

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 21, 2018

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY HOOD, Chairperson of the Zoning Commission
- PETER MAY, Zoning 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:

ANNE FOTHERGILL
CRYSTAL MYERS
MAXINE BROWN-ROBERTS
MATT JESICK

The transcript constitutes the minutes from
the Public Hearing held on February 21, 2018.

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

9:42 a.m.

CHAIR HILL: Good morning, everybody. Hearing's going to come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, NW. This is the February 21, 2018 Public Hearing of the Board of Zoning Adjustment, District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, Lesyllee White, board member, Lorna John, board member, and representing the Zoning Commission is Anthony Hood for a decision case, as well as then Peter May will be joining us for the hearing cases.

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

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

All persons planning to testify either in favor

1 or in opposition must have raised their hand and been sworn
2 in by the secretary. Also, each witness must fill out two
3 witness cards. These cards are located on the table near the
4 door and on the witness table. Upon coming forward to speak
5 to the board, please give both cards to the recorder sitting
6 at the table to my right.

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

13 The order of procedures for special exceptions,
14 variances and appeals are also listed as you come into the
15 room. The record shall be closed at the conclusion of each
16 case except for any materials specifically requested by the
17 board. The board and the staff will specify at the end of the
18 hearing exactly what is expected and the date when the
19 persons must submit the evidence to the Office of Zoning.
20 After the record is closed, no other information shall be
21 accepted by the board.

22 The District of Columbia Administrative Procedures
23 Act requires that the public hearing on each case be held in
24 the open before the public, pursuant to Section 405(b) and
25 406 of that act. The board may, consistent with its rules of

1 procedures and the act, enter into a closed meeting on a case
2 for the purposes of seeking legal counsel on a case pursuant
3 to D.C. Official Code 2-75(b)(4), and/or deliberating on a
4 case pursuant to D.C. Official Code 2-575(b)(13) but only
5 after providing the necessary public notice and in the case
6 of an emergency closed meeting after taking roll call vote.

7 The decision of the board in cases must be based
8 exclusively on the record. To avoid any appearance to the
9 contrary, the board requests that persons present not engage
10 the members of the board in conversation. Please turn off all
11 beepers and cell phones at this time so as not to disrupt the
12 proceedings.

13 Preliminary matters are those which relate to
14 whether a case will or should be heard today, such as a
15 request for postponement, continuance or withdrawal, or
16 whether proper adequate notice of the hearing has been given.
17 If you are not prepared to go forward with a case today or
18 you believe the board should not proceed, now is the time to
19 raise such a matter. Mr. Secretary, do we have any
20 preliminary matters?

21 MR. MOY: Good morning, Mr. Chairman, members of
22 the board. I do have a quick announcement regarding case
23 applications on today's docket. First of all, first category,
24 three cases that have been postponed or rescheduled. These
25 are case applications numbers 19690, 2916 P Street, LLC,

1 rescheduled to March 28, 2018, number 19696, of 1001 through
2 1003 Rhode Island Avenue NE, LLC, rescheduled to April 25,
3 2018, and application number 19567 of Aung Mint, that has
4 been withdrawn by the applicant so there are two cases that
5 have been rescheduled.

6 Secondly, Mr. Chair, we have before the board for
7 action a request for postponement, and that is to case
8 application number 19674, Kimberly Ziegler. This is property
9 located at 1139 6th Street NE. That request filing is on your
10 case records to take action on, up or down, and finally I
11 guess, I believe in terms of the lineup that you'll be
12 addressing, two cases will be moved further up the line,
13 which is application numbers 19685 of Emma Sarah Davis, and
14 19695 of LHO Washington Hotel Three. That's before you, Mr.
15 Chair.

16 CHAIR HILL: Okay, great. Thank you, Mr. Moy. Is
17 the case that was requesting the postponement, the number was
18 what, 19674? Are they here? Kimberly Ziegler? No? Okay. As
19 I recall, we don't have any reports from the Office of
20 Planning or the ANC and so unless the board has any other
21 thoughts I'd also agree to the postponement. Okay. We'll go
22 ahead and postpone that. When are you postponing that to, Mr.
23 Moy?

24 MR. MOY: That would be postponed to, I don't seem
25 to have that date in front of me but I'll announce it

1 sometime during this hearing. It's back in my office.

2 MS. GLAZER: Mr. Chair? Mr. Secretary I think the
3 request for continuance was from today until April 25 if that
4 was available.

5 MR. MOY: That sounds about right.

6 CHAIR HILL: Okay. Thank you, Ms. Glazer. So we'll
7 postpone it until April 25. All right. Anyone who's here
8 wishing to testify, if you'd please stand and take the oath
9 administered by the secretary to my left.

10 MR. MOY: Good morning. Do you solemnly swear or
11 affirm that the testimony you are about to present this
12 proceeding is the truth, the whole truth and nothing but the
13 truth? Ladies and gentlemen, you may consider yourselves
14 under oath.

15 CHAIR HILL: Okay, good morning, everybody. We have
16 a full hearing today, a full docket, we're going to be here
17 pretty late today probably, and so we probably will take a
18 lunch break at some point. Just to let you all know that. If
19 you're lucky enough to get out before lunch then you don't
20 have to worry about that.

21 The order, I guess, just to be clear, that we're
22 going to do, in terms of our decision hearing we're going to
23 flip a few things around. The decision meeting we're going
24 to do with the LAMB case application 19581 first with
25 Chairman Hood, and then we're going to move to the hearing

1 cases and hear application number 19672 of Milton Halem next
2 and then we're going to come back to the meeting case and
3 discuss the Verizon case. I don't have the number in front
4 of me.

5 And then after that, as Mr. Moy had mentioned,
6 we're going to go to application 19685, followed by
7 application 19695 and then we're going to come back up to the
8 top of the order again, which is application number 19629 and
9 then we'll just follow the agenda. Hopefully that makes sense
10 to you. Okay, so, Mr. Moy, you can call our first decision
11 case.

12 (Whereupon, the above entitled matter went off the
13 record at 9:50 a.m. and resumed at 10:30 a.m.)

14 CHAIR HILL: All right, Mr. Moy.

15 MR. MOY: Thank you, Mr. Chair. If we can have
16 parties to the table to Application Number 19672 of Milton
17 Halem, capturing advertised for a special exception under
18 Subtitle D, Section 5201. This is from the rare addition
19 requirements of Subtitle D, Section 120614, which would
20 construct a third story and rare addition to an existing one-
21 family dwelling, R-20 zone that premises 2608 F Street, NW,
22 Square 1305, Lot 47. The only addition I have is, Mr. Chair,
23 members of the board, is that there is a solution this
24 morning from ANC 2E, so that's on the record.

25 CHAIR HILL: All right, just to be clear again,

1 Board Member John, you haven't read into this, so --

2 MEMBER JOHN: No, Mr. Chair.

3 CHAIR HILL: You're just sitting here for your own

4 --

5 MEMBER JOHN: Yes.

6 CHAIR HILL: Okay, all right. Let's see. If you
7 could please introduce yourselves from my right to left?

8 MS STUART: Elizabeth Stuart, product designer.

9 MR. CROSS: Michael Cross, project architect.

10 MR. SOLOMON: Ed Solomon, ANC 2E.

11 CHAIR HILL: Okay. Ms. Stuart, are you presenting?

12 Mr. Cross, are you presenting -- Okay. So you were here
13 before, we're having a continued hearing, there was some
14 information that the board had requested from you, I know you
15 submitted it. You need to maybe walk us through what
16 happened, first of all, the information that the board asked
17 you for, what you submitted, and then also what has happened
18 since the last time you were here.

19 MR. CROSS: Sure. Appreciate your time. We are
20 presenting the materials for a relief from the ten-foot rear
21 yard requirement for a project at 3608 S Street, NW. As
22 stated, this is a continuation from our January 24 meeting.
23 At that hearing we presented the proposed addition, which is
24 conforming to the ten-foot restriction with regard to the
25 west neighbor, can you put that up, actually?

1 On the screen here you can see that the axon from
2 both sides --

3 CHAIR HILL: But that's not the by-right one, is
4 it?

5 MR. CROSS: Oh, that's not. This is the proposed.

6 CHAIR HILL: I thought you were talking originally
7 just about the by-right one. I think you just had it on the
8 shadow side, is that what the --

9 MR. CROSS: Sure. So the by-right proposal massing
10 is here.

11 CHAIR HILL: I didn't mean to, you can go ahead and
12 pull that slide up. You can go ahead and continue with your
13 presentation.

14 MR. CROSS: So the proposal, not what's on the
15 screen, the proposal as originally presented was ten feet
16 from the west neighbor, that is conforming, however it is 22
17 feet beyond the neighbor to the east.

18 CHAIR HILL: And I'm sorry, if you can, just pull
19 up that slide that you just had before. Thank you.

20 MR. CROSS: As you may recall, we have been working
21 with the ANC as well as a small group of concerned direct
22 neighbors and as originally presented, our client remains
23 committed to the voluntary concessions outlined before. Those
24 concessions were the removal of a matter of right roof deck,
25 the addition of privacy screens on the sides of the third

1 story balcony, additional acoustical insulation along the
2 party walls, specifically in the areas of increased noise,
3 bathrooms and the elevator shaft, and the elimination of any
4 hardwired external speakers.

5 At the last hearing the board had asked us to
6 provide additional materials. Those included expanded solar
7 views showing the properties outside of just the immediately
8 adjacent and additional axonometric showing the proposed
9 addition from the east as well as plans, solar studies and
10 axonometric views of a matter of right envelope that could
11 be built on this lot.

12 We've provided those and considered the impact
13 that they show, and have concluded that the solar impact of
14 our proposed project is limited to one property beyond the
15 adjacent, and so their views have been expanded accordingly.

16 CHAIR HILL: Can you point out which property that
17 is?

18 MR. CROSS: Our property is here, and we've
19 expanded the view to show two properties beyond, previously
20 it was just one, and that's because the limit of the shadow
21 shown on the sort of four solstice events throughout the year
22 are, is limited to just one property beyond the immediately
23 adjacent property.

24 What we found is that the shadow study of the
25 matter of right envelope is virtually identical to that which

1 we are proposing, and therefore with the continued support
2 of the Office of Planning as well as both adjacent property
3 owners, we respectfully leave our application unchanged from
4 the original for your final consideration.

5 CHAIR HILL: Okay. Thank you. Does the board have
6 any questions for the applicant?

7 VICE CHAIR HART: Yes, Mr. Chairman. With regard
8 to the impacts on, if you can go back to the proposal and the
9 shadow study, showing where you said there was an impact on
10 the neighbor two doors to the --

11 So, what we're seeing in this image is the rear
12 facade that you're proposing, the rear facades that are
13 existing for the two buildings to the west. Is there any
14 impact on the ground? I mean, is there any shadow on the
15 ground that we're talking about? It's hard to tell from the
16 images because of how they are shortened. It makes it a
17 little bit difficult to kind of figure out.

18 Sometimes if you have them as an axon or
19 something, you can actually see the shadow on the ground a
20 little bit clearer, and I just can't tell if there is or
21 isn't -- Maybe it's the images that are to the, that are on
22 the right hand side of this slide are showing some shadows
23 from the, you've got that accessory structure there, it's not
24 part of this, but that shadow's actually on the ground in
25 between the, you know, on the neighbor's property.

1 MR. CROSS: Exactly. That's what I'm seeing here,
2 is that there is some impact on the ground very subtly in
3 front of the adjacent properties for the condition shown but
4 the largest impact is actually from our accessory structure,
5 the garage, which I've stated is not part of the relief being
6 sought.

7 VICE CHAIR HART: Okay. Thank you.

8 MEMBER WHITE: Could you address some of the ANC's
9 concerns about, well, you addressed some of the shadow study
10 questions that Mr. Hart asked, but their position, part of
11 their position is that this rear addition is kind of out of
12 character for the area, that it's not in line with the look
13 and feel of other properties on that block.

14 I just got their ANC letter this morning, and
15 they're opposed to the project. I'm assuming you've seen it,
16 but I'd just like you to address some of those concerns
17 because typically if you have ANC's great weight regarding
18 their positions on zoning adjustments.

19 MR. CROSS: Yeah, so, we do believe that it's
20 actually relatively in character with the neighborhood as it
21 exists today. As you see on page BZA 02, there's some
22 photographs of the block. The photographs down in the lower
23 right hand corner show properties that are, I think, two or
24 three doors down as well as what would be, I guess, seven
25 doors down, which look identical to each other and are

1 virtually identical to what we are proposing here today, at
2 least from the front there.

3 In a similar manner, the rear addition is
4 consistent with those projects. The aerial view on that same
5 sheet labeled overhead, I'm not sure if I can zoom here, but
6 possibly you can see it there. There are many properties on
7 this block that have significant additions in the rear. I
8 think the testimony during the last hearing on the 24th, one
9 of the folks testifying against our addition was admitting
10 he himself has a significant rear addition, albeit limited
11 to one or two stories.

12 I think our position to some of their comments is
13 that we remind that we are not in a historic district, so we
14 are seeking relief from the rear yard restriction only. To
15 that point, we're not seeking relief from the third story
16 addition, which seems to be a lot of the concern as well.

17 As to the validity of the solar studies, they've
18 been created in good faith with industry standard software
19 and are consistent from view to view. We can't guarantee that
20 they are one hundred percent accurate but they are fully
21 prepared in good faith.

22 The current concessions that we've made, removing
23 that roof deck and adding the privacy screens to the balcony,
24 make the privacy concerns or the impact to privacy no greater
25 than any other structure with rear windows at this point.

1 There's a view out the back of our property and I think every
2 single house along here has rear windows, so we're not
3 increasing that. I think that pretty much addresses the large
4 concerns that they have.

5 MEMBER WHITE: Can you just tell me a little bit
6 about the adjacent neighbors, why they're in support of the
7 rear additions that you're proposing? If they're indeed in
8 support. I think --

9 MR. CROSS: One already has a significant addition,
10 and that's the one we're in compliance with. The other one,
11 like our house, is one of the few houses on the block, again
12 going back to the view, that does not have an addition. So
13 I think they're in support of it because houses on the other
14 side of them already have an addition as well, and they
15 probably acknowledge that they are likely going to put on an
16 addition like other houses on the block anyway.

17 MEMBER WHITE: Thank you.

18 CHAIR HILL: Do you have a photo of that? I didn't
19 see the house that was next to you in terms of it has an
20 addition already? That's okay. I can see it. You can go back
21 to that other one. Thanks.

22 MR. CROSS: Yeah, so, the house to the right, and
23 you can see across the block the number of additions there.
24 We are actually in the minority, it appears, from this side
25 at least, of houses that don't already have an addition.

1 CHAIR HILL: Okay. Anybody have more questions for
2 the applicant?

3 MEMBER WHITE: One other question. When did that
4 other addition take place? Was it before the zoning regs
5 changed, or was it after the new regs.

6 MR. CROSS: I can't speak for sure, but we believe
7 it was before the regulations went into effect.

8 CHAIR HILL: Okay, could you introduce yourself?
9 You just kind of popped in there.

10 MR. HALEM: I'm Mitchell Halem. I'm owner of the
11 property. It belonged to my father Milton.

12 CHAIR HILL: Okay. Mr. Halem, did you get sworn in?

13 MR. HALEM: I did not.

14 CHAIR HILL: Mr. Moy, could you swear in Mr. Halem,
15 please?

16 MR. MOY: Do you solemnly swear or affirm that the
17 testimony you are about to present the proceedings to be the
18 truth, the whole truth and nothing but the truth?

19 MR. HALEM: Yes, I do.

20 MR. MOY: Thank you.

21 CHAIR HILL: I'm sorry. This swearing in thing will
22 never get old for me. You cannot lie now. That is amazing.
23 You have now said you will not lie. Right? That is just
24 amazing, and yet there's plenty of people who seem to do it
25 all the time. Okay. Not anybody in this room, I was just

1 having a little free thinking moment about our government.
2 Can I turn to the Office of Planning, please?

3 I'm sorry. I got a little off topic. I'll explain.
4 What I was curious of, I know you gave us your report the
5 last time. If you could tell us a little bit more about your
6 thoughts after you've gotten this additional information, as
7 well as I am curious about your original report, so, go
8 ahead.

9 MS. MYERS: Hello. Crystal Myers from the Office
10 of Planning. The Office of Planning did review the additional
11 information provided by the applicant. I've noted it was an
12 additional shadow study showing more of the block, as well
13 as an axonometric and more information about the matter of
14 right option.

15 When we compared what was proposed by what could
16 be done by matter of right, we felt that there was no
17 significant difference when it came to the impact and
18 continue to recommend approval of this project. As for our
19 original report, again, we took a look at the neighborhood,
20 we looked at the impact of the shadow studies that were
21 originally proposed as well as looked at the letters of
22 support from the adjacent neighbors and looked at the size
23 and scale of the addition. We did not feel that this proposal
24 was significantly different than what you could see in a
25 variety of other houses along the block.

1 I personally went out there and took a look at the
2 neighborhood and there is, as noted by the applicant, there's
3 a variety of two and three-story additions on this block.
4 Some of them are quite sizeable, all within or appear to be
5 within the zoning regulations. This is not a historic
6 district. So with all of that reviewed and considered, we
7 recommended approval on this case. Again, I stand on the
8 record of the staff report as well as the supplemental staff
9 report.

10 CHAIR HILL: Okay. Does the board have any
11 questions for the Office of Planning?

12 MEMBER WHITE: Yes, one question is, how far does
13 the rear addition go out from the first and second floor,
14 from the adjacent property that doesn't have the rear
15 addition? The first and second story are, go back the same
16 amount as these, correct?

17 MS. MYERS: I believe so, yes. This property is
18 going to go back 22 feet, but as for the adjacent property,
19 I'm not exactly sure.

20 MEMBER WHITE: It says going back 22 feet past the
21 rear wall of the adjacent property on the first and second
22 levels.

23 MS. MYERS: Correct.

24 CHAIR HILL: Okay. Does the applicant have any
25 questions for the Office of Planning?

1 MR. CROSS: We do not.

2 CHAIR HILL: Okay. I don't know if we did this
3 last, we are going to get to the ANC, or actually, I was
4 going to do support in opposition, but we're going to go
5 ahead and turn to the ANC. Mr. Commissioner, you'll have five
6 minutes to present whatever you'd like to present, and then
7 we might have some questions for you.

8 Thank you for coming down. I know it's difficult
9 to do, it's kind of a pain to come down and everybody has a
10 job. You can start whenever you like.

11 MR. SOLOMON: Right. To answer a few questions that
12 were raised by the commission today, one of the questions,
13 why did the neighbors on either side approve this?

14 To give you some context to our neighborhood, we
15 have many absentee landlords in our neighborhood. This was
16 caused by being near Georgetown University. Our neighborhood
17 had a transition that many of these were group homes. Now
18 it's transitioning back to families moving into our
19 neighborhood,

20 The houses on the east and west that are adjacent
21 to this property are absentee landlords, as I understand. The
22 applicant may want to correct me. So these are rental units.
23 The other houses in the neighborhood that the Office of
24 Planning referred to, these were built prior to the change
25 in the regs so there was no special exception to build out

1 on these properties.

2 The ANC received many opposition letters from our
3 constituents. Although there were approvals, some of these
4 approvals were absentee landlords, residents in our
5 community. All the ones in opposition were residents who
6 actually live in the community.

7 The committee is very concerned about the density
8 and impact. I believe the applicant mentioned last time that
9 the build out they want to go out to the max. This is a
10 concern to our neighborhood as these additions start building
11 up.

12 We understand that the needs change over periods
13 of time when people move into the neighborhood, neighborhoods
14 change. We're not against buildings and making these houses
15 larger. I think the question is that, how large can you make
16 it before the character of the neighborhood starts to change?
17 Our ANC was concerned about this. Our ANC was unanimous in
18 raising those concerns in our opposition. We respectfully ask
19 to take a look at this. We have someone from our community
20 who would like to address the shadow studies, which I'm sure
21 you'll address in a few moments.

22 The privacy issue is also of concern to the ANC.
23 We appreciate the removal of the roof deck. We still have
24 concerns about the third-floor balcony, even though, or the
25 third floor, I guess you call it deck or balcony, it comes

1 out, although you put panels on the side you're still
2 overlooking the neighborhood to the south. That's all I have.
3 I'll take any questions.

4 CHAIR HILL: Okay, great. Thank you, commissioner.
5 Does the board have any questions for the commissioner?

6 VICE CHAIR HART: Just one, Mr. Solomon. Are you,
7 you said that you'd be amenable, or at least would be, could
8 be supportive of an addition. Do you have, I mean, ten feet
9 is what is, ten feet or less is what is allowed under zoning.
10 Beyond that ten foot becomes a special exception, which is
11 why we're here. You have a preference to this? I mean, is
12 there some idea about what you're looking for?

13 MR. SOLOMON: This is the way the ANC wanted to
14 address it and this is the way I wanted to address it. I've
15 been working with the applicants since they made the
16 application. We've done many phone calls back and forth.

17 One response that you had, Commissioner Hart, at
18 the last hearing was they weren't required, but I took it
19 that you were encouraging the two parties to get together,
20 maybe address what you're asking right now. I did make an
21 offer to the applicant to use our office to meet with the
22 neighborhood, the neighbors that were in opposition to this
23 to have some of these discussions to start to maybe answer
24 your question. We did not have a response from the applicant.
25 I'm not sure if they reached out on their own to other

1 neighbors. You could ask them that question.

2 But to answer your question specifically, that is
3 the reason for groups to get together. I remember
4 Commissioner Hill, you mentioned that this is a hard issue.
5 This is a hard issue for the ANC as well, to meet the needs
6 of the community. They're very concerned, you've heard them
7 at the last hearing, you hear this all the time. This is what
8 the ANC hears also, and this is why we want the neighbors to
9 get together. I can't say it's 18 feet, 17 feet, this is
10 something that we have to discuss.

11 But when you're developing a house, everyone keeps
12 going for maximum, maximum, maximum, there is a change in the
13 neighborhood, there is a change in the character. This is the
14 concern of the ANC and I'm sure it's a concern to the
15 commission. Thank you.

16 CHAIR HILL: Yeah, Commissioner Solomon, first of
17 all thanks for your service. Being an ANC commissioner is got
18 to be, it's more difficult I think than this job.

19 MR. SOLOMON: You can ask my wife. She's sitting --

20 CHAIR HILL: Yeah, I know. If you talk to my wife
21 she already, we all get together and think that we're crazy.

22 What I struggle with, and you mentioned
23 struggling, this is now, there's like three cases of this,
24 similar, something to this in terms of the expansion which
25 is a special exception in terms of going beyond the ten feet.

1 And your constituents, I guess, what I've heard from
2 different ANCs and I can't recall if I've heard it from yours
3 or not, which was that the ten feet is something that is not
4 matter of right.

5 The matter of right that could have happened with
6 these properties is much less than would have been the case
7 before the regulation was changed. And so you seem, your
8 constituents seem to be okay with the ten feet. That's
9 generally what I understand, correct?

10 MR. SOLOMON: That is correct.

11 CHAIR HILL: And what I think that is interesting
12 about the ten feet that I'm trying to, that I continue to
13 struggle with about these different cases, is that ten feet's
14 not a lot of room. Meaning that you can't really do much with
15 ten feet. You basically can't put on necessarily a master
16 bedroom or do anything, you're basically expanding a porch,
17 and so I think why, and this is where maybe the zoning
18 commission came into where this turns into a special
19 exception then with these criteria as to whether or not you
20 can go beyond the ten feet.

21 And again, I'm just speaking since you're here and
22 we're going to have to all go through this again and again,
23 it's almost as if you're not going to do anything then.
24 Because the expense to do ten feet, you might just as well
25 not do anything. That's where I kind of struggle with the

1 special exception in terms of then what are those criteria?
2 And the Office of Planning, they're kind of the neutral
3 bodies so to speak that kind of gives us their very black and
4 white opinion as to whether or not the standards are being
5 met.

6 I'm just kind of sharing this in terms of how,
7 because you have to go back to your constituents and then
8 explain what happens here, and I don't think it's an easy
9 issue. This has gone through the zoning commission and these
10 are the standards that we have. It's not up to us to, I'm not
11 saying I'm on this one way or the other, I'm just saying it's
12 not up to us to change the way the standards are set forth
13 for the special exception or not.

14 It's for us to take the information we get
15 including that from the ANC as to whether or not those
16 standards are being met. And from your report and your
17 letters, again like privacy, light and air, those issues you
18 think are going to be affected because of this possible
19 expansion.

20 So my question to you, I guess, after that long
21 whatever it is, is that the by right, or the matter of right,
22 if they were able to do it or not, because that's the other
23 thing. It's very expensive to do what they're planning on
24 doing even as a matter of right, so whether they would
25 actually do that or not, who knows?

1 But you've seen the matter of right in the spiral
2 staircase and the rooftop deck and the shadow study, which
3 seems basically to me the same as what would happen if they
4 got the expansion. Would your constituents rather, I don't
5 know if you can answer this one or the other, would your
6 constituents rather have the matter of right with the spiral
7 staircase or the expansion?

8 MR. SOLOMON: Are you telling me we have a choice,
9 either matter of right or the expansion?

10 CHAIR HILL: I was asking a question. I don't know
11 whether you're able to answer or not for your constituents.
12 We asked to see what the matter of right would have been, and
13 that's a spiral staircase with the roof deck and the shadow
14 study, and I don't know if the applicant can put that up
15 there. That's what they can do without having to come to us.
16 So that would be, I'm just kind of curious, I don't know if
17 this discussion took place in your ANC or not.

18 MR. SOLOMON: It didn't take place, but since we're
19 having this discussion, now you're asking me the question,
20 and I would -- Obviously this would be a discussion we'd have
21 in the community, but if this were proposed as a matter of
22 right in our neighborhood, the builder, whoever builds in our
23 neighborhood, they have to live there unless they're going
24 to be flipping it to someone else.

25 I've been on the ANC for 12 years. We have had,

1 in a historic community. We've had very few issues in
2 Burleith. Burleith is not part of the Georgetown historic
3 community. It's a part of the ANC but it isn't historic.

4 When the rules were changed to the R-20, we became
5 part of the rules with Georgetown. This is why we have some
6 of the same issues that Georgetown has but we're not a
7 historic community. It's kind of an interesting hybrid here.
8 If we don't have a choice and someone has to build by matter
9 of right, you're going to lose some on the outside spiral
10 staircase, you're going to gain because you're not going to
11 have the density issue or the size of the project going out
12 22 feet.

13 We're not, our ANC, and I'm sure other ANCs
14 throughout the District, understand that ten feet is not a
15 lot. And someone comes, again, we're just having this
16 discussion, I can't take the position of the ANC, if they
17 said we're building a 14 foot room that we need a special
18 exception, I can only speak for myself. I would be coming
19 here to say, I don't have a problem with that. It's not an
20 issue.

21 But when you keep building to the max, that's when
22 we have the problems. Very difficult to define. You have
23 elements that if they are met, if you just go cut and dry,
24 you're going to approve it. But if there are certain
25 subjective issues that you're going to look at and say this

1 building max based on this community, Office of Planning
2 talked about the other houses in the area but if you take out
3 of context these were before the rule change, then that's why
4 we couldn't comment on those. I can guarantee you we would
5 have commented on them, but they were putting the same
6 structure that is being the applicant's presenting now.

7 VICE CHAIR HART: Just to add one piece to this,
8 I guess it's a little bit of clarification, the zoning
9 regulations lay out what the rules are, what you can and
10 can't do on the property. There are, in this case the
11 applicant is seeking a relief from the rear yard extension,
12 which is this ten foot maximum that they can go by right and
13 then have to come to the BZA for relief to allow anything
14 beyond that.

15 There is also a rear yard setback that from the
16 alley or center line of the alley that also creates kind of
17 a building envelope, what it is that's allowed in that net
18 zone. In this case, the regulation is 20 feet for a rear
19 yard. The existing is 62 feet and the proposed is 41 feet.

20 I'm only saying all this in that the building
21 envelope is much larger than anyone would necessarily want
22 to see, but it is a much larger than what's actually being
23 proposed, even right now, by the applicant. I understand that
24 it is larger than what the community would necessarily want,
25 but as the only thing that the applicant is actually looking

1 for is the expansion outside of the ten foot, the allowable
2 ten foot bump out or addition on the rear of the building.

3 I have a hard time also with dealing with these,
4 because it becomes, the issue is about what is unduly? What
5 does the word unduly mean? And so it, which is why I think
6 we have a conversation with the Office of Planning, the ANCs,
7 hearing from the community about what this kind of all means.

8 And it is a, as we take these cases we kind of
9 look at these cases and we see this, okay, so what does this
10 particular project propose? What's allowed? What are they
11 seeking relief from? And we look at another case and we do
12 kind of the same thing.

13 While others may see that oh, well, this is the
14 pattern, this is what they're going to do, you have to look
15 at these as they come before us. And we try to do that as
16 individually as we can. I know that it is helpful, I would
17 hope that it would be helpful for the community to actually
18 be able to weigh in during this process, which is what the
19 zoning commission was really looking for, because there was
20 this 'you can build as much as you can' prior to this
21 regulation change. But I just wanted to make sure that that
22 was kind of stated.

23 CHAIR HILL: Ms. White, do you have a question?

24 MEMBER WHITE: No, not really a question, but a
25 comment. I find these cases to be harder than cases in the

1 LAMB case because I like to be consistent but it's almost
2 impossible to be consistent because the facts are different
3 for each case, the layout of the neighborhood, but I am
4 sensitive to development really going to the max and the
5 community's feeling that it's kind of changing the look and
6 feel of the neighborhood.

7 So when people say, I want to go back 15 feet more
8 or 20 or 30, it's kind of hard for me to put this in a box
9 and figure out what would be in the best interest of the
10 neighborhood. I've got to take a closer look at the facts
11 here and I realize that some of this development took place
12 prior to the change in the zoning regulations, so I know
13 there was kind of like a walk around within that neighborhood
14 but I guess part of the question that I have is that most of
15 the properties that I'm seeing that have been developed in
16 that area were probably done prior to the changes in the
17 zoning regulations. Even if they haven't I still find that
18 these are really challenging to try to be consistent across
19 the board.

20 CHAIR HILL: Okay. Thank you. Yeah, Commissioner,
21 we're just kind of talking it out. I mean, I've voted in
22 favor of some of these, I've voted against some of these and
23 so I think it is difficult, I mean whether we get to
24 deliberation or not about this today, I think what's
25 difficult to think about at times, you know, those buildings

1 that were done before the regulations were changed, were
2 done.

3 So I'm kind of stuck in this chicken or egg thing.
4 Now, they are there, so that is what the neighborhood is like
5 now. But again, that's not to say that each individual thing
6 -- The one question I did have for the applicant, so you did
7 not present the matter of right to the ANC as well? I don't
8 understand.

9 MR. CROSS: That's right.

10 CHAIR HILL: You did not, or you did?

11 MR. CROSS: We did not present the matter of right
12 to the ANC after our last meeting.

13 CHAIR HILL: Okay. So you did not go back to the
14 ANC, because they just met last night again. Is that right,
15 Commissioner Solomon?

16 MR. SOLOMON: We meet on this Monday.

17 CHAIR HILL: Okay. Because there was a letter here,
18 that I thought maybe was addressing -- So they've only
19 presented to the ANC once, is that correct?

20 MR. SOLOMON: That is correct.

21 MR. CROSS: If I may, we have presented to the ANC
22 only once and we did not go back since our last hearing.
23 However, we have been working with the ANC off line as well
24 as the individual neighbors. I think as you might recall in
25 the previous testimony at our last hearing, it's very clear

1 that in that hearing, there was even opposition against a ten
2 foot matter of right addition.

3 Working with the community, we were never given
4 any indication that there was a concession that was available
5 to us to work out, and that largely the opposition is simply
6 they don't want, they are against the development. And so
7 without getting any clear indication that there was some sort
8 of concession beyond 10 feet, which the adjacent property is
9 12 feet, so even aligning with the adjacent was turned down
10 in the previous hearing.

11 CHAIR HILL: Previous hearing where, at the ANC you
12 mean?

13 MR. CROSS: Here in this room. If you go back to
14 the 24th, I believe it was Council Member Hart actually asked
15 if they could go to 12 feet and the answer was not --

16 CHAIR HILL: I'd have to see it I can't remember.

17 MR. CROSS: And so with that, it didn't seem like
18 in our best interest to go back to the ANC --

19 (Simultaneous speaking.)

20 CHAIR HILL: That's fine. I was just curious this
21 matter of right was presented and it wasn't. That's
22 understood.

23 MR. CROSS: It was not.

24 CHAIR HILL: And Mr. Cross, you can see that we're,
25 you're not the first one of these and you won't be the last

1 one of these, so we're just trying to figure out where we
2 stand on these. Does anybody have any more questions for the
3 ANC? I'll let you speak in just one second, Commissioner.
4 Anybody has any more questions for the commissioner or the
5 applicant? Okay. Mr. Commissioner, you had something else you
6 wanted to add?

7 MR. SOLOMON: Yes. On the last comment, I
8 understand it's the role of the ANC to bring parties
9 together, which I did. And I encouraged the applicant to meet
10 with a group of neighbors, which they did. That was the
11 opportunity to discuss different options if they wanted to
12 do it. My phone, I was keeping an open line of communication,
13 it was always the understanding they were going to build to
14 the max, they showed us the project, we were very concerned
15 about other issues as well.

16 So our, if I'm hearing correctly, if they want to
17 discuss as far other options, our ANC is always willing to
18 hear and would even make an exception to get them on the next
19 ANC meeting on Monday night. Our chair is here in the
20 audience and we could, although by rule we have to give
21 notice one week prior to our meeting, that would be the venue
22 to bring something forward.

23 CHAIR HILL: Okay. And Commissioner Solomon, for
24 what it's worth, the applicant I think whatever their
25 strategy might be in terms of trying to move forward and

1 trying to do things, I think that as you, I mean, you've been
2 a commissioner for 12 years. So as a commissioner for 12
3 years you know that there are people there who, they don't
4 want the ten feet at all. They don't want anything. And so
5 you can also understand how talking to people --

6 Anyway, I'm just trying to say there's a lot of
7 different views going back and forth and so I don't get the
8 impression that anyone's, that they're trying to shirk a
9 discussion, for whatever that's worth. Okay. Is anyone here
10 wishing to speak in support? Okay. Is there anyone here
11 wishing to speak in opposition? Okay. If you want to come
12 forward, please? And again, I think we did support and
13 opposition the last time. I'm just doing it now again as an
14 abundance of caution. You can go ahead and stand over here
15 to my right.

16 Okay. As is the last time, if you could introduce
17 yourself you'll go ahead and get three minutes each, and I
18 was going to say I don't know if you want to repeat whatever
19 it was you said the time before, but you can go ahead and
20 give us your testimony.

21 MR. MOY: Excuse me.

22 CHAIR HILL: Yes, Mr. Moy?

23 MR. MOY: Just for my clarification, is the
24 commissioner speaking on behalf of the ANC or is he speaking
25 as an individual?

1 CHAIR HILL: The commissioner, Mr. Solomon, you're
2 speaking, go ahead.

3 MR. SOLOMON: I'm speaking on behalf of the ANC.
4 You requested as to, I believe there was a question that you
5 didn't have a letter in, I believe you have that in the
6 record now?

7 MR. MOY: Oh, yes, I'm sorry. I thought the other
8 gentleman also represented the ANC. But I could be incorrect.

9 MR. SOLOMON: No, that's a resident.

10 CHAIR HILL: Okay, great thank you. If you guys
11 could go ahead and introduce yourselves whenever you're
12 ready, I put three minutes on the clock there and you can
13 start whenever you like. You need to push the button, and if
14 you could just bring the mike a little bit closer to you.

15 MS. LEWIS: Hello, good morning. My name is Pauline
16 Lewis, and I live in 3604 S Street, so two houses down from
17 the applicant.

18 I had a chance to take a look at the light
19 studies, and I'll just -- During the January 24th hearing
20 testimony, my neighbor Anne Carpenter expressed concern about
21 the accuracy of the solar studies in Exhibit 52 because of
22 differing shadows cast by the garage and the matter of right
23 and proposed scenarios despite the fact that the garage has
24 not changed in dimension or position in either scenario.

25 So in the revised solar studies which was included

1 in Exhibit 68, and I have some examples here, I can't show
2 it but I have copies I can give you, Anne felt some of the
3 same discrepancies. However, it has not been put forth by the
4 applicant. If it's okay with you I can give you copies of
5 this.

6 CHAIR HILL: You have enough copies?

7 MS. LEWIS: I do.

8 CHAIR HILL: Okay, sure, go ahead and give it to
9 the secretary. Mr. Moy, over there to the left. Ms. Lewis,
10 did you give one to the applicant?

11 MS. LEWIS: No.

12 MR. CROSS: We were provided one via email.

13 MS. LEWIS: I have enough copies. I made 12, so --
14 Okay. So, this is what Anne Carpenter had put together after
15 looking at the revised solar studies. What you're looking at
16 is what she had compiled to make it easier for everybody to
17 see what, this is just an example of a discrepancy. If you
18 look at the third row, so you're looking at a matter of right
19 summer solstice, 3:30 p.m., and then the second column,
20 existing summer solstice, and then the third column, proposed
21 summer solstice at 3:30 p.m.

22 For example if you take a look at these blue
23 circles, not a big difference but there's a difference in the
24 shadows. If you take a look at the red circles, same thing
25 with the garage. But what's creating those shadows? It's

1 3612. That's, or 3612 is contributing to the shadows. So why
2 is there a difference in the shadows? It's just a question
3 that came to mind, and I'm not the only one questioning it.
4 It's also Anne and then my fellow neighbor Ed.

5 So, and this is just one example of the
6 discrepancies found. These figures are more detail about the
7 discrepancies, because I know that I only have now three
8 seconds, but anyway.

9 (Simultaneous speaking.)

10 MS. LEWIS: Okay. But they're contained in Anne
11 Carpenter's submission so I'm also here to speak on her
12 behalf and I'm also here to speak on --

13 CHAIR HILL: Ma'am, you can't speak on her behalf.
14 That's okay. We have her testimony.

15 MS. LEWIS: Furthermore, I recall it being
16 requested by Commissioners Lesyllee White, Carlton Hard and
17 Chairman Frederick Hill for a shadow study beyond just the
18 adjacent houses. And these recent solar studies submitted
19 looks to cover only a third of my home. It would seem correct
20 for this revised study to show how the proposed construction
21 would impact the entire property. I understand that they are
22 saying, well, as you can see from what we've created, or, I'm
23 sorry, put together, it doesn't seem to make any impact but
24 I think that it would be a little bit easier to understand
25 and easier to just understand if we could see the entire one.

1 As a matter of fact, I seem to recall Chairman
2 Frederick Hill saying it would be nice to see a shadow study
3 of the whole row of homes, not just the adjacent. I don't
4 know if that --

5 (Simultaneous speaking.)

6 CHAIR HILL: Okay, ma'am, I was just interested in
7 seeing the row, not necessarily shadow study. But you are the
8 home two houses over, correct?

9 MS. LEWIS: To the east, yes. Another issue that
10 I have is that in the January 24th meeting, Michael Cross had
11 made the comment that the landlord, his name is Jim Mula,
12 he's the one at 3606, is planning to renovate next year. So
13 the way that I see it is you have 3608 coming out, assuming
14 the special exception happens, so then according to the rules
15 then, so in other words 3608 will then have the ability to
16 expand further out.

17 So now, what I'm thinking is, again, we've already
18 discussed about how the community is changing, there are no
19 longer students so landlords are now wanting to change the
20 homes to be more family-oriented. I understand that, but at
21 the same time when these exceptions are made, and in my case
22 particularly, you're going to have a domino effect. It's
23 inevitable. So you extend one, so now that gives my neighbor,
24 3606, the ability to extend even further, to ten feet. What
25 am I going to look at in 2019? Pretty much a wall. And I

1 think a lot of, I'm sure I'm not the only one who's thinking
2 about this.

3 CHAIR HILL: Okay. Thanks, Ms. Lewis. Sir?

4 MR. LEVY: I'm Ed Levy, and just by way of
5 clarification the documents that Pauline distributed are in
6 Exhibit 72 which, just a small correction, Anne Carper
7 submitted. Viewing them on line, you may have to rotate them
8 a little so that they line up the way the paper copies are
9 that you just received but those are all available to you.

10 I would also point out that there are some
11 discrepancies that Pauline identified which are in Anne's
12 documents and submissions. Those kinds of discrepancies seem
13 to come up throughout the solar studies. Situations where
14 existing properties cast different shadows under the same
15 conditions, so the same with the garage that's proposed for
16 the property. They just call into question the validity of
17 the studies. Maybe there are explanations for these things,
18 but it still makes the studies questionable to my way of
19 thinking.

20 Okay. With regarding the matter of right, to me
21 it's questionable as to how relevant that is in a proceeding
22 like this. Obviously it's going to be relevant to the
23 community and to the people who live there, but what the
24 rules call for is an examination of the impact of the
25 proposed addition. They don't call for an examination of its

1 impact in comparison with what the owner of the property
2 could do as a matter of right.

3 Now if you do examine the matter of right, then
4 what that means the BZA has to do is examine exactly what
5 impact it would have and compare that to the impact of the
6 proposal, because otherwise you can't say that the proposal
7 is no more onerous than the matter of right. I don't know if
8 that's the BZA's function.

9 I mean, the BZA evaluates what's proposed and
10 decides that it doesn't satisfy the rules, then it's up to
11 the applicant to decide what he wants to do in terms of going
12 forward, whether he wants to go with the matter of right
13 construction or whether he wants to try and come up with
14 something in between the proposal and the matter of right.

15 That also plays into another point. The notion
16 that the community is inflexible, which was implied by Mr.
17 Cross, I think, is not correct. While certainly the
18 architects met with people in the community and they did make
19 some adjustments in what was originally contemplated, that's
20 all to the good. I wasn't at that meeting, but my
21 understanding is that there was never any contemplation or
22 suggestion of building anything that's any smaller than
23 what's being proposed here.

24 And so I don't think there's been a real dialogue
25 with the community about exactly what it would support. I am

1 sure there are some people who oppose anything. You know, ten
2 feet, 12 feet, three feet. But that's probably a minority
3 here, and particularly when the applicant as a matter of
4 right can build out to ten feet.

5 The notion that ten feet isn't much, well, that
6 has to be viewed in a context that these structures are now
7 going up, also, creating a third floor which doesn't exist
8 in many of these buildings. So you're not just talking about
9 ten feet out. You're talking about ten feet out plus a third
10 story.

11 I am glad to hear that the Office of Planning took
12 a look at the area, physically examined it, because I was a
13 little concerned with their statement about the structure
14 fitting into the area based on drawings.

15 I myself took a look, having gotten involved in
16 these issues. There's a similar addition, similarly situated,
17 already built under the older rules about a block away, and
18 it towers over the adjacent properties to the east. It may
19 be more consistent to some of the properties to the west,
20 where some of these additions have been built but many of the
21 properties on this block and on other blocks do not have
22 those large additions. That's all.

23 CHAIR HILL: Thank you. Mr. Levy, have you
24 testified on other cases before similar to this? You look
25 familiar to me.

1 MR. LEVY: This case, and I testified in the case
2 involving 3629 T Street, which is also in Burleith where I
3 live.

4 CHAIR HILL: That's right. I remember that. And
5 you're, I hate to do this to you, you're the one that has an
6 extension right now, correct?

7 MR. LEVY: Yes. That was referred to. I don't live
8 on that block, however.

9 CHAIR HILL: That's okay. It doesn't matter. I was
10 just curious. I'm not discounting. Okay. Does anyone have any
11 questions for the witnesses? Okay. I guess I just have, I
12 suppose, more of a comment, and again, the way that, I mean
13 just in terms of the understanding as to how we are looking
14 at these things, we look at them individually. Like, whatever
15 the project is, and base those against the standards that we
16 look at.

17 So our independent, the people that are giving us
18 advice, that we are by regulation are supposed to give great
19 weight to is the Office of Planning, and the Office of
20 Planning has walked through this in terms of their opinion
21 to the light and air and looking at the shadow study. You can
22 disagree with it, I'm just telling you how we got to, how
23 they're getting to their opinion.

24 And in terms of, it's been mentioned quite a bit
25 as terms of like 'the max,' you know, they could have tried

1 to get more, is what I'm trying to point out. They could have
2 tried to make it a bigger project, and they actually, they
3 have. And they could have tried and I don't know if the
4 Office of Planning would have agreed with it or not, and the
5 ANC or not, but they could have gotten a bigger project, just
6 to let you know. And so, Mr. Levy?

7 MR. LEVY: Can I question that? Because I thought
8 that Mr. Halem said at the last hearing, when asked well, why
9 do you go out to 22 feet, was because that was the maximum
10 lot coverage that was permitted.

11 CHAIR HILL: Right. So we'll go back. Obviously,
12 I don't want to, I'm just saying they could have gone for
13 more, just to let you know. Does anyone again have any
14 questions? Okay. Thank you guys very much. Thank you.

15 All right, so I'm going to turn to the applicant.
16 You guys are excused. Thank you. The applicant, so as far as
17 the shadow study, there seems to be some discrepancies that
18 kind of popped up. I understand, and there's an architect on
19 the board here, that, can you explain to us here again how
20 the shadow studies, and what program is used, and how that
21 works?

22 MR. CROSS: We're generating the solar studies in
23 Revit. The model is being designed and drawn in a software
24 called Revit, which is a building information modeling tool.
25 It is drawn in real scale in an absolute geographic location

1 and oriented as it is in real life. We apply the solar tool
2 that's in that software and export these frames for these
3 times.

4 I see the subtle differences in these. I think the
5 largest difference I'm seeing is on the accessory structure
6 in the rear, which again is not part of this. Unfortunately,
7 I'm unable to really explain what's causing that. I believe
8 that as we limited the view to only show where the shadow is,
9 which is why we haven't shown the whole block because we've
10 just pulled it in to the end of the shadow, which hopefully
11 is clear.

12 Some of the buildings around it have been
13 manipulated as well as they were casting shadows on our
14 property and we had to turn them off to be able to show what
15 our impact was and I'm not sure if maybe in that manipulation
16 there's some object that is casting a shadow that's not
17 actually doing so in the other frame.

18 CHAIR HILL: Okay. I always forget that, Revit
19 software. And the, oh, to speak, I know because you have the
20 accessory structure in terms of the lot coverage, but had the
21 accessory structure not been there you could have built a
22 larger property. Or at least tried to.

23 MR. CROSS: Yes. You're exactly right. It's been
24 stated that we're going to the max. We're actually, I think,
25 only at 58 percent including the accessory structure, which

1 was a late addition to the project in general and I don't
2 know the actual lot coverage of the primary structure itself
3 but it is far below the allowable 60 percent.

4 CHAIR HILL: Does the Office of Planning, do you
5 know how far back they could have possibly tried to do this?

6 MS. MYERS: No, I mean, besides saying that ten
7 feet from the adjacent neighbor is, as you all know, the
8 matter of right option, and that the rear yard is 20 feet is
9 the regulation, but their rear yard more than doubles that.
10 What they are proposing right now would still have more than
11 double the required rear yard. From a regulation point of
12 view, they are still within the requirements.

13 CHAIR HILL: I guess this is again just trying to
14 have as much clarification for the board moving forward in
15 terms of this is where it's a special exception and people
16 can come forward and propose something, and I guess I was
17 just kind of curious as to how far back they could have tried
18 to propose.

19 I don't need an exact number or anything. That's
20 where we get into this ten feet, 20 feet, 30 feet, it gets
21 confusing for us as well. But again there's the criteria
22 which each individual project is we're supposed to look at.

23 MR. CROSS: I believe the answer you're looking for
24 is the lot seems to be 125 feet long, we're proposing a 52,
25 53 foot building, 60 percent of 125 is 75 feet which would

1 be max lot occupancy. So we are 20 feet less than that.

2 CHAIR HILL: So you could have tried to go to 75.

3 MR. CROSS: That's correct.

4 CHAIR HILL: Okay.

5 MS. GLAZER: Mr. Chair.

6 CHAIR HILL: Yes.

7 MS. GLAZER: Just to interject, OP does have a
8 report, and if you look at it, page 3 it states that the
9 proposed lot occupancy would be 42 percent and that's with
10 respect to Subsection D, which says the board may approve lot
11 occupancy up to 70 percent.

12 MR. CROSS: The 42 percent likely represents the
13 primary building by itself, because the garage was added in
14 after we filed this application.

15 CHAIR HILL: All right, thank you, Ms. Glazer. I
16 mean, I'm just trying to, I know the percentage and the lot
17 occupancy, but I was also trying to think of a number as to
18 how far back. But, okay. And then again, Mr. Cross, you've
19 testified, and this is where the commissioner and the other
20 people that are here for the application as well as others
21 that might come before us for the application in the future,
22 the people that have signed on to this, they've already
23 acknowledged they're planning on trying to do an expansion
24 as well.

25 So I guess I'm trying to, I think it's going to

1 happen anyway, so that's what I'm saying. These are just
2 going to kind of come before us and this is happening. It's
3 kind of, the neighborhood's signed off that they're going to
4 come to speak to the witnesses' testimony, these are things
5 that are taking place, and I guess I -- The answer's yes,
6 right? You can just say yes, that's what the applicant, the
7 person, kind of thought they might do. You don't know
8 exactly.

9 MR. CROSS: Yes, exactly. I can't speak to that but
10 it's likely that folks will add additions in the future.

11 CHAIR HILL: Okay. And this is the last thing that
12 I'm going to say before I turn it back over to the board
13 again, the thing that I find that the people that come
14 forward and then also don't want to, it's taking away your
15 property rights as well, as well as value to your home as
16 well, meaning that now if this, you know, you could --

17 That's what I find confusing about all of this,
18 is that it's making your property less valuable if this
19 doesn't happen around you. Okay. Does the board have any
20 questions for anybody? Okay. I thought I was going to be able
21 to decide this today, but there's been so much more testimony
22 and the commissioner submitted some information that I want
23 to take a look at it all again, unless you all think you're
24 ready to go right now.

25 Okay. So, then what I would ask is, there was

1 Commissioner Shapiro who is here for the original hearing,
2 I'm going to ask him to watch and read in and then we can do
3 a decision next week. Is that okay? Oh, wait, next week,
4 yeah. We can do it next week. Okay? All right. So we're going
5 to close the hearing, unless you guys, you have anything else
6 you'd like to add before we close the hearing?

7 MR. CROSS: Thanks for all your time and
8 consideration.

9 CHAIR HILL: Okay. Commissioner Solomon, I'm sorry?
10 It wasn't, but if you want to go ahead, you just push the
11 microphone, then I'm going to let the applicant say whatever
12 they want to say, they get the last word.

13 MR. SOLOMON: Okay. The only one, I just don't want
14 to leave you with the impression that the community is
15 adverse to additions. We're concerned about the density and
16 the size of additions. So it's basically what Mr. Levy said,
17 you're always going to have extremes. But I think our
18 difficulty is what's in the middle is what's representing the
19 concerns of the community but also the rights of the
20 applicant.

21 CHAIR HILL: Okay. Thank you. And I guess I'll let
22 the applicant add in anything if they want to, but that is
23 also our problem as well. That's what we're trying to figure
24 out. Whatever the middle is. We've been given the middle, and
25 so the middle changes a lot. So, do you have anything else

1 you'd like to add?

2 MR. CROSS: Yeah. We absolutely have appreciated
3 all the time from the ANC, all the individual community
4 members, working with them all. I think our position is
5 reflected in the letter from February 9 where they opposed
6 the matter of right drawings, and I think that indicates kind
7 of the general position of the ANC and the neighborhood, that
8 they would still be in opposition to even a matter of right
9 solution, and that's --

10 CHAIR HILL: Okay. That's fine. We're just going
11 back and forth. It doesn't matter. Mr. Commissioner?
12 Mr. Cross, you were going to send me off on a great kumbaya
13 moment and then you had to throw that in the end --

14 (Simultaneous speaking.)

15 MR. SOLOMON: What the applicant is referring to,
16 and we received an email which I could submit to the
17 commission if they want, but they agreed that it was a little
18 confusing as far as what they represented, and we questioned
19 whether this was the proposal that they were presenting which
20 was of concern to us. They put back the roof deck on a matter
21 of right. But in the document, you will see, that I just
22 submitted today, that we recognize that and clarified that.
23 So you read the document that we presented today.

24 CHAIR HILL: Okay. Thank you. Mr. Cross, is there
25 anything else that you'd like to add?

1 MR. CROSS: No. Thank you.

2 CHAIR HILL: All right. We're going to close the
3 hearing. We're going to set this for decision next week.
4 We're going to take a break and we will come back. So thank
5 you very much.

6 (Whereupon, the above-entitled matter went off the
7 record at 11:38 p.m. and resumed at 12:15 p.m.)

8 MR. MOY: All right. While the Board prepares its
9 materials, I'm going to call the next case application. And
10 that, I believe, is Application Number 19680 of Quentin
11 Ventures, LLC.

12 Caption advertised for a special exception under
13 Subtitle E Section 5201 from the rear addition requirements
14 of Subtitle E Section 205.4. This would construct a rear
15 addition and convert the existing one-family dwelling to a
16 flat in the RF-1 Zone at premises 1948 2nd Street Northwest,
17 Square 3088 Lot 50.

18 CHAIR HILL: Okay, great. I'm going to take a
19 breath. So, if you could please introduce yourselves, from
20 my right to left, or left to right.

21 MR. BRAITHWAITE: Good morning. My name is Larry
22 Braithwaite. I live at 1946 2nd Street, which is just to the
23 south of the subject property. And I'm also the property
24 owner of the subject property as well.

25 CHAIR HILL: Okay. Could you say your name again

1 and spell it for me? You need to push it again.

2 MR. BRAITHWAITE: It's Lawrence Braithwaite, I go
3 by Larry. Lawrence, L-A-W-R-E-N-C-E, Braithwaite is B-R-A-I-
4 T-H-W-A-I-T-E.

5 CHAIR HILL: All right, Mr. Braithwaite, thank you.

6 MR. KEYS: Good morning, Mr. Chairman. Or, good
7 afternoon, Mr. Chairman. My name is George Keys, I'm an
8 attorney with Jordan and Keys and I'm representing Quentin
9 Ventures, LLC, in this application.

10 CHAIR HILL: Okay. All right, Mr. Keys, I guess
11 you're going to present to us? No? Well, whoever is going
12 to present to us. So, I kind of began to look through --
13 well, I shouldn't say that. I've reviewed the record and I
14 guess we do -- I would like to hear exactly kind of what is
15 being proposed.

16 And I don't know whether you have any slides or
17 not, or if you want to just -- you're just going to walk us
18 through the exhibits. I guess, if you were here for the
19 previous case, which I assume you were, because you got --
20 you guys have both been sworn in?

21 MR. KEYS: Yes.

22 CHAIR HILL: Okay. Well, the attorneys don't have
23 to get sworn in, because they always tell the truth.

24 (Laughter.)

25 CHAIR HILL: If you recall, these are -- we'd like

1 a full presentation as to what you're trying to do and how
2 you're meeting the standard with which for us to grant the
3 application. Also, the ANC has submitted their report. They
4 did not specify any issues or concerns. However, they were
5 in opposition.

6 So, if you could tell us a little bit about your
7 outreach and what you took from the ANC meeting. And I'm
8 going to go ahead and put 15 minutes on the clock, just so
9 I know where we are. And you can begin whenever you'd like.

10 MR. BRAITHWAITE: Great. Well, thank you, and
11 especially thank you for the scheduling change, because I do
12 have a flight in a couple of hours. Do I have the
13 presentation materials here on this laptop to refer to? Or
14 -- okay.

15 So, it's pretty straightforward and I'm happy to
16 refer, there's only really two exhibits that I would
17 reference during my presentation. As I mentioned, my name
18 is Larry Braithwaite. I live at 1946 2nd Street. And
19 between 2016 and 2017, I implemented a renovation of my
20 primary residence, which entailed an extension.

21 And that extension is basically 60 percent lot
22 occupancy. There was no change to the facade, I do live in
23 a historic district. And that renovation was a by-right
24 renovation. In November 2017, I purchased 1948, which is the
25 subject property.

1 And as a result of the change in the regulations,
2 I'm now in front of you seeking a variance. What I would
3 like to accomplish is an identical footprint --

4 CHAIR HILL: A special exception, correct?

5 MR. BRAITHWAITE: A special exception, yes, my
6 apologies. What I would like to accomplish is an identical
7 footprint to that of my primary residence, immediately to the
8 south. So, just to sort of walk through the layout.
9 Currently, 1948 is five feet beyond 1950.

10 And I plan to add an addition, which would be an
11 additional 18 feet, such that the entire footprint of 1948
12 would extend 23 feet beyond 1950, which is obviously a reason
13 why an exemption would be required.

14 MR. KEYS: Mr. Chairman, I think if you would look
15 at the supplemental information that the Applicant filed,
16 there are axonometric drawings that our architect prepared
17 that show the relationship. It's Drawing Number A3.1 in the
18 supplemental filing. And if you look at the upper-left
19 drawing --

20 VICE CHAIR HART: This is Exhibit Number 37.

21 MR. KEYS: If you look at the upper-left drawing,
22 it shows the existing condition of the properties. And as
23 you look at it, the first property to the left is 1950, which
24 Mr. Braithwaite referred to. 1948 is the middle property,
25 that is the subject property of this application. And 1946,

1 the property that was renovated and is Mr. Braithwaite's
2 principal residence.

3 MR. BRAITHWAITE: So, just to conclude my comments,
4 I think that there really are three considerations for the
5 Board, that I think would certainly lend itself in support
6 of the request. The first is the fact that there is no party
7 on the block that would have any adverse impact that is
8 opposed to this improvement.

9 The two properties that could reasonably be
10 impacted are the two properties to the north, which would be
11 1950 and 1952, both of which landlords have issued letters
12 in support of this improvement. So, that is the first
13 consideration.

14 The second consideration that I would point to is
15 the deep number of precedents on the block for what I would
16 call an expanded footprint. And so, just to sort of walk you
17 through the numbers -- and we actually have in the supplement
18 a visualization of the rest of the properties on the block.
19 But if you count all of the properties that have this sort
20 of expanded lot that are facing east on this block of 2nd
21 Street, there are 17 properties, not including the subject
22 property, six of which have an extended footprint. And those
23 properties include 1938, 1946, 1952, 54, 56, and 58.

24 So, there is a great precedent already on the
25 block. And what I would also point to is, certainly toward

1 the northern end of the block, if you look at the properties
2 that are north of 1946, not including the subject property,
3 five of the six have an extended footprint. And so, this is
4 well within the precedent that has been set on the block and
5 I think also speaks to the reasonable impact that it could
6 have with respect to other neighbors.

7 The last point is the fact that this is not a
8 maximum request. As you know, I believe the maximum request
9 is a 70 percent lot coverage. I am proposing 60 percent,
10 which would be identical to my primary residence.

11 And I would also note that the lots in this part
12 of the block in LeDroit are exceptionally deep. And so, even
13 if I was going to be granted this extended footprint, the lot
14 at 1948 would still have an additional 64 feet behind the
15 structure. And the lot at 1950 would have an additional 87
16 feet behind the structure.

17 These lots are about 148 feet deep, about 2,500
18 square feet. And so, it may sound like the improvements are
19 large, but certainly in relation to the size of the lot and
20 the occupancy coverage, they're quite reasonable from my
21 perspective. I think that's --

22 MR. KEYS: Mr. Braithwaite, I think the Chairman
23 wanted you to address your interaction with the Advisory
24 Neighborhood Commission 1B.

25 MR. BRAITHWAITE: Great. So, as per the guidance,

1 I reached out to the ANC to have a dialogue and to just
2 understand their orientation toward my project. I had a
3 conflict and send my architect to the subcommittee meeting,
4 which I understood per the protocol was the first meeting
5 before the full commission would hear the case.

6 And there was a little bit of a conflict, because
7 we actually were able to get on the BZA schedule prior to
8 when the subcommittee would have been able to meeting. And
9 so, we actually requested a postponement of our BZA hearing
10 in order to accommodate the time frame, so that the
11 subcommittee of the ANC can hear it next -- the commission
12 can hear it and then, the BZA.

13 My architect went to that meeting and effectively
14 was told that the ANC would not support the improvement. And
15 there was an invitation made by my architect to revise the
16 plan, such that it would be conforming. And that, frankly,
17 was not interesting to me.

18 And so, I reached out to my ANC commissioner to
19 basically communicate that I did not intend to refile a
20 conforming plan. And I was told that I would be on the
21 agenda for the full commission hearing, which was a number
22 of weeks after the subcommittee hearing.

23 I went to the full commission hearing and I guess
24 there was a miscommunication within the ANC, such that I
25 actually was not on the agenda as I was advised. I had

1 copies of my presentation materials and certainly made myself
2 available, and even requested that I could potentially be
3 added on an ad hoc basis.

4 And I was told that that could not happen. And
5 so, I left the meeting and I informed the subcommittee
6 chairman, as well as my ANC commissioner, that it was really
7 unfair to me to accommodate the ANC with my initial hearing
8 to only sort of have my case be mismanaged, obviously given
9 the time sensitivity of the request.

10 And so, I thought it was fair, given my original
11 accommodation, to continue to move forward. I did learn at
12 some point that, despite what I was told in terms of not
13 being able to get on the agenda, that at some point, the ANC
14 commission did actually vote.

15 I'm pretty sure there was not a public hearing at
16 that vote, I was not given an opportunity and I was told that
17 that vote would not happen and my matter would not be heard.
18 So, it was a little bit disappointing, frankly, and it was
19 a surprise to me to learn that I had been misguided in that
20 way.

21 CHAIR HILL: Any questions from the Board?

22 MEMBER WHITE: Yes. You said that -- good
23 afternoon.

24 MR. BRAITHWAITE: Good afternoon.

25 MEMBER WHITE: You said that six out of 17

1 properties have extensions in your block or in your area,
2 your immediate area. Were all of those extensions done prior
3 to the regulation changes? That was the first question.

4 And then, the second question is, did you get any
5 feedback from the ANC in terms of why they didn't support it?
6 That's the second question. I'm just trying to get a little
7 bit more --

8 MR. BRAITHWAITE: Okay.

9 MEMBER WHITE: -- meat. And then, the third
10 question is, being that this is a historic district, was that
11 part of the reason for the lack of support from the ANC?

12 MR. BRAITHWAITE: Okay. So, with respect to the
13 existing improvements on the block, if you look at the
14 supplemental materials, there's an aerial that shows what I'm
15 referencing. And to be clear, my reference was to a larger
16 footprint.

17 I can't say for sure whether the original
18 structure was larger or whether it was added, because I just
19 don't know. But those larger footprints are referenced on
20 the page. And I'm almost 100 percent certain that all of
21 those improvements were done prior to the change in zoning,
22 because I obviously know when construction is happening in
23 my alley.

24 To address the second question, with respect to
25 the ANC and why, I think that the conversation with my

1 architect, the ANC requested an understanding of why I had
2 planned to make the extension. And I think that my
3 architect, to the best of her ability, explained that I had
4 made the improvement at my primary residence and it was a
5 desire to make the improvement at the subject property.

6 And I think that the feedback from the ANC was,
7 that's not good enough. And so, I wasn't given any
8 constructive parameters as to concessions that I could make
9 in order for them to support the improvement.

10 The very clear guidance was that they could not
11 support the improvement. And I don't want to speak on behalf
12 of the ANC, they're here to speak for themselves. So, I
13 would invite you to ask them that question.

14 I'm sorry, your third question? I apologize. The
15 Historic Board?

16 MEMBER WHITE: Yes, the question --

17 MR. BRAITHWAITE: Again, I cannot --

18 MEMBER WHITE: -- was whether or not --

19 MR. BRAITHWAITE: I cannot speak to why --

20 MEMBER WHITE: -- it's a historic district --

21 MR. BRAITHWAITE: -- or what concerns, I can tell
22 you that with respect to my primary residence, I received all
23 requisite approvals, including from the Historic Board as
24 well.

25 MEMBER WHITE: Okay.

1 VICE CHAIR HART: Mr. Braithwaite, did you provide
2 any shadow studies for the project? I mean, I see that you
3 did the axon and I've seen the other images, I just didn't
4 see that -- the reason I'm asking is, you have a property
5 that is oriented kind of east-west and so, there is the
6 likelihood -- and I understand that you've gotten the kind
7 of sign-off from, or at least letters from the neighbors that
8 are to your north, because they are the ones that would be
9 impacted by the shadows that are going to be cast by your,
10 if we do approve this, by this building.

11 And I just don't know what extent those shadows
12 kind of go to. And I just didn't know if you had actually
13 prepared any of those studies.

14 MR. KEYS: Mr. Hart, we had not prepared shadow
15 studies for two reasons. One, the orientation of the
16 properties suggested where the likely impact was. Secondly,
17 because of the configuration of the buildings, the existing
18 improvement to his principal residence at 1946 is identical
19 to what's being proposed.

20 And that overlap suggested that the increment for
21 a new building of the same configuration and same size would
22 make a negligible effect in terms of shadow study. So, we
23 did not do a shadow study.

24 CHAIR HILL: I mean, we're going to walk through
25 this and I would be interested to hear, again, what the other

1 Board -- I mean, it would have been more helpful to have seen
2 what -- I mean, for the axon study and -- to see what the
3 other homes look like in comparison.

4 You really just cut out the three homes there in
5 the study. And so, it's kind of difficult to see how it's
6 actually playing out with the rest of the block. And also,
7 the shadow study, I guess, is something that would have been
8 helpful.

9 The support that you have, again, can you tell me
10 again, which was the support? It's from the neighbor to your
11 --

12 MR. KEYS: To the north of the property. The
13 immediate property to the north is 1950 and the property next
14 to it to the north, 1952. So, the two closest properties to
15 the subject property, the owners of those properties have
16 provided letters of support.

17 CHAIR HILL: Okay. Then, 54, 56, 58, they're all
18 just as far back as you're planning on going, so you don't
19 have --

20 MR. BRAITHWAITE: Exactly.

21 CHAIR HILL: -- I mean, you don't have letters
22 either way.

23 MR. KEYS: Correct.

24 MR. BRAITHWAITE: Exactly. And I think, just to
25 reiterate a point in my initial comments, the only two

1 properties that could reasonably be impacted by this
2 improvement are 1950 and 1952, both of which have supported
3 the improvement. 1954 extends about as far as I intend to
4 go with the subject property.

5 CHAIR HILL: Was your original -- your primary
6 residence, that was done, yes, that was done before the
7 regulation change.

8 MR. BRAITHWAITE: It was.

9 CHAIR HILL: Yes.

10 MR. BRAITHWAITE: And I lived there prior to the
11 construction as well.

12 CHAIR HILL: Okay. And, Mr. Braithwaite, I mean,
13 you were here for the previous discussion about people going
14 back, right? Meaning, it's not an easy thing. It's not like
15 --

16 MR. BRAITHWAITE: I understand.

17 CHAIR HILL: -- it's not just a simple black and
18 white, easy conversation. It may be in your case, it may be
19 in your mind, but, I mean, it's not. I'm just letting you
20 know, right?

21 MR. BRAITHWAITE: I understand.

22 CHAIR HILL: And so, the -- and I guess, so you're
23 saying you did not present before the full ANC because they
24 said they weren't going to be in support anyway?

25 MR. BRAITHWAITE: Well, because I wasn't on the

1 agenda --

2 CHAIR HILL: Okay.

3 MR. BRAITHWAITE: -- and I pursued all of the
4 protocols as recommended --

5 CHAIR HILL: Right.

6 MR. BRAITHWAITE: -- and I accommodated the ANC
7 with a postponement of my BZA for a first time --

8 CHAIR HILL: Right, to get on --

9 MR. BRAITHWAITE: -- and I didn't think --

10 CHAIR HILL: -- the agenda.

11 MR. BRAITHWAITE: -- frankly, I didn't think it was
12 fair --

13 CHAIR HILL: Right.

14 MR. BRAITHWAITE: -- to me.

15 CHAIR HILL: That's okay, I understand. And I got
16 to let you know, I might agree with you whether it's fair or
17 not, but unfortunately, there's a lot of unfair --

18 MR. BRAITHWAITE: Absolutely.

19 CHAIR HILL: -- in the world, particularly in this
20 process. Speaking as one who's gone through it. Yes, Mr.
21 Keys?

22 MR. KEYS: Mr. Chairman, if I could just direct
23 your attention back to those axonometric drawings that we
24 submitted, and I'd like you to note that the subject
25 property, which is the middle of the three buildings, is

1 already five feet beyond 1950, the property to the north.

2 So, the application of the rule that would allow
3 an extension no more than ten feet beyond the adjacent
4 property means he could put a five-foot addition. And that
5 seems to be the ANC's position is you do what the regulations
6 allow as a matter-of-right. Well, I mean, it's a nonsensical
7 position.

8 CHAIR HILL: No, I understand. It seems unfair.

9 MR. KEYS: I might be inclined to use a stronger
10 word.

11 CHAIR HILL: Yes, that's okay. All right. So, Mr.
12 Keys, I got you, Mr. Braithwaite. Anybody else got any more
13 questions for the Applicant?

14 COMMISSIONER MAY: I have one. So, Mr.
15 Braithwaite, when you did the addition on your house, which
16 was a by-right addition, did you get a whole lot of negative
17 feedback from the neighbors or anybody else? I mean, you
18 didn't have to consult with ANC, so I assume they didn't talk
19 about it. But, I mean, was it controversial when it was
20 built?

21 MR. BRAITHWAITE: All of my neighbors who have my
22 phone number have done nothing but compliment my house. I
23 did not get any negative feedback --

24 COMMISSIONER MAY: No negative feedback?

25 MR. BRAITHWAITE: -- but, of course, there was no

1 hearing --

2 COMMISSIONER MAY: Right.

3 MR. BRAITHWAITE: -- for the improvements.

4 COMMISSIONER MAY: Right.

5 MR. BRAITHWAITE: So, no.

6 COMMISSIONER MAY: Okay. Thanks.

7 CHAIR HILL: Okay. I'm going to turn to the Office
8 of Planning.

9 MS. MYERS: Hello, Crystal Myers for the Office of
10 Planning. The Office of Planning is recommending approval
11 of this project and stands on the record of the staff report.

12 CHAIR HILL: All right. If you could, for me, I'm
13 sorry, just walk us through your thought process in terms of
14 how you got to approving this, again, for me. I mean, I know
15 it's in the report, but --

16 MS. MYERS: Sure.

17 CHAIR HILL: -- if you could just walk me through
18 it? Thank you.

19 MS. MYERS: Sure. So, the three main things we
20 look at is if there's an impact to light and air to the
21 neighboring properties. Reviewing this case and the adjacent
22 properties, as well as the properties along the block, the
23 decision was that it did not have an undue impact to the
24 light and air of the neighbors.

25 And as the Applicant has pointed out, obviously

1 they own the property to the south and their neighbor to the
2 north has written in support of this project. And the
3 property will have, I believe, 42 feet of rear yard still
4 remaining, so light and air, more specifically air, would not
5 be impacted.

6 We're not saying there wouldn't be some level of
7 impact, but it would not be an undue impact, was our
8 conclusion. Privacy of use and enjoyment of the neighboring
9 properties. Again, did not believe this was an undue impact.

10 The neighbor to the north submitted a letter in
11 support. There are no windows on the side of the property
12 of the addition. And, again, the Applicant owns the property
13 to the south. And, as the Applicant pointed out too, this
14 project will be pretty much identical in size and design as
15 his own property.

16 So, it will not be a significant change to what
17 already exists today when it comes to what is in the
18 neighborhood, as well as other properties on the block have
19 -- there's a couple others that are also a little bit further
20 back as well. And when it comes to the visual character,
21 really of the alley, did not see this as being an undue
22 impact to the visual character.

23 There would be -- you would be able to see it from
24 the roof deck and the second story, but it would not be
25 drastically different in appearance than what exists on the

1 property today, or in the neighborhood today. So, our
2 conclusion was that this was suitable to recommend approval
3 on.

4 CHAIR HILL: Okay, great, thank you. Does the
5 Board have any questions for the Office of Planning? Does
6 the Applicant have any -- oh, the Board, sorry, Mr. Hart.

7 VICE CHAIR HART: I'm sorry.

8 CHAIR HILL: I'm just trying to get to lunch.

9 (Laughter.)

10 VICE CHAIR HART: Well, lunch will happen when it
11 happens.

12 CHAIR HILL: Well, thanks.

13 VICE CHAIR HART: Just one question, regarding the
14 kind of light and air issue. The impact from the -- and I
15 understand that you said that the light impact, or the shadow
16 impact, wouldn't be more significant than what you kind of
17 see now.

18 It just seems like in this particular case, when
19 you have cases where there's a project -- I know this project
20 is not getting another level, it is just moving back. Is
21 that part of why you were also in support of it, because it's
22 not actually increasing the height, it's just moving to the
23 -- the addition is to the rear?

24 MS. MYERS: Yes. I mean, the criteria is that it's
25 undue impact, and did not feel that what was being proposed

1 would have an undue impact on the lighting. Or impacting the
2 lighting of the adjacent neighbor.

3 VICE CHAIR HART: Okay.

4 MS. MYERS: But we would acknowledge there would
5 be some impact. It does help that, since the neighborhood
6 already has an addition, the Applicant's, that is pretty
7 close in proximity that is also the same, as far back as what
8 is being proposed now, we took that into consideration. And,
9 again, the fact that the neighbor has already written in
10 support helped to weigh that was well.

11 VICE CHAIR HART: Thank you. And also, were you
12 taking also into account, like, their -- I mean, I'm looking
13 at the Applicant's Exhibit Number 37, Page 6, which basically
14 has -- it's an overhead showing the block.

15 And it's an aerial photograph. And in that
16 photograph, it has, I guess, a couple of trees that are in
17 the back. Were you looking at that as well? Do you take
18 that into consideration for shadow effect?

19 MS. MYERS: We do. I mean, as you know, there --
20 we do not have a shadow study or solar study in this case,
21 but looking at what exists today and what is being proposed
22 and looking at what is next door, with the Applicant as the
23 property owner to the south has, we were able to come to the
24 conclusion that the impact would not be substantive enough
25 or undue enough to recommend a denial on. But it would be --

1 there would be some level of an impact, we would acknowledge
2 that.

3 VICE CHAIR HART: Thank you.

4 CHAIR HILL: Okay, thank you. Does the Applicant
5 have any questions for the Office of Planning? Oh, sorry.
6 Ms. White, do you have questions for the Office of Planning?

7 MEMBER WHITE: I'm sorry. I just want to get your
8 feedback on the historic preservation aspect of it, because
9 this is in LeDroit Park and I noted in your report that you
10 commented about getting their feedback.

11 MS. MYERS: Certainly. Historic preservation, we
12 did contact them and have a discussion about this. They
13 originally, I believe at the staff level, approved the
14 Applicant's existing house that he owns to the south. So,
15 we discussed this project, because it's going to be
16 identical.

17 And my understanding is that they are going to
18 perhaps take this, or are indicating they are going to take
19 this project to the HPRB, to the Board, to review it, because
20 they do want to have a little bit more discussion with the
21 Board about it, where I believe the Applicant's was done at
22 the staff level.

23 But I understand that because the ANC and some
24 community members have expressed some concerns, they think
25 it would be appropriate that this project be taken to the

1 Board. And that has not been done yet, but that is there.
2 At least, that's where they're leaning towards, that's where
3 their intentions are.

4 CHAIR HILL: Okay. That's correct, in terms of
5 HPRB?

6 MR. KEYS: Yes. Well, we don't -- I'm not aware
7 of --

8 CHAIR HILL: Yes.

9 MR. KEYS: -- what the staff's treatment of this
10 application is, because we haven't gotten there yet. But I
11 would just note that the focus for HPRB was the garage
12 structure. We had no changes --

13 CHAIR HILL: Okay.

14 MR. KEYS: -- we made no --

15 CHAIR HILL: Okay. All right.

16 MR. KEYS: -- changes to the --

17 CHAIR HILL: Okay. All right. Do you have any
18 questions for the Office of Planning?

19 MR. KEYS: No.

20 CHAIR HILL: Okay. All right. Is there anyone
21 here from the ANC? If you'd like to come forward, please?

22 MR. NELSON: Chair, just for clarification, we are
23 ANC Representatives, this is a neighbor --

24 CHAIR HILL: Okay.

25 MR. NELSON: -- that is not --

1 CHAIR HILL: All right. Sure. No, that's okay.
2 I appreciate it. I'll walk through that. Oh, so the
3 gentleman was a neighbor?

4 MR. NELSON: He's a neighbor --

5 CHAIR HILL: Okay.

6 MR. NELSON: -- that wants to testify --

7 CHAIR HILL: Okay, sure.

8 MR. NELSON: -- but he's not --

9 CHAIR HILL: Okay.

10 MR. NELSON: -- part of the ANC.

11 CHAIR HILL: Okay. So, you guys are the
12 commissioners, is that correct?

13 MR. NELSON: I am the chair of the Zoning
14 Preservation and Development Committee and this is the
15 representative from the ANC that is --

16 CHAIR HILL: SMD?

17 MR. NELSON: -- his SMD.

18 CHAIR HILL: Okay. If you can please introduce
19 yourself, sir?

20 MR. NELSON: My name is Patrick Nelson.

21 CHAIR HILL: Okay. And, ma'am?

22 MS. NORMAN: I'm Commissioner Norman, Anita Norman.

23 CHAIR HILL: Okay. Let's see. So, Commissioners,
24 thanks for coming down. And so, I guess, if you can go ahead
25 and I'm going to put five minutes on the clock for you, as

1 far as the ANC, and we'll have questions and you can go ahead
2 and tell us what you would like. The -- Commissioner Norman,
3 you're the SMD, is that correct?

4 MS. NORMAN: Yes.

5 CHAIR HILL: Okay. All right. So, you guys can
6 start with whoever you would like or however you would like
7 and then, I'm sure we'll have some questions for you. I'm
8 going to go put five minutes on the clock, just so we know,
9 and either one of you can start whenever you'd like.

10 MR. NELSON: We have actually very brief
11 statements, it won't be that long. As I said, my name is
12 Patrick Nelson, and I chair the Zoning Preservation and
13 Development Committee. This case came before the committee
14 at our January meeting. You have to excuse me, I have a
15 cold.

16 The architect made a presentation to explain the
17 project. She explained that the house next door, 1946, was
18 owned by the same party and they wanted to do the exact same
19 design to this property.

20 When questioned about the size of the extension
21 being proposed and if she was aware that it would be
22 approximately 18 feet past what is allowed under the current
23 regulations, she said, yes, she was aware of that and that
24 HPRB had told them that they were not allowed to do a third-
25 floor addition, but that, again, the owner wants to do what

1 he has done next door to this house.

2 We explained that under the new regulations that
3 apply now, that just because the other property was done,
4 doesn't mean that this one can be done the same. I explained
5 that she needed some rationale reason and give us a good
6 explanation as to why and how this was to be accomplished.

7 A couple of the committee members had questions
8 about the layout of the floor plan and why the rooms were so
9 big, and that if some of the rooms were made a little bit
10 smaller, that that extension could be less than what was
11 proposed.

12 We also explained that we had other requests for
13 the same type of additions on other properties that have come
14 before the committee that either came back with a
15 modification or went in front of this Board, of which I came
16 down and testified on behalf of, and it was not approved.

17 So, rather than getting a no vote from the
18 committee, I suggested to her that she go back to her owner
19 and see if there was some way that he could reevaluate and
20 come back with some better explanation for what he was doing.

21 And I explained to her that if she didn't want to
22 do that, that more than likely she would get a no vote from
23 the committee, which would then go to the commission and also
24 get a no vote. And she said that she was not -- does not
25 have the authority to make additions or changes at that point

1 and she would go back and talk to the owner.

2 The owner had a conversation with the ANC
3 representative after my meeting and it was agreed that he
4 could come and explain points to the commission at the
5 February meeting. The ANC rep asked if I would be okay with
6 him making a presentation, which I said I would not, as it
7 would sidestep the whole committee structure.

8 I said if the chair of the commission is okay with
9 him making a presentation, that it would be his decision
10 alone to make. The chair did not agree to make a
11 presentation, so there was none made.

12 The commission was concerned that, since the ZPD
13 Committee did not make a recommendation to the commission to
14 vote on, and that ANC would not have on the record when the
15 case came before the BZA today, that chair asked that I take
16 some time and explain to the commission what had happened at
17 my committee.

18 They also are given with their packet for each
19 meeting my minutes that detail exactly what goes on. So,
20 they all read these beforehand, so they had a brief
21 explanation of what transpired. After the commission heard
22 my statement, the commission decided that they wanted to take
23 a vote so they could get on record with the BZA. And that
24 is what they did on the February 2 meeting.

25 I will not go through point-by-point, but there's

1 some statements that the owner has made that are incorrect
2 and should be clarified. And since I'm probably going to
3 lose my voice if I went into that, I'm not.

4 But one point I will make is that the regulations
5 now say, if you're coming in front of the BZA Board for a
6 case, you must go in front of ANC and have them review it.
7 So, when Anita brought to my attention that this case was
8 coming up, I told her, I said, well, you're going to need to
9 tell this man that he's not going to have time.

10 He can come to the committee and make a
11 presentation, but there's not enough time between when the
12 committee meets, when the ANC meets, and when his case was
13 going to be. So, he could come to the committee and get the
14 committee to review it, but then his case was going to come
15 up before the ANC would vote.

16 So, I suggested that he move his date, and that's
17 what he did. And when he came, the architect came to the
18 meeting, I gave her all the time she needed to make her
19 presentation. We asked her a number of different questions.

20 And before -- once all that was done was when I
21 said to her that, I'm just giving you some guidance, that
22 you're not giving us enough information to persuade myself
23 to vote to support this. And I'm not speaking on behalf of
24 the commission or the committee as a whole, but in past
25 experiences with these cases, unless you have a good

1 explanation, the committee normally doesn't vote for it.

2 So, we can either vote tonight and I'm pretty sure
3 you're going to get a no vote, or you can go back to the
4 owner and see if he's willing to at least come back and talk
5 to the committee and give some more rational explanation and
6 then, we'll vote at that time.

7 And in the interim time, he had a conversation
8 with the ANC commissioner and she said that he could come to
9 the meeting. I was not privy to that, did not know that that
10 conversation had happened until I showed up at the ANC
11 meeting and I told her, no, I am not going to do that.

12 That's -- like I said, it's sidestepping the whole
13 process. Why have a process if you're not going to follow
14 the process? And if the commissioner that chairs the
15 commission was open to letting him make a presentation, I was
16 fine with that.

17 CHAIR HILL: Your chair, meaning your ANC chairman?

18 MR. NELSON: The chair, ANC chair.

19 CHAIR HILL: Okay. All right. All right,
20 Commissioner Nelson. Commissioner Norman? Commissioner
21 Norman, you can go ahead and give testimony.

22 MS. NORMAN: In addition to what Mr. Nelson has
23 said, I just want to add that I told Mr. Braithwaite that he
24 could come to the ANC commission and give information. We
25 have an information session for everyone, the community,

1 where they can say anything that they want to talk about.

2 So, that's what I was referring to when I told him
3 that he could talk to the commission, not give a
4 presentation. They weren't prepared for that and that's not
5 where presentations happen.

6 CHAIR HILL: Okay. Does the Board have any
7 questions for the commissioners?

8 MEMBER WHITE: My only question is, I know you
9 haven't had a chance to have a formal presentation with Him,
10 but can you comment on the substance of what he's trying to
11 do as far as the development?

12 MS. NORMAN: Yes. I was at the ZPD meeting and
13 also, I met with him about his property that he wants to do
14 and I saw the property that he's done already. However, I've
15 gotten concerns raised from the community. Again, it's
16 historic.

17 I've gotten concerns from the community that
18 they're concerned about the length of the property, the
19 light, the air. There are one or two properties that extend
20 back as far as his. The other properties that he's referring
21 to that extend back, I'm not sure which properties those are,
22 because I didn't see that.

23 And there's a neighbor here who lives on his
24 block, and he doesn't recall any properties that go back that
25 far. So, it's not in line with the landscape of the

1 community, of the backyards of the other properties on the
2 block. So, that's what the concern is.

3 The lady that he speaks of who gave him a letter,
4 she -- if he is approved, she is planning on doing the same
5 thing that he is going to do. So, that's her incentive to
6 agree to let him do this project. But some of the other
7 residents on that block are opposed to it.

8 CHAIR HILL: All right. Commissioner Nelson, I
9 just want understand the process, again. And I don't want
10 to get into the, or I'm going to try not to get into the he
11 said/she said stuff, and the steps, as you kind of where
12 mentioning.

13 So, then, the Applicant came before the
14 subcommittee and you thought didn't have enough information
15 to put forward for an ANC vote, meaning you didn't think
16 there was enough information to go before the full ANC. And
17 so, you had requested further documentation from the
18 architect or you had asked for other things, it sounds like.

19 And the Applicant -- I'll let you respond. And
20 the architect said that they weren't willing to or something
21 or other. And then, you said that you can of course go to
22 the chair and if the chair will let you present without our
23 blessing or without the information, then that is possible.
24 Is that -- am I -- is that correct?

25 MR. NELSON: That's pretty correct, yes. She came

1 and made a full presentation, we asked a number of questions
2 related to the design and the rationale and that kind of
3 stuff.

4 And I explained to her that previous cases that
5 have come before us asking for the same type of thing have
6 either been returned or reevaluated by the owners and made
7 some modifications to the acceptance of the committee. Or
8 not and gone straight to you guys.

9 I know for a fact there's two cases, one of which
10 I personally came down and testified, because he was trying
11 to do more than what was allowed under the ten-foot rule and
12 there was a whole lot of other issues relating to it. And
13 he was adamant about, I'm just not going to change this.

14 And I came down and testified and gave concrete
15 reasons why and all that stuff, and you guys voted not to
16 support his thing. And he ended up having to change it. So,
17 I suggested to her at our committee meeting that we're not
18 happy with the presentation she made, would she be willing
19 to go back and talk to the owner to get --

20 CHAIR HILL: I understand. Commissioner, I
21 appreciate it, I'm just trying to get this right.

22 MR. NELSON: And then --

23 CHAIR HILL: Then, the architect --

24 MR. NELSON: And that's --

25 CHAIR HILL: -- said forget it.

1 MR. NELSON: And she said, okay, that's fine, if
2 you don't think you're going to support it, then I don't want
3 the vote. I'll have to just go back and talk to him. That's
4 where I left it.

5 CHAIR HILL: Okay.

6 MR. NELSON: That she would go back and talk to
7 him.

8 CHAIR HILL: And this was before the --

9 MR. NELSON: This was --

10 CHAIR HILL: -- postponement was requested?

11 MR. NELSON: Right.

12 CHAIR HILL: Okay.

13 MR. NELSON: No, no, no, no, this was -- which
14 postponement are you talking about?

15 CHAIR HILL: There was a postponement of this case
16 so that they could go before the full ANC.

17 MR. NELSON: That was -- right. He had put in for
18 an application, got granted a date. And the date of that
19 hearing here would have been after the ANC would have met,
20 even if I had had a committee review.

21 So, I told him he needed to move his date back so
22 they could come to the committee, then go to the commission,
23 and then be able to send in the documentation to you guys
24 before the hearing.

25 When he was -- when I left the hearing, the

1 committee hearing, I was under the understanding she was
2 going to go back and talk to him and have a conversation and
3 that they would do whatever they needed, either --

4 CHAIR HILL: Okay. Commissioner Nelson, just give
5 me one second. I'm going to -- just give me one second. I'm
6 just going to let everybody know something where we are. So,
7 it's 1:00 right now.

8 So, for the people that are here, what we're going
9 to do after this case, whenever we get through with this
10 case, is we're going to hear 19685 of Emma Sarah Davis and
11 1969 -- oh, sorry, I'm sorry. 19685 of Emma Sarah Davis and
12 19695 of LHO. After we finish this. And then, we're going
13 to have lunch. And then, we're going to come back.

14 So, just to let everybody know where we are. So,
15 if you're not either one of those cases, we're going to take
16 probably a 20 minute lunch after those two cases. Okay? And
17 don't all make a lot of noise as you leave. Okay, thank you.
18 All right.

19 Okay, Commissioner Nelson. Okay. All right.
20 Anybody got any questions for the commissioners? Okay. So,
21 I saw, Mr. Braithwaite, that you were trying to say some
22 things. Now, again, we're not interested in the he said/she
23 said and all that stuff, but I am interested in terms of the
24 timing.

25 So, you haven't gone before the full ANC for a

1 vote and what I understand from this discussion thus far is
2 that you went to the subcommittee meeting, your architect
3 asked that you make some changes for that -- to go before the
4 ANC. Your architect and yourself decided not to make any
5 changes whatsoever and, therefore, you didn't go in front of
6 the full ANC.

7 Or I don't know if there was some information you
8 were supposed to provide in order to get to the full ANC,
9 even if they gave you a no vote on the original design. So,
10 am I getting that part correct?

11 MR. BRAITHWAITE: And I apologize, the reason I was
12 jumping out of my chair is because they hadn't been sworn in.

13 CHAIR HILL: Oh, okay. All right.

14 MR. BRAITHWAITE: Which is --

15 CHAIR HILL: That's great.

16 MR. BRAITHWAITE: But I don't --

17 CHAIR HILL: Okay. That's all right. That's okay
18 --

19 MR. BRAITHWAITE: I don't --

20 CHAIR HILL: That's all right. I appreciate that.

21 MR. BRAITHWAITE: And I would say --

22 CHAIR HILL: You've already -- that's okay. So,
23 you guys weren't sworn in, correct? Is that what you're
24 saying? All right. Mr. Moy, can -- and if anybody else is
25 here, before you left for lunch, if you can stand and be

1 sworn in, please go ahead and stand up and take the oath
2 administered by the Secretary.

3 (Witnesses sworn.)

4 CHAIR HILL: Mr. Braithwaite, it's okay, it's all
5 right, just give me a second. So, I appreciate what you
6 said, and I really do, I'm not kidding. Mr. Nelson,
7 Commissioner Nelson and Commissioner Norman, can you for the
8 record just state that everything that you said before you
9 took the oath was accurate?

10 MR. NELSON: For the record, everything that I
11 spoke of in my statement is correct, for the record.

12 CHAIR HILL: Okay. No, you need to push the
13 button.

14 MS. NORMAN: Commissioner Norman say that I swear
15 or affirm that what I said previously was accurate and true.

16 CHAIR HILL: Okay. Again, I love this under oath
17 thing, I think it's amazing. So, all right. So, you just --
18 anyway, so they just testified that what they said before was
19 accurate and truthful. And so, I appreciate that.

20 MR. BRAITHWAITE: Okay.

21 CHAIR HILL: I'm sorry?

22 MR. BRAITHWAITE: And I was only going to add that
23 I didn't disagree with -- I think everything that was said
24 was true as well.

25 CHAIR HILL: Okay.

1 MR. BRAITHWAITE: The only clarification that I
2 would make is that the communication to my architect was that
3 she had two options: either they could vote then and there
4 a no, or we could modify the plan and bring it back. There
5 was no request for any additional information. There was no
6 representation that there was more to understand about the
7 plan.

8 CHAIR HILL: Okay.

9 MR. BRAITHWAITE: Just to clarify.

10 CHAIR HILL: Okay. Modify the plan so -- okay.
11 All right. Okay. Does anyone have any questions for
12 anybody? Okay. Commissioners, thank you so much. Is there
13 anybody here wishing to speak in support of the application?
14 Is there anyone here wishing to speak in opposition of the
15 application? If you could please come forward, sir?

16 Commissioners, actually, if you could just stay
17 for a minute? I just saw one leave out there, if he could
18 just hang around for a little bit if we have any further
19 questions? Commissioner Norman, if you could catch
20 Commissioner Nelson? Okay, great. All right. Thank you,
21 never mind.

22 Sir, if you could please introduce yourself for
23 the record?

24 MR. DUCKETT: My name is Reginald Duckett, I live
25 at 1940 2nd Street Northwest.

1 CHAIR HILL: Okay, Mr. Duckett. So, as a member
2 of the community, you'll have three minutes to give your
3 testimony. There's a couple of clocks there on the ceiling,
4 and you can begin whenever you like.

5 MR. DUCKETT: Okay. I live at 1940 2nd Street.
6 There's only, from Mr. Larry, or you said, from 1946, he have
7 a addition to his house. But there's one next door to me,
8 1938, have a addition. Only two additions on the block on
9 2nd Street Northwest.

10 And I'm opposed from 1948 for the addition. I
11 liked the regulation to stand as-is from there. And I have
12 a letter from one of my neighbors and you have some neighbors
13 will be emailing you where they against it from the addition
14 further than what it is. And so, that's where I stand right
15 now.

16 CHAIR HILL: Okay. Does anyone have any questions
17 for the witness? Okay. And, sir, why exactly are you
18 opposed to the project?

19 MR. DUCKETT: Let me tell you why I opposed to it,
20 because how the light is now, you come out further, what he
21 asked for, I don't want to take up the whole yard. You just
22 have enough yard there where I want to come out my back, when
23 I look on the right side of me, I see a big building look
24 like a warehouse. I like them to stay in the regulations.

25 And plus, he plan to put a garage there and that

1 take up some more space of the yard. I don't know how much
2 more he going to have of the yard. I rather for the
3 regulations stay as it is and then, I feel comfortable about
4 it, on that situation.

5 CHAIR HILL: Okay. All right. Thank you. All
6 right. Okay. Thank you, sir, very much.

7 MR. DUCKETT: All right. Thank you.

8 CHAIR HILL: I'll give you a chance, just give me
9 one second. Let's see here, I did support, opposition. Now,
10 I'm sorry, Mr. Braithwaite, you had a comment you wanted to
11 make?

12 MR. BRAITHWAITE: Well, I just -- I can't help but
13 to wonder if there's some confusion as to what I'm asking
14 for. Because when I had a conversation with Reggie, he made
15 it clear that he, at least to me, that he was not in support
16 of my going further than 1946, which is my primary residence.

17 And I explained that that was not my intention.
18 My intention was to have an identical footprint. So, I just
19 want to be clear that whether he's saying that he objects to
20 my going beyond 1946, which is not what is proposed, or
21 whether he --

22 CHAIR HILL: Okay.

23 MR. BRAITHWAITE: -- I mean --

24 CHAIR HILL: That's all right.

25 MR. BRAITHWAITE: -- just a clarification point.

1 CHAIR HILL: So, is it -- well, Mr. Duckett, would
2 you mind coming back forward again? Mr. Duckett, so Mr.
3 Braithwaite just wanted to be clear on something, he's not
4 going any bit farther than his current residence. And so,
5 you are still opposed to the project?

6 MR. DUCKETT: As long as he's not going further
7 than what it is, that's fine.

8 CHAIR HILL: Okay. He's not going further than
9 what it is --

10 MR. DUCKETT: Okay.

11 CHAIR HILL: -- now, his current home.

12 MR. DUCKETT: Okay. Okay, I'm fine with that.

13 CHAIR HILL: Okay. All right. Okay. Thank you,
14 sir. Okay.

15 MR. BRAITHWAITE: Thank you.

16 CHAIR HILL: That's all right. And, Mr.
17 Braithwaite, thank you, you're being very helpful. But --

18 MR. BRAITHWAITE: This is my neighbor --

19 CHAIR HILL: That's okay.

20 MR. BRAITHWAITE: -- and we talk.

21 CHAIR HILL: No, that's good. That's good, you're
22 being helpful. And, unfortunately, it's not a popularity
23 contest anyway, but that's good now that we know that he is
24 comfortable with the project. Okay.

25 Does the Board have any questions for the

1 Applicant? Okay. Does the Applicant have anything they'd
2 like to add?

3 MR. BRAITHWAITE: I think there should be an
4 opportunity for those in support of, maybe.

5 CHAIR HILL: We did do support.

6 MR. BRAITHWAITE: Okay.

7 CHAIR HILL: Nobody came forward.

8 MR. BRAITHWAITE: Oh, I thought that --

9 CHAIR HILL: Is there anybody -- did I miss
10 anybody? Is anybody here in support? Oh, please, come
11 forward. I said support and nobody raised your hand and
12 usually nobody's here for support.

13 If you could please -- were you sworn in earlier?
14 Okay. If you can please stand up and get sworn in by the
15 Secretary here to my left. And, again, anybody else? Okay,
16 thank you.

17 (Witness sworn.)

18 CHAIR HILL: Okay. So, if you can introduce
19 yourself, give us your address, and also, there's three
20 minutes on the clock there for your testimony. And you need
21 to push the button so the red light comes on.

22 MR. HARDY: Yes. My name is Martin Hardy. I'm the
23 neighbor two houses up, 1952 2nd Street. What Mr.
24 Braithwaite is proposing is what already exists on the block
25 in quite a number of cases. And certainly to the north of

1 me, he's correct in saying that almost all the houses already
2 go back as far as he's proposing.

3 To me, the concern is really the rights of
4 property owners in this case. What -- the house on 1950 is
5 one of the shortest houses on the block. It is a 30-foot
6 house and the lot is 145 feet long.

7 And with this new ruling that has been imposed by
8 the zoning of ten-foot, an arbitrary ten-foot restriction on
9 building behind, what basically it says is that houses on
10 that block cannot occupy more than 30 percent, almost 30
11 percent of the entire lot.

12 And I don't think this makes any -- this is a real
13 infringement on property owners' rights. It's confiscating
14 their ability to use their own property rights. It's
15 requiring basically that Mr. Braithwaite or myself have to
16 make a garden that's more than 100 feet long in that area.

17 And I cannot see that in a city where you have
18 land is a very scarce commodity that it makes very much sense
19 for the city to be requiring people to build 100-foot
20 gardens, when we have a hub-and-spoke metro system. It costs
21 billions of dollars to build. We have metropolitan area of
22 five million people and we have people living half a mile
23 from the White House making us build gardens.

24 So, I feel that it's a tremendous infringement on
25 Mr. Braithwaite's property rights, and also myself, to apply

1 this ten-foot rule so thoughtlessly and without any kind of
2 flexibility. So, that's what I have to say about it.

3 CHAIR HILL: Okay. Mr. Hardy, where is your
4 address again?

5 MR. HARDY: 1952. So, I'm two houses up.

6 CHAIR HILL: Okay. Just out of curiosity, were you
7 there before the zoning regulation change?

8 MR. HARDY: No, I wasn't. I didn't know about the
9 zoning regulation changes, nobody informed us, the Washington
10 Post never covered this. This was not something that was
11 discussed.

12 CHAIR HILL: Well, I'm sorry, how long have you
13 been in that property?

14 MR. HARDY: Oh, I've been four years, five years.
15 So, yes, I was there before the zoning change.

16 CHAIR HILL: Okay.

17 MR. HARDY: I didn't know it was happening. I had
18 read in the newspaper that suddenly a rule was being imposed
19 that we could not go more than ten feet behind --

20 CHAIR HILL: Okay.

21 MR. HARDY: -- any neighboring property.

22 CHAIR HILL: Okay. Does anybody have any questions
23 for the witness? Okay. All right. Thank you, Mr. Hardy.

24 MR. HARDY: Thank you.

25 CHAIR HILL: Okay. Anything else in conclusion?

1 MR. KEYS: Just briefly.

2 CHAIR HILL: Certainly.

3 MR. KEYS: We're going to rely on the record. What
4 we attempted to do was to provide exhibits to the Board that
5 relate to the criteria of the special exception standards in
6 Subtitle E Section 205.5.

7 And I think we have detailed specifically how this
8 proposed addition does not affect neighboring properties,
9 does not impact the zone scheme, doesn't present an intrusion
10 on the architectural character of the neighborhood.

11 And I think the fact that the existing 1946 was
12 modified with the concurrence of the Historic Preservation
13 Review Board is really evidence that this is a consistent and
14 tolerable modification.

15 Finally, I'll just have to say that my client has
16 already expressed his discomfort with the way in which the
17 ANC handled his application. I think it's an Orwellian
18 process that is really motivated by just a general animus to
19 the whole idea of special exceptions to this particular
20 section of the regulations.

21 The ANC did not make any effort to treat with the
22 real standards that had to be applied. They offered no
23 explanation or reasons when they submitted their report. I
24 find it astonishing that they would come before this Board
25 with really an empty basket.

1 And I would like to request the Board would
2 consider this application and approve this application by
3 bench decision this afternoon.

4 CHAIR HILL: Okay. All right. Is the Board ready
5 to deliberate? Okay. I can start -- oh, pardon me? Yes,
6 thanks. I'm closing the hearing, I'm closing the record.
7 So, I guess, I'm ready to deliberate, I'm ready to talk about
8 this.

9 I do want to talk about just a couple things about
10 just the ANC. And this is more just to the Applicant in
11 general, and anyone. I mean, the ANC process, it is the
12 process that it is. We've been here, everybody's been here,
13 everybody goes through the process.

14 If you can't negotiate the ANC process and it
15 doesn't work out for you, then you need to try a little bit
16 differently, you need to try harder, even if you're going to
17 get a no. I mean, I think that the process is -- I mean, I
18 may be in the outlier here or in the minority, but I think
19 it's a relatively okay process.

20 I mean, it didn't work for you, in terms of how --
21 or, I'm sorry, it didn't work for this Applicant, in terms
22 of how you went through the process. And where the bumps in
23 the road were, I don't know.

24 I'd like to again state that I have a great
25 respect for the ANCs, I have a great respect for the work

1 that they do, it's a huge pain in the butt, and there's a lot
2 of things that are going on in the community and they try to
3 do their best. And so, for the applicants, all the
4 applicants out there, you need to jump through the hoops to
5 get to where you're getting here.

6 Now, it seems as though the Applicant is lucky
7 enough that we're actually going to deliberate about this,
8 because I don't like the fact that we're -- well, that part
9 of it, I'm having a little bit of difficulty with.

10 But none the less, as far as the merits of it, I
11 think that this, going back in terms of what we are
12 continuing to get confronted with, I don't know if this is
13 going to come up again with the Zoning Commission, in terms
14 of like, even as far as like the backs of these developments,
15 whether they're going to start getting stepped back and kind
16 of that turns out to be kind of a way that things are looked
17 at.

18 I mean, I understand that in this particular case
19 with this Applicant, they're trying to match an existing
20 property. I think that there's a lot to be said in terms --
21 and this is why this continues to be just such a difficult
22 topic for us all, it continues to be an issue where basically
23 there are these large lots, as I hadn't heard about it before
24 in terms of like a hundred yard garden, I don't know where
25 the witness is from, that's a long garden, I don't garden,

1 but none the less, whenever I think of a garden, yes, a
2 hundred yard garden, that's a lot of gardening.

3 But the fact that these regulations are changing
4 the ability for people to do what they could do with their
5 property is -- I'm still just -- I think that we're going to
6 continue to go through these each and every time.

7 I wish the Applicant had gone through the ANC in
8 the way that I hoped they had gone through. I do have a vote
9 from the ANC, which is no. The ANC is here in opposition.
10 I am disappointed that again, and I want to just continue to
11 state that, I am disappointed that the ANC didn't at least
12 get it done the way that they should have had the opportunity
13 to get it done.

14 That all being the case, I would agree with the
15 Office of Planning in terms of what they have set forth. And
16 with this particular application, as to whether or not it is
17 meeting the criteria for approval, I think that the standards
18 with which we need to review for the special exception has
19 been met. And so, I would be in favor of it. And I look to
20 my other Board members.

21 COMMISSIONER MAY: Mr. Chairman, I think that's a
22 very good summary. I would agree with everything that you
23 said. I think the ANC review process wasn't great for this
24 case. And whether that's because of the ANC's process or the
25 Applicant's reaction to it, I don't know, but it does make

1 it a little bit harder for us to grapple with.

2 I think it is noteworthy, in particular to the
3 ANC, that the report that we received did not note specific
4 concerns. And the requirement to give great weight for the
5 Board is to give great weight to the concerns of the ANC.

6 So, simply voting no, I mean, obviously there are
7 concerns, but it would help us greatly if those were
8 articulated in a written report when we evaluate it, which
9 didn't happen in this case.

10 I'm not particularly sympathetic to Applicant's
11 counsel and their objections to the ANC process. I mean, the
12 ANC process is what it is and the ANCs vary a lot from place
13 to place. And if you're the applicant going through their
14 process, you got to roll with it and it isn't going to make
15 me any more sympathetic to your case to complain about the
16 ANC, honestly.

17 And, again, all this being said, I think that the
18 strict merits of the case are well said in the Office of
19 Planning's report. I think that they have made the right
20 call in this circumstance.

21 It might have been a different case if this was
22 the first property along that row that was going out 20-some
23 feet. In that circumstance, we might have pushed back a
24 little bit further on how far it can go, but it seems a
25 little bit silly to say, well, you can only go 15 feet, even

1 though the property to the south is at 23, or whatever it is.

2 They are -- as well said several times, these are
3 very deep lots. It's also important to note that the
4 existing house in this circumstance is a very shallow house.
5 A 30-foot deep house is not a very deep house. It's not even
6 a workable sort of three-room deep house. And so, and you're
7 really not getting much more than three rooms.

8 I mean, yes, you could have trimmed it back by
9 five feet or eight feet or something like that and still had
10 something that worked very well. But it, again, seems hardly
11 like it would make a difference in this circumstance given
12 the house next door that's 23 feet beyond the others.

13 The fact that the two neighbors to the immediate
14 north are in support of it, I think is an important
15 consideration, because what we are looking at is whether this
16 has unacceptable impacts on the adjacent neighbors and the
17 neighborhood as a whole. And I think that the fact that they
18 don't consider it to be a problem does speak well on the
19 merits of the application.

20 It's also, I think, worth understanding, again,
21 that this is not -- I mean, this is a special exception
22 consideration. Which means, a special exception means that
23 it is an appropriate thing to do within the zone, it's just
24 that we have to take a little bit more care when we're doing
25 it and making sure that it doesn't have undue impacts.

1 Now, I think that's an important thing for the ANC
2 to understand as well, that special exceptions are
3 substantially different from variance cases and they are not
4 hard and fast, and this is also for the neighbor, Mr. Hardy,
5 who had concerns about the arbitrary rule set forth by the
6 Zoning Commission.

7 I mean, there are substantial problems across the
8 city with very large additions on houses in row house
9 neighborhoods and we took this on very specifically and it
10 grew out of the Zoning Regulation rewrite, but it was a
11 particular case having to do with row house neighborhoods.
12 And we set up rules, but we also planned for the flexibility.
13 Now, I say we, I mean the Zoning Commission, which I am
14 representing on the Board today.

15 So, special exceptions, that means there has to
16 be some additional consideration, but it also means that
17 there is an inherent ability to do things like this, they
18 just have to be given some special treatment. So, and I
19 think that that's the treatment that you've gone through.

20 And so, that's a very long-winded, I apologize,
21 way of saying that I'm in support of this application.

22 CHAIR HILL: Okay. Thank you. Anyone else?

23 MEMBER WHITE: I just concur with your comments.
24 I usually get very uncomfortable with a lot of these rear
25 addition cases, but I think this particular case fit a

1 footprint that I can kind of get behind, especially because
2 of OP's report, the testimony from the neighbors.

3 I was trying to grasp something from the ANC
4 report that would maybe have me take a second look at it, but
5 I wasn't able to put anything into context that would cause
6 me to not support it. So, I think the Applicant in this
7 particular case has met the criteria for a special exception.

8 CHAIR HILL: Okay. All right. I'm going to go
9 ahead and make a motion to approve Application Number 19680
10 as captioned and read by the Secretary and ask for a second.

11 VICE CHAIR HART: Second.

12 CHAIR HILL: Motion made and seconded. All those
13 in favor?

14 (Chorus of ayes.)

15 CHAIR HILL: All those opposed? The motion passes,
16 Mr. Moy.

17 MR. MOY: Staff would record the vote as 5-0-0.
18 This is on the motion of Chairman Hill to approve the
19 application for the relief being requested, second the motion
20 by Vice Chair Hart. Also in support, Mr. Peter May, Ms.
21 White, Ms. John, and I think that's five, right? The motion
22 carries.

23 CHAIR HILL: That is. Welcome aboard, Ms. John.
24 So, full order? Okay.

25 MS. GLAZER: Mr. Chairman?

1 CHAIR HILL: Yes?

2 MS. GLAZER: I'm not sure it needs to be a full
3 order, but --

4 CHAIR HILL: Oh, because the ANC --

5 MS. GLAZER: -- the ANC's issues should be
6 addressed in a --

7 CHAIR HILL: Okay.

8 MS. GLAZER: -- brief.

9 CHAIR HILL: If we could do a summary order, I
10 would prefer to do a summary order.

11 MS. GLAZER: Well, a hybrid.

12 CHAIR HILL: Okay. Let's do -- I'll leave that to
13 OAG.

14 MS. GLAZER: Okay.

15 CHAIR HILL: Thank you.

16 MS. GLAZER: OAG will work with staff at OZ.

17 CHAIR HILL: Please, thank you. All right. We're
18 taking a quick, three minute break, actually. And we'll be
19 right back with our last two cases before lunch.

20 (Whereupon, the above-entitled matter went off the
21 record at 1:24 p.m. and resumed at 1:34 p.m.)

22 CHAIR HILL: All right. Mr. Moy, you ready?

23 MR. MOY: Yes, sir. Thank you, Mr. Chair. All
24 right. I see the Applicant is to the table.

25 This is to Case Application Number 19685 of Emma

1 Sarah Davis, as amended, for a special exception from the
2 parking requirement, Subtitle C Section 701.5, and under the
3 accessory apartment regulations, Subtitle U Section 253.4,
4 which would permit an accessory apartment in R-20 and MU-4
5 Zones at 3238 Reservoir Road Northwest, Square 1280 Lots 114
6 and 835.

7 CHAIR HILL: Okay, great. If you could introduce
8 yourself for the record, please?

9 MR. DZIERZANOWSKI: Sure. My name is Mateusz
10 Dzierzanowski, I'm here with DZ Architecture on behalf of my
11 client and the Applicant, Ms. Emma Sarah Davis.

12 CHAIR HILL: Dzierzanowski?

13 MR. DZIERZANOWSKI: Dzierzanowski, yes.

14 CHAIR HILL: Dzierzanowski, okay. Great. Thank
15 you.

16 MR. DZIERZANOWSKI: No problem.

17 CHAIR HILL: Let's see. Mr. Dzierzanowski, I don't
18 really have a lot of questions for you, I think the record
19 is pretty full. I guess, if you could just kind of go over
20 a little bit what you're trying to do. And the one issue
21 that I was curious of, again, was the requirement for a TDM
22 plan and it looks like that's been addressed, in terms of
23 your most recent exhibit.

24 So, if you could just kind of walk us through what
25 you're trying to do. I'm going to go ahead and put ten

1 minutes on the clock, just so I know where I am, and you can
2 begin whenever you like.

3 MR. DZIERZANOWSKI: Yes, sorry, thank you. So,
4 with the two reliefs being sought, the client purchased the
5 property back this past summer and came into where the
6 basement, as an existing condition, had a separate basement
7 unit to it. But the property falls in a unique position --
8 and, excuse me, let me put the board up real quick.

9 CHAIR HILL: That's all right. Mr. Moy, that's
10 where the camera is, again, correct?

11 MR. MOY: Yes, sir, I think we've captured it.

12 CHAIR HILL: Okay. All right. Great, thank you.

13 MR. DZIERZANOWSKI: And the main reason for the
14 site relief for the accessory apartment is, the actual
15 property is bisected by two different zoning districts, that
16 completely bisects through the middle of our structure on the
17 property. So, while in some aspects, it's allowed in MU-4,
18 R-20 prohibited us from being able to do that.

19 And being that our client is just looking to make
20 improvements and build this accessory unit legally, and do
21 all the improvements in the correct fashion, that's the main
22 reason why we're seeking that relief upon this.

23 Because of the existing conditions of the first
24 floor kitchen, which currently exists where the garage used
25 to be, it also triggered a potential relief from the parking

1 requirement. And if I could just go through the response
2 letter that we had to DDOT and do my best to be as quick and
3 brief with that letter as possible --

4 CHAIR HILL: Okay.

5 MR. DZIERZANOWSKI: -- but it does cite the reasons
6 and concerns that we have.

7 CHAIR HILL: I see their letter, actually. I'm
8 comfortable with the letter, you don't have to walk us
9 through that.

10 MR. DZIERZANOWSKI: Okay. So, the main concern
11 that we do have is, while we respect the DDOT's report in
12 full and understand some of the points, my client has gone
13 through a lot, gone through all the right steps. We've done
14 an exterior building permit, gone through the OGB, the ANC.

15 And the main concern is that if we were to go
16 ahead and remove curb-cuts and paving that, between the
17 existing conditions, between the proposed steps already
18 taken, and the construction already done to keep the home and
19 the property in the matching character of the rest of this
20 street, we just feel that not only to do something
21 appropriate would be even more expensive, even more
22 inconvenient, even more of a longer process at this point.

23 It would also start to fall out of the character
24 of the rest of the street. I actually have --

25 CHAIR HILL: Mr. Dzierzanowski, I'm sorry, I have

1 to interrupt you.

2 MR. DZIERZANOWSKI: Sure.

3 CHAIR HILL: So, you're not in agreement with
4 DDOT's conditions, is that what you're saying?

5 MR. DZIERZANOWSKI: Correct. We agree with how
6 DDOT -- they understand and are allowing of the relief that
7 we will not maintain devoted parking for the residence. They
8 go on then in their recommendation to ask and suggest that
9 we go ahead and remove the existing --

10 CHAIR HILL: They don't suggest, actually they ask
11 that the Applicant close the existing curb-cut and --

12 MR. DZIERZANOWSKI: Correct.

13 CHAIR HILL: -- restore curb and gutter consistent
14 with adjacent conditions.

15 MR. DZIERZANOWSKI: Correct.

16 CHAIR HILL: So, you're disagreeing with that?

17 MR. DZIERZANOWSKI: Correct.

18 CHAIR HILL: Okay. And then, also the Applicant
19 remove the existing impervious surface to public space?

20 MR. DZIERZANOWSKI: Correct.

21 CHAIR HILL: So, you're in agreement with that?
22 You're --

23 MR. DZIERZANOWSKI: No, no, we're also in
24 disagreement with that.

25 CHAIR HILL: Okay. I ran into you in the hall,

1 right?

2 MR. DZIERZANOWSKI: Yes.

3 CHAIR HILL: Didn't you say this was going to be
4 easy?

5 MR. DZIERZANOWSKI: I was trying to make it easy.

6 CHAIR HILL: So, you lied?

7 (Laughter.)

8 MR. DZIERZANOWSKI: I thought it was all in the
9 letter.

10 CHAIR HILL: Are you under oath? Did you swear?

11 MR. DZIERZANOWSKI: I did swear in.

12 CHAIR HILL: Did you -- are you sure you swore?

13 MR. DZIERZANOWSKI: Yes, sir.

14 CHAIR HILL: Okay. All right. Okay. All right.
15 So, walk me through this again.

16 MR. DZIERZANOWSKI: Sure, not a problem. So,
17 what's actually before you here was the approved exterior
18 building permit process that we had previously gone on for
19 this project, in which the existing garaged area, which was
20 already occupied by an existing kitchen, in a separate
21 permit, we only had the proposal to renovate.

22 Showed a replacement of a painted, fixed wood
23 garage door, in order for us to maintain character of the
24 street, be in compliance with some of the neighboring
25 properties and some of the other characteristics of the rest

1 of the block.

2 This has already been done, this has already been
3 approved, we went through that entire process with both OGB,
4 the ANC. And it speaks to one of our points, for Reason 3
5 in the letter, just to state that while they're making this
6 citation now, we've gone through multiple building permits
7 on something that's relatable to an existing condition to the
8 house.

9 So, they're making this request now, while the
10 home has made improvements to be more in character with the
11 rest of the homes on the block and the street. We feel that
12 removing the curb-cuts, removing the impervious surface or
13 the driveway in this case, would present a lot of challenges
14 and kind of bring the front facade of the home out of
15 character with the remainder of the block.

16 CHAIR HILL: So, did you get explanation from DDOT
17 as to their thought process?

18 MR. DZIERZANOWSKI: Sure. So, the specific
19 reasoning, and it's very common with many of the properties
20 on the street, is the area within the driveway doesn't fall
21 within the requirements of what they would deem acceptable
22 for a parking space to occupy within public space.

23 And we had the discussion with them over the phone
24 and tried to just make the case that, not only has this been
25 overlooked, we've gone through many processes to make sure

1 that we're in conformance to make improvements, again, so
2 that we're in conformity with the rest of the block.

3 But there are other existing conditions that are
4 rare and unique to our site, such as the existing stairwell
5 entry to the basement unit, which sits adjacent to the
6 driveway.

7 This is just another item that would -- being
8 adjacent to where the driveway currently is now, it just
9 cites for, again, another area that we would have to really
10 uniquely treat, if we were to remove pavement, if we were to
11 dig this up and try to make an appropriate plan that
12 maintains circulation to the secondary basement level, that
13 properly addressed and touched all of the different adjacent
14 conditions, such as masonry finishes, the stairwell, as I had
15 mentioned, the fixed wood garage door, which we have already
16 installed, as well as a planting strip to the edge of the
17 property.

18 So, their main concern focused around the overall
19 dimension of what it was that was available to the driveway
20 and any potential concerns with how it may or may not have
21 been used. That being said, the conversion of the garage to
22 a kitchen happened well before us acquiring the property in
23 2007, through a proper building permit we were able to look
24 up.

25 And since then, there's been no citation by any

1 neighbor or any citation of another adjacency that we've been
2 able to find or see on the record with concerns to how the
3 driveway has functioned since then or how this part of the
4 property has been used since then.

5 So, our hope is that the Board would consider
6 allowing to maintain the curb-cuts and the driveway, mainly
7 for, obviously for conformity reasons with the rest of the
8 block, and also that there seems to be precedent with the way
9 parking and driveways work on this street, all being of
10 unique sizes and shapes, to allow us to maintain that.

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

13 COMMISSIONER MAY: Yes. So, you're telling me,
14 there used to be an in-fill in that garage door that had
15 windows and stuff on it, right? And that's what I'm seeing
16 on the photographs.

17 MR. DZIERZANOWSKI: Correct. And there --

18 COMMISSIONER MAY: You've --

19 MR. DZIERZANOWSKI: I'm sorry.

20 COMMISSIONER MAY: -- since replaced it with this
21 new garage door?

22 MR. DZIERZANOWSKI: Correct. There was always a
23 kitchen that had occupied --

24 COMMISSIONER MAY: I understand that.

25 MR. DZIERZANOWSKI: -- that garage space, yes. So,

1 we have replaced it with a garage door, correct.

2 COMMISSIONER MAY: And that was because you wanted
3 to make it look more like a garage door? I mean, that
4 doesn't seem -- it seems kind of --

5 MR. DZIERZANOWSKI: So, the previous doors that
6 were in there were, first of all, inset from the front
7 facade.

8 COMMISSIONER MAY: Yes.

9 MR. DZIERZANOWSKI: So, aside from obtaining that
10 space, the owner wanted to make sure that -- the previous
11 French doors and fixed panels that were there were one-off
12 and unique to the homes on that street. And both in
13 discussions with HPRB, as well as her wishes to replace the
14 front entry door and do things to just improve the front
15 facade of her structure, we went ahead and --

16 COMMISSIONER MAY: So, HPRB and OGB have approved
17 --

18 MR. DZIERZANOWSKI: Correct.

19 COMMISSIONER MAY: -- that new door?

20 MR. DZIERZANOWSKI: Correct, and it's already been
21 built and installed.

22 COMMISSIONER MAY: That's just a wacky thing. Let
23 me ask you this.

24 MR. DZIERZANOWSKI: Sure.

25 COMMISSIONER MAY: When you're talking about the

1 current use of that driveway --

2 MR. DZIERZANOWSKI: Sure.

3 COMMISSIONER MAY: -- you're talking about somebody
4 parking a car in it, right?

5 MR. DZIERZANOWSKI: Correct.

6 COMMISSIONER MAY: And you want to be able to
7 continue to do that, even though it's not a legal space in
8 any way, shape, or form? Not just that it's not 13 feet,
9 it's also in public space.

10 MR. DZIERZANOWSKI: Correct.

11 COMMISSIONER MAY: Right.

12 MR. DZIERZANOWSKI: To a certain extent, yes. And
13 I can't --

14 COMMISSIONER MAY: Right.

15 MR. DZIERZANOWSKI: -- speak for the way the owner
16 will use the property, but yes --

17 COMMISSIONER MAY: And then --

18 MR. DZIERZANOWSKI: -- for parking.

19 COMMISSIONER MAY: And this owner may not even own
20 a car --

21 MR. DZIERZANOWSKI: Sure.

22 COMMISSIONER MAY: -- and won't use it that way,
23 but the next owner will.

24 MR. DZIERZANOWSKI: Sure.

25 COMMISSIONER MAY: That's why DDOT wants it taken

1 out and that's why I would want it taken out. And that's why
2 I think putting in a new garage door is kind of silly, but
3 you've already done that.

4 CHAIR HILL: Okay, well, there you go. All right.
5 So, okay. Any other questions for the Applicant? Okay.
6 Going to turn to the Office of Planning.

7 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
8 and Members of the Board. For the record, I'm Maxine Brown-
9 Roberts from the Office of Planning. In our report, we
10 outlined and the Applicant has met all the conditions of
11 Subtitle U 253, in relation to the accessory apartment.

12 In relation to the parking, under Subtitle C
13 Section 703, we also think that there is adequate on-street
14 parking and that there would not be any detriment to the
15 public for losing the one space.

16 In regards the discussion that just went ahead,
17 we did not comment on that, because DDOT was mostly looking
18 at the public space issues, and so we really didn't have a
19 comment on that portion about the closing of the sidewalks
20 and all of that.

21 CHAIR HILL: Okay. But does the Office of Planning
22 have a comment on DDOT's report?

23 MS. BROWN-ROBERTS: No.

24 CHAIR HILL: Okay. All right. Does anybody have
25 any questions for the Office of Planning? Okay. Is there

1 anyone here from the ANC? Is there anyone here wishing to
2 speak in support? Is there anyone here wishing to speak in
3 opposition? Okay.

4 I'm going to turn back to the Applicant. I mean,
5 I'm still stuck on this DDOT thing and so, I don't know what
6 we're going to do here or what -- I don't know what the Board
7 wants to do.

8 Like, I want to -- I wish DDOT were here to -- and
9 maybe we'll do that. Maybe we'll do a continued hearing and
10 ask DDOT to come. I want to talk to DDOT, because they're
11 in support, in terms of -- and I just kind of want to
12 understand it a little bit better before we make a decision.
13 Unless the Board has other thoughts?

14 COMMISSIONER MAY: Can I ask another question? So,
15 when you went before -- I mean, I assume you went before the
16 ANC and all that sort of stuff. Did anybody else talk about
17 the parking --

18 MR. DZIERZANOWSKI: No, they --

19 COMMISSIONER MAY: -- in that space?

20 MR. DZIERZANOWSKI: They didn't. And as we moved
21 forward, part of the reason why the challenge came up is
22 because the conversion had already happened beforehand, we
23 didn't know if there was a preexisting condition or if there
24 was something which deemed the parking or the driveway to
25 remain as it currently does.

1 So, even through the filing of our first and
2 second floor interior renovation, which did highlight the
3 refinishing of the kitchen, even through the exterior permit
4 process, review process, nobody seemed to cite this or flag
5 this.

6 And it was in the plans, it was shown, it's not
7 that we were looking to avoid the issue. We do think that
8 the existing conditions, with everything that's going there,
9 made it for a tough case for our part to be able to plan for
10 properly. And also --

11 COMMISSIONER MAY: All I really --

12 MR. DZIERZANOWSKI: -- some of the neighbors --

13 COMMISSIONER MAY: -- wanted to know is whether the
14 issue of the parking had been raised at these --

15 MR. DZIERZANOWSKI: No, it had not.

16 COMMISSIONER MAY: -- of these public forums at
17 all. Which is kind of surprising to me, because this is a
18 condition that exists on a number of properties, particularly
19 ones of this particular vintage, where -- I don't know --
20 somebody over -- well, DDOT didn't even exist back then, it
21 was DPW.

22 They were giving curb-cuts left and right for
23 garages on the street, because that was thought to be good
24 planning at the time. But there are many of them where this,
25 in fact, happens, where the garage gets filled in, made into

1 habitable space, but people still park in what is the public
2 space.

3 And in the most egregious circumstances, where
4 there's not enough space to fit the car, to illegally park
5 in the public space in front of the house, the car illegally
6 extends into the sidewalk space. And that happens with some
7 frequency.

8 And I imagine that's what would happen here,
9 particularly since it's only 13 feet deep. So, unless it's
10 one of those very tiny cars, it's going to stick out into the
11 sidewalk, which I think is an unacceptable circumstance.

12 CHAIR HILL: Okay. So, what was also clarified to
13 me was that, again, under C 703.4, you need an approved TDM
14 plan from DDOT. And so, that is why, when I originally
15 thought, to your submission, was that you were agreeing to
16 what DDOT was saying and, therefore, that was going to be
17 your approved TDM plan.

18 MR. DZIERZANOWSKI: Understand.

19 CHAIR HILL: So, I think you need to go back to
20 DDOT.

21 MR. DZIERZANOWSKI: Okay.

22 CHAIR HILL: You need to get them to approve a TDM
23 plan --

24 MR. DZIERZANOWSKI: Sure.

25 CHAIR HILL: -- just for us to go forward. And

1 probably you're going to have to get rid of that curb-cut.

2 MR. DZIERZANOWSKI: Understood.

3 CHAIR HILL: And so, I'm going to put this on for
4 a continued hearing again, so we can go back through this
5 again after you've rectified the DDOT issue.

6 MR. DZIERZANOWSKI: Sure.

7 CHAIR HILL: And so, I don't know about your
8 timing, in terms of, do you know -- well, Mr. May is back
9 here on the 21st of March? 21st of March --

10 MR. DZIERZANOWSKI: That would be fine.

11 CHAIR HILL: -- so, you'll go ahead and go back and
12 get all this straightened out and tidied up --

13 MR. DZIERZANOWSKI: Sure.

14 CHAIR HILL: -- because you do need an approved TDM
15 plan from them in order to get this, and currently you don't
16 have one.

17 MR. DZIERZANOWSKI: Correct, understood.

18 CHAIR HILL: Okay. So, if you could go and get an
19 approved TDM plan from them --

20 MR. DZIERZANOWSKI: Will do.

21 CHAIR HILL: -- put that into the record --

22 MR. DZIERZANOWSKI: Sure.

23 CHAIR HILL: -- and then, we can try this again.

24 MR. DZIERZANOWSKI: Okay.

25 CHAIR HILL: Okay?

1 MR. DZIERZANOWSKI: And there's no other comments
2 with regards to the other form of relief? Could I just
3 clarify that?

4 CHAIR HILL: I don't have any.

5 MR. DZIERZANOWSKI: Okay.

6 CHAIR HILL: Does the Board have any other
7 questions?

8 MR. DZIERZANOWSKI: Okay.

9 CHAIR HILL: Did I ask ANC, support, and
10 opposition? The sugar's going down. So, is the ANC here?
11 I thought I did ask. Is the ANC here?

12 MR. DZIERZANOWSKI: I believe you did.

13 CHAIR HILL: People are -- well, half the people
14 are nodding yes and a couple of people are nodding no.

15 (Laughter.)

16 CHAIR HILL: So, did I ask for support? Is there
17 anybody here in support? Is there anybody here in
18 opposition? Okay. So, do you have anything you'd like to
19 add? Okay.

20 MR. DZIERZANOWSKI: Just to thank the Board for
21 your time.

22 CHAIR HILL: Okay, thank you. We're going to go
23 ahead and close the hearing. We're scheduling for a
24 continued hearing. Mr. Moy, if you could ask DDOT to be here
25 for that, if they are still in -- if they still have those

1 conditions and the Applicant and DDOT haven't gotten together
2 on the same page, if you could ask DDOT to come?

3 MR. MOY: Yes. Yes, of course, sir. I wanted to
4 ask, with a continued hearing on 21st of March, do you want
5 to set a deadline for the Applicant to make a filing or do
6 you want to leave that open-ended?

7 CHAIR HILL: You can set a deadline.

8 MR. MOY: How about that, to give you ample time,
9 how about that Friday, March 16?

10 MR. DZIERZANOWSKI: That will work.

11 CHAIR HILL: And then -- what? And then, that's
12 okay with the seven days, Mr. Moy, is that right?

13 MR. MOY: No, it's not. It's --

14 MR. DZIERZANOWSKI: It can be earlier than that,
15 that's fine.

16 MR. MOY: All right. Let's do this, let's make it
17 March 14.

18 CHAIR HILL: Okay. And then, we're back on the
19 24th, correct?

20 MR. MOY: Yes, sir.

21 CHAIR HILL: Okay. Oh, the 21st, sorry. March 21,
22 okay. All right, sir.

23 MR. DZIERZANOWSKI: Thank you.

24 CHAIR HILL: Thank you. All right, Mr. Moy,
25 whenever you like.

1 MR. MOY: All right. I see the parties are at the
2 table. This is Case Application Number 19695 of LHO
3 Washington Hotel Three, LLC.

4 Caption advertised for a special exception from
5 the use permissions under Subtitle U Section 504.1(f) and
6 from the penthouse requirements, Subtitle C Section
7 1500.3(c), to construct a new penthouse restaurant in
8 existing hotel, MU-15 Zone. This is at 1315 16th Street
9 Northwest, Square 195 Lot 846.

10 CHAIR HILL: All right. Everybody, if you could
11 just please introduce yourselves from my right to left.

12 MR. COLLINS: Christopher Collins, Holland and
13 Knight.

14 MR. BOUTWELL: Justin Boutwell, LaSalle Hotel
15 Properties, the Applicant.

16 MS. BLOOMFIELD: Jessica Bloomfield with Holland
17 and Knight.

18 MR. DELCHER: David Delcher with BBGM Architects.

19 MS. DEHART: Meredith DeHart, the owner/occupant
20 of 1528 O Street Northwest.

21 MS. MORRIS: Yolanda Morris, owner/occupant for
22 1520 O Street Northwest.

23 CHAIR HILL: Now, just to clarify, you guys are --
24 you are here to testify in some capacity?

25 MS. DEHART: We are opponents.

1 CHAIR HILL: Okay. Okay. So, just to let you
2 know, we're going to go -- the way the process works is that
3 we hear from the Applicant and then, at some point, after the
4 Applicant and after we've gone through the process, we ask
5 for the ANC, we ask for support, and then, we ask for
6 opposition. So, then, at that point, we'll call you back up.

7 MS. DEHART: Okay.

8 CHAIR HILL: Okay. Okay. Who's going to be
9 presenting to us today? Okay, great. So, Ms. Bloomfield,
10 I suppose, there -- I didn't have a lot of questions,
11 actually, specific questions.

12 I guess, if you want to go ahead and walk us
13 through the application, in terms of what you're trying to
14 do, and also the standards with which we are to review the
15 application, in terms of granting or denying it.

16 And then, I'm going to go ahead and put ten
17 minutes on the clock, just so I know where we are, Mr. Moy,
18 and you can begin whenever you like.

19 MS. BLOOMFIELD: Great, thank you so much, Members
20 of the Board. My name is Jessica Bloomfield from Holland and
21 Knight.

22 As a preliminary matter, I would just like to ask
23 you to take a look at our architect's resume, David Delcher,
24 it's in the record at Exhibit 32A. He's not previously been
25 qualified by the BZA, but has been by the Zoning Commission.

1 CHAIR HILL: Yes, I reviewed Mr. Delcher's resume
2 and I didn't have any issues with him being considered an
3 expert. Does the Board have any thoughts or questions?
4 Okay. All right. Thank you.

5 MS. BLOOMFIELD: Great, thank you.

6 CHAIR HILL: We'll admit him as an expert.

7 MS. BLOOMFIELD: And they have been sworn in and --

8 CHAIR HILL: Okay, great, thank you.

9 MS. BLOOMFIELD: -- they're going to tell the
10 truth.

11 CHAIR HILL: No, that's great, thank you. Thank
12 you, I appreciate that.

13 MS. BLOOMFIELD: So, this application applies to
14 property at 1315 16th Street, which is operated as the Rouge
15 Hotel. It has 137 guest rooms and a restaurant on the ground
16 floor. The hotel is located on the east side of 16th Street,
17 about half a block north of the Scott Circle.

18 The building was originally constructed in 1964
19 as an apartment house and was converted to hotel in 1978.
20 At that time, both the construction and the conversion in the
21 SP Zone district, residential and hotel uses were permitted
22 as a matter-of-right. And a matter-of-right building height
23 of 90 feet and 6.0 FAR.

24 CHAIR HILL: MS. BLOOMFIELD:, I'm sorry --

25 MS. BLOOMFIELD: Yes?

1 CHAIR HILL: -- are you pulling up a presentation
2 or even just --

3 MS. BLOOMFIELD: Well, I was going to go through
4 just some basic information about the property, tell you the
5 standards of relief, and answer your questions. If you want
6 to see a presentation, we have it.

7 CHAIR HILL: Okay.

8 MS. BLOOMFIELD: I don't know if those issues are
9 going to necessary.

10 CHAIR HILL: I understand. If you could just shoot
11 up the front of the hotel or something, just so we can look
12 at something.

13 MS. BLOOMFIELD: Yes. As he does that, I'm just
14 going to finish here. So, under the current zoning, which
15 is MU-15, hotel use requires a special exception. But the
16 hotel's already there.

17 So, the reason we're here is because we're
18 proposing to construct a penthouse addition to the existing
19 building that will house a restaurant use as an expansion to
20 the existing restaurant use on the ground floor. Therefore,
21 we need two areas of relief.

22 The first is to expand the hotel use, since that
23 use is only permitted by special exception, and that would
24 be in the penthouse only.

25 And the second is to operate a restaurant in the

1 penthouse, which, as you know, in the new penthouse
2 regulations, is only permitted by special exception. The new
3 penthouse structure will comply with all height, bulk, and
4 setback requirements for penthouses and is designed to be in
5 harmony with the existing building.

6 We believe that the pleadings in the case record
7 provide support for how the project complies with the special
8 exception relief standards, which, as you mentioned earlier
9 today, should be approved only with a little stricter
10 scrutiny. There's no variances in this case.

11 The Applicant is pleased to have support from the
12 Office of Planning and from DDOT and an 8-0-1 in support from
13 the ANC. And we have also engaged other community members
14 throughout and will continue to do so, as part of the ABRA
15 process, which is where the hours of operation will be
16 established for the penthouse restaurant use, and where any
17 other noise restrictions will be set.

18 We believe the record is complete for the zoning
19 in this case and we are here to answer any questions. We
20 have our architect and a representative of the Applicant.
21 If you would like us to go through a brief presentation, we
22 can.

23 CHAIR HILL: Okay. Does the Board have any
24 specific questions for the Applicant?

25 MEMBER WHITE: Just one question, from a design

1 perspective. Part of the criteria is that it has to -- the
2 design has to be in harmony with the existing uses and
3 structures on the neighboring properties. So, maybe the
4 architect can comment in terms of how it all meshes together.

5 MR. DELCHER: Sure. The building, as Jessica
6 pointed out, was built in the 1960s. It's kind of a mid-
7 century modern building, brick, kind of a beige, light beige
8 colored brick. A lot of the surrounding properties are very
9 similar to that, with kind of punched windows.

10 So, what we're doing on the roof is, we are
11 planning on doing kind of a low-scale rectilinear addition
12 that would kind of merge with the remainder of the
13 architecture of the actual building.

14 MEMBER WHITE: Do you have a rendering of that --

15 MR. DELCHER: Sure.

16 MEMBER WHITE: -- that shows -- just out of
17 curiosity, it sounds interesting.

18 MR. DELCHER: I do.

19 MEMBER WHITE: Okay.

20 MR. DELCHER: This is an axon of the proposed
21 structure. And then, there's some existing structures that
22 are up there currently, which we have an elevator shaft, an
23 open-to-sky mechanical screen area, and then, there's a
24 couple chimneys, that are popping up, existing right now.
25 In addition to, one of the stairs which accesses the roof,

1 right now.

2 MEMBER WHITE: That's that on the right? The box,
3 it's almost like an open box, is that part of the ventilation
4 system?

5 MR. DELCHER: Are you talking about towards the
6 back to the right? Or the --

7 MEMBER WHITE: Yes, where the hand is.

8 MR. DELCHER: That's an open screened area, there's
9 a cooling tower back there, ma'am.

10 MEMBER WHITE: Okay.

11 CHAIR HILL: Anyone else? Okay. I'm going to turn
12 to the Office of Planning.

13 MS. FOTHERGILL: Good afternoon, Chairman Hill and
14 Members of the Board. I'm Anne Fothergill from the Office
15 of Planning, here today on behalf of Brandice Elliott, who
16 is the case manager for this project, but is out of town.

17 And as the Applicant stated, they have applied for
18 two special exceptions. One for the lodging use in the MU-15
19 Zone. And as the Applicant mentioned, they have been a hotel
20 since 1978, so it's an existing nonconformity that they are
21 now getting relief for, so that they can do the restaurant
22 use in the penthouse, which needs a special exception.

23 And one thing I would note is that the habitable
24 space in the penthouse triggers a contribution to the Housing
25 Production Trust Fund, which the Applicant has committed to.

1 And we rest on the record in support of the application. And
2 I'm happy to take any questions.

3 CHAIR HILL: Okay. Wow, I can't believe there's
4 a hotel there since 1978. Does anybody have any questions
5 for the Office of Planning? Does the Applicant have any
6 questions for the Office of Planning?

7 MS. BLOOMFIELD: No, thank you.

8 CHAIR HILL: Okay. Is there anyone here from the
9 ANC wishing to speak? Is there anyone here wishing to speak
10 in support? Is there anyone here wishing to speak in
11 opposition? Please, will you come forward? Hi, if you could
12 reintroduce yourselves again, and then, tell us your address,
13 please.

14 MS. DEHART: My name is Meredith DeHart. I'm the
15 owner/occupant of 1528 O Street.

16 MS. MORRIS: I'm Yolanda Morris --

17 CHAIR HILL: You have to push the button, I'm
18 sorry.

19 MS. MORRIS: I'm Yolanda Morris and I'm the owner
20 of 1520 O Street Northwest. Meredith will speak for me.
21 Thank you.

22 CHAIR HILL: I'm sorry, who's going to -- oh, is
23 going to speak for you? Okay. All right. Okay. Then,
24 well, normally, you get three minutes for a person, we'll go
25 ahead and give you six minutes, since you're speaking for

1 both people.

2 MS. DEHART: Okay.

3 CHAIR HILL: And you can begin whenever you like.

4 MS. DEHART: Okay. One major problem is that the
5 neighbors knew nothing about this until just a few days ago.
6 It appears that there's been deliberate secrecy as to what's
7 happening.

8 I understand that we will get a presentation
9 tomorrow night, but that's after this Board has heard the
10 case. I learned about this in passing when the manager of
11 another hotel in Square 195 said, they took us by surprise,
12 and that was on the occasion of we were having a meeting
13 about a substantial change in their ABC license.

14 CHAIR HILL: How do you say your last name again,
15 I'm sorry?

16 MS. DEHART: DeHart.

17 CHAIR HILL: DeHart?

18 MS. DEHART: DeHart.

19 CHAIR HILL: DeHart.

20 MS. DEHART: D-E, capital H, A-R-T.

21 CHAIR HILL: Okay. Ms. DeHart, when you say we,
22 who do you mean by we?

23 MS. DEHART: Neighbors who were meeting with the
24 Darcy Hotel regarding their ABC substantial --

25 CHAIR HILL: I see.

1 MS. DEHART: -- change.

2 CHAIR HILL: Okay.

3 MS. DEHART: And the manager made the statement
4 just to me that they had --

5 CHAIR HILL: Okay.

6 MS. DEHART: -- been taken by surprise.

7 CHAIR HILL: Okay.

8 MS. DEHART: And I was like, what? I believe I'm
9 the only person in Square 195 who has had any experience with
10 the BZA, knew what it was, or anything about these zoning
11 applications. I started sending out emails, trying to tell
12 people what was going on, and we needed to pay attention.

13 Meanwhile, the ANC met, their zoning board. One
14 person from the General Scott, at One Scott Circle, attended
15 that. He couldn't rouse anybody's attention. And so, they
16 voted that they had no problem with it.

17 With my neighbors, I'm suddenly getting a
18 response. I believe you can't -- I do have letters
19 authorizing me to speak for them, but I don't know that you
20 accept those.

21 But at any rate, tomorrow night, we're supposed
22 to get a presentation and we've been taken by surprise. When
23 --

24 CHAIR HILL: Okay. Once again, I'm sorry, when you
25 say we, who is we?

1 MS. DEHART: The neighborhood there, the
2 owner/occupants of the properties there within Square 195.
3 The townhouses in Square --

4 CHAIR HILL: There's some association or something
5 that you all belong to? When you say --

6 MS. DEHART: I own one of the three townhouses
7 remaining in 195. There are --

8 CHAIR HILL: That's okay. I can ask the Applicant,
9 I was just curious, when you say -- but that's okay. Go
10 ahead, I'm sorry.

11 MS. DEHART: There are also five townhouses across
12 the street and then, three condominium buildings. Mrs.
13 Morris lives in one of those condominium buildings. At any
14 rate, as I said, people don't know what the BZA is. And I
15 have tried to sound the alarm, a number of the residents are
16 appropriately alarmed about this proposal.

17 We did get a set of the plans, finally. And one
18 of the things that struck me for a restaurant application is
19 there appears to be no food preparation space. There are two
20 restrooms on this roof addition, for the roof addition, as
21 well as a storage room.

22 I didn't find any notes about how food would be
23 taken from another part of the hotel or where it would be
24 prepared. It would have to go up ten stories and then,
25 another climb up to the roof. Also, how would they be

1 getting trash from that space.

2 There is an outdoor garden, summer garden,
3 mentioned. I don't know if it's labeled as such on the
4 plans, but for their ANC application, they're saying 73
5 people outside, next door to the General Scott. Seventy-
6 three people, especially 73 people drinking, make a great
7 deal of noise, right outside someone's windows.

8 The noise from the hotel roofs, we've found, in
9 the area, also travels a great distance, so that the rest of
10 us would be impacted.

11 The ANC or ABC application is for operation of the
12 indoor space until 2:00 a.m. seven days a week, and the
13 outdoor space, I think until 12:00 seven days a week. We
14 feel concerned, that's --

15 CHAIR HILL: Okay, that's all right.

16 MS. DEHART: -- in summary --

17 CHAIR HILL: I'm just trying to understand. So,
18 you're -- and I'm going to kind of walk through this, because
19 I'm still not clear as to who the we is, but you, speaking
20 for yourself as an individual, and also for the other person
21 here in opposition, you're opposed to not being notified?
22 What are your concerns in opposition?

23 MS. DEHART: We are opposed to construction of this
24 penthouse.

25 CHAIR HILL: But why?

1 MS. DEHART: It appears to us that it is not really
2 going to be a restaurant space, but an event space, where
3 they are intending to operate it until 2:00 a.m. in the
4 morning seven days a week with indoor entertainment.

5 They have said that there will be no outdoor
6 music, but doors open and close, and when you put 73 people
7 outside who are also drinking, the noise can be tremendous,
8 right outside windows.

9 We also know that noise travels through our entire
10 area, so that there would be no escape from what they are --

11 CHAIR HILL: That's okay.

12 MS. DEHART: -- proposing.

13 CHAIR HILL: So, again, your objection or your
14 concern, at this point, is the noise?

15 MS. DEHART: Noise is the principal reason.

16 CHAIR HILL: Okay.

17 MS. DEHART: And, certainly, within Square 195,
18 I've been there since 1976, I've seen incremental changes,
19 part of them coming through this Board, with one of the
20 hotels where it was originally approved because it had motor
21 access from Rhode Island Avenue and the Board felt it would
22 never be a public nuisance as a result. And then, at a later
23 date, the Board approved removing that motor access and
24 expanding the footprint.

25 CHAIR HILL: Okay. Did you go -- so, you did say

1 though that you guys did go to the ANC meeting?

2 MS. DEHART: One person went to the ANC meeting,
3 we were all so taken by --

4 CHAIR HILL: From your group?

5 MS. DEHART: From the group, he's a resident --

6 CHAIR HILL: From people that you know?

7 MS. DEHART: Right. He's a resident of One Scott
8 Circle, but he was upset with his building that he couldn't
9 get the board to give any reaction.

10 CHAIR HILL: Okay. So, he knew about the meeting?

11 MS. DEHART: He knew about the meeting --

12 CHAIR HILL: Okay.

13 MS. DEHART: -- and went.

14 CHAIR HILL: Okay. All right. So, you didn't go
15 though?

16 MS. DEHART: I did not go.

17 CHAIR HILL: Okay. All right. Does the Board have
18 any questions for the witnesses?

19 MEMBER WHITE: Well, just one. I was looking at
20 the notices that the Applicant filed as part of the record,
21 and I just notice that they did list your association and
22 your addresses --

23 MS. DEHART: Would you like to see --

24 MEMBER WHITE: -- as being --

25 MS. DEHART: -- the notice I received?

1 MEMBER WHITE: Well, I was just asking the question
2 that, the Applicant indicated they sent it to you, but I
3 don't know, it sounds like you got something different.

4 MS. DEHART: I received a notice for a property on
5 Rhode Island Avenue Northeast.

6 MEMBER WHITE: Okay.

7 MS. DEHART: I queried neighbors who said they
8 received nothing.

9 MEMBER WHITE: Yes, I just -- I did notice that
10 they've got 1528 O and 1520 O Street listed here. So --

11 MS. DEHART: When I received the notice, my first
12 concern was that I had a mortgage and perhaps officially
13 owned a property that I knew nothing about.

14 MEMBER WHITE: Right. Okay. And then, the other
15 question, I think you probably just answered that for Mr.
16 Hill, you weren't there at the ANC --

17 MS. DEHART: I was not.

18 MEMBER WHITE: -- meeting, so you're not sure
19 whether or not there was any opposition voiced during that
20 meeting.

21 MS. DEHART: I don't know if Mr. Coggins spoke at
22 all --

23 MEMBER WHITE: Okay.

24 MS. DEHART: -- but I don't know what happened.

25 MEMBER WHITE: Okay. All right. Thank you.

1 CHAIR HILL: Okay. Thank you. All right. Okay.
2 Thank you all very much. So, to the Applicant, I guess,
3 there is a presentation, I guess, the witnesses are speaking
4 to. Can you elaborate what -- who are you presenting to?

5 MS. BLOOMFIELD: Absolutely. So, I'm going to turn
6 it over to Justin in just a second, but I just want to
7 respond to a couple of things, quickly. We did send notice.
8 We didn't, we send a property owner list to the Office of
9 Zoning and they send out a notice of the hearing.

10 So, I apologize if you didn't receive that notice,
11 but you are on our list it looks like, and everyone you
12 mentioned was on our list, including the Condo Association
13 for the General Scott Condo, which I believe is the group
14 that you're referring to that is having a meeting tomorrow.
15 And I'll let Justin talk about the background of that.

16 CHAIR HILL: Wait one second, okay. So, you're not
17 the General Scott group?

18 MS. DEHART: No.

19 CHAIR HILL: Okay. So --

20 MS. DEHART: I live in one of the townhouses, Mrs.
21 Morris lives in the Spencer.

22 CHAIR HILL: That's okay, Ms., I'm sorry, DeHart?

23 MS. DEHART: DeHart.

24 CHAIR HILL: DeHart, I apologize. Ms. DeHart, I'm
25 just trying to figure out who the group is that -- so, you're

1 getting -- somebody is getting presented to tomorrow night.

2 MS. DEHART: Right.

3 CHAIR HILL: And --

4 MS. DEHART: The group that should be getting a
5 presentation tomorrow night will include the Spencer
6 Condominium Building at 1520 --

7 CHAIR HILL: Okay. And --

8 MS. DEHART: -- O Street. The owners of the houses
9 on O Street --

10 CHAIR HILL: Got it. And you're one of those
11 owners?

12 MS. DEHART: Correct.

13 CHAIR HILL: Okay. All right. Okay. I
14 understand. Okay. Thank you. So, you were saying, you're
15 presenting tomorrow?

16 MR. BOUTWELL: Yes, that's correct.

17 CHAIR HILL: Okay.

18 MR. BOUTWELL: And then, to the General Scott on
19 Friday night.

20 CHAIR HILL: Okay. And --

21 MR. BOUTWELL: Which I've already been to the
22 General Scott and met with a lot of the residents, they just
23 had some follow-up questions.

24 CHAIR HILL: Okay. And where is the, I'm just
25 curious, where is the presentation taking place?

1 MR. BOUTWELL: They haven't gotten back to me on
2 who's coming and I'm happy to hold it at the Rouge Hotel.

3 CHAIR HILL: Okay. All right. And what is the
4 presentation going to be about? Just, again, the --

5 MR. BOUTWELL: Really, to go through the same
6 presentation that's been submitted to the BZA and then,
7 address any concerns.

8 CHAIR HILL: And also the one that was submitted
9 to the ANC, you mean?

10 MR. BOUTWELL: Yes.

11 CHAIR HILL: Okay.

12 MR. BOUTWELL: They're the same.

13 CHAIR HILL: Okay. All right.

14 MR. BOUTWELL: They came after the ANC process and
15 voiced some concerns and I didn't want to say, no, I won't
16 talk to you, we're kind of past that. So, I'm making myself
17 available to --

18 CHAIR HILL: Sure. Okay.

19 MR. BOUTWELL: -- go through all those things.

20 CHAIR HILL: That's a good idea. I mean, it sounds
21 like there are some issues and concerns that I don't know how
22 or why the ANC didn't get them or they weren't addressed at
23 the ANC meeting, but it's good that you're --

24 MR. BOUTWELL: I think they were, it's just that
25 there's other concerns potentially that the ANC said, we're

1 going to resolve during the ABRA process. So, I don't think
2 there's any building-specific special exception concerns,
3 it's more about how this will be operated.

4 One example, she mentioned the concern about,
5 where's the kitchen? There's a prep area, we're going to
6 focus, we think, on local, maybe raw oysters. So, there's
7 a kitchen prep area, but we're going to use the kitchen that
8 we have existing at the hotel. So, yes, there will be food
9 going up and down the elevators, not great, but --

10 CHAIR HILL: But, it's okay. So, you're going to
11 try, again --

12 MR. BOUTWELL: We're going to address --

13 CHAIR HILL: -- through the ABRA process --

14 MR. BOUTWELL: -- those type of concerns --

15 CHAIR HILL: -- it's where you're going to get to
16 the hours and noise and things such as this. However, you
17 are going to try to address those issues as well in your
18 meetings with them, right?

19 MR. BOUTWELL: Exactly.

20 CHAIR HILL: Okay. Because what is before us is
21 now all the zoning issues --

22 MR. BOUTWELL: Correct.

23 CHAIR HILL: -- and not so much the ABRA issues.
24 So, okay. All right. Does the Board have any questions for
25 the Applicant? Okay. Let's see. That's it. Do you guys

1 have any other thing, anything you'd like to say?

2 MR. BOUTWELL: No, thank you for your time.

3 CHAIR HILL: Okay. I'm going to go ahead and close
4 the hearing. Is the Board ready to deliberate? Would anyone
5 else like to start, since I've been talking for seven hours?

6 COMMISSIONER MAY: So, I think the question that's
7 before us is relatively simple and it has to do with, again,
8 special exception, it's something where there is an inherent
9 compatibility with the proposed relief, it's just a matter
10 of giving it a little bit of extra scrutiny.

11 And I think that -- I understand there may have
12 been some sort of issue in terms of notifying surrounding
13 neighbors. But there are multiple means by which that notice
14 is provided. So, if you got a notice that's incorrect, I'm
15 not sure how that happened, but the property is also posted.

16 It's also something that winds up on the ANC
17 agenda and the ANC considered it. I mean, so there other
18 ways where the word is supposed to get out and we can't
19 guarantee that every single person who might be affected is
20 going to hear, but there is, I think, an earnest effort that
21 is made to reach out to anyone.

22 I'm sure the last thing that any applicant who
23 comes before this Board wants to have happen is to have
24 people come up at the last minute saying that, we were left
25 completely in the dark. They certainly don't try to avoid --

1 I've never seen any applicants trying to avoid giving notice.

2 When there are issues with notice, there are, I
3 think, generally it comes down to normal communication issues
4 and human error, because people don't want to be surprised
5 at the last minute like this. I think that this is relief
6 that can be granted.

7 I think that there are -- I mean, there's an open
8 question in my mind whether we want to put any limitations
9 on the hours of use, as suggested by the Office of Planning,
10 because they had conditioned their approval on those specific
11 time recommendations.

12 I guess, I have an open question to the Applicant,
13 I mean, are you okay with those specific times?

14 MR. BOUTWELL: Yes, and they're two hours earlier
15 than what we have existing.

16 COMMISSIONER MAY: Two hours earlier?

17 MR. BOUTWELL: On the ground floor restaurant.

18 COMMISSIONER MAY: On the ground floor?

19 MR. BOUTWELL: Yes.

20 COMMISSIONER MAY: Well --

21 MR. BOUTWELL: So, I'm okay with the hours that
22 have been submitted.

23 COMMISSIONER MAY: Yes. And there's always the
24 chance that in the ABRA process, it will get restricted
25 further --

1 MR. BOUTWELL: Exactly.

2 COMMISSIONER MAY: -- right? Yes.

3 MR. BOUTWELL: Yes.

4 COMMISSIONER MAY: So, I mean, I'm okay with moving
5 forward with the conditions as OP has proposed. I do think,
6 though, while there is some potential for noise transmission
7 from it, it is -- there's no amplified music outside. That
8 is really the biggest source of noise complaints, I think.

9 And it is on one side of the building and it's
10 facing towards 16th Street, where the street noise is likely
11 to be as loud or louder than anything that happens on the
12 roof. And noise transmission from a roof down to lower
13 levels, I think is not very significant. So, those are my
14 thoughts.

15 MEMBER WHITE: My thoughts, Mr. Chairman, I would
16 concur with the thoughts we just heard. And I'm glad you
17 raised the issue about the noise and the music, because I did
18 have some concerns about that before supporting the
19 application, because I know that location off of One Scott
20 Circle, it's a heavy traffic area.

21 But if there's some condition in the order that
22 would include hours of operation and limitation of music
23 outside, I think that could provide some comfort to the
24 community that's been there for many, many years.

25 But I think I can support the special exception

1 relief that they're requesting to expand the lodging use and
2 also to have penthouse restaurant use under the specific
3 sections under Subtitle U 504.1 and Subtitle C under Section
4 1500.3(c).

5 So, Mr. Chairman, I'm supportive of the relief
6 that they're seeking, if we can also incorporate the
7 conditions.

8 CHAIR HILL: Okay. Anyone else? Okay. Then, I'm
9 going to go ahead and make a motion to approve Application
10 19695 as captioned and read by the Secretary, including the
11 recommendations from the Office of Planning, which were
12 Thursday -- I'm going to ask that when the conditions are
13 written up, they refer to Page 3 and 4 of the Office of
14 Planning's report, specifically the hours of operation, as
15 well as the live music and that no amplified recorded or live
16 music would be permitted on the deck.

17 And so, and if the -- when the order is written
18 up, if they could do that, understanding that also through
19 the ABRA process, those things might be looked at again. And
20 I would ask for a second.

21 MEMBER WHITE: I second that.

22 CHAIR HILL: The motion has been made and seconded.

23 I'm being pointed out by the Vice Chair that I
24 didn't close the hearing, perhaps. I think I closed the
25 hearing, but I'm going to make sure, again. I'm closing the

1 hearing, the hearing is closed. Thank you very much, though,
2 we're deliberating.

3 And so, as I made that motion, the motion has been
4 seconded. All those in favor?

5 (Chorus of ayes.)

6 CHAIR HILL: All those opposed? The motion passes,
7 Mr. Moy.

8 MR. MOY: Staff would record the vote as 5-0-0.
9 This is on the motion of Chairman Hill to approve the
10 application for the relief being requested, as well as the
11 hours of operation that's stated in the OP report. Seconded
12 the motion, Ms. White. Also in support, Mr. Peter May, Vice
13 Chair Hart, and Ms. John. Motion carries.

14 CHAIR HILL: A summary order, Mr. Moy?

15 MR. MOY: Yes, thank you.

16 CHAIR HILL: Okay. So, we're going to take a break
17 for lunch. And so, lunch is going to go for, gosh, we'll be
18 back here as soon as we can. But I'm going to say 2:45.

19 And for, again, those people that are here, this
20 is actually turning out to be a very, very long day. I don't
21 know, I hate to say this, but there's a possibility that
22 dinner will happen. So, just to let everybody know, we're
23 just going to go through this.

24 And believe it or not, we treat every single case
25 the same way, we go through it as fairly as we can with every

1 single person. So, that's why this takes as long as it
2 takes. So, see you after lunch.

3 (Whereupon, the above-entitled matter went off the
4 record at 2:23 p.m. and resumed at 3:03 p.m.)

5 CHAIR HILL: All right, Mr. Moy, we're going to
6 get back started again. There's a little bit of a re-
7 ordering here going on, unless I just lost somebody. We'll
8 see what happens. So we've gone through the ones that we're
9 kind of out of order and jumping around, and then we were
10 going to come back up here to -- we were going to -- come to
11 19629. The next thing I'd like to do, however, Mr. Moy, is
12 19677 Plant the Seed, and then we're going to go after that
13 to 19629.

14 MR. MOY: Okay.

15 CHAIR HILL: And then after that we'll follow the
16 order again as we're back in order here.

17 MR. MOY: Thank you, Mr. Chairman. Let me see;
18 308. Okay. Yes, I think the applicant stepped out
19 momentarily. I'm going to go ahead and call the case.

20 So this is Case Application No. 19677 of Plant the
21 Seed Youth Treatment Services as amended for special
22 exception under the use provisions of Subtitle U, Section
23 203.19 to increase the occupant load of an existing
24 healthcare facility from 6 to 15 persons in a R2 Zone. This
25 is at premises 5212 Astor Place Southeast, Square 5308, Lot

1 25. I'm going to run out and see if I can find them, because
2 I think the applicant --

3 CHAIR HILL: I understand, Mr. Moy. That's okay;
4 go ahead and take a look.

5 (Pause.)

6 CHAIR HILL: Okay, we were trying to work out some
7 things but it didn't work out. So we're going to go on now
8 to Case 19629, and so you're back on deck here, if you can
9 call it, Mr. Moy.

10 MR. MOY: Okay, Mr. Chairman.

11 All right, that would be, once again, Case
12 Application 19629 of Timothy and Charlotte Lawrence. This
13 is a request for special exceptions under Subtitle E Section
14 5204, from the rear yard requirements Subtitle E Section
15 5104.1, side yard requirements Subtitle E Section 5105.1, and
16 pursuant to Subtitle X Chapter 10 for variances from the
17 alley center line setback requirements, Subtitle E Section
18 5106.1, and from pervious surface requirements Subtitle E
19 Section 5107.1. This would construct the one-family dwelling
20 on an alley lot, an RF-1 Zone. This is at 1665 Harvard
21 Street Northwest at the rear, Square 2588 Lot 827. And there
22 are at least seven request your party status, Mr. Chair.

23 CHAIR HILL: Okay. So let's see; if you would
24 like to introduce yourselves, please, from right to left.

25 MR. HITCHCOCK: Cornish Hitchcock, I represent

1 Victor Tineo and Lauren Yamagata who are the immediate
2 neighbors in front of the house who are seeking party status
3 here.

4 CHAIR HILL: Sir?

5 MR. HEISEY: Joel Heisey, architect for the
6 Lawrence's.

7 CHAIR HILL: Could you spell your last name,
8 again, for me?

9 MR. HEISEY: H-E-I-S-E-Y.

10 CHAIR HILL: Thank you.

11 MS. MOLDENHAUER: Good afternoon. Meredith
12 Moldenhauer, attorney for the applicant and Cozen O'Connor.

13 CHAIR HILL: Okay.

14 MR. VARGA: Stephen Varga, Planning Services
15 Director, Cozen O'Connor.

16 CHAIR HILL: Okay, great. All right, let's see;
17 so there are a lot of people that have asked for party
18 status. Mr. Hitchcock?

19 MR. HITCHCOCK: Yes, sir.

20 CHAIR HILL: Hitchcock. So you are representing
21 two of those, correct?

22 MR. HITCHCOCK: Correct.

23 CHAIR HILL: And which two are you representing,
24 again?

25 MR. HITCHCOCK: Victor Tineo and Lauren Yamagata.

1 CHAIR HILL: Okay.

2 MR. HITCHCOCK: They live at 1701 Harvard Street
3 which is the house from which the property requested here was
4 carved out some years ago.

5 CHAIR HILL: Okay.

6 MR. HITCHCOCK: We have talked in preparing for
7 the hearing; we met with the neighbors who have asked for
8 party statuses as well. We're interested in trying to
9 consolidate and move things along. What Mr. Tineo and Ms.
10 Yamagata would like to do is take ten minutes for
11 presentation, the other neighbors to take whatever time. In
12 the interest, because this is a contested case, the extension
13 grant party status, I would be the only one doing cross-
14 examination for as many parties in opposition as you may
15 admit to the case.

16 CHAIR HILL: Okay. This is such an interesting --
17 there are faces behind you that are giving colorful
18 expressions -- just to let you know -- and there's hands
19 moving around. So the reason why you guys are in this
20 particular moment right now is that we were trying to work
21 through other cases where we thought they were going to run
22 a little bit more smoothly, but things don't obviously work
23 out the way we think. And you were getting push-back later
24 because it was going to be more complicated. Mr. Hitchcock
25 I want to give a big hug to because he seems to have done

1 some of my efforts which is helping to combine some of these
2 party status people. But we still have a bunch of issues
3 that we're going to have to start to work through.

4 So, Mr. Hitchcock, so you've spoken to all the
5 other party status people; so that would be Christine
6 Fursmith, Geoff Stewart Dow, Carl Ballet, Brian Manley and
7 Barbara Stoufer -- sorry if I'm pronouncing all these wrong
8 -- Laura Pitztik, Cynthia Stevens.

9 MR. HITCHCOCK: I believe they're all here.

10 CHAIR HILL: Okay, so you spoke to all of them?

11 MR. HITCHCOCK: We've had regular meetings at --

12 CHAIR HILL: Okay, and they're in agreement that
13 you will be representing them?

14 MR. HITCHCOCK: I will be representing them for
15 purposes of cross-examination, not as their counsel.

16 CHAIR HILL: Okay, but I'm just trying to get to
17 what -- because you understand what party status means and
18 you understand the process that it takes and how lengthy that
19 is, right. And so what we were going to do to begin with was
20 try to figure out what common issues all of these people may
21 or may not have had, and then see if we could get them to do
22 exactly what it seems that everyone has already done, which
23 is have one person speak on behalf of everyone in terms of
24 the cross-examination, and then also everyone would be able
25 to provide testimony within the time frame that a party

1 status person would get. So to continue the explanation of
2 that, let's say the applicant had 45 minutes to give their
3 presentation, you would then have 45 minutes to give your
4 presentation. In those 45 minutes you could have all the
5 people come up and give testimony and however you would like
6 to put that together.

7 Is that correct understanding?

8 MR. HITCHCOCK: Yes, we're on the same page. Mr.
9 Tineo and Ms. Yamagata have a 10-minute statement, I have a
10 PowerPoint that I'll be running during that. I have not time
11 to know how much time other people would have, but we
12 understand the time constraints, that whatever the limit is,
13 we will fit within that.

14 CHAIR HILL: You would have a shared amount of
15 time as the applicant, okay.

16 MR. HITCHCOCK: And I think in terms of the issues
17 you'll find this commonality of interest in terms of the
18 issues. Some individuals remember the 2008 proceedings, so
19 were here at the time.

20 CHAIR HILL: Okay.

21 MR. HITCHCOCK: They may have a different
22 perspective, but I think we're all pulling in the same
23 direction.

24 CHAIR HILL: Okay, so that's the first thing. And
25 I guess I didn't know whether I'm looking to OAG, and OAG is

1 kind of thinking through this, and before I ask OAG actually
2 I'm going to get to another issue that I had with the party
3 status application. But I was going to turn to OAG and ask
4 them if there was anything we needed to do in terms of
5 dotting our I's, crossing our T's as far as this process.
6 But before I do that, Mr. Hitchcock, in terms of also all the
7 other people that are there, you realize that the design has
8 changed from where it was, A, they were putting a residence
9 there, right. And so now it's just a garage.

10 MR. HITCHCOCK: Correct.

11 CHAIR HILL: And so the reason why I'm asking you
12 that is because all of the party status forms that were
13 filled out and what they were opposing was the residence.

14 MR. HITCHCOCK: A number of the applicants for
15 party status have filed supplemental statements within the
16 last several days explaining that they're still in
17 opposition. I don't have a list -- I didn't cross-check
18 against it, but the concerns remain for a number of the
19 people. Let me put it this way; I have not heard anyone say,
20 "Oh, it's not going to be a residence. It's only going to
21 be a garage. Therefore, we don't care anymore."

22 CHAIR HILL: Okay. And I guess what I'm also just
23 trying to get -- and I understand there still needs to be
24 some kind of a paperwork process here in terms of -- and so
25 you're saying that there was supplemental filings for party

1 status that happened relatively recently?

2 MR. HITCHCOCK: Within the last four days, yes.

3 CHAIR HILL: Okay.

4 MR. HITCHCOCK: I didn't bring a docket with me.
5 I mean, for Mr. Tineo and Ms. Yamagata -- I mean, they are
6 more clearly and directly affected -- the parceling question
7 reads as if it was carved out of their yard, as in fact it
8 was there.

9 MS. MOLDENHAUER: I don't think we're getting into
10 that now.

11 CHAIR HILL: I understand. Give me a second; I'm
12 just trying to get through the first part.

13 MR. HITCHCOCK: Okay.

14 CHAIR HILL: Okay, so based upon the application
15 in terms of the supplemental filings for party status, Mr.
16 Hitchcock, in terms of who you're representing, why should
17 the BZA grant party status to you?

18 MR. HITCHCOCK: To everyone or to the people who
19 I'm not representing technically?

20 I mean, for Mr. Tineo and Ms. Yamagata, they're
21 affected more than anyone else because it's carved out of
22 their property and they are closer to it and it will have
23 more of a direct effect. All of the other applicants for
24 party status are within the 200 feet, they received the
25 notice, it will have an effect on light and air affecting

1 their particular properties.

2 CHAIR HILL: Okay, so my initial thought -- and
3 the board, please speak up if you have anything you want to
4 say, or the OAG -- is that would be to grant you, the people
5 you're representing, Victor Tineo and Lauren Yamagata, party
6 status because they've filled out the correct party status
7 request as to the correct application. I know that for a
8 fact, and you will go ahead and bring up all the other people
9 -- the same thing's going to happen, it's just that I'm
10 giving you party status for those two people, Victor Tineo
11 and Lauren Yamagata, and the rest of the people will be here
12 as witnesses in that case.

13 MR. HITCHCOCK: Fine, thank you.

14 CHAIR HILL: Okay.

15 MS. GLAZER: Mr. Chair, I'm a little confused
16 looking at the case documents. Perhaps counsel for the
17 proposed party in opposition could state what exhibits have
18 been filed, that he claims support the request of party
19 status as to the revised application.

20 MR. HITCHCOCK: We did not file a request for
21 party status as to the revised application because we had a
22 request for party status that had not been granted as of the
23 time when this case was postponed back in January. The
24 opposition remains, the board did not rule upon it at the
25 time, there was a request to rule at the time, so therefore

1 the objection request for party status still carries forward,
2 it has never been responded to.

3 CHAIR HILL: Okay. Mr. Hitchcock, it's okay. So
4 then I was confused as to what your original answer was. And
5 I'm trying to get us through this, which is that the
6 application changed, and so the people that have requested
7 party status has based their party status request on a
8 certain application with a certain design. And now that
9 design has changed, so as I understand it from OAG, there has
10 to be a new party status application. However, I can see
11 what the board thinks of possibly moving forward with this
12 and also if the applicant has any objection to the party
13 status. So my thoughts again, and I don't know how to again
14 process this appropriately -- let me just give everybody an
15 idea of what's happening here for the people that are also
16 staying in the back -- we're trying to work through the
17 regulations and I don't want to have to get to a point where
18 you all are coming back and are leaving right now. And so
19 that's what I'm trying to understand.

20 So if there were a way -- oh, Mr. Commissioner.
21 The Commissioner has a --

22 COMMISSIONER MAY: I would like to make a
23 suggestion. As ideal as it might be to have this all
24 perfectly consolidated, it's not perfectly consolidated.
25 It's sort of imperfectly consolidated request for party

1 status. I would rather have each of the people who requested
2 party status come to the table, restate whether in fact they
3 are requesting that. Now, it seems to me that this could be
4 just as well served with you, Mr. Hitchcock, representing
5 your clients having the party status and doing the cross-
6 examination. We wouldn't necessarily need to get cross-
7 examination from everyone, but just having them all sort of
8 restate it right here and now and then we just have to vote
9 them up or down, because I think once they put the request
10 into the record, we have to vote it up or down.

11 CHAIR HILL: All right. No, no. That's fine.
12 I think that's a great idea and we can go ahead and go
13 through that, and then we can clarify at that point whether
14 or not the people are in opposition to the design the way it
15 is now.

16 MR. HITCHCOCK: Yes.

17 CHAIR HILL: Okay. So all of the people that are
18 here -- Mr. Hitchcock?

19 MR. HITCHCOCK: If I may, if I could respond to
20 your point about; I guess I don't read the objections the
21 same way OAG does and in every respect the zoning relief that
22 is being requested remains the same; one has dropped out as
23 to perviousness; the objections remain as to a 15-foot
24 building behind the Tineo/Yamagata house. Basically very
25 little has changed, other than they've said we're not going

1 to do 2-story's, we're going to put the same structure up and
2 only have 1-story. So I would disagree as to a need for
3 putting in a revised statement saying, even though everything
4 is the same, even though it's going to be a garage instead
5 of a house.

6 COMMISSIONER MAY: I don't think you need to put
7 in a revised statement; I think you can simply restate that
8 you are still seeking party status right now.

9 MR. HITCHCOCK: Okay, and I'm happy to do so. Mr.
10 Tineo and Mr. Yamagata seek party status --

11 COMMISSIONER MAY: Because otherwise, every time
12 the applicant puts in a modification, we'd wind up having to
13 get another form. That's sort of silly.

14 MR. HITCHCOCK: Yes, I agree. Let's state for the
15 record that Mr. Tineo and Ms. Yamagata request party status,
16 party in opposition for the reasons previously stated and in-
17 line even as to the most recent revised application.

18 COMMISSIONER MAY: Okay.

19 MR. HITCHCOCK: As to the two most recent; one
20 from January and one from last week.

21 CHAIR HILL: I'm satisfied as well, so I will wait
22 to see how this plays out. The rest of the people that are
23 here that had requested party status, can you please raise
24 your hands?

25 (Show of hands.)

1 CHAIR HILL: Okay, can you please come forward to
2 the table?

3 COMMISSIONER MAY: So for the other ones, there
4 may have been others that requested party status but in order
5 to get party status you have to be present. So we're down
6 to now just two.

7 CHAIR HILL: I thought there was seven people
8 here.

9 COMMISSIONER MAY: There were at least seven in
10 the record.

11 CHAIR HILL: Okay. All right, could you please
12 state your names for the record.

13 MR. DOW: I'm Geoff Dow; I live at 1714 Hobart
14 Street. I'd like to have party status. I object to all the
15 different variations of what's been proposed that have gone
16 into the record, and I'm delighted to have the opportunity
17 to present my objections later in the testimony.

18 CHAIR HILL: Okay, give me one second, Mr. Dow.
19 Your name, please?

20 MS. STEVENS: My name is Cynthia Stevens; I live
21 at 1704 Hobart Street and I'm about 20 feet from the proposed
22 structure.

23 CHAIR HILL: Okay. So are you -- I think you
24 heard what we were trying to do, right, and so what I
25 understand is that what I would like to do is combine the

1 party status application to one party status application and
2 I think that the reason seems similar enough to get us to one
3 party status application. So then you could, Mr. Hitchcock,
4 could go ahead and in the time allotment allowed, he could
5 help parcel out with you guys in terms of your presentation,
6 and then he would be the person that would be your conduit
7 for cross-examination and such. Does that sound agreeable?

8 MR. DOW: Yes.

9 MS. STEVENS: That's fine with me, too.

10 CHAIR HILL: Okay. So now we have one -- I don't
11 know if I'm looking at OAG, I don't know where we are with
12 the board. So before I get further now I suppose, does that
13 satisfy the board?

14 PARTICIPANT: Yes.

15 CHAIR HILL: Okay, I'm hearing yes. Okay, so that
16 was that part. And I don't even know if we're doing this
17 yet, because now the applicant has an opportunity to respond.
18 Does the applicant object with what has been put forth?

19 MS. MOLDENHAUER: I have no objections to the
20 parties that have been put forth that are present; I would
21 object, though, to all the other party status requests who
22 are not present today.

23 CHAIR HILL: As Commissioner May mentioned, which
24 I actually do know this much about it, is that the people
25 have to be here. No, I appreciate that and I'm really

1 appreciative of all the help I get from everybody here today.
2 So the people that have requested party status that are not
3 here, they're not getting -- we're denying their party
4 status. I'm not going to list the names right now, but the
5 people we are giving party status to, and if you could please
6 repeat your names for me.

7 MS. STEVENS: Cynthia Stevens.

8 MR. DOW: Geoff Dow.

9 CHAIR HILL: Great. And then also Victor Tineo
10 and Lauren Yamagata, those people have received party status
11 and they will be representing by Mr. Hitchcock or he'll at
12 least be the mouthpiece.

13 Okay. All right. Okay, so, Mr. Hitchcock, you
14 can come on back and you guys can sit back in the audience
15 or come up, whatever you want to do, because we're getting
16 through that first piece.

17 All right, now the next piece is there has been
18 some requests -- or I don't know if it's requests -- the
19 applicant has put forth some issues between variances and
20 special exceptions -- after reading through the record, I
21 would take, and the board can again give an opinion, that I
22 don't really want to get in a position we're in kind of an
23 advisory role. The application currently is set forth for
24 a variance and that's the way I would want to move forward
25 with it and not go back into the -- the application's for a

1 variance, so I'd like to move forward with a variance.

2 MS. MOLDENHAUER: Sure. No, we are moving forward
3 with a variance; however, we are going to be walking through
4 some of the history and providing that as part of the unique
5 condition for zoning history. And we will walk through that
6 and explain that, both providing legal precedent for the
7 board to consider that as well as walking through the facts
8 of the case and the regulations during our case-in-chief.

9 CHAIR HILL: Okay. All right, so the application
10 is for a variance. That's fine.

11 MS. MOLDENHAUER: It's a self-certified
12 application for a variance.

13 CHAIR HILL: Okay, thanks. Self-certified
14 application. Great, wonderful. Exactly.

15 All right. Okay -- okay, so now in terms of --
16 and I apologize; the case that was happening before, we
17 called it, now you're here until after we're done with this.
18 So we have -- let's see; so you can go ahead and present your
19 presentation, Ms. Moldenhauer, for your client. And so
20 before I ask how much time you need, I just want to go back
21 again and explain with Mr. Hitchcock and the process as I see
22 it.

23 So you will have an opportunity -- so the
24 applicant is going to present their case, you'll have an
25 opportunity to cross-exam -- oh, I'm sorry -- you'll have an

1 opportunity to cross exam. The Office of Planning will also
2 -- you'll have an opportunity to cross exam everybody. And
3 then you'll go ahead and have your case and the applicant
4 will have an opportunity to cross-exam you, there'll be
5 rebuttal from the applicant. You'll have an opportunity to
6 cross-exam the rebuttal and then we're going to have
7 conclusions. The conclusions are going to -- within the
8 regulations the party status people normally don't get a
9 conclusion, we go ahead and give one anyway. Okay, just so
10 everybody has -- kind of ties it all together.

11 So that all being said, Ms. Moldenhauer, how much
12 time would you like right now?

13 MS. MOLDENHAUER: Thirty-five minutes, but I have
14 one preliminary matter before I begin.

15 CHAIR HILL: Okay, what is the preliminary matter?

16 MS. MOLDENHAUER: We are passing out copies of
17 Steve Varga's resume and we would like to have him qualified
18 as an expert in planning.

19 CHAIR HILL: Okay.

20 MS. MOLDENHAUER: I've also provided one to Mr.
21 Hitchcock.

22 CHAIR HILL: Mr. Varga, since we just got this,
23 would you mind just telling us about yourself?

24 MR. VARGA: Absolutely. Thank you very much, Mr.
25 Board Chair. Again, Stephen Varga, Planning Services

1 Director at Cozen O'Connor. I served as a Development Review
2 Specialist with Office of Planning from 2008 to 2010. In
3 addition, I served for five or six years at the Office of
4 Zoning reviewing numerous BZA applications for conformance
5 with the zoning regulations. I have my master's in planning
6 from Ohio State University back in 2005. I'm an AICP which
7 is a Certified Planner, American Institute of Certified
8 Planners within APA, as well as having earned my Green
9 Associate from USGBC.

10 CHAIR HILL: All right. I didn't mean to
11 interrupt you; I'm sorry, Mr. Varga. I mean, I think we're
12 all somewhat familiar with you as well. So I don't have any
13 issues with accepting Mr. Varga as an expert witness; does
14 anyone else?

15 PARTICIPANT: That's good.

16 CHAIR HILL: Okay, thank you. You're now an
17 expert witness in our book.

18 MR. VARGA: Thank you very much.

19 CHAIR HILL: All right. Ms. Moldenhauer, we're
20 going to put 35 minutes on the clock, Mr. Moy.

21 Okay, you can begin whenever you'd like.

22 MS. MOLDENHAUER: Good afternoon, we are here
23 today for what should be a very simple case. The applicant
24 has reduced the project from a dwelling on an alley to a
25 garage; however, as I'm going to be telling the board, this

1 is not unfortunately a plain and simple case. Alleys are
2 typically networks behind houses in the city which are
3 typically used for storage of cars, bicycles and more. In
4 a compressed city neighborhood, efficiency of use of space
5 is critical. As we embark on today's case it is important
6 to remember that the Department of Transportation, the
7 agency, who oversees public right-of-ways and alley uses has
8 no objection to this application. Given that alleys have
9 always been places to store horses, carriages and then
10 vehicles, it now seems that it should rather be a
11 straightforward and simple case because the applicant is
12 requesting to build a modest structure to house a car and to
13 provide storage. Unfortunately, for the members of the board
14 today, it is not a simple case; we are here to tell you that
15 there are unfortunately some complexities and regulations
16 which create some inconsistencies and there are some concerns
17 obviously about clouding up a prior case as well.

18 I'm going to first start off by addressing two
19 legal issues; first, as it relates to the relief that is
20 being requested in the plain language of the regulations; for
21 clarification, I am not asking the board for an advisory
22 position, but rather want to point out the legal authority
23 the board has, if it were to so choose, in finding the relief
24 requested might be changed, that they have the authority to
25 then change it if they want it. Under the DC Code 6-641.07D

1 which is the code that obviously authorizes the Zoning
2 Commission and the Board of Zoning Adjustment, it indicates
3 the BZA may authorize to interpret maps and also pass upon
4 dispute questions of lot lines or other similar questions as
5 they arise in the administration of the regulations. I say
6 this as I already indicated; this is a self-certified
7 application --

8 COMMISSIONER MAY: Can you repeat that whole
9 sentence again?

10 Sorry.

11 MS. MOLDENHAUER: It's paraphrased, so it's not
12 quoted.

13 COMMISSIONER MAY: Okay, just repeat what you
14 said.

15 MS. MOLDENHAUER: Sure. It says the BZA may be
16 authorized to interpret maps and pass upon disputed questions
17 of lot lines or similar questions as they arise in the
18 administration of the regulations. And then in interpreting
19 that, I would point to two instances in which the board had
20 addressed questions of what relief would be appropriate. In
21 BZA Case 16412 the board was faced with the question of
22 whether the relief should be a special exception or a
23 variance. The board obtained clarification from the ZA in
24 that order, but the order still included Findings of Facts
25 and in its conclusions of law a correction in the relief of

1 the application.

2 Also, in a case that was decided more recently in
3 2016, in 19300 the board while the beginning stated, in
4 granting the certified relief the board made no findings that
5 the relief is either necessary or sufficient -- obviously,
6 that's kind of the caveat -- but then it did add special
7 exception relief to a motion when it approved it -- special
8 exception that the application originally did not ask for.
9 So that is just something that the board obviously has as
10 authority this is a self-certified application.

11 Second, there's a legal issue I wanted to address,
12 is that the past case in this situation, which is the prior
13 case of 2008, should not cloud the board's decision as we
14 move forward. The board should evaluate each case on its own
15 merits and the applicant is permitted to resubmit zoning
16 requests one year after a case is denied. Under the zoning
17 regulations Y604.13 makes no reference to obligating this
18 board to come to the same conclusion or to weigh the prior
19 Findings of Facts in a prior case as material; rather, this
20 case should be evaluated on its own merit and based on the
21 underlying facts before it. As you will hear, OP may have
22 felt more hamstrung by the prior board's decision even though
23 they had previously supported the prior case. The board has
24 numerous occasions in which they have recommended an
25 applicant in situations to hire counsel. Unfortunately, in

1 the prior case by our clients, they have not previously
2 obtained counsel and may have missed important arguments that
3 would have possibly persuaded the board out of a variance
4 case.

5 A case in point in this regard is a case from 1999
6 and the transcript indicated that Chairman Sheila Cross Reid
7 stated to the group and said, "We send them back to retain
8 counsel because they were coming here and, you know, don't
9 have a clue as the procedures and what they are supposed to
10 do and how they're supposed to present the case." That just
11 simply obviously gives rise where there are times where
12 counsel is recommended. And I will now obviously move
13 forward our case on the merits.

14 Thank you.

15 As you can see here in the initial image, this is
16 an image of the property. I will just indicate that as you
17 probably realize is that we introduced members on our board
18 here; our client is not present, our client is a member of
19 the foreign service and is currently living abroad in Africa
20 and is not even on the same kind of time. We are available
21 to communicate this afternoon eventually to kind of discuss
22 prior rebuttal, and I'll obviously ask for opportunity to do
23 so. But I'd like to just simply read a quick statement to
24 the record; I'll provide copies to everybody. It is signed
25 by my client so that they can personally give you an idea of

1 what they wanted to say since they were not able to be here.

2 "Due to my service to our country, unfortunately
3 I am obligated to be out of the country and cannot attend my
4 public hearing today. Having said that, I want to convey a
5 simple term, the casual fact that prompted us to seek the
6 necessary zoning relief to construct a one-story garage on
7 alley lot. My wife, Charlotte and I, bought the house at
8 1665 Harvard Street in 2006. I was pleased to find that the
9 alley lot in the back conveyed as well, which I naturally
10 assumed could be used for parking. This belief was further
11 justified as many lots in the same alley have brick garages.

12 In 2008 we appeared before this body requesting
13 relief to construct a garage under similar circumstances.
14 Our architect, Joel Heisey, represented our interests in his
15 best ability; however, we did not have legal counsel and did
16 not make the necessary legal arguments; therefore,
17 unfortunately, our request was denied despite a favorable
18 recommendation from the Office of Planning."

19 "Nearly a decade later we were excited to learn
20 that the new zoning regulations in 2016 were approved and
21 adopted. My understanding at the time was that they would
22 provide some more flexible -- but be more flexible regarding
23 alley lot developments. They've quoted a couple Washington
24 Post articles to that account; however, along the way we
25 learned that in many ways alley lot development was

1 interpreted in a more restrictive fashion. The detail of the
2 alley lot requirements are well-documented by my attorney and
3 will be presented to you at the public hearing. My
4 impression is that they are unintentionally unclear." It's
5 simply appealing to build a garage structure and in keeping
6 with the many garages on the same alley. The lot's location
7 next to the pedestrian alley impacts our ability to assume
8 the alley into our street lot. Furthermore, because it is
9 next to the public walkway, there are legitimate safety and
10 security reasons to build a closed garage. During the time
11 that we lived there, twice we had our car broken into and
12 items stolen. On other occasions, one being the day after
13 the historic board voted to support our garage request, we
14 had all four of our tires slashed while parked in our lot.
15 Also, one of our tenants reported an attack in the alley as
16 well, so it is not unreasonable to request a building to
17 close a garage on the lot."

18 "An open parking pad creates practical difficulty
19 for maintenance purposes, increase trespass, constant trash
20 dumping and the lack of weather storage. There is plenty of
21 precedent in support for these types of request, including
22 granting variances. One way or another we want to improve
23 the lot, we want to provide an attractive structure that fits
24 aesthetically into a beautiful neighborhood and not be forced
25 to try to provide a fence just around the perimeter. We hope

1 and are willing to reduce the project from a dwelling to a
2 garage and our ability to provide a compromise.
3 Notwithstanding the arguments by counsel make, we'll impress
4 upon you that at the end of the day we are simply hoping for
5 a modest garage in an alley so much like our neighbors have.
6 Thank you."

7 Now, I'll go into -- so here's an image of the
8 property; as you can see, it's a 800 lot, Lot 827, it is the
9 small triangular lot in the rear here along the alley. And
10 along as you can see here, this is a pedestrian alley that
11 goes up along the side of the property. My clients also own
12 Lot 1028 as well which is a street lot located and is
13 obviously abutting or adjacent to this alley lot, but to the
14 pedestrian alley that connects.

15 Here is an image of the lot, you can see it's
16 located here. Here's an image of the lot. You can see the
17 neighboring properties and surrounding structures of other
18 garages that are on the property, across the street and you
19 can see other people's garages. There's a Hobart trash can
20 that's actually in our client's property and lot that's just
21 being used there and stored there.

22 Here are some other images to just provide some
23 street context of other one-story garage structures along
24 Hobart. Obviously, the alley goes between Harvard and
25 Hobart; one of the points that is that there's actually a

1 topographical change, so on Hobart these structures are --
2 since the grade is different, they obviously can build 100
3 percent of their lot occupancy, and so a lot of them have
4 both a garage and then fences on top of that. They have a
5 six-story fence on top of a one-story garage on Hobart Street
6 across the street.

7 Originally the property was to construct a single-
8 family dwelling, based on comments from the ANC and the
9 community the project was reduced to a single-story one-car
10 garage in the alley. We have letters of support, two letters
11 of support in the record -- initially we had three letters
12 of support, one of the letters was removed -- the letters of
13 support are in Exhibit 38 and 39. The letter was from Carl
14 and Emily who initially supported the case and did not
15 support the case, but then they're not here today to indicate
16 one way or another on the revised plans. As indicated
17 earlier the Department of Transportation does have no
18 objection to the project.

19 There are no other words to the uniqueness of the
20 property; I don't think this is disputed, but I think it
21 obviously is important in regards to how it impacts as a
22 practical difficulty, and in the third prong of the zoning
23 standard. But there are no other alley laws in the ANC1D05,
24 so if you look at the red markation on the image, that mark
25 that identifies the entire single-member district, and we've

1 done some research, and we are the only alley lot in that
2 location. There are no other alley lots in our squares, and
3 if you even expand this to the greater Mount Pleasant area
4 and other ANC's, there are only four other alley lots. Now,
5 the board is obviously is very much aware in evaluating the
6 uniqueness does not go to the entire city, they typically go
7 only to the square, and in times they even actually go
8 sometimes more narrowly than that.

9 The property is, as we'll talk about in a little
10 bit more detail, a tax lot. This just indicates and this
11 shows the public alley, the pedestrian alley that we're
12 referencing here which is the 7 feet and ½ pedestrian alley
13 that goes up and is abutting to the property. And obviously
14 since this is the only alley lot, but in addition this is the
15 only pedestrian alley on the sister alley. Obviously, there
16 used to be a pedestrian alley that went from Harvard all the
17 way through past the public alley and onto Hobart Street.
18 The Hobart Street alley had been closed and assumed into the
19 abutting lot; this is then the only remaining portion of the
20 public alley. We have spoken with the DC Water and there's
21 a sewer line that is currently going through that public
22 alley and they have indicated based on a conversation; one,
23 they were kind of shocked that such a small pedestrian alley,
24 that even a sewer line would be running through there; but
25 they would not support closing of the alley in order to

1 assume and allow this to then be assembled into a single
2 street record lot based on the common ownership.

3 The applicant requests variance relief from
4 303.3(a-b); this is not a use variance, these are area
5 variances that have to do with lot area and lot width and the
6 alley width, lot area and the alley width. During this
7 application part of the issue is arguing zoning history and
8 zoning uniqueness; part of the history here is that when the
9 applicant first filed the application, they were under the
10 impression that they would not need to have relief for this.
11 We actually had a meeting with the Zoning Administrator twice
12 to confirm that we were within the 300 feet distance and how
13 exactly he measured that 300 feet from the property to the
14 public way, whether it was from the middle portion of the
15 alley, whether it was on an angle, really wanting to make
16 sure we understood what relief was needed. At that time he
17 verbally provided me as counsel a confirmation that he agreed
18 with us and regards to the fact that this was a historic
19 alley lot and that no relief would be needed then from the
20 subdivision requirements.

21 Subsequent to that as we then continued on into
22 the case, OP sent us an email indicating that they believe
23 relief might be needed based on their understanding what the
24 Zoning Commission had intended. And then we went back and
25 we asked Matt to confirm what he previously had verbally

1 confirmed -- Matt being Matt LeGrant, the Zoning
2 Administrator -- he then went back and re-evaluated it and
3 reinterpreted the regulations, changing his interpretation.
4 And the reason why --

5 COMMISSIONER MAY: Did he put anything in writing
6 first time around?

7 MS. MOLDENHAUER: He did not.

8 COMMISSIONER MAY: So when he finally gave you
9 something in writing, he said it is not a historic alley lot
10 as you are suggesting?

11 MS. MOLDENHAUER: He did say it's a historic alley
12 lot; he said, however, that no matter what even if it is a
13 historic alley lot, he's saying that because DCRA requires
14 through their procedure for a tax lot to be subdivided in
15 order to be turned into a record lot that because it has to
16 go through that administrative procedure, thus a new record
17 lot has to be created, and this requirement would kick in.

18 COMMISSIONER MAY: Right, so basically that's what
19 his decision was. The fact that he was thinking about this
20 from different angles didn't really mean very much, right?

21 MS. MOLDENHAUER: No, there was a substantial
22 period of time that lapsed in regards to, and that was an
23 initial meeting in August, and that decision was then not
24 changed. We had the initial meeting on August 29th of 2017
25 and that decision did not change until after --

1 COMMISSIONER MAY: The decision never changed; he
2 only gave you one decision, right?

3 You only have one decision in writing.

4 MS. MOLDENHAUER: He gave us verbal guidance and
5 then there was one decision in writing.

6 COMMISSIONER MAY: Okay.

7 MS. MOLDENHAUER: But at the end of the day
8 applicants have to rely, there are a lot of applicants that
9 have PDRM's, they have verbal conversations with the Zoning
10 Administrator, with DCRA individuals, and they have to move
11 forward and rely on certain verbal confirmations.

12 COMMISSIONER MAY: No, no. No, no, no, no, no,
13 no. No, they don't have to. If they're going to be safe in
14 what they do, they wait for the paperwork that follows that
15 meeting, right.

16 Whoever's in the audience making motions, just
17 calm down on the motions, okay?

18 So I mean, really, the conservative thing to do
19 is to wait for you until you get written guidance from the
20 Zoning Administrator, isn't it?

21 MS. MOLDENHAUER: The prudent thing would have
22 been to have it in writing; however, it was very clear in our
23 meeting that there was no question about his interpretation.
24 He did not ask for time to consider it, deliberate on it, he
25 simply stated that he agreed. So it did not appear as though

1 he was going to be changing anything; he seemed very
2 confident in that statement.

3 COMMISSIONER MAY: Okay, right.

4 MS. MOLDENHAUER: In Case 17108 which is a BZA
5 case that was asking for variances for lot area, which is the
6 same area we're requesting; this is a case that has some
7 similarities in that they were non-conforming tax lots that
8 then went to DCRA and got those tax lots subdivided into
9 record lots. They then -- and this is all documented in the
10 facts section of this order -- they then obtained and is
11 consistent with DCRA's interpretation, the sub-standard tax
12 lots were then subdivided and created from 800 lots to record
13 lots. The board in this case considered that a unique zoning
14 history in regards to the fact that those lots were then
15 created as a unique zoning history for evaluating the issue
16 of uniqueness and practical difficulty, and we would
17 obviously analogize those situations; in that case, obviously
18 in the Court of Appeals' cases that the opinion of the board
19 may be able to consider events in the order to weigh more
20 equitably in an individual case, and that you can consider
21 based on National Children Association change in regulations
22 and also to zoning history as was found in this case in which
23 they found that the zoning history of the change in the
24 permit and the change of the tax lot status or record lot
25 status to a non-conforming record lot was part of its

1 uniqueness.

2 In addition to that case, there is Case 17352 in
3 which that time this was a variance for lot occupancy; Vice
4 Chair Miller at the time indicated that, "I think what is
5 unique about this is the zoning history in that this case the
6 Zoning Administrator did do a reinterpretation." And we
7 believe in this case the Zoning Administrator did do a zoning
8 reinterpretation verbally, I will add, but that obviously
9 changed some of the history in this case in regards to moving
10 forward.

11 Just to go through the different interpretations
12 and the definition; the zoning regulations as they currently
13 are written have a defined term; the regulations indicated
14 that when you define a term, you use that "defined term" then
15 in every place that you then see those words. Here, you have
16 a defined term of "alley lot"; the regulations do not in
17 Section B define alley tax lot and they do not define alley
18 record lot; however, those two terms are part of the
19 definition "alley lot." And they define an alley lot as
20 "either," meaning one or the other, either a record lot or
21 an alley tax lot that was recorded in the Office of Tax and
22 Revenue before 1957. Thus making some distinction, however
23 the board wants to interpret that, between tax lots that were
24 certified by the Office of Tax and Revenue pre-1957 and those
25 that were after 1957. In this situation this tax lot was

1 created in 1948 and has been in separate ownership and
2 transferred, has been deeded, has had title insurance and has
3 been paying taxes all of that time.

4 Here is a copy of the 1948 which shows that this
5 was when this original lot was subdivided and that tax lot
6 was created in 1948. And we also checked and confirmed that
7 it was in the Office of Tax and Revenue as of that time.

8 The zoning regulations and the DCRA administrative
9 processes I was just engaging with Commissioner May about
10 does not put the same burden on street lots; that procedural
11 requirement where you have to -- they have the same
12 procedural obligation, so you go in and you have a street tax
13 lot, you go down to DCRA even if it is non-conforming; it is
14 500 square feet for the lot size, it is 1,700 square feet for
15 the lots. As you go down you ask them to subdivide it, they
16 will do it procedurally and you will then have a record lot
17 that is non-conforming; however, this regulation under 303
18 and that interpretation indicates that you cannot then
19 procedurally convert an alley tax lot even if it was recorded
20 in the Office of Tax and Revenue before 1957 to a record lot
21 without going through and obtaining a variance. This is a
22 area variance, not a use variance, so I would just remind the
23 board that this obviously is a lower standard and not a
24 standard of undue hardship. And in that regard we would like
25 to provide some comparison to other cases in which the board

1 has evaluated lot area relief similar to this, obviously some
2 on street lots and some on alley lots. And approved even
3 18234 was an alley tax lot that this board approved relief
4 from an area variance for lot area relief.

5 This is a list of BZA cases that have all been
6 approved for, and they're all dwellings for area dimensional
7 relief and they've even given the degrees of deviation that
8 have been approved for those. Of that list, these are those
9 cases that were tax lots; and of those cases that were tax
10 lots, these three cases were actually alley tax lots.

11 I'm kind of just piling that on top of each other.

12 And then in addition to that, the 19479 which is
13 One Library Court is a case where -- that is a case that the
14 board just recently heard under the existing new regulations
15 -- and approved relief under 303(a-b) given the fact that it
16 was an existing lot and that it could not have been enlarged
17 and that it could not obviously obtain a larger size and it
18 could not then be assembled or increased creating a
19 uniqueness and then creating practical difficulty. And we
20 are asking for a deviation that is less than 19479.

21 This obviously indicates -- one of the items that
22 Board Member White was indicating earlier in the day about
23 consistency -- I know it's obviously challenging and there's
24 a challenge between each case being interpreted and upon its
25 own merits which is at the same time balancing those

1 challenges with consistencies of the regulations. And we
2 just point out a number of Court of Appeals cases and U.S.
3 cases that obviously indicate that regulatory agencies such
4 as the BZA obviously have the same legal obligations to
5 provide consistency and interpretation of the regulations so
6 that individuals in the public can obviously anticipate
7 similar types of resolutions and interpretations.

8 I will now turn it over to our architect to walk
9 through just the plans.

10 MR. HEISEY: Hi. First I'd like you to keep in
11 mind that these are more bulk en masse studies than any
12 detailed designs, so forgive some of the rough detailing in
13 it.

14 This is the elevation from the alley showing a
15 two-car garage and again at the 15-foot height -- which
16 button do I push -- this is the elevation as seen from the
17 adjoining property -- if you're in the backyard, this is the
18 south elevation looking at the garage that is there. This
19 would be the elevation facing under the applicant's other
20 property and the pedestrian walkway going down through, and
21 this would be the west elevation adjacent to the neighboring
22 parking lot.

23 Oh, I wanted -- isn't there a section going in
24 there?

25 Anyway. Okay, there's a section that has/shows

1 why the height is. A garage, again, isn't just for cars
2 anymore, it's for storage, and so the height is to get any
3 kind of meaningful storage area that you could get up and
4 actually put things up there, boxes, crates, bicycles,
5 kayaks, whatever you'd like to do. So you'd need a little
6 bit of space there to do that.

7 On this one as well; if you see in the front
8 there's the wall of the building and the fence there; that
9 was from an earlier request from the adjacent neighbor to set
10 the building back, so there is a 2'6" setback on that.

11 I thought there was a plan --

12 PARTICIPANT: That's the other one.

13 MR. HEISEY: There we go. This one -- and where's
14 -- along this alley as well to increase the visibility down
15 along the alley has been set 1 foot back off of the property
16 line as well to provide a wider access and more visibility
17 down through the alley. The owners have also agreed to do
18 other improvements as far as like putting a convex mirror
19 here, putting motion sensor lights along the side of the
20 building as well to help illuminate the alley and also
21 putting motion sensor lights on the back of the garage for
22 that.

23 Well, the only other thing is for the relief from
24 the alley setback, this is consistent with all the other
25 alleys or all the other garages on the alley, on the Hobart

1 side and the few that exist further up on Harvard, and it's
2 also consistent with any fences that are on the Harvard
3 Street especially. They're all in the alley lot line.

4 CHAIR HILL: Just real quick; who did you talk to
5 about the concave mirror and the alley lights thing, the
6 motion sensors?

7 MS. MOLDENHAUER: We had heard at our first ANC
8 meeting that they were really concerned about elderly people
9 --

10 CHAIR HILL: That's okay. So it was from the ANC
11 meetings?

12 MS. MOLDENHAUER: They were generalized comments
13 that were both in their filings, as well as comments that we
14 heard during the ANC about concerns about safety. Obviously
15 it's not the applicant's obligation to make the alley safe,
16 but they thought that it would be a good thing to put
17 something there.

18 CHAIR HILL: Okay, thank you.

19 VICE CHAIR HART: Mr. Heisey? So the drawings
20 that you have up here are not the same drawings that we have?

21 Are these new? The reason I'm asking you is that
22 I'm looking at Exhibit 56A.

23 MS. MOLDENHAUER: We filed these subsequent to our
24 pre-hearing statement where we pull back the building 1 foot
25 up on the side of the pedestrian alleyway.

1 VICE CHAIR HART: So which exhibit are we looking
2 at right now?

3 MS. MOLDENHAUER: I'm going to double check that
4 right now.

5 VICE CHAIR HART: I see there's an Exhibit 56
6 which is a pre-hearing statement and these were 56A, but
7 these are different drawings than what you are showing us
8 right now. The reason I'm saying it is that the drawings
9 that are in there actually have two cars in them, and so I'm
10 a little bit confused as to --

11 MS. MOLDENHAUER: I think it's Exhibit 60. Let
12 me just double check because I opened it up.

13 Yes, I believe it's Exhibit 60. If you look at
14 Exhibit 60, we attach an Exhibit A and an Exhibit B
15 indicating that we revised to pull off 1 foot from the
16 pedestrian walkway in order to both remove the relief for the
17 pervious surface relief as well as to increase in response
18 to OP's comment about having/potentially needing more space
19 in the pedestrian alley to pull that off slightly from the
20 alley. So it is part of the record and we did very late last
21 night upload the PowerPoint, so it's also part of the record.

22 COMMISSIONER MAY: I was going to ask; it's not
23 in ISIS yet? I can't find it.

24 MS. MOLDENHAUER: We uploaded it like 1:30 last
25 night, I think, a.m.

1 COMMISSIONER MAY: Mr. Secretary, is everybody --
2 if we can get access to that because I'd like to look over
3 some of those pages.

4 MR. MOY: Yes, let me check with IT staff.

5 COMMISSIONER MAY: Okay.

6 MS. MOLDENHAUER: We have hard copies.

7 COMMISSIONER MAY: Yes.

8 MS. MOLDENHAUER: Would you like those?

9 COMMISSIONER MAY: Yes.

10 MS. MOLDENHAUER: Sorry, thank you. We brought
11 those just in case because I knew how late we filed. I
12 apologize; I know we typically --

13 CHAIR HILL: So Ms. Moldenhauer, I know you're
14 going to get to this, but again, this is not the plan that
15 the ANC had seen?

16 MS. MOLDENHAUER: I did not personally go to the
17 ANC. Mr. Varga on behalf of our firm and representing our
18 client went to the ANC last night and the ANC was aware of
19 these revisions but they had already written a letter in
20 opposition.

21 CHAIR HILL: Right. So they were aware -- so you
22 had gone to the ANC with this revised project and they just
23 decided not to submit anything?

24 MS. MOLDENHAUER: The vote was last night and they
25 had planned to file something today.

1 CHAIR HILL: Mr. Varga went to that; is that what
2 you're saying?

3 MS. MOLDENHAUER: Mr. Varga attended that.

4 CHAIR HILL: Mr. Varga, basically it was the same
5 vote?

6 MR. VARGA: That's right.

7 CHAIR HILL: And it was the same concerns?

8 MR. VARGA: Yes.

9 CHAIR HILL: Okay, thank you.

10 MR. VARGA: At the meeting last night? Yes, they
11 did allow us to make a very brief presentation and obtain
12 feedback as well.

13 CHAIR HILL: No, that's okay. So you presented
14 to them this project the way it is, the way we're looking at
15 it right now?

16 MR. VARGA: Oh, absolutely.

17 CHAIR HILL: All right, thank you.

18 MS. MOLDENHAUER: At this time we'll turn to Mr.
19 Varga to provide his testimony.

20 MR. VARGA: Thank you, Chairman Hill, members of
21 the board. My name, again, Stephen Varga, Director of
22 Planning Services at Cozen O'Connor. I'm testifying today
23 based on my ten years of experience in zoning and land use
24 within the District of Columbia, including time spent at the
25 DC Office of Planning and Office of Zoning where I reviewed

1 BZA applications for conformance with the zoning regulations.
2 I currently represent clients at Cozen-O'Connor regarding
3 land use and planning matters. You have a copy of my resume
4 entered into the record as went over earlier.

5 This case involves a simple request to locate a
6 private garage on an alley lot; unfortunately this request
7 has become complicated due to the varying levels of
8 regulatory and administrative requirements that have been
9 placed on alley lots. In the end this proposed use is one
10 that will not cause substantial detriment to the public good
11 and does not impair the intent, purpose and integrity of the
12 zone plan. As explained previously, the property is in an
13 alley tax lot located in the Mount Pleasant neighborhood; it
14 is located on a 15-foot wide alley lot that is mid-block to
15 the rear of Harvard Street Northwest between Irving Street
16 and Mount Pleasant Street. The property is 557 square feet
17 in size and located directly behind 1701 Harvard which is
18 improved with the separately owned one-family dwelling. The
19 property also abuts 7-1/2 foot of public pedestrian alley to
20 the east which separates it from 1665 Harvard Street, which
21 is also owned by the applicant.

22 The property is unapproved and used as a parking
23 pad. The applicants have owned the property since 2006.
24 With an intent on improving the lot, the applicant wishes to
25 remove the parking pad and construct a one-story garage

1 structure, which I'll refer to as the "project." I have
2 reviewed the application, performed historical and regulatory
3 research for alley lots and conducted site visits on the
4 property, alley square and surrounding Mount Pleasant
5 neighborhood. The alley has numerous two-story structures,
6 garages and decks to the north of Harvard Street and south
7 of Hobart Street Northwest. Garages in particular are common
8 on the block and in the neighborhood. Further, the size,
9 brick material, and design of the project is intended to be
10 in keeping with those existing structures.

11 Finally a little context on alleys; historically-
12 speaking the basic purpose of alleys in large cities is to
13 provide circulation within the grid and provide access to
14 property. As a function of that purpose, alleys have
15 primarily been used for the storage of --

16 CHAIR HILL: Excuse me; Ms. Moldenhauer, I don't
17 know if Mr. Moy has the right information. If you'd just
18 check with him real quick.

19 MR. VARGA: It's the testimony. It's for a
20 different case, I think.

21 MR. MOY: This is the one.

22 MR. VARGA: Yes.

23 CHAIR HILL: I was trying to be quiet about that
24 and apparently everybody is rolling you under the bus
25 immediately, just letting you know.

1 Okay. Please go ahead, Mr. Varga.

2 MR. VARGA: I probably read a little differently,
3 so I'm glad for the interruption there.

4 So to pick up where I was going; I just gone done
5 talking about the history and basic purpose of alleys to
6 provide circulation within the grid and to provide access to
7 property.

8 This property is a historic alley tax lot, a term
9 used to describe, as Meredith said earlier, those alley tax
10 lots are recorded with the Office of Tax and Revenue on or
11 before November 1st, 1957 as described in Subtitle B 100.1
12 which is the definition section, or on or before May 12th,
13 1958 as described in Subtitle C 303.3. As discussed, due to
14 its tax lot status, the property cannot be converted into a
15 new record lot administratively. Indeed, area variances are
16 required to make the property a record lot for which a
17 building permit can be issued. Alley lots are not especially
18 common in Mount Pleasant, particularly ones of this small
19 size. Indeed, there are no alley lots in either Square 2588
20 or 2591 and only four alley lots in the total of the Mount
21 Pleasant neighborhood. Further, the property is the smallest
22 alley lot and smaller than upwards of 96 percent of all the
23 lots in the Mount Pleasant neighborhood.

24 These facts demonstrate just how unique the
25 property is. As a land planner it's my opinion that the

1 uniqueness of the property should provide comfort to the
2 board and neighbors that granting the request for relief here
3 will not establish a precedent in the larger Mount Pleasant
4 neighborhood. These facts demon -- excuse me; so now I'm
5 going to talk a little bit about the zone plan. The subject
6 property is an alley lot located in the RF-1 zone which is
7 designed for low, moderate or medium density residential
8 areas suitable for residential light and supporting uses as
9 noted in Subtitle E 100.2. Further, the provisions of the
10 RF zones are intended to recognize and reinforce the
11 importance of neighborhood character, walkable neighborhoods
12 and improvements to the overall environment.

13 Finally, like most zones, RF zone provisions call
14 for the establishment of minimum lot area and dimensions for
15 the subdivision and creation of new record lots in RF zones.
16 From a planning perspective, often a nearby garage is a
17 supporting use for residential life; ZR58 supported this
18 conclusion permitting private garages, which is the defined
19 term, as a matter of right use on alley lots in what was the
20 RF-4 zone at the time. Under ZR16 alley lots in the RF-1
21 zone are permitted to have an extremely limited number of
22 uses including agricultural, artist studio, limited camping
23 and a tent wagon, van, automobile, truck or trailer use in
24 a parking garage, which is also a defined term, subject to
25 conditions.

1 In my professional opinion this project more in
2 keeping with the intent of an alley lot in the RF zone is in
3 agriculture or camping. Pursuant to Subtitle A 101.2D, the
4 regulations in this title and the zoning amount are designed
5 with consideration of the requirement that zoning shall not
6 be inconsistent with the comprehensive plan. In short, the
7 text of the comprehensive plan can be used to assist in the
8 interpretation of the zoning regulations. The comprehensive
9 plan contains many citations that support improvement and
10 development of vacant lots, and in this case would support
11 the construction of a one-story garage on the lot. This is
12 particularly so in the land use element and mid-city area
13 elements, and I'll quote a few of those citations here;
14 facilitate the re-use of vacant lots that have historically
15 been difficult to develop due to infrastructure or access
16 problems, inadequate lot dimensions, fragmented absentee
17 ownership, or other constraints. Also, in-fill development
18 on vacant lots is strongly supported in the District of
19 Columbia, provided that such development is compatible in
20 scale with its surroundings and consistent with environmental
21 protection and public safety objectives.

22 And finally, encourage redevelopment of vacant
23 lots and the rehabilitation of abandoned structures within
24 the community. The comprehensive plan does direct that in-
25 fill development must be sensitive to neighborhood context.

1 High-quality design standards should be required, the privacy
2 of neighboring structures should be respected and the density
3 and scale should reflect the desired character of the
4 surrounding area. See also in the framework development
5 where it says in-fill development on vacant sites must not
6 compromise the integrity of stable neighborhoods and must be
7 designed to respect the broader community context where
8 change occurs. It will be modest in scale and will consist
9 primarily of scattered site and fill housing.

10 In my professional opinion I would determine that
11 the project satisfies the comprehensive plan directions
12 because it permits development of a long-term vacant property
13 in a way that is contextual with the surrounding uses. Mount
14 Pleasant is indeed a beautiful, stable neighborhood. The
15 broader community context there is that garages are located
16 along alleys; therefore in my opinion as a planner the
17 project which is modest in scale and design conforms to this
18 broader community context and therefore does not compromise
19 the integrity of the block. Further, the scale, height and
20 density of the garage is compatible with its surroundings
21 that include a number of other similarly sized garages.
22 Further, the project would not be substantially detrimental
23 to the public good. The closest dwelling to the garage is
24 17 feet away to the south. The project should not introduce
25 or extend any shadows beyond that already cast by a large

1 Evergreen tree along the neighbor's property line along the
2 rear.

3 High-quality design standards will also be
4 employed as the garage will provide an aesthetically pleasing
5 brick exterior intended to match the pattern in the
6 neighborhood. Further, privacy will be ensured by the
7 planting of trees on the property's rear yard in addition to
8 the Evergreen tree I referred to earlier. The project is
9 consistent with environmental protection; the environmental
10 protection element in the comp planning calls for the
11 maximization --

12 CHAIR HILL: Mr. Varga, I'm just going to catch
13 up real quick; if you're just reading through this here now
14 at this point, you guys are already seven minutes over. So
15 I don't know if you want to summarize or get to --

16 MR. VARGA-COZON: Yes, I will race to the summary.
17 Thank you very much, Mr. Chair.

18 In conclusion, I remind the board that the comp
19 plan is intended to facilitate the reuse of vacant lots that
20 historically have been difficult to develop and this
21 direction recommends sensible in-fill development like this
22 project specifically on troubled lots just like this
23 property. It's my opinion as a planner that unfortunately
24 comp plan policies here are being stymied by a rejection of
25 the subdivision relief, despite the fact that the board has

1 granted lot area relief to smaller street and alley lots in
2 the past as referred to earlier. Therefore, my professional
3 opinion, I believe the development of long-term vacant
4 properties such as this should be facilitated in some way.
5 And as it stands right now, this vacant alley tax law can
6 only be developed by this board granting the relief from the
7 subdivision requirements, which it should do.

8 Thank you.

9 MS. MOLDENHAUER: Thank you. I will just provide
10 a quick summary of the relief in conclusion. We are
11 requesting the following special exception relief; we are
12 requesting special exception relief for rear yard, side yard
13 and parking, parking use, and then a variance from the center
14 line setback, and then a variance from the subdivision. I'd
15 just like to point out that for the special exception
16 standards, special exceptions are typically deemed to be
17 appropriate in the zone and as long as we size up the
18 standards, they should be approved based on the First Baptist
19 Church case.

20 Also, we believe that, as Mr. Varga testified,
21 that the proposed use is in harmony. Obviously RF zone is
22 proposed for small lots, dwellings, potentially flat
23 dwellings and obviously the proposal for a modest garage
24 would be in keeping with the intent, alley lot yard, relief
25 is permitted by special exception and the goal of the zoning

1 regulations is to prevent unusable land from remaining idle.
2 In addition, the Palmer case which the board has consistently
3 relied upon, indicates as you go into the variance standard,
4 that variances from the application of the zoning are
5 "designed to provide relief from the strict letter of the
6 regulations, protect zoning legislation from constitutional
7 attack, and alleviation of an unjust invasion of private
8 property rights, and prevent unusable land from remaining
9 idle. I point that out here, especially under the issue of
10 constitutional attack and obviously the unjust invasion of
11 private property because without the board's approval of the
12 variance under 303.3, no permit could ever be issued for this
13 property. You cannot obtain a building permit from DCRA
14 without having a property being a record lot, without
15 obviously the -- and so the unique size of this lot, a lot
16 size of 557 square feet is -- it's exceptional condition.
17 The ANT lot is exceptional given the fact that it was
18 actually created prior to the effective date of the zoning
19 regulations in 1948 prior to the zoning regulations taking
20 effect in 1958.

21 The topography and the shape of the lot creates
22 a uniqueness in regards to how that complies with the center
23 line setback requirement in its question of the most
24 efficient portions of the structure and its trapezoidal
25 shape, and the unique condition of its abutting pedestrian

1 alley, given the narrow pedestrian alley obviously requires
2 provisions of additional setback and then that the public
3 alley separation of property from the front street property.
4 And obviously from the ownership as Mr. Varga indicated,
5 issues where you have fragmented ownership. Here is a
6 perfect example of fragmented ownership where the Lawrence's
7 own a property abutted, is fragmented and separated by a
8 pedestrian alleyway, and thus cannot be assembled.

9 These all have approximate connection and cause --
10 CHAIR HILL: Ms. Moldenhauer, I'm just trying to
11 figure out how much more time you need?

12 MS. MOLDENHAUER: Just like two minutes.

13 CHAIR HILL: Okay.

14 MS. MOLDENHAUER: In regard to the exceptional
15 condition but for the small lot size, this lot could be
16 subdivided and as street lots are done all the time into a
17 record lot, and you could build a shed, you could build a
18 structure, you could build a garage. I mean, without that
19 relief, you cannot build any structure, you cannot obtain a
20 building permit. But for the lot location next to the
21 pedestrian alleyway, it could have been combined and
22 assembled into the street lot that the Lawrence's own. And
23 then this could have been used as an accessory dwelling, as
24 a rear garage structure as are permitted in the regulations.
25 And but for the variance relief, the property will remain

1 open and subject to public access, and obviously encroachment
2 by the pedestrian alleyway which is uniquely located next to
3 the alley lot, is a unique factor in this alley lot versus
4 any other alley lot in the city, or given that there are no
5 other alley lots on the square or in the neighborhood.

6 There will be a reduced footprint and in regards
7 to cases which talk about alternatives and no feasible
8 alternatives, we believe obviously given the fact the
9 variance test is to permit any structure from being built
10 here, obviously but for the relief, as is indicated in the
11 association of preservation of 1700 block of M Street; the
12 Court of Appeals says, "There are no feasible alternatives
13 that would comply with the zoning regulations here. The
14 property's individual uniqueness creates its practical
15 difficulty." I would then read to you from one of the cases
16 I quoted earlier which was a 2016 case -- I'm sorry, 2017
17 case under the new regs from an OP report which was an alley
18 tax law where they state that, "The existing property pre-
19 dates the current zoning ZR16 regulations and the prior 1958
20 regulations having been created in the early 19th Century.
21 The existing lot dimensions are now non-conforming which is
22 an exceptional condition as no new land is imminently
23 available to rectify this non-conformity of land." And then
24 obviously, "This creates practical difficulty in obtaining
25 a building permit for any home renovation or structures."

1 So this is a similar case here where we have an
2 existing alley; we cannot obviously widen the alley, we
3 cannot assume this into our client's property and it's a lot
4 that pre-existing and pre-dated the 58 regulations. There
5 are other cases that we can go through that have similar
6 logic in regards to that being the practical difficulty that
7 obviously satisfies a variance test. But we also believe
8 that the relief we've requested has been diminished in nature
9 in regards to the fact that we are now requesting a garage
10 and that it would not create a substantial detriment to the
11 public good. This lot has been separately owned from its
12 street lot for 70 years, it's not as though this is a recent
13 condition, it's obviously been long existing.

14 And we believe that we satisfied the variance test
15 and we'll respond to rebuttal or questions from the board.

16 CHAIR HILL: All right. Well, we can do this
17 either way; does the board want to do questions now or do
18 they want to go through the whole thing and do questions?

19 Okay. Mr. May?

20 COMMISSIONER MAY: Yes, so a couple questions;
21 your slides state that the property will remain idle and
22 under-utilized, so it's not being used for parking right now?

23 MS. MOLDENHAUER: Yes, at times it's being used
24 for open parking.

25 COMMISSIONER MAY: At times it is?

1 MS. MOLDENHAUER: Yes.

2 COMMISSIONER MAY: Like all the time or some of
3 the time, or most of the time? I mean, like normal parking
4 spaces in the back of houses used in the evenings?

5 MS. MOLDENHAUER: Our clients are in the Foreign
6 Service and aren't currently using the property.

7 COMMISSIONER MAY: Nobody's parking there?

8 MS. MOLDENHAUER: They are renting the property
9 and their renters are using the parking.

10 COMMISSIONER MAY: Okay, so the answer's yes it's
11 being used for parking now. So the next thing is that you
12 stated that because it's not a record lot, no permit could
13 ever be granted; so that means they could never put up a
14 fence, they could never repave the lot or anything like that?

15 MS. MOLDENHAUER: No structure.

16 COMMISSIONER MAY: No structure.

17 MS. MOLDENHAUER: Yes, so by right --

18 (Simultaneous speaking.)

19 COMMISSIONER MAY: So is a fence a structure?

20 MS. MOLDENHAUER: No, they could put a, which
21 would be in our opinion, something that would be more
22 egregious than the proposal --

23 COMMISSIONER MAY: I'm not asking what your
24 opinion is; I'm asking what you said they cannot --

25 MS. MOLDENHAUER: A 6-foot fence --

1 COMMISSIONER MAY: Can I finish my sentence then?
2 You said that they cannot get any kind of permit, and now
3 you're saying they can get a permit but not for structure,
4 correct?

5 MS. MOLDENHAUER: If I mis-spoke, they cannot get
6 a permit for a structure.

7 COMMISSIONER MAY: Right, but they could get a
8 permit for a fence?

9 MS. MOLDENHAUER: Yes.

10 COMMISSIONER MAY: And they could get a permit to
11 repave it if they needed to repave it?

12 MS. MOLDENHAUER: I don't know the answer to that
13 when I have not inquired.

14 COMMISSIONER MAY: All right, thanks.

15 VICE CHAIR HART: Mr. Chairman? This is for Ms.
16 Moldenhauer or whomever would like to answer; I was looking
17 at the OP report and on the third page, Exhibit -- I don't
18 know what exhibit it is -- 59 I think -- sorry 61 -- so on
19 this page they have the -- what I'm looking at is the image,
20 the photograph if that's taken off the web, but it's of the
21 lot and then it shows kind of down the row, down the alley,
22 I guess towards the West, and there are no parking garages
23 along this side of the alley. I mean, it is like this would
24 be the only parking garage if we were to approve this along
25 that alley. I don't know what's happening on the east of

1 this, but I do understand that houses do change on the other
2 side of the pedestrian way, but it just seems very striking
3 that this would be the one place that fit. Again, if we were
4 to approve it, we would be saying yes to this, but it doesn't
5 seem like any of the other folks along this row -- and this
6 photograph looks pretty far down, down that alley and it
7 doesn't show any that are there -- I understand that they may
8 be across the north of the alley, but along this portion of
9 the alley where you're on the same level, you're not on a
10 higher terrain, higher topography, there are none. Is that
11 correct, and do you have any images showing what this looks
12 like from behind the proponent's property and then to the
13 East?

14 MR. MOLDENHAUER: Yes, so going from this property
15 in the direction down of -- I'm going to just do an arrow --
16 going in this direction down here there are --

17 VICE CHAIR HART: That's going West?

18 MS. MOLDENHAUER: Sorry, going West. There are
19 open parking pads. Those property owners could build a
20 structure because they are obviously part of their entire
21 street lot, and so they could build parking garage
22 structures, or even under their zoning regulations and
23 accessory dwelling structure, if they so chose to go through
24 that process. As you -- and we are -- while Mr. Hart, you
25 do point out a condition that is a fact in an area where I'm

1 showing my cursor, but as you look at some of the properties
2 that are in the vicinity and across the alley and going
3 opposite direction, all of these -- or almost all of them --
4 almost all of these have parking garage structures along
5 here. And so our position is, and that it is in keeping with
6 the character of its neighboring and abutting properties in
7 this vicinity. Even though it is --

8 VICE CHAIR HART: Neighboring. Abutting means
9 next door.

10 MS. MOLDENHAUER: Neighboring, surrounding.

11 VICE CHAIR HART: But you also noted in your
12 presentation -- I'm not exactly sure which of you stated it
13 -- but there is a topographic change from the north to the
14 south. The road that's to the north, I can't remember which
15 road that is?

16 MS. MOLDENHAUER: Hobart.

17 VICE CHAIR HART: Hobart, is actually at a higher
18 level, almost a full grade. You actually said it, a full
19 grade, a full story higher so that those parking garages are
20 actually at kind of grade on the north.

21 MS. MOLDENHAUER: On the curbside.

22 VICE CHAIR HART: And then it goes kind of down,
23 so they don't really have the impact of -- you're looking
24 kind of -- from the houses to the north looking south they
25 don't actually -- they see their backyard. If you're looking

1 from where your client is and looking to the north, then they
2 can see the parking garages because that's their kind of
3 backyard.

4 MS. MOLDENHAUER: Okay, so if you look at this
5 property across the street, you can see these are typically
6 you have one-story --

7 VICE CHAIR HART: No, no. I understood that.

8 MS. MOLDENHAUER: You have a six-foot fence on top
9 of them, so those kind of tower over the alley onto then the
10 Harvard side of the street.

11 VICE CHAIR HART: Yes, but the houses are at grade
12 at that point. The parking garages aren't but the houses
13 are.

14 MS. MOLDENHAUER: The houses are at grade on
15 Hobart, yes.

16 VICE CHAIR HART: Yes, that's what I'm saying.
17 So the condition to the north is different than the condition
18 along Harvard Street? That's what I was trying to get to.

19 MS. MOLDENHAUER: The entire square's condition,
20 obviously, has a --

21 VICE CHAIR HART: Right. What we're speaking of
22 now is the proponent -- excuse me, the applicant who you
23 represent in this particular lot and also looking kind of
24 down the street in the image from the OP report, it just
25 shows down the alley, it just shows what that condition is

1 that is adjacent to this particular property, which it seems
2 as though they're all parking at grade, not in parking
3 garages but they are, again, adjacent to what you're looking
4 at. I didn't know if you had any images looking the opposite
5 direction to see what that -- along the southern portion,
6 along the Harvard Street side of this alley.

7 MS. MOLDENHAUER: Yes, here's the other images.
8 You have, this is the Hobart side --

9 VICE CHAIR HART: Yes, I was looking at the
10 Harvard side, not the Hobart side. The Hobart Street just
11 to understand what it is along the alley on your side of the
12 alley.

13 MS. MOLDENHAUER: So we have some in the file.
14 I don't seem to have it available at the moment,
15 but we can always pull that up.

16 VICE CHAIR HART: And also, what is the distance
17 between the proposed structure and the house to the south,
18 directly south of it?

19 MS. MOLDENHAUER: Seventeen feet.

20 VICE CHAIR HART: Seventeen feet?

21 MS. MOLDENHAUER: Seventeen feet of the property
22 line, and so it'd be 17, 18, 19, 19-1/2 feet to the
23 structure.

24 VICE CHAIR HART: Okay, thank you.

25 MS. MOLDENHAUER: And the zone has a 15 rear yard

1 requirement.

2 VICE CHAIR HART: Thank you.

3 CHAIR HILL: Okay, just real quick. If you could
4 go back to that previous slide that had the lots to the west.

5 Thank you. So you had just stated that all the
6 lots to the west could do a garage or an accessory dwelling
7 and yours can't because of the tax lot?

8 MS. MOLDENHAUER: Sorry. Yes, so those properties
9 are street-fronting lots. And so they could build a garage
10 structure which can be located in your rear yard but not
11 impeding your rear yard requirement, obviously as long as
12 they have lot occupancy, which those are all of reduced lot
13 occupancy. They're all at like 30 percent lot occupancy
14 along that portion, so they could all build a garage
15 structure if they so choose.

16 CHAIR HILL: Is this recent? I'm just curious
17 because I know why he's built the garage then. That's the
18 whole -- okay, I was just trying to get past that one thing.

19 All right, so does anyone have another question
20 right now for the applicant?

21 Okay, so now Mr. Hitchcock, and I'm going to kind
22 of -- I'm trying to keep everybody understanding what we're
23 doing here in time -- so Mr. Hitchcock, you will now have an
24 opportunity to cross and before we do -- well -- yes, before
25 we do the cross, I just want to kind of state I'm not a big

1 fan of cross-examination. Like if you want to go ahead and
2 cross-examine what specific things you would like to in terms
3 of what the testimony was that the applicant had given --
4 that's the point of cross-examination, right. Your
5 presentation will be what we hear next, so I'm just trying
6 to separate the two things from happening at the same time.
7 And then for the audience here, after the cross-examination,
8 the party status party will have an opportunity to present.
9 They will get 45 minutes -- well, maybe even 50 minutes --
10 45, 50 minutes. That's how long the applicant took. We will
11 then go to the Office of Planning. I'm sorry; we're going
12 to go to the Office of Planning first, and then Office of
13 Planning will speak. There'll be cross-examination possibly
14 the Office of Planning, there'll be questions the Office of
15 Planning. We will come back to rebuttal.

16 I guess what I'm trying to get at is if you're
17 after this, okay -- oh, and we're going to take a break after
18 the cross before we start because we've been here for an hour
19 already -- so if you're after this in any way, shape or form,
20 you're probably not going to -- it's probably at least an
21 hour before you're back here. So just letting everybody know
22 if you want to stretch, that's where we are because I'm
23 trying to be as judicious as possible, because if I were you
24 all, I would want to know.

25 So that being said, Mr. Hitchcock, you can please

1 go ahead and begin your cross-examination.

2 MR. HITCHCOCK: Thank you, Mr. Chairman. I will
3 be brief; I wanted to begin by noting an objection with
4 respect to Mr. Lawrence's statement. On Page 2 -- I didn't
5 want to interrupt Ms. Moldenhauer when she was presenting,
6 but there are various factual statements that are somewhat
7 vague and one doesn't know the significance of it. For
8 example, they talk about the car was broken into --

9 VICE CHAIR HART: Is this the testimony from Mr.
10 Varga?

11 MR. HITCHCOCK: The testimony from Mr. Lawrence.
12 The written testimony --

13 VICE CHAIR HART: Okay, thank you.

14 MS. MOLDENHAUER: From the property owners.

15 VICE CHAIR HART: Thank you. I'm sorry.

16 MR. HITCHCOCK: I was not going to point out,
17 we've been through that. There are points on Page 2, but
18 that was what I wanted to raise that some of these cry out
19 for explanation -- I mean, the tenant was attacked in the
20 alley; what does that have to do with the garage? We're not
21 told stuff was -- car windows broken -- there used to be a
22 fence on this parcel --

23 COMMISSIONER MAY: Mr. Hitchcock, this is your
24 cross. Why don't you cross about these things?

25 MR. HITCHCOCK: Very good. I can't cross a piece

1 of paper, sir.

2 COMMISSIONER MAY: No, but you can ask the person
3 who read it, what they know about it.

4 MR. HITCHCOCK: Okay. Ms. Moldenhauer, it says
5 twice we had our windows broken and items stolen; what month
6 of the year did those take place?

7 MS. MOLDENHAUER: I don't know.

8 MR. HITCHCOCK: Okay. Then one day after the
9 Historical Preservation Review Board voted in support of the
10 garage request, four tires of the care were slashed; what day
11 was that?

12 MS. MOLDENHAUER: That would have been in 2008 and
13 this case was back for the board at some point in time --

14 MR. HITCHCOCK: Thank you. And to your knowledge,
15 was the fence still there or had it been torn down by your
16 client?

17 MS. MOLDENHAUER: I object to your reference that
18 it was torn down.

19 MR. HITCHCOCK: Was a fence still there?

20 MS. MOLDENHAUER: I do not know.

21 MR. HITCHCOCK: You do not know. Okay, one of the
22 tenants reported an attack in the alley as well; when was
23 that?

24 MS. MOLDENHAUER: That was actually very recently;
25 we received an email from the existing --

1 CHAIR HILL: Hold on; we're all going to slow
2 down. We're all going to slow down. That's okay, she's just
3 answering. You'll get a chance. I gotcha. I gotcha.

4 Mr. Hitchcock, it's okay. Go ahead, Ms.
5 Moldenhauer.

6 MS. MOLDENHAUER: Our clients as indicated are
7 abroad, the State Department --

8 CHAIR HILL: No, that's okay. You're not
9 answering his question now, so he --

10 MS. MOLDENHAUER: No, they received an email from
11 their sub-tenant indicating that they had been attacked in
12 the alley --

13 MR. HITCHCOCK: The sub-tenant or the tenant?

14 MS. MOLDENHAUER: The sub-tenant.

15 MR. HITCHCOCK: Is a sub-tenant of a tenant? So
16 this is double hearsay?

17 MS. MOLDENHAUER: I'm telling you the facts; I can
18 provide the board with an email that I have from my client,
19 that I read.

20 CHAIR HILL: Okay.

21 MR. HITCHCOCK: Where in the alley did this take
22 place?

23 MS. MOLDENHAUER: The email did not state that.

24 MR. HITCHCOCK: So you have no knowledge where it
25 took place?

1 MS. MOLDENHAUER: They indicated in the alley by
2 the parking.

3 CHAIR HILL: Okay, give me one second, Mr.
4 Hitchcock. I'm with you; I understand where you are with
5 this. Okay, so there's a lot of, you have a lot of questions
6 with this testimony.

7 MR. HITCHCOCK: Yes, I was just trying to note my
8 objections. I didn't want -- Mr. May requested cross-
9 examination, so I cross-examined.

10 CHAIR HILL: No, I understand.

11 MR. HITCHCOCK: I have only one other set of
12 questions; the opening slide showed some pictures of some
13 trash, trash bins. And the pre-hearing statement on several
14 occasions referred to the accumulation of trash and litter.
15 Maybe this Mr. Varga, this was part of the statement you
16 didn't read, but that's still an argument you're advancing
17 on the public good point and also on the practical difficulty
18 point?

19 CHAIR HILL: I'm sorry, Mr. Hitchcock; what's your
20 question again? I saw the slide with trash; that's why I'm
21 trying to understand what your question was.

22 MR. HITCHCOCK: Right. On several places in the
23 pre-hearing statement there was reference to trash
24 accumulated and that was said, in fact trash accumulates on
25 this site. That was said to relate to the practical

1 difficulty of using the site presently because trash
2 accumulates; that's Page 10 of the pre-hearing statement from
3 January 31st.

4 CHAIR HILL: Okay.

5 MR. HITCHCOCK: Page 15 of that statement says,
6 I'm quoting, the inability to develop the property has
7 resulted in the applicant maintaining a property that only
8 accumulates litter and trash. That goes to the point of the
9 purpose and intent of the zoning regulations and the public
10 good. I didn't hear a presentation and I'm just trying to
11 figure out if those are arguments that are still being
12 advanced here.

13 CHAIR HILL: Okay. Mr. Varga?

14 MS. MOLDENHAUER: I believe we testified there's
15 information on the record that as a vacant property it
16 accumulates trash and it becomes obviously an eye sore; it
17 also was an issue if you put a fence up, the fence obviously
18 will then be on the property line and there would be
19 challenges for maintenance.

20 MR. HITCHCOCK: Is Ms. Moldenhauer testifying or
21 is this legal argument?

22 MS. MOLDENHAUER: I believe you asked for
23 clarification of what the argument was and so I'm providing
24 the clarification.

25 MR. HITCHCOCK: I asked for whether it was still

1 being presented because I didn't -- yes, there are arguments
2 in the record and I just quoted them. Question; when did the
3 trash start accumulating on the property?

4 MS. MOLDENHAUER: When did it stop?

5 MR. HITCHCOCK: Yes, it only -- you said the
6 property accumulates litter and trash. How many visits have
7 you made to the site?

8 Three or four. And did you --

9 MR. VARGA: Excuse me.

10 MR. HITCHCOCK: Can we have one person, Mr. Chair?

11 CHAIR HILL: Hold on, hold on. Mr. Varga was
12 trying to answer your question.

13 MR. HITCHCOCK: Yes.

14 CHAIR HILL: I got to tell you; this is why I hate
15 cross-examination. I hate cross-examination from either
16 side. And so it's very difficult to follow along.

17 So Mr. Varga, answer the question.

18 MR. VARGA: There have been four visits by me
19 personally to the site.

20 CHAIR HILL: Okay.

21 MR. HITCHCOCK: Was the level of trash the same --
22 well, starting when?

23 MR. VARGA: Starting when we first took on Mr.
24 Lawrence as a client, I did an initial site visit.

25 CHAIR HILL: So Mr. Hitchcock, again you're

1 questioning the validity of the trash being an issue?

2 MR. HITCHCOCK: I'm trying to find -- I mean, as
3 I read this -- we can talk about it during our presentation.

4 CHAIR HILL: Okay.

5 MR. HITCHCOCK: They're saying that there is a
6 problem, that this area is a magnet for trash. I want to
7 find out how long it was, when it started, we can address it.
8 My clients live right next door, they can testify to it, but
9 I just want to make sure --

10 CHAIR HILL: I just want to make sure that you're
11 asking a question because I'm just trying to understand it.
12 So your question is when did the trash start or is there
13 trash now?

14 MR. HITCHCOCK: That's what -- when did it start
15 accumulating?

16 MR. VARGA: I'd be happy to answer that question.
17 So on several of my visits I've seen trash on the site, I've
18 seen the storage of trash bins from -- numerous trash bins
19 presumably from neighboring properties on the lot. I've seen
20 them tipped over, I've seen tree trimmings on the lot.

21 CHAIR HILL: Okay, okay, okay, okay, okay.

22 MR. VARGA: All manner of trash.

23 CHAIR HILL: No, no. Gosh, unbelievable. When
24 I say okay, that usually means you can stop talking.

25 Do you have another question, Mr. Hitchcock?

1 MR. HITCHCOCK: No, sir.

2 CHAIR HILL: Okay. All right, so we're going to
3 go ahead and take a break. And then, Mr. Hitchcock, when we
4 come back you'll have 45 minutes to present your testimony.
5 We're going to use the restroom.

6 Pardon me.

7 MR. HITCHCOCK: We'll have an opening first,
8 right?

9 CHAIR HILL: Oh, I don't know. Yes, you're right.
10 Thank you so much. Regardless, we're taking a break.

11 MR. HITCHCOCK: Okay. Thank you, Mr. Chairman.

12 (Whereupon, the above-entitled matter went off the
13 record at 4:38 p.m. and resumed at 4:46 p.m.)

14 CHAIR HILL: Okay. Mr. Moy, let's go ahead and
15 get started again. Mr. Hitchcock, so I'm going to go ahead
16 and put -- let's go ahead and put 45 minutes up there for you
17 and I guess you can kind of work through the other people as
18 well in terms of however you'd like to do it. I know that
19 it might be a little bit -- we'll be accommodable however you
20 get through the other people there as well. And then -- yes,
21 so we'll start there. So whenever you begin, we'll start the
22 clock. Thank you.

23 I'm sorry; actually since new people came, if you
24 could just introduce yourselves before we start.

25 MS. YAMAGATA: Good afternoon; my name is Lauren

1 Yamagata. I live at 1701 Harvard Street.

2 MR. TINEO: Hi, I'm Victor Tineo. I live at 1701
3 as well.

4 CHAIR HILL: Okay, were you guys sworn in?

5 MS. YAMAGATA: Yes.

6 CHAIR HILL: Okay. All right. Okay, Mr.
7 Hitchcock, whenever you'd like.

8 MR. HITCHCOCK: Thank you, Mr. Chairman. I don't
9 have an opening statement; Mr. Tineo will do the testimony
10 on behalf of himself and Ms. Yamagata, and I will run the
11 slide show.

12 CHAIR HILL: Okay, great.

13 MR. HITCHCOCK: Just for the record, I spoke --
14 my computer died this morning, I told Mr. Moy I passed out
15 such copies with color and black & white. Ms. Moldenhauer's
16 copy -- I told Mr. Moy we would be filing electronically once
17 the system opens.

18 CHAIR HILL: Okay, great. Thank you.

19 MR. TINEO: My name is Victor Tineo and with me
20 today is my wife Lauren Yamagata. We live at 1701 Harvard
21 Street which you can see on this slide. You've heard a lot
22 about the pedestrian alley next to our property which
23 continues from Harvard Street up to the rear of our house.
24 You can see that on the right of the slide and here's a
25 close-up of that pedestrian alley taken from the rear of our

1 house.

2 My first slide showed you the front of the house,
3 here's a slide from the rear with the left photo showing the
4 parking pad and the right photo showing the entire back of
5 our house.

6 CHAIR HILL: Can you go to that front slide again
7 just real quick? Because you said the rear and it kind of
8 threw me.

9 The first slide. Right, that's the front.

10 MR. TINEO: Yes, that's the front.

11 CHAIR HILL: Okay, and your house is on the left
12 of the alley?

13 MR. TINEO: Yes, the little stepway alley.

14 CHAIR HILL: Thank you.

15 MR. TINEO: So the entire back of our house with
16 the car which is blue parked on the right side. The parcel
17 in question here today was carved out what one would expect
18 to be part of our rear yard as shown here. We bought our
19 house in 2017, so we were not here in 2008 when the
20 Lawrence's made a similar proposal for a garage on the site.
21 We have, however, taken a look at what this board decided in
22 2008 and believe that you should reach the same conclusion
23 now as you did ten years ago. We are pleased to agree with
24 the ANC and the Office of Planning's analysis at this point.
25 The current proposal is even more aggressive than the 2008

1 proposal; the current request is for a 15-foot tall garage
2 which is about one-third taller than the 2008 proposal. This
3 would have a negative effect on the enjoyment of our home.
4 Our patio is recessed three feet six inches below the grade
5 in the alley as it's shown by this slide in 2008. So a 15-
6 foot garage starting three and a half feet above our patio
7 would tower over us. This would have a negative effect on
8 us as individuals and the neighborhood more broadly, given
9 that light and air are more important in densely settled
10 areas such as Mount Pleasant.

11 VICE CHAIR HART: I'm sorry to interrupt; that
12 fence is your property line

13 MR. TINEO: Yes.

14 VICE CHAIR HART: So on the other side of that
15 fence is --?

16 MR. TINEO: Is the alley. Is the stairway alley.
17 So you're talking about that brown fence?

18 VICE CHAIR HART: Yes.

19 MR. TINEO: Yes, that's the pedestrian walkway,
20 the stairwell.

21 VICE CHAIR HART: That's east of you. We're
22 looking towards the east. Yes.

23 MR. HITCHCOCK: Mr. Hart, if I may clarify; the
24 rear is -- this is taken from 2008 --

25 VICE CHAIR HART: That's fine.

1 MR. HITCHCOCK: The fence there shows where the
2 rear of the property line is; it is slightly differently
3 configured since then, but it's just designed to show the
4 dimensions of the yard even though the backyard is somewhat
5 differently configured; correct?

6 MR. TINEO: My apologies; our backyard looks a
7 little bit different now.

8 VICE CHAIR HART: No, it's fine. I was just
9 trying to make sure that's what we're looking at, but I
10 understand what you're on.

11 CHAIR HILL: I'm not understanding. That brown
12 fence, what's on the other side of that brown fence?

13 MR. TINEO: Okay, so --

14 CHAIR HILL: Yes, go back to that one. The other
15 one. Sorry.

16 MR. TINEO: So that brown fence you're looking at
17 this diagonal.

18 CHAIR HILL: You have a cursor there?

19 MS. YAMAGATA: A pointer.

20 MR. TINEO: This one?

21 MS. YAMAGATA: So the brown fence -- sorry --
22 where is it -- it's not showing on the --

23 CHAIR HILL: That's all right. Yes, is there a
24 cursor there?

25 MS. MOLDENHAUER: Laser pointer, there you go

1 guys.

2 CHAIR HILL: Okay, so the brown -- okay, great.
3 That's great.

4 MR. HITCHCOCK: It would be --

5 MS. YAMAGATA: The brown --

6 MR. HITCHCOCK: I'm sorry.

7 CHAIR HILL: That's all right. Put your cursor
8 right on the brown fence. That's the brown --

9 MR. TINEO: Yes, the brown fence is --

10 CHAIR HILL: That's the brown fence?

11 MS. YAMAGATA: Yes.

12 CHAIR HILL: Okay. Now go to the next slide, or
13 go two slides over. That grey fence right there to the left,
14 that's where?

15 MR. TINEO: That abuts the parking pad.

16 CHAIR HILL: Okay, I got it. It's fine, I got it
17 now. I got it, I got it. Okay, all right.

18 That wasn't easy.

19 (Laughter.)

20 Okay.

21 MR. TINEO: If I could just find --

22 CHAIR HILL: We won't dock your time. You're
23 okay.

24 MR. TINEO: Thank you. Let me emphasize that we
25 would have no objection if the Lawrence's want to enclose

1 their parking space as they had done at the time of the 2008
2 hearing, nor would we have an objection if they wanted to put
3 in a low-rise carport that was open on all sides. A garage
4 pushing back almost to the lot line would, however, be a
5 departure for this part of our neighborhood; it would be
6 inconsistent with the other rear yards that we and our
7 neighbors enjoy.

8 CHAIR HILL: I'm sorry to keep doing this. So go
9 back one.

10 Okay. So the cursor -- if your backyard is behind
11 that car right there, right, so that's what --

12 MR. TINEO: Yes.

13 CHAIR HILL: Yes, that's right. Okay, thank you.
14 Yes, the little L thing.

15 MR. TINEO: Yes.

16 CHAIR HILL: Okay. All right.

17 MR. TINEO: So it would be inconsistent with the
18 other rear yards that we and our neighbors enjoy. Their lot
19 is connected to a historic row of identical homes, none of
20 which have garages, let alone imposing ones that are 15-foot
21 high. Here's a photograph looking west towards 17th Street.
22 Harvard and Hobart Streets are about as densely settled as
23 any area in the district. A ruling that allows more density
24 at the rear of the property would make the current density
25 even worse and for no obvious public benefit. Also, let me

1 stress, there are tight conditions in this alley and
2 encouraging more garage development would not be in the
3 public interest.

4 Let me return to the point that I made at the
5 outset about this board's 2008 decision. Parking may be a
6 use that is allowed as a matter of right, but that does not
7 mean that this proposal should be approved. In 2008 this
8 board ruled that building a garage on this parcel should be
9 viewed as a matter of convenience for the applicant. You
10 also stated that inconvenience is not the same thing as a
11 peculiar and exceptional practical difficulty in using the
12 site. In 2008 the Lawrence's argued that there was a
13 practical difficulty related to providing greater security
14 than was provided by a 6-foot fence. In response, this board
15 stated that any difficulty in providing security does not
16 arise out of the exceptional condition of the small size of
17 the lot or its location behind someone else's dwelling. The
18 board also indicated that --

19 MS. MOLDENHAUER: I would like to object to
20 reading the prior order.

21 MR. HITCHCOCK: It's a matter of public record.
22 It is something that can be quoted. Ms. Moldenhauer said it
23 is not persuasive or it should not be followed --

24 CHAIR HILL: That's all right. I'm fine with
25 hearing the prior order.

1 MR. HITCHCOCK: Thank you.

2 MR. TINEO: The board also indicated there may be
3 ways of providing security without variance relief. We
4 understand that security was a concern cited in the past, but
5 the Lawrence's tore down their fence following the board's
6 decision. The practical difficulty now claimed is that
7 litter and trash now accumulate on the site. Let's break
8 that down; four months ago in October the Lawrence's trimmed
9 the foliage and other growth alongside their house adjacent
10 to the side alley. The slide to the left taken on October
11 2017 shows that all of the foliage waste was dumped on their
12 parking pad. The slide on the right was taken in mid-
13 December showing the foliage waste plus additional debris
14 from interior work the Lawrence's did on their home. The
15 parking pad has looked like this for the past four months
16 until clean-up began just two days ago.

17 The Lawrence's claim that accumulation of trash
18 on the site as a practical difficulty, but the recent
19 accumulation of trash is of their own making, and a failure
20 to keep their property clean. We have not witnessed that
21 this lot is more prone to attract trash and litter than any
22 other part of this alley. Frankly, we share the Lawrence's
23 stated interest in having their lot free of refuse. We even
24 contacted DPW about their problem because we didn't want them
25 thinking that this was on our property.

1 All that said, we're not sure why building a 15-
2 foot garage would eradicate the trash problem or why steps
3 short of that are impossible. This brings me to what I
4 understand to be the requirement for obtaining the type of
5 variances and exceptions being sought. I'm not a zoning
6 expert but let me make a few comments based on what I
7 understand are the factors you'll be considering. The parcel
8 in question is small but the trapezoidal shape is hardly
9 unique or exceptional. Also, the Lawrence's point out that
10 the parcel is adjacent to two allies, but as the Office of
11 Planning report points out, that situation is not unique.
12 There are issues about whether the Lawrence's need
13 subdivision relief.

14 Allow me to note that the Office of Planning's
15 point that the requirements in the 2016 zoning regulations
16 for new record lots make sense to ensure that alley type
17 development is consistent with the surrounding neighborhood
18 particularly in the built-up areas such as Mount Pleasant.
19 The Lawrence's note that without the type of relief they're
20 seeking, it may be impossible to improve their property to
21 any reasonable use. But the ability to park two cars in the
22 lot is on its face a reasonable use for the site. Frankly,
23 it's a luxury to have two parking spaces in such a densely
24 populated part of the city.

25 They also note that the 2016 rewrite of the zoning

1 regulations sought to increase alley uses. That may be so,
2 but nothing in the zoning regulations indicates that every
3 square foot in the District of Columbia needs to be
4 developed. If the Lawrence's want to use this space for
5 parking as they have for years, there's nothing stopping them
6 from doing so.

7 I want to mention one point in particular; there's
8 a proposal to plant trees in the 2-1/2 rear foot yard in
9 order to provide some degree of buffering between the garage
10 and the property. We appreciate that gesture, but the
11 proposal raises more questions than it answers. Our rear
12 wall is about 6 feet and so in order to provide any kind of
13 buffering, the trees could have to be up to 15 feet tall.
14 Are the Lawrence's planning to plant young trees that might
15 reach that height in 10 years or 20 years, and if they're
16 contemplating trees that tall to provide a buffer, how
17 extensive would the root network be, would it damage our
18 adjacent wall essentially, and what effect would it have on
19 the proposed new garage.

20 Which brings me to my final point; the Lawrence's
21 cite a number of factors that they say create practical
22 difficulties; however, we believe that you should look at it
23 in a different perspective; consider just how far-reaching
24 the scope of the zoning relief is that they seek. The side
25 alley is only 7-1/2 feet wide, so our neighbors need 8-1/2

1 feet of zoning relief from the alley central line
2 requirement; that's more relief than the alley is wide. The
3 relief needed as to the rear of the alley is also
4 significant, 4-1/2 feet on an alley that is only 15-feet
5 wide. The proposal is to eliminate the side yard
6 requirements and most of the rear yard requirements which are
7 both important in a neighborhood as built up as Mount
8 Pleasant. So taken together, these are not mere adjustments
9 to the zoning protection that residents expect. These
10 changes are more in the nature of repealing the current
11 zoning protections for us and our neighbors.

12 For all these reasons, we ask the board to deny
13 the request of variances and exceptions. Thank you.

14 CHAIR HILL: Okay, thank you. Let's see; just
15 trying to understand, Mr. Hitchcock, what you intend to do.
16 So we can go ahead and ask questions of the two people that
17 are here. Would you like us to go -- I'm trying to
18 understand what you're going to do; would you like to hear
19 everybody, then we'll come back to you at the end?

20 MR. HITCHCOCK: Yes, I would suggest perhaps
21 hearing the other two parties who are here, then there could
22 be cross-exam -- board questions for cross-examination.

23 CHAIR HILL: Later questions, okay. So let's go
24 ahead and bring out the other two people then.

25 MR. HITCHCOCK: Ms. Stevens has her own PowerPoint

1 that she will show.

2 CHAIR HILL: It was such a beautiful day today,
3 the weather was so nice.

4 (Laughter.)

5 CHAIR HILL: I understand it's like spring outside.

6 (Laughter.)

7 CHAIR HILL: Yes. Yes.

8 MS. STEVENS: Geoff, do you want to go? I'm having
9 trouble pulling this up.

10 CHAIR HILL: Mr. Dow, if you want to go ahead and
11 give us your testimony, I guess, while the other slide
12 presentation is being put forward.

13 MR. DOW: Sure. Thanks very much for the
14 opportunity to say a few words. So just to address a factual
15 question that was raised by Mr. Hart earlier with respect to
16 the structures within 200 feet of the property in question;
17 so to the west on the Harvard Street side, there's no garage
18 structures at all and then to the east there's none that are
19 set, that aren't set back more than 5 feet from the alley.
20 So from the perspective of neighbors who already live in a
21 densely populated part of the city, allowing the relief to
22 build a structure right up to the property line, in my
23 opinion, and I think in many other's opinions as well, that's
24 creating something of a precedent that we're not happy with.
25 So that was just clearing up that factual part of it.

1 I wanted to address a couple things in relation
2 to the prior consideration of the garage that the board
3 elected not to address last time, and that specifically
4 relates to the impairment of the public good. So the pass-
5 through alley between Harvard Street and Hobart Street is
6 used by lots of folks to basically cut through in a part of
7 the neighborhood where there isn't any other way of getting
8 from Mount Pleasant down to Adams Morgan, commonly used --

9 CHAIR HILL: Mr. Dow, I'm sorry to interrupt you;
10 I'm just trying to understand. So you're testifying now to
11 what they're not building?

12 MR. DOW: No. What I would like to point out is
13 our objections to the garage based on an impairment of the
14 public good, and that relates to the use of the alley by
15 pedestrians. So you walk up that alley and now you're lines
16 of sight are closed off by 15-foot garage.

17 CHAIR HILL: Okay, I get you. I just was
18 confused. Okay, go on.

19 MR. DOW: Yes, so there's that line-of-sight
20 challenge you're not protected from, either cars speeding
21 through an alley, which happens all the time, or frankly
22 other pedestrians late at night. We're not convinced the
23 proposed mitigation measures around the fish eye lens and the
24 motion detector lights will actually alleviate the problem
25 in the evenings. And so from our perspective, the security

1 for pedestrians would be in a worst state if the relief was
2 granted relative to what it is now and there are other
3 practical ways that the security issues raised by the
4 applicants could be addressed through some sort of fence or
5 chain-link arrangement where you do have lines of sight but
6 there is some security provided to the parking.

7 The other issue that I think needs to be thought
8 through is the additional shade that that 15-foot wall would
9 impact in terms of the pass-through alley from Harvard Street
10 up to Hobart Street. And in the main East/West alley in
11 terms of the accumulation of snow and ice built up, because
12 of the additional shadow that's going to occur as a result
13 of that 15-foot wall. You've heard testimony from the
14 immediate neighbors that the attention to detail from the
15 Lawrence's in terms of maintaining the property doesn't give
16 us great hope that the mitigation strategies that might be
17 put in place like more shoveling or maintenance of a motion-
18 activated lighting system really addresses those security and
19 safety issues.

20 So I'll stop there and I think Cindy's got some
21 points along those lines, too.

22 CHAIR HILL: All right. Ms. Stevens?

23 MS. STEVENS: Thank you. I'll keep this brief.

24 CHAIR HILL: You mind pulling that microphone a
25 little bit closer to you?

1 MS. STEVENS: Sure, I'll keep this brief. I think
2 it's important to understand this project in context of the
3 larger neighborhood. So one of the things to know is that
4 the alley spans three city blocks; it has two access points
5 at the top and the bottom one on Mount Pleasant Street, the
6 other toward the far west end of Hobart Street and there's
7 an access point about mid-way that's not too far from where
8 this particular property is located. Abutting this three-
9 block alley is about hundred houses, about 60 on the Hobart
10 Street side and about 40 on the Harvard Street side. And so
11 what we've got here is sort of a bottleneck that's likely to
12 occur, and I think as Geoff has mentioned, we're concerned
13 about the sight lines to the public access, public pass-
14 through that runs from the alley. We're concerned about the
15 alley narrowness and how the sunlight is likely to affect
16 this.

17 So just to give you some understanding; this is
18 the view from my house, which is kind of kitty-corner from
19 the area. You'll see the pass-through to the alley; I've got
20 an arrow pointing to that. The site of the proposed garage
21 you'll notice the fence in the back, the architectural
22 drawings suggested that those were 6-foot high, so this would
23 rise more than double the height of that fence. The garage
24 at 1702 Hobart Street which I rent in my property which is
25 right next door.

1 So I met with an architect yesterday to get some
2 idea of what kind of shadows would be cast on the alley; this
3 was the outline in terms of what he gave me. That's my car
4 in the garage there. This photo was taken about 11:00 a.m.
5 on Sunday, October 22nd. And I can tell you in the ten years
6 that I've lived at this house, I've had to go out before with
7 a mountaineering axe to break up ice on the alley in order
8 to get my car out of the garage. So with the additional
9 shadows we're concerned that that's going to lead to a build-
10 up of snow and ice. And I think the other problem is with
11 the shadows there it's going to reduce the driver's ability
12 to see pedestrians coming up, particularly since that'll be
13 blocked by the proposed structure.

14 This is another, I guess, view of this with the
15 outline showing what the shadow would look like in the
16 morning, and which is when many of us try to get out of the
17 alley in order to go to work.

18 So that's a summary of what I had to say. I'll
19 be happy to take any questions.

20 CHAIR HILL: Okay, great. Does the board have any
21 questions for anyone who has provided testimony at this
22 point?

23 COMMISSIONER MAY: Yes.

24 CHAIR HILL: Please.

25 COMMISSIONER MAY: So we saw a photo that there

1 was a fence there not too long ago, right. So the fence is
2 gone which improved the ability to see into the alley as
3 you're walking in and out of the pedestrian alley, but when
4 the fence was there clearly that was already obstructed. I
5 mean, there aren't too many people who can see over 6-foot
6 fences or whatever, so was that a problem before?

7 MS. STEVENS: When I moved into the house, the
8 fence was no longer there.

9 COMMISSIONER MAY: Did anybody live there when the
10 fence was there?

11 You need the microphone on, please.

12 MR. DOW: I lived there a couple of years before
13 the 2008 case, but ever since then which has been most of the
14 time I've lived there, there hasn't been any of those --

15 COMMISSIONER MAY: But you were there for a while
16 when there was a fence?

17 MR. DOW: A couple years, yes.

18 COMMISSIONER MAY: I mean, what is it a problem
19 then, more of a problem then because of that fence?

20 MR. DOW: Honestly, prior to 2008 which was at
21 least ten years ago, I don't really remember.

22 COMMISSIONER MAY: That's okay. I don't remember
23 much from that time either.

24 CHAIR HILL: Mr. Dow, you're under oath.

25 (Laughter.)

1 MR. DOW: I promise to tell the truth.

2 COMMISSIONER MAY: The other thing; with regard
3 to snow and ice, I understand that on many of these
4 properties along an alley there essentially is a matter of
5 right ability to build something. I mean, there's got to be
6 somewhere where you can build garages, that would be that
7 tall, 15 feet was the normal height limit even before the law
8 was changed. So I mean, protection against snow and ice is
9 not an argument we usually hear; you understand that that's
10 not something that is really a public entitlement, right?

11 MR. DOW: So can I speak to that?

12 COMMISSIONER MAY: You can both speak to that.

13 MR. DOW: Okay, excellent. So I'm not certain,
14 but I believe that all the other property owners along that
15 strip would want to build hypothetically garages, would have
16 to seek some sort of at least special exception relief from
17 the center alley line setbacks. So --

18 COMMISSIONER MAY: Or build it back on the -- you
19 can build it back within your property.

20 MR. DOW: Right. So it's not like it's not a
21 matter of right that's subject to other conditions. So
22 that's the first point.

23 COMMISSIONER MAY: Right.

24 MR. DOW: And then the second thing is that the
25 snow and ice argument relates to an impairment of the public

1 good alley. I want to be able to walk down that alley
2 knowing that there's no enhanced risk of falling over and
3 dying because someone didn't hammer out the axe with a
4 mountaineering axe.

5 COMMISSIONER MAY: You have to understand that's
6 a common issue across the city. I mean, the alleys are the
7 last thing that the city pays any attention to in terms of
8 snow and ice clearing. I mean, in my neighborhood people
9 park on the street when the snow is coming, so of course
10 there's a limit on that, too. But to avoid having to shovel
11 out the alley and -- I've taken a few spills getting my bike
12 out of the garage in the alley. I mean, it's just a fact of
13 life; it's not something that we're all entitled to. I mean,
14 it's a puzzling sort of argument to make. I can appreciate
15 how it's an inconvenience, but it's hardly a reason not to
16 grant relief.

17 MS. STEVENS: I'm not suggesting that we're
18 entitled to an ice-free alley way. I mean, I've cleared it
19 out many times. I think the problem comes in that the
20 pedestrian access is close to the car access; it's near the
21 mid-point of an alley that spans through three city blocks.
22 The alley's not wide enough for cars to be able to pass each
23 other and when you have the pedestrian access close to a
24 structure that is blocking the sun from being able to help
25 remove some of the snow and ice. And given that people walk

1 up that pedestrian pass-through and often walk down the alley
2 to where the car access is, you get more traffic in that
3 particular portion with regard to pedestrians than you would
4 at other points along the alley. That's really what I'm
5 trying to say. And so when you've got an accumulation of
6 snow and ice there and reduced visibility, I think it's that
7 combination that creates public safety threat.

8 COMMISSIONER MAY: Well, let's just say it's a
9 novel argument. I haven't heard that before.

10 CHAIR HILL: We're just asking questions. Give
11 me a second. So does anyone have any questions, more
12 questions? I've got a couple.

13 Thank you.

14 Oh, this was to -- and I'm sorry; I forgot your
15 name now, the gentleman who spoke first --

16 MR. TINEO: Victor. Mr. Tineo.

17 CHAIR HILL: Mr. Tineo, did these people ever
18 offer to sell you that lot or you tried to buy that lot?

19 MR. TINEO: That's a great question. No, they
20 didn't. And you would imagine that it might make sense to
21 do so because it's --

22 CHAIR HILL: That's okay, so no they didn't.
23 That's good enough for me, right. And you tried or you --
24 I was just curious.

25 MR. TINEO: No, no, no. I was going to say I

1 wanted to try but it occurred to me that this is the only
2 parking parcel for that, so it's unlikely.

3 CHAIR HILL: Okay. I wouldn't sell it to you
4 either, but that's okay. I like parking. So okay, that --
5 and then what I get from the testimony thus far, and I know
6 we were talking about the ice and things like that, but it
7 seems to me that it's the massing that is really kind of the
8 big objection. Would you agree; is that kind of the general
9 sense of the testimony?

10 There was a fence there before is what I'm getting
11 at; the 6-foot, you were fine with the fence?

12 MR. HITCHCOCK: If I may --

13 CHAIR HILL: Sure, Mr. Hitchcock.

14 MR. HITCHCOCK: Height in massing I think was a
15 fair summary.

16 MR. TINEO: Yes, it's a very imposing structure.
17 So 15 feet it seems like a lot and that 6-foot fence is less
18 than half of that.

19 CHAIR HILL: All right, any more questions for --
20 and you did have something you want to say originally before
21 I ask you a question?

22 MR. TINEO: Yes, it was that point about the
23 fence. Mr. May asked about the 6-foot fence and that's true,
24 it might have imposed some sort of obstruction to your view,
25 but a 6-foot fence is not the same as a 15-foot garage.

1 CHAIR HILL: Okay. Mr. Hitchcock, I'm going to
2 turn it back to you; do you have anything else you'd like to
3 add?

4 MR. HITCHCOCK: Just one final observation; in
5 listening to the testimony a lot of the emphasis is on how
6 unique and how small the property is. But I think one ought
7 to turn that around; because of the particular conditions,
8 the level of relief required is so extensive that it really
9 undercuts the protection in the zoning regulations, and I
10 would suggest -- this board sits as a Board of Zoning
11 Adjustment -- the relief that they're asking is really it's
12 not too far to say it amounts to being zoning nullification.
13 If you look at the extent of the relief, the height, yes it
14 may be within the old limit for a garage but the alley
15 limitations and everything else is quite a departure.

16 And that's my final comment.

17 CHAIR HILL: Okay, great. Thank you. Ms.
18 Moldenhauer, I'm going to turn it to you and as I've said
19 before, I'm going to just get - I'm going to practice this
20 more and more because I'm going to get better at this -- it's
21 now your opportunity to cross-examine and as other people
22 that have had this opportunity before, I ask that you ask
23 questions that are related to the testimony that's been given
24 and I'm going to try that you ask a question, we'll get the
25 question answered and we'll go back and forth. And the hope

1 when cross-examination is I had seen is done well, it is
2 helping to clarify for the board things that are going on,
3 not to further muddy the waters. But forget about all that,
4 just -- anyways, okay. You can begin whenever you like.

5 MS. MOLDENHAUER: Mr. Hitchcock, we'll kind of go
6 backwards. You just said that you think that this is an
7 example of zoning nullification, but you are aware that just
8 ten months ago the board approved a lot area variance for an
9 alley tax lot that was actually smaller than this lot?

10 MR. HITCHCOCK: I am not a witness to be cross-
11 examined.

12 CHAIR HILL: It's just yes or no, so no is your
13 answer?

14 MR. HITCHCOCK: I'm not aware of a particular
15 decision which I have not seen, which has not been cited, no.

16 MS. MOLDENHAUER: Okay, then --

17 COMMISSIONER MAY: Ms. Moldenhauer, can you put
18 your microphone a little closer?

19 MS. MOLDENHAUER: Sure. Sure thing. So I guess
20 my question is first to Victor and then I also heard -- sorry
21 -- Mr. Dow mention the same thing and Ms. Stevens all point
22 to the question of this 15-foot structure. And you said, I
23 think each of you referenced that it's too high. Is there
24 a height that you would deem a garage structure would be
25 acceptable to you? First to Mr. Tineo?

1 MR. TINEO: So speaking for myself alone, not even
2 my wife; yes, there is an acceptable height with a caveat;
3 there are some, I guess, trust issues with your clients. And
4 --

5 CHAIR HILL: Okay, hold on. What is the
6 acceptable height; do you have something in mind or do you
7 just think that there's an acceptable height?

8 MR. TINEO: Yes. I mean, looking at the drawings
9 when she had them, it looked like 9 feet was the height of
10 a normal car garage.

11 CHAIR HILL: Okay. And then, Mr. Dow?

12 You need to push your button.

13 MR. DOW: Yes. So personally I look at the, all
14 the people that got notified of this hearing, so within 200
15 feet of the applicant's property. This is not another garage
16 within 5 feet of the property line, and on the south side of
17 the alley on Harvard Street, there's no garage at all.

18 CHAIR HILL: Okay, Mr. Dow, I'm just trying to
19 move on. So your answer is no?

20 MR. DOW: I'm happy with the fence, could live
21 with the fence. Not happy with the garage.

22 CHAIR HILL: Okay, so your answer is no. And I'm
23 sorry; Ms. --

24 MS. STEVENS: Stevens. I guess I would go along
25 with Victor; I think a carport or something that is not that

1 much taller.

2 CHAIR HILL: Okay, thank you. Ms. Moldenhauer?

3 MS. MOLDENHAUER: And then since Ms. Stevens just
4 brought it up, the question of the carport, a carport would
5 be -- can I just make sure we all understand what a carport
6 is, because I googled it and I feel like I have one image in
7 my head of a carport and people might be describing something
8 else of a carport, not architecturally what a carport is, but
9 what the opposition -- I know that there's probably a
10 definition, there's a definition that's actually in the old
11 regs that didn't follow through. But Mr. Victor Tineo, can
12 you just describe to me and the board what you mean by a
13 carport? Sorry, I'm a little sometimes visually challenged.

14 CHAIR HILL: That's okay.

15 MR. TINEO: Sure, it's almost like a four-post
16 structure with a ceiling.

17 MS. MOLDENHAUER: So do you understand that a
18 carport would still need variance relief for 303 because it
19 would be a structure?

20 I want to make sure, do you understand that, that
21 you would be supporting then of variance under the 303
22 requirement?

23 CHAIR HILL: No, no, whether or not he'd be
24 supporting a variance or not, I don't know that he'd be
25 supporting anything. He's saying what he thinks is maybe a

1 carport; you're asking him whether he understands that it
2 still needs to be approved. I suppose he understands it now,
3 perhaps. Do you understand now that that would still need
4 to be approved, your supposed carport?

5 MR. TINEO: I do so now.

6 CHAIR HILL: Okay, thank you. Ms. Moldenhauer?

7 MS. MOLDENHAUER: No other questions.

8 CHAIR HILL: Okay. For anybody else that's coming
9 up later for cross-examination, when you can hear my voice
10 get a little more tense, it means that I just don't see the
11 point. It's okay, thank you.

12 All right, I'm going to turn to the Office of
13 Planning.

14 MS. FOTHERGILL: Good evening; I'm Anne Fothergill
15 with the Office of Planning and as you saw in the Office of
16 Planning report, we are recommending denial of the variances
17 as well as the special exceptions for the relief that was
18 requested. And we did include in our staff report a
19 background section referring to the 2008 case and the board's
20 order, but we did review this case on its own merits. So
21 that was a background section and was referenced at certain
22 points when it was relevant within our staff report, but we
23 did not -- but we did review this application. And in fact,
24 this application is different; the 2008 case came under the
25 old regulations and different relief was requested and I

1 believe it was alley setback and lot occupancy, so different
2 in two forms of relief.

3 The applicant has revised the plans and part of
4 that was in consultation with the Office of Planning and
5 addressing our concerns, so we appreciate the direction.
6 It's gone in, it originally was two-car with a dwelling
7 above, and then it was two-car, and now it's one car plus
8 storage, or 1-1/2 car. And you saw the photo in the staff
9 report showing the existing conditions. And the first step
10 of this, which the applicant mentioned, is that because it
11 is a tax slot, the zoning regulations say that it needs to
12 be a record lot, and to go through the subdivision process,
13 there are a number of criteria it needs to meet and our
14 understanding is that the discussion on alley lots, when the
15 zoning discussed them, was to allow future development of
16 existing alley record lots, even if they were sub-standard,
17 but to limit the creation of new, non-conforming record lots,
18 which is what this request would be.

19 And so as such, the regulations require that any
20 new record lot, including a new alley lot, meet the
21 requirement for lot size in the zone, among other standards.
22 And in this case, that lot area is 1,800 square feet, and as
23 you heard, the existing tax lot is 557 square feet. So it's
24 substantially sub-standard from that requirement.

25 So the board found in 2008 and the Office of

1 Planning concurs that the property does exhibit exceptional
2 conditions; it is very small, it's trapezoidal shaped, it's
3 cited behind the rear of the property at 1701 Harvard, which
4 is a unique situation as you can see on the location map you
5 seen in the presentations. And but the board found in 2008
6 that these exceptional conditions didn't result in a
7 practical difficulty for the applicant since a parking garage
8 isn't required, and they denied it on that basis and didn't
9 necessarily go further in their analysis.

10 The current use of surface parking could continue
11 without the zoning relief, and in fact, generally a garage
12 on an alley lot, as the applicant stated in the beginning,
13 is a fairly simple proposal. And a garage of 450 square feet
14 is allowed by right in the zone. But in the case the lot
15 area is so small in terms of what's required, and the garage
16 needs substantial amounts of additional relief that could
17 impact the use of the neighboring properties and that public
18 alley. When you do a site visit, you're struck by how narrow
19 the public alley is and the adjacency to the vehicular alley,
20 and the addition of a structure right there would have an
21 impact on the use of that alley. And not having a setback
22 from the vehicular alley also poses some issues.

23 So for the subdivision, the Office of Planning
24 recommended denial that the two -- and then for -- I don't
25 know if you want me to continue on past that one since that's

1 the first step? Should I keep going?

2 CHAIR HILL: You're okay for now. You don't need
3 to keep going on that.

4 Okay. All right, does the board have any
5 questions for the Office of Planning?

6 MEMBER WHITE: Just one question; it sounds like
7 it's going to be very challenging for them to be able to
8 create a garage type structure in that space because OP's
9 view is that it's an exceptional configuration but it didn't
10 result in a practical difficulty. So I guess my question is,
11 are there any other alternatives that the applicant is
12 working with OP on that could potentially work?

13 MS. FOTHERGILL: Well, when we addressed the other
14 requests for relief, we did discuss things that -- we sort
15 of suggested things that could be done to lessen relief, so
16 since it needs rear yard and side yard and alley center line,
17 it's clearly sort of maximizing its space, which has an
18 impact on these adjacent properties and uses of the
19 properties. And so, for example, the applicant submitted a
20 buy right option in their submission where you cannot fit a
21 car. So understanding that if a car was to be allowed, it
22 would need relief. And we understand that, but it's possible
23 that they could need less relief with some reconfiguration.
24 However, since we don't find it meets the variance test for
25 the subdivision to create a record lot, we didn't -- they

1 can't jump to the next step if that is not allowed, that is
2 not approved by the board.

3 CHAIR HILL: And just to follow the testimony; in
4 order for there to be the carport, that would have to also
5 be -- the variance would have to be amended.

6 MS. FOTHERGILL: I can't weigh in on the carport.
7 I reviewed what's in front of me. I don't know the answer.

8 CHAIR HILL: Okay, I do have just one question;
9 in terms of like there was some testimony that was taken
10 again that the Office of Planning might feel hamstrung in
11 terms of the previous decision and I think you had stated
12 that you're looking at this strictly on its own merit and
13 you're referring to the previous decision, correct?

14 MS. FOTHERGILL: That is correct.

15 CHAIR HILL: Okay, anybody else?

16 Okay. Does the applicant have any questions for
17 the Office of Planning?

18 MS. MOLDENHAUER: I guess one question is, you
19 indicated that if a lesser structure was proposed but one
20 that would still -- and tell me if I'm -- it was larger than
21 the buy right scenario that showed that OP would review that
22 maybe more favorably? Is that what I heard?

23 MS. FOTHERGILL: So the buy right scenario does
24 not allow for car depth, correct?

25 MS. MOLDENHAUER: Yes, correct.

1 MS. FOTHERGILL: So if the applicant was able to
2 construct on this property and was proposing a vehicular
3 garage, then relief would be needed. So what we had
4 discussed with the applicant is minimizing the structure for
5 the least amount of impact on the public good and reducing
6 the amount of relief that was needed; for example, the
7 pervious surface that was removed from the application, which
8 was very good.

9 MS. MOLDENHAUER: So if the client, or if the
10 applicant reduced the structure but still needed relief, OP
11 might be able to support even the 303 relief, or?

12 MS. FOTHERGILL: I can't answer hypotheticals, but
13 we recognize that to fit a car in a garage, relief would be
14 needed.

15 MS. MOLDENHAUER: No more questions.

16 CHAIR HILL: Okay. Does the party status and
17 opposition have any questions for the Office of Planning?

18 MR. HITCHCOCK: No questions.

19 CHAIR HILL: Okay. All right, is there anyone
20 here wishing to speak in support of the application?

21 Is there anyone here wishing to speak in
22 opposition of the application?

23 Okay, if you could come forward, please. Is there
24 just one person here in opposition?

25 Okay, if you could come on forward here.

1 Good afternoon.

2 MS. JAYNE: Good afternoon, or evening.

3 CHAIR HILL: Good evening. It's getting close;
4 we'll change that over pretty soon. Did you get sworn in
5 earlier?

6 MS. JAYNE: Yes.

7 CHAIR HILL: Okay. If you could just give us your
8 name and address, and as a member of the public you'll have
9 three minutes to provide your testimony. But first give me
10 your name and address.

11 MS. JAYNE: My name is Patricia Jayne and I reside
12 at 1653 Harvard Street. I've lived there since 1986 and I
13 will speak briefly and answer some of the questions.

14 CHAIR HILL: Okay. Ms. Jayne, I'm sorry; you'll
15 speak briefly and answer some -- ok, sorry, never mind. Go
16 ahead. Sorry.

17 MS. JAYNE: I will speak briefly to some of the
18 questions that were raised earlier. I would like to point
19 out that this alley in question runs nearly half a mile, all
20 the way from Mount Pleasant Street to Irving Street; it
21 encompasses the entire 1600, 1700 and 1800 blocks of Harvard
22 Street. The only public access to Harvard Street is the
23 walkway adjacent to this property. And the traffic in this
24 alley is heavier the traffic would normally be in an alley
25 because the 1800 block consists solely of a large apartment

1 house run by the DC Housing Authority and it houses seniors
2 and the disabled. There's a tremendous amount of alley
3 traffic generated by this building. The delivery dock is in
4 the back on the alley, there are two large parking lots that
5 are on the alley, and so people cut through and use the alley
6 as a street to get to this building.

7 So for pedestrians who are coming out of this
8 pedestrian walkway side alley, it's an extremely dangerous
9 situation to not have a line of sight.

10 I'd like to speak also to the question about the
11 garages; there are no garages in the entire 1700 block.

12 CHAIR HILL: I'm sorry to interrupt you just real
13 quick; Mr. Moy, could you start the clock for me?

14 Thanks. Sorry.

15 MS. JAYNE: The 1600 block which is where I live
16 are older houses and they were all built with what I would
17 refer to as an integral garage; they were built for Model T's
18 and the garage was underneath the house with a short
19 driveway, a short very steep driveway. Most of them have
20 been converted to parking pads. There is only two garages
21 in the 1600 block; one is immediately to the east of my house
22 at 1651 and there is another one, and I'm forgetting the
23 number in the 1640's. Other than that, everyone either uses
24 still their integral garage or has a parking pad.

25 In reference to the fence that was on this

1 property, my recollection, and as I've said, I've lived there
2 since 1986, was initially, and when I moved in it was just
3 a chain-link fence. There was no boards within the chain-
4 link fence, so the line of sight issue wasn't a problem. I
5 was a little less -- I don't know what the right word is --
6 conscious of the permitting process that would have been
7 needed to add the board to the fence. And so I have no idea
8 whether the initial construction of the chain-link fence,
9 much less the addition of the boards, that there was a permit
10 for that. But that, as it is, I would personally object now
11 since the permitting process is required to any definition
12 of the side lot variance, the definition of the side lot
13 requirement to narrow this alley further. The traffic has
14 only increased the 30 some years that I've lived there, and
15 I think that for the protection of the pedestrians who use
16 this very commonly, it's very busy pedestrian walkway, and
17 they walk through the alley to reach it, we need the side lot
18 requirement.

19 Thank you.

20 CHAIR HILL: Okay, great. Thank you. Does the
21 board have any questions for the witness?

22 Okay, does the applicant have any questions for
23 the witness?

24 MS. MOLDENHAUER: I'm just confused, but if a
25 fence was put on the property line which could be done as a

1 matter of right, you would still lose these sight line that
2 you're talking about?

3 MS. JAYNE: I'm not aware that it is a matter of
4 right.

5 MS. MOLDENHAUER: But if a fence was put on the
6 property line, would you lose the sight line that you're
7 concerned about?

8 MS. JAYNE: You would lose some of it, yes. Not
9 15 feet of it which would block any possibility of sight
10 line.

11 CHAIR HILL: All right, Ms. Jayne, thank you so
12 much. All right, Mr. Hitchcock --

13 MR. HITCHCOCK: Quick question --

14 CHAIR HILL: Oh, sure.

15 MR. HITCHCOCK: Was there a difference in your
16 view if it was chain link as opposed to wood fence?

17 MS. JAYNE: Yes.

18 MR. HITCHCOCK: Could you elaborate?

19 MS. JAYNE: I personally have no objection to
20 chain link fences -- I know some people do -- but I think
21 that they provide as much security and are probably sturdier
22 than a wooden fence and allow for visibility.

23 CHAIR HILL: Okay. All right, thank you. All
24 right, thank you Ms. Jayne. We did -- so there's no one here
25 that wishes to speak in opposition -- I can see a lot of

1 people that have been here all day -- all right, so I'm going
2 to go back to Ms. Moldenhauer who has an opportunity for
3 rebuttal.

4 MS. MOLDENHAUER: And I would ask the board's
5 possible indulgence's to see if you could either give me 10
6 or 15 minutes just to go and talk to, call my client since
7 they're obviously abroad and not here, to just consult with
8 them before providing my rebuttal. Or you can even have the
9 other case, the Tree case you tried to have before, I would
10 also ask the opportunity to consult with them before
11 presenting the rebuttal.

12 CHAIR HILL: So that's new. I don't particularly
13 have an issue with that so that your client can have an
14 opportunity to respond. I suppose they're watching or you're
15 going to just call them on the phone and just see if there's
16 any rebuttal.

17 Okay, so the -- and I'm just curious to OAG, that
18 there's no problem with this?

19 MS. GLAZER: Basically, I think counsel's asking
20 for a brief recess of the case.

21 CHAIR HILL: Okay.

22 MR. HITCHCOCK: I'd like to not an objection; I
23 mean, if the witness is available by phone now, question, why
24 was he not available for the last two hours to testify by
25 telephone? This is somewhat unusual. And testify and be

1 cross-examined. I mean, Ms. Moldenhauer will consult, but
2 this is rather unusual.

3 MS. MOLDENHAUER: I'm going to see if I can call
4 them in Africa and have a conversation.

5 COMMISSIONER MAY: We don't do testimony by
6 telephone or video or anything like that, so if the witness
7 is here, the witness is here. If he's not, he's not. Her
8 client I think it's perfectly reasonable for her to have an
9 opportunity to consult with her client before continuing.

10 MR. HITCHCOCK: Okay, my objection is noted for
11 the record. Thank you, Commissioner May.

12 CHAIR HILL: Okay, so before you go talk to your
13 client then, so I'm curious of a couple things if you're
14 going to talk to your client; so I'd like to know why your
15 client tore down the fence and when your client tore down the
16 fence -- okay, right -- yes, if the client tore down the
17 fence -- and then -- or I'm just asking you, so this is where
18 I'm going to ask you later -- I was going to ask you later --
19 there was all this trash that was left there, why was the
20 trash left there? Were they tearing it down so that they
21 thought this was definitely going to happen and therefore
22 they were just leaving trash there?

23 That's okay; you're going to have an opportunity
24 to speak to the person in Africa, right. So that's kind of
25 what I'm curious of if you get through to them; again, what's

1 the whole deal with the trash being there and when was the
2 fence tore down.

3 Okay, so now we will go to the next case. We're
4 going to go to the next case, so we'll come back after that,
5 okay, for rebuttal and then you'll have an opportunity to
6 cross. Thank you.

7 MS. MOLDENHAUER: Thank you, I appreciate it.

8 CHAIR HILL: We are going to take a two-minute
9 break.

10 (Whereupon, the above-entitled matter went off the
11 record at 5:41 p.m. and resumed at 5:49 p.m.)

12 CHAIR HILL: All right. Mr. Moy, did we figure
13 out how all the technology is working? And are we kind of
14 good to go, or where are we?

15 MR. MOY: Okay. Sir, we're with Plant the Seed.
16 We're going to plant the seed.

17 CHAIR HILL: Okay.

18 MR. MOY: Okay. I see the parties at the table.
19 This is Case Application Number 19677 of Plant the Seed Youth
20 Treatment Services.

21 Now, this application, Mr. Chairman, has been
22 amended. And as far as I recall, it is now for special
23 exception under the -- under the use provisions of
24 Subtitle U, Section 203.1(i), to increase the occupant load
25 of an existing healthcare facility from six to 15 persons in

1 the R-2 zone. And this is at premises 5212 Astor Place,
2 Northeast, Square 5308, Lot 25.

3 CHAIR HILL: Okay. I'm going to say good evening.

4 MR. MICHAEL DAVIS: Good evening, and thank you
5 for hearing our case and allowing us to amend the case to be
6 heard today.

7 CHAIR HILL: Okay. Great. Could you just give
8 us your name and address, please?

9 MR. MICHAEL DAVIS: My name is Michael Davis. The
10 address of the facility or the address of my company?

11 CHAIR HILL: The facility is fine.

12 MR. MICHAEL DAVIS: 4865 F Street, Southeast,
13 Washington, D.C.

14 CHAIR HILL: All right.

15 MR. MICHAEL DAVIS: 20010.

16 CHAIR HILL: So, Mr. Davis, you're going to be
17 presenting to us?

18 MR. MICHAEL DAVIS: I will be presenting.

19 CHAIR HILL: Okay. So if you could, again, tell
20 us about the -- what you're trying to do. And then, also,
21 if you could speak to the condition that the Office of
22 Planning has put forward as well for you in terms of your
23 understanding of it? And then I suppose also you could speak
24 to kind of the ANC and how you've gone through that process
25 and how your experience was with them.

1 And I don't know why we lost our monitors, or at
2 least I lost mine. Okay. Well, there's one over here. Oh,
3 there we go.

4 Okay. And, again, how you're meeting the standard
5 for us to grant the relief requested. And I'm going to put
6 10 minutes up on the clock, just so I know where I am, and
7 you can begin whenever you'd like.

8 MR. MICHAEL DAVIS: Okay. First, I'd like to say,
9 again, thank you for the opportunity to come before you. I
10 would first like to start by saying that we're trying to
11 implement a substance abuse residential treatment program for
12 youth at 5212 Astor Place. It currently has a certificate
13 of occupancy of six. We want to increase that occupancy to
14 15 for in-patient substance abuse treatment for youth.

15 We have been speaking with -- since the beginning
16 of the process, and we learned that we had to seek some
17 alliance with -- with the ANC, we have been having several
18 conversations and several interactions with them. And that
19 was noted in our application, and we forwarded most of that
20 information to you during the -- in the BZA application
21 process.

22 We have been -- we have gone to the meetings. We
23 have talked about what we wanted to do in terms of in-patient
24 care. Today, there is no youth treatment, residential
25 treatment program available for youth in D.C. at all. Youth

1 are sent to Baltimore, Florida, and various cities outside
2 of the area, which creates a challenge when you talk about
3 continuity of care, and you're talking about family
4 interaction in terms of treatment.

5 So they -- of course, they sent the report, and
6 they were, you know, pretty much against it and voted against
7 it. One of their concerns was that there were more -- they
8 had their share of programs in the area, and we reiterated,
9 as in the -- that's in the record, too, that we reiterated
10 that we weren't adding any programs to the area. We were
11 simply replacing a program that had dissolved, Education
12 Solutions, in that same 5212 Astor Place.

13 So it wasn't -- it wasn't going to be an
14 additional program in that area. It will simply be a
15 different type of program.

16 We did due diligence in seeking the support in the
17 community to see what the community felt about it, and we
18 were able to obtain over 160 names of residents who live
19 directly in the SMD 7E06. Fifteen of those residents live
20 directly across the street from the proposed site, and the
21 others live within 7E06, which is where the program would be.
22 Three of those signatures are signatures of the pastors of
23 the churches that are in that community.

24 And with, we presented that. We also went to
25 several of the home associations. One in which I speak

1 clearly of is the Glencrest, which sits in 7E04 and 5, and
2 participated in their housing association to meet with them
3 and the residents there. And they have -- they have given
4 some overwhelming support. I didn't have time to get that
5 submitted into the record, but I wanted to speak to that.

6 Treatment is essential. And when you don't have
7 residential treatment, you lose a delivery service in the
8 -- it's a gap in the delivery service of treatment. To date,
9 right now, D.C. only provides outpatient care, and that
10 outpatient care, once they cannot progress through the
11 outpatient care, like I said, they are sent out of the city.

12 So we are trying to -- trying to implement a
13 program that would allow the youth to participate in
14 residential treatment as patients, receive clinical --
15 certified clinical evidence-based care by practitioners who
16 are licensed by the District of Columbia, and provide them
17 with 28 days of residential substance abuse treatment. And
18 at that point, they would be able to transition back into the
19 community.

20 And I would like to go on to some of the areas of
21 treatment that we would --

22 CHAIR HILL: Okay. Actually, Mr. Davis, I mean,
23 I think the record is pretty full on a lot of the things that
24 you're speaking to. So, actually, what I'd like to do is
25 kind of just continue to work through the application hearing

1 --

2 MR. MICHAEL DAVIS: Sure.

3 CHAIR HILL: -- and then the Board come back and
4 ask any questions of you. The one -- the one item that was
5 a condition of the Office of Planning, and I'd just like to
6 get verification, was that the healthcare facility shall not
7 exceed 15 residents, not including supervisors and staff, and
8 you're in agreement with that condition, correct?

9 MR. MICHAEL DAVIS: I'm in agreement with that.

10 CHAIR HILL: Okay. So I'm going to turn to the
11 Office of Planning.

12 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman,
13 and members of the Board. Again, Maxine Brown-Roberts for
14 the record.

15 As outlined in our report, the special exception
16 that the facility is governed by his Subtitle U, 203 --
17 203.1(i), and in -- and which outlines a number of
18 requirements, and the applicant has met all of the relevant
19 requirements as outlined in our report.

20 And, therefore, we recommend approval with the
21 condition that the facility not exceed 15 residents, which
22 the applicant had -- had requested.

23 And I'm available for questions.

24 CHAIR HILL: Okay. Great. Does the Board have
25 any questions for the Office of Planning?

1 Okay. Does the applicant have any questions for
2 the Office of Planning?

3 MR. MICHAEL DAVIS: No.

4 CHAIR HILL: Okay. Is there anyone here from the
5 ANC? Is there anyone here wishing to speak in opposition?
6 Is there anyone here wishing to speak in support? If you
7 could please come forward.

8 COMMISSIONER MAY: Mr. Chairman, actually, I have
9 a question for the applicant.

10 CHAIR HILL: Certainly.

11 COMMISSIONER MAY: Just to clarify, you said that
12 this -- that there are no existing programs that provide this
13 treatment.

14 MR. MICHAEL DAVIS: For youth in D.C. at all.

15 COMMISSIONER MAY: Right. And then, but you also
16 said that this -- that Plant the Seed will replace another
17 program that used to be in the same location.

18 MR. MICHAEL DAVIS: Same location.

19 COMMISSIONER MAY: And it was the same kind of
20 program.

21 MR. MICHAEL DAVIS: No. It was Education
22 Solutions. It was some type of educational program.

23 COMMISSIONER MAY: It was an educational -- it was
24 a resident educational --

25 MR. MICHAEL DAVIS: It was a residential, but it

1 provided some type of educational literacy. It didn't deal
2 with substance abuse or treatment.

3 COMMISSIONER MAY: Okay. All right. Thank you.

4 CHAIR HILL: Okay. Ms. White, you had a question?

5 MEMBER WHITE: Yeah. I'm looking -- well, it
6 looks like maybe the ANC did not show today, but I did have
7 a question about some of the comments that they raised, and
8 I want to give you a chance to respond because they denied
9 the application.

10 And one of the things that they mentioned was
11 concerns for the safety of the community, so I just wanted
12 you to be able to have an opportunity to address that, and
13 also to maybe talk a little bit about the extent of your
14 experience in dealing with the challenges of youth addictive-
15 type issues within the community, just to give us some
16 feedback on that.

17 MR. MICHAEL DAVIS: Okay. Currently, I am the
18 director of a residential substance abuse program. I have
19 been a director for four years. I've been in the field of
20 substance abuse treatment as a practitioner. I currently
21 hold a professional license with the District of Columbia.

22 I have been in the field working as a substance
23 abuse practitioner for over 10 years in Washington, D.C. And
24 I might add, I am not just a resident, I am a constituent of
25 the same community. And when -- and in speaking about youth,

1 currently, right now, I am a clinical supervisor for two
2 outpatient programs that provide services to youth, one which
3 is the largest in the city, Hillcrest Services.

4 The type of security that we will provide, there
5 is a mandatory ratio that when you're dealing with youth you
6 have to have for staff -- for every four youth, you have to
7 provide one staff. For surveillance and security, it would
8 be up to the utmost who have outside cameras. Inside there
9 is a 30-minute accountability for the youth.

10 There are behavioral measures put in. Their
11 family is always there for support. We have professional
12 licensed social workers who are on board who will be
13 providing services during the day. At no time will the youth
14 be unsupervised. There will always be at least four, at a
15 minimum, professional staff on board, 24 hours, seven days
16 a week.

17 MEMBER WHITE: Okay. Thank you.

18 CHAIR HILL: Okay. Ma'am, you just came and sat
19 down. Are you -- are you -- if you could just speak into the
20 microphone?

21 MS. DAVIS: Yes. I'm a proponent. My name is
22 Catherine Davis.

23 CHAIR HILL: Okay.

24 MS. DAVIS: In support.

25 CHAIR HILL: You're coming to speak in support.

1 Okay. Great. And were you all sworn in?

2 MS. DAVIS: Yes.

3 CHAIR HILL: Okay. Great.

4 MS. DAVIS: Early.

5 CHAIR HILL: Okay. Yeah, I'm sorry. That's good.

6 All right. Let's see. So I'm going to start on
7 this end, and if you could just introduce yourself, and then
8 give your name and address. And everyone will get three
9 minutes to speak. And so there is clocks there on the
10 ceiling up there, and you can begin whenever you'd like, sir.

11

12 MR. DARYL DAVIS: Okay. My name is --

13 CHAIR HILL: You have to push the button there
14 until it turns on red.

15 MR. DARYL DAVIS: Okay. My name is Daryl Davis, and
16 I currently live at 2012 Rosedale Street, Northeast, which
17 is in the 7 Ward. I just want to say a short -- because I
18 know we have a lot, but the rehab residential helped my life.
19 I just want to say what it done for me. I was on crack for
20 many years, and a program stopped it.

21 Today I am a pastor of the Assembly of Life
22 Community Church. I wouldn't be there, I don't think, if it
23 wasn't for a program. I believe the youth need that set-
24 aside time to hear it, just like I did.

25 CHAIR HILL: Thank you, Pastor Davis.

1 MS. LEE: Hello. My name is Danina Lee. I'm from
2 Baltimore, Maryland. My address is 3529 -- oh, I'm sorry,
3 I'm nervous. I came to Washington, D.C., because I was
4 working with the youth in Baltimore, Maryland in Mount Manna.
5 And I have, you know, spoken with the children, and I have
6 heard their stories of no support.

7 And so I reached out to Mr. Davis and asked him
8 for help, and he -- you know, we understand that they really
9 need the support from D.C. and it's -- for their family, but
10 the distance, they -- it was no great outcome, because the
11 parents couldn't make it to come see them, come support them,
12 or anything. So I think that the program would be an
13 excellent add-on to Washington, D.C.

14 CHAIR HILL: Okay. Thank you.

15 Sir?

16 MR. CARTER: My name is Michael Carter. I
17 currently reside at 5249 Benning Road, which is a few blocks
18 from where the program will be. I think it's a wonderful
19 idea for the youth, because there are a lot of programs for
20 adults, and to me I just feel that if you can catch these
21 youth younger, then -- as opposed to being older in
22 addiction, it gives them a better chance.

23 And me being a long-term resident of this
24 community -- I was born and raised in this community -- I'm
25 pretty sure I know a lot of youth that needs this treatment.

1 And it's not, like the young lady was saying, it's
2 no real support when you send them away to another state,
3 city, and I think it's a wonderful idea for them to be, you
4 know, in close-knit with their family and communities. I
5 think it will help the program better that way.

6 CHAIR HILL: Okay. Great. Thank you, sir.

7 Ma'am?

8 MS. DAVIS: Yeah. Hi. I'm Catherine Davis, and
9 Michael is my brother and he has asked me to join in this
10 endeavor as a response to the District's request for
11 providers for this service. And one of the reasons is I'm
12 a retired teacher, I have a master's in community health, and
13 to note that the District does not have this service as it
14 appears to be a serious service gap.

15 And so to see it begin, be implemented, of course
16 is necessary. And I just wanted to say that the residents
17 that my brother has identified is totally -- is totally able
18 to sustain the number of patients that he is requesting.

19 It's a nine-bedroom, six-and-a-half-bathroom
20 residence, and he was very pleased that -- to identify this
21 home because of the non-institutional ambience of it for
22 these patients who are coming in, a lot of them, out of
23 institutional settings.

24 So I am hoping that he can get the special
25 exception to increase the capacity and serve as many as

1 possible, to service as many as possible. So thank you.

2 CHAIR HILL: Okay. Great. Thank you very much.

3

4 Does the Board have any questions or comments for
5 the witnesses? Nobody has a comment or anything? I mean,
6 I have a comment, which is that, thank you all for staying
7 so late and, you know, it's -- it's really kind of -- I mean,
8 you've been here all day, and, you know, it's important to
9 hear from the community and from, you know, people that are
10 testifying as to what might happen with the cases that are
11 going on here.

12 And it's cases like this that, you know, I really
13 appreciate being a part of, and why, you know, we're here
14 -- a lot of the reason why some of us are here. So, but in
15 any case, thank you all very much for coming down.

16 MS. DAVIS: Thank you.

17 CHAIR HILL: So back to you, Mr. Davis, is there
18 anything else you'd like to add?

19 MR. MICHAEL DAVIS: No, not at this time.

20 CHAIR HILL: Okay. And the Board doesn't have any
21 more questions of anyone?

22 Okay. Then I'm going to go ahead and close the
23 hearing. Is the Board ready to deliberate?

24 Okay. I can start. As I've already now
25 proclaimed, I -- well, I mean, I -- I can appreciate the

1 project and what the project is trying to accomplish. In
2 terms of the zoning requirements, I feel that the -- as is
3 with the report from the Office of Planning, that the
4 applicant has met the criteria for us to grant the special
5 exception.

6 It is -- I'm sorry that the ANC was not on board,
7 and also can understand their concerns, but I think that as
8 Ms. White's question was answered to kind of ally -- you
9 know, I'm trying to figure out what that word is that I'm
10 looking for, but, you know, calm the fear -- alleviate, thank
11 you. Thank you. Some of the concerns that the ANC might
12 have, I'm comfortable with moving forward with this
13 application.

14 Does the Board have any other thoughts?

15 MEMBER WHITE: Mr. Chairman, yeah, I'm certainly
16 supportive of this application as well. It's really amazing
17 that this would be the only residential youth facility in the
18 nation's capital when addiction is such a huge issue right
19 now.

20 So without going -- preaching about the necessity
21 of having such a facility, I'd just like to congratulate you
22 in putting it together and getting, you know, the support
23 that you have here to try to push this application forward.
24 I think they have met the criteria, and I would be in support
25 of providing the relief that they are seeking.

1 CHAIR HILL: Okay. Great. Then I'm going to go
2 ahead and make a motion to approve Application Number 19677,
3 as captioned and read by the secretary, and ask for a second.

4 COMMISSIONER MAY: Second.

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

7 (Chorus of ayes.)

8 CHAIR HILL: All those opposed? The motion
9 passes.

10 Mr. Moy?

11 MR. MOY: Thank you. Staff would record the vote
12 as five to zero to zero. This is on the motion of Chairman
13 Hill to approve the application for relief being requested.
14 Seconding the motion, Mr. Peter May. Also in support Ms.
15 White, Vice Chair Hart, Ms. John.

16 After saying that, was I correct that there is no
17 condition attached to this?

18 CHAIR HILL: Oh, I'm sorry. I apologize. I now
19 have to redo this I guess. So, again, and thank you for
20 clarifying.

21 I want to make a motion to approve
22 Application 19677, as captioned and read by the secretary,
23 including the condition that was agreed to by the applicant
24 with the Office of Planning, which was the healthcare
25 facility shall not exceed 15 residents, not including

1 supervisors and staff, and now ask for a second.

2 COMMISSIONER MAY: Again, second.

3 CHAIR HILL: The motion has been again seconded.

4 All those in favor?

5 (Chorus of ayes.)

6 CHAIR HILL: All those opposed? The motion
7 passes, Mr. Moy.

8 MR. MOY: All right. Thank you, Mr. Chair. The
9 vote is five to zero to zero, and the motion carries.

10 CHAIR HILL: Okay. So we have to do a full order,
11 correct, Mr. Moy?

12 MR. MOY: Yes, unless -- unless our counsel feels
13 otherwise, but I think it's a full order.

14 MS. GLAZER: It is a full order, but because the
15 ANC's issues and concerns have to be addressed.

16 CHAIR HILL: Okay. All right. Okay. Then full
17 order, Mr. Moy.

18 Okay. Thank you, all.

19 (Pause.)

20 CHAIR HILL: We haven't called anybody yet.

21 MS. MOLDENHAUER: Oh, okay. I thought you guys
22 were saying that you had called us. I apologize.

23 (Pause.)

24 CHAIR HILL: All right. Mr. Moy, I think we're
25 back to wherever we're back to. I think. If we've reached

1 Africa.

2 Okay. Wait, wait. You've got to talk in -- I
3 don't know what's happening, so let's -- let's get called in
4 first before everyone gets to have their fun. If you would
5 recall us, Mr. Moy, when you have an opportunity.

6 MR. MOY: Yes, sir. On the recess of Case
7 Application 19629, this is Timothy and Charlotte Lawrence.

8 CHAIR HILL: Okay. Do we need them to introduce
9 themselves again? Okay. We're going to introduce ourselves
10 again. Okay. Just because you're at the table here. Okay?
11 So please --

12 MR. TINEO: Victor Tineo.

13 MR. HITCHCOCK: Cornish Hitchcock, counsel for
14 Victor Tineo and Lauren Yamagata.

15 MR. HEISEY: Joel Heisey, architect for the
16 applicant.

17 MS. MOLDENHAUER: Meredith Moldenhauer, attorney
18 for the applicant.

19 MR. VARGA: Stephen Varga, Cozen O'Connor.

20 CHAIR HILL: And, sir, over here on the right?

21 MR. DOW: Geoff Dow.

22 CHAIR HILL: Okay. So now, Ms. Moldenhauer, you
23 were going to begin your rebuttal. And we're going to give
24 you 10 minutes, okay? And so go ahead and take your 10
25 minutes. Then we're going to go to the next thing.

1 MS. MOLDENHAUER: So, first, we were not able to
2 reach our client. We did not expect this to be so late in
3 the evening here on the east coast, obviously, more or less
4 at the time.

5 Your question about the fence, Mr. Heisey had
6 indicated that the fence had been removed after the prior
7 case, so that's the timing of that. But then, in the second
8 regard, our client had -- you know, in, obviously, the
9 process of being -- trying to plan for a hearing that they
10 are not present in, had indicated that if we had heard some
11 comments from the opposition about willingness to compromise,
12 and we heard comments about the 10 feet, and so we also heard
13 I think some comments from OP.

14 So I am now going to turn over to Mr. Heisey, who
15 is the architect, to present a rebuttal plan set that I think
16 the Board, and we have shown it to the opposition, and Anne
17 will want to consider, and then we can obviously determine
18 how to go from there.

19 CHAIR HILL: Wait a minute. Wait, wait, wait,
20 wait. So you guys are going to -- you're -- so, originally,
21 there was going to be rebuttal to everything we had heard.
22 And so now you're proposing what again? I'm sorry, I got a
23 little lost. You're now going to try to propose some
24 compromise?

25 MS. MOLDENHAUER: Yes, that's -- it is a

1 compromise based on -- so we had had negotiations or
2 attempted to negotiate with the opposition previously, and
3 it had not come to a resolution. And so at today's hearing,
4 we heard -- and at lots of times, obviously, hearings allow
5 for opportunities to mediate and hear --

6 CHAIR HILL: Okay. That's all right. I'm just --
7 I understand. God, I can't believe we're -- okay. No, I'm
8 just -- so -- so the reason why I'm trying to stop here is
9 that I -- and we can go through this, and we'll see -- so go
10 ahead. Never mind. Go ahead, go ahead.

11 MR. HEISEY: I'll keep it in with the eight
12 minutes. And part of this is there was an attempt to earlier
13 have a dialogue and address some of these issues. That, for
14 various reasons, didn't happen.

15 So in that process, we did prepare some
16 alternatives that were addressing people. So what has come
17 up, what you're looking at here is reduced to a single-car
18 garage on the lot. It applies -- it addresses a lot of the
19 OP issues.

20 CHAIR HILL: Yeah. Okay. Hold on, hold on, hold
21 on. So now OAG -- OAG, I'm trying to understand, are you
22 trying to revise your proposal right here, right now, and
23 give us something new to look at? And then that hasn't gone
24 to the ANC, OP hasn't had a chance to look at that yet, so
25 I don't understand what we're trying to do.

1 MR. HEISEY: We'd like the opportunity -- I guess
2 what --

3 MS. MOLDENHAUER: We'd like the opportunity to
4 present this and then, obviously, continue the hearing and
5 allow everyone to -- but we would just like to present this
6 because I believe that this revised drawing responds in our
7 rebuttal, in that regard, to comments that we have heard
8 today. And we can make it brief.

9 CHAIR HILL: Yes. Commissioner May?

10 COMMISSIONER MAY: Mr. Chairman, you know, it's
11 one thing to sort of, you know, tweak something a little bit,
12 to make a little bit of a compromise, move something a foot,
13 right? To move back a foot from the -- from the pedestrian
14 alley.

15 But, I mean, this is a completely different plan.
16 The Office of Planning needs to weigh in on it, and the ANC
17 needs to weigh in on it. So, I mean, we -- I don't see any
18 reason to do anything further at all.

19 CHAIR HILL: Yeah. And I hear, like over here,
20 you know, other comments from the Board, and I guess I'm kind
21 of now -- I appreciate that you guys are kind of coming
22 together and talking. But like we've been here now for three
23 hours hearing about one thing. I'm ready to move forward.
24 Like are you withdrawing your application? Are you -- you
25 know, are you changing this to now -- let's hear rebuttal

1 from whatever you all were originally proposing? Is that
2 what we are talking about? I don't understand.

3 VICE CHAIR HART: Honestly, it is -- I'm actually
4 trying to keep a little calm here. I would like to actually
5 not hear a rebuttal because I don't think that's going to be
6 worth our time because we're really not going to be talking
7 about that if we're going to be talking about this.

8 What I would propose is that we actually have you
9 submit this and we have -- have a continued hearing, and we
10 don't go any farther with this -- this portion of this
11 hearing. So then we can have this discussion, have the ANC
12 weigh in, have OP weigh in, because right now I just feel
13 like we're -- we're kind of, okay, now we're looking at
14 something completely different. Now, how do we look at this?

15 And so it doesn't make any sense to me to continue
16 going today on this proposal that you have -- that's on the
17 -- the screen right now. And like I said, I'm a little bit
18 taken aback by it. Not that it -- it's bad or anything.
19 It's more than like, well, why didn't we just look at this
20 previously? And I understand that you said you needed to
21 have some kind of dialogue or whatever, but it just -- I
22 don't want to try to do some sort of discussion in -- in this
23 -- in this process without having OP or the ANC weigh in on
24 it.

25 I just don't see that it's -- it does us any good

1 to go through the presentation now, if we're going to have
2 to go through another presentation of this whenever this
3 comes back for -- for the continued public hearing. So I'm
4 just --

5 MS. GLAZER: Can I just say something, Mr. Chair?
6 It's also possible with a compromise and a new proposal that
7 we will not have parties in opposition. And so the hearing
8 really should be continued, and that would be a positive
9 thing, if that were to happen.

10 COMMISSIONER MAY: So, Mr. Chairman, introducing
11 something like this very clearly is going to either -- I
12 think it has to necessitate a continued hearing. But I think
13 that what the applicant needs to understand here is that this
14 is not just a matter of addressing the concerns that were
15 raised by the neighbors. I think the big hurdle that you
16 have to clear is the Office of Planning.

17 And what you've suggested before about the
18 potential for the BZA essentially to rewrite the zoning
19 regulations in effect has not been compelling. And I think
20 that you have an extremely high hurdle, at least from my
21 perspective, on whether you can actually clear that. If you
22 come back somehow and magically the Office of Planning is in
23 agreement that you do not need a variance, that this can be
24 treated as a special exception, or, you know, you get over
25 the whole record mod issue somehow. Then there is probably

1 something to talk about.

2 But if you're just going to try to come up with
3 something that, you know, preserves sightlines and satisfies
4 the concerns of the neighbors, I mean, I appreciate the
5 concerns of the neighbors, but I don't think that that's the
6 -- the biggest hurdle you have to clear.

7 So, I mean, I'm fine with -- with continuing the
8 case, but I -- you know, I would need to know that the
9 concern about record lot and the need for a variance is
10 addressed.

11 MEMBER WHITE: I'm not shocked that, you know,
12 they came up with an alternative solution. It's just that
13 we've been sitting here for a long time saying, you know,
14 there is a little agitation with respect to that. But I
15 think, you know, it would be good to sort of continue the
16 hearing in order, as you said, to give the Office of Planning
17 an opportunity, as well as possibly the ANC, as well as us,
18 to look at -- look at everything.

19 But these kind of things happen, you know, so I'm
20 -- I'm willing to take another look at it in the event we're
21 able to -- the parties are able to resolve all the issues.

22 So --

23 CHAIR HILL: Okay. I -- I think that -- I'm just
24 trying to figure out how to work through this. I think that
25 the -- the applicant is doing a good job in terms of trying

1 to do what they're trying to do. And so, you know, they
2 presented a case, and we were going to deliberate upon that
3 case, be it today or whenever it was.

4 And so now I'm just trying to figure out I guess
5 kind of how I feel about how this is kind of moving forward.
6 But in terms of this design, which I assume you had then
7 because you didn't just draw this up, right? I mean --

8 MR. HEISEY: Well, it was in anticipation of
9 trying to work with --

10 CHAIR HILL: Sure. Okay.

11 MR. HEISEY: -- the neighbors. But --

12 CHAIR HILL: That's fine.

13 MR. HEISEY: -- the meetings and things didn't
14 happen --

15 CHAIR HILL: I understand.

16 MR. HEISEY: -- for various reasons.

17 CHAIR HILL: Okay. I got it. And, I mean, this
18 is what we're here for, so it's -- it's all right. But so
19 the only -- I mean, now, I mean, you'd have to go to the
20 Office of Planning again. You'd have to go to the Office of
21 Planning with this. You'd have to -- and I don't know from
22 OAG like whether anything has to change in terms of if the
23 same application -- so I guess I'm trying to figure this out,
24 Ms. Moldenhauer. It would still be a variance. To address
25 Mr. -- Commissioner May's point, it would still be a variance

1 with this, correct?

2 MS. MOLDENHAUER: It would -- there would still
3 be a variance. We are still -- we are removing the side lot
4 requirement for setback from the pedestrian alleyway, and we
5 are also reducing the structure below the 450 square foot
6 requirements. Substantially, actually, we are only now at
7 265.

8 CHAIR HILL: So you don't know if this would be
9 something that the Office of Planning may or may not be able
10 to get behind.

11 MS. MOLDENHAUER: We do not know.

12 CHAIR HILL: Okay.

13 MS. MOLDENHAUER: And --

14 CHAIR HILL: That's okay. Just curious. So the
15 -- I guess, then, to keep it alive, if you want to keep it
16 alive, is -- is we can go ahead and continue it. You can go
17 work with the Office of Planning. We can get a supplemental
18 report from the Office of Planning. You can go back to the
19 ANC, get another presentation with this, because it's a
20 different design, it's a different everything, and then we're
21 back here again after that.

22 Otherwise, and what -- I mean, I'm not -- I guess
23 the part that I'm kind of struggling with is that if we had
24 gone through this, if you had gotten denied, right, then I
25 think you would not -- if I understand it, you're not able

1 to reapply again for a year.

2 MS. MOLDENHAUER: Yes. And I --

3 CHAIR HILL: Okay.

4 MS. MOLDENHAUER: Can I just explain something
5 really quickly?

6 CHAIR HILL: Sure. And I'm just trying to walk
7 through this, and then you can -- is that -- is that you
8 wouldn't be able to apply -- you wouldn't be able to apply
9 again for a year. So your applicant would then be stuck with
10 having to wait for a year to come back with this, right?

11 So I guess just it seems -- I feel a little bit
12 like, you know, we're looking at something, you're taking a
13 shot at something, and then in the middle you're going to
14 maybe take a shot at something else, which is fine for the
15 applicant. I just -- I'm just not really sure how I feel
16 about it.

17 But so to -- you can respond, Ms. Moldenhauer.
18 I'm not faulting the -- I'm not faulting the process. I'm
19 just trying to -- it's a new garage, and so --

20 MS. MOLDENHAUER: It's the same -- it's the
21 structure. It meets a lot of the similar relief. It's
22 reducing the relief, but it's, obviously, trying to address
23 a lot of the concerns and reduce the overall relief
24 requested.

25 And I think just so that the Board understands,

1 I understand it has been a long day, that our client is
2 obviously -- they have expended the costs to go through the
3 process. They are trying to expedite the process and say if
4 there is an opportunity to -- that we heard comments, to
5 provide this to the Board, and to get a resolution because,
6 obviously, for them, you know, continued delays cost them
7 more money in regards to the process.

8 CHAIR HILL: Okay.

9 MS. MOLDENHAUER: And that is one of the reasons
10 why, you know, we wanted to then show this during the
11 rebuttal, but we understand the Board's position that we need
12 to, obviously, get a supplemental report from OP.

13 CHAIR HILL: Well, I mean, I don't even know what
14 the height is of that thing now. So what's the height of
15 that, still the 15 feet?

16 MS. MOLDENHAUER: No. It's reduced.

17 CHAIR HILL: Right. So I'm just saying, like we
18 don't know what we're looking at at all. And so, okay, let's
19 go -- if the Board is fine, then we'll go ahead and continue,
20 and go ahead and work with the Office of Planning with
21 whatever -- I guess -- however you need to work it now to get
22 back here, go ahead and work with the Office of Planning, see
23 what the Office of Planning has. The Office of Planning can
24 give us a supplemental report to this.

25 Then you can go back in front of the ANC again and

1 get a supplemental -- another report from the ANC on this
2 particular design. And I guess we can come back, if you can
3 make -- if you didn't come back by the time -- and get this
4 all done by the time Mr. May is back again, then that's fine.
5 Otherwise, I don't know. And I guess you want to --

6 COMMISSIONER MAY: Well, I mean, I think the ANC
7 is probably a complication. I don't know when the ANC meets.
8 Does anybody know?

9 MS. MOLDENHAUER: They meet the third Wednesday --
10 sorry, the third Tuesday of the month. So they would be
11 meeting on the 20th, and you are back on March 21st, based
12 on your statement earlier tonight. So they would be able to
13 meet the night before, the same way they met the night before
14 this hearing.

15 CHAIR HILL: Okay. But that would give you now
16 how -- what -- oh, the 21st.

17 MS. MOLDENHAUER: So that would give us 20 days.

18 CHAIR HILL: Three weeks. A month. A month.
19 Okay. All right. Then, if that's -- if the Board is
20 comfortable with that, and I assume then the party status in
21 opposition would then have an opportunity to either again
22 come before us, and we do this again, or give us your input
23 on the -- this proposal.

24 MR. HITCHCOCK: Yeah. I mean, as Ms. Moldenhauer
25 indicated, I mean, we were in touch leading up to the hearing

1 today. We've spoken with OP. We'll continue the
2 conversation.

3 CHAIR HILL: Okay.

4 MR. HITCHCOCK: And see what we find out. So
5 we're looking at the 21st?

6 CHAIR HILL: The 21st. Back here on the 21st.

7 MS. GLAZER: Mr. Chair?

8 CHAIR HILL: Certainly.

9 MS. GLAZER: I mean, we're taking -- we're
10 assuming that the ANC can put it on their agenda that night.

11 CHAIR HILL: Sure.

12 MS. GLAZER: I think --

13 CHAIR HILL: And if not, then we have to do it
14 until -- I mean, we're not going to do anything until we hear
15 from the ANC again. So at least that's my stance now, after
16 this, you know, change. And so if you can get on the ANC,
17 I mean, we -- we want to hear from what the ANC has to say
18 about this, at least if I understand the Board correctly,
19 about this proposal.

20 Okay? All right. Mr. May?

21 COMMISSIONER MAY: Yeah. I just want to add, I
22 mean, I think that, you know, you -- you -- Ms. Moldenhauer
23 mentioned the effort that your -- your client has already put
24 in and the expense that they have already gone to to achieve
25 this.

1 And I think you need to be realistic about the bar
2 that needs to be cleared and whether in fact it is worth
3 continuing to do this at all. I mean, you know, by all
4 means, you know, continue what you are planning to do, but,
5 you know, you need to gauge whether in fact it's worth
6 continuing and bringing this back to the Board. And I'm sure
7 you will. So --

8 MS. MOLDENHAUER: And obviously, you know, our --
9 we've looked to other cases, and we would -- we'll continue
10 to present those to the Board.

11 CHAIR HILL: Okay.

12 MS. MOLDENHAUER: To all the Board members.

13 COMMISSIONER MAY: If I can mention one other
14 thing, which is that, I mean, you raise a good point about
15 the lack of true clarity in the zoning regulations with the
16 treatment of historic tax lots versus new tax lots. And it
17 is probably an area that needs clarification, and it's
18 probably worth having the conversation with the Zoning
19 Commission or with the Office of Planning about that lack of
20 clarity and whether there is something that the Zoning
21 Commission needs to take up to resolve that.

22 MS. MOLDENHAUER: We did. We filed -- as soon as
23 we found out about this, we filed a request with OP to
24 recommend a text amendment to try to clarify this. And we
25 have, you know, not heard back. We're --

1 COMMISSIONER MAY: When was that?

2 MS. MOLDENHAUER: When was that, Steve?
3 November 20th.

4 COMMISSIONER MAY: Okay. So --

5 MS. MOLDENHAUER: Sent that to Office of Planning.

6 COMMISSIONER MAY: -- that would be in -- that's
7 good to know. I'll look to hear from the Office of Planning
8 at some point about what the status of that is, whether in
9 fact a new text amendment might be coming to the Zoning
10 Commission to address that.

11 MS. MOLDENHAUER: I mean, I think one of the
12 things that we had -- that we looked at was the fact that,
13 you know, during the Zoning Commission hearing there was a
14 conversation about will parking be permitted, and there was
15 a conversation --

16 COMMISSIONER MAY: I read that in your submission,
17 and, you know, the fact that the -- that Jennifer Steingasser
18 mentioned something about it is not indicative of the
19 conclusions of the Zoning Commission.

20 MS. MOLDENHAUER: No.

21 COMMISSIONER MAY: So that's why it should be
22 brought before the full Zoning Commission if, in fact, there
23 is an issue to be resolved.

24 MS. MOLDENHAUER: We'll follow up with Office of
25 Planning on the submission that we filed with them.

1 COMMISSIONER MAY: Okay. Thank you.

2 MS. MOLDENHAUER: Thank you.

3 CHAIR HILL: Okay. Just to be clear, then, so,
4 Mr. Hitchcock, you're aware -- everything that has just been
5 said, you're in agreement.

6 MR. HITCHCOCK: Yes.

7 CHAIR HILL: Okay. All right. Then we'll see you
8 back here on the 21st. You'll let us know what you see.
9 You're going to go try to work through the Office of Planning
10 and the ANCs with the new design. And we'll be back here on
11 the 21st.

12 Mr. Moy, you have something to add?

13 MR. MOY: I don't -- well, I don't know if it's
14 to add, but I have a question. So continued hearing on the
15 21st. Are you allowing opposition parties to -- plus the ANC
16 to file a response prior to the 21st or not?

17 CHAIR HILL: We're trying to be as fair with
18 everything that is going on, so I don't -- I don't know when
19 you're going to get whatever your submissions are to the
20 ANCs. I'm just trying to work through this as well so that
21 the -- the party in opposition has an opportunity to respond
22 to anything that you are planning to submit.

23 So, Mr. Moy, if you can give me dates that might
24 work out, maybe we can try from there and see if that will
25 work out with the applicant.

1 MR. MOY: Well, very simply, though, I mean, with
2 the continued hearing, and the record still open, which we'll
3 hear on the 21st, then if the intent is to allow opposition
4 parties to respond to what is filed by the applicant, I would
5 give seven days and give it the 14th of March, if it's
6 possible. And the ANC, of course, will -- will get the next
7 day, since they're meeting on the 20th.

8 CHAIR HILL: So you guys can submit whatever you
9 want us to look at on the 14th of March. They can have an
10 opportunity, seven days to submit whatever they want to
11 submit, and before our meeting you'll hopefully get in front
12 of the ANC. And if not, you might be asking for a
13 postponement to send us to whenever the next time is.

14 MS. MOLDENHAUER: We will file on those deadlines.

15 CHAIR HILL: Okay. Okay. Are we done?

16 MR. MOY: Nothing from me, sir.

17 CHAIR HILL: Okay. All right. Thank you all very
18 much.

19 (Pause.)

20 CHAIR HILL: All right. Mr. Moy, let's go ahead
21 and start next.

22 MR. MOY: Thank you, sir. That would be Case
23 Application Number 19683 of Brian and Carolyn Wise, as
24 amended for special exceptions under Subtitle E, Section 5204
25 from the rear yard requirements; Subtitle E, Section 5104;

1 and from the alley centerline setback requirements, Subtitle
2 E, Section 5106; and pursuant to Subtitle X, Chapter 10, for
3 area variances from lot area requirements, Subtitle E,
4 Section 201.1; and from the lot frontage requirements,
5 Subtitle C, Section 303.3(a) through (b). I guess I could
6 have said (a) and (b). To construct a two-story, one-family
7 dwelling on an existing vacant alley lot in the RF-3 zone at
8 premises 260 Lincoln Court, Southeast, Square 762, Lot 828.

9 CHAIR HILL: Okay. Great. Good evening. If you
10 could please introduce yourselves for the record.

11 MR. WISE: Brian Wise, the applicant.

12 MR. DZIERZANOWSKI: Mateusz Dzierzanowski with DZ
13 Architecture, architect for the applicant.

14 MS. MOLDENHAUER: Meredith Moldenhauer, land use
15 counsel for the applicant.

16 MR. DeBEAR: Eric DeBear, land use counsel for the
17 applicant.

18 CHAIR HILL: Okay. So, Ms. Moldenhauer, I assume
19 you're going to present to us?

20 MS. MOLDENHAUER: Yes.

21 CHAIR HILL: Ms. Moldenhauer, I appreciate that
22 you've been here this long. I'm sure you all are tired as
23 well. And so, you know, I think it's great. We've got
24 another alley lot, you know? And so we're all ready to go
25 on alleys.

1 And how do you say your name, sir, again, to the
2 right?

3 MR. DZIERZANOWSKI: Mateusz Dzierzanowski.

4 CHAIR HILL: You're the one who told me that it
5 was going to be an easy thing and it wasn't, right? I didn't
6 realize that you were going to come back again. Right.
7 Okay.

8 MR. DZIERZANOWSKI: Second time around.

9 CHAIR HILL: Right. Did they just find you in the
10 hall and they're like, hey, you've been here -- you were here
11 all day. Let's go ahead and drag you in.

12 MR. DZIERZANOWSKI: Today was solely coincidental.

13 CHAIR HILL: Okay. All right. All right. So,
14 Ms. Moldenhauer, we're going to go ahead and let you start.
15 I think you know where all the problems are. And I'm going
16 to go ahead and put -- I'm just going to put 10 minutes up
17 there just because. Never mind, I mean, I agree, this is a
18 problem. So we'll put 20 minutes up there, okay, and see
19 where we get after 20 minutes.

20 So, and you can begin whenever you'd like.

21 MS. MOLDENHAUER: Thank you. So what we'll do is
22 we -- I will first walk through the project and the
23 application and the plans, and then we will address some of
24 the issues more at the tail end here.

25 So from the application you can see the property

1 in the image on the screen, which is the PowerPoint that was
2 uploaded last night. And here the property you can identify
3 is in the RF-3 zone. The RF-3 zone is the zone for the
4 residential flats and single-family dwellings in the Capitol
5 Hill interest zone. Thank you.

6 This property is unique in regards it is a split-
7 zoned square. Obviously, as you can see in this image, the
8 top half of the square is commercially zoned MU-26 and MU-24.
9 A large majority of the properties along this square that
10 also utilize this alley are commercial in nature, and at the
11 bottom of the site it houses the Capitol Hill Hotel, which
12 kind of hovers over this access point on the bottom here.

13 There are two access points to this alley.
14 There's an access point here where my arrow is, as well as
15 an access point here, which is in more close proximity to the
16 property. This access alley point here has gone through an
17 alley naming process. For those of the Board members who are
18 not aware, in order for an alley lot not only to overcome all
19 the other hurdles, it also has to be named. You cannot
20 obtain a building permit on an unnamed alley.

21 So you have to also go to the D.C. Council and get
22 your councilmember to recommend legislation to name the
23 alley. The community and the ANC can then participate in
24 identifying what the proper name would be for the alley. In
25 this case, the applicant, Mr. Wise, as will be explained in

1 a little more detail, has gone through that process. It,
2 obviously, is a long public process.

3 The ANC, I believe who is still here presently
4 today, yes, can also testify to the fact that that was
5 presented and went through with this case, that the alley has
6 now been named Lincoln Court. And there is a name associated
7 with this property, or name and address rather, 260 Lincoln
8 Court, Southeast.

9 The project is to construct a single-family
10 residence on an unimproved alley and provide one parking
11 space for the residents. Here you can just see another --
12 this is -- an abutting property owner has an existing garage
13 that is one story, and then there is -- on the far side you
14 can see some additional conditions of the alley, along with
15 other two-story structures to the other side of this open
16 parking area.

17 The parking -- this area to the right, which I am
18 highlighting with my arrow here, is part of the Capitol Hill
19 Hotel, which also then obviously utilizes the alley.

20 This is another vantage point. So as you go in
21 from the alley, the alley is initially 14 feet in width.
22 We'll address -- the zoning regulations require that the
23 alley be 15 feet in width. This is one foot short from
24 permitting this as -- reducing one of the reliefs required.

25 But as you can see, once you clear a portion of

1 the property, where this black kind of SUV is, the alley does
2 open up only about a couple of feet past the choke point
3 there.

4 So here you can see, again, that this is 15-foot-
5 wide alley. The property is 93 feet from a public street
6 frontage of 3rd Street. As the Board is aware, typically the
7 requirement is a 15-foot alley within at least 300 feet in
8 order to provide FEMS hoses to be able to access it.

9 So while we are one foot off, we are also very
10 close -- we are obviously more than close in regards to that
11 300-foot requirement. We're only 95 feet in that right --
12 and it does, as I say, open up to over 20 feet once you get
13 past this one property on the left-hand side of that alley.

14 In regards to community outreach, as I indicated,
15 this property -- this case has been going on for quite some
16 time in regards to the alley naming process. We went to the
17 ANC last week, and the ANC voted on this BZA case, and there
18 was extensive discussion with other property owners on 3rd
19 Street, and with that discussion the ANC voted four to zero
20 to four, four abstaining, but four in support of the relief.
21 And we have letters of support from 209 3rd Street and 203
22 3rd Street.

23 The Capitol Hill Restoration Society has also
24 unanimously supported the application. The Department of
25 Transportation has no objection, and the Office of Planning

1 has no objection to four -- two of the four requests for area
2 relief that are being presented.

3 As similar in the other case, we are presenting
4 the argument that the property has a uniqueness due to the
5 zoning history. The applicant has requested a variance in
6 order to provide a structure. Without this relief, no
7 structure could be built on the property.

8 And so in regards to that, during the initial
9 application when there was a two-unit flat, the applicant was
10 not clear to the relief, nor to the subdivision requirements.
11 The BZA case in that case was filed in May with no relief
12 being requested. There was then -- obviously, the applicant
13 pursued the alley naming process through counsel, which was
14 public, and obtained approval and the alley is now named.
15 In June of 2017 -- the subdivision variance only became aware
16 of that not until July of 2017, and the Zoning
17 Administrator's office did not provide guidance until
18 February of 2017 -- fall. Sorry, fall of 2017.

19 Here we will point out that the property does meet
20 the Section B definition of an alley lot. This property was
21 recorded at the Office of Tax and Revenue since 1905, and
22 would, thus, comply with the definition of alley lot because
23 it is a lot that is recorded on the records of the D.C.
24 Treasurer, Tax and Revenue, on or before November 1, 1957.

25 And it is -- you know, the question of the

1 discrepancy between that acknowledgment of a historic alley
2 tax lot created prior to the zoning regulations taking
3 effect, and the fact that this was subdivided on February 23,
4 1905.

5 Here is an image of the survey plat showing that
6 -- the original lot and showing the subdivision of that lot
7 into four properties and indicating how, you know, that our
8 Lot 828, just for clarification, only abuts Lot 826 because
9 there is a walkway easement that you may hear reference to,
10 but actually does not abut or touch 827 or 824, but that, you
11 know, all of them were part of the same subdivision and have
12 been separately owned and operated or owned and transferred,
13 sold, title insurance, and property taxes paid on all of them
14 since 1905.

15 CHAIR HILL: So just curious, that Lot 827 and
16 824, they use that easement, is that --

17 MS. MOLDENHAUER: Yes. And I believe the property
18 owners are present today in the audience, and so they will
19 be able to testify to that as well.

20 CHAIR HILL: Okay.

21 MS. MOLDENHAUER: The property is an existing
22 alley lot since 1905, and just for this record I wanted to
23 obviously identify that the zoning regulations in DCRA have
24 an administrative process that would allow for a street-
25 facing tax lot to become a record lot with no zoning process,

1 just simply administratively through the subdivision process.

2 However, there is a practical difficulty and an
3 undue burden placed on a property owner of a historic tax lot
4 who would not be able to do the same, given the Subdivision
5 303.3 requirements and the interpretation of those.

6 This is an area variance for a subdivision in
7 regards to not a question of, you know, not an absolute bar
8 or not allowing a subdivision at all, but rather that in
9 order to provide the subdivision, a minimum lot area has to
10 be met. In that regard, it's an area variance and not a use
11 variance. There is not a question of, can this be used for
12 other purposes? It's a question of, does it create a
13 practical difficulty to comply? And is there an ability to
14 expand the lot and to meet that lot area requirement in
15 another way?

16 And in that regard, our position is that there is
17 no opportunity to expand the lot, and we'll have additional
18 testimony from our client regarding his ability or his
19 attempt to try to do so. Also, the Board of Zoning
20 Adjustment, in 18234, approved an alley lot area relief and
21 lot width relief for a single-family home on an alley tax lot
22 in which -- so there is evidence there in that case for the
23 Board -- or at least some level of precedent that the Board
24 can find that just because a lot does not meet the minimum
25 lot area, that does not mean an absolute bar, and that there

1 are times -- and we believe this is one of them -- in which
2 the Board could find that, even though a lot does not meet
3 the 1,800 square feet, that relief from that requirement
4 would not create an adverse impact on the neighborhood and
5 the zone plan.

6 And we think, especially in this case with our
7 high level of outreach and the support from the ANC and the
8 other members of the Capitol Hill Society, that we have met
9 that bar here.

10 Here is an example of past BZA approval cases for
11 lot area relief in regards to satisfying that standard,
12 showing existing precedent for the Board. These are examples
13 of other cases where the lot area relief for the tax lot, and
14 here are examples of past BZA approvals where they were
15 requesting lot area relief on an existing alley tax lot.

16 In all of -- the top two examples, those reliefs
17 were for 71 percent deviation, 55 percent deviation, and the
18 bottom case was for 39 percent deviation. Here we're
19 requesting about a 33 percent deviation. So in regards to
20 the deviation of requests in regards to kind of comparison
21 to other cases that have been approved, we are obviously at
22 a lower degree as compared to some other cases that have been
23 approved.

24 This is in the record. I won't speak to it in too
25 much depth but, as indicated, the consistency with prior

1 decisions, and this Board as a regulatory body trying to
2 provide an even-handed, predictable, consistent development
3 principle and standard, and applying that to past cases as
4 well as future cases.

5 Here are -- and I will now turn to the architect
6 to provide some discussion from an aesthetics perspective on
7 existing character of surrounding alley dwellings in the
8 Capitol Hill neighborhood, and then to go into the design of
9 the project.

10 MR. DZIERZANOWSKI: All right. Thank you. So the
11 specific characteristics of a lot of the structures that
12 exist within that alley, as we travel up north from our lot,
13 there are a series of accessory garage structures all going
14 to the same building height, all masonry type of
15 constructions, garage doors, windows, various characteristics
16 that we took into consideration through the part of looking
17 at both the massing and also the overall aesthetic to our
18 proposal.

19 Just to the elevation drawings -- so we go ahead
20 and we look to the south facade, the point at which the entry
21 into the single-family residence would exist, the overall
22 massing would be in line and in characteristic with the
23 adjacent structures along the alley. We would go to the 20-
24 foot height. The proposal is for everything to be within a
25 masonry brick finish.

1 We have had discussions with HPRB in maintaining
2 and making sure that not only overall volume but general
3 aesthetic of the proposal would be in characteristic with
4 structures and elements within the alley.

5 This is looking at the west facade. Again,
6 similarly, here we can see a case where the garage -- this
7 would be where the entrance to the garage would be, which is
8 to the west of the proposed lot. Again, similar
9 characteristics, and here you can kind of see towards the
10 left of the elevation we would take the facade and the entire
11 building envelope and abut it to the adjacent structure.

12 This is one point and one item that was discussed
13 by HPRB in order to maintain consistency and continuity of
14 the facades along the alley there. And then the next
15 elevations -- these start to portray just both the north and
16 then the east exterior. We are showcasing a wood fence to
17 run along the side yard that we are proposing.

18 This was something originally proposed in brick.
19 Following some discussion and hearing from some of the
20 neighbors, this has been changed by both reducing the overall
21 height and changing the materiality, and it is along this
22 side yard, which we have been able to maintain the side yard
23 relief that is being asked, and also maintain the green area
24 ratio requirements within that area to provide a permeable
25 area along the side.

1 We also hope that this side yard will also help
2 to benefit for storage of trash, potential storage of other
3 items, and give the owners an area where they can properly
4 store things and remain relatively private, keep the -- keep
5 the surrounds of the proposed alley structure clean.

6 And with that --

7 MS. MOLDENHAUER: With that, I will just let Mr.
8 Wise just make one or two brief comments.

9 MR. WISE: Sure. Mr. Chairman and members of the
10 Board, thank you for the opportunity to be here. This has
11 been a long, protracted, drawn-out process for us, and I know
12 that that is, to some degree, how it is meant to be, so that
13 the right decisions are come to.

14 But we had purchased this lot back in 2015 with
15 the intent of developing it for our personal use, and came
16 to find out during that process that certain relief was
17 required. And then, of course, ZR-16 was passed and came to
18 find out that at that point different relief was required,
19 and have, quite honestly, been told many, many different
20 things by many, many different people.

21 And all we're trying to do is to build a home for
22 our family to live in so that we can stay on Capitol Hill,
23 because we absolutely love the neighborhood, we love the
24 neighbors. I have a two-and-a-half year-old daughter that
25 loves to go to the park, go down to Garfield Park, and we

1 hope to raise her there in the neighborhood.

2 But with that, I'll turn it back to Meredith. And
3 if you have any questions, I'm happy to answer them.

4 MS. MOLDENHAUER: Okay. And then we have just a
5 brief statement from Mr. Varga. His resume is in -- not in
6 this record. We'll provide a copy of his resume for this
7 record, and we'd ask the Board to qualify him as an expert.
8 We're passing out copies of his full testimony. He will not
9 read from his full testimony. He will provide an executive
10 summary statement.

11 CHAIR HILL: Okay. So, Mr. Varga, I'm sorry,
12 could you please introduce yourself quickly?

13 MR. VARGA: Thank you, Mr. Chairman. My name is
14 Stephen Varga, Cozen O'Connor, director of Land Use Services.

15 CHAIR HILL: Thank you, Mr. Varga. So we did look
16 at your application -- I'm sorry, your resume in a previous
17 case. And unless it has changed from then, which it could
18 have, I am assuming that we're going to accept you as an
19 expert in this testimony. Is that correct? Do any members
20 of the Board have any other comments?

21 And also, could you then submit that to the
22 record, his resume? Because this is just his testimony. I
23 assume you're going to submit his resume to the record.

24 MS. MOLDENHAUER: We will. Thank you.

25 CHAIR HILL: Okay. Thanks.

1 MR. VARGA: Thank you. Thank you, Board Chair.

2 CHAIR HILL: sure.

3 MR. VARGA: So I just performed a site visit just
4 today as well, so I'll be happy to answer any questions from
5 a land use perspective that you might have about the
6 property. I would just like to say that because development
7 of vacant lots is supported in the comp plan, and due to the
8 fact that the scale height tends to be in design aesthetic,
9 the project will neither substantially impair the intent,
10 purpose, and integrity of the zone plan, nor cause
11 substantial detriment to the public good.

12 Quite the contrary, the project will fulfill many
13 planning objectives that underpin the zone plan, as I've
14 stated before.

15 This lot also faces many of the same challenges
16 that the previous lot in the previous case did. And, again,
17 I'll be more than happy to stand on the record and answer any
18 questions that you have.

19 MS. MOLDENHAUER: Thank you. So now just to
20 provide a quick rundown of the relief being requested, we are
21 requesting a variance from the alley width requirement from
22 303.3(a). In this case, there is a requirement for a 24-
23 foot-wide minimum lot. The property fronts on an alley that
24 is 20 feet. But as I indicated, the alley access is 14 feet.
25 But I also pointed out an alley that was between the Capitol

1 Hill Hotel, and that is, as I believe is referenced in OP's
2 report, is a private alley.

3 And when we looked at the definition sections, the
4 language requires that it be off of an alley. And when you
5 look at the definition of the word "alley," an alley must be
6 a public alley recorded in a surveyors. That 20-foot alley
7 that is referenced in the OP report and is a second means of
8 access for this alley network is a private alley and is not,
9 thus, qualified. So we are asking for relief under that
10 requirement.

11 The lot area requirement under 303 is an 1,800
12 square foot lot. This lot is 1,120 square feet. So it is
13 while I think very, you know, consistent with a lot of sizes
14 of homes in the Capitol Hill neighborhood, it does not meet
15 the 1,800 square foot requirement, and under that we are
16 requesting relief.

17 The alley setback requirement from the 12-foot
18 centerline setback, the proposed design provides 10 foot from
19 the centerline of the alley.

20 The property faces a number of -- a factor of
21 exceptional conditions. One, the alley -- the zoning history
22 and the fact that this is a historic alley tax lot that was
23 in existence prior to the zoning regulations going into
24 effect in 1958, in fact it has been a subdivided, separately
25 owned property, or separately deeded property, for 112 years.

1 It is an unimproved lot, and the property's lot
2 area cannot be expanded due to separate ownership. And as
3 is in your written testimony from Mr. Varga, this goes to an
4 ownership fragmentation and the inability to assemble or
5 create a larger lot or create street frontage.

6 The zoning history, as a parking lot, there are
7 seven prior BZA cases where the -- where prior owners
8 obtained parking relief to have this property be used for
9 commercial, not residential -- it's in a residential zone --
10 for commercial parking.

11 That would require zoning relief, and so in that
12 regard this property had previously obtained that relief and
13 that those relief on -- those conditions on that relief have
14 been quite extensive and numerous, and we believe that the
15 proposed relief is less adverse and more in keeping with the
16 community.

17 The split zone square, there are 22 properties
18 that are commercial in nature, and only 17 residential
19 properties. This goes to the practical difficulty of
20 permitted uses on the lot. A lot is only permitted for
21 residential parking for residents of the square. It's not
22 just any resident, that the current zones say that
23 residential parking can only be used by residents of the
24 square.

25 Therefore, given the fact that the property is

1 split -- the square, not the property, I apologize -- the
2 square is split zoned, it creates an adverse impact and a
3 challenge for the client to be able to comply with that
4 requirement. And, obviously, I think that the zoning history
5 here also leads that and provides that conclusion, given the
6 fact that there have been seven prior cases over some of the
7 life of this history for commercial use of the parking.

8 Also, the property's location in the Capitol Hill
9 Historic District, there is information in the record about
10 the Capitol Hill Office of -- I'm sorry, Historic
11 Preservation Office's desire to have certain line of sight
12 from the street in regards to the setback requirements.

13 The strict application of the zoning regulations
14 create a practical difficulty. As indicated here, the
15 24-foot-wide alley, the applicant's alley is 20 feet, but
16 that is not a public alley, and the 1,800 square foot lot
17 requirement, given that there is no ability to increase the
18 lot area, and that this is a separately owned, street-facing
19 lot, it was -- went for public sale in 2015, but none of the
20 street-facing owners acquired the lot at that time on 3rd
21 Street.

22 The applicant also offered to sell the alley lot
23 to the street-facing owners, but none of those were
24 interested at the time.

25 The practical difficulty for the subdivision, a

1 residential dwelling is the only reasonable use for the
2 property. Other potential reasonable -- other potentially
3 matter-of-right uses, such as agriculture, architectural
4 studio, which would still require a structure, and would,
5 thus, require the 303 relief, and camping, which we do not
6 believe is reasonable, especially given the limitations
7 surrounding surface parking, only for residential lots. You
8 have already discussed that. And then residential dwellings,
9 which we are requesting.

10 The practical difficulty for subdivisions, I
11 already went through this. Sorry.

12 And then here I'm referring to the lot area
13 requirement. This shows that in regards to the degree of
14 relief that we are asking it is right in line, especially
15 kind of almost, you know, in regards to the degree of relief
16 that has been commonly requested and commonly approved in
17 regards to the degree of relief for lot area requirement.
18 This is a 1,210 square foot lot where 1,800 square feet is
19 required.

20 The alley setback requirements for the historic
21 preservation, the alignment of the property facades to the
22 abutting properties, which I already indicated. The size of
23 the lot compliance would reduce the square footage by
24 65 square feet per floor, which is six percent of the average
25 square footage, and the difficulty then of complying with

1 different building code requirements in stairs and hallways.

2 We don't believe that there would be a zoning
3 impact to the public good, as outlined in more detail in Mr.
4 Varga's testimony that is in the record.

5 Yes, next?

6 And the special exception standard from rear yard
7 and the residential dwelling on an alley, we believe that we
8 satisfy the special exception standards.

9 Next?

10 And then we believe that this is in harmony with
11 the purpose and intent of the zone plan.

12 Next?

13 And that there would be no adverse impact on the
14 use of the neighboring and abutting property owners as this
15 would not create any additional noise. It would, obviously,
16 reduce the traffic from a commercial use that had been
17 approved many years ago. Windows facing the alley only and
18 not neighboring property owners, and the project would be
19 buffered from neighboring properties by a rear yard and
20 existing garages and existing trees.

21 Next?

22 Special exception conditions for residential uses.
23 An alley lot is -- we comply with the first prong. We comply
24 with the second prong. The alley lot connects to an improved
25 alley. This is what I was speaking to a little bit earlier

1 and the fact that we don't -- that we are 95 feet from 3rd
2 Street.

3 And then the last prong of that special exception
4 test is that the District agencies provide comment. The
5 applicant has contacted the agencies, and here's a quick list
6 of those. FEMS provided a letter of no objection in the
7 prior case, which is for a flat. So that's -- we're
8 referencing that for this case.

9 DDOT has no objection. MPD was called and was
10 emailed but no response. D.C. Water was emailed but no
11 response. And DPW was called with no response.

12 We believe that we satisfy the Capitol Interzone
13 Conditions, and I'll go through those if the Board requests.

14 And we have no -- a letter of no objection as
15 Exhibit 51 in the record.

16 Next?

17 Thank you.

18 CHAIR HILL: Okay. Okay. All right. Okay. So
19 does the Board have any questions for the applicant? Okay.
20 Mr. May? Commissioner May?

21 COMMISSIONER MAY: Regrettably, yes, I have
22 questions.

23 CHAIR HILL: Sure. Certainly.

24 COMMISSIONER MAY: So, first of all, you gave us
25 that long list of lot area relief. How many of those were

1 actually alley lots?

2 CHAIR HILL: You need to speak in the microphone.
3 Sorry.

4 MS. MOLDENHAUER: Sorry. So the ones -- go back.

5 COMMISSIONER MAY: Three. So those --

6 MS. MOLDENHAUER: No, no, no, no, no, no. Hold
7 on. Sorry. Let me answer your question.

8 COMMISSIONER MAY: Okay.

9 MS. MOLDENHAUER: These are all alley -- no, those
10 are all tax lots. So those -- sorry, then the next one.
11 Those are alley tax lots. But then there are a couple of
12 other alley lots that were record lots that I didn't include.

13 COMMISSIONER MAY: Okay. You went to the wrong
14 page. The page that was just up there that had all of the
15 lot -- area lot -- yes, that one.

16 MS. MOLDENHAUER: Okay.

17 COMMISSIONER MAY: How many of these are actually
18 alley lots?

19 MS. MOLDENHAUER: Three.

20 COMMISSIONER MAY: Three. Okay. And those are
21 the three that are listed earlier?

22 MR. DeBEAR: Yes.

23 MS. MOLDENHAUER: But --

24 CHAIR HILL: Okay. If you're going to speak, you
25 need to be on a microphone.

1 MR. DeBEAR: Yes.

2 COMMISSIONER MAY: Okay.

3 MR. DeBEAR: This is just -- this is actually the
4 same slide, just circling to --

5 COMMISSIONER MAY: That's fine. That's fine. I
6 don't need a lesson in the graphics.

7 So the -- so can we -- all right. Now we'll go
8 back to the three that you listed. Can we go back to the
9 slide with the three? So these three are all on that other
10 list, correct?

11 MR. DeBEAR: Yes.

12 COMMISSIONER MAY: Okay. And these are alley tax
13 lots only. They are not record lots.

14 MR. DeBEAR: These are alley tax lots, yes.

15 COMMISSIONER MAY: Okay.

16 MR. DeBEAR: That were given relief to build a
17 structure, or had existing structures but were given relief.

18 COMMISSIONER MAY: But this is essentially the
19 same problem we had with the last case because of -- because
20 of the problem with tax lots.

21 MS. MOLDENHAUER: It's a variance. I don't -- I
22 mean, it's not a problem. The zoning regulations --

23 COMMISSIONER MAY: Well, okay. But so these --

24 MS. MOLDENHAUER: -- allow for variances.

25 COMMISSIONER MAY: -- these previous ones were all

1 given lot area relief.

2 MS. MOLDENHAUER: Were all variances.

3 COMMISSIONER MAY: They were all variances.

4 MS. MOLDENHAUER: They're all variances. They
5 were all given lot area relief. It's the same standard.

6 COMMISSIONER MAY: Okay. And are there any other
7 homes on the alley?

8 MR. DeBEAR: Yes, I think --

9 MR. WISE: Yes. Yes. There is one other
10 residence that is 203 Rear.

11 MR. DeBEAR: And they gave a letter of support for
12 this project.

13 COMMISSIONER MAY: All right. Thank you.

14 CHAIR HILL: Okay. Anyone else for the applicant?

15 MR. VARGA: Yeah. With regard to the ANC report,
16 four-zero-four, can you talk about that, please?

17 MS. MOLDENHAUER: I would actually prefer to refer
18 to the ANC Commissioner who has been sitting here and who
19 will come up later and can maybe more appropriately answer
20 that.

21 MR. VARGA: That's fine. I just didn't know if
22 you had any -- had a take on it. I can ask him later.
23 That's fine.

24 MS. MOLDENHAUER: I mean, our take is that, you
25 know, there are neighbors who had concerns, and there were

1 some members that abstained. They didn't vote in opposition.
2 They abstained.

3 CHAIR HILL: Okay. I'm going to turn to the
4 Office of Planning.

5 MR. JESICK: Thank you, Mr. Chairman, and members
6 of the Board. My name is Matt Jesick. The Office of
7 Planning recommended denial of the relief necessary in order
8 to convert this tax lot to a record lot. And that it was,
9 as in the previous alley lot case, that was our biggest
10 hurdle in reviewing the application.

11 The applicant -- the application would require
12 relief for lot area and alley width in order to create a
13 record lot in this location. And the record lot is necessary
14 to obtain a building permit.

15 Simply, we felt that the application did not meet
16 the standard for the variance, the three-part test. The
17 application did not demonstrate in our review that there was
18 an exceptional condition or a unique condition impacting the
19 property, and, furthermore, that even if there was it was
20 unclear that there would be a practical difficulty resulting
21 from that exceptional condition.

22 We also felt that granting relief could create
23 harm to the zoning regulations which intended under ZR-16 to
24 further limit the creation of new alley record lots, so that
25 granting relief would go against that intent.

1 For the rest of my testimony, I will just rest on
2 the record, but I would be happy to take any questions.

3 Thank you.

4 CHAIR HILL: Does anybody have any questions of
5 the Office of Planning?

6 MEMBER WHITE: Are you still working with them to
7 try to figure out a solution on this one, too, or is this
8 kind of -- it is what it is right now?

9 MR. JESICK: The only application -- the only
10 proposal that we have reviewed is the one that we have seen,
11 which is the one before the Board.

12 MEMBER WHITE: Okay.

13 CHAIR HILL: Okay. So I guess -- I mean, to me,
14 this is a little different than -- anyway, I'm kind of
15 curious, so -- so as far as the Office of Planning, like what
16 is supposed to happen with this lot?

17 MR. JESICK: The regulations will allow for
18 surface parking to continue, as it has, as the applicant
19 testified, for the past many decades. So that use could
20 continue.

21 CHAIR HILL: Okay. Okay. No one else?

22 All right. Do you have any questions for the
23 Office of Planning?

24 MS. MOLDENHAUER: Just two. Mr. Jesick, you said
25 that approving this would go against the intent to create new

1 record lots. But the zoning regulations don't put a bar on
2 this type of relief, do they? Did they outline a bar when
3 they changed it to ZR-16?

4 MR. JESICK: Can you define "bar"? I'm not sure
5 what you mean.

6 MS. MOLDENHAUER: Did the Zoning -- did the Zoning
7 Commission say, "The Board cannot grant relief on this
8 section"?

9 MR. JESICK: No.

10 MS. MOLDENHAUER: And OP is interpreting this as
11 an area variance, not as a use variance.

12 MR. JESICK: That's correct.

13 MS. MOLDENHAUER: Thank you. Then my other
14 question was, sorry, it was a follow up on -- oh, sorry,
15 thank you. Thank you.

16 Mr. -- Commissioner -- Chairperson Hill, I
17 apologize, asked you the question about what could be
18 permitted, and you said parking, as it had been in the past.
19 But isn't it true that the parking required zoning approval
20 that has since lapsed, so that prior use would obviously --
21 of parking, as it had been approved by the BZA, would require
22 BZA approval?

23 MR. JESICK: Parking is listed as a matter-of-
24 right use on alley lots in the RF zones.

25 MS. MOLDENHAUER: But the prior BZA cases were for

1 commercial use. That's how -- that's the historic use of the
2 lot, and that would not be a matter of right.

3 MR. JESICK: That's correct.

4 MS. MOLDENHAUER: And as a matter of right, you
5 couldn't park more than two residential cars on a 1,120
6 square foot lot.

7 MR. JESICK: I would have to --

8 MS. MOLDENHAUER: That's fine.

9 MR. JESICK: -- see what --

10 MS. MOLDENHAUER: No further questions. Thank
11 you.

12 CHAIR HILL: Okay. Is there anyone here from the
13 ANC? Would you please come forward?

14 MR. RIDGE: Good evening.

15 CHAIR HILL: Good evening, Mr. Commissioner. Can
16 I -- we are pretty darn close. Before we're done, I'm sure.
17 You need to push your button there. And if you could
18 introduce yourself, please, for the record, and where you
19 live.

20 MR. RIDGE: I'm Dan Ridge. I'm the chair of
21 ANC-6B. I live at 1504 Potomac Avenue, Southeast.

22 CHAIR HILL: Chairman Ridge, have you been here
23 since 9:30?

24 MR. RIDGE: I was in the Building Museum Café from
25 9:30 until about 1:00.

1 CHAIR HILL: Okay. All right. Great. So did you
2 get sworn in?

3 MR. RIDGE: I was sworn in by Charles Allen, but
4 I was not sworn in here by your secretary.

5 CHAIR HILL: Okay. All right. Very good. Did
6 you see the exhibit in the Building Museum about zoning?

7 MR. RIDGE: Absolutely.

8 CHAIR HILL: It's a very good exhibit. You have
9 to pay to get in. You know that, right?

10 MR. RIDGE: I'm a member.

11 CHAIR HILL: Oh, good. There you go. All right.
12 Let's see. Mr. Moy, would you swear in the chairman, please.

13 (Witness sworn.)

14 MR. MOY: Thank you. You may be seated.

15 CHAIR HILL: All right. Mr. Chairman, you can
16 begin whenever you're ready. We're going to throw five
17 minutes up there on the clock because that's what you're
18 allotted, but we'll see where it goes.

19 MR. RIDGE: Well, in fact, my testimony will be
20 much shorter. The bylaws of our ANC restrict somebody
21 presenting on behalf of the ANC to the letter and motion that
22 has been approved. And with respect to Commissioner May's
23 view that ANC input is better when it cites reasons, at some
24 point you get the motion that you can get.

25 And so where we are on this is, as you noted, we

1 made a motion, four-zero-four, to support this application,
2 and that's the -- that's the motion that we got to, and
3 that's the position I've been authorized -- that I authorized
4 myself to make here before you.

5 But I'm happy to answer absolutely any question,
6 including about the other appearances of this project before
7 the ANC. Since the ANC has spent perhaps 10 hours on this
8 case, from the alley naming, from other aspects of this case,
9 both at the ANC committee level, transportation and planning
10 and zoning, and at the full ANC. So we're all really quite
11 familiar with it.

12 CHAIR HILL: Okay. Well, Mr. Chairman, I'm quite
13 happy to hear your testimony just in terms of what has been
14 going on within your ANC with regard to this proposal. So
15 feel free to walk us through what has happened with this and
16 how, I guess to Vice Chair Hart's question, where you go to
17 the four-zero-four. So four people -- after the hours and
18 hours that have gone on, four people decided not to vote.

19 MR. RIDGE: Well, thank you for that question.
20 this matter was referred most recently to our Planning and
21 Zoning Committee where it was heard in February. And after
22 that, in the course of that meeting, the ANC Commissioner for
23 that SMD introduced a motion to support this and to place the
24 matter on our consent agenda.

25 And that went on our consent agenda with a vote

1 of 10-zero-zero. So it was unanimous and on our consent
2 agenda. It was pulled off our consent agenda at the start
3 of our full ANC meeting of 13 February, and then reheard
4 before the full ANC with neighbors.

5 And as is our practice at rehearings, we tend to
6 focus on new information, both from opponents and from the
7 applicants. And not much had really changed. I think the
8 biggest change is that Ms. Moldenhauer and Cozen were
9 representing the project, and so had new things to say.

10 In particular, they introduced us to two pieces
11 of relief that they said they would seek before the Board
12 that hadn't been previously discussed. And so the ANC
13 amended the motion that we had to include provisional support
14 for that additional relief that had been sought.

15 And I'm not sure that it's appropriate for me to
16 opine about why commissioners peeled off from that original
17 unanimous motion that we were acting on, but that could be --
18 that could be part of the reason.

19 But in the course of the same meeting, actually,
20 the ANC considered carefully this issue of alley versus tax
21 lots, and we tried to consider that matter generally. ANC-6B
22 is full of alley lots. All of them are regular. And it has
23 been our almost universal position that we wish to encourage
24 the development of these in responsible ways.

25 Whenever an applicant has come forward requesting

1 an alley naming, we have always been for naming the alley if
2 it enabled construction. And, generally, we have been very
3 positively disposed towards building on these alley lots.
4 And so we attempted to address this issue, so that we could
5 -- rather than do it case by case, talk about it generally.

6

7 And our view, unfortunately, given the constraints
8 of time, we weren't -- because we get kicked out of our room,
9 unlike you.

10 We had to table that issue until next month, but
11 -- and we took no position. But, I mean, my point is, it's
12 an issue that we take quite seriously, and we're attempting
13 to work through to make sure that the ANC is always able to
14 articulate a position that supports the development of these
15 alley lots.

16 CHAIR HILL: Okay. Thank you. Does the Board
17 have any questions for the chairman?

18 COMMISSIONER MAY: I just want to clarify. I
19 think what I've -- maybe I didn't quite make myself clear
20 before, but the ANC reports get great -- we're supposed to
21 give great weight to the concerns of the ANC. So if the ANC
22 simply supports something, it isn't the same sort of great
23 weight treatment, if I understand it correctly. I mean,
24 that's what I've been advised.

25 So it's not that it's -- you know, it's any -- you

1 know, we're -- we think any differently about support. I
2 mean, it's certainly great having the ANCs come in and speak
3 in support of projects. But the -- you know, the specific
4 requirement for us is to give great weight to the "concerns
5 of the ANCs."

6 So that was the only point I was trying to make
7 earlier.

8 MR. RIDGE: Oh. I appreciate that distinction.
9 I mean, I just want to make clear that the ANC-6B, you know,
10 has heard this and, you know, wishes to make sure that we can
11 articulate the best set of concerns. But, you know, we have
12 10 voices, and so sometimes where you can get is emotion,
13 period, and not a statement of specific --

14 COMMISSIONER MAY: No, and that's fine. Just, you
15 know, understand that it's -- there are limitations on what
16 -- what that means for --

17 MR. RIDGE: Sure.

18 COMMISSIONER MAY: -- the actions that we take.

19 MR. RIDGE: Sure. I would add, though, that the
20 ANC often articulates concerns even with support. And in
21 this case, we have expressed support for the applicant and
22 neighbors to continue talking and --

23 COMMISSIONER MAY: Right.

24 MR. RIDGE: -- and we look forward to that, and
25 that is articulated in our letter.

1 COMMISSIONER MAY: Right. And those are the sort
2 of things that we would want to try to address. I mean,
3 concerns don't necessarily mean opposition, right. We
4 understand that you can support with concerns. So --

5 CHAIR HILL: Okay.

6 COMMISSIONER MAY: -- I don't think I have
7 anything else.

8 CHAIR HILL: Okay. Ms. White?

9 MEMBER WHITE: I'm good.

10 CHAIR HILL: Okay. Okay. Oh, it was four to zero
11 to four?

12 MR. RIDGE: That's right.

13 CHAIR HILL: So that gets me to eight people.

14 MR. RIDGE: Yes.

15 CHAIR HILL: You have 10 people?

16 MR. RIDGE: We have one vacancy, and we had one
17 who had the flu.

18 CHAIR HILL: Okay. Okay. Thank you, Mr.
19 Chairman. Thanks for staying. Thanks for coming down.
20 Thanks for supporting the Building Museum.

21 Is there anyone here wishing to speak in support?
22 Is there anyone here wishing to speak in opposition? Please
23 come forward. If you could, first of all, state your name.
24 I assume you've all been sworn in, correct?

25 MR. CHILCOAT: I have not, sir.

1 CHAIR HILL: Okay. All right. Mr. Moy, if you
2 could do the honors once again, please?

3 Sir, if you could please stand. And if anybody
4 has missed it, please stand.

5 (Witness sworn.)

6 MR. MOY: Thank you.

7 CHAIR HILL: Okay. Great. Thanks. So, and also,
8 you have to fill out the witness cards and give those to the
9 transcriber. I guess if you could go ahead and state your --
10 all of you just -- well, let's start, first, with stating
11 your name and address, and then I'll give you your -- the
12 time for the testimony.

13 If you could please introduce yourselves and give
14 your name and address, starting from you, sir, and then
15 working your way to your right.

16 MR. CHILCOAT: Yes, sir. I'm Clayton Chilcoat.
17 I am the owner of 211 3rd Street, Southeast.

18 MS. FRIEDMAN: Hi. I am Lauren Friedman. I am
19 the co-owner of 215 3rd Street.

20 MR. COLEMAN: Hello, my name is Thomas Coleman.
21 I'm the co-owner of 215 3rd Street.

22 CHAIR HILL: Okay. And just so as you're going
23 through this, I guess, well actually, you can tell me now.
24 Because I don't want to take away from your three minutes.

25 Where are you guys located in relationship to --

1 you can just go down the line, where are you all related in
2 relationship to the proposed project?

3 MR. CHILCOAT: We all three are directly behind
4 the proposed project. I own 211, which has that walkway.
5 So, mine is the property that actually physically abuts the
6 lot.

7 CHAIR HILL: Okay. Right, so you're at the end
8 of the flag or whatever, the --

9 MR. CHILCOAT: Yes, sir.

10 CHAIR HILL: The easement. Right.

11 MR. CHILCOAT: Yes, sir.

12 CHAIR HILL: Okay. And then you guys?

13 MR. COLEMAN: We own the garage. So if you
14 distinctly know, that narrow alleyway, we're the one
15 alongside it. And our garage abuts the three-foot walkway.

16 MS. FRIEDMAN: And we have an easement to the
17 walkway.

18 CHAIR HILL: Okay. And I'm sorry for the
19 Applicant, can you just pull up that record lot thing for me
20 again? Thank you.

21 Just for -- you guys are -- who's who now again?
22 So you're at 826?

23 MR. CHILCOAT: Yes, sir. I'm 826.

24 MR. COLEMAN: And we're 824.

25 CHAIR HILL: And you're 824. So that's a garage

1 right there. Okay. That's the garage. Okay.

2 MS. FRIEDMAN: That's why it's strangely shaped
3 right there.

4 CHAIR HILL: Sure. And 827, they're not here.
5 Okay. Okay. All right, so --

6 MS. FRIEDMAN: Right. She did submit something
7 for the record though.

8 CHAIR HILL: Okay.

9 MS. FRIEDMAN: This morning she filed like a nine-
10 page statement for the record.

11 CHAIR HILL: Okay. Okay. Great. Thank you.

12 MS. FRIEDMAN: And she did have someone present,
13 but it's been a long time.

14 CHAIR HILL: Okay. Sure. No, I understand.
15 Okay. So, sir, you can go ahead and be -- Mr. Chilcoat? Oh,
16 okay. Mr. Coleman?

17 MR. COLEMAN: If it would be okay, I'd like --
18 members of the Board and Zoning Adjustment.

19 CHAIR HILL: Sure.

20 MR. COLEMAN: Thank you. As the owners of 215 3rd
21 Street, S.E., we submit this letter and testimony to oppose
22 the application as set forth in BZA Case 19683.

23 The applicants are seeking three variances and two
24 special exceptions to convert a parking area behind our house
25 into a two-story residential building.

1 As affected neighbors, we oppose the special
2 exceptions and variances and construction for the following
3 reasons: air and light impacts, light impacts to planned
4 solar panels on a garage, special trees, improper notice and
5 its effect on being recognized as a party to this case, the
6 lack of construction management agreement.

7 Air and light. Approving the project will impair
8 our ability to use and enjoy our property. First the
9 property significantly impacts our air and light.

10 The structure will impede our patio and house's
11 light during the hours before sunset as the building
12 overshadows our garage from the west. Second, the
13 development would turn an open-air easement into a dark,
14 potentially dangerous, unmonitored narrow gap.

15 Currently, 211 3rd Street, S.E. owns the land
16 between our properties, and the proposed development, and we
17 have an easement to use this land for passage and to keep our
18 trash on it.

19 The current application does not adequately
20 address these impacts to our property or the easement area.
21 Furthermore, rats are an issue around our property, including
22 this easement.

23 As of August 2017, DPW found two rat burrows in
24 the alley in response to our service request. As recently
25 as January 2018, DPW has several pending service requests.

1 Decreased light and air in the area compounded
2 with increased density and trash could exacerbate the rodent
3 problem already evident in our area. In addition, it is not
4 clear at this time where the trash cans will be placed for
5 pickup for the new tenants.

6 Currently, our private easement and street curb
7 are the location where we place our trash cans for pickup.
8 The Applicants' current plans do not include any potential
9 trash pickup location such as a private open area to place
10 those cans for pickup.

11 Our curb area on 3rd Street is already
12 overburdened with trash cans. And we are concerned that a
13 lack of planning for trash services will result in
14 encroachment on our easement.

15 Regarding the solar. Evidence in the record does
16 not specifically address how the proposed structure would
17 shade the roof of our garage, which is relevant to our
18 evaluation of a pending solar project for our property.

19 We are currently under contract with a solar firm
20 to evaluate and install solar panels on the roof of our house
21 and garage. Currently this project is in the assessment
22 stage.

23 And we have brought the proposed development to
24 the attention of our solar contractor to help evaluate the
25 impacts. The Applicants' architect presented a solar study

1 at the ANC meeting, not currently included in the BZA record.

2 The Applicants' solar study demonstrated the
3 proposed structure would indeed shade the roof of our garage
4 at times when the current buildings in the area do not shade
5 the roof of our garage. However, as the site was limited
6 temporally, it did not address its full impacts.

7 Indeed the study consists of an aerial view for
8 four hours in a day at four different dates of the year.
9 However, it did not assess the amount of solar power
10 prevented from reaching our roof by the proposed structure.

11 In addition, since what will be proposed to the
12 ANC and ourselves was an aerial view, two dimensions and not
13 three dimensional rendering, has appeared in other cases
14 before the BZA. It is unclear whether the assessment
15 includes the height of our sloped roof of our garage, which
16 is 14 feet to 10 feet. It's not flat.

17 And regarding special trees. There are two large
18 magnolia trees currently overshadowing the footprint of the
19 proposed development, and both their canopy and roots may
20 require protection or changes to the design.

21 These two trees fall into different lots. The
22 first is 70 inches in circumference and located on 211 3rd
23 Street, S.E., making it a special tree over the 45-inch
24 circumference threshold.

25 Canopy and roots of 211 3rd Street could require

1 protection. Using Google Maps, an overhead development area
2 and the trees canopy, which is different than the roots,
3 conflict potentially with the proposed development.

4 This could result in the trees' death without
5 protection or relocation measures. To date the Applicants
6 have not borne the burden of evidence in how they will
7 protect this tree.

8 There is a second magnolia tree at 209 3rd Street,
9 S.E. And the record also does not indicate whether this tree
10 is a special tree, or even a heritage tree, which is more
11 than one hundred inches in circumference.

12 At the hearing for the previous application
13 submitted by the Applicants, the Office of Planning said that
14 it would get a report from the Urban Forestry on this issue.
15 However, because the Applicants did not move forward on the
16 application, instead filed this one, the report was never
17 done, which is necessary to assess the issue with said trees.

18 Regarding notice. As the owner of 215 3rd Street,
19 S.E., the property within two hundred feet of the alley, we
20 never received a notice of this application for this project.

21 On November 22, 2017, applicants submitted this
22 application and also filed a list of names and mailing
23 addresses of property owners within two hundred feet. On
24 December 21, the BZA sent notice of a public hearing to the
25 property owners listed.

1 Applicants incorrectly listed the wrong
2 individuals as property owners. We bought it in August. And
3 we didn't receive the required notice.

4 As a result, we were only recently made aware of
5 the application and additional materials submitted by the
6 applicants. As a result of the recent new filings in this
7 matter, we have just now retained counsel, not present today.

8 If we had more notice on application, we would
9 likely have asked the Board to recognize us as a party to
10 this case as well.

11 And in addition, and last I'll just say, we also
12 have some feelings on a construction management plan that
13 we've listed in our letter to you. It should be in front of
14 you in the Exhibit.

15 CHAIR HILL: Okay. You mentioned a couple of
16 things. Is that in the record? Your testimony?

17 MR. COLEMAN: Yes. It is.

18 VICE CHAIR HART: Exhibit Number 53.

19 CHAIR HILL: Thank you. Okay. Ms. Friedman?

20 MS. FRIEDMAN: Yes. I won't nearly need as much
21 time since my husband has read through our remarks.

22 CHAIR HILL: Sure. Which Exhibit again? Which,
23 I'm sorry.

24 VICE CHAIR HART: Number 53.

25 CHAIR HILL: Thank you. You can begin whenever

1 you like.

2 MS. FRIEDMAN: Okay. I would like to point out
3 a couple of things that might not be in there though. For
4 instance, this application does not address such things as
5 site lines around the corner of the proposed property, which
6 is something that was mentioned in a previous case today.

7 There is around to the property it goes from one
8 alley and turns very -- you can probably see in there. If
9 there was a large structure and there were cars going through
10 there many times a day, I don't know what that would mean in
11 terms of people are going to be walking there now that it's
12 a named alley and people are living on the alley.

13 Other cars, it's a -- cars go two ways on that.
14 It's not a one way street. So, it could be potentially
15 dangerous to not be able to see around that corner.

16 I think you did most of that. I did want to point
17 out that we were looking through the slides presented by the
18 other -- the applicants earlier.

19 And the slide, number 29, which had that whole
20 list of other properties that had gotten relief I guess, it
21 did show an incorrect, I believe, amount of square footage
22 for the property. It said that it was 1,210 feet. Where
23 it's, I heard today it's 1,120.

24 I don't know if that would be materially
25 different. But it does mean a different percentage amount.

1 A difference between that and whatever the maximum amount
2 would be.

3 And I would like to also reiterate our concerns
4 for the trees in the area. As we do love seeing those trees.
5 They -- at least the one at 211 comes all the way over near
6 our garage. And we do love that tree.

7 In addition, in terms of solar impacts, we didn't
8 say in our -- what we filed. But our house is 100 percent
9 electric. So something like solar power would be very
10 effective in a house like ours.

11 We have not yet completed a sun study or anything
12 like that. But I just wanted to point that out.

13 Anyway, that's all I have to say. Thank you for
14 your time.

15 CHAIR HILL: Okay. Great. Mr. Coleman -- uh,
16 Chilcoat? Chilcoat?

17 MR. CHILCOAT: It's Chilcoat, sir.

18 CHAIR HILL: Thanks.

19 MR. CHILCOAT: And thank you all for this
20 opportunity. I submitted testimony in writing earlier. And
21 I won't read it to you, because I'm not very good at that.

22 But, to hit the highlights, while I agree with my
23 neighbors, and I thank them for the support of our tree, I
24 think they've covered that piece quite well.

25 We do disagree with the Office of Planning in

1 their assessment of the impact of a rear yard exemption.
2 Their statement is that exempting the rear yard requirement
3 would not significantly impact light or air for any of the
4 neighbors.

5 Our backyard is directly in line with where that
6 rear yard would be. And I believe that it would
7 significantly impact.

8 I do not personally have light studies. I don't
9 know what significant means from the Office of Planning.

10 But, that would decrease light. It would block
11 our view likely of the Library of Congress.

12 It would also decrease airflow, which becomes a
13 concern not just for the trees that they keep mentioning, but
14 there is already a mosquito issue due to standing water in
15 the dilapidated storm drain system. So, decreased airflow
16 would mean more mosquitoes potentially back in that area.

17 And it also decreases the amount of emergency
18 egress. If the building goes up as proposed, there will be
19 only one emergency exit out of the rear of our buildings,
20 which is the three-foot wide walkway that I have now.

21 If there was a rear yard to this construction that
22 would give a second emergency egress from the back of our
23 building.

24 I'd like to conclude with a more general point.
25 I'm certainly not a legal scholar. But, it seems to me that

1 the purpose of zoning requirements is to protect the
2 neighborhood and to protect the neighbors. And to ensure
3 that the people living in the area that their rights are
4 protected.

5 In cases like Plant the Seed, where the zoning
6 requirements impact the common good, it makes sense to make
7 adjustments. The case that you all solved a little bit ago.

8 It makes sense to make those adjustments to make
9 the -- for the benefit of the neighborhood.

10 CHAIR HILL: And Mr. Chilcoat, I'm just going to
11 stop you real quick like.

12 MR. CHILCOAT: Yes, sir.

13 CHAIR HILL: Pulling in another thing, another
14 case that we heard, I don't know that it's necessarily
15 relative. But I don't know why I stopped you.

16 You can go ahead. I just -- go ahead. Go ahead.
17 Sorry.

18 MR. CHILCOAT: Understand, sir. And apologize for
19 any --

20 CHAIR HILL: You don't have to apologize. It's
21 just been a long day. And so I just wanted to make sure I'm
22 not doing anything wrong.

23 And so, the later it gets, the more likelihood
24 there is that I'm going to do something wrong. So, --

25 MR. CHILCOAT: Exactly sir.

1 CHAIR HILL: Okay.

2 MR. CHILCOAT: But my point with that is that the
3 zoning requirements are there to protect the neighborhood and
4 the neighbors. And when the zoning negatively impacts the
5 greater good, it makes sense to adjust it.

6 But, when the zoning requirements are protecting
7 the rights of the neighbors that's why we're here today to
8 speak against this. And the relief from these requirements
9 only seems to benefit the person who is applying for relief
10 when the rest of us would be negatively impacted.

11 The value of my property, enjoyment of my property
12 will be negatively impacted by construction that would come
13 from this relief. I don't understand why it would be
14 considered to potentially adjust.

15 But again, I'm not an expert on these things. I
16 thank you all for your time.

17 CHAIR HILL: Okay. Thank you. I'll ask if we
18 have any questions.

19 Just as far as real comment, as far as a quick
20 comment goes. The funny thing about what happens with
21 properties, I mean, sometimes, you know, your property value
22 goes up.

23 Or sometimes, you know, you think it's not going
24 to go up and it ends up going up. Or you don't think you're
25 going to like something, and so it helps the mosquito issue,

1 or it helps the rat problem.

2 I mean, we're here for again, the variance -- the
3 different issues that have been brought up before us for the
4 application. And then have to weigh those accordingly in
5 terms of the standards that are set forth, so.

6 But, I did have some questions. But now I'm going
7 to first ask the Board so I can think about them.

8 Does the Board have any questions for the
9 witnesses?

10 (No response)

11 CHAIR HILL: There was one that I had. I thought
12 and I'm sorry, Mr. Coleman I think it was. You had said --
13 you guys were here for the first -- you guys look familiar.

14 You were here at the begin -- the first time,
15 right?

16 MR. COLEMAN: We were in September 2017.

17 CHAIR HILL: And -- okay. Okay.

18 MR. COLEMAN: Because there were two. My
19 understanding is there was one in July. We weren't here for
20 that. We were here in September.

21 CHAIR HILL: Right. And so you mentioned
22 something about you had not been given party status or
23 something? Or you had tried to seek party status?

24 Or I got confused there. It sounded as though you
25 said that you were denied party status.

1 MR. COLEMAN: We recently obtained counsel and
2 became more aware of our rights. But we have been involved
3 in the past as a -- when we bought the house in August 2017.

4 CHAIR HILL: Right. But what I'm saying is no one
5 told you you couldn't apply for party status or try to become
6 party status. Or anything like that.

7 MR. COLEMAN: No. I mean, we didn't receive a --
8 you're asking me if we received like, you don't need to do
9 that?

10 CHAIR HILL: I don't know. I thought somewhere
11 in your testimony you said something about how you'd been
12 denied or been --

13 MR. COLEMAN: Oh, no. I mean, I think it's just
14 with advice of counsel and all of that. And what that fully
15 means and entails.

16 We did not seek it in the past. No, sir.

17 CHAIR HILL: Okay. Okay. All right. Okay. Does
18 the Applicant have any questions for the witnesses?

19 MS. MOLDENHAUER: Okay. So, just Mr. Coleman.
20 I just want to confirm, the rear of your property, you have
21 a garage structure?

22 MR. COLEMAN: We do.

23 MS. MOLDENHAUER: And that garage -- do you know
24 approximately the high -- tall that garage structure is?

25 MR. COLEMAN: Yes. I believe it slopes somewhere

1 between 10 and 14 feet.

2 MS. MOLDENHAUER: Okay. So what does it -- so
3 obviously so that is currently also creating some shading on
4 the back of your own property.

5 MR. COLEMAN: Is there shading caused by our
6 garage? Yes. I believe so. I'm not a sun study expert.
7 But yes.

8 MS. MOLDENHAUER: Okay. And you talked about
9 solar panels on your garage roof. Do you currently have
10 solar panels on your roof?

11 MR. COLEMAN: No. I tried to clarify that in my
12 testimony. We're in the process. We just moved in in
13 August. And it's a long process, tax credits and everything.

14 I mean, if you -- I don't want to make this sound
15 all --

16 CHAIR HILL: That's okay. I understood your --
17 I understood the question. The answer is no.

18 MR. COLEMAN: No.

19 CHAIR HILL: Right.

20 MS. MOLDENHAUER: And I know that you have
21 expressed some concerns with the notice. But you did -- you
22 have become aware of the case and you have been active at the
23 ANC and active here?

24 MR. COLEMAN: Yes. I would just say the notice
25 makes it -- right now we have to actively track and try to

1 remember to come to these things.

2 And if you don't appear, as kind of evident today,
3 you know, you lose your right. So, making sure we get all
4 notices is something that we're interested in.

5 And that's all we wanted to, I think, bring up.

6 CHAIR HILL: Okay. Okay. Any other questions?

7 MS. MOLDENHAUER: Oh, just because it's part of
8 the ANC report. After the ANC, which is a longer question,
9 I'm sorry.

10 After the ANC, the ANC indicated in their report
11 that they wanted you because you had attended the ANC, to
12 work with the applicant and have a meeting. Did I reach out
13 to you via email asking for a -- did we actually -- we talked
14 about doing this, right?

15 Not, I'm sorry, Mr. Coleman, not you, because you
16 weren't there at the meeting. Your wife was present. Did
17 we talk about having a meeting on Monday?

18 Did I email you about trying to get together at
19 least and have a dialog?

20 MS. FRIEDMAN: I believe I received an email.
21 But, as we've retained counsel, I don't want -- I didn't want
22 to respond to any such email without him.

23 MS. MOLDENHAUER: And did your counsel then tell
24 you that I emailed him? I think it was a him, and asked him
25 to have a dialog?

1 And I never received a response from him?

2 MR. COLEMAN: We've been in preliminary, kind of
3 setting up the relationship. It's been very recent since
4 you've been retained.

5 MS. MOLDENHAUER: It has been. Yes.

6 MR. COLEMAN: Same with -- same with ours. So,
7 if that --

8 CHAIR HILL: No. That's okay. That's good.
9 That's good. I'm trying to understand. Or we're trying to
10 understand.

11 So okay. So, they reached out to you. And out
12 of an abundance of caution and being just careful, you didn't
13 respond back to them.

14 You were waiting for the attorney. And the
15 attorney didn't respond back to them.

16 MR. COLEMAN: We're working with our attorneys.
17 I'm trying to like just get this, you know, reviewed. We had
18 a lot of stuff going on.

19 CHAIR HILL: That's okay.

20 MR. COLEMAN: Yeah.

21 CHAIR HILL: So the attorney hasn't gotten back
22 to you guys?

23 MS. MOLDENHAUER: No other parties.

24 CHAIR HILL: Okay. All right. Okay. I hate that
25 when -- the -- so you guys went to the ANC meetings.

1 Correct? All three of you?

2 MR. CHILCOAT: Yes, sir.

3 MR. COLEMAN: I was not at the last one.

4 CHAIR HILL: Oh, you were not at the last one?

5 MS. FRIEDMAN: And at the Planning and Zoning
6 Subcommittee meeting, which was the week before last. We
7 were the only ones present.

8 For a number of reasons the other two neighbors
9 weren't aware of it.

10 CHAIR HILL: Who's the other two neighbors?

11 MR. CHILCOAT: Myself and Ms. Quinn from the other
12 --

13 CHAIR HILL: Oh, okay. Got it. Okay. So, but
14 you did go to the -- so you did go to the ANC meeting. And
15 the vote was four to zero to four. And you heard the
16 testimony from the chairman. And so I'm just kind of curious
17 as to how that ANC -- I mean, obviously some people were in
18 favor of it. Some commissioners were in favor of it and some
19 weren't. Like what were people -- I mean, besides
20 yourselves, were there other people opposed to it? I mean,
21 what was kind of -- how did the ANC meeting go?

22 MR. CHILCOAT: It went very long, sir. It was --
23 it started at seven. It was approaching ten o'clock by the
24 time we finished with ours.

25 Other neighbors weren't or -- weren't particularly

1 interested. They had all come for their own personal things,
2 as we had as well.

3 CHAIR HILL: Sure.

4 MR. CHILCOAT: So, really from a neighbor
5 standpoint, the parties were the only ones who showed
6 interest. And, you know, similar to what you might expect,
7 the applicant is -- was very supportive of getting support
8 from the ANC.

9 And we were opposed to it, so.

10 CHAIR HILL: Okay. And at that time, Ms.
11 Moldenhauer, you were counselor and you presented?

12 MS. MOLDENHAUER: Yes. I believe I was retained
13 like the day or two before the ANC meeting. We attended not
14 the Subcommittee meeting, but the ANC meeting.

15 CHAIR HILL: Okay.

16 MS. MOLDENHAUER: And presented. And I was
17 present at that.

18 CHAIR HILL: Okay. Ms. Friedman?

19 MS. FRIEDMAN: If I might add something? In terms
20 of -- I -- you heard from the ANC chairman --

21 CHAIR HILL: Uh-huh.

22 MS. FRIEDMAN: Earlier, who also expressed that
23 they have quite an interest in developing alley lots. In
24 meaning alleys, in developing alley lots.

25 So, in terms of supporting this project or not,

1 they really -- it seemed to us anyway that they were really
2 commenting on they wanted alley lots to be developed in
3 general too.

4 And they did consider some, you know, writing a
5 letter to the Office of Planning for instance, or Zoning
6 Commissioner, I'm not sure who, because I'm not entirely sure
7 of all of this, about like changing the rules on this and
8 disagreeing with OP.

9 CHAIR HILL: Okay. That's all right. I mean, I
10 appreciate that. And I was just trying to get a feel for the
11 temperature of how it went and such.

12 And I think I got -- I got that.

13 MS. FRIEDMAN: And the -- our SMD did abstain.

14 CHAIR HILL: Okay. All right. So, okay. Okay.
15 So, does anybody have anything else for anybody?

16 (No response)

17 CHAIR HILL: Okay. So, you guys are excused.
18 Thank you very much.

19 Mr. May has a question for the Applicant.

20 COMMISSIONER MAY: So, going back to the three
21 cases that you had cited that were alley tax lots. One of
22 them was relatively recent, 19479.

23 I'm wondering in that particular case what the
24 Office of Planning's recommendation was?

25 MS. MOLDENHAUER: It was to support.

1 COMMISSIONER MAY: It was to support?

2 MS. MOLDENHAUER: Yes. And I can -- I actually --
3 that was part of what I read here. I've got the report here.
4 Just give me -- sorry.

5 VICE CHAIR HART: And in that case --

6 MS. MOLDENHAUER: So --

7 VICE CHAIR HART: Go ahead. Keep going.

8 MS. MOLDENHAUER: I was trying not to interrupt.
9 Sorry Mr. Hart. Oh. So this is -- sorry. But, this was
10 April 27, 2017.

11 The AN -- the Office of Planning recommended
12 approval for a variance from the E201.1 minimum lot area
13 requirement, E201.1 minimum lot area requirement. It
14 recommended approval from special exceptions.

15 And --

16 COMMISSIONER MAY: I don't need all that
17 particular information. You may want to include that at some
18 point.

19 I'm actually interested in what Mr. Power might
20 have to say about the -- what the Office of Planning has to
21 say about that.

22 MR. JESICK: Thank you Mr. May. I'm not familiar
23 with the particulars of that case. I do know that however
24 that it was an existing alley structure that was being added
25 onto.

1 So, it's not quite comparable.

2 COMMISSIONER MAY: Okay.

3 MS. MOLDENHAUER: And yeah, I mean, so I mean,
4 just on a random note, it actually -- I live on -- off of
5 Library Court.

6 So I know the owner as well. And they're, you
7 know, it's right near -- but it's an existing structure.

8 But the issue is in order for anybody if you have
9 an existing home or you have any alley record lot that is a
10 tax lot, you can't even get a repair permit. Which is what
11 this AOP report said, in order to -- unless you need that
12 relief.

13 COMMISSIONER MAY: Right. I understand that.
14 That's an essential problem that came up in the last case.
15 And it's one that probably has to be addressed by the Zoning
16 Commission.

17 MS. MOLDENHAUER: Yes.

18 COMMISSIONER MAY: So, what about these other
19 cases? I mean, how long ago were those? I mean, they were
20 a thousand cases ago.

21 MS. MOLDENHAUER: I think -- so, I think is that
22 -- so, 18511 is behind the Giant in Capital Hill. Is it the
23 Giant? No.

24 COMMISSIONER MAY: No. There is no Giant in
25 Capitol Hill.

1 MS. MOLDENHAUER: Not the Giant. It's the --

2 COMMISSIONER MAY: That's northwest.

3 MS. MOLDENHAUER: The Harris Teeter. The over by
4 the new Frager's --

5 COMMISSIONER MAY: 18234. You're mixing them up
6 there.

7 MS. MOLDENHAUER: I'm sorry.

8 CHAIR HILL: It's been a long day.

9 MS. MOLDENHAUER: Sorry, it's been a long day.
10 So that one yeah. That one is --

11 COMMISSIONER MAY: Just tell me first, how long
12 ago were they?

13 MS. MOLDENHAUER: One was when I was on the Board.
14 So it's obviously a long time ago.

15 COMMISSIONER MAY: So they're pre-ZR16.

16 MS. MOLDENHAUER: Yes. The other two --

17 COMMISSIONER MAY: They're both pre-ZR16.

18 MS. MOLDENHAUER: Are pre-ZR16. Yes.

19 COMMISSIONER MAY: And that's where we got a
20 little muddy here with ZR16, right?

21 MS. MOLDENHAUER: So we look at the number --
22 because we look at the R4. We look at the R4. Well, you
23 still had that requirement for minimum lot size under --

24 COMMISSIONER MAY: Right.

25 MS. MOLDENHAUER: ZR58. It's just that you have

1 this now, this new requirement for the subdivision.

2 COMMISSIONER MAY: Right. That's where it got
3 more complicated with ZR16. And this is why it's -- there's
4 a brighter line having to do with the variance requirement.
5 Right?

6 So, that -- I mean, and again, this is why it's
7 something that probably -- has to be resolved by the Zoning
8 Commission ultimately.

9 All right. I think I have my questions answered
10 for the moment. We'll see where this goes.

11 MS. MOLDENHAUER: I was just going to ask the
12 architect on like five seconds of rebuttal. Or if the Board
13 feels it's necessary.

14 There were a couple of points that were --
15 Chairman Hill, if I could have you -- I just think that there
16 was a couple of points that were mentioned by the neighbors.

17 CHAIR HILL: That's fine. That's fine.

18 MS. MOLDENHAUER: I mean, if the Board --

19 CHAIR HILL: Just give me a second. So, okay you
20 -- sure, we'll hear from the architect.

21 MS. MOLDENHAUER: I just want to briefly ask the
22 architect to respond to the concerns about both shading and
23 line of sight.

24 MR. DZIERZANOWSKI: Sure. So the first with
25 regards to shading, the property as you know, it is very

1 closely adjacent to the Capital Hill Hotel, which goes to an
2 extremely tall height.

3 So, we've actually found in doing some research
4 that the majority of the time between both the existing
5 accessory garage structures up along the alley, the existing
6 trees.

7 And at many times in the day, the majority of the
8 interior of that alley is covered in shade. And the majority
9 of that is because the shallowness of the sun angle and its
10 relationship to that hotel.

11 So, some of the questions and concerns about the
12 full extent of potential shading or potential shadowing given
13 off by our proposed structure that's all part of the reason
14 why we maintained that side yard, to try to distance the
15 actual edge of the structure. And to buffer some of the
16 concerns with that shading.

17 And how any of that might, you know, cast off.
18 So --

19 MS. MOLDENHAUER: I'm going to -- I think that's
20 great. Thank you.

21 MR. DZIERZANOWSKI: Sure.

22 MS. MOLDENHAUER: I'm going to just try to just
23 run through this.

24 MR. DZIERZANOWSKI: No problem.

25 MS. MOLDENHAUER: I know everyone is tired and

1 it's late. Mr. Wise, can you quickly just tell the Board
2 about the tree study that you had commissioned?

3 Based on there were some concerns about trees.
4 I know the Board does consider some of those things at times.

5 MR. WISE: Sure. We hired Keith Pitchford, a
6 certified arborist to come out and identify any issues that
7 he saw with the trees.

8 In his report, which we can add to the record, in
9 his report he identified that there would -- that they are
10 both likely special trees. And so we'd have to pay the
11 permit fee to -- if they were removed.

12 But the only one that would need to be removed
13 would be the 209 tree. 209 is on the property. And we have
14 a letter of support in the record from John and Jenny Freed,
15 who own that property. They are in full support of the
16 project.

17 And we have come to an agreement with them, a
18 private agreement will take care of that tree. So that there
19 will be -- that there is no objection.

20 So, that is -- that tree will be taken care of.
21 It will likely be removed and replaced with a tree of similar
22 height and of similar origin.

23 MS. MOLDENHAUER: Thank you. And sorry, a point
24 of correction. We did make a typographical error. And I
25 apologize.

1 And so thank you for pointing that out. It was --
2 I did reverse the numbers in that one slide. It's 1,120
3 square feet.

4 So, the degree of deviation would be 0.37, not
5 0.33. I just want to make sure that's clear. I apologize
6 for that error.

7 And I want to make sure that's on the record. I
8 don't believe that that five percent change changes --

9 CHAIR HILL: Point zero five.

10 MS. MOLDENHAUER: Sorry, thank you. Point zero
11 five percent change would impact the relief that we're
12 requesting.

13 Sorry, can the project architects just quickly
14 address the trash? Just five seconds.

15 MR. DZIERZANOWSKI: Yeah. Real quick. So the
16 side yard area which we had discussed, and which I had
17 mentioned that area would be dedicated to such things such
18 as trash, any additional storage by the neighbor. And has
19 its own direct access to that.

20 So, any issues or concerns that --

21 CHAIR HILL: Okay. So, I'm going to stop you here
22 for a second.

23 MR. DZIERZANOWSKI: Sure.

24 CHAIR HILL: So, I've got a couple of comments,
25 I guess. And then we'll see where the Board is. And then

1 Ms. Moldenhauer you can also provide a little bit of summary
2 or conclusion if you'd like.

3 You were retained when?

4 MS. MOLDENHAUER: Two weeks ago.

5 CHAIR HILL: Two weeks ago. Okay. So Mr. Wise,
6 and I'm trying to remember this again. And I'm going to go
7 back.

8 Like you just got legal counsel two weeks ago for
9 this.

10 MR. WISE: No. We were previously represented by
11 another legal counsel who identified a conflict in his
12 schedule --

13 CHAIR HILL: Okay.

14 MR. WISE: For this.

15 CHAIR HILL: Okay.

16 MR. WISE: So, we had been -- on this application
17 we have been represented by Chris Collins prior to this.

18 CHAIR HILL: Okay. Okay. Because I don't
19 remember it being -- yeah. Okay. So, okay.

20 All right, I guess -- and Mr. Wise, I guess, so
21 when you purchased the property, you purchased the property
22 with the intent of building a single family home there.

23 And the -- and you did your due diligence as best
24 you could. And you were told what?

25 MR. WISE: So, we were told when we walked into

1 have initial meetings for -- we initially wanted to just use
2 it as parking until we could get the approvals to do that.
3 Because it had been, we were told, been used as parking prior
4 to that.

5 When we went into DCRA, we were told that we would
6 have to obtain relief for any use of the lot.

7 CHAIR HILL: But I'm sorry to interrupt you. So,
8 I'm just trying to understand. When you purchased it, you
9 thought you were going to be able to do what? And how did
10 you get to that determination?

11 MR. WISE: We believed -- we had plans to build
12 a single family home on that lot.

13 CHAIR HILL: You had plans to build a single
14 family home. So you just thought that you could build a
15 single family home on there?

16 MR. WISE: We had gone through -- we knew that
17 there was -- that there was discussion with the -- with the
18 ZR16 language. And we had bought it with the intent to be
19 able to build --

20 CHAIR HILL: Okay. And it's all right. Because
21 this is what I'm getting at.

22 MR. WISE: Sure.

23 CHAIR HILL: It seems to me you just bought it.
24 So you tried -- you just bought it based -- you thought oh
25 wow, I'm sure I can build a home here.

1 And that was the due diligence that you did?

2 MR. WISE: Yeah. We --

3 CHAIR HILL: Or you went down to DCRA and talked
4 to somebody at DCRA?

5 MR. WISE: No, no, no. We -- so we own a -- we
6 currently own a home at 205 3rd Street. Which is about a
7 half a block away from this lot.

8 So, we were told that we could use it for parking
9 until we were able to get and hopefully the ZR16 language
10 would go through. But, we were told that we would be able
11 to use it as -- that we could use it as a single family home.

12 We could develop it as a single family home.

13 CHAIR HILL: Okay. Okay, and I'm sorry, Mr. Wise,
14 like I'm going to stick on this one now, because I'm just
15 curious, right?

16 MR. WISE: That's fine.

17 CHAIR HILL: So, when you bought it, you bought
18 it intending to use it as parking with the hope of turning
19 it into a single family home.

20 MR. WISE: No. We purchased it with --

21 CHAIR HILL: The intent of building a single
22 family home.

23 MR. WISE: Correct.

24 CHAIR HILL: So who told you that you could build
25 a single family home?

1 MR. WISE: The architect that we had at the time.

2 CHAIR HILL: The architect that you had at the
3 time. So that was the due diligence?

4 MR. WISE: Yes. And this pertains to a pervious
5 discussion, but --

6 CHAIR HILL: That's okay. I'm just trying to get
7 to where you guys are.

8 MR. WISE: Yeah. I mean, -- we --

9 CHAIR HILL: That's all right. So hopefully you
10 fired that architect.

11 MR. WISE: We did.

12 CHAIR HILL: So right.

13 MR. WISE: Absolutely.

14 CHAIR HILL: So but that's how --

15 MR. WISE: They are not here. We have a new
16 architect.

17 CHAIR HILL: That's how -- that's how you found
18 out that you could build a home on this. Based upon the
19 information that you received from that architect.

20 MR. WISE: That's correct.

21 CHAIR HILL: Okay. Thank you. All right --

22 MR. WISE: And then when we went to DCRA, we were
23 told that we couldn't do anything with the lot without
24 relief.

25 CHAIR HILL: Okay. That's all right. The

1 architect -- we'll just blame it on the architect. Okay?
2 Because that's where -- because you bought it after the
3 architect said you could build on it.

4 MR. WISE: Right. And then DCRA said that we
5 can't do anything with it. If --

6 CHAIR HILL: Okay. Okay. All right. So, I need
7 some time. I don't know what the rest of the Board, I mean,
8 I just can't get to this right now.

9 Like, so what I'd like in terms of from the
10 applicant that has been the attorney for two weeks, and I
11 state that because that's what I understand.

12 So, if I could get just -- and I know there's a --
13 I know that there's a lot of stuff in here. And we go
14 through it all. And I do appreciate it.

15 And I don't want this to become the new norm for
16 me. I like going through the whole presentation. I like
17 hearing the whole presentation.

18 But, if you can now provide something that kind
19 of summarizes how you're getting to the variance. Okay? I'd
20 like to see that. Okay?

21 So, I'm just -- so you summarize just how you're
22 getting us -- because your problem, well one of the problems
23 is the Office of Planning is opposed to the variance. Which
24 is not easy. Right?

25 So, a summary as to how you're supporting the

1 three-pronged test in getting us to override the Office of
2 Planning's opinion. So that's what I would -- just the
3 variance, whatever.

4 I just want a summary of the variance. Okay? And
5 then I'd also like you to reach out to the neighbors that
6 apparently, I don't know whether they -- you know, they're
7 the abutting property.

8 Like, I mean, they -- you know, and how there's
9 counsel. And so I hope you reach out to your counsel. And
10 so, you know, had you -- had you applied for party status,
11 you probably would have gotten party status. Okay?

12 And so now you have, you know, after this 12
13 hours, you can probably hang up a shingle. And like, you
14 know, become a zoning attorney if you want.

15 Well, that's not really part of the case. Sorry.
16 So, but please work with the neighbors there. And I'd like
17 to hear a little bit more about how that went.

18 And there was one other thing. But I don't know
19 if anybody else has anything else while I try to remember
20 what it was.

21 COMMISSIONER MAY: Yeah. I'm interested. I mean,
22 I can see the practical difficulty a little bit more clearly
23 in this case. And I hate comparing it. You know, just
24 you're dealing with by the fact that we had two of these in
25 a row, right?

1 So, but I think that there's a difference in the
2 practical difficulty associated with this. Because you
3 would, as you said, you need to have relief to do anything
4 other than have, you know, parking your own car there.

5 Right? You live on the block and, you know, you
6 could rent -- or you know, I'm talking, you could -- maybe
7 you can talk when I'm done. We'll see.

8 But, I mean, it -- I think it is a little bit more
9 complex. The thing that still is a concern to me obviously
10 is, you know, Office of Planning's report.

11 And so I appreciate the Chairman asking for a
12 summary argument related to it. And this is, I mean, I'm
13 interested in a precise and to the point summary. Not a,
14 let's throw everything that we have at it and write 50 pages.

15 CHAIR HILL: I'm sorry, I didn't clarify? Because
16 that -- you know what I mean?

17 COMMISSIONER MAY: The concise one.

18 CHAIR HILL: I mean, like right. Like, you know,
19 this is it.

20 COMMISSIONER MAY: Yes.

21 CHAIR HILL: This is not -- okay.

22 COMMISSIONER MAY: The Cliff's notes. Right?

23 CHAIR HILL: Okay, a little look here. Try to
24 figure that one out. You know, right.

25 COMMISSIONER MAY: Yeah. So, but I'm interested

1 in hearing more from the Office of Planning. And, you know,
2 in part because of the prior recommendation on that other
3 case on Library Court.

4 Because that's been cited here. And I'd like to
5 understand more about what the rationale was in that
6 circumstance.

7 I also think that it would help to get for this
8 case what I asked for from the previous case. Which is what
9 the Office of Planning is thinking about with regard to
10 amending the text of the Zoning Regulations to clarify this
11 issue with "historic" tax lots on alleys.

12 Because I think this is -- it is a, you know, when
13 this comes up as an issue and it kicks some of these things
14 into variance territory, I mean, I understand this is a
15 little bit different than the other case.

16 But, it is a question that I would like to have
17 a little bit more understanding about from the Office of
18 Planning.

19 MR. JESICK: You want us to provide that here at
20 the BZA? Or to the Zoning Commission?

21 COMMISSIONER MAY: Well, I think it needs to be
22 provided to the BZA. And since I'll be continuing with this.

23 But I think that it's also something that
24 depending on what the Office of Planning is thinking, it may
25 be appropriate to take it up to the Zoning Commission

1 simultaneously.

2 I don't know. I mean, it may be that those --
3 that this issue needs to be decided by the Zoning Commission
4 before the BZA can act on either of these cases.

5 I don't know, so. Anyway, having some feedback
6 would be helpful.

7 CHAIR HILL: All right. Does the Office of
8 Planning understand?

9 MR. JESICK: I think so.

10 CHAIR HILL: Okay. Let's see, okay. Does the
11 Applicant understand what we're trying to get to?

12 MS. MOLDENHAUER: We do. And I would just make
13 one brief general comment.

14 Commissioner May, I wholeheartedly support your
15 position. Or your point that you made. Not position, but
16 your point.

17 I do think that the Zoning Commission needs to
18 provide its perspective to OP. Because I think OP is, you
19 know, also looking to the Zoning Commission to understand,
20 you know, what the intent was.

21 And so I look forward to maybe getting some
22 clarification and working with OP, and obviously as that
23 transpires. That being said, we will file an executive
24 summary.

25 A summary of the variance standard as the Board

1 requested here. And I would just want to confirm that is the

2 --

3 CHAIR HILL: I'm trying to figure it out. So, we
4 want an executive summary. Okay? And then also working with
5 the neighbors.

6 MS. MOLDENHAUER: I will email the neighbors
7 attorney and follow up with them from the prior email.

8 CHAIR HILL: And I guess -- yeah. And I'm just
9 trying to figure out what I want from the neighbors in terms
10 of whether we -- is this a --

11 MS. MOLDENHAUER: Well, they're not at party
12 status, so.

13 CHAIR HILL: Do you want me -- I understand
14 they're not at party status. Yeah, I got it. Right.

15 So, just trying to understand if anybody wants
16 anything from them. Or how this would -- how do we get
17 feedback? Or what you all's thoughts are?

18 Are you guys ready to do this as a decision? Do
19 you need a continued hearing? What do you all need?

20 COMMISSIONER MAY: I think the written submissions
21 are sufficient. And we can take it up for decision making
22 at a future date.

23 That's my opinion.

24 CHAIR HILL: Okay. So, then we could ask for the
25 Applicant to submit the material requested in terms of

1 working with the neighbors, the adjacent neighbors. And try
2 to understand what happened with that discussion.

3 And then I guess, I mean, and this is where maybe
4 OAG can help me, if I'm overstepping this. Or if, you know,
5 the attorney would like to help me.

6 Or, you know, that the new -- because what I'm
7 trying to figure out, is I just want to hear from the next
8 door neighbors now. Because they just got counsel.

9 There's now an attorney that's going to be
10 involved with them. And so I'm just trying to figure out how
11 to -- how to process this.

12 So, if you submit whatever -- and this I'm still
13 asking OAG, I guess, at this point. I'm going to ask,
14 because I don't -- because they don't have party status. So
15 these are just witnesses.

16 So what I was going to suggest is that go ahead
17 and talk to everybody. You guys submit what you want to
18 submit.

19 Allow them seven days to give us whatever their
20 response is to your submittal. And then we would come back
21 here for a decision.

22 And I'm looking to the attorney only because
23 you're the one who's going to have a problem with things.
24 So, if -- meaning, like do you understand what I'm trying to
25 get through?

1 And is that -- and also OAG, I mean, I don't know
2 if then, does that make sense?

3 MS. GLAZER: The witnesses don't have a right to
4 notice. If you want to hear from them, you can hear from
5 them again.

6 CHAIR HILL: Okay. But I can hear -- we can hear
7 from them through --

8 MS. GLAZER: They don't have a right to notice and
9 a right to respond like a party does.

10 COMMISSIONER MAY: But they -- we can just leave
11 the record open for them to submit a further response.

12 CHAIR HILL: Okay. Okay. So, we're going to go
13 ahead and do that. So go ahead and respond -- we're going
14 to give you some dates here.

15 Then you're going to provide your executive
16 summary. Which, by the way, I'm having a hard time with the
17 Office of Planning also, and the variance thing.

18 So, that's where just, you know, I don't think
19 that's a surprise. Okay?

20 And so go ahead and submit the executive summary.
21 I mean, whatever, you know, whatever we're calling it.
22 Then speak to the neighbors.

23 Submit something about how that meeting went or
24 whatever happened with it. See if you can get them to agree
25 to something.

1 And then the neighbors will have seven days to
2 respond to that. And then we can get to a decision.

3 MS. MOLDENHAUER: I'm fine with all this. My only
4 comment would be that as the Applicant and given that the
5 neighbors are not a party status, I would think that they
6 should file something. And then we should have the last
7 opportunity to file on our submission after obviously they
8 file.

9 I mean, so we're going to talk with them between
10 now and the hearing.

11 CHAIR HILL: I'm also trying -- I agree with you.

12 MS. MOLDENHAUER: And so --

13 CHAIR HILL: I'm trying to figure out the last
14 thing that gets us back here, I guess. And so --

15 MS. MOLDENHAUER: So, I just want to have that be
16 is when we file and everything else in the record.

17 CHAIR HILL: And so --

18 MS. MOLDENHAUER: If that's okay.

19 CHAIR HILL: So I'm still going with this. So
20 you're back here again on the 21st? Okay. So the 21st and
21 we set these dates already again, right?

22 So the seven days would be, you know, you submit
23 something on what day. And then the -- we could allow seven
24 days for some tests -- some response to the witness -- I'm
25 just curious about the neighbors.

1 MS. MOLDENHAUER: Can I --

2 CHAIR HILL: You know, the neighbors. And then
3 you can have an opportunity to submit something after they've
4 submitted something.

5 I mean, you're asking for them to submit something
6 first. And I just think that that's turning into a -- it's
7 not going to get us back here sooner.

8 MS. MOLDENHAUER: I mean, I was going to say like,
9 I'll try to meet with them before, you know, in the next two
10 -- the next week and a half.

11 And then if they could file something, you know,
12 by the 9th. And then we could file something by the 14th.
13 And then we're back here on the 21st.

14 CHAIR HILL: Okay.

15 MS. MOLDENHAUER: That would give enough time for
16 us to meet. And then them to file something either saying,
17 we met. We didn't meet. We discussed things. We could
18 resolve some issue.

19 And then we could then file our executive summary
20 and our response too whatever.

21 COMMISSIONER MAY: We could push the -- their act
22 -- actually their submission a couple of days later to like
23 the 16th. Because we don't have the seven days for -- the
24 mandatory seven days for ANC response.

25 I mean, I don't think we're expecting anything

1 further from the ANC.

2 CHAIR HILL: No, that's okay. So repeat. What --
3 say what you're saying again.

4 COMMISSIONER MAY: So I mean, you could -- if you
5 -- if we gave them until the 9th. And then the applicant
6 would have until the 16th. And then we would take it up on
7 the 21st.

8 I mean, certainly the ANC is free to respond. But
9 I don't feel like we have to have --

10 CHAIR HILL: What was your first --

11 COMMISSIONER MAY: We're not asking for anything
12 further from the ANC.

13 MS. MOLDENHAUER: No. So, yes. I'm great with
14 those dates. So, then the individuals that appear today here
15 as witnesses would be able to file something by the 9th.

16 And that would obviously put --

17 CHAIR HILL: Okay, so hold on a second. That's
18 fine. So the people that are here, you're going to meet with
19 them.

20 They're going to file something by the 9th.
21 They're going to file something by the 9th as to what
22 happened. Okay?

23 All right. Then --

24 MS. MOLDENHAUER: We would file our executive
25 summary and any other response to what they filed.

1 CHAIR HILL: On the 9th.

2 MS. MOLDENHAUER: On the 16th.

3 CHAIR HILL: On the 16th. Right. Exactly. Your
4 response to the 9th --

5 MS. MOLDENHAUER: And then meet back here on the
6 21st.

7 CHAIR HILL: Okay.

8 COMMISSIONER MAY: And the Office of Planning
9 would have to do theirs by the 9th as well. Does that work?

10 MR. JESICK: If we're responding to what the
11 Applicant submits, that wouldn't work. If they --

12 COMMISSIONER MAY: Well, no. I mean, the
13 Applicant would be responding on the 16th.

14 So -- I mean, I -- we're not really asking you
15 to respond to what they submit. I think I'm asking -- I
16 mean, what we asked for from you was a reaction to today.

17 And I think they have the -- the Applicant has the
18 ability to -- or should have the right to respond to what you
19 submit. Correct?

20 MR. JESICK: Got it.

21 COMMISSIONER MAY: So that means the 9th. You can
22 do the 9th?

23 MR. JESICK: Yes.

24 COMMISSIONER MAY: Okay.

25 CHAIR HILL: Okay. So the Office of Planning is

1 going to submit -- Mr. Moy, if you're following this, the
2 Office of Planning is going to submit by the 9th.

3 The Applicant is going to meet with the neighbors.
4 And the neighbors are going to submit something by the 9th.

5 Then the Applicant will have until the 16th to
6 respond to everything that was submitted on the 9th. And
7 then that gets us back here on the 21st.

8 MS. MOLDENHAUER: Yes.

9 MR. MOY: And the 21st will be for decision
10 making. Correct? Yes? No?

11 CHAIR HILL: Yes. Yes. Okay.

12 MS. MOLDENHAUER: It's just late. Sorry. It's
13 for decision?

14 CHAIR HILL: Decision.

15 MS. MOLDENHAUER: Okay. Sorry. I was just
16 checking. Thank you.

17 Can I ask one question? I know it's --

18 CHAIR HILL: That's okay. Just give me a second.
19 Give me a second.

20 I'm trying to determine whether or not I think I
21 can -- and I'm being -- because I'm just unclear as to
22 whether I can do a decision on that day.

23 Or whether we can continue on that day if we had
24 further ques -- I don't -- if we had further questions.

25 So you're back here anyway. Right?

1 COMMISSIONER MAY: Right. If we don't have all
2 of our questions answered, we can certainly continue the
3 deliberations.

4 CHAIR HILL: It has to be a continued hearing.
5 I can't -- if it makes a decision, then I'm back to the same
6 problem that I was -- anyway.

7 So, I'd like to make --

8 COMMISSIONER MAY: Well, no. I mean, if we have
9 to have further -- we can continue deliberations then. And
10 we can request additional filings at that time if we need
11 them. Without having a problem.

12 We just can't bring people up and start
13 questioning them, because that's a hearing.

14 CHAIR HILL: Right. And so I'm proposing a
15 continued hearing. Because I'm going to have more questions,
16 I think, about the executive summary perhaps.

17 And I don't want to put myself in the situation
18 that we were in the last time. And since you're already
19 going to be here-- and I'm just trying to figure out whether
20 -- does the Board have any issues with it being a continued
21 hearing?

22 COMMISSIONER MAY: No. Because we could also roll
23 right into deliberations.

24 CHAIR HILL: Okay.

25 COMMISSIONER MAY: But I would say that it would

1 be a limited scope hearing based on the additional filings
2 that we would be receiving.

3 CHAIR HILL: Yes.

4 COMMISSIONER MAY: As opposed to just throwing the
5 door open for everything.

6 CHAIR HILL: No. Thank you very much for -- thank
7 you very much for clarifying. So, we're going to have a
8 continued hearing.

9 All the dates are staying the same. We're just
10 going to have a continued hearing to discuss the things that
11 have been filed after this hearing.

12 MS. MOLDENHAUER: So then just two questions then.
13 One, is if it's a continued hearing, and since there's no
14 party status individuals in the case, I just want to confirm
15 that then the only individual that you would be questioning
16 -- you're not going to bring up the witnesses.

17 Because obviously, you've already gone through
18 that procedural part of the hearing. Is that correct?

19 COMMISSIONER MAY: No. I would expect that we --
20 if we -- we may have questions. They're going to make
21 submissions.

22 So we may have questions about those submissions,
23 so. I mean, it's sort of --

24 CHAIR HILL: The Zoning Commissioner.

25 COMMISSIONER MAY: It truly leaves everything

1 open. So we want to focus on answering questions.

2 MS. MOLDENHAUER: I'm just trying to understand.

3 CHAIR HILL: So, all I -- to be quite honest, and
4 I don't think it's that complicated. Although I always get
5 confused by the regulations and making sure again, doing the
6 right thing.

7 Following the process. Because I don't want to
8 do the mistakes that have gotten me in trouble before.

9 And so, yeah. So, we're going to go with same
10 dates. And if the people that have come down to talk today,
11 you might, if you're here, we'll ask -- and you want to come
12 down, we might ask you some questions.

13 We might not have any questions for you. But, if
14 -- I just want to make it a continued hearing in case we have
15 questions. Then we have an opportunity to ask them.

16 Because this is a little bit more complicated than
17 I thought at the beginning. Okay.

18 MS. MOLDENHAUER: Now, my client asked me to ask
19 this. So, I'm going to.

20 CHAIR HILL: Certainly.

21 MS. MOLDENHAUER: Could we be placed at the
22 beginning of that agenda for that day?

23 (Laughter)

24 CHAIR HILL: That's fine. That's fine. So,
25 that's fine, Mr. Wise.

1 MS. MOLDENHAUER: I don't know whether that's a
2 respectful request.

3 CHAIR HILL: That's all right. That's all right.

4 MS. MOLDENHAUER: Just a respectful request. All
5 right. Thank you.

6 CHAIR HILL: I can't recall, did we put anybody
7 in the beginning yet?

8 MR. MOY: To my -- not to my knowledge.

9 CHAIR HILL: Okay. I think we can do that. Okay?
10 So we're going to -- so, we're going to do this continued
11 hearing as the first hearing of the 21st. Okay.

12 So, all the dates stay the same.

13 MS. MOLDENHAUER: Thank you very much.

14 CHAIR HILL: Does everybody understand?

15 MS. MOLDENHAUER: Yes.

16 CHAIR HILL: Okay. All right.

17 MS. MOLDENHAUER: Thank you.

18 CHAIR HILL: Thank you.

19 MS. MOLDENHAUER: Appreciate your time. Thank you
20 Board Members.

21 CHAIR HILL: Thank you.

22 (Whereupon, the above-entitled matter went off the
23 record at 8:11 p.m. and resumed at 8:24 p.m.)

24 CHAIR HILL: All right, Mr. Moy. Whenever you
25 like.

1 MR. MOY: Okay. All right Mr. Chairman. I'm
2 going to make this brief.

3 Okay. This is Case Application Number 19659.
4 Federation of State Medical Boards Amended for Special
5 Exception Use Provision, Subtitle U, Section 203.1(n). To
6 use the existing residential building as an office.
7 Nonprofit organization R3, at 2118 Leroy Place, Northwest,
8 Square 2531, Lot 49.

9 And participating is the Chairman, Vice Chairman,
10 Ms. White, Peter May. I don't know if Ms. John is going to
11 participate on this or not. But, I'll leave that up to her.

12 CHAIR HILL: As I understand Ms. John -- Ms. John,
13 you weren't planning on reading in, correct? Is that --

14 MS. JOHN: Sure.

15 CHAIR HILL: Okay. Well, we'll -- at this point
16 Ms. John, why don't you -- I think there's a lot to read
17 into.

18 So maybe we'll just -- we'll just -- you can maybe
19 hold off. And we'll see whether we need you to read in
20 afterwards.

21 And so, okay. So, if you could please introduce
22 yourselves.

23 MS. MAZO: Samantha Mazo. I am counsel to the
24 Sheridan Kalorama Neighborhood Council, and the Sheridan
25 Kalorama Historical Association. They are the two parties

1 who were granted party status in opposition to this
2 application.

3 MR. SULLIVAN: Thank you Mr. Chairman. Marty
4 Sullivan from Sullivan and Barros on behalf of the Applicant.

5 MR. FISH: Thank you Mr. Chairman and Members of
6 the Board. Eric Fish, the Senior Vice President of Legal
7 Services for the Federal of State Medical Boards.

8 CHAIR HILL: Okay. Were you guys sworn in?

9 MR. FISH: I was earlier this morning.

10 CHAIR HILL: Oh, was everybody sworn in? Okay,
11 very good. Okay. Great.

12 So, let's see. First of all welcome. Welcome
13 everybody here. I mean, I'm not kidding. Congratulations.
14 This is apparently -- this is very close to the record.

15 This is apparently Commissioner May's record.
16 He's never been here this late in 13 and a half years. I
17 thought if we go two more hours it will break my record.

18 So, okay. So, where I think we are now, as I
19 recall, was that you had rebuttal when we ended the last
20 marathon meeting actually, was the end of you guys.

21 And so, if you could go ahead and give your
22 rebuttal. Wherein then the party in opposition will have an
23 opportunity to cross in order to cross the testimony that was
24 given during the rebuttal.

25 And then we'll see if the Board has anything else

1 in terms of the questions for the Office of Planning. Which
2 they are here? No?

3 That's okay. That's okay. All right. So now I'm
4 going to turn to the OAG again for here for a second.

5 Ms. Glazer, again what I recall -- and actually
6 the attorneys will help me out. The rebuttal, cross, cross
7 on rebuttal?

8 I didn't think there was cross on rebuttal. Is
9 there cross on rebuttal?

10 MS. GLAZER: Sorry. Chairman Hill, my memory
11 serves me correctly, I believe at the end of the last hearing
12 you did indicate that there would be cross on rebuttal.

13 CHAIR HILL: No. There is going to be cross on
14 rebuttal. I'm talking about the -- the applicant having
15 cross to the cross? No.

16 COMMISSIONER MAY: No. I had written down maybe
17 that there was still cross that was going on. Was all the
18 cross on the previous testimony was completed?

19 CHAIR HILL: Yes. There was rebuttal --

20 COMMISSIONER MAY: Okay. All right. So that was
21 my error. I'm sorry.

22 CHAIR HILL: That's okay. That's okay. So
23 rebuttal and then cross on rebuttal.

24 COMMISSIONER MAY: Cross on rebuttal.

25 CHAIR HILL: You're going to get me to that two-

1 hour record though if you'd like. Yeah.

2 So, rebuttal, cross on rebuttal. Then we're going
3 to go to a conclusion with the party in opposition. Even
4 though that's not in the regulations.

5 And I keep pointing that out because I just like
6 to hear, I think it's easier for us to understand. And then
7 the Applicant gets the last word.

8 So, that being the case, Mr. Sullivan, how long
9 do you think you'll need for rebuttal?

10 MR. SULLIVAN: Five -- five, ten minutes tops.

11 CHAIR HILL: Okay. All right. So go ahead Mr.
12 Sullivan.

13 MR. SULLIVAN: Okay. Thank you. Just some
14 questions for Mr. Fish. Mr. Fish, can you tell the Board
15 again, what is your title and your duties, primary duties
16 with the Applicant, FSMB?

17 MR. FISH: I am the Senior Vice President of Legal
18 Services. Which is akin to the General Counsel for the
19 organization.

20 And in that role I am -- my duty is to ensure
21 compliance with all the federal tax codes and other codes
22 related to our nonprofit status.

23 MR. SULLIVAN: Can you tell me, who are the
24 members of the Federation of State Medical Boards?

25 MR. FISH: I believe it was raised earlier in

1 error. The members of our organization are the individual
2 state medical boards of the United States.

3 That is 70 individual state medical boards. These
4 medical boards are the instruments of the executive function
5 of state government.

6 They are not private physicians. They are state
7 employees, state government.

8 MR. SULLIVAN: Can you explain, what are some of
9 the ways that FSMB assists its member boards in fulfilling
10 their individual missions?

11 MR. FISH: The FSMB's mission is really related
12 to our educational and scientific purposes as put out in our
13 Articles of Incorporation. Some of the issues that we work
14 on on behalf of our medical boards include licensing
15 examinations.

16 In the past we have worked together to harmonize
17 what at one point were 50 different licensing exams for state
18 boards. And we've made it into one medical exam for
19 licensees across the nation.

20 We've also worked on best practices standards that
21 member boards have adopted in part or in full. Including
22 here in the District of Columbia.

23 MR. SULLIVAN: Thank you. Finally, on this
24 section, and then I have a few more questions after this one.
25 But, regarding the definition of nonprofit organizations

1 under the D.C. Zoning Regulations, there's a requirement that
2 no part of an organization's net income inure to the benefit
3 of any private shareholder or individual.

4 So I ask you, does any of the net income of FSMB
5 inure to the benefit of any private shareholder or
6 individual?

7 MR. FISH: It does not. Our members are state
8 medical boards. We serve our state medical boards.

9 We do pay our board of directors, a few of the
10 members. But that is not private inurement. Private
11 inurement is individuals who are profiting in a personal
12 capacity.

13 Our member board of directors who are paid, in
14 some respects, our chair, our vice chair, our past chair and
15 our chair elect, all are paid reasonable. That is allowed
16 under federal tax code for a nonprofit, either a 501(c)(3)
17 or a 501(c)(6).

18 Again, we do comply with federal tax laws. And
19 this is allowable.

20 MR. SULLIVAN: Thank you. The opponents have
21 offered a few examples of activities that they claim would
22 adversely affect the use of neighboring properties. One of
23 those they did mention a few times is Ubers and taxis picking
24 up passengers on the street in front of 2118 Leroy.

25 In your experience with your current space and

1 your expectations for the future, how often would you expect
2 staff or visitors to arrive or depart via hired
3 transportation?

4 MR. FISH: I have been with the Federation for
5 five years in the D.C. office. And I would say that the use
6 of taxis and Ubers is infrequent in comparison to other
7 commercial uses.

8 We may have an individual who goes to a meeting
9 and would take a taxi, maybe once, twice a week. I think at
10 most three to four or five times a week would be the max of
11 comings and goings.

12 And I think given the location and just the
13 practical realities of receiving an Uber on a one way street
14 and receiving a taxi if you're trying to hail it on a
15 commercial street, Connecticut is an easier hail than Leroy.

16 MR. SULLIVAN: Do you expect any employees to ever
17 use Leroy Place for parking?

18 MR. FISH: I do not. Currently only one employee
19 drives to the office. That is our CEO who has a dedicated
20 garage space in the office that we rent.

21 This property has a garage in the back. And we
22 continue -- we hope to continue to allow him to drive and use
23 that garage space.

24 The other employees that would be there, either
25 the existing or any future employees would be directed to

1 park at the nearby commercial garages that are on
2 Connecticut, less than a quarter of a mile away.

3 MR. SULLIVAN: Is it true that the relocation of
4 the Columbian Embassy has caused the street to recapture two
5 reserved parking spaces for public use?

6 MR. FISH: It has. It is my understanding that as
7 a foreign chancellery or an embassy that they were allowed
8 dedicated parking spaces on the street.

9 We would not be seeking a dedicated parking space.
10 And would not have the ability to seek it as a resident of
11 permit parking.

12 MR. SULLIVAN: I have no further questions or
13 rebuttal.

14 CHAIR HILL: Okay. Ms. Mazo, as a -- so, you have
15 an opportunity to cross. And so you weren't here, or maybe
16 you were for when I went through all these things with cross.

17 And you know, in general I find that cross is
18 really -- hasn't been incredibly enlightening. And so, you
19 know, if you could, go ahead and provide -- and then you'll
20 have an opportunity for your conclusion.

21 But, if you would go ahead and ask your questions
22 concerning the testimony that was just given in terms of
23 rebuttal, then we can go on from there.

24 MS. MAZO: Thank you. And I was monitoring. And
25 I clearly got the message in terms of cross. I do just have,

1 I think, two questions for Mr. Fish.

2 The first, Mr. Fish is where is your current
3 office located?

4 MR. FISH: 1300 Connecticut Avenue. At the corner
5 of N and Connecticut.

6 MS. MAZO: So it is what, two blocks from the
7 metro now?

8 MR. FISH: It's actually less than a block. If
9 you get off at the Dupont South station, you are directly at
10 that Krispy Kreme. And it's two buildings away.

11 There's 1350 and 1333.

12 MS. MAZO: Okay. You are aware that the Leroy
13 Place property is, you know, at least by DDOT standards half
14 a mile from a metro?

15 MR. FISH: From the Dupont North exit, yes.

16 MS. MAZO: Uh-huh. And well, and then also
17 probably half a mile from, I guess, what is that, Cleveland
18 Park? Or maybe even further. I don't know.

19 MR. FISH: Maybe it would be -- Woodland Park
20 would be in there somewhere.

21 MS. MAZO: And also, is it up the hill from the
22 Dupont Circle metro?

23 MR. FISH: It is.

24 MS. MAZO: Okay. And you know, therefore could it
25 be logical that if someone was going to be hailing a taxi,

1 being maybe more likely from this new property that's much
2 further from the metro than from your current site now?

3 MR. FISH: If I understand your question, you'd be
4 saying that an individual would be taking a cab north from
5 the Dupont North station?

6 MS. MAZO: No. I'm just saying that if they are
7 either coming to your site or they're going somewhere else,
8 it may be more likely if they are arriving by some sort of
9 car or Uber, simply because it's much further from the metro
10 then your current location.

11 MR. FISH: I would defer to how they would use it.
12 I think that given the location of the property, and just
13 normal uses of taxis or Ubers, you would exit on Connecticut
14 going north, because the one way street that Leroy is, you
15 wouldn't want to waste a few minutes driving around in a
16 circle.

17 MS. MAZO: Just one more question. You stated in
18 your capacity that part of your role in general counsel is to
19 prepare the filings to the federal government.

20 Is that correct?

21 MR. FISH: That is correct.

22 MS. MAZO: Are you -- I assume then you are
23 familiar with some of the information in the 2015 990 filing
24 for FSMB. Is that correct?

25 MR. FISH: Yes.

1 MS. MAZO: I have a question about that. The 990
2 indicates that there was --

3 MR. SULLIVAN: Objection. Mr. Chairman, we didn't
4 testify here in rebuttal about any information in the 990.

5 CHAIR HILL: I guess I'm just trying to understand
6 the question. Which I think is being asked in terms of the
7 fact that Mr. Fish had testified in rebuttal as to what his
8 position was.

9 And I'm also just trying to get Ms. Mazo, I guess,
10 to what the question is.

11 MS. MAZO: I'm going to withdraw the question.
12 It's -- I'm going to withdraw the question.

13 CHAIR HILL: Okay.

14 MS. MAZO: So, I'm done with cross.

15 CHAIR HILL: Okay. All right. I think I'm going
16 to have some questions. I think the Board might have some
17 questions.

18 I know that we asked for a bunch of stuff the last
19 time. And I guess I would like to hear from both the
20 Applicant and the opposition as to, you know, what we asked
21 for and what you submitted, and how you went about that.

22 I suppose I'll start with the Applicant in terms
23 of since the last hearing, what it was that we asked for. I
24 mean, I know it's on the record and I've reviewed it.

25 And I just want to get again, for the clarity for

1 me as far as what you've done since the last time we were
2 here. So, you can go ahead and start Mr. Sullivan. And then
3 we'll go over to Ms. Mazo.

4 MR. SULLIVAN: If I could, Mr. Chairman, have one
5 second to pull up a copy of that filing.

6 CHAIR HILL: Sure. Ms. Mazo, why don't we start
7 with you or Mr. -- or are you going to have to pull that up
8 too, then? Okay, you have to pull that up, too? That's all
9 right. Because, the questions that I'm trying to get to when
10 we finally get to whenever we're asking questions again, is
11 that, you know, there was a filing from DDOT that talked
12 about the 25 people. Right? And, Mr. Sullivan, you can
13 speak to that if you want.

14 Then there was also the conversation about our
15 filings in there, about how at one point, you know, there was
16 the 15 people, the 15 full-time -- and actually, this is just
17 for the applicant, for I'm going to start there, all right.

18 So, the 15 people, and then there was the five
19 temporary people, and I got confused as to how the temporary
20 thing kind of figured it out, meaning, it seemed to me there
21 was always going to be 20 people there, then.

22 Only five would be considered temporary. You
23 would just rotate in and out the temporary people, but there
24 would be 20 people. So, you can explain that to me, first.
25 And then, you can hit any of the other things as you want to.

1 MR. SULLIVAN: Yes. And I don't think that's
2 exactly true. I think the intention was that there would be
3 15 employees. But to be fully transparent, if there was
4 going to be an intern that showed up, or a visiting staff
5 from Texas, we wouldn't want to be extending over our 15
6 limit without having that as part of our conditions. It
7 might just be easier to say 20, but the --

8 CHAIR HILL: No, I understand, but that's --

9 MR. SULLIVAN: -- and then that'll never be, you
10 know, temporary --

11 CHAIR HILL: That's why I'm just trying to
12 understand --

13 MR. SULLIVAN: Yes.

14 CHAIR HILL: And the whole transparent part, it's
15 confusing in that, you know, like, you know, again, I
16 understand what you're saying by temporary, and that there's
17 the 15 people. And so basically -- right, you were getting
18 me back to the place where I was originally, which is that
19 there are going to be 20 people there, or otherwise, you have
20 to kind of figure it out. Right?

21 So -- or you can explain -- because that's what
22 I didn't understand, in terms of the temporary people, like,
23 it was three months at a time. So, you know, do you get five
24 people at three months at a time? And when those three
25 months at a time are burned out, then you don't get to use

1 them again. You understand my confusion.

2 MR. SULLIVAN: I understand.

3 CHAIR HILL: So, would you try to -- would you
4 like to explain that?

5 MR. SULLIVAN: I think maybe the best way to do
6 it --

7 CHAIR HILL: You're going with the 20 people.

8 MR. SULLIVAN: -- I don't think there's a
9 difference between 15 and 20.

10 CHAIR HILL: Okay, got it.

11 MR. SULLIVAN: But there will never be more than
12 20. So, if there is a need to have an intern, or the need
13 to have a visiting staff member from Texas, they have to fit
14 within that 20. So, we can't go over the 20 total.

15 CHAIR HILL: Right. Because the original report
16 from the Office of Planning had 15. So, that's where I'm
17 trying to kind of understand the extra five here, and what
18 that means. Right? So -- okay. All right. So, please go
19 ahead and talk to anything in terms of your submissions that
20 you've had. I guess I got my question answered about the 15,
21 the five temporary people, and 20 number.

22 MR. SULLIVAN: Okay. Some of the things that were
23 asked for and we responded to, was the GFA -- Gross Floor
24 Area analysis -- which is obviously -- it's in dispute, and
25 we can talk more about that. I really feel strongly, but

1 I'll wait until my closing to talk more about what I think --

2 CHAIR HILL: Okay, so you submitted the GFA thing
3 that we asked you to resubmit. Right?

4 MR. SULLIVAN: Right.

5 CHAIR HILL: Okay.

6 MR. SULLIVAN: The rear loading situation, the --
7 I don't know if there was a request for a loading dock, but
8 our response to that is that it's really is not conducive to
9 doing that because it's not a large space, and the loading
10 would be a one-time thing, really. There's not going to be
11 a -- once the furniture --

12 CHAIR HILL: Okay, that's all right. I understood
13 it was more of a loading issue. It wasn't necessarily a one-
14 time thing, people moving in. I thought it was actually
15 loading -- how would loading take place. And so, we had a
16 question about it and you have answered it, and it's in your
17 filings there.

18 MR. SULLIVAN: Right.

19 CHAIR HILL: Okay. So they're not getting a
20 loading dock. You're saying it is what it is, and the alley
21 is as wide as it is.

22 MR. SULLIVAN: That's correct. Yes.

23 CHAIR HILL: Okay.

24 MR. SULLIVAN: And we submitted a FSMB smoking
25 policy and what it would be for this property. The articles

1 of incorporation were submitted. We submitted a short
2 response on the Halcyon House comment, and that related to
3 our issue with the five-year time limit, and just pointing
4 out that the two approvals that have five-year time limits
5 are a totally different animal than what we're proposing.

6 Those are uses that have weddings and banquets and
7 parties, and tour buses. And much more likelihood to have
8 an adverse effect on the use of neighboring properties.

9 We submitted information on expected visitor
10 information, and then further description on the meeting
11 schedules, descriptions of potential meetings for the
12 property.

13 CHAIR HILL: Right. And so, in terms of the
14 questions I guess, again, the -- right. You were -- well,
15 originally, or last time, as I recall, you would rather not
16 do the five years, but you weren't opposed to necessarily the
17 five years.

18 MR. SULLIVAN: Well, we would not -- I don't think
19 that FSMB would sell the property if it was five years. But
20 I just don't think it's appropriate for this proposal, and
21 it makes it a lot tougher to invest a significant amount of
22 money in the restoration, not having the certainty that
23 you're going to move on to five year.

24 CHAIR HILL: Okay. That's okay. I mean, I love
25 this late at night. I can just -- and you can just ramble

1 them out. Right? So, last time they were okay with the five
2 years, you know, to a certain extent, as I recall. And then
3 Mr. Fish is right here. And so, Mr. Fish, am I getting that
4 wrong.

5 MR. FISH: It would be our preference to have no
6 time limit on it. However, we do understand --

7 CHAIR HILL: It would be your preference to be
8 more time that the Office of Planning has given the five
9 years as a condition. In discussion with our Board of
10 Directors and our senior leadership, we believe that we could
11 live with the five years, however, feel that it's unfair for
12 the applicant in the sense that we will be investing
13 substantial amount of money that's been approved to renovate
14 this property, and then to live with this as a unsure
15 condition that that we just have to --

16 CHAIR HILL: Okay. That's all right. I'm just
17 trying to clarify -- and just to let you all know, I'm just
18 trying to clarify and understand where we were the last time.
19 And so, that -- I mean, I'm not saying one way or the other
20 how this is going. I'm just trying to understand and
21 remember what we did the last time.

22 And so, I think those are all the things we asked
23 of you to submit. Correct, Mr. Sullivan?

24 MR. SULLIVAN: Yes, that sounds right. Yes.

25 CHAIR HILL: Okay. And then, Ms. Mazos -- and you

1 all can chime in afterwards, because I'm on a roll here and
2 I'm trying to remember. So, we asked -- please clarify what
3 we asked of you. I remember in your submission -- I remember
4 what I asked of you was, in terms of the conditions that were
5 set forth and the long discussion about the conditions, and
6 what you all thought about the conditions.

7 And in your filing, you basically did clarify that
8 you thought the conditions didn't really -- weren't going to
9 mitigate or solve the issues, but you did provide some
10 commentary on that. So, if you could start with whatever it
11 was that we asked of you, and kind of tell us what that is,
12 and then we'll start there.

13 MS. MAZO: Thank you very much. In that,
14 initially the first issue that was raised, in terms of the
15 question that was asked of the SKNC and SKHA, was indeed to
16 provide a response on the Office of Planning's conditions.

17 In so doing, we submitted, again, our general
18 opposition, of course, in terms of conditions. But then, we
19 also identified which of OP's conditions we did not seek any
20 clarification on. And then, we also identified a few
21 conditions that we requested to ask some -- or to ask for
22 some additional clarification.

23 Also, in so doing -- this is all in our
24 Exhibit 141 -- we also submitted four or five additional
25 conditions for the Board's consideration. You know, I don't

1 want to take up more time by reading them out, but, you know,
2 one of those -- those conditions related to lighting, outdoor
3 security, window treatments on Leroy Place, that the
4 applicant would file a comprehensive transportation report,
5 that there be a TMP that would -- we work through at DDOT.

6 And also, that the applicant would have an
7 employee reside full-time at the property, and that employee
8 would be charged with us being responsive to some of the
9 residents' concerns. So, those were addition -- those were
10 conditions that we suggested, in addition to the Office of
11 Planning's conditions, and a full set of those conditions is
12 included at our Exhibit 141 -- Exhibit A to BZA Exhibit 141.

13 And then, the second request was for the list of
14 homes in the neighborhood that exceed 10,000 sq. ft., and we
15 provided that list. In total, there were 34 properties in
16 the neighborhood out of about 500 homes, which gets around
17 seven percent of the homes that exceed the 10,000 gross --
18 the 10,000 sq. ft. of grossable area, based on information
19 from PINS -- from the public.

20 I mean, you know, ultimately, if one were to get
21 into a property, they could potentially make another
22 decision, I don't know. But, based on the publicly available
23 information, we were able to provide a list of 34 residences
24 in the neighborhood that satisfied this or that would exceed
25 the 10,000 sq. ft. And those were the question -- that's

1 what was asked of us. And then, also, I don't know whether
2 you're going to get to it, but then, there was also an
3 opportunity for both the opposition parties and for the
4 applicant to respond to the comments made by the other party.

5 So --

6 CHAIR HILL: All right. No, thank you for that
7 clarification. I remember all of the things you sort of --
8 as I was going through that list of the 10,000 sq. ft. homes,
9 I just was so jealous, you know. I mean, they were just
10 like -- I thought my house was so small.

11 So, does anybody have any other questions that
12 they'd like to ask? Please do. Please ask some questions.

13 MEMBER WHITE: Well, I just want --

14 CHAIR HILL: Does anybody got some questions?

15 MEMBER WHITE: I just want to get some
16 clarification on those conditions that you just mentioned
17 that Sheridan-Kalorama came back with. And just to kind of
18 verify the response that you've gotten back.

19 In my reading, it appears, unless I'm misstating
20 it, that you got pushback on all of those, including, you
21 know, the lighting issues, window treatments, the
22 comprehensive transportation review, because DDOT indicated
23 that it wasn't something that was needed.

24 And also, there was some pushback on the fact that
25 if the applicant sold the property, it could only be sold as

1 a single-family residence. And then, finally, the full-time
2 employee living in the house. So, just, my question -- and
3 maybe the applicant should respond, but I just wanted to kind
4 of get a sense of, am I making the correct assumption that
5 there was pushback on those items?

6 MS. MAZO: Just quickly, for the record, your
7 reading is the same as our reading.

8 MEMBER WHITE: Okay.

9 MR. SULLIVAN: Thank you. I think, on lighting,
10 we said that we'd be happy to work with the neighborhood on
11 lighting.

12 MEMBER WHITE: Okay.

13 MR. SULLIVAN: On the window treatment --

14 COMMISSIONER MAY: Before we leave lighting, can
15 I ask specifics about that? I mean, you know, it seems to
16 me that there are some pretty specific things that you could
17 commit to, and that are just sort of good standard business
18 practice, that might address some of the lighting concerns.

19 Such as, having all of the internal lights be on
20 motion sensors or timers, or something like that, so that you
21 don't have lights blazing out the -- you know, through the
22 windows at three in the morning, unless somebody really is
23 burning the midnight oil.

24 I'm sure you guys work long hours. Right? But
25 no, I mean, I think -- but something like that, which you

1 would probably normally do in any kind of office setting.

2 Right? So --

3 MR. FISH: Yes, Commissioner May, that is
4 something that we are amenable to. And I think it also goes
5 to show that we have responded to neighbors who have
6 complained that the lights -- we originally requested the
7 lights be on. We did have them on timers --

8 COMMISSIONER MAY: Yes.

9 MR. FISH: They said the timers were too late.
10 We changed those.

11 COMMISSIONER MAY: Okay.

12 MR. FISH: Then yet, we hear that we're not going
13 to be responsive to the neighbors' concerns if we don't have
14 an individual living there.

15 COMMISSIONER MAY: Okay, well that's a different
16 point. And then, when it comes to -- I mean, did they also
17 have concerns about exterior lighting? Or is it all
18 lighting? Or what was it?

19 MR. FISH: I believe it just says, all lighting.
20 And it is within the Historic District, and --

21 COMMISSIONER MAY: Yes, but where you had the
22 previous conversation with neighbors.

23 MR. FISH: That was interior and exterior
24 lighting.

25 COMMISSIONER MAY: It was interior and exterior?

1 Because I think -- because on the exterior stuff, I mean, you
2 can just put everything on motion sensors. There's no reason
3 to have the -- I mean, you're not going to have a whole lot
4 of exterior lighting on the front anyway, but you'd probably
5 have motion sensor lights on the backyard, like probably most
6 of the neighbors would, as well, just for security purposes.
7 Right?

8 MR. FISH: Correct.

9 COMMISSIONER MAY: Yes.

10 MS. MAZO: Sorry, just a point of clarification
11 on the lighting. The issue, of course, has been raised by
12 both SKNC and SKHA in regards to the fact that we -- that the
13 neighbors do not just want a dark, black hole in the middle
14 of their residential street. And so, when there's a
15 discussion of lighting, it's not necessarily an issue where
16 they don't want any lights on at night. It's that they want
17 it to be residential-looking lighting from the exterior.

18 And so, I want to make sure that that point is
19 made, because it's not simply a situation where the
20 neighborhoods want there to be no lights on when there's
21 nobody looking --

22 COMMISSIONER MAY: That's fine. But what
23 you're -- you know, what you're describing, I mean, they're
24 not going to light this thing up like it's, you know -- I
25 mean, they're not going to be throwing all sorts of

1 spotlights on the building, and they're not going to -- it's
2 not going to be a black hole.

3 I mean, it's a short street frontage, and the
4 backyards, I mean, I don't know, it just -- I don't see how
5 you could not light this in a manner that's consistent with
6 being in a residential neighborhood.

7 CHAIR HILL: Okay, let me just clarify something
8 real quick, just what I'm getting from this. And so, you
9 know -- and I want to be clear also, from the people in
10 opposition. You know, we're not here or -- well, I am
11 curious about some of these conditions, and I want to kind
12 of talk them through.

13 But, we're not here to necessarily negotiate
14 conditions, and I understand fully, and I appreciate, that
15 that's not what, you know, your party -- your clients, are
16 in opposition about. Okay? And so, you know, we understand,
17 as the Board, the two threshold issues that are being
18 discussed, and getting us to, again, the merits of the case.

19 I'm just asking some further questions from what
20 had happened before in some of these, and I'm turning to
21 Mr. Fish again, and the applicant, you know, just seemed,
22 again, to -- which has been mentioned before, quite a few
23 times, like the good neighborly policy kind of things.
24 Right?

25 Like, window treatments and, you know, you

1 understand what the opposition has been saying, you know, in
2 terms of, you know, this not being an office building, or
3 looking like an office building, or creating a situation
4 where they feel like it's an office building.

5 I mean, and where I'm kind of continued to hear
6 from the applicants on either side again, was just that the
7 thing about it being a single-family home, or -- you know,
8 as I was going through this again, you just never know what
9 you're going to get with a single-family home, meaning that
10 you might get somebody who -- you know, they have receptions
11 all day long, all the time, and you got, you know, the valet
12 parking is jammed up on the -- I mean, you just don't know
13 who you're going to get.

14 So, I'm kind of just having a further discussion
15 out loud because it's 12 hours now. Okay, so the conditions.
16 So, back to the lighting thing, and the -- so all of the
17 conditions that got brought up, there's somebody who, you
18 know -- and I actually am curious, of all these new things
19 that might have been brought up, Mr. Sullivan, Mr. Fish, what
20 are the ones that you are having immediate need gut reactions
21 to? In the bad, negative.

22 MR. SULLIVAN: Oh. So, window treatments are
23 fine. I just -- that gets in the weeds of, you know, how do
24 you do it. But I'm sure they don't care what it is. I just
25 don't see how it affects the use. The traffic study, just not

1 necessary. There's not going to be any traffic.

2 It's imminently believable, as Mr. Fish stated,
3 that people are going to park in the parking garages that are
4 just --

5 CHAIR HILL: I mean, that's fine. What about the
6 traffic study?

7 MR. SULLIVAN: The requirement to sell the
8 property as a single-family residence is a restriction on
9 alienation that may be just -- I don't think it's even
10 constitutional in a sense, but it certainly doesn't have
11 anything to do with the special exception test. And then,
12 a resident in the property just -- it's going to be restored
13 as the office property that it is.

14 The organization is not prepared to commit to
15 having an employee live in the property. I don't know that
16 they could make an employee live in the property.

17 CHAIR HILL: Okay. So, the reason Ms. Mazos --
18 the person living in the property, where did that come from?
19 Or why that come? I'm just curious.

20 MS. MAZO: Sure. There are really two genesis of
21 that. One is that there's evidence in the record that at
22 some point while the property was used as the -- or the
23 Columbian Chancery, that there had been people living there
24 at some time. And so, that would be a continuation of a
25 prior use.

1 And the other thing is really just the sense --
2 again, going back to, Chairman Hill, what you were talking
3 about, that the neighbors want this to continue to feel like
4 a residential home, and to be able to make the connections.
5 There are -- as the Office of Planning has identified --
6 there are some non-residential -- or technically, non-
7 residential uses on the street.

8 But all of those have people living in them. The
9 Lubavitch Center, there was a family that was living in them.
10 The mosque.

11 CHAIR HILL: Okay.

12 MS. MAZO: So, it's not a far cry from the
13 situation as it stood, and also, as the other kind of -- the
14 more commercial uses on the --

15 CHAIR HILL: Okay, I was just trying to get to
16 where you were coming from. But part of what I thought was
17 that there would be somebody who, then -- they get contact
18 all the time to deal with whatever's going on.

19 MS. MAZO: And so, that was my third point.

20 CHAIR HILL: Right.

21 MS. MAZO: There was testimony in the record by
22 Mr. Marcus, one of the adjacent property owners. Actually,
23 I think it was Dr. Fagan saying that they were concerned
24 that if the property was owned by a corporation and used as
25 an office, then they would not know who to contact and how

1 to make contact with them.

2 CHAIR HILL: But there could be somebody assigned
3 that is a 24-hour emergency guy -- right? -- that the
4 community could know about.

5 MR. FISH: Yes, Chairman. And we're committing
6 to a neighborhood liaison program, as well.

7 CHAIR HILL: Okay. I did have a question for the
8 Office of Planning, and I'm not sure -- I think you are the
9 person that was originally on the case. Sorry. And the
10 question that I had was, they -- they the applicant -- and
11 the Office of Planning originally was putting 15 people in
12 there.

13 DDOT had, you know, they had opined about 25. And
14 then, now we're here. And I remember that the reason why the
15 Office of Planning -- I forget why you guys got to 15, but
16 you had explained it last time. And so, do you have a
17 thought on 20?

18 MS. FOTHERGILL: Good evening. For the record,
19 I'm Anne Fothergill with the Office of Planning. Just to
20 follow up on the DDOT memo, at the last hearing it came up
21 that their memo had come in very early before the applicant
22 submitted their final submission, and that perhaps, in fact,
23 they hadn't seen it.

24 The request was for 25 employees, and so Board
25 Member Hart specifically asked that DDOT provide a memo

1 addressing the application, which is for 25 employees. And
2 just while we're on DDOT memo, they came back and said that
3 that triggers SMART benefits.

4 And so, I just want to put that in there, that
5 the --

6 CHAIR HILL: I'm sorry. The 25 triggers SMART
7 benefits? Or the 20 triggers?

8 MS. FOTHERGILL: Well, so I followed up with DDOT.
9 Twenty triggers employer commuter benefits, which is a
10 District law. I mean, it's not -- they would have to comply.
11 But just so everyone knows, at 20, that kicks in, according
12 to DDOT.

13 They also recommended something new from last
14 time, which was three long-term bicycle parking spaces. So,
15 I just want to bring that to your attention, because that is
16 new since the last hearing. Otherwise, they continued to say
17 that loading -- that the 15-foot public alley can
18 sufficiently accommodate delivery vehicles, and that standard
19 delivery vehicles -- such as FedEx and UPS -- would come on
20 the street like it does -- like they do to residences.

21 CHAIR HILL: Okay, so is the applicant aware of
22 the 20 and the SMART triggering?

23 MR. SULLIVAN: Yes. The report actually says 25,
24 but we're not asking for the 25, of course. But the
25 applicant's happy to accept that as an issue.

1 CHAIR HILL: I mean, we're just clarifying, it's
2 the law, so, I mean, you're aware of the -- I'm just pointing
3 out.

4 MR. SULLIVAN: Yes.

5 CHAIR HILL: So, now you're aware of it if you
6 weren't before. And then, the three long-term bicycle
7 parking?

8 MR. SULLIVAN: Yes, of course.

9 CHAIR HILL: So, you're comfortable with that.

10 MR. SULLIVAN: Absolutely.

11 CHAIR HILL: Okay.

12 MS. FOTHERGILL: And then, in terms of your
13 question about the employee cap, so initially, the
14 application said that they have currently eight employees,
15 and they were going to possibly expand to ten. And so,
16 giving some legal room, OP recommended a cap of 15. That's
17 where the 15 came from. It was just adding for possible
18 interns.

19 I'm still not clear how we get to 20. And so, we
20 would stick with our cap of 15, because I haven't really seen
21 an explanation of how -- the jump to 20, from eight to ten.

22 CHAIR HILL: Okay. So, when you say you haven't
23 seen -- so, your continuing to -- I mean, you just said this,
24 but you're continuing to stick with your 15. You don't
25 have -- your opinion is to stick with the 15, and not go into

1 the 20, which was now what has been proposed by the
2 applicant.

3 MS. FOTHERGILL: That's right. I mean -- yes.

4 CHAIR HILL: Okay. All right. I'll get to you
5 guys asking questions, the Office of Planning. Does the
6 Board have any questions for the Office of Planning?

7 VICE CHAIR HART: So, Ms. Fothergill, if I kind
8 of understand what you're saying about the number of
9 employees, you were already adding in some kind of wiggle
10 room when you got to 15. And so, the applicant is kind of
11 saying, we'll, wiggle room would mean that we would get up
12 to 20.

13 And you're saying that, well -- you feel like
14 you've already kind of given that -- given them some leeway
15 to get to the 15, and the 20 just seemed a little bit like,
16 I don't have a justification for it, so it's hard for you to
17 support that.

18 MS. FOTHERGILL: That's correct.

19 CHAIR HILL: Okay. I'm going to work backwards.
20 Does the party sides have any questions for the Office of
21 Planning?

22 MS. MAZO: Office of Planning, are you able to
23 respond to any questions on the DDOT report?

24 MS. FOTHERGILL: I can try. I mean, I did -- I
25 was in communication with them to get the report. So --

1 MS. MAZO: Just very briefly, on the DDOT report,
2 do you know whether DDOT took into account the difference
3 between an office use in a residential neighborhood, as
4 opposed to normal mode splits for a general office use?

5 MS. FOTHERGILL: Well, I only know that it says
6 here, specifically, an office for a non-profit organization
7 in the R-3 zone, so they were aware. But no, I don't know
8 how they did the analysis.

9 MS. MAZO: Also, on the OP report, do you know,
10 by chance, if the Office of -- or, sorry, not the OPM,
11 sorry -- the DDOT report, whether a DDOT staffer came and
12 looked at the alley to -- when it made their determination,
13 in regards to the alley, feasibility of loading and
14 delivering in the alley?

15 MS. FOTHERGILL: I don't know the answer, but I
16 do know they were in contact with someone from -- possibly
17 who represents -- someone from the neighborhood. And so, if
18 there wasn't a site visit, there was at least a conversation
19 of existing conditions.

20 MS. MAZO: One more question. Back to the cap,
21 in your previous testimony, you did testify that you believed
22 25 was too many. Is that correct?

23 MS. FOTHERGILL: I think, to Mr. Hart's point, I
24 haven't seen the justification. My understanding is that
25 eight employees in the DC office. And then, there was

1 mention of expansion to ten. I just haven't seen where a
2 justification to get to 25.

3 MS. MAZO: I don't have anymore questions for
4 Office of Planning.

5 CHAIR HILL: Okay. Does the applicant have any
6 questions for the Office of Planning?

7 MR. SULLIVAN: No, thank you.

8 CHAIR HILL: Okay. Okay, so I'm going to have
9 conclusions now.

10 MS. MAZO: Can I ask a question of the Board, to
11 make sure that there are no clarification issues?

12 CHAIR HILL: Sure.

13 MS. MAZO: As I indicated, the parties were
14 directed to respond to each other's submissions, and SKNC
15 retained an architect to address the question of the 10,000
16 sq. ft. of gross floor area. And that architect is here if
17 the Board had any questions they wish to direct towards him.

18 CHAIR HILL: Before Mr. Sullivan says anything,
19 if the Board has any questions, I can ask the Board. We have
20 your submission, and it is from your expert, in terms of how
21 they got to the GFR. GFR? GFR. GFR?

22 (Off-microphone comments.)

23 CHAIR HILL: Thank you. And so, does the Board
24 need to speak with the architect that submitted the
25 information that we have from the opposition? Okay. So, we

1 don't need any further, additional testimony.

2 And so, but it is in the record, and we have seen
3 it and reviewed it, and I appreciate that. Because that was
4 part of the discussion last time, in terms of how -- you
5 know, there was a discrepancy.

6 There was basically -- you all said that they were
7 over 10,000 sq. ft., you all said they were under 10,000 sq.
8 ft. So -- and there are numbers and outright architects and
9 experts to prove either way. So -- okay.

10 So, I'm going to go ahead and let you give a
11 conclusion. I'll go ahead and give you five minutes.

12 MS. MAZO: Can I have seven minutes?

13 CHAIR HILL: Sure. We'll give you seven minutes.
14 And then, if you run a little bit over, that's fine. Okay?
15 So, you can start whenever you like.

16 MS. MAZO: Great, thank you. You know, Board, you
17 have heard a significant amount of testimony between five
18 hours on the 31st and some today. You know, one thing I just
19 want to have everybody to keep in mind is, I believe the
20 personal impacts this project will have on the individuals
21 who live on Leroy Place -- and we heard from Rick Guinea, who
22 lives directly across the street.

23 He testified that he spent a significant amount
24 of time reviewing the zoning maps and the zoning regulations
25 before purchasing his home. He also testified to the

1 substantial adverse impact in regards to traffic and
2 vehicular impact, in both his oral testimony and his two
3 written submissions.

4 You also heard from Marcus Watkins, who lives
5 directly next door, who raised concerns about smoking, about
6 additional pedestrians on his stoop, about concerns about the
7 opportunity for blocked driveways, where properties are --
8 Ubers could be blocking driveways.

9 And then, you also heard from others, but in
10 particular, Dr. Fagan, who -- whom it was so important for
11 him to come down that he came here, testifying directly after
12 having cataract surgery, and he said that he was fearful
13 about living directly next door to an office building.

14 And you'll want to make sure that the thoughts of
15 the actual residents who live on the street are fresh in your
16 mind, as we get into more of the mundane, nitty gritty of
17 some of the legal issues.

18 You know, this slide explains kind of the overview
19 as to why the application should be denied. You know, first
20 of all, I just want to raise that the Board has the authority
21 to determine if a use variance is necessary, and that's
22 expressly stated in the DC Code, that gives the Board the
23 ability to have the final administrative authority to
24 interpret the zoning regulations, and that's been upheld by
25 the courts.

1 Different courts have also addressed this issue
2 about when a use variance is required. And, in fact, in past
3 cases, the Board has made decisions themselves, that use
4 variances are necessary because of the facts that were
5 presented to him.

6 So, they're like -- point you to BZA case number
7 17656, which was a self-certified application that there was
8 an area variance, but the Board determined that the necessary
9 relief was a relief variance to locate a residence on an
10 alley lot.

11 Also, 16875 -- I do have copies of all these if
12 you want them. Then, they determined -- the Board determined
13 that a use variance was necessary, even after the zoning
14 administrator said that only a special exception was
15 required.

16 And they found, in that case, that the use
17 variance was required, because in that instance, that
18 proposed use, which was going to be a parking lot in a
19 residential zone, would significantly alter the character of
20 the residential zone.

21 Here we go back to some of our threshold issues,
22 which is FSMB does fail to meet the threshold requirements.
23 There was quite a discussion about the French case, and
24 whether the existing residential building -- but I would like
25 to identify to the Board that the French case, it was a very

1 limited holding. I mean, it was specifically to that
2 property, which, as Mr. Sullivan will say, is down the
3 street.

4 But it was a different place and a different time.
5 And in the French court, they specifically said that these
6 cases are evaluated on a case-by-case basis. There was
7 little danger that the issuance of a special exception in
8 this will establish a precedent permitting a flood of non-
9 profit organizations into any particular zoning district.

10 You know, to that end, the zoning regulations are
11 clear that a chancery use is a non-residential use. And so,
12 for that reason, if the Board wanted to, they could determine
13 that this use is not right for a special exception.

14 Now, we get into the much-discussed non-profit use
15 under the zoning regulations. I want to point, again, the
16 Board to the 2015 990, which is in the record at
17 Exhibit 105A, I believe that really does explain, I think,
18 as highlighted here, FSMB, they -- I'm sure they do good
19 work, but they are a testing agency.

20 They get -- of their examination -- of their
21 revenue, 98 percent of their revenue comes from examination
22 review, examination history reports, and FCVS revenue, which
23 my Google-searching has indicated is, I think, a service
24 where doctors have to pay to provide credentialing.

25 The zoning regulations -- we talked about the

1 definition here. But, again, it's the question about, are
2 they operated exclusively -- exclusively -- for the
3 religious, charitable, literary, scientific, and again, going
4 back, \$40 million of FSMBs -- approximately 96 percent, I'm
5 sorry -- the revenue comes from examination administration
6 and credentialing fees. So, it does not operate exclusively
7 for charitable purposes.

8 The other thing I want to highlight, which,
9 actually, I didn't even, you know, identify until today, but
10 when you look at the expenses of FSMB, the expenses of FSMB,
11 more than half of their expenses goes to addressing the
12 licensing issue.

13 There is a \$17 million in licensing and transfer
14 fees. So, the licensing issue exceeds other non-property-
15 related expenses by approximately \$2 million, and so, getting
16 to the heart of this exclusivity issue. In addition, the
17 great majority of cases that the Board has permitted, non-
18 profits have been 501(c)(3) charities.

19 And, you know, there are two cases in which the
20 Board has approved a non-501(c)(3) charities. But those are
21 in different factual situations. Those are cases where they
22 concern the expansion of a non-profit that was already
23 located in a neighborhood.

24 That is not the case here. I also point again to
25 something that our land use expert, Ellen McCarthy,

1 referenced, which was going back to, where did the special
2 exception come from.

3 It came from a 1973 zoning text amendment, and in
4 that -- the record of that text amendment, it specifically
5 identifies that this exception would only go to only those
6 organizations operated exclusively for religious,
7 charitable -- now, that text amendment does not reference a
8 501(c)(3). I am not stating that here, but I am stating that
9 there is direction that could be relied on by this Board to
10 determine that, indeed, this use -- FSMB's use does not
11 satisfy the special exception requirements.

12 Next, we go to another requirement that's not
13 satisfied, and that's the 10,000 sq. ft. requirement of the
14 special exception. And, again, as Ellen testified -- as our
15 land use expert testified -- this issue goes to the heart of
16 whether this use is in harmony with the zoning requirements.

17 Again, our SPNC retained an expert in
18 architecture, and he did his own analysis using the grade
19 plane analysis, and determined that the actual gross floor
20 area of the property was under the 10,000 sq. ft.

21 And, again, all this stuff is in the record. But,
22 he used his expert analysis as an architect in the District
23 of Columbia, to determine exactly where the midpoint should
24 be, and made the calculations in that way.

25 Next, we go to really the heart of the special

1 exception. I mean, if you guys determine that a variance
2 that -- no-use variance isn't required, and the area variance
3 isn't required, we still have the special exception that they
4 need to satisfy. There needs to be substantial evidence in
5 the record, and there clearly is not.

6 The property, or this use, does not satisfy the
7 purpose and intent of the zoning regulations and the maps.
8 They need to be consistent with certain comprehensive plan
9 recommendations that recommend and strongly discourage
10 conversion of housing units to the non-residential uses, as
11 well as going back to the 7332, that ZTA, which was -- the
12 purpose was to keep large properties from becoming derelict
13 and vacant, and to promote the public health and general
14 welfare.

15 This use is not consistent with the comprehensive
16 plan, and it's also not consistent with the purpose of 7332.
17 It's not in danger of becoming derelict. There were maybe
18 six, I don't know, at least three property owners who wanted
19 to buy this property. Different -- depends on who you talk
20 to. But, there were other people who wanted to buy this
21 property and FSMB paid \$650,000 over the asking price to get
22 it.

23 Further, FSMB is a wealthy trade association that
24 is not that -- operated exclusive for charitable purposes.
25 It's not the type.

1 Finally, we discussed the adverse effects on the
2 uses of the neighboring properties, and these adverse effects
3 do exist. They are real. We know that there have been some
4 dismissive nature towards them, but that is not how these
5 neighbors in this particular street believe that to be.

6 This is going to be an office use. There are
7 going to be maybe 20 employees. And -- I'm sorry, 70
8 members. There are 700 members. Plus invited guests, night
9 events, potentially at least one time a month. Multiple
10 trips a week. You even heard Mr. Fish testify to that
11 frequent trips to Capitol Hill.

12 Office uses have things that most residential
13 homes -- even large residential homes -- don't have. They
14 could have multiple cleaning crews a week, trash pickup,
15 landscapers, events staff and deliveries. These will create
16 an adverse effect on the neighboring uses, because of the
17 uniqueness of Leroy Place.

18 It is a one-way, narrow street that has lined with
19 driveways -- residential driveways on the north side -- to
20 pass, and I have driven down it to pass. If there is a car
21 in front of you, you have to wait.

22 These are all potential impacts. There's also
23 impacts on the alley. So, there's just -- there are adverse
24 impacts here. There's also adverse impacts into -- and just
25 give me two, maybe one more minute --

1 CHAIR HILL: Sure. Go ahead.

2 MS. MAZO: -- a destabilization of the residential
3 real estate market. And this is something that our land use
4 expert testified to, that the nature of the neighborhood will
5 become more commercial. This makes it less attractive to
6 residential neighbors.

7 This could hyper-inflate the prices for those
8 10,000 sq. ft. properties we talked about, while potentially
9 reducing the marketability of the smaller properties,
10 because, quite frankly, a lot of families don't want to live
11 near a bunch of office buildings.

12 And, you know, this really could impact. And, in
13 terms of the destabilization of the residential real estate
14 market, again, our land use expert testified to, that one of
15 the important purposes of zoning is to create a stable real
16 estate market, and to create a stable set of expectations.
17 And granting of a special exception here would be against
18 that.

19 Finally, there are -- the FSMB -- there are cases
20 that the Board can rely on to deny this application. I point
21 it to case 13787, and that was a case where there was special
22 exception to change a former beauty salon to a non-profit.
23 In the case, the Board denied it because the new use was
24 going to be more intense than the previous use -- which is
25 similar to the case here -- and that the applicant had failed

1 to provide sufficient evidence that the noise, traffic, and
2 other deleterious external effects would not impact the
3 surrounding uses.

4 And then, I also point to two other cases in the
5 Sheridan-Kalorama neighborhood. These are older cases,
6 marketing --

7 CHAIR HILL: Okay, Ms. Mazos -- no, I'm just
8 curious about a couple of things. So, are all these things
9 testimony that you had presented before?

10 MS. MAZO: This is closing.

11 CHAIR HILL: Okay.

12 MS. MAZO: Legal argument. I'm just --

13 CHAIR HILL: No, I understand. I'm just trying
14 to understand. All this are things that you testified to
15 before. You're just -- you're not presenting anything new
16 to us right now.

17 MS. MAZO: No, except for --

18 CHAIR HILL: All these BZA cases were before us
19 the last time. You pointed all them before --

20 MS. MAZO: No, I did not.

21 CHAIR HILL: Okay.

22 MS. MAZO: These BZA cases are being addressed as
23 part of my legal closing.

24 CHAIR HILL: Okay. All right. Are you -- okay.

25 MS. MAZO: Finally, so there are these other

1 cases -- 7160, which is --

2 CHAIR HILL: Okay.

3 MS. MAZO: Anyway, that's in the --

4 CHAIR HILL: No, I guess the trouble that I'm
5 having with this, again, is that any new information now that
6 you're presenting in front of us, is now new information that
7 I now have to kind of figure out, or we have to figure out,
8 or the applicant would have an opportunity to, you know,
9 testify to, rebut, what have you.

10 So, I'm just trying to understand. And, it
11 doesn't matter. I mean, we'll see what the Board has any
12 questions to you, but I'm just letting you know that's why
13 I'm trying to understand --

14 MS. MAZO: Okay.

15 CHAIR HILL: -- in terms of whether things had
16 been presented to us before. And even if it's in conclusion
17 here, if this is new things we're hearing from, in terms of
18 some of the cases you're citing, or in terms of some of the
19 things you're providing to us right now.

20 And so, you're saying there are -- there might be
21 some new things in there, but not all of them.

22 MS. MAZO: There are no new facts. There are no
23 new facts.

24 CHAIR HILL: Okay.

25 MS. MAZO: The only thing that I did not get an

1 opportunity to cite to before was to provide a legal closing,
2 and to address the cases --

3 CHAIR HILL: Okay. All right, go ahead.

4 MS. MAZO: -- on which the Board could use to --
5 in making their determination.

6 CHAIR HILL: Okay.

7 MS. MAZO: And all of these cases are certainly
8 in the public record, and could be reviewed by the Board at
9 any time.

10 CHAIR HILL: Okay.

11 MS. MAZO: Just, you know, again, in closing, they
12 do not meet the special exceptions standards under
13 Subtitle U-203.1. You know, I think -- the only thing I want
14 to bring up is really just condition 6, which is in their
15 last filing.

16 FSMB now says it may need to make modifications
17 to the interior and exterior of the building, and any
18 exterior change would require BZA and HPRB approval, which
19 they have agreed to, I believe.

20 We have discussed the conditions. This list of
21 conditions is the same list of conditions that was in the
22 record at Exhibit 141. One thing I just do want to highlight
23 for the Board, again, on a legal conclusion side, is that
24 there are many other cases in the Board --

25 CHAIR HILL: Okay, I'm going to ask you to just

1 kind of wrap it up now, because we had -- it was seven
2 minutes, now we're at 12. And originally, again, and I'm
3 just kind of pointing out, because again, I've been told many
4 times before that the opposition doesn't get a conclusion.
5 And so, that's why I just wanted to do it as an opportunity
6 for the Board to clarify and understand the points that are
7 being taken -- that you'd like us to take -- you would like
8 us to take away.

9 MS. MAZO: Okay. Just, the Board is aware there's
10 staunch opposition from the community, and many, many letters
11 in opposition, no letters in support. And applicant has
12 failed to satisfy the burden of proof, and the application
13 should be denied.

14 CHAIR HILL: Okay. Okay. All right, thank you.
15 All right, Mr. Sullivan, I don't know what time we're at now.
16 I guess I'll give you 15 minutes.

17 MR. SULLIVAN: Thank you, Mr. Chair. So, I'll
18 address threshold issue number 1, Existing Residential
19 Building. I don't even know why we're talking about this.
20 Court of Appeals ruled that all that's required is that the
21 building be in a residential --

22 CHAIR HILL: Mr. Sullivan? We're talking about
23 it because the opposition brought it up as something we're
24 talking about.

25 MR. SULLIVAN: They did.

1 CHAIR HILL: Yeah.

2 MR. SULLIVAN: And I understand. But they --

3 CHAIR HILL: But I'm just telling you, that's why
4 we're talking about it.

5 MR. SULLIVAN: -- they should know better --

6 CHAIR HILL: Okay, I'm just letting you know
7 that's why --

8 MR. SULLIVAN: -- because they were the appellant
9 in that case, as well.

10 CHAIR HILL: Okay. All right.

11 MR. SULLIVAN: But this is not -- when the Court
12 of Appeals said that the building just needs to be in a
13 residential zone, they were not saying anything new. They
14 were not upsetting the status quo. They were just reciting
15 what the law has always been since this was adopted, and they
16 said it had been done on five previous BZA cases, as well.

17 So, they have presented this as me encouraging
18 some sort of broad interpretation. All I'm saying is this
19 is what the law has always been, and in the French case, the
20 Court of Appeals said that definitively. We are in a
21 residential zone, so we meet that requirement.

22 Regarding non-profit organization, as such term
23 is defined in the DC Zoning Regulations, you have heard
24 testimony that, in my opinion, completely dismisses the
25 attempted zoning testimony of the opponent's tax expert.

1 To make clear, she is not a zoning expert, and was
2 not accepted as one, and admitted on cross that she had no
3 experience in zoning. And that became apparent from her
4 testimony from the beginning, when she stated on several
5 occasions, that the definition of non-profit organization in
6 the zoning regulations was, quote, identical, to the
7 definition of Internal Revenue Code 501(c)(3) organization.

8 We know, of course, that it's not the same. It's
9 significantly different. But yet, she used that false
10 premise slight-of-hand, and then argued for the rest of her
11 case, that we didn't meet the 501(c)(3) requirements, rather
12 than arguing that we didn't meet the requirements under the
13 zoning regulations.

14 The specific -- the most significant difference
15 in the definitions, is that the 501(c)(3) definition includes
16 language that says, no substantial part of the activities of
17 an organization carrying on propaganda, or otherwise
18 attempting to influence legislation, and which does not
19 participate in, or intervene in, any political campaign on
20 behalf of, or in opposition to, any candidate for public
21 office. That's specifically excluded from the definition in
22 the zoning regulations.

23 And furthermore, of course, this Board has
24 approved non-(c)(3)s on several occasions in the past. So,
25 the issue, I think, is a whole lot simpler than the opponent

1 has claimed. There's four elements to the definition of non-
2 profit organization in the zoning regulations.

3 First, that FSMB is organized exclusively for
4 scientific and educational purposes. Even the tax expert
5 stipulated that in her testimony -- transcript, page 182,
6 which she said she agreed that the language in the articles
7 probably could meet the organizational test under 501(c)(3).

8 The second element is that FSMB is registered with
9 the IRS, and with the states that it operates in, and it is.
10 It meets that requirement.

11 The third element is that FSMB is operated
12 exclusively for scientific, educational, and the other
13 enumerated purposes. And as the tax expert, Ms. Cune
14 (phonetic), noted in cross-examination, lessening the burden
15 of Government is a charitable purpose, according to the IRS.

16 And this is the crux of whether or not FSMB
17 operates exclusively for educational, scientific and
18 charitable purposes. FSMB's members are State Government
19 licensing boards. The State Governments have decided that
20 it is their province to protect the public by licensing
21 medical doctors.

22 FSMB assists in this. And by doing so, they
23 lessen the burdens of Government, which is considered a
24 charitable purpose.

25 I'm going to read to you the mission statement of

1 the District of Columbia's Board of Medicine, if I could have
2 one second to find that. This is the mission statement of
3 the District's Board of Medicine, which is a member of FSMB:
4 To protect and enhance the health, safety and well-being of
5 District of Columbia residents by promoting evidence-based
6 best practices in health regulation, high standards of
7 quality care, and implementing policies that prevent adverse
8 events.

9 There's nothing in her about assisting
10 practitioners or physicians, which was the tax expert's
11 entire argument, that the beneficiaries of FSMB's activities
12 were the practitioners, rather than the public.

13 Finally, the final element of the non-profit
14 organization definition under the DC Zoning Regulations, is
15 that no part of net income inure to the benefit of any
16 private shareholder or individual. And you're heard
17 testimony from Mr. Fish that is not disputed from any
18 information that's been presented. That no part of its net
19 income does inure to the benefit of any private shareholder
20 or individual.

21 So, there is no, of course, bright-line test for
22 501(c)(3). We meet the four elements of the definition of
23 non-profit organization under the zoning regulations.

24 Now, on the substantive parts of the application,
25 the bulk of the opponent's argument is that all non-

1 residential uses are inherently adverse to this particular
2 neighborhood, and the specifics of this particular use really
3 don't matter.

4 There's nothing that FSMB, or any other
5 organization, can do to satisfy the opponents in this regard.
6 And this is an argument that would apply in a Zoning
7 Commission text-amendment case, I believe. But I don't think
8 it's an argument that addresses the zoning regulations at
9 play here.

10 Those zoning regulations include six conditions.
11 If those conditions are met, the Board must approve the
12 application. Those actual conditions are, first, the
13 building is located in an historic district. Of course, it
14 is. Everybody agrees on that.

15 Second, the gross floor area of the building in
16 question is 10,000 sq. ft. or greater. So, the Board has a
17 couple of options here. I understand what the opponent said
18 about other cases where the Board made a decision that no,
19 this is an area variance, not a use variance.

20 Those cases, if I had time to look at that, I
21 imagine that I would find that those were more ambiguous
22 items, rather than a strict technical requirement of gross
23 floor area. Here's the options, as I see it.

24 The Board could accept that this is a self-
25 certified application, in which case the zoning administrator

1 has to find that it's 10,000 sq. ft. of gross floor area at
2 the building permit application stage, and if he does not,
3 then the application falls apart. We would need to come back
4 here for an area variance, because I believe that's the same
5 thing Cozen applied for last summer when they had a property
6 that was short of the 10,000 sq. ft.

7 But, they would have the right to challenge that
8 at that time, too. So, there's no prejudice to them to kick
9 that to the zoning administrator that has the staff, has the
10 equipment, does this everyday, and will have the particular
11 plans that you submit with a building permit application.

12 Another option, if you want to make it --
13 memorialize it a little more, you can just specifically
14 condition -- say, we approve this, provided, however, that
15 the zoning administrator finds that the gross floor area of
16 this building exceeds 10,000 sq. ft.

17 The third option is to deny the application based
18 on this, and say that we need a use variance, which
19 completely cuts off the applicants rights to challenge it.
20 Option 1 and option 2 don't prejudice the opponent in any
21 way. They'll have their day in court on this.

22 So, there's no harm to the opponents in this being
23 self-certified, or it being conditioned on the 10,000 sq. ft.
24 I don't know why they wouldn't just want it to go to the
25 zoning administrator, and then they're free to challenge

1 that.

2 One other complication here is that tomorrow night
3 the zoning commission is going to consider changes to gross
4 floor area, that I think will impact this. So, we're not
5 even sure exactly what those rules are going to be when this
6 case is decided, or when the building permit application
7 comes about. So, that just adds another element of an
8 unknown factor there.

9 And as proposed now, if the changes proposed for
10 the zoning commission for tomorrow night are accepted, our
11 gross floor area number will actually increase.

12 COMMISSIONER MAY: But the hearing on that is
13 tomorrow, and the decision-making will follow. So, I mean,
14 it's not going to be decided for several months. Right?

15 MR. SULLIVAN: Right. Yeah, and it's not clear
16 to me --

17 COMMISSIONER MAY: Right.

18 MR. SULLIVAN: -- the 10,000 sq. ft., when that
19 would be decided. I think it should be at building permit
20 stage. So, just -- there are some discussions on the claim
21 of an adverse effect on the use of neighboring properties.
22 I think the entire argument has been general.

23 Opponent stated the residents just would like to
24 feel like there's a residence there. I don't think feeling
25 like there's a residence there, or not feeling, is actually

1 affecting the use of your property. So, let's talk about
2 specific things.

3 Traffic. There's not going to be any traffic.
4 The condition is to park in nearby garages. This would be
5 a condition of employment. Not only is it a condition of
6 employment, it's not hard to believe that this could happen.
7 It's -- there are several garages, it's a stone's throw from
8 Connecticut Avenue, and it's extremely likely that that
9 condition would be honored.

10 So, where's the harm? Where is the adverse effect
11 on the use of the property? Is it on 15 to 20 employees
12 walking from Connecticut Avenue, from the Metro, from the
13 parking garages, into the building? Does this affect the use
14 of neighboring properties, and how?

15 Is it having 15 employees working quietly within
16 an enclosed building, unseen and unheard? How does that
17 affect the use of neighboring properties? Is it an Amazon
18 delivery that might show up every week or two, and is likely
19 serving other buildings on the street at the same time? How
20 does this affect the use of neighboring properties?

21 The applicant has readily agreed, and doesn't have
22 a need to have nighttime events, despite what they said.
23 They won't be having nighttime events, fundraisers, parties,
24 receptions. So, that won't be an effect on the neighborhood.

25 Smoking policy. We're really down to talking

1 about a smoking policy. FSMB is a healthcare organization.
2 They experience higher insurance rates when their employees
3 smoke.

4 But, nevertheless, FSMB has proposed a smoking
5 policy that we think would settle that, or mitigate that
6 concern. Is there concern about the renovation? Any
7 renovation that's done here would be on a par with something
8 that a residential user would do.

9 Overall, we believe that this use is less intense
10 than most other uses approved by the special exception
11 approval. It's certainly less intense than the previous use.
12 And much less intense than what the Board approved three
13 doors down back in 1991, also over the heavy objection of
14 these opponents.

15 There's been some discussion about the level of
16 the recent use in the Columbian Embassy. The Ambassador has
17 stated in a letter that there were between 25 to 40 staff in
18 the building up until 2015. Neighbors dispute this. What's
19 important to remember, that the use was not conditioned at
20 all.

21 They could have stayed in the building. They
22 could have had 100 employees. A chancery could come in, get
23 special exception relief, and get more employees. And an
24 embassy could come in as a matter of right, and not be
25 conditioned.

1 The proposed use here is heavily conditioned. It
2 gives great protection to the neighborhood in that regard.
3 Probably even more protection than a residential use would.

4 We do acknowledge that there's existence of a
5 number of opposition letters. But the quantity of letters
6 does not speak to the existence of adverse effects.

7 The next condition. The amount and arrangement
8 of parking spaces shall be adequate and located to minimize
9 traffic impact on the adjacent neighborhood. Talked about
10 this extensively. Parking will be handled offsite in
11 garages, two and three minute walk away.

12 The area has a walk score of 93 -- a walker's
13 paradise -- and a bike score of 88 -- very bikeable -- and
14 a transit score of 75 -- excellent transit.

15 Next condition. No goods, chattel wares, or
16 merchandise shall be commercially created, exchanged, or
17 sold. Of course, that won't happen. There's no walk-up
18 traffic here, and nothing being sold.

19 Additions. Any additions to the building or if
20 we made modifications shall require approval of the BZA after
21 review and recommendation by HPRB. We do -- FSMB requests
22 flexibility to do cosmetic changes, not footprint changes,
23 all of which would, of course, still be subject to HPRB and
24 DCRA.

25 Finally, on the general special exception criteria

1 of Subtitle X, the zoning commission adopted the special
2 exception relief for specific purpose. That purpose and
3 objective have not changed over the years, because the
4 language has not changed. So, by definition, if a proposal
5 meets the noted conditions, it is considered to be in harmony
6 with the general purpose and intent of the zoning regulations
7 and maps.

8 Opponent repeatedly brings up that this is a
9 residential zone. This application only takes places in a
10 residential zone, of course. It's important to note, too,
11 that the use here has not been residential since at least the
12 1940s.

13 FSMB is not taking a residential property off of
14 the rolls. This is closer to status quo. There's a lot of
15 discussion about that the street being 75 percent
16 residential. I happen to think that's a pretty low number,
17 actually, for a residential street. But we're not changing
18 that percentage.

19 CHAIR HILL: All right, Mr. Sullivan. Are you
20 getting near your end?

21 MR. SULLIVAN: Yeah, I'm finishing. Yeah, I
22 just -- some questions about conditions. Of course, we've
23 talked about time limit. You know our position on that.

24 Concerns about precedent. The opponent claims
25 that if you approve this case, there'll be a flood of

1 potential applications. The Board approved a case in 1991,
2 three doors down, and since then this is the first
3 application.

4 They had the same argument then that there would
5 be a flood of applications. It didn't happen. This was the
6 next one. We're not asking for any changes in the law here,
7 and this would be approval under the same law that was in
8 place in 1991.

9 In closing, just -- I want to address a couple of
10 points that she brought up. There was a case -- she
11 mentioned 13787, I do happen to be familiar with. That's a
12 special exception where you're changing from one non-
13 conforming use to another. It wasn't a non-profit use
14 exception like this case. There were a lot of factors in
15 that case. And if I could look at --

16 CHAIR HILL: Okay, okay. Okay, let's move on.

17 MR. SULLIVAN: -- those other cases, I'm sure that
18 I would have responses to that, as well. Closing, we note
19 that the application has met the special exception
20 conditions. The proposed use is in line with the less
21 intensive use, as approved by this Board in many cases like
22 this over the years.

23 It compares very favorably with the last approval
24 in Kalorama, at 2110 Leroy. And therefore, in accordance
25 with the zoning regulations, we request that the Board

1 approve the application. Thank you.

2 CHAIR HILL: Okay. All right, thank you. So, a
3 couple of quick thoughts, again. First of all, I do want to
4 clarify for the party in opposition, I'm going to remember
5 this now. In terms of -- I don't know, and I apologize
6 correcting whatever you may or may not have brought up,
7 because now I don't even know -- you know, Mr. Sullivan, you
8 brought up, like, a case that, you know, Cozen O'Connor did,
9 and so there's, like, something else.

10 And so, you guys are here a lot, and you're going
11 to be back here a lot. As far as the conclusions go, like,
12 it'd just be really nice just to hear whatever had been
13 talked about before, really clean it up as easy it is for us.

14 I'm not going to be here -- God, I hope not a
15 really long time. But I got approved for another three
16 years, so I'm at least, until my wife kills me, I'm here for
17 a little bit longer. So, you know, the conclusions, just
18 conclude, and don't bring in new stuff. Just don't take
19 shots at each other, and just give the conclusions. Okay?

20 So -- okay, that's my little speech on that at the
21 end of the night. Does -- so I did have some -- I know we've
22 gotten to the end here. The conditions -- there was the
23 whole thing about the meetings. And I do have, just some
24 questions. All right?

25 There was meetings and there's receptions, and

1 there was, like, you know, how many were going to happen, and
2 that seemed to change from the last time you were here. I
3 mean, I got a little confused as to what were you guys
4 proposing in terms of the meetings? And who's coming, and
5 all that stuff?

6 MR. SULLIVAN: The meetings, which were asked
7 about related to how we would use the property for
8 conferences or committee meetings and things --

9 CHAIR HILL: Right.

10 MR. SULLIVAN: -- in the record submitted -- it's
11 supplemental -- were the, sort of the roster, the types of
12 meetings that FSMB would hold in the property, which would
13 be two to three per quarter, with the average attendees about
14 15 to 20. Those would be during business hours.

15 There is the potential that previous to that
16 meeting -- maybe a night before -- everyone just gathers to
17 prepare for that meeting, have a cocktail or so, that would
18 be the, quote unquote, nighttime event, that we would be
19 seeking.

20 CHAIR HILL: Did that line up with what the Office
21 of Planning had proposed for you guys?

22 MR. SULLIVAN: I --

23 CHAIR HILL: I thought we said no meetings?

24 MR. SULLIVAN: They said no annual meeting. The
25 annual meeting, of course, is offsite, and that's not taking

1 place. And no nighttime events, I believe, is what the
2 Office of Planning said. So, I think it does pretty much
3 line up with that.

4 CHAIR HILL: Okay. And please, as a Board, you
5 know, speak up for any questions they might have, in terms
6 of clarification. So, what I would propose is that I would
7 like to see, I guess, proposed findings of fact from both of
8 you guys, and also, then, proffered conditions.

9 And -- I appreciate that everyone's been here as
10 long as they have. So, I'll tell you where I am. Okay? So,
11 in terms of the threshold issues -- in terms of the questions
12 with the existing residential property, the 10,000 sq. ft.,
13 and the non-profit issue, I'm already there.

14 So, I'm now just trying to see whether or not we
15 get to -- because, initially, what this was set -- oh yeah,
16 it was five hours of testimony. This is an additional two
17 hours. There have been seven hours of testimony for a case.
18 And so, this wasn't even, like, an appeal.

19 This has been an extremely long case with a lot
20 of testimony and a lot of information. And I take into
21 account that all of the testimony that the neighbors have put
22 together, and everything -- and I'm only one voice, so I'm
23 just kind of giving you where I am. Right?

24 So that -- because everyone has been here all day,
25 so I think it's fair. Okay? So, I also do appreciate very

1 much the letters that we've received from the Chairman --
2 Chairman Mendelsohn -- as well as the Councilmember --
3 Councilmember Evans -- in terms of their position.

4 And where I continue to take what I am charged
5 with is, again, the standards with which we weigh whether or
6 not to grant a special exception.

7 So, again, where this was originally set forth,
8 which was how to take these 10,000 square foot buildings, and
9 make sure something's done with them, and so -- particularly
10 when, back in the day when, you know, people didn't want to
11 be in DC as much as they do now -- so that's why those things
12 kind of came about.

13 And I think that to -- Mr. Sullivan, to your
14 point, again, the feel that the -- that I use the word feel,
15 or that other people might have used, I think that's to the
16 adverse impact. So, that's what I mean by feel. Right?

17 So, I mean, if I am any of these people here, and
18 they don't see any difference, they don't -- it's -- I mean,
19 I -- it's not -- I don't know the details of your group, but
20 I don't think there's a political stance here.

21 It's just that, you know, if all looked the same
22 and all feel the same, everybody got along the same way, that
23 might be even better than if you had another billionaire
24 there, and every time, you know, there's a reception or a
25 fundraiser, you get a long line of your valet thing, and then

1 you have to deal with that. Right?

2 So, you just never know what you're going to get.
3 That's just my little talk on that. So, it's bringing me
4 back to the conditions, which is, you know, again, the
5 proposed set of conditions from both of you, and where I am
6 continuing to struggle with, even in the conditions, is that,
7 again -- and you can speak to it now, Mr. Fish, because I
8 like as much clarity as possible before we leave here -- but,
9 you know, the Office of Planning is at 15. Right?

10 And that's -- they got to eight employees, and
11 they're giving you your extra few in there. Okay? So,
12 that's only 15 people. Right? And the doctor that was here
13 before that I think was -- and I can't remember his name.

14 MS. FRIEDMAN: Our CEO, Dr. Chaudhry.

15 CHAIR HILL: Right. And his position there was,
16 again --

17 MS. FRIEDMAN: We had proffered back 25 after
18 seeing the Office of Policy and Planning's report.

19 CHAIR HILL: No, no, no, his position.

20 MS. FRIEDMAN: Oh, he's the CEO.

21 CHAIR HILL: Right. He's the CEO. Okay? So, I
22 got a little unclear even from the back and forth last time,
23 whether you guys were actually okay with the 15. Right? And
24 then, you were like, you know, maybe we'll get 25, and now
25 you came back at 20.

1 So, it seems there's some negotiations going on
2 here. But the Office of Planning is stuck on 15. Okay?
3 Right? So, you're going to have to get me past the 15 with
4 the Office of Planning. Right? Which, I don't know. Right?
5 So -- and I'm saying that because, like, we're going to
6 deliberate. We're not going to decide today. Okay?

7 So then, there's the, you know, the window
8 treatments and the light, which again, to me, sounds like,
9 you know, the feel. Right? Again, what does it feel like?
10 Right? You know, does it feel like it's an empty hole on the
11 street?

12 And that's where I get confused with the
13 opposition's standpoint. Like, I don't know how, you know,
14 somebody might want it black all the time. Somebody might
15 want, you know, this light. I mean, I don't know how you get
16 to that point, in terms of the opposition. Like, what it is
17 that they would find that solves this adverse impact. Okay?

18 So -- you know, for them, in terms of the
19 lighting. I'm just talking about the lighting. And they're
20 like, the window treatments, and -- I mean, you know, the
21 window treatments and the lighting. Right? Like, that's
22 going to be a problem. Right?

23 So -- so then, again, right, the 15 people.
24 That's a problem. Okay? The events. So, the Office of
25 Planning had suggested -- and I have to go back and look at

1 the Office of Plan- -- and so, I guess what I'm trying to get
2 at here, is that if you want this -- if you want my vote --
3 right? -- and I'm just one person, and I don't know if they
4 all want to talk or not, and they can -- but if you want my
5 vote, like, you know, the Office of Planning has already
6 proposed all the meetings, whatever they think, I'm going to
7 have to back to the Office of Planning's report, scrub what
8 they said, and then compare it against what your conditions
9 are. Okay?

10 And I'm going to do that. And so, that's why I
11 got a little confused with the meeting stuff. Because I
12 think that an annual meeting is different from, you know --
13 the neighborhood doesn't want all of the things that the
14 neighborhood said. Right?

15 You want your -- you want approval for this. You
16 want a special exception for this. There's a tremendous
17 amount of opposition. The ANC is opposed to this -- all two
18 members. Okay? The ANC is opposed to this. Okay? Right?
19 The Chairman of the Council of Washington, DC has sent a
20 letter. Okay? As has the Councilmember. Right?

21 So, I don't know where you might end up. Okay?
22 Right? But -- so, your lost list of -- I'm just letting you
23 know, Mr. Fish, that this is, you know -- where are you from
24 originally, Mr. Fish?

25 MR. FISH: South side of Chicago.

1 CHAIR HILL: Okay, so you're not from here.
2 Right?

3 MR. FISH: I am not.

4 CHAIR HILL: So -- okay. So, we're all from here.
5 Okay? Right? So, you know, you might -- well, at least --
6 I'm sorry -- I am. All right, never mind. Okay, my point
7 was, you better really take it into hard consideration as to
8 the people that are around you in this neighborhood. Okay?

9 All right, so the conditions, and -- and so again,
10 if anybody -- I'm just confused about the meetings, and I
11 don't know if anybody has anything else, but the Office of
12 Planning, didn't you have -- like, wasn't there specifics in
13 terms of how many meetings, how many people, what was going
14 on?

15 MS. FOTHERGILL: My report does say that the
16 applicant has stated one annual conference and eight to ten
17 smaller annual meetings. But, quarterly is what they're
18 being called -- quarterly meetings. And the concern was that
19 some might be on weekends or in the evenings, or after
20 regular office hours, and it could impact residential use.

21 And that the case down the street, the BZA
22 required that that non-profit hold annual meetings and events
23 offsite. So, that's where that term, annual meetings and
24 events, comes from, and OP recommended that condition.

25 CHAIR HILL: So, what I got confused with the OP

1 report, was the annual meetings part. Like, you know,
2 they're speaking of small meetings or board meetings, and are
3 you -- was OP -- again, for the adverse impact -- concerned
4 about all of -- any meeting, or -- I mean --

5 MS. FOTHERGILL: So, this was -- these
6 conditions -- these recommended conditions -- were all taken
7 from other similar cases. And that one, specifically, was
8 taken, I believe -- I'm not -- I don't have everything in
9 front of me right now -- but I believe was taken from the
10 other non-profit use down the block that was approved by the
11 Board, and the Board made that a condition.

12 CHAIR HILL: Right, that's the Halcyon House that
13 their speaking --

14 MS. FOTHERGILL: No, not the Halcyon House. It's
15 the case 1555, I think is the number. At --

16 CHAIR HILL: Okay, but they have -- they were more
17 likely to have receptions, and things such as that. Was that
18 what it was?

19 MS. FOTHERGILL: I don't know, I thought it was --
20 it was at the time of the application, and I think it was the
21 National Association for Education of -- Children, I think.

22 CHAIR HILL: Okay, right. So --

23 MS. FOTHERGILL: They didn't end up moving in, I
24 don't believe. But, anyway, that's where that came from.

25 CHAIR HILL: Okay, so this is my thoughts, again,

1 within the Board, and I'm going to stop talking. So,
2 promotes findings of fact and conclusions of law. The
3 conditions -- proffered conditions, it would be better if you
4 guys were both on the same page with your conditions. The
5 person onsite there, I don't think anybody has to live there,
6 but, you know, again, you guys can negotiate your own
7 conditions.

8 Like, I understand fully having somebody that is
9 in town, really close by, that you can call and complain, and
10 they're going to -- as one who has, like, issues with my own
11 densely populated neighborhood, calling somebody and being,
12 like, you know, Bob, Sarah, come take care of this, and they
13 answer the phone and take care of that. That would -- I'd
14 like to know in the conditions, how you plan on alleviating
15 that problem for the community.

16 And then, I'd like to know -- I guess I would
17 like -- and this is where I might get in trouble -- but where
18 the Office of Planning -- because now there's new conditions
19 that are going to be -- I'd like to know what the Office of
20 Planning has to say about those conditions. Is that
21 possible?

22 MS. FOTHERGILL: So, the applicant is going to --
23 what are the new conditions?

24 CHAIR HILL: There's going to be proffered
25 conditions --

1 MS. FOTHERGILL: Okay.

2 CHAIR HILL: -- from both the applicant and the
3 opposition. And I would like Office of Planning's feedback
4 to those proffered conditions, because I'm confused by the
5 meeting thing, in terms of wanting to make sure that those
6 conditions do not go against what the Office of Planning
7 thought would alleviate adverse impact.

8 MS. FOTHERGILL: Okay.

9 CHAIR HILL: Okay. So then, now I know that
10 Mr. May is back here on the 7th? Okay. So, the 7th is how
11 far away? Two weeks. So, we could go to decision on the 7th
12 if you can do all this, and -- and, again, everybody else
13 might have a completely different opinion, and so you can go
14 with that, as well, in terms of whether you get past the
15 threshold issues, and all that.

16 But, this is just where, at least, I'd like us to
17 be able to chew upon. And so, that's two weeks from now, if
18 you want to get back here by the time Mr. May is here, in
19 order to deliberate. So, that means that --

20 COMMISSIONER MAY: I think that the complication
21 with the 7th is getting OP to opine on the proffered
22 conditions. So, I mean, unless the applicant can get those
23 in in a week and the party in opposition get them in in a
24 week --

25 CHAIR HILL: So, Mr. Fish, let me do this again.

1 I'm sorry. I asked you this last time. The next time you're
2 here, Mr. May, after that is the 21st. Correct?

3 COMMISSIONER MAY: Which has been overloaded by
4 several other cases today.

5 CHAIR HILL: Oh, I'm not here the 21st.

6 (Off-microphone comment.)

7 COMMISSIONER MAY: You're not here the 21st?

8 CHAIR HILL: I'm not here the 21st. Yeah.

9 COMMISSIONER MAY: You're kidding me.

10 CHAIR HILL: Nope. Yep. That's not --

11 COMMISSIONER MAY: Oh, we're going to have to
12 reschedule, much as I --

13 CHAIR HILL: I'm happy. Okay, so then, yeah. So,
14 the 7th -- because I would like to be able to deliberate with
15 Mr. May and the fellow Board members here, and I should be
16 here.

17 So, the 7th -- that would mean that you all would
18 have to get together with the opposition in a week. Okay?
19 And try to get some kind of proposed conditions, and all this
20 information, to the Office of Planning, so that they can turn
21 around and report to us. And then, in terms of OAG, if I
22 might ask again, the seven-day thing. So, does the applicant
23 and the opposition need to have seven days to respond to the
24 Office of Planning?

25 MS. GLAZER: Are you intending to have

1 simultaneous submissions? Or do you want OP to react to the
2 submissions from the parties?

3 CHAIR HILL: I would like OP to opine on the
4 conditions that the two people --

5 MS. GLAZER: Okay, well that should be sufficient.

6 CHAIR HILL: Okay, so I'm -- what I'm trying to
7 ask, and this is just, again, for my procedural
8 clarification, they don't have to have time to respond to
9 OP's supplemental.

10 MS. GLAZER: Only if you want them to. I mean,
11 if you feel a need --

12 CHAIR HILL: I don't think there's a need. I
13 think that whatever you guys put forward is whatever you guys
14 are going to put forward, and the Office of Planning is going
15 to respond however the Office of Planning's going to respond.
16 And so, I don't see a need for you guys to respond to the
17 Office of Planning's report.

18 MS. MAZO: Can I just ask a point of
19 clarification?

20 CHAIR HILL: Sure. Certainly.

21 MS. MAZO: Is the Board envisioning that both the
22 FSMB and the opposition party submit one list of conditions?

23 CHAIR HILL: I mean, that would be ideal. I don't
24 necessarily think that's going to be the case. I think that
25 what could possibly happen is that the -- it would be -- I

1 think that there will be -- my guess is that you guys will
2 come together on some things, and not come together on
3 others. You will submit two sets of conditions, and the
4 Board will decide which conditions we think we're going to
5 approve.

6 MS. MAZO: And -- sorry, just a point, again, on
7 clarification on the findings of fact and conclusions of law.
8 In your discussion, Chairman Hill, you seemed to indicate you
9 only want discussion on the special exception. Is that
10 correct in regards to that submission? That you only want
11 the parties to address the special exception standard? Or
12 should the parties also advise --

13 CHAIR HILL: I think the parties can address
14 whatever they want to address, because I don't know where the
15 rest of the people are. And so, if you want to address
16 finding -- you know, findings of fact and conclusions of law
17 aren't everything.

18 And so, you know, you can go ahead and do that.
19 And then, the conditions, you know, depending upon how the
20 rest of the Board goes, you might not even get to the
21 conditions. I'm just sharing where I am right now, because
22 everybody's been here for 12 hours. And so, I'm just being
23 honest as to where I am. And so --

24 MS. GLAZER: Mr. Chair?

25 CHAIR HILL: Yeah.

1 MS. GLAZER: I believe that Ms. Mazo may have been
2 asking whether you want more information about whether it's
3 a variance or a special exception. Is that what you were
4 referring to?

5 MS. MAZO: Oh, I -- my -- actually, I was trying
6 to understand if the Board only wanted to see a limited
7 proposed findings of fact and conclusions of law that only
8 addresses the special exception? Or if they want to see one
9 that addresses all the issues that have been raised?

10 CHAIR HILL: I think the Board -- from what the
11 Board seems to be nodding, they want to see everything, in
12 terms of what has been raised.

13 MS. MAZO: Then -- sorry. Can I, then, raise a
14 logistical issue?

15 CHAIR HILL: Sure.

16 MS. MAZO: From a workload standpoint --

17 CHAIR HILL: Sure.

18 MS. MAZO: These are very time-intensive to
19 draft --

20 CHAIR HILL: I agree.

21 MS. MAZO: -- and I am, quite frankly, quite
22 concerned about a March 7th turnaround on this. I mean, if
23 FSMB can do it, we can do it, as well. But I just did want
24 to raise that for the record.

25 MR. SULLIVAN: I can't say that we're not totally

1 unconcerned, ourselves. That's a heavy lift.

2 CHAIR HILL: So, I --

3 MR. SULLIVAN: And so, it depends on when the next
4 one is.

5 COMMISSIONER MAY: You know, if the 7th is out and
6 the 21st is out, I don't know when I'm here next. So, can
7 we just adjourn and set this -- the timing of this
8 administratively, later on, for another time? And I'll
9 figure out -- I'll give clarity as to when I'm here, and --

10 CHAIR HILL: Okay. I mean, usually, again, the
11 applicant has some kind of deadline that they're up against,
12 in terms of finances, in terms of when they're trying to
13 permit things, so that's why I was trying to do what I was
14 trying to do.

15 The federation -- which just always reminds me of
16 Star Trek -- you know, is apparently flushed with cash, and
17 they're good to go. And so, you're saying this does not
18 concern you, the timeline.

19 MR. MOY: We will work with both parties -- all
20 parties.

21 CHAIR HILL: Okay. So, then, it will be -- sure,
22 certainly. Ms. White?

23 MEMBER WHITE: There was just one thing I wanted
24 to have addressed in the findings of fact, and that is, the
25 one issue that I'm just trying to get past is, what is life

1 going to be like there on a daily basis? Not just when
2 you're having special meetings and get-togethers.

3 You know, you've got, let's say 20 to 25
4 employees, you've got 700-plus members. I'm just trying to
5 get a sense of the traffic flow, the activity. Is it going
6 to just be a few sprinkles of members popping in
7 periodically? Or is it going to be, if you look at it from
8 a worst-case scenario, just a heavy flow of people all the
9 time?

10 So, I just wanted to see if you could incorporate
11 that, because that's a part of the -- I think that needs to
12 be factored in as part of the special exception criteria,
13 when you're looking at how it's adversely affecting the
14 community. So, that was just my two cents, Mr. Chair. And
15 if that could be addressed, I would appreciate that.

16 CHAIR HILL: Sure. And so, follow-up, I suppose,
17 with Board Member White, Mr. Fish, again, I'm stuck on the
18 15. So, do you have an opinion right now on the 15?

19 MR. FISH: We could live with it if we have to.

20 CHAIR HILL: Okay. So, the Office of Planning has
21 already stuck on the 15. So, you know, you can do what you
22 want to do, but I'm letting you know where the Office of
23 Planning is. Okay. Anybody else have any thoughts?
24 Questions?

25 MS. MAZO: Just to circle back, Mr. Moy will

1 contact us in response to --

2 CHAIR HILL: No, we'll do the dates right now.

3 MS. MAZO: Oh, okay.

4 CHAIR HILL: So, go ahead right --

5 MS. MAZO: We don't have to --

6 (Simultaneous speaking.)

7 CHAIR HILL: You don't know when you're back here.

8 Yeah, but I thought you just said that you would come back
9 here if you need us after the 21st.

10 COMMISSIONER MAY: I didn't say that, no.

11 CHAIR HILL: Your microphone isn't on. So --

12 COMMISSIONER MAY: I know.

13 (Laughter.)

14 CHAIR HILL: So, I guess -- okay, that's fine,
15 too. I don't understand -- I mean you're normally scheduled
16 every -- you know, they love to keep everybody guessing.
17 So --

18 COMMISSIONER MAY: Because every three, four, five
19 weeks --

20 CHAIR HILL: Right.

21 COMMISSIONER MAY: Sometime in April.

22 CHAIR HILL: Right. I don't know if the audience
23 knew, but the Commissioners aren't scheduled. Like, they
24 just -- you never know when they're going to show up, because
25 that way you never know which Commissioner you're going to

1 get. It's a very interesting situation. All right. No?

2 COMMISSIONER MAY: Commissioner roulette.

3 CHAIR HILL: Right. Commissioner roulette, right.

4 All of a sudden you're like, oh, damn. You be like, oh yeah!

5 (Laughter.)

6 CHAIR HILL: Okay. So -- all right, so what are
7 we trying to do now? So, we're not going to decide the date.

8 Is that what --

9 COMMISSIONER MAY: Well, I mean I think it's safe
10 to say that, I mean --

11 CHAIR HILL: I'm just trying to get submissions
12 now.

13 COMMISSIONER MAY: Just figure out how much -- how
14 much time do you think you need to do the -- do what you have
15 to do? And then set the dates according to that, and then
16 we'll get this on --

17 CHAIR HILL: Okay, let's set the dates according
18 to that. So, how do you long do you think it's going to get
19 you guys to get the findings of fact, conclusions of law,
20 talk to everybody, and figure out what you think you may or
21 may not want to do? Two weeks? Three weeks?

22 MS. MAZO: I mean, I'll let Mr. Sullivan go first,
23 but I would say to come -- to have documents due by the
24 middle of -- I'll get a date. April something.

25 MR. SULLIVAN: I would say three weeks.

1 MS. MAZO: Yeah.

2 CHAIR HILL: Okay.

3 MS. MAZO: So, maybe to have documents due by
4 April 9th to be able to get documents --

5 MR. SULLIVAN: She means March.

6 COMMISSIONER MAY: Yeah. No, no, we're not
7 talking about April for your submissions. Maybe for the
8 meeting.

9 MS. MAZO: Oh, okay. I'm sorry.

10 CHAIR HILL: So three weeks from now is what?

11 MS. MAZO: Three weeks from now would be March 14.

12 CHAIR HILL: Okay, so March 14th you guys will get
13 us findings of fact, conclusions of law, and whatever
14 conditions you do or don't agree on, after talking with the
15 opposition. Okay?

16 Then, a week later, we can get something from the
17 Office of Planning? So, a week later we can get something
18 from the Office of Planning. Which brings me to which week?
19 The 21st, we'll get something from the Office of Planning.
20 And then, we'll just set a date after that.

21 MS. MAZO: I would request that that date be the
22 first week in April. The last week of -- the week of
23 March 26th is spring break for many schools in the area.

24 CHAIR HILL: Okay. So then, you could maybe be
25 back with us, Mr. May, that first week in April?

1 COMMISSIONER MAY: I definitely cannot be back in
2 the first week of April.

3 CHAIR HILL: Okay. Okay. So, then, we'll just
4 see. We'll see -- Mr. Moy?

5 MR. MOY: So, I'm looking at either April 11th or
6 the 18th. The middle of April sometime.

7 CHAIR HILL: Isn't it like all kinds of spring
8 break. I don't have kids, so there's, like, spring break
9 stuff and all those things going on? All right. So, which
10 is the week after -- I'm just now looking to Mr. May.

11 COMMISSIONER MAY: I have conference on the 4th
12 and the 11th.

13 CHAIR HILL: Okay.

14 (Off-microphone comments.)

15 MR. SULLIVAN: Mr. Chair, I'm sorry to change up,
16 but if it's going to be too late, we'd rather do the original
17 plan of the 7th, just doing it by next week.

18 CHAIR HILL: All right, so Mr. Fish, we're back
19 to you now.

20 COMMISSIONER MAY: Wait a minute. What's too
21 late?

22 CHAIR HILL: So, the 18th -- the 18th is where we
23 are, of April. You seemed to think everything was really
24 good for a really long time, and now, you're fixing again.
25 It's going to be very difficult to get back here in two

1 weeks. Let's put it that way. Right? So, the 18th, that
2 gives you plenty of time to work with -- the 18th of April.

3 MR. FISH: I'll work with whatever schedule the
4 Board decides.

5 CHAIR HILL: Okay. So, the 18th of April, as of
6 now, we're going to come back here for a decision.

7 COMMISSIONER MAY: I don't know. I will check.

8 CHAIR HILL: Okay. That's fine. And if we have
9 to change it, we might change it. Okay? We might change it.
10 We're going to see -- or Mr. May might just submit, then.
11 You know? So -- but we'll -- we're going to shoot for the
12 18th back here. Okay? And you still have the dates, in
13 terms of the submissions. Okay? Mr. Moy, does that work?

14 MR. MOY: Yes.

15 CHAIR HILL: Can you repeat the submission date
16 again for everybody?

17 MR. MOY: Okay, March 14th, submissions --
18 findings of fact, conclusions of law, including the proffered
19 conditions, so that'd be March 14th.

20 March 21st would be a response from the Office of
21 Planning regarding their analysis of the conditions. And
22 then, April 18th would be the decision date. Right?

23 CHAIR HILL: Yes, yes. Exactly. Decision date
24 on April 18th. And I really hope that Mr. May can join us,
25 because I'm not here the following week in April.

1 MR. MOY: Yeah. Well, you know, as things go,
2 when we get closer to that date, and the Board can opt to
3 reschedule that meeting.

4 CHAIR HILL: Okay, great. All right. So, do you
5 all have any questions? Okay.

6 MS. MAZO: Just, the record will be closed
7 until -- except for those filings. Is that correct?

8 CHAIR HILL: The record's closed. The record is
9 closed. Thank you for helping me clarify. The record is
10 closed. Other than the filings that we just requested, the
11 record is now closed. Okay? Okay, well thank you all very
12 much. This is a record.

13 MS. MAZO: Thank you.

14 CHAIR HILL: Okay? All right.

15 MS. MAZO: It's not a record. We had our --
16 (Simultaneous speaking.)

17 CHAIR HILL: Had to go along -- okay. All right.
18 Darn. Okay. All right. Okay, thank you all very much.
19 Mr. Moy, do we have anything else?

20 MR. MOY: No, sir.

21 CHAIR HILL: Okay, great. We are adjourned.

22 (Whereupon, the above-entitled matter went off the
23 record at 10:06 p.m.)

24

25

C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DC BZA

Date: 02-21-18

Place: Washington, DC

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