

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

March 28, 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 10:54 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 L. JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
ELISE VITALE

The transcript constitutes the minutes from the  
Public Hearing held on March 28, 2018.

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

10:54 a.m.

1  
2  
3 CHAIRPERSON HILL: Okay. So we started off a  
4 little slow today but I do want to mention we have a very  
5 full docket today and so probably we'll be breaking for lunch  
6 around like 12:30 or so and then if you want to maybe start  
7 thinking about dinner you might want to go ahead and do that.

8 MEMBER HART: Mr. Chair.

9 CHAIRPERSON HILL: So, Mr. Moy, if you want to go  
10 ahead and call our first hearing case whenever you have a  
11 chance.

12 MR. MOY: Yes, sir, thank you. That would be case  
13 application number 19720 of Equilibrium 465 Mellon, LLC.

14 This is captioned for variance from the non-  
15 conforming use requirements subtitle C section 204.1. This  
16 would add two apartments to an existing 10-unit apartment  
17 house, R-3 zone at 465 Mellon St, SE, square 5996, lot 34.

18 CHAIRPERSON HILL: Okay. Good morning. If you  
19 could please in yourselves from my right to left.

20 MR. VARGA: Stephen Varga, Cozen O'Connor.

21 MS. MOLDENHAUER: Meredith Moldenhauer from the  
22 law firm of Cozen O'Connor representing the applicant.

23 MR. DeBEAR: Eric DeBear from the law firm of  
24 Cozen O'Connor representing the applicant.

25 MR. ASTATKE: Sofonias Astatke, applicant.

1 MS. FELDER: Tenika Felder with Redlef Group  
2 Architects. I'm the architect.

3 CHAIRPERSON HILL: Did you say Astatke?

4 MR. ASTATKE: Astatke.

5 CHAIRPERSON HILL: Could you spell that for me?

6 MR. ASTATKE: A-S-T-A-T-K-E.

7 CHAIRPERSON HILL: Okay, great. And I'm sorry,  
8 ma'am, what was your name again?

9 MS. FELDER: Tenika Felder.

10 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, I  
11 assume you're going to be presenting to us. Oh, Mr. DeBear.

12 MR. DeBEAR: Me. I will be presenting.

13 CHAIRPERSON HILL: So I guess there were a couple  
14 of questions that we had in terms of -- well, I'd just  
15 basically like to hear again how you're meeting the standard  
16 for the variance.

17 I didn't see an ANC report unless it came in  
18 later.

19 MR. DeBEAR: We were going to address that but  
20 we've --

21 (Simultaneous speaking)

22 CHAIRPERSON HILL: If you could speak to that as  
23 you're going through the presentation. I think that the  
24 record is relatively clear as to the argument that you're  
25 making, but if you could go ahead and again focus on how you

1 are meeting the standards for the variance and then touch  
2 upon your outreach in terms of the ANC.

3 And I'll go ahead and put 15 minutes on the clock  
4 just so I know where we are and you can start whenever you  
5 like. Unless the Board has any other questions they want to  
6 address at this point. Okay, all right, great.

7 MR. DeBEAR: Thank you, Chair.

8 CHAIRPERSON HILL: One second, I'm sorry. We will  
9 have time for -- we will ask for comments from the people in  
10 the community in support and opposition later in the hearing.

11 MR. DeBEAR: Thank you, Chair. I'm going to pass  
12 it along to my client the applicant, but this is a variance  
13 for expansion of a non-conforming use. I'm going to turn it  
14 over to Sofonias to talk a little about the property and his  
15 project.

16 MR. ASTATKE: Sure. We purchased this property  
17 in September of 2016. We've done a decent amount of work to  
18 renovate the property. We are doing an electrical upgrade  
19 and we're installing HVAC in all of the units. We're waiting  
20 on Pepco to complete the electrical upgrade so that we can  
21 complete that work.

22 And we're upgrading units as we go. And our goal  
23 is to be able to add two additional units of affordable  
24 housing.

25 We've probably purchased and renovated a total of

1 25 properties since 2001 when I started. We did it under the  
2 Equilibrium name starting in 2009.

3 We participated in the Vacant to Vibrant Auction  
4 this year and that's going to add additional 15-plus units  
5 of affordable housing this coming year.

6 And this is part of that process where we hope to  
7 add two more affordable units at this location. And they'll  
8 be in line with the current rents that are in place there.

9 This particular property was previously zoned  
10 apartment zoned and it was downgraded in 2008. So I think  
11 that's noteworthy as well.

12 As I discussed before we're looking to add 2  
13 dwelling units to the existing 10 units. We're using the  
14 existing structure so we're not adding anything to the  
15 structure. They're existing storage units that aren't being  
16 utilized at all and so our goal is to utilize them and create  
17 two more affordable units at this location.

18 MR. DeBEAR: I'll just touch on what the chair had  
19 requested which the community outreach aspect.

20 First off we have Office of Planning support for  
21 this application, but I think more importantly we have been  
22 in touch with the ANC. I personally have attempted to  
23 contact the ANC.

24 CHAIRPERSON HILL: Sorry, Mr. DeBear. The AMI  
25 percentage for the two affordable units, what is that used

1 at? The two additional ones.

2 MR. DeBEAR: I'll let my client answer that, but  
3 I think it is not necessarily categorizes as affordable under  
4 inclusionary zoning. It's just a lower rate of rent in line  
5 with the market in that area of the city. But I'm going to  
6 let my client answer that.

7 MR. ASTATKE: Right. So I guess by affordable I  
8 don't mean that it's a required affordable component, it's  
9 just we provide quality housing for low-income and moderate  
10 income residents.

11 CHAIRPERSON HILL: Okay, I was trying to  
12 understand. So you're just using the term affordable.

13 MR. DeBEAR: Yes.

14 MS. MOLDENHAUER: I think affordability, there's  
15 affordability and then there's IZ, inclusionary zoning. I  
16 think that sometimes when we're here before the Board of  
17 Zoning Adjustment affordability automatically sometimes means  
18 inclusionary zoning, but I think in the greater world of the  
19 District affordability can mean pricing that is obviously  
20 affordable but might not automatically equal an inclusionary  
21 zoning unit.

22 MR. DeBEAR: And just to be clear this building  
23 is tenanted. Equilibrium purchased the building and kept the  
24 existing tenants at that rate of rent. So it is a standard  
25 rate of rent for that area of the city.

1 CHAIRPERSON HILL: Okay. All right, Mr. DeBear,  
2 you can go ahead and start going through again. If you  
3 wouldn't mind just starting at the beginning again. I was  
4 trying to ask a question of the vice chair.

5 So if you want to start again with the community  
6 outreach and your attempts.

7 MR. DeBEAR: Yes. So we have Office of Planning  
8 recommending approval. We have -- I have personally been in  
9 touch with the chair of ANC 8C. That was in mid February.

10 She requested at that time that we attend the  
11 executive committee on February 26. We, myself, Sofonias and  
12 Tenika attended the executive committee and no one was there.

13 I then attempted to get in touch with the chair  
14 once again after that and she did not return my calls. From  
15 what I understand she's been having health problems.

16 We then attended the March ANC meeting, the  
17 normally scheduled March ANC meeting. There were  
18 approximately 25 people in the crowd and no commissioners  
19 showed up.

20 I have been in touch with our SMD who is  
21 Commissioner Teresa Stith. She has repeatedly told me that  
22 we need to get in touch with the chair to get added to the  
23 agenda formally.

24 I have called approximately 15 to 20 times the  
25 chair and received no response.

1 I did speak with Commissioner Stith on Monday who  
2 told me that she thinks we can come to the ANC in April if  
3 need be, but we still need to be added to the formal agenda  
4 by the chair.

5 I also talked to Mr. Simon who's in the office of  
6 -- he's the ANC liaison for D.C. Council, in the Office of  
7 D.C. Council. And he told me to just keep trying to contact  
8 her basically. So that's the chair I'm referring to.

9 MEMBER HART: Have you reached out to the vice  
10 chair?

11 MR. DeBEAR: There's no contact information. I  
12 was able to get the phone number for our SMD through the  
13 security guard at the R.I.S.E. Demonstration Center when we  
14 went the two times.

15 So on the ANC website there's only a phone number  
16 for the chair who I've been calling. I was able to get our  
17 SMD's phone number and I talked with her a couple of times.

18 I will note, and I'm not going to put words in her  
19 mouth. She said the community seems to be generally  
20 supportive and she doesn't have any problem with us moving  
21 forward today.

22 With that being said we've been clear with her  
23 that we're willing to go back if need be to the ANC. But  
24 we've been there twice and no one has been there.

25 CHAIRPERSON HILL: You went to the executive

1 committee once and no one showed up. And then you went to  
2 the ANC meeting itself and no one showed up.

3 MR. DeBEAR: Yes.

4 CHAIRPERSON HILL: But 25 people of the community  
5 came.

6 MR. DeBEAR: Yes.

7 CHAIRPERSON HILL: And none of the commissioners  
8 came.

9 MR. DeBEAR: None of the commissioners.

10 CHAIRPERSON HILL: Do you know how many  
11 commissioners are in that ANC?

12 MR. DeBEAR: I believe eight or nine.

13 CHAIRPERSON HILL: Okay. Okay, please continue.

14 MR. DeBEAR: I'm going to turn it over to the  
15 project architect to talk a little about the existing  
16 structure and then what we're doing in terms of converting  
17 the unused storage space.

18 MS. FELDER: Good morning. This slide here shows  
19 the way that the building exists currently. It is a four-  
20 story building. It's outlined here in red so you can see the  
21 property and how the building currently exists.

22 These are just some additional views of the  
23 building. The property, the area of renovation is if you  
24 look at the top right hand photograph where -- on the bottom  
25 where the cars are parked there's some boarded up areas

1 there.

2 That represents those storage areas where we're  
3 proposing to put the additional units.

4 This is just a general site plan indicating the  
5 footprint of the existing building. Again the two units are  
6 going within the footprint. We're not increasing the size  
7 of the existing building.

8 Also we are providing three parking spaces I  
9 believe that were -- we are maintaining the historical  
10 parking that was within this building but we're going to  
11 bring the three spaces right off the alleyway there.

12 This is the existing floor plan of the ground  
13 floor. The area shaded in red is the existing unit, one-  
14 bedroom unit that's on that particular floor.

15 On the right hand side going along the entire  
16 length of the building are the storage areas and that's where  
17 we're proposing to do the two units.

18 So this is existing floor plans of the second  
19 through the fourth floor. The different colors or different  
20 shadings there represent the three different types of units  
21 that we have on each of the floors.

22 This is the proposed floor plan. Again, that area  
23 -- this is on the first floor plan. Again that area on the  
24 left where it's shaded red, that's the existing one-bedroom  
25 unit. And then the area that's shaded blue, those represent

1 the two proposed one-bedroom units that we're putting in that  
2 existing storage area.

3 MEMBER HART: And so you're changing from a two-  
4 two bedroom. What is that one?

5 MS. FELDER: That's a one-bedroom. The red.  
6 Which one?

7 MEMBER HART: The red here. What's the next  
8 slide, slide 10? So is that a two-bedroom?

9 MS. FELDER: On each floor on the second through  
10 the fourth floor there is one two-bedroom, and then the  
11 purple and the red are one-bedroom units.

12 MEMBER HART: And so you're going to --

13 MR. DeBEAR: The only change that's being made is  
14 the first floor.

15 MS. FELDER: Yes, this is just showing you the  
16 makeup of the existing building. We're not touching any of  
17 the other floors.

18 MR. DeBEAR: So here on the right, so you have the  
19 laundry room, the access corridor, the utility room. You  
20 have one unit on the first floor. This is the unused storage  
21 space on the right here where I'm pointing with my cursor.

22 And then Tenika was pointing out --

23 MEMBER HART: I understand. Thank you.

24 MS. FELDER: Okay. In terms of the transportation  
25 options again this building is convenient to public

1 transportation. We have the bus routes there which stops  
2 directly in front of the property. The Metro Congress  
3 Heights is less than a mile away from the building and also  
4 Capital Bikeshare is available at the Congress Heights Metro  
5 as well.

6 MR. DeBEAR: Now I'm going to turn it over to our  
7 land use and planning expert, Mr. Varga.

8 MR. VARGA: Thanks, Eric. I was going to say good  
9 afternoon, I'm so used to saying that, but good morning  
10 Chairman Hill and members of the Board. My name is Stephen  
11 Varga, director of planning services at Cozen O'Connor.

12 I am testifying today as a previously qualified  
13 expert.

14 My analysis and review of the relief is based on  
15 the fact that the project will not expand the existing  
16 structure.

17 Second, no tenants will be displaced during the  
18 construction process. And also, the applicant has agreed to  
19 replace the three parking spaces creating no change from a  
20 parking or traffic perspective.

21 The request will satisfy several comprehensive  
22 plan recommendations as well. Generally speaking the  
23 comprehensive plan's framework and land use elements  
24 discourage vacancy.

25 Here the applicant seeks a use variance to prevent

1 usable floor space in the existing structure from remaining  
2 idle. And there is no other reasonable use for the unused  
3 storage space except for the provision of additional housing  
4 units.

5 The provision of additional housing is  
6 consistently encouraged in the framework element, land use  
7 element and housing element of the comprehensive plan.

8 These recommendations speak to increasing the  
9 housing supply in managing the alteration of existing  
10 structures in and adjacent to single-family neighborhoods in  
11 order to protect the low-density character of the  
12 neighborhood, preserve open space and maintain neighborhood  
13 scale.

14 The proposed relief is not inconsistent with  
15 stated goals in the far Southeast and Southwest area elements  
16 of the comprehensive plan either which encourages, quote,  
17 "providing more housing suitable for families and young  
18 homeowners," as well as quote "preserving the affordability  
19 of some of the area's rental housing through rehabilitation  
20 and renovation."

21 In short, the request for relief will benefit the  
22 public by increasing the housing supply in the Congress  
23 Heights neighborhood will simultaneously protecting its low-  
24 density character and causing no disruption.

25 In conclusion, the relief could be approved and

1 advance numerous comprehensive plan recommendations and not  
2 be a detriment to the public good nor impair the intent and  
3 purpose of the zone plan.

4 I urge you to approve the request. Thank you very  
5 much for your consideration.

6 MR. DeBEAR: Thank you, Mr. Varga. I'm going to  
7 walk through the variance standard at this point.

8 So as we stated earlier the use variance is needed  
9 because this is a non-conforming apartment house. As my  
10 client mentioned earlier this used to be in the R-8 zone but  
11 was down zoned in 2008 to the R-3 zone. So this building was  
12 built -- the Office of Planning did some of its own research.

13 What I see from the property information  
14 verification system is the nineteen seventies. But  
15 nonetheless it was built as an apartment house but our client  
16 to add these two units would be expanding an existing non-  
17 conforming use which is why we are requesting variance  
18 relief.

19 So some of the exceptional conditions this  
20 property faces. I think the first and foremost is the  
21 existing floor plan as the architect walked through. We have  
22 unused storage space on the first floor that just simply will  
23 sit idle without variance relief.

24 As part of our client's efforts to renovate this  
25 property this kind of made sense in terms of taking basically

1 what was previously unusable space and making it into  
2 something that can actually provide housing to people.

3 In that regard some of the existing floor plan on  
4 that first floor that the architect had talked about is  
5 exceptional as well because we cannot combine that first  
6 floor unit because of the existence of the utility room, the  
7 laundry room and the core of the building down the middle  
8 there.

9 The property is a large corner lot which makes it  
10 unique in this square. It is the only large apartment  
11 building in the square as well. And the property's  
12 topography makes this uniquely suitable to convert these  
13 first floor storage spaces into units.

14 The topography slopes so that the rear or the  
15 eastern facing side of the building is actually fully above  
16 grade which again makes it uniquely suitable for a dwelling  
17 unit.

18 The applicant faces undue hardship. I think  
19 there's a long line of both BZA precedent and court of  
20 appeals precedent that tries to avoid basically making usable  
21 space idle.

22 There's simply no reasonably compatible use for  
23 this area of the property. I'm just going to pose a couple  
24 of questions just for my client to confirm.

25 In your opinion, Mr. Astatke, is this space

1 appropriate for some of the by-right uses such as an  
2 emergency shelter, a government use, or a religious based  
3 use?

4 MR. ASTATKE: No.

5 MR. DeBEAR: And in your opinion is this  
6 compatible with the apartment house use that is currently  
7 existing?

8 MR. ASTATKE: Yes.

9 MR. DeBEAR: Okay. So it just simply doesn't make  
10 sense for this space to be used as anything but a residence.

11 As I mentioned before the existing first floor  
12 cannot be expanded due to the bisecting core and the laundry  
13 room and the utility room. So it's not as if we could  
14 convert this to a residential space and then combine it with  
15 that first floor dwelling unit.

16 And then in terms of the existing tenants none of  
17 the units -- Ms. Felder walked through the second through the  
18 fourth floor plan.

19 Those units cannot be combined either because we  
20 are trying not to displace any of the existing tenants in the  
21 building.

22 So I just want to briefly walk through some of the  
23 past cases that this Board has approved that are relevant to  
24 this case.

25 19262 was an extension of a non-conforming use.

1 CHAIRPERSON HILL: Mr. DeBear, that's okay. Let's  
2 just go ahead and skip all these. I saw the ones that were  
3 in the record there.

4 MR. DeBEAR: These are all in the record. And  
5 then finally in terms of the third prong of the variance test  
6 we posit that this will not cause any substantial detriment  
7 to the public good or the zone plan.

8 This is a residential area. The existing use is  
9 residential. We are not changing the use. We are simply  
10 adding to it within the building's envelope.

11 Again I think Mr. Varga touched on some of the  
12 planning goals that this meets in terms of the comprehensive  
13 plan. It adds units to an area that as with the entire city  
14 can always use extra housing and I think relatively speaking  
15 causes a minimal impact in terms of noise or traffic or  
16 anything in that regard.

17 Again our client's goal is to add housing but  
18 maintain the existing level of rent. And again I think that  
19 this will comply with kind of the zone plan in terms of  
20 maintaining this residential neighborhood.

21 And with that I'll open any questions from the  
22 Board.

23 CHAIRPERSON HILL: Okay, great. Thank you. Does  
24 the Board have any questions for the applicant at this point?

25 MEMBER WHITE: So can you restate again what the

1 undue hardship is for me? I know you said it's difficult to  
2 combine the units. The space would just be sitting idle.  
3 But I'm just trying to get through that prong, make sure I  
4 understand exactly.

5 MR. DeBEAR: Right. I think in terms of undue  
6 hardship, again, this is kind of what those past cases go  
7 toward. Trying to avoid remaining idle this existing area.

8 But I think more importantly there are no  
9 compatible uses there that are by-right in the R-3 zone. I  
10 think we listed some of them here.

11 It would essentially, without variance relief it  
12 would just remain unused space which really doesn't  
13 contribute in any way to the existing tenants or anyone  
14 outside the building.

15 As my client stated, all the by-right uses would  
16 not be compatible with this existing apartment use. And in  
17 terms of a government use or a religious use or any of the  
18 other uses permitted in the R zone.

19 And then we just walk through in terms of undue  
20 hardship the option -- they do not have the option of making  
21 this part of an existing unit because of both the core of the  
22 building and the utility room on that first floor and then  
23 the existing tenants on the second through the fourth floor.  
24 So there can't be any combination of units up top. And there  
25 are some difficulties with combining units beyond the

1 existing tenants as well and kind of disrupting that.

2 MEMBER HART: And these were formerly used as a  
3 garage?

4 MR. DeBEAR: Historically they were. They have  
5 not been recently. From what I understand they've been  
6 unused storage space for quite some time. My client could  
7 probably answer. Have they been unused since you purchased  
8 the property?

9 MR. ASTATKE: Definitely, yes.

10 MR. DeBEAR: And they were not used for parking.

11 MR. ASTATKE: That's correct.

12 MEMBER HART: But can they be used for parking?

13 MR. DeBEAR: My client would have to answer that.  
14 I'm not sure.

15 MR. ASTATKE: Yes, I suppose they can. I don't  
16 know if there's -- because we have the parking outside  
17 already I don't know if there's any additional need for that  
18 to be parking. I think the best use in my mind would be as  
19 apartment units.

20 MEMBER HART: But it's not because of the size.  
21 There's still size large enough to be able to use for  
22 parking.

23 MR. ASTATKE: That's correct.

24 MEMBER HART: So that's not the issue. It's more  
25 about being able to use this for kind of habitable space.

1 That's what you're saying is your preference in this case.

2 MR. ASTATKE: That's correct. I think that would  
3 be the best use.

4 MR. DeBEAR: I think given the size of the lot and  
5 the ability to put parking somewhere else it makes a lot more  
6 sense to not waste that space with parking. And it hasn't  
7 been used for parking for a number of years.

8 MEMBER HART: Okay, thank you.

9 MEMBER WHITE: Have there been any comments from  
10 the residents or from the neighbors -- I don't want you to  
11 testify on someone's behalf, but in terms of feedback that  
12 you've got from the residents. What is the feedback that  
13 your client's received?

14 MR. DeBEAR: Again, as you said Commissioner White  
15 I don't want to put words in the mouth of the SMD  
16 commissioner. She indicated that she didn't see a problem  
17 with it. But this is part of why we were trying to go to the  
18 ANC obviously.

19 I don't think we've heard really much one way or  
20 the other. That's all I'll say.

21 MEMBER WHITE: But the residents that live in the  
22 building, that's what I was referring to.

23 MR. DeBEAR: I don't personally know. I don't  
24 think my client has talked to them about the zoning  
25 specifically. But they were given notice and we did file the

1 names and addresses, unit numbers in the record and they  
2 received notice.

3 MEMBER WHITE: And they didn't view it as  
4 something that was negative.

5 MR. DeBEAR: I don't know. I'm going to just let  
6 my client answer that if he even knows.

7 MR. ASTATKE: We haven't had any response yet.  
8 No positive or negative response.

9 MEMBER WHITE: Okay.

10 COMMISSIONER MILLER: Thank you, Mr. Chairman.  
11 Just following up on your comments and your dialogue with the  
12 chairman about the affordability level for this market area  
13 what is the rent level for the existing units? You said it's  
14 going to be comparable to the rent level for the existing 10  
15 units.

16 MR. ASTATKE: Yes. So on average I would say  
17 we're in the \$950-\$1,000 per unit range.

18 COMMISSIONER MILLER: Nine hundred fifty dollars.

19 MR. ASTATKE: Per unit.

20 COMMISSIONER MILLER: Per month.

21 MR. ASTATKE: Yes. And so these new units would  
22 be --

23 COMMISSIONER MILLER: For the one-bedroom.

24 MR. ASTATKE: Yes. I don't have the exact numbers  
25 but I would say \$900 for a one-bedroom, \$1,000 for the two-

1 bedrooms is kind of what the rents are roughly. And these  
2 new units would be in line with that.

3 COMMISSIONER MILLER: Is the building subject to  
4 rent control?

5 MR. ASTATKE: It is.

6 COMMISSIONER MILLER: It is. And the two new  
7 units would be subject to rent control, or not necessarily  
8 but you're maintaining the level? I'm characterizing that  
9 right?

10 MR. ASTATKE: Yes. So I think the rents that  
11 we're going to get for the new units would be in line with  
12 the rents that are there currently.

13 COMMISSIONER MILLER: Okay, thank you.

14 MR. DeBEAR: Can I just add one quick thing that  
15 I should have brought up as a preliminary matter? The  
16 affidavit in maintenance for the public notice posting was  
17 filed yesterday. So we're just requesting a waiver from that  
18 provision. It's supposed to be filed two days before the  
19 hearing.

20 CHAIRPERSON HILL: Can you tell me which exhibit  
21 that's in again?

22 MR. DeBEAR: The most recent one, I believe it  
23 would be 35.

24 CHAIRPERSON HILL: So what are you requesting  
25 again?

1 MR. DeBEAR: Just a waiver from the provision of  
2 subtitle Y concerning filing an affidavit of maintenance no  
3 less than two days prior to the hearing.

4 CHAIRPERSON HILL: And when was it posted?

5 MR. DeBEAR: The public notice was posted in a  
6 timely fashion. That was posted 15 days prior to the  
7 hearing. The affidavit of maintenance itself was filed one  
8 day late.

9 CHAIRPERSON HILL: I understand.

10 MR. DeBEAR: But the posting was done in  
11 compliance with the rules.

12 CHAIRPERSON HILL: I understand. As long as the  
13 posting was done in compliance with the rules I don't have  
14 any issues with it. Does the Board?

15 MEMBER HART: Just one quick question. So it was  
16 that you checked it on Monday, or that you checked it  
17 yesterday.

18 MR. DeBEAR: So, just to be clear, the poster, we  
19 were maintaining it, an agent of my client. They found it  
20 ripped down on Friday. They got it re-posted on Monday.

21 But what I am requesting a waiver from is not that  
22 necessarily. We believe the posting has been maintained to  
23 the best of our ability. Just the timeliness of the filing  
24 of the affidavit of maintenance.

25 CHAIRPERSON HILL: Okay, so we'll go ahead and

1 waive that requirement.

2 All right. As far as the -- and I was just  
3 curious. So the two units will be rent controlled or they  
4 won't be rent controlled?

5 MR. ASTATKE: Actually I don't know.

6 CHAIRPERSON HILL: I'm just curious. You don't  
7 know. Because if they're brand new then they wouldn't be.

8 MS. MOLDENHAUER: In the District of Columbia new  
9 units are typically not subject to rent control. And since  
10 these were not previously rent control and I believe what the  
11 applicant has testified to though is that even though they  
12 would not be subject specifically to the Rent Control Act of  
13 the District of Columbia that they would be in line with  
14 other rental units in the building.

15 CHAIRPERSON HILL: Right, but you could try to get  
16 whatever market you could get for them. It's okay, it is  
17 what it is. I'm just being clear. They're not under rent  
18 control because they're new units. Okay.

19 All right. So I'm going to turn to the Office of  
20 Planning.

21 MR. MORDFIN: Good morning, Chair and members of  
22 the Board. I'm Stephen Mordfin. And the Office of Planning  
23 supports this application, finds that it meets the  
24 requirements for use variance relief including exceptional  
25 and undue hardship and supports the application.

1 CHAIRPERSON HILL: Okay. Does the Board have any  
2 questions for the Office of Planning? Okay.

3 Is there anyone here from the ANC? Is there  
4 anyone here from the ANC? No. All right.

5 Is there anyone here wishing to speak in support?  
6 Is there anyone here wishing to speak in opposition? Ma'am  
7 you can just come on forward, it's all right. You can just  
8 sit there at the end.

9 And did you get sworn in earlier today by any  
10 chance? Okay, great. Please go ahead and have a seat. And  
11 then if you just push the microphone there. Can you first  
12 just give us your name and home address.

13 MS. JEFFERSON: Yes. Ruth Jefferson, 465 Mellon  
14 Street, Apartment 6.

15 CHAIRPERSON HILL: Okay, Ms. Jefferson. Are you  
16 here in opposition or support? You have to push the button  
17 again.

18 MS. JEFFERSON: Actually I saw the sign on the  
19 door and noticed that it was going to be a Zoning hearing  
20 today. I did not receive anything in the mail nor did I  
21 receive anything on my door letting me know that there was  
22 going to be a zoning or any discussion about additional two  
23 apartments that was.

24 As long as I've been there that area now boarded  
25 up it appeared that it was some previous owner maintenance

1 personnel that called themselves boarding up the area I guess  
2 to live there rent free or whatever.

3 But originally that area was never a parking area.  
4 It was used for the tenants to put their trash in that area.  
5 Somehow the trash cans got moved from different spots around  
6 the building making it look very poorly.

7 CHAIRPERSON HILL: Okay. Ms. Jefferson, I'm  
8 sorry. I'm just trying to figure out. So normally then  
9 members of the public will have three minutes to testify  
10 either in support or opposition. And you don't have to  
11 necessarily tell us what it is. You can go ahead and just --  
12 you're starting to tell us why you're here and so I'm just  
13 trying to understand, the Board is just trying to understand  
14 (a) why you're here and then (b) if you're in support or  
15 opposition or if you just want to kind of give us more  
16 information and then we can ask questions of you.

17 So I'm going to put three minutes on the clock.  
18 They're right over there on the ceiling. And you have three  
19 minutes to present your testimony.

20 MS. JEFFERSON: Actually I wanted to talk with an  
21 ANC committee to have them come to see if that was the best  
22 interest for the tenants because I want to make sure that  
23 that would be beneficial for us the residing tenants who live  
24 there trying to make sure.

25 I personally am not an expert in the zoning area,

1 but it doesn't appear to me that that area looked like it  
2 could be renovated to two existing units.

3           However, like I stated before that is not my  
4 expertise. But I did want someone at our ANC to come to  
5 represent to make sure that it was in fact beneficial for us  
6 the tenants as well who were still residing there.

7           CHAIRPERSON HILL: Okay.

8           MS. JEFFERSON: So that was my concern.

9           CHAIRPERSON HILL: Okay. So after hearing the  
10 testimony here thus far in terms of what they're trying to  
11 do with those two units in the basement are you in support  
12 or opposition or you're just not sure?

13           MS. JEFFERSON: I'm not sure. I would like to  
14 have someone from our ANC commission come there to make sure  
15 that it really is beneficial for the existing tenants that  
16 are there.

17           Personally it doesn't look like it could be  
18 renovated into two units. I'm just curious how that could  
19 be done.

20           CHAIRPERSON HILL: Okay. So Ms. Jefferson, it's  
21 kind of a pain to take time to come down here and like you  
22 know all of the effort to come down and hear the testimony.  
23 So I just wanted to make sure that I understood kind of what  
24 you were looking for.

25           As far as the two units go I think that the

1 architects has provided drawings that I think that they will  
2 be able to provide two units there. I mean I don't think  
3 that it's going to be two units they're going to be unable  
4 to do.

5 In terms of the ANC and this is what we're going  
6 to end up deliberating about they seem to have reached out  
7 to the ANC quite a bit and gone to the meetings and have had  
8 a difficult time finding anybody from the ANC in order to  
9 give feedback to.

10 And now you have a question for the applicant in  
11 terms of notice. But does the Board have any other questions  
12 for Ms. Jefferson?

13 MEMBER HART: Thank you very much for coming down.  
14 Ms. Jefferson, do you think that there are enough units or  
15 do you think that there are going to be too many units? Do  
16 you think that there are going to be trash problems that are  
17 going to be associated with this? Is there a particular  
18 concern that you have, or is it that you just don't know  
19 enough to be able to say I think this is going to be a  
20 problem or I think that's going to be a problem. And I'm  
21 just throwing some things out.

22 MS. JEFFERSON: The new owner really has not shown  
23 me that they have tried to take care of the apartment right  
24 now with the 10 units. You can see the area. You can see  
25 the grass area. You can see the trash location. You can see

1 the walkway.

2           So they've had it for I think over a year now and  
3 I have not seen very much improvement except for them trying  
4 to make individual I guess utilities, if I'm not mistaken the  
5 laundry area I don't think has even been restored or any  
6 restoration done to that.

7           So they're concerned about creating 2 units when  
8 they haven't really properly taken care of the 10 units that  
9 are previously under them.

10           MEMBER HART: Thank you. And I think you know  
11 that the person sitting there next to you --

12           MS. JEFFERSON: I do.

13           MEMBER HART: Okay. But I encourage you to have  
14 conversations with him after this to voice some other  
15 opinions of this. But I appreciate you for coming down.  
16 Thank you.

17           MEMBER WHITE: Ms. Jefferson, I also appreciate  
18 you coming down as well. One of the questions that I was  
19 asking because part of the variance test is that you have to  
20 kind of get a sense of whether or not the application is in  
21 the interest of the public good.

22           So I was more interested in what kind of dialogue  
23 that they've had with the people actually in the building.  
24 So I can see that that's something that obviously needs to  
25 be improved so that there's some synergies there so that you

1 can address some of the concerns that the people that live  
2 there have.

3 So I would hope that going forward that you can  
4 begin to have dialogue with the people that live in your  
5 building.

6 CHAIRPERSON HILL: Ms. Jefferson, are you above  
7 where the units are going to be built?

8 MS. JEFFERSON: I'm actually in apartment 6 so I'm  
9 in the back area.

10 CHAIRPERSON HILL: Oh, you're in the back area of  
11 that floor.

12 MS. JEFFERSON: No, I'm actually the second level.  
13 So it would be the third tier. And so I'm in the back facing  
14 probably Newcomb Street.

15 CHAIRPERSON HILL: So Mr. DeBear, so as far as  
16 notice goes what did you guys do for notice?

17 MR. DeBEAR: We filed in exhibit number 11 the  
18 four existing tenants with the Office of Zoning. And I  
19 believe notice was sent to them.

20 CHAIRPERSON HILL: In the mail.

21 MR. DeBEAR: In the mail.

22 CHAIRPERSON HILL: Okay.

23 MR. DeBEAR: And obviously the property was posted  
24 as required. And Ms. Jefferson is specifically listed in  
25 exhibit number 11.

1 CHAIRPERSON HILL: So you possibly got something  
2 in the mail.

3 MS. JEFFERSON: Nothing in the mail. I actually  
4 took a picture of the sign and that's how I knew to come here  
5 today.

6 CHAIRPERSON HILL: Okay. All right. Well, Ms.  
7 Jefferson as my colleagues are saying Mr. Astatke, he's the  
8 owner of the property there. And so I think that if you  
9 could kind of make sure that you talk to Ms. Jefferson here  
10 after the hearing and then just see what issues or concerns  
11 she may have in terms of the work that's being done and how  
12 you can alleviate any concerns that she might have since she  
13 took the time to come down here.

14 MR. ASTATKE: Sure.

15 CHAIRPERSON HILL: Okay. Does the Board have any  
16 other questions for Ms. Jefferson? Sure, Commissioner.

17 COMMISSIONER MILLER: Thank you, Mr. Chairman.  
18 Ms. Jefferson, thank you for coming down. How long have you  
19 lived at this property?

20 MS. JEFFERSON: Probably since '70 something, late  
21 seventies, '76, '79, something in that area.

22 COMMISSIONER MILLER: Okay, thank you.

23 CHAIRPERSON HILL: Yes, Mr. Astatke, she's been  
24 there since the seventies. So if you can make sure that  
25 she's taken care of and that you're not bothering her or

1 anything like that. The building has only been there a  
2 couple of years and I don't want to get into what you have  
3 or haven't done with the property at this point but that's  
4 something that the Board definitely wants to make note of.

5 MR. ASTATKE: Sure.

6 CHAIRPERSON HILL: Okay. Thank you, Ms.  
7 Jefferson.

8 MR. MOY: Mr. Chair?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: Could you ask Ms. Jefferson if she had  
11 filled out a witness card?

12 CHAIRPERSON HILL: Ms. Jefferson did you fill out  
13 a witness card?

14 MS. JEFFERSON: I did not.

15 CHAIRPERSON HILL: Okay, if you could fill out two  
16 of those and then give it to the transcriber to our right  
17 there. Okay. All right.

18 So Mr. DeBear, do you have anything else you'd  
19 like to add?

20 MR. DeBEAR: Just two brief questions.

21 CHAIRPERSON HILL: Questions?

22 MR. DeBEAR: Sorry, follow-up for the architect.  
23 (Simultaneous speaking)

24 MR. DeBEAR: This is for Ms. Felder. Will the two  
25 units that are being added be of similar size to the existing

1 one-bedroom units in the apartment?

2 MS. FELDER: They will.

3 MR. DeBEAR: Thank you. And this is just quickly  
4 to Mr. Astatke, are you renovating or have you renovated the  
5 laundry room?

6 MR. ASTATKE: Yes, we've started the process.  
7 We've purchased new washers and dryers and have started  
8 renovating the laundry room.

9 MR. DeBEAR: Thank you.

10 CHAIRPERSON HILL: Mr. Astatke, when is that going  
11 to be done?

12 MR. ASTATKE: It's near complete. So we're  
13 waiting to just install the new washers and dryers that are  
14 in place. So it should get completed this week.

15 CHAIRPERSON HILL: Okay.

16 MEMBER HART: I know this may not have particular  
17 bearing on the case, but do any of you have any idea as to  
18 why this lot is shaped this way?

19 Because it seems as though there's almost like a  
20 circle that's going on in this whole area like they were  
21 planning a circle but the property itself is if you look on  
22 an aerial photograph there are rectilinear lines that this  
23 is where this is but for some reason all the properties  
24 around this particular block are just like a circle.

25 So I just didn't know if you had had any idea as

1 to why that was. It doesn't have necessarily bearing on  
2 this. I was more just as an interest.

3 MS. MOLDENHAUER: I don't have any specific  
4 knowledge. It does appear to be something that was intended  
5 maybe by the original subdivision and creation of this  
6 neighborhood.

7 MEMBER HART: Thank you.

8 MEMBER JOHN: I have one question of the  
9 application. So, someone just said that there are four  
10 tenants in the building now. Is that correct?

11 MR. DeBEAR: Yes.

12 MEMBER JOHN: Okay. And so the other six units,  
13 are those being renovated now or they're just vacant?

14 MR. ASTATKE: So we've completed renovation on  
15 four units that are on the left stack. We're waiting on  
16 Pepco to do the upgrade so we can't necessarily do anything  
17 with those units until Pepco has upgraded.

18 So all the individual hot water heaters,  
19 individual HVAC units are in. We've upgraded those units but  
20 we're waiting on Pepco to be able to have tenants move in.

21 MEMBER JOHN: And so do the previous tenants have  
22 the opportunity to rent in the renovated units?

23 MR. ASTATKE: And that's something that we've  
24 actually had conversations about. So there is the  
25 opportunity to either move to that renovated unit or we have

1 to work with existing tenants to be able to do the work in  
2 their unit.

3           So our goal is to have all of the units have  
4 central A/C and hot water incorporated. And again we're just  
5 waiting on Pepco to do the electrical upgrade so that we can  
6 provide that option to the existing tenants.

7           So there are going to be two options. One is  
8 either you move to the newly renovated unit. The other is  
9 that we do the work in your unit and if you require, you  
10 know, I think we can do that in three to four days. And so  
11 we would probably provide hotel stay for that period while  
12 we just go in and put in the ducts and conduct the hot water  
13 heaters.

14           So we're kind of stalled by Pepco at this point.

15           CHAIRPERSON HILL: So Ms. Jefferson, since you're  
16 still sitting there. So do you know about this? So you  
17 don't know anything about this information in terms of like  
18 the possibility to move into a renovated unit, or that  
19 they're going to renovate your unit or anything like that.  
20 You're learning about this right now.

21           MS. JEFFERSON: Actually I was told about that  
22 because they had probably over a year to come in and try to  
23 renovate. Of course there were some other violations that  
24 they've been trying to correct and that was not done.

25           So I'm not sure. They said it would take just now

1 two or three days, but it's been over a year and they haven't  
2 been able to do anything in my apartment yet as far as  
3 renovation.

4 I was told, however, that they would consider  
5 renovating my place but they would want me to pay more than  
6 I'm required to pay.

7 CHAIRPERSON HILL: Okay. So Mr. Astatke I'm  
8 getting a bunch of mixed signals here on what's been done,  
9 what's being done. You seem pretty honest to me. You're  
10 under oath.

11 And then the other thing is I don't know whether  
12 you're better off or worse off that we're having a light  
13 docket today. Because we're spending a lot of time. We're  
14 going to keep asking questions now because you brought up now  
15 the laundry room.

16 So now I'm curious. So Ms. Jefferson, have they  
17 started to do the laundry room?

18 MS. JEFFERSON: I have not gone back to check.  
19 I will check today. When I did go in probably I want to say  
20 six weeks ago it was not done.

21 CHAIRPERSON HILL: Okay. Renovations can happen  
22 kind of quickly, believe it or not. It's shocking but they  
23 can happen quickly. I mean, I do believe Mr. Astatke that  
24 he's doing the renovations I guess, the laundry room.

25 So again, Mr. Astatke, I would ask you after this

1 hearing to talk to Ms. Jefferson, make sure she understands  
2 what is available to her and so forth in terms of either  
3 moving into a new renovated -- I mean again, you can do what  
4 you want with this. This has nothing to do with zoning.

5 But if she can move into the renovated space, if  
6 there's like making sure her space gets renovated. She came  
7 all the way down here and then make sure you have at least  
8 one of your tenants will know more than any of your tenants.  
9 And maybe Ms. Jefferson you can share that with your  
10 neighbors. Okay.

11 Does anybody have anything else? All right. Mr.  
12 DeBear, do you have anything else?

13 MR. DeBEAR: Nothing further.

14 CHAIRPERSON HILL: Okay. Is the Board ready to  
15 deliberate? All right, I can start.

16 So I was actually in agreement with the Office of  
17 Planning. I thought that the applicant has made their case  
18 in terms of how they are meeting the variance standard.

19 I think that again considering -- I understand how  
20 they're getting to the point that they, the applicant,  
21 believes they're meeting the standard for the variance to be  
22 approved. I also will agree with that.

23 I will agree with the Office of Planning's  
24 analysis. I read in the record all of the different things  
25 that the applicant has gone through in terms of meeting with

1 the ANC. I'm a little surprised that of nine members at an  
2 ANC meeting no one came to the ANC meeting, but again the  
3 applicant is under oath and so I assume that that happened.

4 It seems to me that the ANC has had an opportunity  
5 to weigh in on this. And considering that the envelope of  
6 the building isn't being changed I don't see that I would be  
7 uncomfortable -- in other cases I would be uncomfortable that  
8 the ANC hasn't, we haven't gotten anything from the ANC.

9 So I would be in favor of approval. Does anyone  
10 else have any comments?

11 MEMBER WHITE: Mr. Chair, I would also agree with  
12 you. We don't hand out variances easy. It's a very high  
13 standard so obviously you all know that.

14 But I think the fact that they're not expanding  
15 the footprint of the building and the fact that it would be  
16 very difficult to expand the first floor beyond what they're  
17 trying to do in this application, and the fact that they can  
18 add in two additional units that would kind of be in synch  
19 with the price points for some of the existing units in that  
20 building I think provide a positive public good to the area  
21 in terms of providing more units that are a little bit more  
22 affordable than others even though he may not be under strict  
23 rent control for those additional units.

24 I also feel that in terms of looking at the  
25 criteria for the variance that this would not be a detriment

1 to the intent and the purpose and the integrity of the zoning  
2 regulations. So I would be in support of expanding this to  
3 provide two additional units of habitable space on the first  
4 floor.

5 CHAIRPERSON HILL: Okay, anyone else?

6 COMMISSIONER MILLER: Thank you, Mr. Chairman.  
7 Yes, I would agree with my colleague's analysis and the  
8 analysis of the Office of Planning and the applicant that the  
9 standards for the variance test for the variance relief have  
10 been met including the comprehensive plan analysis that the  
11 applicant provided. So I'm ready to go forward.

12 MEMBER JOHN: I'm fine with everyone's analysis,  
13 Mr. Chairman.

14 CHAIRPERSON HILL: Okay, great. And again I would  
15 encourage Mr. Astatke to speak with his tenants particularly  
16 Ms. Jefferson who's here.

17 And again I was a little confused with like it is  
18 rent control so there is rent control on the units that are  
19 even being refurbished.

20 And Mr. Astatke, you may or may not be back here  
21 again before us. So if you are we will remember or hear or  
22 understand. So that's the only comment I have as to what you  
23 do after this moment.

24 I will go ahead and make a motion to approve  
25 application number 19720 as captioned and read by the

1 secretary and ask for a second.

2 MEMBER HART: Second.

3 CHAIRPERSON HILL: Motion has been made and  
4 seconded. All those in favor?

5 (Chorus of ayes)

6 CHAIRPERSON HILL: All those opposed? The motion  
7 passes, Mr. Moy.

8 MR. DeBEAR: Thank you.

9 MR. MOY: Staff would record the vote as 5-0-0.  
10 This on the motion of Chairman Hill to approve the  
11 application for the relief being requested. Seconding the  
12 motion Vice Chair Hart. Also in support Mr. Rob Miller, Ms.  
13 White and Ms. John. The motion carries.

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

15 MR. MOY: Thank you.

16 CHAIRPERSON HILL: Okay. All right, thank you  
17 all. And actually we are going to take a quick break. Thank  
18 you.

19 (Whereupon, the above-entitled matter went off the  
20 record at 10:54 a.m. and resumed at 11:02 a.m.)

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

23 MR. MOY: Thank you, Mr. Chairman. I see the  
24 parties are to the table. This is case application number  
25 19690 of 2916 P Street LLC. This application has been

1 amended for a use variance from the non-conforming use  
2 requirements of subtitle C section 204.1.

3 This would construct a rear and third story  
4 addition to an existing four-unit apartment house R-3 zone  
5 at premises 2916 P Street, SE, square 5547, lots 808 and 809.

6 CHAIRPERSON HILL: Okay, thank you, Mr. Moy. Good  
7 morning. If you could please introduce yourselves from my  
8 right to left.

9 MR. SULLIVAN: Good morning, Mr. Chairman and  
10 members of the Board. My name is Marty Sullivan with the law  
11 firm of Sullivan & Barros on behalf of the applicant.

12 MS. WILSON: Good morning, Alex Wilson from  
13 Sullivan & Barros on behalf of the applicant.

14 MR. ROUHANI: Alex Rouhani, partner at 2916 P  
15 Street LLC.

16 CHAIRPERSON HILL: Sir, could you spell your last  
17 name for me?

18 MR. ROUHANI: Rouhani. R-O-U-H-A-N-I.

19 CHAIRPERSON HILL: Okay, great. Thank you, sir.  
20 Mr. Sullivan, are you going to be presenting to us?

21 MR. SULLIVAN: Yes.

22 CHAIRPERSON HILL: Okay. So I didn't have a lot  
23 of particulars in terms of what I was interested in hearing  
24 about. I mean I would like to hear in general what you are  
25 trying to achieve and considering obviously that it's a use

1 variance the standard is a little higher in terms of what we  
2 have to go through to approve or deny.

3           So if you could like I guess focus in on those  
4 standards a little bit.

5           And then I'm going to go ahead and put 15 minutes  
6 on the clock just so I know where we are. And does the Board  
7 have anything specific they'd like to hear from the applicant  
8 other than what I mentioned? Okay.

9           Then Mr. Sullivan you can go ahead and begin  
10 whenever you'd like and then we'll have questions for you.

11           MR. SULLIVAN: Thank you, Mr. Chair. The address  
12 of the property again is 2916 P Street, SE. This is just a  
13 block or so north of Pennsylvania Avenue after crossing the  
14 bridge.

15           It is an existing four-unit apartment building.  
16 It was built in 1935. It's in the R-3 zone.

17           It had two underlying record lots underneath it  
18 which is now one single record lot which was combined at the  
19 request of DCRA.

20           And they are requesting relief to do an addition  
21 to expand the living area of the units and to create more  
22 family sized units that fit the character of this particular  
23 neighborhood.

24           And they're not proposing to increase the number  
25 of units, only to create the larger units.

1           Originally the zoning administrator called this  
2 an area variance. I happen to agree with him the first time  
3 but he changed his mind and it's now a use variance.

4           I mention in the back of our PowerPoint some case  
5 law on that. So if the Board wanted to go a different way.  
6 There is some case law from the BZA implying that this could  
7 be an area variance.

8           I don't think it's your typical use variance.  
9 However we did argue the use variance standard. I think  
10 that's what the Office of Planning reviewed it under.

11           And on that note I'll go to the variance test  
12 then. The exceptional condition is the fact that the  
13 building was built as an existing, originally built apartment  
14 building prior to 1958 and then became non-conforming of  
15 course in 1958 when the R-3 zone was restricted to not  
16 include apartment houses.

17           And that condition prevents the applicant from  
18 adding any additional floor area despite the fact that the  
19 building is limited to 24.7 percent lot occupancy currently  
20 and just 2 stories and 20 feet in height.

21           The undue hardship comes down to the financial  
22 analysis around any of the options to either upgrade or  
23 modernize this property or to bring it in line with the  
24 surrounding area and the type of units that are being sold.  
25 And this goes to why the ANC supported this so

1 enthusiastically too because they wanted larger units here.

2 And all those numbers have been submitted,  
3 financial analysis, I won't go into detail on that. But  
4 there's no viable option either to do nothing and try to  
5 modernize at the existing sizes and value. And of course  
6 adding any floor area requires us to have relief.

7 So if there's any questions and the applicant is  
8 here to answer any questions as well.

9 CHAIRPERSON HILL: Mr. Sullivan, you said the ANC  
10 was enthusiastic. I was just curious. So one of the members  
11 voted no. It said 3-1 right. Did somebody abstain?

12 MR. SULLIVAN: The letter says 3-1 yes. I wasn't  
13 at the meeting.

14 CHAIRPERSON HILL: Oh you weren't at the meeting.  
15 Were you at the meeting, sir?

16 MR. ROUHANI: I was at the meeting but I don't  
17 recall any opposition to our case.

18 CHAIRPERSON HILL: Okay. You were not at the  
19 meeting.

20 MR. ROUHANI: I was at the meeting.

21 CHAIRPERSON HILL: Oh you were at the meeting.

22 MR. ROUHANI: Yes.

23 CHAIRPERSON HILL: Okay, so you presented to them?

24 MR. ROUHANI: I had the architect to present.

25 CHAIRPERSON HILL: Okay. Could be abstained.

1 Does the Board have any questions for the applicant?

2 MEMBER HART: Yes, I have a question, Mr.  
3 Sullivan. As I was looking through this I just wanted to  
4 make sure that I understood the relief that was being sought.

5 I think that you were kind of explaining. I was  
6 looking through the documents themselves. So the ZA gave  
7 some -- there's a memo in the record, I don't know what memo  
8 it is, I can't remember, there were several that came in.  
9 Number 9 was the first exhibit.

10 And they talked about what the relief was for the  
11 property which included two area variances and a special  
12 exception.

13 And then that changed -- that was from July of  
14 last year. Then in January of this year there's exhibit I  
15 want to say 34B, no, 34A which talks about -- and I think you  
16 were talking about the change, the relief that was being --  
17 that the ZA was discussing at that point which is again  
18 exhibit 34A January 2018 that says it's a use variance and  
19 then an area variance and then a special exception.

20 But now you're saying that the area variance and  
21 the special exception are not being pursued anymore and that  
22 all your pursuing is the use variance from -- and you're not  
23 really, you still think it might be an area variance but you  
24 can understand. I don't know. Just if you could explain  
25 that that would be helpful.

1 MR. SULLIVAN: That's correct. Item number 2 and  
2 3, the plans were revised to no longer need the relief. So  
3 we're self-certifying and this is provided for information  
4 purposes.

5 MEMBER HART: Okay. And this is just to kind of  
6 give you the history of this is why we're here.

7 Part of this too is because -- and again as I was  
8 looking through this I was getting a little bit confused  
9 because the ANC report actually refers to -- and I guess that  
10 was from November so they would have been under the first ZA  
11 kind of -- what the ZA had described at that point, the  
12 relief that was described at that point because they include  
13 the two area variances and the special exception then.

14 And so that's the part that I was trying to kind  
15 of -- as you're walking through all of this. Okay so things  
16 have changed. So what's changed and kind of where are we  
17 now. And from what you're telling me we are now at a use  
18 variance for this case and that's it because there have been  
19 changes to the design that you all now don't need the other  
20 relief that you were seeking.

21 MR. SULLIVAN: Yes, that's correct. Since the ANC  
22 meeting we've just taken away from the project, not added  
23 anything to it.

24 MEMBER HART: Okay. I know that was a lot that  
25 I was saying. I was making sure that I understood it, that's

1 all. Because after looking through it I was like okay, so  
2 what are we doing now.

3 And the Office of Planning report only looked at  
4 one thing so I was like okay now I'm just missing it. I'm  
5 missing something in this. But I appreciate it. Thank you.

6 CHAIRPERSON HILL: So again just to clarify, Mr.  
7 Sullivan and Mr. Rouhani I guess again, what the ANC approved  
8 was what the zoning administrator first had you guys apply  
9 for.

10 And then you've taken away from the project.  
11 Therefore you still are under the assumption that the ANC  
12 would obviously still be in approval of this.

13 MR. SULLIVAN: Yes, that's correct. The lot  
14 occupancy got smaller and the rooftop penthouse went away.

15 CHAIRPERSON HILL: Okay, just wanted to clarify  
16 for the record. Anyone else?

17 MEMBER HART: Just one other thing. Can you go  
18 through your calculations or at least the analysis on exhibit  
19 34B which is the cost concerns that you have difficulties.  
20 It doesn't matter who answers. Thank you.

21 MR. ROUHANI: Well, basically our option is to  
22 keep the unit as is and modernizing. And that's the first  
23 scenario which it would result almost like \$5,000 loss.

24 And the other option is the one that we are  
25 requesting a variance to add a second floor -- add the third

1 floor and expanding the rear of the building to create still  
2 four units.

3 And basically this is the only way that we can  
4 modernize the building and to be profitable.

5 The last one was a suggestion to make the whole  
6 building one single-family units. In order for us to  
7 modernize it and then we have to be able to sell just one  
8 single-family unit at \$915,000 in order to break even with  
9 all the cost.

10 MEMBER HART: And so you have a difference would  
11 be between the loss for the matter of right option 1 and the  
12 net profit.

13 MR. ROUHANI: Of the second --

14 MEMBER HART: Of the second option. So that would  
15 be like over \$200,000. Is that what you're saying?

16 MR. ROUHANI: \$196.

17 MEMBER HART: But I'm saying if you look at what  
18 you're proposing for the matter of right option that would  
19 be a loss.

20 MR. ROUHANI: That's right.

21 MEMBER HART: So the difference between that loss  
22 and what you're proposing is \$200,000.

23 MR. ROUHANI: That's right.

24 MEMBER HART: Okay. Or \$201 I guess.

25 MR. ROUHANI: That's right.

1 MEMBER HART: Okay. Thank you.

2 CHAIRPERSON HILL: Okay. I'm going to turn to the  
3 Office of Planning.

4 MR. MORDFIN: Good morning, Chair and members of  
5 the Board. I'm Stephen Mordfin. And the Office of Planning  
6 is in support of this application finding that there is an  
7 exceptional and undue hardship and that it would not be a  
8 substantial detriment to the public good in the provision of  
9 these larger units. So therefore the Office of Planning  
10 supports this application. Thank you.

11 CHAIRPERSON HILL: Does the Board have any  
12 questions for the Office of Planning? Does the applicant  
13 have any questions for the Office of Planning?

14 MR. SULLIVAN: No, thank you.

15 CHAIRPERSON HILL: Okay. Is there anyone here  
16 from the ANC? Is there anyone here wishing to speak in  
17 support? Is there anyone here wishing to speak in  
18 opposition? You guys are so lucky it's such a light day.

19 Okay. Does the Board have any questions for the  
20 applicant? Does the applicant have anything else they'd like  
21 to add?

22 MR. SULLIVAN: Just a note on the area variance  
23 versus use variance thing. The thing that makes it difficult  
24 to analyze it as a use variance is that we're not changing  
25 the use. It's not a commercial use.

1           So if it was a commercial use and we're expanding  
2 that obviously that has an impact and you're expanding a use  
3 that's not permitted in that zone.

4           A residential use is permitted in that zone and  
5 that case law that I cited talks about that fact. And didn't  
6 distinguish between multi-family and residential. And I  
7 think that's where the zoning administrator and I differ.

8           So I don't want to entangle the Board in a long  
9 discussion of that, but it makes it a little more difficult  
10 to make that argument because we're supposed to for undue  
11 hardship prove that it can't reasonably be used for a  
12 permitted use.

13           Well, we are using it for a permitted use. So the  
14 argument more relates to the structure and the difficulty and  
15 the hardship in being able to do something to the structure.

16           And if you don't do anything it just becomes more  
17 dilapidated and more in need of relief. So I'm not sure what  
18 you do with that but just a suggestion that this is kind of  
19 a hybrid in effect of a use variance, area variance. And I  
20 think that impacts your review and the standard a little bit.

21           CHAIRPERSON HILL: I understand and I think the  
22 Board does understand. I kind of appreciate what you're  
23 saying.

24           However, as you mentioned it just would kind of  
25 entangle us a little bit more into further discussion into

1 an area that we don't in the past I guess haven't really kind  
2 of gone into.

3 But I do make note of what your comments are.  
4 However, this is now the application that is before us and  
5 you seem to at least be leaning towards a win.

6 But we could start talking about it all but I  
7 think that might get a little bit more confusing. So I'm not  
8 going to enter into that discussion unless the Board wants  
9 to enter into that discussion.

10 COMMISSIONER MILLER: I didn't want to enter into  
11 the discussion but now that we've entered into the discussion  
12 just to quickly ask does the Office of Planning have a  
13 viewpoint on that issue that you can share?

14 MR. MORDFIN: Well, the Office of Planning also  
15 views this -- it's an existing four-unit building. And I  
16 think what's different about this compared to some other non-  
17 conforming uses that are expanded is that it's going from a  
18 four-unit apartment building to a four-unit apartment  
19 building. So the use is not really changing although the  
20 size is increasing.

21 I think this would be completely different if they  
22 were asking to convert it to a six-unit apartment building  
23 while expanding it.

24 But this is just, the purpose of it is to  
25 modernize the units. And I think that's where it also then

1 is not a detriment to the public good because it's improving  
2 the building.

3 CHAIRPERSON HILL: Okay. All right. Does the  
4 Board have anything else they'd like to ask the applicant?  
5 Okay. Oh sorry, of course, please.

6 MEMBER JOHN: Mr. Chairman, I don't have anything  
7 to ask but I did have difficulty trying to decide whether  
8 this should be an area variance or a use variance.

9 And I looked at it as an expansion of the existing  
10 use. And in that case came up -- I agree that it should have  
11 been a use variance but who knows. We'll have to look at it.

12 CHAIRPERSON HILL: Okay.

13 MR. SULLIVAN: To clear it up I'm not making a  
14 formal motion for the Board to decide.

15 CHAIRPERSON HILL: I didn't think you were.

16 MR. SULLIVAN: Okay, thanks.

17 CHAIRPERSON HILL: Okay. Do you have anything  
18 else you'd like to add, Mr. Sullivan?

19 MR. SULLIVAN: No, thank you.

20 CHAIRPERSON HILL: Okay. Is the Board ready to  
21 deliberate? Okay. I'm comfortable with where we are. I  
22 mean I'm not going to change what has been presented before  
23 us.

24 I think there is an argument to have a different  
25 type of application, but this is the application that is

1 before us.

2 I agree with the analysis the Office of Planning  
3 has provided. I also agree with the support that the ANC has  
4 provided.

5 I also will make note of the testimony that the  
6 applicant has provided that they had been before the ANC with  
7 a previous application that had more relief requested and  
8 they've pulled back some of that relief so therefore I am not  
9 concerned about the stance of what the ANC has previously  
10 approved.

11 And so I'm comfortable approving this application.  
12 Does anyone else have anything they'd like to add?

13 MEMBER WHITE: Yes, Mr. Chair. I'm also  
14 comfortable with your analysis as well. I think this  
15 building was built in like 1935 so the need to modernize and  
16 possibly expand I can understand the logistics there and I  
17 can also understand the cost associated with just doing a  
18 modernization as a matter of right, how that could impose  
19 hardship to the applicant.

20 But just looking at the use variance test I also  
21 concur with your analysis that they've met the criteria for  
22 this particular application.

23 CHAIRPERSON HILL: Okay. And others can say but  
24 I just want to follow up, Ms. White. I'm always a little not  
25 hesitant or skeptical, but when we get financial information

1 like there's a lot of ways that it can be presented to us.  
2 And it does take a lot necessarily to dig down into it.

3 I appreciate, I really do, the financial  
4 information that was provided to us, but that wasn't really  
5 -- that didn't have a lot to do with my thought process.

6 And the reason why I even mention this is because  
7 I know that we do get applications before us where a lot of  
8 information is put on finances and I'm just kind of stating  
9 for the record I'm always a little bit -- if this was a big  
10 financial issue for me then we would have maybe dug more down  
11 into it and talked more about it. But I'm just kind of  
12 stating that for future cases.

13 But please, Mr. Miller, you looked like you had  
14 something to say?

15 COMMISSIONER MILLER: No, I just wanted to agree  
16 that I believe that the variance test has been met whether  
17 it's an area variance or a use variance.

18 And I wanted to commend the applicant for  
19 renovating the building and creating more family sized units.

20 MEMBER HART: Although I had quite a number of  
21 questions most of the questions I had were about  
22 clarification of things so I think you've provided the  
23 clarity that I needed and I appreciate it.

24 I don't have anything further than what my  
25 colleagues have already stated and that's it.

1 CHAIRPERSON HILL: Okay. I'm going to go ahead  
2 and make a motion to approve application number 19690 as  
3 captioned and read by the secretary and ask for a second.

4 MEMBER HART: Second.

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

7 (Chorus of ayes)

8 CHAIRPERSON HILL: All those opposed? The motion  
9 passes, Mr. Moy.

10 MR. MOY: Staff would record the vote as 5-0-0.  
11 This on the motion of Chairman Hill to approve the  
12 application for the relief being requested. Seconding the  
13 motion Vice Chair Hart. Also in support Mr. Rob Miller, Ms.  
14 White, Ms. John. The motion carries.

15 CHAIRPERSON HILL: Thank you. A summary order,  
16 Mr. Moy.

17 MR. MOY: Thank you.

18 CHAIRPERSON HILL: That applicant is just gone.  
19 He was just like okay, see you.

20 Okay. Mr. Moy, let's do our last case, please.

21 MR. MOY: Thank you, Mr. Chairman. That would be  
22 case application number 19684 of C&S Development LLC.  
23 Caption advertised for special exceptions pursuant to the  
24 inclusionary zoning dimensional modifications of subtitle C  
25 section 1002.2, and under subtitle E section 5201 from the

1 rear addition requirements, subtitle E section 205.5.

2 This would subdivide the existing lot into three  
3 new lots and construct three flats in the RF-1 zone. This  
4 is at premises 2610 4th Street NE square 3551 lot 801.

5 CHAIRPERSON HILL: Okay, great, thank you. If you  
6 could please introduce yourselves from my right to left.

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

10 MS. WILSON: Alex Wilson from Sullivan & Barros  
11 on behalf of the applicant.

12 MR. AMONS: Ryan Amons of C&S Development.

13 CHAIRPERSON HILL: Mr. Amons, have we seen you  
14 here before?

15 MR. AMONS: Yes, you have.

16 CHAIRPERSON HILL: Okay. Mr. Sullivan, are you  
17 going to be presenting to us?

18 MR. SULLIVAN: Yes.

19 CHAIRPERSON HILL: Okay. So I hope you noticed  
20 we paired you together. So we kept you guys all together.  
21 You didn't have to leave or move.

22 MR. SULLIVAN: I appreciate that.

23 CHAIRPERSON HILL: This one's going to be a little  
24 bit more lengthy in terms of what we're going to have to  
25 discuss.

1 I'm sure you know that the Office of Planning is  
2 in denial of some of the requests that you've given us. And  
3 we've read through the record and understand your argument  
4 in terms of why you believe that this should be approved the  
5 way it should be approved.

6 However, if you could then go ahead and start at  
7 the beginning. And we're going to give you -- I'm just going  
8 to start with 20 minutes, Mr. Moy, just because and we'll see  
9 where we get to. Because there are quite a few moving parts  
10 here with this.

11 And again this is even the first time I think with  
12 the voluntary IZ stuff that you're kind of putting forward.  
13 So feel free to talk through this in a way that is very  
14 succinct and full and I'll let you begin whenever you like.

15 MR. SULLIVAN: Thank you, Mr. Chair. I'd like to  
16 start off by noting that there's two distinct elements to  
17 this case and I would like to ask the Board to bifurcate  
18 their decision on that. Specifically because the Office of  
19 Planning is in support of one and not in support of the  
20 other.

21 And the one request of course is lot with relief  
22 16 feet that goes along with inclusion of an inclusionary  
23 zoning unit for the two northernmost of the three properties.

24 And the southernmost property meets the lot width  
25 requirement of 18 feet therefore is not included in that

1 inclusionary zoning bonus request, that special exception.

2           The only special exception relief the southernmost  
3 lot is asking for is an additional 2 feet 10 inches into the  
4 rear yard going past the 10 foot rule. So it's going 12 feet  
5 10 inches past the adjoining building to its south.

6           CHAIRPERSON HILL: Okay. So, Mr. Sullivan you're  
7 asking for something that we haven't done before I don't  
8 think while I've been here. I know that this has been asked  
9 for before.

10           I'm going to turn to the Office of the Attorney  
11 General for comment on your request and start there.

12           MS. GLAZER: I don't believe there's a provision  
13 in the rules allowing for bifurcation.

14           The other issue is that this is one project and  
15 it seems as if one part of the relief cannot be separated  
16 from the other.

17           CHAIRPERSON HILL: Okay. I mean I'm uncomfortable  
18 trying to deal with this at this moment. I appreciate that  
19 you're the last one. You can take hours and hours now if you  
20 like and we really could get past dinner.

21           But you're completely changing the whole thing on  
22 us right here. And so I don't know what the rest of the  
23 Board feels like but I'm not interested in trying to figure  
24 this out in this particular way. Does the rest of the Board  
25 have any comments?

1           MEMBER HART: I would prefer listening to all of  
2 this together. I just think that we need to hear all of the  
3 aspects of the case together. I'm not wanting to bifurcate.

4           CHAIRPERSON HILL: Okay. So Mr. Sullivan, I  
5 appreciate the attempt but go ahead and move forward with the  
6 way that we have it before us.

7           MR. SULLIVAN: Okay. And if I could just, I want  
8 to explain part of this because it's important to decisions  
9 we make going forward.

10           My idea of bifurcation is just in the decision,  
11 not in the case itself. But we would make the case and that  
12 you could approve one part of it and deny another part of it.  
13 I think the Board has done that quite a bit.

14           The biggest concern here -- since the Office of  
15 Planning is in denial of a portion of this, last case I had  
16 where the Office of Planning did not support this and there  
17 was no party opposition we were required to get a full order.  
18 Full orders at 14 months to a project and that doesn't work  
19 for this project.

20           So if we're not going down the path of a summary  
21 order if everything goes well today we would withdraw the  
22 request for the south lot because we don't want the IZ unit  
23 relief caught up in opposition to just this part of it.

24           And we can talk about that later as we go forward.  
25 I'm not asking for any decisions right now. I'm just saying

1 this is a concern of the applicant here that since OP  
2 supports this and we don't have any party opposition to the  
3 two north lots to the IZ request, the lot width request we  
4 look forward to if we get approved, if the Board reviews this  
5 and -- we should get a summary order.

6 I'm afraid that OP's opposition to the south lot's  
7 relief, separate relief, would cause us to also have to get  
8 a full order for the entire thing and I don't want that to  
9 happen. So I want some opportunity.

10 Because we're only asking for 2 feet 10 inches on  
11 the southernmost lot.

12 CHAIRPERSON HILL: Which I have figured out also.  
13 It's not that I don't understand what you're trying to do.  
14 It's I'm just trying to figure out what my feelings are on  
15 it.

16 I don't think that these cases recently have been  
17 quite, whether it's 6 feet, 5 feet, 2 feet and a half in  
18 terms of the rear addition beyond the 10 feet they have  
19 caused a lot of consternation for us.

20 And so we've read the record and we've read the  
21 report and I understand the analysis that Office of Planning  
22 has already put forward.

23 And so, well do my colleagues -- I don't think  
24 anything different is going to happen now in terms of hearing  
25 your argument in your case. And we can see where we get.

1           And then I guess we can get to the end of it and  
2 then figure it out. I mean I understand what you're throwing  
3 out there, but I would imagine that this would have been a  
4 discussion that you would have had with the applicant at the  
5 beginning to understand the situation that they may or may  
6 not be in.

7           And to ask the Board to kind of jump through a  
8 bunch of hoops at the end to make it so -- so we'll just see  
9 what happens.

10           MR. SULLIVAN: Well, I'll make it as easy as I can  
11 for the Board at the end. I'm not asking for anything right  
12 now.

13           MEMBER HART: One of the questions that I'm having  
14 if I understood this correctly you were thinking that you may  
15 not move forward with the southern house or property. Is  
16 that what you just said?

17           MR. SULLIVAN: If that gets approved -- well first  
18 of all if that gets denied I want to make sure that our 16  
19 foot lot width request can get approved separate from that.  
20 And the Board has done that in the past where they say no to  
21 a certain aspect of your request and say yes to another  
22 aspect.

23           MEMBER HART: What I'm trying to get to is right  
24 now we have drawings that show three buildings, right?

25           MR. SULLIVAN: Correct.

1           MEMBER HART:    Okay.    So if you're not moving  
2 forward or not -- if you are thinking about possibly  
3 withdrawing a portion of this what are the drawings that we  
4 would be approving?

5           Because right now the issue is that the property  
6 that is abutting to the south of your property of this  
7 southern parcel that we're talking about would be -- I don't  
8 know what happens between the two buildings that are being  
9 proposed if the third building is not, the third house is not  
10 constructed.

11           And I don't know if we have any drawings that show  
12 that.  I didn't see any so I'm trying to figure out what that  
13 means.

14           And that's why I'm having a hard time with maybe  
15 we don't or do.  I'd rather just kind of hear it all and then  
16 we start figuring out how we are going to go through it.

17           So I would prefer that we just move forward with  
18 it because right now there are just too many ifs and buts and  
19 I'm not -- I don't want to get to ifs and buts.  I want to  
20 get to the meat of the case.

21           CHAIRPERSON HILL:  If ifs and buts happen this is  
22 going to get messier.  And so you make it sound like it's  
23 really an easy thing at the end.

24           And so I'm very -- and I understand, it's okay,  
25 you've taken us all the way to the end of what you think this

1 is going to play out. And so you're setting it up for one  
2 way or the other how it's going to play out, however you  
3 think it might play out.

4 And so to the vice chair's comment we don't -- oh  
5 never mind. Okay, go ahead. I'll let you start and we'll  
6 see where we get.

7 MR. SULLIVAN: Okay.

8 CHAIRPERSON HILL: Sorry. Ms. White.

9 MEMBER WHITE: Before you start I noticed that I  
10 think this is the case where you were supposed to be  
11 presenting to the ANC on the 20th. So I wondered what was  
12 presented to the ANC and what their feedback was as well as  
13 part of your presentation.

14 I don't see anybody else here so I'm going to rely  
15 on you for that information for now.

16 MR. SULLIVAN: Yes, you're right and I think we  
17 talked about that when we got postponed last time. So why  
18 don't we go to the slides that show the ANC.

19 We have a long story of the interaction with the  
20 advisory neighborhood commission. It began in December when  
21 we filed the application and Ms. Wilson mostly began trying  
22 to contact the SMD with 10 to 15 phone calls and emails that  
23 were not responded to and in fact voicemail was full.

24 Actually the first response we ever got -- then  
25 we tried to contact the chair and didn't get a response for

1 a while.

2 The first response we got was admonishing her for  
3 calling him by his first name and not responding to our  
4 request so we had to keep asking.

5 And then in January the chair finally responded  
6 and said I talked to the SMD. She has looked at the  
7 application and approved you to be on the agenda for this  
8 upcoming ANC meeting.

9 The applicant went to that ANC meeting, was  
10 printed on the agenda. This is January. Got halfway through  
11 their presentation and he can answer questions about this  
12 when the SMD spoke up and said I've never seen this before,  
13 I didn't put you on the agenda and pulled it off and the  
14 chair said yes, you're dismissed, you're off the agenda and  
15 then had to leave the hearing and got no vote.

16 So we continued to try to reach out to the SMD.  
17 Eventually --

18 CHAIRPERSON HILL: Sorry, which one of those dates  
19 if you go back. The one where you got turned away.

20 MR. SULLIVAN: 1/16. January 16.

21 CHAIRPERSON HILL: Okay.

22 MR. SULLIVAN: Since that time, I'll sum up. I  
23 don't want to go through every single thing that happened,  
24 but what happened after that has been a lot of interaction  
25 with the SMD, several meetings scheduled and canceled.

1 But at least three meetings made which went fairly  
2 well and the result of those meetings and other interactions  
3 that we have the full support of the two immediate neighbors  
4 on both sides.

5 However, the SMD's response continues to be well,  
6 you're not quite ready to be on an ANC agenda. I want you  
7 to do this, I want you to do this.

8 So after three community meetings and securing the  
9 support of the two neighbors we have not been promised even  
10 the May meeting. The April meeting has been assured no way,  
11 but we'll see about May.

12 So it's been four or five months now and the  
13 applicant couldn't afford to wait any longer. And so we have  
14 not been to an ANC meeting and we would love to have been on  
15 an agenda once in the last three or four months.

16 COMMISSIONER MILLER: What is the ANC number?

17 MR. SULLIVAN: 5E.

18 COMMISSIONER MILLER: Thank you.

19 MR. SULLIVAN: So should I go forward with the  
20 presentation? Okay.

21 So I'll just summarize briefly before we go into  
22 the PowerPoint that it's two requests. And the first request  
23 has to do with the south lot and it involves extending the  
24 board 12 feet 10 inches past the rear wall of the adjoining  
25 building to the south. So that's rear yard relief.

1 CHAIRPERSON HILL: Can you point that one out?

2 MR. SULLIVAN: That's this lot here.

3 CHAIRPERSON HILL: Right.

4 MR. SULLIVAN: And it's got a matter of right  
5 width so it's not part of the other request. All we're  
6 asking there is the 2 feet 10 inches.

7 CHAIRPERSON HILL: Past which wall again?

8 MR. SULLIVAN: Past the rear wall --

9 CHAIRPERSON HILL: The middle lot.

10 MR. SULLIVAN: No, no.

11 CHAIRPERSON HILL: Oh, the one below it. Right,  
12 okay. So you don't have a picture of that one, do you?

13 MR. SULLIVAN: There's an aerial photo showing  
14 that.

15 CHAIRPERSON HILL: An aerial photo of -- right,  
16 2608.

17 MR. SULLIVAN: Yes, 2608 is the adjoining  
18 building.

19 CHAIRPERSON HILL: So you go 2 and a half feet  
20 past that.

21 MR. SULLIVAN: Right.

22 CHAIRPERSON HILL: Okay.

23 MR. SULLIVAN: And so what I was referring to,  
24 that would go away if we withdrew that. And your plans would  
25 be --

1           CHAIRPERSON HILL:     But if you go back, Mr.  
2 Sullivan, to the first slide there that you were referencing  
3 by hand. So well you haven't gotten in front of the ANC  
4 anyway I suppose.

5           So no one has seen the three units at the ANC at  
6 this point. No one's seen your proposal yet at the ANC.

7           MR. SULLIVAN:   Well, we've sent it to them.

8           CHAIRPERSON HILL:   Right, but you haven't got a  
9 response back. I'm just trying to understand.

10          MR. SULLIVAN:   He did do half a presentation  
11 before they shut him off and said you're not really on the  
12 agenda. That's what happened on January 16.

13          CHAIRPERSON HILL:   Mr. Amons, so you started a  
14 presentation at the ANC on January 6. You started presenting  
15 this application with the two areas of relief that you're  
16 requesting and these three units. And you got halfway  
17 through and then somebody stopped you?

18          MR. AMONS:   Yes, sir. The single member district  
19 Ms. Jones, it seemed like she had a puzzled look on her face.  
20 She made a statement that she had never seen our project,  
21 never heard from us.

22          CHAIRPERSON HILL:   Had she not seen your project  
23 before?

24          MR. AMONS:   To her recollection no, but we had  
25 reached out several times via email.

1 CHAIRPERSON HILL: Okay, that's fine, I was just  
2 curious. All right, Mr. Sullivan, we can go back to you now.

3 But please do clarify so we can mentally picture  
4 these two tracks that you seem to be kind of possibly going  
5 down.

6 MR. SULLIVAN: And the neighborhood has seen these  
7 plans several times now. So there's been three meetings with  
8 neighborhood groups and of course the neighbors have seen it  
9 and they're in support.

10 So, requests for the two lots, for the lot width  
11 I'll call that request number one is the lot width. That's  
12 the inclusionary zoning request that the Office of Planning  
13 supports.

14 This is what has sort of confounded me a little  
15 bit about the opposition from the Office of Planning and the  
16 lack of interest I guess from the ANC or the lack of  
17 commitment to put us on the agenda is that as far as I know  
18 this is the first time a development this small is offering  
19 an inclusionary zoning unit.

20 And I know the Board and specifically the Zoning  
21 Commission members on the Board have been frustrated that  
22 they have these provisions in the zoning regulations that  
23 encourage inclusionary zoning on the smaller scale, for  
24 instance conversions or opt in, or in this case for a relief  
25 of lot width.

1           And I don't know that anybody has ever come in  
2 with a four-unit project offering an inclusionary zoning  
3 unit. I think that's a big benefit and something that I  
4 would like the Board to consider as we go through this.

5           MEMBER HART: And Mr. Sullivan or Mr. Amons, is  
6 it Amons? I was looking at the drawings that you have in  
7 exhibit 10. And I just wanted to understand this a little  
8 bit better.

9           So you -- I don't know what page this is, it looks  
10 like sheet SP.02 on exhibit 10. I'm waiting for it to open  
11 but I printed them out.

12           In this you have the three units that are being  
13 proposed. One of them, the southernmost one is adjacent --  
14 is I guess attached to the house that's to the south of it.

15           To the north is another house, but I'm assuming  
16 that house is not on the lot line. And so you don't have the  
17 10 foot issue there.

18           There's no relief that's necessary for the  
19 building that's to the north because the only one that's  
20 actually attached is the building to the south. Is that  
21 correct?

22           MR. SULLIVAN: That's correct.

23           MEMBER HART: And so each of the units seems like  
24 they are, what do you call it, there are different lengths  
25 to each of the units, each of the buildings.

1           Is it possible to shift how the buildings are  
2 being proposed in terms of the length in the rear? Because  
3 right now the building that's to the north is shorter than  
4 the building that's to the -- that's in the south. I say to  
5 the south, I don't know how you want to describe that.

6           One of the buildings is not as long as the other  
7 buildings and I just didn't know if that was -- I don't know.  
8 It just seems like you're looking for relief from something  
9 and I just don't know if that's necessarily -- if you need  
10 to do that if there's a way to.

11           MR. SULLIVAN: The only relief we're asking for  
12 as far as the length is the south building.

13           MEMBER HART: Yes. But right now that building --  
14 not all the buildings are the same length.

15           MR. SULLIVAN: Correct.

16           MEMBER HART: Okay. So is there --

17           MR. SULLIVAN: I don't know why that is, whether  
18 it's a design feature or not.

19           MEMBER HART: I just didn't know if there was a  
20 way to not have that to deal with that relief. That's what  
21 I'm trying to --

22           MR. SULLIVAN: Oh, you mean for the south lot?

23           MEMBER HART: Yes.

24           MR. SULLIVAN: Well, we would just be making it  
25 a smaller building. And actually if that's the simplest

1 thing I'm prepared to withdraw. I have the authority to  
2 withdraw the request for the south lot.

3 I don't want to confuse any further. I'd like the  
4 Board to fully consider.

5 MEMBER HART: I'm not trying to give you -- to  
6 redesign the building. I'm just asking why that's necessary  
7 in that particular case, why that relief is a necessity.

8 Is it because of the size of the rooms inside?  
9 Is it because of the stairwell that you have to -- the  
10 stairwell has to go up a certain run so that it can actually  
11 go up to the second floor or another floor. Is that causing  
12 some problems? I just don't know what the internal  
13 machinations or the structure of the unit is that's causing  
14 the building to have to require that relief.

15 And again it's just a question to figure that out.  
16 Do you understand the question I'm asking?

17 MR. SULLIVAN: I think so. I don't know the  
18 answer to that question. I think the reason for the request  
19 of the additional 2 feet 10 inches on the south building was  
20 for additional space to get to the 60 percent lot occupancy.

21 And since it's to the north of the building south  
22 they didn't think it would be an issue going just two feet.

23 CHAIRPERSON HILL: Can you pull up that on the  
24 screen, Mr. Sullivan? We're all looking at the same thing  
25 I think, or at least we are up here where it was exhibit --

1 MEMBER HART: It's actually like the fifth page  
2 in. It's probably a better page to look at. A01 -- it's not  
3 coming up.

4 CHAIRPERSON HILL: It disappeared.

5 MEMBER HART: Again and I'm not trying to redesign  
6 this. I'm trying to understand -- I think the person is  
7 coming in to help.

8 I'm just trying to understand why that particular  
9 relief, if there is something that is kind of pushing that.

10 MR. SULLIVAN: No, I don't think there is. I  
11 think it was just --

12 (Simultaneous speaking)

13 CHAIRPERSON HILL: -- if you could zoom in there  
14 just for a second just on those lots.

15 MEMBER HART: And I don't know if this page or  
16 about two pages down there's a little bit more detail because  
17 it actually has the floor plan. And they actually have the  
18 other building, at least shows where the other building is.

19 If you go to like two pages, that one you can see  
20 where the buildings are to the north and to the south, at  
21 least a portion of those buildings.

22 MR. SULLIVAN: I don't know if this is confusing  
23 it. The building to the south, the adjoining building to the  
24 south has a covered porch addition that we assumed was not --  
25 that we wouldn't be able to prove was lawfully built. We

1 wouldn't be able to find permits for it so we didn't count  
2 from that. We counted from the rear wall not including that.

3 MEMBER HART: So can you point out which wall  
4 you're talking about? The wall you just stated.

5 MR. SULLIVAN: The aerial photo might be the most  
6 illuminating picture here. You can see there's a full  
7 addition in the back the other buildings have, but then  
8 there's a one-story addition there.

9 MEMBER HART: Okay.

10 MR. SULLIVAN: And we're not going 12'10 past  
11 that. We're going 12'10 past --

12 MEMBER HART: Past the first --

13 MR. SULLIVAN: The first addition. The first  
14 setback area.

15 MEMBER HART: Okay. What I was looking was the  
16 drawings themselves. And that addition, whatever you call  
17 it, doesn't actually show up, at least that one you were  
18 talking about doesn't show up. That first addition does show  
19 up.

20 CHAIRPERSON HILL: So you're not going 12'10 past  
21 that addition you're saying.

22 MR. SULLIVAN: There's two additions. One's older  
23 and --

24 CHAIRPERSON HILL: Where your cursor is you're  
25 going 12'10 past that. Okay, that's what I thought.

1           So if you go back to the previous slide. Thank  
2 you. Right. So you're going 12'10 past the building to the  
3 south and so your comment, Mr. Vice Chair, was that this --  
4 the unit -- I don't know what the address, the building at  
5 the top, the farthest north building is shorter than the  
6 southernmost building.

7           MEMBER HART: Yes.

8           CHAIRPERSON HILL: That was your comment.

9           MEMBER HART: The question was if that building  
10 could be shorter then why is it that this one isn't. It just  
11 seems like they're having this problem with trying to deal  
12 with the length of the building and it just seems like they  
13 may have a solution.

14           I just was trying to figure out what the  
15 difference was. If the buildings were all the same length  
16 then I would be okay, that's what you're looking at for your  
17 building, but they're not. And so I was just trying to  
18 understand that.

19           CHAIRPERSON HILL: Okay. All right. So Mr.  
20 Sullivan, and I hate to even mention this, but just mention  
21 it out loud.

22           So you're saying that you could actually now, you  
23 have the authority to withdraw the 2 and a half feet or the  
24 2 feet 10 inches from that southernmost building if we get  
25 to that point.

1 MR. SULLIVAN: My biggest concern is not -- well,  
2 if we lose, fine, then we can do a matter of right and we  
3 wouldn't do the 2 foot 10. But I don't want --

4 CHAIRPERSON HILL: You'd still need the first  
5 relief.

6 MR. SULLIVAN: I don't want the entire case to  
7 lose obviously and I don't want to wait 14 months for an  
8 order because that sort of kills all the economics of the  
9 project. And that's what our wait is these days.

10 And so this can make -- I think I can make it a  
11 lot easier. If we withdraw that then we don't even need to  
12 submit revised plans because it's matter of right, that  
13 southernmost building.

14 And now we're talking about the two 16 foot wide  
15 lots, the portion of the case that the Office of Planning  
16 supports and we don't need to talk about shadow studies.

17 CHAIRPERSON HILL: I'm so glad that you're here.  
18 I'm glad you've got the whole place to yourself. This is  
19 great, I mean really. We could stay here all day.

20 MR. SULLIVAN: I'm trying to make it go quicker.

21 CHAIRPERSON HILL: Oh no you're not, Mr. Sullivan,  
22 come on, you're not at all.

23 Okay, so what are you --

24 MEMBER HART: I don't want to get into this is  
25 what we're going to not do this -- my problem is that we

1 don't -- the drawings that we have don't show what it is that  
2 you're talking about as this alternative.

3           And because we don't have that as an alternative  
4 I don't -- I can't then say oh well, we're going to base our  
5 review and our discussion on what. We don't have that.

6           So I can't just say we're just not going to kind  
7 of deal with that. It is hard for us to be able to  
8 deliberate on something that we actually haven't seen.

9           (Simultaneous speaking)

10           CHAIRPERSON HILL: Let's start again. Let's just  
11 start again. So let's just start again. Go ahead and argue  
12 the case that is before us the way that you have it before  
13 us. Let's get through the Office of Planning. Let's get  
14 through our whole discussion and let's see where we end up  
15 at the end. Okay?

16           MR. SULLIVAN: Okay.

17           CHAIRPERSON HILL: Okay. Please start again.  
18 Thank you.

19           MR. SULLIVAN: Okay. So we have two buildings to  
20 the north of course. The addresses for these which are not  
21 instituted yet, 2610 would be the south lot, 2612 would be  
22 the middle lot, 2614 would be the north lot.

23           We are proposing to provide an inclusionary zoning  
24 unit within the two buildings at 2612 and 2614. These are  
25 the north two lots. They are the 16 foot wide lots.

1           We are asking for special exception relief which  
2 is provided for in this specific situation where you do  
3 provide an inclusionary zoning unit. And the provision of  
4 the inclusionary zoning unit earns the applicant the bonus  
5 of having 16 foot wide lots provided the Board approves the  
6 special exception request.

7           So I'll go through the special exception  
8 requirements for that portion of the application. The Board  
9 is authorized -- first of all the special exception general  
10 requirement 901.2 that the application is in harmony with the  
11 general purpose and intent of zoning regulations and zoning  
12 maps.

13           We are subdividing into the two 16 foot wide lots  
14 for the north lots measure 16 feet in width. We have the  
15 support of both adjacent neighbors to this project and are  
16 providing the IZ unit.

17           And so I would say it's in harmony with the  
18 general purpose and intent of the zoning regulations  
19 specifically because of that. We are providing the  
20 inclusionary zoning unit, something that hasn't been done yet  
21 for a four-unit development.

22           And requirement (b) it will not tend to affect  
23 adversely the use of neighboring property in accordance with  
24 the zoning regulations and zoning maps. The scale of the  
25 buildings, we're not asking for relief on anything with the

1 scale of the buildings. They'll just be more narrow lots and  
2 otherwise provided. And so nothing about the proposal would  
3 tend to adversely affect the use of neighboring properties.

4           And those are -- it's only the general  
5 requirements for this relief because there are no specific  
6 special exception requirements for this particular relief.  
7 So those are the special exception criteria for that.

8           The other request is for the lot to the south to  
9 have an additional 2 feet 10 inches beyond the adjacent  
10 building to the south of that building. And that of course  
11 is the test that you're very familiar with, the light and air  
12 and privacy test.

13           We did not do a shadow study because this building  
14 is to the north of the building to the south so there is no  
15 impact. What we would show in a shadow study is the  
16 difference between a matter of right building and what we're  
17 requesting and that difference would be 2 feet 10 inches.

18           And that 2 feet 10 inches, the shade is going to  
19 the north to our client's properties, the applicant's  
20 properties, not to the south to the adjacent neighbor's  
21 property. And again I'll point out that they're both in  
22 support of this.

23           There's no windows on that side so privacy is not  
24 impacted at 2608. And I think where we differ with the  
25 Office of Planning is the Office of Planning has seen it

1 within their purview to review the entire project, the design  
2 of the whole project, front and back, scale, character.

3 I think this is a case of first impression. I  
4 don't know that anybody has ever submitted a new building for  
5 this relief and I don't think that it's for the Board to  
6 review the entire scale and character of the front I think  
7 because the difference between a matter of right and the  
8 special exception is 2 feet 10 inches.

9 And the Board typically reviews what the  
10 difference would be between the matter of right, what's the  
11 impact from granting relief. And the impact is 2 feet 10  
12 inches. Because if you don't grant the relief we just lose  
13 2 feet 10 inches. The project stays the same otherwise.  
14 Looks the same.

15 There's a decision for the Board I think. Do they  
16 go with what the Office of Planning is saying that you can  
17 review the scale and character of the front of the property  
18 in which case we would withdraw the application as it applies  
19 to the 2 feet 10 inches.

20 And if your review only goes to the 2 feet 10  
21 inches I think we safely meet the special exception  
22 requirements there.

23 This photo on the PowerPoint is an example of what  
24 this applicant has done on another project. This is better  
25 than a rendering we thought of how this is going to look.

1 Of course that would only come into play of course  
2 if we're talking about what the Office of Planning wants to  
3 review.

4 The details of this application aren't any more  
5 complicated than that. I've gone through the entire special  
6 exception requirements.

7 We're talking about a 2 foot 10 inch addition or  
8 expansion beyond what the matter of right is and inclusionary  
9 zoning which don't really provide any special exception  
10 requirements other than the general requirements.

11 So I don't think it's as complicated as you may  
12 have expected.

13 MEMBER JOHN: What would be the full length of the  
14 addition? It would not just be 12 feet. It would be from  
15 the rear of the existing building.

16 MR. SULLIVAN: It's new construction.

17 MEMBER JOHN: It's a new building, that's right.  
18 Thank you for clarifying that.

19 MR. SULLIVAN: And that's what causes this  
20 confusion about what do you review. If it was an addition  
21 we would probably be doing -- typically you're doing a third  
22 story and so you're reviewing that.

23 MEMBER HART: So you've described how the project  
24 -- the reason that you need the relief is because the project  
25 is 2 feet 10 inches beyond the building to the south.

1           But the zoning regulations, they talk about that  
2 the -- that there shouldn't be an adverse effect on the use  
3 or enjoyment of any abutting or adjacent dwelling or  
4 property. And I'm looking at 5201.3.

5           The light and air available to neighboring  
6 properties shall not be unduly affected. And that's  
7 5201.3(a).

8           And the reason I bring that up is your assertion  
9 is that because the building that is adjacent, that is  
10 attached is to the south of your property that there wouldn't  
11 be any impacts on light and air. And I agree with that.

12           The problem is that there's also a property to the  
13 north which is not attached but it's still a property to the  
14 north. And so they're getting the impacts for light and air.  
15 And how are you not impacting that?

16           MR. SULLIVAN: The property to the north is the  
17 applicant's property.

18           MEMBER HART: No, no, I mean the property -- you  
19 have three lots.

20           MR. SULLIVAN: Yes.

21           MEMBER HART: Those three lots are abutting the  
22 property to the north.

23           MR. SULLIVAN: We're only asking for relief for  
24 the south.

25           MEMBER HART: I understand that but this does not

1 say it is just for that. It is the light and air available  
2 to neighboring properties shall not be unduly impacted or  
3 affected.

4 So neighboring properties are to the north and  
5 south of this and that's what I'm trying to understand what  
6 the --

7 MR. SULLIVAN: So the way I read this is that the  
8 light and air available as a result of an additional 2 feet  
9 10 inches at the 2610 lot which is 32 feet away from the  
10 property to the north.

11 MEMBER HART: Okay, but this says an applicant for  
12 special exception under this section shall demonstrate that  
13 the proposed addition or accessory structure shall not have  
14 a substantially adverse effect on the use or enjoyment of any  
15 abutting or adjacent dwelling or property.

16 MR. SULLIVAN: Right.

17 MEMBER HART: Not that it's the what is being  
18 requested from. So this is the properties that are adjacent  
19 or abutting, how is this not -- I mean this is the OP's  
20 report that I'm reading from.

21 Their assertion is that there is an impact on the  
22 properties to the north. I understand that your assertion  
23 is that there is no impact. That the relief is being  
24 requested for from the south. But there is -- I don't know  
25 how you're addressing that.

1 MR. SULLIVAN: I guess because the distance is 32  
2 feet away from that. At 2 feet 10 inches the distance is 32  
3 feet away.

4 That was something I guess we could present a  
5 shadow study of but we assumed it was far enough away since  
6 it's three lots away from the actual area of relief.

7 MEMBER HART: Give me a second.

8 MR. SULLIVAN: Okay.

9 MEMBER HART: Thank you.

10 CHAIRPERSON HILL: Okay. Anybody got more  
11 questions for the applicant?

12 MEMBER HART: Not right now.

13 CHAIRPERSON HILL: Okay. Go ahead and turn to the  
14 Office of Planning, please.

15 MS. VITALE: Good morning, Mr. Chair and members  
16 of the Board. Elisa Vitale with the Office of Planning.

17 As indicated OP recommends approval of the  
18 requested dimensional relief provided that the applicant  
19 demonstrates that the proposed IZ unit meets the requirements  
20 of chapter 10 subtitle C of the zoning regulations.

21 OP would note that we strongly support the  
22 inclusion of the IZ unit in exchange for the reduced lot  
23 width. I think the applicant was indicating perhaps that we  
24 were not supportive of that.

25 OP, however, cannot recommend approval of the

1 special exception to permit the new construction to extend  
2 beyond 10 feet past the adjoining property at 2608 4th  
3 Street.

4 While a 2 foot 10 inch projection may be  
5 considered modest OP believes that the height, scale and  
6 materials proposed would not be consistent with the  
7 character, scale and pattern of houses in the 2600 block of  
8 4th Street.

9 In particular I would call your attention to sheet  
10 A4.3 that shows the site elevation of the proposed new  
11 construction against the adjoining property at 2608 4th  
12 Street.

13 CHAIRPERSON HILL: Which exhibit are you in? I'm  
14 sorry.

15 MS. VITALE: I'm on sheet A4.3. I believe it's  
16 exhibit 10, the architectural plans.

17 CHAIRPERSON HILL: A4.3.

18 MS. VITALE: Correct.

19 CHAIRPERSON HILL: Okay, thank you.

20 MS. VITALE: Sure. OP would also note that in our  
21 report we indicated the potential need for additional relief  
22 that was not requested and we therefore have not analyzed.

23 This is a self-certified application so obviously  
24 the applicant would be proceeding at their risk should  
25 additional relief be needed.

1           But I do want to call your attention to one area.  
2 The applicant is saying that to the north he's not attached.  
3 If they're not attaching to the property to the north and  
4 therefore not requiring analysis of any relief in terms of  
5 extending beyond the rear wall of the property to the north,  
6 if they're not attached then side yard setback would be  
7 required because this would be a semi detached building  
8 because it doesn't share a common division wall with that  
9 property to the north.

10           If they are in fact attached to the property to  
11 the north then I think we would need to look at whether  
12 relief would be required with respect to any projection  
13 beyond the rear wall of that property to the north.

14           And I think it's important to raise that because  
15 that would change the application and the project  
16 significantly if they either had to setback from that north  
17 property line or we needed to look at whether or not it  
18 extends beyond.

19           Sorry to further confuse things. That concludes  
20 my report and I'm happy to answer any questions.

21           MEMBER HART: So the last thing that you were  
22 talking about which was the need for the side yard setback  
23 relief.

24           So you're just saying that it's either one or the  
25 other and right now it just seems like there's neither.

1 What's being proposed is kind of neither one of those so that  
2 needs to be rectified.

3 MS. VITALE: Or both.

4 MEMBER HART: Or both.

5 MS. VITALE: Correct.

6 MEMBER HART: Which is probably -- neither one of  
7 those is a good place to be in.

8 So you've got 36 feet. Can you show where you got  
9 that from? You said that if it's from the north, if the  
10 applicant is saying that they need relief -- if they think  
11 that they need the side yard relief. Actually just explain  
12 that part of that again.

13 MS. VITALE: Sure. The way the zoning regulations  
14 when they were adopted in 2016 there was a change in how  
15 buildings were defined and that had an impact on side yard  
16 setback requirements.

17 Previously under the 1958 regulations if a  
18 building was constructed lot line to lot line it would be  
19 considered an attached dwelling and then no side yard would  
20 be required.

21 In the 2016 regulations a change was made to the  
22 definitions that resulted in the requirement for a side yard  
23 if a building was not attached, if it didn't share a common  
24 division wall.

25 You could no longer be considered an attached

1 dwelling just by virtue of building from lot line to lot  
2 line.

3           So the proposed dwelling at 2614 4th Street, the  
4 northernmost flat that the applicant is proposing goes lot  
5 line to lot line but does not appear to share a common  
6 division wall with the building to the north at 2616 4th  
7 Street.

8           If it doesn't share a common division wall they  
9 would need to provide a side yard setback along that northern  
10 property line.

11           If the applicant is in fact asserting that they  
12 do share a common division wall by attaching to the front  
13 porch at 2616 then we would need to analyze, it appears that  
14 they may exceed the 10 foot beyond the rear wall of the  
15 adjoining property to the north.

16           So I think additional relief would be needed that  
17 would be identified at the time that the applicant applies  
18 for a building permit and they would have to come back to the  
19 Board.

20           MEMBER HART: Okay, that's helpful. That helps  
21 me at least understand some of what's going on with this.  
22 I don't have any other questions.

23           MS. GLAZER: Mr. Chair, my colleague at OAG has  
24 some information about the side yard issue that may have some  
25 bearing on that issue.

1 MS. LOVICK: Well, I'm not sure what the timing  
2 is exactly but there is a text amendment that is the hearing  
3 is scheduled I believe for April 19 that is going to deal  
4 with this issue potentially with regard to the common  
5 division wall being part of the side yard definition.

6 And so I'm not sure if that is part of why this  
7 relief is not being requested as a part of the application,  
8 but I'm just mentioning.

9 I believe it's Zoning Commission case 17-23. I  
10 could be wrong, I apologize. But I just wanted to raise the  
11 issue.

12 MEMBER HART: I appreciate it. It's helpful to  
13 understand that. Thank you.

14 CHAIRPERSON HILL: I hope people have a lot of  
15 questions because I don't know where we are.

16 For the Office of Planning again can you clarify  
17 for me, and I appreciate you pointing me to a piece of the  
18 exhibit. Particularly you pointed me to A4.3.

19 But the matter of right which is going to be 10  
20 feet at least now assuming that what is before us is the  
21 correct relief requested in terms of if there's a text  
22 amendment that's coming down the road that that's why the  
23 applicant hasn't asked for these things.

24 Can you clarify again why the Office of Planning  
25 is -- and you kind of did but just for me help me, the

1 additional 2 feet 10 inches, or if it's 2 feet 2 inches, I  
2 think it's 2 feet 10 inches, the Office of Planning is in  
3 opposition to this.

4           And if you can again just clarify why for me.  
5 Because I understand the 10 feet that's a matter of right.  
6 And in the past -- and we've had some discussion up here with  
7 the Board in terms of orientation in terms of where the  
8 property is oriented in terms of where the sun rises and  
9 sets.

10           As to why 2 feet. The Office of Planning has been  
11 behind things that are way more than 2 and a half feet, you  
12 know, 2 feet 10 inches. And it has caused a lot of  
13 consternation for the Board to kind of walk through that and  
14 a lot of difficulty with the public in terms of  
15 understanding.

16           And so again for me if you could help me  
17 understand why in this particular case anything beyond the  
18 10 feet would be an issue.

19           And I guess you could even clarify or help me  
20 understand, it seems like the Office of Planning would even  
21 say that the 10 feet is a problem. But it just happens to  
22 be matter of right.

23           MS. VITALE: Certainly. Like I said I understand  
24 that 2 feet 10 inches does seem to be modest and certainly  
25 in relation to other cases that the Board may have evaluated.

1           But we do look at each of these cases individually  
2 and evaluate each one independently. And in this instance  
3 in looking at the criteria with the proposed design which  
4 includes an upper level deck and spiral stair we do believe  
5 that there is the potential for some privacy impacts.

6           And then particularly I think it's criteria (c),  
7 5201.3(c) that the construction, new construction in this  
8 case as viewed from the street alley and any other public way  
9 shall not visually intrude upon the character, scale and  
10 pattern of houses.

11           These three properties do have obviously frontage  
12 on 4th Street. There is a public alley to the rear.

13           And in reviewing, as I mentioned looking  
14 particularly at sheet A4.3 I do believe that this proposal  
15 would be out of character and out of scale with the  
16 properties in the 2600 block of 4th Street.

17           This area does exhibit a variety of dwellings.  
18 There are two-story row dwellings, two-story detached homes.  
19 There are also small apartment buildings.

20           But given the scale, given the decks and the  
21 appearance, it looks like the applicant's proposing a metal  
22 panel cladding on the side our view is that this would not  
23 be consistent with the character of the 2600 block of 4th  
24 Street NE.

25           CHAIRPERSON HILL: Okay. And this has been what

1 we've struggled with as a Board in terms of the scale, size,  
2 character. And so it's interesting to hear the Office of  
3 Planning in terms of the report.

4 So would you say, Ms. Vitale, and this is where  
5 I'm just having a discussion, that again if it were 2 feet  
6 10 inches less from that one particular lot the Office of  
7 Planning would probably still think that this is larger than  
8 the size, scale and character is unduly affecting but it's  
9 just matter of right so that is just what it is.

10 MS. VITALE: We're evaluating the application  
11 that's before us.

12 CHAIRPERSON HILL: Okay. You should run for  
13 office. You guys, the Office of Planning should run for  
14 office every now and again.

15 Okay. Does anybody have any questions of the  
16 Office of Planning?

17 MEMBER WHITE: That was part of my issue. My  
18 thought was what would the feedback be if the 2 feet suddenly  
19 disappeared. Would that be something that would be supported  
20 by Office of Planning?

21 MS. VITALE: We wouldn't be here if they didn't  
22 require -- if they were at 10 feet then it would not be  
23 before the Board.

24 CHAIRPERSON HILL: Well, they would still need the  
25 dimensional relief.

1 MS. VITALE: That is correct.

2 CHAIRPERSON HILL: Okay. Mr. Sullivan, I don't  
3 think we're done with the Office of Planning yet but to your  
4 one slide that's up here and just for my clarification.

5 The lot 2610 is the southernmost lot. That's the  
6 one that we're talking about with the 12 feet 10 inches.

7 The one lot to the north is the 2612. If you're  
8 -- in your current plans how much farther out is that end  
9 wall from the 2610 wall? If you didn't get the 2 feet 10  
10 inches would you have to pull back that wall, the 2612 lot  
11 wall back?

12 MR. SULLIVAN: No.

13 CHAIRPERSON HILL: So you'd be 10 feet from  
14 whatever -- if you didn't get the two and a half. You  
15 understand what I'm asking?

16 MR. SULLIVAN: It's not dependent. No matter of  
17 right construction on the two north lots is dependent on us  
18 getting relief on the south lot if that's the question. We  
19 don't need to establish a rear wall at a certain point in  
20 order to do what we're doing on the two lots to the north.

21 So if I withdrew the request for the south lot the  
22 two north lots are still matter right, still self-certified  
23 as matter of right. If that's what you're asking.

24 CHAIRPERSON HILL: I think you're answering my  
25 question but I don't know if that's necessarily what I'm

1 asking. Give me a second.

2 MEMBER HART: Okay. I was looking at -- I was  
3 trying to understand what are the other -- some of the things  
4 that you've included in the report, one of the things was  
5 about the height I guess of the addition. Or I shouldn't say  
6 the addition. The height of the project in the rear was of  
7 a certain height much taller than the buildings that are  
8 currently there.

9 I think you described the elevation that we saw  
10 that showed what the comparison of the existing buildings to  
11 the proposed building.

12 The question that I have is what are the heights  
13 of other buildings on this block or in the immediate area.  
14 I mean are we only talking about two-story houses that you're  
15 aware?

16 MS. VITALE: I know the properties directly to the  
17 north and south are two-story properties. I can't speak off  
18 the top of my head more broadly to this side of 4th Street.

19 But I believe it is characterized by two-story  
20 construction.

21 MEMBER HART: And when you're looking at your --  
22 when you're looking at the views from the alley you look at  
23 the buildings that are directly next door. Are you looking  
24 at all of the buildings on the alley, or are you looking at  
25 the buildings just adjacent to the property?

1 MS. VITALE: We definitely look at the buildings  
2 adjacent. But in the criteria here it speaks to just kind  
3 of how the structure would be viewed from a public way. So  
4 in that analysis we do look more broadly at how -- in this  
5 instance how the proposed new construction would fit within  
6 the larger context of the square.

7 MEMBER HART: Thank you.

8 CHAIRPERSON HILL: Commissioner Miller, you have  
9 a question? From the Zoning Commission?

10 COMMISSIONER MILLER: No, not from the Zoning  
11 Commission.

12 CHAIRPERSON HILL: As a member of the Zoning  
13 Commission.

14 COMMISSIONER MILLER: I had a question for Ms.  
15 Vitale. If the -- not that I'm trying to redesign this  
16 project at all, but if the addition -- not the addition. If  
17 the extension beyond the 10 feet on 2610 only went on the  
18 first and second floors would you be supportive of the --  
19 would you have less concern about the impact on the property  
20 to the south?

21 MS. VITALE: We generally don't like to get into  
22 evaluating hypotheticals.

23 COMMISSIONER MILLER: But you did say the height  
24 is what --

25 MS. VITALE: I do think --

1           COMMISSIONER MILLER:  -- reference just now that  
2 it's only two stories.

3           MS. VITALE:  I do think a reduced height could  
4 mitigate the impact in this instance certainly.

5           COMMISSIONER MILLER:  Okay.

6           CHAIRPERSON HILL:  I'm just amused for like  
7 further discussions that I think are going to be had perhaps  
8 at the Zoning Commission on a variety of design elements.

9           Just for the applicant real quick, Mr. Sullivan,  
10 the Office of Planning has this not necessarily a condition  
11 I think but seems to indicate that it's necessary that you  
12 would need to conform to the conditions -- the IZ issue.

13           Can you repeat again, Ms. Vitale, what the  
14 applicant had to conform to?

15           MS. VITALE:  With respect to the IZ unit that's  
16 proposed there are just certain criteria in subtitle C  
17 chapter 10 that speak to ensuring that any IZ units are  
18 similar to units in the rest of the building in terms of  
19 finishes, size, placement within the building.

20           So that would be evaluated as the applicant works  
21 through the IZ process.

22           CHAIRPERSON HILL:  Okay.  Mr. Sullivan, you are  
23 aware of this?

24           MR. SULLIVAN:  Of course.

25           CHAIRPERSON HILL:  Okay.  And so Mr. Amons, so I'm

1 a little confused. So you're the developer but you're not  
2 the architect.

3 MR. AMONS: No, I hold an administrative capacity  
4 at C&S Development. I work for the developer.

5 CHAIRPERSON HILL: Okay. So you're not the owner.

6 MR. AMONS: No, I am not.

7 CHAIRPERSON HILL: Okay. Does anyone have any  
8 more questions for the Office of Planning at this point? No.  
9 Does the applicant have any questions for the Office of  
10 Planning?

11 MR. SULLIVAN: Yes. Thank you. Ms. Vitale, the  
12 adjacent neighbor to the south has filed a letter of support  
13 for the project. You mentioned that there was some impact  
14 on privacy on that property and light and air, I believe.  
15 What weight does that support letter have in your  
16 consideration?

17 MS. VITALE: It's certainly helpful to know that  
18 the adjoining property owner is supportive of the  
19 application. That letter was not in the record at the time  
20 that OP drafted its report.

21 MR. SULLIVAN: So does that change your opinion?

22 MS. VITALE: No, that would not change my  
23 recommendation. No.

24 MR. SULLIVAN: You mention in the report the  
25 existence of at risk windows on the property to the north at

1 2616 and that having something to do with the additional 2  
2 feet 10 inches on the lot three lots away. Can you explain  
3 what that is?

4 MS. VITALE: Those aren't at risk windows. Those  
5 aren't on a property line.

6 I think we were referring to the fact that not  
7 enough information was provided in terms of a shadow study  
8 or views of the proposed development and elevation at the  
9 rear from the alley to fully understand the impacts of the  
10 new construction on adjoining properties to both the north  
11 and the south.

12 I think given the fact that the property at 2616  
13 to the north is detached and does have windows on that south  
14 elevation that additional analysis is needed to make a  
15 determination that this project would not have any undue  
16 impact on that property.

17 MR. SULLIVAN: But how does the relief, asking for  
18 2 feet 10 inches on the property on the south which 2616  
19 won't see because there will be two matter of right buildings  
20 between them and this relief, how does that 2 feet 10 inches  
21 or the addition at all, how does anything on 2610 affect  
22 2616?

23 MS. VITALE: Again, the criteria for evaluating  
24 this relief speaks to the scale and character and pattern of  
25 houses on the entire frontage of the street as seen both from

1 the front, the elevation at 4th Street as well as the alley-  
2 facing elevation.

3 And it was Office of Planning's belief that the  
4 proposed new construction given the height which is a full  
5 story above either of the adjoining properties, that there  
6 could be undue impacts.

7 MR. SULLIVAN: Okay. So you consider all three  
8 buildings in considering that relief.

9 MS. VITALE: We considered the street frontage  
10 which includes the existing two-story row dwellings to the  
11 south as well as the detached dwellings to the north in  
12 evaluating the impacts on the street frontage and on the  
13 views from the alley.

14 So we looked at the property that will be  
15 exceeding the 10 foot as it impacts the street frontage. And  
16 that happens to include the two new flats that are being  
17 proposed to the north as well.

18 MR. SULLIVAN: Okay, thank you. I have no further  
19 questions.

20 CHAIRPERSON HILL: So Ms. Vitale, just to go back  
21 again for Mr. Miller's question again because now I'm mulling  
22 it over a little bit in my head.

23 I know it's a hypothetical so I guess I don't need  
24 necessarily an answer. I don't know exactly what I'll get.

25 But if the first floor were I guess the 12 feet

1 10 inches and then the second -- and I'm only asking this,  
2 and I know it's hypothetical. Because I'm just trying to  
3 think about other cases or different things.

4           Someone had mentioned the wedding cake comment  
5 that happened awhile ago. If it's stepped back and stepped  
6 back again even on the third story but there remained as  
7 high, I mean you can't give us a yes or no but I mean that  
8 would just be another thing that the Office of Planning might  
9 be looking at, if it's stepped back.

10           MS. VITALE: We would certainly evaluate that  
11 proposal if that was what the applicant was bringing forward.

12           CHAIRPERSON HILL: Okay. Anybody else? Okay.  
13 Thanks, Ms. Vitale. This was very -- it really was actually,  
14 it's very interesting. I think it is interesting.

15           Again we've been going through these for some time  
16 now and I don't think that we're not going to continue to go  
17 through these. And so to have different views from the  
18 Office of Planning on most of these and how we can kind of  
19 learn from each individual case is very helpful.

20           And I understand how the Office of Planning is  
21 coming up with their analysis for this particular case as  
22 well as -- I mean I've lost on several that have come before,  
23 and I've voted yes or no. So we're trying to get to a  
24 consistency is what I'm at least trying to understand, how  
25 I get to my ability to evaluate. So I appreciate the report.

1           Okay, I've said it a few times but no one else has  
2 anything for the Office of Planning?

3           Okay. So let me go -- anybody is not here it  
4 looks like but I'll go through it. Is there anyone here from  
5 the ANC? Is there anyone here who wishes to speak in  
6 support? Is there anyone here who wishes to speak in  
7 opposition? Okay, so we're done with that portion of it.

8           Mr. Amons the property owner didn't want to come  
9 on down for this?

10           MR. AMONS: He's actually on vacation with his  
11 family. It's spring break.

12           CHAIRPERSON HILL: Oh, spring break, that's nice.  
13 I've heard of that. Okay. All right. Mr. Miller, do you  
14 have any questions for the applicant?

15           COMMISSIONER MILLER: Yes, just a couple. Mr.  
16 Sullivan, could you address the attached/detached issue  
17 regarding the property to the north 2614 and whether or not  
18 a side yard is required.

19           MR. SULLIVAN: Yes. We believe it is not attached  
20 or won't be attached to the building because that building  
21 doesn't sit on their property line, on the common property  
22 line.

23           We are counting on the Zoning Commission to delete  
24 the applicable section which is currently proposed. I have  
25 this and probably seven or eight other projects waiting and

1 hoping for that.

2           There's a matter of right option here that doesn't  
3 have IZ and would only have four units instead of six. So  
4 that's the fallback.

5           But we looked at it and I thought the April 19  
6 hearing was something that was going to happen even sooner.  
7 And so we're just taking the chance.

8           And I have another case where I'm asking for  
9 variance relief in that situation on the 25 foot wide lot and  
10 the Office of Planning is not supporting that so I didn't  
11 think it would be supported.

12           So we're self-certifying that when we file a  
13 building permit application that will no longer be a  
14 requirement.

15           COMMISSIONER MILLER: Okay. Just out of curiosity  
16 what is the distance between your proposed 2614 and the  
17 adjacent detached side wall.

18           MR. SULLIVAN: I think it's -- is it a foot?

19           COMMISSIONER MILLER: Just a foot.

20           MR. SULLIVAN: Just from a photo it looks like it  
21 couldn't be more than a foot or two.

22           COMMISSIONER MILLER: And on the inclusionary  
23 zoning I commend the applicant for proposing that. Are these  
24 units going to be owner condominium or are they going to be  
25 rental?

1 MR. SULLIVAN: These will be condominium units.

2 COMMISSIONER MILLER: Okay. So the IZ AMI level  
3 would be at the 80 percent.

4 MR. SULLIVAN: Eighty percent.

5 COMMISSIONER MILLER: Okay, thank you.

6 MEMBER HART: I had a question and now -- I don't  
7 know what my question was.

8 CHAIRPERSON HILL: You can think about it. So,  
9 the property to the north of these three properties they gave  
10 their approval, right? And that's the one that is going to  
11 be separated at least at this point by 2 feet, correct?

12 MR. SULLIVAN: That's correct.

13 CHAIRPERSON HILL: Okay. And so they signed off.  
14 And so the property to the south, they signed off. Correct?

15 MR. SULLIVAN: Correct.

16 CHAIRPERSON HILL: Okay. The reason why I'm  
17 thinking out loud is like why would you sign off on the  
18 property to the north unless you plan on doing this yourself  
19 which is fine. So that would again just move this whole  
20 process forward meaning the block.

21 Okay. Or at least that's one possibility.

22 MEMBER HART: Okay. So I guess the only kind of  
23 question that I have left, I asked the Office of Planning and  
24 maybe you could provide this as well because the Office of  
25 Planning, one of the things they were saying was this isn't

1 in keeping kind of with the kind of types of buildings along  
2 the block.

3 Are you aware or have that information as well?  
4 They're saying it's kind of like two story and I'm just  
5 trying to get a better understanding.

6 MR. SULLIVAN: We didn't really undergo an  
7 analysis of that because I was kind of surprised that we  
8 would be reviewing the front of the building. But if you  
9 could talk about your general knowledge.

10 MR. AMONS: There's a good mix of two-story and  
11 three-story multi-unit buildings on that block with a mix of  
12 detached single-family homes. So it's a good mix.

13 MEMBER WHITE: Do you have a picture of that as  
14 part of what you filed? Because I really would like to see  
15 how this is going to change the look and feel of the area.

16 MR. SULLIVAN: I don't believe we have filed  
17 anything.

18 MEMBER WHITE: Because OP weighed in on that  
19 issue. Just for me.

20 MEMBER HART: And you didn't provide any images  
21 of the rear along the alley, right? I know you just asked  
22 about the street.

23 MR. SULLIVAN: I'm not sure.

24 MEMBER HART: I know you have the one image that  
25 shows the aerial where you're kind of showing the property

1 to the south and that stuff, but you have no other images  
2 that show that?

3 MR. SULLIVAN: We'll look for them.

4 MEMBER HART: I would like to actually kind of see  
5 that.

6 Part of this is I don't know if we're moving into  
7 deliberation or at least trying to get through some of the  
8 questions that I have.

9 One of the ones is while I understand that the  
10 neighbors that are directly to the north and south are kind  
11 of signed off on this, and I understand that you've had some  
12 issues with the ANC trying to kind of get in contact and  
13 present this project in front of them.

14 I just would like to understand where they are on  
15 it. This is a project that is taller than the neighbors that  
16 are directly adjacent to it. And we really don't have any  
17 direction from the ANC on it and that would be helpful to  
18 understand where they are.

19 And I understand that they have had notice and  
20 they could have come here and kind of discussed it. But that  
21 part of it seems a little bit hard for me to deal with.

22 The other issue that I'm struggling with, and I  
23 understand that you're trying to represent your client, Mr.  
24 Sullivan, and trying to give options on moving forward and  
25 not having to wait a year for any order from us.

1           But it's hard for us, it's hard for me to be able  
2 to say oh sure, I know exactly what you're going to propose  
3 if I don't have drawings that show what that is. The matter  
4 of right option for the southern unit, if that's -- if you're  
5 not moving forward with it that's great, but I still don't  
6 have any drawings that actually tell me what that looks like.

7           And that I think would be very helpful for me to  
8 be able to see that. So that part of it is really difficult  
9 for me to really have a decision today because I don't know  
10 how to evaluate something that I don't have.

11           I'd like to also understand how -- I guess OP  
12 would not be opining on that part of it because you wouldn't  
13 be really looking for that relief and they're only focused --  
14 which is rightly so, they're only focused on the relief  
15 that's being sought.

16           MR. SULLIVAN: And I wouldn't submit plans for  
17 that because it would no longer be part of the application.  
18 So there's nothing to submit.

19           Here's what I want to do and I want to do this.  
20 I want to strike this and then that strikes their opposition,  
21 that makes it really easy and that allows us to go forward  
22 with a matter of right here that would not be before the  
23 Board.

24           MEMBER HART: This is the problem that I have with  
25 doing that. The problem that I have with doing that is that

1 the projects that we have -- the drawings that we have on  
2 file already actually show that building.

3           And so then someone would have to go deep into  
4 whatever the approval is to understand what was actually  
5 approved. Because it's hard to know -- when that information  
6 is in front of us and we are then no, we're not going to  
7 actually do that anymore then it becomes what drawings are  
8 they using to then -- we've had issues with other cases where  
9 there have been some drawings that were either -- well, let's  
10 just say this.

11           I'd rather have drawings that actually show this  
12 is not part of this and that's what that is. And so that's  
13 the issue. I understand that you all may not move forward  
14 with it, but it's helpful for us to actually have these  
15 drawings that show this is not part of the application.

16           Kind of similar to the -- well, I just, I would  
17 rather have that.

18           MR. SULLIVAN: I understand. And some background  
19 here is I didn't come here with the intention of making this  
20 a confusing application. I didn't know the 2 feet 10 inches  
21 would be such a big deal and cause a review of the entire  
22 project, nor did my client.

23           And so he said the 2 feet 10 inches can go away,  
24 it's not that important. What's important is the  
25 inclusionary zoning project and the 16 foot wide lots because

1 what we're proposing, what will be six smaller units and one  
2 of them being an inclusionary zoning unit. Only four of them  
3 that would be before the Board if I withdrew the south lot.

4 That from an affordability standpoint is a much  
5 better application not just for the IZ but because we're  
6 providing more units, smaller units, less gross floor area.

7 There's a matter of right option here that my  
8 client's closer to because this has been so difficult to get  
9 an IZ unit case approved.

10 And so I'm trying to make it as easy as possible  
11 so the Board doesn't even have to make a decision about  
12 whether or not they review the front of the building or not  
13 because I don't want to put that decision on you just because  
14 of this 2 feet 10 inches you have to review the front of the  
15 building.

16 CHAIRPERSON HILL: I didn't think it was the front  
17 of the building necessarily, it was also the massing. And  
18 there's a variety of things.

19 Mr. Sullivan, we're all for trying to make things  
20 work and trying to get through this, but it makes it  
21 difficult for us. We spent all our time reviewing all these  
22 cases over the weekend, get all caught up as to what's going  
23 to happen, and then all of a sudden it changes right in front  
24 of us.

25 And then I get different pressures upon me to say

1 that when the applicant is changing its design right in front  
2 of us and different things are happening right in front of  
3 us I get different pressures to be like that's not the way  
4 that we should do things.

5 So the Office of Planning evaluates what it  
6 evaluates. And again, I understand what you're trying to do  
7 for your client and I appreciate that and I think that that's  
8 why the people that come before us so often are good at what  
9 they do.

10 You yourself did know that you were coming here  
11 and the Office of Planning was in denial of something so you  
12 knew there was going to be more of a discussion in terms of  
13 a lot of things that might have happened.

14 So what I did overhear you state and I wasn't  
15 clear that you -- and it's okay. I didn't necessarily  
16 perceive it as a threat, but it was like you were saying that  
17 your client might withdraw the IZ units altogether and then  
18 do something completely different. Was that what you were  
19 saying?

20 MR. SULLIVAN: No, it's not a threat. I'm just  
21 saying the background of this is that there is a matter of  
22 right option.

23 And my biggest concern coming in here is we can't  
24 get delayed 14 months because that's what it's taking to get  
25 a full order.

1 CHAIRPERSON HILL: And I understand that. But at  
2 the same time you know that if the Office of Planning is  
3 against it it is going to be a full order.

4 MR. SULLIVAN: Well, that's not true. Sometimes  
5 it is, sometimes it isn't by the way. They're not a party.

6 CHAIRPERSON HILL: Well, I don't need to get into  
7 that discussion right now but that's okay.

8 MR. SULLIVAN: We have a proposal.

9 CHAIRPERSON HILL: Before you make your proposal  
10 just let me tell you where we are because we did go through  
11 all of this.

12 So I guess you can do what you want to do, but  
13 where I am right now is that I would want to see whatever it  
14 is that we're actually trying to approve. Whatever that is.

15 And so if you wanted to come back before us and  
16 pull that southernmost project and still apply for the IZ  
17 then you can go ahead and do that and get the Office of  
18 Planning's approval.

19 I guess kind of what -- and I don't know where Mr.  
20 Hart was on this. And I do understand and appreciate that  
21 everyone has made the effort that they have been doing to get  
22 in front of the ANC.

23 I'm a little surprised today the ANC has seemed  
24 to be not wanting to participate and they usually always want  
25 to participate.

1           And so my concern is that it is a pretty big  
2 massing. We don't have photographs of what the rest of the  
3 block looks like. And just from the one sheet A4.3 that I  
4 keep looking at it does look really big next to what is  
5 already there.

6           Now I'm not going to say that's not the way that  
7 -- and I'm all for matter of right. If it's matter of right  
8 you guys aren't here and that means we don't have to do this.  
9 And so I think that matter of right is great. If you can do  
10 matter of right and your client wants to do matter of right  
11 they should just do matter of right.

12           And so my thoughts are that I'd at least like to  
13 see whatever it is that you're proposing. If you get the  
14 Office of Planning signed off then that's great. Then that's  
15 one less person that we have to worry about in terms of a  
16 full order. We could have that discussion as to whether or  
17 not it's a summary order or not even with the Office of  
18 Planning being in objection.

19           And then I guess further continuing to try to get  
20 before the ANC. Unless my colleagues have another thought.  
21 I'm totally open to whatever my colleagues have to say.

22           MEMBER WHITE: Mr. Chair, I'm completely onboard  
23 with what you just said. I would definitely like to see  
24 something visually in the record so that we can see exactly  
25 what we're reviewing. And also to give the community and OP

1 an opportunity to see what those changes are before we're put  
2 in a position of making a decision.

3 If it's matter of right then they don't even need  
4 to be here obviously.

5 I am concerned that the ANC has not weighed in on  
6 this because this is a pretty significant project. But  
7 hopefully we can also have an IZ component to this.

8 But I would very much like them to have an  
9 opportunity to look at this as well.

10 MEMBER JOHN: Mr. Chair, I think the applicant has  
11 made a good effort to have input from the ANC. And so from  
12 my perspective I would be open to not waiting to hear from  
13 the ANC at this point.

14 But I support everything else you have said. And  
15 that's all I need to add.

16 CHAIRPERSON HILL: Commissioner Miller.

17 COMMISSIONER MILLER: Thank you, Mr. Chairman.  
18 I think I'm in agreement with my colleagues generally.

19 I understand the frustration of the applicant that  
20 the property to the south is having an impact on the property  
21 that's adjacent to the north.

22 I think I too would like to see -- I don't want  
23 to see a major delay here, but I think it would be helpful  
24 to see a photo simulation of both how the project fits in  
25 with the front of -- with the street frontage of the block

1 and in the rear as well because there's a public alleyway  
2 there just to see a photo simulation of that.

3           Because I think -- and the comparison between the  
4 project and a matter of right project in that spot. Because  
5 I think you might be able to get this Board's approval for  
6 everything that you're proposing if we see that it's not much  
7 difference or there's an adverse or worse option under matter  
8 of right.

9           So if that can be done fairly quickly and yet one  
10 more effort made to try to get something from the ANC during  
11 the time that it takes you to do this photo simulation that's  
12 where I would be.

13           But you have provided us with an option just to  
14 proceed today and with just approving the IZ and I don't want  
15 to lose that so I could go with that. They provided us an  
16 option to go forward with what the Office of Planning  
17 supports so I could go with that today myself personally if  
18 they don't want to do the photo simulation.

19           But I think the photo simulation could show that  
20 this project has no worse and maybe -- no worse impact than  
21 a matter of right proposal on the street frontage and on the  
22 rear. So that's where I am. Is that confusing enough?

23           CHAIRPERSON HILL: That's great, Mr. Miller.  
24 Thank you so much.

25           So Ms. Glazer, I'm just going to turn to you real

1 quick not necessarily even with this, just in general. Your  
2 thoughts on not having a full order if the Office of Planning  
3 is in objection.

4 MS. GLAZER: The D.C. Code requires the Board to  
5 give great weight to OP's recommendation. Therefore I  
6 believe that unless OP were to change its recommendation to  
7 support of the relief a full order would be required.

8 CHAIRPERSON HILL: Okay. So Mr. Sullivan, again  
9 I don't want to get in the way -- I shouldn't say that. I  
10 don't know whether I want to get in the way or not get in the  
11 way of progress. I don't know what that means anymore to be  
12 quite honest.

13 But if you were to -- you were about to suggest  
14 something and so I don't know if your suggestion has changed  
15 but I'm going to make my statement and then please tell us  
16 your suggestion.

17 If you were to be able to provide drawings of  
18 whatever it is that you were considering doing, the owner  
19 that is, speaking with your client about that southernmost  
20 lot.

21 I mean I'm confused as to whether that's now an  
22 empty lot, if you're not going to do anything there, or  
23 you're going to pull it back to the 10 feet.

24 I just want to see what it looks like. I mean  
25 what is it that we're approving. If that's something that

1 you could do.

2           And then if the Office of Planning could provide  
3 some kind of feedback to that and then see whether or not you  
4 get their approval with the IZ units and the southernmost lot  
5 being pulled back to 10 feet then it seems as though some  
6 members of the Board, and I could be convinced of this as  
7 well, do not need to try to require you to continue to try  
8 to pursue the ANC because it seems as though you have made  
9 a very good faith effort to go there and present in front of  
10 them.

11           So that being a suggestion I think we could get  
12 back here relatively quickly if that's what you want to do.  
13 Otherwise I'm just not sure what your suggestion was going  
14 to be.

15           MR. SULLIVAN: Thank you, Mr. Chair. I propose  
16 withdrawing the portion of the application that refers to the  
17 2 feet 10 inch rear yard relief and leave the other section  
18 remaining, the portion that Office of Planning supports.

19           I'd be happy to submit plans. I would love to get  
20 a decision today. If not, as soon as possible.

21           The plan would be this would be a matter of right.  
22 So there would be nothing before the Board technically.  
23 These are separate record lots.

24           So the relief before the Board would be on -- or  
25 they will be separate record lots -- will be on the two lots

1 to the north. And this would be a matter of right building  
2 to the south.

3 So in accordance with what Mr. Miller was  
4 proposing I would withdraw that. I do withdraw that.

5 CHAIRPERSON HILL: It's okay. I understand. I  
6 still don't know --

7 MR. SULLIVAN: I have no confidence that the  
8 Office of Planning will come around and I can't take that  
9 chance because it's a 14-month hit.

10 CHAIRPERSON HILL: Okay. So I guess my -- and  
11 this still remains my level of uncomfotability is that I  
12 still don't see whatever the drawings are.

13 And again it is fortunate that we have had such  
14 a light day here. But to take this much time on this case  
15 knowing pretty much how we were going to start to work  
16 through it. It would have been so much better had we gotten  
17 here the way that we could have gotten here. But I don't  
18 necessarily fault.

19 I think that Mr. Miller is also correct and this  
20 is the thing. If you wanted to come back with photographs  
21 and really try to argue the point that the 2 feet 10 inches  
22 is not really harming the character as much as the 10 feet  
23 is going to I could totally also get behind that discussion  
24 as well.

25 But you understand the full order versus the

1 summary order versus the timeline that you're up against.  
2 So I at the very least would like to see the drawings the way  
3 it is that you're proposing.

4 Resubmit I guess the self-certification to  
5 withdraw the requested relief. I don't know how quickly you  
6 can turn the drawings around. I don't know if the Board  
7 needs anything else other than the drawings to continue the  
8 discussion.

9 So I would just need the drawings and then a  
10 supplemental report from the Office of Planning in terms of  
11 their thoughts on the amended application.

12 And so how quickly could you do that?

13 MR. AMONS: Yes, we could have some revised  
14 drawings available pretty quickly.

15 CHAIRPERSON HILL: Okay.

16 MR. AMONS: Probably by Friday.

17 MS. GLAZER: Mr. Chair, I'm not sure why we would  
18 need a revised OP report or a supplemental OP report. The  
19 relief is -- one aspect would be removed, but I don't see any  
20 need for it unless I'm missing something.

21 CHAIRPERSON HILL: So if I don't need a  
22 supplemental -- so you're just removing the portion that  
23 you're in denial of, or it's possible you're removing the --  
24 you're amending the relief requested so that the portion that  
25 the Office of Planning is in denial of no longer is

1 applicable and therefore you're not in denial of that  
2 portion. Mr. Hart.

3 MEMBER HART: Yes. Just the only question that  
4 I had is that OP also raised the issue about the non-attached  
5 dwelling. The Zoning Commission case that is pending. Is  
6 that going to be a concern about this?

7 MS. GLAZER: Well, since the application is self-  
8 certified the applicant is doing that at his peril. He  
9 believes that by the time he gets to the ZA I assume --

10 MEMBER HART: That will no longer be a concern and  
11 so we wouldn't have to opine on that.

12 MS. GLAZER: No.

13 MEMBER HART: Thank you.

14 CHAIRPERSON HILL: I mean, Ms. Glazer, I  
15 appreciate your comment. I'm just asking the office -- it's  
16 just tidier for me if I get something from the Office of  
17 Planning. But is it burdensome?

18 MS. VITALE: We can certainly submit a  
19 supplemental but if the applicant is merely removing the 10  
20 foot request you have our analysis and our recommendation of  
21 approval with respect to the dimensional relief for the IZ.

22 CHAIRPERSON HILL: Okay, great. All right. So  
23 then I don't need an additional supplemental if that's what  
24 in fact does end up happening, Mr. Sullivan. So you are  
25 going to amend your application and you are going to submit

1 drawings therefore that reflect that amendment.

2 And then you'll give those to us on Friday. What  
3 does the Board think about when you want to do this?

4 MEMBER HART: I guess we could do it next week but  
5 I was just wondering about the -- if they amend the relief  
6 that doesn't have to be posted?

7 MS. GLAZER: No, I don't think so.

8 MEMBER HART: Because they've already asked for  
9 this. They're asking for less.

10 MS. GLAZER: Correct.

11 MEMBER HART: If they asked for something that was  
12 more than we would --

13 MS. GLAZER: Correct.

14 MEMBER HART: Okay.

15 MS. GLAZER: It seems that all you really need are  
16 revised plans and an amended self-certification.

17 MEMBER HART: I think that -- I'll answer since --

18 CHAIRPERSON HILL: I'm not here next week.

19 MEMBER HART: I think that we could have this on  
20 our next week's agenda as a decision case. We've gone  
21 through the entire thing so I don't think we need to have  
22 another hearing.

23 CHAIRPERSON HILL: Okay. So if you can get us the  
24 revised drawings, revised amended self-certification then  
25 we'll put this on for decision on Wednesday. And I can

1 submit an absentee.

2 All right, so I'm going to close the hearing  
3 except for the information that we requested. And does the  
4 Board have any further questions for the applicant?

5 I so thought this was going to be a short day.  
6 I thought it was really going to be a short day. All right,  
7 thank you all. Mr. Moy, does the Board have anything else  
8 to do?

9 MR. MOY: No, that covers it, Mr. Chairman.

10 CHAIRPERSON HILL: Okay. We're adjourned. Thank  
11 you.

12 (Whereupon, the above-entitled matter went off the  
13 record at 1:02 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 03-28-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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