

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY  
APRIL 4, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARLTON HART, Board Member (NCPC), Vice Chair  
LESYLLEE M. WHITE, Board Member  
LORNA L. JOHN, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.  
MARY NAGELHOUT, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN  
BRANDICE ELLIOTT  
CRYSTAL MYERS  
STEPHEN MORDFIN

The transcript constitutes the minutes from  
the Public Hearing held on April 4, 2018.

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

10:03 a.m.

1  
2  
3 VICE CHAIR HART: Excellent. So, moving right  
4 along. We've got a lot of folks in the audience today so  
5 glad we could get through some of this so that we could get  
6 to the meat of the day.

7 I think we can move forward with the -- I hadn't  
8 said this earlier but the cases as they are listed in the  
9 agenda to my left in the back of the room is the order of the  
10 day.

11 So if we could call the first hearing case, Mr.  
12 Moy.

13 MR. MOY: Yes, thank you. If we could have  
14 parties to the table to case application number 19709 of  
15 Focus Works LLC.

16 This application has been captioned and advertised  
17 for a special exception under subtitle D section 306.4 and  
18 section 5201 from the rear addition requirements of subtitle  
19 D section 306.3 and pursuant to subtitle X chapter 10 for use  
20 variance from the non-conforming use requirements subtitle  
21 C section 204.1.

22 This would construct a rear addition to an  
23 existing four-unit apartment house R-3 zone 411 Mellon Street  
24 SE square 5996 lot 52.

25 VICE CHAIR HART: Thank you very much, Mr. Moy.

1 Good morning. If you could please introduce yourselves.

2 MR. MCDONALD: I'm Matthew McDonald, the architect  
3 of record for the project.

4 VICE CHAIR HART: And if you could give your name  
5 and address it would be helpful. Thank you.

6 MR. MCDONALD: My office is at 4948 Saint Elmo  
7 Avenue in Bethesda, Maryland. And again my name is Matthew  
8 McDonald.

9 VICE CHAIR HART: Thank you.

10 MS. SANDERLIN: Yes, my name is Valerie Sanderlin.  
11 I'm the developer of the project. Address 12138 Central  
12 Avenue, Bowie, Maryland.

13 MR. CRUSE: Good morning, my name's Mark Cruse.  
14 I'm one of the partners. My address is 12700 Hallwood Place,  
15 Fort Washington, Maryland, 20744.

16 VICE CHAIR HART: Thank you.

17 MS. CUTHBERT: Good morning. Mary Cuthbert. I'm  
18 the chair for the advisory neighborhood commission 8C in  
19 which this project is located.

20 VICE CHAIR HART: Thank you very much. Ms.  
21 Cuthbert, Commissioner Cuthbert, I greatly appreciate you  
22 coming to our meeting today.

23 So, Mr. McDonald, I'm assuming you're going to be  
24 presenting this for us.

25 MR. MCDONALD: Yes, sir and answering any

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1 questions you may have. As I see you're familiar with the  
2 project the building was purchased as an existing four-unit  
3 apartment building.

4           Once the developers hired me and my firm's  
5 services we realized that in the R-3 zone it was a non-  
6 conforming use and needed to apply for the variance for the  
7 scope of work needed.

8           Have you had a chance to look at the drawings?  
9 Did you want to go over them or are you familiar enough?

10           VICE CHAIR HART: If you could just go through how  
11 you're meeting the criteria for the relief.

12           MR. MCDONALD: So for the use variance there are  
13 three criteria. The physical characteristics of the property  
14 create an exceptional undue hardship for the owner in using  
15 the property consistent with the zoning regulations.

16           It's our belief that there are several physical  
17 conditions of the property that make using it consistently  
18 with an R-3 zone an undue hardship.

19           The first characteristic being that the building  
20 is an existing four-unit apartment building. To convert it  
21 back into a different type of divided building would be a  
22 financial burden for the property owners.

23           It was marketed and sold to the owners by their  
24 realtor as a four-unit apartment building. There was no  
25 disclosure of the zoning situation.

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1           To reconfigure the building with less than four  
2 units would result in financial hardship for the owners with  
3 regards both to the building's value as well as additional  
4 work related to the design of spaces, to require to  
5 reconfigure it.

6           The stairwell would need to be revised. The  
7 plumbing and other infrastructure would need to be further  
8 revised to reduce it from a four-unit building into a two-  
9 unit or less building.

10           Also this building also has a certificate of  
11 occupancy for a four-unit apartment building.

12           Granting the application will not be a substantial  
13 detriment to the public good with regard to traffic, noise,  
14 lighting, et cetera. Again this will not be a detriment.  
15 We're maintaining the current use of the building so any  
16 existing traffic, noise, lighting, et cetera will be  
17 unchanged.

18           The current noise, there will be no more added  
19 noise or traffic with the building.

20           In addition to the building there are also 20 or  
21 more buildings in that area that have the four-unit  
22 configuration so we think it will help maintain the character  
23 of the existing neighborhood.

24           Also the building is currently, it was in a  
25 rundown dilapidated state when it was purchased so in effect

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1 it's our belief that this will actually be for the public  
2 good of the space being that the building will be renovated  
3 and made more habitable for future occupants.

4           Thirdly, granting the application will not be  
5 inconsistent with the general intent and purpose of the  
6 zoning regulations map.

7           So again we'll just reiterate that the building  
8 is already in a four-unit configuration. The purpose of the  
9 R-3 zone is to allow for row dwellings, also includes row  
10 dwellings mingled with detached dwellings, semi-detached  
11 dwellings in groups of three or more row dwellings.

12           Looking at this the intent of this zone appears  
13 to limit the size and scale of the buildings and provide  
14 lower density, providing lower density than zones that allow  
15 for large apartment buildings.

16           The owner is not proposing a large apartment  
17 building. It's rather a low density four-unit use. The  
18 scale and the front facade of the building will remain  
19 unchanged.

20           It's our opinion that the proposed two-bedroom  
21 configuration for each unit which is meant to encourage young  
22 families and couples, it's actually bringing the building  
23 more into line with the intent of the R-3 zone which is  
24 reading it with semi-detached dwellings, row houses, et  
25 cetera, it's usually designed for families rather than single

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1 individuals to live in them.

2           One-bedroom apartments which is currently  
3 configured are more apt to appeal to a single person.  
4 There's just not room for families to live in them. So it's  
5 our opinion that the two-bedroom configuration actually  
6 brings this project more in line with the overall intent of  
7 an R-3 zone.

8           In addition to the use variance we're also  
9 requesting a special exception. And with regards to the  
10 special exception that's just to extend the rear addition to  
11 allow for the second bedrooms to be added on.

12           Again, given the design of this we feel that the  
13 light and air to the neighboring properties will not be  
14 affected. 411 Mellon shares a common wall with the  
15 neighboring properties. There are no windows on that wall  
16 currently so there's no effect in that regard to the  
17 neighboring properties' windows.

18           With the addition there are no windows facing the  
19 neighbors who share the common wall so we believe there will  
20 be no additional privacy issues. In a sense it actually  
21 gives the neighbors a little more privacy when using their  
22 existing deck structure.

23           We also believe the addition will not  
24 substantially visually intrude upon the character of the  
25 neighborhood. It does not extend -- the roof line is lower

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1 than the current roof.

2           When viewed from the front of the facade, the main  
3 street, Mellon Street, you don't even see the addition. As  
4 you know many alleys in D.C. are kind of a hodgepodge of  
5 designs anyway and we feel again by adding a new addition  
6 that's currently built and renovated it's going to actually  
7 help the facade of the alleyway.

8           Additionally by providing parking with part of  
9 this addition they're helping get more traffic and street  
10 cars off Mellon Street.

11           VICE CHAIR HART: And Mr. McDonald, just so that  
12 I have this correct, the addition is actually an 11 foot  
13 addition and there is also a 3 foot utility room.

14           MR. MCDONALD: Shed, correct.

15           VICE CHAIR HART: That's also part of the  
16 building. But it's -- the 11 is kind of the room.

17           MR. MCDONALD: Yes, that's the room. That's the  
18 space needed to make two-unit buildings.

19           So again we think we've made the minimal design  
20 necessary to achieve this. We had originally looked at a  
21 larger addition but in speaking with Office of Planning that  
22 would have required an area variance which we didn't feel met  
23 the unique characteristics and burden of proof requirements  
24 so we've amended the plans to what you see today.

25           VICE CHAIR HART: Thank you. Any questions for

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1 the applicant? Okay, I think we can move to the Office of  
2 Planning.

3 MR. MORDFIN: Good morning, Chair.

4 VICE CHAIR HART: Good morning.

5 MR. MORDFIN: And members of the Board. I'm  
6 Stephen Mordfin. And the Office of Planning is in support  
7 of this application and recommends approval and is available  
8 for questions.

9 VICE CHAIR HART: Do any of the Board members have  
10 questions for the Office of Planning on the report that they  
11 submitted?

12 MEMBER JOHN: No, Mr. Vice Chair.

13 VICE CHAIR HART: Does the applicant have any  
14 questions for the Office of Planning?

15 MR. MCDONALD: I think I'd like to just bring --  
16 Ms. Cuthbert from the ANC is here. We did present this to  
17 the ANC. The meeting wasn't able to happen due to some Board  
18 members not being in attendance so she's here I believe in  
19 support of this project as well.

20 VICE CHAIR HART: That's great. Actually I was  
21 going to get to her right after this. I appreciate it. Mr.  
22 Moy said that I was thinking things before he had the chance  
23 to think them so maybe I just didn't have that.

24 CHAIR HOOD: Mr. Chair, I do have a question. I'm  
25 trying to make sure I'm grasping it.

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1           Let me ask, how far are we going back beyond the  
2 10 feet?

3           MR. MCDONALD: The main structure is an extra 1  
4 foot with about 2 feet more for the shed. I'm sorry, the  
5 main structure extends a total of 11 feet with an additional  
6 3 feet for the utility shed at the bottom of the building.

7           The utility shed is only on the first floor. It's  
8 below an existing deck.

9           CHAIR HOOD: So the total we're going back is  
10 about 14 something, 14.5? All right.

11          MR. MCDONALD: It still complies with the zoning  
12 setback requirements. We're not violating the rear setback.

13          CHAIR HOOD: All right. Okay. Thank you.

14          VICE CHAIR HART: Thank you. So now we can get  
15 to the ANC. Commissioner Cuthbert, again thank you very much  
16 for coming. You can give your thoughts on this case.

17          MS. CUTHBERT: Good morning, Chairman Hart and the  
18 Board members. I'm Mary Cuthbert. Unfortunately you see no  
19 letter from advisory neighborhood commission 8C in the  
20 package.

21                 I was hospitalized two weeks in February and one  
22 week and unfortunately my commissioners didn't know how to  
23 have a meeting.

24                 So when they attended the meeting they came to our  
25 executive committee meeting I believe it was in December.

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1 They came back in February for us to vote on it.

2 Well, come to find out because I was hospitalized  
3 the other six commissioners didn't show so there was no ANC  
4 meeting. So we had no vote on this project.

5 And we have another project coming up on Mellon.  
6 Our meeting is tonight and I hope the other group comes  
7 tonight so we can vote on it. I will be there.

8 It's unfortunate that you have commissioners,  
9 we're all voting the same way, none of us get paid because  
10 the chair is out sick in the hospital they can't have a  
11 meeting. I'm upset.

12 VICE CHAIR HART: Well, and rightly you should be.  
13 But I'm glad to see that you're feeling better and that  
14 you're actually back here so that's good to hear. I  
15 appreciate you coming down to provide the information.

16 At the executive meeting that you had in December  
17 did you have any -- were there any questions or comments that  
18 you had at that point?

19 MS. CUTHBERT: I had a few questions because I had  
20 to physically go see. Because I understand the Office of  
21 Planning do everything on the computer. And what it look on  
22 the computer doesn't look when you physically go there.

23 And I understand that they're expanding and they  
24 want to make it into condominiums for people to buy so I had  
25 to go see for myself.

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1           And I think it's going to be pretty -- it's a good  
2 idea. I think it will catch on with a lot of the housing  
3 along that strip and it's changing, the community is  
4 changing. I'm working on one part. Cross your fingers that  
5 will work out all right on Mellon Street. That's an  
6 interesting block.

7           VICE CHAIR HART: Well, thank you very much for  
8 your thoughts. Any questions for Commissioner Cuthbert?

9           MEMBER WHITE: Just a quick comment. First of all  
10 I'm glad you're feeling better.

11          MS. CUTHBERT: Thank you.

12          MEMBER WHITE: And I'm a big proponent of having  
13 ANC feedback so I'm glad you're here to provide the feedback  
14 because I think it's important to know what the community  
15 thinks about these projects that are being built.

16           And when we don't get ANC feedback that leaves  
17 kind of a void for me. So I'm happy to hear your feedback.

18           But overall would you say that you've been getting  
19 positive feedback regarding this particular project. No  
20 major concerns.

21          MS. CUTHBERT: Back in December when I spoke with  
22 the neighbors when I went to -- I like to go see physically  
23 and talk with the neighbors, a lot of them seemed pleased.

24          MEMBER WHITE: Because the project has been, this  
25 building has been -- has it been vacant for a while?

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1 MS. CUTHBERT: We have a lot of vacant. We're  
2 trying to get people to purchase homes and remove the  
3 homelessness. Unfortunately if you read the law we'll never  
4 get rid of the homelessness but we're going to try.

5 MEMBER WHITE: Well, thank you very much for your  
6 comments. That's all the questions I have, Mr. Vice Chair.

7 CHAIR HOOD: Mr. Vice Chair, also I would be  
8 remiss if I didn't say something, Ms. Cuthbert. I'm glad,  
9 Ms. Cuthbert, you're doing better.

10 MS. CUTHBERT: Yes, I am. Thank you.

11 CHAIR HOOD: You've always had your pulse on the  
12 community and the city as a whole so we appreciate all the  
13 work you've done in the past and all the work you continue  
14 to do in the future.

15 And I'm sure you will work with your ANC to bring  
16 them up to speed. Thank you, Mr. Chairman.

17 VICE CHAIR HART: Thank you. Any other questions  
18 for the Board for Ms. Cuthbert, for Commissioner Cuthbert?

19 So I guess we can now move to the -- if there are  
20 anyone wanting to speak in support of the application.  
21 Anyone wanting to speak in opposition to the application.  
22 Okay.

23 So we're back to you, Mr. McDonald. Does the  
24 Board have any other questions for the applicant? Do you  
25 have any words that you'd like to say in closing?

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1 MR. MCDONALD: I think the only thing I'd like to  
2 add in is that the owners have also prepared -- have some  
3 financing options and some packages they'll be distributing  
4 in the neighborhood to kind of help with affordable home  
5 paths and that type of -- different mortgage options.

6 It's not just for their own profits. They are  
7 trying to better the neighborhood and provide accessible  
8 homes to more people.

9 VICE CHAIR HART: Excellent.

10 MR. MCDONALD: I think that's been a thing that  
11 they've worked with the ANC to develop as well.

12 VICE CHAIR HART: Great. Well, thank you. So I  
13 don't think we have any other -- I think you said your final  
14 words.

15 I would like to then close the hearing. Are the  
16 Board members ready to deliberate on this? I can start.

17 After the hearing the applicant's testimony and  
18 reading the record I would agree with the Office of Planning  
19 report in that the applicant has shown how they meet the  
20 criteria for relief. And that relief was a use variance from  
21 subtitle C-204.1. And special exception relief for subtitle  
22 D 306.4 and subtitle D 306.3.

23 And I felt that what the applicant has presented  
24 to us is a fairly moderate addition to an existing home to  
25 modernize these homes. I thought that their case was

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1 compelling and I would be supportive of their application.

2 I think it's -- hearing the last piece of  
3 information about having some affordability in the District  
4 is also a worthwhile goal. And I do appreciate Commissioner  
5 Cuthbert, you coming down here to provide us with your  
6 thoughts.

7 And things happen I guess with the ANC meetings.  
8 Glad to hear that you're back and able to wrangle them back  
9 into a meeting for this month and move forward with that.

10 So do any other Board members have comments for  
11 this case?

12 CHAIR HOOD: This is actually the first case that  
13 I've seen where I think 306.4 -- as you know I've been  
14 particular for anything with 306.4 when the Zoning Commission  
15 put that in place.

16 But I think now I'm seeing the other side. My  
17 other cases have not been as genuine as far as the rule that  
18 we put in place with 306.4.

19 I think this is an -- case for being able to allow  
20 that relief under 306.4. So I think especially with the  
21 support of Ms. Cuthbert who's been in the trenches a long  
22 time.

23 And even at that, the regulation, I think this is  
24 very modest. And as we go back and revisit this I think this  
25 will help us kind of shape some things to help give guidance

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1 more to the BZA.

2           So this to me now, this is my first time since we  
3 put this rule in place where I have a comfort level and going  
4 ahead and agreeing with this. Thank you, Mr. Chairman.

5           VICE CHAIR HART: Thank you.

6           MEMBER JOHN: Mr. Vice Chair, I would support the  
7 application for use variance under subtitle C 204.1 for the  
8 extension of gross floor area of a non-conforming use.

9           This apartment building has existed since 1941 and  
10 the applicant seeks to modernize it to create affordable  
11 housing for families based on his testimony, based on the  
12 architect's testimony.

13           The applicant has also described the difficulty  
14 in converting the unit back into a residential use and has  
15 stated that there is no increase in the intensity of the use  
16 since it's already in a four-unit configuration.

17           I also believe that this is a modest extension of  
18 the rule regarding the 10 foot addition and so would support  
19 the request to extend the addition to 11 feet with another  
20 3.5 feet for the shed at the back.

21           And there is no increase in the bulk. And the  
22 building meets all of the other requirements for -- all of  
23 the other zoning requirements like rear yard and so on.

24           So for all of those reasons I would support the  
25 application.

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1 VICE CHAIR HART: Okay. So, I guess I will make  
2 a motion to approve application 19709 of Focus Works LLC.  
3 And this is pursuant to 11 DCMR subtitle X chapter 9 for a  
4 special exception under subtitle D 306.4 and 502.1 from the  
5 rear addition requirements of subtitle D 306.3 and pursuant  
6 to subtitle X chapter 10 for the use variance from the non-  
7 conforming use requirements of subtitle C 204.1 to construct  
8 a rear addition to an existing four-unit apartment house in  
9 the R-3 zone at premises 411 Mellon Street, SE, square 5996,  
10 lot 52. Do I have a second?

11 MEMBER JOHN: Second.

12 VICE CHAIR HART: Hearing a second, all those in  
13 favor say aye.

14 (Chorus of ayes)

15 VICE CHAIR HART: Any opposed? The motion  
16 carries, Mr. Moy.

17 MR. MOY: Staff would record the vote as 4-0-1.  
18 This is on the motion of Vice Chair Hart to approve the  
19 application for the relief being requested. Seconding the  
20 motion, Ms. John. Also in support Mr. Anthony Hood, Ms.  
21 White. We have a Board member not present with us today.  
22 The motion carries.

23 VICE CHAIR HART: Summary order, Mr. Moy.

24 MR. MOY: Thank you, sir.

25 VICE CHAIR HART: Thank you. And thank you very

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1 much.

2 MR. MCDONALD: We might stay up here. I think we  
3 have another case that we might also be applying for.

4 VICE CHAIR HART: Okay. Are you 404 Newcomb?

5 MR. MCDONALD: Yes. We're the same people.

6 VICE CHAIR HART: Okay.

7 MR. MOY: All right, thank you, Mr. Vice Chair.  
8 That would be case application number 19710 of 404 Newcomb  
9 LLC. Caption advertised for a special exception under  
10 subtitle D section 306.4 and 5201 from the rear addition  
11 requirements of subtitle D section 306.3 and pursuant to  
12 subtitle X chapter 10 for a use variance from the non-  
13 conforming use requirements of subtitle C section 204.3.

14 This would convert an existing community residence  
15 facility into a four-unit apartment house R-3 zone. This is  
16 at 404 Newcomb Street SE square 5996 lot 48.

17 VICE CHAIR HART: Thank you, Mr. Moy. Welcome.  
18 Been such a long time. If you could just introduce  
19 yourselves and provide your address.

20 MR. MCDONALD: My name is Matthew McDonald. I'm  
21 the architect of record for the project proposed at 404  
22 Newcomb Street.

23 My office address is 4948 Saint Elmo Avenue, Suite  
24 304 in Bethesda, Maryland. Again my name is Matthew  
25 McDonald.

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1 MS. SANDERLIN: Yes, good morning. My name is  
2 Valerie Sanderlin, the real estate developer. My address is  
3 12138 Central Avenue, Suite 571, Bowie, Maryland 20721.

4 MR. CRUSE: Good morning again. My name is Mark  
5 Cruse. I'm one of the development partners and my address  
6 is 12700 Hallwood Place, Fort Washington, Maryland 20744.

7 MS. CUTHBERT: Good morning, I'm Mary Cuthbert.  
8 I'm the chair for advisory neighborhood commission 8C in  
9 which this second project is located.

10 VICE CHAIR HART: Well, welcome back, everyone.  
11 So if we could just provide a brief summary of how you're  
12 meeting the criteria and we'll go from there.

13 MR. MCDONALD: Yes, sir. Just background. Again  
14 this is an existing apartment building. Currently the  
15 apartment building when purchased was configured similar to  
16 a four-unit apartment building.

17 It currently had a use and occupancy certificate  
18 for a CRF use which is a group home which is very similar in  
19 use to the four-unit apartment building.

20 Again we believe the original configuration and  
21 design of the building was a four-unit building. The CRF use  
22 was for a group home facility that while technically not a  
23 four-unit apartment building maintained the four-unit type  
24 use of the building. In fact it may have had more people  
25 than -- more than just four people in that building is

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1 typical of group homes.

2           Again the building was marketed and sold to the  
3 owner as a four-unit apartment building. When my firm was  
4 hired we realized we would need to request zoning relief from  
5 that requirement.

6           To reconfigure this building with less than four  
7 units would result in financial hardships for the owner in  
8 terms of reconfiguring the infrastructure to a two-unit or  
9 less apartment building.

10           We believe granting this application will not be  
11 a substantial detriment to the public good. Prior to  
12 purchase of this building by Ms. Sanderlin the building was  
13 being used as a group home with occupation similar to a four-  
14 unit apartment building.

15           It was not being used as a single-family home.  
16 In fact, it may have had a higher density than even a four-  
17 unit building.

18           Therefore the current levels of noise, traffic,  
19 lighting, et cetera will not be affected by this application.

20           In addition there are 20 or more buildings in this  
21 particular neighborhood that are currently four-unit or  
22 greater apartment buildings so we believe this will maintain  
23 the current character and use of the neighborhood.

24           This building is also in a fairly rundown and  
25 dilapidated state so we believe granting this application

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1 will allow the new owners to upgrade the building from both  
2 an aesthetic and safety standpoint.

3 It will provide newer, cleaner, safer living units  
4 for the residents to live in this neighborhood.

5 Granting the application will not be inconsistent  
6 with the general intent and purpose of the zoning regulations  
7 for several reasons.

8 The unit already exists to a similar four-unit  
9 configuration and it has been used previously as a four-unit  
10 apartment building.

11 Again the purpose of the R-3 zone, to allow for  
12 row dwellings while including area -- excuse me. The R-3  
13 zone is to allow for row dwellings mingled with detached and  
14 semi-detached dwellings in groups of three or more dwellings.

15 Again by turning one-bedroom apartments into two-  
16 unit apartments we believe it brings the building more in  
17 line with the intent of the R-3 zone for families, couples  
18 and lower densities.

19 Also with this building we would need relief from  
20 the 10 foot requirement for the addition. Similarly the  
21 neighboring property shares a party wall. There will be no  
22 windows on the shared party wall so the privacy and use and  
23 air, light, et cetera for the neighboring properties will not  
24 be affected.

25 The addition again will not be visible from the

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1 street and it will not substantially affect the visual nature  
2 of the area.

3 I think additionally to reiterate we've made the  
4 addition the size to make the bedrooms as small as reasonably  
5 we thought was functional for the space.

6 We kept the addition as small as possible to allow  
7 the second bedrooms to be built. So rather than -- the  
8 bedrooms in size are 10 feet 6 by -- the depth of the  
9 bedrooms is approximately 10 foot 6 and that was about as  
10 small as we thought was appropriate for a second bedroom.

11 I will note this addition is identical to an  
12 addition that was previously approved for variance from the  
13 zoning Board about five minutes ago. So we believe there is  
14 a standard in the neighborhood for making this approval.

15 VICE CHAIR HART: Touche, Mr. McDonald.

16 MR. MCDONALD: Thank you.

17 VICE CHAIR HART: Does the Board have any  
18 questions for the applicant?

19 MEMBER WHITE: Just so I'm clear how far back are  
20 you going for the rear addition? You said identical.

21 MR. MCDONALD: Identical. So 11 feet for the  
22 living structure with an additional 3 and a half feet  
23 approximately for the shed on the back.

24 VICE CHAIR HART: And that 3 and a half foot is  
25 for the first floor.

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1 MR. MCDONALD: Correct.

2 MEMBER WHITE: Thank you.

3 VICE CHAIR HART: So I think we can move to --  
4 actually we will get to the ANC but I appreciate it. Now  
5 that we know that that's good to hear.

6 We're going to go to the Office of Planning and  
7 then come to you, Commissioner Cuthbert.

8 MR. MORDFIN: Good morning, Chair and members of  
9 the Board. I'm Stephen Mordfin and the Office of Planning  
10 also recommends approval of this application and is available  
11 for any questions.

12 VICE CHAIR HART: Do the Board members have any  
13 questions for the Office of Planning? Does the applicant  
14 have any questions for the Office of Planning?

15 MR. MCDONALD: No. We appreciate their review and  
16 opinion.

17 VICE CHAIR HART: And Commissioner Cuthbert, thank  
18 you. You had a question of the applicant?

19 MS. CUTHBERT: Yes, I do. Did you actually go to  
20 404 Newcomb and go through the alley? You looked on the map.

21 That alley is like, it's like you've got like a  
22 fork in the road and I don't know if they have that much  
23 space to add on.

24 I know where the halfway house used to be because  
25 Kimberly Morton owned that house many years ago. So I'm

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1 familiar with the area. I've been there 50 years.

2 We didn't discuss this 404. We discussed 400 to  
3 my recollection. I don't remember 404, this project.

4 So I would prefer for the ANC, that commissioner  
5 who's in charge of Newcomb has resigned. So I would like for  
6 the other commissioners who are available to discuss this 404  
7 because my recollection it's right down the street from  
8 Mark's Liquor and it comes in like a fork on the road. And  
9 404 is about six houses from the corner, six to eight houses  
10 from the corner. And it's slanted, the alley, that block is  
11 slanted, the back yard is on a slant, on an angle.

12 So my concern is is that enough space to make it  
13 conducive for someone to purchase rather than do all this  
14 work and the bedrooms are too small where all you can put a  
15 bed in, really a crib in the room.

16 And that's my concern in all the development  
17 that's coming to ward 8. You build these places and they're  
18 in a cubby hole like a bathroom and so everybody is hanging  
19 out on the street. We have to look at that.

20 We want them to have housing. We don't have to  
21 have huge housing, but we want decent housing. And that's  
22 my concern about this development right here. We haven't  
23 discussed that one in great detail.

24 VICE CHAIR HART: So and Mr. McDonald, this is why  
25 we have the public hearings so we know that even though cases

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1 may seem very similar there's always something that we need  
2 to understand about it.

3           So Commissioner Cuthbert said that to her  
4 recollection that they hadn't heard this particular case.  
5 I don't know if you also had this. If you could describe  
6 what your meeting -- was this also discussed during the  
7 December meeting or was this at another time?

8           MR. MCDONALD: If I remember correctly we did  
9 bring both properties to the attention. Given that they were  
10 identical designs and properties there may have been some  
11 confusion. But I had believed we had adequately discussed  
12 them.

13           I know at the last ANC meeting there were two,  
14 maybe three other architects with similar projects so there's  
15 a lot of development going on in that neighborhood.

16           I did pull up 404 Newcomb on a map and the lot is  
17 identical in shape to 411 Mellon Street. It's actually  
18 closer to the corner of Newcomb Street and 4th Street, SE.  
19 So the alley is --

20           MS. CUTHBERT: Newcomb and 4th?

21           MR. MCDONALD: I can show you the map if you'd  
22 like.

23           VICE CHAIR HART: Just for your information the  
24 Office of Planning report on page 5 actually has where this  
25 property is located which is it looks like three, it's the

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1 third property in from the corner of 4th Street SE and  
2 Newcomb Street SE. So it's the third building in I guess.

3 MR. MCDONALD: Correct.

4 VICE CHAIR HART: Second building, third property.

5 MR. MCDONALD: Correct. So the characteristics  
6 of the alley seemed almost identical to me. It's almost a  
7 mirror image of the 411 project. So we are hopeful that the  
8 same, we were providing the same service to the neighborhood  
9 with regard to the density and not causing any difference.

10 VICE CHAIR HART: Thank you. Commissioner  
11 Cuthbert, you're saying that the depth of the rear property  
12 is the concern that you have because you're saying that it's  
13 narrower on that side.

14 MS. CUTHBERT: Right. It's like an angle.

15 VICE CHAIR HART: And it actually looks a little  
16 bit narrower on the map that I'm looking at. I don't think  
17 it's a large distance or difference, but it does look like  
18 it's a bit narrower on the Newcomb Street side than it is on  
19 the Mellon Street side.

20 Again, it's hard to know.

21 (Simultaneous speaking)

22 MS. CUTHBERT: Looking on the map it looks  
23 different, but if you physically go through there.

24 VICE CHAIR HART: Any questions from my fellow  
25 Board members?

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1           MEMBER WHITE: Just kind of to address her other  
2 concern about the size of the rooms. She had concerns about  
3 people not really being able to utilize those rooms in the  
4 back and could potentially cause people to loiter. If you  
5 could address that.

6           MR. MCDONALD: So the new rear bedrooms we sized  
7 -- the living areas and the bedrooms on one of the units 12  
8 feet by 10 foot 6. The other unit is 10 foot 3 by 10 foot  
9 6. That gives you size.

10           On the 12 foot, both units you could easily fit  
11 a double or a queen bed, or if it's for a child you could  
12 easily fit twin beds or a bunk bed and a desk.

13           I wouldn't call them generously sized bedrooms but  
14 for an urban environment they're certainly adequate and meet  
15 the code definition of a bedroom.

16           MEMBER WHITE: How does that compare to -- not to  
17 compare the cases, but are they about the same as the Mellon  
18 case?

19           MR. MCDONALD: They're identical. The property  
20 developer would like to speak as well.

21           VICE CHAIR HART: Sure.

22           MS. SANDERLIN: Thank you. I think there's a  
23 little confusion here because we're doing the same identical  
24 as 411 Mellon.

25           The issue is that I own 400 and 402 which is

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1 beside 404 Newcomb Street. That hearing is not until April  
2 25. So I think it's a little confusion.

3 Chairman Ms. Cuthbert is correct but it was 400.  
4 So I think that was where the confusion lied. But the  
5 architect presented 404 Newcomb and 411 Mellon at the same  
6 hearing. So those are the same plans. 400 is a little bit  
7 different which Ms. Cuthbert is correct.

8 But it's so many addresses because I have like six  
9 buildings over there so I can see where the confusion came  
10 in at there. So I just wanted to clarify for the record.

11 VICE CHAIR HART: Just in the future it may be  
12 helpful to have a little plan that shows where this building  
13 is with respect to just kind of an area, a neighborhood plan  
14 so that people understand where this particular building is.

15 Because I noticed, I'm looking at the plans now  
16 which is exhibit 6 and they don't have -- it's just a name  
17 that changes. And so it's hard to kind of -- for anybody  
18 that's not really kind of paying attention to it oh, the name  
19 changed and so this is a different project.

20 Because the buildings are -- they were done at a  
21 time, they were all done together. So they all look alike.  
22 They're brick buildings that have flat roofs so it's hard to  
23 differentiate them for anybody. But having a plan, just a  
24 neighborhood plan just kind of shows where this building is  
25 with respect to the rest of the neighborhood. Just a

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1 suggestion.

2 MS. SANDERLIN: Yes, and I'm going to take note  
3 of that. This is my first hearing so I will -- note taken  
4 for my 25th.

5 VICE CHAIR HART: I appreciate it. This is what  
6 we do. We listen to the ANC for the neighborhood concerns,  
7 we listen to the applicants as they move forward with this.  
8 And each case is independent and we understand why they are  
9 independent.

10 MS. SANDERLIN: Yes.

11 VICE CHAIR HART: So any other questions for the  
12 applicant? Anyone here wishing to speak in -- actually --  
13 you've actually provided your testimony already.

14 Anyone here wishing to speak in opposition to the  
15 case? Anyone here wishing to speak in favor of the case?  
16 Okay.

17 So Commissioner Cuthbert, do you -- you said that  
18 you'd like for the ANC to actually give some comments on this  
19 case.

20 MS. CUTHBERT: I would like the commissioners to  
21 hear about this 404. Like she says she has different  
22 buildings. We heard about the 400, but this is my first time  
23 hearing about 404.

24 And I want the community to be aware of what's  
25 going on. It's important with all the changes that's taking

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1 place that they are aware and they can ask their questions.  
2 And you want to sell them so you have to educate them on how  
3 they can purchase them.

4 And it's important to me that the community  
5 understands what's going on on each block in their  
6 neighborhood. As the ANC commissioner that's my task.

7 VICE CHAIR HART: And you stated that there's  
8 going to be a meeting tonight?

9 MS. CUTHBERT: Yes. Our ANC meeting will be  
10 tonight. It's every first Wednesday of each month I'm back.

11 VICE CHAIR HART: I'm also assuming that -- I  
12 shouldn't assume it.

13 MS. CUTHBERT: They can come. I'll put them on  
14 the agenda.

15 VICE CHAIR HART: That's what I was asking.

16 MS. CUTHBERT: Yes.

17 VICE CHAIR HART: Because I don't know about the  
18 other commissioners but I would like to kind of understand  
19 if there is another issue with this.

20 It sounds like there are other cases that are  
21 coming before us that the applicant has. And I don't know,  
22 maybe we can push the decision for when they're back. Just  
23 a thought. Any other thoughts on this?

24 MEMBER WHITE: Well, I mean I would be open to  
25 allowing the ANC to submit their comments in the record and

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1 maybe delaying the decision for a week if the other  
2 commissioners are onBoard with that.

3           Because I did want to be respectful of the  
4 neighbors and we did have an unusual situation with the  
5 health of the commissioner. But I'm willing to listen to any  
6 other feedback.

7           VICE CHAIR HART: Okay. Anyone else?

8           MEMBER JOHN: I would also support waiting to hear  
9 from the ANC because the commissioner has raised concerns in  
10 this particular case whereas there were no concerns in the  
11 previous case.

12           And I typically like to hear from the ANC because  
13 they know what's happening in the neighborhood and it's  
14 really the best thing when the neighbors are informed and  
15 know enough about a project to weigh in.

16           So I would also support a brief continuance to  
17 hear from the ANC. And thank you for coming.

18           VICE CHAIR HART: So the question is do we --  
19 would you like to, I'm asking the Board members, would you  
20 like to continue the hearing or have a meeting?

21           MEMBER WHITE: I'm okay with a meeting. I think  
22 we've gotten testimony from OP, from the applicant and some  
23 preliminary testimony from the commissioner.

24           Assuming nothing substantial is raised I think I  
25 have pretty much most of the information that I need in order

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1 to make a decision until I get the final comments from the  
2 ANC.

3 CHAIR HOOD: I would agree. I don't necessarily  
4 know if we need a continuation of a hearing so that way I  
5 don't have to come back, I can send a proxy contingent on the  
6 information we get back from the ANC.

7 If they will be able to get that on the agenda  
8 tonight and be able to deal with it then we'll be able to do  
9 our meeting part of it next week.

10 VICE CHAIR HART: Okay. I think I've heard quite  
11 enough from everyone. I would suggest that we do that, that  
12 we -- actually hearing from the other Board members I will  
13 close the hearing and with the exception of getting a letter  
14 from Commissioner Cuthbert or someone else from the ANC so  
15 that we understand what concerns that you all have following  
16 this meeting that's this evening.

17 And I think that's the only thing that we need  
18 from the applicant. And then put this case on the agenda for  
19 decision next week, next Wednesday.

20 MR. MOY: Mr. Vice Chair, does the Board wish to  
21 set a deadline for the ANC to submit their letter or  
22 resolution to the Board?

23 VICE CHAIR HART: I think we should allow them as  
24 much time as we can.

25 MR. MOY: Tuesday, April 10.

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1           VICE CHAIR HART: Yes. I know, April is moving  
2 by pretty quickly.

3           So that's it. I think that we have everything  
4 that we need. I appreciate you all for coming down. And  
5 Commissioner Cuthbert, thank you very much for accommodating  
6 these folks and being able to put them on your agenda for  
7 this evening.

8           And we'll look forward to getting a letter from  
9 you all about this case and any concerns that you might have.  
10 Yes, ma'am.

11           MS. SANDERLIN: So do we need to come back on  
12 April 10 or you just need the letter?

13           VICE CHAIR HART: You don't need to come back.  
14 It is a deliberation that the Board will have and we're just  
15 waiting for the letter from the ANC.

16           MS. SANDERLIN: Okay, thank you. I just wanted  
17 to clarify.

18           VICE CHAIR HART: That's fine. Thank you very  
19 much. Thank you. And we'll take a few minute break, like  
20 a two-minute break.

21           (Whereupon, the above-entitled matter went off the  
22 record at 10:49 a.m. and resumed at 11:00 a.m.)

23           VICE CHAIR HART: All right, Mr. Moy. Can you  
24 please call the next case?

25           MR. MOY: Thank you, Mr. Vice Chair. We're back

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1 in recess. And the time is 11 o'clock.

2 So I see the parties are to the table. This is  
3 case application number 19715 of Joseph McNamara and Meg  
4 Booth. Caption advertised for special exception under  
5 subtitle E section 5201 from the side yard requirements of  
6 subtitle E section 307.4.

7 This would construct a third story and rear  
8 addition to an existing one-family dwelling RF-1 zone. This  
9 is at premises 1612 E Street SE square 1090 lot 804.

10 VICE CHAIR HART: Thank you, Mr. Moy. So this  
11 case was on the -- previously was on the meeting calendar I  
12 guess for the March 28th meeting as an expedited review  
13 calendar and we actually removed that and we're now here.

14 So we will I guess listen to Ms. Moldenhauer  
15 present the case.

16 MS. MOLDENHAUER: Mr. DeBear will be presenting  
17 the case, but my name is on there. Meridith Moldenhauer from  
18 the law firm of Cozen O'Connor here on behalf of the  
19 applicant.

20 MR. DEBEAR: Eric DeBear also from the law firm  
21 of Cozen O'Connor on behalf of the applicant.

22 MR. MCNAMARA: Joseph McNamara. I'm the home  
23 owner at 1612 E Street as well as the architect for the  
24 project.

25 VICE CHAIR HART: Thank you. Yes, sir.

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1 MR. RIDGE: I'm Dan Ridge. I'm the chair of ANC  
2 6B.

3 VICE CHAIR HART: You said Ridge, Commissioner?  
4 Thank you.

5 Okay. So Mr. DeBear, if we could just provide us  
6 with a brief explanation of the relief that you're going for  
7 and how you meet that relief.

8 MR. DEBEAR: Okay. I'd be happy to do that,  
9 Commissioner Hart. I do have the architect present if we  
10 need to move through the plans.

11 I think that the commissioners are aware this is  
12 a modest addition to the applicant's home. The relief  
13 requested is a special exception for the side yard.

14 The existing home has a non-conforming side yard  
15 at slightly less than 5 feet. The applicant's addition  
16 proposes to entirely remove the side yard.

17 As I stated this is special exception relief. We  
18 do believe our client meets the standard. In terms of  
19 harmony with the zoning regulations this will be maintaining  
20 the applicant's single-family home and expanding it to  
21 accommodate his family.

22 It furthers the goals of the RF-1 zone which  
23 encourage low density residential. In addition I would note  
24 that new construction in the RF would actually not require  
25 a side yard at all which is exactly what the applicant's

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1 proposing. They will be attaching where existing conditions  
2 are that they are semi-detached.

3 And just to note many homes in the nearby  
4 neighborhood are attached so this would be in keeping in line  
5 with the general nature of the RF-1 zone.

6 In terms of no adverse impacts the addition is  
7 modest. It extends 7 feet beyond the existing home but  
8 actually only 4 feet beyond the neighbor to the east.

9 It is clearly within the -- significantly less  
10 than the 10 foot restriction area. The neighbor to the west,  
11 I apologize, it extends 4 feet beyond the neighbor to the  
12 west.

13 The western neighbor does not have windows on that  
14 shared lot line so that would decrease any influence on  
15 privacy. The applicant's property does have a large rear  
16 yard, I believe it's 41 feet even with the proposed addition.

17 The neighboring properties both have rear yards  
18 and there are lots to their north that have open rear yards  
19 too so in terms of light and air this would really maintain.  
20 Existing conditions would not impact to a significant extent.

21 There is an existing dog leg and the applicant is  
22 maintaining approximately 4 and a half by 26 foot existing  
23 dog leg running from the front of the property to where the  
24 addition is going to start. That would also maintain light  
25 and air.

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1           And then moving through the special conditions for  
2 this special exception for an addition to a single-family  
3 home again I think I talked already about some of the minimal  
4 impacts if any on light and air.

5           Again it's a modest addition. There is a large  
6 rear yard and the unoccupied path from the front of the  
7 property is remaining.

8           In terms of privacy of use and enjoyment again  
9 there's no windows on the western facing wall of the property  
10 -- sorry, the eastern facing wall of the property to the  
11 west.

12           And the applicant's addition does not propose any  
13 windows that would face that property.

14           And also to note there is a minimal change from  
15 existing conditions. The applicant's existing property is  
16 already three stories. They're completing the rear addition  
17 to expand those three stories.

18           The third story right now is more or less a  
19 mezzanine and this would be expanding that, but the existing  
20 condition is a three-story home.

21           As viewed from the street this would not impact  
22 the character and pattern of homes on the block. Most of the  
23 homes as I mentioned are attached or semi-detached.

24           The front facade will not be altered. The  
25 addition has been pushed back considerably. It is a rear

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1 addition as I mentioned.

2 But it does maintain the general nature and  
3 character of the homes in the neighborhood.

4 And with that I would just note there are three  
5 letters of support, one from the abutting neighbor to the  
6 east and two from other neighbors on the block.

7 The ANC has voted to support this by a vote of 5-  
8 0-1. I know Commissioner Ridge is here if need be. And the  
9 Office of Planning supports the special exception relief  
10 requested.

11 And if the Board has any further questions for  
12 myself or the applicant we'd be happy to answer them.

13 VICE CHAIR HART: Do Board members have any  
14 questions for the applicant?

15 MEMBER WHITE: I'm not sure if the letter that we  
16 received in opposition, whether or not we'll have any  
17 testimony on that.

18 But there was one letter of opposition. She is  
19 here. I didn't know if you had any comments with respect to  
20 that. She did talk about some of the adverse impacts from  
21 her perspective.

22 I guess it's the detached house on the left if I'm  
23 looking at exhibit 12, is that correct? She noted that the  
24 property I guess in its current state was built in 1877 so  
25 it's a very old house.

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1           So I wondered from your perspective what kind of  
2 response you had with respect to any negative impacts it  
3 would have for her.

4           MR. DEBEAR: Right. Thank you for the question  
5 Chair White, Commissioner White.

6           So a few notes on that. My client has talked with  
7 Ms. Maxwell who's the neighbor, the abutting neighbor that  
8 filed the letter. Just a couple of things on that.

9           First of all there's no right to maintain a semi-  
10 detached home. While we do respect Ms. Maxwell's statement  
11 that she'd love to stay a semi-detached home. And to clarify  
12 she is on the shared property line. So technically it is  
13 semi-detached pursuant to the zoning regulations.

14           There is no right to maintain that and as I  
15 mentioned earlier if this was a new build, if this was an  
16 empty lot that the applicant owned they would be able to  
17 attach by right. They wouldn't even need relief.

18           In addition to that and I know she mentioned some  
19 potential impacts on her enjoyment of her rear yard we do  
20 feel as though this is again a modest addition. I think that  
21 being only 4 feet beyond her property really speaks to that.

22           This is not a huge addition. We are not  
23 requesting relief from the 10 foot addition rule.

24           And again I think it aligns really with kind of  
25 the general pattern of homes in the neighborhood. So other

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1 than that I think that kind of speaks for itself in terms of  
2 responding to that letter.

3           And again the applicant has kind of remained open  
4 and willing to speak with her. I think a few of her issues  
5 relate to construction related matters and I think the  
6 applicant, I think they have a good relationship and I do  
7 think he'll maintain communication throughout construction  
8 and work to kind of respond to any issues with the actual  
9 attaching of the structure.

10           And I know she raised some issues in terms of  
11 stormwater runoff and whatnot. So I think that would be more  
12 of a construction, right.

13           VICE CHAIR HART: Are there any other questions  
14 from Board members?

15           MEMBER JOHN: I have a question concerning slide  
16 19. And I wanted you to clarify for me that the dog leg is  
17 what we're seeing there to the left. Is that a correct  
18 understanding?

19           MR. DEBEAR: Yes, that's correct.

20           MEMBER JOHN: Okay.

21           MR. DEBEAR: I'm just going to show the site plan  
22 because I think that gives a better illustration.

23           MEMBER JOHN: It depends. So you said the  
24 neighbor was built to the lot line and that's what I was  
25 about to ask you, the neighbor on the west.

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1 MR. DEBEAR: Yes, the neighbor on the west is  
2 built to the lot line.

3 MEMBER JOHN: Could you go back to 19?

4 MR. DEBEAR: Yes.

5 MEMBER JOHN: So the fence that I'm looking at  
6 there, the metal fence, whose property is that on?

7 MR. MCNAMARA: That's my property, 1612.

8 MEMBER JOHN: And so all of the dog leg is on your  
9 property.

10 MR. MCNAMARA: Yes.

11 MEMBER JOHN: Okay, thank you.

12 CHAIR HOOD: That's not an easement. Nobody  
13 accesses that or uses it for anything.

14 MR. MCNAMARA: No, it's on my property.

15 CHAIR HOOD: All right.

16 VICE CHAIR HART: Any other questions? I think  
17 we can move to the Office of Planning. Good morning.

18 MS. ELLIOTT: Good morning, thank you. I'm  
19 Brandice Elliott representing the Office of Planning. And  
20 we are recommending approval of the requested side yard  
21 special exception.

22 I'll go ahead and stand on the record of our  
23 report but I'm happy to answer any questions you have.

24 VICE CHAIR HART: Are there any questions for the  
25 Office of Planning?

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1           MEMBER WHITE: Just one question. There are no  
2 historical issues here with that property because it's so  
3 old. I don't have any way of verifying that. I'm just  
4 looking at what the opposition letter is in exhibit 31, 37,  
5 38.

6           MS. ELLIOTT: Well, the property is not located  
7 in an historic district so for the purposes of our review  
8 that is not -- that wouldn't have come under our review.

9           Certainly if there are construction issues that's  
10 something that would be addressed through the permitting  
11 process. A lot of times when neighbors are going through  
12 this process there's some sort of construction management  
13 agreement or negotiations that will occur, but that wouldn't  
14 generally happen with the Office of Planning involved.

15           MEMBER WHITE: Okay, thank you.

16           VICE CHAIR HART: Any other questions for the  
17 Office of Planning?

18           CHAIR HOOD: I wanted to ask the applicant at the  
19 appropriate time.

20           VICE CHAIR HART: Go right ahead.

21           CHAIR HOOD: What are you doing to work out Ms.  
22 Maxwell's concerns? I heard you all had a good relationship.  
23 So what are we doing to try to do what Ms. Elliott said. I  
24 got that right this time.

25           What are we doing to try to work out and mitigate

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1 some of these issues?

2 MR. MCNAMARA: She asked us if there were a way  
3 to fill in the other dog leg on the east side of the property  
4 adjacent to my eastern neighbor and the issue there is that  
5 there's not nearly as much space there to build.

6 And she asked if I could fill in that dog leg and  
7 only a portion of the open space between our house and her  
8 house.

9 We did develop a plan but it essentially provides  
10 a similar amount of square footage but would essentially  
11 require tearing down the entire back of our house and  
12 rebuilding it because we'd only be adding a few feet on each  
13 side of the existing foundations rather than maintaining the  
14 existing.

15 So what we proposed as a compromise was to peel  
16 the back of the addition back further so it didn't impose on  
17 her back yard and not extend past the back of her house.

18 She felt that that wasn't a compromise that  
19 addressed her concern and so she didn't want to pursue that  
20 option.

21 CHAIR HOOD: All right. So we'll wait to hear  
22 from her. Thank you.

23 VICE CHAIR HART: And have you -- I'm assuming  
24 you've pursued some sort of construction management  
25 agreement.

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1 MR. DEBEAR: I can let the applicant answer that  
2 but not at this juncture. But I think that he has that on  
3 his mind. He can speak for himself.

4 MR. MCNAMARA: Sure. We're more than willing to  
5 work out a construction management agreement. I know that  
6 noise was a concern and we're absolutely -- it's a concern  
7 for all neighbors. And so we would certainly put up an STC  
8 50 wall at least between the properties and use higher  
9 quality insulation and make sure that we maintain those  
10 privacy issues.

11 I know it was also mentioned that we could do a  
12 termite treatment or something like that that would help  
13 mitigate that risk for both properties.

14 So we're absolutely committed to doing that but  
15 we haven't gotten to that stage at this point. We want to  
16 kind of get through where we wind up with this portion of the  
17 discussion before we got into that.

18 VICE CHAIR HART: Okay. Any other questions for  
19 the Office of Planning or the applicant? Okay.

20 We'll get to Commissioner Ridge. Ridge, I did  
21 have that correct. Sometimes I'm trying to read my  
22 handwriting. Good morning. I'm trying to think of where we  
23 are, good morning.

24 If you'd like to provide any testimony on the  
25 application.

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1 MR. RIDGE: Sure. ANC 6B heard this case twice,  
2 the first at our meeting of our planning and zoning  
3 subcommittee where it was supported. And then we heard it  
4 again at the full ANC where the ANC accepted the  
5 recommendation of its planning and zoning committee and voted  
6 5-0-1 to support this application.

7 Part of the reason that we heard this application  
8 a second time even after passing on P&Z and part of the  
9 reason that the ANC's correspondence not opposing the  
10 withdrawal of this case from the expedited review is that  
11 zoning is an issue that residents often find out about for  
12 the first time when it's something happening to them and so  
13 we just like to have the widest forum for people and their  
14 views.

15 And I know Ms. Maxwell is here today. So part of  
16 the ANC's view is that we support hearing from Ms. Maxwell.

17 So I'm the chair of ANC 6B and also the SMD  
18 commissioner for 1612, 1614 and 1610. And I'm here to report  
19 the position of the ANC which is the ANC supports the  
20 application by Meg Booth and Joe McNamara before you today  
21 and that the ANC notes the support of the immediate neighbors  
22 at 1614 and the opposition of Pam Maxwell, the immediate  
23 neighbor at 1612.

24 One thing apparent to the ANC in this case is that  
25 basically as a matter of right the applicant could demolish

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1 this property and build property line to property line which  
2 is not an esoteric concern because exactly this has happened  
3 only feet away from this address where historic, not  
4 protected but structures key to the fabric of the  
5 neighborhood were razed in order to provide three row houses  
6 in the space of two. This is a real risk across the ANC.

7           It's our view that penalizing the applicant for  
8 retaining the existing structure rather than razing it was  
9 not consistent with the purpose of the zoning code.

10           I would note that 1610 and 1612 are two of the  
11 oldest properties in my SMD and probably two of the oldest  
12 properties in all of Hill East. For better or worse they  
13 stand outside any historic district. They stand even outside  
14 the proposed Barney Circle historic district which I think  
15 runs perhaps to E Street, to the south side of E Street.

16           The applicant's proposed addition substantially  
17 preserves the freestanding appearance of this pair of homes  
18 despite the alignment of 1610 directly on the shared property  
19 line.

20           The ANC P&Z committee wondered whether the  
21 property on which these two homes sit, you'll note that the  
22 applicant has a tax lot and Ms. Maxwell had a tax lot until  
23 it was converted to a record lot quite recently.

24           We wondered whether the property on which these  
25 two homes sit was subdivided after the homes were constructed

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1 in a way that unintentionally placed the wall at 1610 at risk  
2 of adjacent construction.

3 But we found no evidence of such an oversight.  
4 In fact, these lots were clearly subdivided from the master  
5 lot in a way that created a large lot and a small lot. The  
6 applicant's lot is nearly twice the size at about 2,300  
7 square foot of 1612 which would be a non-conforming lot today  
8 and is about 1,200 square feet as I recall.

9 So we found no evidence of an oversight or error  
10 or unknown historical detail that would require us to  
11 consider the matter with care beyond that which we've already  
12 taken. So that's our position.

13 To the particulars of this case what I would add  
14 is I talked to constituents on the block about this case and  
15 I would estimate that about half of my adult constituents  
16 don't know who their ANC commissioner is, don't know what an  
17 ANC commissioner is.

18 That's not the case either with Mr. McNamara, Ms.  
19 Booth, and Ms. Maxwell. And I would guess a similar fraction  
20 don't know that they don't own their front yard, don't know  
21 the name of their zone that they live in and know very little  
22 about what it means, what the zone means in terms of what  
23 they can build, what they cannot build and what their  
24 neighbors can build. And so there's not a lot of  
25 communication about these things. And so that's one of the

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1 reasons we support this hearing today.

2 I bought this jacket at REI. It's a nice  
3 windbreaker. Keeps the rain off though you have a good  
4 ceiling here. It shouldn't be needed indoors. But I wore  
5 it to remind me that I bought a similar rain jacket at REI  
6 about 20 years earlier and they offered to let me join their  
7 co-op in exchange for a few dollars off. And I did.

8 And every year REI sends me a statement explaining  
9 that I can vote in their elections and exactly what it is  
10 that I own. I get more clarity from REI about what I own,  
11 what my ownership interest is in REI than I get from the city  
12 of Washington, D.C. about what property ownership actually  
13 means in terms of what I can do with it.

14 And so that's not a complaint I have to press with  
15 the Board of Zoning Adjustment today, but it's an observation  
16 that I'd like to share on the record. Thank you.

17 VICE CHAIR HART: Okay. Does the Board have any  
18 questions for the commissioner?

19 CHAIR HOOD: So since we're sharing observations  
20 I want to share one with the commissioner.

21 I heard you, and you're the chair of the ANC,  
22 right?

23 MR. RIDGE: That's right.

24 CHAIR HOOD: And you're SMD. You went around and  
25 asked your neighbors that didn't know about ANCs and they

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1 expressed they didn't know what an ANC was. How do you all  
2 notice your meetings?

3 MR. RIDGE: We notice our meetings several ways.  
4 One of them is that we advertise in the Hill Rag and we've  
5 been advertising in the newspaper for many years.

6 And that is very important because we have a  
7 number of constituents who are not digital.

8 We notice our meetings on the website anc6b.org.  
9 And if you go to the office of ANC webpage it lists a web  
10 directory for each ANC and it's my understanding that they  
11 have a hyperlink directly to our webpage.

12 On our webpage we notice our meetings online.  
13 Additionally Chairman Burger notices the committee meetings.  
14 The committee meeting dates and times are also noted  
15 typically with the monthly meeting on the webpage. And the  
16 meetings of the ANC are noticed on Twitter. I think this  
17 meeting was noticed on Twitter.

18 CHAIR HOOD: So it's no conventional way of  
19 putting it on a lamp post and then taking it back down.

20 MR. RIDGE: I would say that advertising in the  
21 newspaper of record for Capitol Hill which is the Hill Rag  
22 could -- we could scarcely have a more conventional way than  
23 that.

24 CHAIR HOOD: All right. I just know Nick Burger  
25 and when I heard, since you opened it up about the coat and

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1 everything so I wanted to open it back up.

2 MR. RIDGE: Please.

3 CHAIR HOOD: But now that you have informed all  
4 your neighbors I'm sure your attendance will increase.

5 MR. RIDGE: We've been advertising in the  
6 newspaper for a very long time. So I think that we have a  
7 lot of residents who as a city, ANC, council, all of the  
8 administrative organs of D.C., we have not done enough  
9 together to explain to people what it means to own property  
10 in the District of Columbia.

11 CHAIR HOOD: I agree, but you have to recycle that  
12 because what happens is -- we can get into that.

13 VICE CHAIR HART: Thank you, Mr. Commissioner.

14 CHAIR HOOD: Okay.

15 VICE CHAIR HART: Okay. So everything I wanted  
16 to know about REI and was afraid to ask. Do other Board  
17 members have any questions for the commissioner?

18 I appreciate you coming down, making some time in  
19 your busy schedule to come down and provide us with your  
20 testimony on this case and kind of how you got to your  
21 decision. That's very helpful.

22 MR. RIDGE: Thank you.

23 VICE CHAIR HART: So is there anyone in the  
24 audience that would wish to speak in favor of the  
25 application? Is anyone in the audience wishing to speak in

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1 opposition to the application? Please come down.

2 And just wanted to make sure, have you been sworn  
3 in? Thank you. Good morning. If you could state your name  
4 and address.

5 MS. MAXWELL: Yes, I'm Pamela Maxwell. I live at  
6 1610 E Street, SE.

7 VICE CHAIR HART: And you would like to provide  
8 some testimony in opposition to this case?

9 MS. MAXWELL: Yes. I'll read this but maybe given  
10 the information that Mr. Ridge shared I'll just add I didn't  
11 come prepared to speak to that but I would be willing to give  
12 feedback on some of that later in terms of information on  
13 notices of zonings and whatnot.

14 Because for this particular case I did not know  
15 it was going to be presented at the ANC until I just happened  
16 to like maybe I should check to see how this process works  
17 and maybe I'm supposed to do something more.

18 VICE CHAIR HART: And I understand.

19 MS. MAXWELL: I didn't come to talk about that.

20 VICE CHAIR HART: That's fine.

21 MS. MAXWELL: But if they're willing to do that  
22 I'd be happy to follow up later.

23 VICE CHAIR HART: I think right now what we'd like  
24 to focus on is your testimony for this particular case. You  
25 have three minutes to present your case. Mr. Moy, if you

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1 could put that on the clock. You see the clock on either  
2 side. And you can begin.

3 MS. MAXWELL: I'll just read through this.

4 VICE CHAIR HART: That's fine.

5 MS. MAXWELL: So yes, I live at 1610 E Street, SE,  
6 the house immediately west of the property in this case. And  
7 I'm opposed to this plan for primarily two reasons that have  
8 been stated already.

9 One, just changing the historical character of my  
10 house from a fully standalone since I'm not connected to any  
11 structures now to being partially connected.

12 And then also just the aesthetics that it may have  
13 on my back yard space.

14 When I purchased my home in 1993 25 years ago I  
15 moved into D.C. from Maryland. One of the main  
16 characteristics that I liked about my house and still greatly  
17 appreciate about it is that it is fully standalone.

18 It's a fact that's one of the first things I say  
19 when describing my house because it's a discriminator. It's  
20 something different that makes it stand out. And as you know  
21 it's fairly unique in this area as was already mentioned.  
22 And I believe changing this characteristic would not only  
23 affect my enjoyment of the house, but could decrease the  
24 value of my place whenever the time might come when I may  
25 wish to sell.

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1           The other concern is related to the impact of the  
2 structure on the property. Although it's only 4 feet back  
3 the back yard of mine is not very large so I think -- I  
4 didn't do the measurements but I think it's about one-third  
5 of the length of my back yard.

6           So over the years it's small but I have enjoyed  
7 that space very much.

8           So those two concerns. But again my primary  
9 concern has been changing the characteristic of the house  
10 which again was said earlier built in 1877 as the records  
11 that I have on it.

12           And since I've owned it I've done what I could to  
13 keep intact the attributes that existed that were historical  
14 in nature. The wood siding on the front, the pine wood  
15 floors in the main floor, fireplace panel, wall cabinet, just  
16 a few of the items there.

17           I have also replaced windows and siding to be more  
18 in line with the historical character of the house than what  
19 it was when I bought it.

20           I've also done significant improvements as well,  
21 tearing down the back one-story addition that was there when  
22 I bought it and replacing it with a two-story addition that's  
23 the same width as the original front of the house.

24           And getting rid of some other issues like external  
25 duct work that was part of the back of the house. Kind of

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1 odd.

2           And so going through all that too I just would say  
3 I can appreciate Joe and Meg's desire for expansions and  
4 improving their house and I appreciated the offer to adjust  
5 their plans, limiting the extension, but after agonizing for  
6 a bit and whatnot I really was concerned about just keeping  
7 the historical nature of the house.

8           So that's where my opposition is from. I'm out  
9 of time. I had a few more items.

10           VICE CHAIR HART: And you also provided some  
11 information on the record as well.

12           MS. MAXWELL: I did and I have a little bit  
13 updated that I can provide what I had here today. Because  
14 I did make an error, I said it was to the east in the  
15 written.

16           VICE CHAIR HART: That's okay. And we do  
17 appreciate you coming down. I know it's hard. It's a lot  
18 of stuff that's kind of going on and understanding what the  
19 procedures are can be daunting at times. So I understand  
20 that that can be hard. It is appreciated that you come down  
21 to voice your opinion on this.

22           And you raised the concerns about changing  
23 historic character. You note that you have a standalone  
24 house and the house does not touch another building.  
25 However, it does touch the wall, the property line, you share

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1 a property line.

2 I'm sure that in the zoning they consider that a  
3 semi-detached house. And so there is a different -- while  
4 I understand what your point is, the way that we look at it  
5 as a structure and as part of the built environment in D.C.  
6 it has a particular definition for that.

7 And that may be different than how you perceive  
8 it, but that is the way in which that is. And I think you  
9 understood that, I just wanted to make sure that that was --  
10 we put that out.

11 And then you were also saying changing the  
12 aesthetic of your back yard space. And you're just saying  
13 that because you have a shorter back yard that this will take  
14 up -- it'll I guess block a portion of that, of your back  
15 yard space and you're just concerned about that as well.

16 MS. MAXWELL: Right, yes. So for now my back yard  
17 space has an open view because their house doesn't extend  
18 beyond the back of my house.

19 VICE CHAIR HART: You're both even.

20 MS. MAXWELL: No, we're not quite even right now.  
21 They're shorter.

22 VICE CHAIR HART: Oh, I see.

23 MS. MAXWELL: And then it would be three stories  
24 tall too, so it would go back further and then up three  
25 stories which now there's nothing there. And it's probably

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1 about one-third of my back yard.

2 VICE CHAIR HART: Okay. Thank you. Any questions  
3 for Ms. Maxwell?

4 MEMBER WHITE: Just one question. The applicant  
5 mentioned that he proposed some alternatives to try to get  
6 to something that was agreeable on both sides.

7 Can you expand on that a little bit in terms of  
8 why that was not something you were willing to do? That was  
9 the first question. Then I had another question for the  
10 applicant later.

11 MS. MAXWELL: Yes. So really the only alternative  
12 that was presented was to shorten the extension. There was  
13 not any alternative presented that didn't attach to my house.

14 And I had said previously that that was the main  
15 concern. My secondary concern was the extension. So I just  
16 felt that since that was my primary concern I couldn't at  
17 that time agree to compromising that.

18 But understanding what Mr. Hart said in terms of  
19 I'm on the property line and the implications of that.  
20 Depending on how the decisions go that I do appreciate the  
21 willingness to make that modification if my primary concern  
22 can't be addressed.

23 MEMBER WHITE: Okay.

24 VICE CHAIR HART: Thank you. Any other questions  
25 from the Board members for Ms. Maxwell? Okay.

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1           So we'll go back to the applicant. Thank you very  
2 much. If you could turn your mike off, thank you. We'll go  
3 back to the applicant. Sorry, I should be looking at you,  
4 Mr. DeBear.

5           MR. DEBEAR: Always happens.

6           VICE CHAIR HART: So do you have any closing  
7 statements that you'd like to make?

8           MR. DEBEAR: I do. I'd like my client to quickly  
9 address a couple of things as the project architect. And  
10 then I just have a quick closing statement.

11          VICE CHAIR HART: Thank you.

12          MR. DEBEAR: And I have one procedural matter but  
13 we can deal with that at the end.

14          MEMBER WHITE: As you make your closing remarks  
15 can you incorporate why that addition could not go on the  
16 other side. I know you said you'd have to rip down, go into  
17 your house. Just so I understand why that was not an option  
18 because logically I would say well just move it on the other  
19 side but obviously there were some issues with that.

20          MR. MCNAMARA: Right. So the difference being on  
21 the east side the dog leg is only about 4 and a half feet to  
22 the property line. So we'd only be able to gain roughly 4  
23 feet of livable space by expanding there.

24                 Whereas on the other side, on the west side  
25 towards Ms. Maxwell's property there's about 9 feet of space

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1 that we can gain there. And it's usable space to create a  
2 mudroom and a laundry room.

3 So adding 4 feet on one side and 4 feet on the  
4 other really just creates two small little corridors that are  
5 not very usable unless we were to tear down the entire back  
6 of the house, the foundations where the back of the house  
7 sits down and rebuild and incorporate that 4 feet on both  
8 sides to take that square footage. There's a financial  
9 consideration with that.

10 And we also felt that it was more detrimental to  
11 do that to our eastern property because they do have windows  
12 and a door that face that property line. They're about 4  
13 feet away from that property line.

14 And so building right up on that property line we  
15 felt like was an even greater imposition on that neighbor  
16 than the proposal we're making to Ms. Maxwell's property  
17 which has no windows on that side.

18 And I just wanted to note that the historical  
19 character mention about the perception of the two homes being  
20 separated. We are maintaining that separation on the front.  
21 And so it will still have that character. The addition  
22 starts 26 feet back from the front of the house.

23 So the open space is about 26 feet. That's all.

24 MR. DEBEAR: And just to close I believe we've met  
25 the special exception standard. Again why the addition is

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1 not on the other side is not part of the standard, but I  
2 think our client has kind of stated why they chose to do the  
3 design that they did.

4           And I think the main concerns raised by Ms.  
5 Maxwell while we respect them are not really directed toward  
6 the legal standard of the special exception. Her primary  
7 concern is clearly not wanting to attach and I think as we've  
8 adequately laid out that really isn't toward the special  
9 exception standard.

10           And just to clarify again as Office of Planning  
11 stated we're not in a historic district so there are no  
12 historic preservation requirements here. Thank you.

13           VICE CHAIR HART: Thank you very much. Any other  
14 final questions for the applicant?

15           MR. DEBEAR: Just one procedural matter. We did  
16 file the affidavit of maintenance this morning. The  
17 applicant actually maintained because this is home so he can  
18 testify that it's been maintained. But we would just request  
19 that the Board waive the timeliness factor of filing the  
20 affidavit of maintenance. I believe it has to be filed two  
21 days before the hearing and I apologize for that.

22           VICE CHAIR HART: Any explanation as to why?

23           MR. DEBEAR: Why it wasn't filed? It was just an  
24 oversight and I apologize. But again the applicant can  
25 testify that it's been maintained if need be. And the

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1 affidavit was filed this morning.

2 VICE CHAIR HART: That's exhibit 41.

3 MR. DEBEAR: It would be the most recent exhibit.  
4 I did hand it to the secretary. The affidavit of posting is  
5 exhibit 41. The affidavit of maintenance if it's been  
6 entered in the record would be exhibit 45. Forty-six.

7 VICE CHAIR HART: I hadn't seen it. That's why  
8 I was asking. Okay, it's just not on our system yet  
9 evidently.

10 MR. DEBEAR: And the applicant can confirm again  
11 if need be in the record.

12 VICE CHAIR HART: Sure since we actually don't  
13 have this I would appreciate that.

14 MR. MCNAMARA: I can testify that the sign has  
15 been maintained on the site since it was posted on -- I  
16 forget the date it was posted.

17 MR. DEBEAR: It was posted 15 days before the  
18 hearing date.

19 MR. MCNAMARA: And it has remained there and still  
20 remains there today.

21 VICE CHAIR HART: And the applicant has of course  
22 given their oath so we know that you're telling the truth.  
23 What was the question I was going to ask. Okay, I didn't  
24 have a question.

25 So you're asking us to waive the two-day

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1 requirement.

2 MR. DEBEAR: Just the two-day requirement. Not  
3 the maintenance itself.

4 VICE CHAIR HART: Do the Board members have any  
5 discussion about that? About waiving it. Any objection to  
6 it I should say.

7 MEMBER WHITE: No objection.

8 VICE CHAIR HART: Okay. Hearing none we will  
9 waive that requirement.

10 MR. DEBEAR: Thank you.

11 VICE CHAIR HART: So with that I think we can  
12 close the hearing. Is the Board ready to deliberate or would  
13 you like some time to think about this longer? Ready? Okay.

14 So I'll start. I do appreciate everyone coming  
15 down today. I know that property rights are -- they're  
16 things that everyone gets emotional about. And you don't  
17 want anything happening to your property that's adverse to  
18 what you are expecting. So I do appreciate you all coming  
19 down and providing testimony.

20 Our job is to look at the special exception  
21 criteria under the zoning regulations and determine whether  
22 or not we believe that the applicant, in this case it's Mr.  
23 McNamara, has provided sufficient information for us to grant  
24 it or if we don't believe that they've provided sufficient  
25 information then we would be denying it or possibly asking

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1 for additional information.

2 In this case I after listening to all of the  
3 testimony including the Office of Planning report and  
4 reviewing the ANC resolution which I see is exhibit 45, the  
5 Office of Planning report is exhibit 40, I would be in  
6 support of the Office of Planning report and that was their  
7 recommendation to approve this special exception.

8 And I do understand that this is not something  
9 that Ms. Maxwell is necessarily wanting to hear. I will say  
10 that listening to the ANC chair, Commissioner Ridge, did help  
11 to understand this issue a little bit further in that the  
12 applicant is trying to work within the parameters of the  
13 building that they already have and they have a difficult  
14 building.

15 In terms of trying to have a fairly modest, we see  
16 a lot of additions to buildings these days and this is fairly  
17 modest in comparison. But also just fairly modest for the  
18 neighborhood.

19 I believe that the applicant has provided  
20 sufficient information for me to be able to agree that they  
21 have met the criteria for the special exception which is  
22 subtitle E 5201 to allow a three-story and rear addition to  
23 a three-story semi-detached principal dwelling in an RF-1  
24 zone and also not meeting the site requirements of subtitle  
25 E 307.4.

1 I don't know if my fellow Board members have any  
2 comments on this as well?

3 CHAIR HOOD: I would agree with you, Mr. Vice  
4 Chairman and your analysis.

5 One of the things that I found very striking was  
6 that this was on the expedited review. And I appreciate the  
7 ANC with all the work that they do as our front line elected  
8 officials.

9 I appreciate their actually hearing this I believe  
10 twice which means a lot. And I think that the merits of this  
11 case do meet a special exception.

12 But I would ask the applicant to continue to work  
13 with Ms. Maxwell. Even though sometimes in these cases you  
14 don't get everything you want. It's a compromise. But I  
15 would ask that you continue to work with the neighbor even  
16 though we might close the gap even further.

17 But I think the merits of this case, Mr. Vice  
18 Chairman, warrants the special exception relief from this  
19 Board. Thank you.

20 MEMBER WHITE: Mr. Vice Chair, I would echo what  
21 Commissioner Hood just said. I apologize for asking all the  
22 historical questions but I am sensitive to both the applicant  
23 and Ms. Maxwell and I can understand why she pushed back on  
24 having that structure being built to the rear yard of her  
25 house.

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1           But the reality is that it is on the lot line so  
2 we've got to follow the criteria set forth in the  
3 regulations. But again I would echo what Commissioner Hood  
4 said in terms of continuing to work with your neighbor  
5 because you're both not going anywhere so you've got to live  
6 together in harmony there.

7           So I would hope that you continue to communicate  
8 and share with her the construction plans and take care of  
9 things like you said termite inspections of that nature.

10           So I would at this point be supportive of the  
11 special exception relief for the rear addition.

12           MEMBER JOHN: Mr. Vice Chair I support what my  
13 colleagues have already said. I believe the applicant meets  
14 the condition for special exception in this case.

15           And while I emphasize with the neighbor's concerns  
16 as long as the conditions are met for special exception the  
17 Board really has to follow what the regulations require.

18           It's a beautiful house, nicely maintained.  
19 Unfortunately it's also built to the lot line and the  
20 applicant has made an effort to retain the existing dog leg.  
21 So that should not create more impacts in terms of light and  
22 privacy.

23           And so unfortunately we must grant the  
24 application.

25           VICE CHAIR HART: Hearing from all the Board

1 members I would then move to approve application 19715 of  
2 Joseph McNamara and Meg Booth which is pursuant to 11 DCMR  
3 subtitle X chapter 9 for special exception under subtitle E  
4 5201 from the side yard requirements of subtitle E 307.4 to  
5 construct a third story and rear addition to the existing  
6 one-family dwelling in the RF-1 zone at premises 1612 E  
7 Street SE square 1090 lot 804.

8 Do I have a second?

9 MEMBER WHITE: Second.

10 VICE CHAIR HART: Hearing a second all those in  
11 favor say aye.

12 (Chorus of ayes)

13 VICE CHAIR HART: Any opposed? Motion carries,  
14 Mr. Moy.

15 MR. MOY: Staff would record the vote as 4-0-1.  
16 This on the motion of Vice Chair Hart to approve the  
17 application for the relief being requested. Seconding the  
18 motion Ms. White. Also in support Mr. Anthony Hood, Ms.  
19 John. We have a Board member not present not participating  
20 today. The motion carries.

21 VICE CHAIR HART: Summary order, Mr. Moy.

22 MR. MOY: Thank you.

23 VICE CHAIR HART: Thank you all. Can you call the  
24 next case, Mr. Moy?

25 MR. MOY: Yes, that would be case application

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1 number 19721. This is Zhenwei Qiang. And I don't mind you  
2 correcting my pronunciation.

3 This application has been amended for area  
4 variances from the non-conforming structure requirements  
5 subtitle C section 202.2, lot occupancy requirements of  
6 subtitle F section 604.1 to repair and expand an existing  
7 rear and side deck addition to an existing attached principal  
8 dwelling unit, RA-8 zone.

9 This is at 2131 N Street NW square 69 lot 181.

10 VICE CHAIR HART: Thank you, Mr. Moy. Good  
11 morning. If you could please introduce yourselves from my  
12 left to right.

13 MR. GREIGG: My name is Michael Greigg. I'm with  
14 Soe Lin & Associates architects. Address 4340 East West  
15 Highway, Suite 105, Bethesda, Maryland.

16 VICE CHAIR HART: Greigg.

17 MR. GREIGG: Greigg.

18 VICE CHAIR HART: Thank you.

19 MR. PITT: Alexander Pitt. I'm the home owner and  
20 live at 2131 N Street NW in Washington, D.C..

21 VICE CHAIR HART: Thank you.

22 MS. QIANG: I'm Zhenwei Qiang. I'm the co-owner  
23 of the house. Thank you.

24 VICE CHAIR HART: Thank you very much. And Mr.  
25 Greigg I'm assuming you're going to be presenting the case

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1 to us. You may begin at your pleasure.

2 MR. GREIGG: Thank you, Chairman. This case  
3 actually dates back a couple of years. We had gotten a  
4 variance to do a third floor addition and at that time we had  
5 to get the lot coverage amended because it was a non-  
6 conforming site.

7 We weren't planning on doing anything to the deck  
8 other than repairing it in the back so the drawings that were  
9 submitted to the BZA were primarily for the third story  
10 addition.

11 The reason why the third story addition came under  
12 lot coverage also was because it was on a non-conforming  
13 court.

14 Since then the zoning codes have been changed and  
15 the court is now conforming. So we have different  
16 regulations and numbers.

17 We're seeking a minor variance because we're over  
18 the 70 square foot lot coverage. Because we were under the  
19 assumption that the original deck was under 4 feet off the  
20 ground.

21 It turned out to be about 4 foot 3. Now in the  
22 report that was given here it says it was 4'6 but it's  
23 actually not that tall.

24 We'd also like to just --

25 VICE CHAIR HART: I'm sorry, what are you reading

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1 right now?

2 MR. GREIGG: This is the zoning report.

3 VICE CHAIR HART: Exhibit 45.

4 MR. GREIGG: I want to correct one other piece of  
5 item on that same report.

6 VICE CHAIR HART: I'm sorry, can you say what page  
7 are you looking at and what part are you saying is incorrect.

8 MR. GREIGG: This is page 204 deck height. It  
9 says it's 4 foot 6. It's not actually 4 foot 6, it's about  
10 4 foot 3.

11 VICE CHAIR HART: Okay.

12 MR. GREIGG: And the other piece that needs to be  
13 corrected says lot width. It says after existing -- existing  
14 after new construction. The property didn't get smaller.  
15 It's still 16 feet 6.7.

16 VICE CHAIR HART: Okay.

17 MR. GREIGG: So we completed the plans. We went  
18 through DCRA. We have a permit. We completed the project  
19 including the modifications to the deck.

20 And upon the final inspection of the project it  
21 was brought to our attention that the deck was in fact a  
22 couple of inches higher than 4 feet. So we've gone through  
23 the process of getting to this point, going through the ANC  
24 ZBD and we've gotten approvals. It's not a historical issue.

25 And so what we're asking for really is 1.5

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1 percent. Because the original deck was 70.4.

2 Now, going down the --

3 VICE CHAIR HART: If you could let me know or at  
4 least explain -- it seems as though part of the issue here  
5 because the Office of Planning is recommending denial for  
6 this case.

7 MR. GREIGG: Correct, because --

8 VICE CHAIR HART: Hold on a second. Let me ask  
9 the question first. So the reason that they're saying that  
10 is because there was an error. And that error kind of  
11 compounded.

12 The error was at some point either the documents  
13 that were submitted or the buildout was built larger than the  
14 permitted lot occupancy. And because the deck was a certain  
15 height, it was over 4 feet regardless if it's 4'3 or 4'6 it  
16 still is included in the lot occupancy calculation and that  
17 threw the building over the lot occupancy amount.

18 And so right now from what I understand your  
19 client is looking to increase the deck by a couple of feet.

20 MR. GREIGG: Yes, approximately 24.

21 VICE CHAIR HART: Twenty-four inches.

22 MR. GREIGG: Twenty-four feet. Twenty-four square  
23 feet.

24 VICE CHAIR HART: But how much additional is it  
25 from what it is currently?

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1 MR. GREIGG: What we did was we extended it 2 feet  
2 towards the back of the property line only on part of the  
3 deck. Because part of the deck also includes a stair.

4 VICE CHAIR HART: Okay. So variances are as  
5 you're probably well aware much more difficult to achieve  
6 because there is -- the variance is that you are varying from  
7 what is allowed under zoning.

8 Special exceptions are actually things that are  
9 allowed under zoning in special circumstances which is why  
10 they have this certain name.

11 I'm not telling you -- I'm describing this because  
12 you're requesting something that is outside of what we  
13 normally do and there have to be exceptional circumstances  
14 for us to be able to then say okay, well because of this then  
15 we have that.

16 And what I'm trying to get to is what are the  
17 exceptional circumstances that have led to this beyond it  
18 being a calculation error. Because calculation errors are  
19 not something that -- that's something that you do that's a  
20 physical thing.

21 What is it from this particular site makes it the  
22 lot line, the topography, something that would make this  
23 exceptional so that it would then cause you to require a  
24 variance for lot occupancy.

25 MR. GREIGG: We agree that there's not a lot

1 there. There's nothing topography. The lot is rectangular.  
2 It's primarily a mathematical error.

3 But primarily the reason why we're here is because  
4 it's already built. And to take it down becomes a hardship  
5 at that point.

6 And so we have had long discussions with the  
7 Office of Zoning and we understand their position on that.

8 What we're asking is that because it's very minor  
9 and you can refer to the documents on the site plan that a  
10 portion of the existing deck actually goes down the open  
11 court. That actually overlaps where it used to be a non-  
12 conforming and it was already considered lot coverage.

13 So what we're really asking for is very minor  
14 because it's not impacting the lot coverage really because  
15 the zoning changed between the time we started and the time  
16 we are at now.

17 VICE CHAIR HART: Can you provide me -- you said  
18 in the drawings. I see one exhibit which is exhibit 7.  
19 That's the only architectural plans that you've provided to  
20 us?

21 MR. GREIGG: The architectural plans are the ones  
22 we submitted for DCRA, correct?

23 VICE CHAIR HART: I'm just saying for our exhibits  
24 you submitted to us. And so I'm looking at the exhibit. Can  
25 you describe or show the part that is -- because part of this

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1 is that we're trying to understand where you began in terms  
2 of the amount of lot coverage and where we are now.

3 MR. GREIGG: Sure. I'm not sure what the number  
4 of the document that you have in front of you. I do have a  
5 site plan here of the existing condition before any  
6 modifications.

7 VICE CHAIR HART: And any modifications being.

8 MR. GREIGG: We extended the deck 2 feet towards  
9 the back of the property line because we felt that it was  
10 below the 4 foot. And it wouldn't be counted towards lot  
11 coverage.

12 VICE CHAIR HART: Okay. You can continue with  
13 your presentation.

14 MR. GREIGG: And again if it was tabulated  
15 correctly from the beginning the lot coverage would have been  
16 about 77 percent based on the old zoning code. Now we are  
17 at 71.9.

18 Going down the list here, continuing the  
19 presentation, substantial detriment to the public good. It  
20 notes in the zoning report that a neighbor's house two doors  
21 down actually has a similar size deck. And that's a little  
22 understated.

23 Their property is 100 percent lot coverage and  
24 we're sitting at 71.

25 VICE CHAIR HART: Are you making that assumption

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1 or do you have some documentation that is saying that?

2 MR. GREIGG: No, we have -- you can see it in the  
3 site plan. Not the site plan but the aerial photography  
4 shot.

5 VICE CHAIR HART: Sorry, I have to go by exhibits  
6 because that's what we -- so if someone's listening to this  
7 they can figure out where we are.

8 MR. GREIGG: The property was 7121 N Street. 2127  
9 N Street. And they actually have a deck that goes over top  
10 of the entire parking area. They can park their car  
11 underneath the deck. So they are sitting at about 8 feet off  
12 the ground.

13 Not that we're -- I know that the Board of Zoning  
14 Appeals doesn't use that as a criteria and we're not saying  
15 that, but because it was mentioned in the zoning office  
16 report we're not trying to do that.

17 VICE CHAIR HART: Okay. You can continue.

18 MR. GREIGG: Okay. We're also -- we're not  
19 affecting the neighbors' property because the previous deck  
20 was dilapidated. It was actually falling onto their property  
21 so we were able to straighten that out.

22 It doesn't affect light and air since it's low.  
23 It's not any higher than it was before.

24 And just in closing we've been through the ZPD,  
25 the ANC, and have support from the neighbors as part of the

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1 submission.

2 VICE CHAIR HART: Okay. Did the Board members  
3 have any questions for the applicant? I know I do and it's  
4 really on the Office of Planning report on page 3. They talk  
5 about the exceptional situation resulting in a practical  
6 difficulty.

7 And they believe that, their assertion, the very  
8 last sentence in that paragraph says that OP does not  
9 conclude that this is an exceptional situation because the  
10 applicant provided DCRA with inaccurate plans based on  
11 incorrect surveying measurements.

12 And so while I understand that I'm trying to  
13 understand how -- the issue that they raise is that there was  
14 a problem that then, as I said earlier, it compounded itself  
15 in this because it created a greater lot occupancy for your  
16 property and that then made this much more difficult for you  
17 to build even though it seems like a fairly small project in  
18 terms of additions.

19 The other issue that OP raised is that they did  
20 not see an exceptional reason for the site lot occupancy  
21 being increased beyond 70 percent. So permitting a higher  
22 relief would weaken the integrity of the zoning regulations.

23 And that's a part of this as well. And I'm trying  
24 to understand how you -- anything you have said negates what  
25 they've raised. And I don't see how that has negated what

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1 they've raised.

2           If you'd like to add some to this, please. Mr.  
3 Pitt.

4           MR. PITT: Yes, if I may. I think one has to see  
5 the measurement error together with the lot occupancy. And  
6 we have before as the report states we were already beyond  
7 under the new regulations which were not in force at the time  
8 when we submitted the original plans. So we were at 70.4  
9 percent lot occupancy.

10           And because this 2 feet extension is just 2 inches  
11 too high this is why we move 1.5 percentage points higher to  
12 71.9 percent lot occupancy.

13           So this is just, I mean it's because of a small  
14 error, a slight transgression over the possible 70 percent  
15 anyway which we had under the existing conditions before  
16 already. It's becoming slightly bigger.

17           And I think the hardship comes a little bit with  
18 the proportionality. If we have to tear down the deck again  
19 now it costs thousands of dollars because of basically two  
20 inches. So I think it's a proportionality issue.

21           VICE CHAIR HART: But you're also asking to expand  
22 the deck.

23           MR. PITT: This is built.

24           VICE CHAIR HART: Sorry, this is very -- while it  
25 isn't a whole lot of pieces to it there are a lot of things

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1 that have happened that are either have happened or going to  
2 happen or not happened. And so you are trying to do this  
3 retroactively.

4 MR. PITT: Right. We want nothing to happen now.  
5 That would be the best.

6 MR. GREIGG: If I may, under the previous zoning  
7 if we included the deck we would be around 77 by zoning as  
8 existing non-conforming.

9 But because the Zoning Code changed and they took  
10 out the non-conforming court the new lot coverage of existing  
11 non-conforming is 70.4. So we were already over. So we  
12 would already be here anyway just to repair the deck.

13 VICE CHAIR HART: Okay. Any questions from the  
14 Board members.

15 MEMBER JOHN: I have a question. Is there any way  
16 -- since the Office of Planning has recommended that the deck  
17 be reduced to the 70 percent is there any way to achieve that  
18 without tearing down the whole deck?

19 MR. GREIGG: They're asking us to take down 1.5  
20 percent. Where we do that is because they've agreed or are  
21 making a recommendation that they would support 70 percent  
22 we're looking at 1.9 percent of the deck.

23 Is there a portion of that, it's all a function  
24 of money.

25 MEMBER JOHN: I know. But because you're

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1 requesting a variance and you have to show some sort of  
2 extraordinary burden what's the magnitude of the burden.  
3 You're not tearing down the whole deck. You're just trying  
4 to bring it within the 70 percent lot occupancy.

5           And I take the point that it's not a huge  
6 difference. But I think the Board needs to know what exactly  
7 the burden would be. Because tearing down the whole deck  
8 doesn't seem to me to be the reasonable option.

9           MS. QIANG: May I speak. So the deck, basically  
10 the orientation of the wooden beams is such that if we need  
11 to reduce these two feet, so all the pieces need to be cut  
12 through. And then the iron bars also as you can imagine at  
13 the end of the deck. So all the iron bars need to be removed  
14 and basically I think re-manufactured and put in the new  
15 place. So that's the magnitude that would be required to  
16 actually hold back.

17           Let me just add one piece of information from the  
18 owner's perspective is that the current deck that we built  
19 is exactly the same height as the previous deck, as the old  
20 deck we wanted to repair.

21           So from our end it's that it was really an honest  
22 mistake in the sense that we really thought the deck was  
23 actually around 4 feet or a little bit below so we just  
24 simply used the same foundation for the renovation. So I  
25 just want to add this piece of information for your

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1 consideration.

2 MR. PITT: If I may. One additional thing also.  
3 In addition to the custom made steel bars that support the  
4 fencing around the deck also underneath the deck there is a  
5 plastic cover that prevents rain from going into the area  
6 underneath. So we have to tear that down, the entire thing  
7 as well if we have to cut the deck away.

8 So it's not insubstantial. It's not just cutting  
9 off a little bit. Thank you.

10 VICE CHAIR HART: I think we'll move to the Office  
11 of Planning for your report. Good morning. Good afternoon.

12 MS. MYERS: Good afternoon. Crystal Myers for the  
13 Office of Planning. As you all have noted the Office of  
14 Planning is recommending denial of this case because we did  
15 not feel that the applicant provided an argument to support  
16 a variance relief.

17 Instead the Office of Planning is recommending  
18 that this project be reduced, this deck size be reduced to  
19 allow for a 70 percent lot occupancy on the site which would  
20 be a special exception review.

21 And we believe that this does meet the special  
22 exception criteria and would be something we could support.

23 I'd also just like to note that back when this  
24 project, the addition was reviewed a few years back it was  
25 reviewed under the understanding that the existing lot

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1 occupancy was under 70 percent. So it was reviewed as a  
2 special exception review.

3 If it had come in with the correct numbers on the  
4 existing site it would have been reviewed as a variance  
5 relief. So just another piece of information to add in  
6 there. That's all.

7 VICE CHAIR HART: Thank you, Ms. Myers. So you're  
8 recommending that the applicant reduce the size of the deck  
9 itself.

10 I know that you've discussed this with them. Is  
11 there anything that they've said today that would change your  
12 mind on it or are you still at the same -- do you stand by  
13 your report?

14 MS. MYERS: Stand by the staff report still.

15 VICE CHAIR HART: Any other questions for the  
16 Office of Planning?

17 MEMBER WHITE: So the Office of Planning's  
18 position is essentially in order to meet the standard that  
19 they would have to modify the deck.

20 MS. MYERS: Correct. The allowed lot occupancy  
21 is 60 percent so anything over that would have been a special  
22 exception review up to 70 percent. So we believe that 70  
23 percent, we've taken a look at this project and we think that  
24 it does meet that special exception criteria.

25 But beyond 70 percent we're not able to support

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1 it.

2 VICE CHAIR HART: Any other questions for the  
3 Office of Planning? Does the applicant have any questions  
4 for the Office of Planning?

5 Is the ANC here? No representative. Is there  
6 anyone here wishing to speak in opposition to the case?  
7 Anyone here wishing to speak in support of the case? Okay,  
8 no hands were raised.

9 So bring it back to the Board. The issue that I'm  
10 -- and I think you heard probably some of my in the  
11 questions. The issue that I have with the case is that I  
12 understand that this may have started as an error and is now  
13 something that you're having to grapple with and you have to  
14 have somebody here, you have to come here, you have to have  
15 somebody here to represent you. All of that is cost.

16 The Office of Planning is not in support of this.  
17 I think that -- and as I've noted variances are not easy to  
18 get and you do have to show why this should receive that.

19 I really haven't understood and I still don't  
20 understand what it would take to reduce this to a special  
21 exception. I understand that you say that there is a cost.  
22 I understand that there is a cost. But I need to figure out  
23 what that cost, see what that cost is before I'd be  
24 comfortable with making a recommendation on this one way or  
25 the other.

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1 I think that there may be a way to do this but  
2 again I don't know. I'd like to hear from other Board  
3 members if they have any thoughts on this.

4 Personally I would like to see if it's possible  
5 to get this under 70 percent. I don't think that there is  
6 enough for me to be able to say that I'd be in support of  
7 this.

8 So I think that you all need to really take a hard  
9 look at getting underneath the 70 percent threshold. Again  
10 I'd like to hear from my colleagues on this. So I'll open  
11 the floor.

12 MEMBER WHITE: Just quick comments. I'm looking  
13 at the new deck images. What is that. Where you're showing  
14 actually all the beams and the wood. So I can see that it's  
15 going to be a costly process in getting that done.

16 But I also understand that the variance test is  
17 a very strict test and it's not something that we can easily  
18 approve of without meeting the strict criteria.

19 So Mr. Vice Chair I would be okay in maybe getting  
20 some additional information in terms of particularly that  
21 first prong, the exceptional situation resulting in a  
22 practical difficulty.

23 And also getting some information that would show  
24 the cost associated with getting it to a point where it could  
25 meet the special exception test of 70 percent.

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1           Because right now I'm just not there.

2           CHAIR HOOD: Mr. Vice Chairman I think this would  
3 be a heavy lift for me even with the cost analysis. I  
4 believe that this can be worked out. I believe that they can  
5 figure out a way to bring this into compliance for a special  
6 exception under the 70 percent threshold.

7           This is a heavy lift. Variances as we said is a  
8 high threshold. I just don't believe -- and here's the other  
9 thing. I've heard the discussion between you, Mr. Vice  
10 Chair, and the applicant talking about the mistakes.

11           The mistakes as you've already mentioned have  
12 compounded on the mistakes you made and more mistakes. And  
13 the more we keep going the more mistakes we have.

14           So I really think that I would encourage the  
15 applicant at least from my standpoint to go back and try to  
16 work and see how they can come down to the 70 percent for the  
17 special exception criteria as opposed to the variance because  
18 variances are not easy to get. They have a higher threshold  
19 as has already been mentioned.

20           And right now I'm not there. And even with the  
21 cost analysis I don't think I would be there. I think  
22 there's a way to work it out. I've seen it done. The  
23 question is do you want to work it out. That's my comments.  
24 Thank you, Mr. Chairman.

25           VICE CHAIR HART: I appreciate that. And I'm

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1 asking for the cost analysis because I think they need to do  
2 the due diligence aspect of this so that I understand why  
3 that's too costly to do. I'm just saying that we don't have  
4 it. It's somebody saying that it's costly but I don't know  
5 what that costly means.

6 CHAIR HOOD: I agree. But I was just saying for  
7 me even that might not even help me get there.

8 VICE CHAIR HART: I get it. I understand.  
9 Appreciate it.

10 MEMBER JOHN: Mr. Vice Chairman, I would like some  
11 time to think about this case further. And I think the cost  
12 analysis could help.

13 I am also having a difficult time with the  
14 variance test because the standard is so high. And I don't  
15 know how we can find that a measuring mistake is an  
16 exceptional condition. I don't know how we do that.

17 But I do appreciate the applicant's statement that  
18 they were simply replacing a deck that was already there.  
19 And so I think it would be helpful to have the cost analysis.  
20 It would be better to bring it under the special exception  
21 criteria because that takes away much of the angst about  
22 granting the request.

23 So to the extent that you can meet the Office of  
24 Planning halfway then I think that would be a lot easier for  
25 everyone.

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1           VICE CHAIR HART:  And thank you very much for all  
2 of your comments.  I think one of the things that would be  
3 helpful is this cost analysis, or at least just what the cost  
4 is going to be for it.

5           But also I'd like to see some plan that would  
6 reduce this deck because I do believe that the special  
7 exception criteria would be more in keeping with -- I think  
8 it would be an easier threshold for you to be able to get to  
9 to move over than it would be for the variance itself.

10           I also say that while it may not be something that  
11 you necessarily liked I guess it is good that the process did  
12 catch this because you got it kind of late, but you did  
13 receive some information from the last inspection when they  
14 were kind of finishing up this process to kind of say wait  
15 a second, there's something wrong here.

16           Again it is late, but it is something that's kind  
17 of why you have all of these inspections during the process.  
18 But you'd like to say something.

19           MR. GREIGG:  Yes, as a matter of fact of the  
20 inspections we had framing inspections and it was never  
21 brought to our attention at that point.  And we can't lower  
22 the deck down because we're coming out of the basement  
23 underneath the deck and coming out that way.  So lowering the  
24 deck is not an option.

25           As the homeowners had mentioned the deck has only

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1 been -- we're still using the floor joists from the original  
2 deck but we put a new fence around it and we put a new  
3 surface on the deck itself.

4 VICE CHAIR HART: I understand. But you  
5 understand the conversation that's gone on up here.

6 MR. GREIGG: Yes, sir.

7 VICE CHAIR HART: Do you have an idea about when  
8 you would be able to get information to us? I mean we can  
9 wait for a month if you'd like. It's up to you when.

10 MR. GREIGG: I think two weeks ought to give us  
11 enough time to get a contractor over there and get us a good  
12 analysis for you.

13 VICE CHAIR HART: And this would be for the cost  
14 analysis and getting the -- some drawing to show how you  
15 could possibly reduce the deck.

16 MR. GREIGG: Yes, sir.

17 VICE CHAIR HART: So you're saying that you would  
18 take two weeks to get that. I need to see a calendar. So  
19 we're on the fourth. So this would be anything toward the  
20 end of the month. What does the 25th of April look like or  
21 the 2nd of May look like?

22 MR. MOY: I wouldn't do anything prior to the 25th  
23 of April. So either the 25th of April or the 2nd of May  
24 would be fine.

25 VICE CHAIR HART: And what's the caseload look

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1 like?

2 MR. MOY: For the 25th?

3 VICE CHAIR HART: Yes.

4 MR. MOY: We have six cases in the hearing session  
5 on the 25th and on May 2nd we have six also, one of which is  
6 an appeal that is 50/50.

7 VICE CHAIR HART: Why don't we schedule this for  
8 the 25th of April then. In that case we would then receive  
9 documents the end of that week, the 20th.

10 MR. MOY: I thought I heard the architect say that  
11 they could have a submittal in two weeks which would be the  
12 18th. Then why don't you file on Wednesday the 18th to give  
13 the Board plenty of time to review your filing. April 18th.

14 VICE CHAIR HART: Okay.

15 MR. GREIGG: Yes, that's fine.

16 VICE CHAIR HART: Okay. So we will then receive  
17 the documents from you on April 18th and we will have a  
18 continued hearing on the 25th of April. And I think that's  
19 it.

20 MR. MOY: Would you need a supplemental from the  
21 OP?

22 VICE CHAIR HART: Yes. Ms. Myers is laughing at  
23 me, that's probably not a good thing. So that would give you  
24 a few days I guess to look at it. Does that work with your  
25 schedule? Okay. Seeing a nod from the Office of Planning

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1 that seems to work with their schedule as well.

2 So do you have a date for the Office of Planning  
3 report as well?

4 MR. MOY: I would suggest if it would assist OP  
5 I would suggest either that Friday the 20th of April or  
6 Monday the 23rd of April.

7 VICE CHAIR HART: How about the 23rd? April 23rd.  
8 Okay. Thank you all very much. So we'll see you back here  
9 on the 25th of this month. Thank you.

10 Okay, so it looks like Mr. Moy we can move to our  
11 next case.

12 MR. MOY: All right that would be case application  
13 number 19722 of Kline Operations. Board members this  
14 application has been amended for special exceptions under  
15 subtitle I section 205.5 from the rear yard requirements of  
16 subtitle I section 205.1, penthouse use requirements of  
17 subtitle C section 1500.3(c), and under subtitle C section  
18 1504 from the penthouse setback requirements of subtitle C  
19 section 1502.1(c)(4) and pursuant to subtitle X chapter 10  
20 variances from the loading berth requirements of subtitle C  
21 section 909.2, loading access requirements of subtitle C  
22 section 909.3, court requirements of subtitle I section 207.1  
23 and from the interior height requirements of subtitle I  
24 section 612.4.

25 This would construct a new 11-story hotel in the

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1 D-4R zone at premises 925 5th Street NW square 516 lots 827,  
2 828, 829 and 833.

3 And I would ask that the applicant confirm the  
4 required relief. There was a lot here.

5 VICE CHAIR HART: Yes, well we'll get to that.  
6 It looks like we have some preliminary matters.

7 MR. MOY: Yes.

8 VICE CHAIR HART: So we have three party status  
9 requests in opposition. Are the folks here that are  
10 requesting party status here? All three of them? Okay.

11 Actually, I'd like at least one person for each  
12 of the groups to come up. And if we could -- you can come  
13 up to sit at the dais here. I'm not sure if we have enough  
14 chairs, that's why I just said one person. And there's a  
15 third? There's a third person that's coming up as well?

16 Okay. So if you could I guess everyone introduce  
17 themselves. You can start from this side and then work over  
18 here.

19 MR. KLINE: My name is Brad Kline. I'm the  
20 developer from Kline Operations LLC.

21 MR. FILLAT: Peter Fillat. I'm the architect.

22 VICE CHAIR HART: Last name is?

23 MR. FILLAT: Fillat.

24 MS. MOLDENHAUER: Meridith Moldenhauer from the  
25 law firm of Cozen O'Connor representing the applicant.

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1 MS. BIGLEY: Alyssa Bigley also of Cozen O'Connor  
2 for the applicant.

3 MR. VARGA: Stephen Varga, director of planning  
4 services, Cozen O'Connor.

5 MR. MCDERMOTT: John McDermott, employed by Ogden  
6 Cap Properties, the owner of 450 K.

7 MR. STEPHENSON: Aubrey Stephenson, 462 K Street,  
8 adjacent property.

9 MR. ANDRES: Good morning, Vice Chair Hart. Erwin  
10 Andres with Gorove/Slade Associates, transportation  
11 consultant for the applicant.

12 VICE CHAIR HART: Okay. So the party status in  
13 opposition, who are we missing?

14 MS. MOLDENHAUER: Mr. Smith, exhibit 42.

15 VICE CHAIR HART: Give me a second. Okay. So  
16 let's hear from first Mr. McDermott with 450 K Cap LLC. You  
17 say you'd like to be a party to the case?

18 MR. MCDERMOTT: Opposed to the case.

19 VICE CHAIR HART: I'm sorry, yes, opposed to the  
20 case. Can you state your rationale why?

21 MR. MCDERMOTT: We're adjacent property owners.  
22 The property is requesting relief to be built within 10 feet  
23 of our property. We have a residential property that's been  
24 there for four years now.

25 Ogden Cap Properties is an owner/manager of

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1 properties in New York City as well as Washington, D.C.  
2 We've got a big interest here in Washington, D.C. We own the  
3 Jefferson Hotel retail building on 14th Street.

4           And when we purchased 450 K we did our due  
5 diligence and we looked at the area, the surrounding  
6 properties and we took a calculated risk of what could be  
7 built nearby.

8           Office buildings have a 30 foot setback from where  
9 they can be located next to other buildings. Residential  
10 buildings have a 40 foot setback to where they can be built  
11 next to other buildings.

12           It's just odd that a hotel is asking and is being  
13 considered to be built just about to the property line which  
14 will bring them about 10 feet from residents' windows.  
15 Twelve of my apartments will be blocked. They'll be looking  
16 out their windows directly at windows of a transient  
17 building, a hotel.

18           Twelve other apartments will have their light and  
19 air blocked by this structure. About 60 other apartments  
20 including the building's amenity space and courtyard will  
21 have their light and air greatly reduced by this.

22           It's just puzzling that a hotel could be built in  
23 such a fashion that they will not be held to the same  
24 standard as an office building or a residential building.

25           We're not opposed to building. We're investors.

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1 We're long-term generational owners. I'd like to see  
2 something built on the site. I think it would be good for  
3 the neighborhood. I just don't think something like this is  
4 a positive force to other properties on this block.

5 In addition to its close proximity to my building  
6 in particular and other surrounding buildings there are  
7 traffic concerns as well as use of the alleyway in the back  
8 for deliveries that I'd like to ask Joe Mehra, a traffic  
9 consultant to appear on our behalf to talk a little bit more  
10 in depth.

11 VICE CHAIR HART: Thank you. Do the Board members  
12 have any questions of Mr. McDermott?

13 MEMBER JOHN: Not at this time.

14 MS. MOLDENHAUER: Commissioner Hart, can I?

15 VICE CHAIR HART: Sure.

16 MS. MOLDENHAUER: I just want to raise one  
17 question. The exhibit 43 which requested party status did  
18 not include Mr. McDermott's name. We have nothing in the  
19 record indicating that he is an authorized party nor  
20 documentation.

21 The only individual that currently by the filings  
22 is authorized is Lester Schwalb.

23 VICE CHAIR HART: I noticed that and I was going  
24 to ask the same question but thank you for beating me to  
25 that. Mr. McDermott, do you have a letter of authorization?

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1           They can't hear you, but you need to be at a mike.  
2 If somebody could give him a seat that would be appreciated.

3           And I just want to make sure, I should have asked  
4 this earlier but has everyone been sworn in. Okay. Here we  
5 go. Mr. Moy, could you please administer the oath. If  
6 anyone in the audience needs to stand please do that. If  
7 you're going to testify anytime today please stand.

8           (Witnesses were sworn.)

9           VICE CHAIR HART: So Mr. Schwalb.

10          MR. SCHWALB: Yes.

11          VICE CHAIR HART: So just because we need to have  
12 this information if you could provide some information or  
13 clarity on Mr. McDermott.

14          MR. SCHWALB: Mr. McDermott is an officer of the  
15 company and presenting on my behalf. I have a cold.

16          VICE CHAIR HART: That's fine. It's just helpful  
17 for us to have that because procedurally it's hard for us to  
18 know well that guy was speaking for that company or that  
19 organization and we don't know who that person is and whether  
20 or not they have the ability to do that.

21          Ms. Moldenhauer?

22          MS. MOLDENHAUER: No other questions, thank you.

23          VICE CHAIR HART: Okay. So with that I think that  
24 the -- Mr. McDermott has provided sufficient information for  
25 me to allow them party status. Does anybody have any other

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1 questions or concerns on that? Do you affirm that as well?

2 So you've been granted party status. Now, Mr.  
3 Stephenson, if you could provide similar information  
4 regarding your request for party status. And I understand  
5 that there is written information. I'd like to get it on the  
6 record as well.

7 MR. STEPHENSON: Okay, thank you. My name is  
8 Aubrey Stephenson. In 2001 I bought the property at 462 K  
9 Street which is entitled -- it's square 0516 lot 0879 which  
10 we also own the alleyway adjacent to this construction.

11 In the past what has happened is that as an  
12 affected party they're encroaching on our alleyway and the  
13 space we're allotted. They're not using -- they have  
14 consumed or taken up substantial space, even our alleyway  
15 space construction is going to occupy.

16 Now, the reason why I'm affected more is that in  
17 the past whenever construction occurs there like the last  
18 construction last building we suffered substantial damage not  
19 only to the foundation but also in terms of our ability to  
20 continue working there over a period of time.

21 We had to essentially relocate from that space  
22 even though I've been there for more than 17, 18 years and  
23 properties we own.

24 We also have to endure. It's a historic district.  
25 We cannot even try to sell our property to any commercial

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1 developer because the zoning Board tells this is historic  
2 district and I have to maintain it at a certain level. I  
3 maintain all the necessary things that are required for the  
4 zoning for the historic district.

5 Now, with a hotel coming there I would like to ask  
6 a question to the zoning Board. Do I have the same rights  
7 as a hotel? Am I still a historic building? It's something  
8 that you're going to waive and allow a hotel to establish  
9 which is not a problem but I would like to establish a hotel  
10 too if you would permit me to change my historic site. I'm  
11 hoping you would say yes.

12 But in any event the integrity of my property  
13 would have lost. There's no historic site anymore as you can  
14 see. And I would love the hotel to start so I could maybe  
15 talk to Lester and see if he would be interested.

16 But the previous construction cost me  
17 substantially in terms of -- I do a lot of work for the  
18 federal government for the last 30 years. I manage the  
19 finance operations for Justice Department. I manage the  
20 finance operations for State Department. And they require  
21 me to be there and be within a 10-minute radius.

22 I manage all their public officer safety benefits.  
23 When an officer gets killed I'm the first they come to to  
24 make sure they get their benefits. But they request that I  
25 be at that location, 462 K Street within a 10-minute radius

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1 to the Justice Department on 7th Street.

2 Now, do I continue to exist there during this  
3 construction. How long this construction going to last me.  
4 Maybe they can tell me. Is it something that I will have to  
5 report it to the Justice Department that I can't be there  
6 anymore?

7 VICE CHAIR HART: No, I understand that you have  
8 questions. What I'm trying to understand is --

9 (Simultaneous speaking.)

10 VICE CHAIR HART: Hold on a second. What I'm  
11 trying to understand is there are certain criteria for party  
12 status and I'm trying to see how you meet those criteria.

13 You didn't actually include that in the  
14 application that you submitted and I'm looking for that  
15 information. So the questions are how will the property  
16 owned by the -- or occupied by you or in which the person has  
17 an interest be affected by the action requested of the Board,  
18 what legal interest does the person have in the property,  
19 what is the distance between the person's property and the  
20 property that is the subject of the application before the  
21 Board, what are the environmental, economic or social impacts  
22 that are likely to affect you and your property if the action  
23 requested by the Board is approved or denied. Describe any  
24 other relevant matters that demonstrate how the person will  
25 likely be affected or aggrieved. Explain how the person's

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1 interest would be more significantly, distinctively, or  
2 uniquely affected in character or kind by the proposed zoning  
3 action.

4 And your testimony is that you are the -- a  
5 neighbor.

6 MR. STEPHENSON: Yes, I'm close. I'm within maybe  
7 10 feet, 5 feet. It's too close to my building. I'm the one  
8 that is there at 462 K Street. If I walk out to my door I  
9 would walk straight into the hotel. Without any -- it's too  
10 close to my building.

11 The alleyway which is mine, also allocated to me,  
12 they're encroaching on that alleyway. So the closeness. You  
13 talk about economic benefit or the economic cost to me it's  
14 going to be cost from the perspective that I will have to  
15 endure -- the last time the construction was done it was  
16 \$150,000 damage to my property. The property moved by about  
17 three quarters of an inch.

18 I had to hire an engineer and a law firm to  
19 protect my rights. So the economic cost to me I couldn't  
20 quantify.

21 VICE CHAIR HART: No, no, I understand that. What  
22 I'm trying to get to is how you are meeting the criteria that  
23 I -- the questions.

24 MR. STEPHENSON: Closeness. It's close to my  
25 property.

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1           VICE CHAIR HART: I understand that you have  
2 concerns about it and we'll get to that, but I'm trying to  
3 figure out the party status piece of it.

4           Do the Board members have any questions of Mr.  
5 Stephenson?

6           MEMBER WHITE: So basically you're within a  
7 stone's throw of the building.

8           MR. STEPHENSON: Yes.

9           MEMBER WHITE: You own the building.

10          MR. STEPHENSON: Absolutely.

11          MEMBER WHITE: You operate your business from the  
12 building.

13          MR. STEPHENSON: Yes.

14          MEMBER WHITE: You have concerns about  
15 construction impacting your comings and goings.

16          MR. STEPHENSON: Absolutely.

17          MEMBER WHITE: And economically your argument is  
18 that it could impact your business.

19          MR. STEPHENSON: Yes, ma'am.

20          VICE CHAIR HART: And I'll note that the applicant  
21 has actually submitted an opposition to your party status  
22 request. Have you seen that?

23          MR. STEPHENSON: Yes, yes, I saw that. They said  
24 that they weren't notified and they weren't -- and I didn't  
25 say the reason why.

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1 VICE CHAIR HART: Did you notify them?

2 MR. STEPHENSON: No, they did not send it to me  
3 but I think they send it to you. I did not notify them. I  
4 don't know if my attorneys did. I have to check with my  
5 attorneys and see if they notify them about my intention to  
6 be a party to this complaint as well as the justification.

7 They promised to do so yesterday. I don't know  
8 if they have done so. I was only shown this yesterday.

9 VICE CHAIR HART: I'm sorry, you're throwing a lot  
10 at me. Okay. You are testifying that because you have a  
11 building that is in close proximity to this site that you  
12 should be granted party status for the application.

13 And I'd asked the other Board members if they have  
14 any questions. I don't know if Mr. --

15 CHAIR HOOD: Mr. Chairman, I think even though his  
16 submission definitely does not give him any process to have  
17 party status. But I think his testimony does. I think his  
18 testimony is very relevant.

19 He's uniquely affected. He's close by from what  
20 he's testifying to. I will admit his submission and I would  
21 ask if we do grant it that he update his submission.

22 And I know what our rules say and I know we  
23 changed the whole party status thing. I think his testimony  
24 here today would give him the rationale to have party status  
25 even though his submission doesn't.

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1 MS. MOLDENHAUER: Commissioner Hart?

2 VICE CHAIR HART: Yes, ma'am.

3 MS. MOLDENHAUER: I just would like to note my  
4 objection. While I agree he is within the proximity I  
5 believe that the points that he has raised, he raised three  
6 points that I heard, construction which is not within the  
7 purview of this Board to review.

8 He raised damage to his property again which is  
9 not within the purview. There was a collapse of a building  
10 nearby but obviously that is part of DCRA and construction  
11 issues which my client obviously would work with him.

12 And he also raised historic. This case has  
13 already gone to Historic Preservation Review Board and those  
14 are again not issues that this Board is under their  
15 jurisdiction to address.

16 So while I agree he is obviously within proximity  
17 and could testify as a three-minute witness I would again  
18 renew my objection based on the fact that what he stated here  
19 on the record, his reasons for being uniquely affected are  
20 not within Y 404.1(i). Thank you.

21 VICE CHAIR HART: I understand that. I will also  
22 add a fourth thing which is transportation because he talked  
23 about this alley that he owns. And again I'm taking him at  
24 his word. I don't know exactly where the alley is, but that  
25 to me is kind of a transportation concern. And I think that

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1 is part of what is at discussion here because there's a lot  
2 of discussion about loading areas and you have a  
3 transportation consultant yourself.

4 CHAIR HOOD: Mr. Chairman, I would also say he's  
5 within the 200 feet radius. And as well this would afford  
6 him the opportunity even though he names three issues  
7 obviously when I look at his submission there must be some  
8 uncertainty here because the submission that I stated earlier  
9 says nothing. But he's within 200 feet anyway as well.

10 VICE CHAIR HART: Okay. But I do understand and  
11 I would be in support of having Mr. Stephenson be a party in  
12 this case.

13 I would ask that, Mr. Stephenson, you provide the  
14 information that Commissioner Hood just spoke of which is you  
15 have provided us with a party status request but there isn't  
16 any information on the party status request.

17 The information that you provided as testimony  
18 would be how you're filling out this document. So if you  
19 provide that with us that would be helpful.

20 MR. STEPHENSON: Thank you.

21 VICE CHAIR HART: Okay. So we have two party  
22 status in opposition to the case and we have the applicant.  
23 And I think we've kind of dealt with the preliminary matters  
24 and we can begin with the case.

25 MS. MOLDENHAUER: Can I just confirm that you are

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1 then denying Mr. Smith's party status request?

2 VICE CHAIR HART: I'm sorry, I forgot there was  
3 a third. As Mr. Smith did not appear and it's my  
4 understanding that if they don't appear and I'm looking at  
5 OAG for party status requests when the party status person  
6 does not appear, or a party doesn't appear we can deny  
7 because they didn't appear?

8 MS. NAGELHOUT: The request for party status is  
9 deemed withdrawn if the person doesn't appear.

10 VICE CHAIR HART: Okay. Withdrawn. So now we get  
11 to the case itself. We will have -- I'm not sure how long  
12 you need for your presentation.

13 It would be helpful to get just clarity around the  
14 amount of relief that's being sought. If you could do that  
15 and just kind of work through that.

16 And I'll say this now because I hadn't brought it  
17 up. I do have a time constraint myself on this. So if I am  
18 rushing you along that is only because I'm trying to make  
19 sure that we hear the entire case in its entirety and we have  
20 other cases on the docket after this as well.

21 So if you could present as much as you can and  
22 we'll move from there.

23 MS. MOLDENHAUER: I would request 35 minutes on  
24 the clock. We'll try to go through quickly but I just want  
25 to make sure that we obviously address some of the issues.

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1 VICE CHAIR HART: Ms. Nagelhout, amount of time  
2 that the party in opposition has?

3 MS. NAGELHOUT: Parties in opposition collectively  
4 get the same amount as the applicant.

5 VICE CHAIR HART: That's what I thought. Okay.

6 MS. MOLDENHAUER: We can put 20 on the clock and  
7 see how we go.

8 VICE CHAIR HART: Okay. So what that means for  
9 both of you is that the applicant has 20 minutes to present  
10 their case and collectively you have 20 minutes. So 10  
11 minutes and 10 minutes, or 17 minutes and 3 minutes, but  
12 together you have as much time as they take.

13 We'll start with 20 minutes. It may be a little  
14 longer than that but I just wanted you to understand that  
15 aspect of it. Ms. Moldenhauer.

16 MS. MOLDENHAUER: Good afternoon. I'll just first  
17 identify and kind of review the relief that is being  
18 requested. We have four areas of variance relief, two which  
19 address transportation and loading. One is under C 909.2.  
20 There are two loading spaces required and we are going to be  
21 providing one.

22 The second is an area of relief of loading access  
23 under C 909.3. There is a 12 foot drive isle required and  
24 as we will show the property abuts the alley at an 11.5 foot  
25 depth so we're 0.5 short. And so even though it is 12 once

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1 you reach the property and inside the property line it is  
2 more the intersection of the alley that is the area of relief  
3 that we're requesting.

4 DDOT is supportive of both of those relief and so  
5 is OP.

6 We are also asking for court relief under I 207.1  
7 and from the Mount Vernon Triangle principal intersection sub  
8 area under I 612.4. There's a requirement for a 22 foot  
9 clear. We are providing 19 feet 8 inches.

10 All those areas of relief have OP support and DDOT  
11 support.

12 Special exception relief for rear yard setback  
13 under I 205.1 and penthouse setback under C 1502.1(c)(4) from  
14 the one to one on the size. We are compliant on the front  
15 and the rear of the building.

16 And then penthouse use for a bar, restaurant, or  
17 lounge under C 1500.3(c) which is also a special exception.

18 We will be focusing our presentation mostly on the  
19 loading as well as the rear yard and the penthouse setback.  
20 That being said I will turn it over to Mr. Kline to just  
21 briefly go through the property and a quick introduction.

22 MR. KLINE: Hi, my name is Brad Kline. I'm the  
23 managing member. I'll try to be brief.

24 The first building I built in Washington, D.C. was  
25 in the early eighties. It was a condominium at 18th and

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1 Vernon. We had common party walls. I'm very cognizant of  
2 working with my neighbors and very considerate.

3 I've reached out to Lester and have talked to the  
4 owners of the apartment building behind us. I committed and  
5 worked with them on timing of when we have deliveries. On  
6 the hotel business we deliver between 12 and 4.

7 I own apartments. I developed apartments and  
8 adjacent apartment buildings. I'm familiar with construction  
9 and how to work with the existing tenants.

10 And I committed to Lester's management company to  
11 work out a schedule with that.

12 Having said that I think we should move along to  
13 the building itself which I think the slide shows is on 5th  
14 Street. It's a great location. It's 0.3 miles to both Metro  
15 stops, walking distance to convention center. It's an ideal  
16 location for a hotel.

17 You can see that we're in the middle of the block.  
18 It's an assemblage of properties. And there's an aerial shot  
19 showing you the location of the property itself. K Street  
20 and 5th and K. We're on 5th Street fronting 5th Street.

21 So we assembled four lots. The hotel will be 99  
22 feet high. The penthouse is an exciting concept with a  
23 restaurant in it.

24 We met with the homeowners in the apartment  
25 building owned by Lester's company. We had a lot of positive

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1 reception to having a penthouse restaurant in the area and  
2 we had a very positive meeting. We have also met with the  
3 ANC and got their support.

4 I should probably turn it over now to Peter who's  
5 our architect who's done a great job designing this.

6 MR. FILLAT: I'm going to be even briefer. The  
7 first drawing shows the building elevation. There's actually  
8 a historic facade that we are incorporating in the building  
9 that is part of the reason we went through HPO review.

10 These images here show how the design is basically  
11 three volumes with a front building, a small rear building  
12 and a central building that connects the three. The idea  
13 here is that we're trying to break the scale of the building  
14 down so that it sort of fits -- mitigates the height of the  
15 larger buildings next door and around into the historic  
16 fabric.

17 Again the site is irregularly shaped and it fronts  
18 5th Street. It has an alley access. It has an alley access  
19 in the rear and it has kind of a quirky rear dimension.

20 The basement will be a full basement that will  
21 have a hotel program and mechanical space. This plan shows  
22 how the loading dock will work. There's one loading bay  
23 right there that enters in and off the access of the alley.

24 This is the second floor. Shows how there's a  
25 two-story space in the front of the building and the loading

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1 dock is also a two-story space.

2           Typical floor plans. Maximize the efficiency of  
3 the floor plan locating the elevators and the stair towers  
4 at a distance that's required by code that they are separated  
5 by one-third the distance of the floor plan.

6           So the building is extremely efficient and a well-  
7 designed project.

8           This plan shows the rooftop mezzanine that shows  
9 how the restaurant would work. It also shows how there would  
10 be a roof terrace in the front and a green living roof in the  
11 back of the building that correspond to the setback  
12 requirements of one to one off of the front and the rear.

13           This is a building section, shows how the building  
14 height is actually 99 feet. We're permitted to go to 100.  
15 We're holding it back a foot in order to allow us to get the  
16 20 foot overall penthouse height.

17           This plan here shows if we were to keep a 20 foot  
18 side yard setback for the penthouse this would be the  
19 allowable -- the red line is the allowable amount of  
20 penthouse space which would actually require the mechanical  
21 units and cooling towers to not only be in the penthouse but  
22 out beyond the footprint of the penthouse and thus require  
23 some additional screening.

24           This plan shows how that actually works. It  
25 indicates how the penthouse would be a very small footprint

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1 and then the additional mechanical units would be outside of  
2 the penthouse.

3           So in this case really what we're talking about  
4 is I think maybe on the next slide -- so in this what we're  
5 really doing is we're organizing the roofscape into a third  
6 volume that will really be a much better urban design and  
7 aesthetic solution to the roofscape of the city.

8           MS. MOLDENHAUER:    And just a quick question.  
9 Having the stair access obviously located here.  Could you  
10 move that stair location in order to comply with building  
11 code?

12           MR. FILLAT:    If we did that it would actually  
13 become too close to the other stair and so it would not  
14 actually comply.

15           MS. MOLDENHAUER:  And so -- also with the elevator  
16 overrun could you relocate that in another place in order to  
17 comply with the 20 foot setback requirement of the one to one  
18 on the side?

19           MR. FILLAT:    As you can see the width and the  
20 shape of the elevator is practically the exact width of what  
21 ends up being the net result of the side yard setbacks.  So  
22 while we could it ends up being impossible to get the other  
23 parts of the program to work.

24           MS. MOLDENHAUER:    And are there any other  
25 locations where you could put the mechanical from a code

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1 perspective or do they have to be on the roof?

2 MR. FILLAT: The mechanical that's shown on this  
3 plan is the mechanical that would be required in order to be  
4 functional on the roof. If we put it in the basement it  
5 would not work properly.

6 MS. MOLDENHAUER: Thank you. We'll obviously be  
7 available for questions on that issue as well. I'll turn it  
8 now quickly over to Mr. Varga to present testimony in regards  
9 to the zone plan impact.

10 MR. VARGA: Good afternoon, Vice Chair and members  
11 of the Board. My name is Stephen Varga, director of planning  
12 services at Cozen O'Connor. I'm testifying today as a  
13 previously qualified expert.

14 This case seeks to add a new hotel with ground  
15 floor retail to a high visibility site continuing a long  
16 period of reinvestment in the Mount Vernon Triangle  
17 neighborhood.

18 The applicant has worked diligently to reconcile  
19 competing intentions in the zone plan while minimizing  
20 impacts to neighbors.

21 High-quality design and a goal of enhancing the  
22 pedestrian experience come together for a successful project  
23 that will be in harmony with the purpose and intent of the  
24 zone plan, will not adversely affect neighboring properties,  
25 nor cause substantial detriment to the public good.

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1 I'd like to talk for a moment about its  
2 conformance with the D-4-R and Mount Vernon Triangle sub area  
3 zone plans.

4 The downtown residential zone plan calls for an  
5 appropriate mix of high-density uses including lodging which  
6 the project will provide.

7 Additionally it features ground level retail to  
8 facilitate pedestrian activity. The Mount Vernon Triangle  
9 sub area also promotes the development of ground floor uses  
10 that serve the immediate and nearby neighborhoods in  
11 activating pedestrian-friendly experiences as is proposed by  
12 the project.

13 It's also not inconsistent with the comprehensive  
14 plan map, text and small area plans.

15 The property falls within the high-density  
16 commercial and residential area on the future land use map.  
17 This designation is characterized by buildings greater than  
18 eight stories in height.

19 Similarly the property falls within the central  
20 employment area on the generalized policy map which features  
21 the widest variety of commercial uses including hotels and  
22 other hospitality uses.

23 The requested zoning relief and project is not  
24 inconsistent with several planning objectives detailed in the  
25 comprehensive plan city-wide elements including the

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1 framework, land use, economic development and urban design  
2 elements.

3           Also it fulfills key development goals in the  
4 central Washington area element by contributing to the supply  
5 of lodging in central Washington and providing a  
6 complementary use which capitalizes on and supports the  
7 presence of the Washington Convention Center.

8           These planning objectives are further echoed in  
9 relevant small area plans currently being incorporated as  
10 part of the plan D.C. comprehensive plan amendment process  
11 including the Mount Vernon Triangle action agenda, the Mount  
12 Vernon Triangle transportation and public realm design  
13 project, and the Center City action agenda.

14           Generally speaking these plans prioritize the  
15 development of uses that, quote, "invite nightlife, weekend  
16 and holiday visitors to the District and contribute to the  
17 goal of developing the hospitality and tourism market in the  
18 Center City through attractive pedestrian oriented building  
19 designs such as will be delivered here.

20           Further, the project causes no detriment to the  
21 public good. Regarding the necessary relief some additional  
22 context is useful.

23           It should be emphasized that the property is  
24 located in a high-density downtown zone. Entertainment,  
25 lounge and restaurant uses are explicitly encouraged uses in

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1 the Mount Vernon Triangle and its principal intersection  
2 area.

3           Additionally it must be noted that relief from  
4 both the penthouse setback regulations and the rear yard  
5 requirements are permitted by special exception in the zone  
6 primarily because many of the lots in this area are small and  
7 narrow as is the case here.

8           Strict application of both the rear yard and  
9 penthouse setback requirements would be unduly restrictive  
10 regarding the design of the project.

11           Accordingly, granting the relief for the proposed  
12 design will cause no detriment to the public good. As noted  
13 the proposed penthouse meets the setback requirements for the  
14 front and rear of the building and the lounge terrace was  
15 designed to be located only at the front of the building,  
16 well away from residents to the rear.

17           There would be no public access to the rear of the  
18 roof where such use would have the potential to disturb  
19 residents of the nearby apartments at 450 K Street.

20           Also, the impacts are offset by the installation  
21 of translucent vertical window treatments to enhance privacy  
22 for the opposite facing residential units.

23           The applicant proposes to construct an  
24 aesthetically pleasing and pedestrian-friendly hotel in one  
25 of the highest density zones in the District, a zone which

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1 prioritizes development of vibrant and active lodging and  
2 nightlife uses such as those proposed by the project.

3           As such it fulfills the intent and purpose of the  
4 D-4-R zone and the Mount Vernon Triangle sub area and  
5 satisfies numerous comprehensive plan and small area plan  
6 recommendations.

7           It's my estimation that the project must be  
8 considered holistically and on balance the positive  
9 attributes provided justify granting of the request for  
10 relief. Thank you for your consideration. I'll be happy to  
11 answer any questions.

12           MS. MOLDENHAUER: Thank you. And so I will just  
13 -- I've already walked through the relief being requested,  
14 both the special exception and the variance relief.

15           I will focus a little bit on the special exception  
16 standard for the penthouse setback requirement. Mechanical  
17 needs of the project dictate the penthouse setback relief  
18 that we are requesting.

19           Compliance with the penthouse setback requirements  
20 have to be proven to be unduly restrictive. And I believe  
21 that based on some of the additional images that we provided  
22 in the record today and our testimony from the project  
23 architect that based on the 60 foot wide width of the  
24 property that would create an unreasonably narrow 10 foot  
25 wide penthouse space that just physically cannot accommodate

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1 the mechanical that is needed for the building.

2 And additionally the statements that there is an  
3 inability to move the stair core and elevator core based on  
4 building code requirements for fire and egress and  
5 separation.

6 Obviously shifting the stair core would be  
7 unreasonable and based on the standard potentially costly  
8 thus giving rise to an opportunity for the Board to support  
9 the special exception relief.

10 Relief requested also will provide a better design  
11 that is more fluid with the character. As testified both by  
12 the project architect as well as Mr. Varga this is a very  
13 large density downtown district where based on images of the  
14 neighborhood most of the penthouses have large-scale  
15 mechanical and in order to comply it would be more of a  
16 piecemeal where the design would not be in character with the  
17 surrounding neighborhood and as indicated a more irregularly  
18 shaped screened penthouse.

19 Additionally the setback along the closed courts  
20 would not be required unless it was in a historic district.  
21 Typically throughout the entire city you will see similar  
22 conditions.

23 So in regards to impact on the zone plan on most  
24 closed courts throughout the city and in most of the downtown  
25 where there is not a historic district you can build directly

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1 on a closed court.

2 Here in the unique situation that we are in a  
3 historic district we require that one to one setback, not  
4 even one to one, half of one to one which creates some of the  
5 practical difficulty mostly based on the code requirements  
6 as you've identified.

7 Just a little bit of background. The project has  
8 gone to Historic Preservation Review Board. We went there  
9 about three weeks ago and they reviewed the project.

10 We presented to them and they voted to support the  
11 staff application which was to support the project. They  
12 have asked us to come back on their consent agenda.

13 In regards to that then we've included some  
14 additional research that we've provided and instances where  
15 we believe that we've made similar proof in regards to the  
16 challenges of relocation of the core and where the Board has  
17 found that the special exception standard has been met.

18 I'll now jump to the rear yard requirement. And  
19 as OP indicated the rear yard requirement since we are not  
20 a resident or an office use there are certain sections of the  
21 regulation that do not apply.

22 We are providing, we have pulled it back  
23 additionally, an additional 1.5 foot in order to address some  
24 of the at-risk windows at 450 K Street.

25 We are also agreeing to conditions that were

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1 proposed by Office of Planning to include specific window  
2 treatments on a specific section of the building to provide  
3 more privacy to residential units that are across not an  
4 alley but across private property.

5           The variance test, we believe that we satisfy the  
6 variance test in regards to the uniqueness, characteristics  
7 and conditions. And seeing as Office of Planning has  
8 supported those I will be available to answer questions in  
9 that regard.

10           We also have proposed specific conditions which  
11 allow for flexibility based on final review from HPRB as well  
12 as the condition which includes the specific materials that  
13 would be provided on the rear of the building and the time  
14 frame for the penthouse use based on meetings with the ANC.

15           We have met with the ANC and have ANC support in  
16 the record. We also have here with us Mr. Erwin Andres from  
17 Gorove/Slade.

18           Seeing as we believe some of the opposition  
19 individuals will be addressing some of the traffic concerns  
20 we would like to obviously call Mr. Andres on rebuttal and  
21 obviously reserve some time to answer questions on rebuttal  
22 as well. Thank you.

23           VICE CHAIR HART: Okay. Does the Board have any  
24 questions for the applicant? We may not have any right now.

25           And the parties in opposition, do you have any

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1 questions?

2 MS. MOLDENHAUER: Cross examination.

3 VICE CHAIR HART: Cross examination. Thank you.  
4 I don't do this that often. I have to watch Chairman Hill  
5 do this. Do you have any cross examination for the  
6 applicant?

7 MR. MCDERMOTT: Not at this moment.

8 VICE CHAIR HART: Mr. Schwalb, is Mr. McDermott  
9 speaking for you?

10 MR. SCHWALB: I was just going to ask when you  
11 said earlier, Mr. Kline, the hotel deliveries from 12 to 4,  
12 a.m. or p.m.?

13 MR. KLINE: The afternoon.

14 MR. SCHWALB: Okay. And also, I also was under  
15 the impression that the ANC somehow or another took a step  
16 back from the full support they gave recently and sent some  
17 letter to you and to the Board yesterday or am I mistaken?

18 MS. MOLDENHAUER: So the ANC voted to support the  
19 application and that is in the record. We went back and  
20 presented to the subcommittee for the zoning to add the  
21 request for the loading access.

22 We went back and we presented to the ANC zoning  
23 subcommittee because we had added the loading access  
24 requirement.

25 They heard the requested relief at the zoning

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1 subcommittee, voted to recommend support at the zoning  
2 subcommittee. Then, however, at the full ANC the SMD, they  
3 deemed that they did not want to vote.

4 So they knew that we had added that one relief.  
5 And they chose to abstain on the record from further support  
6 or opposition on that point.

7 VICE CHAIR HART: Okay. Mr. Stephenson, you're  
8 cross examining the testimony that the applicant has  
9 provided.

10 MR. STEPHENSON: Yes, thank you. What provisions  
11 are made for any damage to adjacent properties, in my case  
12 462 K Street.

13 VICE CHAIR HART: The questions that you're asking  
14 are to what they have --

15 MR. STEPHENSON: Yes, what they have presented.  
16 In terms of the closeness. They are within 5 feet of my  
17 property, 462 K Street.

18 VICE CHAIR HART: Okay, so one of the folks that  
19 have testified has said that they are going to damage the  
20 property?

21 MR. STEPHENSON: No, I wanted to --

22 VICE CHAIR HART: That's what I'm saying. You're  
23 asking questions that are what they presented. What is it  
24 that you have questions for clarity.

25 MR. STEPHENSON: If they made any provisions in

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1 their presentation or in their plans. You had a building  
2 plan person here. To safeguard adjacent properties.

3 VICE CHAIR HART: Okay.

4 MS. MOLDENHAUER: I would object under relevance  
5 indicating that construction is not a specific aspect. There  
6 are DCMR section 3307 does under D.C. Code provide for  
7 safeguarding of adjacent properties.

8 VICE CHAIR HART: Any other questions, Mr.  
9 Stephenson?

10 MR. STEPHENSON: If I understood her correctly you  
11 said the plans are 10 feet within the adjacent property. Is  
12 that correct?

13 (Simultaneous speaking.)

14 MR. STEPHENSON: But in terms of closeness to the  
15 adjacent properties. Now to what extent is it -- based on  
16 the plans. I don't have it in front of me but how close  
17 would there.

18 VICE CHAIR HART: Okay, they're putting some plans  
19 on the screen in front of you.

20 MS. MOLDENHAUER: So, my understanding is that Mr.  
21 Stephenson owns this sliver back here that then connects to  
22 the front of the property. So my understanding if that is  
23 correct -- so this is Mr. Stephenson's property, is that  
24 correct Mr. Stephenson?

25 MR. STEPHENSON: Yes.

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1 MS. MOLDENHAUER: And so it has this long kind of  
2 dog leg here. And then the property next to it which is a  
3 vacant lot also has another dog leg. So Mr. Stephenson's  
4 property actually does not physically abut our property.

5 There are two 4 foot dog legs here, one owned by  
6 Mr. Stephenson which then abuts 450 K on the side and then  
7 lot 834 which then has another dog leg, a 4 feet that then  
8 abuts our property but our property does not physically abut  
9 Mr. Stephenson.

10 MR. STEPHENSON: It's 4 and a half feet from your  
11 property.

12 VICE CHAIR HART: No, no, I understand that. I  
13 was just trying to understand the question that you had for  
14 them. And so do you have any other questions?

15 MR. STEPHENSON: No.

16 VICE CHAIR HART: Okay, that's fine. So we'll  
17 move to -- you all can present your testimony or case for  
18 your -- the reason that you're in opposition to the case.  
19 I know you've said some of it already, but you have somebody  
20 that's going to be testifying.

21 MR. MCDERMOTT: Yes, in the interest of time I  
22 won't repeat everything that I said earlier.

23 VICE CHAIR HART: Much appreciated.

24 MR. MCDERMOTT: But very quickly we would be  
25 looking for any neighbor to abide by the zoning requirements

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1 which we did our due diligence on when we purchased 450 K for  
2 over \$100 million.

3 We're not opposed to developing this site. I do  
4 want to say that once again. We just want to see it done in  
5 a way that's not going to negatively impact our building.

6 Again, I don't want to rehash the negative impact  
7 on our residents and the windows, et cetera, but the one  
8 thing that I did want to bring up is a traffic study that I  
9 believe the applicant had submitted which we believe there  
10 are some inaccuracies in there.

11 But rather than me talk about it I'd like to  
12 introduce an expert that we've retained, Joe Mehra who's the  
13 president of MCV Associates as our traffic consultant. I'd  
14 like him to speak to that fact and on behalf.

15 VICE CHAIR HART: And did you submit something to  
16 us. Oh, he's submitting it now.

17 MS. MOLDENHAUER: Could I please receive a copy?

18 VICE CHAIR HART: And Mr. Mehra, have you  
19 presented to the BZA previously. Okay, I just wanted to  
20 double-check, that's all. Thank you.

21 MR. MEHRA: Okay. I have reviewed the  
22 comprehensive transportation review study prepared by  
23 Gorove/Slade and also the DDOT report dated March 14.

24 Based on my review I conclude that the  
25 Gorove/Slade CTR or the comprehensive transportation review

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1 is incomplete and does not meet the DDOT CTR guidelines.

2 For the loading access does not function based on  
3 the data and information provided by Gorove/Slade in their  
4 report.

5 The applicant proposes to meet the needs of guests  
6 who wish to drive to the site by offering offsite valet  
7 service. As proposed guests will drop their cars in a valet  
8 zone fronting the building on 5th Street and then an attendee  
9 will park the car at a garage within the vicinity of the  
10 site.

11 First of all I'd like to address the incomplete  
12 CTR. Section 3.2.3 of the DDOT guidelines for CTR  
13 requirements states that a CTR is expected to include further  
14 analysis of vehicle impacts if the proposed site generates  
15 25 vehicle trips in the peak direction for either a.m. or  
16 p.m. or weekend for that matter.

17 There are two fundamental flaws in the  
18 Gorove/Slade methodology for estimating vehicle trips. The  
19 first flaw is using retail, retail use data to estimate hotel  
20 trips.

21 Secondly, Gorove/Slade uses data for hotels that  
22 provide onsite parking for a hotel that does not have onsite  
23 parking. So those are the two major flaws.

24 Gorove/Slade's study states, and I quote, "the  
25 WMATA DR SS noted an average of 42 percent auto share for

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1 retail. For purposes of this study a 35 percent automotive  
2 was applied to the trip generation to account for the surplus  
3 of non-auto options available." End of quote.

4 Using data for retail use Gorove/Slade estimated  
5 that the 153-room hotel will generate less than 25 trips in  
6 each direction. Therefore a detailed comprehensive study was  
7 not needed.

8 The vehicle trip generation estimation by  
9 Gorove/Slade is not valid. First of all it seems they used  
10 retail data to compute hotel trips.

11 Secondly, the WMATA survey that they reference  
12 does have hotel use trip generation data. And I used the  
13 data from the WMATA survey for two hotels that are located  
14 similarly to the proposed hotel which is approximately 0.3  
15 miles from Metrorail station.

16 Using WMATA data for the hotel use it shows that  
17 the number of peak hour movement exceeds 25 vehicle trips and  
18 you can see exhibit 1 in the handout that I've passed out.

19 Let me address the second fundamental flaw  
20 regarding onsite parking and offsite parking. For a hotel  
21 with onsite parking a hotel guest typically makes an inbound  
22 trip and an outbound trip or two trips to the adjacent  
23 intersections or roadways.

24 However, for a hotel that does not provide onsite  
25 parking and relies on valet parking a hotel guest would make

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1 two trips similar to the hotel with onsite parking.

2           The valet generates two additional trips for the  
3 same guest. So the valet picks the vehicle from the hotel  
4 and drives through the adjacent intersections to park the  
5 vehicle. The valet then brings the vehicle back to the hotel  
6 when the guest is leaving.

7           You can see graphics in exhibits 2 and 3 that show  
8 the difference between the guest parking versus guest plus  
9 valet parking. So essentially you are impacting the  
10 intersection twice as much as if there was onsite parking.

11           When you incorporate these impacts every movement  
12 exceeds 25 vehicle trips which means that a detailed CTR  
13 should be done.

14           In order to verify the vehicle trip rates computed  
15 using WMATA data we computed the vehicle trips using the trip  
16 generation data collected by DDOT for several hotels in the  
17 District.

18           Using DDOT data which is different than the WMATA  
19 data the a.m. peak hour inbound trips exceed 25 trips. And  
20 it's shown in exhibit 4 in the handout.

21           Therefore using DDOT data a full CTR would be  
22 required.

23           And on applying the valet impact to the DDOT data  
24 every movement would exceed 25 trips. Therefore the  
25 applicant has not met the CTR guidelines for a traffic study.

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1           Next I'll move on to the loading dock issues. The  
2 applicant is required to supply two loading berths per  
3 zoning. The applicant is proposing only one loading berth.

4           The applicant has not demonstrated that one  
5 loading dock would suffice for a hotel of 153 rooms. The  
6 single loading dock is situated such that it would not be  
7 accessible based on the truck maneuvers developed using auto  
8 turn and as provided by Gorove/Slade in their traffic study.

9           Gorove/Slade included auto turn for a 30 foot  
10 truck and showed inbound and outbound movements from I Street  
11 through the alley and into the loading dock.

12           The alley is not wide enough to allow a truck and  
13 an automobile to pass through. Further, there's a lot of  
14 activity on this alley. There's heavy pedestrian movement.  
15 There are vehicles parked diagonally along the east side of  
16 the alley and these vehicles have to back out of the parking  
17 space onto the alley.

18           This alley also serves all the truck traffic  
19 including trash pickup for 450 K and other buildings in that  
20 block.

21           The alley also has electric light poles on both  
22 sides that restrict the travel width of the alley.

23           The Gorove/Slade auto turn shows that the trucks  
24 will clip the I Street building on the east side as it leaves  
25 the loading dock as shown in exhibit 5.

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1 Further, the outbound movement from the loading  
2 dock looks to be touching edge of the loading dock wall.

3 And finally, very important, the auto turns do not  
4 take into account the on-street parking on both sides of I  
5 Street in the inbound movement as well as the outbound  
6 movement.

7 The graphics shown in exhibits 5 and 6 show --  
8 these are developed by Gorove/Slade. They show that the  
9 truck has to be starting from the parking area on I Street  
10 in order to make that turn into the alley.

11 And same thing when it comes out of the alley it  
12 actually encroaches in the parking area. I've been to that  
13 site several times and there's always parking on I Street.  
14 And this movement would be impossible to be accomplished.

15 So if Gorove/Slade had to do the auto turn they  
16 should assume that the truck would be in the middle of I  
17 Street before they can make the turns into or out of the  
18 alley.

19 Finally, as per DDOT the site's alley access is  
20 constrained by existing walls on adjacent properties limiting  
21 the entry aisle of the alley to be 11.5 feet wide.

22 The trucks need to back into the proposed angle  
23 space of 11 and a half feet which would require the removal  
24 of an existing fence at the alley's end. The backing  
25 movement would require the existence of another person to

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1 guide the driver into the narrow angle loading dock.

2           And finally what I've learned recently is that  
3 DDOT is considering making the alley one-way from K Street  
4 to I Street. If that is done the auto turn movements that  
5 Gorove/Slade developed showing movements from I Street into  
6 the loading dock would really be meaningless because all  
7 access would have to be on K Street since that alley would  
8 be one-way.

9           So in conclusion the traffic study does not meet  
10 the CTR guidelines and should be redone based on a full  
11 review of traffic impacts. The loading docks, a single  
12 loading dock may not meet the needs of the hotel and the  
13 single loading dock provided is not accessible as per the  
14 truck maneuvers using auto turn as provided by Gorove/Slade.  
15 Thank you.

16           VICE CHAIR HART: Thank you. Mr. McDermott?

17           MR. MCDERMOTT: That's all for us, thank you.

18           VICE CHAIR HART: Okay. So Mr. Stephenson, I'm  
19 thinking that we may have the applicant do a cross now and  
20 then come back to you. Is that okay with you?

21           MR. STEPHENSON: Yes, that's fine.

22           VICE CHAIR HART: Okay. So you have let's say  
23 nine minutes for your presentation. I don't know how long  
24 you need to take.

25           MR. STEPHENSON: I just need one minute.

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1           VICE CHAIR HART:  If the applicant is okay do you  
2 want to do it now?

3           MR. STEPHENSON:  I'm just going to repeat what I  
4 said before, it's not much.  But I hope it has an impact.

5           VICE CHAIR HART:  All of it has impact.  We take  
6 everything into account.  Go right ahead.

7           MR. STEPHENSON:  My opposition is based that I'm  
8 within the 20 feet or the 10 feet.  You just need to see.  
9 When I go out there and I look at where the alleyway is going  
10 to be.  I use it sometimes, we park sometimes there and we  
11 have deliveries and trash removed.  The closeness is very  
12 obvious when you go there.

13                   We're within a historic district.  We have to  
14 maintain certain things in our property.  I don't know to  
15 what extent.  So integrity of our property would be affected  
16 from a historical perspective.

17                   And secondly as I said before I'm concerned about  
18 to what extent they'll make provisions in their construction  
19 or their plans for damage to the property and the foundations  
20 and stuff.  That's about it.  I hope that has an impact.  
21 Thank you.

22           MEMBER WHITE:  Quick question for you.

23           MR. STEPHENSON:  Yes, thank you.

24           MEMBER WHITE:  You see this picture on the screen?  
25 Where is your property in relation?

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1 MR. STEPHENSON: That's on 5th Street.

2 MEMBER WHITE: This is 5th Street.

3 MR. STEPHENSON: I'm on K Street, 462. I'm just  
4 to the side of that building.

5 MEMBER WHITE: On the cursor.

6 MR. STEPHENSON: Yes, yes. I'm on that end. I'm  
7 on K Street. I'm not on 5th Street. I'm on K Street. I'm  
8 the only two buildings that remain on K Street that are  
9 obvious that you would love to consider as historic.

10 CHAIR HOOD: What's your address again?

11 MR. STEPHENSON: 462 K Street and 460 K Street.

12 CHAIR HOOD: Okay, thank you.

13 VICE CHAIR HART: Ms. Moldenhauer, cross  
14 examination of either of the parties in opposition?

15 MS. MOLDENHAUER: Yes, thank you. Mr. McDermott,  
16 how many units are in 450 K?

17 MR. MCDERMOTT: Two hundred and thirty-three.

18 MS. MOLDENHAUER: And you have a restaurant or a  
19 commercial use as well?

20 MR. MCDERMOTT: There's a retail space in the  
21 ground floor. It's currently vacant but previously it was  
22 a restaurant.

23 MS. MOLDENHAUER: For 194 seats and an occupancy  
24 of 281?

25 MR. MCDERMOTT: I'm not exactly sure but that

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1 could be correct.

2 MS. MOLDENHAUER: And when you purchased the  
3 property were you aware, did you do your research and you  
4 were aware that the windows that are on the side of your  
5 property are at-risk windows?

6 MR. MCDERMOTT: Yes. I thought I tried to say  
7 that in the beginning but yes, we were aware. We did our due  
8 diligence. We investigated the properties surrounding us.  
9 We also investigated what their setbacks could be, what could  
10 be built there.

11 I understand you have an assemblage that you're  
12 dealing with now in the few lots. I think I was mentioning  
13 earlier that just because you can build or you want to build  
14 something up to the lot line it doesn't mean it should be  
15 built.

16 MS. MOLDENHAUER: Which is why we're here today.  
17 You're aware that the covenant for those at-risk windows  
18 indicates that you must maintain a 10 foot clearance or those  
19 windows would need to be closed?

20 MR. MCDERMOTT: Yes.

21 MS. MOLDENHAUER: And you're aware that we have  
22 pulled back our building so that you will be protected and  
23 will maintain that 10 foot distance so that your windows  
24 would not be subject to possibly being closed.

25 MR. MCDERMOTT: Yes.

1 MS. MOLDENHAUER: Thank you, Mr. McDermott. I now  
2 turn to the traffic consultant. If you can answer for me  
3 what the zoning requirement is for the building for parking.

4 MR. MEHRA: There's no -- it can be zero parking.

5 MS. MOLDENHAUER: So with no parking requirement  
6 then there would be no vehicular trips from a zoning  
7 perspective. There's no cars located on the property.

8 MR. MEHRA: There would be no vehicles parked on  
9 the property but there would be vehicles accessing the site.

10 MS. MOLDENHAUER: Thank you. And you have  
11 reviewed DDOT's report at exhibit 45?

12 MR. MEHRA: Yes, I have reviewed.

13 MS. MOLDENHAUER: Is there anything in that report  
14 that would support your position that the CTR is incomplete?

15 MR. MEHRA: Well, I think the confusion is --  
16 maybe it was an oversight that DDOT did not see the fact that  
17 they used retail trips instead of hotel.

18 Secondly, DDOT may have missed the fact that this  
19 is valet parking so there will be double trips rather than  
20 a single trip by an occupant or by a guest.

21 (Simultaneous speaking.)

22 MR. MEHRA: -- bring those out and let DDOT look  
23 at it.

24 MS. MOLDENHAUER: And you are aware that DDOT did  
25 support the application and did support the relief requested?

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1 MR. MEHRA: Yes.

2 MS. MOLDENHAUER: And does 450 K Street currently  
3 use the alley for their loading/unloading for their -- sorry,  
4 was it 233 residential units?

5 MR. MEHRA: I believe the trash pickup and all  
6 that occurs on the alley.

7 MS. MOLDENHAUER: And they currently have vehicles  
8 that obviously access that alley via I Street and K Street  
9 as well.

10 MR. MEHRA: I guess so, yes.

11 MS. MOLDENHAUER: And then I'll obviously provide  
12 Mr. Andres to rebut some of the other statements. Thank you,  
13 no other cross examination questions.

14 VICE CHAIR HART: Thank you. Okay. I just wanted  
15 to see where we are with it.

16 So I think we're moving to the Office of Planning.  
17 Good afternoon.

18 MR. COCHRAN: Thank you, Mr. Chair. I'll run  
19 through this because I know there are some time constraints.

20 OP is supporting the variance relief that's  
21 requested for the closed court, also for the Mount Vernon  
22 Triangle principal intersection area interior height. For  
23 neither of those do we think there would be any substantial  
24 detriment. We can go into details on that if you're  
25 interested later.

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1 Under the '58 regulations we would be looking at  
2 parking, but the new regulations have no parking requirement  
3 so there was no relief requested and so we have not analyzed  
4 parking because it's not part of zoning anymore for this  
5 site.

6 With respect to the loading access we have to rely  
7 on the DDOT report which looks at the existing alley which  
8 has widths varying from I believe 20 to 30 feet. And DDOT  
9 did not have a problem with either the request for relief  
10 from C 904.2 for the loading access or for the amount of  
11 loading that's provided as required under C 901.1 and 901.4.

12 Now, we get down to the special exceptions. The  
13 lounge. A special exception is required for a rooftop  
14 lounge. And OP agrees that the applicant has demonstrated  
15 that they would meet those requirements and so has the ANC.

16 The rear yard relief was a bit more difficult for  
17 us, but we're not conditioning our recommendation, by the  
18 way, on the provision of privacy screens on the rear windows.  
19 But we are pleased to note that the applicant has agreed to  
20 provide them.

21 They did pull back their building so that there  
22 would not be a requirement to close the at-risk windows for  
23 the apartment building on K Street. We note that typically  
24 when at-risk windows are provided a room that has an at-risk  
25 window also has another window so that you can continue to

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1 occupy a room if an at-risk window is closed.

2 Admittedly it is a tight space but there is 8.5  
3 feet of two other properties between the applicant's property  
4 and the -- excuse me, between the apartment building on K  
5 Street and the rear property line of the applicant. And then  
6 there's another 1.5 feet. So we're looking at 10 feet.

7 Where we do have a problem, however, is with the  
8 penthouse setback requirements. The applicant -- well, let's  
9 look at 1504.1, the criteria (a).

10 Let me just cut to the chase. The biggest problem  
11 we have is with the criteria under (f). And (f) reads -- if  
12 you look at our report and we go to pages 10 and 11 the  
13 penthouse is not supposed to -- if relief is granted it's not  
14 supposed to -- you have to demonstrate that the penthouse  
15 would not be any more intrusive than if you didn't grant  
16 relief. And that it would not appear to be an extension of  
17 the building wall.

18 In this instance I think it's very clear that it's  
19 designed to look like an extension of the building wall, that  
20 it would be considerably more intrusive.

21 The applicant has reduced it by a foot from their  
22 original proposal so the zoning administrator may be able to  
23 give them a building permit because it's no longer at the  
24 height limit. It would have not been able to ask for special  
25 exception relief had it been at the height limit as

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1 originally proposed.

2           The whole point of the changes in the penthouse  
3 regulations a couple of years ago was to permit the  
4 occupation of a penthouse if you met the special exception  
5 criteria.

6           It wasn't to say you may have a penthouse, it was  
7 you may have an occupied penthouse if you meet the criteria  
8 and this applicant clearly does not meet those criteria.  
9 Therefore we would have to recommend that you not approve the  
10 special exception relief for the penthouse side setback.  
11 We're happy to answer any questions.

12           VICE CHAIR HART: Thank you. Do the Board members  
13 have questions for the Office of Planning?

14           MEMBER WHITE: So everything else it sounds like  
15 OP basically supported. So just so I'm clear you were saying  
16 that you had trouble with subsection F. Was that the right  
17 one? Which reads.

18           MR. COCHRAN: I did say F but I think I misread  
19 my own handwriting which is not unusual.

20           MEMBER WHITE: I do it all the time.

21           MR. COCHRAN: Okay.

22           MEMBER WHITE: I just want to be clear.

23           MR. COCHRAN: The applicant -- as of today the  
24 applicant may have demonstrated that they meet 1504.1(a).  
25 I don't know whether the applicant could have designed a

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1 staircase that goes to the penthouse that would have been  
2 offset from the staircase that has to provide fire code  
3 related relief for the hotel rooms. I'm sorry, I'm not an  
4 expert in that. So that's a question. They may have  
5 demonstrated that.

6           The relief would result in better design of the  
7 roof structure without it appearing to be an extension of the  
8 building wall. That's 1504.1(b). Clearly they don't meet  
9 that.

10           The relief request would result in a roof  
11 structure that is less intrusive. Clearly they don't meet  
12 that although it's a harmonious design from an architectural  
13 standpoint but it is clearly not less intrusive.

14           The operating difficulties. Again they may have  
15 demonstrated that the -- it would be difficult to get to the  
16 mechanical penthouse if it were just a mechanical penthouse  
17 without the setback relief.

18           But it's not just a mechanical penthouse. It's  
19 a roof lounge. And they haven't demonstrated that -- well,  
20 I won't repeat myself.

21           And every effort has been made for housing the  
22 mechanical equipment, stairway and elevator to be in  
23 compliance with required setbacks. I think it's pretty clear  
24 that -- well, excuse me. I can't be clear because of that  
25 staircase question on whether every effort has been made for

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1 the mechanical equipment.

2 But they have to meet all of the requirements, not  
3 just some of the requirements for the setback relief for us  
4 to be able to recommend that you approve it.

5 VICE CHAIR HART: Any other questions?

6 CHAIR HOOD: Yes. Mr. Cochran, I'm glad to see  
7 you. Maybe I misunderstood earlier because when I heard the  
8 presentation about the penthouse setbacks and what they  
9 couldn't do and what they could do my first question was  
10 could they do a redesign. So I'm glad to hear you say in  
11 your report about maybe there needs to be some more  
12 reexamining of this whole -- I believe that's what you're  
13 saying.

14 If not that's what I'm going to push for, some  
15 more reexamining of this whole penthouse situation with the  
16 setback.

17 And I realize we're not working with a whole lot  
18 but to me most of the time it falls down on design. There's  
19 some design changes that could be made so you can meet the  
20 setbacks or get closer than what we are.

21 For me that's a showstopper. I'm letting  
22 everybody know up front. For me that's a showstopper. So  
23 we need to reexamine some more on the penthouse setbacks  
24 because when the commission put these in place we put them  
25 in place for a reason.

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1           We didn't just do it because we didn't have  
2 anything to do that night. So I've been hard on that. I  
3 don't like putting regulations in place we can't meet them.  
4 I'm not saying I would not give on it but I need to have some  
5 more examination.

6           I think I'm right in line with what I heard from  
7 the Office of Planning. Thank you, Mr. Chairman.

8           VICE CHAIR HART: Any other questions for the  
9 Office of Planning? Ms. Moldenhauer, do you have any  
10 questions for the Office of Planning?

11          MS. MOLDENHAUER: No questions but we'll provide  
12 additional information in rebuttal.

13          VICE CHAIR HART: Okay. Mr. McDermott, do you  
14 have any questions for the Office of Planning?

15          MR. MCDERMOTT: No, I do not. Thank you.

16          VICE CHAIR HART: Mr. Stephenson?

17          MR. STEPHENSON: No, thank you.

18          VICE CHAIR HART: Thank you. So we'll get to the  
19 -- where are we going now. The ANC. I don't think anybody  
20 is here from the ANC. Okay.

21                 Anyone here to speak in favor of the application?  
22 In opposition to the application? Okay. I guess we can get  
23 to rebuttal.

24          CHAIR HOOD: I have a question for Ms.  
25 Moldenhauer. Ms. Moldenhauer, as you all are creating this

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1 proposal aren't you all creating also some at-risk windows?  
2 And if you aren't, why not? Maybe I'm missing something.

3 MS. MOLDENHAUER: We would be working during the  
4 building process for certain code modifications, yes.

5 CHAIR HOOD: So what I see here unless I'm  
6 mistaken, what I see here you have windows, right. So those  
7 are at-risk as well.

8 MS. MOLDENHAUER: They would be subject most  
9 likely to a covenant, yes.

10 CHAIR HOOD: Okay, so you're doing the exact same  
11 -- so you're creating at-risk. Okay, thank you.

12 MS. MOLDENHAUER: At this point in time I'll turn  
13 over to Mr. Erwin Andres from Gorove/Slade to address some  
14 of the parking and loading questions that were proposed.

15 MR. ANDRES: Good afternoon, Chairman Hart,  
16 members of the Board. For the record my name's Erwin Andres,  
17 principal and vice president with Gorove/Slade Associates.

18 The record is full. We've done some extensive  
19 coordination with DDOT and the ANC as has been identified in  
20 our filings. We scoped this with DDOT. They agreed with our  
21 methodology.

22 And this is consistent with the way we do our  
23 traffic studies in the District. We wouldn't go this far in  
24 the process and not meet or exceed DDOT's guidelines. So I  
25 think the record is pretty explicit in showing that.

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1           With respect to our coordination with the ANC as  
2 the zoning requirements show the requirement is zero but the  
3 applicant and the team has made significant efforts to  
4 actually identify even though it's not required we've  
5 actually identified off street locations that are not onsite  
6 that can accommodate any patrons that decide to show up and  
7 decide that we decided to come.

8           Although the hotel is geared given that it's  
9 relatively close to the Metro station, relatively close to  
10 a lot of transportation elements in the neighborhood. The  
11 major draw will be people using either rideshare or transit  
12 options to come to the hotel.

13           Given that I think I want to emphasize a couple  
14 of items related to the loading. The first is the width that  
15 we're providing that is one of the areas of relief that we're  
16 asking is 11 and a half feet wide.

17           Just to give you a sense of scale a minimum sized  
18 travel lane in the street is actually only 10 feet. So 11  
19 and a half feet is more than adequate for the size trucks  
20 that we anticipate coming to the site. So that's how we  
21 would address that relief.

22           With respect to the loading docks and the number  
23 of loading docks that we're providing we've coordinated with  
24 DDOT to develop and implement a loading management plan that  
25 is geared to manage the loading that would take place in the

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1 alley.

2 I think what's important is that in context if  
3 this were a matter of right project which could be retail on  
4 the ground floor and residential above given those uses that  
5 would actually generate more traffic than our proposed hotel  
6 because you would have the move ins and move outs associated  
7 with the apartments.

8 So in this case given that it's a hotel I think --  
9 and given that we are here before you the fact that we are  
10 here before you actually allows more management of our  
11 loading dock as compared to a matter of right condition which  
12 would actually generate similar loading demands.

13 And then the last item I wanted to sort of  
14 emphasize is that the DDOT design and engineering manual  
15 which dictates where we could put any loading and any parking  
16 access states explicitly that if you have access to an alley  
17 you must use the alley for access.

18 So I understand that there have been issues raised  
19 about us having access to the alley. We have no other access  
20 to our loading dock. DDOT would not allow us a driveway on  
21 5th Street.

22 In addition to that it wouldn't be good design to  
23 have another driveway on 5th Street given the significant  
24 pedestrian volumes up and down 5th Street.

25 So with that I'm available for questions. Thank

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1 you.

2 VICE CHAIR HART: Thank you.

3 MEMBER WHITE: Just one. Do you have a rendering  
4 of what it would look like from the rear showing the loading  
5 dock? I'm curious. We've been talking about that so much  
6 I'm just curious.

7 VICE CHAIR HART: And Mr. Andres, I left the seat  
8 for a second. I don't know if you actually answered this.  
9 Did you talk about how other hotels in D.C. -- I mean this  
10 is not the only hotel in D.C. Did you look at the other  
11 hotels in comparison to see how they -- how folks kind of  
12 arrive and whether or not they had parking.

13 MR. ANDRES: Absolutely. Actually I appeared  
14 before this Board for the new Pod Hotel that's right in  
15 Chinatown. It's actually right next to the arch in  
16 Chinatown.

17 And that hotel had zero parking spaces. Similar  
18 condition to this. But we had to appear before the Board  
19 because that was before the zoning regulations were changed.

20 And in that instance it was a similar situation  
21 where the hotel was geared for transit users, rideshare  
22 users, people coming in from out of town using inner city  
23 bus, using Amtrak, coming into town and wanted to be close  
24 enough to downtown so that they can walk to but also enjoy  
25 some of the amenities in the neighborhood.

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1           So that model is similar to this model. The only  
2 difference is instead of being right at the Metro station  
3 we're only two blocks away.

4           VICE CHAIR HART: Did you provide any information  
5 to us for this case?

6           MR. ANDRES: So for this case I think as part of  
7 our record we've identified we have a parking management  
8 company, actually two of them submitted a letter that they  
9 are available spaces in the neighborhood to park offsite any  
10 vehicles that show up.

11           The hotel is geared for non-drivers. But  
12 obviously as an amenity --

13           VICE CHAIR HART: You're not turning away people  
14 that drive.

15           MR. ANDRES: That's correct.

16           VICE CHAIR HART: Okay. So we know that. I was  
17 just wondering if there was any sort of study that you have  
18 done that says we looked at six hotels in a mile radius of  
19 this building to be able to say this is how they are dealing  
20 with parking. This is what their trip generation is and  
21 everything to understand what that impact might be. That's  
22 what I'm asking if you've done.

23           I understand that there may be parking. I'm  
24 asking if you're looking at vehicle trips that are coming to  
25 and leaving from the site.

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1 MR. ANDRES: Understood. So the short answer is  
2 we've worked probably on six or seven hotels within a two or  
3 three block radius of the site. They're all either in design  
4 development or under construction.

5 So I might have some information for you within  
6 two years.

7 VICE CHAIR HART: So the other question that I had  
8 was there was some question about I Street. And that  
9 actually -- when the opposition party Mr. Mehra, when he was  
10 giving his testimony one of the things that he was talking  
11 about was the movement of the trucks from the loading area  
12 or alley area onto I Street and that the street, the parking  
13 wasn't taken into account that was happening on the street  
14 so the turning radius may be problematic to do that. So  
15 could you talk about that?

16 MR. ANDRES: So there are two things. One, the  
17 exhibit that Mr. Mehra cited actually was not our exhibit,  
18 it was done by the civil engineer Dewberry. So we included  
19 that as part of our application.

20 However, we've confirmed that those turns can be  
21 made because actually I was there today and there was a 30  
22 foot box truck in the alley. Unfortunately I didn't take my  
23 camera out quick enough, but the existence of a lot of the  
24 retail one of which is within 450 K. They have an existing  
25 retail space that's one of the bigger retail spaces on the

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1 block. At the time they had a restaurant that had over 100  
2 plus seats.

3 So the deliveries for that facility, there's a  
4 loading dock actually in the rear of their building which if  
5 they were to accommodate 30 foot trucks they had to get back  
6 there.

7 So I think the opportunity to get into the alley  
8 system behind the building, that and there are dumpsters in  
9 the rear of actually our building and there are dumpsters in  
10 the alley. So the standard trash trucks are approaching 30  
11 feet. So the maneuverability is an issue that's tight in the  
12 District but in this condition it's not that -- it's in the  
13 range of workable.

14 VICE CHAIR HART: Yes. You actually have a chance  
15 to cross examine them now for their rebuttal.

16 MR. SCHWALB: Just for the record the restaurant  
17 never brought 30 foot trucks back there.

18 MS. MOLDENHAUER: Is that a question?

19 VICE CHAIR HART: What you're here for right now  
20 is to actually ask questions.

21 MR. SCHWALB: Pardon me.

22 VICE CHAIR HART: You're asking cross examination  
23 for the rebuttal that they just provided.

24 That's fine, I'm just letting you know where we  
25 are.

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1           You have a closing that you can actually bring up  
2 if you like, but right now we're going through cross  
3 examination. And you have an opportunity to ask questions.  
4 Mr. Stephenson has an opportunity to ask questions. And just  
5 what the rebuttal was that they've just provided.

6           No? Okay. So there are some things that I'm  
7 actually looking for as well for this. I would like to  
8 understand the -- Commissioner Hood brought up the issue  
9 about at-risk windows on your building and I'd like to  
10 understand where they are.

11           If you could provide some graphic that just kind  
12 of shows these are where they are that would be helpful.

13           Just to also let you understand I'm not ready to  
14 deliberate on the case today so that's why I'm asking for  
15 information.

16           It would be helpful for me to understand, Mr.  
17 Cochran raised an issue regarding the penthouse and that  
18 they're not in support of that and why they're not in support  
19 of that of the relief that you've requested.

20           I would like to understand if there is an ability  
21 to make the penthouse not seem like it's an extension of the  
22 building wall. And I'm not sure how you do that but I would  
23 like to have some something that describes that, or some  
24 effort to show how that might change.

25           Again, I don't want to design it. I just want to

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1 understand it.

2           And I don't know if my fellow Board members have  
3 any other kind of information that they would like as well.

4           MEMBER WHITE: If they're providing additional  
5 information to respond to the penthouse setback concerns I  
6 would imagine that they would want to have time to have some  
7 dialogue with OP as well.

8           VICE CHAIR HART: I agree.

9           MEMBER WHITE: Because we're not going to be ready  
10 to deliberate on this obviously today if we need additional  
11 information.

12           VICE CHAIR HART: So I'm wondering, because it  
13 will probably be a continued hearing and probably have -- I'm  
14 wondering if it's better to do closing then as opposed to  
15 doing it now.

16           MS. MOLDENHAUER: Vice Chair Hart, yes, I would  
17 concede that maybe what we would do is instead of asking some  
18 additional rebuttal questions of our project architect in  
19 regards to the penthouse specifically we'll hold on that and  
20 we'll address that at a continued hearing following our  
21 ability to go back and try to look at materials and other  
22 factors and provide additional documentation on the penthouse  
23 and reexamine that to Chairman Hood's statement.

24           There are restrictions, the stairs and the  
25 elevators and the physical need to house the mechanical

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1 equipment, but we'll go back and we'll study that. And we'd  
2 be more than happy to file documentation in the record and  
3 provide a closing at a different date.

4 VICE CHAIR HART: I think that would be helpful.

5 MEMBER JOHN: Yes, I agree with everything that's  
6 been said so far. I am stuck on the transportation study.  
7 And I'm concerned that the data that was used was not  
8 information relating to hotel traffic which is available.  
9 So I'd like to see something on that.

10 MS. MOLDENHAUER: We'll also work with DDOT and  
11 we'll be able to confirm since obviously there were comments  
12 not just questioning our transportation expert but also  
13 DDOT's report which recommended no objection to the relief.  
14 We'll follow up with them as well.

15 MEMBER JOHN: Right. And since we have time and  
16 it's beyond the scope of the Board but I'd still like to have  
17 a discussion with what's his name, Mr. Stephenson at 460 K  
18 Street to at least address some of his concerns even though  
19 they would not be included in a Board order.

20 MR. KLINE: I'd like to meet with you afterwards  
21 like I met with the other neighbor. I understand you had  
22 problems with other construction.

23 I've recently built three large buildings with  
24 Clark Construction and Donohoe. One of them would probably  
25 win the bid. Rest assured we'll work with you and you won't

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1 have to worry. But I'd like to meet with you and talk to  
2 you. Thank you.

3 VICE CHAIR HART: The one last thing that I'd like  
4 to understand is we've talked about where other loading is.  
5 If you could describe where loading is, just a plan added to  
6 the plan that you have that describes where the building 450  
7 loading dock is. Because I don't know where it is in  
8 relationship to this and it seems like we've been talking  
9 about all this, the use of the alley by others and I'm not  
10 exactly sure what that means.

11 There was also a description of having to -- as  
12 vehicles are entering into the alley to access your site they  
13 have to do a maneuver that is basically a three point turn  
14 at kind of a T or a hammer intersection. And I'm not exactly  
15 sure how they do that. There was some testimony about  
16 there's a fence or something that's a problem that may need  
17 to move.

18 Again, I'm just trying to understand how all of  
19 this works. And it would be helpful to just kind of  
20 understand that.

21 I think it may be just updating the drawings to  
22 say okay, there isn't a fence here, or we've worked with the  
23 folks about the fence so it's not going to be a concern with  
24 that. This is where the 450 K loading is and it's not going  
25 to be a conflict in any sort. So that's what I'm looking for

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1 as well.

2 I know I've asked for a lot but I'm just trying  
3 to have all the stuff together.

4 MS. MOLDENHAUER: We want to make sure that we  
5 adequately address all the questions. We will document both  
6 existing loading both visually and by plan, and then we'll  
7 also document obviously this large kind of white building  
8 here in this image is the Peebles Hotel that also came before  
9 this Board for relief and review.

10 But that's also a project that obviously will be  
11 going through construction. They will also be utilizing the  
12 alley. So there are some existing conditions that will be  
13 evolving and changing in regards to full utilization of all  
14 public right of ways in that location.

15 VICE CHAIR HART: I appreciate it. So the  
16 question is how long -- yes.

17 MR. COCHRAN: Mr. Chair, if I might ask would it  
18 be helpful to have DDOT here that day? And if so, because  
19 I can't speak for them or their time might it be possible for  
20 this to be put on the agenda first so that their time would  
21 be minimized.

22 VICE CHAIR HART: We can work with that. I need  
23 to figure out what day we're talking about here so I'll look  
24 at the applicant to see. We've asked for quite a bit of  
25 stuff. But I don't know how long that would take you to

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1 produce it.

2           And then the Office of Planning has to -- I'm  
3 assuming we would actually like to have your -- an update,  
4 a supplemental OP report on what they submit.

5           MR. COCHRAN: We'd be happy to provide that.

6           VICE CHAIR HART: So, do you have a couple of  
7 weeks that you're looking at?

8           MS. MOLDENHAUER: I would think that it probably  
9 would take us maybe a week or two to get everything  
10 finalized. So finalizing and filing something in the record  
11 the week of maybe April 19th or 20th, that's that Thursday  
12 or Friday. And then coming back, giving OP a week to review  
13 that. Would that be sufficient? I'm seeing a head nod.

14           And then coming back maybe the first week of May,  
15 May 2nd. If that's available, I don't know.

16           CHAIR HOOD: Let me tell you when I'll be back.

17           VICE CHAIR HART: That's what I was going to ask  
18 you.

19           CHAIR HOOD: May 16th I believe. That's when I'll  
20 be back.

21           VICE CHAIR HART: We could do that too.

22           CHAIR HOOD: Unless I can transfer this to one of  
23 my colleagues. It doesn't matter.

24           MS. MOLDENHAUER: We'll come back on the 16th.  
25 So then we might want to just simply push those deadlines off

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1 by --

2 VICE CHAIR HART: What we'll do is basically give  
3 you until the 4th of May to provide your information and then  
4 Mr. Cochran if you could provide us a supplemental by the  
5 11th of May.

6 And then that means that we would have the  
7 meeting, the continued hearing on the 16th of May when  
8 Commissioner Hood is back with us.

9 MS. MOLDENHAUER: And just to make sure, we'll be  
10 seeing you on the 16th, Commissioner Hood.

11 So I just want to make sure, so if OP is filing  
12 their report is the Board then waiving their seven day  
13 requirement for opposition to file something or would then  
14 be able to respond.

15 Obviously opposition has seven days to respond to  
16 any filing. Either the Board can waive that requirement  
17 since obviously opposition and the parties will be here at  
18 a continued hearing to respond to it verbally.

19 VICE CHAIR HART: I don't have a problem waiving  
20 it. I don't know if there's an issue with Mr. Cochran. I'd  
21 rather have it on the 11th to give them time to be able to  
22 kind of look everything.

23 And maybe you have a conversation during that  
24 between the 4th and the 11th. I'm just saying that's all.

25 MS. MOLDENHAUER: Thank you very much.

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1           VICE CHAIR HART: Okay. Mr. Moy, it looks like  
2 we're scheduling this for May 16th. The OP report,  
3 supplemental report on May 11th and then the applicant  
4 submitting their information on May 4th.

5           And the opposition party would have an opportunity  
6 to respond to your submittal as well.

7           MR. MOY: I would suggest then if you want to  
8 provide the opposition party to respond to the applicant's  
9 filing at the same time as OP's deadline of May 11th.

10          VICE CHAIR HART: So that would give you all a  
11 week to be able to look over the information that's submitted  
12 by the applicant on May 4th. Okay?

13          MS. MOLDENHAUER: Otherwise will it be a limited  
14 hearing only on the issues that are addressed?

15          VICE CHAIR HART: Yes. On the few issues that  
16 we've raised. And we will also do closing at that time as  
17 well.

18          MS. MOLDENHAUER: Thank you.

19          CHAIR HOOD: Let me just say I agree with Board  
20 Member John that the applicant already has committed to  
21 talking to those in opposition and try to work through those  
22 differences. Sometimes that makes a difference even at that  
23 hearing on the 16th.

24          So I want to continue to encourage you all to do  
25 that.

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1 VICE CHAIR HART: Okay. Thank you all very much.  
2 We're going to take a two-minute break and we'll be back here  
3 about 2:05.

4 (Whereupon, the above-entitled matter went off the  
5 record at 1:59 p.m. and resumed at 2:19 p.m.)

6 VICE CHAIR HART: Okay, thank you for your  
7 patience. Mr. Moy, can you please call the next case.

8 MR. MOY: Yes, thank you, Mr. Vice Chair. We're  
9 reconvening. And let's do this properly. It is 2:20 p.m.  
10 All right. I see the parties to the table.

11 Case application number 19725 of 1169 Neal Street,  
12 N-E-A-L, LLC. This is a request for area variance from the  
13 side yard requirements of subtitle E section 307.1 to  
14 construct a new flat in the RF-1 zone.

15 This is at 1169 Neal Street NE square 4065 lot  
16 801.

17 VICE CHAIR HART: Okay. Welcome back. If you  
18 could please introduce yourselves and provide us with your  
19 address.

20 MS. BIGLEY: Alyssa Bigley of the law firm of  
21 Cozen O'Connor, 1200 19th Street NW on behalf of the  
22 applicant.

23 MS. MOLDENHAUER: Meridith Moldenhauer, attorney  
24 for the applicant from Cozen O'Connor.

25 MR. LATANE MEADE: Thomas Latane Meade. I go by

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1 my middle name Latane. 4112 North Garland Street,  
2 Alexandria, Virginia 22304.

3 VICE CHAIR HART: That's Meade?

4 MR. LATANE MEADE: Yes, Meade.

5 MR. CRAIN: And I'm Adam Crain, the architect with  
6 2Ply. My address is 1260 Braddock Place in Alexandria,  
7 Virginia.

8 VICE CHAIR HART: Excellent. Ms. Moldenhauer.

9 MS. MOLDENHAUER: Chairman Hart, we believe that  
10 the record is full. We are more than willing to go through  
11 and present a full application.

12 However, if the Board would want we can also rest  
13 on the record and be available for questions. We have Office  
14 of Planning support as well as we have the ANC support.

15 We got an email last night and this morning from  
16 Commissioner Boggs indicating that she had filed the  
17 resolution in the record. We did not see it but we have hard  
18 copies as well. So I will provide those to Mr. Moy now.

19 VICE CHAIR HART: Please. Thank you.

20 MS. MOLDENHAUER: As was indicated here in a  
21 resolution that the ANC recommended support of the variance  
22 request as a vote of 6-0-1.

23 Office of Planning is in support and we believe  
24 as I said that we've satisfied and kind of articulated the  
25 standards. So we'll be available for questions.

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1 VICE CHAIR HART: And you have several conditions  
2 that you also include in this as well?

3 MS. MOLDENHAUER: Yes. It's our standard  
4 conditions. So these are our standard conditions that we  
5 request for flexibility given the new zoning regulations and  
6 some of the limitations on modifying the plans unless  
7 conditions specifically permit it. So we would ask that the  
8 Board if they were -- if they believe that we satisfy the  
9 standards to approve the case with flexibility in order to  
10 provide general modifications to the design.

11 VICE CHAIR HART: Okay. Do the Board members have  
12 questions for the applicant? I hear silence. Let's move to  
13 the Office of Planning. Good afternoon.

14 MS. ELLIOTT: Good afternoon. Thank you, Vice  
15 Chairman Hart. I'm Brandice Elliott representing the Office  
16 of Planning. And if it's all right I think we're also going  
17 to go ahead and rest on the record of our report.

18 Office of Planning is recommending approval of the  
19 requested side yard variance. But I'm happy to answer any  
20 questions you have.

21 VICE CHAIR HART: Are there any questions that the  
22 Board has for the Office of Planning? Does the applicant  
23 have any questions for the Office of Planning?

24 MS. MOLDENHAUER: No questions, thank you very  
25 much.

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1           VICE CHAIR HART:    Ms. White, do you have a  
2 question for the applicant?

3           MEMBER WHITE:    Just your response on the one  
4 opposition letter that we got from a neighbor.  If you could  
5 just -- I know you have ANC support but I wondered if you had  
6 any comment with respect to some of the concerns she raised  
7 in exhibit 44.

8           MS. MOLDENHAUER:  Yes.  We are aware of the letter  
9 in opposition.  I believe that while this one individual may  
10 be in opposition I believe that a lot of it might be based  
11 on just misunderstanding of the facts and of the application.

12                            There were statements in the letter concerned  
13 about parking.  As you can see in our site plan and  
14 referenced in our report we are providing two parking spaces  
15 on the property.  So the concern about not providing parking  
16 I don't believe is accurate.

17                            The property is also in line with abutting  
18 properties and there were concerns about the I guess the  
19 design.  But the property is not in a historic district and  
20 we believe that the design is a very attractive design of new  
21 construction.

22                            And the ANC did review that and we did present  
23 that to the community and they did vote to support the  
24 application.

25           MEMBER WHITE:  Thank you.

1           VICE CHAIR HART:  And just for my clarification  
2 you have suggested these conditions and you're suggesting  
3 them.  Can you just provide to us why you're suggesting  
4 those?

5           MS. MOLDENHAUER:  It's out of an abundance of  
6 caution I would say.  Under the new regulations there's  
7 limitations on the ability to modify plans that have been  
8 approved pursuant to the project.

9           And so just in case if a bathroom wants to be  
10 moved, if additional small materials want to be changed we  
11 would obviously seeing that this is a new construction for  
12 the entire project we would want to obviously have that  
13 flexibility and provide the zoning administrator with a clear  
14 comfort that the order allows those modifications to occur.

15           VICE CHAIR HART:  It just seemed -- they seemed  
16 a little bit kind of -- they seemed a little bit more open  
17 than I would have liked.  I just find them to be kind of like  
18 okay well, what are we exactly approving them if we are  
19 giving this much latitude.  It seemed like it was too much  
20 latitude.  That's why I was asking for it.

21           So is the ANC here for the case?  Is there anyone  
22 here in support of the case?  Is there anyone here that would  
23 like to speak in opposition to the case?  Seeing no hands it  
24 comes back to you, Ms. Moldenhauer.  Do you have any final  
25 comment that you'd like to make?

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1 MS. MOLDENHAUER: No specific closing argument,  
2 just that we believe that we satisfy the variance test and  
3 that we'd ask the Board to rule on the case and grant support  
4 on a summary motion.

5 And if there are modifications or eliminations of  
6 the conditions obviously we'd prefer that the case be ruled  
7 on today with a summary order. Thank you.

8 VICE CHAIR HART: Thank you. Does the Board have  
9 any other final questions for the applicant? My Board is  
10 quiet today for this. I feel like just crickets happening.

11 So with that I will close the hearing. Is the  
12 Board ready to deliberate? Excellent. I will start and say  
13 that after hearing the testimony and reviewing the record,  
14 in particular the Office of Planning report regarding this  
15 case I would also be in support of the relief requested.

16 I do believe that they've provided sufficient  
17 information for us to be able to approve that relief. And  
18 that relief is for side yard which is subtitle -- relief from  
19 the side yard requirements subtitle E section 307.

20 And I don't have much more to say beyond that.  
21 I don't know if my fellow Board members have any other  
22 comments they'd like to make.

23 MEMBER WHITE: I concur with your thoughts, Mr.  
24 Vice Chair. They met the variance test for the side yard  
25 relief that they're requesting under subtitle E 307.1.

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1           So with the Office of Planning support, ANC  
2 support and feeling comfortable with the comments that they  
3 provided with respect to the one neighbor that had some  
4 concerns I'm prepared to support the application.

5           VICE CHAIR HART:     And with regard to the  
6 conditions do you have any comments on the conditions that  
7 they propose? I can support it either way, I'm just wanting  
8 to know where the other Board members are.

9           MEMBER WHITE: I don't know if they're necessary,  
10 but if they want to incorporate them out of caution I don't  
11 have a problem with them unless there's some concern that OAG  
12 could raise about it. But other than that I'm okay with it.

13          MEMBER JOHN: Mr. Vice Chair, I'm inclined to  
14 suggest that we not include the conditions precisely because  
15 I don't know what we're approving.

16          But if OAG wants to opine on anything I'd be happy  
17 to hear that.

18          MS. NAGELHOUT: Not really. I personally don't  
19 see how the conditions would operate in conjunction with A  
20 304.10. But the applicant has proposed them and it's the  
21 Board's decision.

22          VICE CHAIR HART: I appreciate it. Okay, so after  
23 hearing that I think that I would make the -- yes, I think  
24 I could make the motion to approve application number 19725  
25 of 1169 Neal Street LLC pursuant to 11 DCMR subtitle X

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1 chapter 10 for an area variance for the side yard  
2 requirements of subtitle E 307.1 to construct a new flat in  
3 the RF-1 zone at premises 1169 Neal Street NE square 4065 lot  
4 801. And I would ask for a second.

5 MEMBER JOHN: Second.

6 VICE CHAIR HART: All those in favor say aye.  
7 (Chorus of ayes)

8 VICE CHAIR HART: Any opposed? The motion  
9 carries, Mr. Moy.

10 MR. MOY: Staff will record the vote as 4-0-1.  
11 This is on the motion of Vice Chair Hart to approve the  
12 application for the relief being requested. Seconding the  
13 motion Ms. John. Also in support Mr. Hood, Ms. White. We  
14 have no other member participating. The motion carries.

15 VICE CHAIR HART: Summary order, Mr. Moy.

16 MR. MOY: Thank you.

17 VICE CHAIR HART: Thank you very much. The next  
18 case, Mr. Moy.

19 MR. MOY: Yes, thank you. The next case is an  
20 appeal. This is appeal number 19713 of Isabelle Thabault.  
21 I'm not sure if I pronounced that correctly or not. I  
22 apologize.

23 This is an appeal from the decision made on  
24 January 16, 2018 by the zoning administrator, Department of  
25 Consumer and Regulatory Affairs to refuse to revoke building

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1 permit number B as in bravo 1712578 to construct a front  
2 addition to an existing one-family dwelling in the R-2 zone  
3 at premises 3840 Legation Street NW square 1857 lot 49.

4 VICE CHAIR HART: Thank you, Mr. Moy. Welcome.  
5 And has everyone been sworn in?

6 MR. LEGRANT: I have not been sworn in today.

7 VICE CHAIR HART: Well, there we go. Mr. Moy,  
8 could you administer the oath, please?

9 (Witness sworn.)

10 VICE CHAIR HART: Okay. So we will first have  
11 introductions. If you could please introduce yourselves and  
12 give your name and your address.

13 MS. THABAULT: Isabelle Thabault. I live at 3838  
14 Legation Street NW.

15 VICE CHAIR HART: Thank you.

16 MR. HITCHCOCK: Con Hitchcock, Ms. Thabault's  
17 counsel, 5614 Connecticut Avenue.

18 MR. SULLIVAN: Marty Sullivan of Sullivan & Barros  
19 on behalf of the property owner.

20 MR. LIEBMAN: Dan Liebman, 3840 Legation Street.

21 MR. LEGRANT: Matthew LeGrant, zoning  
22 administrator, DCRA.

23 MR. TONDRO: Maximilian Tondro, general counsel's  
24 office, DCRA.

25 VICE CHAIR HART: Okay. So this is an appeal and

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1 we will start with the appellant's case.

2 MR. HITCHCOCK: Thank you, Vice Chair Hart. I  
3 think that the issues in this case are pretty well set  
4 forward in the papers that all sides have filed.

5 What I would like to do with the Board's  
6 indulgence is summarize the points in about five minutes  
7 using a PowerPoint. I have extra copies here but it  
8 essentially summarizes what we said in the prior filings.

9 VICE CHAIR HART: If you want it to get bigger  
10 just hit control L. And Mr. Hitchcock, you said 5-10  
11 minutes?

12 MR. HITCHCOCK: Five minutes.

13 VICE CHAIR HART: Five minutes.

14 MR. HITCHCOCK: I know you're disappointed to hear  
15 that, Mr. Chairman.

16 VICE CHAIR HART: No, no, really it's fine.

17 MR. HITCHCOCK: I will try to stick with that.  
18 It's been a long day.

19 VICE CHAIR HART: That's fine. I appreciate it.

20 MR. HITCHCOCK: Now if only I could get this to  
21 work.

22 VICE CHAIR HART: Five minutes to set it up and  
23 five minutes for the actual presentation. Can we get  
24 somebody to help, Mr. Moy? Thanks. You can put your mike  
25 on too. It's a lot of electronics that are going on here I

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1 know. I appreciate it.

2 MR. HITCHCOCK: The slide that I've put up here  
3 contrasts the two buildings that are at issue in this case.  
4 The picture on the left shows Ms. Thabault's house which is  
5 white and the house next to it is the Liebman Davis house.

6 The picture on the right shows the pop-out  
7 addition that was authorized. I should add this is about two  
8 months old. There's a lot more work that has been done  
9 there. But it gives you a sense of the dimension of the  
10 addition.

11 Now our question is how did this happen. The  
12 regulation in question, section B 315.1(c) would seem to  
13 suggest that a pop-out of this sort is not allowed. Is 3840  
14 an interior lot? Yes. Is 3840 attached to another building?  
15 Yes. They are semi-detached. Both houses are semi-detached.

16 But we were told that 3840 is not an attached  
17 building under the 2016 regulations which added the  
18 definition that there must be side lot lines with both  
19 buildings on adjoining lots.

20 And our position is that this reading produces  
21 absurd results as this case will suggest. Here are two more  
22 recent pictures that show the project as it has progressed  
23 to date. These were both taken within the last week and  
24 they're in our reply.

25 You can see the second floor addition of the 3840

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1 house popping out, reducing the light and air considerably.  
2 The picture on the right shows a perspective from a little  
3 bit further back.

4 This picture also shows the view from the  
5 interior. The green roof that you see is Ms. Thabault's --  
6 the roof of her front porch and you can see how the addition  
7 juts out. The picture on the right shows the same scene from  
8 a slightly different angle.

9 So this is what the interpretation that we are  
10 talking about here resulted in.

11 In our view the section in question was never  
12 intended to have this result, but this is not just our view.  
13 The Office of Planning saw this. They told the Zoning  
14 Commission a technical correction was needed.

15 The zoning administrator Mr. LeGrant who must have  
16 one of the toughest jobs in Washington but he agreed with  
17 this analysis as well.

18 And the Zoning Commission even before they issued  
19 a final rule in the proposal expressed the view that the  
20 interpretation in question here was not a correct reading of  
21 what the commission intended.

22 In that proposed rule the commission's intent was  
23 that the front setback requirement and the rules of  
24 measurement apply to semi-detached and detached residential  
25 buildings.

1           As the owners have pointed out, yes, the  
2 commission did state a concern about the potential for  
3 pending applications that might be improperly reviewed.

4           But the commission didn't speak to and there's  
5 nothing in the rulemaking record to suggest the commission  
6 was aware of the precise situation we have here where there  
7 is a pending request to reconsider and to revoke the permit  
8 to prevent the sort of thing that the Office of Planning, the  
9 zoning administrator and the Zoning Commission agreed should  
10 not happen.

11           So, how should the Board decide this case. DCRA  
12 and the owners urge the Board to apply the literal language  
13 even though it was contrary to what the commission intended  
14 and even though everyone knew this was the case when DCRA  
15 rejected Ms. Thabault's revocation request in January of  
16 2018.

17           And I cited some of the language from the cases  
18 that they cite about how to read regulations in this context.  
19 They quote and rely upon the first part of the quoted  
20 statements that yes, you follow the ordinary meaning of the  
21 regulations, but there are always exceptions. And I submit  
22 this case is one of them.

23           One case is when the necessity for a different  
24 interpretation clearly appears. You don't get much clearer  
25 than the Office of Planning, the zoning administrator and the

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1 Zoning Commission saying no, that's not what's intended.

2 And the second point is if a literal reading of  
3 the term would compel an odd result then no, you don't look  
4 to the literal language.

5 And we submit that's the case here. I mean if  
6 this is not an odd result what is. And I see I've used less  
7 than five minutes.

8 Thank you. Nothing further and we ask the Board  
9 to grant the appeal.

10 VICE CHAIR HART: Okay. We're just going to wait  
11 for the other 1 minute and 10 seconds -- I'm kidding. So,  
12 cross examination.

13 MR. TONDRO: I don't think there's anything that  
14 we need to cross examine at this time. Thank you though.

15 VICE CHAIR HART: I just wanted to make sure.

16 MR. HITCHCOCK: Ms. Thabault is here if the Board  
17 has any questions as well.

18 VICE CHAIR HART: Thank you. Okay. So next we  
19 go to -- thank you. I'm so glad that you're here.

20 MR. TONDRO: Good afternoon. Having gone through  
21 the procedure one too many times. Good afternoon, Vice  
22 Chair, members of the Board, Chairman Hood. Thank you. I'll  
23 try to also keep this as quick as possible.

24 Again I agree with Mr. Hitchcock that I think this  
25 is a fairly defined appeal as an issue at the center and

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1 really it comes down to how do we or in this case the ZA  
2 correctly interpret section B 315.1(c) which you can see to  
3 the extent you need it it's on page 2 of my pre-hearing  
4 statement which is exhibit number 25 in the record.

5           And so I think what it comes down to is exactly  
6 what Mr. Hitchcock said which is there are basically two  
7 different possible readings of the text based on how we  
8 interpret the key words attached building.

9           I think a person reading it fresh for the first  
10 time, reading it exclusively by itself would sit there and  
11 say and I'll just quote the building facade of an interior  
12 lot attached building shall not be further forward or further  
13 back than the building facade of one of the immediate  
14 adjoining buildings.

15           I think one reasonable interpretation would be to  
16 say well if it's attached at any point in any place to a  
17 building that would make sense.

18           The problem here that the ZA confronted was that  
19 there is a definition in section B 100.2 of the regulations  
20 which clarifies that an attached building as I have down  
21 below further on page 2 of my pre-hearing statement defines  
22 it as a building that abuts or shares walls on both side lot  
23 lines with other buildings on adjoining lots.

24           So as a result that is a defined term. The  
25 starting sentence of section B 100.2 states and I quote "when

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1 used in this title the following terms and phrases shall have  
2 the meanings ascribed," unquote.

3 In other words once it's defined it's a defined  
4 term. That's how the ZA is required to interpret it.

5 And I'll point out again section 100.1(g) just  
6 before states that, quote, "words not defined in this section  
7 shall have the meaning as given in Webster's Unabridged  
8 Dictionary" unquote.

9 In other words you only go to Webster's if the  
10 term is not defined.

11 So I think in this case the ZA was confronted with  
12 a situation where there might have been a reasonable  
13 interpretation to say that it applied to also the  
14 circumstances of appellant where there's only one adjoining  
15 property -- one adjoining building.

16 Then this case, the Zoning Commission had adopted  
17 this defined term attached building as meaning one that was  
18 attached on both sides.

19 And I think you can also see actually if you go  
20 further towards the end of 315.1(c) that it refers to  
21 immediate adjoining buildings. In other words that full  
22 sentence, the building facade of an interior lot attached  
23 building shall not be further forward or further back than  
24 the building facade of one of the immediately adjoining  
25 buildings.

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1           That seems to also work with that understanding  
2 that attached building will be attached on both sides.

3           So that was the circumstance the ZA faced. When  
4 the appellant raised the question about how to apply this the  
5 ZA very carefully reviewed it. The ZA's office then reached  
6 out to the Office of Planning to determine if that was the  
7 intent, if there was any record of what the Zoning Commission  
8 understood this.

9           I should clarify as well that both the definition  
10 of attached building and this provision 315.1(c) are new to  
11 the 2016 regulations. So we have no track record, no BZA  
12 appeals.

13           There's also no understanding if the original text  
14 had it been in '58 was changed or not by accident. So all  
15 we had to go on was the actual text.

16           We conferred with the Office of Planning. The  
17 Office of Planning was unable to find any specific statement  
18 in the record where the Zoning Commission adopted this  
19 provision that indicated that there was an intent to apply  
20 it to the situation that we're dealing with today where it's  
21 a semi-detached, a building that's only attached on one side.

22           As a result the ZA determined with the Office of  
23 Planning that maybe that was not the intent of the Zoning  
24 Commission and therefore worked with the Office of Planning  
25 to clarify that going forward.

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1           As a result that text amendment was introduced.  
2 The Zoning Commission reviewed it. It adopted it. But again  
3 that has prospective application. It doesn't apply  
4 retroactively.

5           And I'll point out again that conversation with  
6 the Office of Planning that led to that text amendment came  
7 about a month after the issuance of this particular permit.

8           That text amendment only took final effect at the  
9 end of March. So therefore from our standpoint, DCRA's  
10 standpoint the text amendment as it were fixes or clarifies  
11 this issue going forward.

12           So if the application were to come in at this  
13 moment in time it would be clear that the appellant would be  
14 protected, that 315.1(c) would apply. But given the fact  
15 that the text amendment was not retroactive we believe that  
16 the permit was reviewed correctly under A 301.4 which  
17 establishes that a permit has to comply with the regulations  
18 in effect on the date of issuance.

19           And with that I'll rest. Thank you.

20           VICE CHAIR HART: Okay. Actually, I have a couple  
21 of questions for you, Mr. Tondro.

22           So what happens if the ZA doesn't follow their  
23 zoning regulations? In this case the applicant is saying the  
24 zoning regulations say this and you -- not you, the zoning  
25 administrator needs to do something that is not written in

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1 the zoning regulations.

2 MR. TONDRO: I think in that case the zoning  
3 administrator makes the determination based on the facts that  
4 they have before them. And then the person who's raising the  
5 issue has the right as the appellant has done here to appeal  
6 it to the Board.

7 I think it's established that the Board has that  
8 oversight role to interpret the regulations and to make it  
9 clear to the zoning administrator. Zoning administrator at  
10 this time we think generally you do a good job but this time  
11 you missed it.

12 That happens rarely.

13 VICE CHAIR HART: When was the zoning  
14 administrator aware of this -- and I'll call it a technical  
15 correction but I don't know what you want to call it. That  
16 there needed to be a change to the text amendment.

17 MR. TONDRO: So this came out directly in response  
18 to this permit. I should say it came directly in response  
19 not to the permit itself as much as rather to the appellant's  
20 raising the issue.

21 VICE CHAIR HART: The person that owned the  
22 building that wanted to -- they weren't seeking relief  
23 because they didn't come to the BZA, but they were trying to  
24 build this.

25 MR. TONDRO: It did not as far as I know, Mr.

1 LeGrant may be able to testify otherwise, but as far as I  
2 know the situation was not raised at the time of the permit  
3 issuance.

4 But when in response to appellant's raising the  
5 question with the ZA at that point the ZA reviewed, confirmed  
6 the fact that there was this defined term.

7 However, nonetheless understanding that appellant  
8 had raised an issue that was a very important one and there's  
9 a potential for confusion in terms of potential ambiguity  
10 short of if there hadn't been the defined term that on that  
11 basis the ZA reached out to the Office of Planning looking  
12 first of all to understand was there something in the record  
13 for the Zoning Commission that would have indicated --

14 VICE CHAIR HART: Something.

15 MR. TONDRO: As Mr. Hitchcock was saying this was  
16 not the intent. We all know that the new zoning regulations  
17 were adopted over eight years. It was a long time. There's  
18 different provisions. We're talking about two different  
19 sections to develop the rules of measurement as opposed to  
20 the definitions.

21 It's entirely possible that was not the clear  
22 intent. But in the absence of any evidence of what the  
23 intent was to the Zoning Commission the ZA really had to rest  
24 on what was actually in the regulations and again it was not  
25 an unreasonable interpretation that it would apply only to

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1 an attached building attached on both sides.

2 VICE CHAIR HART: And one last question. You  
3 noted in your testimony when you were discussing the case  
4 that this is a new regulation that was part of the ZR '16.

5 Do you know or can you give me an estimate on how  
6 many cases have requested this particular type of relief?

7 MR. TONDRO: Well, again, it's not a relief, it's  
8 a permit application.

9 (Simultaneous speaking.)

10 MR. TONDRO: As far as I'm aware I think this is  
11 the first time this issue has come up, in other words the  
12 first shall we say pop-out unfortunately.

13 VICE CHAIR HART: Maybe first and last.

14 MR. TONDRO: Well so that was the reason why we  
15 reached out was to clarify, (a) was it possible that we had  
16 something we could say actually that was not the intent, we  
17 could disregard the definition. Was there evidence that we  
18 could use to disregard it.

19 And not finding that we clarified with the Office  
20 of Planning whether they had understood that the intent  
21 however not expressly indicated that the intent was that it  
22 covered also semi-detached.

23 Therefore on that basis the Office of Planning  
24 with our support adopted or proposed the text amendment which  
25 was then adopted by the Zoning Commission.

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1           VICE CHAIR HART: And one last question. So why  
2 would the Zoning Commission, DCRA and OP want to move so  
3 quickly on this?

4           This is the zoning regulations which you've said  
5 the zoning administrator is kind of bound to follow. There  
6 is some leeway if there are words that are not defined in the  
7 zoning regulations themselves.

8           But when they are defined then the zoning  
9 administrator needs to follow the zoning regulations as  
10 they've been written.

11           So why would you want to move so quickly. This  
12 is a fairly short turnaround in terms of text amendments.

13           MR. TONDRO: I think the answer to that is that  
14 we have found that word on the street goes out like that and  
15 when people realize there's an opportunity especially with  
16 the new regulations that there's -- I don't want to describe  
17 this as a loophole but there's something that people hadn't  
18 anticipated that word gets out very quickly and we'll be  
19 inundated with applications.

20           So once we realized that this was an issue that  
21 OP thought that the Zoning Commission had not intended we  
22 wanted to make sure that the Zoning Commission had an  
23 opportunity to weigh in right away.

24           VICE CHAIR HART: That's it for my questions.

25           CHAIR HOOD: Mr. Chairman, can I just add I

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1 remember this I believe and I think typically when we do a  
2 text amendment we always ask is there anything in the  
3 pipeline so we'll know whether or not to do something  
4 retroactive.

5           And I guess at that time, and I think Mr.  
6 Hitchcock is right we were not aware at least from my  
7 knowledge that this was even existing.

8           And I will call it a loophole because a lot of  
9 people find things and that was definitely not at least this  
10 commissioner's intent.

11           But I guess I'm looking forward to hearing to see  
12 how we resolve this issue because that was definitely not the  
13 intent.

14           And typically when we do stuff like this we always  
15 ask, I know one particular commissioner, we always ask is  
16 there anything in the pipeline. How many is it. Then we get  
17 to that whole thing about retroactive and seeing how do we  
18 take it back, when do we start it, when do we make it go into  
19 effect.

20           And I believe if I'm not mistaken that question  
21 was asked in this proceeding. I'm pretty sure it was. Maybe  
22 you might be able to help me remember. But I'm pretty sure  
23 in this case. Because I can actually name the commissioner  
24 who asked that question. So anyway. Did you want to say  
25 something?

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1 MR. TONDRO: Pardon me, Chairman Hood. If I can.  
2 I can't respond to that specific issue because I don't know  
3 what the Office of Planning presented but it may be that if  
4 the Office of Planning did not address that issue directly  
5 or respond in the negative it may have been because they were  
6 used to responding to pending applications in the pipeline  
7 and this one instead was a permit that had already been  
8 issued before the text amendment was even discussed let alone  
9 submitted and set down.

10 So in other words it was already issued and that's  
11 the key problem.

12 CHAIR HOOD: Okay, thank you. That makes me --  
13 so that was already gone down the road past the pipeline.  
14 Okay. That's the difference. Okay. Thank you.

15 MEMBER WHITE: I'm just curious is there any  
16 precedent for similar cases like this where a text amendment  
17 was issued after the permit was issued where retroactively  
18 you were able to go back or as a BZA entity we were able to  
19 go back and grant an appeal such as this. Maybe that's a  
20 question for the appellant but I'm curious.

21 MR. TONDRO: I'm not familiar and to the extent  
22 of the Board's ability I think that would be for OAG  
23 respectfully to advise you.

24 I think our understanding my experience and I  
25 don't know if the zoning commissioner has any other thoughts

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1 that that has never happened.

2 What usually happens I think as Chairman Hood was  
3 thinking about with the R-4 where you have a vesting  
4 procedure based on when you have a map amendment where it  
5 only applies to applications that are pending.

6 Presumably again precisely because they haven't  
7 been issued. And again I think that's because section A  
8 301.4 is the one that says that a permit must comply with the  
9 regulations in effect on the date of issuance. And that's  
10 a very longstanding provision.

11 MEMBER JOHN: So can we go back to the language  
12 of the regulation section 100.1 and 315.1(c). So taken  
13 together can you point to the ambiguity in those two  
14 sections. That's me over here.

15 MR. TONDRO: I apologize, Board Member John.

16 MEMBER JOHN: So the big issue is that there is  
17 this ambiguity in the language of those two sections. Is  
18 there just reading it for the first time without any  
19 knowledge of the history of the regulations if you just read  
20 the plain text is there some ambiguity there in those two  
21 sections?

22 MR. TONDRO: I would say no. I believe that one  
23 could have an alternate understanding. There is potential  
24 ambiguity if you read B 315.1(c) by itself. In other words  
25 if you do not know that attached building is a defined term.

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1           Once, however, you realize that attached building  
2 has been defined in the zoning regulations then the  
3 combination of those two I think leads inexorably to what the  
4 ZA decided which was that B 315.1(c) does not apply to the  
5 property in this case.

6           MEMBER JOHN: Which is why I asked you the two  
7 sections taken together. Because if I'm reading 315.1(c)  
8 then I'm going to look for the definition. And I get to the  
9 definition it says an attached building has to meet the  
10 criteria to be attached on both sides.

11           So taking those two sections together is there  
12 some ambiguity.

13           MR. TONDRO: DCRA would assert no.

14           VICE CHAIR HART: And to follow on that question  
15 I guess the part that I was trying to make sure that I  
16 understood was that the DCRA's position I guess on this is  
17 that the semi-detached is not discussed in 315.1 at all and  
18 so that's kind of outside of discussion.

19           You're just talking about an attached building and  
20 kind of what happens with that, but you don't really bring  
21 in the semi-detached. And so because of that then it's kind  
22 of outside of that.

23           And so if they want to do something they can do  
24 that, but that's the point that you're trying to make with  
25 that.

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1 MR. TONDRO: Yes. And so the whole section on  
2 front setbacks was new to the 2016 regulations. It does not  
3 apply across the Board. It only applies in certain  
4 situations. One of these situations is the one we're dealing  
5 with right here.

6 So I think it's perfectly reasonable to apply it  
7 only to as the text says attached buildings. Once you  
8 realize that it's a defined term.

9 VICE CHAIR HART: Do you have any questions?  
10 Either one of you for DCRA.

11 MR. SULLIVAN: No, thank you.

12 VICE CHAIR HART: Okay. It's all you. You have  
13 an entire five minutes.

14 MR. SULLIVAN: Thank you. So I think there's a  
15 clear distinction here and it's very apparent that in  
16 November when the building permit was issued this provision  
17 applied to attached buildings. That's it.

18 On March 2 it now applies to attached buildings  
19 and semi-detached buildings. It was a correction that was  
20 made.

21 This homeowner is entitled to the regulations  
22 which say that his building permit is subject to the zoning  
23 regulations in effect upon issuance of the permit. So when  
24 the permit was issued this provision did not apply to semi-  
25 detached buildings, did not apply to his property.

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1           The Zoning Commission then fixed that and now it  
2 does.

3           The appellant says the defined term must be  
4 ignored for other reasons which he does not prove. And  
5 remember the burden of proof here.

6           It's not just the zoning administrator had the  
7 discretion to ignore the defined term. He's saying he was  
8 actually required to ignore the defined term for reasons  
9 which I don't understand. He says because of an odd result.  
10 And his proof is his statement that if that's not an odd  
11 result what is.

12           He's presented no information on why a staggered  
13 frontage would be an odd result. I don't really think this  
14 is entirely relevant but since he's brought the issue up we  
15 have photos of examples of staggered frontages in the  
16 neighborhood.

17           In answer to Chairman Hart's question what happens  
18 if the zoning administrator decides to go off the written  
19 language essentially.

20           And I think it makes his job impossible. I don't  
21 know how he's supposed to foresee the future and tell whether  
22 or not his decision is wrong.

23           And it makes it impossible for the District  
24 homeowner who's not familiar with development even if they  
25 were to understand what they need to do.

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1           This isn't a situation where something was slipped  
2 by DCRA. Mr. Liebman can explain and tell you how he was  
3 very diligent in meeting with DCRA several times even before  
4 he filed the permit. And he specifically talked about the  
5 front setback issue.

6           And he made very sure that he was permitted to do  
7 this. He doesn't know anything about loopholes. He's a  
8 homeowner. He just wants to know what he's allowed to do and  
9 how to do a modest addition to his house. He couldn't do it  
10 on the side and he couldn't reasonably do it on the rear.

11           And I think the discussion about the Zoning  
12 Commission and whether applying something retroactive I think  
13 maybe you're referring to vesting. I know they talk about  
14 vesting a lot and whether or not there's applications that  
15 maybe should have the benefit of the old regulations.

16           I'm not aware of the Zoning Commission making  
17 anything retroactive.

18           And it's not just a question of retroactivity.  
19 It's a question of the provision in the zoning regulations  
20 that says that you're subject to the regulations in effect  
21 on the date that the permit was issued.

22           And also I don't think there's any ambiguity at  
23 all. I think at one point it applied to attached buildings  
24 and then later on it was corrected.

25           I don't want the Board to confuse legislative

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1 intent with a mistake in drafting or adoption which was later  
2 corrected.

3 I have several other instances of things I'd like  
4 to see corrected from the 2016 regulations that I think once  
5 the commission sees them they would say yes, we didn't really  
6 intend to do this based on what we've done in the past.  
7 However, I can't ask the zoning administrator to approve  
8 anything in that regard based on that mistake if you will.

9 And legislative history is just that. It's the  
10 past. It's history. There is nothing in the legislative  
11 history that would imply that this should be interpreted any  
12 other way than the plain language using the defined term.

13 The zoning administrator can't see into the future  
14 to see that somebody would speak otherwise of that  
15 legislative intent. And I'll turn it over to Mr. Liebman.

16 MR. LIEBMAN: Thank you. Thank you, Marty, thank  
17 you, members of the Board. If I could ask for the  
18 possibility of maybe a little more than five minutes because  
19 I may go over that amount.

20 First, to reiterate the process we went down to  
21 DCRA before we submitted our application for a permit  
22 approval for exactly this reason. We wanted to make sure  
23 that we were in line with the regulations before even going  
24 down that road.

25 There's no point in us making any kind of

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1 expenditure if we can't do it. So we went down there and we  
2 specifically discussed the front setbacks. And I have some  
3 email correspondence if you need to see that.

4 And once we knew that we were in line with the  
5 code then we went down for the formal permit application.  
6 And that took several months to be reviewed.

7 DCRA was well aware of my neighbor's views and  
8 they still approved it.

9 And then after the permit was issued and work was  
10 started there was a complaint now bringing up this code issue  
11 after the permit was issued again.

12 And they looked at it a third time and came to the  
13 same conclusion. This was a validly issued permit.

14 And I hope that you'll indulge me a little bit,  
15 but I've led regulatory affairs and legal policy teams for  
16 a federal agency so this is a little bit of what I do for my  
17 living.

18 So I was well aware of what the code said and it's  
19 clear that the defined term was used in 315.1(c) and there  
20 are 31 pages of defined terms in here. This code doesn't  
21 work if you ignore the defined terms.

22 They're put in there for a purpose and that's so  
23 that people know what you mean when you say them.

24 And I'd like to point out a couple of other places  
25 in 304.5 when they wanted to say something different they did

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1 for a building attached at any point, for instance.

2 In 320, rules and measurements for side yards here  
3 they make distinctions between semi-detached and detached  
4 buildings and then they say you can't add on to a semi-  
5 detached building to make it an attached building. So  
6 they're clear that they wanted to treat these buildings  
7 differently.

8 And so that's why I'm taken aback by some of this  
9 conversation about a loophole. Because it seems pretty clear  
10 to me that it was intended to be written that way. And there  
11 were comprehensive hearings leading up to the regulations  
12 promulgation.

13 I am positive that the Zoning Commission was very  
14 diligent in what they were doing and all that was  
15 intentional.

16 To address the issues of odd result we submit  
17 those pictures of houses in the neighborhood. I think that  
18 is proof in itself that it's not an odd result because these  
19 buildings exist on our block and in the surrounding  
20 neighborhood.

21 VICE CHAIR HART: Mr. Moy, where's the camera  
22 again? Do we have this one?

23 MR. LIEBMAN: Yes, this one's in there. This is  
24 on our street. Semi-detached house. The front of this  
25 house, it's on the right of the picture, it's the left when

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1 you look at it, is farther forward than the one next to it.

2 MR. HITCHCOCK: Mr. Chairman, may I note we were  
3 not provided with any of this in the submission that came in  
4 seven days. It's a little odd to be sort of responding to  
5 photographs that came in with no address, no data, citations  
6 of regulations.

7 We took five minutes. They're taking 15.

8 VICE CHAIR HART: And actually I was going to ask  
9 you to wrap it up because we want to make sure that -- the  
10 timing is because we want to make sure that everyone has the  
11 same amount of time as they're presenting their case. And  
12 you all have had a lot of time.

13 I think you've made the points that I understand  
14 for them. And if you have one other thing that you want to  
15 do I'll allow that.

16 MR. LIEBMAN: Real quick.

17 VICE CHAIR HART: And adding pictures, the reason  
18 that you can't do pictures is because we can't see them. And  
19 we actually have this online and the people online can't see  
20 what you're presenting to us.

21 So you did present us -- gave us each copies of  
22 the information. If you'd like you can submit those into the  
23 record. We probably won't decide on the case today. I'm not  
24 sure about that.

25 But we would like to actually have this

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1 information. So if you want to submit it that's fine, but  
2 you'd have to submit it to the secretary.

3 MR. LIEBMAN: These pictures that I'm showing you  
4 are ones that you have in your packet.

5 So just the last picture very quickly is this one  
6 which our house and it's 5224 and -- or is it 5124 and 5126  
7 Nebraska Avenue. So if you need an address.

8 And just finally to retroactively apply a code  
9 change after a permit has been issued I feel would just be  
10 patently unfair.

11 People have to have an understanding of the  
12 process to be able to do work. And if you comply with that  
13 process and you've been told all along this is fine and then  
14 there's a law change after the fact is just not fair. Thank  
15 you.

16 VICE CHAIR HART: Thank you.

17 CHAIR HOOD: Mr. Chairman, I feel like I need to  
18 respond. Maybe I used the wrong word retroactive. I meant  
19 vested. And I think Mr. Tondro corrected me and I appreciate  
20 that.

21 When I said retroactive I meant we vest things  
22 that were in the pipeline. But I understand how this really  
23 went.

24 But let me just say this. From my standpoint the  
25 intent of the Zoning Commission was not to arrive to where

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1 we are here today. That's never the intent.

2           And this is not to even just this case. We have  
3 a lot of things that we put in place for nine years. Somebody  
4 said it was eight, but I can tell you I was here for all of  
5 it. It was nine. Trying to work out regulations to improve  
6 regulations in the city.

7           But I can just tell you that the federal  
8 legislative stuff is not any better than what we do here in  
9 the city. I know about that as well.

10           So what I'm saying is -- and you're right.  
11 Legislation and regulations and codes should be predictable.  
12 I agree with that.

13           Because the Zoning Commission, we get put in all  
14 these -- did this, didn't do this, what the intent was. It  
15 would be different if I had to do something prior to me being  
16 -- and my intent, at least this commissioner's intent was not  
17 to come out with outcomes like this.

18           But then again we also make sure -- and the ZA has  
19 a pretty good record and I'll say this. He's been there the  
20 longest since I've been around. So he has a pretty good  
21 record.

22           And by law that's what he's supposed to do, make  
23 those interpretations as we all know.

24           So anyway that's enough of that. So let's just  
25 do away with the word retroactive. That was me saying that.

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1 But it's vesting is what I was saying and how we basically  
2 deal with this. But far succeeds what we normally -- our  
3 normal course of action. Anyway.

4 VICE CHAIR HART: So we have cross examination.

5 MR. HITCHCOCK: I don't have any questions, but  
6 what I would like to ask. Our presentation limited it solely  
7 to stuff that's in the record. Mr. Sullivan and Mr. Liebman  
8 have brought in a number of new materials. We don't know  
9 where these houses are.

10 Looking at it superficially nothing I think in  
11 this pile looks anything like this where you look out your  
12 window and there's a wall in front.

13 So if the Board is going to admit this additional  
14 evidence, have it filed on ICE we would like it to include  
15 the addresses so we can respond to it and would like a week  
16 to put in any response to that.

17 All this was available by the time that the  
18 opposition's statement was filed seven days before.

19 VICE CHAIR HART: I understand and as I said I  
20 don't think that we're going to be ruling on this today so  
21 there will be some time.

22 MR. HITCHCOCK: And I would like to make a few  
23 comments if I may in response to Member White's question.

24 VICE CHAIR HART: Actually just -- we're going  
25 through the cross examination for testimony that the owner

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1 has provided. If you have any questions and I think you said  
2 you didn't. I don't know if DCRA does have any questions for  
3 them?

4 MR. TONDRO: No, thank you.

5 VICE CHAIR HART: Okay. Then I just want to make  
6 sure that we kind of move through the different aspects of  
7 it.

8 CHAIR HOOD: Mr. Chairman, let me just say this  
9 though. This submission that we just got, I would like to  
10 make an apples to apples comparison because all of these  
11 don't need to be responded to because it's not even a fair  
12 comparison.

13 VICE CHAIR HART: I haven't gotten there but I was  
14 going to actually ask for some other information if the owner  
15 would.

16 I would like to know where they are located with  
17 respect to your property. Just the information that you  
18 provided, the photographs, I have no idea where they are in  
19 the neighborhood and so it's hard to understand where that  
20 is.

21 And it is helpful to do that. I understand that  
22 it's something that you can kind of walk out and say this is  
23 one and that's one, but my idea of neighborhood and your idea  
24 of neighborhood may be different. And I'm just trying to  
25 understand all that.

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1           How many of these are actually on the block. How  
2 many of them are within five blocks. I don't know. But it  
3 would be helpful to be able to have that information. So  
4 that is what that is.

5           And then understand what the appellant's rebuttal  
6 to that is.

7           MR. SULLIVAN: And we were just responding to his  
8 general comment that it's odd and absurd.

9           VICE CHAIR HART: I understand that.

10          MR. SULLIVAN: It's not because there are other  
11 houses that do that.

12          VICE CHAIR HART: I was actually interested in  
13 that in general because I think it's helpful to kind of  
14 understand what that is.

15          So as we're moving through our process here we  
16 have a rebuttal that you may give at this time. I'm trying  
17 to think -- I'm sorry, going through this process is  
18 different than our normal process so I apologize for who's  
19 moving first through this. But if you could provide a  
20 rebuttal that would be helpful.

21          MR. HITCHCOCK: Okay, thank you, Vice Chair Hart.  
22 And I will try to be brief and respond to some of the  
23 questions as well.

24          I think Chairman Hood pointed out the point about  
25 pending applications. That was what was asked. That was

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1 what was answered.

2           This case falls somewhere in the middle. It  
3 wasn't pending.

4           But I want to talk also about this question of how  
5 you construe the rule. The legislative intent, the  
6 commission's intent is very clear. And this case is perhaps  
7 unique because at the time the issue was identified there was  
8 still a live issue before the zoning administrator.

9           It was possible to do something. And their  
10 argument is okay well, in November 2017 it was reasonable to  
11 read the words together. We can argue that point but even  
12 if that is so, and I don't want to concede the point, even  
13 if that's so it quickly became apparent within a matter of  
14 weeks that no, that was not what the commission intended,  
15 that the commission did not intend this sort of thing to  
16 happen.

17           I think Vice Chair Hart you asked about how often  
18 does this happen. One of the problems here is that this is  
19 a matter of right development. So a neighbor such as Ms.  
20 Thabault doesn't know what's going to happen until she finds  
21 out that the permit has been issued.

22           I don't want to get into who said what to whom  
23 when and that kind of stuff, but there is some email in there  
24 where she asked for the plans.

25           If she had known that it was going to look like

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1 this in advance things could have been done. But because  
2 things played out the way they were that just wasn't  
3 possible.

4 So the unique situation here made this issue ripe  
5 for consideration and reconsideration in January. The permit  
6 was wrongly issued. It should not have been issued. It was  
7 not the intent to have pop-outs.

8 And as the Board and Chairman Hood certainly know  
9 the commission and the Board spent a lot of time in recent  
10 years dealing with pop-ups. And I would respectfully submit  
11 that this kind of pop-out is different from the sort of  
12 developments that we've seen elsewhere.

13 Member White asked the question about precedent.  
14 The zoning regulations only change once every 58 years. So  
15 there is not a lot of clear guidance.

16 But I think what is clear is that when everyone  
17 agreed in January, only three months ago that what the right  
18 interpretation of the rule was and there was a chance to do  
19 something about it something should have been done.

20 As we said in our brief it's never too late to do  
21 the right thing and we respectfully submit that should have  
22 happened here. If the court has no --

23 VICE CHAIR HART: It's okay.

24 MR. HITCHCOCK: I multi-task. One other point in  
25 terms of that we recounted the factual background. Ms.

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1 Thabault did keep the owners apprised of what her concerns  
2 were. She did as soon as she heard the construction start  
3 right after Thanksgiving tell them she was appealing. We put  
4 that email in the record.

5           There may have been some -- she can speak to this  
6 better than I but in the interest of time there may have been  
7 some interior work done but the exterior work did not really  
8 begin in earnest until after the zoning administrator's  
9 January decision. Is that correct? Okay. She says yes.  
10 She didn't have her microphone on.

11           VICE CHAIR HART: I appreciate you saying that.  
12 And I saw her say that.

13           Okay, so Mr. Tondro?

14           MR. TONDRO: Thank you, Vice Chair Hart, Chairman  
15 Hood, members of the Board.

16           This is a case where the ZA was confronted with  
17 two clear rules that taken together which the ZA must do  
18 under B 100.2 it says that the words that are defined herein  
19 shall have the meaning ascribed. Shall.

20           Those two taken together are clearly in the ZA's  
21 view and DCRA's view unambiguous that it applies only to  
22 attached buildings. I think that's a reasonable  
23 interpretation as well.

24           However, in response to Ms. Thabault's questioning  
25 the ZA reached out to the Office of Planning to see if there

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1 was any evidence on the record. There has to be some  
2 evidence of the Zoning Commission's intent.

3 And after research there was nothing that could  
4 be shown. In other words what we would be looking for was  
5 evidence that when the Zoning Commission considered let's say  
6 the text of B 315.1(c) that there was discussion about that  
7 that made it clear that it was meant to be understood as  
8 attached building attached at any point to another building.

9 There wasn't anything there as far as the Office  
10 of Planning was able to find, as far as the Office of the  
11 Zoning Administrator was able to find.

12 In the absence of any evidence to hang an  
13 interpretation that would deny the applicability of the  
14 definition of attached building to B 315.1(c) the ZA was  
15 forced to do his job which is to say this is the regulations,  
16 this is how it should be understood and convey that to Ms.  
17 Thabault.

18 However, nonetheless in that discussion with the  
19 Office of Planning there was a sense from the Office of  
20 Planning that the intent of the Zoning Commission -- this had  
21 been sort of overlooked that again perhaps in the process  
22 that there was -- the definition of attached building was  
23 adopted somehow differently, that that was not the intent.

24 The Office of Planning thought that was not the  
25 intent and therefore took it to the Zoning Commission to

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1 confirm. And the Zoning Commission did subsequently confirm  
2 that.

3 But again the Zoning Commission action took place  
4 almost a month after the permit had already been issued. So  
5 again from the ZA's point of view this is something where he  
6 does not have that right to be able to retroactively take  
7 away a permit on the basis of some subsequent action by the  
8 Zoning Commission that indicated an intent that however was  
9 never manifested earlier. So I'll leave it at that. Thank  
10 you.

11 VICE CHAIR HART: Thank you.

12 MR. SULLIVAN: Thank you, Mr. Chair. On the issue  
13 of legislative intent, the legislative intent is determined  
14 first and foremost from the language itself. And the  
15 language here was clear, plain, unambiguous. It was a  
16 defined term.

17 So the legislative intent in the absence of any  
18 other history on this which Office of Planning noted there  
19 was none showed that this was to apply only to attached  
20 buildings and not to semi-detached buildings.

21 The correction later actually only clarifies that  
22 point. Call it a technical amendment if you want but it  
23 substantively changed that provision. It was attached  
24 buildings. Now it's attached and semi-detached. It's that  
25 plain.

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1           If you're proposing that after a Zoning Commission  
2 hearing where they say we wished we would have written it  
3 this way and now we're going to change it that way, if you're  
4 saying that the zoning administrator should then go back and  
5 apply that that's not an interpretation.

6           The finding that the zoning administrator made in  
7 January was that the language here still means what it says.  
8 He can't apply a future thing. They're asking you to apply  
9 a regulation that wasn't even adopted yet and wasn't even  
10 effective until March 2nd.

11           What if they changed the language in the process  
12 in the hearing if they had hearings. Would the intent, the  
13 later stated intent then change and he'd have to go back and  
14 maybe give the permit back or pull it later.

15           You have to put yourself in the zoning  
16 administrator's position because they have to prove that he  
17 made a mistake. And when he's looking at defined terms and  
18 unambiguous language I don't know how anybody could say the  
19 zoning administrator made a mistake in saying this provision  
20 did not apply to Mr. Liebman's house. Thank you.

21           VICE CHAIR HART: Thank you. Okay, the last thing  
22 we have are closing. But it sounds like most of you actually  
23 did a closing already. If you have any last thoughts.

24           MR. HITCHCOCK: I'll keep it under a minute this  
25 time.

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1 VICE CHAIR HART: You're getting closer and  
2 closer. Soon it's going to be like you're going to say two  
3 words and it's going to be done.

4 MR. HITCHCOCK: It's like that old show Name That  
5 Tune. I'm not that good. I can't close in two words.

6 VICE CHAIR HART: That's okay.

7 MR. HITCHCOCK: But I'm a little surprised Mr.  
8 Sullivan is running from the phrase about odd results because  
9 the cases that we quote on page 6 are his case. They're the  
10 ones he cited in his memorandum. But the problem is he only  
11 cited the part that favors his client's view, not the part  
12 that points to some leeway.

13 I would agree, yes, if a statute or a regulation  
14 is perfectly clear normally you look to the words of the  
15 statute and apply it. But here when you get odd results as  
16 I submit we have seen here this is different as the chairman  
17 suggested that's not a reason to follow the literal language.

18 And again, to emphasize the uniqueness of this  
19 case. If the permit had issued, the building had been built  
20 and all of a sudden a neighbor realizes oh my goodness,  
21 that's a terrible addition but there had been no appeal that  
22 would be a different case.

23 But here Ms. Thabault once she became aware of the  
24 situation did everything that she could to bring it to the  
25 attention of the zoning administrator and to seek relief.

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1 And relief could have been granted.

2 The zoning administrator could have realized that  
3 yes, this was a mistake and the permit can be revoked. Thank  
4 you.

5 VICE CHAIR HART: Thank you.

6 MR. TONDRO: I'll try to be as quick as possible,  
7 probably not as quick as Mr. Hitchcock.

8 Contrary to what Mr. Hitchcock said I think the  
9 ZA did not have the authority to be able to go and say there  
10 was a mistake with the permit when it was issued because the  
11 zoning administrator was charged with enforcing the zoning  
12 regulations which when you combined the definition of  
13 attached building as I've already said with the actual text  
14 of B 315.1(c) it leads inevitably to the result that it only  
15 applied to attached buildings.

16 However, the zoning administrator did work with  
17 the Office of Planning to try to make sure that to the extent  
18 that was not the intent that going forward that would be  
19 addressed and the zoning administrator tried to do that as  
20 quickly as possible to make sure that if the intent of the  
21 Zoning Commission was not to produce results like this one  
22 that this was a one-off.

23 But ultimately this appeal really is about did the  
24 ZA err. And as has already been alluded to the appellant in  
25 this case in all appeals has the burden of proof. In this

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1 case the ZA has -- there's been no sufficient evidence to  
2 show that the ZA erred in effectively what the appellant  
3 would have the ZA have done which would be to rewrite the  
4 zoning regulations, ignore one portion in favor of another.

5 I think the ZA did what he was charged to do in  
6 this particular case and therefore as a result DCRA would ask  
7 that the Board confirm that he did not err and therefore deny  
8 the appeal. Thank you.

9 VICE CHAIR HART: Thank you.

10 MR. SULLIVAN: Thank you, Mr. Chairman. I'm going  
11 to talk about this issue of odd results. Because what  
12 they're calling an odd result is just their opinion that they  
13 don't like it.

14 And if that's what the zoning administrator's  
15 standard is it's impossible. It's impossible for a homeowner  
16 to ever do anything because of the odd result exception that  
17 would be written into the zoning regulations if the Board  
18 went with that.

19 Can I do this, Mr. Zoning Administrator? Well,  
20 yes, you can, but if somebody next door thinks that it's an  
21 odd result then maybe you can't and I have to be careful.  
22 And so maybe I'm making a mistake.

23 The odd result exception talks about when it  
24 doesn't jibe with other portions of the regulations or it  
25 makes something come about that wasn't --

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1 MR. LIEBMAN: So in this instance it would be as  
2 if 315 had said you cannot build on a semi-detached building  
3 against one of its two immediately adjoining neighbors where  
4 it's clear that the defined term doesn't mix at all with the  
5 rest of the provision. That's the odd results that they're  
6 talking about in the case law. Not a taste of how a style  
7 would look.

8 MR. HITCHCOCK: May I clarify?

9 MR. SULLIVAN: That's all we have. Thank you.

10 VICE CHAIR HART: So I know that we have -- I  
11 don't know if the Board wants to ask for any other  
12 information.

13 The one thing that we did ask for was the kind of  
14 addresses or a map that shows where these -- what the owner  
15 handed out to the Board members earlier. Kind of a map and  
16 some addresses for that. That would be helpful.

17 I think the appellant is looking for that  
18 information as well so they can respond to it which is fine.

19 Do the Board members want anything else, any  
20 information? Because we do have a lot of information so far  
21 on the -- where each of you stand with the statements that  
22 you've made here as well as the written statements that  
23 you've made that are exhibits in the record as it is.

24 I was thinking that we may want to have -- I don't  
25 know if the rest of the Board wants it. Would you like to

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1 have the findings of fact and conclusions of law for this?  
2 I'm just looking at the Board members to see.

3 So if you all could provide that for us, findings  
4 of fact and conclusions of law for the case. So, Mr.  
5 Sullivan, we're looking for map, addresses.

6 Mr. Hitchcock, response to that. And Mr. Tondro  
7 if you want a response, that's up to you if you want to or  
8 not.

9 I don't know what the timing is for you to get  
10 this. I'm assuming you need --

11 MR. HITCHCOCK: I'm not sure if Mr. Sullivan wants  
12 to amend to add addresses and file it on ICE and serve it.  
13 I don't know what date you had in mind. If we could have a  
14 week after that.

15 In terms of proposed findings and conclusions, two  
16 weeks after that. I don't know.

17 VICE CHAIR HART: So a couple of weeks we're  
18 talking about.

19 MR. HITCHCOCK: Yes, what makes sense for you. I  
20 don't know when Mr. Hood will be coming back, in May or June.

21 VICE CHAIR HART: I think that we may be actually  
22 doing -- I'm speaking for the Board. Are we moving this to  
23 decision at our next meeting?

24 CHAIR HOOD: Mr. Chairman, once you get what you  
25 asked for I think we can.

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1           VICE CHAIR HART: Okay. The reason I was asking,  
2 Commissioner Hood may or may not be at that. He could submit  
3 --

4           CHAIR HOOD: I think this is one that I probably  
5 need to be at.

6           VICE CHAIR HART: So I know the next time you said  
7 you're going to be here is in the middle of May.

8           CHAIR HOOD: I hate to keep pushing everything to  
9 the 16th.

10          VICE CHAIR HART: It is what it is. It is a  
11 meeting at that point.

12          CHAIR HOOD: Yes.

13          VICE CHAIR HART: They don't have to attend that.  
14 You may if you like but that's not something that you would  
15 have to do. That would give you time to be able to respond  
16 and submit the findings of fact and conclusions of law to us.

17          Mr. Moy, can you give me some dates for all of  
18 this?

19          MR. MOY: With pleasure. But I want to ask if I  
20 may ask the applicant how much time you would need to make  
21 your filing on the additional information on the photographs.

22          MR. HITCHCOCK: I guess the question would first  
23 go to Mr. Sullivan in terms of when he would be filing the  
24 maps with addresses and that sort of thing. If we could have  
25 a week from that and then two weeks after that for findings.

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1 I don't know. I'll let my colleagues here speak to that  
2 schedule.

3 MR. SULLIVAN: We can file these by Friday.

4 MR. MOY: By Friday. So that would be this Friday  
5 April 6th. And I believe Mr. Hitchcock said he could respond  
6 to Mr. Sullivan's filings a week later which then would April  
7 13th or do you want April 20th?

8 MR. HITCHCOCK: It should be fairly  
9 straightforward. By the 13th and then proposed findings by  
10 the 27th.

11 And just again to note for the record this is  
12 information that was available to them. They could have  
13 filed it.

14 MR. SULLIVAN: I object. We've had our closings.

15 VICE CHAIR HART: That's fine. So I think that  
16 we're good. Everybody knows the dates and what we're  
17 expecting?

18 MEMBER JOHN: Mr. Vice Chair, I have a question.  
19 Would it make sense in terms of relevance to have the houses  
20 that they submit be limited to houses on the same street?  
21 Since we're looking at the setback from the street.

22 MR. SULLIVAN: I would ask the Board what the  
23 relevance of any of it is so we know how to engineer that.

24 VICE CHAIR HART: You've already submitted this.  
25 I just want to limit it to that, to what you've already

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1 submitted. So I don't want to get into the street or not the  
2 street. Just whatever they submitted, just get the addresses  
3 and a map that shows where that is.

4 MR. MOY: So anyway, Mr. Vice Chair, I just want  
5 to add that if the parties are going to be depending on the  
6 transcript I'd allow between 10 to 14 days for the  
7 transcripts to be available if you need that to help you  
8 prepare your findings of fact and conclusions of law.

9 So I would offer perhaps to file the findings of  
10 fact and conclusions of law let's say Monday April 30th.

11 VICE CHAIR HART: That will work, Mr. Moy.

12 MR. MOY: Okay, good. And then I believe you said  
13 that you were going to set this for decision on May 16th.

14 VICE CHAIR HART: That's when Commissioner Hood  
15 is back.

16 MR. MOY: Okay, there you go.

17 VICE CHAIR HART: And that's it. Thank you all  
18 for coming in. Thank you for your patience for the day. Do  
19 appreciate it.

20 Mr. Moy, do we have any other matters before us?

21 MR. MOY: That's it from the staff.

22 VICE CHAIR HART: So the meeting is adjourned.

23 (Whereupon, the above-entitled matter went off the  
24 record at 3:34 p.m.)

25

C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DC BZA

Date: 04-04-18

Place: Washington, DC

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