

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 17, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARLTON HART, Vice Chairperson (NCPC)
LORNA JOHN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Zoning Commission Member
PETER SHAPIRO, Zoning Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
KAREN THOMAS
MAXINE BROWN-ROBERTS
STEPHEN COCHRAN
MATT JESICK
CRYSTAL MYERS
BRANDICE ELLIOTT
ANNE FOTHERGILL

The transcript constitutes the minutes from the
Public Hearing held on April 17, 2018.

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

(9:43 a.m.)

1
2
3 CHAIR HILL: All right, good morning everyone.
4 Sorry we're starting a little late. There were some metro
5 issues, I won't name the line. The hearing will please come
6 to order. We are located in the Jerrily R. Kress Memorial
7 Hearing Room at 441 4th Street, N.W.

8 This is the April 17th public hearing of the Board
9 of Zoning Adjustment of the District of Columbia. My name is
10 Fred Hill, Chairperson. Joining me today is Carlton Hart,
11 Vice Chair, and Lorna John, Board member, and representing
12 the Zoning Commission is Peter May. Peter Shapiro will also
13 be joining us for a case.

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

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

25 All persons planning to testify, either in favor or

1 in opposition, must have raised their hand and been sworn in
2 by the secretary.

3 Also, each witness must fill out two witness cards.
4 These cards are located on the table near the door and on the
5 witness table. Upon coming forward to the Board -- pardon
6 me. Before coming forward to speak to the Board, please give
7 both cards to the reporter sitting at the table to my right.

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

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

23 The District of Columbia Administrative Procedures
24 Act requires that the public hearing on each case be held in
25 the open before the public pursuant to Section 405b and 406

1 of that act.

2 The Board may, consistent with its rules and
3 procedures and the Act, enter into a closed meeting on a case
4 for purposes of seeking legal counsel on a case pursuant to
5 D.C. Official Code Section 2-575b4 and/or deliberating on a
6 case pursuant to D.C. Official Code Section 2-575b13, but
7 only after providing the necessary public notice, and in the
8 case of an emergency closed meeting, after taking a roll call
9 vote.

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

16 Preliminary matters are those which relate to
17 whether a case will and should be heard today such as
18 requests for a postponement, continuance, or withdrawal, or
19 whether proper and adequate notice of the hearing has been
20 given. If you are not prepared to go forward with the case
21 today or if you believe that the Board should not proceed,
22 now is the time to raise such a matter.

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

24 MR. MOY: Good morning Mr. Chairman, members of the
25 Board. Believe it or not, I don't have any general

1 preliminary matters before the Board calls its first case.
2 Other than that, there are some preliminary matters that
3 staff would suggest the Board address when the case is
4 called.

5 CHAIR HILL: Okay. That being the case, if anyone
6 here wishes to testify, and if you could please stand and
7 raise your right hand and take the oath administered by the
8 secretary to my left.

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

14 CHAIR HILL: Okay, great. Thank you. One more
15 announcement I guess. This hearing was going to -- this was
16 the one that was going to happen during the snow day, and I
17 was actually not supposed to be there that day. So Vice
18 Chair Hart, if you were prepared to chair that meeting, and
19 I appreciate you doing that again today if you wouldn't mind,
20 because you have more of the reporting, heard more of the
21 reports than I have.

22 VICE CHAIR HART: Sure. That's not a problem, Mr.
23 Chairman. So I guess we can call the first case, Mr. Moy?

24 MR. MOY: Yes. Thank you. As the Board will
25 recall, the Board, on its own motion, to reopen application

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1 number 19677 of Plant the Seed Youth Treatment Services, and
2 I'm going to read, for the record, this was -- rather is an
3 application that was amended for special exception under the
4 use provisions of Subtitle U, Section 203.1(I). This would
5 increase the occupant load of an existing health care
6 facility from six to 15 persons in the R-2 Zone at 5212 Astor
7 Place Southeast, Square 5308, Lot 25.

8 VICE CHAIR HART: Thank you, Mr. Moy. If we could
9 have the applicant come to the dais, please.

10 CHAIR HILL: And just for the record, again, I have
11 read into everything for today.

12 VICE CHAIR HART: Okay, thank you. Good morning.
13 I'll let you all get settled. If you could just introduce
14 yourselves for the record, and if you could give your name
15 and your address, I'd appreciate it. Turn on the mic in
16 front of you. That's okay.

17 MR. M. DAVIS: My name is Michael Davis. My
18 address is 4865 F Street Southeast, Washington D.C., 20019.

19 VICE CHAIR HART: Yes, sir.

20 MR. D. DAVIS: My name is Daryl Davis. I live at
21 2012 Rosedale Street Northeast, Apartment 1, Washington D.C.,
22 20002.

23 MS. T. DAVIS: Good morning. My name is Toya
24 Davis. I'm at 2012 Rosedale Street Northeast, Apartment 1,
25 Washington D.C., zip 20002.

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1 VICE CHAIR HART: Good morning. Welcome.

2 MR. M. DAVIS: Good morning.

3 MR. D. DAVIS: Good morning.

4 MS. T. DAVIS: Good morning.

5 VICE CHAIR HART: And as you are probably aware,
6 you've understood that this case was to be heard at the
7 January 31st meeting that we had of this year. That was our
8 first hearing. We were going to hear this case, or had
9 continued it until March 21st. Just, an error occurred. We
10 actually heard the case on February the 21st, which was
11 early.

12 MR. M. DAVIS: That's correct.

13 VICE CHAIR HART: And we actually decided the case
14 at that point. We are here because we received some
15 notification from a community organization. They were
16 seeking to be a party on this case, and when we received
17 that, we realized that there was some issue with timing and
18 the calendar.

19 So we reopened the case, and now we had the case
20 set for the 21st, a snow day occurred, and it's now been
21 pushed to today. So currently what's before us, we had
22 already I guess granted this application back in February,
23 on February 21st of this year, after that hearing, and now
24 we are, because of some kind of time issues that we have, we
25 actually have to -- we're going to have to vote to rescind

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1 that vote so that we can kind of open up this hearing and
2 continue the hearing in a way that purports to our
3 regulations.

4 So I wanted you to kind of understand that timeline
5 to understand where we were in this. It happens, and we are
6 trying to just deal with that, the situation that we're all
7 in right now. So the first thing, and you all can turn off
8 your mics. You don't need to have them on right now.

9 The first thing I guess for us is that, for the
10 Board, is that we will have to rescind our vote, and I'm
11 going to make a motion to rescind the vote that we had for
12 Application number 19677 of Plant the Seed Youth Treatment
13 Services as read by the secretary and that we voted on and
14 approved on February 21st of 2018. Do I have a second?

15 CHAIR HILL: I second.

16 VICE CHAIR HART: All those in favor of rescinding
17 the vote say aye.

18 (Chorus of aye.)

19 VICE CHAIR HART: Any opposed? Okay, Mr. Moy, it
20 looks like the votes have it to rescind our earlier approval.

21 MR. MOY: Yes, Mr. Chair -- Mr. Vice Chair. Let me
22 read the vote for the record. And that vote is recorded as
23 four to zero to one, this on your motion, Mr. Vice Chair, to
24 rescind the vote to Application number 19677. Seconded the
25 motion, Chairman Hill. Also in support Mr. Peter May and Ms.

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1 Lorna John. No other Board members were present.

2 VICE CHAIR HART: Thank you, Mr. Moy. Okay, so
3 that gets us back to our hearing, and we're going to proceed.
4 We have a party -- a motion for party status that has been
5 submitted to us. Is anyone here from the Marshall Heights
6 Civic Association? If you could come to the dais, please.
7 You can both come, that's fine. And if you could state your
8 name and your address.

9 MR. TOWERY: Keith Raphael Towery. 4807 B Street
10 Southeast, Washington D.C.

11 VICE CHAIR HART: How do you spell your last name?

12 MR. TOWERY: T-O-W-E-R-Y.

13 VICE CHAIR HART: Okay. Yes, sir.

14 MR. SMITH: Dontrell Smith, ANC Commissioner for
15 7E06. Address, 5408 E Street Southeast, Washington D.C.,
16 20019. The spelling of my name is D-O-N-T-R-E-L-L, last name
17 Smith.

18 VICE CHAIR HART: Thank you, Commissioner Smith,
19 for coming down. So you all have submitted a motion for a
20 party status request. That motion was made on March the 9th.
21 Or actually I think it was the 12th that we received it.
22 Could you tell us a little bit about why you've submitted
23 this party status request?

24 MR. TOWERY: Yes. It was actually --

25 VICE CHAIR HART: Actually, what I'm asking for is

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1 really how do you meet the criteria that's set up in the
2 zoning regs?

3 MR. TOWERY: Okay. We meet the criteria because we
4 represent the community of Marshall Heights. Marshall
5 Heights is a community that is enjoined and bound by East
6 Capitol, Central Avenue, Southern Avenue, and back to Benning
7 Road. It's the same area in which the Plant the Seed
8 application is asking for the extension to increase their bed
9 size from six to 15.

10 VICE CHAIR HART: And this is a different request
11 than the -- I mean, the ANC is already a party in this case,
12 so could you give a little explanation as to how you're
13 different from the ANC?

14 MR. TOWERY: A civic association, as a civic
15 association, we assist the ANCs in advocating for different
16 things, different priorities and different considerations
17 that take place in our Marshall Heights community. We are
18 not an elected body per se as the Advisory Neighborhood
19 Commissions. We are a civic association that is the
20 neighborhood group. We have residents from every block in
21 Marshall Heights that are part of the civic association.

22 VICE CHAIR HART: And Commissioner Smith, are you
23 part of this civic association as well?

24 MR. SMITH: No.

25 VICE CHAIR HART: Okay. You're just coming because

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1 you're the ANC rep?

2 MR. SMITH: Yes. Correct.

3 VICE CHAIR HART: Okay. Does the Board have any
4 questions for the party status opposition? No? I think that
5 we will -- we're going to have to determine whether or not
6 we believe that you should be granted party status. One of
7 the issues that we have to address is that your party status
8 request was actually late.

9 It was a late filing. The case was actually -- the
10 first hearing for the case was January 31st, and your party
11 status request came in in March, which is several months
12 late. Could you describe why that's the case? We're just
13 trying to understand that.

14 MR. TOWERY: Sure. So, when this issue was brought
15 to our civic association from residents that reside on Astor
16 Place, we did our due diligence to consult with the Advisory
17 Neighborhood Commission of 7E, and we also read all of the
18 materials on your website. On your website, we saw that as
19 long as you file 14 days before a hearing date, you can be
20 considered to receive party status. The website didn't
21 indicate to us that you have to apply for the first hearing.

22 VICE CHAIR HART: And so when were you made aware
23 of this application?

24 MR. TOWERY: We were --

25 VICE CHAIR HART: Because the application was out,

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1 you know, before -- it has to be noticed. It's on the
2 property. There is notice that actually happens well before
3 the actual public hearing date. So what we're trying to
4 understand is what the delay was from.

5 MR. TOWERY: Well, unfortunately, on the actual --
6 the property, the 5212 Astor Place property, there are no
7 public notices displayed on the property. We were made aware
8 of this instance -- I can't give you the exact date, but I
9 can tell you it was circa the last week of February when we
10 had a Board meeting and we had a member from the Astor Place
11 come and ask if we can become part of the party. And at that
12 point, we contacted ANC to figure out if they have submitted
13 any information to the actual BZA Board so we could
14 supplement the information.

15 VICE CHAIR HART: And were you -- I thought there
16 was an ANC meeting before our January 31st meeting. Were you
17 not aware of that meeting, that they were discussing this
18 particular case?

19 MR. TOWERY: No, we were not aware. We were not in
20 attendance at that particular ANC meeting. And the December
21 meeting, for myself personally as the Chair of Marshall
22 Heights, I was not in Washington D.C. I was somewhere else.
23 I did not make it to the December meeting as well that they
24 also discussed it.

25 VICE CHAIR HART: Okay. Any questions from the

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1 Board?

2 COMMISSIONER MAY: Yeah, my recollection is that
3 the January 31st hearing was immediately continued, right?
4 There was no substance to that day, right?

5 VICE CHAIR HART: Okay. That is correct.

6 COMMISSIONER MAY: Right. But we do have -- I mean,
7 I've not pulled it up, but we do have a -- or I'm trying to
8 pull it up, but we have an affidavit of posting which means
9 that there should have been signs on the property. This is
10 an affidavit that says that there were signs on the property
11 in January, which is one of the things that you had said you
12 did not think had occurred, right? You were not aware of
13 signs being posted on it?

14 MR. TOWERY: Correct.

15 COMMISSIONER MAY: Okay. Unfortunately --

16 VICE CHAIR HART: Yeah, I've actually pulled up the
17 affidavit posting, and it --

18 MR. M. DAVIS: May I interject that if you look at
19 the application, we sent pictures --

20 COMMISSIONER MAY: Right, that's what we're talking
21 about. You don't need to interject.

22 VICE CHAIR HART: Yeah, this is a discussion
23 between the Board and the folks, the party that's trying to
24 become an opposition party.

25 MR. TOWERY: And might I add --

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1 VICE CHAIR HART: Hold on a second. The actual
2 affidavit posting says January 8th, 2018. This is signed by
3 a notary, a notary public. It says that these, that there
4 were signs, photographs on the property itself as early as
5 early January so this, that was several weeks before the
6 actual date. So I'm just saying that that's what we have.
7 We have to go to the record to see what it actually says.
8 If they have --

9 CHAIR HILL: Mr. Vice -- I'm sorry. It looks -- I
10 mean, the photographs that I see, it looks like it's duct-
11 taped on the building pretty good there.

12 VICE CHAIR HART: So do you know what -- oh, that's
13 Exhibit 27A through D it looks like.

14 MR. TOWERY: If I may add --

15 VICE CHAIR HART: Sure.

16 MR. TOWERY: Again, we were made aware of this
17 around February, circa the last week of February. It's
18 possible if there was only a time limit that this posting
19 should be on the building, by the time we were informed, that
20 sign wasn't there any longer.

21 We also did neighborhood canvassing in the month of
22 March in SMD7006, and I can tell you personally I knocked on
23 the door of the 5212 and also the building that adjoins it
24 as well. I didn't personally see any posting there. So if
25 there was a time limit for the posting to be there, by the

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1 time we were informed of it, it was no longer there on the
2 building.

3 VICE CHAIR HART: I mean, the time limit is that it
4 is usually before the case has been, you know, kind of heard.
5 And in this case, the applicant would have received a
6 notification from us that -- or been actually at the public
7 hearing themselves in the mid part of February to the 21st
8 to understand what the status of their application was.
9 Anyone else have any other questions? Go ahead.

10 COMMISSIONER MAY: I don't really have any other
11 questions. I'm ready to discuss whether we should grant.

12 VICE CHAIR HART: That's fine.

13 COMMISSIONER MAY: Oh, okay, sorry. Yeah, I'm
14 familiar with the Marshall Heights Civic Association.
15 They've come and testified before the Zoning Commission on
16 multiple occasions. They're very active in the community,
17 and I think represent a distinct set of issues from the ANC.

18 And given the complications that have occurred in
19 this case, the original scheduling and the postponement, I
20 can -- I mean, I hate to just sort of rule them out on the
21 basis of them not being timely, particularly since at this
22 point, you know, we are essentially rehearing the entirety
23 of the case. And I don't think that it puts the applicant
24 at a particular disadvantage in this circumstance to allow
25 them to have party status. So I think I'm inclined to grant

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1 it.

2 VICE CHAIR HART: Anyone else?

3 MEMBER JOHN: Mr. Vice Chairman, I'm inclined to
4 agree since we have to hear the case again, and that's it.

5 CHAIR HILL: I didn't really have a strong opinion,
6 but Commissioner May makes a good point. I actually would
7 have probably been more on the side that you're untimely.
8 But again, I can go with granting the party status if we're
9 going to go through the whole hearing.

10 VICE CHAIR HART: Okay. Well, then it sounds like
11 we have three, and I would be fine with granting party status
12 as well. I understand that they are a bit late in this.
13 There were some time issues with this particular case, so we
14 would be granting you party status for this. The ANC is, of
15 course, party status already. And we will begin with the
16 actual case.

17 MR. TOWERY: Thank you.

18 VICE CHAIR HART: So what we'll do is have the
19 applicant describe their project. Just describe what it is
20 that they're doing. I know that we've done this before, but
21 we will go through this process so that the ANC and the
22 Marshall Heights Civic Association, they can have an ability
23 to cross-examine your testimony and then present their
24 testimony. You can cross-examine them. And we'll go on with
25 the hearing that way. So you may present your case as you'd

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1 like.

2 MR. MOY: Excuse me, Mr. Vice Chair. How much time
3 are you going to allocate for the parties?

4 VICE CHAIR HART: Like ten, 15 minutes? Ten
5 minutes is fine? Ten minutes, Mr. Moy. Thank you.

6 MR. M. DAVIS: Good morning to the Board, and thank
7 you once again to hearing our case. My name is Michael
8 Davis. I'm the CEO for Plant the Seed Youth Treatment
9 Services. We want to establish why we wanted to increase the
10 occupancy from six to 15 at 5212 Astor Place. It is a
11 residential youth inpatient treatment program.

12 The reason we want to increase it from six to 15 is
13 we want to provide services for youth at a capacity where
14 we're able to provide those services. And the facility that
15 we have can accommodate at least 15 youth. Plant the Seed
16 Youth Treatment Services will provide 28 days of inpatient
17 treatment.

18 That inpatient treatment would be provided by
19 certified addictions counselors who are licensed through the
20 District government, licensed social workers. There will
21 also be a contracted psychiatrist and a contracted medical
22 doctor.

23 Plant the Seed Youth Treatment Services is willing
24 to provide those services, and they are licensed with, or
25 seeking a license, of the Department of Behavioral Health as

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1 a treatment provider. We went to the DCRA, and DCRA gave us
2 status as a healthcare facility, so as a matter of right, we
3 could start at eight but we would limit it to 15. As it
4 stands right now, we are not -- we are at the door to opening
5 up. However, we wanted to see if we could have that increase
6 to 15 so that we're able to provide these services.

7 VICE CHAIR HART: Are you -- have you completed --
8 okay. Thank you. Mr. Towery, do you have any cross
9 examination for the applicant?

10 MR. TOWERY: Sure.

11 VICE CHAIR HART: And the cross examination is what
12 he's presented, are there things that you have questions on.
13 You will have an opportunity to present your own case, so if
14 you could just limit it to the questions to what he's
15 presented.

16 MR. TOWERY: At this time, I don't have any
17 questions for cross examination.

18 VICE CHAIR HART: Thank you. Mr. Smith? Excuse
19 me, Commissioner Smith, do you have any questions for the
20 applicant?

21 MR. SMITH: Just my only question is about how
22 would you bring this potential Plant the Seed to the
23 community? How would you integrate it? Like, what's your
24 platform in regards to increasing your occupancy from six to
25 15? How would you integrate it with the various different

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1 types of potential substance abuse, at-risk youth, all in one
2 center at a very quick time? Just to lay out in the
3 platform, how he plans to lay it out within the premises of
4 the 5212 Astor Place.

5 MR. M. DAVIS: I don't understand your question.

6 MR. SMITH: The question is, how would you bring
7 this -- how would you -- what's the platform and layout of
8 how the occupancy would be? Because the six to 15 is kind
9 of big, a big jump, especially when it's first starting off
10 in its pilot stage. So I'm trying to say, how would you --
11 what's the difference between six and 15? How would you
12 integrate, especially when you have a lot of different
13 substance abuse that occurs throughout the city for the
14 youth?

15 MR. M. DAVIS: The Medicaid states that you can't
16 provide any services beyond 15 as a treatment program for
17 youth anywhere in the United States. The capacity for a
18 youth treatment ends at 15 -- excuse me. Our admissions
19 policy where we would bring in youth, whether they would be
20 District -- whether they would be coming from the Ward 7 or
21 coming from other wards of the city, the capacity would just
22 be 15. So I don't know if that answers your question.

23 VICE CHAIR HART: I mean, what we're trying to do
24 is understand the zoning aspects of this. Is there a
25 particular zoning piece that you're concerned about?

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1 MR. SMITH: I'm just looking at the items that was
2 displayed on the website and just looking at the application.

3 VICE CHAIR HART: Yeah. What I'm saying is that
4 what you are asking him questions about are what he just
5 stated about two minutes ago. So you have to limit it to
6 that.

7 MR. SMITH: That's fine.

8 VICE CHAIR HART: And if you want to present --

9 MR. SMITH: No further questions.

10 VICE CHAIR HART: That's fine. If you want to
11 present later, you may do that about some issues that you
12 have, but these typically are about the zoning-related
13 concerns that are here. Good morning.

14 MS. C. DAVIS: Good morning. My name is --

15 VICE CHAIR HART: You have to put on the mic,
16 because I can't -- I just wasn't sure -- who did you say?

17 MS. C. DAVIS: My name is Catherine Davis. I'm
18 with Plant the Seed Youth Treatment Services.

19 VICE CHAIR HART: Thank you. Welcome.

20 MR. SMITH: No further questions.

21 MS. C. DAVIS: Sorry for my lateness.

22 VICE CHAIR HART: That's okay. And you can turn
23 your mic off, too. Thank you. So Mr. Towery, I think Mr.
24 Davis had three minutes that he took to present his case.
25 You have that amount of time to be able to present the case

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1 that you have. And Mr. Moy, if we could -- Mr. Moy's not
2 here. He's here. Mr. Moy, if you could put three minutes
3 on the clock for the party status. Excuse me, the opposition
4 party.

5 MR. TOWERY: Okay, so again, good morning. My name
6 is Keith Towery. I'm the current Chair of the Marshall
7 Heights Civic Association. I come here today to talk to the
8 BZA Board regarding the Marshall Heights Civic Association's
9 objections to the Plant the Seed application to enhance their
10 capacity space from six to 15 beds.

11 Our first argument is that our ANC 7E has
12 demonstrated their great weight by submitting their
13 resolutions to this BZA Board regarding their objections to
14 granting this exemption to allow them to expand their bed
15 capacity from six to 15.

16 Our second concern that we have as a community is
17 just present safety concerns that take place in a
18 neighborhood. Like many Southeast communities, or
19 communities east of the river, or how we're trying to rebrand
20 and call it the East End, there are a lot of potential safety
21 concerns that we have in our neighborhood, particularly
22 around the blocks of Astor Place. There are three open drug
23 markets. There are constant speeding in terms of vehicles,
24 traffic, and simply there are high theft and other property
25 crimes that take place in that general vicinity.

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1 The community is also disappointed -- or, not in
2 support of the history of that particular building. That
3 building has continued to lease or rent the space to similar
4 type of programs. We have an influx of these type of
5 service-oriented buildings in our community, and we don't
6 have the proper resources to actually match and have the
7 capacity to run such programs.

8 Also, we felt that the Plant the Seed misled the
9 general public about the proper use of the facility that
10 they're going to have, and we feel that the collection of
11 signatures that they obtained was done improperly. As we've
12 been community canvassing and we've been knocking on the
13 doors of the actual signatures and addresses that are listed
14 on those petitions, a lot of the residents have stated that
15 they don't recall actually giving their consent.

16 And if you can actually look at the consent, which
17 is one of the exhibits, you'll see that the only thing that
18 these forms says is substance abuse treatment for our youth
19 right here, right now. Astor Place residency, Southeast
20 Washington D.C. There's one form that actually has an
21 address that's hand-written, and there's another form that
22 actually has the website that's on there. But there's no
23 information that actually tells you exactly what these people
24 are signing up for.

25 Additionally, some of the people that the Plant the

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1 Seed Youth facility has been having testify do not stay in
2 the Marshall Heights community, as well as the apartment
3 condo association that they're referring to is not within the
4 200 feet of their location.

5 There's also no history from the group of running
6 such a facility, and I know I just went over time, so I'll
7 make this next one quick. We don't have any answers that
8 they're actually capable of running such a facility,
9 especially increasing their bed size from six to 15 when
10 there's no history of capability of capacity back knowledge.
11 Thank you.

12 VICE CHAIR HART: Thank you, Mr. Towery. I do have
13 one question. Are you aware of any similar facilities? I
14 mean, the zoning regulations state whether or not there are
15 -- whether or not there are other healthcare facilities that
16 are within a 1,000 foot radius. Are you aware of that? I'm
17 going to ask the applicant as well, but I just was
18 understanding if that was a concern.

19 MR. TOWERY: Within 1,000 feet, no. And then
20 because I'm not particularly keen on if some of those group
21 homes, the majority of the group homes that we have within
22 Marshall Heights, if they're actually classified as a health
23 type of group home. I'm not sure. But I do know that off
24 of 50th and D Street there's three group homes.

25 There's Sasha Bruce, there's the Bedford Falls, and

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1 then there's also the Catholic Charities which all -- well,
2 the last two house transitional for homeless adults, and the
3 Sasha Bruce house for juveniles in the District of Columbia.
4 And they are not within 1,000 feet, but they are still within
5 the community of Marshall Heights.

6 VICE CHAIR HART: Thank you. Another question, you
7 raised an issue about speeding, high theft. Are you saying
8 that this is because this group, this applicant wants to be
9 there, or are you saying that these are underlying issues
10 that you're -- that the community is trying to deal with?

11 MR. TOWERY: These are underlying issues that the
12 community is dealing with in concert with MPD Sixth District,
13 604. It's just an area that is just, you know, plagued with
14 these type of concerns.

15 Additionally, I know my time ran out. I did want
16 to mention that we did have residents that also submit
17 testimony in BZA that talked about the previous owner or the
18 previous group that was there that had youth that actually --
19 I don't want to say terrorized the neighborhood --

20 VICE CHAIR HART: Yeah, but we don't -- I mean,
21 that's another owner. That's another -- so we're trying to
22 deal with what we have here.

23 MR. TOWERY: But it's just that thing. It's just
24 an area that's not really conducive to have such a great
25 facility and treatment center that they would like to put

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1 there. We're not ready yet. We're just not ready for that.

2 VICE CHAIR HART: Do you think that this facility
3 will have an adverse impact on traffic, or on noise?

4 MR. TOWERY: I believe that this facility will have
5 an adverse impact on the crime. I believe that with the
6 youth that they may bring into the community, it may just
7 enhance the drug markets that we currently have in the
8 neighborhood, as well as any other kind of foot traffic or
9 any vehicle traffic within the community.

10 VICE CHAIR HART: Okay. Thank you. Any other
11 Board members have any questions?

12 CHAIR HILL: I do, I guess. Thank you, Mr. Vice
13 Chair. And this is basically to any one of the Davises. I
14 went back and watched the previous hearing, and a lot of the
15 testimony that's in the record now, both from the party in
16 opposition, the ANC tends to deal with a lot of kind of the
17 adverse impact in terms of like, how you're going to run your
18 program, and again, the concerns of the community as going
19 from a whatever, the six to 15 people.

20 So if you could speak a little bit to how you can,
21 you know, ease the fears of the community, or concerns, I
22 should say, as to how you service and look after the people
23 that you're going to be providing treatment to. I mean, the
24 one thing that I did notice is it's like 15 people and seven
25 staff, so you're almost kind of at a two-to-one ratio in

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1 terms of people that are there. But I mean, you're hearing
2 the testimony from the people, from the community. There's
3 concerns. So if you could kind of speak to how you go about
4 serving your patients.

5 MR. M. DAVIS: I guess I'll take some and then I'll
6 pass it on to my administrator. First, I would say that as
7 far as safety and security -- well, I'll speak to safety.
8 The 15 youth or up to 15 youth at no time will be
9 unsupervised. There's no in and out. They're in inpatient
10 treatment, meaning that their groups, their individual
11 counseling, their recreation will not be out in the street
12 at Astor Place.

13 All of that takes place within the facility unless
14 they are supervised and they're placed in a van and they're
15 taken out of the area to participate in a guided recreation.
16 At no time will they be unsupervised or let out to walk the
17 streets unsupervised.

18 As far as security, we will have cameras on the
19 front entrance, the side, the back of the building. There
20 are cameras that will be placed in our group area, on each
21 floor of our facility to ensure that not only that our own
22 clients are safe, that we are assured that they're where
23 they're supposed to be.

24 With those measures in place, we truly believe that
25 we will have the kind of safety that would speak to their

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1 concerns.

2 CHAIR HILL: And Mr. Davis, have you run a facility
3 like this before?

4 MR. M. DAVIS: I am presently now. I am a clinical
5 -- I'm the director of the residential treatment program
6 that's the largest and most successful in D.C. at the present
7 time.

8 CHAIR HILL: And how many patients do you have at
9 that one?

10 MR. M. DAVIS: Fifty.

11 CHAIR HILL: Five-zero?

12 MR. M. DAVIS: Yes.

13 CHAIR HILL: Okay. And do you have a pretty good
14 track record at that facility?

15 MR. M. DAVIS: We're the choice provider of the
16 District of Columbia client.

17 CHAIR HILL: Okay, thank you sir.

18 VICE CHAIR HART: Okay. Commissioner Smith? You
19 have, as everyone else has had, you have an ability to give
20 your -- to present your case on this particular application.
21 You have three minutes. Mr. Moy is gone again. I'll get
22 three minutes on myself. But you have three minutes to be
23 able to present your case, and you can do that whenever you'd
24 like. You can start whenever you'd like.

25 MR. SMITH: Okay. As mentioned, my name is

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1 Dontrell Smith, Commissioner of 7E06. I did my due diligence
2 as being an elected official by first allowing Plant the Seed
3 to give a presentation in our October 2017 meeting so he
4 could present to the community his ideas of what he wanted
5 to bring forth to the community. At that meeting, our
6 commission unanimously voted in opposition of Plant the Seed
7 in a letter of support in regards to the certificate of need
8 for the Department of Health.

9 But again, to circle back, I was able to canvass
10 the neighborhood, as well as tour the facility where these
11 potential occupancies will be housed at 5212 Astor Place and
12 toured the facility. And then secondly, we, upon the
13 application receipt of the increase to occupancy, we gave --
14 we did a vote within our commission at the January 2018
15 meeting to see what was the commission's take on that. We
16 again unanimously voted in opposition against it in regards
17 to their application for increasing from 6 to 15.

18 The biggest thing I want to say as a commission as
19 a whole, we do face a lot of issues within the 7E commission
20 as stated from the Marshall Heights Civic Association, that
21 we have a lot of pressing needs within our community, and we
22 already have a lot of compressing issues within our community
23 from the lack of other resources that we do have.

24 This facility, it's not against -- it's not saying
25 it shouldn't be welcome within the city, but just welcome in

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1 the 7E would be very difficult. You know, and like I said
2 earlier, if we already was in opposition of the certificate
3 of need of supporting it, and then you come back with another
4 application to increase your occupancy. It's like, wow,
5 you're going to 15? We already was hesitant with the initial
6 outcome that we would have.

7 As you look at other previously issued -- you look
8 at schools. They don't start off with the high school and
9 all four grades. They start off with ninth grade, then they
10 integrate ninth and tenth, and then so on until they get all
11 four grades as a pilot stage just to see.

12 So you're trying to bring something new to the
13 community in the already drug-infested area and the high-
14 crime area, then you're also trying to bring youth from all
15 over the city. No telling what type of situations or
16 backgrounds they may come from.

17 So then now you're trying to bring that. Okay, six
18 people. But now you want to raise it to 15? We already had
19 issue with the initial six. You know, granted they are
20 currently within the space, but they're not occupying it.

21 Then lastly, I did attend the March 2018 meeting
22 for the Department of Health where they postponed their
23 decision for the certificate of need because of the
24 presentation. The presentation, they did state that it is
25 a need for the city, because it would be the first facility

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1 within the city.

2 But just the platform, the portfolio, their
3 business plans, and how the layout is just a little bit --
4 they wanted a little more further information, also, they
5 wanted to take time to get the feedback from the Office of
6 Zoning to want to know why was it opened back up from the six
7 to 15.

8 So I do want to just mention that, you know, it is
9 a need for the city, and we understand that. But just the
10 7E as a whole, it's just too much. And especially going from
11 six to 15, it's already -- it's just a lot for our one
12 community. Thank you.

13 VICE CHAIR HART: Thank you. Mr. Davis, you
14 actually -- and I failed to do this before, but you actually
15 have the opportunity to cross examine both of the parties in
16 opposition.

17 MR. M. DAVIS: Yeah, I wanted to ask, first --

18 VICE CHAIR HART: And they're questions about what
19 they've --

20 MR. M. DAVIS: What they've presented.

21 VICE CHAIR HART: Yes.

22 MR. M. DAVIS: I wanted to first to ask, did you
23 have any data --

24 VICE CHAIR HART: Who are you -- I'm sorry, who are
25 you --

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1 MR. M. DAVIS: I'm referring to the Marshall
2 Heights --

3 VICE CHAIR HART: Okay.

4 MR. M. DAVIS: -- representative. I can't
5 pronounce his last name.

6 VICE CHAIR HART: It's Mr. Towery. Towery?

7 MR. M. DAVIS: But I wanted to know, did you have
8 any data reflecting what you had stated about the speeding
9 cars and the drugs and did you have any crime, any
10 statistics, any data to support what you were saying?

11 MR. TOWERY: Definitely. We actually do have data.
12 We have the data that's from the MPD website, and I can
13 upload it as an exhibit. I do apologize that I did not bring
14 that with me, but we did put a lot of that information within
15 the exhibit that we submitted to get our party status.

16 MR. M. DAVIS: Okay. The other question I had was,
17 there was some mention made about the signatures. Those
18 signatures were collected way before the increase, so how are
19 you bringing the signatures into the increase, I don't know.

20 VICE CHAIR HART: Were the signatures about what he
21 presented, or was that about --

22 MR. M. DAVIS: He was giving some reference to the
23 200 --

24 VICE CHAIR HART: Okay.

25 MR. M. DAVIS: -- close to 200 signatures that

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1 Plant the Seed had collected in support of the program. And
2 I was just wondering why -- how are you bringing that into
3 the increase as to disqualify it?

4 MR. TOWERY: So, I was not aware that these
5 signatures are now invalid due to I guess a change in the
6 increase that you're having. When I did mention the
7 signatures during my comments period, I was mentioning that
8 these signatures were presented to BZA as if this was people
9 in the community giving their support. So I was just only
10 stating the fact that I didn't feel that these signatures
11 were valid because they didn't actually have information in
12 regards to how somebody is supporting or disapproving the
13 presence of this group home facility in the Marshall Heights
14 community.

15 MR. M. DAVIS: Plant the Seed Youth Treatment
16 Services is not providing a group home. This is a
17 residential inpatient treatment program, and we're considered
18 a healthcare facility. So I'm just --

19 VICE CHAIR HART: Okay, do you --

20 MR. M. DAVIS: -- but I'll retract the question.

21 VICE CHAIR HART: Okay. Any other questions?

22 MR. M. DAVIS: No, I don't.

23 VICE CHAIR HART: Hold on, one second. It's fine,
24 you may speak, but --

25 COMMISSIONER MAY: I just needed to clarify

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1 something from the applicant, which is that you're saying
2 that the petitions that we received in the record were
3 petitions in support of your program generally and not in
4 support of this particular location and going from six to 15?

5 MR. M. DAVIS: That's correct. It was just in
6 general.

7 COMMISSIONER MAY: Was that clear to us in anything
8 that was submitted? Because these all came in -- I mean,
9 maybe it's in there somewhere, but I mean, did you make that
10 clear to us?

11 MR. M. DAVIS: I was --

12 COMMISSIONER MAY: Because it was not clear to me.

13 MR. M. DAVIS: It was -- I submitted everything
14 that I had that would be in support of the program. And that
15 included the --

16 COMMISSIONER MAY: Okay, but being in support of
17 the program is very different from being supportive of the
18 program being on your block, right? And being increased from
19 a matter of right use to a -- from six to 15 which would be
20 -- I mean, granted, it's a special exception and not a
21 variance, so there is a recognized right to be there, but
22 that difference between six and 15 is subject to, you know,
23 is there going to be any adverse impact associated with that
24 expanded use?

25 So I mean, we do look at what people in the

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1 neighborhood have to say about what they think that impact
2 will be, and I'm going to go back and look at what you
3 originally submitted to see whether we had an indication and
4 I just missed it. But this is a pretty significant
5 difference. Thank you.

6 VICE CHAIR HART: Okay. And Mr. Moy, could you
7 swear in one of the folks at the dais right now? And
8 actually, anybody else that's here that came in that needs
9 to.

10 MR. MOY: Thank you, Mr. Vice Chair. If you would
11 stand, please. Do you solemnly swear or affirm that the
12 testimony you're about to present in this proceeding is the
13 truth, whole truth, and nothing but the truth? Thank you.
14 You may be seated.

15 VICE CHAIR HART: Thank you. Sorry about that. I
16 just wanted to make sure that, we have to do that for
17 everyone as they come up, and you said that you wanted to --
18 you have to touch the mic to turn it on.

19 MS. C. DAVIS: Yes, I wanted to address the ANC's
20 comment about the meeting.

21 VICE CHAIR HART: You're --

22 MS. C. DAVIS: My name is Catherine Davis, and I am
23 administrator --

24 VICE CHAIR HART: What I'm asking, what I'm trying
25 to figure out is that are you giving a statement or are you

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1 asking them a question? Because right now, we were doing
2 cross examination for the ANC and for the party in
3 opposition, the Civic Association.

4 MS. C. DAVIS: That's right.

5 VICE CHAIR HART: Okay. So you're asking a
6 question of them?

7 MS. C. DAVIS: So this --

8 (Simultaneous speaking.)

9 VICE CHAIR HART: Something that they -- something
10 that they stated as part of their presentation.

11 MS. C. DAVIS: Yes.

12 VICE CHAIR HART: So you're asking a question on
13 that?

14 MS. C. DAVIS: Oh, does it have to be a question,
15 or I did want --

16 VICE CHAIR HART: That's --

17 (Simultaneous speaking.)

18 VICE CHAIR HART: It's a cross examination, is a
19 question that you're asking them of what they presented
20 already.

21 MS. C. DAVIS: Okay.

22 VICE CHAIR HART: If it isn't, then that -- if it's
23 a statement, then you have a closing statement that you can
24 add, or you can do a rebuttal.

25 MS. C. DAVIS: Thank you.

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1 VICE CHAIR HART: But for right now, we're trying
2 to get through the cross examination.

3 MS. C. DAVIS: Okay, thank you.

4 VICE CHAIR HART: It's a process that we are going
5 through. First we give presentations. We do cross
6 examinations. We have the Office of Planning give their
7 report. You all are able to cross examine the Office of
8 Planning. And then we have a rebuttal and then closing
9 statements.

10 MS. C. DAVIS: I see. I see. Thank you.

11 VICE CHAIR HART: So there's a process to go
12 through, and I just wanted to make sure that we were staying
13 on that track.

14 MS. C. DAVIS: Okay, thank you.

15 VICE CHAIR HART: Any other questions? Okay. So
16 we'll move to the Office of Planning. Good morning.

17 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and
18 members of the BZA. Maxine Brown-Roberts with the Office of
19 Planning. The Office of Planning recommends approval of the
20 -- excuse me -- the health care facility for this site, and
21 with the condition that it should not exceed 15 residents,
22 not including supervisors and staff.

23 The standards for approval is outlined in Section
24 U 203.1(I) for healthcare facilities, and I'll just go
25 through simply what are the conditions.

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1 The first one is that it should not include -- the
2 healthcare facility should not include -- should be for nine
3 to 300 persons, and this one is for 15 persons. It is
4 permitted within the R-2 zone as a special exception. There
5 are no other healthcare facilities within the square or
6 within a radius of 500 feet from the subject property.

7 They meet the parking requirements as outlined by
8 the applicant and as supported by DDOT. The application will
9 be certified by the D.C. Department of Behavioral Services
10 as a substance abuse disorder treatment and recovery
11 provider.

12 The proposal, again, will not cause any adverse
13 impact on traffic, because the residents will not be driving,
14 and there are adequate parking spaces for the supervisors and
15 staff which will be rotating on shifts. DDOT, in their
16 report, also stated that there would be no adverse impact on
17 traffic conditions within the area.

18 There is also the impact of noise. Again, as the
19 applicant stated, that there will only be 15 residents, which
20 will be supervised and will be inside the building. And they
21 will be taken by their own transportation to other areas for
22 other activities.

23 The operations also we do not believe that will
24 have an impact, again, it will be confined to the building.
25 And as the applicant stated, that the residents will not be

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1 allowed to be outside unless they are supervised.

2 Again, there is no other health facility within the
3 subject square or within 500 feet of the subject property.
4 Therefore, we recommend approval.

5 VICE CHAIR HART: Thank you. Are there any
6 questions for the -- from the Board for the Office of
7 Planning?

8 CHAIR HILL: I don't necessarily have for the
9 Office of Planning. A little bit back to Mr. Davis for a
10 second. So how did you get to 15, the number 15? You need
11 to turn on your microphone, Mr. Davis.

12 MR. M. DAVIS: According to Medicaid, 15 is the max
13 for residential treatment for youth in the country. You
14 can't have over 15 and be considered a residential treatment,
15 inpatient treatment program.

16 CHAIR HILL: Okay. Just out of curiosity, within
17 the space of the building, how many could you handle if --

18 MR. M. DAVIS: We have a nine-bedroom, six and a
19 half bath, 3,400 square foot facility. We could actually
20 accommodate 20.

21 CHAIR HILL: Okay, thank you. So Ms. Roberts, I'm
22 just trying to understand again. Like, within the
23 regulations, it could have gone up to 300?

24 MR. M. DAVIS: That's --

25 CHAIR HILL: No, I'm sorry --

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1 MS. BROWN-ROBERTS: Well, facilities that fit in
2 this section can go up to 300, right.

3 CHAIR HILL: Right, I understand. I just wanted to
4 understand.

5 MS. BROWN-ROBERTS: But not in this building.

6 CHAIR HILL: No, I understand. I was just, within
7 the regulations, that was my question for you. I just wanted
8 to kind of get to where we got to 15 first. Okay, thank you.

9 MS. BROWN-ROBERTS: Yes.

10 VICE CHAIR HART: And Ms. Brown-Roberts, you've
11 heard from the ANC, they've provided some -- and the Marshall
12 Heights Civic Association, they've provided some concerns
13 about things like traffic and like, theft I guess. Did you
14 take that into consideration as you were -- I think you've
15 heard some of this already, some of this testimony already,
16 or at least heard some of the issues that they've raised.
17 Could you talk about that a little?

18 MS. BROWN-ROBERTS: Regarding the traffic, and it's
19 stated in DDOT's report that they will not -- that the
20 facility will not generate much traffic coming onto the
21 streets. The traffic would be from the residents -- not the
22 residents. From the staff people coming to the site. And
23 at seven, there are seven staff persons, and so I don't think
24 that will create an impact on the traffic.

25 I think the things that the ANC spoke about, about

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1 the speeding on the street, I think that is something that
2 is outside of the applicant's purview. So I'm not sure what
3 the applicant would be able to do to stop the speeding along
4 the street, except I suppose they could have -- make sure
5 that their staff persons are not participating in that
6 activity.

7 VICE CHAIR HART: Thank you. Any other questions
8 from the Board? There was a question, you were asking a
9 question for the Office of Planning, Commissioner Smith?

10 MR. SMITH: Thank you, I just had a brief question.
11 I know you mentioned, I think we had clarification about the
12 300 people in regards to the occupancy for that type of
13 facility. I actually toured the facility. I want to know
14 if you toured the facility, and I saw it, for their facility,
15 do you think -- because at 3,400 square feet and, according
16 to Zillow, seven beds and six and one-half baths, are you
17 able to tour the facility to determine that it can, it's
18 feasible to have 15 occupancy as well as their potential
19 nurses and caregivers and the people running the program all
20 in one site?

21 Also, I noticed the parking. You know, there's a
22 parking area in the back as well, as I saw, but can you speak
23 in regards to that parking aspect? Because it's already a
24 congested street, and we've got apartment buildings on that
25 block, and I want to know how would this not impact the

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1 parking spaces that's already tight on that street as well,
2 because the one in the back is very -- I don't bank on more
3 than three cars getting back there.

4 So can you speak on if you toured the facility, if
5 the 3,400 square feet can occupy the 15 people with the per
6 -- where it's listed as seven beds and six and a half baths,
7 as well as the parking space in regards to did Office of
8 Planning think about this around the community, as well as
9 the apartment building, as well as the potential church
10 that's also on the block that also has parking for Sunday as
11 well.

12 So, has the Office of Planning thought that deep in
13 regards to the aspect when we speak on the transportation and
14 the traffic of that area as well?

15 MS. BROWN-ROBERTS: I didn't, because that is sort
16 of the purview of DDOT. You asked about touring the
17 facility. No, I didn't tour the facility. But the -- one
18 of the things I did speak to DCRA, because the application
19 was submitted to them, and I did speak to them about if that
20 building would be able to accommodate the 15 persons.

21 They said yes. In addition to that, I also spoke
22 to the Department of Behavioral Services which would be the
23 department that goes in to make sure that there is enough
24 space for the 15 persons, and they said yes, that from what
25 they've seen, that the building can accommodate 15 persons.

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1 So I didn't go out to look at it.

2 Again, regarding the parking, I think that, again,
3 I think that the property can accommodate the number of
4 parking spaces. They meet the parking requirements. And I
5 don't believe, again, I don't believe that all the staff
6 persons are going to be on site at one time. And of course,
7 we would encourage the applicant to have -- to make sure that
8 they're able to accommodate their persons coming to the site
9 and also, you know, the use of public transportation within
10 the area.

11 MR. SMITH: Last followup question. I was -- when
12 I toured the facility back in October, I did see the site.
13 I did notice that it's two ways -- you could correct me --
14 I believe it's two ways to enter and exit the premises, as
15 well as there's iron bars on the first floor.

16 So now we've got youth and we've got where -- did
17 any of the offices that you spoke with speak about possibly
18 potentially adding an emergency release button in regards to
19 we're already having youth and we have 15, so with only two
20 exits, and the bars on the first-floor windows, how would,
21 in the event of an emergency, would they be able to get out
22 in the time? Do you know if DCRA --

23 MS. BROWN-ROBERTS: No, I didn't. I didn't.

24 MR. SMITH: Okay.

25 VICE CHAIR HART: Any other questions for the

1 Office of Planning? Okay. So I wanted to ask if there was
2 anyone here that wanted to -- I know the ANC is already here.
3 Anyone here that was wanting to speak in opposition to the
4 application? Anyone here to speak in support of the
5 application? Yes, ma'am. Could you identify yourself and
6 give your address, please?

7 MS. LEE: Good evening. My name is Danina Lee. I
8 live 3529 Old York, Baltimore, Maryland. I come today. I
9 am the Director of Plant the Seed. I've worked with youth
10 and substance abuse programs since 2004 at Mountain Manor.
11 It's also a youth treatment center.

12 I understand that 15 may be a lot, but compared to
13 how many we lost in the course of the years due to substance
14 abuse -- and I understand that, you know, the key mission is
15 a group home. If it's considered a home, that's what we want
16 the boys to do to feel comfortable to get back out here.
17 This would probably be the only comfortable they get -- the
18 only comfortable home they will get within the 28 days.

19 If we do, you know, if we do fall short, I feel
20 that the ANC will -- we will take any type of advice to how
21 we can grow, because this will be our first year. But I
22 think if we come together as a team, we can save our youth,
23 because we are losing them.

24 Going to a funeral where seeing a 15-year-old in a
25 casket, or walking into one of our rooms in the facility in

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1 Mountain Manor and seeing one of the youth hanging from the
2 ceiling. I came here to represent all of the D.C. children
3 that I've sat with that cried and cried out for support from
4 D.C. I understand that it is a community, and it has been
5 multiple programs in that building. But sometimes, we got
6 to go back to what hurt us to get us to go further.

7 So again, I do support the program. When I reached
8 out to Mr. Michael, he was very, very, very supportive, and
9 he worked very hard to help our youth. And again, whatever
10 Plant the Seed can do to help the community, we'll definitely
11 do it. Pick up trash, pass out fliers, whatever we can do.
12 Again, I come here from Baltimore every day to support Mr.
13 Michael, and again, I hope that you give Plant the Seed a
14 chance. Thanks.

15 VICE CHAIR HART: Thank you.

16 MS. C. DAVIS: Yes, as well --

17 VICE CHAIR HART: I'm sorry?

18 MS. C. DAVIS: As well, in support.

19 VICE CHAIR HART: You're speaking in support? Can
20 you put your mic on, please?

21 MS. C. DAVIS: Yes, in support.

22 VICE CHAIR HART: Thank you. I thought you were
23 with the -- you're not with the --

24 MS. C. DAVIS: I'm with the organization, yes.

25 VICE CHAIR HART: Okay.

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1 MS. C. DAVIS Yes. So that's support right there,
2 right?

3 VICE CHAIR HART: Yeah. So, we'll go to your
4 rebuttal, and then we'll go to closing. So Mr. Davis? And
5 basically the rebuttal is if there are any -- anything that
6 you want to say, this is what you are doing. You've heard
7 the testimony from the Office of Planning. You've heard it
8 from the parties in opposition. Do you have any statement
9 that you'd like to make at this point?

10 MR. M. DAVIS: Yes.

11 VICE CHAIR HART: You don't have to, I'm just
12 giving you the option --

13 MR. M. DAVIS: Sure, thank you, Chair. I just
14 wanted to say that we've tried to participate in every
15 community activity that's been available, even as late as the
16 housing, the Glen Crest Housing Association, which is the
17 largest housing association in the 7E district, 7E SMD or
18 district.

19 And we even went there to inform them of our
20 intentions to increase the occupancy and to inform them. And
21 it was well received. In fact, we have endorsement from the
22 president of the Glen Crest Housing Association. So we've
23 tried to do as much as we can in terms of reflecting what the
24 community has, you know, from what we've gathered that the
25 community has been in support of.

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1 We've also been -- we don't want to be in odds with
2 the ANC, and I'm hoping that at some point, that we would be
3 able to, if granted, we would be able to find a place that
4 we could work together to build a better place for our youth.
5 And because that's, for us, and I feel personally, that's the
6 real deal.

7 You know, we're sitting here, but we're only
8 sitting here, and I believe we want the same thing. We want
9 a better community for our youth. And I live in the same
10 community that I'm proposing this program. I'm a 7E04
11 resident. I have a home there for ten years. I've raised
12 a child there. I have a granddaughter there. So when I hear
13 that it's drug-infested and it's rundown, I speak and say,
14 hey, you know what? Let's do something about it.

15 Let's provide a place where youth can come and
16 receive treatment. And I'm a treatment provider. I'm
17 licensed through the District of Columbia as a licensed
18 practitioner. And I want to use my experience not just as
19 a professional but my experience as a father and as a
20 community member to help my own community, to improve my own
21 community.

22 And I believe that the ANC -- and I'm not speaking
23 for you all, but I believe that we all want the same thing.
24 To improve the community. And I believe that six to 15
25 sounds like a large number, but in the wake, and I think that

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1 someone said it, that at the rate that we're losing our
2 youth, six to 15 is a very small number. So that's all I
3 have to say.

4 VICE CHAIR HART: Thank you. And each one of you
5 have a chance to give a closing.

6 MR. TOWERY: So just for clarification, this is a
7 closing or rebuttal?

8 VICE CHAIR HART: A closing.

9 MR. TOWERY: Okay. So again, thank you for hearing
10 the -- thank you for granting the Marshall Heights Civic
11 Association party status for this Plant the Seed residential
12 treatment facility. I hope I said that right instead of
13 group home, and I do apologize for calling it a group home.
14 I'm new to this and I'm learning terms.

15 I do want to say that, you know, everything is
16 heartfelt. You know, I work with kids that are incarcerated.
17 I work with gang members. I work in the jails and
18 everything. So I understand all of the arguments. And I get
19 the emotional appeal, too. But there's a certain point where
20 we really need to be conscious of what we have in the
21 community, especially if we're going to try to provide a
22 facility that's aim is to really treat this public health
23 issue of drugs.

24 It's not the best place to put a drug treatment
25 facility, in the heart of a place that is just surrounded by

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1 so many drugs. The woman from Baltimore, Maryland, again,
2 you made a really appealing argument. You know, it should
3 be home. I don't believe that this will be a place that will
4 be a home for these youth, as they won't be able to interact
5 in the neighborhood.

6 You know, going back to what Mr. Davis said in
7 terms of safety and security. You know, I don't really see
8 a real fleshed out security plan. I mean, cameras are fine,
9 to have cameras in and outside of the home, but there's other
10 things that probably should be in place. There should be
11 other protocols. There should be other instructions that
12 should be given. And I was really hoping today I could hear
13 some of that information, but I didn't receive that.

14 In terms of safety too, as well, just saying that
15 the kids will not be unsupervised at any time, again, those
16 are good principles, but I think there's still more that
17 could be done in order to really ensure the safety of these
18 youth, these precious youth that will be in such a facility.

19 I just feel that at some point, maybe this
20 expansion to request to have 15 patients was more of a pull
21 just to have more beds and to have more income in order to
22 fund the facility versus coming from a place if you truly
23 want to help the youth, listen to what the community is
24 saying. We don't want to have 15 beds. Start off at six
25 beds. I think we could be okay with that.

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1 But demonstrate that you can handle that first,
2 that you can address all of the safety issues and concerns
3 that we're having as a community, and then expand. Then you
4 probably won't have any opposition from the Marshall Heights
5 Civic Association, as well as the ANC 7E.

6 Another note, too, because we did mention Glen
7 Crest a few times. Glen Crest is not in the general vicinity
8 of the area. The apartment buildings that's there on the
9 block still haven't really gave their support for this
10 either.

11 Again, I really appreciate you guys taking the time
12 to allow the Marshall Heights Civic Association to be a part
13 of this party and to also voice the voice of our Marshall
14 Heights community. We are a 50-member organization and
15 growing. We have Marshall Heights Day May 12th, as I've
16 invited you multiple times, Mr. Davis, to come out to our
17 Civic Association meeting.

18 I would love for you guys to come out to our
19 Marshall Heights Day at JC Nalle Field and come talk to the
20 community. Set up a table. Talk to our residents. That's
21 what we're trying to do. Build community and address the
22 same issues you guys are addressing. Thank you.

23 VICE CHAIR HART: Thank you. Commissioner Smith?

24 MR. SMITH: Thank you. First, you know, I'm not
25 speaking just as an ANC commissioner. I'm also speaking for

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1 the voices of the 2,000 constituents that I represent in 7E06
2 as well as the 10,000 constituents that we represent as a
3 whole that's 7E.

4 From September 2017, when I first met Mr. Davis and
5 Plant the Seed up until April 2018, you know, we still
6 haven't bridged the gap of what we face, you know? As a
7 person, you know, if they're not for it, you know, maybe see
8 how you could bridge the gap. How could you come to a
9 conclusion, a better solution to solve the problems that we
10 may have?

11 There's a lot of problems that we face in society,
12 but where's the solutions? We never was able to bridge that
13 gap, and as of today, we still, as a community, as a whole,
14 as a 7E, as a commission, still is not in support of
15 increasing the load from six to 15. We still have some open
16 questions.

17 You know, have people seen the facility? What's
18 the safety aspect? What is the people going to do to try to
19 integrate it in within our community? Like, we have reached
20 out to the Civic Associations and worked with Marshall
21 Heights to try to come to, hey, what's your thoughts about
22 this? How do you feel? And we surveyed, and we got the
23 feedback, and as they're here currently.

24 But I want to say, you know, we're not trying to
25 stop the program as a whole. We're not trying to stop it for

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1 the city. Yes, the city needs it. Yes, possibly Wards 7 and
2 8 possibly need it. But deep down inside as a whole, 7E06
3 and inside my SMD, at the present moment, we don't need it,
4 because we're already facing a lot of adversity within our
5 community.

6 The lack of the retails. The lack of the retail,
7 the healthcare facilities to treat our youth from outside of
8 drugs. You know, just from medical providers. You know, we
9 have a lot of things that we constantly face. It's hard to
10 get clean if you're already in a drug-infested area. You
11 know, what's the success rate? What's the track record?

12 We hear about the people that go to Baltimore, but
13 what's the success rate when they come back to D.C.? What's
14 the platform once they leave your facility? What type of
15 resources will they have? What type of resources will they
16 gain? What's the thing -- after the 28 days within, is it
17 going to be a new cycle of constant use, rolling in and out?

18 So the biggest thing I say that when you come to
19 the conclusion and you make your motions or your vote, you
20 know, don't just vote on -- vote for what, if it was in your
21 community, how would you feel? If it was right near your
22 next door and you were walking out, how would you feel? If
23 you were going to church which is a couple doors down, how
24 would you feel if you have church members leaving?

25 So you've got to think about the vote in regards to

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1 the community and the community as a whole. But I do want
2 to thank you today for allowing me to speak and testify on
3 behalf of the 7E06, especially 7E as the commission as a
4 whole. Thank you.

5 VICE CHAIR HART: Thank you all. And I guess we
6 will -- it has been very helpful to hear your perspectives
7 on this, and Mr. Towery, I'm glad that you were able to make
8 this and provide some of your thoughts and insight on this.
9 It is helpful to hear that. And you know, it's why we do
10 have public hearings for all of our cases. And all of you,
11 I know that you've spent time trying to come here, so we do
12 appreciate that as well. I don't know if the Board members
13 have questions at this point, any final questions?

14 CHAIR HILL: Yeah, thank you, Mr. Vice Chair. Ms.
15 Lee, I was curious about something. So again, it's a 28-day
16 program, right? So you're currently working in Baltimore?
17 I was confused as to where you currently are and which
18 program you're currently working with.

19 MS. LEE: I work in Baltimore at Mountain Manor at
20 another youth treatment center. They actually are closing
21 the adolescent department, they closed it March the 15th.
22 So they stopped taking Washington D.C. children, so now they
23 don't have no way --

24 CHAIR HILL: And how many people, how many people
25 does that facility have?

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1 MS. LEE: Sixteen. Sixteen boys.

2 CHAIR HILL: Sixteen boys?

3 MS. LEE: Yes.

4 CHAIR HILL: And you have had -- you would be now
5 moving down to this facility?

6 MS. LEE: Yes sir, Washington, D.C.

7 CHAIR HILL: If this happens, obviously. You'd
8 take on this facility? And how do you -- you've heard a lot
9 of the concerns from the community here in terms of
10 oversight, so how is it that you administered for the
11 facility in Baltimore in terms of oversight with your
12 patients?

13 MS. LEE: We just make sure we were fully staffed.
14 Made sure it was one staff to four children. Make sure that
15 security was always, you know, make sure that -- we always
16 make sure the children were where they were supposed to be.
17 And we also kept record, just make sure everything was in
18 order, everything was in place, so they would not -- we
19 didn't deal with the community. We didn't have the children
20 dealing with the community.

21 CHAIR HILL: And this -- right, and in this
22 situation, for this program, also here in D.C., people are
23 going to be inside the facility at all times unless they're
24 going to be taken out on a trip of some kind?

25 MS. LEE: Yes, sir. We're actually taking our

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1 children outside of the community so they won't really
2 interact with inside of the community. So, we have a van
3 that will take the children out on different trips. The
4 closest we'd probably be would be to the museums, because we
5 definitely want them to interact with seeing different
6 cultures and seeing different part of life than just inside
7 of the community.

8 CHAIR HILL: Okay. And how's your track record
9 been there in Baltimore?

10 MS. LEE: Awesome. Awesome.

11 CHAIR HILL: Okay. That's not the same facility,
12 Mr. Davis, that you were speaking of with the 50 people?

13 MR. M. DAVIS: No.

14 CHAIR HILL: You need to put your microphone again,
15 I'm sorry.

16 MR. M. DAVIS: No, the facility I'm speaking of
17 with the 50 people was a residential adult facility in
18 Washington, D.C.

19 CHAIR HILL: Okay. And then just to the members in
20 opposition and also the commissioner for, and thanks,
21 Commissioner, for coming down, I echo his point. I'm just
22 kind of looking at the zoning aspects. Again, kind of the
23 things that we have, what we're charged to do here. Like,
24 what is in, within the zoning regulation.

25 And the one that you guys seem to have the most

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1 concerns about, again, are the adverse impact. And the
2 adverse impact that we're looking at is traffic, noise, and
3 then operations. And so operations maybe is kind of the area
4 that I'm kind of poking around in. I mean, definitely it
5 sounds like, you know, there's a lot of concerns that the
6 community has about your track record, about what you've
7 done.

8 I don't think anybody seems to have any problem
9 with trying to, you know, the cause that you're doing. But
10 the concerns of going from what six, is allowed by right now.
11 Like, they can do six anyway. To go up to another, whatever
12 that number is. There you go, nine. Public education. But
13 okay. All right, thank you so much. Thank you Mr. Vice
14 Chair.

15 VICE CHAIR HART: Mr. May?

16 COMMISSIONER MAY: Yeah, I want to clarify
17 something from the applicant as well. You originally
18 proposed this as a six-person facility, is that right?

19 MR. M. DAVIS: Originally we were given from the
20 DCRA that it was a community-based, that it was a --

21 COMMISSIONER MAY: Community-based residential
22 facility, right.

23 MR. M. DAVIS: Residential facility, and it would
24 go from -- it had a six, could only have six residents as a
25 community-based. They finally decided that it met the

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1 regulation of a -- because it was the first proposed youth
2 treatment residential, that it met the criteria for a health
3 care facility, which raised it from eight to 300. So, but
4 when we had written --

5 COMMISSIONER MAY: But in terms of zoning, you're
6 allowed six as a matter of right and 15 by special exception.

7 MR. M. DAVIS: And that's under the community-based
8 residential. But we were --

9 COMMISSIONER MAY: Oh, I see, okay. So it could be
10 up to 300, right? Okay, because it's medical. But your
11 initial -- I mean, from the beginning, did you envision this
12 as a 15-person facility? I'm just asking about you, I'm not
13 asking about the --

14 MR. M. DAVIS: From the beginning, yes. Yes.

15 COMMISSIONER MAY: Okay. And is it functional as
16 a six-person facility?

17 MR. M. DAVIS: Very. I have some pictures --

18 COMMISSIONER MAY: No, no, no, I'm just asking. As
19 a six-person facility, could you still operate?

20 MR. M. DAVIS: No.

21 COMMISSIONER MAY: You need to have 15 in order to
22 make it --

23 MR. M. DAVIS: We would have to --

24 COMMISSIONER MAY: -- viable in terms of staffing
25 and investment?

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1 (Simultaneous speaking.)

2 MR. M. DAVIS: -- at capacity. We couldn't for the
3 staff that's available, for the staff that has to be paid,
4 licensed people that would have to come in and provide the
5 services. Six residents would not provide --

6 COMMISSIONER MAY: Be financial viable?

7 MR. M. DAVIS: Wouldn't be financially viable.

8 COMMISSIONER MAY: And is 15 the minimum that would
9 be financially viable?

10 MR. M. DAVIS: Fifteen is the cutoff for
11 residential. Actually, it's 16, but we are at 15.

12 COMMISSIONER MAY: Okay. That's not what I'm
13 asking. What I'm asking, I mean, what's the minimum number
14 that would be viable?

15 MR. M. DAVIS: We wanted to provide 15.

16 COMMISSIONER MAY: Which again is not answering my
17 question, and you may not have an answer for it. That's
18 fine.

19 MR. M. DAVIS: And I don't. I really don't. But
20 we know that --

21 COMMISSIONER MAY: Okay, that's fine. You know the
22 15 works.

23 MR. M. DAVIS: -- the Department of Behavioral
24 Health will not support --

25 COMMISSIONER MAY: I'm not asking about the

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1 Department, I'm asking about you and your operation and you
2 think that you need 15?

3 MR. M. DAVIS: At least 13.

4 COMMISSIONER MAY: At least 13? Okay.

5 MR. M. DAVIS: Right.

6 COMMISSIONER MAY: Thank you.

7 VICE CHAIR HART: Any other questions? Are you all
8 ready to -- hold on a second. Is the Board ready to
9 deliberate, or do you want to -- Mr. May? Okay. Yeah. So,
10 thank you. So I'm going to close the hearing, and does
11 anybody want to start the deliberation?

12 CHAIR HILL: I'll start. So thank you. I guess --
13 you know, I went back and watched the previous one as well
14 in terms of what we had gone through, and then we've gone
15 through this in terms of hearing now from the ANC and the
16 people in opposition. I mean, for me, what I've been, again,
17 kind of going through the analysis is what we're supposed to
18 do, is looking at the regulations and the standards with
19 which we are to weigh the discussion.

20 And I think that the Office of Planning has done a
21 very good job of their analysis in terms of how they're
22 meeting the regulations. The one that I was the most
23 concerned of, again, was the one that the party in
24 opposition, as well as the ANC has kind of raised, was just
25 the adverse impact on the neighborhood.

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1 But again, even within that, it's because of
2 traffic, noise, operations, or the number of similar
3 facilities in the area. And I think we've addressed traffic,
4 noise, and number of facilities in the area. And it was just
5 kind of the operations that I was listening to.

6 And I think that I am comfortable in terms of what
7 now I understand a little bit more clearly, actually, is that
8 people aren't going to be -- it's a treatment facility where
9 people are going to be inside the facility, and they're not
10 out, actually, within the community in terms of a way that,
11 you know, some of the items that were brought up from the
12 opposition seemed as though those were items where there
13 would be more of an interaction with the people that are
14 actually in the facility.

15 And so these people aren't going to be interacting.
16 They're actually going to be within the facility at all
17 times. I'm comfortable with the testimony that we heard from
18 Mr. Davis as well as the witness, Ms. Lee, in terms of how
19 the facility is run.

20 I guess what I would liked to have seen more of is
21 that, you know, the SOPs, or like, you know, Standard
22 Operation Procedures of the facilities that might have then
23 made the ANC and the party in opposition also feel more
24 comfortable with what they're trying to do. And I guess
25 again, going from six, which is a matter of right, to 15 I

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1 didn't think was necessarily that big a jump given what the
2 regulations could possibly allow.

3 And also then the Office of Planning had provided
4 analysis of. And I think that the -- again, just kind of
5 going back. I was just about the adverse impact and trying
6 to understand whether or not I felt comfortable that this
7 facility was actually not going to provide adverse impact.

8 And again, just to reiterate, even within that,
9 it's just really traffic noise, and the only thing you can
10 kind of focus on is operations, and that's a little broad,
11 but I'm comfortable that this will -- this meets the criteria
12 that we're supposed to look at for zoning. And so I'll be
13 in favor.

14 MEMBER JOHN: Mr. Vice Chair, I am also in favor of
15 approving the application after having listened to the
16 testimony now twice. In terms of the special exception
17 criteria, under section U 203.1 which impacts -- which asks
18 us to consider the traffic noise, operations, and the number
19 of similar facilities in the area, I believe the applicant
20 has made the burden of proof, has satisfied the burden of
21 proof.

22 And particularly, impressed by the expertise of the
23 operators and in particular Mr. Davis who presented. So I
24 feel that the facility should be able to operate with 15
25 residents based on the testimony that the boys will be

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1 supervised at all times, and I'm also going to rely on the
2 analysis of the Office of Planning.

3 And in particular, statements that DCRA and the
4 Department of Behavioral Services have all stated that the
5 building can accommodate 15 persons. And so based on the
6 testimony and giving great weight to the testimony of OP and
7 the analysis, I am supportive of the application.

8 However, I also understand the concerns of the
9 neighborhood and the ANC, and so I would be willing to
10 recommend that perhaps we have some sort of a time limit,
11 maybe a term limit so that we could see if it's -- if the
12 facility is working so that the residents would have an
13 opportunity to come back in if there is additional noise and
14 traffic and disturbance, or the operations are not being done
15 according to what's been promised.

16 And I say that because I think if this facility
17 were next to me and I had to walk out every morning and there
18 were boys hanging out on the street, I would like to know
19 that there is some recourse. So, in voting to approve the
20 application, I would want to see a track record from the
21 facility and that it would operate the way it has said that
22 it will operate. Thank you.

23 VICE CHAIR HART: Commissioner May?

24 COMMISSIONER MAY: Yeah, I think I agree with most
25 if not all of what's been said so far, especially with the

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1 notion of putting some sort of a term on this approval,
2 because I think that it is the sort of thing where it would
3 be good if there were an opportunity to look at this again
4 in a few years and see whether in fact it has been performing
5 well. I mean, I do have some personal experience with some
6 treatment facilities.

7 I'm three blocks away from a facility now that's
8 mostly about counseling, but it does -- it's an outpatient
9 facility, and there's a lot of activity associated with that.
10 And it's generally not a problem, because there are a lot of
11 other people around. But there are times when you walk
12 through the adjacent park and it is filled with people who
13 are -- wouldn't necessarily make everyone feel comfortable.
14 But the way this is described, it would not have those kinds
15 of impacts. So I'm generally disposed in favor.

16 I also lived across the alley from a group home.
17 It was not the same kind of facility specifically, but it did
18 involve a lot of teens living essentially in a small
19 apartment building. But it was extremely well run, and the
20 kids who were there were, I think, I mean, I can't speak to
21 their personal, all of their personal behavior, but I can say
22 that the people who ran the facility kept a pretty tight
23 control over it and that it was not a problem for the
24 neighborhood.

25 They were not exactly outgoing and engaging with us

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1 on a regular basis, but there really were no problems. And
2 so it can be done well, and I think it can be managed.
3 Fifteen is not a huge number. But I do like the idea of
4 putting a term limit of a few years on this so we can revisit
5 and make sure that everything is going according to plan.
6 And I mean, I don't know what the right number is. In the
7 past we've done three years, which may be a reasonable
8 number, I'm not sure. So, anyway, that's my thought.

9 VICE CHAIR HART: Thank you. And three years? I
10 don't know if we're looking at three years or maybe four or
11 five. Do the Board members have a particular preference for
12 that?

13 And I'll say that having listened to all of the
14 testimony that's been given so far, and appreciating that the
15 Marshal Heights Civic Association came down to present your
16 case, and Commissioner Smith, you came as well to discuss
17 some of the issues that you have with the -- from the ANC
18 point of view, we do appreciate that, and we understand that
19 the decisions that we make are not necessarily going to be --
20 not necessarily make everybody happy.

21 But we are trying to understand how each
22 application fits and addresses and meets the criteria that
23 are set up in the zoning regulations. They are fairly
24 limited. So it is something that we have to kind of look
25 through to understand how each application, in this case the

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1 Plant the Seed Youth Treatment Service, how they are meeting
2 those regulations.

3 I believe that they've actually met the regulations
4 as well, but that's not saying that you don't have legitimate
5 concerns and that maybe this is a discussion that you're just
6 starting and you can have with them as they begin their
7 facility. I would also agree that a term limit may be -- or
8 a time limit may be in order here, and I'd be supportive of
9 a three- or four-year time limit. So I don't know what my
10 fellow Board members think about that.

11 CHAIR HILL: Yeah, no, I'm kind of curious what the
12 Office of Planning, I don't know how -- whether they have any
13 thoughts on this, but I am going to ask you a question. So
14 this is the first time that we're kind of -- or I shouldn't
15 say the first time. This is interesting in terms of time
16 limits, right?

17 That now we're kind of talking about this. And so
18 in the past, the Office of Planning has provided either
19 opinion in terms of like three year, five year, ten year.
20 And it's either the applicant has put it forward or the
21 Office of Planning has put it forward. I'm just asking in
22 general, is there kind of a -- like, how does the Office of
23 Planning look at three year, five year, ten year? Is there
24 a way that you determine that?

25 MS. BROWN-ROBERTS: In a lot of cases, when you're

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1 doing that, we usually, it's done in consultation with the
2 applicant, and about how soon they would be getting
3 operation. You know, give them a little time to get things
4 settled in and that sort of thing, and then say, okay, you
5 know, by this time, things should be running. They should
6 have a handle on how they're running the facility. And that
7 would be sort of the guidance that we --

8 CHAIR HILL: So then in this case, what might you
9 think?

10 MS. BROWN-ROBERTS: I think we do the same thing.
11 You know, the applicant would say, you know, how long do they
12 think they would -- it would take them, you know, to go
13 through all their permitting and that sort of thing to start
14 the operation, to set up, and --

15 CHAIR HILL: I'm listening to you, sorry.

16 MS. BROWN-ROBERTS: And I'm not sure if they're
17 going to have 15 kids from the beginning, or are they going
18 to transition into it? But I would say three to four years
19 is a good number.

20 CHAIR HILL: Okay. Mr. Davis, how long -- if this
21 were to get approved -- well, first of all, the term limit
22 starts when the order comes out, right?

23 MS. BROWN-ROBERTS: That's correct.

24 CHAIR HILL: So this is going to be -- you're not
25 going to get whatever it is for a year, okay? Because you

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1 have opposition, okay? So you'll get that in a year. And
2 so after that, how long would it take you to get up and
3 running?

4 MR. M. DAVIS: We have another year.

5 CHAIR HILL: To get to 15 people?

6 MR. M. DAVIS: To get to 15 people?

7 CHAIR HILL: Yeah.

8 MR. M. DAVIS: We don't know. We know that there
9 are youth that are waiting to go into residential treatment
10 today. If we were open today, they would be -- they have
11 been recommended into residential treatment --

12 CHAIR HILL: You could get up to 15 pretty quickly
13 is what --

14 MR. M. DAVIS: It would probably be right now,
15 because they've closed down in Mountain Manor. D.C. has
16 nowhere else to send them, so they've just been recommending
17 --

18 CHAIR HILL: The reason why I'm asking is because
19 then again, to try to understand what the impact's going to
20 be within the community, you'd need to get to 15 for them to
21 really kind of --

22 MR. M. DAVIS: Probably about two months, maybe.

23 CHAIR HILL: Okay. So pretty much right away. So
24 in that case -- thank you. So in that case, Mr. Vice Chair,
25 I'm comfortable with three to four to five. I'd be leaning

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1 towards four I guess, because like, five -- because the
2 reason why, again, you know, it's not a big high-dollar kind
3 of situation. So it costs money to come back here again, you
4 know? So this isn't a cheap event.

5 VICE CHAIR HART: Okay. So it sounds like we could
6 do four years, yes? Okay.

7 So hearing all the testimony, hearing all the
8 comments from my fellow Board members, I think that I can
9 make a motion to approve application number 19677, Plant the
10 Seed Youth Treatment Services, as amended pursuant to 11 DCMR
11 Subtitle X, Chapter 9, for a special exception under the use
12 provisions of Subtitle U, 203.1(I), to increase the occupant
13 load of an existing health care facility from six to 15
14 persons in the R-2 zones at premises 5212 Astor Place
15 Southeast, Square 5308, Lot 25, with the condition that the
16 applicant comes -- returns back in five years.

17 Excuse me, in four years to apply again and provide
18 information on the operation of the facility.

19 CHAIR HILL: Second.

20 VICE CHAIR HART: All those in favor, say aye.

21 (Chorus of aye.)

22 VICE CHAIR HART: Any opposed? Looks like the ayes
23 have it, Mr. Moy.

24 MR. MOY: Staff would record the vote as 4-0-1.
25 This is on the motion of Vice Chair Hart to approve the

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1 application for the relief being requested along with the
2 condition of the return period of four years. Seconding the
3 motion was Chairman Hill. Also in support Mr. Peter May and
4 Ms. Lorna John. No other Board member participating. The
5 motion carries.

6 VICE CHAIR HART: Thank you, Mr. Moy. This is a
7 full order?

8 MR. MOY: Yes, sir.

9 VICE CHAIR HART: Thank you. At the moment, we're
10 going to take a few minute break so that we can change our
11 Zoning Commission members. And we're going to be hearing
12 case number 19692 of Reno 809, LLC, when we return.

13 (Whereupon, the above-entitled matter went off the
14 record at 11:19 a.m. and resumed at 11:31 a.m.)

15 VICE CHAIR HART: Mr. Moy, can you call the next
16 case, please?

17 MR. MOY: Yes. Thank you, Mr. Vice Chair. The
18 Board is back in session. The -- if we can have parties to
19 the table to case Application No. 19692 of Reno 809, LLC.
20 And this application was amended for area variance from the
21 side yard requirements of Subtitle D, Section 307.1, to
22 construct a new one-family dwelling I R-2 Zone at premises
23 809 49th Street N.E., Square 5178, Lot 806.

24 As the Board will recall, the Board had completed
25 hearing procedures and -- on March 7, 2007, the Board

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1 completed hearing procedures and continued the case for a
2 limited scope hearing to hear the ANC's issues and concerns,
3 if any, and the Board requested an ANC report as well as
4 signage -- posted signage, and I believe it's in the record
5 under Exhibit 45.

6 VICE CHAIR HART: Thank you, Mr. Moy. Good
7 morning. How are you?

8 MR. HOOKS: Good morning.

9 VICE CHAIR HART: Could you introduce yourself --

10 MR. HOOKS: Yes.

11 VICE CHAIR HART: -- and please give your address?

12 MR. HOOKS: Earl Hooks, 9247 Oakland Court,
13 Manassas, Virginia 20110.

14 VICE CHAIR HART: And Mr. Hooks, the last hearing
15 that we had, we were looking for an ANC report or some
16 comments from the ANC.

17 MR. HOOKS: Correct.

18 VICE CHAIR HART: And can you just explain where we
19 are with that, the steps --

20 MR. HOOKS: Yes. About three or four weeks ago, I
21 was able to meet and present to the Board and on the 12th of
22 this month --

23 VICE CHAIR HART: To the ANC?

24 MR. HOOKS: -- the community -- yes, the ANC, on
25 the 12th of this month, they just had their community meeting

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1 in which they voted unanimously for a support letter in
2 support of the variance for 809 49th Street, Application
3 19692. I was told that it would be forthcoming or forwarded
4 to you, because that just happened last Thursday.

5 VICE CHAIR HART: And have you had any
6 conversations with the ANC after the -- after Thursday, have
7 you talked to them today, yesterday?

8 MR. HOOKS: I have not.

9 VICE CHAIR HART: No emails or anything, no
10 communication at all?

11 MR. HOOKS: No. They told me to let Mr. Moy know
12 that they would be sending over a letter of support and what
13 I did as -- just as a matter of record, I made note of what
14 the vote was and posted it in the Application.

15 VICE CHAIR HART: I see that. That's Exhibit
16 Number 57.

17 MR. HOOKS: Yes.

18 VICE CHAIR HART: Okay. And I think you've
19 provided also some other information about the -- your
20 notice, your posting?

21 MR. HOOKS: Well, yes. You needed -- I guess the
22 original pictures were taken from a distance and you had
23 requested that there be closeup pictures of the posting. So
24 I provided the closeup pictures of the posting. I guess we
25 were supposed to meet when we had the snow thing as well, but

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1 after our initial meeting, because I was having, if you
2 recall, some trouble meeting with the ANC, we had some
3 problems there, I went specifically to houses on the block,
4 next-door neighbors and people across the street and
5 presented my information to them, and I also put up letters
6 of support from them in the Application.

7 VICE CHAIR HART: Yes. I see there are several
8 letters, about seven, eight letters, I think --

9 MR. HOOKS: Yes.

10 VICE CHAIR HART: -- that you've uploaded to the
11 file -- excuse me -- to the record. Okay. Do the -- does
12 the Board have any questions for the Applicant?

13 CHAIR HILL: No, Mr. Vice Chair, I -- actually, I
14 know that we continued the hearing for that information and
15 we had a full hearing. I don't have any questions for the
16 Applicant.

17 VICE CHAIR HART: Okay. Anyone else?

18 COMMISSIONER MAY: No, sir.

19 MEMBER JOHN: No, Mr. Vice Chair.

20 VICE CHAIR HART: And we've already gone through
21 the public testimony in favor and in opposition. Is the ANC
22 here?

23 (No response.)

24 VICE CHAIR HART: Seeing no hands raised. I will
25 close the hearing, because I think we've actually had a full

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1 hearing already. We were looking for this information. I
2 understand that the ANC had the opportunity to provide that
3 information. They did request a continuance of the hearing
4 -- excuse me -- a postponement of the hearing back when it
5 was -- in March, they had -- got lucky and it was -- it
6 snowed so we didn't actually have the hearing then. But I
7 think that we've provided enough time to be able to receive
8 the information from them. You know, maybe they may submit
9 it in today but right now, I think we have heard from you.
10 And I should have asked this before; have you been sworn in
11 when you came in?

12 MR. HOOKS: Yes.

13 VICE CHAIR HART: Okay. We have heard this from
14 you and you have provided Exhibit Number 57 which describes
15 what the vote was, which is a unanimous vote from the ANC 7C.
16 And I don't know if, I guess, my other Board members have any
17 other comments. I felt that after reviewing the -- I thought
18 I closed the hearing. I'm sorry. I will close the hearing
19 and we can proceed to deliberations.

20 After reviewing the record and listening to the
21 testimony of Mr. Hooks and also looking at the -- reviewing
22 the OP report, I would be able to support the Application.
23 The Applicant -- the Office of Planning Report recommends
24 that the BZA approve this case as it meets the three prongs
25 of the variance test. With regard to the exceptional

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1 conditions prong, OP Report states that the Applicant's
2 12,000-square-foot property is nearly three times as large
3 as the typical single-family residences in the area, and
4 while it would be possible to retain the existing house and
5 subdivide the lots, it would not be possible to construct a
6 semi-detached house on these new lots. It would also not be
7 possible to create just one new lot conforming to the lot
8 dimension requirements without either receiving side yard
9 relief for the existing house or demolishing a portion of
10 that existing house, which you want to keep.

11 Regarding the two other prongs for detrimental
12 impacts to neighborhood properties or the zone plan, I also
13 agree with the Office of Planning Report that states that the
14 request for side yard relief would have no detrimental impact
15 on neighboring properties for the zone plan. This side yard
16 relief is for the existing building that you have and there
17 was an adjacent neighbor that testified in the initial public
18 hearing that was in partial opposition because she thought
19 that the proposed house would be built closer to her house.
20 She was -- lived in a single family house -- and that it
21 might overshadow her house. And I'll just note that the
22 Applicant, Mr. Hooks, stated that the proposed -- that the
23 new house would be -- while it would be adjacent to his
24 neighbor's house, it would have the required 8-foot side yard
25 and as the zoning does necessitate that. The zoning relief,

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1 as I noted, is for the existing house, not the new property.
2 And I understand that we don't have an ANC report but I
3 believe that they are in support as provided with the
4 testimony from Mr. Hooks even though we haven't received the
5 letter yet.

6 And so for those reasons, I would be in support of
7 the Application, and I didn't know if my fellow Board members
8 had any comments.

9 MEMBER JOHN: Nothing to add, Mr. Vice Chair. I
10 agree that the variance test is satisfied in this case
11 because of the very large lot, and that in terms of the
12 existing house, it would -- the Applicant would have to
13 demolish the house or a part of it to meet the side yard
14 exception -- side yard requirement, and you've already stated
15 that there are other houses with side yards of less than
16 eight feet in the neighborhood, so relief can be granted
17 without substantial detriment to the public good. And so for
18 all of those reasons, I support the Application.

19 VICE CHAIR HART: Okay. So with that, I'd like to
20 make a motion to approve Application 19692 of Reno 809, LLC,
21 as amended pursuant to 11 DCMR Subtitle X, Chapter 10, for
22 an area variance from the side yard requirements of Subtitle
23 D, Section 307.1, to construct a new one-family dwelling in
24 the R-2 Zone at premises at 809 49th Street N.E., Square
25 5178, Lot 806. Do I have a second?

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1 COMMISSIONER SHAPIRO: Second.

2 VICE CHAIR HART: All those in favor, say aye.

3 (Chorus of ayes.)

4 VICE CHAIR HART: Any opposed?

5 (No response.)

6 VICE CHAIR HART: Motion carries. Mr. Moy.

7 MR. MOY: Staff would record vote as 4 to 0, the
8 one -- this is on the motion of Vice Chair Hart to approve
9 the Application for the relief requested; seconded motion,
10 Mr. Peter Shapiro; also in support, Chairman Hill, Ms. Lorna
11 John with the other Board Member not participating today.
12 So the motion carries.

13 VICE CHAIR HART: A summary order, Mr. Moy?

14 MR. MOY: Yes, sir.

15 VICE CHAIR HART: Thank you. Thank you, sir.

16 MR. HOOKS: Thank you very much.

17 VICE CHAIR HART: Mr. Moy, when you're ready, we
18 can call the next case. We're waiting to get our
19 Commissioner.

20 MR. MOY: If we can have parties to the table to
21 case Application No. 19683. This is of Brian and Carolyn
22 Wise. The Application as Amended for special exceptions
23 under Subtitle E, Section 5204 from the rear yard
24 requirements of Subtitle E, Section 5104 and from the alley
25 center line setback requirements, Subtitle E, Section 5106,

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1 and pursuant to Subtitle X, Chapter 10, for area variances
2 from the lot area requirements of Subtitle E, Section 201.1,
3 and from the lot frontage requirements of Subtitle C, Section
4 303.3(a) and (b). And this is -- this would construct a
5 two-story, one-family dwelling on an existing vacant alley
6 lot, RF-3 Zone. This is at 260 Lincoln Court S.E., Square
7 762, Lot 828.

8 VICE CHAIR HART: Thank you, Mr. Moy. And welcome
9 back, Mr. May. Looks like we lost our other Commissioner but
10 we gained our first Commissioner, so. So the case we have
11 before us, if you all could -- welcome, good morning -- if
12 you could give me your name and address? Thank you.

13 MS. MOLDENHAUER: Meredith Moldenhauer representing
14 the Applicant -- from the law firm of Cozen O'Connor.

15 MR. VARGA: Stephen Varga, Director of Planning
16 Services, Cozen O'Connor, 1200 19th Street N.W., Suite 300.

17 MR. WISE: Brian Wise, the Applicant to 60 Lincoln
18 Court S.E.

19 MR. DZIERZANOWSKI: Mateusz Dzierzanowski,
20 architect for the Applicant, at DZ Architecture. It's 1140
21 3rd Street N.E., Suite 2181.

22 VICE CHAIR HART: Could you spell your last name,
23 please?

24 MR. DZIERZANOWSKI: No problem, Dzierzanowski, D-Z-
25 I-E-R-Z-A-N-O-W-S-K-I. Sorry.

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1 VICE CHAIR HART: You don't have to be sorry about
2 it. I just -- I couldn't spell it so I was trying to figure
3 out what's the best way to go. So it looks like we have a
4 couple of party status requests that are here. Are the
5 parties, Mr. Coleman, Lauren Friedman -- you can come to the
6 dais, please? Quyhn vu Bain, Clayton Chilcoat? Okay.

7 Good morning. Could you identify yourselves,
8 please, giving your name and address?

9 MR. KOFFMAN: Dan Koffman, counsel for Ms. Friedman
10 and Mr. Coleman.

11 MS. FRIEDMAN: Lauren Friedman. I live at 215 3rd
12 Street S.E.

13 MR. COLEMAN: Tom Coleman, also at 215 3rd Street
14 S.E.

15 VICE CHAIR HART: And you all have been here
16 before, and has everybody been sworn in?

17 (No response.)

18 VICE CHAIR HART: Okay. I just have to ask. So we
19 have a party status request in front of us. Could you give
20 us -- and I'm assuming, Mr. Koffman, you're going to be
21 giving their party status request. If you could just provide
22 how you meet the -- and could you also -- how you meet the
23 requirements but also what is -- since this was late-filed,
24 could you kind of describe why that was -- happened as well?

25 MR. KOFFMAN: Right. So at the previous hearing,

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1 there was a lot of discussions about what would happen at
2 this hearing, what the scope of it would be. My clients
3 simply desire to, whatever the extent of this hearing is, to
4 have the rights of a party as it pertains to this. I'll --
5 I can let them speak to their qualifications as a party.

6 VICE CHAIR HART: Sure.

7 MR. COLEMAN: Sure. I'll speak on behalf of myself
8 and my wife. As owners of an adjacent property to the
9 proposed development, we oppose the Application, which seeks
10 basic variances and special exceptions to convert a parking
11 area behind our house into a two-story residential building.
12 The Applicant's property abuts an easement that we have. As
13 affected neighbors, we oppose the special exceptions
14 variances and the construction. We are agents so we're
15 testifying about air and light impacts to our patio and
16 easement including exacerbating existing RAD issues, light
17 impacts to planned solar panels on our garage, two special
18 trees with canopy extending over the property and a proposed
19 construction management agreement as required by the ANC.

20 VICE CHAIR HART: Thank you. Does the Board have
21 any questions for the party status request for folks in party
22 status that want to -- whatever. If you have any questions
23 or --

24 CHAIR HILL: Yes, I do. So again, just you're --
25 I forget now again. I know you guys were down here the last

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1 time and presented, and the -- or provided testimony. Where
2 are you guys again? You share the easement with the
3 property?

4 MR. COLEMAN: Sure. If you have the map in front
5 of you, there are three kind of abutting property owners.
6 One of the three -- we're one of the three, a different one
7 of the three property owners owns the easement. We have a
8 right to use the easement and so we have a property interest
9 in it in that way. And that easement directly abuts the
10 proposed site development.

11 MS. FRIEDMAN: In addition, our property is just
12 next to that easement so three feet from the property.

13 CHAIR HILL: Okay. And the reason why you guys are
14 late, why is it again that you -- you didn't know that you
15 were able to do it? I mean that's basically what happened?

16 MS. FRIEDMAN: Right. So the last time we were
17 here, we didn't know to file all these things. We only got
18 counsel a few days before that --

19 CHAIR HILL: Right.

20 MS. FRIEDMAN: -- and finally -- we're learning
21 about these things as it goes. We're not experts in any way.

22 CHAIR HILL: Right, sure.

23 MS. FRIEDMAN: So -- and it was, I think, 14 days
24 before whatever is supposed to be the next planned hearing.

25 CHAIR HILL: Right. You have to do it 14 days

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1 before the first one.

2 MS. FRIEDMAN: Right, but we didn't know and --

3 CHAIR HILL: No. I'm saying -- I'm just trying to
4 understand the reasoning is that you didn't know. Okay.

5 MS. FRIEDMAN: Exactly.

6 MR. KOFFMAN: And going back to the transcript from
7 that previous hearing, it seems like the Board went out of
8 its way to act as if my clients were a party by giving them
9 a certain amount of time to respond, et cetera. So it
10 certainly was the will on behalf of the BZA to treat them
11 similarly to a party.

12 VICE CHAIR HART: But they were not a party at the
13 time so -- I mean it's -- we have procedures that we go
14 through to -- so that we kind of treat everybody fairly. And
15 if there was some more leeway that we had given, it was not
16 because they were treating them as a party status. So that
17 is a definite thing we'd have to -- definite process that
18 we'd have to go through and that was not the case.

19 MR. COLEMAN: May I say one thing? We didn't
20 receive official notification or -- so when we received that
21 -- that -- you know, we were on notice and we became aware
22 of the proceeding. And so I would say that affected the
23 timeline.

24 MS. MOLDENHAUER: Chairman Hart, we have a pending
25 motion in opposition when you want it.

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1 VICE CHAIR HART: Yes. Ms. Moldenhauer, I do see
2 that. So the Applicant has submitted an -- basically an
3 opposition to the untimely party status and striking the
4 request for party status in Exhibit 66 and we'll get to that
5 in a minute. Any other questions for the party status?

6 (No response.)

7 I mean it's -- I mean I understand that you all are
8 in very close proximity to this property, granted this is a
9 three-foot kind of distance between you all and the Applicant
10 themselves. It is because the properties are noticed, this
11 property was noticed and we have the affidavit of posting,
12 I understand that you all may not have received the
13 notification and I don't know why and I'm not going to say
14 I know why. But you all did come to the previous hearing.
15 I want to say there may have been two hearings that we came
16 to that you all have been -- or maybe it was another case.

17 I'm leaning not to give you party status but I'd
18 like to hear from my fellow Board members. I'm leaning in
19 that direction, so.

20 COMMISSIONER MAY: I would agree. I mean this is
21 not -- an Application not timely filed. I think it's as
22 simple as that. I mean, you know, this is a case where we
23 heard substantial testimony. We already granted -- I mean
24 there were significant opportunities for this party to
25 testify and lots of discussion on the backs and forth in this

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1 case. So I don't think that we're creating any disadvantage
2 either for the opposition or for the Applicant. Well, we're
3 not creating a -- I think a difficulty by denying this but
4 I'm -- and I think that if we were to grant it, I'm not sure
5 that it would really add any value to what we are considering
6 so --

7 VICE CHAIR HART: Anyone else?

8 COMMISSIONER MAY: I would agree with that.

9 CHAIR HILL: Yes. I mean I think that if this
10 would have been timely filed, then probably I would have been
11 in favor of them getting party status. And again, as I think
12 I remember or recall from the last time, we did allow, as the
13 attorney had just testified, that we did allow for more time
14 and more discussion because of that fact, because we wanted
15 to hear from them. So really, for me, it's just -- again
16 it's untimely and it's not something that I kind of look to
17 waive lightly. And so, you know, I think it also kind of
18 prejudices the Applicant at this point. So -- but at the
19 same time, I mean as we kind of go through this, I don't know
20 if you were planning on doing testimony again in opposition
21 or in support, but you know, maybe we could hear from them
22 for the allotted time that the public might have at a certain
23 point during the testimony -- presentation.

24 VICE CHAIR HART: Thank you. Ms. John?

25 MEMBER JOHN: I agree with everything that's been

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1 said so far and it would, in fact, prejudice the Applicant
2 because we almost had a complete hearing. Well, not quite
3 but we took substantial testimony at the last hearing. So
4 I would not support the application for party status because
5 it's untimely filed.

6 VICE CHAIR HART: Okay. I think that I've heard
7 from the Board. I think that we are going to deny the party
8 status request but appreciate you all for submitting it to
9 us and that's the way that it is. So Ms. Moldenhauer --

10 MEMBER JOHN: Commissioner Hart --

11 VICE CHAIR HART: -- you do --

12 MEMBER JOHN: -- oh, just two points. One, Bain at
13 Exhibit 59 and Clayton Chilcoat at Exhibit 60 are both not
14 present, so I just would want to confirm on the record that
15 based on their attendance --

16 VICE CHAIR HART: I'll go through that but I do
17 appreciate it. I was going to actually go to your
18 opposition, your Exhibit --

19 MEMBER JOHN: Yes.

20 VICE CHAIR HART: -- to -- I mean I don't think
21 that it's an issue anymore because you weren't to seeking to
22 strike. That, as well as the others, we can go through and
23 I agree with you because I'm assuming that it's -- I'm not
24 sure if that's a Miss or Mrs. -- but Quyhn vu Bain --

25 MEMBER JOHN: Yes.

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1 VICE CHAIR HART: -- which also -- Ms. Bain, who
2 requested party status, and Clayton Chilcoat, who also
3 requested party status,, they're not here and as being -- as
4 they are not here, we are going to -- I would vote to deny
5 those applications -- those requests so.

6 MS. LOVICK: Excuse me, you would deem them
7 withdrawn.

8 VICE CHAIR HART: Withdrawn. Okay, thank you. So
9 regarding the -- so we are withdrawing the two from Ms. Bain
10 and Mr. Chilcoat party status requests and with regard to
11 your application to oppose the untimely party status and
12 striking them, I mean I think that it's something that can --
13 it's fine to be in there. They requested it. We voted on
14 it. I don't have an issue with keeping their request in
15 there, and I would deny their motion to strike it from the
16 record. Do I have a second?

17 MEMBER JOHN: Second.

18 VICE CHAIR HART: And I'm assuming that we're all
19 in favor of that?

20 COMMISSIONER MAY: Yes.

21 VICE CHAIR HART: Okay. So now we get to the meat
22 of the case. The show is yours, Ms. Moldenhauer. How much
23 time do you think you need to --

24 MS. MOLDENHAUER: I would say that at the last
25 hearing, we had a focus on the question of minimum lot size

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1 in regard to 303.3, a subdivision, and we have -- you know,
2 we believe that it is a large lift and we still, obviously
3 --we'd like to ask for more than 10 minutes, probably at
4 least 25 and to walk through that.

5 COMMISSIONER MAY: To go through your 210-page
6 PowerPoint?

7 MS. MOLDENHAUER: Two hundred -- well, 25. I think
8 we can go through it fairly quickly.

9 COMMISSIONER MAY: No. Speak directly to the
10 issues that are hand here --

11 MS. MOLDENHAUER: We are --

12 COMMISSIONER MAY: -- that have to talk to the
13 variance relief.

14 MS. MOLDENHAUER: Yes.

15 COMMISSIONER MAY: It's the variance hurdle that
16 you're trying to get over so just focus on that and do it in
17 less than 210 slides. Don't ever give us a 210 slide
18 presentation again.

19 MS. MOLDENHAUER: I think --

20 COMMISSIONER MAY: That's crazy.

21 MS. MOLDENHAUER: No. It was -- somehow it printed
22 four times --

23 COMMISSIONER MAY: Okay.

24 MS. MOLDENHAUER: -- and then it uploaded so I
25 apologize, Commissioner May.

1 COMMISSIONER MAY: Got it.

2 MS. MOLDENHAUER: It's not a --

3 COMMISSIONER MAY: So it's only 50 pages?

4 MS. MOLDENHAUER: It's less than that so.

5 COMMISSIONER MAY: Yes, okay. Not 25 minutes.

6 MS. MOLDENHAUER: It was an error --

7 MR. KOFFMAN: You can do it in less than 25
8 minutes.

9 MS. MOLDENHAUER: -- based on the uploading.

10 COMMISSIONER MAY: Yes.

11 MS. MOLDENHAUER: It was multiple copies.

12 COMMISSIONER MAY: Yes. I think I remember that
13 from before.

14 MS. MOLDENHAUER: I don't know why that --

15 COMMISSIONER MAY: I went through it all before.
16 I'm like this just seems familiar.

17 MS. MOLDENHAUER: It's an -- it was an error.

18 COMMISSIONER MAY: Yes.

19 MS. MOLDENHAUER: But we are focusing on the
20 specific issue of the subdivision and the minimum lot area.

21 VICE CHAIR HART: Just for timeliness, I would
22 actually look at 15 minutes for their presentation.

23 COMMISSIONER MAY: Yes.

24 MS. MOLDENHAUER: We will --

25 VICE CHAIR HART: So I think it's, you know, more

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1 -- we've heard a lot on this case already so that's what
2 we're trying to focus on.

3 MR. KOFFMAN: Sure.

4 MS. MOLDENHAUER: And we just want to make sure we
5 get to that great lift in regards to the variance.

6 VICE CHAIR HART: I understand.

7 MS. MOLDENHAUER: I believe we can produce evidence
8 and walk through it but yes.

9 VICE CHAIR HART: Okay.

10 MEMBER JOHN: And can I ask you to focus on cases
11 that have been decided post ZR-16 for --

12 MS. MOLDENHAUER: There are very few.

13 MEMBER JOHN: I mean because that's sort of where
14 the issue is. I tell you where I am right now and that's my
15 big issue.

16 MS. MOLDENHAUER: And think the big issue is that
17 the Board hasn't had any cases, and this is really your first
18 case.

19 MEMBER JOHN: Right.

20 MS. MOLDENHAUER: And so -- I mean there is the
21 other case in regards to Library Court. The circumstances
22 are slightly different. There was another case which was
23 Gillette Wing on the other side of East Capitol, but that
24 situation was different. They didn't ask for the subdivision
25 relief. So we really have to go to the underlying question

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1 of area, minimum lot area requirements which existed, as
2 we'll provide testimony to, you know, in the history of that.
3 So -- but we will focus in on that specific question and you
4 will, hopefully, understand there's practical difficulty that
5 specifically is created by that requirement here. I'll turn
6 it over then to Mr. Wise, the Applicant, to do a brief
7 introductory statement.

8 MR. WISE: Hello, Mr. Chairman, Mr. Vice Chairman,
9 Members of the Board. My name is Brian Wise. My wife,
10 Carolyn, and I bought this alley lot in 2015 with the hope
11 of building a home on it. I spoke --

12 COMMISSIONER MAY: I'm sorry. You're giving
13 introductory information again. We don't need that. We got
14 that already. What's -- can we get to the point of the
15 variance relief?

16 MR. WISE: Okay. During the last hearing, the
17 Office of Planning had said that we did not face any
18 practical difficulties because we could continue to --
19 continue the parking use at the property. This is simply not
20 true. When we purchased the property, the prior owner had
21 been renting at least four and using eight commercial spaces
22 at the property. During our due diligence, we discovered
23 that the prior owner had not obtained a basic business
24 license for the parking use. However, when I went to DCRA,
25 I was told that I could not obtain a basic business license

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1 without a certificate of occupancy. But I could not get a
2 certificate of occupancy until the lot becomes a record lot.
3 And as we have explained, the lot cannot become a record lot
4 without relief from the subdivision requirements. In short,
5 I can't use this property for anything if I didn't live on
6 the square.

7 Even if we were seeking a special exception for a
8 commercial parking use at the property, I would still need
9 to seek relief from the same subdivision requirements.
10 Again, without relief from the subdivision requirements, I
11 could not obtain a certificate of occupancy or a basic
12 business license for commercial parking use or even a
13 residential parking rental use. An inability to obtain a
14 certificate of occupancy would also create issues in terms
15 of our insurance policy against the property. I'll leave the
16 legal standard to Meredith but it seems to me like the
17 textbook example of practical difficulty if we cannot even
18 maintain the existing parking use without zoning relief.

19 Given the difficulties we will face in improving or
20 even maintaining our lot, we respectfully request that the
21 Board grant this zoning relief. Thank you for your attention
22 to our case and I'll turn it over to Meredith.

23 MS. MOLDENHAUER: I'd just now like to pass out
24 copies of the DCRA website which identify the four steps of
25 obtaining a basic business license. I will jump down

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1 directly to step number three which says, registration with
2 the Office of the Zoning Administrator, produce a copy of a
3 certificate of occupancy or home occupancy permit.
4 Obviously, here without being able -- then we also pass out
5 copies of the certificate of occupancy DCMR regulations which
6 identify that the only instances in which -- read the Section
7 DCMR 110.1, except as provided under 3203 of the zoning
8 regulations, no person shall use -- this is not any structure
9 but land even -- land or part thereof for any purpose. No
10 change in use or load shall be made until a certificate of
11 occupancy has been issued.

12 This goes specifically to the question of practical
13 difficulty. We have a situation in which as is being
14 supplemented here today that in order to get a basic business
15 license to even use the property as parking, you need to have
16 a certificate of occupancy. In order to have a certificate
17 of occupancy, you need to be able to have a building permit
18 that is then processed through DCRA's system. None of this
19 can occur without granting relief from Section C-303.3 and
20 allowing this to be converted from a record lot -- I'm sorry
21 -- from a tax lot to a record lot.

22 So now --

23 COMMISSIONER MAY: Excuse me, do they need a
24 building permit to continue the use as a parking lot?

25 MS. MOLDENHAUER: They wouldn't be able to go and

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1 obtain a building permit to repair the bollards. See these
2 bollards in the --

3 COMMISSIONER MAY: No. I --

4 MS. MOLDENHAUER: -- pictures right here.

5 COMMISSIONER MAY: -- can you answer the question
6 that I asked? Can they use this as a parking lot?

7 MS. MOLDENHAUER: I don't know. The question is
8 they would -- it would have to be inspected. There might be
9 aspects of inspections by DCRA that they may look at the
10 property, they may say it doesn't pass certain stormwater
11 management, it doesn't pass certain drain --

12 COMMISSIONER MAY: So in other words, they could
13 use it as a parking lot?

14 MS. MOLDENHAUER: No. I don't know is the
15 question. We don't know because we can't have --

16 COMMISSIONER MAY: Well, but you're --

17 MS. MOLDENHAUER: -- the proper --

18 COMMISSIONER MAY: -- you're trying to imply that
19 --

20 MS. MOLDENHAUER: -- inspections.

21 COMMISSIONER MAY: -- you're trying to imply that
22 they could not get a C of O and -- or that they could not get
23 a building permit even for the -- C of O to use it as a
24 parking lot by using up the building permit aspect of it.
25 And that's -- I'm not connecting those points.

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1 MS. MOLDENHAUER: So a building permit -- so in
2 order to go and get a building permit, you have to produce
3 both an address as well as your lot and square number. If
4 a -- if you go in and you type in -- I'm trying to walk
5 through and explain this -- and so if you type it into the
6 system at DCRA, right now, nothing would come up, and you
7 would -- because there's no prior C of O for the property and
8 there's no prior building permits for the property. And so
9 they would not be able to --

10 COMMISSIONER MAY: So --

11 MS. MOLDENHAUER: -- issue a building permit even
12 if it were for --

13 COMMISSIONER MAY: But would they --

14 MS. MOLDENHAUER: -- pavement.

15 COMMISSIONER MAY: -- be able to get a C of O?

16 MS. MOLDENHAUER: The C of Os would require a
17 building permit.

18 COMMISSIONER MAY: Why?

19 MS. MOLDENHAUER: Because it --

20 COMMISSIONER MAY: It's an existing parking lot.

21 MS. MOLDENHAUER: -- it's -- there would be a
22 change of use because the prior use was only conditioned upon
23 a BZA Order. That BZA Order has since lapsed and so you --

24 COMMISSIONER MAY: How long ago did it lapse?

25 MS. MOLDENHAUER: It lapsed --

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1 MR. WISE: 1980.

2 MS. MOLDENHAUER: So --

3 COMMISSIONER MAY: So have you actually attempted
4 to get a C of O?

5 MR. WISE: We have. I have. I went to --

6 COMMISSIONER MAY: For parking --

7 MR. WISE: -- I -- we went to go and get a C of O
8 for parking so that we could --

9 COMMISSIONER MAY: And what did they say?

10 MR. WISE: They said no. They said that we cannot
11 -- they said --

12 COMMISSIONER MAY: Why?

13 MR. WISE: -- they said we cannot provide it if
14 it's a tax lot. It needs to be subdivided to be a record
15 lot.

16 COMMISSIONER MAY: Okay. So that's the relevant
17 point.

18 MS. MOLDENHAUER: That's -- but it also goes to the
19 regulations which require it, because sometimes DCRA
20 indicates certain requirements and they might not actually
21 not all be backed up by the regulations. The regulations in
22 DCMR indicate that even for land, you require a C of O. A
23 C of O is then required for a basic business license.

24 The question then here today focuses on the minimum
25 lot requirement. Under 303.3 for the subdivision

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1 requirement, there are two subparts. I will not address the
2 second part as I believe that focuses mostly on the FEMS
3 requirements that Office of Planning and the Board have --
4 are not looking for us to identify or focus on. The Board
5 has the specific authority. The Zoning Commission did not
6 limit the Board's authority to grant a variance from the lot
7 area requirements in the specific subdivision section. More
8 importantly, area requirements are not a use variance. One
9 of the things we want to point out is that in the DC Court
10 of Appeals case, Taylor, they identify that area variance
11 involved minor alterations to the character of the zone
12 district whereas a use variance tends to drastically change
13 the district's character. And some of the images that we'll
14 quickly flip through go to that specific point.

15 ALW vs. BZA states that the prospect of a lot
16 remains permanently vacant in a street devoted residential
17 use is scarcely calculated to enhance the neighborhood. Here
18 we have proven that obviously, the inability did not only
19 simply utilize the space by a BBL or a C of O but also to
20 maintain it, the ability to get a permit for the property to
21 maintain the use, to repair a bollard, things to that effect,
22 would not be able going directly to ALW's case in regards to
23 -- would tend to obviously create overgrown or a condition
24 that would be the specific reason why variances are permitted
25 under zoning requirements.

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1 We have also identified other cases to Board Member
2 John's point where the Board has granted this. Obviously,
3 a lot of those go back to older regulations but I think when
4 you dig into the question of the subdivision, it's a minimum
5 lot requirement. You're not going to have the question of
6 other -- and we do have other alley tax lots where minimum
7 lot requirements were issued but in regards to current
8 regulations under 016, it's just too early. And
9 unfortunately, this is one of the first cases that has kind
10 of honed in on this requirement.

11 However, we have shown other cases in which there
12 were tax lots and there were vacant properties where minimum
13 lot requirements were addressed. The Office of Planning and
14 the Board did, in these specific instances where we're
15 talking about properties where there were -- it's a vacant
16 lot, it was a tax lot, and it didn't meet the minimum
17 requirements -- where Office of Planning said a predated
18 zoning regulation and the inability to acquire a property and
19 assemble the property actually goes specifically to the
20 practical difficulty in not being able to meet that specific
21 minimum lot requirement.

22 Next we have a quick image. One would think that
23 on an alley lot, that potentially, you would be surrounded
24 by -- let me just show you with a cursor here -- potentially
25 be -- that's a highlighter; sorry, I don't want to --

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1 potentially be surrounded by one, two, three, four, and maybe
2 even five properties. In this instance, they are not. As
3 you've heard testimony, there is an easement that pulls along
4 the rear here, so there's only two other property owners that
5 actually physically abut the lot. And you are actually
6 connected by two alleys, not just one alley that abuts this
7 property. So that limits the ability for the assemblage of
8 this lot for this property owner to then potentially acquire
9 either this property or this property. This property owner
10 here to the north has supported the application. This
11 individual is Mr. Clayton who did not show up today who has
12 the right to the easement, but that is the only homeowner
13 that actually has the physical connection to possibly permit
14 an assemblage.

15 These images just quickly show the character will
16 not be adversely affected. Thus, it does not jump into a use
17 variance requirement but is in the context of the
18 neighborhood of Capitol Hill and this specific area to permit
19 a dwelling on this lot. This is actually the property right
20 abutting the project. First of all, you can see this is
21 actually one of the bollards I was talking about and the
22 inability to get a permit, a building permit to repair those
23 if that was required.

24 The exceptional condition as identified here is the
25 property as well as the uniqueness that is measured in

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1 comparison to the neighborhood. We have heard testimony from
2 -- in some of the filings from opposition as well as from OP
3 that, well, there are tax lots all throughout the city.
4 Well, it's not -- that's not the standard. The standard is
5 the neighborhood and here, this lot is unique to the
6 neighborhood. We have also shown the challenge and the
7 uniqueness in the fact that the property is on a split zone
8 square where the property abuts the Capitol Hill Inn and
9 Hotel, a commercial use where there are then more people
10 walking around. There is commercial uses, the Starbucks at
11 the corner, the other Capitol Hill Lounge, creating more
12 commercial users which is obviously some of the reasons why
13 the prior use had -- many, many years ago had allowed for a
14 commercial use of the parking.

15 Now any commercial use of the parking, as we
16 showed, one, would need a BBL, but two, would also require
17 special exception as we are asking here today but rather to
18 actually go towards creating a dwelling unit and housing.
19 Furthermore, the property is unimproved and is challenged in
20 regards to its orphanancy. In other words that it is an orphan
21 lot that does not have similar ownership from abutting
22 homeowners.

23 The Applicant does produce and show a practical
24 difficulty in that it cannot acquire land to create
25 conforming lot, that no alternative improvements can be used

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1 without the variance test. It cannot obtain a business --
2 a building permit for a structure without the subdivision.
3 It cannot obtain a building permit even to maintain the
4 structure, and this goes to the Library Court case
5 specifically. In the Library Court case, OP specifically
6 stated that their practical difficulty was the homeowner's
7 inability to maintain or even do general improvements on that
8 house. The same is true here; without relief, this
9 homeowner, this owner of this property would not be able to
10 do general maintenance improvements to the site because they
11 could not get a business license -- or a building permit.
12 That goes to the practical difficulty and the inability to
13 then also obtain a -- to the third point here on the slide --
14 the inability to obtain a certificate of occupancy for any
15 use.

16 I'm going to -- let's go -- we have our uses in the
17 next slide. You know, the uses, we believe, are obviously
18 unreasonable, but one of the uses could be agriculture or,
19 you know, a beekeeping facility, right. It's permitted by
20 zoning but you couldn't even get a business license because
21 you would have to, obviously, go through that process and
22 obtain the subdivision. It's a clear practical difficulty
23 and it is clearly unique to this lot.

24 We have gone through and we have shown general --
25 what requires a business license. Interestingly enough, the

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1 zoning -- zoning is more narrow in regards to business
2 license requirements than building permits under DCRA's
3 purview. So what you look at here, you look at anything
4 that's typically over four feet. Anything under four feet,
5 if it's a patio, it's not zoning, right; doesn't count
6 towards lot occupancy, doesn't count towards FAR. However,
7 when you're talking about going and getting a permit at DCRA,
8 to get into their system, they require permits for all sorts
9 of work including foundation and earth work. So if someone
10 wanted to go and do earth work or if they wanted to do
11 additional work on the bollards or if they wanted to do
12 paving, all of that requires a permit, none of which can be
13 obtained without obtaining a subdivision transforming this
14 lot from a tax lot to a record lot.

15 This indicates work that is exempt from a permit;
16 brick pointing, caulking. Again, you're looking at sections
17 -- now none of this here -- the only section that might apply
18 would be a single garden storage shed that does not exceed
19 50 square feet. However, it says it must be accessory to a
20 structure or building. We have no structure or building.
21 Again, this property is an orphan lot that is not connected
22 to any other property, so you still would not be able to get
23 any of these exempt permits at DCRA.

24 I've already gone through and I provided copies for
25 the Board Members -- in order to get a certificate of

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1 occupancy, that one is required, no person shall use land,
2 even open land, without getting a C of O, and that is -- goes
3 directly to the subdivision requirement here. The Applicant
4 faces practical difficulty. All of the proposed matter of
5 right uses, agriculture, camping, artist studios -- artist
6 studios would require a minimum lot relief as well.
7 Residential, which is what we're for today, would require
8 minimum lot relief.

9 The surface parking, you know, we've walked through
10 this previously so unless the Board wants me to -- but this
11 is a split zone lot so you only have few residential
12 individuals that could possibly rent property or be able to
13 rent the property to be able to use it for parking. You
14 would not be able to get a commercial parking use without
15 coming back to the Board for special exception use. And even
16 if the owner said, well, we'll get the subdivision or we --
17 you know, we'll get the subdivision approved. Now I'm going
18 to rent it to residents in my square. He couldn't do that.
19 He could not because you need to be able to pay taxes; you
20 need to be able to have a license in order to get insurance.
21 If you're going to have other people other than you as a
22 homeowner parking on your property, you want to have
23 insurance that is obviously then compliant with all local
24 regulations. As we've shown, that would be a practical
25 difficulty here without granting the subdivision relief.

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1 I will -- we have testimony from Mr. Varga and
2 we're already over a minute. I don't know if the Board would
3 like to either ask Mr. Varga questions or if the Board would
4 like to provide us an extra three minutes for Mr. Varga to
5 provide additional testimony. We have done some research in
6 regards to subdivisions and the history of when the minimum
7 lot requirements went into effect in the District of
8 Columbia.

9 VICE CHAIR HART: I think that -- do you have
10 written testimony?

11 MR. VARGA: Yes, I do.

12 VICE CHAIR HART: You can --

13 MR. VARGA: Yes.

14 VICE CHAIR HART: You have copies for us?

15 MR. VARGA: Yes.

16 VICE CHAIR HART: It -- that wasn't submitted, was
17 it?

18 MS. MOLDENHAUER: No, it was not. We were planning
19 on providing it orally.

20 VICE CHAIR HART: You can provide it to us --
21 provide it for the record. He doesn't need to go into that
22 unless -- would some other Board Members --

23 COMMISSIONER MAY: No. I mean I think what you're
24 going to be talking about is stuff that has more to do with
25 a zoning case than a BZA case that we have in front of us.

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1 So -- but we'll read it. We'll take a look at it and see if
2 we have any questions.

3 VICE CHAIR HART: Anything else, Ms. Moldenhauer?

4 MS. MOLDENHAUER: Let me just -- sorry -- clarify
5 one point. The zoning regulations state that, in order to
6 even use the parking lot in an R zone for residential use,
7 you have to be a resident of the square. It's written into
8 the regulations. If for any instance, Mr. Wise were to have
9 to -- wants to move to another area of the city, wants to buy
10 another -- a larger house -- part of the history of this case
11 is that Mr. Wise was looking to convert this to a facility
12 for his mother because he wants to move to another facility
13 where he can have his mother in his house -- and he were to
14 relocate away from his home on Third Street -- right now he
15 is a resident of the square on Third Street. Let's say he
16 were to move. He would no longer be a resident of the
17 square. That would mean that -- right now he may be able to
18 use it for his own personal use, but if he did move, the
19 zoning conditions that use by him owning another lot on the
20 square, which would again mean that he would then have to
21 rent it out to somebody else other than himself and then he
22 could not obtain a C of O or a BBL for the lot, which I think
23 furthers the practical difficulty. Obviously, the Board
24 looks to the property in and of itself, not the Applicant.

25 But in this situation, the question -- I think all

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1 of the practical difficulty does go to the history of the
2 lot, the fact that the lot has been -- was a pre-1958, pre-
3 November 1957 subdivided record tax lot. We are not looking
4 to reduce the size of the lot at all beyond what currently
5 exists. And we do have substantial -- we do not believe that
6 it would be a substantial detriment to the zone plan nor a
7 substantial detriment to the public good as this would
8 actually allow for permitting and improvement of the site,
9 would not impact light and air to any abutting neighboring
10 properties. We went through this in more detail last time.
11 Seeing as OP is supportive of the structure that is proposed,
12 the dwelling that is proposed, I will not go through that
13 unless the Board asks specific questions.

14 But we've also then shown the multiple cases dating
15 back, obviously, for many, many years where the Board has
16 found that minimum lot sizes can be reduced and the fact
17 that, you know, the minimum lot requirements, as is provided
18 in Mr. Vargas' testimony, is really based on a mentality of
19 providing regulations that would not increase or adversely
20 impact water and sewer and sanitation challenges which we do
21 not believe, obviously, is an issue here.

22 VICE CHAIR HART: Okay. Are we almost --

23 MS. MOLDENHAUER: I am complete. Thank you.

24 VICE CHAIR HART: Do we have any questions for, Ms.
25 Moldenhauer?

1 COMMISSIONER MAY: I think I got my questions in
2 while she was testifying.

3 VICE CHAIR HART: You do that so well, Mr. May.

4 VICE CHAIR HART: So I understand that you're
5 saying that you would not be able to use this property
6 without receiving this variance for basically anything else.
7 And you also made a statement, Ms. Moldenhauer, that if the
8 Applicant moved away from the square -- are you saying that
9 if they are a property owner and they decide to buy another
10 property but they maintain their property and this particular
11 lot, that they wouldn't be able to keep the lot? Or are you
12 saying that --

13 MS. MOLDENHAUER: I think I see where you're going
14 and --

15 VICE CHAIR HART: Yes. So I'm just asking you does
16 it -- it's not necessarily that somebody has to live there;
17 they just have to own property on that square?

18 MS. MOLDENHAUER: The --

19 VICE CHAIR HART: And I'm --

20 MS. MOLDENHAUER: -- well, it's --

21 VICE CHAIR HART: -- I'm asking for clarification.

22 MS. MOLDENHAUER: -- no -- and I think that it's
23 complicated because it's a situation in which, if they own
24 property on the square, so conditioning one property's use
25 on another property's ownership, they could then personally

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1 use it themselves. However, as we know, this is a 1,120-
2 square-foot lot so it obviously can house more than one car
3 or -- and I hope that in our smart city growth mentality, the
4 Applicant does not own more than one car, but -- so if you
5 have other people, other residents of the square, so let's
6 say for your instance, Commissioner Hart, he moves away and
7 he rents the house that he currently owns. That is a
8 resident of the square. They could use the lot then but as
9 a good lawyer, they would be -- they should, through DC
10 requirements, they should get a basic business license for
11 housing to rent their house, correct? Then they should have
12 to get a C of O for that. They have to have inspections for
13 that and they have to then get a certificate of occupancy and
14 a BBL, and they have to go through all the requirements to
15 rent that. That would not be a certificate of occupancy for
16 this lot. It's a separate legal lot. They would need to get
17 a BBL and a C of O for the general business purposes then of
18 renting this lot even to another resident of the square.

19 VICE CHAIR HART: Okay. Thank you. Any other
20 questions? Okay. I wanted to hear from the Office of
21 Planning. Good afternoon -- or good -- yes, good afternoon.

22 MR. JESICK: Good afternoon, Mr. Chairman and
23 Members of the Board. My name is Matt Jesick. I can go
24 through the memo we submitted or if you're looking for any
25 other information, I'm happy to follow your lead.

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1 VICE CHAIR HART: I think going through the memo
2 would be helpful and you've heard the Applicant provide more
3 in-depth description of their -- of how they meet their --
4 the prongs and just understanding if that would change your
5 mind or if you're still in the same mindset.

6 MR. JESICK: All right. Thank you. Just to go
7 through the memo we submitted, which I believe is Exhibit 54
8 in the record, at the previous hearing, the Board had asked
9 for two pieces of information; one, a summary of OP's
10 analysis of the Library Court case and in regard to that was
11 similar types of relief in that the Applicant there was
12 looking to create a record lot from an existing tax lot in
13 order to expand an existing two-story alley dwelling with a
14 one-story addition. And OP found that the property did
15 exhibit exceptional condition that led to a practical
16 difficulty because the lot's dimensions were now non-
17 conforming as it was built before the 1958 zoning
18 regulations, and there was no land available to rectify the
19 non-conformity of both the lot size and the non-conformities
20 of the structure itself. And as the Applicant noted here
21 today, the Applicant in the Library Court case would not be
22 able to obtain a building permit even for home renovations.

23 OP found that there would be no detriment to the
24 public good, that being able to obtain a building permit
25 would allow for the preservation and maintenance of an

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1 historic residential structure and thus help maintain the
2 character of the neighborhood.

3 And OP also found for the third part of the test
4 that there would be no substantial harm to the zoning
5 regulations -- excuse me -- that this would help satisfy the
6 intent of C301.1 that existing -- you know, talking about
7 record lots here but that existing record lots with
8 substandard dimensions may receive building permits and may
9 be developed as long as other development standards of the
10 zone are met. So OP was able to recommend approval of that
11 case.

12 The second piece of information the Board asked for
13 was what, if any, potential text amendments are being
14 considered to address this alley lot issue. And at this
15 point, OP is examining the issue. We're aware of some of
16 these conflicts, if you will, within the regulations but at
17 this point, we don't have any concrete options to present to
18 the Board or the Zoning Commission, but we can do that once
19 our analysis has progressed.

20 Now as to what was presented today, I think the
21 Applicant has presented a strong argument in regards to, you
22 know, obtaining a C of O and then obtaining a business
23 license. I think we would just want to confirm all of that
24 with DCRA before we give the Board any more in-depth feedback
25 or a recommendation, so I can't change my recommendation here

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1 this morning but we can look into it further if the Board
2 would like.

3 COMMISSIONER MAY: So, Mr. Jesick, I mean the one
4 piece that I heard today that actually was compelling in this
5 case where I was trying to see if there was, in fact, a
6 reason to grant the relief to the Applicant has to do with
7 the fact that right now the property really can't be used for
8 anything. And in order for them to use it for anything,
9 they'd essentially have to have a special exception, and they
10 couldn't even do anything to the property to even maintain
11 it as a parking lot, right? I mean if they're just going to
12 continue to use it as a parking lot, I mean maybe it's usable
13 right now without any improvements, but it isn't going to
14 stay that way forever. And if they have to go in and repave,
15 you know, I mean repairing a bollard I don't think is an
16 issue but if they -- you know, if they wanted to put up a
17 fence, all things that one might reasonably do with a
18 parking, they wouldn't be able to do it. And do you agree
19 with that they would not be able to make any improvements?
20 Is that a -- I mean --

21 MR. JESICK: I can agree that that's a compelling
22 argument. I would want to go back to DCRA though and just
23 confirm that whole chain of events that needs to happen just
24 to --

25 COMMISSIONER MAY: Well --

1 MR. JESICK: -- that's --

2 COMMISSIONER MAY: And the reason that I think --

3 MR. JESICK: -- the process.

4 COMMISSIONER MAY: -- that's relevant is that we --
5 the relief that was previously granted in the Library Court
6 case, I mean that was the one key fact that stood out to me,
7 that there was really no way for them to do anything to the
8 property the way it was and that they needed some level of
9 relief for that tax lot in order to do anything with it. And
10 given its unusual circumstance, this particular setting,
11 because I'm not going to, you know, make any leaps about how
12 we should be treating tax lots across the city until we've
13 had further discussion at the Zoning Commission, but this is
14 -- I was finally, I think, based on the testimony today, able
15 to draw a parallel between the Library Court case, where the
16 BZA granted relief, and this one, because something -- I mean
17 they really can't do anything. So I mean whether that
18 actually means this house should be built is a -- you know,
19 I'm not going there yet but just I found that that was a
20 compelling issue.

21 And I also would not like to continue to drag this
22 on forever where we get further information from DCRA, but
23 I think it's pretty reasonable to assume that in order to
24 make -- even do the basic upkeep of this property, they'd
25 wind up having to get permits. And if they have to get

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1 permits, they have to have a record lot. I mean is that --
2 do you think that I'm connecting those things correctly?

3 MR. JESICK: I really can't confirm that, you know,
4 without speaking to DCRA to see if they would, in fact,
5 require a C of O and then a building permit. They may allow
6 in-kind replacement or --

7 COMMISSIONER MAY: Replacement --

8 MR. JESICK: -- repair.

9 COMMISSIONER MAY: -- without?

10 MR. JESICK: I just don't know.

11 COMMISSIONER MAY: Right. Okay. That's a good
12 question. Thank you.

13 VICE CHAIR HART: Any other questions from the
14 Board? Ms. Moldenhauer, do you have any questions for the
15 Office of Planning?

16 MS. MOLDENHAUER: Sure. OP did, however, find that
17 there was no ability to get a permit in Library Court, so
18 somebody at OP -- as you reviewed -- you reviewed Library
19 Court when you wrote your memo, correct?

20 MR. JESICK: Yes, that's correct.

21 MS. MOLDENHAUER: And somebody at OP found that
22 that project --

23 CHAIR HILL: I'm sorry, can you repeat the question
24 again?

25 MS. MOLDENHAUER: Oh, sure.

1 CHAIR HILL: And I'm sorry. I was --

2 MS. MOLDENHAUER: I was asking Mr. Jesick if he had
3 reviewed Library Court to draft his memo and --

4 MR. JESICK: Yes.

5 MS. MOLDENHAUER: -- and when you reviewed Library
6 Court, somebody had at OP, the prior staff member, did
7 confirm that in that case, that they would not be able to get
8 a permit because it was a tax lot; is that correct?

9 MR. JESICK: I think that's a fair summary, yes.

10 MS. MOLDENHAUER: So it has already been confirmed
11 by somebody in your office that that is a statement, whether
12 you have personally confirmed it or not, but it has been
13 confirmed in your office based on that statement in the prior
14 Library Court case?

15 MR. JESICK: That was for an existing structure
16 that they were expanding. This is for an empty lot that's
17 currently a parking lot.

18 MS. MOLDENHAUER: And is it your understanding that
19 DCRA follows the DC Municipal Regulations and if it says in
20 the DC Municipal Regulations that certain permits would not
21 be issued or that certain permits are required, that whether
22 you had to confirm that or not, that that would actually be,
23 in fact, how DCRA operates in accordance with its own
24 regulations?

25 MR. JESICK: Presumably.

1 MS. MOLDENHAUER: Okay. So then the Board could
2 then review the regulations themselves as handed out and we
3 have -- they're under -- if you flip through to the third
4 page under Section 01.2, it specifically lists work exempt
5 from a permit. So is it -- would it be a fair understanding
6 then that this is the only -- items 1 through 14 that would
7 not require a permit in the District of Columbia?

8 MR. JESICK: I'm sorry. I must have a different
9 copy. You said page three?

10 MS. MOLDENHAUER: Sorry, it was -- no, past -- back
11 of the second page, sorry; 105.2. That's titled -- do you
12 see what 105.2 is titled? The permit one, yes. So we're
13 looking at DCMR Section 105, so it's 12A DCMR 105 and then
14 we're flipping to the back of the second page, Section 105.2;
15 is that correct, Mr. Jesick?

16 MR. JESICK: Yes.

17 MS. MOLDENHAUER: And what is that titled?

18 MR. JESICK: Work exempted from permit.

19 MS. MOLDENHAUER: Okay. And that -- those are the
20 only -- items 1 through 14 -- the only items that could then
21 be done without requiring a permit. And even in Section 7,
22 it identifies replacement in-kind type of work; is bollard
23 or concrete or repaving listed at all in 1 through -- in 7.1
24 through 7.7?

25 MR. JESICK: 7.4 lists private sidewalks and

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1 driveways. I don't know how they would interpret that.

2 MS. MOLDENHAUER: Is a parking pad a driveway in
3 your opinion?

4 MR. JESICK: I don't know what -- how DCRA would
5 analyze that.

6 VICE CHAIR HART: Any further questions, Ms.
7 Moldenhauer?

8 MS. MOLDENHAUER: No other questions. Thank you.

9 VICE CHAIR HART: Thank you. I think we'll --

10 CHAIR HILL: I have one question.

11 VICE CHAIR HART: Yes, go ahead.

12 CHAIR HILL: Mr. Jesick, just to be clear again, so
13 you guys are just in denial of the variance right now. So
14 you're still in denial of what --

15 MR. JESICK: I mean if you made me give you a
16 recommendation today, yes, then it would be -- still be
17 denial until we can -- you know, like I said, I think the
18 Applicant possesses a compelling argument about the business
19 license and the C of O. I would just want to confirm that --

20 CHAIR HILL: Okay, okay.

21 MR. JESICK: -- before we --

22 CHAIR HILL: -- okay.

23 MR. JESICK: -- move any further.

24 CHAIR HILL: Thank you.

25 VICE CHAIR HART: So -- and I know we've done this

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1 already but I -- since they actually are sitting here, and
2 having -- they hadn't heard this particular testimony, I
3 thought it would be helpful to have a party in opposition --
4 I know you already -- not party, excuse me -- persons in
5 opposition, you can have three minutes to be able to give
6 some testimony.

7 MR. COLEMAN: That'd be great.

8 MR. KOFFMAN: Yes, from what we heard today, it
9 seems like there is an existing use. If Mr. Wise is a
10 resident of the square and can utilize the lot for parking
11 currently, he has a current use and it's not making it an
12 extreme difficulty on him. I'll let Mr. Friedman continue
13 on about what his particular issues are.

14 MR. COLEMAN: Sure. I'd say there are two big
15 developments I'd like to -- so after the last hearing, you
16 know, we both worked on a construction management agreement
17 to kind of figure out the specific issues we had about the
18 building, but if we're talking about kind of uses, we
19 actually put out an offer to buy it from them, and they did
20 not accept it. That offer expired I think immediately prior
21 to the last hearing, and we examined uses, too, prior. So
22 I would say, you know, we've evaluated those. We've
23 discussed with our adjacent neighbors. There could even be
24 an option where one of the neighbors, that would be currently
25 Mr. Clay, he would be able to purchase and possibly combine

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1 this lot because it's adjacent to his easement.

2 VICE CHAIR HART: Is that Mr. Chilcoat?

3 MR. COLEMAN: Yes. Sorry.

4 VICE CHAIR HART: No, that's fine. I just want to
5 make sure we were talking about the same person.

6 MR. COLEMAN: Yes, I confirmed his last name.

7 Yes, so I would say -- and then from our
8 perspective maybe I'll ask my wife to speak a little bit
9 about some of the uses we were thinking about for us if we
10 were to buy it.

11 MS. FRIEDMAN: Yes, so we did look at parking as an
12 option for this and I would also like to point out that there
13 are a couple of garages also on the square that are tax lots;
14 not record lots that have received building permits to fix-up
15 or, I guess, raise -- I'm not entirely sure but they received
16 some sort of building permit for those tax lots that are not
17 connected to any sort of record lot as far as I'm aware. I'm
18 not the expert here, but we also looked into options to rent
19 out parking.

20 There are a number of residences on the square
21 including a 13-unit apartment building across the way. That
22 as far as I can tell, does not have enough parking for that
23 particular unit and there are a number of residences around
24 the square that are for multi-families, as far as I could
25 tell from the tax real estate. Again, I'm not the expert.

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1 But, there are a number of multi-family residences on the
2 square and we would definitely consider if not renting to
3 residents on the square, at least looking into potential to
4 rent out to the businesses on the square including the hotel
5 on the other side -- on C street. That we see their parking
6 lot all the time and it seems like, you know, very full most
7 days. So, it seems that there might be a need there as well
8 as the other businesses on Pennsylvania Avenue.

9 In addition, we also would look into other uses to
10 not leave the lot vacant during that time. And there's a
11 couple of other ones if we wanted to use it for parking for
12 ourselves, if we wanted to start, perhaps, growing some
13 things as a small garden out there and we would generally be
14 open to looking into those if we were to purchase the lot.

15 VICE CHAIR HART: One thing -- thank you very much.
16 One thing that I -- I remember you all saying and I know Ms.
17 Moldenhauer -- and I'm not sure who's the best person to ask.
18 Maybe it's Ms. Moldenhauer, but this Mr. Chilcoat?

19 MS. MOLDENHAUER: Chilcoat.

20 VICE CHAIR HART: Chilcoat? I -- his name keeps
21 coming up and is he the owner of the --

22 MS. MOLDENHAUER: The easement.

23 VICE CHAIR HART: -- of the easement?

24 MS. MOLDENHAUER: Yes, correct.

25 VICE CHAIR HART: Just the easement -- he's the

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1 property and the easement. Is that correct?

2 MS. MOLDENHAUER: Yes, it's a -- it's like a --

3 VICE CHAIR HART: Yes, yes. It's a kind of a dog
4 leg or something.

5 MS. MOLDENHAUER: Yes. It's like a not really --

6 VICE CHAIR HART: Or pan, panhandle or something.
7 I don't know which one to call it, but --

8 MS. MOLDENHAUER: Yes, he owns that property. He
9 lives at Virginia. Virginia?

10 MR. WISE: Yes, he lives --

11 MS. MOLDENHAUER: Yes, he lives in Virginia and
12 rents it and we've had -- obviously had conversations with
13 him.

14 VICE CHAIR HART: That's fine.

15 MS. MOLDENHAUER: He's not here today.

16 VICE CHAIR HART: And do you happen to know where
17 Ms. Bain lives?

18 MS. MOLDENHAUER: She lives at the property.

19 VICE CHAIR HART: She lives at Mr. Chilcoat's?

20 MS. MOLDENHAUER: No, sir. She is -- let me pull
21 the map. I'm sorry. I apologize.

22 VICE CHAIR HART: It's okay.

23 MS. MOLDENHAUER: Let me pull the map. This might
24 be faster to just walk through it this way. So, Ms. --

25 MR. WISE: Bain.

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1 MS. MOLDENHAUER: -- sorry. The -- Thomas and
2 Lauren Friedman live here.

3 VICE CHAIR HART: Okay.

4 MS. MOLDENHAUER: Ms. Bain lives here and then Mr.
5 Chilcoat lives here with the property that comes down with
6 the easement that then these two homeowners have access to.

7 VICE CHAIR HART: Okay. I was just trying to
8 understand where they were and --

9 MS. MOLDENHAUER: Oh, they don't? Oh.

10 VICE CHAIR HART: And you said that the owner
11 that's to the north, I guess, is -- was in support of the
12 application?

13 MS. MOLDENHAUER: Yes, correct.

14 VICE CHAIR HART: Okay.

15 MS. MOLDENHAUER: There's a letter in the record.

16 VICE CHAIR HART: And did the -- Mr. Chilcoat, did
17 he want to purchase the property either?

18 MR. WISE: We had offered it to him and all the
19 other neighbors for sale following -- back in, I believe it
20 was October of last year and John and Jenny Fried at 209
21 originally looked into it and decided that they weren't able
22 to purchase it but it was offered to all of the neighbors for
23 sale.

24 VICE CHAIR HART: Okay. Thank you. Is there a --
25 does the Board Members have any questions for the testimony

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1 that we just gave -- that we just heard? None for Mr.
2 Friedman, no? Is there anybody here in support of the
3 application since I haven't asked that? Okay.

4 Ms. Moldenhauer, would you like to give a closing
5 statement?

6 CHAIR HILL: I've got a couple of questions before
7 we do our closing.

8 VICE CHAIR HART: Oh. We can go that.

9 CHAIR HILL: So just -- and I'm still back to Mr.
10 Jesick over here.

11 So, again this whole thing and I'm going to just
12 completely claim that I'm confused. And so, in the
13 application, everything that's being requested, the issue
14 between turning it from a tax lot into a record lot, which
15 one of those is for the tax lot to the record lot?

16 MR. JESICK: Are you guys talking about which areas
17 of relief?

18 CHAIR HILL: Yes.

19 MR. JESICK: Well, there were three variances. One
20 to the width of the alley, one to -- well, actually two to
21 the width of the alley and then a third one for the lot area.
22 So, OP recommend denial of those three variances.

23 CHAIR HILL: Okay, but do all three of those have
24 to do with turning it from a record lot to a tax lot? I
25 mean, a tax lot to a record lot?

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1 MR. JESICK: That's correct. They're all C 303.3
2 and then the various subsections.

3 CHAIR HILL: So if we turned it from a tax lot to
4 a record lot, that means that they would then be able to
5 build this particular building?

6 MR. JESICK: Well, they've also requested relief
7 for rear yard and OP had no objection to that particular area
8 of relief.

9 CHAIR HILL: Okay. Okay. I'm still struggling
10 with the use that you have now, right? And again, what Mr.
11 May was speaking of.

12 So, Mr. Wise, again, I remember this from the --
13 and I -- this was -- we've been here a long time actually now
14 that I recall because I went back and I remember this was a
15 late one that we were here the last time on. And so
16 whoever's going to be here at the end of this day, this is
17 going to be a late one just to let you know.

18 The -- this is our second case, right? Oh, three.

19 MALE PARTICIPANT: Third.

20 CHAIR HILL: We're on our third? Okay, great.

21 So, Mr. Wise, you bought this originally as a
22 parking lot? Well, you wanted to use it as parking as I
23 recall and you're under oath so I just want to know. You
24 were going to use it as parking and then you later decided
25 that maybe you wanted to build on it?

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1 MR. WISE: No, we owned 205 3rd Street which is
2 about a half a block away. We had originally intended to
3 build a home on it for my disabled mother for -- to care for
4 her in a -- in close proximity. We initially -- and I'll try
5 and go through this really quick.

6 CHAIR HILL: As you did your due diligence --

7 MR. WISE: Yes.

8 CHAIR HILL: -- you didn't do it well enough before
9 you bought the lot?

10 MR. WISE: We understood that we had to go through
11 relief; we would have to get relief from it -- from certain
12 things. The architect that we had identified certain areas
13 of relief that we would have to get but we purchased it
14 anyway because it was in close proximity and quite honestly,
15 it's the only place that we would be able to house my mother
16 because she's in a wheelchair. So --

17 CHAIR HILL: That's okay. You bought it thinking
18 you could do what you're going to try to do with it?

19 MR. WISE: Sure. Yes.

20 CHAIR HILL: Okay. Okay. But you didn't know --
21 I mean, you took a risk? You took a gamble.

22 MR. WISE: I mean, to a certain idea. I never
23 anticipated that we would have no use for it. That we would
24 not be able to use it for anything. That --

25 CHAIR HILL: Yes.

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1 MR. WISE: And that's where we're at now. I went
2 to go -- and when we met with Mr. LeGrant he basically told
3 us, you can't use this for anything if you were to move away
4 from --

5 CHAIR HILL: After you bought the property. After
6 you bought the property.

7 MR. WISE: After we bought the property.

8 CHAIR HILL: Are you the person that I asked
9 whether you fired the architect?

10 MR. WISE: Yes.

11 CHAIR HILL: Okay.

12 MR. WISE: And we did.

13 CHAIR HILL: Yes, no. Great. Okay.

14 MR. WISE: We have a new architect.

15 CHAIR HILL: All right. Thank you.

16 VICE CHAIR HART: I think you were going to start
17 your closing.

18 MS. MOLDENHAUER: I was just giving pause to make
19 sure there was no other questions from any other Board
20 Members.

21 VICE CHAIR HART: Yes and I'll -- just to let you
22 know that I do have a somewhat of a time constraint myself.

23 MS. MOLDENHAUER: Okay. All right. I'm ready to
24 --

25 VICE CHAIR HART: So --

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1 MS. MOLDENHAUER: -- jump in. I just wasn't sure
2 if any other --

3 VICE CHAIR HART: That's fine.

4 MS. MOLDENHAUER: -- Board Members had questions.

5 VICE CHAIR HART: No, that's fine.

6 MS. MOLDENHAUER: So, just in closing -- just to
7 identify a couple of issues at the last hearing. We were
8 asked to engage all three of the owners. The Friedmans who
9 are here today, Ms. Bain and Mr. Chilcoat in a conversation
10 regarding the CMA. We emailed with -- as provided in our
11 submission, we emailed with the -- with Mr. Friedman and Ms.
12 Coleman, their attorney, Mr. Koffman, who is here -- a CMA
13 agreement. We then waited a substantial period of time. If
14 they provided us edits right before the hearing on Monday the
15 19th. The hearing was supposed to be Wednesday, the 21st.
16 We had no hearing.

17 Then the Applicant's Counsel responded with edits
18 on April 2nd with CMA Language and we had not heard a
19 response from that. But we have been, obviously, trying to
20 engage with the neighbors. We believe that under the
21 variance -- area variance test; this is not a use variance.
22 They're to commit Board Member Hill's questions about
23 knowledge of the property. Only use variances prior
24 knowledge is a bar.

25 In the 1700 block of N Street case before the Court

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1 of Appeals, it was a situation in which a YMCA knew, they
2 bought a property. They knew that they were going to need
3 parking relief. They went forward. The Board granted
4 parking relief. It went to the Court of Appeals, the Court
5 of Appeals said just because they knew they needed relief
6 before they bought it is not a bar unless a -- unless it is
7 a use variance case.

8 Here -- we are here today on a area variance case.
9 The issue obviously is the subdivision but the subdivision
10 is brought into two sections; the minimum lot requirement and
11 the overall -- the depth or width of the public alley. The
12 public alley asks structurally mostly based on FMES. We have
13 shown that we are -- we are on a 20 foot alley; not a 24 foot
14 alley and that we are within less than 300 feet of the street
15 on 3rd Street. And in regard to the question of whether an
16 1800 square foot minimum requirement. Here we're at 1,120.
17 There are many other homes actually -- or lots in the
18 neighborhood and even on this square that are smaller than
19 what is proposed here.

20 The size does not create an adverse impact to the
21 public good in regards to the lot and the question of whether
22 or not then a area variance from this requirement is
23 necessary or would be appropriate because it would create a
24 practical difficulty to the owner -- any owner. Whether it
25 was Mr. Wise or anybody else, in order to properly comply

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1 with regulations; both DCRA permitting, C of O licensing and
2 then to maintain the property. This is a question of wanting
3 to ensure the property does not continue to mean -- or remain
4 neglected or unable to be maintained but rather, can be
5 improved.

6 I think here, obviously, Office of Planning is
7 supportive of the overall proposed use of a dwelling. We
8 have the Capital Hill Restoration Society that is in support
9 of the overall use in the subdivision. We have the Coalition
10 for Smart Growth who has filed a letter in the record urging
11 the Board to support the relief and to support the
12 subdivision. We also have the architect of the Capital who
13 has reviewed the project and has also indicated support in
14 the record at Exhibit Number 40 -- I can't read that
15 backwards -- 49.

16 And we believe that while there are concerns from
17 the neighbors, that we have addressed those and that OP in
18 regards to concerns about light and air is supportive of the
19 special exceptions for the structure. And at the end of the
20 day, it really goes down to whether or not the Board finds
21 that a lot of 1,120 square feet can be created by a
22 subdivision or whether or not the fact that it is of a 37
23 percent deviation. I believe that's correct. To find the
24 numbers we have to go down here.

25 You know, is something that would stop this

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1 property from being able to get any sort of acquired building
2 permit. We -- in regards to -- we have records here that a
3 building permit is required for the foundation or earth work.
4 It would be required for anything other than the exempt item
5 which is part of the DCMR. You heard from OP that they would
6 want to confirm this but the regulations are clear. We have
7 copies of them that these are the only 14 areas that are
8 exempt from permitting and that all of these would require
9 a permit in order for DCRA to process the system, it would
10 have to be a record lot in order for a permit to be issued.

11 And we believe that the Board has substantial
12 history in regards to issuing sub-lot area requirement
13 relief. The request that we're asking for is 37 percent
14 deviation. We believe that the record is full and based on
15 Taylor v. BZA and ALW that this is -- fits right within the
16 requirements and we would ask the Board to rule on the case.

17 Thank you.

18 CHAIR HILL: Thank you very much. I wanted to see
19 if there were --

20 COMMISSIONER MAY: Mr. Chairman, I -- if I could
21 just jump ahead a little bit here. I would love to try to
22 decide this today but unfortunately I think we are missing
23 one key piece of information. Contrary to what Ms.
24 Moldenhauer just testified or stated, it is not clear from
25 the regulations that nothing can be done with the property.

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1 And I would like to get that clarity from DCRA because
2 apparently, we have testimony on the record that DCRA made
3 pretty definitive statements that basically the property is,
4 you know, useless or could become so in a short period
5 because of the way the regulations are.

6 The C of O Regulations, the building permit
7 regulations and of course, the zoning regulations all
8 conspiring to make this a very difficult property to use.
9 I can understand why it's a very difficult property to use
10 for that reason and for other reasons. But I do think we
11 need to have the Office of Planning speak one more time with
12 DCRA. Preferably, get something written from DCRA about
13 whether they stand but also that would give the Office of
14 Planning the opportunity to consider whether, in fact, the
15 variance is something that they would recommend at this point
16 because I do see the parallel between this and the library
17 court case.

18 But the line that -- or the, you know, the -- it's
19 not quite as clear that nothing can be done with the property
20 at this point without a building permit and a building permit
21 couldn't be had for this property.

22 I think that's what this hinges on more so than
23 anything else. I mean, tax lots, history tax lots, you know,
24 that's all fodder for a future zoning case, I think. But I
25 think in this particular circumstance, that's the question

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1 that needs to be answered and I would suggest that we could
2 close the hearing and simply request that further report from
3 the Office of Planning. And of course, I don't know if the
4 Applicant gets to respond to that report as a matter of
5 process. I don't know. But that's all, I think, that we
6 really need and it's very specific to that issue in my mind.

7 I would also say that that -- generally speaking,
8 you know, reuse of this kind of a property, if it wasn't for
9 the fact it was a record lot, I mean, you'd think it'd be
10 pretty easy to give -- to grant the relief to it. So, I
11 mean, that may not be what the neighbors want to hear but
12 reuse of a property like this for a two-story structure is
13 not outrageous. So --

14 VICE CHAIR HART: Thank you, Mr. May.

15 So, I actually think that's a great idea. I think
16 getting some further clarity from the Office of Planning.

17 Mr. Jesick, do you think that that's something that
18 we could get, I don't know, fairly shortly?

19 MR. JESICK: Yes. I think whatever time line the
20 Board prescribes, we can work with.

21 VICE CHAIR HART: And, Mr. Moy, would we need to --
22 we would need to have the Applicant provide some response to
23 that?

24 MR. MOY: Well, that's up to the Board. I think it
25 would be procedurally correct.

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1 VICE CHAIR HART: Okay. That's fine. So, I know
2 Mr. May is back here at the beginning part of May and that
3 would provide time for the Office of Planning to provide a
4 report and then the Applicant to -- we're looking at May 9th,
5 Ms. Moldenhauer.

6 That would also provide the Applicant the time to
7 respond to the Office of Planning report. So --

8 MR. MOY: So I would suggest, Mr. Vice Chair, that
9 if the Board is looking at a decision making on the 9th of
10 May, then perhaps -- I'm working backwards here. OP can file
11 its definitive report -- it's -- I'll give them either --
12 let's say Monday, May 7th. That might be off if the
13 Applicant can make its -- well, wait a minute. It's the
14 other way around.

15 VICE CHAIR HART: I think if we would --

16 MR. MOY: It's the other way around.

17 VICE CHAIR HART: Yes.

18 MR. MOY: Okay. If OP can make its filing let's
19 say Wednesday, May 2nd and then we give the Applicant the
20 opportunity to respond, if at all, I would say Monday, May
21 7th.

22 MS. MOLDENHAUER: I would just maybe ask to give OP
23 until the 3rd or the 4th. I know that the Zoning
24 Administrator's out at the American Planning Conference. So,
25 I was just want to give everybody enough time and I would ask

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1 OP to obviously have the Applicant participate in any
2 communications with DCRA during that time which I think might
3 be able to expedite the process.

4 VICE CHAIR HART: I mean, I don't have a problem
5 giving them more time to do that. That's -- does that work
6 with you, Mr. Jesick?

7 Okay.

8 MR. JESICK: That's fine.

9 VICE CHAIR HART: So, Mr. Moy, if the OP could
10 provide a -- their report on the 3rd, 4th which is that
11 Friday?

12 MR. MOY: Yes, that would be May 4th.

13 VICE CHAIR HART: And then the Applicant would be
14 able to provide a -- Ms. Moldenhauer, a response by the 7th.

15 MR. MOY: That's correct. That would be a Monday.

16 VICE CHAIR HART: So --

17 MR. MOY: And May 9th would be a decision. Or do
18 you want to continue hearing?

19 VICE CHAIR HART: No, no. We've -- I -- I'm

20 MR. MOY: Okay.

21 VICE CHAIR HART: -- closing the hearing. So we're
22 just asking --

23 MR. MOY: Okay. I just want to be sure.

24 VICE CHAIR HART: -- for additional information.

25 MR. MOY: I just want to be sure we're clear.

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1 VICE CHAIR HART: That's okay.

2 MR. MOY: Okay, good.

3 MS. MOLDENHAUER: Sorry. My client is just
4 informing me -- is there any possible way to have it a little
5 sooner in regards to a decision date? And we will --

6 VICE CHAIR HART: I mean, the issue is that we want
7 to Mr. May to be back here and that's when he's back here.
8 So that's why we're scheduling for that date. So --

9 COMMISSIONER MAY: What's the driving need for an
10 earlier time?

11 MS. MOLDENHAUER: My client can address that. I
12 just was informed, so --

13 MR. WISE: This process has been long. This has
14 been now 16 months of us going through this --

15 VICE CHAIR HART: Sure.

16 MR. WISE: -- and the driving factor is that every
17 time we have another hearing, I fly back to California to
18 take care of my mother immediately after and then I have to
19 fly out here for the hearing.

20 We're trying to arrange --

21 COMMISSIONER MAY: Well this will be a meeting you
22 don't need to be here.

23 MR. WISE: Okay. We're trying to arrange for her
24 care. For --

25 COMMISSIONER MAY: I can understand that.

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1 Appreciate it, but you don't need to be here. You know,
2 unfortunately, I don't think that -- the only other date that
3 I could make it would be so early that I don't think that we
4 could get the response from DCRA.

5 VICE CHAIR HART: Yes.

6 COMMISSIONER MAY: So, we have to aim for May 9th.

7 VICE CHAIR HART: Yes, and I think that we're --
8 this is -- the meeting is just for the Board Members to be
9 able to discuss. We're just trying to get the information
10 so that we can have the discussion. We're not going to be
11 taking anymore testimony and, as Mr. May said, the Applicant
12 -- you can be here, you can watch it on TV, but it's not
13 necessary to actually be in the meeting for that.

14 MR. WISE: Okay.

15 VICE CHAIR HART: So, I think we're going to keep
16 on the May 9th, have the OP report on the 4th of May and then
17 have the Applicant submit a response to the OP report by --
18 on the 7th of May. It's a Monday.

19 CHAIR HILL: And, Mr. Wise, as you just heard,
20 they're trying to get Mr. May back here and get him here as
21 soon as possible. And, one who takes care of his ailing
22 parents -- I mean, I wish you luck on that one as well. But
23 we're trying to get it back here as quickly as possible.

24 MR. WISE: Appreciate that, sir. Thank you.

25 VICE CHAIR HART: So, I think we're all set.

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1 Thank you all very much and I did close the
2 hearing. So -- and I appreciate your time and we're going
3 to take a lunch break. We'll be back --

4 MALE PARTICIPANT: 1:30?

5 VICE CHAIR HART: -- at about 1:30.

6 Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record at 12:57 p.m. and resumed at 1:42 p.m.)

9 VICE CHAIR HART: Okay, the hearing will come to
10 order. Mr. Moy, can you call the next case, please.

11 MR. MOY: Thank you, Mr. Vice Chair. The time is
12 1:45, I believe. So, I see the parties are at the table.
13 This is Case Application No. 19629 of Timothy and Charlotte
14 Lawrence.

15 Let's see, this is an application for special
16 exceptions under Subtitle E, Section 5204 from the rear yard
17 requirements of Subtitle E, Section 5104.1, side yard
18 requirements of Subtitle E, Section 5105.1, and pursuant to
19 Subtitle X, Chapter 10, for variances from the alley
20 centerline setback requirements, Subtitle E, Section 5106.1,
21 and from the pervious surface requirements, Subtitle E,
22 Section 5107.1.

23 This would construct a garage structure on an alley
24 lot in the RF-1 zone. This is at 1665 Harvard Street N.W.
25 This is at the rear, Square 2588, Lot 827.

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1 VICE CHAIR HART: Thank you, Mr. Moy. I think we
2 have a preliminary matter to deal with in this case. So, we
3 have a motion from Ms. Cynthia Stevens to be -- I want to
4 make sure I have this right -- to be an opposition party.

5 And I just wanted to say that our -- that
6 Ms. Stevens had actually already been -- excuse me, I'm
7 sorry. I trying to get to the right place, coming back after
8 lunch.

9 Ms. Stevens had actually already been granted party
10 status on February 21st. If you're just not -- okay, thank
11 you. If you were not aware of that, you have been granted
12 party status.

13 And Ms. Christiane Frischmuth -- did I pronounce
14 that correctly? Can you come to the dais, please. You can
15 sit on this side. Just sit at the table with the -- look at
16 the microphone in front of you.

17 So, if -- I should start with this. If anybody
18 that is here that is going to testify in -- that's either
19 sitting at the table or in the audience, that has not been
20 sworn in, if you could stand and -- has everybody been sworn
21 in? You have to turn the mike on. You have to turn the mike
22 on. Yes.

23 MS. FRISCHMUTH: I just came after lunch, so I have
24 not been sworn in.

25 VICE CHAIR HART: Okay. If any- -- anyone else in

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1 the audience? Okay. Mr. Moy, could you give the oath,
2 please?

3 MR. MOY: Yes, thank you.

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

7 Thank you. You may be seated.

8 VICE CHAIR HART: Thank you. So, Ms. -- and I'm
9 going to pronounce your name incorrectly, so I apologize.
10 It is Frisch- -- I can't even say it. Frisch- --

11 MS. FRISCHMUTH: Frischmuth.

12 VICE CHAIR HART: Okay.

13 MS. FRISCHMUTH: Frischmuth.

14 VICE CHAIR HART: Frischmuth.

15 MS. FRISCHMUTH: It's a German name. Yeah.

16 VICE CHAIR HART: Okay, Frischmuth. So, you --
17 there was a previous request for party status, but
18 this -- but you were -- you did not appear at the hearing --

19 MS. FRISCHMUTH: I was out of the country at that
20 time. Yeah, I wasn't able to appear last time.

21 VICE CHAIR HART: Okay. Could you just provide us
22 some information as to why you think you should be receiving
23 party status?

24 MS. FRISCHMUTH: My house is exactly across the
25 alley from this particular lot, including my garage. So, I

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1 would be directly impacted by any construction that would
2 happen on that lot.

3 VICE CHAIR HART: So, you're north of the property?
4 Of the alley?

5 MS. FRISCHMUTH: I'm not good with directions, but
6 it's directly the alley, on Hobart Street. Is that north?
7 Yeah, north. Yeah.

8 VICE CHAIR HART: And you said that you were out of
9 the country when we had the hearing in February?

10 MS. FRISCHMUTH: Correct.

11 VICE CHAIR HART: And you are -- were you aware
12 when that would be -- were you aware of the conflict at --

13 MS. FRISCHMUTH: I was. I have my own private
14 business, and the reason I was out of the country was a
15 business trip, and I just could not change my contract. I
16 had a contractual obligation.

17 VICE CHAIR HART: Okay. So, the Board is -- does
18 the Board have any questions for the party status request?
19 And I know that this is -- that we've already heard this
20 particular request, but I didn't know if there was, I don't
21 know, extenuating circumstances that you wanted to discuss.

22 Hearing none. Do the Board members want to
23 reconsider the party status request from Ms. Frischmuth?

24 CHAIR HILL: I mean, I've thought -- and I know
25 that we were here -- I'm sorry -- it is unfortunate that you

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1 weren't here the last time when we did the party status
2 request. And as you weren't here the last time, we dismissed
3 it in terms of, like, you weren't here. And then we went
4 through the whole -- basically case.

5 I mean, at this point I don't think that, since
6 there was someone who was granted party status, and also us
7 going through all the testimony that we did, in my opinion,
8 I don't think it's necessary to have this person's party
9 status reestablished, and then we'd have to re-go through --
10 you know, go through everything again. I think that the
11 thoughts that I've seen from Ms. Frischmuth?

12 MS. FRISCHMUTH: Frischmuth.

13 CHAIR HILL: Frischmuth. I'm sorry. Frischmuth,
14 is very similar to a lot of the concerns that have been
15 expressed thus far, and I think that, again, if we do get to
16 a point where we're taking testimony from the public again,
17 then we could hear from her at that time. But I would be
18 opposed to granting party status at this time.

19 VICE CHAIR HART: Any other comments?

20 MEMBER JOHN: I would agree, Mr. Vice Chairman.

21 PARTICIPANT: Mr. Chairman.

22 VICE CHAIR HART: That's him. He was the --

23 MEMBER JOHN: No, it was me. I was agreeing with
24 the Vice Chairman -- the Chairman's.

25 VICE CHAIR HART: Okay, so having heard that, I

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1 actually agree with the Chairman in that this is -- we
2 actually have already decided on this. I appreciate you
3 coming down, and I understand that there were some
4 constraints at the February 2nd hearing -- excuse me,
5 February 22 -- 21st hearing.

6 But I also think that it's -- we do have several
7 party status and oppositional ready to the case, and we have
8 gone through much of the hearing already with this, and I
9 would vote to deny that request.

10 MS. FRISCHMUTH: Thank you for your consideration.

11 VICE CHAIR HART: But you may provide some comments
12 after we get through the discussions with ours. So, I want
13 to make sure that we are in agreement that we were denying
14 the party status request.

15 PARTICIPANT: Yes.

16 VICE CHAIR HART: Okay. So, since we actually
17 haven't introduced everyone, Ms. Moldenhauer, if you could
18 introduce yourself and everyone else at the desk.

19 MS. MOLDENHAUER: Sure. Meredith Moldenhauer, land
20 use counsel for the applicant on behalf of Cozen O'Connor.
21 With me today is Steve Varga, Cozen O'Connor, as well as
22 Joel, the architect of the project.

23 MR. HITCHCOCK: Con Hitchcock, counsel for Victor
24 Tineo and Lauren Yamagata. Ms. Yamagata is traveling.
25 Mr. Tineo is here to testify.

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1 MR. DOW: Geoff Dow. I live at 1714 Hobart Street.
2 I'm one of the people with party status.

3 VICE CHAIR HART: Thank you.

4 MS. STEVENS: Cynthia Stevens, party status.

5 VICE CHAIR HART: Ms. Stevens, do you want to come
6 to the table? You're going to be on the side. In case you
7 have questions, you'll be able to ask them at the -- where
8 you're sitting. So, Ms. Moldenhauer.

9 MS. MOLDENHAUER: Vice Chair Hart, we would be more
10 than happy to go through and present and walk through the
11 case, but we also just taking note of prior cases. We
12 believe that this case may be better if we hold and postpone
13 being able to -- we will be presenting similar arguments as
14 previously presented, in regards to DCRA inability to obtain
15 permits and improve the lot.

16 And so, we would ask then, currently, rather than
17 walking through this case now, to request the Board's
18 indulgences to postpone the case, allow for us to work with
19 OP and work with DCRA to affirm certain assertions that were
20 made in the prior case in regards to the DCMR regulations,
21 and based on limitations on permits, certificates of
22 occupancies, and BBLs.

23 VICE CHAIR HART: And so you're looking to postpone
24 until May 9th?

25 MS. MOLDENHAUER: Yes.

1 MR. HITCHCOCK: Vice-Chair Hart, we would oppose
2 the extension. The issues in the library court case that
3 were mentioned, we addressed in the legal memoranda that we
4 filed.

5 In that case, which I believe you, sir, were the
6 only current participant on, the Board did grant the relief
7 in the summary order, but it said it was not deciding if
8 zoning relief was necessary or required.

9 And in that case, whatever the issues may be in the
10 case that you just heard involving Lincoln Court, there is
11 no suggestion here that at any point from the Office of
12 Planning or from anyone else, that DCRA issues come here,
13 come to the fore.

14 This is a simple, straightforward case about
15 whether the property owner can use a garage on the property
16 in connection with that use of that property, and we don't
17 see any reason to delay it. Let's -- this case has been
18 pending for a number of months now. Let's finish it up and
19 get a decision.

20 VICE CHAIR HART: Any comments from the Board?

21 COMMISSIONER MAY: Mr. Chairman, I am inclined to
22 go ahead today. I mean, I think that the circumstances of
23 this case are different in certain regards, and -- as they
24 are in, you know, in every case. And I -- I mean, we may
25 wind up in the same place, where we need to get further

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1 information, but I do not want to continue the hearing. I
2 want to hear what you have to say now, and then if we have
3 to go back and request a further report from the Office of
4 Planning, we could do that after completing the hearing.

5 VICE CHAIR HART: Mr. Chairman, do you have any
6 questions? Ms. John?

7 MEMBER JOHN: I agree, Mr. Vice Chair.

8 VICE CHAIR HART: I would side with my colleagues
9 to hear what we have to say now, and if we need to have a
10 continued hearing or decision in -- later in -- on May 9th,
11 then we can do that. But I think we should -- everyone's
12 here, so let's proceed with the case that's before us.

13 MS. MOLDENHAUER: We are prepared. I would just
14 indicate, you know, my clients are obviously -- every time
15 we come here there's an expense, and they are looking to
16 build a garage. This is not a -- in building a large
17 project, we're coming to multiple hearings.

18 That's obviously part of the rationale for creating
19 an efficiency of the hearing, but if the Board so requires,
20 we will move forward.

21 That being said, we will start off with the fact
22 that before you today is a case for both special excep- --
23 sorry, variance relief under the subdivision requirement for
24 an alley record lot. Sorry --

25 VICE CHAIR HART: Ms. Moldenhauer, just one

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1 question. How long do you need for your presentation?

2 MS. MOLDENHAUER: Twenty-five minutes.

3 VICE CHAIR HART: Let's start with 20, and then
4 we'll see where we go. Go ahead.

5 MS. MOLDENHAUER: We're here today based on the
6 subdivision requirements for -- in order to obtain a alley
7 record lot. Under the subdivision requirements of C.303.3
8 there are two subsections of this section, one that has to
9 do with a minimum lot requirement, which is 1800 square feet,
10 which is the requirement for most residential dwelling
11 structures.

12 We have 557 square feet, and are proposing a
13 garage, required frontage on access to a public street
14 through an alley that is a minimum of 24 feet. This is a
15 relief that is mostly based off of FV&S factors, and the
16 obligation to be able to get a emergency vehicle into an
17 alley for potential aid dwelling.

18 Again, this is not a dwelling. This is a situation
19 in which we do, however, have a frontage on a 15 ft. wide
20 public alley, and it is less than 300 feet access to Hobart
21 Street, providing more than sufficient access, despite the
22 fact that we would need relief from that section.

23 We have reviewed the opposition's filing that was
24 actually, from a procedural perspective, was filed just on
25 Monday, beyond what the Board had required, and does not

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1 indicate a request late filing. So, there is a question
2 there.

3 But the Zoning Commission did not specifically
4 limit the Board's authority to grant an area variance from
5 the minimum lot area or the alley width requirement. The
6 area variance test is not that of a use variance. Legally,
7 the Board is not looking at whether no other use is required.

8 Use variances require you to look at other
9 permitted matter-of-right uses. Area variances have you look
10 at the -- whether there is a practical difficulty arising out
11 of the unique conditions of the lot in order to provide, you
12 know, the relief requested.

13 We look to Taylor v. the Board of Zoning
14 Adjustment, in which an area variance involves a minor
15 alteration to the character of the zone district, whereas a
16 use variance tends to drastically change the district's
17 nature.

18 In Taylor, there was a situation in which there
19 were multiple minimum lot area requirements. But you have
20 to remember, that case had to do with 27 row humps. Here,
21 we're talking about a single garage. That was a situation
22 in which the Board and the court found that it drastically
23 changed the district's character.

24 Here, as you will show in regards to images, that
25 the proposed garage will not -- it will actually be

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1 consistent with the character of an alley -- thus, a
2 garage -- and not be something that would, one, rise level
3 of a use variance, and that the appropriate center would be
4 an area variance.

5 In A.L.W. v. BZA, the concept of the prospects of
6 an alley, of a lot -- sorry -- remaining permanently vacant
7 in a street devoted to residential use is scarcely calculated
8 to enhance the neighborhood, as abandoned lots tend to become
9 overgrown with weeds and dumping grounds for trash and
10 garbage.

11 In this situation, it is analogous to A.L.W. as,
12 while this is not a street devoted to residential use, it is
13 a lot that is devoted to parking. We will present arguments
14 that in order to maintain and to do basic improvements, this
15 Board should approve a special -- a variance test to allow
16 the subdivision on the lot in order to get basic maintenance
17 permits, even if it were not to support some of the other
18 relief for a structure.

19 Here, we also have a situation in which, just like
20 A.L.W., permitting and not allowing the subdivision of a lot
21 to obtain a record lot in order to be maintained, and permits
22 to be obtained, would simply allow weeds and a dumping ground
23 for trash, where other basic maintenance for an alley lot
24 could not be obtained.

25 This is a orphan lot that does not have similar

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1 ownership, and while there are other structures that are
2 parking pads and it's currently being used as a parking pad,
3 you will look at the pictures and you'll see that it is
4 obviously in need of potential improvements.

5 And obviously the proposal here is to improve the
6 property, and without the subdivision relief, DCRA would not
7 issue a permit, and would not then allow for additional
8 improvements that are required and would be creating a
9 practical difficulty for any owner of the property.

10 We also have gone back and looked at BZA cases in
11 regards to lot area relief on tax lots where OP has found
12 practical difficulty because the applicant could not acquire
13 additional land to create a conforming lot.

14 Here, while only one of these is currently under
15 2016 zoning regulations, the other cases do show that the
16 Board of Zoning Adjustment, as well as the Office of
17 Planning, has looked at tax lots, and has found that those
18 tax lots, if they are predating the zoning regulations and
19 there would be no opportunity to acquire adjacent or
20 assemblage of properties -- and again, that goes to the
21 applicant's ability to assemble, not whether somebody else
22 wants to be able to buy the lot.

23 It really goes to whether the applicant can
24 assemble additional lots in abutting property, in order to
25 expand the lot or create a conforming condition. And the

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1 Board and OP has consistently found that those are rationales
2 for which lot area can be obtained.

3 Here, we have specific unique condition, as we have
4 previously testified to, but I would just like to readdress,
5 that the -- and I'll show a cursor here -- the property is
6 uniquely abutting a public pedestrian alley.

7 The applicant, through counsel, had went and met
8 with the DC Water Agency here in the District of Columbia,
9 and had determined that there is a public superline that is
10 in that alley, which would create a practical difficulty for
11 assembling and connecting this property that is the subject
12 of this application, with the applicant's other street-
13 fronting lot.

14 But for that condition, the applicant could then
15 have an alternative option of going and assembling and asking
16 the DC Council to close that public alley, and assemble it
17 into the property. As you can see to the north here, that
18 we haven't been able to find the information, so they wanted
19 to curb it.

20 There was a through-pedestrian alley that had been
21 closed and assumed into this property many, many years ago --
22 and, I mean, we were not able to find a specific date -- but
23 here, this does create a unique condition, which creates a
24 challenge for assemblage.

25 Second, we then show, and we'll go through here,

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1 showing that each image -- 875 -- going up and down the
2 specific alley of question -- our property is located at 8 --
3 to show that the proposed relief to propose and build a
4 garage is not something that would change the character of
5 the property.

6 You can see here other buildings that are located
7 face online with the alley, other structures going up three.
8 This is showing in all the images, three, four, as well.

9 VICE CHAIR HART: And are any of these actually
10 offset from the actual property?

11 MS. MOLDENHAUER: You can look at the pictures
12 right here. So, this is -- the property line obviously --

13 VICE CHAIR HART: I mean, offset in terms of, we
14 have a condition here on this particular lot with --

15 MS. MOLDENHAUER: Are they orphan -- a separate
16 lot? No, they are not. Again, we are unique. We have done
17 a study and we provided documentation in our prior PowerPoint
18 that this is the only tax -- separately owned tax lot
19 record -- sorry -- yeah, tax alley lot in the entire single-
20 member district.

21 So, in regards to uniqueness -- now, I don't
22 believe that there could be anything that could be more
23 unique in regards to that.

24 It's one of four in the full Mt. Pleasant
25 neighborhood. But in regards to the SMD, here additionally,

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1 this is now going further with seven, based on the initial
2 image, again, consistency with the character in the
3 neighborhood.

4 And then an image of our property, which, you know,
5 as stated previously from some of the individuals who live
6 in the property, it is a, you know, dirt structure that has
7 multiple carpets on top of it that obvious -- and there was
8 questions in regard to, you know, meeting to improve and take
9 care some of the shrubs that were there. Our clients did
10 clean that up following the initial hearing.

11 In addition to that, you know, one of the things
12 that we have looked at are other garage structures in the
13 overall neighborhood. We just showed you images of the
14 properties within our specific alley, and these are then just
15 other garage structures in the neighborhood. I'll now turn
16 it over to the project architect to show the reduced plan
17 that we did not get to go walk through last time.

18 MR. HEISEY: Hello. It's Joe Heisey, architect for
19 the Lawrences. The previous plans had shown a garage
20 covering the entire lot, and we have now shrunk it down to
21 a single-car garage with a 2½ foot setback from the rear
22 property line on this property line, on the alley lot.

23 And then, just enough to get a minimum size for a
24 standard sized car to come in. This, then, would be an open
25 parking space and proposed with a roll-up garage door along

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1 this line, and then a fence along the alley.

2 Just come -- a closer plan show the pavers things.
3 The one thing I would note on this plan is currently the
4 fences are inside of the right-of-way for the alley. They
5 are only at six -- 5½ feet, where what we would do is we
6 would -- the lots on both sides of the alley would relocate
7 their fence back to the actual property line of the alley to
8 address some of the concerns that people had about visually
9 coming around that corner, and access with the alley.

10 Again, this is the plan. This red line is showing
11 the three feet, nine inches, space that you would get, and
12 this is just a very minimum-sized, or as a basic-sized, mid-
13 sized car. These are three feet, nine inches, in the back,
14 which is consistent with DDOT rear overhang allowances on a
15 parking space for accessing your -- the rear of your vehicle.
16 Oh, I guess I just hit the wrong -- there we go -- just a
17 section.

18 The height has also been lowered from the earlier
19 designs, that the highest point now is 12 feet along the
20 alley, sloping down to 11 feet towards the adjacent
21 neighbors, and again, with a 2½ foot buffer space between the
22 lot line and the structure itself.

23 A elevation of the alley facade, and again, showing
24 where the existing fences are, and how that would be widened
25 to the actual property lines. The side towards the alley is

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1 the side to the neighbor's parking space, and that's just a
2 quick run through the revised plans.

3 MS. MOLDENHAUER: I'll now turn to Mr. Varga to
4 address the public good and zone plan.

5 MR. VARGA: Good afternoon, Vice-Chair and members
6 of the Board. I'd like to take a step back and talk briefly
7 about the minimum lot size requirements in general, and show
8 that the granting of the relief would serve the purpose and
9 intent of the zoning regulations.

10 At its base, the original and current purpose of
11 the zoning regulations are to ensure the health, safety and
12 welfare of residents. This is echoed in the District's
13 zoning regulations at Subtitle A.101, which call for, in
14 their interpretation application -- the provisions of this
15 title shall be held to be the minimum requirements adopted
16 for the promotion of public health, safety, morals,
17 convenience, order, prosperity, and general welfare.

18 To provide adequate light and air, and prevent the
19 undue concentration of population and overcrowding of land,
20 among other things.

21 By way of context, the minimum lot size
22 requirements were established in the zoning codes for many
23 major American cities throughout the early and middle 20th
24 Century, as a way to directly address the consequences
25 associated with densely populated arrangements of living, for

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1 residents without adequate water and sewer access.

2 The think was that by spreading people out, health
3 and sanitary conditions could be achieved. It's crucial to
4 consider that these minimum lot size requirements introduced
5 in the zoning regulations of 1958 did not apply to alley
6 lots. Between 1920 and 1958, only lot occupancy court and
7 yard requirements were regulated.

8 This plainly demonstrates that the purpose and
9 intent of the zoning regulations was to permit garage use of
10 alley lots which could not satisfy the minimum lot
11 dimensions.

12 Section 3101.39 -- and before you right here I have
13 the zoning regulations of 1958. This is the 1972 printed
14 version. And if you look in it, in 3101.39 it's regulated
15 private garages on alley lots recorded with the Finance
16 Office, on or before November 1, 1957, subject to provisions
17 in Article 74.

18 You flip to Article 74 and you find in
19 Section 7401.12, regulated private garages constructed on
20 alley lots requiring that they be set back 12 feet from the
21 centerline of the alley, and should "be exempt from the
22 requirements for minimum lot dimensions, but shall be subject
23 to the limitation on percentage of lot occupancy for the
24 district in which it's located."

25 This plainly, as I said before, demonstrated that

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1 the purpose and intent of the zoning regulations, going from
2 1920 to 1958, was to permit garage use of alley lots, which
3 makes sense on its face, which could not satisfy the minimum
4 lot dimensions. Especially since, again, no one was living
5 there, and the underlying purpose of minimum lot size
6 requirements to begin with, is to ensure adequate sanitary
7 and health conditions.

8 Additionally, when reviewing our city's design and
9 lot configuration, the notion of viewing a structure from the
10 rear of a dwelling is not adverse to the zone plan or zoning
11 regulations. Instead, it's a fairly common feature, due to
12 the design of the L'Enfant plan, which virtually guarantees
13 that this will be the outcome in certain circumstances.

14 Many lots, especially, for instance, at the corner
15 of a square, abut in a manner in which a garage on one lot
16 may appear to be in the rear of a corner facing lot's
17 backyard. And here, we have four different images at four
18 different intersections within the Mt. Pleasant neighborhood,
19 where this could be the case.

20 When the Board is evaluating where there is adverse
21 impact to the public good or zone plan, it should consider
22 the standard amongst a city environment, and then consider
23 which is more common and, hence, more acceptable.

24 Given the separate ownership and separation of the
25 Lawrences' street facing lot from this orphan alley lot, lot

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1 assemblage is not possible, and thus, variance and special
2 exception relief is proper and permissible.

3 Therefore, the Board can rest assured that the
4 granting of the relief from the lot subdivision requirements
5 will not cause any detriment to the public good, it does not
6 impair the intent, purpose and integrity of the zone plan,
7 either from the relief, from the minimum lot size
8 requirements, or from the position of the proposed garage on
9 the alley lot.

10 I urge you to approve the relief requested, and I'm
11 happy to answer any questions.

12 MS. MOLDENHAUER: We submit that the applicant
13 faces practical difficulty here, and that it cannot acquire
14 land to create a conforming lot. The street-facing lot is
15 under separate ownership, and cannot, obviously then, assume
16 the public alley, as indicated, because of the unique
17 condition that that public alley -- even though it is
18 small -- does include a sewer system or sewer drain that
19 obviously that they would not want to see closed underneath
20 a private property.

21 Additionally, no alternative improvements could be
22 used without variance relief. Based on DCMR, Section 12A,
23 DCMR 105, which governs permits, as well as certificates of
24 occupancy, a permit could not be obtained for the structure
25 without a new record lot. Nor could a permit be obtained to

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1 maintain the existing parking use.

2 Permits requiring to be repaved parking areas to
3 relocate bollards or to improve the property, even in its
4 existing condition, in order to obtain a permit the lot would
5 then require to be subdivided, and a record lot created.

6 Furthermore, in order to obtain a certificate of
7 occupancy, or obtain a basic business license, they would
8 then further need to obtain, and go through the process of
9 obtaining, a basic business certificate of occupancy,
10 building permits, and we will provide copies of documentation
11 in regards to the four steps required by DCRA in order to go
12 through the permitting process.

13 You would require then, obviously, a home
14 occupation permit, or a certificate of occupancy, in order
15 to get a basic business license. Here, neither of those will
16 be able to be obtained on the order to do possibly any other
17 use of the property.

18 The applicant faces practical difficulty because no
19 by-right use is reasonable without a variance. As we
20 indicated agricultural, and as I said, even if they wanted
21 to use the property for an agricultural use, you know, while
22 it's not reasonable -- let's say they were to locate a lower-
23 than-four-foot beehive, you know, or bee, you know, bee
24 structure -- they would need to get a BBL. In order to get
25 a BBL, they would have to get a CFO, they would need to get

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1 a permit, and again, it creates this practical difficulty for
2 the property -- artist studios that require a structure in
3 which lot occupancy relief would be needed, residential
4 dwellings would also require a structure, and the surface
5 parking for the property.

6 If an applicant moved away from the property or the
7 square, the same regulations apply where you must be a
8 resident of the square in order to utilize parking in a
9 residential zone. And without obtaining a new record lot,
10 the applicant could not obtain a CFO.

11 We've also believed that this would not create an
12 adverse impact because there are other structures that would
13 require permits, as well. There is a carport. A carport
14 would also require the subdivision and a permit.

15 Or whether you had other type of structures --
16 here's another example of a carport in the neighborhood of
17 the Mt. Pleasant community, that would require a -- the
18 subdivision under C.303 section.

19 Without subdivision relief there would be no
20 ability to maintain, or even improve, the property if --
21 we'll go through in a moment here the -- let me just jump
22 down -- sorry.

23 If you go to the building permit section under
24 DCMR 12.105, it identifies that permits are required for an
25 owner who intends to undertake any activity set forth in the

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1 following sections: to construct, enlarge, repair -- repair,
2 even if it's just repairing -- move, demolish, or change the
3 occupancy of a building or other structure, erect, install,
4 enlarge, alter, repair, remove -- again, you know, any
5 requirements.

6 So, I'm jumping through here. Under
7 Section 105.1.1, it outlines classifications of permits.
8 Classifications of permits under .5 is, Foundation and
9 Earthwork. So, if there was earthwork, where there's
10 obviously were to be dug up and were to be improved, a permit
11 would be required.

12 Furthermore, under DCMR 12A 105.2, work exempt from
13 a permit. There are specifically one through 14, in regards
14 to listed items that are exempt from a permit, and they go
15 through and then they indicate, you know, in-kind
16 replacement, and we do not believe that any of those are
17 permitted here.

18 Nor, they also indicate a single garden storage
19 shed that does not exceed 50 square feet and is no taller
20 than ten feet in overall height, if it is accessory to a
21 building restructure, or a building under the jurisdiction
22 of the residential code.

23 Here, since this is, again, an orphan lot with no
24 additional or other primary use, or other residential
25 structures on the building, that would not be permitted. It

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1 grossly limits the ability for the property to be maintained
2 or improved.

3 We believe that then, under Monaco, whether the
4 property is unique, is measured on a comparison to the
5 neighborhood, not to the city as a whole, the property is,
6 as we believe we proved in the initial application, is
7 unique.

8 The confluence of factors in regards to the
9 historic alley tax lot, we are not trying to reduce the
10 minimum size here, but we're simply trying to move forward
11 with a proposal in the existing lot size. It is unimproved.
12 And we also have the uniqueness of the fact that there is the
13 inability to assemble it based on the public sewer line in
14 the public alley. Sorry --

15 VICE CHAIR HART: Are we -- are we nearly --

16 MS. MOLDENHAUER: I'm nearly done.

17 And we believe that there's no detriment to the
18 public good, as this would be a -- the same use. In other
19 words, there would be parking on the property now, and
20 there'd be parking located in a secure environment, which
21 would not then create any adverse impacts to other homeowners
22 or garages or uses on the block.

23 VICE CHAIR HART: Thank you. Does the Board
24 have -- do the -- does the Board have any questions for the
25 applicant? Yes, Mr. May.

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1 COMMISSIONER MAY: Yeah, so what is the surface
2 right now?

3 MS. MOLDENHAUER: Dirt.

4 COMMISSIONER MAY: It's dirt?

5 MS. MOLDENHAUER: I think it's --

6 MR. HEISEY: Carpet.

7 MS. MOLDENHAUER: Carpet, dirt.

8 MR. HEISEY: It's dirt, with old carpets laid in to
9 keep the mud at bay.

10 COMMISSIONER MAY: So, you could always replace the
11 carpet. I -- you know, looking at the photos, it looks like
12 there's some gravel in part of it. Am I imagining that?

13 MS. MOLDENHAUER: I -- we can't answer that,
14 specifically. It is what it is. I don't know.

15 COMMISSIONER MAY: You can talk when we get to you.
16 You can explain this if you have an answer. Thank you. All
17 right, what was the point of the whole history going back to
18 1920? I mean --

19 MR. VARGA: That was just to give, hopefully, the
20 Board some relief that by granting this relief to the minimum
21 lot size requirements, that there's nothing intrinsic about
22 that for the purposes of putting a garage on an alley lot.

23 COMMISSIONER MAY: Right. Okay, so this is --

24 MR. VARGA: Again, though --

25 COMMISSIONER MAY: -- about putting a garage on the

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1 alley lot. Right? Or -- right? It's not just about a
2 garage on an alley lot. So, I mean -- I mean, it said 1920
3 and 1958. Doesn't really matter if it's not in CR16. Right?

4 MR. VARGA: So again, the purpose and intent of the
5 zoning regulations are to ensure the health, safety and
6 welfare, and the minimum lot size requirements that
7 eventuated in many, you know, American cities in the mid-20th
8 century -- in this case it falls in perfectly, 1958 minimum
9 lot size requirements were introduced in the District zoning
10 code for the first time.

11 Previous to that, it was just lot occupancy and
12 yards. What we're here to show is that when those
13 regulations in 2016 were introduced, all of a sudden,
14 overnight, all of those tax lots that had previously been
15 able to obtain a building permit, were no longer able to do
16 so.

17 COMMISSIONER MAY: All right, so you're making a
18 zoning case, not a BZA case, with that.

19 MS. MOLDENHAUER: I believe it goes to the third
20 prong. The -- whether or not this creates an adverse or a
21 detriment to the zone plan --

22 COMMISSIONER MAY: Yeah, but we -- you know, you've
23 got to get past the first prong.

24 MS. MOLDENHAUER: -- or the public good. But we
25 have to prove, you know, all three.

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1 COMMISSIONER MAY: Right. Okay. I don't think you
2 have a problem with the third prong. We have a problem with
3 the first prong. So --

4 MS. MOLDENHAUER: Uniqueness?

5 COMMISSIONER MAY: The practical difficulty issue.

6 MS. MOLDENHAUER: The second prong.

7 COMMISSIONER MAY: That's the second prong. Okay,
8 whatever it is. Sometimes I get my prongs confused. The
9 point being that it's not about inconsistency. I mean,
10 obviously there are other alley garages on this block and in
11 other garages. There are other ones that are fences. That's
12 not really what this boils down to. It's a matter of the use
13 of a tax lot.

14 MS. MOLDENHAUER: I think it boils down to the fact
15 that the uniqueness, there are no other tax alley lots in
16 this neighborhood, but for this being a tax and alley lot,
17 you would be able to get a --

18 COMMISSIONER MAY: It's not -- I'm sorry. Forget
19 about the uniqueness. Forget about the uniqueness.

20 MS. MOLDENHAUER: Okay. But it's for connection.

21 COMMISSIONER MAY: It's the practical difficulty.
22 It's whether you can use this for anything else.

23 MS. MOLDENHAUER: And that's why I asked for
24 postponement, if we need to obviously confirm --

25 COMMISSIONER MAY: And no, we're not going to go to

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1 a postponement because I don't want to continue hearing the
2 case. If we get to the point where we need that answered,
3 I mean, we'll see what the opposition has to say, we'll see
4 what the Office of Planning has to say, and then we'll decide
5 whether or not we need to have that same answer.

6 MS. MOLDENHAUER: Mm hmm.

7 VICE CHAIR HART: Any other questions from the
8 Board? Hearing none, Mr. Hitchcock, you can cross-examine
9 the --

10 MR. HITCHCOCK: I will save it for our
11 presentation. Thank you.

12 VICE CHAIR HART: Okay. Excuse me. And,
13 Ms. Stevens, I'm just making sure that you are -- did you
14 have any questions?

15 MS. STEVENS: None at this time. Thanks.

16 VICE CHAIR HART: Okay. Just have to ask. Let's
17 see, so we had a -- let's go to the Office of Planning and
18 actually -- I'm sorry, we should go to your -- if you have
19 anything that you want to present, because we've gone through
20 their presentation. We'll go through your presentation, and
21 then we'll go to the Office of Planning.

22 MR. HITCHCOCK: Yes. I would like to make a brief
23 opening remark responding to the points Ms. Moldenhauer made.
24 Mr. Tineo has a five-minute presentation. We filed the deck
25 and can follow along. So, if I could switch, I guess, with

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1 your architect, or pass it over. All right.

2 VICE CHAIR HART: And this is while we're kind of
3 waiting to get this set up. Mr. Hitchcock, are you -- I
4 won't want to say representing everyone, but are you speaking
5 for all of the parties in opposition?

6 MR. HITCHCOCK: I'm speaking just --

7 VICE CHAIR HART: You need to put the mic on.

8 MR. HITCHCOCK: I'm speaking for Mr. Tineo, and he
9 just has the five minutes. I don't know about Ms. Stevens
10 or Mr. Dow.

11 VICE CHAIR HART: I was asking because the parties
12 in opposition have 20 minutes combined.

13 MR. HITCHCOCK: Mm hmm.

14 VICE CHAIR HART: So, you may take that time, but
15 the folks that are up here that are -- that would like to
16 speak, as well, that are parties, you all have a 20-minute --
17 you have a combined 20 minutes in which to present a case.
18 So, Mr. Hitchcock, if you have ten minutes, then the others
19 will have the remaining ten minutes.

20 MR. HITCHCOCK: Okay. This is not mine. Oh. For
21 some reason, it's not opening the document. If you'll bear
22 with me one moment. Perhaps if you want to hear the other
23 two witnesses.

24 VICE CHAIR HART: Could we get some IT help,
25 Mr. Moy?

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1 MR. MOY: I'll check. He's usually -- he's on the
2 way.

3 MR. HITCHCOCK: Sometimes it's easier to use the --
4 okay. But the type is so small.

5 Thank you for your indulgence. A quick comment at
6 the beginning. For the last six months we've been told this
7 case was about nothing but a garage. It would basically be
8 an accessory to the house.

9 One of the reasons there's been such strong concern
10 among the neighbors, is the fear that this is really a Trojan
11 Horse. Or, if you'd prefer, the camel's nose under the tent.
12 That they're not really interested in a garage, but they're
13 interested in what Ms. Moldenhauer now candidly says is,
14 "additional improvements."

15 We have been reviewing this case for some months
16 now as simply about a garage. And now we're told -- without
17 any presentation, any additional filings, certainly nothing
18 that was in the memo that was filed last month -- that this
19 is really about additional improvements, certificate of
20 occupancy, building permits. I'm sure the neighbors --

21 COMMISSIONER MAY: I'm sorry, Mr. Hitchcock --

22 MR. HITCHCOCK: Yes, sir.

23 COMMISSIONER MAY: I'm lost.

24 MR. HITCHCOCK: Okay.

25 COMMISSIONER MAY: We didn't hear any -- I mean,

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1 the only thing that's before us is what they're proposing,
2 in terms of the improvements.

3 MR. HITCHCOCK: Right, but --

4 COMMISSIONER MAY: And they're not going to get
5 authority to do anything other than what's --

6 MR. HITCHCOCK: That is correct. I'm trying to put
7 the remarks in context, because the neighbors talked about
8 the concern of what would happen next. And I think that her
9 comments illustrate that.

10 COMMISSIONER MAY: If there is a next, wouldn't
11 they have to come back for additional relief?

12 MR. HITCHCOCK: Yes, and that's a concern. All
13 right.

14 COMMISSIONER MAY: Okay, so --

15 MR. HITCHCOCK: Okay.

16 COMMISSIONER MAY: -- let's focus on what's in
17 front of us.

18 MR. HITCHCOCK: All right, to put it in context,
19 we're focusing on the -- we filed a legal memorandum that
20 responds to the cases, and I'm not going to go into that.
21 You and your counsel can examine it. But let me focus on --
22 Mr. Tineo will give the testimony, and I will run the slide
23 show, I hope.

24 MR. TINEO: I'm ready. Yeah, I think the time has
25 to be --

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1 VICE CHAIR HART: Okay. Let's see if we can
2 operate the timer.

3 MR. TINEO: Okay, thank you. Thank you, Mr. Vice-
4 Chairman, Mr. Chairman, members of the Board. As the
5 neighbors most directly impacted by this project, my wife and
6 I -- my wife couldn't be here -- we remain opposed to the
7 application, even with the revisions. Allow me to make a few
8 points.

9 The reason why the Board denied relief in 2008
10 still applies, particularly as the maximum height of the
11 proposed garage would exceed the height that the Board
12 rejected in 2008.

13 Second, the Lawrences can continue to use the
14 property for its permitted use, as they have for years.
15 Finally, their most recent statement fails to address the
16 specific points in our prior testimony about the adverse
17 effects on our property.

18 Why should you reach the same conclusion that you
19 did in 2008? The short answer is, that nothing has changed.
20 The lot is still small, it's still trapezoidal, it still sits
21 behind my house, it's still next to two alleys, and it can
22 still be used, and is being used, for the permitted and
23 desired use -- namely, parking.

24 The OP reported -- report noted that there are many
25 other small alley lots in the District that were historically

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1 tax lots, but not record lots. This lot is not unique. As
2 for the supposed practical difficulty, the Lawrences appear
3 to have backed away from their argument that the lot is a
4 magnet for trash, and as such, this is a practical
5 difficulty.

6 That means you should let them build a garage to
7 deal with that problem. When we testified last month, we
8 should that much of the accumulation was of their own making,
9 as they did not start to clean it up until two days before
10 that hearing.

11 In fact, as they admit, a citation was issued
12 several weeks after the hearing. Overall, the argument seems
13 to be that without a variance nothing could be built.

14 This is not the test. The lot can be used for
15 parking, which is a permitted use in this residential zone.
16 The Lawrences are not being denied any use of their property.

17 Finally, as to the public good and impact of the
18 zoning plan, the Lawrences' definition of what is a practical
19 difficulty sets the bar so low that just about any
20 development on the lot could be justified.

21 The 2016 zoning regulations may allow greater use
22 of alley lots, but that does not mean every alley lot can be
23 developed. The standards for new alley record lots were
24 adopted based on recommendations about public safety.
25 Notably, by the fire department.

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1 Finally, let me note that the deviations being
2 sought here are not minor, but seek a 75 percent departure
3 from the minimum lot requirement, and a significant departure
4 from alley central line requirements.

5 Some concerns that we raised at last month's
6 hearing have not been addressed. The roof structure is
7 designed to drain toward our property, and the latest filing
8 does not address structural concerns we raised about the
9 effects of trees in the two-foot, six-inch, space near the
10 rear of our wall.

11 They make a point that there are taller garages
12 along the alley, but many of them go with houses on Hobart
13 Street, which has a higher grade than Harvard Street. The
14 view down our alley is different. That's all.

15 VICE CHAIR HART: We all -- yeah, sure. Questions?

16 CHAIR HILL: No, I just had a comment. So, the
17 last time we did this, they showed photographs of the alley,
18 and it was pretty -- I'm sorry, the lot -- and it was pretty
19 dirty.

20 MR. TINEO: Yeah.

21 CHAIR HILL: And so, since the hearing they cleaned
22 up the lot?

23 MR. TINEO: Yes.

24 CHAIR HILL: Okay. And, Ms. Moldenhauer, your
25 client, again, is in Africa?

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1 MS. MOLDENHAUER: Yes.

2 CHAIR HILL: Okay, so he's watching maybe, or
3 something.

4 MS. MOLDENHAUER: Hopefully, not at this hour.

5 CHAIR HILL: Or whatever it is. I thought the lot
6 was really dirty, you know. And so, it was a little -- and
7 I'm looking at you because I have nobody else to look at.

8 But it was disappointing that it was such a dirty
9 lot, you know? And I'm glad to see that it did get cleaned
10 up. And I'm just kind of stating that for, beyond this whole
11 situation. Like, you know, you having to live there, and,
12 you know, it's very disappointing that that lot was left the
13 way it was. So --

14 VICE CHAIR HART: Okay. So, we have still about 16
15 minutes. I'm actually keeping time up here, so I know that
16 clock is ticking. Sixteen minutes for Mr. Dow, and
17 Ms. Stevens, if you want to present.

18 And, Ms. Moldenhauer, if you want to ask any --
19 since we're waiting for this, do you have any cross that
20 you'd like to give Mr. Tineo, or Mr. -- yeah, Tineo?

21 MS. MOLDENHAUER: Mr. Tineo, you heard testimony
22 from -- or statements from Mr. Hitchcock of the concern about
23 this being a larger issue or, you know, slippery slope.
24 You're aware that the applicant offered to issue a covenant
25 that would not allow further development beyond what's

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1 proposed here as an abundance of caution. And that was
2 submitted to you. Correct?

3 MR. TINEO: Yeah, for a limited time. That's true.

4 MS. MOLDENHAUER: And --

5 VICE CHAIR HART: You don't have to have questions.
6 I just didn't know if you had any.

7 MS. MOLDENHAUER: I wanted to make sure that the
8 covenant's out there that we're trying to do.

9 VICE CHAIR HART: Okay.

10 MS. STEVENS: Thank you. I had a longer
11 presentation, but I'll keep this very short because I think
12 this particular slide kind of sums up the issues from my
13 perspective.

14 As you'll see, this shows the region of the alley
15 lot. It shows the access points at the west end of Hobart,
16 at the midpoint of Hobart, and at Mt. Pleasant Boulevard, as
17 well as the site of the proposed garage.

18 From my perspective, if there were a lower
19 population density, a shorter alley, or more access points,
20 the requested zoning variance would pose fewer problems. I
21 think particularly the setback from the center line of the
22 alley, it creates a choke point, and because there's so many
23 people living along with alley, and as we established last
24 time, I think it creates some significant problems. Thank
25 you.

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1 VICE CHAIR HART: Thank you. The Board have any
2 questions for Ms. Stevens?

3 CHAIR HILL: Ms. Stevens, I remember the last time
4 I think you were testifying about the -- as you kind of
5 walked up that alley, some kind of looking to the left was
6 going to -- you thought that looking to the left was going
7 to be dangerous, or you could provide -- could be dangerous,
8 whatever. Is the new design, does that give you less
9 concern?

10 MS. STEVENS: So, last time we were talking about
11 a taller structure, and I was concerned about the shadow that
12 that cast on the alley. I think it will still cast some
13 shadow on the alley, which could make visibility coming out
14 from the pedestrian access difficult.

15 But I think, you know, this is sort of wrapped up
16 in a larger set of concerns about the density of the
17 neighborhood, and in particular, the fact that so many people
18 access that alley -- cars and pedestrians -- it's three
19 blocks long.

20 CHAIR HILL: Yeah. No, the reason why I was asking
21 again is just providing clarity for myself, is that the new
22 design, there's no -- there's kind of a parking pad there
23 now. There's no longer -- the building is not there. So,
24 I just wondered if you had different thought in terms of, you
25 know, walking up that alley, being able to look to the left.

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1 And it seems like you have kind of the same concerns, though.

2 MS. STEVENS: Well, it sounds like that the fencing
3 and the garage would still go to the edge of the property
4 line, which would still make the visibility difficult from
5 the pedestrian access. But I think it poses less of a
6 problem than if it were the height the last time around, or
7 the times before that, of 20 feet.

8 CHAIR HILL: Okay, thank you. And to the architect
9 or Ms. Moldenhauer, the -- as you're walking up that alley
10 now, what's to the left there now? I mean, because now
11 there's a parking pad there. Right? And then there's a
12 rolling door.

13 VICE CHAIR HART: It's a garage door that you're
14 proposing that's a rolling --

15 MS. MOLDENHAUER: Oh, you're asking what's
16 proposed. I thought you were asking what's currently there?

17 CHAIR HILL: No no no no. Sorry, proposed. So,
18 I'm just trying -- I'm trying to visualize, you know, walking
19 up that alley, what's to the left there? How high is the
20 fence, or what is there that's --

21 MS. MOLDENHAUER: The --

22 MR. HEISEY: The fence would be a six-foot-high
23 fence, just for security.

24 CHAIR HILL: Six-foot-high fence. Right.

25 MR. HEISEY: And then a rolling --

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1 CHAIR HILL: And then you'd see the rolling door
2 that's up to ten, 11 feet, or something?

3 MR. HEISEY: Yeah, you got minimum clearance for a
4 rolling door is seven feet, so you -- say 18 inches for motor
5 and casing, it could be ten feet.

6 CHAIR HILL: Okay. Okay, thank you.

7 MS. MOLDENHAUER: And we also proposed in our
8 initial filing for mirrors to provide better access. Because
9 right now if there is -- or even when there was a fence there
10 previously, there were no mirrors to provide additional line
11 of sight, and we also proposed in our initial application
12 for -- to attach lighting to the side of any structure, or
13 on the client's property, to enhance a public alley.

14 So, I'm saying, you know, the applicant motion
15 lights, that it would actually increase or improve the public
16 alley condition --

17 CHAIR HILL: Okay. Okay.

18 MS. MOLDENHAUER: -- from the city perspective.

19 CHAIR HILL: Okay, thank you.

20 MS. MOLDENHAUER: Or visibility perspective. A car
21 would then know someone's walking up that alley.

22 VICE CHAIR HART: Okay. Mr. Dow? I'm keeping time
23 on my own.

24 You may press it at any -- at your leisure,
25 Mr. May. Mr. May, Mr. Moy, I don't know. You can fix it?

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1 There's three minutes left, so --

2 PARTICIPANT: Three minutes left?

3 VICE CHAIR HART: Yeah.

4 CHAIR HILL: Vice-Chair Hart, when you're the
5 Chair, everybody gets different jobs, and --

6 VICE CHAIR HART: I see that. I see that. I'm not
7 even sure what I'm doing anymore half the time. We're
8 waiting for Mr. Dow, making sure that he's ready. You do
9 that so well, Mr. May.

10 VICE CHAIR HART: It's one letter and you have
11 another job. Moy? May? Yeah, Paul, can you --

12 MS. MOLDENHAUER: It's a pdf, so I don't know.

13 VICE CHAIR HART: It should be able to.

14 Thank you, Mr. Dow. Mr. May, if you could help us
15 there? Thank you, sir. Okay.

16 MR. DOW: Good afternoon.

17 VICE CHAIR HART: You don't have to take all 12
18 minutes, but that's what we have.

19 MR. DOW: Hopefully, I'll be a lot shorter than
20 that. Thank you for the opportunity to say a few remarks
21 about this. I'm still opposed to the applicant's proposal
22 because I don't think it's in the public interest, and I
23 wanted to make a couple of remarks about the context of the
24 neighborhood that you may wish to consider in your
25 deliberations.

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1 So, this pdf image is in Exhibit 82, which is my
2 letter of opposition, Figure 1. And what I'm showing here
3 is the 200 foot circle around the applicant's property
4 indicated in red, approximately.

5 And then the red horizontal lines indicate to the
6 best of my ability, the impact of the 12-foot alley setback.
7 You can see that, from this satellite image, that there are
8 no structures within that alley centerline setback on the
9 Harvard Street side of the alley, and in particular, on the
10 1700 block of Harvard Street, there are no garages of any
11 kind within that 200-foot circle.

12 So, what's being proposed is different from the
13 context that's already there. The reason why I personally
14 object to this is because I feel, for the same reasons that
15 other folks have indicated, that we're already quite densely
16 populated, and I feel that a grant of the variance for the
17 alley line setback may open the door to both this applicant
18 and other applicants in the future, from building residential
19 structures right out to the alley property line.

20 I'm at 1714 Hobart Street, which I'll highlight in
21 the next slide, and although I'm not directly affected by
22 this property yet, I'm concerned that the distance that I
23 have between my windows and the windows of our neighbors to
24 the south on Harvard Street, which is currently 110 feet, if
25 the door is opened to other structures being built, that that

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1 will narrow that distance, and therefore impact my privacy,
2 as well as the privacy of other folks on Hobart Street and
3 Harvard Street.

4 The issue here is partly due to the precedent that
5 granting the two lot variances and the alley centerline
6 variance will provide. But perhaps even more concerning is
7 that there's no zoning restriction on height. So, you could
8 go in there and build a 20-foot structure by right in that
9 garage.

10 Once the permission has been given to convert the
11 lot from a tax lot to a record lot, we think that sort of
12 precedent is harmful to the neighborhood, and I hope that you
13 will consider those concerns in your deliberations. Thank
14 you.

15 VICE CHAIR HART: Thank you very much, Mr. Dow. Do
16 the Board members have any questions for Mr. Dow?
17 Ms. Moldenhauer, do you have any cross-examination?

18 MS. MOLDENHAUER: Mr. Dow, did you conduct a survey
19 to confirm that none of the properties in that 200-foot
20 radius are actually not within the centerline setback?

21 MR. DOW: So, specifically, if you go from the 1700
22 block --

23 MS. MOLDENHAUER: Did you conduct, like, a survey
24 hiring a DC surveyor, to shoot elevations and confirm?

25 MR. DOW: If you let me finish answering the

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1 question, I'll answer it. Based on the satellite photos
2 which I showed you, there aren't any structures that violate
3 the 5½ foot setback from that -- the property line abutting
4 the alley.

5 As to whether there are some special cases or
6 whatnot that might have been there from some archival lore,
7 no, I haven't done that survey.

8 VICE CHAIR HART: Do you unders- -- any other
9 questions, Ms. Moldenhauer?

10 MS. MOLDENHAUER: You stated that you're concerned
11 about density population. You said that you're concerned
12 about public interest, density. There are currently two cars
13 parked there now. How would a two-car proposal increase
14 density?

15 MR. DOW: So, first of all, you don't need any
16 structures to continue using property --

17 MS. MOLDENHAUER: But that's not my question. My
18 question is: how does it increase density?

19 MR. DOW: I'm answering your question if you will
20 please stop interjecting. Your client can continue to use
21 the property for parking two cars. You do not need a
22 structure to do that.

23 My objection is the precedent that this may set for
24 building structures which do increase density and population
25 density.

1 MS. MOLDENHAUER: So, that has nothing to do with
2 this case, then.

3 MR. DOW: Actually, what's --

4 VICE CHAIR HART: Okay, excuse me. Excuse me. Can
5 we have a question and then an answer, and kind of contain
6 it to that, please? We're not looking to have a
7 conversation. We're asking -- it's a cross-examination, and
8 Mr. Dow, she's just asking you for that response to that.

9 MR. DOW: The original proposal was a two-story
10 residence.

11 VICE CHAIR HART: Okay.

12 MR. DOW: I'll leave it at that.

13 VICE CHAIR HART: Thank you. Any other questions,
14 Ms. Moldenhauer?

15 MS. MOLDENHAUER: No other questions.

16 VICE CHAIR HART: Okay. Let's move to the Office
17 of Planning.

18 MS. FOTHERGILL: Good afternoon. For the record,
19 I'm Anne Fothergill, with the Office of Planning. And as the
20 Board knows, in the Office of Planning's report dated
21 February 14th, we recommended denial of the variance and
22 special exception relief that the applicant had requested at
23 that time.

24 And then, at the end of the public hearing on
25 February 21st, the applicant proposed revisions to the plans,

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1 and the Board requested that the Office of Planning review
2 those plans and the relief that was requested.

3 So, the Office of Planning submitted a supplemental
4 report dated March 19th, and recognized that the changes to
5 the plans have removed some -- the need for some of the
6 relief that was in the previous application, so they no
7 longer need the side alley centerlines relief. They no
8 longer need U600.1, which was for a parking garage that
9 exceeds 450 square feet, and they no longer need relief from
10 the side yard requirement, and because the footprint has been
11 reduced and it's a one-car garage with the pavers to the
12 east.

13 And while the relief has been reduced, it doesn't
14 impact the requested subdivision relief, which is that a
15 alley tax lot needs subdivision relief to become a record
16 lot, to get a building permit, and it doesn't impact OP's
17 analysis of that relief or recommendation.

18 The -- so OP continues to recommend denial of the
19 variances from the subdivision regulations, and from the
20 alley centerline requirements. And we can rest the record,
21 or we can go through the previous report of what those points
22 were, and I'm happy to do that or answer any questions.

23 VICE CHAIR HART: Do you have questions, Mr. May?

24 COMMISSIONER MAY: I mean, I'm happy to just go
25 straight to questions. So, just to be clear, I mean, it's --

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1 you still believe that the property can continue to be used
2 for parking, and that, I mean, but what about the question
3 of the fact that it's not really paved, and it would be a
4 sensible thing for it to be paved in some form, even if it's
5 just gravel. But you have to have a permit just to put
6 gravel down. Right?

7 MS. FOTHERGILL: Well, that was something that came
8 up today.

9 COMMISSIONER MAY: Right.

10 MS. FOTHERGILL: In the previous case, that is
11 new -- a new discussion today, and I don't know the answer
12 of if you need a building permit. I mean, that is
13 something --

14 COMMISSIONER MAY: Right.

15 MS. FOTHERGILL: -- that OP is going to look into
16 for the other case, and we can certainly look into for this
17 case.

18 COMMISSIONER MAY: Okay. All right. Yeah, I
19 wouldn't expected you to miraculously figure out the answer
20 to that, although maybe you, you know, knew something
21 different about this one. Let me ask you another question.

22 Much of the concern that we're hearing from the
23 neighbors has to do with the mere thought of a garage --
24 particularly a tall garage -- in this location. But it seems
25 to be that there are other properties on the block, or

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1 certainly if this particular tax lot were reunited with
2 its -- with the lot that surrounds it -- that one could do
3 a garage as a matter of right on many or most of these
4 properties. They'd have to be set back to 5½ feet, but
5 couldn't that be done on this property, or on other
6 properties, you know, that are whole?

7 MS. FOTHERGILL: That's correct. If it wasn't this
8 specific case with this lot, the other ones could, matter of
9 right, construct a garage on the alley that meets alley
10 centerline needs.

11 COMMISSIONER MAY: Yeah, the setbacks.

12 MS. FOTHERGILL: Yes.

13 COMMISSIONER MAY: Yeah. Okay, because, I mean,
14 the mere thought of a garage on this lot just as a physical
15 circumstance, is not problematic from a zoning point of view.
16 It's the fact that it is a -- it's not owned by the same --
17 it's carved out from a different piece of property, and
18 therefore separate, that makes it more complicated. Yeah.
19 Okay, thank you.

20 VICE CHAIR HART: Any other questions for the
21 Office of Planning from the Board?

22 CHAIR HILL: Yeah, I do. So yeah, again, so the
23 going from the tax lot to the record lot. So, right now you
24 don't know whether you could do -- and this is what -- I'm
25 going to repeat the question, basically.

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1 If you don't know if they can do any improvements
2 to it the way it is now, you first have to go from a tax lot
3 to a record lot, and you're not clear as to whether or not
4 you do need to do that in order to just pave it?

5 MS. FOTHERGILL: That's correct. We don't know the
6 answer. So, that was just raised today as a discussion.

7 CHAIR HILL: Okay. And just for clarity, I mean,
8 if it went from a record lot to a tax lot, you -- sorry,
9 sorry, my God, everybody in the office is helping me out.
10 If you went from a tax lot to a record lot, that doesn't
11 necessarily mean that we would be -- you would be approving
12 the garage there, because they would still need the relief
13 from the centerline setback.

14 MS. FOTHERGILL: That's right. They have to meet
15 the subdivision requirements, or get relief, and then get any
16 other additional relief.

17 CHAIR HILL: And I forget. OP, though, was in
18 favor of the centerline relief setback, just -- no? Right?

19 MS. FOTHERGILL: No. We continue to recommend
20 denial of the alley centerline --

21 CHAIR HILL: Okay.

22 MS. FOTHERGILL: -- setback.

23 CHAIR HILL: Okay, so they're still stuck with that
24 anyway. Okay. All right, and then -- yeah. Okay, thank
25 you.

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1 VICE CHAIR HART: Ms. Moldenhauer, do you have any
2 questions for the Office of Planning?

3 MS. MOLDENHAUER: So, following along the same
4 conversation, do you believe that, obviously, you know,
5 you're aware of the DC municipal regulations, and DCRA has
6 been bound by the DC municipal regulations that require
7 permits?

8 MS. FOTHERGILL: I, I -- yes.

9 MS. MOLDENHAUER: And so, you know, if DCRA
10 confirmed their own regulations that permits are required for
11 what is identified in 105, and that the only permits that are
12 exempt are the specific 14 permits that are exempt in
13 Section 105.2, that then, in order to do any basic
14 improvement, a permit would be required here.

15 MS. FOTHERGILL: We need to look into it.

16 MS. MOLDENHAUER: Would you believe that if you
17 looked into that and that was confirmed, that that might
18 change your opinion on the C.303.3 requirement? In other
19 words, it not allowing any improvement or overall maintenance
20 of the property, but for the subdivision?

21 MS. FOTHERGILL: We're cross that analysis path
22 when we get there, but currently there is parking that could
23 continue as an unpaved lot.

24 MS. MOLDENHAUER: Is it in the Office of Planning's
25 interest to see properties being able to be maintained in a

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1 good quality for the public good?

2 MS. FOTHERGILL: Yes.

3 MS. MOLDENHAUER: And then, just one other
4 question. Is -- so obviously we have some questions that
5 still need to be resolved on that one. But then, going to
6 the question of the alley centerline setback, you are aware
7 that OP, back in 2008, did recommend support under the
8 variance test for the alley centerline setback?

9 MS. FOTHERGILL: Yes.

10 MS. MOLDENHAUER: All right. Thank you.

11 VICE CHAIR HART: Do we have any questions from
12 Mr. Hitchcock? Mr. Dow? For the Office of Planning?
13 Ms. Stevens? Okay. Just feel like I'm going through the --
14 catch all the heads.

15 So, let's see if there are any -- if there is
16 anyone that is wanting to speak in support of the
17 application. Anyone here that's wanting to speak in
18 opposition to the application? You can come up. And I
19 should have also asked: is there anyone from the ANC here?
20 Okay. Good afternoon.

21 MS. FRISCHMUTH: Here we go. Good afternoon. I
22 just have --

23 VICE CHAIR HART: If you could just --

24 MS. FRISCHMUTH: Oh.

25 VICE CHAIR HART: -- state your name and your

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1 address.

2 MS. FRISCHMUTH: Yes. Christiana Frischmuth,
3 1702 Hobart Street, N.W., Washington, DC, and I'm in
4 opposition.

5 VICE CHAIR HART: And you have three minutes for
6 a -- three minutes.

7 MS. FRISCHMUTH: Most of what I would say has been
8 said, so I won't repeat that. I want to add that there is
9 gravel -- not a lot, but some gravel -- on the current lot.
10 I know that. I look at it a lot from my window. Also, that
11 I have a question about why 12 feet? Because the height
12 certain is a concern for all of us.

13 And then, the last thing I wanted to check, which
14 is in terms of the density, if somebody applies for a basic
15 business license, which was given as one possible use, the
16 intention is usually to rent it. And if that space is rented
17 out, that would increase the need for the current tenants,
18 because it is a home that's rented out, to then find other
19 parking for their cars.

20 And so, in fact, if you do turn a lot into a rental
21 lot, that would increase the density of the cars in our
22 neighborhood, which already is a problem. So -- and finally,
23 just to make the Board aware, again, that this is an absentee
24 land owner -- land owner -- home owner, landlord, and so
25 there's a very different -- having to live with the

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1 consequences of the actions then for all of us who are living
2 there every day. Thank you.

3 VICE CHAIR HART: Thank you very much. Does the
4 Board have any questions for Ms. Frischmuth?

5 MS. FRISCHMUTH: Didn't want to run.

6 VICE CHAIR HART: That's okay. Nope? Okay, I just
7 wanted to ask. Do you have any questions? No? Okay.

8 CHAIR HILL: Okay, thank you. No, this -- oh, is
9 there somebody -- oh, someone else is coming. Oh, I'm sorry.

10 VICE CHAIR HART: Oh, I'm sorry. I didn't -- no,
11 I just -- you all could have sat at the table together. It
12 didn't have to be one at a time.

13 MS. PRATT: Hi. I'm Cynthia Pratt. I live at
14 1710 Hobart Street. I'm four houses down and across the
15 alley, but I can sit on my deck and look at this little lot,
16 and I do. I think -- I'm puzzled by a couple of things. We
17 heard today for the first time the notion that the owner
18 might want to combine that lot with his other lot. Assembly,
19 I believe, is the term.

20 And that's a whole new thing, which has just come
21 up for the first time and I'm sort of confused about. But
22 what I'm mostly concerned about is that I see absolutely no
23 economic rationale for building a garage, because you can't
24 get but more than about \$50 or \$100 a month rent additional
25 for having an enclosed parking place, versus an open parking

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1 place. I did the research on Craigslist.

2 And it would take an awfully long time to pay off
3 the cost of building a garage like that, which I learned on
4 the Internet is around, I don't know, \$25,000 at least. It's
5 not even an economical approach to trash management, if they
6 think that putting up a garage is going to help eliminate,
7 or alleviate at least, the trash problem. That just doesn't
8 make economic sense.

9 And so, I'm left with the only logical conclusion,
10 that this request for zoning relief -- because it's
11 essentially the same as what they would need for the original
12 two-story dwelling -- that that really is what they want to
13 accomplish in the long run, and they think this is the way
14 to do it.

15 And one more thing. I just heard a few minutes ago
16 about mirrors and lighting being added to this newest design.
17 But honestly, those things have to be maintained, and I don't
18 think there's a good track record about maintenance here.

19 So, when the mirror gets broken by some big truck
20 going by, or the light bulb's burned out, I think that'll be
21 the end of that. So, thank you for hearing my comments.

22 VICE CHAIR HART: Thank you, Ms. Pratt. Do you
23 have any questions for the witness? No?

24 MS. MOLDENHAUER: No questions.

25 VICE CHAIR HART: Okay. Thank you very much.

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1 CHAIR HILL: Thanks. No, I had a question for
2 Ms. Moldenhauer. Just as far -- I was trying to look through
3 the captioning that I had in front of me, and I didn't see
4 in the caption -- I mean, you are applying for Subtitle
5 C.303.3(a) and (b) to allow the creation of an alley record
6 lot that does not have frontage along a 24-foot wide public
7 alley, 15-foot exemption, and does not meet the minimum lot
8 area standards of the RF-1 zone. Correct?

9 MS. MOLDENHAUER: 303 is, yes, one of the reliefs.

10 CHAIR HILL: You know, I'm just saying --

11 MS. MOLDENHAUER: C303.

12 CHAIR HILL: -- but that's the one going from
13 the -- taking me from the tax lot to the record lot.

14 MS. MOLDENHAUER: Yes.

15 CHAIR HILL: Okay. Okay, sorry. I just wanted to
16 clear that up because I didn't see it in what I had before
17 me. But it was in OP's report. So, I just wanted to make
18 sure I understood. Okay, that was my only question. Thank
19 you.

20 VICE CHAIR HART: Okay. Any other questions for
21 the applicant? Okay. Okay. Ms. Moldenhauer, you have an
22 opportunity for a rebuttal.

23 MS. MOLDENHAUER: Yes. So, on rebuttal, just
24 wanted to note a couple of things. One, the question of
25 height has been brought up. The height has been lowered, but

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1 is still substantially below what is permitted as a matter
2 of right. Two, the -- and I believe at the last hearing
3 there was testimony by -- I'm sorry, I can think. Victor,
4 what's your last name?

5 MR. TINEO: Tineo.

6 MS. MOLDENHAUER: Tineo -- Mr. Tineo. Sorry. By
7 Mr. Tineo, that if it was lower, if it was something more
8 like ten feet, so we then did propose a, you know, ten feet,
9 five inches to the rear, where it then obviously abuts that
10 property, reducing the structure by what we believe would be
11 a compromise the community would then be supportive of.

12 We then heard comments of, this is a foothold, this
13 is simply, you know, a issue where we want, you know, to get
14 relief, and then we'll be doing something else. In response
15 to that, as I think some of the Board members have
16 identified, the regulations would require that obviously only
17 that which is permitted by the order could be issued or could
18 be done, and that no other change in the plans could be
19 provided without coming back to the Board.

20 Two, we then also offered, in an email to
21 Mr. Tineo's counsel, to agree to both conditions that further
22 affirmed the law, and also even record an easement against
23 the land -- or covenant against the land, that would confirm
24 that, and would state that there would be no opportunity to
25 change this into a little studio, or something to that

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1 effect.

2 What we are proposing here is a garage. A garage
3 is under DDOT standard. You know, typical of what you see
4 in an alley. As OP confirmed, if the property, you know, had
5 been -- now, the property had actually been sold to my client
6 years ago as part of their acquisition of their home.

7 This was not a parcel that was separately acquired,
8 you know, because it was simply a tax sale. No. It was
9 actually sold by deed associated with my client's street-
10 facing property, to this property. It had been separately
11 owned from the street-facing lot for, I believe since 1947.

12 PARTICIPANT: Forty-eight.

13 MS. MOLDENHAUER: Forty-eight, which was part of
14 our initial case-in-chief. So, this has been long separated
15 from its street-facing lot, and has been long part of that
16 separate ownership. There is an intent not to increase the
17 density.

18 This is simply a situation where the proposal is to
19 keep two parking spaces. The question is whether or not --
20 I think the real heart of the question is whether or not the
21 Board finds that the applicant has satisfied the standard to,
22 one, overcome the C.303 relief in the minimum lot
23 requirement.

24 As testified by Mr. Varga, the minimum lot
25 requirement really goes historically -- and you're looking

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1 at the third prong of public good and intent of the zone
2 plan -- really goes to building residential homes. And under
3 the ZR-58 -- I don't know how it got lost -- but under ZR-58
4 in the 1977 version, reprinted -- or '73?

5 PARTICIPANT: '72 --

6 MS. MOLDENHAUER: '73?

7 PARTICIPANT: -- '73.

8 MS. MOLDENHAUER: '73 version, there's a reprint,
9 it indicated that private garages on alley tax lots did not
10 need to meet the minimum lot area requirement. We're not
11 saying that in regard to a zoning commission change. We're
12 saying that in regards to the context of the third prong,
13 that granting this relief we don't believe would be an
14 adverse to the zone plan or the public good.

15 That being said, in addition to that, without
16 granting that relief, this property directly addresses the
17 A.L.W. and, in addition to that, addition- -- other court
18 cases which say, without granting the relief, the property
19 would then not be able to be maintained or improved.

20 Here, when we're talking about improvement, without
21 that relief under 303, we're even talking about basic
22 improvements. The inability to obtain basic permits to --
23 and when I said improve, Counsel Hitchcock indicated, well,
24 he thinks that we're asking for something more than what
25 we're saying with a garage.

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1 No, we're talking about putting in gravel, possibly
2 doing earthwork. There's -- under the permit section,
3 earthwork and foundation require permits. If we were to dig
4 up the ground and lay them a proper earth for this to maybe
5 address any of the additional concerns of Mr. Tineo in
6 regards to stormwater, that would need a permit.

7 It would need to then go through stormwater
8 management permits, it would need to provide all those things
9 to improve this to be a better a contributor to the alley
10 network. And we believe that based on whether that needs to
11 be confirmed by DCRA, or whether the Board can, on their own
12 authority, look at the DCMR requirements for permits and say,
13 you could -- you are not exempt from a permit to do certain
14 maintenance.

15 And thus, if a permit needs to be obtained, relief
16 would need to be required, and the Board should then, on its
17 own, find that we satisfy the fact that the property is
18 unique, that uniqueness, it not be -- it's being an orphan
19 lot not able to be assembled, the uniqueness of it being
20 specifically separated by a public alley that has sewer
21 systems in it that would not allow us to assemble it, is
22 unique.

23 There's no opportunity then for it to be assembled
24 with its owner, and a permit could not be obtained,
25 maintenance could not be obtained, and that is why we believe

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1 that the Board has the authority and the information here
2 today to be able to grant relief.

3 We also do not believe that granting relief in
4 regards to the distance from any other property -- when
5 someone were to look out of any of the homeowners on Harvard
6 Street, you would look out your rear yard, you'd walk into
7 the back, you'd look out your window, and what would you see?

8 From Mr. Tineo's house, past a large tree on the
9 corner of his property, he would be able to see his
10 neighboring homes, he would be able to see a parking garage.
11 Just like his --

12 VICE CHAIR HART: Are we into -- are you into --

13 MS. MOLDENHAUER: I'm in closing, yes.

14 VICE CHAIR HART: You're in closing now.

15 MS. MOLDENHAUER: Jump right in.

16 VICE CHAIR HART: I'm like, I'm thinking this is
17 kind of past -- actually, can we take like a two-minute
18 break.

19 MS. MOLDENHAUER: Sure.

20 VICE CHAIR HART: Okay, thanks.

21 (Whereupon, the above-entitled matter went off the
22 record at 3:05 p.m. and resumed at 3:13 p.m.)

23 VICE CHAIR HART: Okay, and we're back. Sorry, Ms.
24 Moldenhauer, I cut you off but you didn't want to go last for
25 your closing?

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1 MS. MOLDENHAUER: Yes, correct. If there's any
2 questions on my rebuttal statements?

3 VICE CHAIR HART: So, Mr. Hitchcock?

4 MR. HITCHCOCK: Thank you, Vice Chair Hart, I will
5 be brief. I think Ms. Moldenhauer and her team have done a
6 very good job of making a very simple case seem like a very
7 complicated one.

8 Both in 2008 and during the first several rounds of
9 the filings here, there was no issue about DCRA building
10 permits, certificates of occupancy. I think the issue can
11 be decided strictly on the application itself and not on
12 these collateral issues.

13 And the point I would like to to make is that the
14 issue here is basically the same as it was in 2008, and we
15 think you were right then and the same relief should be
16 granted here.

17 There are a number of points in the record and it's
18 important I think to stress the strong community opposition.
19 The ANC has been unanimously against this twice. I want to
20 point out in particular a letter from Historic Mount Pleasant
21 which was filed on March 15th, which points out how this
22 would be intrusive and jarring in the neighborhood,
23 particularly the 1700 block of Harvard Street, where all the
24 houses are set back because of the hillside.

25 And there's open space in the back to preserve some degree

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1 of open space, and what you saw earlier was a very densely
2 built up neighborhood.

3 But I think the issue is pretty straightforward,
4 the exceptions and the variances they're asking for are
5 really a fairly dramatic departure from what the matter of
6 right allows. The project can be used as it currently is,
7 as it was 10 years ago, and as it was previously before the
8 2008 Hearing.

9 So, for the reasons that we've set forth and the
10 others in the record, we would ask that the application be
11 denied.

12 Thank you.

13 VICE CHAIR HART: Thank you, Mr. Hitchcock. Ms.
14 Stevens?

15 MS. STEVENS: Thank you. I guess I wanted to
16 return to the issue of density because that has come up a
17 couple of times. And my concern with regards to density is
18 that the neighborhood is densely populated.

19 The construction of a garage that goes to the edge
20 of the property line does not meet the alley center line
21 setback and creates a choke point in the alley. The alley
22 is three blocks long, there's a lot of people who use it.
23 That choke point comes at a place where the pedestrians have
24 access to the bus stop on Harvard Street, as well as walking
25 through the alley.

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1 Cars cannot pass each other on the alley and so
2 creating choke points, particularly when there's only three
3 access points to the alley, in my view creates a really
4 difficult problem with regards to density.

5 So, I wanted to clarify that point. Thank you.

6 VICE CHAIR HART: Thank you. Mr. Dow?

7 MR. DOW: I just want to reiterate that the
8 property has been used as a two-car parking pad at least
9 since I've lived there in 2005.

10 No zoning variance or relief of any sort is
11 required to keep using it for that purpose, and the other
12 residents on 1700 block of Harvard Street all have open plans
13 at the same spot and park their cars their with no garages.

14 We think this additional structure that they'll be
15 proposing sets a precedent to increase the density of both
16 vehicles and people in the future as part of Mount Pleasant.

17 And I personally feel like that impairs and
18 corrodes my quality of life in terms of privacy and for the
19 other reasons that Cindy and other folks have indicated. And
20 I'd ask you to deny the variance on that basis.

21 Thank you.

22 VICE CHAIR HART: Thank you, Mr. Dow. Ms.
23 Moldenhauer? Everybody else has gone. And you don't need
24 to repeat what you already started; pick up where you left
25 off.

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1 MS. MOLDENHAUER: Sure, there was testimony that
2 one of the issues here is whether the property's been used
3 since 2005 for parking.

4 There have been statements that it's an eye sore,
5 that it is in need of repair, that it's a location and
6 opportunity for additional debris to be identified. In order
7 to improve that, a subdivision is required.

8 Other properties, even the properties further down
9 this side of Hobart Street, while some of them are open
10 garages, they have paved them, they have improved them, they
11 have carports on them, all which in this case would be
12 practical difficulty being able to obtain a building permit.

13 DDOT hears concerns of density construction, ease
14 of maneuvering in the alley. This is a 15-foot wide alley.
15 DDOT at Exhibit 51 is supportive of the relief and has been
16 supportive of the relief since the beginning of the case.

17 There's testimony that the Board should simply rely
18 on its prior decision in 2008. In 2008, the Office of
19 Planning was supportive of the center line setback in the
20 additional relief required.

21 Unfortunately, the Applicant did not have counsel
22 at that time and I think that they missed a couple of legal
23 arguments. As the Board has seen today in the prior cases,
24 while this should be a simple case, unfortunately it is not
25 and it does require additional arguments to be made.

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1 We believe that we have made the case in connecting
2 the unique condition of the property to the practical
3 difficulty here. At the end of the day, what is being
4 requested is the ability to obtain building permits for the
5 property under the C303 requirement.

6 We would ask the Board that even if for some reason
7 they don't believe that we satisfy the center line setback
8 requirement, which we believe we do, that they would still
9 grant the opportunity for the subdivision requirement to
10 allow improvements, basic improvements, maintenance
11 improvements, on the lot.

12 We believe that we have satisfied that standard
13 based on information in the record regarding the DCMR permit
14 limitations for its existing condition as well as the
15 testimony that previously under prior zoning regulations,
16 parking garages were permitted.

17 We would ask the Board to find that we satisfy both
18 the variance tasks and that we satisfy for the subdivision
19 as well as the variance tasks for the center line setback,
20 and identify that the project has been grossly reduced.

21 We are no longer asking for the setback
22 requirements from the pedestrian alley.

23 We have pulled the property in on requesting rear
24 yard setback requirement, which Office of Planning does
25 support, and that in order to pull back off of the center

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1 line, that would create a situation where there would not be
2 a safe space behind a car to open up a trunk and provide
3 usability.

4 Based on that, we would rest on the substantial
5 record before us, and we would ask the Board to deliberate.
6 Thank you.

7 VICE CHAIR HART: Thank you. So, I don't know if
8 the Board has any questions, questions for the Applicant or
9 the Office of Planning? Mr. Chairman?

10 CHAIR HILL: Yes, so I continue -- it's been a long
11 tax lot, record lot day -- I continue to be a little bit
12 confused with the record lot, tax lot thing. So, I want just
13 to understand this case and get my head around this again.

14 So, there's the relief that's been requested to go
15 from a tax lot to a record lot. And so if that were
16 approved, then we're not necessary approving any of the other
17 things that are going on.

18 So, I'm just saying that's one aspect of relief
19 that's been requested on its own.

20 And I'm just actually asking more that I understand
21 the whole garage thing a little bit better. If the owners
22 in front of this lot bought this lot then incorporated the
23 lot, then they can have enough room to pull back from the
24 center line and put in a garage?

25 MS. FOTHERGILL: That's correct.

1 CHAIR HILL: And so the Office of Planning doesn't
2 have any concerns about the height of the garage.

3 Let's say this garage was now -- I'm following
4 along this line -- if the owner owned that tax lot and then
5 actually, I guess they wouldn't even have to pull it turning
6 the record lot, then they just would own the tax lot, then
7 they would pull back the garage.

8 And so the height's fine and everything else about
9 the garage is fine except for the center line.

10 MS. FOTHERGILL: The height, it's a matter of
11 right, it's within the maximum height allowed. And the alley
12 center line if there was more room to move the proposed
13 structure, they can probably meet that.

14 CHAIR HILL: They can pull it back?

15 MS. FOTHERGILL: Right.

16 CHAIR HILL: Okay, and that was the only thing.

17 Okay, so we're still back to the question about
18 whether or not you could do anything to improve this lot
19 because it's a tax lot, and whether or not it's going to stay
20 with just rugs and carpets down there on the mud. Whereas,
21 they could do something with it to improve it and you're not
22 clear?

23 MS. FOTHERGILL: Right, that was raised today and
24 I don't have an answer. I can get it to the Board if you
25 like.

1 VICE CHAIR HART: Do we have any other questions?
2 Mr. May?

3 COMMISSIONER MAY: No, I think it has come down to
4 a similar question as the previous case having to do with the
5 ability for any work to be permitted. Clearly, in this
6 circumstance, there's a need for some immediate work to make
7 the parking spaces better than they are.

8 And I think that until it is paved in some form,
9 you're going to continue to have problems with stuff growing
10 up there and potentially stuff getting up there that's going
11 to return to its state.

12 I do think that much of the testimony that we've
13 heard from the folks of opposition is not based on the actual
14 zoning relief that's requested here.

15 I think you can tie some of it to the issue of
16 setback from the alley, but if they could meet that
17 requirement, if this tax law were part of the record law that
18 surrounds it, I have no doubt that a garage could be built
19 here and it would be fitting with the rest of the
20 neighborhood.

21 And I think people have to keep that in mind
22 because that is what the zoning regulations say. You'd have
23 to meet the setback requirements, but you could build
24 something there.

25 If Mr. Tineo owned this tax lot and rejoined it

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1 with his record lot, something could be built here and that
2 may be what happens in the future.

3 But I think the open question for us now is whether
4 anything at all can be done there because if they can't even
5 pave it, then there's a problem. Now, whether the relief
6 that's requested is the appropriate relief, the relief to be
7 able to build a garage there, that's a different question.

8 Then we have to go into the other specific bits of
9 relief that have been requested, the center line setback
10 relief in the side yard and things like that.

11 But I think the threshold question is whether
12 anything can be done here, and that's what I'm most
13 interested in hearing about. So, same kind of situation as
14 the last one.

15 I think if we had that piece of information, we
16 might be able to make a decision.

17 VICE CHAIR HART: So, it sounds like we may be
18 headed down the same path in terms of having the Office of
19 Planning -- because really, once they find out the
20 information from the previous case, they will find out the
21 information from this case as well.

22 But we would be able to have this case as a meeting
23 case and not a hearing case if I'm hearing my fellow Board
24 Members correctly, and so you wouldn't have to be here,
25 speaking to the Applicant and all of the parties in

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1 opposition.

2 The only piece that I think is a little bit
3 different here is that we have a couple of parties in
4 opposition that would also have to be able to give some
5 comment on the OP determination report. But, yes --

6 COMMISSIONER MAY: Parties in opposition would have
7 --

8 VICE CHAIR HART: Yes, and that's the only
9 difference it seems to me. So, in the previous case, we had
10 the case set for a decision on May 9 when Mr. May is back
11 with us.

12 We had the Office of Planning provide a report by
13 the 4th of May and the Applicant provide a response on the
14 7th of May. And so I think the parties in opposition would
15 also be providing some comments on the OP report by May 7th.

16 COMMISSIONER MAY: So, I think we might need to
17 stick with a more stringent timeline here, because while Ms.
18 Moldenhauer was willing to work the weekend to get her
19 response in, I'm not sure that we can put that burden on the
20 party in opposition.

21 VICE CHAIR HART: And I might give a couple of days
22 but I think part of this is that we were waiting for DCRA to
23 be back.

24 COMMISSIONER MAY: Whatever the conventions the
25 zoning administrator has to get to, there has to be somebody

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1 else there who can provide --

2 VICE CHAIR HART: We should get a decision out of
3 them in two weeks one way or another.

4 So maybe it's the 1st of May, which is a Tuesday
5 that we have the OP report, and then we can still have the
6 7th for the Applicant and for the parties in opposition to
7 respond to the -- basically almost a week that would give
8 them to respond to the OP report.

9 COMMISSIONER MAY: Does that work for the parties
10 in opposition?

11 MS. STEVENS: I think so.

12 VICE CHAIR HART: Thank you.

13 CHAIR HILL: So, you're going to, I guess, give us
14 a supplemental report of some kind? If you could just kind
15 of repeat again what your opinion is on obviously, you know,
16 everything, right?

17 Because I'm again going back to your original
18 report, where I know things have change in terms of how much
19 -- in terms of what they originally had proposed. And so if
20 you could just clarify your position on each one of the
21 pieces of requested relief.

22 And as I said before, I was missing the one thing
23 about the first one, which is the alley lot -- I'm sorry, the
24 record lot to the tax lot, the 303.3A and B. But anyway, if
25 you could just clarify that for me, that would be great.

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1 MS. FOTHERGILL: Sure.

2 VICE CHAIR HART: So, Mr. Moy, are we clear on the
3 dates of everything?

4 MR. MOY: Yes, the Staff is. Since you're asking
5 --

6 VICE CHAIR HART: If you could just repeat?

7 MR. MOY: Of course, so the decision is scheduled
8 for May 9th. The Applicant and the opposition parties will
9 file a response to the OOP supplemental on May 7th, and the
10 Office of Planning will file on May 1st.

11 VICE CHAIR HART: Thank you. I think that's it,
12 the Hearing is closed, if I hadn't said that, except for
13 these filings that we've just described, and that's it.
14 Thank you very much.

15 MS. STEVENS: Thank you.

16 VICE CHAIR HART: All right, Mr. Moy, next case,
17 please?

18 MR. MOY: Okay, I believe we are going by the next
19 case application as 19685 of Emma Sarah Davis, as amended for
20 special exceptions from the parking requirements, Subtitle
21 C, Section 701.5, and under the accessory apartment
22 regulations of Subtitle U, section 253.4 to permit an
23 accessory apartment in the R-20 and MU-4 Zones at 3238
24 Reservoir Road N.W., Square 1280, Lots 114 and 835.

25 VICE CHAIR HART: Thank you, Mr. Moy. Good

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1 afternoon, could you please introduce yourself and give us
2 your address?

3 MR. DZIERZANOWSKI: Sure. Mateusz Dzierzonowski,
4 I'm with DZ Architecture, it's at 1143rd Street N.E., Suite
5 2181, and I'm here on behalf of my client Ms. Emma Sarah
6 Davis.

7 VICE CHAIR HART: Okay, and I think in this case we
8 were looking at the DDOT issue?

9 MR. DZIERZANOWSKI: Correct.

10 VICE CHAIR HART: If you could just give us kind of
11 an update on that? I think we can kind of focus primarily
12 on that.

13 MR. DZIERZANOWSKI: Absolutely, so last time we
14 were here, after we just voiced our thoughts and opinions,
15 obviously, with the parking, since then we are now in
16 agreement with DDOT's report.

17 I had followed up with a Mr. Patrick Reed from the
18 DDOT Office whom had formatted the report, and we received
19 a follow up email from him that Mr. Moy was CC'd to with
20 regards to us fulfilling all the requirements in the previous
21 submission.

22 No additional information was required with regards
23 to anything for TDM measurement plans or additional
24 requirements for that. So, we as the Applicant are in
25 agreement with the process report and unless there's, again,

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1 additional requirements or comments from the Board, we hope
2 you can deliberate and grant approval.

3 VICE CHAIR HART: Okay, are there any questions
4 from the Board?

5 COMMISSIONER MAY: So, just to be clear, by saying
6 you agree with the report, that means you're willing to
7 remove the curb cut?

8 MR. DZIERZANOWSKI: Correct.

9 COMMISSIONER MAY: And eliminate that not quite
10 legal parking space?

11 MR. DZIERZANOWSKI: Correct.

12 We did file for the record a TCP plan in addition
13 just to show at a high level the scope and what the new ideal
14 layout would be, following some conversations with DCRA at
15 a different Technician Member from DDOT.

16 COMMISSIONER MAY: When was that submitted?

17 MR. DZIERZANOWSKI: It was filed two days prior to
18 when the original Hearing was to happen so I believe February
19 --

20 VICE CHAIR HART: This is Exhibit 41?

21 MR. DZIERZANOWSKI: Correct, sorry.

22 COMMISSIONER MAY: Oh, right, okay, I did review
23 this and I was just a little bit confused by it because, yes,
24 the curb cut is clearly going away.

25 MR. DZIERZANOWSKI: Correct.

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1 COMMISSIONER MAY: And you're going to patch the
2 sidewalk or whatever, but the existing sidewalk's going to
3 remain?

4 MR. DZIERZANOWSKI: Correct.

5 COMMISSIONER MAY: And there will be just a paved
6 patio?

7 MR. DZIERZANOWSKI: We would do something permeable
8 but yes, it would remain a paved road.

9 COMMISSIONER MAY: Okay, and the curb goes back in?

10 MR. DZIERZANOWSKI: Correct, we would match what's
11 existing.

12 COMMISSIONER MAY: What is existing, is it
13 concrete?

14 MR. DZIERZANOWSKI: There's existing concrete.

15 VICE CHAIR HART: Okay, any other questions for the
16 Applicant? I don't know if I've gone through it, but I might
17 as well as do the rest of it.

18 I think we've actually heard from the Office of
19 Planning already for this, and just to make sure, is there
20 anybody from the ANC that's here for the case? Anybody in
21 support of the case wish to speak? Anybody in opposition?

22 Okay, do you have any final comments that you'd
23 like to make?

24 MR. DZIERZANOWSKI: No, I appreciate your time.

25 VICE CHAIR HART: Thank you. So, to get back to

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1 the Board, I'll close the record.

2 After reviewing the record and listening to the
3 testimony from the Applicant, I would be in support of the
4 application. I think they've provided the sufficient
5 information for me to be able to grant the relief, and didn't
6 have much more to say about it.

7 I wasn't sure if we really needed to do the
8 conditions since they actually provided the information
9 showing they were going to do that, but that they're actually
10 going to close the existing curb and restore the curb and
11 gutter.

12 But I'll leave that to our Board Members if you
13 want to --

14 COMMISSIONER MAY: Yes, I think it's worth it to
15 have it written in the order.

16 VICE CHAIR HART: Either way is fine with me.

17 So, not hearing any other comments, I will make a
18 -- so, I make a motion to approve Application 19685 of Emma
19 Sarah Davis as amended pursuant to 11 DCMR Subtitle X Chapter
20 9 for special exceptions from the parking requirements of
21 Subtitle C, 701.5, and under the accessory apartment
22 regulations of Subtitle U 253.4 to permit an accessory
23 apartment in the R-20 and MU-4 Zones in premises 3238
24 Reservoir Road N.W., Square 1280, Lot 114 and 835.

25 And with the conditions that the Applicant close

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1 the existing curb cut, restore curb and gutter consistent
2 with the existing conditions, and the Applicant remove the
3 existing and impervious surface in public space. And do I
4 have a second?

5 CHAIR HILL: Second.

6 VICE CHAIR HART: All those in favor say aye.

7 (Chorus of aye.)

8 VICE CHAIR HART: Any opposed? The motion carries.
9 Mr. Moy?

10 MR. MOY: Staff would record the vote is 4-0-1.
11 This is on the motion of Vice Chair Hart to approve the
12 application for the relief along with the two conditions as
13 cited.

14 Seconding the motion, Chairman Hill, also in
15 support Mr. Peter May, Lorna John. No other Board Member
16 present, motion carries.

17 VICE CHAIR HART: And summary order?

18 MR. MOY: Yes, sir.

19 VICE CHAIR HART: Thank you.

20 MR. DZIERZANOWSKI: Thank you.

21 VICE CHAIR HART: Yes, sir. So, we can go to the
22 next case, Mr. Moy, when you're ready.

23 MR. MOY: All right, if we could have parties to
24 the table to Case Application 19687 of D.C. Jewish Community
25 Center for an area variance from the FAR, floor area ratio

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1 requirements, Subtitle G, Section 602.1.

2 This would modernize and expand the existing
3 community center in the RA-8 and MU-15 Zone. This is at 1529
4 16th Street N.W., Square 194, Lot 113.

5 MR. MOY: All right, I believe --

6 VICE CHAIR HART: We'll wait for a minute for him
7 to come.

8 CHAIR HILL: Yes, because the order that --

9 VICE CHAIR HART: Let's just move forward, Mr.
10 Chairman. If you could introduce yourselves, please?

11 MS. MILANOVICH: Good afternoon, Jami Milanovich
12 with Wells and Associates, Transportation Consultant for the
13 project.

14 MR. GAON: Joe Gaon of Holland and Knight, Counsel
15 for the Applicant.

16 MR. QUIJANO: Tomas Quijano, Perkins Eastman,
17 architect.

18 MS. ZAWATSKY: Carol Zawatsky, CEO for the DC JCC.

19 VICE CHAIR HART: Okay, it looks like -- Mr.
20 Quijano, I don't think you're in our expert book. Did you
21 go in front of the BZA before?

22 MR. QUIJANO: No.

23 VICE CHAIR HART: Is your resume in with --

24 MR. QUIJANO: I believe it is.

25 MR. GAON: Yes, 37D.

1 VICE CHAIR HART: Okay, give me a second. Okay, so
2 I didn't have any questions about this. I don't know if any
3 of my Board Members have?

4 COMMISSIONER MAY: I just have one, and this is a
5 general Perkins Eastman thing I think. There are no dates,
6 right, on your resume? How long have you been practicing in
7 this firm?

8 When was your license issued, any of that stuff?

9 MR. QUIJANO: License was issued in 2008; I've been
10 practicing since 1994.

11 COMMISSIONER MAY: I see 20 years of design and
12 production experience. It's helpful to have this information
13 because it's not easy to find, including even the name of the
14 firm. There's not a letterhead or things like that.

15 So, this is a one-time deal because now you're in
16 the book, we don't need to go through this again, but you
17 might want to pass word back to the marketing people that
18 worked on these. I'm sure you've got a whole fleet of them.

19 MR. QUIJANO: We have one here; we have another one
20 here.

21 COMMISSIONER MAY: Oh, good.

22 MR. QUIJANO: We're everywhere.

23 COMMISSIONER MAY: I know you are. Mr. Gaon has
24 been accepted to our book, and so I'll leave it to you to do
25 your presentation.

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1 MR. GAON: Good afternoon, Members of the Board, my
2 name is Joe Gaon with the law firm Holland and Knight. I am
3 joined today by Carol Zawatsky, DC JCC, Tomas Quijano of
4 Perkins Eastman, and Jami Milanovich of Wells and Associates.

5 We are here today to request a variance from the
6 FAR requirements to modernize and expand the existing
7 building on the site. As you're aware, the JCC is a
8 nonprofit organization.

9 They've been located at the site since 1994. We
10 are happy to rest on the record and just take questions that
11 you may have.

12 VICE CHAIR HART: Do we have any questions for the
13 Applicant?

14 COMMISSIONER MAY: I have one question. So, DDOT's
15 support had some conditions on it. Have you agreed to those
16 conditions?

17 MS. MILANOVICH: We have agreed to two of the three
18 conditions. And on the third condition, we believe we've
19 reached a compromise with DDOT.

20 The third condition, DDOT requested that we provide
21 eight long-term bicycle parking spaces that shelter bicycles
22 from the weather. And we believe, like I said, that we've
23 reached a compromise given that we're not required to provide
24 long-term bike parking in accordance with Section 802.6.

25 The issue is that we explored locations within the

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1 building as well as we also looked at providing enclosed
2 shelters outside of the building.

3 There was some security concerns with that, and
4 space inside the building is limited as well as the only at-
5 grade interest we would have for bicycles, they would be
6 required to go through the metal detectors in the security
7 system.

8 So, what we agreed to do is to replace the existing
9 serpentine bike rack that's located outside of the building
10 with current best practices which, are the inverted U bike
11 racks.

12 And then we would also expand the capacity of the
13 outdoor bike racks, and we would work with DDOT to determine
14 what the appropriate number is through the public space
15 Committee process.

16 I did have a conversation with Patrick Reed at DDOT
17 regarding this, and I have an email I can submit for the
18 record if you would like, summarizing that conversation.

19 In a nutshell, he indicated they would still prefer
20 some number of indoor bike parking spaces but if after
21 coordinating with the project team and the project architect,
22 we were not able to find room for those additional indoor
23 bike parking spaces, they would be amenable to the
24 compromised solution.

25 COMMISSIONER MAY: Okay, so how many spaces are you

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1 trying to get outside of the building with the inverted use?

2 MS. MILANOVICH: So, we did not specify a number
3 with DDOT; DDOT preferred to discuss that and determine how
4 many we could actually fit in public space when we go through
5 that public space process.

6 COMMISSIONER MAY: Okay, so you would be okay if we
7 granted approval that would include the requirement that you
8 developed, the pickup and drop-off plan with DDOT's approval,
9 and that when you're following approval, the formal
10 assessment would be done to determine whether adjustments
11 should be made in the 15-minute parking zone and queue in the
12 pickup and drop-off plan?

13 MR. GAON: That's correct.

14 COMMISSIONER MAY: Okay.

15 VICE CHAIR HART: Any other questions for the
16 Applicant? And this site, I was looking at the DDOT report,
17 there are already 14 short-term bike parking spaces outside?

18 MS. MILANOVICH: Yes, I believe that is the correct
19 number.

20 VICE CHAIR HART: Okay, I think we can turn to the
21 Office of Planning?

22 MS. FOTHERGILL: Good afternoon, I'm Anne
23 Fothergill with the Office of Planning and we rest on the
24 record in support of the variance relief and I'm happy to
25 take any questions.

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1 VICE CHAIR HART: Do we have any questions for the
2 Office of Planning? Mr. Gaon, do you have any questions for
3 the Office of Planning?

4 MR. GAON: I do not.

5 VICE CHAIR HART: Okay, moving right along, is the
6 ANC present? Is there anyone here wishing to speak in
7 opposition? Anyone here wishing to speak in support? Seeing
8 no hands raised and no one moving, back to you, Mr. Gaon.
9 Do you have any closing?

10 MR. GAON: Just one additional thing I would like
11 to add, we request flexibility on the exterior design just
12 to respond to any comments that we may get from HPRB in the
13 permitting process. So, that's all.

14 VICE CHAIR HART: So, that's a condition that
15 you're asking for?

16 MR. GAON: Yes, that's correct.

17 VICE CHAIR HART: It always makes me kind of
18 cautious when you're asking for flexibility because I'm not
19 exactly sure how much that we're talking about. I don't
20 know, any thoughts?

21 COMMISSIONER MAY: Mr. Chairman, if I could, so in
22 circumstances like this where we know that they have some
23 level of approval already from a certain division and they
24 may need to go through more review.

25 They're not likely to wind up having to make

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1 changes that would change the zoning relief, and if they did,
2 they would have to come back here. So, I think they're going
3 to try to find a solution that wouldn't require that.

4 And I don't think there's any aspect of the design
5 in this circumstance -- and this can happen -- but in this
6 circumstance, I don't think there's any aspect of the design
7 that actually works to mitigate any of the requested zoning
8 relief.

9 So, it's not like the design really matters that
10 much in terms of the zoning relief.

11 VICE CHAIR HART: Yes, I guess it's more like why
12 are we having to do it if they -- because I'm not even
13 exactly sure how -- it seems like it would be so broad that
14 it would be --

15 MR. GAON: So, we're required to construct the
16 plans as they are in the record. So, if the architect wanted
17 to change a material because at the time they couldn't get
18 that material to do the construction, they would have to go
19 back to HPRB and get approval for those materials.

20 We're not looking to change the footprint of the
21 building in any way, shape, or form; it's just with respect
22 to exterior design of the building.

23 VICE CHAIR HART: So, I don't have a strong -- one
24 way or the other. I just was trying to see if we could
25 narrow that down.

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1 CHAIR HILL: I don't have a problem, as
2 Commissioner May just mentioned, in this case in terms of
3 where they're asking for it, but I am kind of curious.

4 Later, talking with OAG, this happened last week or
5 the week before, whatever it was, and we do have often times
6 Applicants request for flexibility.

7 And sometimes we ask for greater specificity in
8 their request, and perhaps we can work with OAG to kind of
9 figure out what language is -- I mean, everyone understands
10 what they're trying to ask for but at some point, it's like
11 we as a Board I think get confused as to how drastically
12 things can change in terms of that, when we approve for
13 flexibility.

14 But in this case, Mr. Vice Chair, I don't have any
15 issues with allowing flexibility as required by HPRB.

16 VICE CHAIR HART: That's fine. So, I will close
17 the record now, and it seems like we've already had some
18 discussion, but does the Board have any other discussion that
19 they'd like to provide now? Yes, no?

20 So, after reviewing the record, I find that I would
21 be able to support the application. I do agree with the
22 Office of Planning's report, their recommendation to grant
23 the relief, and would be able to support it myself.

24 I didn't have much more to say with regards to the
25 conditions. I don't have an issue with having the I guess

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1 now three conditions, the first two that Mr. May read earlier
2 and then the other condition, which is to allow the Applicant
3 flexibility with materials as they go through to HPRB.

4 And hearing no other comments, I would make a
5 motion to approve Application 19687 of D.C. Jewish Community
6 Center, pursuant to DCMR Subtitle X, Chapter 10, for an area
7 variance from the floor area ratio requirements of Subtitle
8 G, Section 602.1, to modernize and expand existing community
9 center in the RA-8 and MU-15 zones at premises 1529 16th
10 Street N.W. (Square 194, Lot 113).

11 Do I have a second?

12 MEMBER JOHN: Second.

13 VICE CHAIR HART: All in favor, say aye.

14 COMMISSIONER MAY: I'm sorry, I do one to raise one
15 other thing, a very important point. So, we are going to
16 have the two DDOT conditions?

17 VICE CHAIR HART: Yes.

18 COMMISSIONER MAY: And then on that note, as you're
19 working through the issues on the bike parking, I would just
20 encourage you be as aggressive as possible, and if you don't
21 work through some of these things now, it's going to come to
22 you through your members and your visitors.

23 So, you're going to have accommodate more and more,
24 not to mention the fact that there are going to be dockless
25 bikes laying all over the place, too. We haven't figured

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1 that one out yet. That's all.

2 VICE CHAIR HART: Thank you. All those in favor
3 say aye?

4 (Chorus of aye.)

5 VICE CHAIR HART: Any opposed? The motion carries.
6 Mr. Moy?

7 MR. MOY: Staff would record the vote as 4 to 0 to
8 1 on the motion of Vice Chair Hart to approve the application
9 for the relief requested, as well as three conditions
10 proposed by DDOT, one proffered by the Applicant.

11 The motion is seconded by Ms. Lorna John; also in
12 support, Mr. Peter May, Chair Hill. No other Board Members
13 present, the motion carries.

14 MR. GAON: Just a summary order? You usually say
15 it, sorry.

16 VICE CHAIR HART: I usually say it after he's given
17 that.

18 MR. GAON: I apologize.

19 VICE CHAIR HART: Thank you, Mr. Gaon --

20 MR. GAON: A little late and a little early.

21 VICE CHAIR HART: -- for a little levity. As the
22 Applicant has request, Mr. Moy, can we do a summary order?

23 MR. MOY: Whatever the Board desires.

24 VICE CHAIR HART: I think we can do a summary
25 order, thanks. Moving right along, Mr. Moy, the next case,

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1 which I have as 19699 of 1800 Newton Street.

2 MR. MOY: Okay, 19699 of 1800 Newton Street, NE
3 LLC. Special exceptions under the nonconforming use
4 requirements of Subtitle C, Section 204.9, and under Subtitle
5 C, Section 703. This is from the parking requirements for
6 an expansion or change of use of Subtitle C, Section 705.

7 This would convert two existing commercial spaces
8 to two residential units in the existing building in our R1B
9 Zone at premises 1800 Newton Street N.E. (Square 4203, Lot
10 191).

11 VICE CHAIR HART: Thank you, Mr. Moy. Could you
12 please introduce yourselves?

13 MS. OLSON: Hi, good afternoon, my name is Kate
14 Olson with the law firm of Greenstein, DeLorme & Luchs.

15 VICE CHAIR HART: You have to push the button.

16 MR. BRESLIN: I've been here long enough to know
17 that. Joseph Breslin, 1314 Rhode Island Avenue, N.W.,
18 Washington D.C., 20005.

19 VICE CHAIR HART: And just to be clear, have you
20 all been sworn in earlier?

21 MR. BRESLIN: Yes.

22 VICE CHAIR HART: I know you've probably been here
23 for a while but I have to ask. And you may present your
24 case.

25 MS. OLSON: Excellent, thank you. As you know,

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1 this is a case requesting special exception relief from
2 Subtitle C, Section 204.9, nonconforming uses, and Subtitle
3 C, Section 705, minimum parking requirements.

4 The property is zoned R1B, and it consists of a
5 corner lot with an area of 3675 square feet and is located
6 on the N.E. corner of the intersection of Newton and 18th
7 Street. There's a 16-foot public alley to the rear and we're
8 directly across from the public school, the John Burrows
9 elementary school.

10 As you'll see by the PowerPoint, it's a two-story
11 existing semi-detached building on a property that was built
12 in the 1920s, and due to the size and placement of the
13 building on the property, parking has never been provided.

14 The building has been used for a mix of commercial
15 and apartment uses since it was built in the 1920s, pre-50-
16 year regulations. The building has been -- there have been
17 many, many, many C of Os at this property over the years.

18 We've included a list going back as early as 1978
19 in all different types of uses including apartment houses,
20 number of commercial uses on the first floor. There have
21 also been BZA orders with this property that have granted
22 special exception relief going from one non-conforming use
23 to another non-conforming use throughout the years.

24 Since both commercial and apartment house uses are
25 non-conforming because they're built in an R1B zone which

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1 doesn't allow either one of these uses, they're there for
2 grandfather uses.

3 The Applicant is proposing to convert the two non-
4 conforming commercial units on the first floor into two non-
5 conforming apartment units, which is allowed as you know, by
6 the BZA with approval.

7 So, by converting the two existing commercial units
8 on the first floor, it'll result in an eight-unit apartment
9 building. I just want to emphasize that there's no expansion
10 of the existing building envelope or gross floor area, no
11 exterior renovation, and there's no opposition in this case.

12 We met with the ANC on February 28th, and they
13 voted 5-0-0 in support. I am happy to go through our
14 requested relief or stand on the record as you request.

15 VICE CHAIR HART: I don't necessarily need you to
16 go through that, but I don't know if my other Board Members
17 would like to hear something?

18 COMMISSIONER MAY: I just have a question. The ANC
19 report had recommended or requested that one of the units be
20 an inclusionary zoning unit.

21 So do you want to respond to that request?

22 MS. OLSON: Sure, actually, the report issued was
23 that they voted 5-0-0 in favor, and they acknowledged at the
24 meeting that IZ wasn't required and it was sort of after the
25 fact. I think it states: Although not required, ANC

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1 constituents would like one of its units to be in IZ or ADU
2 unit.

3 This apartment building is less than ten units,
4 it's eight units. And the existing six units at the property
5 are already rent-controlled units. It would be very
6 difficult for the Applicant to provide an IZ unit, which is
7 not required.

8 COMMISSIONER MAY: Okay, and then the DDOT
9 conditions?

10 MS. OLSON: DDOT had requested -- are you referring
11 to the bicycle parking spaces?

12 COMMISSIONER MAY: Three long term bicycle spaces,
13 and remove the trash container from public space.

14 MS. OLSON: So, the bicycle spaces, the bike
15 requirement, once space for each three dwelling units for
16 long-term spaces.

17 The project is converting two commercial units into
18 two residential units, and the minimum bike parking required
19 should be calculated based on the entire gross floor area
20 added.

21 So, I think in the DDOT report, it seemed like they
22 were sort of acknowledging the fact that this product
23 actually only requires at the most one, but they were
24 requesting three.

25 The Applicant is not doing a gut rehab of this

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1 property, and in order to provide three, which is in excess
2 of the requirement -- the Applicant could actually respond
3 to this -- but it's my understanding that the one laundry
4 area that serves the entire building would actually have to
5 be taken out to provide those three internal.

6 Because as you know, there are the regulations
7 about the size and the placement of interior long-term
8 bicycle spaces. So, it would be difficult, since it's not
9 a gut rehab of the entire building, to provide those.

10 COMMISSIONER MAY: The answer is no, you're not
11 going to do it, you can't do it?

12 MS. OLSON: Correct.

13 COMMISSIONER MAY: So, what are you going to do
14 when your tenants want to park their bikes permanently?
15 They're just going to carry them into their apartments? Is
16 that what they do now?

17 MR. BRESLIN: Honestly, yes, and I usually wouldn't
18 have an issue with that. As was mentioned, we could do it,
19 but it would involve taking the laundry area out, which is
20 located on the first floor.

21 Then, I think if I took a survey of future tenants,
22 they might want laundry inside the building more than perhaps
23 bike spots.

24 COMMISSIONER MAY: They also might want them in
25 their apartments. Would you do that for them if they said

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1 that?

2 MR. BRESLIN: Laundry?

3 COMMISSIONER MAY: Yes.

4 MR. BRESLIN: I'm open to it in the future for
5 sure.

6 COMMISSIONER MAY: I'm just saying indoor parking
7 for bikes is a really, really good idea, and it's going to
8 become more and more important over time.

9 And I'm not going to put my foot down and say it's
10 going to be required --

11 MR. BRESLIN: Especially with the scooters I see
12 everywhere too.

13 COMMISSIONER MAY: Well, there's all that, right,
14 and it's not great carrying your bike in because most people
15 don't carry them in and they roll them in and you've got the
16 common areas that are messy and all that sort of stuff.

17 So, it would be good if there was a way to do that.
18 What about the dumpster?

19 MR. BRESLIN: It's the similar situation as the
20 bikes. We could accommodate it inside but the most logical
21 place would be in the laundry area.

22 COMMISSIONER MAY: Okay, so I think that is a
23 problem you have to solve for them regardless of the zoning
24 relief. So, I think you need to figure out how to do that
25 because you're not allowed to just keep your dumpster in

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1 public space in an alley, right?

2 MR. BRESLIN: That's correct, yes, and we -- do you
3 want to go ahead?

4 MS. OLSON: And actually, the Google shot that is
5 included shows a dumpster in the alley and I apologize, that
6 Google shot is a little outdated.

7 So, since the Applicant has purchased the property,
8 that is no longer actually in the alley, which looks like it
9 was really right in the alley before. It's now located on
10 the side along Newton Street in that grassy area.

11 COMMISSIONER MAY: I'm sorry, what are you looking
12 at? What Exhibit are you looking at?

13 MS. OLSON: So, even the first page of your
14 PowerPoint I handed out, that just shows the side there along
15 Newton Street. So, presently, the trash cans are located in
16 that side area.

17 MR. BRESLIN: And that dumpster was owned by the
18 previous owner, we have the roll-away plastic cans that we
19 just keep on the grassy area.

20 COMMISSIONER MAY: Okay, but that's also a public
21 space, right?

22 MS. OLSON: Yes.

23 COMMISSIONER MAY: So, I don't know, it's just
24 something you're going to have to work out with DDOT because
25 do you have any land that is not building?

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1 Right, so then you'd have to put them somewhere,
2 your roll-away dumpsters, in the building and then roll them
3 out on the day of collection. So, I assume you have a
4 private service, right?

5 CHAIR HILL: Can't they just go in the yard there?
6 I don't understand.

7 COMMISSIONER MAY: They can't because it's public
8 space.

9 MR. BRESLIN: Yes, it appears to be the yard
10 associated with the building, but technically it is public
11 space.

12 COMMISSIONER MAY: But if this were a house, you
13 could leave it in your front yard because the city issues the
14 trash cans and doesn't give you a place to put them
15 necessarily.

16 It is a problem for you, it is not necessarily a
17 problem for zoning, although it could have been something
18 that you solve with some space within the building. But I
19 don't know that we necessarily even need to see that or know
20 that. This is really just about reusing the commercial space
21 for apartment use instead.

22 So, you're going to have to figure that out because
23 I'm sure that your neighbors are not going to be happy about
24 having your plastic roll-aways in the yard next to their
25 porch. And the people in the building shouldn't want that

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1 either.

2 And of course DDOT is not going to really want you
3 -- I don't know how much they enforce it, but they're not
4 going to want it in any public space, front yards or the
5 alley.

6 VICE CHAIR HART: Thank you. Any other questions?
7 Office of Planning?

8 MR. MORDFIN: Good afternoon, I'm Steven Mordfin,
9 and the Office of Planning supports this application and
10 stands on the record, and is available for any questions.
11 Thank you.

12 VICE CHAIR HART: Any questions for the Office of
13 Planning?

14 MS. OLSON: No.

15 VICE CHAIR HART: Thank you, Mr. Mordfin, a very
16 easy case there. So, is the ANC here? Anyone here in
17 support of the application? Anyone here in opposition?

18 Seeing no one, Ms. Olson, do you have any final
19 comments -- closing comments?

20 MS. OLSON: No, thank you.

21 VICE CHAIR HART: Okay, I'll close the record. I
22 maybe need a break. Is the Board ready to deliberate? And
23 I can start. The case is for a special exception for a non-
24 conforming use to another non-conforming use in parking space
25 requirements.

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1 The OP report recommends approval of the
2 application, stating the Applicant meets all the requirements
3 under Subtitle C, 204.9. I would agree with this as well.

4 The OP report also states that the Applicant meets
5 their requirements under Subtitle C, 703.2, as there is no
6 space to add the parking spaces on the property. DDOT noted
7 that there is no TDM plan required, but they did require a
8 couple of conditions.

9 After having the discussion a few minutes ago
10 regarding not being able to provide the parking spaces,
11 bicycle parking spaces indoors and the discussion about the
12 trash containers, I think that it sounds like you're going
13 to need to continue to work on that concern.

14 So, does the Board have any other discussion about
15 the conditions or any discussion about the case?

16 All right, okay, so hearing that, I will make a
17 motion to approve Application Number 19699 of 1800 Newton
18 Street, N.E. LLC pursuant to 11 DCMR Subtitle X, Chapter 9,
19 for special exceptions under the nonconforming use
20 requirements of Subtitle C, Section 204.9, and under Subtitle
21 C, Section 703 from the parking requirements for an expansion
22 or change of use of Subtitle C, Section 705, to convert two
23 existing commercial spaces into two residential units in an
24 existing building in the R-1-B Zone at premises 1800 Newton
25 Street N.E. (Square 4202, Lot 191).

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1 Do I have a second?

2 COMMISSIONER MAY: Second.

3 VICE CHAIR HART: All those in favor say aye?

4 (Chorus of aye.)

5 VICE CHAIR HART: Any opposed? The motion carries
6 with the Board.

7 MR. MOY: Staff would record the vote as 4-0-1.
8 This is on the motion of Vice Chair Hart to approve the
9 application. I think I heard in the motion the two DDOT
10 conditions?

11 COMMISSIONER MAY: No, I think --

12 VICE CHAIR HART: The first one, no. Actually I'm
13 not even sure either one of them will be able to do so.

14 MR. MOY: That's fine, I understand.

15 VICE CHAIR HART: So, thank you for the
16 clarification.

17 MR. MOY: Second motion is Mr. Peter May, also in
18 support Chairman Hill, Ms. Lorna John. We have no other
19 Members participating today. The motion carries.

20 VICE CHAIR HART: Summary order?

21 MR. MOY: Thank you.

22 MS. OLSON: Thank you.

23 VICE CHAIR HART: Thank you.

24 VICE CHAIR HART: All right, Mr. Moy, you can -- can
25 you call the next case, please?

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1 MR. MOY: Thank you, Mr. Vice Chair. My
2 understanding is that there's little switch up, and the next
3 case Application is Number 19703 of the Capitol Hill Day
4 School. This Application is captioned advertised for special
5 exception under the use provisions of Subtitle U, Section
6 320.1(a) and Subtitle U, Section 203.1(1), to permit a
7 private school use on the second floor of an existing office
8 building in the RF-3 Zone at premises 218 D Street, S.E.
9 This is Square 763, Lot 2.

10 VICE CHAIR HART: Thank you, Mr. Moy. Good
11 afternoon. Good after late noon. Please, if you could --
12 if you could introduce yourselves.

13 MS. BLOOMFIELD: Good after -- late afternoon Board
14 Members. My name is Jessica Bloomfield with the law firm of
15 Holland and Knight.

16 MR. GRAY: I'm Jason Gray, head of Capitol Day
17 School.

18 MS. NEERIEMER: I'm Ann Neeriemer with Perkins
19 Eastman D.C.

20 MR. FREEMAN: Kyrus Freeman, Holland and Knight.

21 VICE CHAIR HART: So I will leave you to a -- your
22 presentation.

23 MS. BLOOMFIELD: Great. So we -- we're here seeking
24 special exception relief to allow a private school use in the
25 RF-3 District at 218 D Street, S.E. The record is full of

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1 support. We have support from the Office of Planning. They
2 indicated three conditions in their report, which we agree
3 to. We also have support from DDOT as well as from the ANC.
4 So we -- we believe that the pleadings in our case record set
5 forth how we meet the special exception standard of relief,
6 which we can go through if you'd like. But we would prefer
7 to rest on the record and respond to any questions that the
8 Board may have.

9 VICE CHAIR HART: So does the Board have any
10 questions? Yes, Mr. May.

11 COMMISSIONER MAY: Yes, so were you actually
12 proffering an expert in this or not? You're not going to
13 bother?

14 MS. BLOOMFIELD: We're not going to bother, unless
15 you'd like us to.

16 COMMISSIONER MAY: No, but I just, you know, I think
17 you heard me talking before about the Perkins Eastman
18 resumes.

19 MS. BLOOMFIELD: We heard, and we do not proffer her
20 as an expert, but maybe in the future, and we'll take a look
21 at her resume --

22 COMMISSIONER MAY: Yes, that's fine.

23 MS. BLOOMFIELD: -- and make sure it's -- it's ready
24 to go.

25 COMMISSIONER MAY: Just make it easier to read for,

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1 you know, those of us who have too much to read. Thank you.

2 VICE CHAIR HART: Okay. No other questions, the
3 Office of Planning.

4 MS. THOMAS: Good evening, Mr. Chairman, members of
5 the Board. I will rest on the record of my report, and I'll
6 be happy to take any questions. Thank you.

7 VICE CHAIR HART: The only question that I had was
8 the last condition which has to do with the parking is going
9 to be at another site. It seems a little bit off our -- the
10 third condition which says all event parking for this
11 location shall be at the main campus at 21, excuse me, 210
12 South Carolina Avenue. It just seems like we're --

13 MS. THOMAS: Is that the wrong address?

14 VICE CHAIR HART: Is that the right -- not that it's
15 the wrong address, I'm just saying that it's -- it's a
16 different address than the actual school itself.

17 MR. THOMAS: Yes, because the main campus is three
18 blocks south of that, and that's where they have their
19 parking. The site doesn't accommodate parking for them.

20 VICE CHAIR HART: I guess it's not that I don't
21 understand that's where they have a site, I'm just saying
22 that we're -- we're incorporating another site into this, you
23 know, into this -- this condition. It just seemed a little
24 odd to me that's all. I don't know if the other Board
25 members have any concerns about any of the conditions, but

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1 that was the --

2 CHAIR HILL: Well I guess what you're speaking to is
3 that from -- from discussions with OAG it seemed as though
4 we weren't able to apply that condition because it was going
5 to be a condition on another property. That was the -- the
6 discussion and the concern. Would the Office of Planning
7 agree with that?

8 MS. THOMAS: I would agree if there's a concern with
9 that. We don't have any issues with that --

10 CHAIR HILL: -- Okay, --

11 MS. THOMAS: -- it can be taken off.

12 CHAIR HILL: -- so then I would drop that condition
13 then, --

14 MS. THOMAS: Okay.

15 CHAIR HILL: -- because it is to another -- to your
16 point it is a non-property.

17 VICE CHAIR HART: Thank you for -- for that Chairman
18 Hill. Does the Applicant have any questions for the Office
19 of Planning?

20 MS. BLOOMFIELD: We do not, thank you.

21 VICE CHAIR HART: Is the ANC here?

22 (No audible response.)

23 VICE CHAIR HART: Is anyone here in support of the
24 Application?

25 (No audible response.)

1 VICE CHAIR HART: Anyone here in opposition?

2 (No audible response.)

3 VICE CHAIR HART: I see no hands raised and no one
4 moving forward. Ms. Bloomfield, do you have a closing that
5 you'd like to --

6 MS. BLOOMFIELD: No, we would just respectfully ask
7 that the Board support this Application. Thank you.

8 VICE CHAIR HART: Okay. Thank you. I will close
9 the hearing. Is the Board ready to deliberate?

10 MEMBER JOHN: Yes.

11 VICE CHAIR HART: Okay. I can start the -- after
12 hearing the testimony -- limited testimony, and reviewing the
13 -- the full record, I would be able to support the
14 Application. I do agree with the Office of Planning report
15 that describes how the Applicant meets a criteria for the
16 relief for the special exception being sought by the
17 Applicant to locate a private school in a -- in an office
18 building in a, excuse me, in an RF-3 Zone.

19 I don't have an issue with the two conditions, the
20 first being the hours of school operation shall not -- just
21 one small change, the hours of school operation shall not
22 exceed 8:00 a.m. to 6:00 p.m. And then the total number of
23 students at the location shall not exceed 90 students at any
24 one time. And I didn't know if the Board members had any
25 other comments they'd like to make. Hearing none, I'll make

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1 a motion to approve Application Number 19703 of Capitol Hill
2 Day School.

3 COMMISSIONER MAY: Second.

4 VICE CHAIR HART: Okay. Thank you, Mr. May. I
5 won't read the rest of it. It's been seconded. I will
6 finish though. Pursuant to 11 DCMR Subtitle X, Chapter 9,
7 for a special exception under the use provisions of Subtitle
8 U, 301, excuse me, 320.1(A), and Subtitle U 203.1(1), to
9 permit a private school use on the second floor of an
10 existing office building in an RF-3 Zone at premises 218 D
11 Street, S.E., Square 763, Lot 2. I've heard a second already
12 from Mr. May. All those in favor say aye.

13 (Chorus of aye.)

14 VICE CHAIR HART: Any opposed?

15 (No audible response.)

16 VICE CHAIR HART: The motion carries, Mr. Moy.

17 MR. MOY: It's time for record the votes. That's
18 four to zero to one. That's on a motion of Vice Chair Hart
19 to approve the Application with the two conditions decided.
20 Second the motion Mr. Peter May. Also in support Chairman
21 Hill, Ms. Lorna John. No other Board member participated
22 today. Motion carries.

23 VICE CHAIR HART: A summary order and we are
24 including the two conditions, correct, Mr. Moy?

25 MR. MOY: Yes, yes. Yes, sir.

1 VICE CHAIR HART: Thank you very much.

2 I think the next case is 19697, Mr. Moy.

3 MR. MOY: Okay. That would be case number 19697 of
4 Arkadi Gerney and Nancy Meakem, I believe. Caption
5 advertised for special exceptions under Subtitle D, Section
6 5201 from the rear yard requirements of Subtitle D, Section
7 306.1. This would construct a rear addition to an existing
8 one-family dwelling R1-A Zone at 4220 Fordham Road, N.W.,
9 Square 1481, Lot 3.

10 VICE CHAIR HART: Thank you, Mr. Moy. Welcome.
11 Good afternoon.

12 MR. FOWLKES: Thank you.

13 VICE CHAIR HART: If you could introduce yourselves,
14 and -- introduce yourself, and please give your address.

15 MR. FOWLKES: Sure. V.W. Fowlkes. I'm representing
16 the clients, the homeowners. My office address is 1711
17 Connecticut Avenue, Suite Number 204.

18 VICE CHAIR HART: I'm sorry, you say Fowlkes?

19 MR. FOWLKES: Fowlkes, correct.

20 VICE CHAIR HART: It's a great name. Just saying.
21 Thank you. So if you could just give us a brief --

22 MR. FOWLKES: Sure.

23 VICE CHAIR HART: -- presentation of the case.

24 MR. FOWLKES: Sure. The house currently has a sun
25 porch on the back of it. Because of the diagonal nature of

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1 the rear property line, the 25 foot rear set back clips the
2 sun porch in the back as it exists now. We're looking to
3 widen the sun porch. That is we're going to extend it
4 laterally, not push it back toward the rear property line,
5 but towards the side property line. But in so doing we are
6 continuing the existing nonconformity, and exacerbating it
7 slightly. It's just one story. We've shown the designs to
8 all the neighbors. We've gotten letters of no objection from
9 all of them, and we had not objection from the ANC.

10 VICE CHAIR HART: Okay. Any questions for Mr.
11 Fowlkes -- Fowlkes, excuse me?

12 (No audible response.)

13 VICE CHAIR HART: Okay, the Office of Planning.

14 MS. FOTHERGILL: Good afternoon, I'm Anne
15 Fothergill, and we rest on the record in support of the
16 Application, and I'm happy to take any questions.

17 VICE CHAIR HART: Okay. Any questions for the
18 Office of Planning?

19 MR. FOWLKES: No.

20 VICE CHAIR HART: Any questions for the Office of
21 Planning? I was asking them and you, but that's fine. Okay,
22 anyone from the ANC here?

23 (No audible response.)

24 VICE CHAIR HART: Anyone wishing to speak in
25 support?

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1 (No audible response.)

2 VICE CHAIR HART: Anyone wishing to speak in
3 opposition?

4 (No audible response.)

5 VICE CHAIR HART: No one has come up. Do you have
6 a final closing statement that you'd like to make?

7 MR. FOWLKES: I have nothing additional.

8 VICE CHAIR HART: Okay. I will close the hearing,
9 and I'll bring it back to the Board. I can start. Again,
10 I do feel that the Applicant -- that this is a fairly
11 straightforward case, fairly modest proposal. And I would
12 agree with the Office of Planning report and the ANC that
13 this Application should be granted, because you've provided
14 sufficient information describing how you meet the special
15 exception criteria for your rear yard relief, an addition to
16 a nonconforming structure. So -- and, you know, you've
17 provided information on how the project would not unduly
18 affect the light and air of neighboring property, and it
19 would not unduly compromise the privacy or use of neighboring
20 properties as well. And I would be in support of the
21 Application. Anyone else want to opine?

22 MEMBER JOHN: Mr. Vice Chairman, I also approve the
23 -- would support the Application. It is a very modest
24 limitation on the rear yard requirement. From what's
25 existing now. And I believe that says Applicant has met the

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1 burden of proof for a special exception for an addition to
2 a principal dwelling unit under Subtitle D 5201.

3 VICE CHAIR HART: Okay. Would you like to make a
4 motion?

5 MEMBER JOHN: No.

6 (Laughter.)

7 VICE CHAIR HART: Okay. So hearing that you do not
8 want to make a motion, I'll make the motion to approve number
9 -- Application Number 19697 of Arkadi Gerney and Nancy Meakem
10 as amended pursuant to 11 DCMR Subtitle X, Chapter 9, for a
11 special exception under Subtitle D, 5201 from the rear yard
12 requirements of Subtitle D, 306.1 and the nonconforming
13 structure requirements of Subtitle C, 202.2, to construct a
14 rear addition to an existing one-family dwelling in an R1-A
15 Zone, the premises 4220 Fordham Road N.W., Square 1481, Lot
16 3. Do I have a second?

17 CHAIR HILL: Second.

18 VICE CHAIR HART: Hearing the second, all those in
19 favor say aye.

20 (Chorus of aye.)

21 VICE CHAIR HART: Any opposed?

22 (No audible response.)

23 VICE CHAIR HART: Motion carried, Mr. Moy.

24 MR. MOY: Staff would record vote as four zero to
25 one. This is on the motion of Vice Chair Hart to approve the

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1 Application for the relief requested. Seconded motion
2 Chairman Hill. Also in support Mr. Peter May, Ms. Lorna
3 John. With no other Board Member participating the motion
4 passes.

5 VICE CHAIR HART: A summary order, Mr. Moy.

6 MR. MOY: Thank you.

7 VICE CHAIR HART: Thank you. Thanks. Moving right
8 along.

9 MR. MOY: The next case Application, if I have
10 parties to the table, to 19698 of Richard Hall. This is
11 captioned advertise for a special exception, under Subtitle
12 D, Section 5201 from the rear yard requirements of Subtitle
13 D, Section 1206.2, and the non-conforming structure
14 requirements of Subtitle C, Section 202.2(b). This would
15 construct second floor rare addition in our R-20 Zone at
16 premises 1959 39th Street, N.W., Square 1310, and I believe
17 there was a typo in the caption. And it should be read as
18 Lot 77.

19 VICE CHAIR HART: Instead of Lot 33.

20 MR. MOY: That's correct, sir.

21 VICE CHAIR HART: Good afternoon. Hi, if you could
22 introduce yourselves, and please give your address.

23 MR. HALL: My name is Richard Hall, 1959 39th
24 Street, N.W., 20007.

25 MS. HALL: Good afternoon, I'm Linda Hall, also at

1 1959 39th Street, N.W.

2 VICE CHAIR HART: Okay. I'm assuming you're going
3 to present, since you have your mic on already.

4 MR. HALL: Yes.

5 VICE CHAIR HART: You may proceed at your
6 convenience.

7 MR. HALL: Thank you. We wish to extend the
8 exterior wall of our upstairs rear bedroom 8 feet 2 ½ inches
9 so that it comes flush with the face of our sunroom below.
10 The exterior wall will follow the same footprint as that wall
11 below, and it will extend only so far as the exterior wall
12 of the bump out built by our neighbor to the north.

13 Our plan includes a bay window for that upstairs
14 bump out matching the bay window below. That window
15 encroaches 1 foot 6 inches into the rear yard space at a
16 height of 18 feet. This item is the focus of our appeal for
17 special exemption to the BZA this morning -- this afternoon.

18 VICE CHAIR HART: This evening.

19 (Laughter.)

20 MR. HALL: We have received letters of support from
21 our neighbors immediately to the north and south, and from
22 additional neighbors nearby. Thank you.

23 VICE CHAIR HART: Okay. Any questions for Mr. Hall?

24 (No audible response.)

25 VICE CHAIR HART: Okay, hearing none, let's go to

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1 the Office of Planning.

2 MS. ELLIOTT: Good evening, Mr. Vice Chairman,
3 Members of the Board. I'm Brandice Elliott with the Office
4 of Planning, and we're going to stand on the record of our
5 report. We are recommending approval of the requested
6 special exceptions, and I'm happy to answer any questions you
7 have.

8 VICE CHAIR HART: Do I have any questions from the
9 Board for the Office of Planning?

10 (No audible response.)

11 VICE CHAIR HART: Hearing none. Mr. Hall, do you
12 have any questions for the Office of Planning?

13 MR. HALL: No, sir.

14 VICE CHAIR HART: Okay. Is the ANC here?

15 (No audible response.)

16 VICE CHAIR HART: Is anyone here wishing to speak in
17 support of the Application?

18 (No audible response.)

19 VICE CHAIR HART: Anyone here wishing to speak in
20 opposition?

21 (No audible response.)

22 VICE CHAIR HART: Hearing none. Back to you, Mr.
23 Hall, do you have any closing statements that you'd like to
24 make?

25 MR. HALL: No, sir. Thanks for your time.

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1 VICE CHAIR HART: We have a question. Yes.

2 CHAIR HILL: Hey, Mr. Hall. Were you guys here
3 before?

4 (No audible response.)

5 CHAIR HILL: What were you guys here before for?

6 MR. HALL: It was a deck coming out from the
7 sunroom, and the rear yard -- it was for a variance for the
8 exemption from the rear yard.

9 CHAIR HILL: It was a variance?

10 MR. HALL: It was a exception for the rear yard rule
11 of 20 foot --

12 CHAIR HILL: Okay, and how long ago was that, do you
13 remember?

14 MR. HALL: That was in -- that was in October. I
15 can tell you --

16 CHAIR HILL: That's okay. That's all right. I was
17 just trying to remember -- okay.

18 MR. HALL: Was it --

19 CHAIR HILL: Okay.

20 MR. HALL: It was within -- it was about eight or
21 nine months ago.

22 CHAIR HILL: Okay. Okay. All right, thank you,
23 thank you. I was just curious, thank you.

24 VICE CHAIR HART: Good memory, Mr. Chairman. So
25 you've said that you didn't have any closing statement --

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1 MR. HALL: That's correct.

2 VICE CHAIR HART: -- that you would like to make.

3 MR. HALL: No.

4 VICE CHAIR HART: Okay, with that I would close the
5 hearing. Is the Board ready to deliberate?

6 CHAIR HILL: Yes.

7 VICE CHAIR HART: Sure.

8 CHAIR HILL: Okay, so I thought that the record was
9 very full. I thought that the Office of Planning's report
10 was very -- was instructive. And I thought that -- and I
11 agreed with the analysis that they have provided. Also ANC
12 2E was in support eight to zero to zero. It was also good
13 to hear -- see that. We also have five letters of support
14 in the record, as well as DDOT has no objection. Just taking
15 all those things into consideration I thought that the
16 Applicant has met the standard for us to grant the relief.
17 Mr. Vice Chair, that's what I have to say.

18 VICE CHAIR HART: Thank you. I would agree with the
19 chairman, and hearing no other comments I will make a motion
20 to approve Application Number 19698 of Richard Hall, pursuant
21 to 11 DCMR Subtitle X, Chapter 9, for a special exception
22 under Subtitle D, 5201 from the rear yard requirements of
23 Subtitle D, 1206.2, and the nonconforming structure
24 requirements of Subtitle C, 202.2(b), to construct a second
25 floor rear addition in the R-20 Zone at premises 1959 39th

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1 Street N.W., Square 1310, Lot 77. Do I have a second?

2 COMMISSIONER MAY: Second.

3 VICE CHAIR HART: Hearing --

4 COMMISSIONER MAY: Second.

5 VICE CHAIR HART: Oh, I didn't hear that, Mr. May.

6 Hearing a second, all those in favor say aye.

7 (Chorus of aye.)

8 VICE CHAIR HART: Any opposed?

9 (No audible response.)

10 VICE CHAIR HART: Motion carries. Mr. Moy.

11 MR. MOY: Staff would record the vote as four to
12 zero to one. This is on the motion of Vice Chair Hart to
13 approve the Application for the relief requested. Seconded
14 the motion is Mr. Peter May. Also in support Chairman Hill,
15 Ms. Lorna John. We have a Board member not participating
16 today, the motion carries.

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

18 MR. MOY: Yes. Thank you, sir.

19 VICE CHAIR HART: Thank you. Thank you all.

20 (Pause.)

21 VICE CHAIR HART: Next, I'm sorry, Mr. Moy. Next
22 case, please.

23 MR. MOY: I see Applicants are dashing to the table.
24 This is case Application Number 19706 of Mary's House
25 Incorporated. Caption advertised for special exceptions

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1 under Subtitle U, Section 421. This is for a new residential
2 development, and under Subtitle C, Section 710.3 from the
3 parking location restrictions of Subtitle C, Section 710 to
4 construct a new 12-unit apartment house and two surface
5 parking spaces in the RA-1 Zone at 1005 Bunker Hill Road,
6 N.E., Square 3863, Lot 843.

7 VICE CHAIR HART: Thank you, Mr. Moy. Could you all
8 introduce yourselves, and provide your name and address.
9 Thank you.

10 MR. MURPHY: William Murphy. I'm the founder and
11 director of Mary House. I live at 7 Columbia Avenue, Takoma
12 Park, Maryland.

13 MR. GAON: Joe Gaon with the law firm Holland and
14 Knight, counsel for the Applicant. I believe Mr. Murphy has
15 not been sworn in yet, so.

16 MS. RAO: Heather Rao with Cunningham Quill
17 Architects, the architect for the project.

18 VICE CHAIR HART: Excuse me, Mr. Moy, if you could
19 administer the oath, please.

20 MR. MOY: Yes, my pleasure.

21 VICE CHAIR HART: And if anyone else needs to --

22 MR. MOY: You may wish to stand, sir. Do you
23 solemnly swear or affirm that the testimony you are about to
24 present in this proceeding is the truth, whole truth and
25 nothing but the truth.

1 (No audible response.)

2 MR. MOY: Thank you. You may be seated.

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

4 MR. GAON: Good evening, members of the Board. My
5 name is Joe Gaon with the law firm Holland and Knight. I'm
6 joined today by Bill Murphy and Heather Rao, who's the
7 architect for the project. We are here today requesting
8 special exception approval to construct a residential
9 development in the RA-1 Zone District, and special exception
10 approval to allow a service parking space in the front of the
11 property.

12 We have Office of Planning support, DDOT support,
13 ANC support. One thing you'll note is there's one condition
14 in the DDOT report, the Applicant agrees with -- agrees to
15 the condition in the DDOT report. And we're happy to rest
16 on the record, and provide any answers to any questions that
17 you may have.

18 VICE CHAIR HART: And I just noted that, Ms. Rao,
19 you're not in our book. Have you been before the BZA before?

20 (No audible response.)

21 VICE CHAIR HART: I thought so, but I --

22 MS. RAO: I have, yes.

23 VICE CHAIR HART: Okay. I was just looking at
24 comments that we have from the OZ, the Office of Zoning
25 staff. They had said that you were not in the -- in our

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1 book, and I just wanted to double check that. That was all.
2 I don't know. It's fine.

3 MS. RAO: I didn't know that either but I have been
4 before you before, yes.

5 VICE CHAIR HART: Thank you.

6 COMMISSIONER MAY: But you've been proffered as an
7 expert?

8 MS. RAO: I believe so.

9 COMMISSIONER MAY: Yes, okay. Do we have you resume
10 on the record?

11 VICE CHAIR HART: Yes, let's go through this thing
12 so --

13 COMMISSIONER MAY: I mean, we might as well do it so
14 that we have it. Which exhibit is your resume at, do you
15 know? 31(b)?

16 (Pause.)

17 COMMISSIONER MAY: I will note the presence of dates
18 on the resume, and the name of the firm.

19 (Laughter.)

20 VICE CHAIR HART: So it's approved.

21 COMMISSIONER MAY: There's only one of you, where's
22 Ralph and where's Phoebe?

23 MR. GAON: We weren't sure exactly who was going to
24 testify, so that's why we included everybody.

25 COMMISSIONER MAY: Okay.

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1 VICE CHAIR HART: Well, I don't have a problem with
2 accepting you into the -- into our expert book. So you don't
3 have to do this anymore.

4 MS. RAO: Thank you.

5 VICE CHAIR HART: Isn't that wonderful?

6 MS. RAO: That's wonderful. I appreciate that.

7 VICE CHAIR HART: Now you can go out and celebrate.
8 Sorry, Mr. Gaon. Where were we? I'm not even sure where we
9 were. Have you -- After a while it does get kind of hard to
10 remember the place in line. Mr. May, you have a question?

11 COMMISSIONER MAY: Yes, I do have a question. So
12 the one thing I didn't quite understand in this case is the
13 calculation of -- for the parking. You're saying that you
14 and OP are both saying only two spaces are required based on
15 one, two, three, about four spaces including the metro
16 discount as it were. And that works for a 12 unit building,
17 but this will ultimately be an 18 unit building, won't it?
18 I mean, it's -- what am I -- did I miss something in the
19 calculation there?

20 (Pause.)

21 MS. RAO: Wasn't sure his question that was for.
22 We've always understood that you discounted any existing
23 building, and there is no legal parking provided for the
24 existing building currently. There is a gravel lot adjacent
25 to it, which is not considered by DDOT to be a current legal

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1 parking situation.

2 COMMISSIONER MAY: Right, but -- so because it's
3 grand fathered as not have parking, that it's only the new
4 building.

5 MS. RAO: That's what we've always understood.

6 MR. GAON: The original building is nonconforming
7 with respect to parking, so it's assumed under the zoning
8 regulation that you get a credit for that, and you're
9 providing the amount that you're required to provide under
10 zoning, so --

11 COMMISSIONER MAY: When you build an addition and
12 that triples the size of it, or something like that, I would
13 think that something kicks in, but, I mean, I can ask Ms.
14 Rao. What I'm -- I'm not concerned about the relief that
15 you're requesting. I just want to make sure you get the
16 right relief, because I'd hate to have you go through the
17 DCRA process and have them stop you because you do not have
18 sufficient relief for what you are seeking.

19 MR. GAON: Understood.

20 VICE CHAIR HART: Hearing no other questions, we'll
21 go to the Office of Planning.

22 MS. BROWN-ROBERTS: Good afternoon again, Mr.
23 Chairman and Members of the Board. Maxine Brown-Roberts for
24 the Office of Planning, and we -- I'm going to stand on the
25 record concerning the -- the relief, the special exception

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1 relief, for the new residential development and address the
2 parking. The -- in the regulations concerning the additional
3 parking, the new portion is required to have parking.
4 However, -- I don't remember the exact number right now, but
5 it has to be over a certain amount that -- if addition --
6 this addition was like 500 square feet addition, they
7 wouldn't need any additional parking, but because this is
8 significantly higher it -- the parking does kick in.

9 COMMISSIONER MAY: Right, but what I'm concerned
10 about is that if it's kicking in is it kicking in enough.
11 Does it mean that they have to provide parking based on the
12 parking ratios for this building type and the zone with, you
13 know, proximity to Metro and all that sort of stuff. I mean,
14 is it all -- does it apply to the entire building because
15 this is an addition to an existing building, or does it apply
16 only to the addition?

17 MS. BROWN-ROBERTS: How I read it is was that it
18 applies to the -- only to the addition.

19 COMMISSIONER MAY: Only to the addition.

20 MS. BROWN-ROBERTS: -- but I'm not a 100 percent
21 sure.

22 COMMISSIONER MAY: And I'm not 100 percent either.

23 MS. BROWN-ROBERTS: Yes, --

24 (Simultaneous speaking.)

25 COMMISSIONER MAY: I mean, maybe the safe thing to

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1 do is to grant -- if they were to request -- it's a little
2 hard to do, but they could request -- I mean, if you do that
3 other calculation it works out to be three spaces instead of
4 two --

5 MS. BROWN-ROBERTS: Yes.

6 COMMISSIONER MAY: -- the way I did it, but I, you
7 know, I don't do this for a living, not the zoning parking
8 calculations. I do lots of other zoning stuff for a living.

9 MS. RAO: So if we used 18 units, discount four,
10 divide by three, you'd get four, we'd divide that in half,
11 and we'd still have two. By my math.

12 COMMISSIONER MAY: 18 minus -- 14 divided by three
13 is four and two-thirds.

14 MS. RAO: Four and two-thirds, sorry, you're right.

15 COMMISSIONER MAY: Which would be five.

16 MS. RAO: So then we'd divide that in half and we'd
17 have two and a half.

18 COMMISSIONER MAY: Which would be three.

19 MS. RAO: Okay.

20 COMMISSIONER MAY: That was the way I did the math.
21 I don't know. Maybe the thing to do is to note the number
22 of spaces that would be provided, and note that that would
23 be relief of up to three parking spaces, something like that.
24 I mean, again, I don't want you to get caught up when you --

25 MR. GAON: Understand.

1 COMMISSIONER MAY: -- when you go for final permit
2 review assuming we grant the relief, --

3 MS. RAO: Okay.

4 COMMISSIONER MAY: -- but it -- maybe it should be
5 granted that way.

6 CHAIR HILL: Okay.

7 VICE CHAIR HART: So do you have any -- any
8 questions for the Office of Planning?

9 MR. GAON: No questions?

10 VICE CHAIR HART: Is the ANC here?

11 (No audible response.)

12 VICE CHAIR HART: Anyone here speaking -- wishing to
13 speak in support of the Application?

14 (No audible response.)

15 VICE CHAIR HART: Support of the Application?
16 Please come up. Welcome. Good evening.

17 MR. MORGAN: Good evening. My name is Leroy Morgan,
18 and I live at 1000 Otis Street, Apartment 5. I live next
19 door to the Application, and I'm here to support the
20 Application, including the parking, because I'm right in the
21 back yard. In the back of building working on my bicycle,
22 cleaning it up. And when I finish -- I have two bicycles,
23 one is in suitcase, and the other one's folded up ready for
24 use. They're both ready for use. So for bicycle put it in
25 suitcase and go, or use the other one and fold it up. But

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1 I mentioned I'm in the back. And by me being in the back
2 cleaning the bicycles they won't interfere with my work,
3 because I'm right next door to them. So I'm the next door
4 neighbors and tenant. I think we have about what, 4, 8, 12,
5 13 tenants there. And I'm here to support the Application.

6 VICE CHAIR HART: Well, Mr. Morgan is it?

7 MR. MORGAN: Right.

8 VICE CHAIR HART: Thank you very much for coming
9 down. You've spent a long time here today.

10 MR. MORGAN: Early this morning, in the fire, in the
11 subway, in the trains, and --

12 VICE CHAIR HART: Yes. But it's great to have you
13 coming down to give your support for this Application, and
14 it's helpful to hear that. And wish you well.

15 MR. MORGAN: Yes.

16 VICE CHAIR HART: And thanks very much.

17 MR. MORGAN: You're welcome.

18 VICE CHAIR HART: Do you have any questions for Mr.
19 Morgan?

20 CHAIR HILL: I just want to echo, Mr. Morgan. I
21 want to also mention it's fantastic you stayed here this
22 long, like, that's so, you know, nice of you to kind of
23 provide your support, and also give your feedback for being
24 there in the community. I mean, it's amazing you stayed here
25 this long. So that's -- I really think that's fantastic.

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1 MR. MORGAN: Yes, yes. I witnessed their work.
2 They're doing a lot of work, you know, and -- for the
3 children, for the other -- the residents there. And I'm in
4 support of that.

5 CHAIR HILL: Wonderful, wonderful. Well thank you
6 for coming down.

7 MR. MORGAN: You're welcome.

8 COMMISSIONER MAY: I like the fact that he's working
9 on bikes.

10 VICE CHAIR HART: I knew you were going to say that.
11 (Laughter.)

12 COMMISSIONER MAY: I couldn't let that go.

13 MR. MORGAN: What was that? I missed that.

14 VICE CHAIR HART: Commissioner May at the end here
15 -- he's a biker. He likes to bike into work, and he likes
16 to bike around D.C., so he liked to hear the fact that you
17 were working on bicycles in your yard, and you have two
18 bicycles.

19 MR. MORGAN: And two folding bikes.

20 VICE CHAIR HART: You have folding bikes.

21 MR. MORGAN: Folding bikes, right.

22 VICE CHAIR HART: Yes.

23 MR. MORGAN: So that -- I had to worry about the --
24 having the bicycle outside, stuff like that.

25 VICE CHAIR HART: Yes, it just folds up, you put it

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1 in suitcase --

2 MR. MORGAN: Fold it up in suitcase --

3 VICE CHAIR HART: -- wherever it is.

4 MR. MORGAN: -- one I put in the -- two of them for
5 folding, one in the suitcase, but I got one in there right
6 now and one ready to go. And I'm ready to use them for a 70
7 mile bicycle ride in July, one of them, so --

8 VICE CHAIR HART: Oh, wow.

9 MR. MORGAN: And another one in September. That's
10 another 77 miles ride.

11 VICE CHAIR HART: And you ride the folding bikes on
12 these?

13 MR. MORGAN: Yes, but they got quality parts. It's
14 the parts on there.

15 VICE CHAIR HART: Okay.

16 MR. MORGAN: And three more years I'm going to be 70
17 so I got to keep on moving.

18 VICE CHAIR HART: That's right. That's right.

19 (Laughter.)

20 VICE CHAIR HART: I love it. Okay --

21 COMMISSIONER MAY: Can you come back down for a
22 zoning commission hearing sometime?

23 (Laughter.)

24 COMMISSIONER MAY: I'd like you to meet the
25 chairman.

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1 MR. MORGAN: You got my address.

2 COMMISSIONER MAY: The chairman doesn't think that
3 anybody, you know, he doesn't even think that I ride my bike
4 at my age, and, you know, when somebody becomes a senior
5 citizen that they can ride a bike anymore, so I would just
6 like to have you come down sometime.

7 MR. MORGAN: Right, I have to because --

8 COMMISSIONER MAY: Explain that to him.

9 MR. MORGAN: I used to -- I used to run, but because
10 of the concrete and asphalt it's too much on my foot, you
11 know.

12 COMMISSIONER MAY: Yes, yes.

13 MR. MORGAN: Biking --

14 COMMISSIONER MAY: This is Ward 5, right. You're
15 Ward 5, right.

16 MR. MORGAN: I'm right next door.

17 COMMISSIONER MAY: Yes, and the chairman is from
18 Ward 5.

19 (Simultaneous speaking.)

20 COMMISSIONER MAY: He's always speaking up for Ward
21 5. I got to them him I met a guy from Ward 5 who has two
22 bikes, is three years away from 70, and he rides them all the
23 time.

24 MR. MORGAN: Also tell him that I'm the one that
25 back in 1993 took a bicycle ride starting from New York to

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1 Washington, D.C. on the --

2 COMMISSIONER MAY: Yes.

3 MR. MORGAN: -- on the Columbus Day weekend.

4 COMMISSIONER MAY: Wow, yes. That's great.

5 MR. MORGAN: There's more. I got a whole history.

6 COMMISSIONER MAY: I got to make note of the time on
7 the hearing here. I'm just going to send him a clip. Thank
8 you.

9 MR. MORGAN: You're welcome.

10 VICE CHAIR HART: Okay. That was excellent. Mr.
11 Gaon, do you have any closing statement. I'm not sure if you
12 could actually, you know, top it.

13 MR. GAON: I'm just going to leave it with that.

14 VICE CHAIR HART: Okay. I will close the hearing.
15 Is the Board ready to deliberate? Hearing the -- my fellow
16 Board members say that they're ready let's start -- I
17 actually did not have any concerns about this Application.
18 I believed after reviewing the record, and reading through,
19 excuse me, the Office of Planning report I would also be able
20 to support the Application.

21 I understand that there is one condition, and the
22 condition is that the Applicant shall install bushes or
23 shrubbery along 10th Street N.E. between the sidewalk and the
24 purposed surface lot, not to exceed 42 inches in height. And
25 would ask if the other Board members have any other comments

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1 that they'd like to make?

2 (No audible response.)

3 VICE CHAIR HART: Hearing none --

4 MEMBER JOHN: I do --

5 VICE CHAIR HART: Oh, hearing some.

6 MEMBER JOHN: Well, there was a question of the
7 number of parking spaces.

8 VICE CHAIR HART: Yes.

9 MEMBER JOHN: So how would we address that? Would
10 we need to maybe put a condition in that the Applicant -- I
11 don't know how to say it though.

12 VICE CHAIR HART: Mr. May, do you have any --

13 MR. MAY: Yes. I mean, I think --

14 VICE CHAIR HART: I don't know. Maybe we need OAG
15 to concur with this, but I think that if we were to approve
16 the relief to construct the 12 unit apartment house with two
17 surface parking spaces, that if we simply say that its --
18 we're giving permission with two parking spaces if that's
19 sufficient, or is it -- do we need to be -- because we would
20 caption the relief -- let me read it. Let me try to read it
21 and see if you think that that's sufficient, okay? So it's
22 -- so I would move approval that we grant a special exception
23 under Subtitle U, Section 421 for a new residential
24 development under Subtitle C, 710.3 -- sorry, I'm mangling
25 this. I move approval of zoning, I'm sorry, BZA -- this is

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1 like really late in the day, I can't talk at all. Approval
2 of BZA Case Number 19706 of Mary House Incorporated for
3 special exceptions under Subtitle U, 421 for a new
4 residential development, and under C 710.3 from the parking
5 location restrictions of Subtitle C, Section 710 to construct
6 a new 12-unit apartment house with two surface parking spaces
7 in the RA-1 Zone at premises 1005 Bunker Hill Road N.E. So
8 was that sufficient? I'm stating that it would be only two
9 parking spaces.

10 MEMBER JOHN: Well weren't you making the point that
11 you thought that there may be a requirement that there would
12 be three spaces? I mean, since --

13 COMMISSIONER MAY: Well right. We would have to
14 grant relief to allow -- that's right.

15 MEMBER JOHN: Right. So, I mean, --

16 COMMISSIONER MAY: Because we're not --

17 MEMBER JOHN: -- because of the fact that it's a
18 self-certified application.

19 COMMISSIONER MAY: Yes.

20 MEMBER JOHN: So only if the Applicant wanted to
21 amend the Application to include that additional parking
22 relief would -- I mean, you'd be able to --

23 COMMISSIONER MAY: We would have to -- we would have
24 to -- we could -- they would have to amend the Application
25 to request the relief from one parking space.

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1 MEMBER JOHN: To three.

2 COMMISSIONER MAY: To three.

3 MEMBER JOHN: Yes.

4 COMMISSIONER MAY: Yes. For some reason I thought
5 they were already --

6 MEMBER JOHN: Because the relief under 710 is
7 specific to allowing --

8 COMMISSIONER MAY: Yes, right.

9 MEMBER JOHN: -- the space to be in front of the
10 building.

11 COMMISSIONER MAY: Right, right, right. That's what
12 the relief was.

13 MEMBER JOHN: Yes, so it really does, yes.

14 MR. GAON: Can I make a suggestion?

15 COMMISSIONER MAY: Yes, sure.

16 MR. GAON: We can just -- since we're -- we prefer
17 not to amend the Application we'll just leave it as is, and
18 then if, you know, the relief is only to have the location
19 of the parking space, not the number. And then, you know, --

20 COMMISSIONER MAY: You have to file a new
21 application for relief, or you'd have to --

22 MR. GAON: That's what I'm -- what I'm getting at is
23 --

24 COMMISSIONER MAY: You'd have to construct three.

25 MR. GAON: Yes, if we -- I was suggesting that

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1 maybe, you know, we can include in the order just the
2 Applicant shall have flexibility to construct three spaces
3 if required by zoning. Just so we don't have to come back --

4 COMMISSIONER MAY: Is there room to fit three
5 spaces?

6 MR. GAON: Yes.

7 MS. RAO: We have a turnaround area shown that could
8 be a parking space. There's enough space there, and we'd
9 still have room to turn around in that space.

10 COMMISSIONER MAY: Okay.

11 MS. RAO: We're also providing a van space there.
12 So we have a little bit of wiggle room to provide that third
13 space --

14 COMMISSIONER MAY: All right.

15 MS. RAO: -- if needed.

16 (Simultaneous speaking.)

17 MR. GAON: It would just be flexible -- I apologize.

18 COMMISSIONER MAY: All right. So we could just say
19 with two or three surface parking spaces, or maximum of
20 three.

21 MALE PARTICIPANT: I would just say maximum --

22 MR. GAON: Maximum of three.

23 COMMISSIONER MAY: Maximum of three parking spaces,
24 and if you can get by with two then you're fine.

25 MR. GAON: Perfect. Thank you.

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1 COMMISSIONER MAY: All right. So do I have to read
2 that whole thing again?

3 VICE CHAIR HART: No.

4 COMMISSIONER MAY: I'm just going to say for a
5 maximum of three parking spaces and ask for a second.

6 VICE CHAIR HART: Second.

7 COMMISSIONER MAY: Now you got to carry on.

8 VICE CHAIR HART: I know. Well you were doing such
9 a great job, Mr. May. All those in favor say aye.

10 (Chorus of aye.)

11 VICE CHAIR HART: Any opposed?

12 (No audible response.)

13 VICE CHAIR HART: Motion carried. Mr. Moy.

14 MR. MOY: Staff would record the vote as four zero
15 to one. This is on the motion of Mr. Peter May to grant the
16 request for relief along with one DDOT condition, and of
17 course the amendment in the caption of the Application as
18 cited. Second the motion Vice Chair Hart, also in support
19 Chairman Hill, Ms. Lorna John. We have no other Board
20 members participating. The motion carries.

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

22 MR. MOY: Yes, sir.

23 VICE CHAIR HART: And there is a condition too
24 that's connected with this.

25 MR. MOY: I mentioned that.

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1 VICE CHAIR HART: Okay. I'm sorry.

2 MR. GAON: I have the last case too, that's why I'm
3 not moving.

4 (Pause.)

5 MR. MOY: Okay. The -- I believe the next final
6 Application before the BZA today is Case Application Number
7 19711 of Granite LLC, caption advertised for special
8 exceptions under Subtitle I, Section 205.5 from the rear yard
9 requirements of subtitle I, Section 205.1, to construct an
10 addition to an existing building to establish a museum and
11 conference center with associated office use. This is in the
12 D-6 Zone at premises 1501 through 1505 Pennsylvania Avenue,
13 N.W. This is Square 221, Lots 29, 810, and a portion of a
14 public alley which is to be closed.

15 VICE CHAIR HART: Thank you, Mr. Moy. Welcome.
16 Good evening.

17 MR. GAON: Good evening.

18 VICE CHAIR HART: If you could please introduce
19 yourselves.

20 MR. GAON: Joe Gaon with the law firm Holland and
21 Knight, here on behalf of the Applicant.

22 MR. GILLIAND: And Mark Gilliand with Shalom Baranes
23 Associates Architects.

24 VICE CHAIR HART: Mr. Gaon, as you -- you can
25 proceed at your -- your own pace.

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1 MR. GAON: Good evening members of the Board. My
2 name is Joe Gaon with the law firm Holland and Knight. I'm
3 here on behalf of the Applicant. I'm joined by Mark
4 Gilliland, the architect for the project. The property is
5 located at 1501 to 1505 Pennsylvania Avenue, N.W. The
6 Applicant proposes an addition to the two existing historic
7 structures. We are here today requesting special exception
8 of rule from the rear yard requirements. We are pleased to
9 have the support of the Office of Planning, DDOT and the ANC,
10 and we are happy to rest on the record and take any questions
11 that you may have.

12 VICE CHAIR HART: Yes, I actually did have a
13 question on this and it was really around -- given the
14 location of this and that you're proposing a roof top
15 element, could you just describe any conversations that
16 you've had with the Secret Service regarding -- and I know
17 that there is a -- an adjacent property that's to the north.
18 There was some discussion with the Secret Service about that.
19 I didn't know if there was a discussion that happened
20 simultaneously with this property, and I just wanted to
21 understand that a little further.

22 MR. GILLIAND: Sure. Yes, at the same time we were
23 discussing the property to the north we did talk about our
24 intent for a sixth floor addition as a walk off terrace at
25 that level, below the main roof level. So, you know, it's

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1 not a -- something that's associated with kind of habitable
2 space that would -- is in that kind of -- that area that's
3 defined as requiring Secret Service sign off and BZA relief
4 for that terrace. We did review it. They had -- they took
5 no exception to the proposed terrace off that upper floor.

6 VICE CHAIR HART: And so the conversation that you
7 had with them regarding the building that's to the north,
8 this was -- the images that we see now are the same images
9 that -- has the project changed, I guess, in that -- in that
10 time frame. That's what I was trying to ascertain how
11 they've --

12 MR. GILLIAND: No, it was a separate project on a
13 separate record lot.

14 VICE CHAIR HART: Yes.

15 MR. GILLIAND: Sorry to bring up record lots this
16 late in the day, but -- and, yes, we did get the zoning
17 relief for the habitable space up on top there, yes.

18 MR. GAON: One thing I'd just like to stress is
19 there's a prohibition in the area around the White House for
20 Penn DOT's habitable space. This is sixth floor. It's not
21 a penthouse so the prohibition doesn't --

22 VICE CHAIR HART: I understand that --

23 MR. GAON: Okay.

24 VICE CHAIR HART: My question was it sounds like a
25 penthouse, it looks like a penthouse, it is really not a

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1 penthouse only because it's not at the height level. And,
2 you know, the question really is whether or not -- how Secret
3 Service had had the opportunity to be able to kind of review
4 this. Mr. Gilliland said that they had reviewed this as part
5 of a -- the kind of larger develop -- I don't want to say
6 larger development, but as part of a -- another development
7 that's going on that's adjacent to this property.

8 MR. GILLIAND: Yes, sir, that's correct.

9 VICE CHAIR HART: In the -- and I know in that case
10 there was a kind of an approval -- well not approval. There
11 was a acknowledgment by the Secret Service that they had
12 actually, you know, reviewed it and they didn't have any
13 concerns about it. Were there any things that you added to
14 this property to -- that were in reference to the Secret
15 Service, like, did you have to add in some glass railings,
16 or, you know --

17 MR. GILLIAND: Actually we didn't. We know it's
18 pretty standard roof terrace area off of the habitable space,
19 and it's standard 42 inch glass railing. Trying to minimize
20 the impact of that glass railing. We did, you know, go
21 through a process where we got -- we have received our
22 contact approvals from HPRB and the U.S. Commission of Fine
23 Arts. So they were sensitive to what that railing looked
24 like. And Secret Service did not influence that design.

25 VICE CHAIR HART: But they reviewed it and they're

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1 okay with having people outside on the top of the existing
2 roof essentially.

3 MR. GILLIAND: That's correct.

4 VICE CHAIR HART: Okay. Any other questions for the
5 Applicant? Good evening.

6 MS. MEYERS: Good evening. Crystal Meyers with the
7 Office of Planning. The Office of Planning is recommending
8 approval of this case. And we'll stand on the record of the
9 staff report.

10 VICE CHAIR HART: Any questions for the -- for Ms.
11 Meyers? Mr. Gaon, any questions for --

12 MR. GAON: No questions.

13 VICE CHAIR HART: -- Office of Planning? Is the ANC
14 here?

15 (No audible response.)

16 VICE CHAIR HART: I'm waiting for the ANC to
17 respond. No responses. Anyone here and wishing to speak in
18 opposition?

19 (No audible response.)

20 VICE CHAIR HART: Anyone here wishing to speak in
21 support of the Application?

22 (No audible response.)

23 VICE CHAIR HART: Having heard no one and no one
24 else is here, Mr. Gaon, is -- you're free to give a closing
25 statement.

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1 MR. GAON: No closing.

2 VICE CHAIR HART: Okay. I will close the hearing.
3 Is the Board ready to deliberate?

4 (Chorus of yes.)

5 VICE CHAIR HART: And I can start. Yes, the -- as
6 you've heard by my questions, the concern that I had was
7 really on what the Secret Service -- any concerns or issues
8 that they would have raised. And, again, I understand that
9 there was a conversation that you, Mr. Gilliland, had or the
10 Applicant had, with this -- for this case, and which was
11 simultaneously with another case that was adjacent to this
12 property. And that the Secret Service didn't raise any
13 concerns. That's the testimony that you've provided today.

14 I didn't really have a concern about the relief
15 that was being sought, and would be able to be in support of
16 the -- of the Office of Planning report, which recommended
17 support and approval of this application. Do any of my Board
18 members have any other comments they'd like to make?

19 MEMBER JOHN: Mr. Vice Chairman, I agree with your
20 comments so far and the analysis of the Office of Planning
21 for the special exception relief from Subtitle I to 5.205
22 pursuant to I 205.4. And I believe the Applicant has
23 satisfied all of the criteria, and I would vote to support
24 the Application.

25 VICE CHAIR HART: Thank you. We're going to have

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1 you do a motion soon.

2 (Laughter.)

3 MEMBER JOHN: I'm the new girl.

4 VICE CHAIR HART: Oh, the new thing is going to wear
5 off really quickly. So I'll make a motion to approve
6 Application Number 19711 of Granite LLC pursuant to 11 DCMR
7 Subtitle X, Chapter 9 for special exception under Subtitle
8 I, 205.5 from a rear yard requirement of Subtitle I, 205.1
9 to construct an addition to an existing building to an
10 established -- to establish a museum and conference center
11 with associated office use in the D-6 Zone at premises 1501-
12 1505, Pennsylvania Avenue, N.W., Square 221, Lots 29, 810 and
13 a portion of a public alley to be closed. Interesting. Do
14 I have a second?

15 CHAIR HILL: Second.

16 VICE CHAIR HART: All those in favor say aye.

17 (Chorus of aye.)

18 VICE CHAIR HART: Any opposed?

19 (No audible response.)

20 VICE CHAIR HART: Motion carries, Mr. Moy.

21 MR. MOY: Staff would record the vote as four to
22 zero to one. This is on the motion of Vice Chair Hart to
23 approve the application for the relief requested. Seconded
24 the motion Chairman Hill. Also in support Mr. Peter May, Ms.
25 Lorna John. No other Board members participating. The

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1 motion carriers.

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

3 MR. MOY: Thank you.

4 VICE CHAIR HART: Thank you all.

5 Mr. Moy, do we have any other business before the
6 Board?

7 MR. MOY: No, sir. I think that's -- nothing from
8 the staff.

9 VICE CHAIR HART: Thank you. And the hearing is
10 adjourned.

11 (Whereupon, the above-entitled matter went off the
12 record at 5:16 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 04-17-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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