

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 30, 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  
LESYLLEE M. WHITE, Board Member  
CARLTON HART, Board Member (NCPC)  
LORNA JOHN, Board Member

ZONING COMMISSION MEMBER[S] PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

TRACEY W. ROSE, Senior Zoning Specialist  
ALLISON MYERS, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
KAREN THOMAS  
ELISA VITALE

The transcript constitutes the minutes from the  
Public Hearing held on May 30, 2018.

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

(9:40 a.m.)

1  
2  
3 CHAIRPERSON HILL: Okay, good morning everybody.  
4 The hearing will please come to order. We're located in the  
5 Jerrily R. Kress Memorial Hearing Room at 441 4th Street  
6 Northwest. This is the May 30th, 2018, public hearing of the  
7 Board of Zoning Adjustment of the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me  
9 today is Carlton Hart, vice-chair, Lesyllee White and Lorna  
10 John, Board Members. And representing the Zoning Commission  
11 is Peter Shapiro. Copies of today's hearing agenda are  
12 available to you and are located on the wall bin near the  
13 door.

14 Please be advised that this proceeding is being  
15 recorded by a court reporter and is also webcast live.  
16 Accordingly, we must ask you to refrain from any disruptive  
17 noises or actions in the hearing room.

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

23 All persons planning to testify either in favor  
24 or opposition must have raised their hand and been sworn in  
25 by the Secretary.

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

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

13           The order of procedures for special exceptions,  
14 variances, and appeals is also listed as you come into the  
15 room. The record shall be closed at the conclusion of each  
16 case except for any materials specifically requested by the  
17 Board.

18           The Board and the staff will specify at the end  
19 of the hearing exactly what is expected and the date when the  
20 persons must submit the evidence to the Office of Zoning.  
21 After the record is closed, no other information shall be  
22 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 405(b) and

1 406 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 2-575(b)(4), and/or deliberating  
6 on a case, pursuant to D.C. Official Code Section 2-  
7 575(b)(13), but only after providing the necessary public  
8 notice and in the case of an emergency closed meeting after  
9 taking a roll call vote.

10           The decision of the Board in cases must be based  
11 exclusively on the public record to avoid any appearance of  
12 the contrary. The Board requests that persons present not  
13 engage in the members of the Board in conversation.

14           Please turn off all beepers and cell phones at  
15 this time so as not to disrupt the proceedings. Preliminary  
16 matters of those which relate to whether a case will or  
17 should be heard today, such as request for a postponement,  
18 continuance, or withdrawal, or whether proper and adequate  
19 notice of the hearing has been given.

20           If you're 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. Ms. Secretary, do  
23 we have any preliminary matters?

24           MS. ROSE: Yes, good morning. We have two  
25 preliminary matters initially. Application number 19696 of

1 1001 through 1003 Rhode Island Avenue, Northeast, LLC has  
2 been postponed until July 25th, 2018, at 9:30 a.m. And  
3 application number 19758 of 1505 Mill Street, LLC was  
4 postponed from May 30th, today, to June 27th, 2018, at 9:30  
5 a.m. Other preliminary matters we can address as we call the  
6 cases.

7 CHAIRPERSON HILL: Okay, great. Thank you, Ms.  
8 Rose. If anyone is here wishing to speak in -- like to speak  
9 before the Board, if you would please stand and take the oath  
10 administered by the Secretary to my left, if you plan on  
11 testifying before the Board in any fashion.

12 MS. ROSE: Do you swear or affirm that the  
13 testimony you will be presenting today will be the truth, the  
14 whole truth, and nothing but the truth? Please say "I do."

15 INDIVIDUALS TESTIFYING: I do.

16 MS. ROSE: You may be seated.

17 CHAIRPERSON HILL: All right, great. So thank  
18 you, Ms. Rose. Just so everyone knows, we are going to  
19 follow the order as it is listed in the agenda as you come  
20 into the room, so there's nothing to change there. And that  
21 being the case then, Ms. Rose, you can call our first meeting  
22 case.

23 MS. ROSE: The first case on the expedited review  
24 calendar is application number 19742 of Anthony Balestrieri,  
25 pursuant to 11DCMR Subtitle X, Chapter 9 for a special

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1 exception under Subtitle E, Section 5201 from the lot  
2 occupancy requirements of Subtitle E, Subsection 304.1 to  
3 construct a three-story rear addition to an existing  
4 principal dwelling unit in the RF1 Zone at premises 732 4th  
5 Street Northeast, Square 777, Lot 34.

6 CHAIRPERSON HILL: Great. Thank you, Ms. Rose.  
7 Is the Board ready to deliberate? Okay.

8 So originally I was kind of confused as to what  
9 I thought in terms of whether this would or would not be an  
10 expedited review case. I wasn't clear as to whether there  
11 was public notice, but the affidavit of notice did come in.

12 And then also there was a lot of revisions that  
13 had happened with the application, but I believe now that  
14 they are requesting the correct relief under 5201. So I  
15 wasn't -- I had some questions that I wanted to ask the  
16 applicant, but those were two of them that seems to have  
17 resolved themselves in terms of kind of working through the  
18 record.

19 And then also, there hadn't been something from  
20 the ANC, so I was kind of looking for something from them.

21 However, after taking a look at which ANC it was, it's a  
22 very active ANC, and they have been notified in terms of the  
23 30-day notification. So I think that that particular ANC if  
24 they had any kind of issues, I think we would have heard from  
25 them.

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1           In addition to that, in terms of the actual relief  
2 being requested, I thought it was relatively straightforward  
3 and that the analysis that the Office of Planning had  
4 provided was pretty clear in terms of their thought process  
5 as to why the applicant should be granted the relief. So I  
6 can actually move forward now with it, and I would be in  
7 support of the application. Does the Board have any other  
8 thoughts?

9           MEMBER WHITE: I would concur with you, Mr. Chair.  
10 You know, again, you mentioned that this was a very active  
11 ANC so I -- my thought is that if they had some issues or  
12 concerns, they would have responded. But I think the  
13 criteria was laid out very succinctly with the OP report, and  
14 they met the criteria for a special exception for lot  
15 occupancy.

16           So there don't appear to be any negative impacts  
17 that would be caused from granting this relief. And the  
18 community doesn't seem to have any objection to what they're  
19 asking for. So I would be in support.

20           VICE CHAIRPERSONPERSON HART: Mr. Chair, I have  
21 nothing else to add. I would concur with your analysis and  
22 assessment of this case, and I would be in support of it as  
23 well.

24           CHAIRPERSON HILL: Okay. All right.

25           COMMISSIONER SHAPIRO: I concur as well, Mr.

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1 Chair.

2 CHAIRPERSON HILL: Anyone else? No? All right.  
3 Okay, all right. Then I'll go ahead and make a motion to  
4 approve application number 19742 as captioned and read by the  
5 secretary and ask for a second?

6 MEMBER WHITE: Second.

7 CHAIRPERSON HILL: Motion made and seconded. All  
8 those in favor, aye.

9 BOARD MEMBERS: Aye.

10 CHAIRPERSON HILL: All those opposed. The motion  
11 passes, Ms. Rose.

12 MS. ROSE: Staff will record the vote as five to  
13 zero to zero with a motion by Mr. Hill, second by Ms. White,  
14 with Mr. Hart, Ms. John, and Mr. Shapiro in support of the  
15 motion.

16 CHAIRPERSON HILL: Summary order?

17 MS. ROSE: Thank you. Are we ready for the next  
18 one?

19 CHAIRPERSON HILL: Yes, please.

20 MS. ROSE: Next case on the expedited review  
21 calendar is 19750, application of Adam Chamy and Bradley  
22 Gallagher pursuant to 11DCMR Subtitle X, Chapter 9 for a  
23 special exception under Subtitle E, Section 5201 from the  
24 rear yard requirements of Subtitle E, Subsection 306.1 to  
25 construct a one-story rear addition to an existing flat in

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1 the RF1 zone at premises 3658 Water Street, Northwest, Square  
2 3031, Lot 148.

3 CHAIRPERSON HILL: Okay, thank you, Ms. Rose. Is  
4 the Board ready to deliberate? Okay, I can start.

5 I thought it was a really interesting project  
6 after kind of having an opportunity to look through the  
7 record again. This is under expedited review. I would be  
8 in agreement with the analysis that was provided by the  
9 Office of Planning in terms of the criteria that was  
10 necessary to grant the special exception.

11 I'm also as glad to see that the ANC was in  
12 support and they didn't have any issues or concerns. I  
13 didn't really have anything in terms of any comments, other  
14 than I thought that they met the criteria. Does anyone have  
15 anything else they'd like to say?

16 VICE CHAIRPERSONPERSON HART: Mr. Chairman, I  
17 would concur with your analysis and your comments that you've  
18 made. I think that they've, you know, provided the  
19 sufficient information for us to be able to approve of the  
20 application. And that's it.

21 CHAIRPERSON HILL: Okay. I'll go ahead and make  
22 a motion to approve application number 19750, as captioned  
23 and read by the Secretary, and ask for a second.

24 VICE CHAIRPERSONPERSON HART: Second.

25 CHAIRPERSON HILL: Motion made and seconded. All

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1 those in favor, aye.

2 BOARD MEMBERS: Aye.

3 CHAIRPERSON HILL: All those opposed? The motion  
4 passes, Ms. Rose.

5 MS. ROSE: Staff will record the vote as five to  
6 zero to zero to approve the application with a motion by the  
7 Chairman, seconded by Mr. Hart, with Ms. White, Ms. John, and  
8 Mr. Shapiro in support of the motion.

9 CHAIRPERSON HILL: Thank you. Summary order, Ms.  
10 Rose?

11 MS. ROSE: Thank you. The last case on the  
12 meeting agenda is application of Amaro, LLC, number 19726 as  
13 amended, pursuant to 11DCMR Subtitle X, Chapter 9 for special  
14 exceptions under the use permissions of Subtitle U,  
15 Subsection 802.1(c) and under Subtitle C, Section 1504 from  
16 the penthouse set-back requirements of Subtitle C, Subsection  
17 1502.1(b) and (d).

18 And pursuant to 11DCMR Subtitle X, Chapter 10 for  
19 a variance from the driveway width requirements of Subtitle  
20 C, Subsection 711.6 and from the loading berth requirements  
21 of Subtitle C, Subsection 902.3 to construct an emergency  
22 shelter in the PDR2 zone at premises 101 Q Street Northeast,  
23 Square 53 -- 35, I'm sorry, 3518, Lot 25.

24 Did I miss something? I have a correction. What  
25 is it? Okay, so the variance is just for the loading berth

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1 requirements, and that's from Subtitle C, Subsection 902.3.  
2 Thank you.

3 CHAIRPERSON HILL: Thank you. Okay, is the Board  
4 ready to deliberate? All right. I know Commissioner Shapiro  
5 is not on this, but I think we have an absentee ballot from  
6 Commissioner Turnbull.

7 So we had a limited scope hearing on this back on  
8 May 9th, and there was some clarifications that we requested  
9 from the applicant. We did get those, and there was then  
10 some continued discussion about the penthouse setback and  
11 some information that we wanted to get from the Zoning  
12 Administrator.

13 I think that you know, in terms of -- after going  
14 through the record and the applicant -- I'm sorry, and the  
15 application in the case that went forward -- I would agree  
16 with the criteria has been met in terms of granting the  
17 applicant's request for the relief.

18 In the case of the Office of Planning, I thought  
19 in their original report as well in their supplemental  
20 report; they did provide continued analysis or a good  
21 analysis as to how they're meeting the criteria for relief.  
22 So I would kind of, you know, cite that in terms of some of  
23 my thought process.

24 But and then also the ANC, you know, it's always  
25 nice when the ANC is in favor, even though it's just, again,

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1 us giving them great weight, but they were in favor eight to  
2 one to zero.

3 So even though we did go through quite a bit with  
4 the hearing and also the discussion, I think that the  
5 application has met the burden to approve the relief  
6 requested. And so I would be in support. Does anyone on the  
7 Board have any other thing they'd like to add?

8 MEMBER WHITE: Yes, I would be in support as well,  
9 Mr. Chair. This is a request to -- for an emergency shelter  
10 in the city. And obviously, you know, this is a very  
11 critical issue in the city, but as a Board, we have to look  
12 at the specific criteria, and it was good to see that the  
13 ANC, as well as the Eckington Civic Association, was in full  
14 support of this.

15 So that tells me that they not only met the  
16 criteria but they also -- which also includes the fact that  
17 they also got very strong community support with respect to  
18 the relief that was being sought. So I would be in support  
19 of it as well, given that they met the specific criteria  
20 under the regulations.

21 VICE CHAIRPERSONPERSON HART: Mr. Chair, I would  
22 also be in support of the application. After looking through  
23 the information that we've kind of requested for the case,  
24 and receiving the information in Exhibit 84 from the Zoning  
25 Administrator, saying that the site setback for the penthouse

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1 relief was supposed to be six feet, and the applicant is  
2 recommending a six-foot setback, I would be in support of  
3 this application as well.

4 I mean, I think that they've met the criteria for  
5 relief for the other relief that they had requested. That  
6 particular one was one that we had some -- quite a bit of  
7 discussion on and it was just quite a bit of discussion on  
8 the location of the stairwells, and if those could be moved  
9 to be away from the edges of the roof.

10 They've given us information as to why that was  
11 not a possible or feasible thing to do. They cited that  
12 there would be some problems with having to reorient and  
13 reorganize the rooms, and how the rooms are supposed to work,  
14 and that I can understand.

15 And then the information regarding the setback on  
16 the, I guess it was on the west side of the building, that  
17 was for a kind of an enclosed -- a fence-enclosed area,  
18 patio, play space that they needed to have to allow for the  
19 children, as well as the adults, to be able to have some  
20 outdoor space.

21 And it seems as though -- the question that we had  
22 was whether or not that was actually within the regulations,  
23 and we received the information from the Zoning Administrator  
24 stating that that was acceptable within the regulations.

25 So I don't think that there were any other

1 concerns that I had regarding the project and the relief that  
2 they were requesting. So I would also be in support of the  
3 application as well.

4 MEMBER JOHN: Mr. Chairman, I also support the  
5 application, based on a very thorough analysis of the Office  
6 of Planning, the additional information -- excuse me -- the  
7 additional information we received concerning the setback and  
8 the clarification from the Zoning Administrator. And I  
9 concur with everything everybody else has said.

10 CHAIRPERSON HILL: Okay, great. Thank you. Thank  
11 you to my colleagues. Thank you all very much for your  
12 helpful analysis. So I'll go ahead and make a motion then  
13 to approve application number 19726, as read by -- as  
14 captioned and read by the Secretary and ask for a second.

15 MEMBER WHITE: Second.

16 CHAIRPERSON HILL: Motion made and seconded. All  
17 those in favor, aye.

18 BOARD MEMBERS: Aye.

19 CHAIRPERSON HILL: All those opposed. Motion  
20 passed, Ms. Rose.

21 MS. ROSE: Thank you. And we have an absentee  
22 ballot from Mr. Turnbull in support of the motion. So staff  
23 will record the vote as five to zero to zero, with a motion  
24 by Mr. Hill, I think a second by Ms. John, with Mr. Hart and  
25 Ms. White in support of the motion. And Mr. Turnbull in

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1 support by absentee ballot. Ms. White? A couple of people  
2 seconded.

3 CHAIRPERSON HILL: Okay, a summary order, please.

4 MS. ROSE: Thank you.

5 CHAIRPERSON HILL: Thank you. All right, Ms.  
6 Rose, you can go ahead and call our next one.

7 MS. ROSE: The first case --

8 CHAIRPERSON HILL: Our first hearing case, I  
9 should say, sorry.

10 MS. ROSE: Hearing, yes, sir. Application 19728  
11 of Patrick and Becky McGeehan, pursuant to 11DCMR Subtitle  
12 X, Chapter 9 for special exceptions under Subtitle E, Section  
13 5201 from the nonconforming structure requirements of  
14 Subtitle C, Subsection 202.2, from the rear yard requirements  
15 of Subtitle E, Subsection 306.1, from the lot occupancy  
16 requirements of Subtitle E, Subsection 304.1, to construct  
17 a two-story addition to an existing one-story rear addition  
18 to an attached principal dwelling unit in the RF1 zone at  
19 premises 121 Tennessee Avenue Northeast, Square 1012, Lot 20.

20 CHAIRPERSON HILL: Okay, great. Thank you, Ms.  
21 Rose. Good morning. If you could please introduce  
22 yourselves from my right to left.

23 MR. BOYETTE: Joseph Boyette.

24 MS. BOYETTE: Melissa Boyette.

25 MR. MCGEEHAN: Patrick McGeehan.

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1 MS. MCGEEHAN: Becky McGeehan.

2 CHAIRPERSON HILL: I'm sorry, the first McGeehan  
3 was --

4 MR. MCGEEHAN: Patrick.

5 CHAIRPERSON HILL: Patrick.

6 MR. MCGEEHAN: Patrick, yes.

7 CHAIRPERSON HILL: And the second was?

8 MS. MCGEEHAN: Becky.

9 CHAIRPERSON HILL: Okay, thank you. Okay, so  
10 right. So is it Mr. and Mrs. Boyette? I'm just -- okay.  
11 So you are here in opposition.

12 MS. BOYETTE: No, we're the architects.

13 MR. HILL: Oh. Okay, is the -- are the people  
14 that are here requesting party status and opposition here?  
15 Okay, could you four please come and sit here next to the  
16 table if you wouldn't mind? Good morning. If you could  
17 please introduce yourselves from right to left.

18 MR. DALEY: Michael Daley. I live at 119  
19 Tennessee Avenue.

20 MS. BOYER: Allison Boyer at 123 Tennessee Avenue.

21 MR. COHEN: Sig Cohen --

22 CHAIRPERSON HILL: You need to push the button,  
23 sir.

24 MR. COHEN: Sig Cohen, 125 Tennessee Avenue  
25 Northeast.

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1 MR. HUDSON: My name is Ronald Hudson. I'm at 137  
2 Tennessee Avenue Northeast.

3 CHAIRPERSON HILL: Okay, so all of you have  
4 requested party status. Ms. Boyer, you're the one that  
5 confused me. I thought you were one of the -- there was  
6 Boyette over here and so.

7 Okay, there are two people that are next door  
8 neighbors to the immediate property. Which ones are -- okay,  
9 so that's Mr. Daley and Ms. Boyer. Okay, so you possibly  
10 looked at the criteria for party status or not, I'm not  
11 really sure, but if you could I'm going to leave the next  
12 door neighbors, I guess, for a minute.

13 If I could just start with you, sir, Mr. Hudson.  
14 If you could tell us why -- like, where are you located to  
15 the property, and why you think that you deserve party  
16 status?

17 MR. HUDSON: Well --

18 CHAIRPERSON HILL: You need to push the button on  
19 the microphone, sir.

20 MR. HUDSON: I'm located approximately about seven  
21 or eight houses north on the same block. And the reason why  
22 I oppose is primarily because of the fact that this property  
23 had received a variance exception some years ago when they  
24 dug out the basement. And it allowed an increased square  
25 footage at that time. And from my standpoint, this would

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1 exacerbate the --

2 CHAIRPERSON HILL: Oh, Mr. Hudson, I'm sorry. I  
3 didn't mean -- we're just -- at this point this is a  
4 preliminary matter. We're just trying to decide, determine  
5 whether or not everyone should be granted or not granted  
6 party status, and there's a lot of things that go into being  
7 granted party status or not.

8 So really I was trying to understand what makes  
9 your perspective any different from, you know, the public or  
10 the ANC or other members of the community. And your argument  
11 is that --

12 MR. HUDSON: Primarily my argument is that it  
13 would further exacerbate the FAR that has already been  
14 granted. It would take the over-improvement of the property  
15 -- by the property being over-improved, it would affect my  
16 value in some way. To determine the appreciation or  
17 depreciation would be difficult to do so.

18 CHAIRPERSON HILL: Okay, and you were how many --  
19 you were three houses over?

20 MR. HUDSON: I'm about --

21 CHAIRPERSON HILL: Four houses over?

22 MR. HUDSON: -- five or six houses over.

23 CHAIRPERSON HILL: Five, six houses over, okay.

24 All right. Ms. Cohen -- I'm sorry, Mr. Cohen.

25 MR. COHEN: Yes.

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1 CHAIRPERSON HILL: Same question to you. We're  
2 just talking about party status -- not getting into the  
3 merits of the case. So, you know, why is it that you think  
4 that you've determined that our -- should be granted party  
5 status?

6 MR. COHEN: I live two homes to the north of the  
7 McGeehans. And the structure, the proposed --

8 CHAIRPERSON HILL: We're listening.

9 MR. COHEN: Oh. And the proposed structure would  
10 have an adverse effect on my line of sight as well as the  
11 valuation of my home.

12 CHAIRPERSON HILL: Okay, your line of sight?  
13 Where --

14 MR. COHEN: In other words --

15 CHAIRPERSON HILL: You're two houses next door?

16 MR. COHEN: Yes.

17 CHAIRPERSON HILL: Okay.

18 MR. COHEN: The house to the north.

19 CHAIRPERSON HILL: Okay.

20 MR. COHEN: It's going to adversely affect the  
21 light coming through, the air coming through --

22 CHAIRPERSON HILL: Okay.

23 MR. COHEN: -- and potentially the valuation of  
24 the home, as well as the scope of sight from the rear windows  
25 of my home.

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1 CHAIRPERSON HILL: Okay. All right, Mr. Cohen.  
2 Okay. Ms. Boyer -- Boyer?

3 MS. BOYER: Boyer.

4 CHAIRPERSON HILL: Boyer?

5 MS. BOYER: Boyer.

6 CHAIRPERSON HILL: Boyer. Actually, by the way,  
7 gentlemen, if you could turn off your microphones there just  
8 so afterwards -- and actually if you could turn off yours,  
9 sir, as well. It creates a feedback.

10 If you could again, same question. How are you  
11 meeting the criteria for us to grant party status to you?

12 MS. BOYER: I'm the immediate neighbor adjacent,  
13 and a three-story structure alongside my house is definitely  
14 going to impact my light and air, and the enjoyment of my  
15 property. I have a deck at the same level as well, as their  
16 -- it juts out as far as their structure.

17 CHAIRPERSON HILL: Okay.

18 MS. BOYER: So it sort of renders my home in  
19 darkness.

20 CHAIRPERSON HILL: Okay. So again, I'm kind of  
21 looking at again, Subtitle Y, Section 404.1(i) in terms of  
22 those criteria as to granting party status. But, I mean, the  
23 immediate next door neighbor, I mean that would be something  
24 that I think, you know, obviously has a different perspective  
25 than the general public.

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1           Mr. Daley -- you can turn off your microphone if  
2 you don't mind. Mr. Daley, same question to you.

3           MR. DALEY: Yes, I have somewhat of a similar  
4 issues as my neighbors. One would be line of sight. My  
5 sight would be, in the rear alley, would be severely  
6 diminished.

7           In addition to that, we're probably looking at  
8 construction of over six months or more. I'll have -- we'll  
9 have construction debris, construction dust to deal with,  
10 construction noise to deal with. That alley is somewhat  
11 claustrophobic as it is.

12           In other words, a lot of these additions are in  
13 areas that have, you know, backyards that maybe are 30 feet  
14 in length or more. This is not the case. This will pretty  
15 much take up --

16           CHAIRPERSON HILL: Okay. That's okay, Mr. -- I'm  
17 just -- I mean, I understand, just trying to get through the  
18 party status aspect. I do appreciate the comments that  
19 you're starting to give.

20           Does the Board have any questions for -- well,  
21 before we even get to the questions the Board, which I want  
22 to ask them in terms of the party status thing. So whether  
23 or not you guys are aware of it, your requests are untimely.  
24 Were you aware of this at all?

25           So what's been brought to our attention from the

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1 Office of the Attorney General, again, is that your requests  
2 are untimely because they needed to come in 14 days before  
3 the hearing. And so the original hearing date was, and I can  
4 have OAG kind of -- not right now, but it's okay. I could  
5 have OAG kind of read through what the original dates were.

6 And so what that does, it kind of puts me in kind  
7 of a technicality in terms of that you're already -- you're  
8 late in your filings, you know, whether you knew it or not.

9 And so we technically -- the way that one would  
10 have gotten around that, I suppose, also, is like, or I don't  
11 know if "around" is the right word, but, you know, requesting  
12 for a waiver from that time limit, right? So that's what I'm  
13 just kind of processing a little bit here in terms of my  
14 brain.

15 And then -- or I should say my thought process.  
16 And that that doesn't preclude you from being in opposition  
17 or testifying in opposition. We're just trying to figure out  
18 party status, because what party status does is it allows you  
19 to cross-examine, it allows you to ask questions of the --  
20 it's a different system.

21 And then there's a standard, which I'm reading  
22 from -- as I was talking about Section Y here, as to how you  
23 are or are not meeting that standard. So that's something  
24 that we're just going to have, as a Board, kind of going to  
25 have to process through right now.

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1           But I just wanted to kind of throw that out before  
2 I ask anyone here if they have any questions of the people  
3 requesting party status. All right.

4           Then I'm back to the Board here, I suppose, which  
5 is that -- so they are late, and I guess I'm kind of torn in  
6 either denying the party status based upon the untimeliness.  
7 Or as I understand we do have the ability to waive the -- we  
8 do have the ability to waive the time limit -- I'm sorry, the  
9 -- yes, the time limit --

10           VICE CHAIRPERSONPERSON HART: Mr. Chairman, I do  
11 actually have a question. For actually all four of you, if  
12 you could answer. Why is it that you submitted your request  
13 for party status when you did? Because the original hearing  
14 for this public hearing was actually in April, if I'm not  
15 mistaken, and so it was earlier than when you submitted your  
16 request.

17           So if you could just give us some information as  
18 to when -- why you submitted when you did, that would be  
19 helpful. And Mr. Daley, you could start and then just kind  
20 of go through each one.

21           MR. DALEY: I was really unaware of the time  
22 limit, that's all. And initially, I supported the proposal.  
23 After review, I rescinded my support, which I'll be happy to  
24 explain in more detail.

25           VICE CHAIRPERSONPERSON HART: That's fine.

1 Because I think Ms. Boyer, you also did the same thing? You  
2 had kind of like yes and then a change of mind during the  
3 process, and you wanted to say no, so if you could.

4 MS. BOYER: Yes, I had thought that we had gotten  
5 it in within the 14 or 15 days, at least I have the forms  
6 there to this postponed date.

7 VICE CHAIRPERSONPERSON HART: It's to the  
8 original.

9 MS. BOYER: That I didn't -- I didn't know that.

10 VICE CHAIRPERSONPERSON HART: And I understand.  
11 I'm just -- for your future knowledge it is -- they are --  
12 when we post -- when the Office of Zoning posts or there is  
13 a posting for these projects, they always start from the date  
14 that that begins.

15 So they may be postponed, whatever, but they're  
16 intended to --

17 MS. BOYER: Okay.

18 VICE CHAIRPERSONPERSON HART: -- start from that  
19 date, and then you're supposed to be submitting documents  
20 prior to that. But I --

21 MS. BOYER: I spoke with Clifford Moy, and I  
22 thought we had gotten at least that blue form filled out and  
23 all sent in. As I say, I have the originals here, and it was  
24 just under the wire for this 14 day -- for this hearing. But  
25 it really was a case of not really understanding how the

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1 process went. It's taken a long -- been a steep learning  
2 curve.

3 VICE CHAIRPERSONPERSON HART: I understand. Thank  
4 you.

5 MR. COHEN: Ditto for me. I mean, I thought it  
6 was 14 days from the new date. And when Ms. Boyer relayed  
7 to me what Mr. Moy said, I thought we got it in under the  
8 line. I did not know it was the original date.

9 MR. HUDSON: I think it's primarily the same thing  
10 with me. I was under the idea or the thought that the  
11 process was going along based on when I attended the ANC  
12 meeting. And from that point on, I got more so involved, and  
13 I responded based on that time period.

14 VICE CHAIRPERSONPERSON HART: Thank you.

15 MEMBER WHITE: No, I was just going to comment.  
16 You know, so the specific provision is Subtitle Y, 404.3.  
17 And it does say the original hearing date.

18 So I guess the issue here at this point is because  
19 you did not seek a waiver is whether or not there's  
20 sufficient evidence that we can consider to grant party  
21 status. But the technical reading of the regulation would  
22 suggest that the party status request on its face are  
23 untimely. So that's kind of what we have to kind of talk  
24 through.

25 CHAIRPERSON HILL: Okay, so I'm kind of -- well,

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1 now I just want to ask my fellow Board Members, I suppose.  
2 I'm a little torn, right? Like, I think that you know, even  
3 if we had the -- even if everyone had been timely, I don't  
4 necessarily know whether I would be in agreement that Mr.  
5 Hudson and Mr. Cohen were necessarily unique enough to be  
6 given party status.

7           However, I would say that you know, the immediate  
8 next door neighbors are the ones that would have -- you know,  
9 I would have been in favor of party status. And the fact  
10 that they aren't of legal counsel and kind of know how the  
11 regulations are in terms of, you know, when requesting a  
12 waiver to -- for the time constraints, you know, I mean, that  
13 would have been the filing. And so we would be having that  
14 discussion first.

15           So I would be inclined, and also then -- and I'd  
16 like to hear what my other Board Members have to say -- but  
17 I would be inclined to, first seeing if we can somehow -- if  
18 Mr. Boyer and Ms. Daley have, you know, similar aspects or  
19 concerns about the project, to get them to combine into one  
20 party status so that we could hear them in that fashion.

21           So that's one thought, again, that I'm having here  
22 with the Board. And then also granting them party status and  
23 a waiver from the time constraints to allow them to testify  
24 as a party status member.

25           Now that's not to say, again, that Mr. Cohen and

1 Mr. Hudson will not be able to testify in opposition during  
2 that portion of the hearing -- which they will be -- they  
3 just will not have party status, status. So, yes, Mr.  
4 Shapiro?

5 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.  
6 That's exactly where I would land on this as well. I could  
7 see myself -- I could see us waiving the rules for the two  
8 neighbors and having them join as one party.

9 CHAIRPERSON HILL: Okay, so does anyone else have  
10 any thoughts on that?

11 MEMBER JOHN: I concur.

12 CHAIRPERSON HILL: Okay. So I guess what we're  
13 now proposing here, Ms. Daley and Mr. Boyer, is so -- yes?  
14 Oh, sorry, sorry, Ms. Boyer and Mr. Daley, is that you all  
15 would be granted party status together and that one of you  
16 would be the spokesperson for your party status presentation.

17 And you can determine who would be that. And  
18 then, you know, you can ask questions to each other, it's  
19 just that one person would be asking the questions of the  
20 neighbors and that type of thing, or you could write notes  
21 and such in terms of that.

22 And I'm just wondering whether we should -- well,  
23 this is -- I love how you do everything in the public here.  
24 So whether we should like, you know, let them have an  
25 opportunity to kind of like go sit back -- we'll maybe call

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1 a couple cases and then they can come back and have a little  
2 bit more of a unified, you know, discussion and then everyone  
3 knows what's going to happen here before we now start moving  
4 forward.

5 VICE CHAIRPERSONPERSON HART: I would just ask Ms.  
6 Boyer and Mr. Daley if they were ready to go now. I mean,  
7 the applicant is here, and the applicant is the one that's  
8 before us. They requested this party status, knowing full  
9 well that if they get it, they would have to then go through  
10 a process.

11 So while I understand the need to do that, I would  
12 also argue that the -- if we do grant this, and we haven't  
13 decided that fully, but if we do grant it, they were going  
14 to move forward with this anyway. You know, they should have  
15 been ready to make --

16 CHAIRPERSON HILL: I understand. So --

17 VICE CHAIRPERSONPERSON HART: That's my viewpoint.

18 CHAIRPERSON HILL: I was only going to say a  
19 couple of cases, which is just like, you know, now, but  
20 that's okay. So the question from Vice Chair Hart is, are  
21 you prepared to go, ready now?

22 MS. BOYER: Yes.

23 CHAIRPERSON HILL: Okay, all right. Okay, because  
24 you might as well then. You're also then going to be here  
25 later as well.

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1           So, and I guess one of you can decide who's going  
2 to speak on behalf of the group. So what I would go ahead  
3 then is, and I don't know if I have to make a motion, and I  
4 guess I do, is -- well, right.

5           So make a motion to deny party status for Mr.  
6 Cohen and Mr. Hudson. And I would be denying party status  
7 based upon their untimeliness in terms of their application  
8 for party status. And I guess I would ask for a second.

9           VICE CHAIRPERSONPERSON HART: While I would also  
10 deny for untimeliness, I think it's untimeliness and  
11 insufficient information to state how they are uniquely  
12 affected, you know, that we should be granting it. I don't  
13 think it should be just on time.

14           CHAIRPERSON HILL: Okay.

15           VICE CHAIRPERSONPERSON HART: Just about the time  
16 issue.

17           MEMBER JOHN: Mr. Chairman, I concur with the Vice  
18 Chair. I believe that I would be -- not I believe. I would  
19 be inclined to deny party status based on the fact that the  
20 record does not show sufficient -- an interest that's so  
21 different from the public that they should be granted party  
22 status.

23           Because we are -- the rationale to me for waiving  
24 party status for the other two requesters would be the same  
25 for everyone. So if we say that because they did not have

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1 counsel and were not aware of the regulations, that that  
2 could, you know, grant us the discretion to waive the  
3 lateness, then we should do that for everybody. I know this  
4 is a roundabout way of saying it.

5 CHAIRPERSON HILL: No, it's okay. Well, because  
6 now --

7 MEMBER JOHN: But I think it applies to everybody.

8 CHAIRPERSON HILL: I guess we're going to have a  
9 discussion on this point as well. I don't -- I am  
10 uncomfortable with waiving the time limit. Like I think --  
11 and just for like future things that might come down the  
12 line, like I think, you know, that the time limit is a very  
13 hard thing, and if you miss the time limit, you miss the time  
14 limit.

15 Like it's actually an exceptional case to not only  
16 grant the time limit, but also to now go ahead and even  
17 though they haven't applied for a waiver from the time limit  
18 to go ahead and be granting it. So I mean, that's -- we're  
19 getting to the same place, but it's just kind of, I feel  
20 uncomfortable with that aspect.

21 You know, but so we would still be denying, and  
22 I would still be denying -- I would agree with my colleagues,  
23 which is that it would be denial on the -- it would be denial  
24 on the party status in addition to the -- or I don't know,  
25 now I'm going to have to go to the OAG as to whether these

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1 steps are right or not.

2 But if like in addition to -- it's an addition to  
3 the fact that they're not meeting the criteria? Now I'm  
4 looking at OAG.

5 MS. LOVICK: Well, you could deny the request just  
6 based on them being untimely. But since you have considered  
7 the merits, you're now -- you're saying that you want to deny  
8 the request because they're untimely and also because they  
9 don't meet the requirements of Y 404.2 -- or no, I'm sorry,  
10 Y 404.13, which is that the person requesting party status  
11 has clearly demonstrated that the person's interest would  
12 likely be more significantly, distinctively, or uniquely  
13 affected in character or kind by the proposed zoning action  
14 than those other persons in the general public.

15 So I think what you're saying is that you'd like  
16 to deny the request because it's both untimely and also  
17 because you've considered it on the merits, and it doesn't  
18 meet the criteria of Y 404.13.

19 CHAIRPERSON HILL: Okay, so that's where I would  
20 be, okay? Okay. So, Mr. Cohen, you had something you wanted  
21 to say?

22 MR. COHEN: We were never told about the need to  
23 submit a waiver. So believe me, we would have.

24 CHAIRPERSON HILL: No, I understand. And Mr.  
25 Cohen, what we're saying is even if you had submitted the

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1 waiver, we wouldn't be in agreement that you or Mr. Hudson  
2 had met the criteria for us to grant party status.

3 MR. COHEN: Are you saying that because of our  
4 submissions to the Board?

5 CHAIRPERSON HILL: Well, the submissions -- yes,  
6 the submissions to the Board. What you have and your  
7 testimony here today as to why you're meeting the criteria.  
8 You can disagree, I'm just letting you know that that's --  
9 so you're still going to have an opportunity to testify in  
10 opposition, you're just not going to get party status. So  
11 okay. So I'm back to where -- I'm sorry?

12 MR. COHEN: No, I'm just trying to --

13 CHAIRPERSON HILL: Process.

14 MR. COHEN: -- suss out what you're saying.

15 CHAIRPERSON HILL: Sure. So --

16 MS. BOYER: Say the differences between party  
17 status and --

18 CHAIRPERSON HILL: So, okay. So all right. Can  
19 you turn off your microphone? I can only do one -- yes, yes,  
20 that's okay.

21 So party status has an opportunity to present.  
22 So what's going to happen is, eventually, is that the  
23 applicant will go ahead and present their application. It's  
24 their application. It's their application as to why they  
25 believe they should be granted this relief before the Board.

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1           Then you will have an opportunity with the same  
2 amount of time -- well, first you'll have an opportunity to  
3 ask questions of the applicant as to their testimony, based  
4 on just their testimony, like what they say and questioning  
5 what they have to say. That's what the party status is able  
6 to do.

7           Then you, as a party status individual, will have  
8 an opportunity to present again. You know, give your own  
9 presentation as to why you think they should be denied the  
10 relief that they're requesting. And then they will have an  
11 opportunity to ask questions of your testimony.

12           And then we're going to go to the Office of  
13 Planning, then we're going to see if there's anyone here from  
14 the ANC, then we're going to see if there's anyone here in  
15 support, then we're going to see if there's anybody here in  
16 opposition, which is when the opposition would have an  
17 opportunity to speak.

18           Then we're going to go back and hear a conclusion  
19 -- or rebuttal I should say -- from the applicant as well as  
20 a conclusion, and then we'll see wherever we are. So that's  
21 kind of the process if we get to that process, which we will  
22 get to.

23           So I'm back to the first thing which is, I guess  
24 what the Board seems to be saying is that we're going to go  
25 ahead and deny the party status application of Mr. Cohen and

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1 Mr. Hudson based on untimeliness, and that they're not  
2 meeting the criteria for party status.

3 And we're going to approve the untimely filing of  
4 Mr. Daley and Ms. Boyer as party status applicants, and grant  
5 their party status based on the fact that they are meeting  
6 the criteria for party status.

7 COMMISSIONER SHAPIRO: And combine them as one  
8 party.

9 CHAIRPERSON HILL: And combine them as one party.  
10 Thank you, Mr. Shapiro. And so that would be my motion. We  
11 don't -- just consensus, right? We don't have to make a  
12 motion. That's just on consensus. Okay, so everyone's in  
13 agreement?

14 VICE CHAIRPERSONPERSON HART: No objection.

15 MEMBER JOHN: No objection.

16 CHAIRPERSON HILL: Okay, all right. So then now  
17 Mr. Cohen and Mr. Hudson, you're excused for the moment,  
18 okay? You can go ahead and leave the table, but you'll come  
19 back during the opposition portion. And so -- all right.

20 So now we're back to the McGeehans and the Boyas  
21 and -- oh, Boyette? Boyette. Oh, all right, okay. So all  
22 right. Okay, so now I kind of have explained how the whole  
23 process is going to work, and I guess who's going to present  
24 from you guys? Who's going to begin the presentation? Okay,  
25 all right.

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1           So Ms. Boyette, if you -- do you have slides and  
2 stuff? Or is it just -- okay, all right. So you can go  
3 ahead. I'm going to go ahead and put 15 minutes on the clock  
4 just so I know where we are, and please go ahead.

5           And what we'd like to hear, the Board would like  
6 to hear again, is what it is you're trying to accomplish, and  
7 how you're meeting the criteria for us to grant the relief  
8 that you're requesting. And you can begin whenever you like.

9           MS. BOYETTE: Thank you. This project proposes  
10 a two-story, approximately 12 foot by 11 foot addition on an  
11 existing one-story dogleg portion of the home at 121  
12 Tennessee Avenue Northeast.

13           We're here today because the existing condition  
14 is nonconforming and because the additional volume will  
15 extend this nonconformity as it relates to lot occupancy and  
16 rear yard setback.

17           The existing home is a three story, three bedroom  
18 home with only one bathroom on the upper floors. Patrick and  
19 Becky have three young children, one who was born in 2016  
20 after their 2014 purchase of the home. All three children  
21 share a bedroom on the third floor. Additionally, the  
22 McGeehans regularly host their parents, whose health and  
23 safety needs have changed over the past few years.

24           The proposed plan adds a bathroom on the second  
25 floor to create a master suite with jack-and-jill access from

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1 the living room and adds a third bedroom on the upper floor,  
2 allowing for three bedrooms on one floor.

3 The upper level provides the family has a safe and  
4 flexible option for the children as they grow and as their  
5 needs change, as well as the ability for aging parents to  
6 remain safely and comfortably on the second floor when they  
7 need to. The cellar level is completely below grade and does  
8 not allow for light or air.

9 During the design process, we determined the best  
10 scenario is to extend the second and third floors beyond what  
11 is allowed by right and to do so in a manner where we do not  
12 tear off the back of the home, but rather maintain the home's  
13 historic fabric and character.

14 While the mass of the home will change, the  
15 footprint remains largely intact, and the final product would  
16 align in scope and style with several homes on the block and  
17 on the alley, both original and modified designs.

18 On the block, 35 percent of the homes are three  
19 stories. Generally, these three story homes have no windows  
20 on the lower level, and one enters the home at grade.  
21 Whereas the two-story homes typically have windows on the  
22 cellar level and stairs up to the first floor. As a result,  
23 the three-story homes only rise a few feet above the two-  
24 story homes.

25 On the block, 46 percent of the homes have

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1 doglegs. This existing home has one story plus cellar brick  
2 dogleg, which based on base maps dates before 1958. While  
3 adjacent neighbors to the north and south have similar one-  
4 story doglegs, most of the doglegs on the alley are two  
5 stories.

6 There is one three-story dogleg existing on the  
7 alley at 108 13th Street as well as BZA case 19593, which was  
8 decided April 2nd, 2018, which proposes a three-story dogleg.

9 The proposed massing of our project allows  
10 bedrooms toward the interior of the house to meet the Code-  
11 required light, air, and egress requirements.

12 When we design a project, there are three  
13 important facets that we take into account. We take into  
14 account the needs of the client, the idiosyncrasies of the  
15 building, and the context of the neighborhood, whether inside  
16 or outside the sometimes arbitrary boundaries of the historic  
17 districts.

18 In this case, the best way to meet the needs of  
19 our client and respect the building in its context is to  
20 build on top of the existing massing as opposed to creating  
21 an atypical massing.

22 The burden of proof requires us to respond to  
23 issues of maintaining light, air, and privacy to adjacent  
24 properties. Regarding light, the Office of Planning  
25 contacted us to prepare a sun study for the proposed volume

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1 that will be added. As stated in our burden of proof, and  
2 as you can imagine, adding on does create some additional  
3 shadows on the property to the north during certain periods  
4 of time, but does not do so in a way that is inconsistent  
5 with the zoning regulations.

6           Regarding air, the original intent of dogleg  
7 configuration is to allow access to air. Both the neighbors  
8 to the north and to the south have a dogleg. The density  
9 that is being proposed still allows for air flow and access.

10           Regarding privacy, we're proposing a solid brick  
11 wall on the north property line, high windows on the south  
12 facade that's set off the property line.

13           Regarding the existing conditions in the alley as  
14 they relate to light, there's a large tree in the backyard  
15 of 123 Tennessee Avenue Northeast, which provides shade to  
16 the rear of the subject property as well as several adjacent  
17 properties.

18           We provided photos of this and find that the  
19 neighbor's claims to light cannot go without consideration  
20 of the fact that the existing condition is not completely  
21 light-filled.

22           Zoning serves to help homeowners to understand  
23 what to expect from a certain zoning district. Homeowners  
24 should be able to know what they are buying and that their  
25 rights to expand within reason are not going to change.

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1 Giving special exception within these parameters would be  
2 within the precedent.

3           Regarding our application, we do request some  
4 flexibility for the materials that are proposed on the  
5 exterior of the addition and for the quantities of the  
6 windows, due to budget and due to possible design input from  
7 HBRV.

8           MR. MCGEEHAN: Prior to February 26, BZA mandated  
9 written notification to all neighbors within 200 feet of the  
10 property. We approached our direct neighbors to the north  
11 and south, 123 and 119 Tennessee Avenue, respectively.

12           My wife, Becky, shared our plans with Ms. Boyer  
13 at 123, who stated that she was not thrilled with the idea  
14 and wouldn't champion the project but wouldn't actively  
15 oppose unless there was a groundswell of support of  
16 opposition that she could join. Becky let her know she could  
17 come to us or our architect with any questions or detailed  
18 concerns.

19           Seeing that she was upset and assuming her  
20 position is one of opposition regardless of whether she  
21 officially objected and not having had -- and of having had  
22 a friendly relationship with Ms. Boyer over the past four  
23 years, we felt like it was inappropriate to pressure her to  
24 actively support our project.

25           Weeks after that interaction and several days

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1 after our sun study was made available on the BZA website,  
2 Ms. Boyer did submit a letter of support on March 19th.

3           Similarly, we approached our neighbor at 119, Mr.  
4 Daley, prior to letters being sent to the neighborhood.  
5 Becky ran into him in the front yard on February 21st and  
6 filled him generally in on our project. He said he'd be  
7 willing to provide support.

8           I went next door later that evening to deliver the  
9 plans in person. I talked with Mr. Daley a bit and asked him  
10 if he wanted to take more time with the plans before signing  
11 a letter of support. Mr. Daley, a real estate broker, signed  
12 the letter of support that night.

13           While Ms. Boyer officially pulled her support on  
14 May 11th, we've been aware of and engaged in trying to  
15 address her concerns for much longer. However, it wasn't  
16 until May 11th, 2018, the day after our project was approved  
17 by ANC, that we received any indication from Mr. Daley that  
18 he had concerns at all, let alone a full change of heart  
19 about our project.

20           Yet, throughout this process, our project and  
21 plans have not changed. While it pains me that the project  
22 has caused concern to two neighbors that I've had a cordial  
23 and friendly relationship since my family moved in four years  
24 ago, I feel that we have planned the project and engaged in  
25 the process in good faith.

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1           While I certainly don't want to diminish anyone's  
2 opinion, nor tell anyone how to feel, I believe our case  
3 documents and the previous testimony of my architect show  
4 that our project does not unduly impact light, air, privacy,  
5 or the general makeup of the neighborhood that I have made  
6 home these past several years.

7           To that end, a narrative that is arisen from some  
8 of our opposition is how the support that we have received  
9 for our project is somehow invalid because it is from  
10 neighbors who aren't impacted by the project. Objectively,  
11 I'd like to respond to that argument by noting that BZA  
12 believes that anyone within 200 feet of the project is  
13 impacted.

14           Every one of those neighbors was notified of the  
15 project, and we have spoken with several of them about the  
16 project, as has our opposition. Some we solicited support,  
17 some of our opposition solicited, some letters were  
18 submitted, some testimony has been given, others not.

19           While we understand the importance of giving party  
20 to concerns, it is equally important that our needs and  
21 rights, as well as those of our supporters, not be  
22 discounted, nor our validity as members of the community  
23 diminished because there is opposition to our project.

24           In the end, like many other similar D.C.  
25 renovations, the impact to our lives will be immense. As our

1 architect has stated, homeowners should be able to know what  
2 they are buying, and their rights to expand within reason are  
3 not going to change. Giving special exception within these  
4 parameters would be within the precedent. Thank you for your  
5 time.

6 CHAIRPERSON HILL: Okay, great. So I guess --  
7 what was that? That was like seven minutes. I just kind of  
8 want to mention this. I mean, I haven't been here a long  
9 time, been here about three years which actually seems like  
10 a really long time. And these things do happen, in that  
11 people come forth and they have differences of opinions.

12 And I mention that because it just is -- it always  
13 just is disappointing that particularly as neighbors, you  
14 know, you guys are going to be together and have been  
15 together, and you just have difference of opinions. You're  
16 here doing what you are trying to do, and they're here trying  
17 to, you know, state their opinion and defend what they want  
18 to do.

19 So I'm just kind of letting you know that's kind  
20 of the place that we come from. And so as I now turn to --  
21 now who's going to speak on you all's behalf? You need to  
22 speak in the microphone, I'm sorry.

23 MS. BOYER: I think I will, but I have to take a  
24 little look at --

25 CHAIRPERSON HILL: Sure, sure, sure.

1 MS. BOYER: I will say my piece and then perhaps  
2 I could say his?

3 CHAIRPERSON HILL: Sure. No, yes, before we get  
4 there actually, yes. So right now, what you're going to be  
5 doing is asking cross-examination questions of the testimony  
6 that just happened from the applicant.

7 So basically, you know, whatever they just  
8 testified to, you would be asking clarifying questions and  
9 primarily about zoning. Like, you know, light and air,  
10 things such as that or any questions that you might have from  
11 their testimony.

12 It doesn't necessarily have to be long; it doesn't  
13 necessarily have to be intense. We're not having, like, big  
14 Perry Mason moments here or anything like that. Just, you  
15 know, if you have any questions, fine. If you don't have any  
16 questions, that's fine as well. And we can move to your  
17 presentation. But if you do have any questions, now's the  
18 opportunity to have those.

19 MS. BOYER: Okay. And I've uploaded a lot of  
20 stuff to the -- as exhibits, and I probably won't be  
21 restating all of that. I'm assuming that you guys have taken  
22 a look at that.

23 CHAIRPERSON HILL: That's more for the  
24 presentation. But, yes, we have taken a look at it. This  
25 is just for questions --

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1 MS. BOYER: Okay.

2 CHAIRPERSON HILL: -- of the testimony that the  
3 applicant has just given, just questions.

4 MS. BOYER: Okay. My main question really is --  
5 I have to put it as a statement, is that you have not  
6 actually met the burden of proof that the light and air  
7 available to neighboring properties should not be unduly  
8 affected. "Unduly" is a term that I -- as far as I'm  
9 concerned it is unduly affecting my home. And I see in your  
10 --

11 CHAIRPERSON HILL: Ms. Boyer, I'm sorry. I'm just  
12 trying to get us to -- this is just -- you're making a  
13 statement, which is fine. I mean the question is that you're  
14 asking them if they believe that they have met the burden?  
15 I'm just trying to understand the question.

16 MS. BOYER: Yes, that is what I'm asking. I am  
17 asking how have you met the burden of proof that it will not  
18 unduly affect my home's light and air?

19 CHAIRPERSON HILL: Okay. And your answer would  
20 be?

21 MS. BOYETTE: As we stated before, regarding light  
22 we prepared a sun study, and there are some shadows that are  
23 cast, but we don't feel that it's beyond what is allowed by  
24 zoning -- excuse me, and consistent with the zoning  
25 regulations.

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1           Regarding air, the original configuration of the  
2 house being a dogleg allows for air to flow into a house.  
3 And regarding privacy, we are proposing a solid brick wall  
4 on the north side, and on the south side, we have high  
5 windows.

6           CHAIRPERSON HILL: So their answer to how they're  
7 not -- their answer to how they're not unduly affecting your  
8 light and air is what they've submitted into the record.

9           MS. BOYER: What is the standard by which you  
10 measure undue effect?

11           CHAIRPERSON HILL: That would be more for like the  
12 Office of Planning. That would be a question for the Office  
13 of Planning.

14           MS. BOYER: Okay.

15           CHAIRPERSON HILL: Which we'll get to, by the way.

16           MS. BOYER: Okay.

17           CHAIRPERSON HILL: It was just -- and I'm not  
18 trying to -- why don't we go ahead and we can go through your  
19 presentation, and then if you have questions later, we can  
20 see how they might come up with the applicant. Unless there  
21 are specific --

22           MS. BOYER: Here are some specific questions.

23           CHAIRPERSON HILL: Okay, sure.

24           MS. BOYER: Do you want to do -- well, shall I --  
25 okay. Do existing doglegs extend as far out and as high as

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1 the proposed construction? And what's the difference between  
2 them? Because I have a plan here that shows quite -- that  
3 it will be one of the few, in fact, one of two, very high  
4 structures in the area.

5 What is the proposed length of time of  
6 construction? Will the neighbors continue to have unimpeded  
7 access to the alley during construction?

8 CHAIRPERSON HILL: Okay, okay. Let's take one  
9 question at a time.

10 MS. BOYER: Okay.

11 CHAIRPERSON HILL: So the first question was what  
12 again?

13 MS. BOYER: Do existing doglegs extend as far out  
14 and as high up as the proposed construction? And what's the  
15 difference in height?

16 CHAIRPERSON HILL: Okay.

17 MS. BOYETTE: As I mentioned previously, there are  
18 several doglegs. There is precedent for three-story doglegs  
19 that extend actually even a little bit closer to the rear  
20 property, the one being on 13th Street --

21 CHAIRPERSON HILL: So I guess the question, a  
22 little bit -- those ones that are -- we're going to get to  
23 this probably even as a Board as we kind of go through  
24 questions. Those next door neighbor ones, which are the  
25 people who are here in opposition, they're -- and I've looked

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1 through the drawings.

2 I mean, they're just single story doglegs,  
3 correct?

4 MS. BOYETTE: Correct.

5 CHAIRPERSON HILL: And so the question, I guess  
6 again, was are there other doglegs that are of -- I think  
7 that was your question? Are there other doglegs? Or you  
8 were just asking --

9 MS. BOYER: Yes.

10 CHAIRPERSON HILL: Okay, so that maybe something  
11 during -- so she is answering that question. So what was  
12 your next question?

13 MS. BOYER: What's the proposed length of time for  
14 this construction?

15 MS. BOYETTE: We have not engaged a contractor  
16 yet, so we don't know for certain.

17 CHAIRPERSON HILL: Okay.

18 MS. BOYER: Will neighbors continue to have  
19 unimpeded access to the alley during construction?

20 MS. BOYETTE: The alley will remain open. The  
21 alley is quite narrow. It is so narrow that it will be  
22 difficult for trucks to come in, so they will be hand-carting  
23 a lot of the materials.

24 MS. BOYER: Through the front or through the  
25 alley?

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1 MS. BOYETTE: Through the alley.

2 CHAIRPERSON HILL: Okay. All right. Anything  
3 else right now?

4 MS. BOYER: No, but --

5 CHAIRPERSON HILL: Okay. We'll work through this.  
6 You don't have to worry. We'll work through it. So okay.  
7 So now you have an opportunity to present your  
8 case, right? In terms of your opposition to this project.  
9 And so I'm going to give you the same -- well, I started them  
10 with 15 minutes, they only did seven minutes.

11 So we'll go ahead and put 10 minutes on the clock  
12 for you, okay? The clocks are on either side. And you guys  
13 can begin whenever you like.

14 MS. BOYER: Okay. It's back to that business of  
15 the burden of proof there. The applicant has sought a  
16 special exception to construct a three-story rear addition  
17 on a residential property.

18 This supplemental memorandum that I'm reading from  
19 right now addresses the applicant's burden under 5201.3. And  
20 you all know this, but I'm just going to restate it.

21 An applicant for special exception under this  
22 section shall demonstrate that the proposed addition or  
23 accessory structures shall not have a substantially adverse  
24 effect on the use or enjoyment of any abutting or adjacent  
25 dwelling on property. In particular, the light and air

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1 available to neighboring properties shall not be unduly  
2 affected.

3           As far as I can see, the proposed three-story  
4 structure would have an impact on the adjacent properties'  
5 access to light and air. In particular, as shown by the  
6 applicant's own shade study, a significant impact of the  
7 construction on the access to ambient light is also clear.

8           I mean, it's demonstrated that there will be  
9 shadow effect on my home and I brought pictures that show --  
10 I scribbled out before and after, and I don't know when you'd  
11 like to see them.

12           But there's also the question of ambient light.  
13 All of our houses in Capitol Hill are long and narrow, get  
14 very little light. What little light there is we kind of  
15 value. But there's also this question of ambient light.

16           A large three-story structure next to my home that  
17 juts out is going to definitely impact the direct sunlight  
18 of which there is very little, but also create shade and  
19 affect my ambient light. So the applicant's failure to  
20 address the impact of light and air on my home at 123  
21 Tennessee Avenue means that their burden -- that they've  
22 really failed to meet the burden of proof that it will not.

23           Let's see. I have five rear-facing windows, and  
24 rear-facing glass door and direct sunlight continues  
25 throughout the day, but it's strongest earlier in the day.

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1 The ambient light is strong throughout the afternoon and the  
2 evening until the sun sets. Their shade study, first of all,  
3 it was hard to get a hold of a before and after. Shall I  
4 stop?

5 CHAIRPERSON HILL: No, no, no. I'm listening to  
6 you. Please go on.

7 MS. BOYER: It took us a long time to get a hold  
8 of the -- we got the shade study before the economic  
9 development zoning meeting three days before that and then  
10 took a while to get the winter portion of it, which is really  
11 when the effect is most egregious.

12 And then we asked for a before and after, which  
13 didn't even plot where the windows on my home are. So once  
14 you draw them in, you can see that it's quite significant.  
15 So I say that the applicant's shade study does show heavy  
16 shadowing being cast.

17 And I just think that they've not met the burden  
18 of proof that it won't have a significant impact on my home.  
19 In fact, in the architect's burden of proof, all she does is  
20 describe my home, including the fact that I have a basement,  
21 which I don't understand why that would have anything to do  
22 with it. So it just seemed kind of an odd description. I  
23 could read it to you, but -- yes.

24 CHAIRPERSON HILL: Ms. Daley -- actually, so Mr.  
25 Blair we're going to let you -- I'm going to let you speak

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1 also because since -- Mr. -- what'd I say? Oh, sorry, Mr.  
2 Daley. I keep doing this, I'm sorry.

3 Mr. Daley, I'm going to let you again speak  
4 because she was speaking specifically to her house and so --  
5 but you can go ahead and -- Ms. Boyer, go ahead and finish  
6 what you were saying there.

7 MS. BOYER: Yes, they also in the burden of proof  
8 do claim that it won't impact in any way the character and  
9 scale of the neighborhood, but as the architect kindly  
10 uploaded this, it really is quite evident that there's really  
11 only one large three-story structure -- that would be theirs  
12 -- all along that side.

13 There's one around the corner, and it's true  
14 across the way there may be one being constructed soon. So  
15 it really does, it juts out as it stands all the way down.  
16 It's the only one that stands out. So it really does affect  
17 the character and the scale of, as far as I'm concerned, so  
18 --

19 MR. HILL: Okay, okay. Mr. Daley?

20 MR. DALEY: First of all, thank you for giving me  
21 the opportunity to speak.

22 As Mr. McGeehan said, I originally supported his  
23 proposal, just from the standpoint I wanted to be a good  
24 neighbor. I have had some construction done on my property,  
25 although it didn't impact -- the construction I did did not

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1 impact the neighborhood as much as his. But after thoughtful  
2 consideration, I am rescinding my support for the  
3 comprehensive renovation and additions planned at 121  
4 Tennessee Avenue, N.E., a townhome which adjoins my property.

5           While I initially signed the McGeehans' petition  
6 for support, I failed, admittedly, to consider their proposal  
7 in detail. After careful review of the architectural  
8 drawings and the visual inspection, I now realize that their  
9 proposed rear addition would neither be in my best interests  
10 nor in the best interests of my neighbor.

11           When completed, the proposed construction would  
12 result in a three-story wall beside my property and while  
13 sitting on my rear patio, I was able to visualize how  
14 sunlight and my view of the open space would be severely  
15 diminished if walls were erected on either side of my  
16 property. My small patio would become claustrophobic.

17           Although my neighbors at 117 have not expressed  
18 a desire to make a similar addition, my objection if they  
19 proposed a similar addition in the future, would be somewhat  
20 disingenuous and perhaps discriminatory if I supported this  
21 proposal.

22           As a real estate broker who has made extensive  
23 renovations to my home and other properties I've owned, I  
24 generally support a homeowner's desire to modify or improve  
25 their dwelling provided it does not adversely affect their

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1 neighbors. Much of this construction will be external,  
2 noisy, and long lasting. It will disrupt the use of our  
3 street facilities and alley for extended periods of time.  
4 Therefore, for the reasons I've stated, I oppose the  
5 McGeehans' proposal.

6 And I would also add that, you know, the alley  
7 will be almost of no use to anyone, even though they're going  
8 to -- as the architect mentioned, it's very narrow. They  
9 will have to hand cart things in. We're talking about major  
10 construction that will need all types of material, not the  
11 least of which is lumber, bricks, cement that will create a  
12 lot of dust. I will have absolutely no use and neither will  
13 most of the other neighbors in the rear, I will have no use  
14 of my rear windows. I will not be able to open the windows  
15 to get any type of fresh air because of the construction,  
16 dust, and noise coming in. The alley will be almost,  
17 virtually as I mentioned, unusable. With that, I'll conclude  
18 my remarks.

19 CHAIRPERSON HILL: Okay, great. Thank you. Does  
20 the Board have any questions for the opposition party?

21 MEMBER HART: Yes, actually, I do. Ms. Boyer, do  
22 you -- is your opposition to this because it is three  
23 stories? Is your opposition to this because if they did two  
24 stories would you be in support of that? I'm not exactly  
25 sure if you're saying no impact -- no additional impact on

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1 your sun, shadow impact on your property or is there some --  
2 do you have some give in that? You have to turn your mic on.

3 MS. BOYER: I have photos that show the windows  
4 that will be impacted by --

5 MEMBER HART: It's hard for the --

6 CHAIRPERSON HILL: Yes, I'm trying to figure that  
7 out. Describe it if you wouldn't mind.

8 MS. BOYER: I know that two stories wouldn't meet  
9 their needs for more space. And in fact, a second story  
10 would, in fact, be the worst thing because it blocks in my  
11 deck and affects one, two, three, four kitchen window, dining  
12 room window, second floor bedroom window. So that wouldn't  
13 solve it.

14 MEMBER HART: You don't want that.

15 MS. BOYER: It just wouldn't solve the problem.  
16 The third story is not as egregious. It's the second story  
17 that really causes me most problems as far as light and air  
18 into my home.

19 MEMBER HART: So if they had proposed something  
20 on top of their building?

21 MS. BOYER: Oh, goodness.

22 MEMBER HART: What I'm trying to get to is at some  
23 point there is -- and I can't recall what the actual height  
24 limit is for the neighborhood, but I don't know if they're  
25 able to actually build on top of the -- and if they're not,

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1 then they're -- I'm getting a lot of head shakes saying no,  
2 but that's fine.

3           What I'm trying to go get to is what you're  
4 opposed to is any development, any further development on  
5 their property.

6           MS. BOYER: Yes, yes.

7           MEMBER HART: That's what you're telling me.

8           MS. BOYER: Yes.

9           MEMBER HART: Okay.

10           CHAIRPERSON HILL: I just want to make a quick  
11 comment. So after this case, we're going to take a break,  
12 so just to let everyone know who is here.

13           Ms. White?

14           MEMBER WHITE: So I'm trying to just get a better  
15 feel for why Mr. Daley and Ms. Boyer decided to rescind their  
16 support. Was there -- originally, there was support and then  
17 you rescinded support. Was there something that changed  
18 during that time process?

19           MS. BOYER: Yes. And I would like to point out  
20 that we've had fantastic relations with our neighbors.  
21 They've been wonderful, wonderful neighbors for four years.  
22 I have been in my house for 15 years.

23           What happened was I thought that I would be the  
24 only voice. I objected to it. I was not happy about it.  
25 When I realized that my neighbors felt very strongly and

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1 there was a critical mass of us who felt strongly against it,  
2 then I felt that I needed to do something about it. But  
3 originally, the way it was presented to me it seemed as  
4 though it was kind of a fait accompli, that I really just had  
5 to sign my name and it was going to happen anyway, because  
6 I've never been through this before. I didn't really realize  
7 I had a say and certainly in solidarity with my neighbors,  
8 I feel all the more strongly about it and am empowered a  
9 little bit to speak up. That's what happened.

10 CHAIRPERSON HILL: Mr. Daley?

11 And Ms. Boyer, if you could turn off your mic?  
12 Thanks.

13 MR. DALEY: Yes, as I mentioned before, I really  
14 didn't give it much time. To be a good neighbor, I signed  
15 when Mr. McGeehan approached me, I signed the petition right  
16 away without even reviewing the architectural drawings.

17 After I really sat down and started considering  
18 all of the aspects to it and then realized that my neighbor,  
19 who was going to be even more affected than I am, was going  
20 to be adversely affected, I started thinking that maybe I  
21 shouldn't.

22 I can actually share this with the Commission, if  
23 this is helpful, I can actually give you this. And you can  
24 kind of see visually why I withdrew my support in terms of  
25 how much light it would block, and not only that --

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1 CHAIRPERSON HILL: So Mr. Daley, I'm sorry, you  
2 don't have enough copies for us. Maybe we can make copies.  
3 We'll see where we get to even at a break.

4 Go ahead, I'm sorry.

5 MR. DALEY: And then in addition to the light and  
6 the sight line issue, I started thinking about the fact that  
7 I would have no use -- the back of my property would pretty  
8 much be unusable because of the construction dust, because  
9 of the noise. I wouldn't be able to open my windows and then  
10 another aspect, my home, as all the homes, are over 100 years  
11 old. I have the original sandstone pointing, the original  
12 pointing for my bricks are sand. That is starting to crumble  
13 through no fault of my neighbors, but once that construction  
14 starts, that's going to accelerate. I will have to repoint  
15 the back of my house, totally. It's going to cost me,  
16 because of the construction rumblings.

17 CHAIRPERSON HILL: Ms. White was just asking, you  
18 hadn't given enough thought to it is why you rescinded your  
19 support?

20 MR. DALEY: That's correct. That's the short  
21 answer. That's correct.

22 CHAIRPERSON HILL: Mr. Shapiro?

23 COMMISSIONER SHAPIRO: Just a question or two Mr.  
24 Daley. First of all, you said you're at 119, is that right?

25 MR. DALEY: That's correct.

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1           COMMISSIONER SHAPIRO: And you have a one-story  
2 addition on the back of yours that goes close to the alley?

3           MR. DALEY: That's correct.

4           COMMISSIONER SHAPIRO: When was that built?

5           MR. DALEY: Prior to the time I moved in. So that  
6 would have been before 1980.

7           COMMISSIONER SHAPIRO: Okay. Thanks. And your  
8 primary opposition in addition to you being supportive of  
9 concerns about the neighbor, which I heard loud and clear and  
10 I respect that, too. Your primary concern is around the  
11 impact on you of the construction because the light and air  
12 except for during construction, if I'm reading this  
13 correctly, it's not that much of a direct impact on you.  
14 It's more on Ms. Boyer. For you, it's the impact during  
15 construction that you're primarily concerned about for  
16 yourself, not that you're not also concerned for your  
17 neighbor.

18           MR. DALEY: I am concerned about the sight lines  
19 and the view from the back alley which once again if we can  
20 copy this. It has been uploaded. You guys should have an  
21 electronic copy of this, but once I visualized how the sight  
22 lines would be diminished, that's a concern. But certainly,  
23 the extensive nature of the construction is also a major  
24 concern.

25           COMMISSIONER SHAPIRO: Okay, thank you. That's

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1 all I have, Mr. Chair.

2 MEMBER JOHN: Mr. Chairman?

3 CHAIRPERSON HILL: Yes, please.

4 MEMBER JOHN: I have a quick question. I'm having  
5 trouble visualizing who is close to the dog leg. So whose  
6 house? Okay, so between your house and the Applicant's  
7 house, there's about a five foot wide dog leg?

8 MS. BOYER: Both of our dog legs sit out at the  
9 same level.

10 MEMBER JOHN: But the width between your house and  
11 the neighbor's house?

12 MS. BOYER: It's a small alley. It's shy --

13 MEMBER JOHN: You'll have to share it with  
14 everyone else. I'm just trying to see if there's a dog leg  
15 between your house and the Applicant's house or is it  
16 constructed to the lot line?

17 COMMISSIONER SHAPIRO: I think Exhibit 59 has  
18 existing conditions.

19 MEMBER JOHN: Okay. Thank you.

20 MEMBER HART: You may also want to try Exhibit 60  
21 which is a block diagram. And this diagram actually just  
22 shows, Exhibit 60 shows the kind of plans -- not the plans,  
23 they show the entire block and where each of the kind of  
24 neighbors are and then where the actual project is happening  
25 which is on 121.

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1 And Ms. Boyer, you're 123, correct?

2 MS. BOYER: I am, yes.

3 MEMBER HART: So you're to the north. And Mr.  
4 Daley is 119 to the south.

5 CHAIRPERSON HILL: And the purple is the one story  
6 dog leg, existing one story dog leg. And the Applicant, the  
7 121, you guys have an existing one story dog leg where you  
8 are now.

9 Did you want to clarify something?

10 MS. BOYETTE: Yes, if I may. Sheet G-3 which is  
11 the proposed site plan shows the sizes of the dog legs.

12 CHAIRPERSON HILL: Which exhibit are you in?

13 MS. BOYETTE: I don't know which exhibit number  
14 it is. I'm sorry.

15 CHAIRPERSON HILL: Seven? Are these your plans?

16 MS. BOYETTE: Yes, correct. The plan sheet G-3.

17 CHAIRPERSON HILL: G-3, okay.

18 MS. BOYETTE: Ms. Boyer has a -- the portion of  
19 the dog leg is 6 foot 6 off of the proposed north wall of our  
20 property.

21 CHAIRPERSON HILL: G-3 you said?

22 MS. BOYETTE: Yes.

23 CHAIRPERSON HILL: All right, so now as we did  
24 before, does the Board have any more questions of the party  
25 status?

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1           Okay, so now again, as I mentioned before, Ms.  
2 Boyette, if you have any questions of the Applicant, it's not  
3 necessary, but you have any questions of the Applicant, based  
4 on their testimony, would you have any questions?

5           MS. BOYETTE: I don't have any questions.

6           CHAIRPERSON HILL: Okay, all right. So we're  
7 probably going to have some questions for you guys, I think,  
8 in a minute, but we're going to go ahead and turn to the  
9 Office of Planning.

10          MS. THOMAS: Good morning, Mr. Chair and members  
11 of Board, Karen Thomas with the Office of Planning. In this  
12 application, we looked at it as one that was unusual to any  
13 other addition that's been proposed within the RF-1 District.  
14 This two-story rear addition, in particular --

15          COMMISSIONER SHAPIRO: Ms. Thomas, did you say not  
16 unusual or unusual. I didn't hear.

17          MS. THOMAS: Not unusual.

18          COMMISSIONER SHAPIRO: Okay. Thank you.

19          MS. THOMAS: So this one, in particular, we felt  
20 had the benefits of the dog legs in terms of providing  
21 separation for light and air, that would maintain light and  
22 air to the abutting neighbors.

23                 So for instance, with this exhibit that we have  
24 up right now, we see that on either side of the Applicant's  
25 home, there's a 6 foot 6 dog leg on one side and the

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1 Applicant would maintain their 6 foot 7 inch dog leg for --  
2 which would maintain light and air to Mr. Daley's property,  
3 I believe, at 119 Tennessee.

4           So with that, we also asked the Applicant to  
5 revise its light study to include existing conditions and  
6 that's what would happen when the addition is there. So they  
7 did provide a revised shadow study to show existing and  
8 proposed.

9           So with that, we were able to look at the context  
10 of unduly and would it substantially adversely impact the  
11 neighbors on either side. With that, we did not think that  
12 it would unduly impact either abutting neighbor because of  
13 the existing dog legs.

14           This aspect of light and air with respect to  
15 additions, regulations anticipate additions to homes. That's  
16 why we have Chapter 5201, all within parameters that the  
17 regulations proscribe. And so we agree with the Applicant  
18 when he said it's not inconsistent with the regulations. We  
19 did not see any undue or adverse shadowing taking place with  
20 respect to the proposed additions. It wouldn't be uncommon  
21 to have an additional shadow, but it wouldn't be abnormal,  
22 I don't believe, or excessive or intolerable. So that's the  
23 standard we would use for unduly. It would not be  
24 intolerable. It's not meant to say that it would not have  
25 any, but it would not be intolerable.

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1           So with respect to the privacy, use, and enjoyment  
2 of the neighboring properties, the same effect of it would  
3 not, should not be unduly compromised. We did not think it  
4 would be unduly compromised to the neighbors.

5           And with respect to the visual intrusion upon the  
6 character and scale, and passing of housing along this street  
7 frontage, well, it wouldn't be visible from the frontage, but  
8 also from the alley, we didn't see it as anything that would  
9 have had any major difference by way of the alley as we can  
10 see from that picture that was shown previous to this exhibit  
11 on the screen before you.

12           So with that, we could determine that this  
13 addition should not have an adverse impact on the abutting  
14 neighbors and we would recommend approval of the application  
15 as presented.

16           CHAIRPERSON HILL:     So Ms. Thomas, the other  
17 questions I have again is again, as you first stated and you  
18 kind of clarified for Commissioner Shapiro, like this is not  
19 necessarily something that's that uncommon within the RF-1?

20           MS. THOMAS:     That's correct.

21           CHAIRPERSON HILL:     So I think we should also  
22 change language from unduly to intolerable. That's a whole  
23 different standard altogether. Intolerable.

24           MS. THOMAS:     That's actually, I researched that  
25 in Merriam-Webster with the definition of unduly would be

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1 intolerable, inordinate, excessive, excessively, uncommonly,  
2 exceedingly, monstrosity.

3 CHAIRPERSON HILL: Wow. I'd like to have a copy  
4 of that definition. I'm not even kidding, I guess I'll look  
5 it up. Unduly, intolerable.

6 Does anyone have any questions for the Office of  
7 Planning?

8 MEMBER WHITE: I have one question, Mr. Chair, for  
9 the Office of Planning.

10 Mr. Daley was talking a little bit about the fact  
11 this is a Historic District and that the construction would  
12 have an impact on the pointing, I guess the brickwork. So  
13 my question is did you take that into consideration in terms  
14 of potential damage that could occur as a result of the  
15 construction to the abutting property?

16 MS. THOMAS: I see his point now. As part of the  
17 report, I did not take that into consideration, but however,  
18 I'll editorialize here. I do live in a 100-year-old home  
19 myself and I can respect his position with respect to that.  
20 And to address that, I would suggest that I would encourage  
21 the Applicant to work with Mr. Daley and employ construction  
22 management techniques that would assist him with his --- with  
23 the problems of damage to this property and even with respect  
24 to controlling dust to his property during construction. And  
25 that's something that could be worked out. But there could

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1 be before and after pictures with respect to prior to  
2 construction and during construction that can take place that  
3 they can work on. That's understandable.

4 MEMBER WHITE: Thank you.

5 CHAIRPERSON HILL: Mr. Shapiro.

6 COMMISSIONER SHAPIRO: Thank you. The question  
7 for Office of Planning as well, could you just in a minute  
8 or so, just take me through the shadow study which is -- I'm  
9 sorry, I forget which exhibit it is. Just take me through  
10 that very quickly, take us through that very quickly so that  
11 -- help us to understand your assessment as to why this is  
12 not undue impact.

13 I don't want to -- it looks like it's December  
14 21st at 11:30 a.m. which is the one that seems to have the  
15 biggest variation. But I'm just trying to get a -- you make  
16 these assessments and I'm just curious to see how you come  
17 up with the unduly related to this.

18 MS. THOMAS: I'm sorry, I can't control it. I  
19 don't know how to --

20 CHAIRPERSON HILL: You need to turn on the  
21 microphone or speak into the microphone. Just repeat what  
22 you just said.

23 MR. BOYETTE: I can go through the slides, if you  
24 direct me.

25 MS. THOMAS: You know, okay, so start from the

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1 beginning. Yes, the submission that says existing and  
2 proposed.

3 MEMBER HART: Exhibit 58 is what we're looking  
4 for. The one with the before and after.

5 MS. THOMAS: Yes. That's the one we looked at in  
6 particular. You would see existing, the existing condition,  
7 March and September at 9; and the proposed condition, there's  
8 not much change with respect to either side. And as we --  
9 could you roll? You see in September, we have the same type  
10 of situation.

11 So the period with the longest and shortest period  
12 of light and you have it shown at different times. Roll.  
13 Could you go again?

14 I think this one had some impact at this time of  
15 the year, at this time of the day. You would see more impact  
16 to the roof of the house and maybe to some of the windows,  
17 it will get totally blocked out. Is that going to be  
18 standing there forever? No. There is going to be movement.  
19 Keep going.

20 And again, with the existing and proposed on June  
21 21st which is the longest day on either side, you see no  
22 impact or negligible impact. Keep going.

23 Similarly, at 12 p.m. Keep going. And this one  
24 has again some impact to the neighbor to Ms. Boyer with  
25 respect to you would see partial where the window where she

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1 has possibly some windows on the side, on the dog leg side,  
2 that would be blacked out. And again, that would not be a  
3 standing condition. And everybody is blacked out in  
4 December.

5 MR. BOYETTE: If I may, this is sunrise. So the  
6 houses on the other side of the alley are actually casting  
7 a shadow on all of the rear facades.

8 MS. THOMAS: And again, I would maintain that  
9 there's negligible impact on Ms. Boyer's home between the  
10 existing and the proposed addition.

11 Again, in December in this one, on this side, you  
12 would see there's light on the roof where there's no windows.  
13 There are no windows, in the existing condition. The  
14 proposed condition, the roof has no light and that's  
15 expected. But that shouldn't have an impact.

16 COMMISSIONER SHAPIRO: Thank you for walking us  
17 through that. Thank you, Mr. Chair. That's the only  
18 question I had.

19 CHAIRPERSON HILL: Okay. Thank you. Anyone else  
20 for the Office of Planning?

21 MEMBER HART: I do have a question for the Office  
22 of Planning. Regarding the shadows, we were looking at kind  
23 of windows and that which is fine. In December, there was  
24 a -- you said it was kind of negligible. I may differ with  
25 that, but I'm not sure if that's undue, I'm just saying I may

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1 differ with that assessment.

2           But Ms. Boyer also said that she has a deck on her  
3 -- on top of her one-story addition. Did you look at the  
4 impacts on that as well because whenever you are covering  
5 that roof, of that one-story addition, you're actually --  
6 those are shadows on that roof which I'm assuming she enjoys  
7 the sun coming through during the different parts of the  
8 year.

9           MS. THOMAS: Okay. So December 21st, if there is  
10 a deck on there, I don't think we kind of go out on our decks  
11 in December. Maybe we do sometimes, but --

12           MEMBER HART: It depends.

13           MS. THOMAS: It depends. So yes, there will be  
14 some impact to the deck.

15           (Off microphone comment.)

16           CHAIRPERSON HILL: Okay, one second. I'm sorry.  
17 You'll get a chance. That's all right. We're just answering  
18 questions up here for the Office of Planning.

19           MS. THOMAS: Yes, and if there are windows back  
20 there, the existing -- back up to the last one.

21           MEMBER HART: Are you trying to get to the --

22           MS. THOMAS: Yes, we'll start from the bottom and  
23 go back up. Sorry. Yes, I would say that the deck would be  
24 impacted at that time, to be fair.

25           MEMBER HART: I don't think the monitor -- just

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1 to --

2 MS. THOMAS: I'll use that motion so he can see.  
3 On December 21st, we will see at 11:30, you have substantial  
4 light on the existing condition and in the proposed  
5 condition, some shadowing on the deck, if we go to the deck.  
6 And it's all covered over at sunrise in the morning.

7 Again, on June 21st, in the height of summer, or  
8 you're in the summer time, you would see -- yes, there's an  
9 area of the deck that gets an additional shadowing. But it  
10 doesn't take out all, it doesn't completely overshadow the  
11 deck and there's no impact on June 21st at 12 p.m., at lunch  
12 time.

13 Similarly, around sunrise or morning time, when  
14 it's nice to enjoy a deck, and I would think this one would  
15 be the most impacted in September at 3 p.m. thus far, because  
16 it covers the deck. Again.

17 Negligible impact there. Negligible impact here  
18 of the deck in March and September.

19 MEMBER HART: Okay, I just was more curious as to  
20 kind of how you see this as well. Thank you.

21 CHAIRPERSON HILL: All right, anyone else for  
22 Office of Planning?

23 Okay. Does the party status people have any  
24 questions for the Office of Planning?

25 MS. BOYER: I would have appreciated a before and

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1 after study that indicates where my windows are because we're  
2 talking about the deck here, but I have multiple windows back  
3 there that --

4 CHAIRPERSON HILL: So your question is how are  
5 those multiple windows affected?

6 MS. BOYER: Was the Office of Planning taking into  
7 account that there were windows in those places that are  
8 shaded by the construction's shadow.

9 CHAIRPERSON HILL: Okay.

10 MS. THOMAS: Yes, we did. We looked at it not  
11 just as a blank wall, but you would have windows there, yes.

12 MS. BOYER: You knew where they were, in fact?

13 MS. THOMAS: Yes, I saw the pictures. Yes.

14 CHAIRPERSON HILL: Okay. Does the Applicant have  
15 any questions for the Office of Planning?

16 MS. BOYETTE: No questions.

17 CHAIRPERSON HILL: Is there anyone here from the  
18 ANC?

19 Is there anyone here wishing to speak in support?

20 Is there anyone here wishing to speak in  
21 opposition? If you could please come forward, both of you.

22 Again, please state your names for the record.

23 MR. COHEN: My name is Sig Cohen. I live at 125,  
24 two houses to the north of the McGeehans.

25 CHAIRPERSON HILL: Mr. Cohen, I'm sorry, I'm just

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1 going to go through this real quick? And so what's your name  
2 again?

3 MR. HUDSON: My name is Ronald Hudson.

4 CHAIRPERSON HILL: Hudson, all right. Mr. Cohen,  
5 we're going to start with you. As a member of the public,  
6 both of you will get three minutes to testify. The clocks  
7 are up there on your left and right and you can begin  
8 whenever you like.

9 MR. COHEN: I'm at a total loss as to what  
10 criteria actually applied to this proceeding. Is it shade  
11 and light? Is it the fact that they need more room for their  
12 children or their parents who are going to move here? Is it  
13 any number of factors? I'm trying to figure out what is the  
14 determining criterion for you all to decide that.

15 And I'd like to draw your attention to Exhibit  
16 43A. I'd be happy to share this with you.

17 CHAIRPERSON HILL: We have it here.

18 MR. COHEN: Okay, and there is a before. These  
19 are the photos I attached to my eight-page letter of  
20 opposition. I don't know whether you went through all of it,  
21 which goes through not only --

22 CHAIRPERSON HILL: Mr. Cohen, we did go through  
23 all of it. I'm just letting you know, this is your  
24 opportunity to testify instead of asking us questions.

25 MR. COHEN: I'd like to point out that the impact

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1 of that structure will have on the -- looking south from my  
2 deck, this is a clear view in 43A of the line of sight, going  
3 from our building down to the end of the alley, okay? It's  
4 clear, there are no other structures on our side of the  
5 alley. Okay?

6           After, I have shaded in what the impact of that  
7 structure will have. It's significant. It's not -- I don't  
8 know about the line of -- the shadow and the study. All I  
9 can tell you is that the line of sight from that structure  
10 will significantly impede -- that structure will  
11 significantly impede the line of sight plus air flow, God  
12 knows what else, from our home.

13           What it's going to do to Ms. Boyer's home is  
14 significantly more. It's more than shade and light. It's  
15 the existence of a structure which is out of context with the  
16 entire -- that side of the alley, totally inconsistent with  
17 the rest of the structures and it will impact our quality of  
18 life, period.

19           CHAIRPERSON HILL: Okay. I'll go through the  
20 testimony first and then I'll ask the Board whether they have  
21 any questions.

22           Mr. Hudson?

23           MR. HUDSON: Yes. Quickly. My name is Ron Hudson  
24 again and I'm a tax assessor, former tax assessor. Worked  
25 in the D.C. Government Tax Assessor's for a number of years.

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1 I chaired the Board of Equalization and Review and I'm a  
2 professional licensed appraiser. And I'm speaking from  
3 merely a professional standpoint.

4 This house will be considered over improvement for  
5 the neighborhood. The additional square footage would have  
6 a tremendous impact on the values of other houses in that  
7 area because it will be a super inadequacy. It would be  
8 excessive and overbearing and therefore, it would be very  
9 difficult to determine the amount of appreciation and  
10 depreciation on other houses in that area.

11 As far as the homogeneousness, there are no  
12 additions like that in the alley. There are none. There are  
13 absolutely no -- well, actually, it would be a three-story  
14 dog leg construction and there are none. I don't understand  
15 where she said this is the norm. This is not the norm around  
16 there. I've been in that neighborhood for what, 40, 45, 50  
17 years and there's just nothing like that there.

18 I've assessed in that neighborhood when I was  
19 working for the District Government. I know these  
20 properties. I know them inside and out. I know what goes  
21 on up there.

22 And as far as the excessive FAR, it would  
23 exacerbate the FAR, the Floor Area Ratio, as it relates to  
24 the square footage of the house, as it relates to the lot  
25 size. It would just take it beyond the extreme.

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1           And therefore, it would also inconvenience the  
2 hazardousness of them carrying goods up and down that alley.  
3 I parked my car back there. I have off-street parking. And  
4 they are going to be carting things through that alley.  
5 Somebody could get hurt. Kids could get hurt or somebody  
6 walking through the alley, they could damage properties or  
7 a whole host of things because the alley is not suited for  
8 construction. It is certainly not capable of handling any  
9 type of construction.

10           CHAIRPERSON HILL: Okay. Thank you. Does the  
11 Board have any questions for the witnesses? Sure, please go  
12 ahead.

13           MEMBER WHITE: Did you have any discussions with  
14 the ANC regarding your concerns and what type of feedback did  
15 you get?

16           MR. HUDSON: I was very disappointed with the ANC  
17 Commission. That hearing was so biased until it was unreal.  
18 They would not even let me speak. They would not let her  
19 speak. We didn't have an opportunity to address our concerns  
20 at all.

21           My understanding is it should have been something  
22 that they should have heard us out or allowed us to talk.  
23 They really didn't.

24           MEMBER WHITE: Thank you.

25           CHAIRPERSON HILL: Thank you very much, gentlemen.

1 You can go ahead and go back. Thank you so much.

2 Oh, I'm sorry. You can stay there for one second.

3 I forgot. Does the party status people have any questions for  
4 the witnesses?

5 No, do you all have questions of the testimony  
6 that just was given. Okay.

7 Do you have any questions about the testimony that  
8 was just given?

9 MR. MCGEEHAN: I was just going to clarify that --

10 CHAIRPERSON HILL: Not clarification. Do you have  
11 any questions from the testimony that was just given?

12 MR. MCGEEHAN: I was going to ask Mr. Hudson if  
13 he had a chance to speak at the ANC meeting?

14 CHAIRPERSON HILL: Ask Mr. Hudson if he had a  
15 chance to speak at the ANC meeting?

16 MR. MCGEEHAN: He was intimating that he was --

17 CHAIRPERSON HILL: Right, the question is, Mr.  
18 Hudson, did you have a chance to speak at the ANC meeting?

19 MR. HUDSON: I spoke, but I never had the  
20 opportunity to clearly express myself. I was shut down. I  
21 was controlled and that's the gist of it.

22 CHAIRPERSON HILL: Okay. All right.

23 MR. MCGEEHAN: I would ask the same question of  
24 Mr. Cohen, if he had a chance to speak at the ANC meeting?

25 MR. COHEN: Yes, I did. I did have a chance to

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1 speak at the ANC meeting. I did not have a chance to bring  
2 my arguments to a full conclusion and Ms. Boyer never had a  
3 chance to speak at all.

4 CHAIRPERSON HILL: Okay. All right. Thank you.  
5 Thank you, gentlemen.

6 All right, we did that. Does anyone have -- oh  
7 yes, so before we get to -- so you guys have rebuttal,  
8 meaning you can rebut anything that was just said. And then  
9 if you don't have any rebuttal, then we're going to go to  
10 conclusions and what conclusions mean, I'm going to give a  
11 little bit of time and it's not within the regulation, I  
12 don't even know if it's within the regulation. Actually, I'm  
13 a little unclear.

14 I usually let -- I like to hear from the party  
15 status people in conclusion, as well as then the Applicant  
16 in conclusion. But before we get to there, I guess there are  
17 some questions that I even have with the Applicant and I  
18 guess I'll start actually with some of the questions for the  
19 Applicant.

20 So you guys, some of the things that we've heard  
21 a lot about or at least seems to be is like construction  
22 management. Did you guys talk about a construction  
23 management plan with the neighbors? That's my first  
24 question.

25 MR. BOYETTE: We are a full service architecture

1 firm. We provide all phases of help during the process, from  
2 the beginning to the end, until the owner moves back in. So  
3 we work -- we have weekly meetings with the contractors on  
4 site, to make sure that from the standpoint of the neighbors  
5 and the standpoint of the homeowners, issues are addressed  
6 timely. That could be trash flying into the neighbors'  
7 property.

8 CHAIRPERSON HILL: Mr. Boyette, as one who has  
9 gone through this before, so like do you -- I'm asking you  
10 don't have a construction management plan with the neighbors  
11 yet or you haven't submitted any formal construction  
12 management plan?

13 MR. BOYETTE: No. DCRA is going to require  
14 neighbor notification letters about the construction.

15 CHAIRPERSON HILL: So the answer is no.

16 MR. BOYETTE: No.

17 CHAIRPERSON HILL: Yes, please. One second. I'm  
18 sorry. I'll let you answer, I'm just trying to get my  
19 questions here.

20 What was your comment in terms of construction  
21 management plan?

22 MS. MCGEEHAN: Just because you had asked about  
23 conversations with the neighbors, the construction, noise,  
24 and dust often seem the secondary in those conversations, but  
25 when Mr. Daley did come in person which I very much

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1 appreciated to rescind his support and he brought up concerns  
2 of construction, we did inform him that in our conversations  
3 interviewing contractors, construction management and noise  
4 and dust was definitely something that we were assessing when  
5 we talked to these guys.

6 CHAIRPERSON HILL: Okay, so what I'm asking about,  
7 I guess, is a formal construction management plan that you  
8 would submit into the record that says what you plan on doing  
9 to address any kind of adverse impact that is coming up from  
10 the construction phase, right?

11 So we've had construction management plans that,  
12 you know, share what's going to happen with the next door  
13 neighbor. What's going to happen to the neighborhood. It's  
14 not an uncommon request for us.

15 The one thing -- there was something in the record  
16 that I recall about a green wall that had at one point been  
17 suggested and I guess it was the one that was facing Mr.  
18 Daley. Perhaps, no, it was Ms. Boyer then? So where was the  
19 green wall supposedly going to be.

20 MR. MCGEEHAN: So one of the complaints that we  
21 had heard was that this would be a brick wall that would be  
22 visually unappealing, so I had suggested to Ms. Boyer, who  
23 is an artist, that maybe we could do something, green wall,  
24 or paint a mural or something that would be a little bit more  
25 visually appealing than a brick wall on her side, because

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1 that's technically a party wall, even though it's got a six  
2 foot plus setback. There's no windows allowed on it, so it  
3 would have to be solid. But we were just trying to  
4 brainstorm on ways that we could possibly do something that  
5 would be a little more visually appealing.

6 On Mr. Daley's side, we have the setback on our  
7 property line. We do have some high windows, so it breaks  
8 up the monotony of the wall there.

9 CHAIRPERSON HILL: Okay. Is there a comment from  
10 the architect?

11 MR. MCGEEHAN: Yes, so not a party wall. So I'd  
12 have to defer to her on why there's not allowed to be windows  
13 on that side.

14 CHAIRPERSON HILL: Okay.

15 MR. MCGEEHAN: It's on the property line, I guess  
16 --

17 CHAIRPERSON HILL: Okay, I understand, so there  
18 was a green wall, that was at a one point suggested during  
19 discussions. Okay, so does the Board have any questions for  
20 the Applicant?

21 MEMBER WHITE: One question that I have, just in  
22 respect to the fact that these are historic buildings and  
23 there was some conversation about potential damage to  
24 pointing and so the question is as part of that construction  
25 management plan, would it include protecting the abutting

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1 neighbors from damage and you know, reimbursement in the  
2 event that that would happen, if we grant the relief.

3 MR. MCGEEHAN: Yes, ma'am. I would assure all my  
4 neighbors that we'd be hiring a licensed and bonded  
5 contracting company and we would take full responsibility for  
6 anything that was negatively impacted to their properties.  
7 Obviously, as homeowners, we understand that we take a lot  
8 of pride in our homes and we don't want things to negatively  
9 impact them, so certainly we would not only take steps to  
10 plan to make sure that we don't negatively impact them, and  
11 then if anything, unfortunately, were to happen, obviously,  
12 we would make that right.

13 MEMBER WHITE: Okay. Thank you.

14 CHAIRPERSON HILL: Okay, so in terms of rebuttal,  
15 do you have any rebuttal that you'd like to give.

16 MS. BOYETTE: I guess the only thing that I would  
17 like to mention is that the size of the addition that we're  
18 talking about is about 140 square feet on two floors, so  
19 again, as Office of Planning stated, this is not an enormous  
20 addition. This is within -- we're still below 70 percent lot  
21 occupancy in terms of the kind of the comment about  
22 assessment. It's not an enormous amount of space that's  
23 being added. Any improvements that were done to the cellar  
24 level, I believe were prior to the McGeehans living there and  
25 as I mentioned the cellar level does not get light or air.

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1 CHAIRPERSON HILL: Okay. Anybody else got  
2 anything?

3 All right, so I'm going to go ahead and give you  
4 guys two minutes just for conclusion, if you have anything  
5 you'd like to conclude with. You have to push the  
6 microphone.

7 MS. BOYER: I'm having a hard time understanding  
8 how the impact of the shadows on my home where windows are  
9 featured is being referred to as insignificant or not  
10 intolerable or whatever it is. It's my home and it's light  
11 and we don't have a lot of it.

12 I have pictures of little spots of light that  
13 actually reach my home which won't be happening any more.  
14 And I just feel awful about the fact that it keeps on being  
15 referred as not substantial and little impact and that's what  
16 I have to say. It's my home. It has windows. It has --  
17 that's it.

18 CHAIRPERSON HILL: Okay. Mr. Daley?

19 MR. DALEY: Yes, I would just add that my concern,  
20 as stated previously, is more in reference to the sight lines  
21 and also construction. I appreciate the Board's mentioning  
22 a construction management proposal and that has now become  
23 part of the record.

24 I'd also add that if Mr. McGeehan is going to keep  
25 his word about reimbursing neighbors who may have property

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1 damage, can that be in writing in some form so that it's not  
2 just a verbal commitment, but that it's a written commitment  
3 that that happen.

4 CHAIRPERSON HILL: Okay, do you guys have anything  
5 in conclusion?

6 MS. BOYETTE: Sure. I'd just like to mention that  
7 as we discussed, we believe we've met the burden of proof for  
8 light, air, and privacy. We believe that there is precedent  
9 for a project like this in Capitol Hill, but also in the  
10 alley itself. As I mentioned, there's a property on 13th  
11 Street that is a three store dog leg and there's a recent BZA  
12 case that approved a third story to an existing two story dog  
13 leg.

14 In terms of the fact that the existing structure  
15 is a dog leg, we are just basically extruding this dog leg  
16 vertically, so the historic fabric of the neighborhood will  
17 remain intact and just to reiterate kind of the development  
18 rights of my clients and what they're able to do with their  
19 property.

20 CHAIRPERSON HILL: Okay, great. I am going to  
21 take a quick pause here again. As I mentioned before we're  
22 going to take a break after this. And if there are any ANC  
23 Commissioners here, are there any ANC Commissioners here?  
24 Okay, I thought there were some ANC Commissioners here. All  
25 right. Okay. All right.

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1           Let's see, so what -- I don't know about the  
2 Board, what I'm interested in kind of hearing, I think we can  
3 do this probably as a meeting decision the next time, but I  
4 would be interested in seeing a construction management plan,  
5 like something from you guys that says you know, what you're  
6 planning on doing with the neighbors in terms of just, you  
7 know, how you plan on addressing any adverse impact, any  
8 concerns, any concerns about alley access during the  
9 construction phase, and then also I guess addressing some  
10 comments about your neighbor in terms of the pointing.

11           And then, I don't know, I forget what it's called  
12 in terms of adding them to your insurance policy in terms of  
13 if there's any damages that happened during the construction  
14 phase. I'm just kind of like throwing out like I would  
15 suggest again seeing if you can meet with your neighbors and  
16 get to either a construction management plan or something  
17 that possibly makes them feel a little bit more comfortable  
18 with how this project may move forward if it were to move  
19 forward.

20           I mean I think there is a lot of information that  
21 has come from even the Office of Planning's record and again,  
22 I guess, I even kind of mentioned to some of the people that  
23 spoke in opposition, the Office of Planning's report outlines  
24 each one of the criteria as to what we look for as to how  
25 we're going to go ahead and move through a project. That's

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1 not necessarily saying that we agree with the Office of  
2 Planning all the time, but that's where you can go and see  
3 where the standard is, to review the proposal. So I would  
4 be looking for something or at least if my colleagues were  
5 in agreement with this, be looking for something along those  
6 lines.

7           And I also just kind of mention that, you know,  
8 I know there's tremendous -- there can be tremendous anxiety  
9 and animosity, not necessarily, but anxiety between parties  
10 that have differences of opinion. And if you could come to  
11 an agreement, this is kind of an opportunity where people  
12 that are in party status in opposition can kind of maybe come  
13 together with the people in an application, again and then  
14 if you can get to the same point and if the incentive even  
15 for the Applicant even beyond kind of, you know, the Board,  
16 at least my questions, suggesting my questions, if the -- if  
17 party status is actually -- if opposition is withdrawn, then  
18 you're kind of back in a summary order as opposed to a full  
19 order type of thing which is a whole other thought process.

20           Regardless of that, I'm not even trying to get  
21 into that. I'm just kind of looking for kind of a  
22 construction management agreement, construction management  
23 plan, and kind of speaking with your neighbors in terms of  
24 how to address some of their concerns that have been put  
25 forth here today, again, whether it's, you know, the green

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1 wall again or I don't know if that's still possible or not.  
2 But I'd be interested in hearing something in terms of what  
3 might happen after this hearing.

4 Does the Board have any other thoughts?

5 MEMBER HART: The only other thing I'd like to add  
6 is the case number that you cited, I'm not sure whether it  
7 was Mr. or Mrs. Boyette, was it 19583? I wrote it down --

8 MS. BOYETTE: It's 19593.

9 MEMBER HART: 93. And that was a case that we  
10 have recently --

11 MS. BOYETTE: Yes, that was decided on April 2nd  
12 of this year.

13 MEMBER HART: We get a lot of cases, so I'm trying  
14 to remember, I'm like, okay, what is this one.

15 I think that would be helpful just to look at  
16 because it's in the area, it's on the same block. I'm sorry,  
17 I was asking if you could put that -- I guess we have it  
18 already. So I don't want you to put it -- sometimes we have  
19 the Applicant put things that they've raised in the record,  
20 but I think we can get that. I just wanted to know what the  
21 number was. Thanks.

22 CHAIRPERSON HILL: Okay, anyone else?

23 MEMBER WHITE: Yes, as part of the construction  
24 management plan, the question popped up a couple of times.  
25 No one really seemed to know approximately how long the

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1 construction was going to take. I know you don't know the  
2 start date, but maybe as part of that you could share that  
3 information within the construction management plan so that  
4 the neighbors have a pretty good sense of how long it's going  
5 to take to complete the improvement.

6 CHAIRPERSON HILL: Sure, you can answer that  
7 question and also, you want to put it in the plan.

8 MS. BOYETTE: Sure. I just wanted to make sure  
9 about this construction management plan. We do not have a  
10 contractor on board at this time. We're still going through,  
11 we have to through HPRB as well for this project.

12 A project like this is probably about six to eight  
13 months of construction. That is a completely -- it depends  
14 on the team that we have.

15 MEMBER WHITE: One question is when are you going  
16 before the Historic Board?

17 MS. BOYETTE: Our date is the end of July. And  
18 if I may ask one clarifying question or just make sure we're  
19 on the same page, the comments about repointing. Repointing  
20 is really a maintenance issue. It's not something that when  
21 construction is done to a house it's going to affect the  
22 pointing of the brick on another house. Now if they had  
23 cracking, that's a different thing. But I just want to  
24 clarify that I don't believe that repointing is something  
25 that falls within the construction management plan.

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1 CHAIRPERSON HILL: Okay, I don't think anybody was  
2 saying that you were going to repoint the building, but Ms.  
3 Thomas, since you live in a 100 year old home as well, what  
4 were you kind of speaking to in terms of what you thought  
5 there might be some concerns about the pointing?

6 MS. THOMAS: If his brick work is weak,  
7 particularly weak, because it needs repointing and as a  
8 result of construction, you have cracking or shifting,  
9 anything foundation or anything like that, they should be  
10 able to address that.

11 CHAIRPERSON HILL: Okay. So I guess it's just --  
12 I'll get to you in one second. I guess it's just -- I mean  
13 what we're looking for and perhaps the Office of Zoning  
14 across the hall can kind of like help you understand or  
15 someone here in terms of like we're not asking for anything  
16 I don't think as a condition. It's something that we'd like  
17 -- I'd like to see what things you think are pretty normal  
18 in terms of mitigation for something in your experience that  
19 you have done with construction. Like starting after 7,  
20 ending at 5, whatever, and adding them all to the insurance  
21 policy, just pretty basic stuff, right, in terms of what you  
22 would ask your contractor to adhere to.

23 And again, this isn't -- we're not -- I'm not  
24 saying you have to come and figure out how to get them on the  
25 same page. I'm saying that as part of what I'm going to be

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1 looking for, it's just that you did reach back out to your  
2 neighbors. You tried to come up with something to mitigate  
3 the construction issues and if there was any other ways that  
4 you could possibly mitigate some concerns.

5 Now you're free to put those into the report that  
6 you had a meeting, things were presented, we came up with  
7 nothing, and we have nothing. There you are, right? So you  
8 can submit whatever you want to the Board, but I'm just  
9 curious in seeing something.

10 Mr. Daley, you had a question?

11 MR. DALEY: Well, no, I just wanted to clarify  
12 that comment about the brick pointing. What I was trying to  
13 explain is that those bricks were pointed a hundred years ago  
14 with material now that is deteriorating. Mostly, it's just  
15 sand. And if there's construction rumbling, if there's heavy  
16 noise during construction, that noise or that vibrations  
17 during construction could actually cause the sand now to  
18 disintegrate at an accelerated rate. It literally will fall  
19 off between the bricks and that's the point I was making.

20 The other point is that construction is going to  
21 be so extensive, that it's my understanding that the  
22 McGeehans are moving out. We don't have that option. They  
23 will be out of their home during all of that period of  
24 construction, six to eight months, while we'll have to live  
25 with it and undergo discomfort during that period of time.

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1           CHAIRPERSON HILL:     Okay, well, Mr. Daley, I  
2 appreciate you making that comment. I mean we're trying to  
3 kind of hear some of the -- at least I am and the Board can  
4 chime in after I finish talking, but we're trying to hear  
5 some of your concerns.

6           I mean as far as construction, I mean construction  
7 is going to happen all around you. I mean you live in the  
8 city and you live in a 100 year old home and that's going to  
9 disintegrate anyway. And so I don't know what they're going  
10 to -- how they're going to -- I'm trying to ask them to try  
11 to come up with a way that can help with some of the things  
12 that they can help with. So that's I'd be interested in you  
13 guys getting together on.

14           And if you all don't come together with anything,  
15 then that doesn't necessarily mean we are or aren't going to  
16 approve it. I mean we're here, basically again to look at the  
17 standard set forward in the regulations to determine whether  
18 or not they should or should be approved. And I'm just going  
19 to continue to refer you back to the Office of Planning's  
20 report because that's where all the criteria is laid forward.

21           Now one can agree, disagree, have discussions  
22 about, you know, what is unduly and what is -- and now I'm  
23 learning a new word intolerable, but you know, that is where  
24 we kind of -- this is where we come to all the time. This  
25 unduly thing happens every day, all the cases and we as a

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1 Board have to determine, okay, we all don't live out in --  
2 I was going to name a suburb, but we all don't live somewhere  
3 where we have an acre lot or something like that. We live  
4 next to neighbors. We live next to people, and there are  
5 zoning requirements that are set forth that allow people to  
6 apply for things that they can use their property, and that's  
7 all we're here trying to figure out.

8 Does the Board have any other thoughts? Okay, so  
9 you all understand what I'm asking for? Okay. When do you  
10 think you might be able to get that to us?

11 MS. BOYETTE: We'll try for two weeks.

12 CHAIRPERSON HILL: Okay, so if you do it in two  
13 weeks, then we have to let the party status people and the  
14 ANC -- the ANC can always submit. But then they'd have a  
15 week after that to make any comments on to whatever is  
16 proposed. You don't have to have comments. I mean  
17 obviously, if everything was great, then you wouldn't have  
18 any comments. But they might submit something and you're  
19 going to have comments to whatever they submit.

20 So what kind of time line are we look at then, Ms.  
21 Rose?

22 MS. ROSE: The Applicant can submit in two weeks?

23 CHAIRPERSON HILL: Yes.

24 MS. ROSE: So that would be around the 13th. So  
25 if the Applicant can submit by June the 14th, and the

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1 responses would be due on June 21st, the Board could consider  
2 a decision at the June 27th meeting. That's the one where  
3 you'll be out.

4 CHAIRPERSON HILL: I might not be here the 27th.  
5 And neither will Ms. White.

6 So the following week --

7 MS. ROSE: The next one is July 11th.

8 CHAIRPERSON HILL: July 11th, okay. So why don't  
9 we work from that date.

10 MS. ROSE: Yes, so if we do a July 11th meeting,  
11 the Applicant's filing would be due on June 28th and you  
12 would serve the other parties and then the responses would  
13 be due on July 5th, Thursday, July 5th with service to the  
14 parties.

15 CHAIRPERSON HILL: So then you want it earlier?  
16 Mr. Hart, do you have a suggestion of the time line, I'm  
17 sorry. I don't have a calendar in front of me.

18 MEMBER HART: I'm just looking at the calendar.  
19 I mean I understand July 4th is just a hard -- it's in the  
20 middle of the week and it just kind of -- people are going  
21 to have plans and stuff. I just didn't -- having something  
22 on July 5th, I just don't know if they're going to be present  
23 to be able to have something available. And if the Applicant  
24 is saying that they could have something by the 13th, then  
25 why don't we just say we can give them an extra week, the

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1 21st and then have responses back on the 28th of June. That  
2 way we have a couple of weeks before the actual meeting on  
3 the 11th.

4 MS. ROSE: Okay, so the Applicant's documents  
5 would be due June 21st?

6 MEMBER HART: Yes.

7 MS. ROSE: And the responses would be due on June  
8 28th.

9 CHAIRPERSON HILL: Yes.

10 MS. ROSE: And the Board would have the meeting  
11 on July 11th?

12 MEMBER HART: That's correct.

13 CHAIRPERSON HILL: We're not working on July 4th?

14 MS. ROSE: No, sir.

15 MEMBER HART: Would you like a response to that,  
16 Mr. Chairman?

17 CHAIRPERSON HILL: That sounds good to me. So  
18 does everyone understand the deadlines? Yes, please.

19 MS. BOYETTE: Can you just clarify the responses  
20 due, that is the ANC responses.

21 CHAIRPERSON HILL: The people in party status will  
22 have an opportunity to respond to your submission and they  
23 will have up to seven days, so that gives them until the  
24 28th.

25 MS. BOYETTE: Okay. Thank you.

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1 CHAIRPERSON HILL: Okay. Thank you all very much.  
2 So be clear, when all that happens, then we're going to have  
3 a meeting case, if you were here for the meeting cases. Just  
4 give the witness cards to the transcriber to my right.

5 We're going to take a 15-minute break, okay? And  
6 then we're going to come back and hear a couple of cases or  
7 see how far we get and then we're probably going to take  
8 lunch. So just to let everybody know, lunch might happen  
9 like 1 o'clock. So we'll see you all in like 15 minutes.  
10 Thank you.

11 (Whereupon, the above-entitled matter went off the  
12 record at 11:45 a.m. and resumed at 12:23 p.m.)

13 CHAIRPERSON HILL: All right, let's go ahead and  
14 start again, please. Hopefully we've got the people we need  
15 here/ And Ms. Rose, you can start, and announce our next  
16 case, please.

17 MS. ROSE: This is application number 19745 of Fort  
18 Totten South LLC, pursuant to 11 DCMR subtitle X, chapter 9,  
19 for a special exception under the Zone Boundary Line  
20 provisions of subtitle A, subsection 207.2, and under  
21 subtitle G, subsection 409.1 from the side yard requirement  
22 of subtitle G 406.1 -- subsection 406.1, to construct a  
23 mixed-use residential and retail development in the MU-4 and  
24 R-2 zones at premises 5543 through 5575, South Dakota Avenue  
25 NE, square 3760, lot 22, and parcel 125/30, and the adjacent

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1 unimproved portions of a street to be closed.

2 CHAIRPERSON HILL: Thank you. Okay. Have you all  
3 been sworn in? Okay. There are, if there are people here  
4 that are planning on testifying that didn't get sworn in  
5 earlier -- and maybe I'll do this later -- but if you plan  
6 on testifying and you haven't been sworn in, do you want to  
7 stand and get sworn in?

8 If you were not here when we were swearing in  
9 people earlier, could you stand and get sworn in now if  
10 you're going to testify? If not, if there's no one here,  
11 then I guess no one's going to testify. All right.

12 Okay. Have you been sworn in earlier today? Oh,  
13 okay, all right. Good.

14 Okay, if you could, whoever hasn't been sworn in,  
15 if you could please take the oath as administered by the  
16 secretary to my left?

17 MS. ROSE: Please raise your right hand. Do you  
18 swear or affirm that the testimony you will be presenting  
19 today will be the truth, the whole truth, and nothing but the  
20 truth? Thank you. You may be seated.

21 CHAIRPERSON HILL: Okay, great. Could you please  
22 introduce yourselves, from my right to left?

23 MR. KADLECEK: Good afternoon, Cary Kadlecek from  
24 Goulston and Storrs, land use counsel on behalf of the  
25 Applicant.

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1 MR. GOLDMAN: Good afternoon. Evan Goldman from  
2 EYA. I'm the developer on the project.

3 MS. AMIRHAKIMI: Ameneh Amirhakimi with MV+A  
4 Architects, architect of the project 40 YSL.

5 CHAIRPERSON HILL: Could you say your name again,  
6 please?

7 MS. AMIRHAKIMI: Ameneh Amirhakimi.

8 CHAIRPERSON HILL: Hakimi?

9 MS. AMIRHAKIMI: Amirhakimi.

10 CHAIRPERSON HILL: Amirhakimi.

11 MR. KADLECEK: Do we ---

12 CHAIRPERSON HILL: Okay, Mr. Kadlecek, I assume  
13 you're going to present to us?

14 MR. KADLECEK: Yeah, so we'll give you a, a short  
15 presentation ---

16 CHAIRPERSON HILL: Just real quick ---

17 MR. KADLECEK: Sure.

18 CHAIRPERSON HILL: So okay. So yeah, I didn't have  
19 a lot of particular concerns or question. I mean, there was,  
20 obviously, the request that you've made. So if you could  
21 kind of like highlight what it is that you're here before us  
22 for, and then again, just kind of like, touch on the, the,  
23 sorry, the standard with which you're, should be granted the  
24 relief.

25 I think we might have more questions for either

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1 the Office of Planning, or seeing who's here with us later.

2 So I'm going to go ahead and put 15 minutes on the  
3 clock just so I know where we are. But you can begin  
4 whenever you like.

5 MR. KADLECEK: Great. Thank you, Mr. Chairman,  
6 members of the Board. Just real quickly, again, this is a  
7 request for two areas of relief. It's a project that  
8 includes townhouses, and then some ground-floor retail, and,  
9 and some, and some residential above the ground floor retail.

10 The two areas of relief are one, request to extend  
11 the zone standards of the MU-4 zone into the R-2 portion of  
12 the zone. It's a split-zone site, so it's to extend a little  
13 bit of the MU-4 standards into the R2 portion of the site.  
14 And then the second is for rear yard, I'm sorry, side yard  
15 relief. The site plan, as you saw in Exhibit 45A, we've  
16 slightly modified in response to a request from the Office  
17 of Planning.

18 We're not in full agreement with that  
19 interpretation, but in the interest of expediency, we did  
20 modify this site plan slightly so that there is .4 FAR of  
21 density in the R-2 portion of the zone. And with that,  
22 Evan's going to give you an overview of the project.

23 MR. GOLDMAN: Thank you Cary, and thank you to the  
24 board for allowing us to speak today. So this is a property,  
25 looking at the PowerPoint presentation, located in Fort

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1 Totten at South Dakota and Riggs. You can see it  
2 highlighted, the word property.

3 It's about, a little bit less than a quarter-mile,  
4 between an eighth and a quarter-mile from the metro station,  
5 and across from a JBG project with the Wal-Mart on the first  
6 floor, and some street retail that was built on South Dakota,  
7 I'm sorry, on Riggs.

8 This is a blow-up of the site. There's two  
9 portions to the property. This use to be a turn lane from  
10 South Dakota onto Riggs that was owned by DDOT as part of the  
11 city's roads.

12 And so, JBG owned the sliver of land behind them,  
13 and so there was a approval by the City Council approximately  
14 two to three years ago that essentially allowed the District  
15 land to be sold to JBG as the adjacent landowner, and EYA and  
16 JBG have then partnered on this redevelopment.

17 To put residential here, there's a requirement for  
18 29 affordable units, and a community benefits agreement that  
19 was negotiated with the community, even though this is not  
20 a PUD project.

21 The overall site plan, this is the revised site  
22 plan, and so I'll identify some of the minor changes. You  
23 can see the green dash line that goes through the property.  
24 Everything to the upper right ---

25 Actually, go to the next slide. Sorry.

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1 Everything to the upper right that's highlighted  
2 in yellow is the R-2 zone. Everything on the rest of the  
3 property is MU-4. When we went to the City Council a number  
4 of years ago for approval, we didn't realize that the  
5 property was split-zoned. It was actually very difficult to  
6 tell from the zoning maps that it was split-zoned, so we only  
7 discovered this about a year ago, after we had full approval  
8 of the ANC and the Lamont-Riggs Civic Association.

9 And so as a result, we had to modify the design  
10 of the back portion of the property to be consistent with  
11 what we're, the relief we're requesting today. And so the  
12 density, we've essentially moved, this is what we originally  
13 submitted to you a number of months ago. As you can see,  
14 there were a lot more townhomes in that yellow zone. And  
15 now, you can see there's just a lot less FAR. And so we've  
16 taken most of the square footage out of that zone. We're now  
17 at .4 FAR for the houses that are in that zone.

18 We've met with the neighbors, and they supported  
19 this project, that live directly behind the site, on the road  
20 behind it. And they were actually happy with our revised  
21 design, because these houses now sit on the ground, whereas  
22 before, all of the houses were up on a podium.

23 So looking at this overall plan, you can see the  
24 red is retail, up along Riggs Road, with parking going to  
25 below-grade, the below-grade garage. And then above that are

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1 residential townhomes that are accessed off a courtyard  
2 upstairs, and open to the sky courtyard.

3           And then the portion of the site --- Sorry, let  
4 me go back to that. The rest of the site, to the right, are  
5 all just typical UIA at-grade townhomes we've done throughout  
6 the city with a street grid.

7           So in the original design that we had presented  
8 to our ANC a number of years ago, everything was up on a  
9 podium. So there was a 20-foot base with parking and retail,  
10 and then the units went up to 50 feet. Now our heights are,  
11 are greatly reduced, so the neighborhood was appreciative of  
12 that.

13           And other than this zoning relief we're asking  
14 for, everything else is by right, would be a by-right design.

15           You, as you can see here, this is a, kind of an  
16 overview aerial of what we're proposing. And so there's  
17 retail along Riggs Road, about 20,000 square feet of retail.  
18 You can see those townhome units up above it, and with that  
19 open courtyard, and then you can see the homes that are on  
20 the grade to the right of that.

21           All of these, actually all but 15 of the units are  
22 three-bedroom units, and we have 29 affordable units,  
23 including many three-bedroom affordable units.

24           This is the intersection across from Wal-Mart,  
25 looking at South Dakota and Riggs. And so in response to the

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1 community, you're seeing the kind of high, white, modern,  
2 whitish-grayish modern brick on the podium portion of the  
3 project, and a red brick, more traditional townhome style for  
4 those that are at grade.

5           And then this is the entry up to the podium. And  
6 while this is not near the BZA request, just for information  
7 purposes, you can see the staircase going up to the podium  
8 with a security gate at the top. There's also an elevator  
9 lobby like a more typical condo building, where you'd go in  
10 and go up to the podium as well, and then you would enter the  
11 townhomes from the, up on the shared podium.

12           This is what that shared podium looks like. It's  
13 essentially a big open courtyard with private spaces in front  
14 of each of the houses.

15           Going down South Dakota, there's quite a bit of  
16 grade -- about 30 feet -- and so you see the red townhomes  
17 going down the road.

18           And then, now we're getting to the area that's  
19 near, where what the BZA request is for. And so you can see  
20 the houses behind us, which are the kind of grayish, brownish  
21 houses overlooking the townhomes that we're proposing, which  
22 are in the foreground.

23           And our rear yards will front those rear yards,  
24 and we'll have a, kind of a, a nice fence in the back yards  
25 of our houses. And you can see a retaining wall, because

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1 there's about 20 to 25 feet between us and the houses behind  
2 us. And so our houses are quite a bit lower.

3 And then in section, here on the upper right, you  
4 can see the existing houses up on the hill, and our new  
5 houses being built at the bottom of the hill.

6 So the residents were appreciative of the fact  
7 that these houses are now lower, and that their views will  
8 be, they'll still have their views, maintain their views.

9 So that's the extent of the project. The request  
10 is for the minor side yard relief next to the 7-11. And for  
11 the zoning standards of the MU-4 zone, to allow us to  
12 continue to do townhomes in that portion of the R-2 zoned  
13 property.

14 And then we're happy to answer any questions you  
15 have.

16 CHAIRPERSON HILL: Okay. Thank you. Does the  
17 Board have any questions for the Applicant?

18 MEMBER HART: Yeah, Mr. Chairman. Mr. Goldman,  
19 could you show us where the --- I appreciate you going  
20 through this, the, the PowerPoint slides. But I'm, what I  
21 was trying to understand is, do you have an image showing  
22 what the new configuration looks like that's a prospective  
23 image, or do you just have the, the plans?

24 MR. GOLDMAN: These two images --- Sorry. These  
25 two images here are essentially unchanged. That's the

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1 prospective images of that same area, so the only ---

2 MEMBER HART: But you're not including the, because  
3 one of the units is actually ---

4 MR. GOLDMAN: Turned.

5 MEMBER HART: The -- it's perpendicular to the rest  
6 of them. So I was just trying to understand how that worked.

7 MR. GOLDMAN: Yeah, so we haven't designed that  
8 architecturally yet. The nice thing is, these units have,  
9 let me go back to the plan for a second. So this string of  
10 units, these one, two, three, four, five, six, those seven  
11 units do not have parking in the unit, like a typical garage.

12 So unlike most UIA projects, where there's an  
13 alley and you pull into the, the back of the house, and  
14 that's where you park, those units are more typical houses  
15 on grade with backyards.

16 And so it gives us flexibility on how we design  
17 the first floor of those units.

18 We don't have to have a, you know, a typical  
19 townhome style, where you have the house in the back. So it  
20 would be the same exact layout as the other houses, but we  
21 would turn the unit, and it would, it would be made to look  
22 like either two fronts to two different units -- we haven't  
23 done the architecture for that specific unit yet -- whether  
24 it'd be two fronts for that unit even though it was one side,  
25 or we would design it as kind of a nicer, bigger-looking

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1 house, you know, with a front side view.

2           You would enter from the side into the living room  
3 space there. So it wouldn't feel, you wouldn't go around the  
4 corner and enter the house from the side yard. So from a  
5 pedestrian perspective, it would feel like you were entering  
6 that house from the mews, just like all the other houses.

7           MEMBER HART: And, and so you'd be entering it from  
8 the south.

9           MR. GOLDMAN: Exactly.

10          MEMBER HART: And ---

11          MR. GOLDMAN: Sorry, no, from the, on this drawing,  
12 from the bottom of the page, which happens to be west,  
13 because this is turned, north is to the left on this drawing.

14          MEMBER HART: Okay. Well, I mean the, I'm looking  
15 at the, there's a north arrow on this. So I'm, it's kind of  
16 looking ---

17          MR. GOLDMAN: Oh, yeah ---

18          MEMBER HART: --- this is south ---

19          MR. GOLDMAN: --- I'm sorry, you're right ---

20          MEMBER HART: --- so ---

21          MR. GOLDMAN: --- it's on an angle. Yes. So you'd

22 ---

23          MEMBER HART: Yeah, it's --

24          MR. GOLDMAN: --- entering from --- sorry.

25          MEMBER HART: And so, you were also telling us

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1 through the, the, through the sections, that there is  
2 actually a, like a 15 foot grade difference between where the  
3 existing houses are to the, the east, I guess, and where your  
4 proposal is located, so that yours are actually, your, the  
5 buildings you're, that you're proposing are actually smaller,  
6 or shorter.

7 MR. GOLDMAN: Yeah, that's right.

8 MEMBER HART: They're starting at a lower  
9 elevation, because they're not actually shorter.

10 MR. GOLDMAN: Right.

11 MEMBER HART: And so that it, it gives the existing  
12 homes still the ability to have some sort of view. I'm not  
13 exactly sure what that view is, but ---

14 MR. GOLDMAN: Yeah.

15 MEMBER HART: --- there's some view that they, that  
16 they have. And, so what I'm also understanding is that there  
17 is a --- And I'm looking at the, you know, the, the rest of  
18 the topography here. So this topography is stepping ---

19 MR. GOLDMAN: Down ---

20 MEMBER HART: Looks like you're also stepping down.

21 MR. GOLDMAN: Yeah. So from the intersection of  
22 South Dakota-Riggs ---

23 MEMBER HART: Okay.

24 MR. GOLDMAN: Down South Dakota ---

25 MEMBER HART: Okay.

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1 MR. GOLDMAN: Towards Michigan Park, the, the road,  
2 South Dakota, slopes almost 30 feet in grade ---

3 MEMBER HART: Yeah.

4 MR. GOLDMAN: So, down.

5 MEMBER HART: So the Riggs, South Dakota is the  
6 high point, and then it kind of goes down towards the --  
7 well, to the ---

8 MR. GOLDMAN: South-ish.

9 MEMBER HART: --- south, southeast?

10 MR. GOLDMAN: Yeah.

11 MEMBER HART: And then, it will then have a, kind  
12 of an up-slope that goes up to where the existing ---

13 MR. GOLDMAN: Yeah, so if, so let me go to the  
14 plan. I'll, I'll walk you through that ---

15 MEMBER HART: Because I recall actually driving  
16 along, I think that the, it was that, that kind of weird road  
17 that you, that connected the two streets before. It was a  
18 while ago that I've been on it, so.

19 MR. GOLDMAN: So if you look at this image, this  
20 kind of helps tell the story. At the very corner of South  
21 Dakota and Riggs, that's the high point, and on our property,  
22 it slopes all the way down the hill, and those individual  
23 townhomes go down a few feet per townhome.

24 In the back, the existing houses that are shown  
25 in Google Maps behind it, those are up on a ridge that's

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1 roughly anywhere from 10 to 20 feet above our property.

2           So our site's a little bit of a bowl. And so in  
3 our initial design that we had proposed to the City Council  
4 three years ago, and that was approved -- and that the  
5 community approved -- we had one, big continuous concrete  
6 podium on the entire property that had above-grade parking  
7 and retail, and that was sitting at 20 feet from the Riggs-  
8 South Dakota corner, going all the way on the site, and then  
9 our houses were on top of it ---

10           MEMBER HART: I think I get it now ---

11           MR. GOLDMAN: So that's the ---

12           MEMBER HART: I, what I was, what I was trying to  
13 get to was the change, or the changes really, you've moved  
14 where the podium is.

15           MR. GOLDMAN: Exactly.

16           MEMBER HART: And so you've allowed the, kind of  
17 natural grade to, to kind of be maintained ---

18           MR. GOLDMAN: Exactly.

19           MEMBER HART: --- on the site ---

20           MR. GOLDMAN: Yup.

21           MEMBER HART: --- but the podium is where the, to  
22 the north along ---

23           MR. GOLDMAN: Yeah.

24           MEMBER HART: --- Riggs.

25           MR. GOLDMAN: Yup.

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1 MEMBER HART: Where the mixed-use is going to be  
2 located.

3 MR. GOLDMAN: That's exactly right.

4 MEMBER HART: Okay. And one last question, how  
5 many units, how many units were affected, and now are  
6 affected by the -- where the R-2 zone is?

7 MR. GOLDMAN: So the, so the total of the  
8 property's 163 units. In our original design, which I'll  
9 show here, there were one, two, how many? Nine. Thank you.  
10 There were nine units affected in the original design, and  
11 in our new design we have only one, two, three, four, five  
12 units that go into the R-2 zone. Thank you.

13 MEMBER HART: Okay, and one last question. You  
14 have a, you said you had, there's a 15 foot setback?

15 MR. GOLDMAN: Mm-hmm.

16 MEMBER HART: And is that self-imposed, or is that  
17 ---

18 MR. GOLDMAN: No, it's part of the zoning  
19 regulations for MU-4 on the rear of the property, and so you  
20 can see, there's a 15 foot, the dash line running along the  
21 entire back of the property is that 15 foot setback.

22 MEMBER HART: Okay. Thank you.

23 CHAIRPERSON HILL: Anyone else?

24 MEMBER WHITE: Can you give me a little sense of  
25 what the community's feedback has been with respect to this

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1 project?

2 MR. GOLDMAN: Mm-hmm.

3 MEMBER WHITE: Positive, question mark, you know

4 ---

5 MR. GOLDMAN: Yep.

6 MEMBER WHITE: I see ANC weighed in, but overall  
7 I'd be really interested in what the community's impressions  
8 are of this.

9 MR. GOLDMAN: Yeah, I'd be happy to. So, EYA and  
10 JBG worked with Lamond Riggs Civic Association really closely  
11 on this for the past number of years. There's probably been,  
12 if I had to guess, 20 to 30 meetings.

13 They wrote a letter of support as well, that just  
14 was submitted in the last two days to the record.

15 MR. KADLECEK: Yesterday. I think it's, excuse  
16 me, I think it's Exhibit 45.

17 MR. GOLDMAN: And with the Lamond Riggs Civic  
18 Association, they have both a design review committee that  
19 you work really closely with, that gets involved in  
20 architecture, and style, and design. And even though this  
21 was not going to be a PUD project, we worked really closely  
22 with them, and we agreed to a, a public benefits agreement  
23 as well, even though that wasn't required by zoning.

24 So they've been heavily involved. They testified  
25 in favor of the project at the ANC, and then the ANC

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1 unanimously supported the project originally when this went  
2 to the council, and again reaffirmed that at their meeting  
3 in April.

4           So they've had a lot of involvement. The reasons  
5 they were supportive was, number one, they really wanted to  
6 see retail across from Wal-Mart, and create, have Riggs Road  
7 become more of a retail street, with retail on both sides of  
8 the street. So Wal-Mart's ---

9           MEMBER WHITE: Exactly ---

10           MR. GOLDMAN: So that's, so on this plan, the, the  
11 tan building to the left of our site, the left of the drawing  
12 across Riggs Road is the Wal-Mart facade, and then the  
13 restaurant spaces ---

14           MEMBER WHITE: Okay.

15           MR. GOLDMAN: And the coffee place right on the  
16 corner.

17           MEMBER WHITE: Okay.

18           MR. GOLDMAN: So they wanted to see that completed  
19 as a real, more urban streetscape. Five thousand square feet  
20 of that needs to be local retail, and they like that idea.  
21 They'd really like it to be a restaurant, which we'd like to  
22 do as well.

23           And then secondly, they liked that our project was  
24 for sale houses, versus what the original proposal was, was  
25 hundreds of multi-family units in keeping with what Wal-Mart

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1 did across the street, or what that project was across the  
2 street.

3           And so they liked this home ownership idea. They  
4 loved that there were three bedrooms, that they were more  
5 family-oriented, were very supportive of the affordable  
6 housing component of the project as well.

7           So they've been great to work with for the last  
8 few years.

9           MEMBER JOHN: So Mr. Chairman, I have a ---

10          CHAIRPERSON HILL: Sure.

11          MEMBER JOHN: --- question. Have you decided where  
12 the affordable houses will be?

13          MR. GOLDMAN: Yeah, so we have an agreement with  
14 ---

15                I should mention DMPED is our partner on this  
16 project as well, since DMPED owns the land. So they've been  
17 involved in reviewing everything -- all the drawings,  
18 everything we've been doing.

19                And so the, we have an exhibit in the contract  
20 with DMPED, the LDDA that was agreed to by the city that  
21 spreads those affordable units throughout the entire project,  
22 and they are of similar breakdown to the units in the  
23 project.

24                So same number of three bedroom market rate units,  
25 and two bedroom units, as a percentage standpoint, is the

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1 same number of affordable three bedroom and two bedroom units  
2 from a percentage standpoint.

3 MEMBER WHITE: Thank you.

4 MR. GOLDMAN: You're welcome.

5 MEMBER WHITE: Out of curiosity, the affordable  
6 units are rental, or ---

7 MR. GOLDMAN: For sale.

8 MEMBER WHITE: --- for sale? Okay.

9 CHAIRPERSON HILL: Commissioner Shapiro?

10 COMMISSIONER SHAPIRO: I'm just curious, were you  
11 ever considering a PUD, or ever considering a map amendment,  
12 or?

13 MR. GOLDMAN: So in this case, I don't, we --- Hmm.  
14 I'll say two things.

15 The zoning in, I don't believe that we thought we  
16 would get anything more out of a PUD on this site that would  
17 make it worthwhile to go through the PUD process, and we  
18 thought it would delay the project quite a bit, especially  
19 with what's going on currently with PUDs.

20 So, so yeah, that did weigh on us to some extent -  
21 the idea of keeping this simple. And the city wanted to see  
22 this project go forward as quickly as possible, so I think  
23 their desire was also for this to move forward as, without  
24 ---

25 CHAIRPERSON HILL: Thank you. Thank you, Mr.

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1 Chair.

2 CHAIRPERSON HILL: Quick question, as far as the  
3 --- And I do appreciate that, that this is not a PUD.  
4 However, you guys did put together a package, for the civic  
5 package. I was just, what's in that civic package?

6 MR. GOLDMAN: I actually have it here. Community  
7 benefits. So this sheet right here --- You guys can see  
8 this, right? Up there?

9 So this, this outlines our community benefits  
10 agreement. It's roughly \$325,000 that we negotiated with the  
11 community that's spread throughout a whole number of items.  
12 So some of it, the largest one, and probably the most  
13 important is \$200,000 towards public space improvements in  
14 the area.

15 The goal, our desire would be to have that done,  
16 have that money spent on the open space across the street,  
17 at South Dakota and Riggs. But the community will work to  
18 determine where they want that money to go, whether it's a  
19 playground at a local school, or it's another open space  
20 within the community.

21 There are small business development loans,  
22 there's workforce development and education training. And  
23 these were all requests specifically from the community of  
24 where they'd like to see the grants go.

25 And then we're working on, our attorney has

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1 drafted a draft community benefits legal document that the  
2 civic association is reviewing, and that we'll execute with  
3 them.

4 CHAIRPERSON HILL: And in the negotiation, so is  
5 that with the Lamond Riggs Civic Association and the ANC, or  
6 it's just ---

7 MR. GOLDMAN: Just Lamond Riggs Civic Association.

8 CHAIRPERSON HILL: Okay. Anybody else?

9 MEMBER HART: Is that -- is this package a  
10 percentage of the overall development? How did you come up  
11 with these numbers?

12 MR. GOLDMAN: And you know, that's a good question.  
13 I, so I've only been involved in this project for two years,  
14 and this was done before my time, so I don't remember if, how  
15 they came up with the percentages. Or I'm sorry the actual  
16 total dollar amounts.

17 I know it was a negotiation back and forth between  
18 us and, and the civic association. So I'm not a hundred  
19 percent sure where they came up with that specific number.

20 MEMBER HART: Thank you.

21 CHAIRPERSON HILL: Do you know, and they, they, you  
22 were, you know, whoever it was decided to do or try to do a  
23 community benefits package because you thought that it would  
24 be something that would be good for the development? I, I'm  
25 just kind of curious as to, again, since we don't normally

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1 see things that have those, although we have in the past,  
2 just curious as to why your organization decided to go ahead  
3 and try to do that.

4 MR. GOLDMAN: Yeah, so as this project was a  
5 project that had to go to the council, because the council  
6 had to approve of disposition of the portion of the land,  
7 that was the, so as part of that negotiation with the  
8 community, and to get their support for going to the, in  
9 front of the county, City Council, sorry, we had a number of  
10 things ---

11 CHAIRPERSON HILL: Sure ---

12 MR. GOLDMAN: --- we did ---

13 CHAIRPERSON HILL: No, that's great ---

14 MR. GOLDMAN: --- to give back ---

15 CHAIRPERSON HILL: That's great.

16 MR. GOLDMAN: --- as part of that process.

17 CHAIRPERSON HILL: That's great. Okay, wonderful.

18 All right, anyone else?

19 COMMISSIONER SHAPIRO: Just a quick question, Mr.  
20 Chair. Do, were you, was UDC involved at all ---

21 MR. GOLDMAN: No, UDC was not ---

22 (Simultaneous speaking.)

23 MR. GOLDMAN: They were not involved in the  
24 negotiation of this, but they could be a recipient of some  
25 of the ---

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1 COMMISSIONER SHAPIRO: Workforce development ---

2 MR. GOLDMAN: --- public benefits --- Right.

3 COMMISSIONER SHAPIRO: --- and small business  
4 development. Okay. Thank you. That's all, Mr. Chair.

5 CHAIRPERSON HILL: Okay, great. Okay, turning to  
6 the Office of Planning.

7 MR. MORDFIN: Good afternoon, Chair and members of  
8 the board. I'm Stephen Mordfin, and the Office of Planning  
9 supports this application, in that it conforms with all the  
10 requirements for the two requested areas of relief. We would  
11 also like to point out that the side yard, which previously  
12 had been requested to be reduced to a minimum of three feet,  
13 two inches is now a minimum of five feet. So that had, the  
14 amount of relief required has now been reduced.

15 Thank you.

16 CHAIRPERSON HILL: Okay, the only quick question  
17 I had, I mean, you guys were interested in seeing it go to  
18 .04 in the R-2 because why? Just curious.

19 MR. MORDFIN: That had been the interpretation of  
20 the Office of Planning, that within the R-2 it should be no  
21 more than .4.

22 CHAIRPERSON HILL: Okay. I don't think it seemed  
23 like it was very difficult for you all to do, by the way, so,  
24 but, but okay. Anybody got anything for the Office of  
25 Planning?

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1 Okay. Is there anyone here from the ANC?

2 Is there anyone here wishing to speak in support?

3 Is there anyone here wishing to speak in  
4 opposition?

5 Okay. Please come forward, sir.

6 If you could please introduce yourself, and give  
7 your home address.

8 MR. ANSAR BEY: Good afternoon. My name is  
9 Zulferkar Ansar Bey. To answer your question, sir, you're  
10 talking about 90 percent of the people that's in that  
11 community are elderly people ---

12 CHAIRPERSON HILL: Wait one second, Mr. Hansay Bey.  
13 Hansay Bey?

14 MR. ANSAR BEY: No. Ansar.

15 CHAIRPERSON HILL: Ansar.

16 MR. ANSAR BEY: A-N-S-A-R Bey, B-E-Y.

17 CHAIRPERSON HILL: Okay. And so ---

18 MR. ANSAR BEY: You're talking about 90 percent of  
19 the ---

20 CHAIRPERSON HILL: Mr. Ansar Bey, I'm just trying  
21 to tell you, as a member of the public, you'll have three  
22 minutes to give ---

23 MR. ANSAR BEY: Okay ---

24 (Simultaneous speaking.).

25 CHAIRPERSON HILL: No, that's okay.

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1 MR. ANSAR BEY: I understand how it goes ---

2 CHAIRPERSON HILL: --- that, that you're ---

3 MR. ANSAR BEY: I understand the rules.

4 CHAIRPERSON HILL: And so they got the clock thing.

5 You can start whenever you'd like.

6 MR. ANSAR BEY: And remind you, these are elderly  
7 people. They, you know, almost, maybe almost ready to check  
8 out. So they don't go to these meetings like that. They  
9 don't even know what's going on, okay?

10 And for the council downtown to say that they have  
11 the right to make options of the land for the people, whereas  
12 though I recall, it says we, the people. It doesn't say we,  
13 the government, you know, who has right to the land.

14 Specially indigenous rights, okay?

15 These people come along, investors, and  
16 developers. They coming in. And what that's going to bring?  
17 More gentrification. They going to push people out.

18 How many of our people there can really afford  
19 them properties like that? Starting out, for real?

20 And when we was at the last meeting, sir, and you  
21 was there, the elderly people ask them, to say what're we  
22 going to benefit from it? We didn't, they didn't really want  
23 that.

24 And he, he's talking about the houses that's  
25 behind it, on that sloped hill coming down, it's roughly like

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1 about 10 houses.

2           We're talking about the whole Riggs Parks. People  
3 that's 80, 70, 60 years old. I mean, these are elderly  
4 people. That's why you don't see nobody down here. They  
5 don't know what's going on.

6           You know, it's appalling that these people sit up  
7 there, and run around, play games like, you know, you really  
8 got -- entitled to the land. You don't. You're not  
9 indigenous to this land. You come from Europe.

10           So you have to ask the indigenous people first,  
11 because you, I'm telling you, you're setting yourself up for  
12 a real failure.

13           You need to go research the Peace and Friendship  
14 Treaty of 1786, the Constitution, Article 6, Section 2, and  
15 the rights of indigenous people. It was unanimously passed  
16 by Barack Obama in 2010, along with 1995 and 2007.

17           I rest my case. You can't own the land. I mean,  
18 the government can't own the land. It belongs to the people,  
19 not to the government. The government is there to do what  
20 the people want them to do.

21           You understand what I'm saying? It's time for our  
22 people to start sitting up, you know, and speaking up. Stop  
23 being bootleggers, stop being cowards, stop being scared.  
24 Martin Luther King, Malcolm X. These are your people. They  
25 died for our people to have a better life.

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1           What's going to happen to our children? We going  
2 to let some immigrants come in and push them out, too? What  
3 is their, what is your duty to your children, children when  
4 they're growing up? What's going to be left for them?  
5 Inheriting dust? Only if they didn't go to jail?

6           Be somebody's, or be body parts for somebody?  
7 Because they don't have no input on what's going on, far as  
8 economy-wise?

9           So I very, urge all these people sitting on this  
10 board right now that you research the rights of indigenous  
11 people, the Treaty of Peace and Friendship of 1787 between  
12 United States and the Moors, and learn that Constitution.

13           CHAIRPERSON HILL: Okay. All right. Thank you,  
14 sir. Does anybody have any questions for the witness?

15           Okay. All right. Thank you very much, sir.

16           Okay. Let's see. Where were we? All right. So  
17 does anybody have any questions for the Applicant?

18           All right.

19           Do you guys have anything you would like to add  
20 in conclusion?

21           MR. KADLECEK: Nothing really in conclusion, but  
22 I just do want to remind the Board that this process did go  
23 to the City Council, the City Council did go through a  
24 legislative process to dispose of this land. So it was in,  
25 you know, in full transparency with how the city disposes of

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1 its land.

2 But with that, you've heard from the Office of  
3 Planning, the ANC is in full support, the Lamond Riggs  
4 Citizen Association is in full support. So on that, we have  
5 nothing further, unless the Board has any additional  
6 questions. We're happy to answer them. Thank you.

7 CHAIRPERSON HILL: Okay. All right. Great.

8 Okay. All right. So I'm going to go ahead and  
9 close the hearing. Is the Board ready to deliberate?

10 I can go ahead and start. So again, after hearing  
11 the testimony from the Applicant, as well as, basically, the  
12 analysis of the Office of Planning -- I mean, I thought that  
13 what the Applicant has done in terms of working with the  
14 community, in terms of the community benefits package, which  
15 is something they didn't necessarily need to do, like they  
16 were here for the special exceptions as well as the different  
17 criteria that they were meeting within their application.

18 As well, you know, so I, I was, I'm in agreement  
19 with the analysis that the Office of Planning has provided,  
20 and so that is where I'm, kind of like, laying in terms of  
21 them meeting the criteria in order for us to grant this  
22 relief.

23 I am happy that, you know, I can see that the ANC  
24 4C was also in approval of 9-0-0, so unanimous approval from  
25 the ANC, as well as DDOT.

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1           And so I would be in support of the application --  
2 and again, rest my analysis on that, that the Office of  
3 Planning has provided, in terms of how they're meeting the  
4 criteria to grant this exception.

5           And I'll, does the Board have anything else they'd  
6 like to add?

7           MEMBER WHITE: No, Mr. Chair. I'll say a couple  
8 of other comments.

9           I think the record was very full. I asked  
10 questions about community feedback, because I'm always  
11 interested in what type of feedback that you've gotten with  
12 respect to this project, which is very extensive.

13           I am happy that there are some affordable units  
14 as part of this, and I think the community benefits package  
15 is good.

16           I think that is something that, it shows that  
17 you've worked with the various associations in coming  
18 together with something that would be supportive of that  
19 particular area on South Dakota Avenue.

20           But just stepping back, I think that the relief  
21 that you're seeking for a special exception for zone boundary  
22 line provisions under subtitle A 207.2 in side yard G,  
23 Section 406.1, I think the criteria was met, clearly under  
24 those two provisions.

25           So I would be supportive of the relief that

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1 they're seeking for this particular application as well.

2 CHAIRPERSON HILL: Okay. Anyone else? All right.  
3 I'll go ahead and make a motion to approve application number  
4 19745, as captioned and read by the Secretary, and ask for  
5 a second?

6 MEMBER WHITE: Second.

7 CHAIRPERSON HILL: Motion made and seconded. All  
8 those in favor, aye?

9 (Chorus of ayes.)

10 CHAIRPERSON HILL: All those opposed?

11 The motion passes. Ms. Rose?

12 MS. ROSE: Staff will record the vote as 5 to 0 to  
13 0 to approve the application, with Mr. Hill making the  
14 motion, seconded by Ms. White, with Mr. Hart, Ms. John, and  
15 Mr. Shapiro in support of the motion.

16 CHAIRPERSON HILL: Okay. Summary Order?

17 MS. ROSE: Thank you.

18 CHAIRPERSON HILL: Thank you. Thank you all very  
19 much.

20 MR. KADLECEK: Thank you.

21 MS. ROSE: Next is application number 19746 of DC  
22 Super Pack LLC, pursuant to 11 DCMR Subtitle X, Chapter 9,  
23 for a special exception under Subtitle H, Subsection 1109.1a  
24 to permit an animal boarding use in the NC-15 zone at  
25 premises 1371 through 1375 H Street, Northeast, square 1027,

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1 lot 166.

2 CHAIRPERSON HILL: Okay, great. Thank you. Could  
3 you please introduce yourselves?

4 MS. BIGLEY: Good afternoon, Alyssa Bigley of the  
5 law firm Cozen O'Connor on behalf of the Applicant.

6 MR. KAMPF: Good afternoon. I'm Danny Kampf, 40  
7 percent owner of DC Super Pack.

8 MR. STANKEVICH: Matthew Levin-Stankevich, co-  
9 owner, DC Super Pack.

10 CHAIRPERSON HILL: Is it Kank?

11 MR. KAMPF: Kampf.

12 CHAIRPERSON HILL: Kampf. Okay, Ms. Begley, I  
13 guess you're, I assume you're going to present to us?

14 MS. BIGLEY: Yes.

15 CHAIRPERSON HILL: Okay, great. Let's see. I  
16 don't have a lot of questions about this, actually -- I mean,  
17 other than the name confused me for a while. I thought we  
18 were here for a political organization.

19 And there is a condition, I guess, that the ANC  
20 had asked for. So if you can just kind of speak to that, in  
21 terms about, when you're talking about, kind of like your  
22 public outreach.

23 And so I'm going to go ahead and just ask you to  
24 present to what you're here for, and how you're meeting that  
25 criteria, as well as the one issue about the condition.

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1 I'm going to put 15 minutes on the clock, just so  
2 I know where we are, and you can begin whenever you like.

3 MS. BIGLEY: Thank you very much, Chair Hill. This  
4 application comes before you, it's an application for dog  
5 daycare and boarding use in the NC-15 zone. The property is  
6 located in the NC-15 zone. It's currently a one story  
7 structure. It's just one story, no basement, no cellar.

8 The request for relief is because in the NC-15  
9 zone, the dog boarding use is required to be in a cellar or  
10 basement.

11 This property does not have a cellar or basement,  
12 and therefore they are required to seek relief.

13 I will let the Applicant just give a brief  
14 introduction about their business, and as to how we got to  
15 where we are.

16 MR. KAMPF: So we are a dog daycare and boarding.  
17 We take a behavioral approach to dog daycare, and yeah. So  
18 it's mostly just, like a daycare service for dogs. We also  
19 offer walking in the area.

20 MR. STANKEVICH: So a little but about how we got  
21 to where we are, seeking relief. We acquired the space  
22 nearly six months ago through our landlord, who had a current  
23 certificate of occupancy for retail use.

24 We immediately followed that with a building  
25 permit, in which we clearly noted that this was going to be

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1 a doggie daycare, that on every plan and drawing submitted  
2 was the use that we were using it for.

3           Upon completion of our full build-out, we applied  
4 for a certificate of occupancy, and we got notice back that  
5 we actually didn't need a certificate of occupancy, we need  
6 a change of use.

7           And that started this process, after we already  
8 built out the space, already invested our funds to do so.  
9 So that's been the six month process that we've been going  
10 through.

11           CHAIRPERSON HILL: Okay. Does anybody have any  
12 questions for the Applicant?

13           Okay. Going to turn to the Office of Planning.

14           MS. MYERS: Good afternoon. Crystal Myers for the  
15 Office of Planning.

16           The Office of Planning is recommending approval  
17 of this case, and stands on the record of the staff report.

18           CHAIRPERSON HILL: Does anybody have any questions  
19 for the Office of Planning?

20           Is there anyone here from the ANC?

21           Is there anyone here who wishes to speak in  
22 support?

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

25           Would the Applicant like to add anything?

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1 MS. BIGLEY: I think we will stand on the record  
2 as is, thank you, Chair.

3 CHAIRPERSON HILL: Sorry, I'm sorry. I took a bite  
4 of cookie, and it was just cracking me up.

5 Okay. All right. Does the Board have any final  
6 questions for the Applicant?

7 Oh yes, please. Commissioner.

8 COMMISSIONER SHAPIRO: Thank you. Just one quick  
9 question, Mr. Chair. The, the ANC as, is asking for a  
10 condition about waste disposal. I, assuming you're having  
11 no objection with that. If you weren't to adhere to that,  
12 what would you have done with the waste?

13 MR. STANKEVICH: A couple things. So they were  
14 specifically addressing waste upon our walking service within  
15 the neighborhoods, and their original request was to package  
16 that during a four hour walk, and bring that waste back to  
17 the location.

18 A lot of our walkers don't return to the brick and  
19 mortar location. They had concerns about the pest control  
20 in public waste bins.

21 So what the ultimate recommendation, and, and  
22 condition that they asked us to have, which we agreed to, was  
23 any of our walkers that are returning in that neighborhood,  
24 to the brick and mortar, to dispose it in our approved trash,  
25 DC trash service at our brick and mortar, which is more than

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1 reasonable.

2           What wasn't was people walking dogs up in Glover  
3 Park, transporting that back after a six hour day of walking

4 ---

5           CHAIRPERSON HILL: Okay ---

6           MR. STANKEVICH: --- dogs.

7           CHAIRPERSON HILL: So ---

8           MR. STANKEVICH: So.

9           CHAIRPERSON HILL: --- and I appreciate the  
10 clarification. The, the condition that I had, again, was the  
11 Applicant shall store the waste from the animals boarded on-  
12 site in their own waste receptacles, so as to minimize the  
13 community impact of their operations.

14           MR. KAMPF: Yeah, we have a contracted trash pickup  
15 for twice a week where we're doing exactly ---

16           CHAIRPERSON HILL: Okay.

17           MR. KAMPF: --- that.

18           CHAIRPERSON HILL: But as far as the condition  
19 goes, you agree with that condition in the order? Okay.

20           MR. KAMPF: Oh, yes.

21           CHAIRPERSON HILL: All right. Okay. Okay. All  
22 right.

23           All right, I'm going to go back to the Applicant.  
24 So that's, you're done with your presentation?

25           MS. BIGLEY: Unless there are further questions,

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1 yes, we stand on the record.

2 CHAIRPERSON HILL: Does the Board have any further  
3 questions?

4 Okay. I'm going to close the hearing.

5 I thought that, that the Office of Planning's  
6 report was very concise as to how they are meeting the  
7 criteria. I thought that the ANC being in support with the  
8 condition was clear -- and also that they have been operating  
9 and, in this way, and have already, you know, I guess  
10 somewhat proven that, that they are not providing any adverse  
11 impact to the community there.

12 So I would be in support of the application with  
13 the one condition. Does the Board have anything they'd like  
14 to add?

15 Okay. Then I'm going to approve application  
16 number 15746 as captioned and read by the Secretary,  
17 including the condition: the Applicant shall store the waste  
18 from the animals boarded on site in their own waste  
19 receptacles, so as to minimize the community impact of their  
20 operations, and ask for a second?

21 MEMBER HART: Second.

22 CHAIRPERSON HILL: Motion is made and seconded.  
23 All those in favor, aye?

24 (Chorus of ayes.)

25 CHAIRPERSON HILL: All those opposed?

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1 The motion passes. Ms. Rose?

2 MS. ROSE: Staff will record the vote as 5-0-0 to  
3 approve the application on a motion by Mr. Hill, seconded by  
4 Mr. Shapiro?

5 CHAIRPERSON HILL: Mr. Hart, I believe.

6 MS. ROSE: Mr. Hart? Seconded by Mr. Hart, with  
7 Ms. White, Ms. John, and Mr. Shapiro in support of the  
8 motion, with one condition.

9 CHAIRPERSON HILL: Thank you. Summary order?

10 MS. ROSE: Thank you.

11 CHAIRPERSON HILL: Thank you. Thank you all very  
12 much.

13 MS. BIGLEY: Thank you.

14 MR. KAMPF: Thank you.

15 MR. STANKEVICH: Thank you.

16 (Pause.)

17 MS. ROSE: Are we ready? All right.

18 CHAIRPERSON HILL: I guess we are ready. Okay.

19 MS. ROSE: Next is application number 19644, of  
20 Meenakshi Nankani, pursuant to 11 DCMR, Subtitle X, Chapter  
21 9, for special exceptions under Subtitle D, Section 52201,  
22 from the rear yard requirements of Subtitle D, subsection  
23 306.2, and the side yard requirements of Subtitle D,  
24 subsection 307.1, and pursuant to Subtitle X, Chapter 10, for  
25 a variance from the lot occupancy requirements of Subtitle

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1 D, Subsection 304.1 to construct a rear deck addition to an  
2 existing one family dwelling in the R-1B zone at premises  
3 1315 Delafield Place Northwest, square 2808, lot 30.

4 CHAIRPERSON HILL: Is the Applicant here?

5 (No response.)

6 CHAIRPERSON HILL: Okay. I guess we'll just put  
7 it at the end, and see if the Applicant comes back. For now,  
8 we'll just keep going, and we'll ---

9 MS. ROSE: Right.

10 CHAIRPERSON HILL: --- push it at the end. Who is  
11 the next one, Ms. Rose?

12 MS. ROSE: It's 19735, of Mi Casa Inc., pursuant  
13 to 11 DCMR Subtitle X, Chapter 10, for area variance from the  
14 lot dimension requirements of Subtitle D, Subsection 302.1,  
15 and from the side yard requirements of Subtitle D, Subsection  
16 307.4 to construct a new principal dwelling unit in the R3  
17 zone at premises 1528 W Street Southeast, square 5779, lot  
18 824.

19 MR. DEBEAR: I apologize to the Board. The, we  
20 have two cases for Mi Casa today, and ---

21 CHAIRPERSON HILL: No problem. Are ---

22 (Simultaneous speaking.)

23 CHAIRPERSON HILL: Are you the first Mi Casa ---

24 MR. DEBEAR: I am.

25 CHAIRPERSON HILL: Okay, you're 197, you're 19735.

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1 MR. DEBEAR: Yes.

2 CHAIRPERSON HILL: Okay. All right. Just give us  
3 a second here. Do you need other members of your team,  
4 or are you ---

5 MR. DEBEAR: Yeah.

6 CHAIRPERSON HILL: Okay. We can just wait a  
7 minute.

8 MR. DEBEAR: Yeah.

9 CHAIRPERSON HILL: We can wait a minute.

10 MR. DEBEAR: The head of Mi Casa is here, or the  
11 Deputy Director.

12 CHAIRPERSON HILL: We're, we're going to take a 30-  
13 second break here, anyway, while we get everybody together.

14 (Whereupon, the above-entitled matter went off the  
15 record at 1:06 p.m. and resumed at 1:13 p.m.)

16 CHAIRPERSON HILL: All right. Okay. So if you  
17 could please introduce your --- oh, no, did we call the case  
18 already, Ms. Rose?

19 I think we did, correct?

20 MS. ROSE: Yes.

21 CHAIRPERSON HILL: Okay, can we call it again?

22 MS. ROSE: Okay, this is Mi Casa, right? This is  
23 Mi Casa, application 19735 of Mi Casa, Inc., pursuant to 11  
24 DCMR Subtitle X, Chapter 10, for area variances from the lot  
25 dimension requirements of Subtitle D, Subsection 302.1, and

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1 from the side yard requirements of Subtitle D, Subsection  
2 307.4 to construct a new principal dwelling unit in the R-3  
3 zone at premises 1528 W Street Southeast, square 5779, lot  
4 824.

5 CHAIRPERSON HILL: Okay, great. If you could  
6 please introduce yourselves for the record?

7 MR. DEBEAR: Yeah, I appreciate the Board's  
8 indulgence on that technical matter.

9 My name's Eric DeBear from Cozen O'Connor,  
10 representing the Applicant, Mi Casa.

11 MS. ZURBRIGG: Hi, good afternoon. My name is Elin  
12 Zurbrigg, and I am the Deputy Director of Mi Casa, Inc.

13 MS. MOLDENHAUER: Good afternoon, Meridith  
14 Moldenhauer, zoning land use counsel for the Applicant.

15 MR. RUEDA: Good afternoon, Guillermo Rueda,  
16 architect for the Applicant.

17 CHAIRPERSON HILL: Okay, Mr. DeBear, are you  
18 presenting?

19 MR. DEBEAR: I am.

20 CHAIRPERSON HILL: Okay. So there, just to kind  
21 of start off again, if you could go ahead and walk us through  
22 the relief that you're requesting -- particularly, I guess,  
23 like kind of highlighting the, the variance relief, and, and  
24 the standards in which you're meeting that test.

25 I think the Board will have some questions about

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1 that. But, and then also your outreach to the ANC, because  
2 we don't have a report yet, okay, unless it came in ---

3 MR. DEBEAR: It did come in last, yesterday  
4 afternoon.

5 CHAIRPERSON HILL: Okay, great. Okay, then I'll  
6 take a look at that as you're going through your  
7 presentation.

8 Does the Board have anything else, other than  
9 those items that I mentioned? Okay.

10 If you want to go ahead, and start, I'm going to  
11 put 15 minutes on the clock just so I know where we are, and  
12 you can start whenever you like.

13 MR. DEBEAR: Thank you, Chair.

14 Again, my name's Eric DeBear on behalf of Mi Casa,  
15 Inc. This is a BZA application seeking variance relief to  
16 improve a vacant lot, a long-vacant lot.

17 Mi Casa is seeking lot dimension relief because  
18 the required 3000 square feet, and the lot width of 30 feet  
19 are, have not been met.

20 Mi Casa's also seeking side yard relief from the  
21 freestanding side wall provision of 307.4 for providing two  
22 substandard side yards that are both freestanding.

23 And with that short introduction, I'll turn it  
24 over to Elin Zurbrigg from Mi Casa.

25 MS. ZURBRIGG: Good afternoon again. So Mi Casa,

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1 Inc. is an affordable housing nonprofit developer based in  
2 the District of Columbia. We've been around for more than  
3 25 years, and we were awarded the two lots from the DC  
4 Department of Housing and Community Development, DHCD's  
5 Property and Acquisition Disposition Division, or PADD, to  
6 develop into new homes.

7 So just a point about 1528 U Street -- W Street,  
8 Southeast, where it's located in an R-3 zone in the historic  
9 Anacostia District in Ward 8.

10 And a little bit of background about Mi Casa, if  
11 you want me continue --- Oh.

12 So historically, it was, this was a line of, of  
13 detached houses. And so we're looking to recreate a house  
14 that's very similar, and very much in context with the  
15 existing surrounding houses.

16 A little bit of background on Mi Casa, we, as I've  
17 said, have been developing the District for more than 25  
18 years. Our focus is on non-displacement of low-income  
19 residents, so we provide housing that is affordable to  
20 families and individuals with income ranges from below 30  
21 percent AMI to up to 80 percent Area Median Income.

22 And in this case, we are looking to provide  
23 family-size home ownership to below 50 percent AMI.

24 We, our goal, our mission is to promote access to  
25 affordable housing across the District, and preserve diverse

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1 neighborhoods - again, preventing the displacement of low-  
2 income residents as our city develops.

3           So we do that by transforming and renovating  
4 vacant homes and lots into high quality, energy-efficient  
5 single family homes for first-time home-buyers. We also  
6 preserve existing buildings by working with tenant  
7 associations to form cooperatives, and preserve the under the  
8 Tenant Opportunity to Purchase Act.

9           And we develop affordable multi-family rental  
10 housing, and we're doing that more and more throughout the  
11 District to prevent the displacement of low-income residents.

12           So relevant projects, we've worked on a lot of  
13 projects with the city, and starting out with the D.C.  
14 Housing Authority's Scattered Sites Initiative some time ago,  
15 when there were lots of vacancies throughout D.C.

16           And much of that has changed, and so over time  
17 we've focused on in-field development -- and, again,  
18 preserving existing affordable housing.

19           We did a joint project with, very much with deep  
20 community involvement in Ivy City through an initiative, the  
21 Ivy City Special Demonstration Project, that was a joint  
22 effort between the community, DHCD, and nonprofit developers  
23 such as Mi Casa and other non-profits.

24           So we have roots in doing community development  
25 that's very much focused on outreach to the local community

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1 in building homes that will be suitable for people who are  
2 looking to buy in their community, and stay within their  
3 community.

4           So this project, these two lots, is also part of  
5 those broader initiatives that DHCD, the Mayor, and the City  
6 Council support -- including the, the recently initiated, at  
7 the end of 2017, Vacants to Vibrant Initiative. And the  
8 intention is to convert longstanding vacant properties in the  
9 District's inventory into affordable housing and other public  
10 use.

11           So this particular site will be developed into one  
12 single-family home -- again, has, and designed to be in the  
13 historic context of the neighborhood. And it will be  
14 affordable to a family below 50 percent area median income,  
15 as mentioned, and it will remain affordable over 15 years  
16 through an affordability covenant.

17           It's a family-size residence, so we're providing  
18 four bedroom homes, a semi-detached home, again, with four  
19 bedrooms, a front porch, and a rear yard.

20           So we have done extensive community outreach. We  
21 always do extensive community outreach, because it's  
22 important to us per our mission that what we build is  
23 something that the community really wants to see.

24           So we started early, reaching out to the  
25 community. Actually, we reached out while we had an

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1 application in to DHCD, we reached out to the ANC, the  
2 Historic Anacostia Block Association, and other community  
3 groups.

4 We've been in partnership for a long time with  
5 initiatives like Elevating Equity -- some of you may know  
6 about the initiative that is in partnership with community  
7 groups, local initiatives is partnership LISC, and Building  
8 Bridges Across the River.

9 The intention is to do lots of intensive community  
10 outreach to involve the community in the redevelopment that's  
11 happening, and ensure that they continue to have a voice, and  
12 a stake in the redevelopment of Anacostia.

13 And one of the key ways of doing that, of course,  
14 is through ownership. So we're very much committed to  
15 promoting, on a broader effort, home ownership to ensure that  
16 residents who live in this neighborhood can continue to live  
17 in this neighborhood.

18 So just a -- sort of a timeline. Formally, we  
19 reached out to the ANC last year in the fall, and again, had  
20 other meetings with Historic Anacostia Block Association,  
21 other folks, representatives of HAPS.

22 And then we, more formally, went to the, to the  
23 Board Executive Committee in March of 2018, and the full ANC  
24 in April, the Executive Committee again in late April, and  
25 then we had an ANC meeting, the, a vote of support on May 1.

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1 MR. DEBEAR: Just on that note, Chair, the ANC's  
2 resolution is that Exhibit 42 -- I know you had asked --  
3 supporting the application. And I'll turn it ---

4 CHAIRPERSON HILL: Thank you, no ---

5 MR. DEBEAR: -- back to ---

6 CHAIRPERSON HILL: --- I got it, thank you.

7 MR. DEBEAR: --- Elin.

8 MS. ZURBRIGG: Okay. And along with that support,  
9 we, we also have four letters of support from broader, from  
10 some of the partners that we've been working with on broader  
11 initiatives east of the river, to ensure that equitable  
12 development is able to be a part of all, all of the  
13 development east of the river.

14 Office of Planning provided support for both areas  
15 of relief, as well.

16 MR. DEBEAR: And with that, we'll turn it over to  
17 our architect, Mr. Rueda, to walk through some of the plans.  
18 And then we will get to the variance standard.

19 CHAIRPERSON HILL: Okay.

20 MR. RUEDA: Good afternoon again. So the property  
21 sits at the corner of 16th and W Street, and the photograph  
22 here shows that it is an empty corner lot at the end of a  
23 series of similar Queen Anne-style single-family homes that  
24 are characterized by front porches and a gable roof.

25 The historic homes are situated on 24 foot wide

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1 lots, with two and a half foot nonconforming side yards on  
2 either side, which leaves about five feet of side yard  
3 between the houses.

4 So the proposed site plan here describes a new  
5 home that respects the front and rear yard setback  
6 requirements with a single nonconforming six foot side yard  
7 setback on the west side of the, of the house, and we're  
8 showing the house face on line, on the east side.

9 The proposed plans, as Ms. Zurbrigg mentioned, are  
10 proposed to be three to four bedroom houses. There's,  
11 there's an affordable --- not affordable, excuse me --  
12 accessible option on the first floor for a den to be  
13 converted to a bedroom, and then there's three bedrooms  
14 above.

15 And in this case, we designed the exterior  
16 elevations to be very much in keeping, both in proportion,  
17 scale, and dimension to the adjacent, I believe there's five  
18 or six Queen Anne, Queen Anne homes that are very similar to  
19 this immediately to the west.

20 And, and so we designed these very much with an  
21 eye towards the surrounding context, and that we were granted  
22 conceptual approval at HPRB.

23 Thank you.

24 MR. DEBEAR: Thank you, Mr. Rueda.

25 So I'll walk through the variance relief that's

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1 being requested as part of this application. As I mentioned  
2 earlier, it's really two main areas of relief -- lot  
3 dimension, the lot dimension requirements in the R-3 zone for  
4 a semi-detached residence, as proposed by Mi Casa is 3000  
5 square feet of lot area, and 30 feet of lot width.

6 Here, we only have 2760 square feet of lot area,  
7 and a lot width of 24 feet. So it's substandard.

8 The side yards, it would be both side yards are  
9 freestanding walls under the definition in Subtitle D 307.4.  
10 As Mr. Rueda mentioned, one side yard will be six feet, the  
11 other side yard there, there will be no side yard. It's face  
12 on line, on the corner there.

13 Initially, I wanted to just run over, again, Mi  
14 Casa, I think Elin did a fantastic job of describing Mi  
15 Casa's mission through DHCD and other District programs to  
16 provide affordable housing throughout the District,  
17 especially family-sized affordable housing.

18 I think the Board's probably well-aware that  
19 that's sorely needed.

20 And in that vein, the, under the longstanding  
21 Court of Appeals precedent started in Monaco, and continued  
22 in several cases, we do believe that Mi Casa's entitled to  
23 a reduced standard of review here, and that they meet the  
24 variance standard.

25 And I can go through some of that at the Board's

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1 request.

2           Again, there are certain factors set forth in the  
3 Draude v. BZA case that the specific design constitutes an  
4 institutional necessity.

5           Again, as Elin described, the goal is to provide  
6 a true family-sized home with four bedrooms. Here, a smaller  
7 home -- so one that provided standard side yards --- would  
8 really not accomplish that goal. There would also be issues  
9 with delays with the DHCD financing.

10           And then, the second factor, that the design  
11 features require the variance sought -- as I said, the  
12 applicant cannot construct a home on this vacant lot without  
13 obtaining lot area relief, as I'll talk about briefly in a  
14 bit.

15           There is a side yard on the only abutting property  
16 to the west, so the applicant could not possibly create an  
17 attached home here -- which means they would not be entitled  
18 to the lot dimensions available for an attached home.

19           And again, with the compliant side yards, it would  
20 greatly reduce the capacity of the home, making it  
21 essentially, I believe, eight feet wide, which isn't viable.

22           In terms of the specific variance standard, the  
23 exceptional conditions -- this lot has long been vacant, and  
24 its next to an abutting neighbor with a side yard. Again,  
25 that means that they cannot become attached.

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1           It is in the Anacostia Historic District, as Mr.  
2 Rueda spoke about. The goal is to provide something that's  
3 in context with the other semi-detached and detached homes  
4 on the block face.

5           And then, as Elin spoke about, the applicant's  
6 programmatic needs is certainly to provide family-sized and  
7 affordable home.

8           And these exceptional conditions relate directly  
9 to the practical difficulties in meeting the lot dimension  
10 and side yard requirements.

11           Again, the abutting property to the west, the only  
12 abutting property on W Street has its own side yard. In the  
13 R-3 zone, there are differing lot area and lot width  
14 requirements, depending on the type of home being  
15 constructed.

16           Here, they would meet the attached home  
17 requirements, but again, they cannot possibly become attached  
18 because the home to the west has its own side yard that abuts  
19 Mi Casa's property.

20           With strict application of the side yard  
21 requirements being 8 feet in the R-3 zone, the applicant  
22 would experience practical difficulties satisfying building  
23 code requirements, including stairwell widths and hallway  
24 passage, and then providing an adequate amount of, really,  
25 habitable space.

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1           The lot is only 24 feet wide. To provide two  
2 eight-foot side yards would leave a eight-foot wide home,  
3 which just isn't viable, really, for a, for a family-sized  
4 residence.

5           And then, certainly, the historic preservation  
6 aspect -- doing a design that meets the, the general pattern  
7 and scale of the homes on W Street, as Mr. Rueda mentioned --  
8 the fact that the whole line of homes are semidetached, and  
9 to keep that kind of pattern in line with our own side yard.

10           Again, the applicant already received conceptual  
11 approval from HPRB. There are some minor alterations, that  
12 they're being made, but they're mostly aesthetic.

13           And then finally, no substantial detriment to the  
14 public good. The Office of Planning supports both areas of  
15 relief. The applicant has designed a project to fit the  
16 scale and pattern of homes in the neighborhood. It's a  
17 residential neighborhood, mostly single family homes. This,  
18 this construction will be a single family home.

19           And then, again, kind of implementing the aspects  
20 of the comprehensive plan that encourage affordable housing  
21 and in-fill development.

22           And with that, I have gone through the, the BZA  
23 standard, and I would, if the Board has any questions, I'd  
24 be happy to answer them.

25           CHAIRPERSON HILL: There, there was -- and I'm sure

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1 the Board has other questions as well -- but just really  
2 quickly, you, and I don't know whether or not this is going  
3 to happen, but you were asking for areas of flexibility of  
4 ---

5 MR. DEBEAR: Yes.

6 CHAIRPERSON HILL: --- of relief?

7 MR. DEBEAR: I was going to wait until the end,  
8 Chair ---

9 CHAIRPERSON HILL: Sure. That's okay.

10 MR. DEBEAR: --- Hill, but we can, we can walk  
11 through those. It's really in direct connection with the  
12 HPRB pending application. As I mentioned -- and I think Mr.  
13 Rueda can speak directly to this -- they are working on  
14 making minor external aesthetic revisions, and seeking  
15 approval, final approval from HPRB.

16 And we wanted to maintain just the ability to not  
17 alter any of the dimensions of the home, but to simply be  
18 able to alter the aesthetic look of the home, and then  
19 anything in the interior, in terms of the layout, or the  
20 partition, or the location of bedrooms -- which is more just  
21 a general request, as Mi Casa works through the process of  
22 constructing this property.

23 CHAIRPERSON HILL: Okay, there was three areas of  
24 flexibility, I though ---

25 MR. DEBEAR: We removed one to clarify. I think

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1 one was superfluous, and so we combined them, and now we, we  
2 have what you see here. This would be the proposed language  
3 that we're seeking in terms of flexibility.

4 CHAIRPERSON HILL: Okay. Okay. Well, we'll,  
5 we'll, we'll probably get into a discussion about that.

6 Does the Board have any questions for the  
7 applicant?

8 MEMBER HART: Just a, a couple of quick questions.  
9 One, Mr. DeBear, the project seems to be larger than the  
10 adjoining -- than the properties that are next door to it.  
11 It just seems to be longer. I looked at, I was looking at  
12 one of the images, floorplan on page, on your slide nine?

13 And just, could you talk about, kind of, why you  
14 were looking at this dimension, why is it larger than the  
15 buildings that are next to, next door to it, kind of how is  
16 that in keeping with the, with the neighborhood scale?

17 And along with that, if you could ---

18 Actually, just, just, I, I'll stop with there.

19 MR. DEBEAR: Okay.

20 MEMBER HART: At the, actually, if you could let  
21 me know what the size of the existing, what, there was a  
22 building there at one point, according to the Baist maps.

23 MR. DEBEAR: Yes.

24 MEMBER HART: So, kind of, when was that torn down,  
25 and, or do you know, or?

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1 MR. DEBEAR: That sort of remains a mystery. I  
2 think these questions would probably be best answered by Mr.  
3 Rueda.

4 But I will say, Board Member Hart, that our  
5 property does not go more than 10 feet past the rear wall of  
6 that neighboring property.

7 But I'll let Mr. Rueda talk about kind of the  
8 design aspect. And I do have a feeling it's, it, it's at  
9 least in part driven by, certainly, the need to provide a,  
10 a real family-sized home, with appropriate amount of bedrooms  
11 and recreation space.

12 And there is a, a large rear yard there, I will  
13 note, with a parking pad.

14 But I'll let Mr. Rueda answer your question. I  
15 think it's probably best for him.

16 MR. RUEDA: So I'm, I, I'm not exactly sure that  
17 the representation in the site plan of the existing home is,  
18 includes the dogleg in the back. I, I'd have to double-check  
19 on that, to be honest, because the site plan's cut off.

20 MEMBER HART: You mean, you mean the adjacent ---

21 MR. RUEDA: On the adjacent property?

22 MEMBER HART: Yeah, I, I just was wondering about  
23 the, about the, the, the size of the house that you're  
24 proposing, and the size of the house that's -- the houses  
25 that are existing.

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1 MR. RUEDA: So in length, we, we look longer at  
2 this point, because of the way the site plans cut off. But  
3 I, I do believe there is a dogleg back there, that if, I, I  
4 have nothing to show you to represent that.

5 MEMBER HART: I mean, I was kind of, I was kind of  
6 looking at the, slide number four. They have the, you know,  
7 the Baist maps that kind of show what the existing building,  
8 where that existing building used to be, and there was a  
9 building that's next door to it, and that, and it looked like  
10 it somewhat have a, had somewhat of a dogleg. But I don't  
11 know that for sure, I'm just asking, but you, you've included  
12 it in your, in the drawings that you've provided to us.

13 I was just wondering why that, why there was such  
14 a -- why there was a difference in the size.

15 MR. RUEDA: The, the, the representation in the  
16 historic base, I think was different when we were on site.  
17 The surveyor dimensioned the property line to be 30 inches  
18 between us. And by their own description, the, the adjacent  
19 two neighbors said that they shared a five, approximately  
20 five foot side yard. So they each had about 30 inches on  
21 either side of the house.

22 So this representation isn't, isn't current,  
23 obviously. And as far as the length of the house, I'm not  
24 sure that this is actually also representative of the current  
25 house.

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1           There's also a new alley back here, just, you  
2 know, as a, as a point of interest, I suppose -- which is  
3 shown by the dotted line. The, this property gave up 15 feet  
4 towards that public alley.

5           MEMBER HART: And do you, and do you have any idea  
6 --- Thank you.       Do you have any idea about the, the  
7 existing house that ---  
8 the Baist map shows a house, so I didn't know if that was ---

9           MR. RUEDA: We couldn't find information shown in  
10 photographs or anything like that.

11          MEMBER HART: No demolition?

12          (Simultaneous speaking.)

13          MR. RUEDA: Not, not that I could find.

14          MEMBER HART: And who's been maintaining the  
15 property?

16          MR. RUEDA: Sorry?

17          MEMBER HART: Who has been maintaining the  
18 property?

19          MR. RUEDA: DHCD.

20          MEMBER HART: Okay.

21          MR. DEBEAR: And, and we did look into where, what  
22 this house was, and we really could not find any information.  
23 There's just nothing out there.

24                I, I'm not sure if this one, or if Mi Casa's other  
25 application, it burned down at some point I believe, but we

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1 don't know when, and, and why, and what it was before ---

2 MEMBER HART: That's, that, that's fine. I just  
3 was ---

4 MR. DEBEAR: Yeah.

5 MEMBER HART: --- curious. Thank you.

6 CHAIRPERSON HILL: I just had a quick question.  
7 And I'm sorry, I've forgotten your name, the Director of Mi  
8 Casa? Is it Executive Director, or?

9 MS. ZURBRIGG: Elin Zurbrigg, I'm the Deputy  
10 Director.

11 CHAIRPERSON HILL: Zurbrick?

12 MS. ZURBRIGG: Zurbrigg.

13 CHAIRPERSON HILL: Zurbrigg. Zurbrigg.

14 MS. ZURBRIGG: Yes.

15 CHAIRPERSON HILL: So I was just curious about, so  
16 how long have you been there at Mi Casa?

17 MS. ZURBRIGG: Sixteen years.

18 CHAIRPERSON HILL: Wow. So now, the concept,  
19 again, I just want to understand. You, can you explain again  
20 what you guys do?

21 MS. ZURBRIGG: So, yeah. We actually started out  
22 25 years ago developing single-family homes for sale to  
23 first-time homebuyers, and we've evolved since then --  
24 especially within the last 15 years -- to, to doing multi-  
25 family development.

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1           So we work with tenant associations to help form  
2 co-ops, and help ---

3           CHAIRPERSON HILL: Did you start in DC?

4           MS. ZURBRIGG: We started in DC; we still are based  
5 in DC.

6           CHAIRPERSON HILL: okay.

7           MS. ZURBRIGG: So we, we're DC-focused ---

8           (Simultaneous speaking.)

9           CHAIRPERSON HILL: Where is your actual office?

10          MS. ZURBRIGG: Our actual office is in Brightwood,  
11 in Ward 4.

12          CHAIRPERSON HILL: Okay.

13          MS. ZURBRIGG: Third and Sheridan.

14          CHAIRPERSON HILL: Okay.

15          MS. ZURBRIGG: But we work throughout the city.  
16 We have projects, we have other current projects in Southeast  
17 DC, Northeast ---

18          CHAIRPERSON HILL: How did you guys get started?

19          MS. ZURBRIGG: We got started in the early 90s,  
20 when there were a high rate of vacant single-family homes,  
21 and we saw the need for a bilingual organization to reach out  
22 to the growing Latino population, and also to low-income  
23 homeowners who were looking for quality, affordable homes to  
24 purchase for the first time.

25          CHAIRPERSON HILL: Okay, great. Okay. Thank you.

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1 MS. ZURBRIGG: Sure.

2 CHAIRPERSON HILL: Any more questions for the  
3 applicant?

4 Okay. Now we're going to turn to the Office of  
5 Planning.

6 MS. VITALE: Sorry. The microphone's further away  
7 than I thought.

8 Good afternoon, Mr. Chair, members of the Board.  
9 Elisa Vitale with the Office of Planning.

10 I'm happy to rest on the record in support of the  
11 requested lot dimension and side yard relief, and I'm happy  
12 to answer any questions. Thank you.

13 CHAIRPERSON HILL: Okay. Does anyone have any  
14 questions for the Office of Planning?

15 Okay. Okay.

16 I have a quick question. I don't know whether you  
17 can answer this or not today. I know that we -- there might  
18 be some discussion concerning the flexibility that they've  
19 asked for.

20 Like, do you know anything about, or do you have  
21 any thoughts about the flexibility that the applicant's  
22 asking for?

23 MS. VITALE: I would defer to OAG on this, but I,  
24 I do believe that generally, the Board is approving relief,  
25 not the project specifically. So this sort of design

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1 flexibility isn't something that's generally appropriate at  
2 the BZA. This would be something that would be more typical  
3 for, like, a planned unit development or something, before  
4 the Zoning Commission.

5 CHAIRPERSON HILL: Okay. All right. Well, we can,  
6 we'll, we'll get farther along with this before I turn to the  
7 Office, the OAG, that is.

8 Okay. Does the applicant have any questions for  
9 the Office of Planning?

10 MR. DEBEAR: No.

11 CHAIRPERSON HILL: Okay. Is there anyone here from  
12 the ANC?

13 MS. FULLER: Yes.

14 CHAIRPERSON HILL: From the ANC, please come  
15 forward. Did, yeah, okay. So let me see. Did you guys get  
16 sworn in, or did you get sworn in? Okay. Is anyone else  
17 going to testify that wants to get sworn in? No? Okay.

18 If you could introduce yourself, please.

19 MS. FULLER: Good afternoon. My name is Greta  
20 Fuller. I am a Commissioner in ANC 8A, and a Commissioner  
21 ---

22 CHAIRPERSON HILL: Ms. Commissioner? I'm sorry.  
23 So Commissioner Fuller, the reason why I'm just smiling is  
24 like, I asked if there was any commissioners here earlier.  
25 I don't know if you noticed or not.

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1           The reason why I asked that is I was going to try  
2 to get the commissioners up earlier. Right. So I'm just,  
3 because I recognized you, and I was like, I thought you were  
4 ---

5           But, so please, go ahead. I, you have five  
6 minutes as an ANC to testify in any way you like, and you can  
7 begin whenever you want.

8           MS. FULLER: Oh, okay. I wasn't sure if you were  
9 talking about for that case.

10          CHAIRPERSON HILL: No, I'm sorry.

11          MS. FULLER: It's okay.

12          CHAIRPERSON HILL: I was just trying to, I was just  
13 trying to move you along.

14          MS. FULLER: I appreciate it, especially with all  
15 the work we have to do.

16          But anyway, thank you for listening to ANC 8A, and  
17 behalf on the community today.

18          There are a couple of things that I just wanted  
19 to point out. We did write a letter of support for this  
20 project, because we do believe in providing housing for  
21 residents -- and actually, housing that's for sale, because  
22 we have a lot of apartments in our community, and we're  
23 looking for home ownership to help gel and complete the  
24 fabric of historic Anacostia, and in Ward 8.

25          Mi Casa has worked very diligently with myself and

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1 other community members and residents to try to get this  
2 project going.

3           The one thing that I kind of had some questions  
4 about, and it was the Office of Planning's letter. And if  
5 we look at, I think it's the -- under IV, number two -- no  
6 substantial detriment to the public good. I want us to take  
7 that very seriously.

8           No substantial detriment to the public good, I  
9 think that's very subjective. I think that people that live  
10 next door to properties, and when new properties are built,  
11 that we should be very conscious of how we're building those  
12 new properties, so that we don't cause any detriment to the  
13 people that live next door.

14           And when I read this paragraph, and it was the  
15 last sentence that kind of caught my eye, because I am a  
16 member of Historic Anacostia Preservation Society, as well  
17 as a Commissioner in the historic district, is that, that  
18 HPRB gave consent for the concept, and I was at that meeting.

19           And I don't remember them saying that the  
20 dimension in side yard relief should not result in  
21 substantial detriment to the public good. I don't even think  
22 that's in their purview to even say something like that.

23           So to put a sentence like that next to HPRB kind  
24 of drew flags for me. So I would like the Office of Planning  
25 to be careful when they say or write these sort of things.

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1 They should really just keep in line what historic  
2 preservation is for, and that's consenting on the conceptual  
3 architectural design.

4 And they do go and talk about side yards, et  
5 cetera, but they also defer that to zoning if people are  
6 seeking variances. So let's be very careful of that.

7 The other thing that I, kind of drew my attention  
8 was number six, community comments -- and it said comments  
9 from community members, including ANC 8A were not received  
10 at the time this report was written.

11 If the Office of Planning had actually received  
12 or looked at the HPRB hearing, that they would know that they  
13 had community comment, because I was there as a ANC, and I  
14 was also there as HAPS and there may have been some other  
15 members.

16 So if you could see HPRB approved the conceptual  
17 drawings, then you should know that there were community  
18 comment as part of that hearing. So you may not have gotten  
19 something directly to H, I mean to Office of Planning at that  
20 time, but you certainly had access to records where the  
21 community had spoken.

22 Another thing that I want to say here -- and this  
23 kind, this is kind of a DHCD thing. I want to thank Mi Casa  
24 for coming out here, and, and like, really working hard to  
25 make this project work.

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1           But DHCD has done this before. They've put these  
2 type of pressures on the developer to come through zoning,  
3 and, and jump through hoops, when they knew full well when  
4 they gave this property to Mi Casa that it was not a record  
5 law, that it was a tax law, that it needed all of these  
6 variances in the historic district.

7           But still, they pushed this off to Mi Casa, a  
8 nonprofit who's trying to develop housing, instead of them  
9 doing their due diligence, and doing their work before they  
10 gave this project to Mi Casa to actually do what they came  
11 here to do.

12           And what they came here to do was build a house.  
13 They didn't come here to get variances, they didn't come here  
14 to, like, jump through hoops, and try to figure out all of  
15 this other stuff. So DHCD really needs to do their work as  
16 part of the government, and using my District money, and  
17 probably half of these other people in this room, instead of  
18 putting it off on them.

19           This is not the first time that I've seen DHCD.  
20 And if it feels like I'm leaning on the government a little  
21 bit, I am, because when we get a nonprofit trying to do the  
22 right thing, and the government is pushing off their work on  
23 someone else, I find that a problem.

24           Thank you.

25           CHAIRPERSON HILL: Okay. Okay. So, well, and

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1 Commissioner Fuller, thanks for coming down. I've seen you  
2 before. And we, we, you know, we, you were on the other side  
3 of what it was, I think, one time when you came down. But,  
4 so I, I really, I mean, I know the Board does appreciate when  
5 the commissioners come down.

6 As far, I, I don't know how to comment to some of  
7 the things you're talking about, because it's not really part  
8 of my purview, or our purview. I can go ahead and, and kind  
9 of, we can, we can check later with, kind of like the Office  
10 of Planning, in terms of, like, I don't know how -- and I  
11 guess I can just even ask now, whether or not, do the Office  
12 of Planning -- because I know when you mean community input,  
13 it's usually from comments from the community, people from  
14 the ANC, something that we get.

15 But you guys don't look -- and I guess I'm just  
16 asking now -- you guys don't look at testimony that was taken  
17 at HPRB, or anything like that, do you?

18 MS. VITALE: In the OP reports, when you see the  
19 section that refers to community comments, that would reflect  
20 any comments that were entered into the record for this  
21 particular case that we're reviewing before the Board of  
22 Zoning adjustment.

23 We certainly coordinate closely with HPO staff if  
24 there is a project that is in a historic district, but the  
25 testimony given at the HPRB hearing, we would not pull that

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1 testimony or those comments into the OP report. We would  
2 look for comments specific to the case before the Board ---

3 CHAIRPERSON HILL: Okay.

4 MS. VITALE: --- that were entered in ISYS.

5 CHAIRPERSON HILL: Okay. And then, as far as the,  
6 how this, I don't know, as far as, as DACD, how they have,  
7 going through those things. I mean, I guess, again, that's  
8 kind of outside of our purview.

9 But definitely, I'm sure that, yeah, you know,  
10 we're here because the applicant needs to go through this to  
11 get to what they need for this lot, which is how, you've been  
12 here before, hearing how we'd go through.

13 But, but I do hear what you're saying, and  
14 unfortunately I, it's above my paygrade, in terms of that  
15 kind of area. But you are here, backing, again, supporting  
16 what you all, your letter was, in terms of the support with  
17 the ANC, correct?

18 MS. FULLER: That is correct. I am here to  
19 support. But I did want clarification on that last sentence,  
20 behind historic preservation, about, since I can understand  
21 that she didn't go back and, and look at, you know, the, the  
22 ---

23 CHAIRPERSON HILL: Sure, you want me to ask ---  
24 (Simultaneous speaking.)

25 MS. FULLER: --- the testimony as to ---

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1 CHAIRPERSON HILL: What's the clarification, what's  
2 your question you're trying to ask, Ms. Fuller?

3 MS. FULLER: It was number four, and I think, IV,  
4 number two. At the very end, the last sentence, of, and it  
5 feels like that's something Historic Preservation Review  
6 Board said --

7 MEMBER HART: It's the sentence that says,  
8 "Granting the requested lot dimension and side yard relief  
9 should not result in substantial detriment to the public  
10 good." And what you're saying is, that seemed to be  
11 referring to the HPRB meeting, and you're saying that that  
12 was not actually something that the HPRB actually discussed.

13 And I'm not exactly sure that OP was meaning that,  
14 or if they were actually making their own assertion.

15 And so, it may be helpful just to ask, to ask OP  
16 to, to kind of clarify that.

17 MS. FULLER: That's what I'm asking.

18 MS. VITALE: Certainly. I'm happy to clarify. In  
19 analyzing substantial detriment to the public good, one of  
20 the things that we would be looking at, in this instance,  
21 this is a property in a historic district. Preservation of  
22 the District's historic neighborhoods, particularly those  
23 neighborhoods that are designated, is something that is  
24 important.

25 If there was a project coming to the Board of

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1 Zoning Adjustment that OP was reviewing, and it was in a  
2 historic district, and we believed that there might be a  
3 negative impact, that would certainly factor into our  
4 analysis under this section.

5           So under this section, we were looking at a number  
6 of things. In this instance, this is a semi-detached  
7 building. They're siting it at the, the street side corner  
8 line -- street side property line of the corner lot, so  
9 they're providing space between this new proposed building  
10 and the adjacent existing building.

11           This project had been reviewed by HPRB. They  
12 believed that it conceptually was appropriate for the  
13 neighborhood, and for the character of this square.

14           So all of those factors together were factoring  
15 into my statement that, granting the requested dimensional  
16 and side yard relief shouldn't result in a substantial  
17 detriment to the public good.

18           So I think it was, you know, you have to take that  
19 whole paragraph together, and that in reviewing all of those  
20 items in relationship to the requested relief, that we didn't  
21 believe it would result in a substantial detriment to the  
22 public good.

23           MEMBER HART: So in some ways, you could, that last  
24 sentence may be more like OP staff, you know, have determined  
25 that granting the requested, you know, taking all this

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1 information into account, OP staff have, has kind of made  
2 this determination, and that last sentence is that  
3 determination.

4 MS. VITALE: Certainly.

5 MEMBER HART: Okay.

6 MS. VITALE: Yes.

7 MEMBER HART: Thank you. Is, is that helpful?

8 MS. FULLER: That does help, because it's on record  
9 now, via ---

10 MEMBER HART: That's fine.

11 MS. FULLER: --- and not HPRB saying that. Thank  
12 you.

13 MEMBER HART: I, I, I appreciate the, the  
14 clarification.

15 I did have a question for you, though,  
16 Commissioner Fuller. With regard to the letter that we have  
17 on file, which is Exhibit 42 -- I'm only telling this so that  
18 folks know.

19 But in the letter, you said we have, we've  
20 expressed support -- this is the third, second paragraph --  
21 we have expressed support for this development, and received  
22 assurances from Mi Casa that it will, it will keep the  
23 Commission abreast of, of its progression on the project.  
24 However, there are outstanding issues between the homeowner  
25 of 1926 15th Street Southeast, and Mi Casa.

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1           We were, we were hopeful that the parties would  
2 reach an agreement prior to the ANC vote, but no agreement  
3 has been reached to date.

4           So could you, one, kind of describe what the  
5 issues were, and then two, if there is any resolution as of  
6 yet.

7           MS. FULLER: Yes. I think you would want to hold  
8 off on that part, because that's the next case -- because we,  
9 when we voted on this, we sent one letter in, because Mi Casa  
10 has two cases here ---

11           MEMBER HART: I, I understand ---

12           MS. FULLER: --- today.

13           MEMBER HART: --- that. I, I appreciate ---

14           MS. FULLER: So ---

15           MEMBER HART: --- it. I just was trying to figure  
16 out how ---

17           MS. FULLER: Yeah.

18           MEMBER HART: --- this was connected into the ---

19           MS. FULLER: Yeah.

20           MEMBER HART: --- but I get what you're saying.

21           MS. FULLER: So if I start talking, you'll get it

22 ---

23           MEMBER HART: I, I'm ---

24           MS. FULLER: --- anyway, okay?

25           MEMBER HART: --- I'm, I'm fully on board with

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1 that. I, I get it. Thank you.

2 CHAIRPERSON HILL: Okay. Great. Thank you. Is  
3 there anyone here wishing to speak in support?

4 Is there anyone here wishing to speak in  
5 opposition? All right. Okay.

6 Does the Board have any questions for the  
7 applicant?

8 COMMISSIONER SHAPIRO: Just a brief question. You,  
9 Commissioner Fuller, triggered this in me as you were  
10 talking. Were you aware, when you took on this property,  
11 that you would need to be seeking a variance?

12 MS. ZURBRIGG: We were not.

13 COMMISSIONER SHAPIRO: Okay. Thank you. Thank  
14 you.

15 CHAIRPERSON HILL: Okay. So I guess we can kind  
16 of discuss -- and I don't want to close the hearing yet,  
17 because we'll let the applicant participate in the  
18 discussion.

19 I am going to turn to OAG in terms of, kind of,  
20 the flexibility question, because that was something where  
21 what I ---

22 Well, there's two things that I was kind of  
23 curiosity talking to, through this, in terms of, like, the  
24 whole Monaco thing was one.

25 And then the other, though, was with regard to

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1 these flexibility issues -- and I don't know where the Board  
2 was -- but I thought that from some of the, some of my  
3 understandings from discussion with OAG that this was a way  
4 that could be handled through the Zoning Administrator, and  
5 I guess it was ---

6           Maybe, could you provide some clarification on  
7 that, please?

8           MS. LOVICK: Well, I mean there is a process in  
9 place pursuant to Subtitle A, Section 304.10 that allows the  
10 Zoning Administrator to approve minor modifications to  
11 approved plans.

12           And, you know, although the, the applicant's  
13 proposing language that sort of incorporates some of the  
14 criteria of that ZA authority, to sort of clarify that  
15 they're not doing certain things, if the Board were to adopt  
16 these conditions, the applicant would not have to obtain  
17 approval through the ZA.

18           They wouldn't have to go through that process --  
19 and that process does give notice to the ANC, and it gives  
20 notice to any parties to the original case.

21           So it's, you know, I mean, it, it, it certainly  
22 would create a scenario where they would not need to go back  
23 to the ZA ---

24           CHAIRPERSON HILL: I understand.

25           MS. LOVICK: Yeah.

1 CHAIRPERSON HILL: Okay.

2 MS. LOVICK: And, you know, I mean, typically, the  
3 Board adopts conditions that mitigate the adverse impacts of  
4 the relief that's being sought. And so it's a slippery slope  
5 when the Board starts, you know, just generally adopting  
6 flexibility conditions.

7 CHAIRPERSON HILL: Okay. Okay. So I'll let the  
8 Board, if the Board has any comments or questions there to  
9 the OAG.

10 I mean, where I'm, again, just kind of coming down  
11 in this aspect, is that, you know, whenever we've, the  
12 flexibility thing is something that we've struggled with, I  
13 guess, a little bit.

14 And, like, sometimes we seem to grant it,  
15 sometimes we don't. And in this case, I think there is an  
16 avenue for the applicant, and I understand that it's Mi Casa,  
17 so we would want to, at least the mission of the development  
18 is different than others.

19 But, like, I wouldn't really think that it was  
20 necessary to grant this type of flexibility.

21 But does the Board have any thoughts?

22 MEMBER HART: I mean, I would, I don't typically  
23 like the conditions that are like this, because I think that  
24 they're a bit, they're just a bit vague to me, and I think  
25 that I would rather not have conditions like this, which I,

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1 you know, as Ms. Lovick just described, it's not necessarily  
2 addressing any particular aspect of the, of the zoning, per  
3 se.

4 So I'm, I would not be in support of that, of  
5 doing these conditions, because again, I think that they are  
6 somewhat vague, and I'm not sure if they're necessary.

7 MEMBER WHITE: If, if you could tie them to how  
8 they mitigate adverse impacts, I would be supportive. But  
9 I'm having a hard time getting to that particular point.

10 But I do acknowledge that Mi Casa is a mission-  
11 based organization that's doing affordable housing. And  
12 certainly we want to, you know, look at these conditions if  
13 it allows for a little bit more flexibility to, to execute  
14 their mission.

15 But I still would like to tie it in to mitigating  
16 adverse impacts.

17 CHAIRPERSON HILL: Okay. I'll let the applicant  
18 speak. Just a second, just a second.

19 Board Member, Commissioner Shapiro?

20 COMMISSIONER SHAPIRO: Yeah, I actually am, am,  
21 would not be supportive of the flexibility. I think, I think  
22 that, with the, with OAG, I think that this is a, a bit of  
23 a slippery slope for us.

24 CHAIRPERSON HILL: Okay. Ms. John?

25 MEMBER JOHN: I would not support those conditions

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1 either, for the reasons stated by OAG and my colleagues.

2 CHAIRPERSON HILL: Okay. Would the applicant like  
3 -- I think you're outvoted, but you can go ahead and give me  
4 an argument, if you like.

5 (Laughter.)

6 MS. MOLDENHAUER: More for a general, general  
7 statement, as the Board obviously has already indicated a lot  
8 of their positions.

9 I do think that, obviously, the Board, we would  
10 obviously wish the Board to address this case today. But if  
11 the Board were able to consider conditions, I think that, you  
12 know, here, the HPRB is a public process. So from any  
13 concerns about having opportunities for people to get  
14 noticed, the HPRB process is public. They do receive public  
15 notice on that. So I think that would address one of OAG's  
16 comments.

17 I think, second, you know, this is a nonprofit  
18 organization that is looking to obtain certain missions of  
19 timing focus as well. So any delays that could be created  
20 by additional need for review by the Zoning Administrator,  
21 or during that process, this also does address that.

22 The zoning regulations do, in the code section  
23 addressed by OAG, do indicate, or any flexibility granted in  
24 the order.

25 So this Board does have the ability to grant that

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1 flexibility in the order, which simply provides a zoning  
2 technician, and not the Zoning Administrator, the ability to  
3 review the plans, compare the plans, and not have it be  
4 delayed by indicating, oh, there might be a small change  
5 here, and then having them have to be elevated to the Zoning  
6 Administrator, reviewed, and then 30 days' notice provided.

7           So since it is something that is specifically  
8 related to a public process such as HPRB, and the final need  
9 for that to go back to HPRB for permit approval, we would  
10 obviously ask the Board to consider that.

11           If the Board does not wish to grant that,  
12 obviously we'd also like them to move forward with the case  
13 today.

14           CHAIRPERSON HILL: Okay. And I appreciate that,  
15 Ms. Moldenhauer.

16           I guess, and for me, again, like, I like the, the  
17 way the, the ---

18           And I'm also just kind of delving a little bit  
19 more into this, because we're going to have the exact same  
20 discussion on the next one.

21           And so also, just for future things that happen  
22 before us, you know, this is something that now, just from  
23 getting a little bit more clarity on, in terms of whatever  
24 the process is that the Zoning Administrator -- who actually  
25 happens to be here -- is able to provide that type of

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1 flexibility, and then the ANC gets notified.

2           And so, you know, so I'm, that discussion,  
3 although I do believe that there is an argument for  
4 timeliness, perhaps in another situation, or even though one,  
5 you're making one now, it didn't change my mind.

6           Did it change anybody else's mind? Okay.

7           So I don't think the flexibility's going to  
8 happen, but thank you.

9           So that being the case, does the applicant have  
10 any, any more questions for the applicant?

11           Oh, actually, I did have one more.

12           Sorry. There's more discussion, I guess.

13           So, again, the Monaco thing -- and this is  
14 actually kind of more for the Board, because I want to keep  
15 this as a hearing portion, just, rather than just  
16 deliberations.

17           The Monaco argument, that, that, that seems to be  
18 put forward again was that, you know, the, the, not  
19 flexibility, what's the word ---

20           MR. DEBEAR: Reduced standard.

21           CHAIRPERSON HILL: Thank you. Thank you so much.  
22 The reduced standard -- see, it's a discussion -- the reduced  
23 standard, the reduced standard is one where in the past, I  
24 thought Monaco, and I'm kind of looking to the Board Members  
25 here at this level, which is that, you know, it was an, it

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1 was an expansion of their space.

2 Like, it was an expansion of the actual space from  
3 the nonprofit. So that was that increased flexibility.

4 I think this is an interesting argument, and I'm  
5 kind of offering it up for somewhat of a discussion as to,  
6 because this might, this argument might come forward again,  
7 and I think that it's an interesting argument in that, you  
8 know, it's an expansion of the purpose of the nonprofit.

9 And whether that has any, whether the Board had  
10 any thoughts about that, I was kind of curious.

11 And then we can ask the applicant.

12 MEMBER JOHN: Mr. Chairman, I, I think that if we  
13 should accept the applicant's theory, we could end up in a  
14 position where every nonprofit that comes in could make the  
15 argument that because we're a nonprofit, we are entitled to  
16 this more flexible, relaxed standard.

17 So I don't see how we get away from being on a  
18 slippery slope if we expand what Monaco was about, which was  
19 expanding the office space.

20 CHAIRPERSON HILL: Okay. And I just, to clarify,  
21 I'm not necessarily saying that this whole thing is hanging  
22 on this. And the reason why I'm kind of having this  
23 discussion a little bit open with the applicant is that I  
24 wanted to --- I was curious as to if the applicant had a  
25 comment about what I'm presenting, and you're, got your hand

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1 up, so I would assume that would be yes.

2 But if this is, again, it's not necessarily, this  
3 is what everything, the crux of the argument is happening,  
4 it was just this one particular thing.

5 But thank you, Ms. John.

6 Did the Board -- any other Board Members have  
7 anything before I ask for any clarification from the  
8 applicant?

9 I thought Mr. --- Okay, all right.

10 Do you have some clarification you'd like to  
11 offer?

12 MS. MOLDENHAUER: Yes. So, uniquely, myself and  
13 our firm also represented the District of Columbia in  
14 multiple homeless shelters throughout the District and  
15 obtaining Board relief from those cases.

16 Those cases, including Ward 3, had recently been  
17 appealed with the Court of Appeals based on this Board's  
18 support of those applications for multiple areas of variance  
19 relief under the Monaco test.

20 Part of the appeal argument was that, by the  
21 opposition parties, was that the Monaco test did not apply  
22 to, or only applied to expansions of structures.

23 We presented an extensive brief, along with OAG,  
24 supporting this Board's decision that it is not limited just  
25 simply expansions of buildings, but rather that it is a

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1 principle that applies to public services themselves and  
2 their purpose.

3           And so that is still pending. We made oral  
4 arguments about two months ago to the Court of Appeals. The  
5 Court of Appeals, in my professional and personal opinion,  
6 did not seem to be persuaded by that argument, and was more  
7 persuaded by the argument that we and OAG, in support of this  
8 Board's decision in Ward 3, articulated that it goes to the  
9 public service, arguing that it is both at the George  
10 Washington Hospital case, which was the public service of the  
11 hospital, as well as other library cases, where there were  
12 new constructions of libraries, that the Monaco test was  
13 applied there, as well as more recent cases -- even the  
14 Dupont Civic Association case, where that case was remanded,  
15 where the court actually, in, in my reading of it, was  
16 encouraging the Board to evaluate that under a Monaco test,  
17 and more, rather more expound upon their decision.

18           And so we believe that it would be consistent with  
19 this Board's decisions, both in Monaco, Draude, and then in  
20 other more recent cases -- not just the Dupont Civic  
21 Association case -- and multiple library cases, and other  
22 church cases where the Board would apply the Monaco test as  
23 a reduced standard.

24           The Board also applied this in the, the, what is  
25 it, the Washington, the Catholic church case on Rhode Island

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1 Avenue ---

2 No, it was the ---

3 CHAIRPERSON HILL: Okay. That's okay. I, no I ---

4 MS. MOLDENHAUER: But there are multiple instances  
5 in which it has not been a specific expansion of a structure,  
6 but rather it goes to the use, and then it goes to the two-  
7 pronged ---

8 (Simultaneous speaking.)

9 CHAIRPERSON HILL: Okay, and I appreciate that.  
10 And I don't --- give me a second. And I don't necessarily,  
11 I'm not, I'm kind of just, I was curious as to the  
12 applicant's thoughts on that, which is why I raised the  
13 issue.

14 And I'm not necessarily in disagreement, because  
15 I also do think it provides the Board with more flexibility.  
16 So I don't know where I'm necessarily laying. I just wanted  
17 to, kind of like, point that out for the Board.

18 Mr., Commissioner Shapiro?

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Yeah,  
20 I, I think if, if I hear what Board Member John said about  
21 the, the problem with the potential slippery slope, I hear  
22 that.

23 But I, I think, Ms. Moldenhauer, what, the way you  
24 presented that, I think is, is more in line with where I'm  
25 coming from on this, which is this doesn't mean that we will

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1 grant this kind of flexibility. It just means that we can.

2 And we, we can take this into account. And I'm  
3 not sure that I would favor certain mission-driven  
4 organizations over others just because it's about expanding  
5 their current physical space, rather than developing some new  
6 physical space.

7 That, that seems a bit arbitrary. That doesn't  
8 seem to follow the intent of what this Board did.

9 That's all I have, Mr. Chair.

10 CHAIRPERSON HILL: Ms. White?

11 MEMBER WHITE: Yeah, I mean the way I look at it  
12 is kind of the way Ms. Moldenhauer framed the issue.

13 I think for Mi Casa, I think what they're looking  
14 to do is to have the ability to be able to get this relief  
15 in order to execute their mission for creating more  
16 affordable housing -- not necessarily to, to, to get this  
17 reduced Monaco type of flexibility in order to expand an  
18 office space just by virtue of being a nonprofit.

19 But I think Monaco could potentially, you know,  
20 be applied in a case where allowing them to, to have this  
21 flexibility would help this particular nonprofit execute  
22 their ability to provide more affordable housing, which helps  
23 them to complete their mission.

24 CHAIRPERSON HILL: Okay.

25 MEMBER WHITE: So that's kind of where I'm at with

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1 this particular standard, if this is something we need to  
2 apply in order to get them over the variance hump.

3 But I think, even without applying Monaco, I think  
4 there's still an argument to be made that relief could be  
5 granted here.

6 CHAIRPERSON HILL: Okay, yeah. No, and I was just  
7 kind of bringing that up for discussion ---

8 MEMBER WHITE: Sorry I got a bit long-winded ---

9 CHAIRPERSON HILL: --- for discussion that would  
10 be things, again, kind of, for down the road, kind of  
11 understanding where we kind of are.

12 But the quick question I have for the Office of  
13 Planning again, in terms of Ms. Vitale, I mean, how you went  
14 about providing your analysis.

15 You know, it, you weren't taking Monaco into huge  
16 consideration when you were providing your analysis.

17 MS. VITALE: We were not, no.

18 CHAIRPERSON HILL: Okay. Office of Planning, no.

19 (Laughter.)

20 CHAIRPERSON HILL: Okay. Love the Office of Planning.  
21 All right. Okay. Does anyone have anything else for the  
22 applicant? Okay.

23 All right. Does the applicant have anything  
24 they'd like to add in conclusion?

25 MR. DEBEAR: No.

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1 CHAIRPERSON HILL: Okay. I'm going to go ahead and  
2 close the hearing. Is the Board ready to deliberate?

3 Okay. I can start.

4 I thought that, you know, we, I mean, I thought,  
5 I really am thankful to my colleagues for being able to  
6 provide this kind of discussion, even during the hearing.  
7 And I, again, am not one that would be in favor of the  
8 flexibility, because I think there is a process now that is,  
9 that provides for that flexibility.

10 I do think that the applicant has made their case  
11 in terms of why this relief should be granted. I also think  
12 that the ANC has provided a good analysis as to why it should  
13 be granted. And I would rest on their analysis.

14 I would also say that, that the -- thankful for  
15 the ANC being here, and also providing their feedback from  
16 the community, as well as their support.

17 So I would be in favor of the application.

18 Does anyone have anything else they would like to  
19 add?

20 MEMBER WHITE: I Would just comment that I really  
21 admire the mission of Mi Casa. Affordable housing is  
22 extremely important in the city, and in this country.

23 And, but looking at the record -- you know, I love  
24 affordable housing, but you got to follow the rules in terms  
25 of whether or not the criteria's been met, and I believe it

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1 has been.

2           And I really appreciate Commissioner Fuller's  
3 feedback, because I think the partnership with the ANC, and  
4 the community, and Mi Casa, and the city is a good mix in  
5 order to improve the lives of people here in the city.

6           So with the Office of Planning's report,  
7 obviously, that adds extra meat in terms of answering the  
8 question of whether or not the criteria for the variance  
9 relief -- which is a much higher standard -- has been met,  
10 I would be supportive of this particular application as well,  
11 Mr. Chair.

12           MEMBER JOHN: Mr. Chair, I, too, will support the  
13 application. And I would also give great weight to the  
14 analysis and the recommendation of the Office of Planning.

15           And I would just like to add that, and to confirm  
16 that I would not consider Monaco as applying to the -- Monaco  
17 as applying to this situation.

18           MEMBER HART: Ditto.

19           CHAIRPERSON HILL: Oh, are you on the Monaco side?

20           MEMBER HART: No, no, I ---

21           CHAIRPERSON HILL: Oh.

22           MEMBER HART: You, no, no ---

23           CHAIRPERSON HILL: Right. But you said ---

24           MEMBER HART: --- I'm not on the Monaco side. I'm

25 ---

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1 CHAIRPERSON HILL: --- ditto.

2 MEMBER HART: Ditto ---

3 CHAIRPERSON HILL: So ---

4 MEMBER HART: --- ditto to ---

5 CHAIRPERSON HILL: --- right.

6 MEMBER HART: --- everything that's been said ---

7 CHAIRPERSON HILL: I'm just kind of curious how  
8 this is all going to go later on.

9 MEMBER HART: Well, I, I'm, I, I don't, I ---

10 The Monaco aspect of it, I, I didn't think that  
11 was necessary, really necessary ---

12 CHAIRPERSON HILL: Okay, we don't have to talk  
13 about it, you don't have to talk about it. I'm ---

14 MEMBER HART: No, no, no. I'm just saying. I  
15 didn't think it was necessary. I thought that the actual,  
16 the case, the variance test was, that there was enough  
17 information regarding the actual size, and the constraints  
18 of the actual site to be able to pass the variance test.

19 I just didn't think there was a -- the prongs of  
20 the variance test. I didn't think that Monaco was necessary  
21 to, you know, have to give flexibility to that. I thought  
22 that it was sufficiently -- the case was made that was  
23 sufficiently strong to be able to support it. So.

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I,  
25 I would agree with that, which is, I appreciated the

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1 discussion around Monaco, and we may not all be in the same  
2 place about that, but I don't think it needs to apply to take  
3 into account for this case. I feel like they have met the  
4 test without that.

5 CHAIRPERSON HILL: Okay. All right. Then I'm  
6 going to go ahead and make a motion to approve application  
7 number 19735, as captioned and read by the Secretary, and ask  
8 for a second.

9 MEMBER HART: Second.

10 CHAIRPERSON HILL: Motion made and seconded.

11 All those in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON HILL: All those opposed?

14 The motion passes. Ms. Rose?

15 MS. ROSE: Staff will record the vote as 5 to 0 to  
16 0, with a motion by Mr. Hill seconded by Mr. Hart, with Ms.  
17 White, Ms. John, and Mr. Shapiro in support of the motion.

18 CHAIRPERSON HILL: Okay, summary order?

19 MS. ROSE: Thank you.

20 CHAIRPERSON HILL: All right. And we are going to  
21 take a quick break, and then we're going to come back, and  
22 then we're going to hear the next case. And then we might  
23 even take a quick break before the appeal, but we'll see.

24 (Whereupon, the above-entitled matter went off the  
25 record at 2:11 p.m. and resumed at 2:25 p.m.)

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1 CHAIRPERSON HILL: All right. Okay, Ms. Rose,  
2 let's go ahead and get started again.

3 MS. ROSE: Next is Application Number 19736 of Mi  
4 Casa, Inc., as amended, pursuant to 11 DCMR Subtitle X,  
5 Chapter 10, for area variances from the lot dimension  
6 requirements of Subtitle D, Subsection 302.1 and the side  
7 yard requirements of Subtitle D, Subsection 307.2 to  
8 construct a new principle dwelling unit in the R-3 Zone at  
9 premises 1928 15th Street, Southeast, Square 5766, Lot 800.

10 CHAIRPERSON HILL: Okay, great, thank you. Good  
11 afternoon. If you could please introduce yourselves from my  
12 right to left. Sure, you can go first.

13 MS. AGYEI: Dorcas Agyei, 1926 15th Street.

14 CHAIRPERSON HILL: Could you say your name again,  
15 the last part?

16 MS. AGYEI: Agyei.

17 CHAIRPERSON HILL: Agyei.

18 MS. AGYEI: A-G-Y-E-I.

19 CHAIRPERSON HILL: Thank you.

20 MS. FULLER: Greta Fuller, ANC 8A.

21 MS. BIGLEY: Alyssa Bigley of Cozen O'Connor,  
22 legal counsel for the Applicant.

23 MS. ZURBRIGG: Elin Zurbrigg of Mi Casa, Inc., the  
24 Applicant.

25 MS. MOLDENHAUER: Good afternoon, Meridith

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1 Moldenhauer, land use counsel from Cozen O'Connor on behalf  
2 of the Applicant.

3 MR. RUEDA: Guillermo Rueda, architect for the  
4 Applicant.

5 CHAIRPERSON HILL: Okay. So I guess we'll start  
6 over here. Ms. Agyei, I can't recall, were you here -- why  
7 are you here again?

8 MS. AGYEI: Because there is so much development  
9 in my neighborhood.

10 CHAIRPERSON HILL: Okay. All right. So you're  
11 here, you weren't requesting party status or anything were  
12 you?

13 MS. AGYEI: I was, but we've since come to an  
14 agreement.

15 CHAIRPERSON HILL: Okay. Now you've come to an  
16 agreement though based on the four inches, wasn't that right  
17 or no?

18 MS. AGYEI: No.

19 CHAIRPERSON HILL: No, okay. You've come to an  
20 agreement separate from the four inch thing that's --

21 MS. AGYEI: Yes.

22 CHAIRPERSON HILL: Okay. All right, so you're  
23 here to testify at some point?

24 MS. BIGLEY: Could I provide a brief --

25 CHAIRPERSON HILL: Sure. No, that's great. I'm

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1 sorry, I'm just confused as to --

2 MS. BIGLEY: Sure. So a lot actually took place  
3 this morning while the other cases were going on, so if I  
4 could provide an update to the Board on that?

5 CHAIRPERSON HILL: Sure.

6 MS. BIGLEY: So we, as of this morning, before we  
7 came here today, there was a request from Ms. Agyei in the  
8 record for party status in opposition. There was some back  
9 and forth where an agreement was nearly reached with Ms.  
10 Agyei, and that was based on the plans that were in the  
11 record with a four inch, technically a four inch side yard,  
12 on the one side.

13 Since then, we had more discussion this morning.  
14 We've reached a subsequent settlement agreement whereby we  
15 have updated and amended the plans. I actually just uploaded  
16 them in the record for the Board right now.

17 So that agreement is based on a proposed design  
18 that has a two foot side yard where that original four inch  
19 side yard was that's on the north side of the property. And  
20 then we are shifting the structure down, the structure  
21 itself. The design of that building has not changed, but  
22 it's being shifted down so that there is a six foot side yard  
23 on the other side.

24 So the updated relief that we requested was for  
25 noncompliant side yards. That relief has not changed, it's

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1 just the amount, the side yard width has changed. And I can  
2 get into the actual full relief when we get there.

3 CHAIRPERSON HILL: Okay. All right. Okay, so now  
4 -- okay, and Ms. Fuller, you are here as the ANC but to  
5 testify during the ANC portion?

6 MS. FULLER: Yes. To testify during the ANC  
7 portion and to say that I also work with Mi Casa, their  
8 lawyers, and the community residents and try to get some  
9 historic guidelines and things in purview as well.

10 CHAIRPERSON HILL: Okay. All right, great. Well,  
11 Ms. Agyei, welcome back. I just, I'm glad that this is  
12 working out better than the last time. Or at least seems to  
13 be so far. At least I'm holding my breath and hoping.

14 Okay, so, Ms. Bigley, I don't know, I'm sorry I  
15 pronounce it wrong, I know. Can you pronounce it again for  
16 me?

17 MS. BIGLEY: Bigley.

18 CHAIRPERSON HILL: Bigley, sorry. Ms. Bigley, if  
19 you could please, I guess you're going to present to us?

20 MS. BIGLEY: Yes, that's fine.

21 CHAIRPERSON HILL: Okay. I'm going to put 15  
22 minutes on the clock, just so I know where we are, and you  
23 can start whenever you like.

24 MS. BIGLEY: Sure. And just to clarify, this  
25 settlement agreement that we just reached with Ms. Agyei has

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1 just been given to the Secretary as well. Just so you have  
2 a copy of that.

3 CHAIRPERSON HILL: Okay, great. Thank you.

4 MS. BIGLEY: Sure. So this case, I will caveat  
5 by saying that this is also presented by Mi Casa. This is  
6 also a vacant lot in historic Anacostia on the corner of U  
7 and 15th Streets, Southeast.

8 The relief that we are requesting is also based  
9 on the lot dimensions, which are substandard here. And also  
10 for the side yard.

11 I will let Mi Casa give a brief introduction.  
12 Again, I will ask the Board if they would like us to go  
13 through a full introduction, since this is substantially  
14 similar to the case that was previously presented.

15 CHAIRPERSON HILL: I think that we don't have to  
16 do the full introduction again since it's the same discussion  
17 that we had in the last case. I guess I would just, I don't  
18 even know, I guess refer people back to the previous case if  
19 they --

20 MS. LOVICK: Sorry, I just want to interject  
21 because the party status request, we need to take some action  
22 on it.

23 CHAIRPERSON HILL: Okay.

24 MS. LOVICK: Either you need to -- you can dismiss  
25 it or the person who was requesting party status can submit

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1 something in writing to withdraw it.

2 CHAIRPERSON HILL: Okay. Ms. Agyei, would you be  
3 able to submit something in writing to withdraw your party  
4 status request?

5 MS. AGYEI: Right now?

6 CHAIRPERSON HILL: After. Afterwards. We'll  
7 leave the record open for that withdrawal. Oh, you can push  
8 the button there.

9 MS. AGYEI: Yes.

10 CHAIRPERSON HILL: Okay. So you are withdrawing  
11 your party status request?

12 MS. AGYEI: Yes.

13 CHAIRPERSON HILL: You push the button just once.

14 MS. AGYEI: Yes, based on the settlement.

15 CHAIRPERSON HILL: Okay.

16 MS. LOVICK: So I think the best course of action  
17 would be to just dismiss it because we can't --

18 MS. MOLDENHAUER: No, actually, sorry, can I just  
19 jump in?

20 MS. LOVICK: Yes.

21 MS. MOLDENHAUER: The settlement agreement that's  
22 been provided actually is signed by Ms. Agyei and Mi Casa.  
23 And in the settlement agreement it indicates that upon  
24 executing the agreement that she would immediately withdraw  
25 party status.

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1 MS. LOVICK: Okay.

2 MS. MOLDENHAUER: So it's in writing. and it is  
3 already part of the record.

4 MS. LOVICK: Oh, thank you. I wasn't aware of  
5 that. Thank you very much for that clarification. Well  
6 then, I apologize for interjecting myself.

7 CHAIRPERSON HILL: No, that's okay.

8 MS. LOVICK: Proceed.

9 CHAIRPERSON HILL: So, and I'm still kind of  
10 unclear. I still, well, I don't know. I still think even  
11 the Board should maybe do something because we're getting all  
12 this like right now.

13 So I think the Board should go ahead and do  
14 something here. I mean, I think from hearing from the  
15 Applicant that based upon the executed settlement agreement,  
16 which we now have in the record, the Applicant is dismissing,  
17 is dismissing their party status in opposition.

18 So I would, I guess, by consensus, dismiss the  
19 party status in opposition.

20 MS. ROSE: Or you could accept the withdrawal.  
21 If she is withdrawing it, you can accept the withdrawal.

22 CHAIRPERSON HILL: So I would suggest then, as the  
23 Board here, we'll go ahead and accept the withdrawal.

24 MS. ROSE: Yes.

25 CHAIRPERSON HILL: Okay. And as the Board is all

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1 nodding their heads, we can do that in consensus.

2           However I do appreciate all the work that has  
3 taken place to get to this point, and I'm very happy that you  
4 guys were at the end of the day. Even though I might have  
5 gotten the Commissioner up sooner if we had known. But then  
6 you might -- so --

7           All right, so that all got cleared out. I think  
8 with OAG we're okay now? So we've accepted the dismissal of  
9 the party status, the person requesting party status.

10           In addition to the fact that there is now a  
11 settlement agreement in the record, concerning that person  
12 who was in opposition. And I guess, Ms. Bigley, when you're  
13 kind of going through the application if you could, I am a  
14 little curious to the settlement agreement, so maybe you  
15 could, because I'm curious as to how that happened.

16           And then I will be interested, as I saw the Office  
17 of Planning kind of thinking about the discussion at this  
18 point, it's changing things on the Office of Planning to a  
19 certain extent, so if the Office of Planning could provide  
20 analysis based upon just what they received now, that would  
21 be helpful.

22           So back to Ms. Bigley.

23           Sorry. It's tough up here man.

24           (Laughter.)

25           CHAIRPERSON HILL: So, back to Ms. Bigley.

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1 MS. BIGLEY: Thank you, Chair Hill. So I will go  
2 through and point out what may have been updated since you  
3 may have looked at the record.

4 So this is also, we can take a look at the base  
5 map. This is the corner property, as I mentioned. There was  
6 a historic structure on the property, again, similar to the  
7 case ahead of this one.

8 That structure is no longer there. And we don't  
9 have a lot of specific information as to how that occurred.  
10 So now we know that the lot is vacant, and Mi Casa seeks to  
11 construct a single-family, family size affordable home on the  
12 property.

13 I will run through this very, very quickly since  
14 you just heard this. Mi Casa, the Applicant, as you heard,  
15 is a nonprofit organization. You heard about their previous  
16 projects and the community outreach that they've done.

17 So, similarly, these cases were presented together  
18 to the ANC. So these dates on here still hold true. The  
19 previous case and this case were presented together.

20 I will mention that there were six letters of  
21 support in the record for this case specifically. A few of  
22 them have been recently modified, but that was based on  
23 information that was relevant yesterday, before this  
24 settlement agreement took place. So take that for what you  
25 will.

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1           The letters were supportive and then modified.  
2 Still in support but somewhat modified. But now this relief,  
3 based on the settlement agreement, is changed.

4           The Office of Planning, obviously they will speak.  
5 Based on their report, the original application was for a  
6 property that was to be constructed face on line with the  
7 northern property line. That has changed, as I mentioned,  
8 to bring it down two feet off of that northern property line.

9           The Office of Planning report was supportive for  
10 the lot dimension relief that we are requesting as well as  
11 the freestanding side wall relief. We are now seeking relief  
12 from D307.2 for two noncompliant side yards.

13           This is a general overview --

14           CHAIRPERSON HILL: Can you say that again?  
15 D307.2?

16           MS. BIGLEY: 307.2.

17           CHAIRPERSON HILL: Not 307.4?

18           MS. BIGLEY: We've changed it so many times, let  
19 me refer back.

20           MS. LOVICK: That's correct. There is a revised  
21 --

22           CHAIRPERSON HILL: Who is correct, 2 or 4?

23           MS. LOVICK: 307.2. The relief --

24           CHAIRPERSON HILL: Okay.

25           MS. LOVICK: -- is pursuant to that.

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1 CHAIRPERSON HILL: Okay.

2 MS. LOVICK: And there is a revised self-cert at  
3 Exhibit 47.

4 CHAIRPERSON HILL: Okay, thank you.

5 MS. BIGLEY: Thank you. So this slide was to give  
6 you an overview of the extensive outreach that has occurred  
7 between Mi Casa, the ANC, the neighbor.

8 As you mentioned, we now have a settlement  
9 agreement, so I will skip going through all those details.

10 I think at this point it would be helpful for Mr.  
11 Rueda to give an overview of the design that is proposed now,  
12 the updated design.

13 CHAIRPERSON HILL: Okay, great. Thank you.

14 MR. RUEDA: Thank you. So here we have another  
15 corner lot. The photograph shows through site fencing the  
16 general approximate boundaries of the site.

17 This empty corner lot is at the end of a group of  
18 three similar Italianate style single-family row dwellings  
19 also characterized by front porches and a prominent cornice  
20 line.

21 The property is recorded as a 28 foot wide lot  
22 adjacent to the single-family home. That is setback about  
23 two foot eight to two foot eleven inches from the shared  
24 property line.

25 The proposed plan is modified by the ratified

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1 settlement agreement, describes the proposed new home,  
2 respecting the required setback requirements at the front and  
3 at the rear.

4 In the agreement, the house was moved two feet to  
5 the south as part of this language included in the exhibit  
6 you received. And this was done to allow for more generous  
7 passage to the rear of the property, on the adjacent property  
8 and will provide the adjacent neighbor with no less than five  
9 feet in width and a south side yard on the lot of the  
10 proposed property of six foot four inches. Sorry I got  
11 confused.

12 So the proposed house here is also a three to four  
13 bedroom house, depending on how the owner configures it. The  
14 downstairs has a den that's designated as an accessible  
15 bedroom if they so choose.

16 And the elevations are designed to be consistent  
17 with these three row houses. The elevations --

18 CHAIRPERSON HILL: Mr. Rueda, I'm just going to  
19 kind of cut you off because I don't know whether the Board  
20 has a lot of questions for you in this area right now.

21 MR. RUEDA: Sure.

22 CHAIRPERSON HILL: I mean, that was the main  
23 thing, which was, I was curious as to how this changed from  
24 what was in the record previously, and I think you addressed  
25 that.

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1 Does the Board have any specific questions of the  
2 architect? Yes, sir.

3 COMMISSIONER SHAPIRO: One very briefly.

4 CHAIRPERSON HILL: Sure.

5 COMMISSIONER SHAPIRO: There is trees that are  
6 going to be removed, they were going to be removed before  
7 this agreement?

8 MR. RUEDA: That's correct.

9 COMMISSIONER SHAPIRO: Okay.

10 MR. RUEDA: Yes, sir.

11 COMMISSIONER SHAPIRO: Thank you. Thank you, Mr.  
12 Chair.

13 MR. RUEDA: I was halfway through my last bullet  
14 point, just so you know.

15 (Laughter.)

16 CHAIRPERSON HILL: We have an appeal next.

17 MEMBER JOHN: Mr. Chairman?

18 CHAIRPERSON HILL: Yes. No, please.

19 MEMBER JOHN: I have a quick question.

20 CHAIRPERSON HILL: Of course.

21 MEMBER JOHN: I was a little confused when you  
22 said there were five or six feet of space.

23 MR. RUEDA: Yes, I'm sorry about that.

24 MEMBER JOHN: Can you clarify what that means?

25 MR. RUEDA: Yes.

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1 MEMBER JOHN: Because I'm thinking you're only  
2 going back to pulling the building back, structure back, two  
3 feet.

4 MR. RUEDA: I apologize, yes.

5 MEMBER JOHN: Okay.

6 MR. RUEDA: I was trying to be comprehensive. So  
7 between the side yard of the adjacent neighbor and the side  
8 yard that we're asking for relief from on the property, there  
9 will be about five feet between the houses. Sorry. Yes.

10 CHAIRPERSON HILL: Okay. Anyone else for the  
11 architect? No. I'm going to turn to the Office of Planning.

12 MS. VITALE: Okay. Good afternoon, Mr. Chair and  
13 Members of the Board.

14 As was indicated in OP's most recent staff report  
15 in the record that was filed on May 18th, we continue to  
16 recommend approval of the requested minimum lot dimension  
17 relief. We couldn't make a recommendation for the requested  
18 relief for the four inch side yard.

19 I don't think the Applicant's addressed the  
20 variance test for the new two foot side yard. I'm not sure  
21 if that's where they were headed in their presentation.

22 I do think OP is more comfortable with the two  
23 foot side yard. I think we could support that. I think it  
24 would be helpful for the Applicant to describe how the  
25 variance test would be met for that two foot side yard

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1 relief.

2 CHAIRPERSON HILL: I'm sorry, Ms. Vitale, I'm  
3 short-handing over here. So I was curious, really, as to  
4 kind of what the Office of Planning had to say about the new  
5 plans, but I'm going out of order.

6 And so I'll go back here to the Applicant in terms  
7 of the argument for the variance test.

8 MS. BIGLEY: Absolutely. So I will focus on the  
9 variance test. The property, the exceptional conditions that  
10 create practical difficulties, the property has long been  
11 vacant, as mentioned previously. It's a corner lot.

12 Similar to the previous case, the abutting  
13 neighbor property, that structure is set back from that  
14 property line. So similar to the previous case, there cannot  
15 be an attached structure constructed on this lot. Therefore  
16 the lot dimensions could not be met; the minimum lot  
17 dimensions could not be met.

18 Also, again, this is in the historic district in  
19 Anacostia, and the Applicant's programmatic needs, including  
20 to provide affordable family sized homes, are exceptional and  
21 unique.

22 As well, the exceptional conditions that create  
23 the practical difficulty, again, the abutting property to the  
24 north has its own side yard, you could not construct an  
25 attached dwelling there.

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1           The strict application of the side yard  
2 requirements would result in a very narrow building. If we  
3 were required to provide the two eight foot side yards, the  
4 resulting structure would be 12 feet wide, which would create  
5 practical difficulties for the Applicant in satisfying the  
6 building code requirements and including, but not limited to,  
7 stairwell widths, as well as providing an accessible  
8 circulation on that ground floor as well.

9           Again, the historic preservation requirements  
10 pending at HPRB, similarly, this case has a pending  
11 application before the Historic Preservation Review Board.  
12 They also were -- they provided concept approval for this  
13 case.

14           But if the Applicant were required to provide two  
15 compliant side yards, that would drastically change what was  
16 proposed to HPRB, and it would not meet what has been  
17 indicated as consistent historic preservation standards,  
18 particularly on this block.

19           The Applicant also has shown that there is no  
20 substantial detriment to the public good or impairment of the  
21 zone plan. As stated previously, the Office of Planning had  
22 supported the lot dimension relief.

23           The Applicant designed the project to fit within  
24 the scale and pattern of homes in the neighborhood,  
25 particularly on this block, in trying to keep it consistent

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1 with those historic homes that exist. The project will align  
2 with the height, pattern, and scale of those homes.

3 The Applicant worked diligently with the  
4 neighboring property owner, which led us to the settlement  
5 agreement that we have right now with this revised design,  
6 with the two side yards.

7 The neighborhood is overwhelmingly residential in  
8 nature, this project will continue that use and will not  
9 provide -- it will provide a single-family residence.

10 And finally the project implements the goals that  
11 the Board heard previously for this particular nonprofit  
12 organization and further the goals of the District's  
13 comprehensive plan.

14 If that is sufficient for the Board to go through  
15 the variance standard, if they wish to have Office of  
16 Planning testify?

17 CHAIRPERSON HILL: Yes. No, sorry, and I do  
18 apologize, the Office of Planning, I kind of like cut off the  
19 Applicant. I mean, I was kind of going through the original  
20 Office of Planning report, and I neglected to see that there  
21 still was a difference from what I had thought the Office of  
22 Planning had provided feedback on.

23 And so now, after hearing, after the Board hearing  
24 from the Applicant as well as now the Office of Planning  
25 having a little bit more time with the presentation, could

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1 we hear from the Office of Planning again?

2 MS. VITALE: Sure. Again, Elisa Vitale with the  
3 Office of Planning. I think one thing that's important to  
4 note here is just kind of the nature of the relief and  
5 shifting from a semi-detached building located on one  
6 property line to a fully detached building.

7 That that, in this instance, because they can't  
8 physically share a common division wall with the adjoining  
9 property, they are now shifting off the property line two  
10 feet. That results in increased lot dimensions in the R-3  
11 zone. If you have a detached building, you need a 40 foot  
12 minimum lot width and 4,000 square feet of lot area.

13 So I want to note that that's the lot dimension  
14 relief that's now required. The Office of Planning supports  
15 that relief, and we also support the request for the two  
16 nonconforming side yards, one yard of two feet where eight  
17 feet would be required and one yard of, I believe it's --

18 CHAIRPERSON HILL: Six foot four.

19 MS. VITALE: -- six foot four inches, where eight  
20 foot would be required.

21 And as indicated by the Applicant, again, the  
22 inability to attach to the adjoining property owner presents  
23 an exceptional situation that results in a practical  
24 difficulty.

25 I would note that HPRB did indicate, in this

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1 instance, where you saw in the previous case they were able  
2 to site it at the side street line, at this property HPRB,  
3 or HPO staff rather, said that they wouldn't want this  
4 property sited at the property line along the side street  
5 because that would impact kind of the line of facades along  
6 the -- is it Q Street, I believe.

7 MS. BIGLEY: U.

8 MS. VITALE: U, around the corner.

9 So that I think this accomplishes a good -- a  
10 compromise. It respects the desire of HPRB to preserve that  
11 viewshed along U Street.

12 And then it also, on the other property line where  
13 they can't attach, whereas we thought four inches really just  
14 kind of set things up for a problem in the future and really  
15 wasn't helpful or beneficial to either property, either the  
16 subject property or the neighbor, I think by shifting it off  
17 two feet it creates a situation where the Mi Casa property  
18 has a side yard, albeit small, but it would provide for  
19 access and maintenance in the future, and then also provide  
20 separation for the adjoining property.

21 Because that property does have a small side yard,  
22 there are windows on the adjoining property, on the elevation  
23 that would face the Mi Casa house. There is a door on that  
24 elevation as well.

25 So I think providing the two foot side yard

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1 results in a better solution all around. So we can support  
2 the revised relief request. I'm happy to answer any  
3 questions.

4 CHAIRPERSON HILL: No, thank you. No, thanks very  
5 much. Does anyone have any questions for the Office of  
6 Planning? Okay.

7 Does the Applicant have any questions for the  
8 Office of Planning?

9 MS. BIGLEY: No, we don't.

10 CHAIRPERSON HILL: Okay. Commissioner Fuller,  
11 would you like speak?

12 As I mentioned before, I'm going to give you five  
13 minutes. And if you could just introduce yourself before you  
14 give your testimony.

15 MS. FULLER: Thank you. My name is Greta Fuller,  
16 Commissioner in ANC 8A, and thank you again.

17 I'm just going, I'm not going to take up a lot of  
18 time because this case is very similar to the case before,  
19 so ditto on all of my comments that I made before because  
20 they also stand in this case as well.

21 I was happy that Mi Casa, the homeowner next door,  
22 myself, we could go in a room today and discuss some of the  
23 differences.

24 And that also, I want to thank the Office of  
25 Planning to seeing that this additional two feet really does

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1 help both property owners and, and that the settlement  
2 agreement between the two parties really be upheld because  
3 that's very important for us.

4 And one last thing. I kind of lost my train of  
5 thought. But anyway, I think that -- yeah, I lost my train  
6 of thought on the last thing I wanted to say.

7 CHAIRPERSON HILL: It's okay, take your time.

8 MS. FULLER: But anyway, I just think that we've  
9 come to -- oh, I know what it was. The one thing that I  
10 wanted to say is that we do not take these variances lightly  
11 in historic Anacostia or in our neighborhood.

12 We find that the zoning laws were put there for  
13 a reason. And especially when you have a historic district  
14 and you're talking about side yards, as many of our  
15 properties do have, we want to respect that.

16 But in this instance, we want to be flexible to  
17 help new ownership in our community and also to weave the  
18 fabric of the community back where we no longer have standing  
19 structures. So when we come and the ANC agrees and the  
20 Historic Anacostia Preservation and the community agrees,  
21 it's not saying that, hey, every variance is a good variance,  
22 but in this particular case, we want to support the Applicant  
23 and the resident.

24 So let's not make this the norm, is what I'm  
25 really trying to say. And thank you again for your

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1 listening.

2 CHAIRPERSON HILL: Okay, does anybody have any  
3 questions for Commissioner Fuller?

4 Okay, I do, Ms. Commissioner Fuller, since we may  
5 see you again and you have made a point, I just want to let  
6 you know it is not the norm, right?

7 Like, I mean, I know that you have been here  
8 before and it hasn't, you've been here in opposition to  
9 things, and I don't mean, and I just don't want to also  
10 portray myself as it being kind of like an easy thing.

11 There is some time commitments that I'm kind of  
12 working through up here and so, but as far as the Board is  
13 concerned, and Ms. White points it out very often in terms  
14 of the variances, it's a very high bar to reach the  
15 variances, so we do take it very seriously. We don't take  
16 it as an easy thing to do. But I do appreciate the comments  
17 that you're making.

18 Ms. Agyei, did you have something either in  
19 support or opposition?

20 MS. AGYEI: Just thank you for listening to us  
21 speak, and I'm glad that we were able to get to a settlement.

22 CHAIRPERSON HILL: Okay, great. Wonderful. Does  
23 the Applicant have any questions for Ms. Agyei or the  
24 Commissioner?

25 MS. BIGLEY: No, we don't.

1 CHAIRPERSON HILL: Okay. Let's see. And I kind  
2 of did it in a different way, but again, is there anyone here  
3 who wishes to speak in support? Is there anyone here who  
4 wishes to speak in opposition?

5 Okay, does the Board have any more questions for  
6 the Applicant?

7 MEMBER HART: Just one question, Mr. Chairman.  
8 In the plans that you -- I don't know what this is, this is  
9 updated Plan 64 I think. I don't know what this -- I don't  
10 know what these are from. The settlement agreement. So  
11 whatever exhibit that is.

12 In it there is a drawing that shows the new  
13 proposed location of the building, but there's also a little  
14 thing that says HVAC. Is that an actual HVAC that's going  
15 to be on the north side of the building?

16 Because I thought there was, as part of the  
17 agreement, that there was no utilities and things, so is that  
18 not considered that or what?

19 MR. RUEDA: No. And I think it's on the other  
20 side of --

21 MEMBER HART: I'm just showing what I'm looking  
22 at, this --

23 MR. RUEDA: No, no, I understand what you're  
24 looking at. And so the HVAC was not considered a utility in  
25 our opinion. And also, it would be east of the clear area.

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1 There's a -- right.

2 MEMBER HART: So you're saying that because it's  
3 not actually on the building itself, it's on the patio, that  
4 it's -- do you see what image I'm looking at?

5 MR. RUEDA: I just --

6 MEMBER HART: Okay.

7 MR. RUEDA: -- created it. Yes, I know what  
8 you're talking about.

9 MEMBER HART: I'm just asking because there are  
10 so many of them, it's hard for me to, I want to make sure  
11 we're talking about the correct, the same thing.

12 MR. RUEDA: I apologize. So could you restate  
13 your question?

14 MS. MOLDENHAUER: And I, sorry, I believe what we  
15 were referencing with the utilities was the utility box,  
16 where you have the connection.

17 MR. RUEDA: Electric --

18 MS. MOLDENHAUER: Yes.

19 MR. RUEDA: Electric and gas.

20 MEMBER HART: Yes, I just wanted to make sure  
21 because this is, it's very explicit about what that easement  
22 area is. And I just, again, it is very hard for us to  
23 actually review things on the dais, and this is a lot of  
24 information that we're trying to digest.

25 And as part of it, it seems like there was a

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1 fairly delicate negotiation that was going on, and I just  
2 wanted to make sure that I was seeing that correctly because  
3 HVAC units are not small, so if you don't want a electric  
4 box, which is fairly small, but the HVAC unit is different,  
5 then I just needed to understand what that was about.

6 And I wanted to make sure Ms. Agyei was aware of  
7 that and that that was okay with her. I know she signed  
8 this, I just wanted to make sure that we're all looking at  
9 the same thing.

10 MS. BIGLEY: If I could briefly clarify as well.

11 MEMBER HART: Actually, I wanted to hear --

12 MS. BIGLEY: Okay.

13 MEMBER HART: -- from her first and then you can

14 --

15 MS. BIGLEY: Sure.

16 MEMBER HART: Sure. Thank you.

17 MS. AGYEI: I was. My main concern was it being  
18 past the door.

19 MEMBER HART: That's fine. And I appreciate it.

20 MS. AGYEI: Thank you.

21 MEMBER HART: I just, again, as we're looking at  
22 it, it's --

23 MS. AGYEI: I appreciate it.

24 MEMBER HART: Thank you. Ms. Bigley.

25 MS. BIGLEY: Yes. And just to clarify, so the

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1 Board is aware, the easement area, that is part of the  
2 settlement agreement. That easement area ends at the rear  
3 wall of the proposed structure.

4 So the HVAC unit would not be within the portion  
5 of the easement area. It is within the north facade, and I  
6 think that that is something you were getting at,  
7 Commissioner Hart, is that the HVAC unit is on the north  
8 facade where we say utilities would not be. This is separate  
9 and apart from utilities.

10 MEMBER HART: Yes. No, I understood that, I was  
11 just bringing up the fact that the easement itself has not  
12 actually been signed and notarized because we're, you know,  
13 it's kind of 11th hour we're talking about. So I just need  
14 to understand --

15 MS. BIGLEY: Sure.

16 MEMBER HART: -- and get clear as to what we are  
17 looking at and the document that you've submitted to us.

18 MS. BIGLEY: Okay.

19 MS. MOLDENHAUER: And just to be clear, Mr. Hart,  
20 the easement could not be executed even if we had negotiated  
21 this weeks ago because Mi Casa does not yet own the property.  
22 It is still owned, obviously, by DHCD. And until that  
23 property transfers to Mi Casa, the settlement agreement  
24 indicates that ten days within, most of this will happen  
25 simultaneous, but the agreement provides for ten days after

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1 Mi Casa becomes the owner of the property, would the easement  
2 be recorded and executed.

3 But it obviously is all part of the final  
4 settlement agreement --

5 MEMBER HART: Understood.

6 MS. MOLDENHAUER: -- that's been executed today.

7 MEMBER HART: Thank you.

8 CHAIRPERSON HILL: So, and I appreciate this and  
9 having an architect here is helpful in that, are you  
10 comfortable, Mr. Hart?

11 MEMBER HART: I got to say, I'm never comfortable  
12 when I get documents that I'm having to look at and then  
13 listen to and people are saying while I'm trying to look at  
14 the documents, it gets a little bit hard to make sure that  
15 we're actually seeing the same thing.

16 But I understand that -- I have had a chance to  
17 look at the documents, I didn't think that there was any  
18 particular issue that was raised. I think it's a better  
19 situation because of the distance that has now gone from four  
20 inches to two feet. So that has helped to give some  
21 separation between the two buildings.

22 I think the Office of Planning gave us their  
23 information, which helps me understand this a little bit  
24 better as well. They are fairly comfortable with it as well  
25 so I'm comfortable with it. I just, like I said, it's a lot

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1 of information to have to try to digest in a fairly short  
2 period of time.

3 CHAIRPERSON HILL: Okay. Okay. All right. And,  
4 Ms. Agyei, you understand what they were speaking to in terms  
5 of the HVAC there?

6 MS. AGYEI: Yes. My concern was that they would  
7 not be coming to the front, like, to put their trash. Like,  
8 it wouldn't be a shared trash situation.

9 CHAIRPERSON HILL: Okay. All right.

10 MS. AGYEI: Trash bins.

11 CHAIRPERSON HILL: Okay. All right. All right,  
12 so anyone have any more questions for the Applicant? Okay.

13 Does the Applicant have anything they'd like to  
14 offer in conclusion?

15 MS. BIGLEY: No, I think we'll rest on the record.  
16 Thank you.

17 CHAIRPERSON HILL: Okay. I'm going to go ahead  
18 and close the hearing. Is the Board ready to deliberate?  
19 Okay.

20 I mean, I'll start. I mean, I do appreciate that  
21 it is fast, and I guess that I think that we have had a  
22 little bit of time here to kind of process this.

23 I don't necessarily know, in fact, I know that  
24 this isn't something that we will do on a regular basis in  
25 terms of the speed in which we're kind of getting to this

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1 point, but the fact that the Commissioner from the ANC is  
2 down here, the fact that there was a person in party status,  
3 and I'm just speaking of just the public here, not even the  
4 merits of the case, but just kind of, we're here to be able  
5 to talk through things. At least that is comforting.

6           And so, but really, I think that I am, and I very  
7 much appreciate, as the Applicant had stated, the ability of  
8 the Office of Planning to work with people here. That's very  
9 much appreciated and I know -- by the Board and myself.  
10 Because we're trying to do the best things that we can in  
11 terms of processing things for the City as quickly as we can,  
12 but we can't do that without the -- the Office of Planning,  
13 so thank you so much.

14           And so after hearing from the Office of Planning,  
15 I am comfortable with their analysis as to how we can get to  
16 a decision in terms of them meeting the variance requirement.  
17 So I'm comfortable moving forward with this application.

18           Does anyone have anything else they'd like to add?

19           MEMBER HART: No. Only that I also appreciate the  
20 Applicant working with Ms. Agyei so that she can be  
21 comfortable with what is being proposed.

22           Commissioner Fuller, very appreciative for you  
23 coming down today, because I think you've provided both  
24 leadership and a voice from the neighbors to understand that  
25 while this may be a person, it is a person that is in the

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1 neighborhood that is uniquely impacted by a project that's  
2 being proposed, and that, I think that that speaks volumes  
3 for the neighborhood and then your commitment for trying to  
4 provide a neighborhood feel for the area.

5 I would be in support of the application as well.  
6 Again, I've said my issues with receiving documents late.  
7 The good part about it is that this seems to have gone into  
8 a better direction, and I would just leave it at that.

9 I appreciate the Office of Planning providing  
10 their information and analysis regarding this information  
11 that we've received today. And that's it.

12 MEMBER JOHN: Mr. Chairman, I too support the  
13 application and commend everyone on the effort to -- and I'm  
14 always sitting away from the mic, sorry about that.

15 So I appreciate the effort of everyone to work  
16 towards a solution that works for the neighbor. And I want  
17 to put in a plug for the design of this home because of the  
18 accessible entry and the fact that the first floor can be  
19 converted to a bedroom, you know, to age in place.

20 I think that so many more homes could add that one  
21 little feature and folks who are considering staying in their  
22 homes indefinitely would be in a much better position. So  
23 thank you for moving in that area.

24 MEMBER WHITE: Yes, Mr. Chair, I concur. I think  
25 they've met the very strict and tough variance criteria.

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1           And, again, I support the mission of Mi Casa. I'm  
2 very thankful for Commissioner Fuller and Ms. Agyei for  
3 coming in and working through this and getting to a  
4 resolution that leaves everyone with a smile. So I would be  
5 in support of this application as well, Mr. Chair.

6           COMMISSIONER SHAPIRO: I concur.

7           CHAIRPERSON HILL: Okay.

8           MS. LOVICK: Excuse me, I'd just like to  
9 interject. I just wanted to mention the flexibility  
10 conditions that were an issue on the last case are an issue  
11 in this case as well. Just wanted to make sure that you  
12 address that.

13           CHAIRPERSON HILL: Sure. And I appreciate that.  
14 So it is -- I assume that the reason why the Applicant didn't  
15 bring it up was because of the same reasons as though we had  
16 discussions about in terms of the flexibility and that the  
17 Board wasn't onboard with granting those flexibility terms.  
18 But the Board, at this point, I don't think, is going to be  
19 entertaining those. And I assume that's why you didn't bring  
20 them up.

21           MS. BIGLEY: That is correct. Yes.

22           CHAIRPERSON HILL: Okay. So that being the case,  
23 and I did clarify that the relief requested had been  
24 announced properly by the Secretary, so I'm going to go ahead  
25 and make a motion to approve Application Number 19736 as read

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1 by the Secretary and ask for a second.

2 MEMBER WHITE: Second.

3 CHAIRPERSON HILL: The motion made and seconded.

4 All those in favor, aye?

5 (Chorus of ayes.)

6 CHAIRPERSON HILL: All those opposed?

7 The motion passes. Ms. Rose?

8 MS. ROSE: Staff will record the vote as 5-0-0 to  
9 approve the application with a motion by Mr. Hill, seconded  
10 by Ms. White. In support of the motion is Mr. Hart, Ms.  
11 John, and Mr. Shapiro.

12 CHAIRPERSON HILL: Okay, summary order?

13 MS. ROSE: Thank you.

14 CHAIRPERSON HILL: Okay. And good luck to Mi Casa  
15 also. Yes, thank you all very much.

16 MS. BIGLEY: Thank you.

17 CHAIRPERSON HILL: Thank you. Thanks everybody.

18 All right, we can start whenever you like, Ms.  
19 Rose.

20 MS. ROSE: Next is Appeal Number 19708 of Berkley  
21 Smallwood, pursuant to 11 DCMR, Subtitle Y, Section 302 from  
22 the determination made on November 28th, 2017 by the Zoning  
23 Administrator, Department of Consumer and Regulatory Affairs,  
24 to refuse further processing of Building Permit B1801942, to  
25 permit the renovation of a flat in the RF-1 zone at premises

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1 3652 Park Place, Northwest, Square 3034, Lot 202.

2 As a preliminary matter, DCRA has filed a motion  
3 to incorporate the Zoning Administrator's final rejection of  
4 the application, or in the alternative, a motion to dismiss  
5 the appeal. And the Appellant has filed a response in  
6 opposition.

7 CHAIRPERSON HILL: Okay, if you could please  
8 introduce yourselves for the record?

9 MS. LORD-SORENSEN: Good afternoon, Chairman Hill  
10 and the Board. Adrienne Lord-Sorensen, assistant general  
11 counsel for the D.C. Department of Consumer and Regulatory  
12 Affairs. And by the way, I wasn't here this morning to be  
13 sworn in.

14 CHAIRPERSON HILL: Okay, we'll swear you in, in  
15 one second then.

16 MR. LEGRANT: Matthew LeGrant, Zoning  
17 Administrator, DCRA.

18 MR. GRANT: My name is Christopher Grant, I'm the  
19 attorney for the Smallwood family business. And I'm a lawyer  
20 in Washington.

21 CHAIRPERSON HILL: Okay.

22 MS. SMALLWOOD: Amanda Smallwood, representative  
23 for the owner, Berkley Smallwood.

24 CHAIRPERSON HILL: Okay. So if you all haven't  
25 been sworn in, and I don't know if even, Mr. Grant, you've

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1 been sworn in either, so if anyone who hasn't been sworn in,  
2 if you could please stand to get sworn in by the Secretary  
3 here to my left?

4 MS. ROSE: Please raise your right hand. Do you  
5 swear or affirm that the testimony you will be presenting  
6 today will be the truth, the whole truth, and nothing but the  
7 truth?

8 (Chorus of ayes.)

9 MS. ROSE: You may be seated.

10 CHAIRPERSON HILL: Okay. All right. So there are  
11 preliminary matters, one of which was to incorporate the  
12 final decision which was April --- was it April, I forgot  
13 what it was --- May 4th, thank you, May 4th -- into this  
14 appeal and/or dismiss. So, Ms. Lord-Sorensen, I guess, could  
15 you explain your preliminary motion?

16 MS. LORD-SORENSEN: Certainly, Chairman Hill. So  
17 the instant appeal is appealing a November 2017 email  
18 regarding the permit application submitted by Applicant.  
19 However, the Zoning Administrator did not issue a final  
20 decision until May 4th, 2018, and that information is in the  
21 record. It's one of the exhibits attached to Exhibit Number  
22 36. And so we were asking to incorporate the final decision  
23 of May 4th, 2018.

24 CHAIRPERSON HILL: Okay. And then was the motion  
25 dismissed?

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1 MS. LORD-SORENSEN: So in the alternative, we  
2 filed a motion to dismiss for premature filing. So again,  
3 the appeal, the instant appeal is appealing the November 2017  
4 email. However the final decision came about four months  
5 later in May. So we filed a motion to dismiss for premature  
6 filing.

7 CHAIRPERSON HILL: Okay. So I guess I'd be  
8 looking to the Board to have a discussion on this. What I  
9 thought, and also we can also turn to OAG, was that it is the  
10 first writing as to what is the appealable action.

11 And I guess --- I'm just kind of discussing this  
12 with the Board at this point, if you all would just bear with  
13 us while we kind of get through this --- so there was the  
14 first writing which we have, as a Board, had to come up  
15 against before in terms of what is considered the first  
16 writing. And I would argue that the November 28th was, in  
17 fact, the first writing and that the appeal was being filed  
18 correctly against that.

19 I guess I would also say that the May 4th decision  
20 we can incorporate into the record as evidence because it is,  
21 in fact, the final decision. And then I wouldn't be in favor  
22 of dismissing. And then I can turn to OAG if we want to hear  
23 more from OAG. But those are kind of my overall thoughts.  
24 Could somebody give me their opinion?

25 MR. GRANT: Mr. Chairman, may I speak to it

1 please?

2 CHAIRPERSON HILL: Give me one second. You can,  
3 but I'm going to do this --- well, I guess you -- because  
4 I know that you had filed in opposition. And so I suppose --  
5 actually, sure, why not? Go ahead. You had filed in  
6 opposition to the request.

7 MR. GRANT: I did. Thank you, Mr. Chair. I cited  
8 in the opposition, 11 DCMR Y 302.1, which describes an appeal  
9 from a decision. Counsel for the Office of Zoning has  
10 referred to it as an email. But it wasn't merely an email,  
11 it was a decision. And it was a decision that harmed us.  
12 It was a decision that's kept us waiting for six months now  
13 to improve the property which is the subject of this appeal.

14 We've been waiting since November 28th. The  
15 decision on November 28th stopped the processing of our  
16 permit. So there's no question that it was a decision on the  
17 part of the Zoning Administrator, and there's no question  
18 that under that referenced DCMR it's appealable to this  
19 Board. Thank you.

20 CHAIRPERSON HILL: Okay. I think --

21 MS. LORD-SORENSEN: May I be heard?

22 CHAIRPERSON HILL: Sure, Ms. Lord-Sorensen.

23 MS. LORD-SORENSEN: Just to clarify, the November  
24 28th, 2017, email did not --- it wasn't a final decision in  
25 the sense that it just dismissed the application that was at

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1 hand, that was pending before the Zoning Administrator.  
2 Instead, it was placed in a holding pattern because there  
3 were a series of applications, which we'll discuss further,  
4 that supported the Zoning Administrator's --- which gave the  
5 Zoning Administrator pause in order to review this  
6 application a little bit further.

7           So again, it was an attempt, when you read the  
8 November 28th, 2017, email, it was an attempt for DCRA to try  
9 to work with the Applicant to make sure that the structure  
10 or structures that were being built at 3652 Park Place, NW,  
11 was, in fact, compliant with the -- in compliance with the  
12 zoning regulations.

13           CHAIRPERSON HILL:    Okay.    And I'm not --- I  
14 appreciate that.    And I appreciate that, like, you're giving  
15 us your thoughts on --- you're defending your motion.    So I'm  
16 just kind of going back to --- and so you've mentioned what  
17 you wanted to say.

18           And so I'm back here with the Board again, which  
19 is that the reason why I'm kind of struggling with it is in  
20 the past there have been things that we've had to deal with  
21 in terms of appeals which has been with, like, the first  
22 writings of things, right.

23           And it's gone back all the way to --- I can't  
24 remember which case I'm thinking of.    But it really turned  
25 into a big issue as to what was the first writing.    And so

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1 I'm still back to what I started to talk about, so maybe I  
2 showed my hand a little bit too early, which was that I think  
3 that the email, the November 28th, was the action at which  
4 the appeal could have been made.

5           And I'm still where I am before which is that, you  
6 know, we'd stick with the November 28th email as being what  
7 they're appealing or, I guess, the first writing, and that  
8 we would leave the May 4th decision to the record as evidence  
9 and deny the motion to base this off of the May 4th decision.  
10 But I, again, turn to my Board members.

11           MEMBER WHITE: You know, Mr. Chair, I'm kind of  
12 leaning in the direction of strictly reading the regulation,  
13 Y 302.5, you know, that talks about the zoning appeal may  
14 only be taken from the first writing that reflects the  
15 administrative decision complained of, which the Appellant  
16 had noted. So the date that I'm still kind of stuck on right  
17 now is the November 2017 timeframe in terms of the date that  
18 we should look at for purposes of the appeal.

19           CHAIRPERSON HILL: Okay. Anyone else?

20           MEMBER HART: I, in reviewing the case or the  
21 motion, I think that I would agree with you that the November  
22 28th, 2017, date was a decision. It may not have been the  
23 final decision, but it was something that was transmitted to  
24 the Applicant or the permit holder, I guess, at the time, and  
25 that it put a stop to the use or the ability for the

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1 Applicant to be able to --- I keep on saying Applicant ---  
2 the permit holder to be able to move forward. So I would  
3 concur that the November 28th, 2017, date would be the ---  
4 I would consider that the -- that first --- that decision  
5 point.

6 MEMBER JOHN: Mr. Chairman, I have struggled with  
7 this because I -- you know, the regulation does not say the  
8 final action, you know, or the final determination. And I  
9 was sort of bothered by the fact that the parties were still  
10 communicating to try to come up with a resolution.

11 And as I read the record, there was another  
12 submission from the Appellant. So in my view, the parties  
13 had continued to discuss the, you know, outcome of what would  
14 happen on the permit.

15 However, as my colleague said, if you look at the  
16 language of the regulation, it does say first writing. And  
17 I think whoever drafted it could have said something else.  
18 If they'd wanted to say the final action on the permit, they  
19 could have said that. But they said first writing. So  
20 looking at the plain language, I would agree.

21 MEMBER HART: And, Mr. Chairman, I also would ---  
22 and I think that Board Member John gives us information about  
23 if the Applicant -- if the Appellant were to have waited  
24 until May, or at least after the May 4th time period, we  
25 probably would be sitting here saying, well, why didn't they

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1 say something, you know, after the November time period?

2           So I think that --- because we know that that  
3 first time that they were aware of the issue was in November.  
4 So I think that that kind of makes me think that the November  
5 28th, 2017, timeframe would be considered the first writing,  
6 the first instance where the Appellant would have understood  
7 that there was something that they don't agree with.

8           COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I'm  
9 in agreement with my colleagues. The only question I would  
10 have is --- and this is a question for the Zoning  
11 Administrator, setting aside the process related to this  
12 specific case, or maybe it's for the OAG as well, are there  
13 any precedent setting concerns that we have? Are there any  
14 unintended consequences from us staking out this as first  
15 writing?

16           I mean, it's clear as day, as we've talked about,  
17 that that's the standard. But why isn't this first writing,  
18 despite the fact that you have concerns about this case?

19           MR. LEGRANT: Well, Commissioner Shapiro, and  
20 members of the Board, I cannot recall another instance of an  
21 appeal. The November email was a request for clarification  
22 and further information. So I have not yet had an appeal  
23 similar to the issue today that was of that type of  
24 communication, request for additional information.

25           Typically, it's the issue is of a permit, it might

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1 be --- and to distinguish, I've sent emails prior to issuance  
2 of a permit saying -- making a zoning determination, that is  
3 then the subject of an appeal, which I believe this Board has  
4 accepted as a, quote unquote, first writing of a  
5 determination that was appealable.

6 But just to distinguish today, the email was a  
7 request for additional information that I believe my counsel  
8 has, in her motion, has said it this -- just isn't ripe and  
9 that the argument for the preliminary motion to incorporate  
10 was to take into account the May 4th decision.

11 COMMISSIONER SHAPIRO: So if I may continue, so  
12 then what's the danger in having this be sort of a precedent  
13 for what is considered first writing? I mean, what could  
14 happen?

15 MR. LEGRANT: Well, Counsel may be able to speak  
16 to this, but if this was accepted and then, you know, I don't  
17 know if the Appellant could continue if, like, okay, if the  
18 appeal was denied then another decision point --- it may not  
19 be this case but another case --- that I'd say, oh, no, now  
20 there's a decision. And that would be possibly appealed  
21 again. But I don't know if that is even viable.

22 MR. GRANT: May I speak to the issue, please?

23 CHAIRPERSON HILL: One second.

24 COMMISSIONER SHAPIRO: That's actually fine for  
25 me, Mr. Chair

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1 CHAIRPERSON HILL: Okay. Sure, Mr. Grant. Go  
2 ahead, what did you have to say?

3 MR. GRANT: The Zoning Administrator referred to  
4 the November 28th, 2017, decision as a request for additional  
5 information. But what the decision actually says is, quote,  
6 the Zoning Administrator completed his review. However, he  
7 is unable to grant approval allowing further processing of  
8 building permit B1A01942.

9 That's the problem. This was a decision, and it  
10 was a decision that stopped the processing, expressly stopped  
11 the processing of our permit application. And here we are  
12 six months later, and we can't do anything with this  
13 building. We do not have a building permit.

14 CHAIRPERSON HILL: Okay, okay. We're just talking  
15 about this as a preliminary matter. You know, and we haven't  
16 gotten to the merits yet. But the reason why I'm taking the  
17 time is because this --- and I can't remember what it was,  
18 but DCRA was here before. And they were arguing the other  
19 way. And that's why I'm trying to remember what it was. But  
20 I can't remember what it was.

21 And so --- and it was, like, the first writing was  
22 way back ago, and it was an email, and it basically did what  
23 this is doing. And the argument, I thought, was that that  
24 was the first writing.

25 But regardless of -- I'm just making a comment,

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1 because I've actually been here long enough that things come  
2 up every now and again. And so I'm trying to get my hands  
3 around this, also from a Board perspective, since we've been  
4 apparently doing this a little bit today, is kind of  
5 understanding what is the first writing.

6 I think, again, I'll go back with --- I think the  
7 first writing was the November 28th, so I would be inclined  
8 to dismiss the motion to incorporate. But the thing that I'm  
9 --- and now I guess we can keep talking a little more -- is  
10 I still think we're at the same place. So that's what I  
11 still don't get about this, is whether you do it with the May  
12 4th, or whether you do it with the 28th. You're still  
13 appealing the same decision. But, Mr. Shapiro?

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
15 mean, I think, you know, not every first email is a first  
16 writing. I think that's the thing that I would want to be  
17 clear with in my mind. This email feels like it, based upon  
18 --- as the attorney for the Applicant -- Applicant --

19 FEMALE PARTICIPANT: Appellant.

20 COMMISSIONER SHAPIRO: -- Appellant says, it's  
21 hard for me not to interpret it this way, regardless of the  
22 intent of the writer, the impact of this clearly says to me  
23 this is the first writing.

24 CHAIRPERSON HILL: Okay. So we're all in the same  
25 place, it seems, or at least some of us are. I don't know,

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1 Ms. John?

2 MEMBER JOHN: I'm not entirely there, but I could  
3 get there. Because I think the letter is ambiguous, the  
4 email is ambiguous, in a way.

5 You know, the final statement is the zoning  
6 administrator will reconsider, as my colleague pointed out  
7 to me, it says it will reconsider granting approval. So that  
8 means it's already denied approval.

9 However, the first paragraph says in order to move  
10 forward, so that's an indication that they anticipated that  
11 a discussion would continue. The ZA anticipated that there  
12 would be further discussion if these additional items were  
13 provided.

14 It seems to me that the underlying issue is that  
15 the Appellant disagrees with the basis for denying the  
16 application in the first place. And that's really why we are  
17 here.

18 CHAIRPERSON HILL: So are you torn, you're ---

19 MEMBER JOHN: Well, I can go either way.

20 CHAIRPERSON HILL: Okay. Well, we've got torn  
21 over there.

22 MS. LORD-SORENSEN: Chairman, Chairman Hill, may  
23 I just ---

24 CHAIRPERSON HILL: Give me one second, Lord-  
25 Sorensen, give me one second.

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1 MS. LORD-SORENSEN: Okay.

2 CHAIRPERSON HILL: Mr. Hart?

3 MEMBER HART: I think I'm pretty clear on it. I  
4 mean, I'm --- I think that this is the first writing --

5 CHAIRPERSON HILL: Okay, so we've got first  
6 writing, we've got first writing, we've got first writing.  
7 Okay, I've got three. Okay, so Ms. Lord-Sorensen, you had  
8 something else you'd like to add?

9 MS. LORD-SORENSEN: I just wanted to just  
10 piggyback a little bit off of what Board member John said.  
11 Because everyone kept talking about first writing, first  
12 writing. So if you actually read the November 28th, 2017,  
13 email, the very first sentence reads, "Thanks again for  
14 providing the affidavit," which shows that there was an on-  
15 going conversation between the Appellant and DCRA.

16 If, I'm assuming Appellant had issue with  
17 submitting the initial affidavit then, you know, based on  
18 what's being said today, then that should have been the first  
19 writing. But no, the Applicant, excuse me, the Appellant,  
20 however, submitted the affidavit, I wasn't privy to that  
21 conversation, but submitted the affidavit.

22 The zoning administrator and his staff reviewed  
23 it, and then we requested additional information or, excuse  
24 me, further information be incorporated into the affidavit.  
25 And that's what the Appellant has taken issue with.

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1 CHAIRPERSON HILL: Okay, all right. So we're  
2 continuing to have this discussion, which is fine. I mean,  
3 then to Ms. John and, again, since we're doing this in the  
4 public, that whether it was November 28th or whether it was,  
5 like, a few emails later, or whenever it was, I don't think  
6 the first writing was May 4th, you know. So that's what I'm,  
7 you know --- Mr. Shapiro?

8 COMMISSIONER SHAPIRO: I completely agree. And  
9 I would call the question.

10 CHAIRPERSON HILL: Okay. So back to just getting  
11 through this preliminary matter, and we can have --- I'll  
12 make a motion, we can vote. So I'm going to make a motion  
13 to dismiss the motion to incorporate the ZA's final rejection  
14 applications, May 4th, and also to dismiss the motion to  
15 dismiss the appeal, that the appeal was filed prematurely,  
16 and ask for a second.

17 MEMBER HART: Second.

18 MS. LOVICK: Sorry, I'm just going to interject.

19 I would be to deny the motion, it would be to deny ---

20 (Simultaneous speaking)

21 CHAIRPERSON HILL: Okay, sorry. That's all right.  
22 Thank you. Thank you. The law. Okay, so I'm going to make  
23 motion to deny the motion to incorporate the ZA's final  
24 rejection of the application being May 4th, and then also  
25 make a motion to deny the motion to dismiss the appeal on the

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1 grounds that it was filed prematurely, and ask for a second.

2 MEMBER HART: Second.

3 CHAIRPERSON HILL: The motion's been made and  
4 seconded. All those in favor, aye?

5 (Chorus of ayes)

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

8 MS. ROSE: Staff would record the vote as 5-0-0  
9 to deny both motions filed by DCRA with Mr. Hill making the  
10 motion, Mr. Hart, Ms. White, Ms. John, and Mr. Shapiro in  
11 support of the motion.

12 MS. LOVICK: Sorry. I would just interject again  
13 and just say that, for purposes of the May 4th decision, you  
14 can include it as evidence if you like. You're not  
15 incorporating it ---

16 CHAIRPERSON HILL: Oh, I'm sorry, and I ---

17 MS. LOVICK: -- but you could include it as  
18 evidence. Because it really, it just further corroborates  
19 the November 28th first writing.

20 CHAIRPERSON HILL: I appreciate that. And thank  
21 you so much. I had mentioned that once before, but I do want  
22 to do that if the Board, by consensus, would just agree that  
23 we're going to incorporate that into the record.

24 Okay, all right. Okay, so now we're back to the  
25 merits of the appeal. And so I'm going to turn to the

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1 Appellant. And so, Mr. Grant, I assume you're going to be  
2 speaking or presenting?

3 MR. GRANT: That's correct.

4 CHAIRPERSON HILL: Okay. And let's see, and Ms.  
5 Smallwood, I was a little confused. So you said you're  
6 representing the property owner? Could just speak in the  
7 microphone.

8 MS. SMALLWOOD: I'm the daughter of the property  
9 owner, and also the property manager. I pulled all the  
10 permits. I met with all the inspectors.

11 CHAIRPERSON HILL: Okay, okay. So you're not the  
12 property owner, you're the daughter of the property owner?

13 MS. SMALLWOOD: Yes, sir.

14 CHAIRPERSON HILL: Okay, all right. So, Mr.  
15 Grant, I'm going to go ahead and give you --- let's just  
16 start with 20 minutes, okay, in terms of the presentation.

17 MR. GRANT: That's plenty.

18 CHAIRPERSON HILL: Okay.

19 MR. GRANT: That's plenty, thanks.

20 CHAIRPERSON HILL: And then the way it is going  
21 to work, again, just so you know, so I can go through it in  
22 my head, is that, again, you present. DCRA will have an  
23 opportunity to cross examine. They're going to have an  
24 opportunity to then present. You'll have an opportunity to  
25 cross examine. We're going to ask questions along the way.

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1 And then you'll have an opportunity for any rebuttal.

2 And then we will have a conclusion with DCRA even  
3 though I'm not terribly sure, usually, whether it's in the  
4 regulations or not this way. But, like, I would like to have  
5 a conclusion from DCRA. We'll have a conclusion from the  
6 Appellant, okay. So that's just giving you kind of the  
7 outline of it. So you can go ahead and begin your case  
8 whenever you'd like, Mr. Grant.

9 MR. GRANT: Thank you, Chairman Hill.

10 CHAIRPERSON HILL: Twenty minutes, Ms. Rose.

11 MR. GRANT: I will give just a brief summary of  
12 the case. And then I'll ask Ms. Smallwood to testify about  
13 it.

14 During the course of this presentation, you will  
15 hear, and I think with confidence I can say even when the  
16 zoning administrator and his counsel speak, you will hear  
17 nothing about anything wrong with this house. There's  
18 nothing wrong with this house. This house is utterly  
19 compliant with the law. And it has been at all times.

20 It complies not only with the regulations, but  
21 everything that we're required to do we have done and had  
22 done as of November 28th, 2017. So there is nothing about  
23 this house that says that it does not deserve to have the  
24 improvements made which the Smallwood family wants to make.  
25 There's been no --- it's been inspected repeatedly. There

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1 have been no violations issued. We have passed every test.

2 And despite that, we are not, as I've said  
3 repeatedly already, for six months we've been prevented from  
4 improving our property. We want to make our property better.  
5 Making our property better is a good thing. It's a good  
6 thing not only for our property but for the neighborhood.  
7 There's nothing wrong with wanting to make our property  
8 better as long as it's compliant with the law.

9 Now, the issues that the zoning administrator  
10 raised are two. The first one has to do with whether the  
11 improvements that we want to make would create a dwelling  
12 unit. But it's absolutely clear that the dwelling unit, the  
13 definition of a dwelling unit, as I've said in my written  
14 presentations, require that there be a kitchen. There has  
15 to be cooking facilities.

16 One of the Commissioners, one of the Board members  
17 referred a few minutes ago to plain language. Well, the  
18 language is very plain in the definition in the DCMR of a  
19 dwelling unit. And it requires equipment for cooking.

20 Now, we are desirous to improve --- there are two  
21 units in this building. One is upstairs, and then ground  
22 floor and the lowest level are part of Unit 1. And that's  
23 the unit that's in the controversy.

24 We want to improve the lowest level by putting in  
25 two bedrooms and a bathroom. And that's all. That's to

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1 improve the comfort and the value to a tenant and to the  
2 owner of Unit 1, the lowest level on the ground floor.  
3 There's nothing wrong with that. It's an improvement. It's  
4 an improvement in that unit. And it's compliant with what  
5 the regulations require.

6           Then is the issue which came up for the first  
7 time, I believe, in the November 28th email. The zoning  
8 administrator requested that we remove a third electrical  
9 panel and a HVAC unit that serve the lowest level. But those  
10 two items, the HVAC unit and the electrical panel were both  
11 installed previously in the previous couple of years with the  
12 permission of the zoning administrator. We had a building  
13 permit for those improvements. And we got inspections a  
14 certificate of occupancy for those units.

15           So then, suddenly, in November of 2017, the  
16 administrator is asking us to take them out, having spent  
17 money to put them in, to take them out. But there's no  
18 reason why we should take them out. So those are the two  
19 issues.

20           And I think I will --- that's enough of a summary.  
21 Let me ask Ms. Smallwood to talk about this decision, about  
22 what is the plan. Tell me what the plan is for improving the  
23 lowest level of the house.

24           MS. SMALLWOOD:       Okay.       So the basement is  
25 currently unfinished. And we want to take that basement ---

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1 CHAIRPERSON HILL: Ms. Smallwood, can you just  
2 kind of lean into the microphone a little more --

3 MS. SMALLWOOD: The basement is unfinished right  
4 now, and we want to take that basement and simply add two  
5 bedrooms and a bathroom. And that would enlarge the Unit 1  
6 and make it a larger unit by creating a total of a four  
7 bedroom, three bath unit.

8 MR. GRANT: Now, do you understand that the  
9 regulations prohibit you from installing a kitchen in the  
10 lower level?

11 MS. SMALLWOOD: Yes.

12 MR. GRANT: And where did you acquire that  
13 information, where and when?

14 MS. SMALLWOOD: We initially applied to make the  
15 basement an accessory dwelling unit. And every department  
16 approved the permits, but when I got to zoning, they said no,  
17 that that neighborhood had been down-zoned, I believe is what  
18 they called it. And there was a recent change in the law  
19 that we couldn't do that. So then that's when we reapplied  
20 for a new building permit to just add the two bedrooms and  
21 the bathroom.

22 MR. GRANT: And is it your intention, under the  
23 permit which you're seeking, to install a cooking facility  
24 in the lowest level?

25 MS. SMALLWOOD: No. We know what the laws are,

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1 we plan to obey the laws, just how we have done in the past,  
2 and we respect the rules. We're only trying to put in the  
3 two bedrooms and the bathroom.

4 MR. GRANT: Tell me how did that third electrical  
5 panel and the HVAC unit get installed to begin with? How did  
6 that happen and when did it happen?

7 MS. SMALLWOOD: Okay. So our architect prepared  
8 the drawings with the three HVAC units and the three  
9 electrical panels. That's how he drafted the drawings and,  
10 subsequently, that's how the property was built out.

11 We obtained the certificate of occupancy for that  
12 work, it was inspected twice by zoning, once by whatever  
13 inspector comes out for the certificate of occupancy, and  
14 then again by a legal construction inspector. And we've  
15 never received any violations. All the work was approved,  
16 and passed, and no violations or fines ever during this  
17 entire process.

18 MR. GRANT: And were you given a certificate of  
19 occupancy for that work?

20 MS. SMALLWOOD: Yes.

21 MR. GRANT: All right. Is it your intention to  
22 create a separate dwelling unit in the lowest level?

23 MS. SMALLWOOD: No. I think that the architect  
24 put the separate HVAC and the electrical panel into the  
25 drawing so that we wouldn't have to heat and cool the

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1 basement unit if it wasn't being utilized.

2 MR. GRANT: I think that's all we need to say.  
3 Let me --- I'll end it there and probably make some more  
4 comments at a later time. Thank you.

5 CHAIRPERSON HILL: Okay. Before I get to the  
6 questions from DCRA, I guess, actually does the Board have  
7 any questions now, or would you rather kind of go through the  
8 process a little bit more? We'll go through the process a  
9 little bit more. Okay.

10 So, Ms. Lord-Sorensen, if you could go ahead. Do  
11 you have any questions for cross?

12 MS. LORD-SORENSEN: Yes, I do, Chairman. Isn't  
13 it true that 3652 Park Place, NW, was originally a single  
14 family dwelling?

15 MS. SMALLWOOD: Yes.

16 MS. LORD-SORENSEN: Okay.

17 CHAIRPERSON HILL: Hold on, I wanted to say I need  
18 you to speak in the microphone. Okay, sorry. She didn't  
19 speak in the microphone.

20 MS. LORD-SORENSEN: Okay. And you said yes?

21 MS. SMALLWOOD: Yes.

22 MS. LORD-SORENSEN: In May of 2014, isn't it true  
23 that you submitted an application to perform interior  
24 renovations to the property?

25 MS. SMALLWOOD: Yes.

1 MS. LORD-SORENSEN: And based on the architectural  
2 drawings submitted to DCRA, the zoning technician commented  
3 that the proposed floor layout depicts a three-unit apartment  
4 building instead of a two-family flat. And you were required  
5 to submit corrections to those architectural designs,  
6 correct?

7 MS. SMALLWOOD: Yes.

8 MS. LORD-SORENSEN: Okay. Or an alternative, seek  
9 relief from the BZA?

10 MS. SMALLWOOD: Yes.

11 MS. LORD-SORENSEN: A few moments ago you  
12 mentioned that you submitted the first set of plans, because  
13 the intention was to make an accessory dwelling. And then  
14 you submitted, I guess, the most recent plans. However, in  
15 between those two submissions, isn't it true that on November  
16 7th, 2017, you submitted an application to DCRA to obtain a  
17 building permit for, and I quote, "alteration and repair of  
18 an in-law suite, ground level, one story interior alteration  
19 including new kitchen and bathroom?

20 MS. SMALLWOOD: Yes.

21 MS. LORD-SORENSEN: Okay. And you are aware that  
22 this property is located in an RF-1 zone, correct?

23 MS. SMALLWOOD: Yes.

24 MS. LORD-SORENSEN: And the maximum number of  
25 units permitted as a matter of right is two.

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1 MS. SMALLWOOD: Yes.

2 MS. LORD-SORENSEN: And isn't it true that the  
3 Office of Zoning communicated to you that they had some  
4 concerns about the possibility that the ground level or the  
5 basement level could be potentially sold or conveyed as a  
6 third unit?

7 MS. SMALLWOOD: No.

8 MS. LORD-SORENSEN: They never communicated their  
9 concerns about the construction going on in the ground level?

10 MS. SMALLWOOD: That wasn't the question.

11 MS. LORD-SORENSEN: Okay. Did the Office of  
12 Zoning ever express their concerns with the construction  
13 anticipated in the ground level?

14 MS. SMALLWOOD: Did they express concern, meaning  
15 how?

16 MS. LORD-SORENSEN: About any work that you  
17 anticipated or expected to perform in the ground level of the  
18 property?

19 CHAIRPERSON HILL: I'm sorry. Even I'm a little  
20 confused now. What was the question again? Say the question  
21 again.

22 MS. LORD-SORENSEN: Did the Office of Zoning ever  
23 express any concerns with respect to how you plan to build  
24 out the ground level or the first level, the ground level,  
25 basement ---

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1 CHAIRPERSON HILL: Did the Office of Zoning ever  
2 express any concerns about you building out the ground level?

3 MS. SMALLWOOD: Yes. So when we initially applied  
4 for the accessory dwelling unit, they advised that the  
5 neighborhood had been dezoned, so we couldn't do that.

6 CHAIRPERSON HILL: When you applied for an  
7 accessory dwelling unit?

8 MS. SMALLWOOD: Yes.

9 CHAIRPERSON HILL: Okay.

10 MS. SMALLWOOD: So then we rescinded that building  
11 permit and cancelled it. And then we applied for a new one.  
12 I think it was a couple of days later, just putting the two  
13 bedrooms and a bathroom down there.

14 CHAIRPERSON HILL: And this was back when, again?

15 MS. SMALLWOOD: In November.

16 CHAIRPERSON HILL: Okay, this was the November  
17 timeframe. Okay. Ms. Lord-Sorensen?

18 MS. LORD-SORENSEN: Isn't it true that you  
19 conveyed to the Office of Zoning that you had no intention  
20 of disconnecting the main floor from the ground floor? So  
21 you --- excuse me, let me take that back. Isn't it true that  
22 you've expressed to the Office of Zoning your intent to  
23 maintain a reasonable connection between the main floor and  
24 the ground floor?

25 MS. SMALLWOOD: There's always been a connection

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1 there.

2 MS. LORD-SORENSEN: And you plan to maintain that,  
3 correct?

4 MS. SMALLWOOD: Yes.

5 CHAIRPERSON HILL: Okay, Ms. Sorensen?

6 MS. LORD-SORENSEN: I mean the stairway.

7 MS. SMALLWOOD: The staircase.

8 MS. LORD-SORENSEN: Yes.

9 CHAIRPERSON HILL: Okay, Ms. Sorensen, I mean,  
10 Lord-Sorensen, Ms. Lord-Sorensen ---

11 MS. ROSE: That's okay.

12 CHAIRPERSON HILL: So basically what I'm trying  
13 to always focus on a little bit, in terms of the cross, is,  
14 like, whatever the person testified to, that's --- and I'm  
15 always trying to remember whatever it is that they testified  
16 about.

17 What I don't want to get into is that this ends  
18 up being the presentation, more like what it is. Because  
19 we're going to hear from DCRA and what their arguments are.  
20 And this goes for vice versa, basically, so, Mr. Grant, as  
21 well, I would say. And I don't know, I think I've been on  
22 the record before. I don't think -- I think cross sucks,  
23 okay. Like, I rarely get anything out of cross, okay, that  
24 is further clarifying for me, okay. So it turns out to be  
25 just an argument.

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1           But I definitely want you to get the information  
2 that you need. And I want the Applicant to get the  
3 information that they need. So the questions are supposedly  
4 going to be questions that were coming from testimony. So  
5 ---

6           MS. LORD-SORENSEN: Based on what was said on  
7 direct.

8           CHAIRPERSON HILL: Yes. I mean, there are cross  
9 examinations based upon the testimony that they just gave.  
10 So what I guess I get a little confused on, and I'm just kind  
11 of sharing this for the first time here with you, is that I  
12 always get a little confused as to what they actually then  
13 testified against, you know.

14           Like, so it would be helpful if when both parties  
15 are asking their cross examination questions they're actually  
16 asking questions about what they just heard, the testimony  
17 they just heard. So if you could please go ahead and  
18 continue your line of questioning for testimony that you just  
19 heard.

20           MS. LORD-SORENSEN: Okay. The most recent plans  
21 that were submitted to the Office of Zoning requested the  
22 installation of two bedrooms, correct?

23           MS. SMALLWOOD: Yes.

24           MS. LORD-SORENSEN: And a bathroom?

25           MS. SMALLWOOD: Yes.

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1 MS. LORD-SORENSEN: No further questions.

2 CHAIRPERSON HILL: Okay. All right. So Ms. Lord-  
3 Sorensen, so you're going to have 20 minutes also to present  
4 your case. And, oh, actually, before we move on, does the  
5 Board still want to have any questions now, or do they want  
6 to kind of go through this a little bit more? Do you want  
7 to keep going on?

8 MEMBER HART: All right. Just one question.

9 CHAIRPERSON HILL: Sure.

10 MEMBER HART: And this is for kind of both the  
11 Appellant and DCRA. Did anybody --- it didn't seem like,  
12 well, no one provided any actual drawings. And so I find it  
13 just interesting that we're talking about this but --

14 MS. LORD-SORENSEN: Right.

15 MEMBER HART: Because it's helpful to kind of see  
16 what that is and why that ---

17 CHAIRPERSON HILL: Mr. Hart, who's your question  
18 to?

19 MEMBER HART: It was just for both.

20 CHAIRPERSON HILL: Okay, all right. So you're  
21 here first.

22 MS. LORD-SORENSEN: Certainly. So that's a valid  
23 question. And that was part of our motion to incorporate the  
24 May 4th, 2018, decision. Because part of the zoning  
25 administrator's decision and ultimately --- or I guess, yes,

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1 ultimately to dismiss the application was based on the plans.

2           However in this case, the plans, most recent plans  
3 that were issued here was a walkthrough. They didn't  
4 actually upload the project docs. So the Agency does not  
5 have a copy of the plans at issue. And so we're requiring,  
6 we're asking of the Appellant to actually provide the plans  
7 to the Board --

8           CHAIRPERSON HILL: Okay, okay.

9           MS. LORD-SORENSEN: -- so you have a sufficient  
10 record.

11           CHAIRPERSON HILL: Okay. Mr. Grant, the question  
12 is why aren't there plans?

13           MR. GRANT: Our view was that we think this is a  
14 simple case, with simple issues, and simple facts which have  
15 been submitted to --- testified to this afternoon. We were  
16 afraid that the drawings, A, were unnecessary, and, B, might  
17 complicate things. And we didn't want to complicate things.  
18 So we didn't submit the drawings.

19           MEMBER HART: Well, being a simple man, I would  
20 like to actually have drawings, because I like architectural  
21 drawings to be able to refer to and to be able to understand  
22 some of what's being discussed.

23           Because currently, we've heard about a permit that  
24 was sought for accessory unit, that was then rescinded, and  
25 I'm not really sure what the status of that was. Ms.

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1 Smallwood said that it was actually been -- I don't know,  
2 rescinded in order of moving forward. That's fine, but I  
3 just don't understand what that is. And how did the plans  
4 for that comport with the plans that have actually been  
5 built? And right now, we have no plans to be able to  
6 understand any of this.

7           The issue is can there be an easy conversion to  
8 a kitchen, because that's the issue that's been kind of  
9 raised. And we don't know what that is. We don't know if  
10 that's easy or not. If there's no, you know, water going  
11 down or, you know, drains or anything going down to that  
12 ground floor, then it's going to be easy to say, well,  
13 they're not going to be able to do a kitchen there.

14           But if there is something that looks kind of  
15 similar to a kitchen, then you might have that --- I might  
16 have a different thought. And so right now I don't know what  
17 that is. And so it's very difficult for me to just look at  
18 writing and make that determination. So I think that right  
19 now we have incomplete information to be able to, you know,  
20 fully assess what's before us.

21           So again, I would respectfully ask for or actually  
22 would require that we have drawings so that we have an  
23 understanding of what is kind of before us. So I didn't want  
24 to, you know, take too much time, but I just thought that  
25 needed to be out there. And we can continue with Ms. Lord-

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1 Sorensen.

2 CHAIRPERSON HILL: Okay, thank you. So Vice-Chair  
3 Hart, you actually did mention the time that was taken up by  
4 the Appellant. And I do appreciate that. It was actually  
5 only seven minutes, I think. Is that what you said? And  
6 under the regulation, you get the same amount of time as the  
7 other party. But we did start with 20, and we'll just stick  
8 with 15 and see where we get to.

9 And so I think there are a bunch of questions that  
10 we're all going to have. And some of them are starting to  
11 come out now. But I think the Board was waiting to get  
12 through the two presentations, the two sections of cross, and  
13 then we'll be able to ask our questions. So that being the  
14 case, Ms. Lord-Sorensen, please begin whenever you like.

15 MS. LORD-SORENSEN: The property, 3652 Park Place,  
16 NW, is located in RF-1 district. And with that, the maximum  
17 number of dwelling units is two. Now, in this particular  
18 case, the building permit application for B180942 sought the  
19 following type of work, interior alteration of ground level,  
20 including two new bedrooms and bathroom, pour concrete over  
21 existing concrete pad.

22 Now, when you just look at that application by  
23 itself, there doesn't seem to be much of an issue. However,  
24 we have to look at all of the work, all of the applications  
25 and permits that were obtained for this particular property

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1 in order to gain a better understanding of what's going on.  
2 And the zoning administrator can talk more about this in a  
3 few minutes.

4 But by way of history, when the Appellant  
5 initially requested the building permit, as I mentioned a few  
6 moments ago, the zoning technician commented that, based on  
7 the architectural drawings that were submitted to the Agency,  
8 the proposed floor layout depicted a three-unit apartment  
9 building instead of a two-family flat.

10 And DCRA required that the Appellant submit  
11 corrections to reflect a two-family flat or, in the  
12 alternative, seek relief from the BZA for a three-unit  
13 apartment. So revised plans were then submitted, and the  
14 building permit was issued. This was back in 2014.

15 Shortly thereafter, a few months later, Appellant  
16 submitted revised plans which reflected interior renovations  
17 to convert a single-family dwelling to a flat in R-4. And  
18 then they obtained a building permit, B1405599, to perform  
19 the following, three floors, interior alterations on all  
20 levels, including new kitchen and bathrooms, new lighting and  
21 mechanical. And then the building exterior was new windows,  
22 new entry doors, and siding at rear.

23 And then shortly thereafter, another application  
24 was submitted, this one for alteration repair of an in-law  
25 suite, ground level, one-story, interior alteration including

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1 new kitchen and bathroom. The Appellant subsequently  
2 cancelled this application and then submitted the application  
3 that's at issue right here with respect to the two new  
4 bedrooms and bathroom.

5 So when you look at all of the applications that  
6 have been submitted to the zoning administrator for review,  
7 it did give the zoning administrator pause. And so they  
8 wanted to start this dialogue. And so the zoning  
9 administrator reached out to Appellant to get a better  
10 understanding of what's going on at this property.

11 Because when the Board looks at the attachments,  
12 there are various complaints from the ANC commissioner as  
13 well as other members of the community. They're concerned  
14 about what's going on at 3652 Park Place, NW. And we can't  
15 turn a blind eye to that. Because these people are there in  
16 the trenches, and they probably have a better idea of what's  
17 going on at this property than us. Because again, we're just  
18 looking at plans.

19 With that being said, the zoning administrator met  
20 with either Appellant or Appellant's representative and made  
21 the suggestion of recording a covenant. Because Appellant  
22 has always made the representation, oh, we don't plan to  
23 convert this into a three-unit dwelling, okay. We always  
24 plan to maintain a substantial connection by means of a  
25 stairwell between the main level and the ground level.

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1           Okay, well, in order to appease the community, and  
2 to alleviate any sort of concerns, record a covenant. But  
3 they refuse to record a covenant. Why? Maybe because --  
4 maybe the neighbors are actually right. Maybe the ANC  
5 Commissioners have a valid argument here.

6           And so we have to take that in consideration and  
7 make sure that the Appellant, as well as other individuals  
8 in the neighborhood are in compliance with the zoning  
9 regulations. So if the zoning administrator can talk more  
10 about any interactions you may have had with the Appellant  
11 and Attorney Grant, that would be helpful.

12           MR. LEGRANT: Thank you, Adrienne. So I and my  
13 previous counsel, Mr. Max Tondro, met with Mr. Grant, I  
14 believe it was in February, to discuss this matter. But the  
15 purpose of the meeting was to find out the intention of the  
16 property owner of what they wanted to do at this level, this  
17 ground floor level of the structure.

18           MR. GRANT: Mr. Chairman, let me interrupt for ---

19           CHAIRPERSON HILL: No, no, no, no.

20           MR. GRANT: Can I just ---

21           CHAIRPERSON HILL: No, no, no. He's doing his  
22 presentation.

23           (Off microphone comments)

24           CHAIRPERSON HILL: Okay, I don't know. He's  
25 giving his presentation. I don't know what you can add. You

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1 can have the opportunity to cross.

2 MR. LEGRANT: Thank you, Mr. Hill. So in that  
3 general discussion was, well, what is going to happen in this  
4 level? Mr. Grant said he would --- we expressed our concerns  
5 that Ms. Lord-Sorensen had covered. And there was no  
6 decision, there was no agreement at that meeting. And Mr.  
7 Grant conveyed to Mr. Tondro and I that he would take the  
8 information back to his client.

9 After that meeting, his communications were only  
10 to my counsel, my then counsel, Mr. Tondro, about what his  
11 client's response was. Subsequently, the offer was made, as  
12 Ms. Lord-Sorensen mentioned, to, well, you're not going to  
13 use this as a third unit, we have a mechanism developed by  
14 my office as a covenant, a covenant that basically states it  
15 is the property owner's intention not to use the basement,  
16 or in this case the basement level, as a separate dwelling  
17 unit. Although it has several elements of a separate  
18 dwelling unit, they would not have --- would not utilize it  
19 as a separate unit. That then, if agreed to, would be  
20 recorded for the property records so that any subsequent  
21 property owner would be aware.

22 So that offer was made. I understood from my  
23 counsel, that there was no agreement, that they refused to  
24 go along with that covenant process. So I guess you heard  
25 from my counsel part of the frustration on my office's part

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1 was, well, there is a path forward here that, if indeed the  
2 Appellant has no intention to use the ground floor as a  
3 separate unit, we'd use the covenant to record that and then  
4 we'd be done. We wouldn't be here today. But that did not  
5 go forward. So that, I believe, is some of the aspects of  
6 my involvement with this case to date.

7 MS. LORD-SORENSEN: Nothing further.

8 CHAIRPERSON HILL: All right. Did you have  
9 questions? Okay, sure, go ahead.

10 MEMBER HART: Are covenants normal? Do you do  
11 them --- are covenants normal? Are these things that you've  
12 done more recently? Or is it something that --- I just don't  
13 know.

14 MR. LEGRANT: Okay. It is a recent development  
15 in the last six months, and faced with several cases in  
16 which, as a result of what's informing --- we developed the  
17 covenant as a tool to help manage situations in which, again,  
18 often the lower level of a building has elements, but not all  
19 of the elements of a dwelling that we can utilize. And many  
20 property owners have agreed and signed those covenants,  
21 because it's not their intention to have a separate unit.

22 It is, again, in the last six months, a recent  
23 development within several iterations with my counsel in  
24 developing a template for that covenant. And we further  
25 would see it as a useful tool.

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1           And I say that, this is informed by enforcement  
2 cases in which I've had the experience of unfortunate  
3 situations where people have represented using a basement  
4 level, often with a wet bar and other elements. And then  
5 they turn around and we get a complaint. And the inspector  
6 goes out, and we find, in fact, illegal construction  
7 occurred, and it was turned into a separate unit without  
8 proper approval. So to help forestall that, that is the  
9 mechanism, the covenant that we developed.

10           MEMBER HART: And you said many. Are we talking  
11 about 100, are we talking about ---

12           MR. LEGRANT: I think to date, in the last few  
13 months, I would say we've had about eight to ten.

14           MEMBER HART: Okay. And most of the covenants  
15 that you --- the covenants that you have, is it most of the  
16 time the homeowner, or land owner, or property owner is ---  
17 are they agreeing to them? Or are they --- are you having  
18 half of the people that you suggest them to saying no, or are  
19 you having more or less of that? That's what I'm trying to  
20 ---

21           MR. LEGRANT: I would say in the context, again,  
22 where this is coming from is an application review where my  
23 staff looks and we see, oh, this has several elements of a  
24 dwelling unit. We reach out to the Applicants. Do you want  
25 to use this as a dwelling unit? In some cases they say yes.

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1           And then we prescribe the proper process, whether  
2 in some cases it can be a matter of right, but it has to meet  
3 certain standards, in some cases it needs Board relief. In  
4 those cases where they say, no, our intention is not to use  
5 it as a separate unit, then we say in order to have this  
6 level of improvements you would need a recurred covenant.  
7 It is a requirement that my office is putting forth.

8           Some people have disputed it, and they've said,  
9 well, what authority do you have to make me do a covenant?  
10 I vetted, with my counsel, my office's authority to do so.  
11 I think we are comfortable that we have that authority.

12           And then going forward, because it's fairly new,  
13 again, we've tweaked the template here and there in the last  
14 few months to, again, be a mechanism, a tool to be able to  
15 let the bonafide applicants, who are just going to use that  
16 level with the wet bar for the teenagers to have their video  
17 games or something down there, to go forward, versus a  
18 separate unit that unfortunately, in some cases, arises that  
19 was without meeting all the proper codes.

20           CHAIRPERSON HILL: Okay. Let me just go through  
21 Q&A real --- I mean, I'm sorry, cross real quick for Mr.  
22 Grant. And then we can have a round robin here of asking  
23 questions, I think, of both people.

24           Mr. Grant, again, questions to the testimony that  
25 was just provided. What questions do you have please, sir?

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1 MR. GRANT: Mr. LeGrant, do you happen to know ---

2 CHAIRPERSON HILL: You need to push the  
3 microphone.

4 MR. GRANT: Yes, sorry. Mr. LeGrant, do you  
5 happen to know a legal citation to your authority to impose  
6 a covenant on a land owner?

7 MR. LEGRANT: I would have to defer to my counsel  
8 for a citation.

9 MR. GRANT: I have nothing further.

10 CHAIRPERSON HILL: Okay. All right. Okay, so I  
11 guess you can defer to counsel in terms of the citation, or  
12 there is not one, I guess. Is that what was the point of the  
13 question? I'm not sure. Is there a citation?

14 MS. LORD-SORENSEN: I'm unaware of one.

15 CHAIRPERSON HILL: Okay, okay. All right, so I  
16 got --- okay, so are we going to ask questions now?

17 FEMALE PARTICIPANT: Yes.

18 CHAIRPERSON HILL: Okay, so --- all right, so I  
19 got a couple of questions. Okay, it's actually to the  
20 Applicant again, right. I mean, I'm a little confused,  
21 right. So you don't have plans for us, okay. And I'm just  
22 asking a question. So you don't have plans for us, okay,  
23 which we may be getting to.

24 So my first question is, again, how did you think  
25 we were to determine whether -- well, you've already answered

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1 that question. That's okay. Why were you guys not  
2 interested in the covenant?

3 MR. GRANT: Well, we don't think that the --- what  
4 we are asking is something we're entitled to under the  
5 regulations. The home is compliant with the regulations.  
6 We're entitled to a building permit. We don't have to agree  
7 to a covenant. Now ---

8 CHAIRPERSON HILL: No, you don't have to agree to  
9 a covenant. So you don't want to agree to the covenant. And  
10 the thing that I seem to get from that is that you want to  
11 keep your option opened for doing something to the basement.

12 So I don't understand then why. Because if,  
13 again, the whole point is not to have a third unit in the  
14 basement, then if you had a way around this whole process you  
15 would sign a covenant. But you --- and I'm actually asking  
16 Ms. Smallwood -- so you don't want to sign the covenant.

17 I mean, what your attorney is implying is that  
18 it's out of principle. You don't want to sign it because,  
19 out of principle, you're allowed to have what you're allowed  
20 to have by regulation. So I'm asking you, why don't you want  
21 to sign the covenant?

22 MS. SMALLWOOD: Okay. So prior to the request for  
23 the covenant, they asked us to sign the affidavit. They gave  
24 us a language for the affidavit. We drafted it, and we  
25 signed that, and gave it to them. They also asked to come

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1 out and inspect the property. We let them inspect the  
2 property. No violations were noted. So then we thought  
3 everything was going to be okay. We'd be able to move  
4 forward. Then it's, oh, we need to record a covenant, you  
5 know, under the DC land and tax records and everything. And  
6 we were, like, no --

7 CHAIRPERSON HILL: So why didn't you --

8 MS. SMALLWOOD: That seems unreasonable to me.

9 CHAIRPERSON HILL: Unreasonable because why?

10 MS. SMALLWOOD: Because up to that point we had  
11 been working with them, we had done all the requests that  
12 they had made, you know ---

13 CHAIRPERSON HILL: And what did the affidavit say?

14 MS. SMALLWOOD: It's a part of the exhibit. It  
15 basically said the same thing the covenant said. And we gave  
16 it to them, and it wasn't good enough. It says that we're  
17 the property owner, our mailing address is X, Y, Z.

18 "Regarding the property at 3652 Park Place, the  
19 lowest level building will not be converted into a third unit  
20 in the future. I acknowledge that if there is a desire to  
21 convert the use of the building from a flat into an apartment  
22 house, three units or more, I understand that relief would  
23 be required from the BZA Board."

24 And then we addressed --- they asked us to adjust  
25 the third electrical panel and the HVAC unit, which we did

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1 that in the next paragraph. If you want me to read it, I  
2 can.

3 CHAIRPERSON HILL: That's okay.

4 MALE PARTICIPANT: This is Exhibit Number 6.

5 CHAIRPERSON HILL: Thanks. So DCRA again, or Mr.  
6 LeGrant, I guess you guys at one point were asking for  
7 affidavits from people and then you moved on to covenants or,  
8 I mean, I'm just trying to --- I understand what I think  
9 these guys are trying to achieve. And I'm just trying to  
10 understand the difference now between the affidavit and the  
11 covenant.

12 MR. LEGRANT: Right. So as my counsel put it in  
13 her pre-hearing statement, there was a request for an  
14 affidavit and additional information. But our information  
15 was that that information was declined. The Applicant  
16 declined to provide those documents.

17 CHAIRPERSON HILL: The Applicant declined to give  
18 the plans?

19 MR. LEGRANT: In part.

20 CHAIRPERSON HILL: In part, but they agreed to  
21 give the affidavit?

22 MR. LEGRANT: Yes. I personally, I don't think  
23 I've ever seen the affidavit, you know, that was submitted  
24 if ---

25 CHAIRPERSON HILL: Okay. Well, I mean, at least

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1 the Commission, whatever, the notary is 92721. Twenty-one?

2 (Pause)

3 CHAIRPERSON HILL: All right, sorry, November  
4 22nd, 2017. All right, I'm going to let my colleagues ask  
5 their questions.

6 COMMISSIONER SHAPIRO: Just to ---

7 CHAIRPERSON HILL: Sure.

8 COMMISSIONER SHAPIRO: Maybe in the implication  
9 of that question for counsel. Help me to understand. Is  
10 there a higher standard? Do you have more authority to  
11 enforce a covenant than an affidavit?

12 MS. LORD-SORENSEN: Well, an affidavit doesn't run  
13 with the land. The covenant would run with the land. And  
14 here, we want to protect perspective buyers. Because right  
15 now, when you look at the property, there are characteristics  
16 of a third dwelling unit, or it could be easily converted to  
17 a third dwelling unit. So as the zoning administrator  
18 mentioned, and I mentioned briefly before when I was  
19 describing the prior applications, I mean, there's a private  
20 entry. There's a --- I'm sorry.

21 COMMISSIONER SHAPIRO: Let me hold you there.  
22 Because I just wanted to make the distinction between  
23 affidavit and covenant.

24 MS. LORD-SORENSEN: Yes.

25 COMMISSIONER SHAPIRO: And you were very helpful

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1 in explaining that.

2 MS. LORD-SORENSEN: Yes. So again, if they decide  
3 that they're going to actually --- if a realtor decides to  
4 put it on the market for three, you know, three apartment  
5 units, or three condos, what have you, a perspective buyer  
6 wouldn't know that it's actually not zoned for three separate  
7 dwelling units. Because when they do the title search, or  
8 what have you, an affidavit is not going to come up.

9 COMMISSIONER SHAPIRO: Right.

10 MS. LORD-SORENSEN: A covenant, however, will come  
11 up and protect District residents.

12 COMMISSIONER SHAPIRO: That's very clear, thank  
13 you. And so a question for Ms. Smallwood. You're hearing  
14 that. I can get in touch with your annoyance about the  
15 process, and the requests, and the additional requests. But  
16 clearly, there's a different legal standard, and there's  
17 value for the District in the heightened both enforceability  
18 and also the notifying perspective purchasers of this. I'm  
19 curious, if that makes sense to you, is there any objection  
20 to signing a covenant?

21 CHAIRPERSON HILL: You need the microphone, I'm  
22 sorry.

23 MS. SMALLWOOD: Sorry, there is an objection. I  
24 feel like it's beyond their scope. It's beyond their  
25 authority to request a covenant from a homeowner who has done

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1 nothing wrong. And it seems like all this has stemmed from  
2 a neighbor who keeps calling and complaining about us. And  
3 we've done nothing but cooperate with the government up until  
4 this request for the covenant.

5 And again, we have done nothing wrong. We haven't  
6 been cited for anything, we haven't been fined for anything.  
7 So I just feel it's unreasonable and beyond their authority.

8 COMMISSIONER SHAPIRO: Okay, thank you. Thank  
9 you, Mr. Chair.

10 MEMBER JOHN: Mr. Chairman, I have a quick  
11 question. I've been struggling with the need for a third  
12 electrical panel. And perhaps you can explain to me why you  
13 would need a third electrical panel. And was it your  
14 intention to have it separately metered?

15 MS. SMALLWOOD: Sorry, I didn't realize I was  
16 still on.

17 MEMBER JOHN: So there is a third electrical  
18 panel.

19 MS. SMALLWOOD: Yes.

20 MEMBER JOHN: And ordinarily, for a two-unit  
21 structure, you would not need a third electrical panel. And  
22 I can understand having a third HVAC system, and I can  
23 understand having three electrical units. Well, actually,  
24 I could understand separating the heating for the first two  
25 dwellings.

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1           But I'm having a hard time with three panels. And  
2 I'm not sure why one panel would not serve two levels, the  
3 basement and the first floor. And that's what I'd like some  
4 sort of explanation on.

5           And then the second part of that is which permit  
6 allowed the inclusion of three panels? Was that when the  
7 basement unit was still unoccupied or, you know, not  
8 renovated? So that's the difficulty I'm having.

9           MS. SMALLWOOD: So the third panel was approved  
10 under the building permit that was pulled way back in 2014.  
11 And that work was inspected, and it was approved, and we got  
12 the certificate of occupancy for that work, for the third  
13 HVAC unit and the third electrical panel.

14           The architect, that's how he drafted the drawings.  
15 I'm not an electrician, but the electrician put the three  
16 panels in, and PEPCO approved that.

17           MEMBER HART: Yes, but the problem we're running  
18 into with this is that you, the owner, your father, he's  
19 paying for these elements to be added to the building. If  
20 you're paying for it, people typically will have one  
21 electrical panel for a unit, because that kind of makes sense  
22 in terms of having to pay for it. You don't want to have to  
23 pay for more than what you're actually building.

24           And so it is a little strange for us to  
25 understand, why would you have to have three panels for two

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1 units? Because two units would have two panels. If you have  
2 an electrician coming to the site, he's expecting to find a  
3 panel for one unit, and a panel for Unit 2. If he finds a  
4 third panel, he may be, well, where is this connected to?  
5 Why do you have this?

6 And what it leads to is that there was a third  
7 unit that was being contemplated at the time of building the  
8 third panel, regardless of when you got the permit, when the  
9 permit went with the unit or the property.

10 It seems as though there is a progression of  
11 trying to go down a particular road which is fine, because  
12 you would, if you wanted to have a third unit, you would be  
13 able to go through the BZA process to do that. But it seems  
14 a little bit odd to try to understand all of this. And some  
15 of these things don't connect. And so that's what we're  
16 having a hard time with.

17 The process seems like it should be going, okay,  
18 well you're trying to get three units. That makes sense.  
19 And you're, you know, you want to do that. But we have no  
20 drawings to try to figure that out. And we have no --- and  
21 some of the decisions seemed a little bit odd if you were  
22 trying to build this --- If you're trying to upgrade or  
23 improve the site, there are certain decisions that you make.

24 And as we have heard -- we have heard many  
25 projects throughout the time that we've been here. And this

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1 just is very difficult to kind of put the pieces together.  
2 Because they don't seem to add up. And so we're trying to  
3 get to that. Where does this add up?

4 I would like to see the drawings, because does the  
5 basement unit have stairs to go to it? Are the stairs only  
6 interior, or are there exterior stairs? How do you --- where  
7 are the stacks for this unit --- not unit --- for the ground  
8 floor, and is that able to be converted into a kitchen fairly  
9 easily or not?

10 And right now, we don't have that information.  
11 So I'm just saying that I agree with Board Member John's, her  
12 question, because I have the same question. I'm, like, I  
13 don't understand why you would necessarily do that and pay  
14 more money for something that you don't necessarily need.

15 So that's the part that is very difficult to kind  
16 of understand with this. The pieces don't seem to add up to  
17 us, if this was just to be two units. It does add up to be  
18 a little bit easier if it is going to be three units. So  
19 that's where I am.

20 CHAIRPERSON HILL: Ms. John, did you have --- Ms.  
21 John has a question, I know. I'm sorry, Ms. White, Ms.  
22 White, I'm sorry. Ms. White has a question. Did you --- Mr.  
23 Grant was ---

24 (Off microphone comments)

25 CHAIRPERSON HILL: Okay. So Ms. -- oh, wait for

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1 a second. Ms. White has a question for you.

2 MEMBER WHITE: Yes, question for Ms. Smallwood.  
3 Would you consider just removing that third panel out of  
4 there, since you're not interested in signing that covenant?  
5 Is there another solution that you would find and the DCRA  
6 would find acceptable? Because there are a lot of semantics  
7 going on here right now. So I'm just trying to ---

8 MS. SMALLWOOD: So in regards to the third panel  
9 and it being separately metered, I would like to add that the  
10 basement unit has been vacant since 2014, since we started  
11 this entire process. So during that time, we haven't had to  
12 pay to heat and cool that entire floor, because it has the  
13 separate electrical panel. And I think back in 2014, there  
14 was, like, the intention of doing the two units with the  
15 accessory dwelling unit. That's how the third panel came  
16 about.

17 But I wish you guys could see the inside of it.  
18 It's a beautiful place. We put so much time and money into  
19 the interior renovation. We put a new roof on it, new  
20 windows, the outside looks great, the inside, quartz counter  
21 tops, luxury vinyl plank throughout. And we have spent so  
22 much time and money on this place. I just don't understand  
23 ---

24 CHAIRPERSON HILL: So, go on.

25 MS. SMALLWOOD: I have photographs of the basement

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1 if you want to see them.

2 COMMISSIONER SHAPIRO: But I'm saying, so why  
3 don't you pick another principle to have a fight about?  
4 Because this is a broader issue for DC. And I feel like the  
5 tool that DCRA is developing is a useful tool. And if you  
6 have no intention of doing a third unit, then just say that,  
7 sign the covenant, and this issue goes away. And then the  
8 beautiful unit you have gets to be used.

9 I mean, if you want to have this fight around this  
10 principle, I hear you. But it feels like a tool that makes  
11 sense to me. That's what I'm struggling with. If I take you  
12 at your word that you're not intending to build a third unit  
13 there, I take you at your word.

14 I don't need to challenge you on that. But then,  
15 there's a process, because it's a bigger issue than just you.  
16 It's about how we manage housing in DC. I don't think  
17 there's a whole lot more to it than that back and forth. And  
18 so the problem is an inch away from being solved.

19 MS. SMALLWOOD: I just feel like if we were to  
20 sign the covenant, then they would come back with something  
21 else. Because if you read the decision that -- the email he  
22 sent, he ends it with, okay, if you do these three things  
23 then we may reconsider granting approval. And there's no  
24 guarantee there that even if we do all those things that he's  
25 asking us to do then, okay, he's going to come back and ask

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1 us to do something else.

2 COMMISSIONER SHAPIRO: The zoning administrator  
3 is right here. We could ask him.

4 CHAIRPERSON HILL: Can I ask a quick question,  
5 Commissioner Shapiro? So again, it's just to the Applicant,  
6 just real quick. Like, do you all know how much a covenant  
7 costs you?

8 MS. SMALLWOOD: No idea.

9 CHAIRPERSON HILL: Do you know how much a covenant  
10 costs? Is there a financial cost?

11 MR. LEGRANT: Well, we have a template that we  
12 provide free of charge. Certain property owners do work with  
13 a private counsel, so there may be the charge of the counsel  
14 involved with that. And I believe there's a recording fee  
15 to record anything, you know, against your deed with the  
16 Office of the Recorder. What that fee is, I do not know.  
17 I think it's a nominal fee.

18 CHAIRPERSON HILL: Okay, all right. And I'll let  
19 --- and I guess we're having kind of a, I don't even know if  
20 it's --- I guess I'm kind of --- like we read the record.  
21 We read everything in the record. And I guess why we're  
22 struggling here -- and we come here every week, and we hear  
23 everything about, you know, appeals. And particularly, we  
24 also hear about people trying to do what, to me, seems like  
25 you guys are going to want to try to do, which is get a third

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1 unit.

2           And so, because I'm completely confused as one who  
3 is a business owner. And if there was easy way around this,  
4 because this costs money, your attorney costs money, so in  
5 my mind, the only reason why you would go through this is to  
6 keep your option open for a third unit. And so that's not  
7 the way that one goes about getting a third unit.

8           So I'm back to over here with --- I guess the  
9 question is I'm just completely confused as to how, if you  
10 didn't --- if there was no intention whatsoever to do this  
11 as a third unit, then you would sign the covenant. And you  
12 wouldn't be here. And so that's what I continue to struggle  
13 with.

14           So what's the question? I guess the question goes  
15 back to what you had told me, was that it seems to be a --  
16 it's on principle. Like, you think that the targets are  
17 going to continue to move, like, you're going to pay for a  
18 covenant, get a covenant, and not get your permit.

19           MS. SMALLWOOD: Yes. This has been going on for  
20 years, the renovation of this property.

21           CHAIRPERSON HILL: Okay.

22           MS. SMALLWOOD: I just want it to end, to be  
23 honest with you.

24           CHAIRPERSON HILL: Okay. Okay, so the renovation  
25 of the property. Okay, does anyone have any more questions?

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1           COMMISSIONER SHAPIRO: I just have a question for  
2 Mr. LeGrant.

3           CHAIRPERSON HILL: Yes, I'm sorry. Did someone  
4 have --- did you guys have something over there, OAG? It  
5 seemed like you wanted to say something. No, okay. All  
6 right. I thought Ms. Rose --- Ms. Rose, I thought you were  
7 saying something. I'm sorry. Commissioner Shapiro?

8           COMMISSIONER SHAPIRO: Is a covenant adequate?

9           MR. LEGRANT: I believe the covenant would be  
10 adequate. I would like to see the plans again. And if --  
11 the covenant is, again, designed for spaces which have  
12 certain elements of a dwelling unit that, if the  
13 representation that the property owner makes in the covenant  
14 says I will not use this as a separate dwelling, then the  
15 covenant lists out they can have, for example, a bedroom, a  
16 full bath, maybe a wet bar, a separate entrance to allow  
17 egress separate from the unit above. Then, in those cases,  
18 we have, and I will commit to approving the covenant for this  
19 situation.

20           CHAIRPERSON HILL: And, Mr. LeGrant, just a quick  
21 question. So in that scenario, you people can have separate  
22 electrical panels, they can have separate HVACs?

23           MR. LEGRANT: Yes. And I guess I'll speak to  
24 that. Sometimes multi-unit buildings have a greater number  
25 of electrical meters than for the unit count themselves.

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1 Usually, like, an apartment building may have, let's say a  
2 four-unit apartment building may have five meters, because  
3 they have a meter for the common elements, like common  
4 hallways, outdoor lighting, and so forth.

5 I believe in this case the request was what's the  
6 purpose of the third electrical unit. And I never got an  
7 answer to that, what the purpose of that was. So that was  
8 part of the questions that were posed.

9 CHAIRPERSON HILL: But just to answer my question,  
10 I'm sorry, I got a little lost in there. So in this  
11 particular case, or in cases previous to this, you have  
12 approved, after looking at plans and understanding what is  
13 actually being put forward, you have approved separate  
14 electrical panels and separate HVAC with a covenant, or at  
15 least you could see yourself doing that.

16 MR. LEGRANT: Yes.

17 CHAIRPERSON HILL: Okay.

18 MEMBER JOHN: Mr. Chairman, I'd like to follow-up  
19 on a question I wanted to be sure I understand. So we're  
20 talking about a third electrical panel, not a meter. So in  
21 my thinking of it, because there's a third panel, it could  
22 be more easily attached to a meter. And therefore, there  
23 could be a separate electrical bill. Am I thinking of this  
24 correctly?

25 MR. LEGRANT: Part of the struggle here is getting

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1 full information. So, you asked, I believe, that there's a  
2 third panel that the Appellant noted had been approved in the  
3 previous permit. The question is then what was the wiring  
4 for that, what was it going to serve, and so forth, to help  
5 inform a decision for my office as to, oh, is it going to be  
6 something for common elements, like I just spoke to, or would  
7 it serve the ability to have a separate unit?

8 So that's something --- we would look at the  
9 analysis. We do look at the meter, I mean, the panel and  
10 what it served, what portion of the building it served.

11 MEMBER JOHN: So let me follow-up. So there are  
12 three levels. And if the meter on the second floor was so  
13 wired, I'm sorry, the electrical panel on the second floor  
14 was so wired that it would be relatively easy to connect to  
15 the meter independently of the basement floor, you know, when  
16 there's a three-unit apartment, there are three meters  
17 outside. That's how you can tell.

18 MR. LEGRANT: Typically, yes.

19 MEMBER JOHN: Typically. So in this case, would  
20 it be relatively easy to get that third meter on the outside  
21 because of the way it was wired?

22 MR. LEGRANT: We had asked previously for removal,  
23 and I think it was a meter. It wasn't just a panel, it was  
24 a meter. And maybe there's some disagreement, panel/meter.  
25 But remember, I want to just emphasize, we look at the

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1 context of the whole situation. You know, if I didn't  
2 understand the wiring diagram, I'd go down the hall and ask  
3 DCRA's electrical engineer and say, what is the import of  
4 that? But in and of itself, the electrical piece is only a  
5 component of the overall picture.

6 MEMBER JOHN: Thank you.

7 CHAIRPERSON HILL: Okay, does anybody have any  
8 more questions?

9 (No response)

10 CHAIRPERSON HILL: Okay. So, Mr. Grant, you have  
11 an opportunity for rebuttal. And then we're going to do a  
12 conclusion with DCRA and a conclusion with you.

13 MR. GRANT: Responding to Commissioner Hart's  
14 questions about the drawings, we do have some photographs  
15 that might shed light or answer any questions you have that  
16 you might answer through the drawings. We have photographs  
17 we can share with the Board if you like.

18 MEMBER HART: Are you saying you have them right  
19 now?

20 MR. GRANT: We have them right here.

21 MEMBER HART: Okay, but you don't have drawings  
22 right now?

23 MR. GRANT: We don't have any drawings with us.

24 MEMBER HART: All right.

25 CHAIRPERSON HILL: Let's see what we get to at the

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1 end here. I mean, the photographs, you have to make copies  
2 of them. And so if you want to go ahead and present your  
3 rebuttal, Mr. Grant.

4 MR. GRANT: I have concluding comments, but I  
5 don't have any rebuttal questions.

6 CHAIRPERSON HILL: Okay, all right. Then DCRA,  
7 I'm going to grant three minutes for a conclusion, okay. And  
8 you can go ahead and give a conclusion, and then I'll let the  
9 Appellant also do the same.

10 MS. LORD-SORENSEN: In essence, DCRA is asking for  
11 the Board to dismiss Appellant's appeal. Based on the  
12 cumulative nature of the materials provided to DCRA, it  
13 appears as though Appellant's intent is to create a third  
14 dwelling unit.

15 As testified earlier, there are characteristics  
16 of a third dwelling unit. There was a separate entryway,  
17 bathrooms, of course bedrooms, and there's a third electrical  
18 meter, there's a separate HVAC, all of which lends itself to  
19 a third dwelling unit.

20 On top of that, Appellant refuses to record a  
21 covenant. The purpose of the covenant is to protect  
22 prospective buyers. It's our understanding that Ms.  
23 Smallwood is a developer. And so it is not unlikely that the  
24 intent here is actually to sell the property, 3652 Park  
25 Place, NW, as a three unit dwelling. In order to, again,

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1 protect District residents, we ask that Appellant reasonably  
2 record a covenant in this case.

3           And I just wanted to note something. Ms.  
4 Smallwood said during her direct examination that, you know,  
5 the third electrical meter, or panel, what have you, was put  
6 on the drawings by the architect. That seems very  
7 unreasonable. If I'm paying money to an architect, the  
8 architect would actually follow my direction. They can't  
9 just put on an extra electrical panel without my direction.  
10 So the fact that she doesn't know where that electrical panel  
11 came from, it's simply unreasonable.

12           Basically, in this particular context, when you  
13 look at everything, the fact that the initial intent back in  
14 2014 was to create an accessory dwelling, the fact that they  
15 submitted another application not too long thereafter to  
16 create an in-law suite with kitchen and bathroom, and then  
17 again, just based on the fact that there's a third electrical  
18 meter and a third HVAC, again, separate egress, and all the  
19 indicia of a third dwelling unit, it just lends itself ---  
20 it just supports the zoning administrator's decision to  
21 dismiss this case, excuse me, to dismiss Appellant's  
22 application.

23           CHAIRPERSON HILL: All right. Thank you. Mr.  
24 Grant, your conclusion.

25           MR. GRANT: Thank you, Chair Hill. The evidence

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1 is before the Board how the third electrical panel got there.  
2 We have a certificate of occupancy dated July 14, 2017 --  
3 July of 2017. At that time, as Ms. Smallwood has testified,  
4 she was -- she and her father were contemplating a third unit  
5 in the basement. And the third electrical panel was  
6 installed with that in mind by November -- early November of  
7 2017. It had been made clear to her by the Zoning  
8 Administrator that that would not be permitted. That the  
9 area had been downzoned and that a third dwelling unit would  
10 not be permitted.

11 That's why there's a third electrical panel there  
12 because at the time it was installed, at the time it was  
13 designed, at the time it was inspected and at the time a  
14 certificate of occupancy was issued for it, a third dwelling  
15 unit was contemplated. But all of that took place before  
16 November of 2017. In November of 2017, Ms. Smallwood was  
17 informed that she could not do that without permission relief  
18 from this Board. So, she gave up on that idea and she made  
19 a proposal for the current -- the permit that is on appeal  
20 here to make the lowest floor part of Unit Number 1.

21 So, there is no mystery -- there is -- there  
22 should be no confusion about how the third electrical panel  
23 got there. It got there because it got there two years  
24 earlier -- or -- and -- I mean, finally, the certificate of  
25 occupancy was in July of 2017. That's how and why it got

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1 there. Now, that was all done with permission. It was all  
2 legal. The third electrical panel is legal. It was always  
3 legal and there is no reason why it should be taken out.

4 Counsel said that the third electrical panel  
5 suggests an intent to create a third dwelling unit. Well,  
6 that's because it was -- that's why it was put in to begin  
7 with. But, we know what the definition of a dwelling unit  
8 is because it's in the regulations and this house with or  
9 without a third electrical panel does not qualify as a third  
10 dwelling unit because there are no facilities for cooking.  
11 So this is not a third dwelling unit, it can't be a third  
12 dwelling unit unless facilities for cooking and other  
13 facilities are installed. There's no question about that.  
14 It's -- and to listen to the Zoning Administrator, one would  
15 think that we could sneak it and somehow create a third  
16 dwelling unit. But haven't we heard emphatically that this  
17 house is being watched?

18 We can't move a muscle in this house! We  
19 absolutely couldn't have a third tenant in there without it  
20 becoming immediately known. That's just contrary to  
21 everything that we've heard today. So, there's really no  
22 issue about the third electrical panel. We know what the  
23 story says.

24 On the covenant, I have no doubt that the Zoning  
25 Administrator want -- we respect him, we understand how

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1 difficult his job is and we understand that there are people  
2 who cheat. And there a lot of -- probably a lot of people  
3 who cheat and that he needs a remedy against people who  
4 cheat. But we are not one of them. We are not people who  
5 cheat. We have obeyed the law, we have promised that we're  
6 going to continue to obey the law. When he's -- the Zoning  
7 Administrator testified that he hadn't seen the affidavit  
8 that we -- that Mr. Smallwood submitted, but he has seen the  
9 affidavit because there's an email -- the actual email of  
10 November 28th, 2017 of which Mr. -- the Zoning Administrator  
11 received a copy refers to the affidavit -- thanks Mr.  
12 Smallwood for the affidavit.

13           So it's not news to the Zoning Administrator that  
14 an affidavit was submitted. And every time we do something,  
15 that satisfied his requirements at that time but the  
16 requirements immediately -- as soon as that was satisfied,  
17 were increased. Now, a couple of the commissioners, I think,  
18 have mentioned a matter of principle as if that means it  
19 doesn't matter. But when I asked the Zoning Administrator  
20 and his counsel for a citation of the authority of the Zoning  
21 Administrator to insist upon a covenant, they had nothing;  
22 nothing. He does not have this authority.

23           If he wants to ask -- now, I attended a settlement  
24 negotiation and the reason I objected earlier was because  
25 settlement negotiations in any evidentiary proceeding are

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1 inadmissible. Settlement negotiations can't succeed if  
2 they're to be brought up as evidence later. So, they're  
3 inadmissible. Settlement negotiations are supposed to be  
4 settlement negotiations only. In that settlement  
5 negotiation, the Zoning Administrator imposed or tried to  
6 impose his requirement of a covenant. He can -- he has the  
7 authority to do anything he wants as a settlement proposal.

8 He can ask us anything as a settlement proposal.  
9 And, evidently, he has asked some homeowners as a settlement  
10 proposal to agree to a covenant and they've agreed to it.  
11 But we don't. He does not have authority to insist upon it.  
12 He can ask us, sure. But we have the authority to say, no.  
13 We are not the law. The regulations do not require us to  
14 sign a covenant and they don't require us to take the third  
15 electrical panel out. And those are conditions that he is  
16 insisting upon. He lacks the authority to do that.

17 Anything else?

18 Thank you for your attention and thank you. We've  
19 been here all day watching you be incredibly thorough and  
20 diligent and we appreciate that very much.

21 CHAIRPERSON HILL: Okay. Sure, you can ask a  
22 question.

23 First of all, I thank you for the nice comment  
24 again. I'm sorry that you guys have been here all day. I  
25 am sorry you guys have been here all day. I'm still

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1 struggling with you all but I'm still sorry you all have been  
2 here all day.

3           Okay.

4           MEMBER JOHN: I'm so sorry to ask a question but  
5 I was reading the Exhibit 2 and this is your statement -- the  
6 Appellant's Statement of December 7th. I think that's the --  
7 I don't know what it is. It's your Statement on Appeal, I  
8 think, and in describing what the ZA requested, it does say,  
9 lastly the Zoning Administrator is asking for the removal of  
10 the third electric meter and HVAC. Somewhere it does -- oh,  
11 yes. Electric meter. So, that's a big difference from an  
12 electric panel. The electric meter means that that level  
13 would be independently metered for electricity.

14           So, I just wanted to note that for the record that  
15 we're talking about a meter and not an electric panel,  
16 internal to the house. And this is from Berkley Smallwood,  
17 Exhibit 2.

18           CHAIRPERSON HILL: Well, now I guess I have a  
19 follow-up because -- the follow-up question I'm having --  
20 what I understand -- or -- well, now you can clarify. I  
21 understand that there is a third electric panel. Could you  
22 clarify is there also a third electric meter?

23           Okay. So there's a third electric meter and a  
24 third electric panel.

25           MS. SMALLWOOD: Yes, sir.

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1           CHAIRPERSON HILL: Oh, you have to -- I'm sorry.  
2 You have to push the button. That's all right.

3           MS. SMALLWOOD: Yes and those are on the drawings  
4 that were submitted to DCRA back in 2014 approved and  
5 inspected under the current certificate of occupancy we have.

6           CHAIRPERSON HILL: Okay. Okay. All right. Okay.  
7 Does the Board have anything else?

8           COMMISSIONER SHAPIRO: I just -- I'm just stuck  
9 on the same thing which is I'm not doubting that you had  
10 everything approved, Ms. Smallwood, up to this point but we  
11 have the Zoning Administrator here before us under oath  
12 saying that if you have -- if you agreed to the covenant then  
13 this issue goes away.

14           So, I just need to put it out there again it's as  
15 clear as day that's what he's saying. We are here, he is  
16 under oath and I would --

17           CHAIRPERSON HILL: And now -- that's okay --  
18 because now I do have a question now that you're asking a  
19 question. So, because Mr. LeGrant -- so there was like some  
20 -- have you -- you still would need to see drawings in order  
21 to -- because I'm just kind of thinking how this thing would  
22 actually work out even though it's beyond us and I'm just  
23 kind of curious, right? So, if this actually were to get to  
24 a covenant possibility you would still need to see drawings  
25 before you would be able to approve a covenant?

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1 MR. LEGRANT: Yes and actually one of the  
2 covenant template includes a place for an exhibit of the  
3 attached plans. So it's -- that's what it --

4 CHAIRPERSON HILL: So it doesn't matter what the  
5 --

6 MR. LEGRANT: Right.

7 CHAIRPERSON HILL: -- plans look like. I mean,  
8 you're not -- there's nothing -- you're hearing nothing that  
9 would stop this from actually happening in terms of a  
10 covenant? Like, I just want to -- just for my own  
11 edification and if we are kind of going down this line in  
12 terms of, you know, logic, there's nothing that is going to  
13 hinder now the Smallwoods in terms -- or the Appellant in  
14 terms of like if, you know -- they still cannot -- they still  
15 do whatever they want to do but if they wanted to do a  
16 covenant, there's not another little hoop that they haven't  
17 jumped through yet.

18 MR. LEGRANT: Nothing that I've heard today.

19 CHAIRPERSON HILL: Okay. All right. Okay. So,  
20 does the Board have any further questions?

21 Okay. Does the Board need anything else? Okay.  
22 Is the Board ready to -- I'm going to close the hearing. I'm  
23 going to close the hearing. So --

24 MS. LOVICK: Sorry to interject because I just  
25 want to clarify. I thought the Board indicated that you

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1 wanted to see the drawings as a basis to make a decision.  
2 I just want to --

3 CHAIRPERSON HILL: No, I appreciate that. I was  
4 actually kind of looking at Mr. Hart. I'm actually -- I  
5 don't need anything else. And so, you know, if Mr. Hart  
6 needs something else then please speak up but I -- it seems  
7 as though you were saying you didn't need anything else.

8 VICE CHAIRPERSON HART: I had requested them early  
9 on in the discussion because I thought that it was something  
10 that -- it would be helpful to have for the record and just  
11 because we don't have any. So it was, again, helpful to be  
12 able to see them. Whether or not -- upon listening to more  
13 conversation or testimony that we've had, I think I  
14 understand what we're -- the issue is really around the third  
15 panel and understanding kind of where that came from.

16 The applicant is -- the Appellant has said that  
17 that is actually -- there was an anticipation of a third  
18 unit. That has changed and so that's where they are with the  
19 -- with their plans. So, at this time I guess I'm just  
20 saying that I don't think I need them but I understood -- I  
21 -- we did not have them early on a discussion before we had  
22 some other testimony.

23 CHAIRPERSON HILL: Okay. So you don't need them.  
24 Okay. All right. So then does anyone need anything else?  
25 All right. So I'm going to close the hearing. Is the Board

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1 ready to deliberate? Would someone else like to start?

2 VICE CHAIRPERSON HART: You can start.

3 CHAIRPERSON HILL: I'll start, I'll start. Okay.  
4 I mean, I don't know. I, again, just kind of am confused in  
5 terms of the appeal. I mean, I think that -- I don't think  
6 that the Appellant has made their case that the Zoning  
7 Administrator has erred. In fact, I continue to be -- as we  
8 continue to hear testimony it just seemed more and more  
9 likely to me that -- and it's completely fine that somebody  
10 wants to keep their options open, but keeping their option  
11 open for something that at one time was possible.

12 I understand that they have no intention of doing  
13 a third unit. However, there's really nothing to hang the  
14 hat on for the city to know whether or not they in fact are  
15 going to do a third unit in the future other than what seems  
16 to me now a new tool which is now the covenant. Okay. And  
17 this is something that is relatively new and I for one am  
18 actually kind of pleased that this is a tool for us.  
19 Otherwise, we would be here all the time with people trying  
20 to not be able to have an electrical panel or an AC unit and  
21 have no way of convincing DCRA that they aren't actually  
22 going to do a third unit in the future, so --

23 But that's basically even kind of beside the point  
24 that what the Appellant needs to do is really present a very  
25 strong case that the Zoning Administrator has erred in their

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1 decision and I don't think that the case have been made that  
2 they have erred. So I would be denying -- my vote would be  
3 to deny the appeal.

4 MEMBER JOHN: Mr. Chairman.

5 CHAIRPERSON HILL: Sure.

6 MEMBER JOHN: My vote would also be to deny the  
7 appeal and one of the deciding factors for me was this  
8 December 7 letter noting that really what is at issue is the  
9 presence of a third electrical meter and, in my view, there's  
10 no need for a third electrical meter unless there is an  
11 intent to have a separate electrical utility bill for that  
12 unit which is what you would need for an independent  
13 accessory dwelling unit which is not allowed in that zone.

14 I would also look at the history of the permits  
15 and the discussions with the Zoning Administrator as further  
16 proof. In my view, that -- the Appellant at one time  
17 intended to have a third unit and that when it was explained  
18 that a third unit was not allowed because of the different  
19 zoning, the Appellant insisted on continuing to maintain  
20 whatever -- the separate meter. Because, for me, that is the  
21 big issue. I think that the Zoning Administrator is correct  
22 in being concerned that there's no notice to the public that  
23 this structure is not a three unit.

24 And I would also note that the Appellant in  
25 referring to the basement, consistently referred to the third

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1 unit. So, perhaps -- and maybe this was just an error -- in  
2 the Appellant's mind it is a third unit. So, even setting  
3 that aside, I am persuaded that in the interest of providing  
4 notice to the public, the third meter should have been  
5 removed and that the covenant would be a useful tool to alert  
6 buyers -- prospective buyers that this is in fact a two-unit  
7 dwelling.

8 MEMBER WHITE: Yes, Mr. Chair, I mean that's why  
9 I kind of asked questions like are you willing to remove the  
10 panel or the third electrical unit and try to get a little  
11 bit more information as to why there was resistance to doing  
12 the covenant to try to make this all go away. Because it  
13 seemed to me that it was a fairly simple solution. But I can  
14 understand, you know, why the Appellant maybe had some  
15 frustrations with trying to, you know, get things moving in  
16 the direction that she wanted it to move in.

17 But just looking at, you know, the preponderance  
18 of the evidence here and just trying to pull out, you know,  
19 what the potential intent was here in terms of having that  
20 separate meter and the separate panel and, you know, and the  
21 unwillingness to look at the covenant as of the potential  
22 solution even though there weren't -- even though DCRA didn't  
23 necessarily -- wasn't prepared to present the regulations  
24 that, you know, gave them the authority to ask for that. I  
25 still am of the opinion that, you know, this was kind of

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1 moving in the direction of wanting to do a third unit. And,  
2 you know, I'm not upset about that, you know. Because if  
3 they're looking to potential selling of the property or  
4 developing it, you know, for -- as a three family dwelling,  
5 that's one thing.

6 But just looking at the evidence that I'm -- that  
7 we've talked about today, I'm not inclined to grant the  
8 Appellant's request today.

9 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
10 would concur with my colleagues and to your point originally,  
11 Mr. Chair. I think, you know, what is before is did DCRA  
12 err. And I don't see any evidence that said DCRA erred. I  
13 do see concerns that they're using a tool which you may not  
14 agree with or like and you have the right to challenge that  
15 in other forums as well. But I see it as a useful tool and  
16 again, I certainly don't see any way in which DCRA erred.  
17 There is ample data to suggest that there might be a third  
18 unit and that there would be a need for a covenant. And I  
19 like the tool.

20 So, that's where I am, Mr. Chair.

21 CHAIRPERSON HILL: Okay. All right. Well, I  
22 appreciate everybody being here and I appreciate everybody's  
23 been here late but I'm going to go ahead and make a motion  
24 to deny Appeal Number 19708 as read by the secretary. And  
25 as for a second?

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1 COMMISSIONER SHAPIRO: Second.

2 CHAIRPERSON HILL: Motion made and seconded. All  
3 those in favor say --

4 MEMBERS: Aye

5 CHAIRPERSON HILL: All those opposed? The motion  
6 passing, Ms. Rose.

7 MS. ROSE: The staff would record the vote as five  
8 to zero to zero to deny or reverse -- I'm sorry -- to deny  
9 the appeal and uphold the Zoning Administrator's  
10 determination with Mr. Hill making the motion, Mr. Shapiro  
11 seconding the motion with Mr. Hart, Ms. White and Ms. John  
12 in support of the motion to deny.

13 CHAIRPERSON HILL: Thank you. Is that a full  
14 order?

15 MS. ROSE: Yes.

16 CHAIRPERSON HILL: Yes, a full order. Okay. All  
17 right. Thank you all very much.

18 All right. Ms. Rose, is there anything before the  
19 Board again?

20 MS. ROSE: Yes.

21 CHAIRPERSON HILL: Oh. All right. There's the  
22 one case that didn't show up, correct?

23 MS. ROSE: Yes. That's Application Number 19644  
24 of Meenakshi Nankani located at 1315 De La Field Place, NW.  
25 We called it earlier and there was no one in the audience so

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1 we're calling it again. Is anyone present? And I will defer  
2 to Ms. Myers for an update.

3 MS. MYERS: Good afternoon. Since this case was  
4 first case was first called, Office of Zoning and Office of  
5 Planning have been reaching out to Applicant's agent in this  
6 case and we now understand that the agent had intended to  
7 request a postponement until June but hadn't filed that to  
8 the record which is why the Applicant or agent was not  
9 present today. We learned that they intend to provide  
10 revised plans and to present the ANC on June 13th. So just  
11 for the sake of moving this along, I would recommend the  
12 Board consider postponing this case till June 20th in order  
13 to allow for that to happen and to revisit this case.

14 CHAIRPERSON HILL: Okay. And so I think -- so,  
15 just to be thorough, right. So if there were anyone here who  
16 would have wanted to speak about Application Number 19644,  
17 they would have been here at that time. I do -- I'm going  
18 to just for the record -- is there anyone here who is --  
19 would like to speak about Application Number 19644? Okay.

20 And so no one is here to speak about that  
21 application. So I would go ahead and agree to the  
22 postponement. You said June 20th?

23 MS. MYERS: That's correct.

24 CHAIRPERSON HILL: Okay. All right. Is that fine  
25 with the Board? Okay. I see everyone nodding. All right.

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1 Other than that, is there anything else before the Board?

2 MS. ROSE: No, sir.

3 CHAIRPERSON HILL: Okay then we stand adjourned.

4 Thank you.

5 (Whereupon, the above-entitled matter went off the  
6 record at 4:50 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: 05-30-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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