

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 12, 2018

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, National Park Service Designee  
ROBERT MILLER, Vice Chairperson

NATIONAL CAPITAL PLANNING COMMISSION MEMBER PRESENT:

MARCEL ACOSTA, Executive Director

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
KAREN THOMAS  
BRANDICE ELLIOT  
ANNE FOTHERGILL  
JONATHAN KIRSCHENBAUM  
CRYSTAL MYERS  
MATT JESICK

## DISTRICT DEPARTMENT OF TRANSPORTATION:

KELSEY BRIDGES

The transcript constitutes the minutes from the  
Public Hearing held on SEPTEMBER 12, 2018.

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

(9:39 a.m.)

CHAIR HILL: All right. Good morning. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street Northwest. This is the September 12th public hearing of the Board of Zoning Adjustment for the District of Columbia to act on a chancery application pursuant to the Foreign Missions Act 22 USC 4301-4316 and chapter 10 of the zoning regulations.

My name is Fred Hill, Chairperson. Joining me today is Lesyllee White and Lorna John, board members. The federal representatives are Marcel Acosta, representing The National Capital Planning Commission and Peter May, representing The US National Park Service.

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

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

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1 All persons planning to testify either in support  
2 or in opposition are to have filled out two witness cards.  
3 Excuse me. These witness cards are located on the table near  
4 the entrance door. And on the witness table upon coming  
5 forward to speak to the board, please give both cards to the  
6 reporter sitting to the table at my right.

7 The order of procedures for the foreign missions  
8 case is also listed on the desk as you come walking into the  
9 door here. The record will be closed at the conclusion of  
10 each case except it will remain open for any materials  
11 specifically requested by the board. The board and the staff  
12 will specify at the end of the hearing exactly what is  
13 expected and the date when the material must be submitted to  
14 the Office of Zoning. After the record is closed, no other  
15 information will be expected by the board.

16 The District of Columbia Administrator Procedures  
17 Act requires that the public hearing on each case be held in  
18 the open for the public pursuant to section 405(b) and 406  
19 of that act. The board may consistent with its rules and  
20 procedures and the act enter in a closed meeting on case for  
21 purposes of seeking legal counsel on a case pursuant to the  
22 DC official code section 2-575(b)(4) and/or deliberating on  
23 a case pursuant to DC official code section 2-575(b)(13), but  
24 only after providing the necessary public notice, and in the  
25 case of an emergency closed meeting after taking a roll call

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1 vote.

2           The decision of the board in this legislative  
3 proceeding must be based exclusively on the public record to  
4 avoid any appearance of the contrary. The board requests the  
5 persons present not engage the members of the board in  
6 conversation. Please turn off all beepers and cell phones at  
7 this time not to disrupt the proceeding.

8           Preliminary matters or those matters with which  
9 to relate to whether a case will or should be heard today  
10 such as a request for postponement, continuance or  
11 withdrawal, or whether a proper and adequate notice of the  
12 hearing has been given. If you're not prepared to go forward  
13 with the case today or you believe the board should not  
14 proceed, now is the time to raise such a matter.

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

16           MR. MOY: Good morning, Mr. Chairman and members  
17 of the board. Welcome to September 12th. Very quickly, let's  
18 see. Yes. On today's docket, there's been a withdrawal of a  
19 case application, and that is appeal number 19807 of Jay  
20 River, 1772 Church Street LLC and St. Thomas Episcopal  
21 Parish.

22           Other than that, there are other preliminary  
23 matters but staff would suggest that the board address those  
24 when I call the case.

25           CHAIR HILL: Okay, great. Thank you, Mr. Moy. Also,

1 yes, welcome back. Welcome, everybody, back. If anyone's here  
2 wishing to testify, if you wouldn't mind standing please and  
3 taking the oath which is going to be administered by the  
4 secretary to my left.

5 MR. MOY: Good morning. Do you solemnly swear or  
6 affirm that the testimony you are about to present in this  
7 proceeding is the truth, the whole truth and nothing but the  
8 truth? Ladies and gentlemen, you may consider yourselves  
9 under oath.

10 CHAIR HILL: Okay, great. Well, welcome everybody.  
11 We got a full house today. Let's see. A couple of things and  
12 I hope this doesn't throw off too many people here. But I  
13 wanted to let you know kind of the process in which we're  
14 going to go today. As you saw when you came in walking  
15 through the door, there's our agenda for the public meeting  
16 and the hearing.

17 We're trying to accommodate a few different  
18 schedules, one of which is a commissioner schedule and  
19 another is the foreign mission that is here with us today.  
20 So we're going to be hearing our hearings first, and then  
21 we're going to be doing our decisions after the hearings.

22 So what that means is, again, we're going to hear  
23 all of our hearings. And the order in which we're going to  
24 hear our hearings are the order in which they have been  
25 listed, so there's no change there.

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1           And then we're going to be doing our meetings, the  
2 public meetings, after all of the hearings are concluded. So  
3 the public meetings are just deliberations between the board.  
4 We don't take any testimony, anyway. So if you are here for  
5 that, you can obviously stay until the end of the day, or you  
6 could just simply watch on the computer back at home or  
7 whichever you prefer.

8           So the hearings, as I said, are going to go  
9 forward. We're probably going to take a lunch at around 12:30  
10 or 1:00. And I think that's all I had to add. And other than  
11 that, Mr. Moy, we can go ahead and get started.

12           MR. MOY: Thank you, Mr. Chairman. So with that,  
13 if we can have the parties to come to the table to  
14 Application Number 19798 of State of Hungary, Ministry of  
15 Foreign Affairs pursuant to 11 DCMR Subtitle X, Chapter 10.  
16 This is to renovate the existing Hungarian Chancery in the  
17 MU 15 South. This is at 1500 Rhode Island Avenue NW, Square  
18 19 -- or rather, 195S, I believe by 800.

19           CHAIR HILL: Okay, great. Well, welcome. If you  
20 wouldn't mind introducing yourselves from my right to left,  
21 please.

22           MR. SANDELANTS: Matthew Sandelants, Department of  
23 State.

24           MR. COLLINS: Christopher Collins, Holland &  
25 Knight.

1 MS. BLOOMFIELD: Jessica Bloomfield, Holland &  
2 Knight.

3 MR. HETESHI: John Heteshi, Deputy Chief of Mission  
4 at the Hungarian Embassy.

5 MR. TALTY: Brian Talty with KCCT Architects.

6 MR. KABATT: Chris Kabatt with Wells and  
7 Associates.

8 MS. IDE: Emily Ide with EHT Traceries.

9 MR. KRANSZ: Andras Kransz from Meta Logistics.

10 CHAIR HILL: Okay. Who's going to be presenting to  
11 us today? Okay, Ms. Bloomfield? Okay. Well, first of all,  
12 welcome. And sir, how do you pronounce your name again? Your  
13 last name if you wouldn't mind? If you could --

14 MR. HETESHI: It's Heteshi, Mr. Chairman.

15 CHAIR HILL: Heteshi.

16 MR. HETESHI: Yes.

17 CHAIR HILL: Okay, great. Well, welcome, Mr.  
18 Heteshi. Ms. Bloomfield? I'm so glad that so many of you are  
19 here. That means that our audience is going to thin out a  
20 little bit after this case. So if you want to go ahead and  
21 get started. I mean we've obviously read the record and seen  
22 all the things that are in there.

23 I'm going to go ahead and, if you wouldn't mind  
24 kind of walking us through or presenting your application  
25 however you'd like. And telling us kind of what exactly

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1 you're trying to accomplish and how in which you're meeting  
2 the standards for us to grant the application. And I'm going  
3 to be 15 minutes on the clock so I know kind of where we are.  
4 But, you know, we're not in a big hurry today since it's the  
5 first day of being back after our recess, you know, as  
6 opposed to the last day when we're trying to get out. So you  
7 can take a little bit more time if you like. But go ahead and  
8 start whenever you like.

9 MS. BLOOMFIELD: Great. Well, welcome back. Again,  
10 Jessica Bloomfield from Holland & Knight for the record. We  
11 will do a quick presentation. We won't all give direct  
12 testimony but we're all here in case there are questions that  
13 come up afterwards. So we'll do a five-minute presentation  
14 through the building.

15 Just as background, we're here pursuant to Section  
16 206 of the Foreign Missions Act and Subtitle X, Chapter 2 of  
17 the Zoning Regulations requesting approval to make certain  
18 improvements to the existing building and the public space  
19 adjacent to property located at 1500 Rhode Island Avenue NW.

20 This site is bounded by four sides by public  
21 streets and is improved with an existing historic building  
22 that is occupied and used as the Chancery for the Embassy of  
23 Hungary. Our architects will present to you the proposed  
24 building renovations and public space improvements that we've  
25 proposed in this applications. And the materials in the

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1 record demonstrate how the project is consistent with the  
2 Foreign Missions Act and the zoning regulations.

3 We've worked extensively on this project with the  
4 Office of Planning, the Historic Prehistoric Preservation  
5 Office, DDOT, and the Department of State. And we're pleased  
6 to have support from all of those agencies.

7 DDOT conditioned its support on two items related  
8 to the height of the trash enclosure and the parameter  
9 security fence. And we will address both of those items in  
10 our direct presentation. We also worked with ANC 2B, which  
11 voted unanimously 9 to 0 to support the application. And  
12 their report is in the record.

13 I will now turn it over to our team to provide  
14 more details on the application. And answer any questions  
15 that you have.

16 MR. TALTY: Thank you for this opportunity to give  
17 you -- Thanks for the opportunity to present an overview of  
18 the project. Here we'll discuss some major topics we've had  
19 further discussions with the agencies and ANC Office of  
20 Planning and DDOT.

21 The project is at 1500 Rhode Island Avenue. It's  
22 bound by 15th Street, N, Rhode Island, and Corregidor just  
23 east of Scott Circle. It's an isolated plot which is  
24 surrounded by the circulation on four sides. In the facing  
25 of each street, 15th Street is sort of buffered by a parking

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1 area. Rhode Island Avenue is the main entrance for the  
2 embassy. Industry and Corregidor streets are essentially up  
3 to the property lines facing the public right of way.

4 To describe a little bit of the existing  
5 circulation to the east on Corregidor Street -- rather to the  
6 west, it's a one way entrance into a porte-cochere or a  
7 formal entrance drop-off for the facility and an exit to  
8 Rhode Island at the north.

9 At the east is a two way sort of a back-in pull-in  
10 to the parking area. Proposed changes to that is to maintain  
11 the curb cut at the west portion into the porte-cochere to  
12 have a one-way formalized, infrequently used circulation.  
13 We are also proposing to have a two-way widened curb cut at  
14 the north along Rhode Island Avenue to allow for the one-way  
15 drop-off for the porte-cochere. And for a two-way parking  
16 entrance and exit. And we would like to limit the entrance  
17 to the east to just a diplomatic parking pull-in and drive-  
18 out for two spots and reducing that curb cut substantially.

19 Proposed changes to the perimeter, currently  
20 there's a curb that surrounds the site at the public right  
21 of way at the sidewalk. We would like to place a fence --  
22 a perimeter fence around the facility for security purposes.  
23 The fence would be 7 feet 6 high. We have gated entrances  
24 at the west where we have the single drop-off for the porte-  
25 cochere at the double in and out for the parking. And as

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1 well for the east where we have the diplomatic parking.  
2 We have pedestrian entrance that puts itself on circulation  
3 access with the building itself. And that would be  
4 controlled access as well, as well as at the service entrance  
5 in the south portion of the facility.

6 And proposed design for the fence, it's a 1 foot  
7 curb support foundation with twisted steel pickets that  
8 wonder around the site to sort of give visibility into the  
9 site, but protect for a crowd control, a site control and  
10 this surrounds on four sides. And the total height from  
11 grade is a constant 7 foot 6, which follows a topography with  
12 a difference of about four to six feet. So 7 foot 6 would  
13 be the maximum hold -- minimum and maximum topography.

14 Current parking at the north, we've got four  
15 public spots.

16 CHAIR HILL: Excuse me, I'm sorry. Did you say  
17 7'6"?

18 MR. TALTY: Seven foot 6, yes.

19 CHAIR HILL: Okay. Okay, thank you.

20 MR. TALTY: On the north, we have four public  
21 spots that are existing on the street. On the south, along  
22 N Street, we have two public spots that are metered and  
23 three currently dedicated diplomatic spots. And on the east  
24 along the bike path on the 15th Street, there are four  
25 current spots. The embassy currently has 29 staff spots

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1 inside the site. We're looking to reduce that to six, plus  
2 the two diplomatic.

3           Shown here, we are reducing the public spots to  
4 three on the Rhode Island Avenue and dedicating a no parking  
5 zone directly west of that shown in grey. On the North  
6 Street, we have three public parking spots. We're adding one  
7 spot to equal out to have a total of six, so that it's  
8 basically taking a public spot from Rhode Island to N Street  
9 and maintaining three diplomatic spots. We don't have any  
10 action towards the 15th Street. Those spots remain as is.  
11 And we're reducing the parking inside the compound to six  
12 staff spots and two diplomatic spots.

13           And to depict the impression of the fence around  
14 the site, the proposal was a negotiation in conversation we  
15 had with Office of Planning, essentially the original design  
16 had stepped fence where the topography would lower from about  
17 four to six feet from one side of the site to the other.  
18 What this resulted in was a 7 foot 6 minimum and about a 10  
19 to 12 foot maximum as the stepping occurred. So the  
20 negotiation and discussion was really if there's a way we can  
21 slope the fence to maintain a 7 foot 6 all the way around,  
22 bringing down the scale of the fence around the site. And  
23 that's currently in the design.

24           We also have a kitchen program inside the embassy  
25 that requires kitchen exhaust. There's an existing chimney

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1 that's part of the original structure -- or the addition.  
2 We are proposing to reduce that structure itself, the chimney  
3 for that kitchen exhaust to get it away from pedestrians and  
4 roof terrace occupants. We just completed a seismic study  
5 and an internal investigation -- camera investigation of that  
6 chimney which showed extensive damage. So we would need to  
7 replace the chimney itself to bring it up to current code and  
8 seismic control.

9           As well, the proportions inside will not allow us  
10 to utilize this as an exhaust. We've spoken with the Office  
11 Of Planning and they are in agreement that we could rebuild  
12 the proportions of the chimney, considering the proportions  
13 are to the original addition. And that allows us to frame  
14 it out to improve the seismic condition and the structure of  
15 it. As well, allow for the clearance for the exhaust.

16           At the roofscape, currently we've got a penthouse,  
17 which is about 10 feet from the roof. That's an existing  
18 condition. We are looking to reduce that dramatically, to  
19 lower it, shown on the bottom diagram. The other additions  
20 include skylight changes which essentially change in  
21 proportion, but the landscape of the roof is lowered  
22 substantially, particularly with their penthouse.

23           Because of the requirement of the embassy function  
24 and communications, we do need to locate a satellite dish.  
25 We are proposing in the center of the roof where the

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1 structure itself is conducive to having such a support. And  
2 we've done some studies in conjunction with communication  
3 with the Office of Planning on site line studies of that  
4 dish. And we did not find that the visibility was obtrusive  
5 to the building itself.

6 Another discussion we had was in the south edge,  
7 there is a loading area with trash receptacles. Original  
8 design had a 5 foot 9 to 6 foot enclosure fence around it.  
9 The comment from DDOT was to lower that to a maximum of 42  
10 inches high, so we've agreed to do that. And it's shown on  
11 the top right diagram which we are submitting the amended  
12 drawing today.

13 The facade throughout the building will have  
14 window replacement in kind profiled to match the original.  
15 The original currently is wood with single pane glass. Many  
16 of the frames are in an unsealed condition. The efficiency  
17 of the windows is as you would expect from a building of this  
18 century. In addition the building has been modified in the  
19 past to allow for fan coil units and new walls to be  
20 constructed, thus window replacement necessary. We are  
21 looking to remove those and bring back the windows in their  
22 original design. All the windows and doors in the building  
23 will be replaced in time with energy efficient windows,  
24 except for the front elevation, which is a cast iron door  
25 which we will restore.

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1           On the east side, there is an existing fire escape  
2 which we are intending to reuse. And we are allowed to do  
3 so by the existing building code as long as we're maintaining  
4 that egress path. What we would like to do is screen that  
5 with a screen wall, which essentially provides a little bit  
6 more enclosure for the egress path, as well as blocking it  
7 from view. We chose to take in Hungarian art inspiration to  
8 provide this screen wall with something that's indicative to  
9 the culture of Hungary.

10           And here, we'll turn to Chris Kabatt with Wells  
11 Associates.

12           MR. KABATT: Good morning. I'll be quick here.  
13 Mr. Talty went over a lot of the aspects of the  
14 transportation part here. I just wanted to reiterate a few  
15 points. We have met with DDOT on several occasions in the  
16 Office of Planning to discuss this project. And it was  
17 determined that a full CTR was not required for this low trip  
18 generating site. As mentioned, there are only eight on-site  
19 parking spaces; six for the everyday use and two for the  
20 Ambassador. As well as the three parking spots on N street  
21 that are dedicated to the embassy. And that parking is  
22 adequate. Five are required per the code.

23           I also wanted to point out that onsite loading is  
24 not required for this site. The size of it does not meet the  
25 requirement. And just another point is that that site is

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1 well served by public transportation. There's the 16th  
2 street bus lines, the S series, as well as a cycle track on  
3 15th street and bike lanes to the south on L and M. With  
4 that, I'll be here to answer any questions.

5 MR. HETESHI: Good morning, Mr. Chairman,  
6 distinguished members of the board. For the record, my name  
7 is John Heteshi, the PT Chief of Mission. And I would like  
8 to present a couple of words with regard to our important  
9 project.

10 I am there to represent the Hungarian Embassy and  
11 the Hungarian government at this important event. Ambassador  
12 Laszlo Szabo is sending his best regards. He is at the  
13 Atlantic Coast at the moment with our President, Janos Ader  
14 at the Global Climate Action Summit in San Francisco.

15 Coming back to this project, we are excited to  
16 bring the premises of the embassy and thereby decor  
17 diplomatic activities of Hungary from Shoemaker Street to  
18 Rhode Island Avenue. In a city, location is important.  
19 These new premises would enable us to join other embassies  
20 at Embassy Row, conduct our activities more effectively,  
21 bring more people to our events as it becomes the new house  
22 of culture of Hungarian diplomacy and culture.

23 Hungary is proud of the exquisite history of the  
24 Bell Morton Mansion that once housed the inventor of the  
25 phone, the Vice President, Secretary of War, Secretary of

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1 State, and an ambassador. We sincerely believe that the  
2 future use of this building for diplomatic purposes is a  
3 fitting role and a natural continuation given its history.

4 The "new activity" will not create any disturbance  
5 or even any new situation in the vicinity as the building was  
6 already used for office purposes. And two of our neighbors  
7 will be the Australian and the Tunisian Embassies. We are  
8 proud that the embassy will be located in such a landmark  
9 building of Washington D.C. It comes with responsibilities  
10 that we are ready to honor. In order to assure that, we have  
11 teamed up with KCCT Architects, EHT Traceries, West &  
12 Associates, Holland & Knight, Metro Logistics, and other  
13 experts that have utmost experience with similar projects.

14 Besides the preservation efforts as you have  
15 already heard, we have decided to restore some elements of  
16 the earlier design that have been altered by previous owners.  
17 This has been also acknowledged in the opinion of the  
18 Advisory Neighborhood Commission. The building requires  
19 intensive renovation inside. It was one of the factors in  
20 the previous owner's decision to sell. Having said that, we  
21 are convinced that at the end of the renovation, the building  
22 will not only fulfill all requirements for a state of the art  
23 embassy, but it will also reduce the ecological footprint of  
24 the premises, contributing to the efforts of the U.S. Capital  
25 in that regard. We will also add further green surface on

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1 the premises.

2 Distinguished board members, since the regime  
3 change in 1989, Hungary has been a proud friend and a NATO  
4 ally of the United State of America. Our diplomatic defense  
5 and security corporation, as well as economic and cultural  
6 relationships are traditionally strong. As you have noticed,  
7 the State Department has also acknowledged our forthcoming  
8 approach and the spirit of cooperation with which we have  
9 accommodated all security and logistical interests of the  
10 U.S. Embassy in Budapest and elsewhere in our country.

11 We respectfully request your guidance and support  
12 to bring this process to a successful conclusion so we can  
13 celebrate our upcoming 30-year anniversary of our renewed  
14 cooperation in our fully functioning new premises. Thank  
15 you, Mr. Chairman.

16 CHAIR HILL: Thank you, Dr. Heteshi.

17 MS. BLOOMFIELD: That concludes our presentation.  
18 We're here to answer any questions that you may have.

19 CHAIR HILL: Okay. Does anybody have any  
20 questions for the applicant? Please, go ahead.

21 MEMBER WHITE: Just point of clarification. I'm  
22 looking at DDOT's report in terms of their recommendations.  
23 Did I hear correctly that they recommended that the fence be  
24 6 feet 6 inches, but I thought I heard 7 feet 6 inches.

25 MS. BLOOMFIELD: That's correct. DDOT had two

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1 conditions in their report. One of which was to reduce the  
2 proposed fence height from 7 feet 6 inches to 6 feet 6  
3 inches. And we have made the decision to not reduce the  
4 fence height. And we're happy to go into the multitude of  
5 reasons why that is the case. We also have a good amount of  
6 precedent for other embassy cases where there are fences  
7 greater than 6.5 feet and greater than 7.5 feet in public  
8 space for security purposes. So if you'd like to hear from  
9 our team on why we need a 7.5 foot fence, we'd be happy to  
10 do that.

11 MEMBER WHITE: Maybe a couple of seconds of  
12 explanation would be helpful.

13 MR. HETESHI: Thank you very much. If I may come  
14 in with regard to the security and diplomatic issues. Indeed  
15 to erect the fence is basically for security purposes and  
16 site control purposes. The original request of the Hungarian  
17 Ministry for Foreign Affairs was 9 feet 10 inches, which is  
18 based on the standards that we usually use abroad. If I  
19 understand it correctly, the original request in height is  
20 similar to what the U.S. Embassy is having in Budapest.

21 Now we appreciate the thought and consultations  
22 that went into this subject matter. And as colleagues have  
23 already mentioned, the Ministry for Foreign Affairs and the  
24 security team within the Ministry for Foreign Affairs have  
25 made some compromises -- major compromises.

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1           One is that from the original request, we have  
2 went down 6.6 -- sorry, 7.6 inches -- 7 feet 6 inches, which  
3 was the first compromise. And the second compromise was to  
4 follow the topographical pattern around the building so we  
5 don't have higher fences than 7.6.

6           I do understand that in some other cases, other  
7 countries -- other embassies were able to compensate certain  
8 security issues with changes on the building. This we cannot  
9 do in this case because of the landmark status of the  
10 building. So we cannot alter that.

11           You will also have to take a look at the building.  
12 You will see that on the N street side, the windows are  
13 really low from the ground. So basically, it requires only  
14 one step to climb into the building if there is an open  
15 window. This is why we have found that it would be important  
16 to retain the compromised 7 feet 6 inches so to make sure  
17 that the fence is not that easy to scale. Thank you.

18           MS. BLOOMFIELD: And I will note that we have two  
19 orders that I can hand in if you want them. China approved  
20 -- there was a fence approved in public space that was 9 feet  
21 6 inches. And South Africa has a fence that is 8 feet 10  
22 inches. Both of which were approved by this board. I can  
23 hand in those orders if that's helpful.

24           CHAIR HILL: No, that's all right. Just one  
25 second. So Ms. Bloomfield, that's great. Thanks. Just a

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1 real quick question from me as well. The DDOT was also  
2 taking about the trash enclosure on N street that are 42  
3 inches in height. Did you guys talk about that?

4 MS. BLOOMFIELD: Yes, we did and we actually  
5 handed in a new exhibit today. We've agreed to lower than  
6 enclosure height to 42 inches. And that's the one 11 x 17  
7 sheet that you received today. It's in the upper right  
8 corner.

9 CHAIR HILL: Okay. I see it. Thank you. All  
10 right, the gentleman from the State Department, what's your  
11 name again? I'm sorry.

12 MR. SANDELANTS: Matthew Sandelants.

13 CHAIR HILL: Zandelants?

14 MR. SANDELANTS: Sandelants.

15 CHAIR HILL: Sandelants. Mr. Sandelants, have you  
16 been here before?

17 MR. SANDELANTS: I have.

18 CHAIR HILL: Okay. So all right -- So I would  
19 hopefully know how to pronounce your name by now, so sorry.  
20 Ms. Sandelants, I just saw you nodding. So you're saying  
21 that the Budapest government has allowed us to have a 7 feet  
22 6 inch fence around our embassy?

23 MR. SANDELANTS: Actually the height of the fence  
24 around our embassy in Budapest is 9 feet. And we very much  
25 would like to keep it that way.

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1 CHAIR HILL: Okay, all right. Well they already  
2 approved our fence. Right? So, we already got our 9 feet.  
3 But I guess they can do whatever they want too.

4 Did anyone else have some questions from the  
5 board?

6 ZC MEMBER MAY: Just a couple of things. First  
7 of all, it's good to know all the bike lanes that are around  
8 the embassy. I'm sure you'll get a lot of people biking to  
9 work hopefully.

10 No, but the -- I'm curious about the antenna and  
11 I appreciate seeing the site line diagrams. But does it  
12 really have to be 9 feet 4 inches tall? I mean that's a  
13 really big antenna or is that just like the maximum?

14 MS. BLOOMFIELD: This antenna is actually on the  
15 existing chancery building on Shoemaker Street. They're  
16 moving it to this property. So it's an existing antenna.  
17 It's actually 8 feet in diameter and sits on a --

18 ZC MEMBER MAY: Yes. It's 9 feet 4 total.

19 MS. BLOOMFIELD: Yes.

20 ZC MEMBER MAY: Right.

21 MS. BLOOMFIELD: It is set back 1 to 1.

22 ZC MEMBER MAY: So okay.

23 MS. BLOOMFIELD: And it meets all the antenna  
24 requirements.

25 ZC MEMBER MAY: Yes, but it's just -- Granted it

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1 won't be visible from most locations on the street. It will  
2 be visible from beyond the circle or at the circle, I think,  
3 and visible from buildings around. And it just -- it just  
4 seems over large for something that's downtown on top of an  
5 historic building. So obviously it's not an issue for us,  
6 but it provokes the comment because a lot of buildings,  
7 especially a beautiful building like this can get really  
8 cluttered up with some stuff like that. So if it's possible  
9 to replace it with a smaller antenna, I would encourage that.  
10 But of course that's at your discretion.

11 MS. BLOOMFIELD: Thank you. We'll think about it.

12 ZC MEMBER MAY: Thank you.

13 CHAIR HILL: Okay. Let's see. I'm going to go  
14 ahead and turn to the -- Does anyone have anything else at  
15 this point? All right, I'm going to turn to the Office of  
16 Planning.

17 MS. THOMAS: Yes. Good morning, Mr. Chair,  
18 members of the BZA. I'm Karen Thomas with the Office of  
19 Planning. We fully support the applicant's presentation here  
20 today. And we will stand on the record of the report in  
21 support of not disapproving this application today. Thank  
22 you.

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

25 ZC MEMBER MAY: I have one.

1 CHAIR HILL: Sure.

2 ZC MEMBER MAY: Regarding the fence, you're okay  
3 with the fence height as proposed despite DDOT's concern?

4 MS. THOMAS: Yes. In this case, yes. Because HP  
5 worked a lot with them in terms of getting it to an  
6 appropriate height. And this was a compromise in their needs  
7 and the city's needs.

8 ZC MEMBER MAY: Okay, thanks.

9 CHAIR HILL: Okay. Can we hear from DDOT?

10 MS. BRIDGES: Hi. I'm Kelsey Bridges. I'm with  
11 DDOT. And we acknowledge a lot of the site improvements that  
12 have been made regarding curb cuts and other public space  
13 elements. Also I think that reducing the trash enclosure  
14 will be positive for anyone walking by and viewing the area.

15 And also the 6 feet 6 is typically when overheight  
16 fences go to Public Space Committee. We do see some  
17 embassies that also go to Public Space Committee. That's  
18 typically what they're shooting for. There are some --  
19 there's a wide variety of parameter security fences around  
20 D.C. So understanding this one is also right at the  
21 sidewalk, wanting to try and reduce that strong visual  
22 element was the intent, along with also kind of going with  
23 what Public Space Committee normally suggests.

24 CHAIR HILL: Okay. Anybody have any questions for  
25 DDOT? Okay. Does the applicant have any questions for the

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1 Office of Planning or DDOT? Okay. Is there anyone here  
2 wishing to speak in support of the application? Is there  
3 anyone here wishing to speak in opposition of the  
4 application? Okay. Ms. Bloomfield, do you have anything  
5 else you'd like to add?

6 MS. BLOOMFIELD: I think that, that pretty much  
7 sums it up. We have extensive information in the record.  
8 And we'd ask that you support this application. Thank you.

9 CHAIR HILL: Okay. All right, does the board have  
10 any final questions? Okay. I'm going to close the hearing.  
11 Is the board ready to deliberate? Okay. I can start.

12 After going through the record and hearing the  
13 presentation, I mean, I'm comfortable with what has been  
14 proposed, as well as the report that the Office of Planning  
15 has provided in terms of how they are meeting the standard  
16 for the request that they are making.

17 As far as the 7 feet 6 versus the 6 feet 6, I mean  
18 I do understand that the applicant has made some changes  
19 from, I think it was 10'6" inches that was originally  
20 mentioned, to the 7'6". And I do appreciate actually that  
21 the Hungarian Embassy is kind enough to allow us to keep our  
22 higher fence over in Hungary. And I can understand the State  
23 Department would be pleased that we do not push back from  
24 something that's already been accomplished.

25 I also do, in terms of them coming down from

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1 10'6", I actually do appreciate that Dr. Heteshi had  
2 mentioned that there was a window that they are trying to  
3 kind of continue to secure due to the height of the fence.  
4 So I don't have an issue with the 7'6". And I would be in  
5 approval of this application. Does anyone have anything else  
6 they'd like to add?

7 MEMBER WHITE: Mr. Chair, I'm in support as well.  
8 I had some questions about the fence, but I'm comfortable  
9 with the response that I received. I'm very familiar with  
10 the area. So I would also concur with your comments as well.

11 CHAIR HILL: Okay, great. Oh, sorry.

12 MEMBER ACOSTA: Also to add my support. I thank  
13 you for working with the Preservation Office on the fence  
14 issue in particular. I think we usually try to minimize the  
15 height of these things. But we also understand you had  
16 extenuating circumstances regarding the building as a  
17 landmark. And also you did work through the fence issues in  
18 terms of trying to respect the building, but also these  
19 surrounding public spaces. It's always a tradeoff. But we  
20 also understand the importance of protecting and securing the  
21 building. So thank you for restoring this important  
22 landmark.

23 CHAIR HILL: Thank you. And thank you, Mr. Acosta  
24 for mentioning that because it is true. Thank you, Dr.  
25 Heteshi and the Hungarians for working with the city and

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1 doing what you can to make it so that we can, you know, help  
2 to preserve the building, as well as you get a security  
3 measure that you want in place. And you know, we are very  
4 pleased to have you with us obviously today.

5 All right. That being the case, I'll go ahead and  
6 make a motion not to disapprove Application Number 19798 as  
7 captioned and read by the secretary. And ask for a second.

8 MEMBER ACOSTA: Second.

9 CHAIR HILL: Motion made and second. All those  
10 in favor say aye.

11 (chorus of ayes)

12 CHAIR HILL: Aye. All those opposed. The motion  
13 passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as 5 to 0  
15 to 0. This is on the motion of Chairman Hill to not  
16 disapprove the application. Seconded the motion, Mr. Acosta.  
17 Also in support, Mr. Peter May, Ms. White, Ms. John. And the  
18 motion carries. That's five, right?

19 CHAIR HILL: All right. Thank you all very much.  
20 Thank you for coming. Good luck with the project.

21 MR. HETESHI: Thank you.

22 CHAIR HILL: We're just going to take a minute  
23 here and switch out commissioners.

24 (Whereupon, the above-entitled matter went off the  
25 record at 10:17 a.m. and resumed at 10:24 a.m.)

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1 CHAIR HILL: All right, Mr. Moy. We'll go ahead  
2 and get started here again. There's a couple of quick  
3 announcements -- Well I have to read something again now that  
4 we're doing this a little differently. So we're all going  
5 to have to bear with me while I read my little script in a  
6 moment.

7 But concerning the meeting reports, I know I had  
8 mentioned that we were going to do the meetings at the end  
9 of the day. But there was a preliminary matter with one  
10 particular application. Application 19823 where there was  
11 someone that wanted advanced party status consideration. Is  
12 that person here in the audience? Okay, great. You can just  
13 go ahead and sit down. We're not going to keep you here all  
14 the way until the end of the day. We're going to do that  
15 after this. Okay? And then you can buy us all lunch to  
16 thank us if you like. You know? That was a joke. That was  
17 a joke. And so now I'm going to read my other script.

18 All right. The hearing will please come to order.  
19 We're located in the Jerrily R. Kress Memorial Hearing Room  
20 at 441 on 4th Street. This is the September 12th public  
21 hearing of the Board of Zoning and Adjustment.

22 My name is Fred Hill, chairperson. Joining me  
23 today is Carlton Hart, vice chair, Lesyllee White and Lorna  
24 John, board members. And representing the Zoning Commission  
25 is Rob Miller for one case and Peter May for the rest of the

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1 day.

2           Copies of today's hearing agenda are available to  
3 you and located on the wall bin near the door. Please be  
4 advised that this proceeding is being recorded live by a  
5 court reporter and is also web cast live. Accordingly, we  
6 must ask that you refrain from any disruptive noises or  
7 actions in the hearing room when presenting information to  
8 the board. Please turn on and speak into the microphone,  
9 first stating your name and home address. When you're  
10 finished, please turn off your microphone so that your  
11 microphone is no longer picking up sound and background  
12 noise.

13           All persons planning to testify, either in favor  
14 or in opposition, must have raised their hand and been sworn  
15 in by the secretary. Also each witness must fill out two  
16 witness cards. These cards are located on the table near the  
17 door and at the witness table. Upon coming forward to speak  
18 to the board, please give both cards to the reporter sitting  
19 at the table to my right.

20           If you wish to file written testimony or  
21 additional supporting documents today, please submit one  
22 original and 12 copies to the secretary for distribution.  
23 If you do not have the requisite number of copies, you can  
24 reproduce copies on an office printer in the Office of Zoning  
25 located across the hall. Please remember to collate your set

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1 of copies.

2           The order of procedures for special exceptions and  
3 variances are all also listed on the table as you come  
4 walking into the door. The record shall be closed at the  
5 conclusion of each case except for any material specifically  
6 requested by the board. The board and the staff will specify  
7 at the end of the hearing exactly what is expected and the  
8 date when the persons must submit evidence to the Office of  
9 Zoning.

10           After the record is closed, no other information  
11 shall be accepted by the board. This is something new for  
12 attorneys that are in the audience -- attorneys in the  
13 audience. It has been suggested that the board's agenda,  
14 including cases set for decision after the board adjourns,  
15 the Office of Zoning in consultation with myself, will  
16 determine whether a full or a summary order may be issued.  
17 A full order is required when the decision it contains is  
18 adverse to a party including an affected ANC.

19           A full order may also be needed if the board's  
20 decision differs from the Office of Planning's  
21 recommendation. Although the board favors the use of summary  
22 orders whenever possible, an applicant may not request the  
23 board to issue such an order. The District of Columbia  
24 Administrative Procedures Act requires that that the public  
25 hearing on each case be held in the open, before the public

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1 pursuant to Section 405(b) and 406 of that Act. The board  
2 may, consistent with its rules and procedures and the Act  
3 enter into a closed meeting on a case for purposes of seeking  
4 legal counsel on a case pursuant to D.C. Official Code  
5 Section 2-575(b)(4) and/or deliberating on a case pursuant  
6 to D.C. Official Code Section 2-575(b)(13), but only after  
7 providing the necessary public notice. And in the case of  
8 an emergency closed meeting after taking a roll call vote.

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

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

23           MR. MOY: No, sir. Not from what I already  
24 mentioned earlier in the day.

25           CHAIR HILL: Okay, great. Thank you. So if

1 anyone again missed the swearing in that took place this  
2 morning, if you could please stand and be sworn in by the  
3 secretary to my left.

4 MR. MOY: Good morning. Do you solemnly swear or  
5 affirm that the testimony that you're about to present in  
6 this proceeding is the truth, the whole truth, and nothing  
7 but the truth? Thank you. You may be seated.

8 CHAIR HILL: Okay, great. Thank you. All right,  
9 Mr. Moy, did you announce the case?

10 MR. MOY: Not yet.

11 CHAIR HILL: Okay, great. If you would please  
12 announce our case.

13 MR. MOY: With pleasure. Thank you, sir. That  
14 would be Appeal Number 19766 of ANC 1A pursuant to 11 D.C.  
15 MR subtitle Y, Section 302 from the decision made on February  
16 15th, 2018 by the Zoning Administrator, Department of  
17 Consumer Regulatory Affairs to issue Building Permit Number  
18 B1712178 to permit the conversion of an existing principal  
19 dwelling unit to a four-unit apartment house RA2 Zone. This  
20 is a permit of 1477 Girard Street NW, Square 2669, Lot 824.

21 As the board will recall, this was first heard on  
22 July 25th, 2018. Also at that time, the property owner  
23 represented by their attorney withdrew its motion to dismiss  
24 the appeal as moved under Exhibit 22. Also at that time, the  
25 board completed hearing procedures except for rebuttal and

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1 closing. And requested additional information and I believe  
2 that they are in the case record.

3 CHAIR HILL: Okay, great. Thank you, Mr. Moy.  
4 Let's go ahead and start by introducing ourselves please from  
5 right to left.

6 MS. LORD-SORENSEN: Good morning. Adrienne Lord-  
7 Sorensen, assistant general counsel with the D.C. Department  
8 of Consumer and Regulatory Affairs.

9 MR. LEGRANT: Good morning. Matthew LeGrant,  
10 zoning administrator, DCRA.

11 MR. SULLIVAN: Good morning. Martin Sullivan of  
12 Sullivan & Barros on behalf of the property owner.

13 MR. TRACZ: Good morning. David Tracz, 3877  
14 Architect.

15 MR. RUEDA: Good morning. Guillermo Rueda on  
16 behalf of the ANC, Architect.

17 MR. BOESE: And Kent Boese, chair of ANC 1A.

18 CHAIR HILL: Okay. Well welcome everybody back.  
19 Sorry that we couldn't finish it all in July. So I believe  
20 where we were when we left off, there was a couple of things  
21 that the board did ask for clarification on. And we did get  
22 those items put into the record. I also did see that the ANC  
23 had put in their rebuttal statement, I think, or some of  
24 their rebuttal into the record, which actually was helpful.  
25 However now you'll have an opportunity to actually present

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1 your rebuttal.

2           So Mr. Rueda, I think you were doing it or I can't  
3 remember the last time. If you would go ahead and present  
4 your rebuttal to us from -- If you can remember all the way  
5 back in July. And then -- which actually I'm sure you can,  
6 what was put forward and rebut those statements. And then  
7 what will happen is the DCRA, as well as the property owner  
8 will have an opportunity to cross any of that rebuttal. And  
9 then we're going to go through conclusions ending with you.  
10 Okay?

11           So I'm going to go ahead and put just -- I'll put  
12 ten minutes on the clock just so I know where I am. And you  
13 can start whenever you'd like.

14           MR. MOY: Excuse me, Mr. Chairman. If I may --

15           CHAIR HILL: Sure.

16           MR. MOY: The appellant will address it, but they  
17 just handed me a new drawing that I'll pass to the board.

18           CHAIR HILL: Okay, maybe you could pass --

19           MR. MOY: I'm assuming the parties have copies?

20           CHAIR HILL: Could you pass those out first, Mr.  
21 Moy, real quick then? Okay, Mr. Rueda, you can go ahead.

22           MR. RUEDA: Thank you very much, Chairman Hill.  
23 Good morning, members of the board. As I way saying, DCRA's  
24 testimony -- Sorry. DCRA's testimony and arguments before  
25 the board on July 25th, 2018 failed to prove conformance of

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1 the permitted work at 1477 Girard Street NW with the zoning  
2 regulations. Specifically with its defined terms and  
3 development standards. Inaccurate and misleading  
4 documentation in conjunction with the failure of DCRA to make  
5 use of the actual language of the regulations renders the  
6 zoning regulations meaningless and fosters an environment  
7 where permits drawings are geared towards approval and not  
8 actual compliance.

9 This rebuttal will explain the errors with the  
10 location of the building height measuring point, the  
11 misrepresentation of finished grade, and its associated  
12 effect on the grade point in FAR. The unfounded exclusion  
13 of the top story as storage level with limited ceiling height  
14 and various code and regulation conflicts where zoning has  
15 improperly allowed -- has been improperly allowed to take  
16 precedence over the building code.

17 So on the screen is a photograph of the as-built  
18 condition. Point Number 1, the project as approved does not  
19 clearly identify existing or finished grade, leading to  
20 errors in interpretation of the building height and grade  
21 plane. The zoning regulations stipulate that the building  
22 height is measured from the existing grade at the midpoint  
23 of the primary building face, which DCRA indicates is shown  
24 on A0032 as 46 feet 4 inches.

25 The building exceeds the required height when

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1 measured per the newly adopted rules governing grade.  
2 However, there are multiple drawing errors with dimension,  
3 building features and relation to grade, existing site  
4 retaining walls and area ways architecture drawings, as well  
5 as drawing conflicts with the survey information and the  
6 structural drawings. These errors leading to further  
7 problems of interpretation of finished grade in the grade  
8 plane analysis discussed in Item 2 below. This will  
9 highlight five.

10           A: Existing grade measurement is incorrect. The  
11 applicant's drawing do not locate the building height  
12 measuring point of the existing grade, but instead measured  
13 from a point 10 inches higher than recorded by the surveyor  
14 in Exhibit C. This is typical of the types of errors found  
15 in the drawings.

16           B: Areaway measurement on survey and structural  
17 drawings conflict. The zoning administrator says that he  
18 does not refer to the structural drawings for his  
19 interpretation. But Sheet S0011 presents an areaway  
20 different in configuration and construction type than shown  
21 on A0011. The difference is significant as the structural  
22 drawing shows a sunken area of more than 8 feet wide and  
23 projecting 10 feet from the building face versus less than  
24 5 feet on Sheet A0011. This is almost 6 feet into public  
25 space, which is not dimensioned on the architectural sheet.

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1 As such, the lower elevation of the areaway on Sheet S11  
2 should not be consider -- Excuse me -- Should be considered  
3 the adjacent finished grade elevation.

4 Point C: Actual building conditions -- Actual  
5 built condition do not comply with the drawings. More  
6 importantly, the board should take note that the construction  
7 on site as witnessed in this photo is similar to what is  
8 shown on the structural drawing, but does not follow the  
9 approved dimensions as depicted on either sheet A11 or S11.  
10 The areaway as built further expands the dimensions of the  
11 areaway walls in width, length, and height.

12 Here are the measurements of what is actually  
13 built to date. The front yard has been excavated to create  
14 a sunken area that now extends 12 feet from the building  
15 face, 2 foot more than is depicted on the structural drawings  
16 and greater than 7 feet than what is depicted on Sheet A11.  
17 The dimension to the first step of the areaway wall is 5 feet  
18 4, twelve inches greater than what's shown and cited by the  
19 zoning administrator -- shown by the architect, cited by the  
20 administrator. This is well beyond the point of exclusion.

21 So on the screen is the exhibit showing the  
22 various configurations of the areaway on the drawings.

23 MEMBER HART: And which exhibit is this in the BZA  
24 file?

25 MR. RUEDA: We submitted -- I didn't capture that.

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1 MEMBER HART: The reason I'm asking is that when  
2 we're going back because this is -- this particular case is  
3 very particular about specific drawings --

4 MR. RUEDA: Yes.

5 MEMBER HART: It's helpful for us to then be able  
6 to kind of say oh, well this is the one they were looking at.  
7 And this is one that either you supplied or that was supplied  
8 by the applicant. That's what I'm trying to make sure that  
9 we capture.

10 MR. RUEDA: We supplied this last Friday. Yes,  
11 I'm looking for the exhibit.

12 MEMBER HART: I think it's G to be honest.

13 MR. RUEDA: No, it's 32C.

14 FEMALE PARTICIPANT 1: That's how it was put into  
15 the record.

16 MEMBER HART: It's Exhibit 32C if this is the same  
17 drawing I think it is. Now the exhibit that you're showing  
18 right now is something that we just received today.

19 MR. RUEDA: That's correct.

20 MEMBER HART: Okay, but are we not going to see  
21 the previous image that you just pulled it up?

22 MR. RUEDA: It's useful to understand the  
23 differences, but this is more -- This has been simplified to  
24 express the point clearer. I can show both.

25 MEMBER HART: No, no. One is fine. I just --

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1 What I'm trying to get to is that as we're going through  
2 this, so that we're all looking at the same drawings, so when  
3 we're referring to it, it's helpful to be able to say oh,  
4 yes. The drawing that you got today, you know, shows this.  
5 And because we haven't -- I haven't really read it yet, I'm  
6 not exactly sure what it's -- what the difference is between  
7 this and Exhibit 32C that you've already sent to us.

8 MR. RUEDA: So Exhibit C basically shows the many  
9 different varieties of areaway that the drawings present.  
10 It shows the --

11 MEMBER JOHN: Mr. Chairman --

12 MR. RUEDA: -- and it shows the difference with  
13 the -- Sorry.

14 MEMBER JOHN: Can I have a quick point of  
15 clarification? Do these drawings affect the permit as-issued  
16 or the structure as-built?

17 MR. RUEDA: So three of the drawings show the  
18 drawn condition. The bottom right areaway shows the as-build  
19 condition.

20 MEMBER JOHN: And so you're appealing the permit,  
21 not the as-built structure.

22 MR. RUEDA: Well what I guess this point is trying  
23 to make is that not only do the drawings present conflicts,  
24 but the as-built condition presents additional conflicts.  
25 So you don't know ultimately what you're evaluating. And so

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1 there are errors that we're citing having been made in the  
2 approval of the permit. And as represented by the fact that  
3 none of these conditions, whether it's been drawn or built  
4 are compliant with the zoning regulations, especially when  
5 you're talking about the finished grade calculation.

6 MEMBER JOHN: I understand that.

7 MR. RUEDA: And is relevant towards the grade plan  
8 calculation in FAR.

9 MEMBER JOHN: So it would be helpful if you could  
10 distinguish that as you go along and refer to a particular  
11 exhibit.

12 MR. RUEDA: Okay, I will try. Exhibit C shows the  
13 different errors that we've found in the drawings and the  
14 conflicts with the built condition. All of these conditions,  
15 we stipulate are in conflict as approved with a determination  
16 of the FAR for the project. The areaway exclusion from  
17 finished grade is incorrect. The product has been approved  
18 and built as an areaway and stairs that provides indirect  
19 access to the basement level.

20 The zoning administrator testified that he  
21 approved the exclusion of the areaway as the measurement  
22 point for finished grade by using the dimensional information  
23 provided on A11, which shows a dimension projecting from the  
24 face of building less than 5 feet, not including the stairs.  
25 And you can see that in the upper lefthand corner of Exhibit

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1 C.

2 Cross examination by the applicant's attorney  
3 asked whether -- Cross examination by Mr. Sullivan asked  
4 whether the stairs are excluded from consideration of the  
5 projecting areaway wall dimension. There is newly added  
6 language in the regulations for exceptions to the definition  
7 of finished grade. While these were not in effect at the  
8 time of approval, the zoning administrator confirmed that the  
9 recently adopted language codifies his longstanding  
10 interpretations. However, the zoning administrator has not  
11 considered the configuration of the defining areaway walls  
12 not shown on All. Shown in the drawing in the lower  
13 lefthand corner of Exhibit C as a concrete block sunken area  
14 defined by a 12 inch block retaining walls.

15 My new exhibit refers to the next part of my  
16 testimony. The new exclusions to finish grade are only for  
17 areaways that provide direct access to an entrance. The  
18 access to the basement entry does not provide direct as  
19 defined by Merriam Webster, access, because the path of  
20 travels interrupted by a landing and an 90-degree turn that  
21 pushes the limited areaway wall well beyond the 5 foot limit  
22 for exclusion. The exhibit shown is not representative of  
23 the conditions at 1477, but instead depict conceptually why  
24 the zoning administrator has approved direct access versus  
25 indirect access in the exceptions to finished grade.

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1 And if you look at the drawing, I think it clearly shows that  
2 the limiting wall and the indirect access where the turn in  
3 the stairs is, pushes the projection well beyond that which  
4 can be excluded.

5 As such, the approved winding stair to the  
6 basement entry disallows the finished grade to be considered  
7 outside of the sunken area. The exhibit depicts the  
8 measuring point for finished grade with an A and an B.  
9 Indirect access is B and direct access as shown is A. A is  
10 shown outside of the areaway and B is shown within the  
11 areaway.

12 The zoning administrator's language is newly  
13 adopted and rife with a specific intent of its words. The  
14 board should consider sending precedent before the words have  
15 even had time to be implemented. Furthermore, these new  
16 zoning exceptions conflict with how areaway projections in  
17 the public space are measured, which include the associated  
18 stairs. Consider that the applicant's original documents  
19 called out this areaway work as existing to avoid scrutiny  
20 by DCRA. And that as-built, the areaway violates the allowed  
21 projection of public space for 12A DCMR Section 3202.9.

22 E: The great representations of the rear are  
23 incorrect. Similar drawing errors remain with the great  
24 representations at the rear of the building. And this area  
25 has yet to be completed. Sheet A32 shows another areaway

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1 back in used for emergency escape that projects 3 feet  
2 inclusive of the stairs. Finished grade is therefore  
3 dimensions 4 feet 5 from the ground floor to the face of the  
4 areaway wall. The top of this areaway wall is drawn much  
5 higher than the level as drawn -- The top of the areaway wall  
6 as drawn will be much higher than the level of the alley  
7 behind, a 16 inch difference confirmed by the survey. This  
8 translates to a parking grading of almost of 7 percent, far  
9 exceeding the 1 percent shown and that which is allowed by  
10 code.

11 CHAIR HILL: Mr. Rueda, I'm sorry, Board member  
12 White has a question for you.

13 MR. RUEDA: Yes?

14 MEMBER WHITE: Just so I'm clear and just make  
15 sure I'm reading these graphs correctly. So in looking at  
16 the lower level of the property, you're not defining it as  
17 a cellar obviously. So how many feet are you saying that we  
18 should be looking at the measurements for the cellar? Is it  
19 less than 5? Is it more than 5 feet?

20 MR. RUEDA: So are you referring to the areaway  
21 or the dimension of the ground floor to the grade?

22 MEMBER WHITE: You can give me your explanation  
23 for both --

24 MR. RUEDA: So the next section talks about the  
25 grade plane, which says that majority of the lower level

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1 should be considered basement. There's a small portion at  
2 the rear that actually is still considered cellar. But  
3 because the grade plane measurement establishes finished  
4 grade at the front and back of the project, you then  
5 establish the portion of the floor area greater than 6 feet  
6 to the floor above.

7 MEMBER WHITE: You think it's greater than 6 feet?

8 MR. RUEDA: I think that if you refer to Exhibit  
9 A, submitted by the ANC, we show as a blue line the grade  
10 plane corrected for --

11 CHAIR HILL: Exhibit A -- I'm sorry, are you  
12 talking about 32A?

13 MR. RUEDA: Yes, sir.

14 CHAIR HILL: Okay.

15 MR. RUEDA: And we did add the additional drawings  
16 you requested in Exhibit A.

17 So in this section, we depict where cellar is  
18 measured and where basement is measured. And the bottom line  
19 here is that .55 FAR was excluded from the project and should  
20 be included in the project, which would add to the 1.72 that  
21 the administrator had cited. And therefore you would be over  
22 the limit of 1.8 if you just considered the area at the  
23 basement alone.

24 CHAIR HILL: All right. Mr. Rueda, I'm just  
25 trying to figure out how much more time you need for your

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1 rebuttal.

2 MR. RUEDA: Well, I can skip over this section if  
3 you prefer, having read it in the rebuttal. I can move to  
4 the section on --

5 CHAIR HILL: Yes, sure. Please do.

6 MR. RUEDA: The project as approved exceeds the  
7 gross floor area by excluding the top story from the  
8 calculation of GFA. The third point of rebuttal focuses on  
9 DCRA's pre-hearing position. Excluding the top story is a  
10 level dedicated to storage. And testimony from the applicant  
11 and the zoning administrator that incorrectly refer to the  
12 top story as an attic. These casual references and rationale  
13 ignore the regulations and seek to confirm the exclusion of  
14 floor area from the prescribed limits of the FAR  
15 calculations.

16 These fail for six important reasons, which  
17 document that storage is not a term excluded from GFA. That  
18 the space does not meet the definition of an attic. And as  
19 if that were not enough, that the top story as approved, does  
20 not provide structural head room less than 6 foot 6 inches.  
21 The definition does not exclude floor area used for storage.  
22 The top story is one of several floors of the building, which  
23 the gross horizontal area is required to be included in the  
24 calculation of allowable gross floor area.

25 DCRA claimed at least initially that this area's

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1 intended use for storage excluded it from GFA. However there  
2 is no exception to zoning regulations that excludes a storage  
3 area from GFA. Recognizing this, DCRA contended that the top  
4 floor could be excluded from GFA because the revised plan  
5 depicts a storage area and because the storage area does not  
6 fall into any other category excluded in the GFA definition.  
7 This is an evident absurdity since it would mean that any  
8 specific type of floor area category, not enumerated in the  
9 general definition; bedrooms, kitchens, bathrooms can be  
10 excluded from GFA.

11           Structural headroom exclusion limited to attics  
12 and mechanical equipment space. As an alternative, DCRA  
13 argued in the zoning administrator's testimony that the  
14 regulations say that any floor that has structural headroom  
15 of less than 6 foot 6 does not count against GFA. Or at any  
16 rate, that's the way the zoning administrator has interpreted  
17 them. And that the top floor area of this building is  
18 therefore excluded. The regulations simply do not say that.  
19 There is no general exception in definition of GFA that  
20 excludes all areas having structural headroom. The only  
21 areas excluded based on structural headroom are floor area  
22 space used for mechanical equipment and attics.

23           The apparent position here is that the zoning  
24 administrator may read such a general exception because of  
25 two exceptions enumerated -- because of the two exceptions

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1 enumerated. This is without foundation in the regulations.  
2 If the drafters of this provision had wished to include other  
3 exceptions based on structural headroom, they could have done  
4 so and they did not. Thus in order to be excluded from GFA,  
5 the top floor must fall within one of the definitions only  
6 two exclusions based on having structural headroom of less  
7 than 6 foot 6. Namely floor space used for mechanical  
8 equipment and attics.

9 Point C: The top story is not floor space used  
10 for mechanical equipment. While DCRA and the applicant have  
11 not claimed this, they rather assert that it should be used  
12 for storage except for a room less than 75 square feet, which  
13 if they exclude it, would not bring the project total within  
14 the allowable limit.

15 CHAIR HILL: Mr. Rueda, I'm just going --I'm just  
16 trying to figure this out just a little bit. I'm not trying  
17 to disrupt your flow.

18 MR. RUEDA: That's fine.

19 CHAIR HILL: I mean I see that you're reading from  
20 your rebuttal.

21 MR. RUEDA: I am.

22 CHAIR HILL: I mean is your plan just to read the  
23 whole rebuttal?

24 MR. RUEDA: Well I have altered parts of my  
25 rebuttal.

1 CHAIR HILL: Okay. The reason why I'm asking is  
2 -- and since this usually isn't the way we go meaning we  
3 heard everything on the 25th --

4 MR. RUEDA: Okay.

5 CHAIR HILL: -- and then normally since we're  
6 hearing everything at the same time, it's very easy for the  
7 board to understand what is actually rebuttal and what could  
8 be new testimony or new things that are coming forward.  
9 Because rebuttal really is just you're there to refute the  
10 things that was presented --

11 MR. RUEDA: That's right.

12 CHAIR HILL: -- in front of -- So probably, like  
13 I went back and I did watch this again --

14 MR. RUEDA: Yes.

15 CHAIR HILL: -- and as we're going through this,  
16 I can also tell I'm going to have to watch it again.

17 MR. RUEDA: Okay.

18 CHAIR HILL: And so, I guess you don't need to  
19 read the whole thing. But what I'm going to be doing, at  
20 least myself, when we're watching again, is I'm going to be  
21 listening for the things that you're actually refuting from  
22 the testimony that was prior given. Right?

23 MR. RUEDA: Okay.

24 CHAIR HILL: And what's probably going to end up  
25 happening as we continue going through this is that anything

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1 new that you're putting forward right now in the cross,  
2 they're going to cross whatever might be new. And so we're  
3 going to work through this and we're going to do this as  
4 effectively as possible. I'm kind of asking you to be as  
5 efficient as possible with this portion of it. Because  
6 what's going to happen next again is that DCRA and the  
7 building owner are going to cross anything that might be new  
8 that you're bringing into. And since probably we're not  
9 going to decide this today, everyone's going to have to go  
10 back and watch the whole thing again. So if you would, try  
11 to make this as concise as possible in terms of rebuttal to  
12 the items that I just mentioned.

13 MR. RUEDA: So I'd like to make a quick statement  
14 then because everything that I've -- Part of the reason that  
15 we included the rebuttal as part of the record was to show  
16 that we do in fact rebut portions of the testimony. And  
17 that's why they're cited as footnotes in the rebuttal. So  
18 effectively, you know playing our rebuttal hand, given them  
19 our rebuttal, you know, to work on. But at the same time to  
20 allow you the time to look at the references that we make.  
21 And to point out yes, that we are in fact rebutting what has  
22 been stated. And I think there's multiple citations for  
23 where the architect spoke or the --

24 CHAIR HILL: Okay, that's fine. I'm just saying  
25 well then if you could still make it as concise as possible

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1 then.

2 MR. RUEDA: So my question is --

3 CHAIR HILL: Sure.

4 MR. RUEDA: -- I can certainly, you know, abridge  
5 the rebuttal to avoid talking about the building code  
6 sections, which we think are just as important obviously in  
7 terms of why the permit shouldn't have been issued. But as  
8 far as what this project is really about, which is the  
9 approval of FAR well beyond the limit of 1.8, you know, we  
10 have to at least present the rebuttal to why is this areaway  
11 being excluded from finished grade when as the zoning  
12 administrator's words state you know plainly --

13 CHAIR HILL: I'm not -- Mr. Rueda, I'm not trying  
14 to again disrupt the flow that you're trying to go through.  
15 I guess what I'm trying to clarify is that --

16 MR. RUEDA: I'm taking too long. I understand.

17 CHAIR HILL: No, no, no. But not even that, I  
18 mean normally, you know, the whole hearing for us takes an  
19 hour. Right? So rebuttal would have only been like ten  
20 minutes or 15 minutes at most. And so basically it seems as  
21 though you're kind of representing a lot of things, even  
22 though you're putting in a rebuttal, but since you had so  
23 much time, since we were away, to write everything and cite  
24 everything back, I mean we will go back and read this again.  
25 So if you can maybe just highlight or I don't know what to

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1 say now after you've presented -- you know, made your  
2 comment. Or you can just go ahead and read the whole thing  
3 again --

4 MR. RUEDA: No, I understand.

5 CHAIR HILL: -- and then we can just go ahead --  
6 You know, if you can hit the highlights of it. Because  
7 again, we're now just going to go through cross in a minute.  
8 And we're probably going to have questions from the board  
9 because since it was so long ago, we will have questions  
10 again just to try to again reacclimate ourselves to what had  
11 happened before. And again, I think the only way that we as  
12 a board are going to be able to do this -- And I did again  
13 watch what we did do in July, is still since this is going  
14 to be extensive part of the hearing, we're probably going to  
15 have to watch that, as well as this again to get to the point  
16 where we can at least get to a deliberation.

17 So that all being said, I'm not trying to stop  
18 you. I'm just trying -- if you hit the high notes, then what  
19 you -- Because if you hit the high notes, we'll be able to  
20 at least focus on those when we're looking at these things  
21 again.

22 MR. RUEDA: I appreciate exactly what you're  
23 saying. The high notes are pretty simple here. DCRA  
24 approved a project not once, but twice that exceeds the FAR  
25 limits. Both times, the drawing errors and interpretations

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1 of the zoning administrator led to the approval of 0.9  
2 additional FAR that shouldn't have been allowed at the  
3 basement level and at the top story. Which they tried to  
4 make the statement that it is an attic. And the highlight  
5 is that it is not an attic. It is not an attic because it's  
6 not defined by Merriam Webster. It doesn't fall into the  
7 category of an attic when you read the definition provided  
8 by Merriam Webster, which I won't read to you.

9           The board itself in previous cases, or at least  
10 in the case that we cite at 17109, which I believe was the  
11 Belmont Tower. The board concluded that in order to be  
12 considered immediately below the roof, which is part of the  
13 definition of an attic, the space in question cannot have a  
14 ceiling since in that case, the ceiling was separated from  
15 the roof. In the present case, the project architect  
16 testified that the top story has a wallboard ceiling. And  
17 the zoning administrator noted it in his testimony. And for  
18 this reason alone, does not qualify as an attic.

19           The ceiling separates the top story from the roof  
20 framing. It is not within either wholly or partially within  
21 the roof framing. So additionally as required by the  
22 definition of an attic, it is not an attic. The zoning  
23 administrator himself pointed to the dimension from the  
24 finished floor to the ceiling assembly above and in response  
25 to Mr. Boese question as to whether the permit documents --

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1 as to why the permit documents do not label the area as an  
2 attic, the architect replied that he was happy to make that  
3 change. That it was just a matter of semantics.

4           If I need to go back, because I'm trying to  
5 abridge this to hit the highlights -- But the bottom line  
6 here is that the conclusions that led to the exclusion of  
7 this top story from FAR rely on it being called an attic with  
8 structural headroom of 6 foot 6 or less. The drawings don't  
9 show structural headroom of 6 foot 6 or less. The  
10 administrator himself said that the ceiling dimension -- the  
11 dimension to the ceiling is 6 foot 5. And that is why he is  
12 discounted it as an attic from the FAR.

13           CHAIR HILL: Okay, okay.

14           MR. RUEDA: So you can't point to a ceiling --  
15 Sorry.

16           CHAIR HILL: Okay. That's all right, Mr. Rueda.  
17 I mean I'm just trying to keep a little bit of track of time.  
18 So we've gone 25 minutes okay, on the rebuttal. Okay? And  
19 so I'm going to kind of turn it over to cross here because  
20 we're going to get to questions again from the board in terms  
21 of what they might have to ask in order so that they can get  
22 further clarity to try to figure out what their decision is.

23           And so from the rebuttal that was presented, and  
24 this again is a little bit for Ms. Lord-Sorensen, as well as  
25 Mr. Sullivan. I guess this is a little bit again out of

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1 order in terms of if we had all done this together at one  
2 time, it would be fresh and I would understand it. So  
3 therefore there's going to be a little latitude that we're  
4 going to provide on both your part and the applicant's part  
5 to just try to you know, help us remember things. Okay?

6           However, what's supposed to happen now is cross  
7 on the rebuttal. Okay? So Ms. Sorensen -- and then the  
8 board's going to have some questions I'm sure of everybody.  
9 So once again, they can remind themselves of what happened  
10 so that we can go back and take a look at this again. But  
11 Ms. Sorensen, do you -- Ms. Lord-Sorensen, do you have any  
12 questions on rebuttal?

13           MS. LORD-SORENSEN: No. I do not, Mr. Chairman.  
14 I believe that the agency, specifically the zoning  
15 administrator, already addressed these issues on July 25th.  
16 Nothing new has come out.

17           CHAIR HILL: Okay. Mr. Sullivan?

18           MR. SULLIVAN: No, we have no questions.

19           CHAIR HILL: Okay, all right. So that didn't  
20 necessarily help me. Okay.

21           MEMBER HART: Actually I do have a question, Mr.  
22 Chairman.

23           CHAIR HILL: Go ahead.

24           MEMBER HART: So what we have is the appellant --  
25 and I think I have this down now. The appellant is making

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1 kind of three arguments. One is that the attic is not an  
2 attic. It actually should be -- actually one larger  
3 conversation really is about -- or disagreement is about  
4 whether or not the FAR was calculated correctly. And in the  
5 FAR, there were several different places that the appellant  
6 is actually talking about. One is that the attic should be  
7 included in the FAR because it's actually not an attic  
8 because of how it is constructed. And that it should be  
9 identified as part of the gross floor area.

10 One other piece is about the areaway has not been  
11 correctly identified because of the stairs leading down to  
12 it -- or the access to it is actually -- indirect access as  
13 opposed to direct access which would then make the areaway  
14 and I guess in the basement included in FAR.

15 And then there's the issue about the ground plane.  
16 And so whether or not the ground plane is -- where the ground  
17 plane is. Because it seems like there is some difference of  
18 in some of the -- difference of opinion of where that begins.  
19 And some of the drawings are incorrect, or at least they  
20 incorrectly show -- They don't consistently show whether that  
21 ground plane is, so then it makes it hard to determine, you  
22 know, basement or cellar and all this other stuff.

23 So I think I have all of the pieces, Mr. Rueda.  
24 Is there another piece that I'm missing from that?

25 MR. RUEDA: I mean as far as the highlights go,

1 you're correct.

2 MR. SULLIVAN: Okay. And I know there's a lot  
3 that goes along with that. I was just trying to make sure  
4 I had all the pieces. And the reason that I was asking you  
5 about the drawings is it's helpful for us to then be able to  
6 kind of see the drawings and say okay, I know where this fits  
7 into that narrative. The narrative here, I think is kind of  
8 key. And that is helpful to be able then to wrap into what  
9 the appellant, you all believe has actually transpired. Or  
10 at least your version of where this -- how we got to where  
11 we are.

12 And I think I understand that there are a lot of  
13 moving pieces to this. So I do appreciate the written  
14 rebuttal that you provided because it is helpful to be able  
15 to go through that, but it is a lot to tease out. And so  
16 that's kind of where we are. And that's what the chairman  
17 was talking about a little earlier is that as we're going  
18 through this, okay so what are these pieces and how are we  
19 supposed to be kind of looking at all this?

20 But the question about if I got all of it was  
21 really the question I was trying to kind of get to.

22 MR. RUEDA: I would say yes. And the only portion  
23 or rebuttal I think that speaks to your decision is that the  
24 board has already ruled on how you measure, you know,  
25 structural headroom. That was sort of the point that I think

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1 got minimized maybe in trying to consolidate my rebuttal.

2 MR. SULLIVAN: Thank you.

3 CHAIR HILL: Okay. So and absolutely, please  
4 board members if you have any questions, go ahead.

5 MEMBER JOHN: So -- and this is for the architect.  
6 So can you show me with a cursor -- I'm looking at that  
7 exhibit on the screen, where in your view that the existing  
8 grade is at the rear of the house.

9 MEMBER HART: And this is for Exhibit 32A that  
10 we're looking at.

11 MEMBER JOHN: Right.

12 MR. RUEDA: Which architect?

13 MEMBER JOHN: Where do you contend -- I'm sorry,  
14 the architect for the appellant. I don't want to  
15 mispronounce your name, Rueda.

16 MR. RUEDA: That's perfect. Thank you.

17 MEMBER JOHN: So if you could just use your cursor  
18 to show me where you see the different distinctions and where  
19 the measurements should be taken.

20 MR. RUEDA: So the section seeks to represent in  
21 green, those points that were taken from the surveyor's  
22 information. And if you use the dimension made by the  
23 applicant's architect, there's a 4 foot 5 dimension that I've  
24 highlighted, right? That's the top of the wall of the rear  
25 areaway. If you actually look at the survey, which was

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1 included previously as Exhibit C, there's a difference of 16  
2 inches from the top of that wall to the alley. That's  
3 recordable and measurable under the survey.

4 CHAIR HILL: Can you use your cursor? I don't  
5 know if you can -- Okay, great. Thank you.

6 MR. RUEDA: So that's the alley --

7 CHAIR HILL: The hand, wherever the hand is.  
8 Okay.

9 MR. RUEDA: Yes. Talk to the hand. So the hand  
10 here shows the alley elevation at 196.7. The top of the  
11 wall's dimension from the finished floor of the first floor,  
12 which is recorded at 202.56. There's no mystery to what that  
13 dimension is. It's 16 inches lower than what's shown. So  
14 there's an actual slope if it gets built this way. Excuse  
15 me. So there's an actual difference that you can record if  
16 it's built this way, that would provoke a 7 percent gradient  
17 to that parking area.

18 MEMBER JOHN: So I'm a little confused. Why are  
19 we going to the level of the parking level to determine where  
20 the level is for calculating --

21 MR. RUEDA: Sure. So the blue line represents the  
22 grade plane calculation, which is shown in front of the  
23 areaway wall as is required by the exception. And you  
24 connect the front finished grade at the areaway level for the  
25 reasons that I discussed because the areaway as depicted and

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1 as built does not provide direct access. So it doesn't  
2 qualify for the exception. So the grade is measured at the  
3 areaway level. Connecting those two points establishes the  
4 grade plane. That grade plane, if you see the 6 foot  
5 dimension, that's the dimension for the amount of floor area  
6 that would be assignable to FAR as basement. And the portion  
7 on the other side of the blue line that says cellar, that's  
8 the portion that's actually measured as cellar under the  
9 grade plane calculation as described in B304.5.

10 So the exhibit really tries to capture the  
11 differences between finished grade, existing grade, the grade  
12 plane, and the amount of area that's been added on top of the  
13 project that should not have been allowed.

14 MEMBER HART: And if I could interject one  
15 question here. And what you're also saying -- what you're  
16 also saying is that these are your -- This drawing, which is  
17 Exhibit 32(a) and I don't know what page it is on it, A003,  
18 this drawing is a drawing that you used to -- that you've  
19 created using the information that was provided in the  
20 drawing set that the applicant gave to the -- gave to DCRA  
21 for its -- not the applicant, the property owner gave to DCRA  
22 for them to review. And so this is your interpretation of  
23 the regulations to make the point that -- to make your point  
24 that you believe that the FAR was not correctly --

25 MR. RUEDA: Calculated.

1 MEMBER HART: -- determined, calculated.

2 MR. RUEDA: Absolutely true.

3 MEMBER HART: Okay. So I just want to make sure  
4 that, that's -- Because it would be different if the -- if  
5 the applicant had brought in their drawings and said okay,  
6 well this is where we actually did it because that may be a  
7 different -- They look at it differently, the applicant. The  
8 owner of the property, they look at this differently. And  
9 they have a different interpretation of what that is.

10 MR. RUEDA: Part of the -- Part of the point that  
11 I'm trying to make to the board obviously is that the zoning  
12 administrator relies on the information provided by the  
13 applicant. The drawings really don't disclose properly the  
14 measurements. They don't represent the zoning regulations  
15 that led to their own determination. Instead they rely on  
16 the zoning administrator to make further determination.

17 So if they had represented the areaway as they  
18 were intending to build it -- If they had actually drawn the  
19 grade plane, you know, using B304.5, then it would lead to  
20 the markups that I have included here. And the conclusions  
21 obviously that, that area, the majority of which should have  
22 been counted towards FAR.

23 MEMBER HART: I'm not sure about this question,  
24 but I'm going to ask it anyway.

25 MR. RUEDA: Sure.

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1           MEMBER HART:     So can you pull up what was  
2 approved, the drawings that were approved by the zoning  
3 administrator? And maybe if we can go from there, we can see  
4 how we can get to your conclusions.

5           MR. RUEDA:     The drawing that you see was approved.  
6 It's actually Revision 8. Revision 10 was part of the final  
7 approval set, which didn't alter any of the information that  
8 you see here. So the colored information that you see is all  
9 my interpretation. The black and white information has  
10 actually been approved. So if you look at the front for  
11 example, I don't want to minimize the point of the attic here  
12 by focusing on this lower level --

13          CHAIR HILL:     That's okay, Mr. Rueda. Just give  
14 us a second here.

15          MR. RUEDA:     I tried to code the information by  
16 having, you know, the green information represent the  
17 existing conditions. And the blue information represent the  
18 calculation of the grade plane.

19          CHAIR HILL:     Ms. John, are you good?

20          MEMBER JOHN:    Yes.

21          CHAIR HILL:     Okay. Well I mean you're going to  
22 get a chance to watch it all again.

23          MEMBER JOHN:    Yes.

24          CHAIR HILL:     You know? Yes, maybe ten times or  
25 so. Okay, so you got your question. All right, based upon

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1 the further discussion, does the board have any questions for  
2 DCRA or the applicant?

3 MEMBER WHITE: My only question would be for Ms.  
4 Lord-Sorensen or Mr. LeGrant would be to respond to what they  
5 just said with respect to that lower level in terms of their  
6 interpretation of the measurements for that area, that it  
7 should have been incorporated as part of the FAR.

8 MS. LORD-SORENSEN: Can I just get the laptop?  
9 I just want to pull up our plans.

10 MEMBER WHITE: I'm just trying to sort of  
11 incorporate both arguments so I can kind of make a decision  
12 in terms of what makes the most sense.

13 MS. LORD-SORENSEN: Okay. I'd like to direct the  
14 board's attention to BZA Exhibit 26(a). DCRA had submitted  
15 architectural plan A0032, which I have up on the screen right  
16 now. So based on the zoning administrator's testimony --

17 MEMBER HART: And just for one point of  
18 clarification --

19 MS. LORD-SORENSEN: Sure.

20 MEMBER HART: This is Exhibit 22(c) in the --

21 MS. LORD-SORENSEN: I believe it's 26(a).

22 MEMBER HART: Twenty-six? Okay.

23 MS. LORD-SORENSEN: 26(a).

24 MEMBER HART: Okay. Well it's --

25 MS. LORD-SORENSEN: Exhibit --

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1           MEMBER HART: It must be several times because I'm  
2 looking at it as well. But that's fine, you can go ahead.

3           MS. LORD-SORENSEN: Okay. So in response to Board  
4 Member White's question, how did we calculate the lowest  
5 area? So what we did here, we looked at the grade which is  
6 right here. And then we -- because this is a cross section,  
7 we just followed the level of grade, which is depicted by  
8 this red line straight across. And then we measured from the  
9 point right here to the floor above. And I will zoom in.

10           And when you measure the distance between the  
11 grade to the floor above, it is 4 feet 7 inches, which is  
12 less than 6 inches. If this dimension -- I'm sorry, 6 feet.  
13 If it was more than 6 feet, than this lowest level would have  
14 been considered a basement. However, this difference of 4  
15 feet 7 inches is less than 6 feet. Therefore this lower  
16 level is considered a cellar and was not factored into the  
17 FAR.

18           CHAIR HILL: Okay. And Mr. Miller, I forget if  
19 there was something -- I thought you had asked for the -- And  
20 I'm not putting you on the spot because I can't remember what  
21 it was. It was like there was supporting documentation, I  
22 thought about -- something about the fourth floor.

23           ZC VICE CHAIR MILLER: Yes, the building code.  
24 The building code modification, which they have provided.

25           CHAIR HILL: Okay. Did you get the information

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1 that you wanted?

2 ZC VICE CHAIR MILLER: Yes. But I have questions

3 --

4 CHAIR HILL: Oh, sure. Great. Okay.

5 ZC VICE CHAIR MILLER: -- also. A couple --

6 MR. RUEDA: Did you get the information that we  
7 provided for that too?

8 ZC VICE CHAIR MILLER: Yes. I was wondering why  
9 I saw it twice. I thought I had printed it out twice. Okay.  
10 No, the question -- I wanted to focus on the upper -- the  
11 upper story -- the upper area. Is DCRA maintaining that this  
12 is a storage area or an attic. Or it's an attic with storage  
13 in it? Is that -- I mean there have been different terms  
14 used throughout this whole appeal. And I originally think  
15 it was referred to as a mezzanine. But that was changed, I  
16 think, pursuant to DCRA's guidance.

17 Can you respond -- Let me put it this way. Why  
18 don't you respond again to the points made about -- by the  
19 appellant about why they're saying this can't be considered  
20 an attic because of the way that it doesn't go immediately  
21 to the roof. There's a ceiling there. Let's maybe start  
22 with that -- just that one discrete question. That --

23 MR. RUEDA: Sure.

24 ZC VICE CHAIR MILLER: -- why they've made the  
25 argument that it can't be an attic because of the definition

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1 in Webster's that says it's immediately under the roofline.  
2 And we've established through your testimony and others, that  
3 there is a ceiling.

4 MR. RUEDA: Okay. So this upper level is not  
5 considered storage, nor is it considered gross floor area  
6 because of the critical aspect of the definition of gross  
7 floor area. Which excludes and it mentions spaces including  
8 attics that have a clearance of less than 6 foot 6 inches.  
9 In this case, the project displays a -- and whether you call  
10 it an attic or a storage area, I don't think is that critical  
11 to the analysis of whether it's counted as FAR or not.  
12 What's critical is does it have the minimum clearance to be  
13 a usable space, which the zoning regulations set forth is 6  
14 foot 6 or greater. Because it is less than that, that is the  
15 basis of my office's conclusion that it's not included in the  
16 FAR.

17 ZC VICE CHAIR MILLER: I mean I realize Mr.  
18 Sullivan's point from the previous hearing seven weeks ago  
19 that the outside of the -- the appearance of the outside of  
20 this home is permitted under the -- is not changed -- would  
21 not be changed because of what's going on inside, that it  
22 would look the same. But it just seems that there have been  
23 a lot of adjustments to try to make this fit -- as not  
24 counting as FAR including the building code modification that  
25 allowed the 6 foot 5, when normally 7 feet, I think would

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1 have been required under the building code. It just seems  
2 that a lot of adjustments have been made to fit this into the  
3 zoning category to exclude FAR when by all, not by all, but  
4 that there seems to be a lot of evidence that this is going  
5 to be occupiable space between the windows, the finished  
6 floors, the balcony. Who has a balcony next to a storage --  
7 or an attic? That's just weird.

8           So I realize that the -- I realize the arguments  
9 that are being made on both sides. And I realize questions  
10 have been raised without the grade plane. And frankly, I  
11 think I'm not persuaded by the appellant's arguments on the  
12 grade plane. But I'm somewhat persuaded on the whole upper  
13 floor area maybe should have been counted. If it was  
14 counted, it would be 0.39 FAR. Is that what's being excluded  
15 on the upper level?

16           MR. RUEDA: 650 square feet, which is 0.39.

17           ZC VICE CHAIR MILLER: Right. So that would bring  
18 -- Just looking at that alone, it would bring it up above the  
19 1.8 FAR limit. Is that correct?

20           MR. LEGRANT: If you counted this upper level,  
21 which is as FAR gross floor area that contributes to the FAR  
22 calculation, it would exceed the FAR maximum limitation.

23           ZC VICE CHAIR MILLER: And what's the purpose of  
24 the maximum FAR limitation in this RA2 zone?

25           MR. LEGRANT: Well I've always --

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1 ZC VICE CHAIR MILLER: I know I've --

2 MR. LEGRANT: Yes. The zoning commission sets  
3 forth maximum FAR limits in the RA2 zone and other zones to  
4 limit the use and the extent of the density that is allowable  
5 in a particular lot because it's related to the lot size.

6 ZC VICE CHAIR MILLER: Did the appellant want to  
7 say something on that?

8 MR. RUEDA: I think it also controls the volume  
9 of buildings, if I'm not mistaken.

10 ZC VICE CHAIR MILLER: One other question.  
11 Apparently 75 square feet is being used on that -- I think  
12 it's our reference that there is a room up there less than  
13 75 square feet that is being permitted. I guess I saw that  
14 in the appellant's rebuttal -- or referenced that on the  
15 appellant's rebuttal statement. So I wanted to find out if  
16 that is the case in terms of the permitted plans.

17 MR. LEGRANT: The intervener may be able to speak  
18 to that more directly while I take up the plans.

19 ZC VICE CHAIR MILLER: Okay.

20 MR. TRACZ: I believe we removed the utility room  
21 that was up there.

22 ZC VICE CHAIR MILLER: That was the --

23 MR. TRACZ: Yes, the washer and dryer.

24 ZC VICE CHAIR MILLER: Oh, that was the utility  
25 room.

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1 MR. TRACZ: Correct.

2 ZC VICE CHAIR MILLER: I see. So there is no --  
3 While you're there, you're saying there is no intent to use  
4 that upper level for occupiable space. Is that your  
5 position?

6 MR. TRACZ: That's my client's position, yes.

7 ZC VICE CHAIR MILLER: Yes. Okay. All right,  
8 thank you.

9 CHAIR HILL: Okay. Anybody else? Okay, I've got  
10 a quick question. So after Mr. Miller had his -- So as far  
11 as -- And this is for the zoning administrator -- Again, if  
12 the grade -- if we go with again what you had established as  
13 the permitted grade, the height of the building is a matter  
14 of right. Correct?

15 MR. LEGRANT: Yes. In the RA2 district, there is  
16 a 50 foot height limit. There is no limit on the number of  
17 stories. And I believe the drawings show a 49 foot and 11.5  
18 inch tall building.

19 CHAIR HILL: Okay. So commissioner -- Mr.  
20 Commissioner, I do have a question for you. I mean, you  
21 know, we are -- And we all understand -- Well at least I  
22 think there's a chance we all understand just exactly what  
23 are the issues that are going forth in terms of this  
24 particular property. So the ANC however seems to be -- would  
25 be most concerned, I guess as you have brought up -- I guess

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1 it's more of a density issue that you're concerned about.  
2 And that this would now start to become something that would  
3 continue on down the row or would also be things that other  
4 people would now continue to copy.

5 MR. BOESE: Precisely. So a couple of our  
6 concerns would be there's a reason for the FAR because it  
7 does relate to how large the lot size is. And clearly if you  
8 have more land in a zone that allows more density and you  
9 build that density, you also can meet the off street parking  
10 requirements and things like that. So even though that's  
11 been met, we fully know that in this particular area,  
12 parking's tight. People seem to expect it. We have to  
13 respect the neighbors who have been there for decades and not  
14 just build for neighbors who don't live here yet. So that's  
15 an issue.

16 But also in particular, the way this measurement  
17 has been miscalculated is that it's creating --

18 CHAIR HILL: Well how you believe it's being  
19 miscalculated.

20 MR. BOESE: How I believe it's been miscalculated.

21 CHAIR HILL: How you believe it's been  
22 miscalculated.

23 MR. BOESE: But we think that --

24 CHAIR HILL: And how you believe it's been  
25 miscalculated isn't pretty much -- you know, I'm just saying,

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1 we're talking like a foot in terms of like the overall height  
2 of the building one way or the other. We're really talking  
3 about, you know --

4 MR. BOESE: But again, I know --

5 CHAIR HILL: -- it's the density issue. That's  
6 all I'm trying to get at.

7 MR. BOESE: Exactly.

8 CHAIR HILL: Right. It's the density issue.

9 MR. BOESE: And I fully am well aware that at a  
10 zoning commission hearing, I don't talk about aesthetics.  
11 That's HPO. So yes, this isn't the height of the building.  
12 This isn't how beautiful the building is. This is the  
13 density.

14 CHAIR HILL: Okay, that's -- I'm just trying to  
15 get an understanding of what the ANC --

16 MR. BOESE: And this seems to be a loophole around  
17 that density that can be replicated in any zone if it's  
18 simply a matter of furring a ceiling down to slightly lower  
19 than what's allowed. I think that's a slippery slope that  
20 we really don't need to embrace.

21 CHAIR HILL: Okay. Well again what my clarity for  
22 asking you again was because you guys are the ones bringing  
23 the appeal. Right? Is that, you know, you're obviously not  
24 spending all this time because you're concerned about 1 foot  
25 in terms of like how high this building is or not. Okay?

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1 It's your concern about the amount of people that could be  
2 living there, as well as how this might repeat. Okay? And  
3 so I'm just trying to understand -- And our goal -- or not  
4 goal, I mean what we're tasked to do is determine whether or  
5 not the zoning administrator had done what he's supposed to  
6 do in terms of how he's applying the regulations. So that's  
7 just what I'm trying to understand.

8 MR. BOESE: Yes.

9 CHAIR HILL: So, okay. That's all.

10 MR. BOESE: Well and very briefly. I mean for us,  
11 it's very important too that if there's an effort to get a  
12 little bit more than zoning allows, we do prefer that it go  
13 through the ANC and public process. We do prefer that the  
14 neighbors have a say in it. And as you are well aware, we  
15 have approved many BZA cases because we do not see them as  
16 having a severe negative impact on the community. So we're  
17 not against density, but we are against getting around the  
18 process that's in place to see if that density is  
19 appropriate, you know?

20 CHAIR HILL: Yes. And I guess, you know that will  
21 be the discussion that we have when we eventually get to  
22 deliberations. I mean, again for me, again the issue that  
23 I'm having is if the envelope of the building is the envelope  
24 of the building, then you're kind of determining what people  
25 do with the inside of their envelope of their building. And

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1 so I'm just kind of struggling with that myself, okay? Just  
2 to let you know where I am, right? I mean I understand what  
3 the ANC's position is or why you guys brought this forward.  
4 But then what I'm just trying to figure out is, you know, the  
5 envelope's the envelope. That's what's going to happen. Now  
6 I'm kind of determining what happens inside that envelope.  
7 And so -- It's okay. We don't have to go back and forth on  
8 it. I just had a quick question as to why you brought it  
9 here and I understand why you brought it here. So that's  
10 all.

11 MR. BOESE: Okay.

12 CHAIR HILL: Thanks. Mr. Rueda, it was just a  
13 question for the ANC. They're the ones that are coming here.  
14 Because if they didn't come here, we wouldn't be here.  
15 Right? So okay, all right. Anybody else? Okay. So I'm  
16 going to start with just some conclusions. And we're just  
17 going to do a pretty brief conclusion, like everybody's going  
18 to get -- We'll give, you know three minutes, three minutes,  
19 and five minutes. Okay? Just in terms of like, just  
20 concluding here. So if we could start with DCRA, if we could  
21 put three minutes on the clock.

22 MR. SULLIVAN: Mr. Chair --

23 CHAIR HILL: Yes? Sure.

24 MR. SULLIVAN: -- is the order -- I believe the  
25 order in the zoning regulations is in this direction. The

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1 appellant first.

2 CHAIR HILL: The appellant first and then so OAG  
3 -- The order in terms of who goes first and last -- Well  
4 usually I thought the conclusion, the only person that got  
5 the conclusion was the appellant. And so I have to look.

6 MR. SULLIVAN: Sir, that's not true.

7 CHAIR HILL: Do you know? Okay, you don't say not  
8 true. It's inaccurate. We'll go with inaccurate. Right,  
9 I mean, you know.

10 MR. SULLIVAN: I'm going 507.1(g), closing  
11 arguments in the order established in B through E.

12 MS. LOVICK: So the order --

13 MR. SULLIVAN: So it would be appellant, then  
14 owner, then DCRA.

15 MS. LOVICK: I think that's correct, yes.

16 CHAIR HILL: Okay, all right. We'll go with that  
17 then. All right, so appellant, owner, then DCRA. Mr.  
18 Sullivan, are you good with that? I know what's in the  
19 regulations. You didn't write them. Okay, Mr. Rueda, so  
20 we'll start with -- I guess -- now I'm confused. I'll tell  
21 you what. We'll get -- Mr. Commissioner, you had a quick  
22 comment?

23 MR. BOESE: No. I'm just saying I'll do the  
24 closing.

25 CHAIR HILL: Oh, okay. Great. Okay. So Mr.

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1 Commissioner, we're going to go -- I thought -- I'm confused  
2 as to how much -- what the order was, so therefore I gave the  
3 amount of time for the person who's bringing the application  
4 forward. So we're just going to go with five minutes for  
5 everybody, okay? And just see what happens. So Mr.  
6 Commissioner, go ahead whenever you like.

7 CLOSING ARGUMENT - MR. BOESE

8 MR. BOESE: Okay. Thank you, Mr. Chairman. So  
9 members of the board of Zoning Adjustment, after reviewing  
10 the testimony and facts that have presented before you, we  
11 feel that you must agree that the zoning administrator erred  
12 in approving the building permits based on the plans  
13 submitted for 1477 Girard Street NW.

14 It is easy to understand how such an error  
15 occurred. Not only does ANC 1A frequently see outcomes that  
16 do not match approved permits, but there is a preponderance  
17 of that in conflicting drawings submitted to DCRA for review  
18 in many applications including the ones for 1477 Girard. It  
19 is clear that some property owners and developers genuinely  
20 try to submit accurate plans, while others submit plans that  
21 they hope can be approved, whether or not the details are  
22 factual. In this case, the facts show multiple errors were  
23 made in issuing this permit.

24 You've heard a lot of details and have many hours  
25 of testimony to watch. But in my closing, I want to

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1 reiterate and to emphasize just two broad areas. That these  
2 are crucial because the words and the regulations matter and  
3 measurements matter. First, the project that's approved  
4 exceeds the allowable gross floor area as it was not  
5 calculated corrected for the lower level. And I'll let the  
6 details submitted to the record stand on that.

7 I do want to go into my second point more fully,  
8 which is the project as approved exceeds the allowable gross  
9 floor area as it was also not calculated correctly for the  
10 upper most level. Again, there are many mistakes here that  
11 just cannot be dismissed. The miscalculation of GFA at the  
12 top level comes from an effort to exclude the top story as  
13 a level by dedicating it as storage. But confusing the  
14 matter before you, the zoning administrator incorrectly  
15 refers to the top story as an attic in his testimony.  
16 However, that's not what the permit is for. You are being  
17 asked to review a permit appeal to exclude storage level from  
18 GFA, not an attic.

19 Regardless, the reference to the storage area as  
20 an attic, along with the rationale for doing so ignores the  
21 regulations for the following reasons. There is no exception  
22 in the zoning regulations definition that excludes a storage  
23 area from GFA. The zoning administrators argument that any  
24 floor that has a structural headroom of less than 6'6" and  
25 as such, does not count against GFA is contrary to the

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1 regulations which do not provide a general exception in the  
2 definition of GFA for all areas having structural headroom  
3 of less than 6 feet 6 inches. The only areas excluded are  
4 areas used for mechanical equipment and attics. The top  
5 story in this case is not a floor for mechanical equipment,  
6 nor does it meet the definition of an attic.

7           As for the zoning administrator's testimony to  
8 give the top story a new name, an attic. The top story is  
9 not definable as an attic based on what's written in the  
10 regulations or be BZA and court precedent. The zoning  
11 administrator described the storage area as an attic. His  
12 claim being that the structural headroom is less than 6 feet  
13 6 inches and therefore excluded from GFA. However, the Board  
14 of Zoning Adjustment determined in BZA Case 17109-D that the  
15 definition of an attic is the part of a building immediately  
16 below the roof and wholly or partially within the roof  
17 framing.

18           In this case, the board further concluded that in  
19 order to be considered immediately below the roof, the space  
20 in question cannot have a ceiling since a ceiling would  
21 separate it from the roof. In the present case, the ceiling  
22 of the storage area has been framed and finished. This  
23 ceiling prevents the space from being wholly or partially  
24 within the roof framing as additionally required by the  
25 definition of an attic. Additionally the wallboard ceiling

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1 is furred down from the structure above separating it from  
2 the roof framing.

3           Having said all that, look at the actual  
4 structural headroom. It exceeds 6 feet 6 inches. As  
5 documented in the approved permit plan, the structural  
6 headroom is correctly measured to the bottom of the 14 inch  
7 roof joists which are 6 feet 8.5 inches from the finished  
8 floor. The measurement must be used -- the measurement must  
9 use the roof joist, rather than the distance to the floor to  
10 the ceiling. The measurement must use the roof joist, rather  
11 than the distance to the wood furring and wallboard ceiling  
12 as neither the wood furring or wallboard are structural  
13 elements. It does not matter if the ceiling is framed or  
14 dropped. The wood framing or the ceiling is no different  
15 than the framing for the non-load bearing wall that may be  
16 elsewhere in the structure. Neither are structural. This  
17 point is important because the BZA has made it clear in past  
18 cases that members that play no role in the structural  
19 integrity of a building overall do not qualify.

20           With that, the project and plan set for 1477  
21 Girard continues to contain a host of errors. And we ask you  
22 to review the documentation and rule in our favor. Thank  
23 you.

24           CHAIR HILL: All right. Thank you, Mr.  
25 Commissioner. Mr. Sullivan?

1 CLOSING ARGUMENT - MR. SULLIVAN

2 MR. SULLIVAN: Thank you, Mr. Chair and members  
3 of the board. Commissioner, one point I'd like to make. At  
4 the beginning, Commissioner Boese said something about they  
5 should be benefitting people that have lived here for decades  
6 and not people that don't live there yet. I would just note  
7 that my client has been a constituent of this ANC and a  
8 resident of this property for decades. And they will  
9 continue to do so following this work. They will actually  
10 be occupying the space that includes the attic.

11 So people when they're making decisions about a  
12 development, they make those decisions based on a strict  
13 compliance with the zoning regulations. And yes, they take  
14 it right up to the limit because everyone else does. So  
15 there's competition to do that. So when you develop a  
16 property, it often gets developed to its fullest extent. And  
17 there are a lot of interpretations that go into that.

18 I would say that if the ANC or if this board  
19 disagreed with the zoning administrator's consistent  
20 interpretation on that point, then they should not make a  
21 change retroactively that would only affect this particular  
22 applicant -- permit applicant. And then the zoning  
23 commission should change something going forward if there's  
24 going to be a change.

25 Regarding the specific aspects of this, this comes

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1 down to the lower level and the upper level. On the lower  
2 level, FAR, the appellant is trying to confuse -- trying to  
3 obfuscate by doing things by talking about building code,  
4 which of course doesn't apply. They talk about the as-built  
5 condition, which doesn't apply especially at such an early  
6 stage of the redevelopment.

7           They talk a lot about new regulations that were  
8 not yet adopted at this point. And that's where they got the  
9 direct -- Excuse me, I'm speaking. They talk about direct  
10 access and indirect access, which is a concept -- completely  
11 new concept under the revised regulations that were not yet  
12 in effect. Furthermore, they neglect to mention that the  
13 measuring point is the center of the front of the building.  
14 And they're measuring the areaway and the edge of the  
15 building. And that's how they come up with the 12 feet. The  
16 whole lower level argument is based on this areaway argument  
17 that just doesn't ring true -- or doesn't ring accurate.

18           And so the upper level, the upper level is an  
19 attic. It's been defined as an attic. The case that they  
20 bring up, and again they try to -- First of all, if there was  
21 clear error by the zoning administrator, then they should be  
22 able to make a clear case of that. They shouldn't have to  
23 bring up building codes. Shouldn't have to bring up as-built  
24 conditions. And shouldn't have to bring up new regulations  
25 that weren't in effect to do that.

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1           The one case that they do cite from the BZA is  
2 17109. And they cite a proposed order that is actually not  
3 in effect. And the order that is in effect is 17109(c),  
4 which says on remand -- This is just -- this is the  
5 conclusion paragraph. "The board concludes that the sixth  
6 level of the subject building is an attic. Having already  
7 concluded that the space has less than 6 feet 6 inches of  
8 structural headroom, the area was properly excluded by the  
9 zoning administrator."

10           Now leading up to that decision, they made some  
11 other statements in there. One saying, "The board instead  
12 finds that the proposed sixth level falls within the third  
13 subdefinition of attic. And as noted by the court, the issue  
14 of habitability is not relevant to whether a space is or is  
15 not an attic."

16           They also talk about -- in that order, there's a  
17 statement that the board makes. The board reiterates, "That  
18 the sixth level is an unfinished part of the building"  
19 because it was in that case -- "immediately under the roof  
20 and so qualifies as a garret, but in any event, it is not  
21 necessary that the sixth level actually be a garret as long  
22 as it falls within one of the three subdefinitions of attic."  
23 So they did not find in that case that the attic couldn't  
24 have a finished ceiling.

25           And I think those are the only two issues. Just

1 to point out just a general point. They begin their  
2 presentation by saying that the DCRA failed to prove  
3 conformance with the regulations. And of course a reminder  
4 that the burden of proof is on them, not on DCRA to prove  
5 conformance with the regulations in this case. Thank you.

6 CHAIR HILL: Okay, great. Thank you, Mr.  
7 Sullivan. Ms. Lord-Sorensen?

8 CLOSING ARGUMENT - MS. LORD-SORENSEN

9 MS. LORD-SORENSEN: After reviewing the testimony  
10 and documents presented, DCRA respectfully requests that the  
11 board affirm that the zoning administrator correctly applied  
12 the zoning regulations to evaluate and approve the permit and  
13 deny this appeal. Appellant has raised several arguments,  
14 but unfortunately has failed to meet his burden of proof.

15 So first with respect to the building height  
16 measurement point, when the board looks at architectural plan  
17 -- the approved plan, A0032, you note that the height of the  
18 building is 46 feet 29 inches. The zoning administrator  
19 testified back on July 25th, 2018 that the maximum height for  
20 this RA2 zone is 50 feet. Therefore this is in compliance,  
21 this particular point.

22 The other area that was addressed was a gross  
23 floor area. The cellar was not included in the GFA because  
24 the height from the grade to the story above was less than  
25 6 feet. And again I would like to direct the board to

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1 Architectural Plan A0032. When we measured the difference  
2 between the grade and the floor above, it was 4 feet 7  
3 inches.

4           Next with respect to -- And I know everyone keeps  
5 using various terms, but the storage area or attic, but the  
6 upper most area of the property was not included in the gross  
7 floor area. Now the definition of gross floor area under the  
8 zoning regulations identifies which areas must be included.  
9 This list includes areas including structural headroom of 6  
10 feet 6 inches or more. The zoning administrator testified  
11 back in July that he has consistently interpreted that only  
12 areas with a minimum height of 6 feet 6 inches are included  
13 in the FAR calculation.

14           And I'll direct your attention to Architectural  
15 Plan A0012. In this case however, the height of the storage  
16 area/attic upper most area is 6 feet 5 inches. Now the  
17 appellant and the appellant's architect would like to take  
18 the position that the storage area will be used as habitable  
19 or occupiable space, but this calls for speculation and this  
20 board should not speculate. Instead we ask the board review  
21 the physical plans and the zoning regulations, which were in  
22 effect at the time that the building permit was issued.

23           During appellant's conclusion, he mentioned  
24 furring and areas that may require furring. However, this  
25 falls under the building code regulations. And a lot of the

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1 arguments or issues that are raised by Mr. Rueda and ANC,  
2 Chairman Kent Boese deals with the building code. And so we  
3 ask that they make sure that they bring these issues before  
4 the right forum. And the BZA is not the appropriate forum  
5 if they have building code issues.

6           With respect to the floor area ratio, the FAR  
7 limit for this particular property is 1.8. As stated back  
8 in July, the FAR is calculated by dividing the total GFA of  
9 all buildings on a lot by the area of that lot. Now DCRA  
10 calculated the gross floor area for the first floor, second  
11 floor, and third floor and determined that the FAR is  
12 approximately 1.72.

13           And lastly, with respect to the areaway  
14 measurements, the zoning administrator reviewed the  
15 architectural drawings. Again, I'd like to direct the  
16 board's attention to Architectural Plan A0011. Now when you  
17 look at those plans, they depict an areaway that extends 4  
18 feet 4.5 inches from the facade. Since this projection is  
19 less than 5 feet, the areaway is considered an exception to  
20 grade. Moreover, as an exception to grade, the building  
21 height measuring point does not begin from that area of the  
22 areaway.

23           During Part 1 of this hearing back in July,  
24 appellant did not express an ongoing concern about the green  
25 area ratio and the lot occupancy, which are two issues that

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1 they raised in their initial filing. So I won't go into  
2 great detail about those two issues. However, if the board  
3 still has questions, I ask that the board review DCRA's pre-  
4 hearing statement which clearly outlines how the lot  
5 occupancy and green area ratio for this project satisfied the  
6 zoning regulations.

7 So based on all the foregoing reasons, DCRA  
8 respectfully requests that board affirm the zoning  
9 administrator's decision and deny this appeal.

10 CHAIR HILL: Okay, thank you. Does the board have  
11 any questions? Okay, all right. I guess I have a question.  
12 Mr. LeGrant, have you seen a lot of these designs before?

13 MR. LEGRANT: When you say designs like these,  
14 could you please expand?

15 CHAIR HILL: Have you seen designs that have  
16 attics or storage areas of this size recently?

17 MR. LEGRANT: I have not.

18 CHAIR HILL: Okay. All right. Okay. All right,  
19 then I guess that's it. Nobody has anything else? All  
20 right. Okay. Then I guess what we're going to do is close  
21 the hearing and try to figure out when we're going to come  
22 back to deliberate. Mr. Miller, when are you back with us  
23 again?

24 MR. MILLER: I don't know.

25 MR. MOY: October 3rd, sir.

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1 CHAIR HILL: October 3rd, all right. Do we have  
2 a lot of stuff on October 3rd? It doesn't matter. Even if  
3 he's back we can deliberate. So October 3rd -- Okay, so  
4 October 3rd, we'll come back for deliberation. Okay.

5 MR. MOY: For decision making.

6 CHAIR HILL: Yes, sorry. For decision making.  
7 Okay, great. All right. Well, thank you all very much.  
8 This has been great being the second case back. I'm so glad  
9 that we were able to do this. And thank you really, thank  
10 you for coming forward. We're going to end up taking a  
11 break. But before we take a break, we're going to take care  
12 of the preliminary matter that we were going to stick back  
13 at the end of the day. So give me a second while we change  
14 out commissioners.

15 (Whereupon, the hearing in the above-entitled  
16 matter was concluded at 11:49 a.m. and resumed at 12:09 p.m.)

17 CHAIR HILL: All right, Mr. Moy.

18 MR. MOY: All right. So the next case application  
19 before the Board is Application Number 19787 of 2604 29th  
20 Street, LLC. This is a request for special exception under  
21 the inclusionary zoning requirement, Subtitle C, Section  
22 1001.2(e)3 to construct a rear addition to an existing flat  
23 and convert it into a 12-unit apartment house. This is in  
24 a RA-1 zone at premises 2604 29th Street, SE, Square 5643,  
25 Lot 18. So if I can have parties to the table, including the

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1 ANC, that would be helpful.

2 CHAIR HILL: Okay, great, thank you. All right,  
3 if you could please introduce yourselves from my right to  
4 left.

5 MR. STERN: I'm Jason Stern. I'm a party involved  
6 with the developer. I'm actually part of the developer.

7 MR. KAYE: Jessie Kaye, also part of the  
8 development team.

9 MR. KADLECEK: I'm Cary Kadlecek, from the law  
10 firm of Goulston & Storrs, on the Land Use Council for the  
11 Applicant and developer.

12 CHAIR HILL: Could you all just wait one minute.  
13 I'm trying to find my pen. Okay, please go ahead.

14 MR. VAN HOOSE: Darryl Van Hoose, owner of 2605  
15 29th Street.

16 CHAIR HILL: Go ahead, that's fine.

17 MS. BUMBRAY: Okay. Good afternoon. I'm  
18 Commissioner Robin Hammond Marlin of ANC 7B, SMD 7B05  
19 Commissioner and immediate past-chair for ANC 7B. And I will  
20 be representing the Commission on these matters.

21 CHAIR HILL: Okay, great. Thank you.

22 MS. BUMBRAY: Monica Bumbray, property owner, 2617  
23 and 2621 29th Street, SE.

24 MS. HARGROVE: Alberta Hargrove, property owner  
25 for 2901 and also representing 2903, 05, 11, 13, 15, and 17

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1 --

2 CHAIR HILL: Okay, Ms. Hargrove ---

3 MS. HARGROVE: -- on Denver Street.

4 CHAIR HILL: Okay, I'm sorry. Do you have  
5 anything in the record that says that --

6 MS. HARGROVE: Oh, I'm sorry.

7 CHAIR HILL: -- you're representing all those  
8 people?

9 MS. HARGROVE: I will. I will submit seven  
10 letters to the record and a petition with ---

11 CHAIR HILL: But no, I was just --- I mean, I  
12 don't mind, like, you're going to have an opportunity to  
13 speak and say whatever you want to say, but in order for us  
14 to actually understand that you're representing people, there  
15 has to be something that says that you represent them.

16 MS. HARGROVE: Oh, no. Okay.

17 CHAIR HILL: Okay, so you can't represent them  
18 technically.

19 MS. HARGROVE: Okay. But I'm just going to submit  
20 the letters --

21 CHAIR HILL: Okay, that's fine. I'll get back to  
22 you in one second, sir.

23 MR. JENNIFER: Hi, my name is Tyrone Jennifer.  
24 I'm the owner of 2628 29th Street, SE.

25 CHAIR HILL: Okay. So you had a question?

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1 (Off the record comments)

2 CHAIR HILL: Just push the button there.

3 MR. JENNIFER: I was just saying they're sitting  
4 back there, who she's representing.

5 CHAIR HILL: Oh. Oh, okay. Well, then that's  
6 easy enough to take care of.

7 (Laughter)

8 MR. JENNIFER: Okay.

9 CHAIR HILL: Okay. Would you now like to --- the  
10 people that are saying -- that you're representing, they do  
11 not want to speak right now?

12 MS. HARGROVE: Right.

13 CHAIR HILL: Okay. Just say yes into the  
14 microphone. I'm sorry, you have to speak in the microphone.

15 MS. HARGROVE: Oh, yes.

16 CHAIR HILL: Okay. All right. So then the two  
17 people that are wanting to be --- Mr. Jennifer, Mr. Jennifer?

18 MR. JENNIFER: Yes.

19 CHAIR HILL: Could you just give up your seat for  
20 one second? And would you two just come forward and just say  
21 on the record that Ms. Hargrove can represent you? And by  
22 the way, was everybody sworn in?

23 (Chorus of yeses)

24 CHAIR HILL: Okay, all right. So let's just do  
25 these quickly, one at a time. Sir, if you could just sit

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1 down, introduce yourself, introduce yourself and just state  
2 for the record that Ms. Hargrove will be representing you.

3 MR. SHELTON: Yes. My name is Lauran Shelton, and  
4 I'm at 2905 Denver Street, SE. And yes, Ms. Hargrove can  
5 represent me.

6 CHAIR HILL: Okay, wonderful. Thank you. Ma'am,  
7 if you could just come up and do the same thing?

8 MS. SHELTON: Sure. My name is Barbara Shelton.  
9 And I live at 2905 Denver Street. And Ms. Hargrove will be  
10 representing me.

11 CHAIR HILL: Okay, great. Thank you so much.  
12 Thank you for saying that.

13 All right, Mr. Jennifer, you can take your seat  
14 back in there. All right. And so, now, you haven't been  
15 sworn in, is that correct?

16 (No audible response)

17 CHAIR HILL: All right. So, Mr. Moy, and anybody  
18 else who hasn't been sworn in, and even later might testify  
19 today, if you could just please stand and take the oath  
20 that's going to be administered by the Secretary to my left.

21 MR. MOY: Do you solemnly swear or affirm that the  
22 testimony you're about to present in this proceeding is the  
23 truth, the whole truth, and nothing but the truth?

24 (Chorus of yeses)

25 MR. MOY: Thank you. You may be seated.

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1 CHAIR HILL: And I'm sorry, we are back for  
2 summer, so this is the first time I get to make this joke.  
3 I can't believe this, you now can't lie.

4 (Laughter)

5 CHAIR HILL: Like, that's what that means. That's  
6 really what that means. So we don't have to, like, ask  
7 whether or not you're telling the truth or not. Just to  
8 clarify, for everybody in the room, that's what that means.  
9 It's shocking.

10 Okay, all right. Mr. Kadlecek, we're going to  
11 start with you, okay. So you're going to go ahead and  
12 present to us, right, in terms of the application, what  
13 they're trying to do and how they're meeting the standard for  
14 us to --- how they're meeting the standard for us to approve  
15 the application. Ms. --

16 (Off the record comments)

17 CHAIR HILL: Thank you. I'm trying to ---

18 MS. MARLIN: Sorry?

19 CHAIR HILL: Raymond Marlin?

20 MS. MARLIN: Robin.

21 CHAIR HILL: Oh, Marlin is the last name. I'm  
22 sorry. Commissioner Marlin, so you would then have an  
23 opportunity to cross examine the testimony that Ms. Kadlecek  
24 is going to give. So what that means is, you know, any kind  
25 of questions you might have just concerning the testimony.

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1           You won't necessarily be giving your testimony  
2 now. You'll just be cross examining his testimony. Because  
3 afterwards, you are then going to give your testimony to the  
4 case itself. And then Mr. Kadlecek will have a chance to  
5 cross examine that testimony, okay.

6           And then there will be rebuttal from Mr. Kadlecek  
7 in terms of that testimony that is given. You will have an  
8 opportunity to cross examine that rebuttal. And then you  
9 will have an opportunity for a closing statement as will Mr.  
10 Kadlecek.

11           In the same regard, we are going to hear from the  
12 Office of Planning, and you'll have an opportunity to ask  
13 questions of the Office of Planning, as will the Applicant.  
14 Is that more or less clear?

15           MS. MARLIN: Just may I ask a question?

16           CHAIR HILL: Sure, of course.

17           MS. MARLIN: where does my testimony fit in  
18 between those pieces?

19           CHAIR HILL: Sure. So what happens is the  
20 Applicant's going to testify. You're going to cross examine  
21 that testimony. You are then going to testify. And then  
22 they will have an opportunity to cross examine that  
23 testimony. Right.

24           Now, there are a bunch of people here at the  
25 table. You will have the same amount of time that the

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1 Applicant will have to give your testimony. However,  
2 depending upon how this goes, you might either want to use  
3 the people that are here at the table as people giving  
4 testimony, right, or they might want to wait until we have  
5 the portion of the application where it's public testimony,  
6 which means the public will get three minutes each to give  
7 their own testimony, right.

8           So you'll see how it goes, meaning whether or not  
9 you want to bring them in now or whether you'd rather they  
10 wait until they have an opportunity to present during the  
11 public testimony portion of the presentation.

12           MS. MARLIN: At the conclusion of this case?

13           CHAIR HILL: It's after the Office of Planning and  
14 after -- that we ask if there's anyone here in support or in  
15 opposition. And that's when each person would get three  
16 minutes. So because what you're about to say is -- I'm just  
17 going to start with Mr. Kadlecek, right, he's only going to  
18 have 15 minutes right now for his presentation. So then  
19 you'll get 15 minutes for your presentation. So you might  
20 want to use them for their three minutes, is what I'm trying  
21 to get at.

22           MS. MARLIN: Yes.

23           CHAIR HILL: We'll see how it goes.

24           MS. MARLIN: Okay.

25           CHAIR HILL: If he goes over his 15 minutes, then

1 you'll have the same amount of time.

2 MS. MARLIN: Okay.

3 CHAIR HILL: Okay. And again, you'll have an  
4 opportunity to question the Office of Planning.

5 MS. MARLIN: Okay.

6 CHAIR HILL: Okay. All right. So after all that,  
7 Mr. Kadlecek, you can begin whenever you like.

8 MR. KADLECEK: Thank you, Chairman Hill and  
9 members of the Board. I'm going to just give a brief  
10 opening, and then Jesse will give more of the bulk of the  
11 presentation to walk you through the project.

12 Again, this is an application for a special  
13 exception. It's actually quite a straightforward and simple  
14 case to voluntarily provide two-family sized inclusionary  
15 zoning units where no IZ is required in this building. And  
16 I think that's an important point I want the Board to  
17 remember, that they are opting to provide two affordable  
18 units in a building where none would otherwise be required.  
19 And just given the quirk of the regulations in the zone, BZA  
20 is required to use the IZ bonus density to do that.

21 The minor relief will allow the developer to  
22 expand the existing building by a de minimis 0.17 FAR. We  
23 are talking about asking for relief to add 1,500 square feet  
24 to this building, all of which will be devoted to two  
25 affordable units.

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1 All other aspects of the building will conform to  
2 the matter of right standards in the RA1 zone. Except for  
3 FAR, the form of the building and the number of units are  
4 permitted as a matter of right. And the building is not  
5 maximizing its building envelope.

6 In fact, the proposed building is smaller in  
7 massing, such as height and lot occupancy, than what is  
8 permitted as a matter of right for a single-family home in  
9 this zone. So I think that provides some context about the  
10 real de minimis nature of the relief being sought here.

11 We are pleased to have support of both the Office  
12 of Planning and DDOT. And with that, I will turn it over to  
13 Jesse to walk you through the project.

14 MR. KAYE: So my name, again, is Jesse Kaye. I  
15 appreciate your time today. My business partner, Jason, and  
16 I own the building at 2604 29th Street, SE. Currently, the  
17 building was originally a four-unit building. It's now two  
18 units. We purchased it about a year ago.

19 Right now, we're here specifically to discuss two  
20 additional IZ units within a matter of right building  
21 envelope. Our images coming up are a little bit misleading.  
22 On a building envelope, as a matter of right and within that  
23 envelope, we wanted to increase the density from ten to 12  
24 units. And it's those two additional units that we're here  
25 for today.

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1           In the back, in the rear we can add seven to eight  
2 parking spaces. We have three levels in the cellar. All the  
3 units in the building will be two or three bedrooms. And  
4 right now, with the IZ bump in FAR, we are only required to  
5 provide 1,115 square feet where we are designating 1,500  
6 square feet, about 30 percent more to inclusionary zoning  
7 units.

8           This is the front of the building. This is the  
9 side. And from left to right there's a pretty substantial  
10 change in grade which would be from Denver Street heading  
11 south. This is the side profile of the building. Right now,  
12 there is a walkout cellar level, again, the side walkout  
13 cellar level, and then from the rear.

14           This is on 29th Street looking up towards Denver.  
15 As you see on both sides of the block, there are apartment  
16 buildings. This is looking down from right in front of our  
17 building, again, more apartment buildings lining this entire  
18 street. There's not a single family home with a 29th Street  
19 address.

20           If you look at the area in the immediate vicinity,  
21 hopefully you can see the hand, but the light blue square in  
22 the top right corner is our property. The blue dots are all  
23 apartment buildings, and the red circles are single family  
24 homes in the zone. So despite it being RA-1, a majority of  
25 buildings in the immediate and non-immediate vicinity are all

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1 apartment buildings.

2           Here's our property. We have one of the largest  
3 lots on the block which allows us matter of right development  
4 to increase the size and FAR of the building. If you look  
5 here, to the left of our building are the single family homes  
6 facing Denver Street.

7           Right now, this is the existing building and our  
8 proposed addition to the rear of the building, again, all  
9 matter of right. Right now, the only difference in what  
10 we're here for today is on the rear addition of the building.  
11 It would be this third level above grade, which is  
12 technically within a matter of right building envelope four  
13 feet below the proposed addition to the existing building,  
14 and where the two additional IZ units would be located.

15           Again, this is from the front, so it's that  
16 additional level in the rear where the IZ units would be  
17 located. That building envelope then would be matter of  
18 right, because it is well within our height limitation.

19           In adding the units, we would proposed adding an  
20 additional six to seven parking spaces along the alleyway  
21 taking more cars off the street, providing more, I guess,  
22 space for the neighbors to park their cars as well. And  
23 that's it.

24           MR. KADLECEK: With that, we're available for  
25 questions.

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1 MEMBER WHITE: Just a point of clarification.

2 MR. KADLECEK: Yes.

3 MEMBER WHITE: Are you doing 12 IZ units?

4 MR. KAYE: No, no, no. It would be two IZ units,  
5 so ten was --- I'm sorry --- so ten would be matter of right.  
6 And we are proposing today to add two IZ units to our ten  
7 unit development.

8 MEMBER WHITE: Okay. So I guess there was maybe  
9 some discrepancy in some of the information.

10 CHAIR HILL: You're doing 12 IZ units, right?

11 MR. KAYE: I'm sorry, we're doing ten ---

12 CHAIR HILL: Ten units and two IZ, right.

13 MR. KAYE: And we're here today to propose two IZ  
14 units on top of the ten.

15 MEMBER WHITE: Yes. I was looking at OP's report  
16 as well. And I thought it said 12 IZ units proposed.

17 MR. KADLECEK: Yes, I think there was some  
18 confusion about that. But we've clarified that since.

19 MEMBER WHITE: And for the IZ units that you are  
20 doing, is it rental or ownership?

21 MR. KAYE: We're not sure yet. You know, I'm not  
22 sure what the future holds. But we are on the fence between  
23 condos and rentals.

24 MEMBER WHITE: And what would the percentage be  
25 for the MFI for the IZ units?

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1 MR. KAYE: So the IZ regulations require 60  
2 percent MFI for rentals and 80 percent MFI for condos. And  
3 they would comply with whichever the requirement is given,  
4 whether they're rentals or ownership.

5 MEMBER WHITE: Okay.

6 CHAIR HILL: Okay. All right. So Commissioner,  
7 so during this portion now you have an opportunity to cross  
8 examine just the testimony that was given, meaning you don't  
9 need to give your testimony. And even though Mr. Kadlecek  
10 only took five minutes, I'm still going to give you 15  
11 minutes for your testimony. So do you have any questions  
12 from the testimony that was given?

13 MS. MARLIN: I do have three.

14 CHAIR HILL: Okay, please. Go ahead.

15 MS. MARLIN: So my first question would be Mr. --  
16 Cary, would you pronounce your last me for me so I can call  
17 you by that?

18 MR. KADLECEK: Kadlecek.

19 MS. MARLIN: Kadlecek. You indicated that, I  
20 guess, as a part of the record that DDOT supported this  
21 project. However, I'm viewing the record. I saw where DDOT  
22 didn't offer comment. Could you explain?

23 MR. KADLECEK: It did. Technically, one of the  
24 few benefits of this job is that I can't be cross examined.  
25 But I will answer that question, because I didn't technically

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1 testify. But in any event, DDOT said that they have no  
2 objection, which is what their standard position is when they  
3 do not disapprove or object to the approval of an  
4 application. They're not here, but in my experience they  
5 don't ever say we support something. They say we don't  
6 object.

7 CHAIR HILL: Oh, Commissioner, it's okay. I'm not  
8 a big fan of the cross examination part of this anyway. But  
9 it is true. So, like, the Applicant's attorney is not  
10 supposedly cross examining, because they're not giving  
11 testimony. But I find that a little bit difficult myself.  
12 But nonetheless, if you could go ahead --- Mr. Kadlecsek  
13 answered the question.

14 Mr. Kadlecsek, I thought it was pretty  
15 straightforward question. So we'll just go ahead. You've  
16 got two more, okay. And then you're going to have an  
17 opportunity to present your testimony.

18 MS. MARLIN: Okay. Also, with the presentation,  
19 which is the first time I've seen it to this extent, some of  
20 the slides were not presented during the meetings that I had  
21 with the developers. I had a question about one of the  
22 slides.

23 CHAIR HILL: Sure. Please, go ahead.

24 MS. MARLIN: So you said that one of the slides  
25 showed you ---

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1 CHAIR HILL: Which slide do you want to refer to?

2 MS. MARLIN: The one looking up from Denver  
3 Street. That one. No, go back.

4 (Off the record comments)

5 CHAIR HILL: You need the microphone. You need  
6 to press the microphone.

7 MR. KAYE: I'm sorry. This is not from Denver.

8 MS. MARLIN: I'm sorry, from 29th Street. I'm  
9 sorry.

10 MR. KAYE: Yes.

11 MS. MARLIN: So where was that taken?

12 MR. KAYE: I'll show you. This was taken right  
13 here, just above the cul de sac looking up 29th from Erie.

14 CHAIR HILL: Commissioner, it should be right in  
15 front of you. Is there a screen right of you?

16 MR. KAYE: Yes, this screen is not on.

17 CHAIR HILL: Oh, it's off. Okay, all right. If  
18 somebody can turn on that screen in front of them as we kind  
19 of move forward. But nonetheless, do you see where the  
20 photograph is being taken from?

21 MS. MARLIN: Yes. Could you put it back please?

22 MR. KAYE: Sure. This is from Erie looking up  
23 29th towards Denver.

24 MS. MARLIN: Okay, thank you. And then my last  
25 question, in terms of Commissioner White's question, I'd also

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1 like to ask about the IZ units. Never, during any of the  
2 meetings that I had with the developer, were we told that  
3 there were going to be 12 IZ units. He subsequently has said  
4 here that that was clarified. So as of last night, when I  
5 reviewed the record, that was not clarified. So I'd like to  
6 know when it was clarified.

7 CHAIR HILL: Okay. Commissioner, as I understand  
8 it, there was an error. And I don't know if it was an error  
9 or not, I have to --- we're clarifying that. It's two IZ  
10 units and ten non-IZ units is what the --- so for a total of  
11 12 units.

12 MS. MARLIN: So that clarification is being  
13 accepted today?

14 CHAIR HILL: Yes. I mean, we'll hear from the  
15 Office of Planning, but that's what has been proposed.

16 MS. MARLIN: Okay, thank you.

17 CHAIR HILL: Okay. All right. So Commissioner,  
18 I'm going to go ahead, as I said before, and you can take a  
19 second to get organized if you like, but I'll give you 15  
20 minutes to give your presentation. And you can begin  
21 whenever you like.

22 And if you want to, as I said, you can either go  
23 ahead and ask people to testify now during your 15 minutes.  
24 If you do, then they won't be testifying during the public  
25 portion of it. But if they --- or they can wait until when

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1 the public portion is, and then they'll get three minutes  
2 each.

3 MS. MARLIN: Okay. So one constituent has voiced  
4 that he would like to testify during the 15 minutes so ---

5 CHAIR HILL: Okay, that's fine. Sure.

6 MS. MARLIN: -- I didn't ask the others. Do you  
7 want to ---

8 CHAIR HILL: You can turn off your microphone and  
9 consult with them if you want.

10 MS. MARLIN: So I have two that would like to  
11 participate.

12 CHAIR HILL: Okay. So you've got 15 minutes. You  
13 can divide it up however you like.

14 MS. MARLIN: Okay.

15 CHAIR HILL: Okay.

16 MS. MARLIN: Originally, I asked the developer how  
17 does this project benefit those nearby impacted residents.  
18 And there was a silence. I got a no with a hesitation on  
19 that. So the building sits on a slope that's below grade,  
20 that leans to the right if you're walking up to the building.  
21 So ANC 7B wants to maintain that the low-rise appearance on  
22 29th Street be maintained.

23 The concerns that I outlined in the ANC report  
24 have to do with density and the fact that density is really  
25 not needed in this area. On 29th Street, 30th, Street, 34th

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1 Street, Naylor Road, as the developer has shown in his  
2 slides, they are apartment buildings, most of them are low  
3 to moderate income apartment buildings. In fact, if he's  
4 allowed to do what he's proposing, the 12 units will add at  
5 least 24 more residents in our already crowded environment.

6 The developer cited, in his report to the BZA, the  
7 amenities in our neighborhood that new residents would  
8 partake in. He cited the Good Hope Marketplace, he also  
9 cited the Hillcrest Recreation Center.

10 I'm here to tell you, as a user of both those  
11 amenities, they're overcrowded, they're over-taxed, and we  
12 cannot stand any more burden on those two facilities. The  
13 characteristics of the building, the community feels, are not  
14 going to be consistent with the what's currently there.

15 For example, if he's allowed to build a third  
16 story building, those immediate surrounding buildings,  
17 including Naylor Gardens, the apartments on Denver Street,  
18 the apartments on Naylor Road, and the apartments across  
19 Naylor Road on 30th Street, are all low-rise apartment  
20 buildings. And they're also affordable units.

21 In the OP report, when we've talked about that,  
22 the developer indicated that he is going to --- well, you've  
23 clarified that in terms of the number of IZ units, so I won't  
24 belabor that point.

25 So I want to talk a little bit about the

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1 transportation issue since DDOT didn't weigh in. Since June  
2 30th, we've lost two bus lines, the Circulator and also the  
3 V5 bus. The metro that the developer talks about in his  
4 report, or transportation options, is at least eight to seven  
5 blocks away. And one would have to walk down a non-  
6 regulation size sidewalk to get to the metro or either they  
7 would have to walk in the street if they took the Naylor Road  
8 route en route to the metro.

9 That has been a concern of ours for years, that  
10 it's not safe, actually, to walk to the metro. We have one  
11 bus, the 30N, that will take you to the metro. And that bus,  
12 the schedule is so infrequent that we've had several meetings  
13 with WMATA about that bus.

14 The other issue is that constituents have come to  
15 me and asked for residential zone parking, because parking  
16 is absolutely at a minimum for residents in that area around  
17 29th Street, 30th Street, 34th Street, Gainesville. And  
18 Alabama Avenue has no parking for residents whatsoever.

19 So the concern is that, if he is allowed to have  
20 these inclusionary zoning units as well as the non-  
21 inclusionary zone units, we're looking at at least 52 people  
22 when he creates these 12 units, if you multiply that by two  
23 -- I'm sorry, at least 24, I'm sorry, by three, well, two  
24 minimum, three possibly --- that he's increasing the density  
25 on that one street alone by that many people with no

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1 consideration for parking, transportation, the use of the  
2 amenities, as he's already cited that he actually wants to  
3 tap into.

4 I don't want to --- let's see, ten minutes. So  
5 I wanted to talk clearly about the density. Because we have  
6 a development under way. You're probably familiar with it.  
7 It's the Skyland Shopping Center Development. That developer  
8 has been very disappointing to my community because he had  
9 promised us a shopping center.

10 And what we're getting now is 268 affordable units  
11 versus just getting a shopping center with no real  
12 entertainment for what type of retail we're going to have  
13 there. But we're getting those units which are a stone's  
14 throw away from the property that this gentleman has  
15 purchased to turn into 12 additional affordable units.

16 The prospect of adding that many people into our  
17 community would totally overburden that small corridor in  
18 Ward 7. We're constantly told that for us to get economic  
19 development, you've heard that in the newspaper, and just in  
20 conversations with a Council member, that we need to increase  
21 our income in that neighborhood for us to get quality retail.

22 And as long we continue to permit low to moderate  
23 income housing in our neighborhood, we're never going to  
24 reach that plateau. We're never going to be able to get the  
25 type of amenities that we deserve that are being actually

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1 built in Ward 8, Ward 6, Ward 5.

2           So I just feel like, for this developer not to  
3 develop the building as is -- he can develop the building,  
4 there's two units in the building, he would stay consistent  
5 with the neighboring buildings on that street -- is just  
6 actually all for profit. He is not thinking about the  
7 quality of life in our neighborhood, he's not even thinking  
8 about working with the residents that have strong concerns  
9 about bringing that many residents into an already  
10 overburdened, taxed, environment.

11           So I'm going to let --- I want to make sure two  
12 people have enough time to speak on my 15 minutes.

13           MR. VAN HOOSE: Hi. I'm Darryl Van Hoose at 2605  
14 29th Street, right across the street from the proposed  
15 development. And it's only about 12 apartments, four-unit  
16 apartment buildings on the block. Most of my neighbors  
17 either live in their building or, like me, my office is in  
18 my building.

19           The developer has said many things about making  
20 our neighborhood better. I mean, it's great as it is right  
21 now. We don't have a lot of traffic, we don't have a lot of  
22 crime, and it's plenty of parking for who lives there now.

23           One of my concerns is about parking. I know a  
24 little bit about, you know, some of the codes about parking.  
25 And to me, you know, they were saying it was going to be 12

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1 units at first. Now we hear about something different now.  
2 But, I mean, they never said the size of the unit, how many  
3 bedrooms it was going to be.

4 So, I don't know, I'm hearing now about the  
5 envelope. So I hope that we can open the envelope and find  
6 out what they're going to do. Because, I mean, right now it  
7 seems like you're trying to get this passed, and then it's  
8 going to change. It's not going to be what they're  
9 presenting here. It's going to be a whole different look  
10 when they come to our block. So I'm against this project.

11 MS. BUMBRAY: Good afternoon again. My name is  
12 Monica Bumbray, property owner of 2621 29th Street and 2617.  
13 I've owned those properties for 18-plus years. We've seen  
14 the street change, the community change for the better.

15 What we have noticed, there is one investor that  
16 did a project across the street from my building. There's  
17 a lot of foot traffic, unnecessary foot traffic. With that  
18 foot traffic has come crime, with that foot traffic has come  
19 drug dealing. We oppose this increase. It's a stretch on  
20 the community. It's a stretch on the street.

21 We've all mentioned the parking. We have the  
22 overflow of Naylor Gardens. One section of Naylor Gardens,  
23 Erie, 30th Street, Denver, there's restricted parking, permit  
24 parking. Some areas do, 29th Street doesn't. So we get the  
25 overflow. So our tenants have to park elsewhere or not park

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1 at all, park in the alley. So it will be an inconvenience.

2 The resources, as Ms. Marlin mentioned, what  
3 resources now are going to be put? We don't have the  
4 Walmart. Skyland is not talking about giving us additional  
5 grocery stores or convenience for our tenants, for some of  
6 us that live there. So I oppose the proposed reconstruction  
7 of 2604 29th Street. Thank you.

8 MS. MARLIN: Okay. So can I reclaim my --

9 CHAIR HILL: Yes.

10 MS. MARLIN: -- five minutes? Okay, great.

11 CHAIR HILL: Yes.

12 MS. MARLIN: So, no, no, I thought she was going  
13 to wait. She's going to wait.

14 MS. BUMBRAY: No, I spoke.

15 MS. MARLIN: She's leaving, okay.

16 MS. BUMBRAY: Yes, I have to --

17 CHAIR HILL: Okay, sure. No, that's all right.

18 PARTICIPANT: Thank you.

19 CHAIR HILL: You're welcome. Wish I was going  
20 with you.

21 (Laughter)

22 MS. MARLIN: Me too, ha, ha, ha. So I wanted to  
23 add to my testimony that the RA-1, if you look on your zoning  
24 map, which I went to your website, there're just about five  
25 of those. And this is on your website, the little dots that

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1 show where RA-1 is located. There are about five of those  
2 little dots. And, you know, I kind of looked around at how  
3 many apartment buildings sat within those dots.

4 And there was a RA-1 too, there're about five or  
5 six dots as well. So we're talking about 29th Street, which  
6 is probably just a little longer than this room. It's a  
7 small street -- just a second, let me --- it's a small  
8 street.

9 And I just think that adding, or let me just say  
10 this, reconfiguring a building that's been there, and it has  
11 been used to house two units, two-family units, for the  
12 developer to come in with no real commitment to us, tell us  
13 how this is improving our community, or even being honest  
14 enough to tell us how it's going to impact on that street in  
15 our community, I think is just a little disingenuous.

16 I think the inconsistencies that we hear things  
17 at one meeting to another meeting, we've heard something  
18 different here today, I think there needs to be more  
19 discussion on this project. But I also just want to say this  
20 and put it on record. In no way do I want this Board, people  
21 in the audience to feel that I, as an ANC commissioner,  
22 representing ANC 7B, and my constituents, we're not opposed  
23 to affordable housing. That's not what this is about.

24 This is about our position in our neighborhood of  
25 how we feel this increased density is not needed. They

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1 haven't really shown where it's needed. I know there's talk  
2 about that throughout the city. It's a good political  
3 talking point as well, affordable housing here, affordable  
4 housing, we need it here. I can tell you, even where I work,  
5 they've put affordable housing units, and they're vacant.  
6 They've been vacant for the last four or five years.

7           They're building these structures and they're not  
8 inhabited. So all I'm asking is that the Board just, you  
9 know, kind of use a little common sense here and hear what  
10 we're saying about we don't need the density, especially with  
11 Skyland coming with 600, I mean, 268 units. To the north,  
12 we have Parkside Apartments, we have the Skyland Apartments.

13           And then we're on the border of Ward 8. There are  
14 a lot of affordable housing units in that area that's not  
15 really shown or represented by the Office of Planning. They  
16 didn't go far west enough, even though I can walk just across  
17 the street and see those apartment units. And we just feel  
18 that the community, we're overtaxed, and especially this one  
19 block. Just around the corner, you have affordable units.  
20 They're apartment buildings.

21           So I just think there needs to be a really clear  
22 look-see at what they're proposing and why when it's not  
23 needed. We have an apartment building within two or three  
24 feet that's boarded up. I don't know who owns it, but I  
25 noted it on MapQuest today. We just don't need this density

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1 in our neighborhood.

2 Naylor Gardens alone is --- what, he showed that  
3 on his presentation --- they have a total of 755 co-op units.  
4 And they're mostly leased units. So we have the housing  
5 there. We have the housing there. So it's not necessary to  
6 bring this additional amount of living units, if you will,  
7 no matter two, three bedrooms, or what have you.

8 He talks about a matter of right of building in  
9 the rear. I think there should be a look-see at that as  
10 well. I think when a developer comes into the community and  
11 wants to be a part of a community, he needs to have genuine  
12 committed discussions. There shouldn't be anything pulled  
13 out here at a hearing that we've never heard.

14 I think he should be very methodical and  
15 thoughtful in what he's presenting to us and make sure that  
16 whatever he's going to present and what he's asking us to  
17 agree to or give consent to is something that's going to work  
18 for all of us, not just him. It shouldn't be all about  
19 profit. It should be more about a community. Thank you.

20 CHAIR HILL: Okay, great. Thank you. Does anyone  
21 have any questions for the Commissioner? Sure.

22 ZC MEMBER MAY: So one of the things  
23 that's a little  
24 bit hard for me to --- sorry, it's not always clear who's  
25 talking.

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1 MS. MARLIN: Yes.

2 ZC MEMBER MAY: One of the things that I'm a  
3 little unclear on is the testimony I heard about parking.  
4 I mean, you testified that there is barely enough parking.  
5 And then we heard from the other gentleman testifying that  
6 there is ample parking, enough for you now. And then we look  
7 at the photographs that were presented, and there seems to  
8 be a lot of parking, a lot more parking than in my  
9 neighborhood. And I got a lot more people in my  
10 neighborhood. I mean, is there regularly a problem not being  
11 able to find a parking space?

12 MS. MARLIN: So actually, I don't know what time  
13 those photographs were taken. But certainly --- so let me  
14 ---

15 CHAIR HILL: Please, let one person talk. And she  
16 has the microphone.

17 MS. MARLIN: I lost my train of thought. I'm  
18 sorry.

19 ZC MEMBER MAY: Yes.

20 MS. MARLIN: There will, even on my street, let's  
21 say, I'm on Erie Street. During the course of the day,  
22 people are out in their cars. I talked about there being a  
23 deficit in bus transportation, because we've lost two or  
24 three of our buses in that neighborhood. So people have been  
25 forced to go back into cars, to buy cars. So I don't know

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1 what time of day that photograph was taken. But if it's ---

2 ZC MEMBER MAY: So you live on ---

3 MS. MARLIN: Let me just finish.

4 ZC MEMBER MAY: Sure.

5 MS. MARLIN: If it was taken in the evening, as  
6 when we had a site visit meeting with these gentlemen, there  
7 was no parking. I had to park around the corner and walk  
8 down the street to get there.

9 ZC MEMBER MAY: So how far is that, I mean, around  
10 the corner?

11 MS. MARLIN: Around the corner would be --- his  
12 building is on the corner, so around the corner would be, let  
13 me say, on Denver, I would say, if I'm counting, sir, I mean  
14 you put me on the spot here, it may be 60 steps. You know,  
15 I'm guessing.

16 ZC MEMBER MAY: Right.

17 MS. MARLIN: And so I'm just ---

18 ZC MEMBER MAY: Well, I'm just trying to  
19 understand the extent of the parking problem. Everybody's  
20 perception of what is a parking problem is a little bit  
21 different.

22 MS. MARLIN: Okay.

23 ZC MEMBER MAY: And when you're accustomed to  
24 being able to pull up and park right in front of your house  
25 and walk in, and you're forced to go a few doors away, that's

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1 a problem in the, excuse me, in the perspective of many.  
2 There are other parts of the city where people have to park  
3 three and four blocks away from their homes. And it's a much  
4 more severe problem. And I'm just trying to understand where  
5 it sort of fits in that spectrum.

6 MS. MARLIN: Can I respond to that, or should I?

7 ZC MEMBER MAY: Well, I mean, sure. But I was  
8 just explaining why I was curious about it.

9 MS. MARLIN: Okay. But I do think that someone,  
10 if not myself, mentioned that Naylor Gardens was such a huge  
11 complex that they do spill over into the neighborhood. And  
12 that's why I had to get residential zone parking ---

13 ZC MEMBER MAY: Sure.

14 MS. MARLIN: -- for those areas.

15 ZC MEMBER MAY: Right. And that's a common way  
16 of dealing with it.

17 MS. MARLIN: Yes.

18 ZC MEMBER MAY: And I have RPP in my neighborhood.  
19 And it's still an issue, being able to find parking some  
20 days. You know, it all depends on what's happening on any  
21 given day.

22 Actually, I did want to get one point further  
23 clarified on the number of units from the Applicant, if I  
24 could, Mr. Chair.

25 CHAIR HILL: Sure, just --

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1           ZC MEMBER MAY: Sure. So I was looking at what  
2 was submitted into the record. And if I look at your initial  
3 statement, let me go pull it up here, it's on Page 3 of the  
4 statement --- I've got to look at the Exhibit Number here.  
5 It's Exhibit Number 9. And it says that, "The project will  
6 contain all affordable units and will otherwise comply with  
7 the IZ requirements under C1003."

8           So is that, I mean, I would assume that was just  
9 a mistake. And has that subsequently been corrected in a  
10 statement from you in the record? I mean, not verbal  
11 statement, but is there a paper that corrected that?

12           MR. KADLECEK: Yes.

13           ZC MEMBER MAY: Because I couldn't find that.

14           MR. KADLECEK: Yes. In the pre-hearing  
15 submission, which --- let me look at what exhibit number that  
16 is, Exhibit 33. We said that the project will comply with  
17 the requirements of IZ. So that's the, you know, the minimum  
18 --- Jesse, at the beginning of his presentation, talked about  
19 the requirement for IZ is 1,115 square feet.

20           But then subsequently, as the project has been  
21 honed further, that's where we came to the conclusion that  
22 they would just devote all of the additional density that  
23 would be provided in this project to the IZ units, which is  
24 1,500 square feet.

25           ZC MEMBER MAY: Okay. So I can see why there's

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1 confusion about this, because of the statement that, in the  
2 initial Applicant statement which says that everything is  
3 going to be affordable, or IZ ---

4 MR. KADLECEK: Yes. And I think there was some  
5 confusion about the meaning of affordable. They take  
6 vouchers for a lot of their properties. And so I think there  
7 was some confusion about what is meant by affordable, because  
8 they accept vouchers, which are not affordable units in  
9 perpetuity, like, IZ units are. That's sort of where the  
10 confusion came from. But in terms of --

11 ZC MEMBER MAY: Got it.

12 MR. KADLECEK: -- IZ affordable units, it's two.

13 ZC MEMBER MAY: Okay. So next time around, don't  
14 write it this way. Because it's very confusing. It should  
15 be very clear, should have been in the first statement that  
16 you intend to have two IZ units.

17 MR. KADLECEK: Understood, yes.

18 ZC MEMBER MAY: Okay. So now we're clear on that,  
19 and we understand what the relief is. And I don't think I  
20 have any other questions.

21 CHAIR HILL: Okays. Does anyone have any more  
22 questions for the Commissioner or the witnesses?

23 MEMBER WHITE: I just had one question about the  
24 process. Because there seems to be kind of a disconnect  
25 between the Applicant, and the ANC, and the neighborhood.

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1 And it's so obvious to me that it's almost uncomfortable.  
2 But, you know, I can understand the concerns you have. I can  
3 also understand, you know, an investor coming in and making  
4 investments in the community. But I'm not clear on what  
5 formal process took place in terms of --

6 MS. MARLIN: Certainly.

7 MEMBER WHITE: -- you guys meeting with the ANC  
8 and why a vote wasn't handed down with respect to this  
9 particular case.

10 Now, I will say that, you know, I do have strong  
11 opinions about IZ and affordable units. And, you know,  
12 there's definitely very low vacancy rates with respect to  
13 affordable housing in the District of Columbia, just because,  
14 you know, I'm just aware of those statistics. So I think  
15 there is a demand, but I can understand concerns about  
16 density, but I am very interested in what kind of  
17 conversations took place ---

18 MS. MARLIN: Certainly.

19 MEMBER WHITE: -- with respect to this. Because  
20 there seems to be a huge disconnect here.

21 MS. MARLIN: So to put some ---I'm sorry to cut  
22 you off.

23 MEMBER WHITE: Go ahead.

24 MS. MARLIN: To put some context to that, actually  
25 I found out about the project by way of Ms. Monica Bumbray

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1 who left. I didn't receive the documents. I'm not blaming  
2 anyone about that. I think the documents -- I was really the  
3 chair up until February. We had a new chair, and the  
4 documents were sent to the chair, the new chair. And I think  
5 he was getting situated in the new position as being chair.  
6 And the documents went to another commissioner who  
7 subsequently didn't discover them until after I called, after  
8 being apprised by Ms. Bumbray, that it was in my SMD.

9           So with that said, I reached out to Office of  
10 Zoning who was impeccably of assistance to me about trying  
11 to get that sorted out. I looked into the file and saw where  
12 it was in my SMD. And I did take note that, in one of the  
13 documents, it was stated that the developer had committed to  
14 reaching out to the ANC, which it did not do.

15           So I was the first one to reach out to the  
16 developer, actually, by way of asking for a postponement  
17 which the attorney, in a very, I think, less than friendly  
18 manner, maybe hostile, told me that I should have been  
19 prepared and that I've had enough time to get my act together  
20 to come down here before you all.

21           I challenged that, and I was granted a  
22 postponement until today for the hearing so that I could  
23 reach out to my constituents. I was told that I needed to  
24 do that. And so I set up a meeting so that my constituents  
25 could meet with the developer. I then invited the developer

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1 to the ANC meeting which occurred in July.

2           Actually, you all went on recess, I believe, in  
3 July, August, August. And I was chastised for that by the  
4 attorney. Because I should have foreseen that you all were  
5 going to have an August break. So we moved forward, and I  
6 had two other meetings. I included the developer in another  
7 meeting, I invited them --- which was the ANC public meeting.  
8 At that point, they presented the project.

9           There were so many inconsistencies, as you can see  
10 here, what their intent was, that the chair ended that  
11 presentation and said the ANC was not going to take a  
12 position. Because it was not understandable what they were  
13 asking for and why.

14           And maybe, to Mr. May's point, how it was  
15 presented in the documentation, the documentation was not  
16 consistent with what they were actually telling us at the ANC  
17 meeting. I was sort of voted down in terms of trying to get  
18 a vote. The commissioners decided that they didn't have  
19 enough information, they weren't going to take a position on  
20 the project at that time, which then pushed us into  
21 September, which is your meeting precedes our ANC meeting of  
22 next month.

23           But I want to be clear, and I appreciate your  
24 question, because I think, as a commissioner who has a full-  
25 time job, I have

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1 really put a lot of time in this project and trying to  
2 coordinate the constituents and the developer.

3           They have been available, and I have asked, I  
4 asked for a site meeting on September 5th to come out, really  
5 walk us through the project so that we would understand what  
6 they're doing. I think some of the information that was  
7 presented here was left out during that meeting, and a lot  
8 of that information that I'm hearing here is just a little  
9 surprising to me. And it has been clarified at this point.

10           So I would not say that the working relationship  
11 has not been what I would hope in terms of trying to, one,  
12 get an understanding and move the project forward, but that  
13 could be a personality thing as well. I tend to be very  
14 committed to my constituents, and I'm going to serve them the  
15 best way that I can in any way that I can. Developers, on  
16 the other hand, see that just a little differently.

17           CHAIR HILL: Okay.

18           MR. KADLECEK: Can I respond to that.

19           CHAIR HILL: Just give me a second, just give me  
20 a second, just give me a second.

21           MR. KADLECEK: Okay.

22           CHAIR HILL: Does anybody have any questions?

23           MEMBER HART: Yes, just one question, Mr.  
24 Chairman.

25 Ms. Marlin --

1 MS. MARLIN: Yes.

2 MEMBER HART: -- Commissioner Marlin, thank you  
3 very much for coming today and providing your presentation.  
4 And from what I understand, you are --- and you've said this  
5 fairly clearly, that you were --- it's not that you're ANC  
6 or you are against the affordable units. You're just looking  
7 for less development. And you are aware that they are  
8 allowed to do a certain number of units just under the  
9 regular zoning?

10 MS. MARLIN: They've made that clear, correct.

11 MEMBER HART: Okay.

12 MS. MARLIN: Numerous times.

13 MEMBER HART: And so what we're --- the reason  
14 that they're here now is because of the two units that  
15 they're --- because they're looking at 12 units instead of  
16 ten units, if I'm correct.

17 MS. MARLIN: Well ---

18 MEMBER HART: It's a total of 12 units. They're,  
19 under zoning, allowed to do ten. They are proposing 12, so  
20 it's the two that is in addition to the ten that they would  
21 be allowed to do under --- we call that matter of right. But  
22 it's what they would be allowed to do under zoning.

23 MS. MARLIN: So to respond to your question, and  
24 I was looking at you with a puzzled look, because that has  
25 been a confusion. I mean, if you take just regular citizens,

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1 I mean, how many of us are going to be real versed on the  
2 zoning regs, you know, Subtitle C, and all the numbers, and  
3 that kind of thing. You really have to read that information  
4 to understand it.

5 So with that said, you would hope that a  
6 developer, in coming in and presenting a project, has a  
7 layman's way, if I can use that term, of explaining a  
8 project.

9 So to your point, when they were explaining what  
10 they wanted to do, they basically said don't worry about  
11 that, that's a matter of right. All you need to do is look  
12 at this, which to me is not maybe a way of trying to get your  
13 point across and what you're trying to do. And so I'm  
14 thinking 12 units, period. I'm not looking at IZ or anything  
15 else. I'm looking at him saying he wants to take a two-unit  
16 apartment building and make it 12.

17 Now whether he wants to designate it IZ or DC or  
18 PD, that's not my concern at this point. I understand the  
19 matter of right in terms of a single-family home situation.  
20 It's very different for me in looking at a developer coming  
21 in wanting to change the configuration of an apartment  
22 building that's going to take up more than what's --- just  
23 a little more than what's allowed for the rear yard  
24 extension.

25 He's exceeding the side yard extension from eight

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1 to 12 feet. And you just have to kind of wrap your head  
2 around all of this if you're not a zoning expert or an  
3 attorney. So when he presents his project to us, we're  
4 looking at 12 units versus two. That's it.

5 MEMBER HART: No, and I understood that. I just  
6 wanted --

7 MS. MARLIN: I'm not being harsh on you, but I've  
8 --

9 MEMBER HART: No, no, no.

10 MS. MARLIN: -- got to make that understood.

11 MEMBER HART: I'm not feeling that way. I just  
12 wanted to understand where you all were in terms of  
13 understanding what they were allowed to do under zoning and  
14 what they were proposing.

15 And what you're also telling me is that you're looking at it  
16 as going from what is existing to what they're proposing  
17 which is ten more units.

18 MS. MARLIN: Because that's what we're hearing.

19 MEMBER HART: I understand that.

20 MS. MARLIN: That's what we're hearing. And I  
21 think that ---

22 MEMBER HART: That's fine, I understood what  
23 you're saying. Thank you.

24 CHAIR HILL: Okay. Now wait a second. So just  
25 a couple of things. So Commissioner, definitely thanks for

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1 coming down. Thanks to everybody for coming down, right.  
2 And so, you know, we have full time jobs also, and this is  
3 something that we have been asked to do. And we have  
4 accepted that responsibility.

5 And what we are tasked to do is look at the  
6 standards as they apply towards what's being asked of us in  
7 terms of regulations. So every case is looked at  
8 specifically differently. And so, like, we're not looking  
9 necessarily at other projects or what other people have done  
10 in the neighborhood.

11 The regulation that might apply, or sorry, the  
12 standard that might apply to you guys in terms of when you  
13 do look at other things, is whether or not, you know, it  
14 would adversely affect the neighboring property, right. So  
15 that's like, you know, how the area around it, how this  
16 proposal or this project is affecting the neighboring  
17 properties.

18 So that's how other properties, like you mentioned  
19 the Skyland project or things like that, I mean, that's not  
20 necessarily something that we would take into consideration  
21 with this unless it had something to do with, again, like  
22 traffic and some of the items that you are bringing up. But  
23 this is, again, something that the Board would take into  
24 consideration as they go.

25 So I'm just kind of making that a general

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1 statement. And then I wanted to turn to the Applicant real  
2 quick here and ask a question again. So either Mr. Kadlecek  
3 or the Applicant, again, as far as what the buy right is,  
4 just for my clarification again, is what?

5 MR. KADLECEK: Okay. So it's a little confusing,  
6 because we're doing an addition to an existing building. The  
7 envelope of the building, which is 35 percent lot occupancy,  
8 30 feet of height, rear yard, I think, provided rear yard's,  
9 like, 20 feet, provided side yards are about 12 feet. That  
10 envelope is all permitted within the zoning regulations.

11 As you all know, except for the R and the RF  
12 zones, the number of units is not regulated. So the envelope  
13 that's being proposed here, say they had a double-height  
14 ceiling without the extra FAR, this envelope could be built  
15 as a matter of right. But what they're proposing is --

16 CHAIR HILL: Wait, let me say something. I  
17 understand the envelope could be built as a matter of right.

18 MR. KADLECEK: Right. So the only thing that  
19 can't be built as a matter of right is the extra 1,500 square  
20 feet of density that's being proposed.

21 CHAIR HILL: Which you're doing. And from that  
22 you're going to have two additional units, right?

23 MR. KADLECEK: Correct.

24 CHAIR HILL: So again, your envelope would remain,  
25 I'm sorry, your envelope would remain the same with the ten

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1 units and the 12 units?

2 MR. KADLECEK: Realistically, if this special  
3 exception weren't granted, the envelope might shrink a little  
4 bit in the back, because that's where they're basically going  
5 to put those 1,500 square feet, because it makes sense.

6 CHAIR HILL: Right.

7 MR. KADLECEK: But in theory, the building form  
8 will be more or less --

9 CHAIR HILL: I understand, I understand.

10 MR. KADLECEK: -- the same it is now. I mean,  
11 it's going to be ---

12 CHAIR HILL: So it'll be adding ten units. I  
13 understand. But again, as for ones that don't understand ---

14 MR. KADLECEK: Right.

15 CHAIR HILL: -- or aren't as clear about it ---

16 MR. KADLECEK: Right.

17 CHAIR HILL: -- the matter of right, what you're  
18 able to do --

19 MR. KADLECEK: Correct.

20 CHAIR HILL: -- is the ten units versus a little  
21 bit in the back, okay. And we're here for the additional FAR  
22 ---

23 MR. KADLECEK: Correct.

24 CHAIR HILL: -- which is going to be two  
25 additional IZ units.

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1 MR. KADLECEK: Correct. And to put it ---

2 CHAIR HILL: So I'm just --- that's okay, I just  
3 wanted to clarify something. That's the first ---

4 MR. KADLECEK: Right. And just to put a finer  
5 point on that, the number of units actually could be  
6 different. I mean, we could put more units in the existing  
7 building. And the IZ is only triggered when you have ten  
8 units in an addition. So it's all very complicated. So the  
9 number of units even is permitted as a matter of right. It's  
10 just the configuration of the density is what requires the  
11 relief. We could theoretically build a ---

12 CHAIR HILL: Try to get 12 units in there. I  
13 understand. That's fine too. As long as the envelope ---

14 MR. KADLECEK: As long as the envelope is within  
15 40 feet of height ---

16 (Simultaneous speaking)

17 CHAIR HILL: But you're adding the back which is  
18 getting you the extra density for the two units.

19 MR. KADLECEK: Correct.

20 CHAIR HILL: Okay.

21 MR. KADLECEK: All right.

22 CHAIR HILL: And so, okay, so just give me a  
23 second. Now, the height's a matter of right is what you were  
24 saying?

25 MR. KADLECEK: It's below matter. It's about ten

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1 feet below matter of right.

2 CHAIR HILL: Okay. So the height's a matter of  
3 right. So they can do what they can do except for the  
4 additional FAR that they're trying to get to include the two  
5 IZ units. I'm just planning my own clarification for this,  
6 okay.

7 So now, Mr. Kadlecek, you're an attorney, and  
8 you've had a lot of, you know, things said about you, I'm  
9 sure. And you're doing things for your client, okay. And  
10 usually I try to interject when it gets a little bit out of  
11 control, or not out of control but, like, you know, let's  
12 just --- I think we can move on in terms of, like, whether  
13 or not you need to respond to anything.

14 I would assume that you're doing the best you can  
15 for your client in terms of trying to make this hearing  
16 happen as quickly as possible. However, if you'd like to  
17 respond to something, you're welcome to respond to something.  
18 But I don't necessarily there's a need.

19 (Simultaneous speaking)

20 CHAIR HILL: And secondly, if you do have any  
21 questions on cross, now is your opportunity.

22 MR. KADLECEK: Yes, thank you, Mr. Chairman. I  
23 won't respond to the specifics other than to say I think that  
24 we have a slightly different interpretation of how everything  
25 played out. But I will say we're appreciative of the ANC

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1 Commissioner's willingness to meet with us. And she has been  
2 very available to meet with us. So we do appreciate that.

3 I think the nature of how things actually occurred  
4 we disagree with. But I think the Board can understand there  
5 are often two perspectives on how things occur. And the  
6 reason that the ANC didn't take a vote, I think we also  
7 differ on how that occurred.

8 But that being said, the one thing I just want to  
9 ask for clarification from Ms. Marlin is the ANC didn't take  
10 an official position on this case, correct? Because they  
11 didn't vote, there's no official ANC position?

12 MS. MARLIN: Correct.

13 MR. KADLECEK: Okay. Thank you. So that's all  
14 I have.

15 CHAIR HILL: Okay. All right, great. Okay,  
16 thanks.

17 All right, so now I'm going to turn to the Office  
18 of Planning. Office of Planning, you're up.

19 MS. ELLIOT: It's good to be back.

20 CHAIR HILL: Welcome back. I'm Brandice Elliot,  
21 representing the Office of Planning. I think there has been  
22 some clarification regarding the relief that's been  
23 requested. Essentially, the building itself is matter of  
24 right. What it comes down to is the FAR, the 1,500 square  
25 feet. This zone allows an FAR of 0.9. That's 7,878 square

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1 feet. And then ---

2 CHAIR HILL: Can you repeat that again? I'm  
3 sorry, 0.9 which is what?

4 MS. ELLIOT: I'm sorry.

5 CHAIR HILL: That's all right.

6 MS. ELLIOT: 0.9, 0.9.

7 CHAIR HILL: Right.

8 MS. ELLIOT: It's 7,878.6, if you want me to get  
9 specific, square feet. And the bonus density that's been  
10 requested takes it up to 1.07 which is 9,339 square feet.  
11 The special exception request, the zoning regulations would  
12 allow it to go up to 1.08, so they're just shy of maximum.  
13 But the difference between that area is 1,461 square feet  
14 which is where we're at. And the relief has been requested.

15 So as the Applicant has clarified, the building  
16 itself complies with the regulations. So in terms of height,  
17 rear yard, side yard, all of the massing regulations, it is  
18 compliant. And parking spaces, it's providing a compliant  
19 number of parking spaces. What we're getting down to is that  
20 1,500 square feet and whether it can be in the building. And  
21 the form of the building doesn't have to change. That can  
22 remain the same, regardless of what happens here today.

23 So OP --- and I do appreciate the clarification  
24 on the affordable units. I think there was a broad stroke  
25 interpretation based on the statement and with further

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1 discussions with the Applicant. And I probably applied IZ  
2 to the entire project, but it's only the two units. And  
3 there is no affordability requirement for the remaining ten  
4 units. But the two units will be administered by DHCD and  
5 will be affordable in perpetuity.

6 So OP is recommending approval of the special  
7 exception. I don't know how much detail you would like for  
8 me to go into. It's essentially, you know, the special  
9 exception criteria gets into whether there is an adverse  
10 impact on the community. And certainly, the community is  
11 coming forward with their own concerns.

12 As it relates to the 1,500 square feet, OP does  
13 not think that the proposed development would appear to  
14 adversely affect the neighboring property, because the  
15 massing itself complies with the regulations. And they think  
16 that that's the big component here that gets us onboard with  
17 it.

18 If there are any questions though, about our  
19 analysis and the relief, I'm happy to weigh in on that.

20 CHAIR HILL: Okay. Does the Board have any  
21 questions for the Office of Planning?

22 MEMBER JOHN: Yes, I have one question. How many  
23 parking spaces are required?

24 MS. ELLIOT: Two parking spaces --- I'm sorry.  
25 I believe our table says, okay, three parking spaces. But

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1 I believe only parking is required for the addition. And so  
2 the existing units are not required to provide parking,  
3 because there is not currently parking. But for the new  
4 units, a total of two parking spaces are required. So that's  
5 why our table reads three. Twelve units would ordinarily  
6 require three parking spaces. But they're only required to  
7 park those units that are being added.

8 MEMBER JOHN: So there's two.

9 MS. ELLIOT: So two parking spaces is my final  
10 answer. Ha, ha, ha.

11 MEMBER JOHN: Okay.

12 MS. ELLIOT: Does that make sense?

13 MEMBER JOHN: Yes. But I thought I heard that  
14 you're proposing seven --

15 MR. KADLECEK: Yes. So ---

16 MEMBER JOHN: -- parking spaces.

17 MR. KADLECEK: Correct. So because, as you heard,  
18 parking was one of the concerns that we did hear and that  
19 we're responding to, the developer is willing is to provide  
20 a minimum of seven, and if they can fit they'll provide  
21 eight. So that's, you know, getting close to one to one for  
22 the number of units. So that's actually significantly more  
23 than zoning requires.

24 MEMBER WHITE: Did you ever have any renderings  
25 of what the building's actually going to look like in the

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1 end, which is, you know, also kind of helpful too. Because  
2 it can be a positive, you know, when you're sharing it with  
3 the neighborhood. But is that the only one that you  
4 currently have --

5 MR. KADLECEK: Yes. We only have ---

6 MEMBER WHITE: -- in terms of an ---

7 MR. KADLECEK: Yes, we only have ---

8 MEMBER WHITE: -- appeal and ---

9 MR. KADLECEK: Yes. We just have the elevations  
10 that are in the package and that you see in this  
11 presentation.

12 MEMBER HART: Yes. I would agree with Board  
13 Member White. It's, I mean, I'm not even sure what the  
14 material is of the building. I don't know what the doors or  
15 windows look like.

16 I mean, there is a very similar look for the  
17 buildings that are existing along the street. And while this  
18 seems like it is trying to do that in terms of the form, I'm  
19 just surprised that there aren't any drawings that say, well  
20 --- because it looks like there's a different material for  
21 some of the elevations.

22 And it looks like it's CMUs and, you know, maybe  
23 siding. But I don't know if that's what I'm actually reading  
24 or not. So like I said, it's very difficult for me to  
25 understand what this is and why there's no detail around any

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1 of the windows or doors.

2 MR. KAYE: Sure. I didn't know we were obligated  
3 to provide detail. But the addition on top of the existing  
4 building will be brick. And then the addition will be Hardie  
5 plank or siding.

6 MEMBER HART: And what's happening with the  
7 doorways and windows?

8 MR. KAYE: Like in kind, windows, vinyl, double-  
9 hung.

10 MEMBER HART: Okay. I mean, it's just really  
11 strange to see drawings like this. I'm ---

12 MEMBER WHITE: My only comment ---

13 MEMBER HART: It's like very basic. These are,  
14 you know, it's like you might as well have just given us a  
15 outline of the building and, you know, where windows are.  
16 Because nothing else reads that way. So it was really hard  
17 for me to kind of understand what that was.

18 MR. KAYE: We tried to delineate between the  
19 existing and proposed which is why you see the different  
20 texture. But if you wanted something in writing about the  
21 material for the outside of the building, we can provide  
22 that.

23 CHAIR HILL: Okay, Mr. Kadlecek -- oh, sorry. Go  
24 on.

25 PARTICIPANT: Go ahead.

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1 CHAIR HILL: No. Mr. Kadlecek, I mean, I was kind  
2 of going to comment. It is difficult for us to kind of,  
3 like, was there some intent as to only just show us this?  
4 Or this is just kind of what you thought was the best thing  
5 in order for us to get through the standard?

6 MR. KADLECEK: Yes. I mean, as the Board knows,  
7 you know, this isn't technically a design review. It's a,  
8 you know, the standards are is there an adverse impact. And  
9 I think, based on what we presented, it's clear that the  
10 building is well within the matter of right zoning limits.

11 And as Ms. Elliot pointed out, you know, that  
12 really goes to ---

13 CHAIR HILL: It's not design review, I agree. But  
14 in the past we've always had at least what it is we're  
15 looking at. And oftentimes, you know, the plans that we  
16 approve are the plans that then need to be ---

17 MR. KADLECEK: Right.

18 CHAIR HILL: -- built.

19 MR. KADLECEK: Right. And the plans that are  
20 provided do provide all of the accurate dimensions of the  
21 building and ---

22 CHAIR HILL: Can you tell me which exhibit that  
23 is again?

24 MR. KADLECEK: So the plans that were provided  
25 with the initial application are ---

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1 CHAIR HILL: Is it 11?

2 MR. KADLECEK: Yes, probably. I don't have the  
3 exhibit list in front of me. One second.

4 CHAIR HILL: That is 11.

5 MR. KADLECEK: Yes, it's 11.

6 CHAIR HILL: Maybe the Zoning Commission can,  
7 like, give us some design review stuff one day where we can,  
8 like, look at stuff.

9 ZC MEMBER MAY: No. That's not going to happen.

10 (Laughter)

11 ZC MEMBER MAY: Not that I wouldn't want to do it  
12 myself. And I think it is important. It is a real  
13 distinction, because the BZA, in certain cases, should be  
14 looking at design issues to the extent to which the design  
15 of the building is a mitigation or is directly related to the  
16 impacts of the proposed project.

17 In this case, I don't see any reason why the BZA  
18 needs to see more detail than we already have. And I  
19 actually think it's not a good idea for us to receive more  
20 than we actually have. The case before us is relatively  
21 simple, as Mr. Kadlecek said before. I understand that there  
22 are concerns from the neighbors, and we have to grapple with  
23 that as well. But I don't think that having more detailed  
24 drawings really relates to the requested relief. Sorry, you  
25 happened to bring in the Zoning Commission, so I felt I had

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1 to --

2 CHAIR HILL: Oh, you sit on the Zoning Commission,  
3 so you've got to vote, I guess, right.

4 So just so the community knows, we don't get to  
5 look at design issues as Mr. Kadlecek has pointed out again.  
6 However, we usually get to look at plans or at least  
7 understand within the colors where we're kind of taking a  
8 look at, which is also part of what I think you might have  
9 come up against with your community outreach in terms of them  
10 depending upon what you showed them, but regardless. So, Mr.  
11 Kadlecek, do you have any questions for the Office of  
12 Planning?

13 MR. KADLECEK: No questions, thank you.

14 CHAIR HILL: All right. Commissioner, do you have  
15 any questions for the Office of Planning?

16 MS. MARLIN: I do.

17 CHAIR HILL: Sure.

18 MS. MARLIN: I do want to start by, I think it's  
19 -- if someone's asking you for relief, I think you need to  
20 see everything that's involved in that relief, whether it's  
21 just to get through a BZA hearing or a zoning hearing.

22 CHAIR HILL: And I'm sorry, Commissioner, what's  
23 your question for the Office of Planning?

24 MS. MARLIN: It's not my question. That was a  
25 statement for Commissioner May. But my question for the

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1 Office of Planning is, I note here on, I think this is Page  
2 of your report, Item 3, the green area ratio is not  
3 provided. Is that standard, or not required, or did you not  
4 see the need for them to provide that?

5 MS. ELLIOT: You know, there are a number of  
6 things that are required with developments. Green area ratio  
7 comes up often. We don't always get that number with these  
8 submissions. But we put it in the chart so that the  
9 Applicant is aware that there is a requirement. And then  
10 when they go to apply for building permits they comply with  
11 that.

12 So the relief hasn't been requested. Just because  
13 it's not provided doesn't mean that OP would recommend  
14 approving that relief. We're just noting that we don't have  
15 that information, and the Applicant will have to comply with  
16 it.

17 MS. MARLIN: So as a quick follow-up, I want to  
18 understand what you're saying. Because Hillcrest community,  
19 even 29th Street, is a green area. We don't want to lose any  
20 green space that we don't have to. So are you saying you  
21 wouldn't recommend it? Is that what --- yes or no?

22 MS. ELLIOT: Well, without --- I'm trying to  
23 simplify this. There is a requirement. Chances are, and I'm  
24 going to guess, that given the size of this lot and that it's  
25 compliant in terms of rear yard and side yard, it probably

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1 complies.

2           That being said, we don't have the information.  
3 That was not provided in this analysis. And I can't say  
4 whether or not OP would support or not. But we're just  
5 noting that it has to be complied with.

6           CHAIR HILL: It is supposed to be complied with.  
7 If it's not complied with, then they won't get their permit.

8           MS. ELLIOT: Right.

9           CHAIR HILL: It will be complied with.

10          MS. MARLIN: But not in this ---

11          MR. KADLECEK: For the record, we are not asking  
12 for relief from the GAR requirement.

13          CHAIR HILL: So it will be complied with.

14          MS. MARLIN: When?

15          CHAIR HILL: When the development is built, it  
16 will be complied with.

17          MS. MARLIN: Okay.

18          CHAIR HILL: Was there any other questions for OP?

19          MS. MARLIN: I think I'm understanding what you  
20 all are saying. It's not documented, but you're saying  
21 there's somewhere else it will be complied with. That's what  
22 you're saying?

23          CHAIR HILL: They're not requesting relief from  
24 it, so therefore they will be complying with it.

25          MS. MARLIN: But my question to her is why they

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1 didn't --

2 MS. ELLIOT: It will be confirmed when they apply  
3 for their building permits and they go through separate  
4 zoning review in DCRA. They'll provide the calculations at  
5 that point, and someone will confirm that it's compliant.

6 CHAIR HILL: Okay. And I'm just saying that ---  
7 I'm not trying to confuse the situation. I'm just saying  
8 that they are saying that it will be complied with.

9 MS. MARLIN: I understand that.

10 CHAIR HILL: Okay.

11 MS. MARLIN: But, I mean, being regulatory, I like  
12 to have things in writing. She's saying that, but it's not  
13 in writing. That's my point.

14 CHAIR HILL: Well, my point just again, because  
15 I had to go through this before also, like, it's a very  
16 interesting process. The second floor in DCRA doesn't ---  
17 they won't get their permit if they're not compliant with the  
18 green area ratio.

19 Okay, any other questions for Office of Planning?

20 MS. MARLIN: Yes, one last question. We saw a  
21 slide that showed blue dots of a lot of apartment buildings.  
22 And I noticed in your report you only went so far west. Is  
23 there a reason why you didn't expand your review?

24 MS. ELLIOT: You know, the beginning table under  
25 location and site description, I think, is what you're

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1 referring to. Typically, you know, adjacent properties are  
2 just those that abut the subject property.

3 We do go into general neighborhood character a  
4 little bit deeper into the report, I guess a little bit  
5 further down, where we just note that, yes, this is a low  
6 density apartment zone. We don't tend to go into a lot of  
7 detail. But we do note what the actual character of that  
8 neighborhood is. So I think we have provided some analysis  
9 regarding that in the report.

10 CHAIR HILL: Okay. All right. So is there anyone  
11 here wishing to speak in support?

12 (No audible response)

13 CHAIR HILL: Okay. Is there anyone here wishing  
14 to speak in opposition?

15 Yes? Okay, so if you could go ahead and state  
16 your name once again, for the record, as well as your  
17 address. And then you'll each get three minutes. And just  
18 press your button whenever you're ready. Well, first go  
19 ahead and introduce yourselves again. I'm sorry, I know ---

20 MR. JENNIFER: My name is Tyrone Jennifer. I'm  
21 the owner of 2628 29th Street. And my family owns 2624 29th  
22 Street, right next to me. We've been on that block for 37  
23 years, sir.

24 CHAIR HILL: Mr. Moy, would you start that clock  
25 also. Thank you.

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1 MR. JENNIFER: I'm objecting to this extra 1,500  
2 square footage, because it's going to bring too much density  
3 to our area. It's just going to mean too many people. And  
4 it's just too much traffic.

5 The picture you saw of the street was him coming  
6 down the street where it's wide. It's making a wide turn.  
7 But as you go down the street, it comes in. So that's not  
8 as many parking spaces as you think. That time of day that  
9 he took that picture had to be, like, 10:00 in the morning.

10 We don't mind them building, but we don't want the  
11 1,500 square footage. We don't want the extra two rooms.  
12 Because if they do three bedrooms, three times 12, 12 units  
13 and three bedrooms is 36 bedrooms. If they do 12 units, two  
14 bedrooms, we got 24 bedrooms, you know. And if you do ten  
15 units, and you do three bedrooms, that's 30 bedrooms. Do you  
16 know how many people will be in these units?

17 I mean, our neighborhood is quiet. We have taken  
18 care of our neighborhood. When we have crime come, we call  
19 the police, and we stay on top of it. When you get people  
20 who buy and invest in the neighborhood, they don't pay  
21 attention to that. When we try to call investors --- or not  
22 investors, people who own their units who don't live around  
23 there, basically investors, they'll pick up the phone and  
24 they'll say --- because we have the situation going on now  
25 with that.

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1 I tell the guy, hey, your property is not up-kept.  
2 Okay, we'll send somebody over there. I call downtown, they  
3 said we're short of help. Call back in about a week and just  
4 keep calling. Keep calling? We pay for you to do your job.  
5 We should not live that way where we have problems.

6 We don't want a lot of people in our area where  
7 it's just crowded. It's overcrowded. It's a small block.  
8 Like I say, when he showed you that picture, he's showing you  
9 going down the street. Show going up the street.

10 I mean, we're not opposed to affordable living.  
11 And anybody can live in our neighborhood. But we want people  
12 who care, we want the owners to care. We don't want you just  
13 to come there and build something, move on to the next stop.

14 I'm about profit. I'm an owner. My family owns  
15 buildings there. But we want people that's going to care.  
16 When I call the office, I expect something to be happening,  
17 not right away, but get it done. And a lot of people come  
18 and say we're going to take care of it, call us.

19 CHAIR HILL: Oh, Mr. Jennifer, just look on up to  
20 us this way. Don't look at them. That's okay.

21 MR. JENNIFER: I'm sorry.

22 CHAIR HILL: That's all right.

23 MR. JENNIFER: I'm sorry, I'm sorry. I apologize,

24 CHAIR HILL: That's okay, that's all right.

25 MR. JENNIFER: But I care about my neighborhood.

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1 CHAIR HILL: Sure.

2 MR. JENNIFER: I moved back the neighborhood five  
3 years ago. I'm renting out my house. My wife didn't want  
4 to move back around there. She was, like, are we going to  
5 be safe? I'm going to make sure you're safe. Because I'm  
6 going to walk that street, I'm going to call the police, and  
7 I'm not running. I'm going to stay here. This is our  
8 neighborhood. And she's comfortable. But when she found out  
9 about this she's, like, oh boy. Now I'm going to have to buy  
10 a new house because she's --- after it gets too crowded.

11 I mean, to be honest, you know, I understand  
12 growth. But it has to be a certain growth. You're going to  
13 impact our block so hard. If that was your neighborhood,  
14 you've got houses, if they come and say we're going to build  
15 six houses there, you're going be, oh, heck no. What about  
16 my parking space?

17 CHAIR HILL: Okay. All right, Mr. Jennifer.

18 MR. JENNIFER: Thank you, sir, appreciate it.

19 CHAIR HILL: Oh, no, no. I appreciate your coming  
20 in.

21 MR. JENNIFER: And I'm sorry.

22 CHAIR HILL: You're all right. It's all good.  
23 I'm sorry, ma'am, I'm ---

24 MS. HARGROVE: Ms. Hargrove.

25 CHAIR HILL: Oh, Ms. Hargrove. Thank you.

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1 MS. HARGROVE: Mrs. Hargrove.

2 CHAIR HILL: Mrs. Hargrove. All right, Mrs.  
3 Hargrove. I'm going to --- same thing. If you could, again,  
4 introduce yourself again. And then we'll go ahead and give  
5 you three minutes.

6 MS. HARGROVE: Okay. My name is Alberta Hargrove.  
7 And I'm an owner of 2901 Denver Street which abuts --- the  
8 rear of my house abuts the building. And I really don't ---  
9 I'm not sure if that property that they're trying to bring  
10 out to the side will be in conflict with my property line,  
11 right? I really think that approving such an apartment  
12 building should not be acceptable for --- I'm nervous. I'm  
13 sorry.

14 CHAIR HILL: Don't be nervous. I'd be nervous.

15 MS. HARGROVE: Okay.

16 CHAIR HILL: Take your time.

17 MS. HARGROVE: Okay. The proposed three-story  
18 building, along with the cellar in the basement, I think that  
19 it should not be an acceptable size as to --- I think that  
20 it would really come into my property. I think that it would  
21 disturb the foundation of my property along with the other  
22 two houses that abut the land.

23 I think that it would disturb the alley  
24 population, people walking up and down the street, and in the  
25 alley, and trying to find parking spaces. I think that they

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1 haven't really set a place where they're going to have  
2 children playing. I think that they may start playing in my  
3 yard.

4           It's just a whole lot of personal household issues  
5 that I really think that would really affect our property as  
6 a whole with a population and the density that they're trying  
7 to erect and cause a lot of problems with my property. So  
8 I'm really opposed of them at least going that extra level  
9 up, because it would definitely bring in more families,  
10 children, and parking.

11           Let me see, I've gotten nervous now. Well,  
12 really, I have provided, along with my neighbors, provided  
13 letters for the record which would really outline our  
14 opposition to this project along with a petition with about  
15 61 people who kind of feel the same way and don't really like  
16 -- would not like them to go higher in density.

17           CHAIR HILL: Okay. All right, does anybody have  
18 any questions for Ms. Hargrove or Mr. Jennifer?

19           MEMBER JOHN: Gentlemen, I had one question. Did  
20 you talk to the developer about perhaps coming to an  
21 agreement about the construction, a construction agreement,  
22 if you're concerned about your property being damaged? Did  
23 you all discuss that at all?

24           MS. HARGROVE: Well, no.

25           CHAIR HILL: Wait, wait, hold on a second. So

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1 okay, all right. So, oh, I had a quick question, so the  
2 answer was no, okay.

3 So, Mr. Kadlecek, can you ask real quick --- well,  
4 let me take a step back. All right, never mind. I'm going  
5 to take a step back. Mr. Kadlecek, the property, Ms.  
6 Hargrove's property, do you know where that is again? I saw  
7 you kind of flipping through the photos to try to figure out  
8 where it was.

9 MR. KADLECEK: Yes. Jesse is pointing it out  
10 right now on the screen.

11 CHAIR HILL: Okay.

12 MS. HARGROVE: It's the first one.

13 MR. KADLECEK: Yes, it's that ---

14 CHAIR HILL: Oh, I see. Okay. But when the  
15 build-out happens --

16 (Simultaneous speaking)

17 CHAIR HILL: -- what change would there be  
18 happening to that property?

19 MR. KADLECEK: Very little, because as you can see  
20 the way the properties are oriented, the back of her house  
21 basically, her property I should say, kind of --

22 (Simultaneous speaking)

23 MR. KADLECEK: -- the existing building.

24 CHAIR HILL: Yes.

25 MR. KADLECEK: So the addition is going to be

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1 beyond that. And I think, Jesse, you can say about what the  
2 distance between the building and the back of her house is.  
3 It's probably 100 feet, something like that?

4 MR. KAYE: About 100 feet, 85 feet.

5 CHAIR HILL: Okay, okay. All right. So does  
6 anyone have any more questions for the witnesses?

7 (No audible response)

8 CHAIR HILL: Okay. All right.

9 MS. HARGROVE: The other issue is when we went to  
10 --- when they came on the site visit, it was unclear to us,  
11 and my neighbor at 2905, if in fact they had considered her  
12 land which a fence is there now. But when she had a survey  
13 done, the markings were beyond the fence which went into  
14 their property. So we were really concerned about that back  
15 bump-out that they had on the, let me see, on the right-hand  
16 side.

17 CHAIR HILL: Mr. Kadlecek, do you know what the  
18 Applicant's speaking about?

19 MR. KADLECEK: Yes, I do.

20 CHAIR HILL: Do you have an answer?

21 MR. KADLECEK: Yes, we do. There's a question  
22 about where the --- there's a fence there. I mean, it was  
23 a question about whether the fence is on her property or  
24 ours. And Jesse or Jason can talk to this. But they have  
25 a survey that shows the fence, and the fence is shown as on

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1 the Applicant's property.

2 CHAIR HILL: Okay. All right, so that's the  
3 answer there on that particular --- so, all right. So I'm  
4 going to go ahead. Does the Board have any more questions  
5 for anybody?

6 (No audible response)

7 CHAIR HILL: Okay. So I'm going to let the  
8 Commissioner go first here in terms of providing a  
9 conclusion, okay, if you have any concluding comments.

10 MS. MARLIN: Thank you. Well, as I said, this is  
11 not about my Commission being -- ANC 7B Commission being  
12 against affordable housing. It has everything to do with  
13 density.

14 I just wanted to weigh in on the fence issue. The  
15 residents are here. They've already said they had a survey  
16 done and the fence is on their property. They subsequently  
17 said that they had the fence removed, but of course that's  
18 not what he just said.

19 So this argument that the community has brought  
20 before the BZA has to do with density, basically. And we  
21 just feel like we don't need any more units on that street.  
22 I know Skyland has been somewhat negated and put aside, but  
23 it is within walking distance. And once we get 268  
24 affordable units there, we have that to also contend with as  
25 well as the existing units that are available there within

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1 very close proximity of this particular site.

2 We do not understand why we've gotten conflicting  
3 information throughout the last two months and have to come  
4 here and get clarification as to what they really want to do,  
5 which I think is somewhat inappropriate. Because you have  
6 to prepare for this when you come before the Board. I think  
7 that there needs to be a little more discussion on how they  
8 can mitigate some of the concerns.

9 I did ask them on the site visit about  
10 construction concerns and how it would impact the residents.  
11 And subsequently, I was told that that's irrelevant to what  
12 we're asking for. And all you need to be concerned about is  
13 whether or not you're going to approve the two units for  
14 inclusionary zoning.

15 So as I talked with the Council members' office,  
16 my concern greatly has been the lack of commitment to what  
17 they're going to do, the inconsistencies they've presented  
18 to us, to someone's point not really knowing what they're  
19 going to do. But yet they're asking for us to approve the  
20 special exception request.

21 So since I do have the consent of the Chair and  
22 of my Commissioners to represent us in this hearing, I'm  
23 going to go on record by saying that the Commission is  
24 opposed to granting the special exception.

25 CHAIR HILL: I don't think you can do that, right?

1 MS. MARLIN: Well --

2 (Off the record comments)

3 CHAIR HILL: So you can go on record, and  
4 everybody's telling me now, you can go on record as saying  
5 that you're opposed. However, since you didn't take a vote,  
6 we can't give great weight to your opposition. And that's  
7 within the regulations.

8 MS. MARLIN: I understand.

9 CHAIR HILL: But we understand now that you're  
10 representing that the ANC is opposed.

11 MS. MARLIN: That's right.

12 CHAIR HILL: Okay. All right, Mr. Kadlecek, do  
13 you have anything in conclusion?

14 MR. KADLECEK: Yes. I want to make a couple of  
15 concluding statements that I think might hopefully clarify  
16 things a little bit. Again, we thank you for time on this.  
17 And what we had hoped was going to be a simple case took a  
18 little bit longer.

19 But in terms of commitment and consistency, I just  
20 want to be clear that the plans have not changed since we  
21 filed this application on May 4th. It has always been a 12-  
22 unit building. The only confusion was what we discussed  
23 earlier. It was about the number of affordable units. But  
24 the request has always been for approximately 1,500 square  
25 feet of density. It's always been for a 12-unit building.

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1 It's always been for a building that's 30 feet tall, et  
2 cetera. So that has not changed since this application was  
3 filed. I just want to be clear about that.

4 So maybe some of the details haven't always been  
5 clear, but the building and what the program of the building  
6 is has always been the same. In fact, this presentation that  
7 Jesse gave you, with the exception of the map showing the  
8 dots and the red circles, was virtually identical to what was  
9 given to the ANC meeting in August.

10 So with that being said, I want to just address  
11 the issues of density and transportation. So on the issue  
12 of density, I want to just, again, sort of put this in  
13 perspective. This is a 12-unit building in a moderate  
14 density apartment zone, a three-story building. Both the  
15 zoning regulations and the comprehensive plan define moderate  
16 density as three units, approximately three units. This is  
17 consistent with all the planning guidance documents in the  
18 city in terms of what moderate density is.

19 And if you think about the perspective of 12  
20 units, 12 units isn't that much. As I'm sure this Board's  
21 aware, you know, a lot of the apartments that developers  
22 propose are studios and one bedrooms. Here you have a  
23 developer proposing a relatively number of family-size units  
24 and doing what is typically not the case.

25 Typically what we hear is, oh, well, you should

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1 be doing family-sized units. So now they're doing family-  
2 sized units and saying that that's too dense. So I think  
3 that's just something to really keep in perspective. We're  
4 talking about 12 two or three bedroom units in a moderate  
5 density zone which is very consistent with what's being  
6 proposed here.

7           It's an 8,000 square foot lot providing eight  
8 parking spaces. So I think when you consider all those  
9 things in terms of the amount of density, it's really quite  
10 consistent. As you saw on the map, this is an apartment  
11 neighborhood, by and large, it's an apartment neighborhood.  
12 And a 12-unit apartment building, particularly with the much  
13 larger apartment buildings at the end of this block -- Jesse,  
14 maybe if you could speak a little bit about what the  
15 character of the apartment buildings just at the end of the  
16 block is to provide a little bit of context about that.

17           MR. KAYE: Sure. The bottom of 29th and Erie  
18 Street, it's 60, 70, 80 unit buildings on our block as well.  
19 So on 29th, with the exception of the one house that is on  
20 the corner of Denver and 29th, every other property on our  
21 block, and the neighboring blocks, are apartments.

22           MR. KADLECEK: Okay. So it's, you know, a 12-unit  
23 building in that context is not overly dense. It's not  
24 inconsistent with the neighborhood.

25           And finally, on the transportation issue, I just

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1 want to reiterate two things. DDOT's report said that they  
2 found that there's no adverse impact on the transportation  
3 network in the neighborhood.

4 And secondly, I'd like to reiterate that the  
5 developers are willing to provide eight parking spaces for  
6 a 12-unit building which is pretty extraordinary, given that  
7 the requirement is two. So really, they did hear the  
8 concerns about parking. And they're willing to respond to  
9 that.

10 Just generally speaking about community engagement  
11 going forward, a lot of what the developer heard, in the  
12 three meetings that we've had with the community and the ANC,  
13 had to do with building operations and construction. And the  
14 Applicant heard those and is willing to work with the  
15 community on those things.

16 There was a question about a construction  
17 management agreement. We actually talked at the ANC meeting  
18 about a construction management agreement.

19 MS. MARLIN: We did not do that.

20 CHAIR HILL: Excuse me, excuse me, I'm sorry.

21 (Simultaneous speaking)

22 MS. MARLIN: I can't sit here if he's going to  
23 lie.

24 CHAIR HILL: Excuse me, really, you've got ---

25 MS. MARLIN: I mean, it's just frustrating.

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1 That's a --

2 CHAIR HILL: Commissioner, Commissioner,  
3 Commissioner, it's just --- No, it's okay. You don't have  
4 to talk anymore. It's the Applicant's opportunity to provide  
5 their conclusion.

6 MR. KADLECEK: So the Applicant has continued ---  
7 is willing to continue working with the community on those  
8 issues and is willing to enter into a construction management  
9 agreement with the community. They're very cognizant of  
10 those issues, and they're willing to work with the community  
11 on those issues. And I don't want that to be lost. That's  
12 a commitment the Applicant's willing to make.

13 So with all that, I just want to conclude in  
14 saying that what this really is is an opportunity to provide  
15 two affordable units that would otherwise not be provided if  
16 this really weren't granted. The Applicant is trying to do  
17 the right thing. It's part of what their business model is,  
18 and they're trying to provide two additional affordable units  
19 in perpetuity with really a very small amount of square feet,  
20 1,500 square feet.

21 So we're asking the Board to not delay this quite  
22 small project any further, with voluntary affordable units,  
23 with the understanding that the Applicant will continue to  
24 work with the community on the issues about building  
25 operations, construction, et cetera. So with that, we would

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1 ask for the Board's approval. And we have nothing further.  
2 Thank you.

3 CHAIR HILL: Okay. All right, great. Does the  
4 Board have any other questions or comments?

5 (No audible response)

6 CHAIR HILL: Okay. I'm going to go ahead and  
7 close the hearing. Is the Board ready to deliberate?

8 (No audible response)

9 CHAIR HILL: Okay. All right. I can start. So  
10 let's see, oh yes. So I appreciate the Commissioner coming  
11 down. And to the Applicant, this didn't go as smoothly as  
12 I suppose you could have possibly done this. I mean, the  
13 part for me that I was, again, continuing to understand was  
14 where --- and I guess this is where, you know, I'm trying to  
15 understand what our responsibility is in terms of whether or  
16 not this is meeting the standard to approve.

17 And as far as what the opposition has brought up  
18 in terms of the density, again, this is a building that is  
19 already going to have or could have had 12 units the way it  
20 was anyway. What we are here to determine is whether or not  
21 the standard's being met for the additional 1,500 square feet  
22 that could bring affordable housing units, two affordable  
23 housing units, into this property.

24 Now, again, the standards that we're using to  
25 apply whether or not it's been met or not is listed within

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1 the Office of Zoning's report. And I think that what I was  
2 somewhat conflicted about, I suppose, was kind of just the  
3 talk about parking, and density, and things such as that, and  
4 that this property is bringing in eight possible parking  
5 spaces and seven parking spaces.

6 So I do appreciate what the community has said in  
7 terms of their concerns. However, as far as what we have to  
8 work with, we're only here for the additional 1,500 square  
9 feet. Like, they're able to do what they're able to do. So  
10 as a matter of right, they'd be able to bring in 12 units in  
11 the capacity that they have put forward.

12 Now, as far as the Applicant's concerned, I don't  
13 know what or how you could have done things differently in  
14 terms of working with the ANC. I mean, again, I'd have to  
15 go back and look and see in terms of, like, drawings and  
16 things, the way things look, just so it's easier to  
17 understand.

18 I appreciate Commissioner May's comment in terms  
19 of we're not design review. We're not design review,  
20 however, you know, getting a little bit more color makes it  
21 a little bit easier at time for me to understand.

22 But I would be in favor of this application,  
23 because I believe it meets the criteria. And I don't think  
24 that if we denied the application there would be any less  
25 density coming to the neighborhood. It's just there would

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1 be two less IZ units that would be available to the city.

2 So does anyone else have anything else they'd like  
3 to add?

4 ZC MEMBER MAY: No. I appreciate the term summary  
5 of this. I would agree it meets the criteria. I don't see  
6 a basis for denying the request based on any of the testimony  
7 we've heard today. I doesn't mean we're not sympathetic to  
8 the issues, it just means that the zoning regulations don't,  
9 I mean, they basically encourage what this Applicant has  
10 requested to do. And there's not really a compelling reason,  
11 based on zoning, to deny it. So I would be in favor of it.

12 MEMBER WHITE: Yes. I thought the case was going  
13 to be a little easier too. But I knew that there was some  
14 tension, you know, in terms of the amount of communication  
15 that's been going on back and forth.

16 As my colleagues have stated, I do think that they  
17 technically met the criteria in order to do this inclusionary  
18 density zoning development. I was a little disappointed  
19 there weren't more IZ units. But I'm glad we got some  
20 clarification on that.

21 What I would be in favor of, unless my colleagues  
22 disagree, would be for the parties to continue to be actively  
23 involved with community engagement, and with the ANC, and to  
24 incorporate some type of construction agreement to ensure  
25 that the neighbors that live in the immediate vicinity don't

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1 have any damage to their properties.

2 I think, you know, parking is a big issue in this  
3 area. But I think that they were able to kind of manage some  
4 of the negative impacts by providing additional parking for  
5 this particular project.

6 So with the support of the Office of Planning,  
7 unfortunately I wish they were able to make some adjustments  
8 in terms of some of the text in terms of indicating that  
9 there were 12 IZ units for this particular development. But  
10 other than that, I think that, you know, they did clearly  
11 kind of spell out that the criteria was met for the special  
12 exception, you know.

13 And then finally, you know, I know we're not kind  
14 of in the business of doing design for these particular types  
15 of projects. But we hear hundreds of cases, and I see people  
16 coming in with renderings that kind of give me, and the  
17 neighbors, and my colleagues a little bit more flavor in  
18 terms of how the project's going to actually look. And  
19 sometimes that can go a long way in terms of providing some  
20 additional good will within the community.

21 So with that, I'm going to concur with my  
22 colleagues and support this application. But if we're able  
23 to add a condition with respect to incorporating -- have the  
24 parties work together to incorporate a construction  
25 management agreement, I would be in support of that.

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1           MEMBER HART: While I understand the concerns that  
2 the ANC and the community members have brought, I also agree  
3 that there isn't --- I haven't heard anything that would make  
4 me see that the Applicant has not met the criteria in  
5 Subtitle C, 1001.2 (e) or Subtitle X 901 for this project.

6           And unfortunately, that's what we have, not  
7 unfortunately, that's what we have to base our decision on  
8 which is what are the criteria that's inside of the zoning  
9 regulations? And are there things that we may have missed,  
10 which is why we listen to the ANC and the community members  
11 and hear testimony so that we can understand if there's  
12 something that we're missing within what the Applicant has  
13 proposed and what they've presented.

14           I, unfortunately, don't see that there's something  
15 that they've missed. So we don't have --- so we are required  
16 to then look at the zoning regs and then base our decision  
17 on that. And I would base my decision on that in saying that  
18 I think that they've met the criteria that's inside of there.  
19 But again, I do appreciate the comments and the testimony  
20 that we've heard today and would agree with my colleagues  
21 about what they have spoken to as well.

22           MEMBER JOHN: So, Mr. Chairman, I agree with what  
23 everyone has said so far. I would support the construction  
24 management agreement if you can work towards that end. And  
25 I think providing seven to eight parking spaces is a very

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1 good thing and in terms of responding to the neighbors very  
2 real concerns about parking.

3           And so I think that, based on what the testimony  
4 has been today, and reviewing the records, in terms of  
5 applying the requested relief to the regulations, I think  
6 that the Applicant has met the criteria for a special  
7 exception which is a lower standard than a variance. And so,  
8 based on all of that, I can support the application.

9           CHAIR HILL: So then as far as --- I'm trying to  
10 figure out this condition thing. So I guess I don't know how  
11 --- I guess you can make it a condition to, like, you could  
12 make it a condition for the Applicant to work with the ANC  
13 or just --- it was just kind of usually an encouragement.  
14 Because I can't make it a condition, you know, for that. So  
15 you wouldn't necessarily come to an agreement on it, correct?  
16 It would be you could make it a condition for them to work  
17 with the ANC on a construction management agreement.

18           MS. LOVICK: Well, I mean, if you're going to  
19 impose that condition, because you think it's necessary to  
20 mitigate the adverse impacts, it would make sense to make  
21 them work on an agreement and then have something submitted  
22 to the record. Because otherwise, there's just no teeth in  
23 ---

24           CHAIR HILL: Okay, I got it. That's fine. I  
25 don't think that that's necessary in terms of what I hope the

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1 Applicant's willing to do. And the Applicant has committed  
2 to seven parking spaces, correct? I'd like to hear it on the  
3 record.

4 MR. KAYE: As many as we can fit.

5 CHAIR HILL: Okay, a minimum of seven.

6 MR. KAYE: Yes, yes.

7 CHAIR HILL: A minimum of seven.

8 MR. KAYE: Yes.

9 CHAIR HILL: Okay. And then you are committed to  
10 working with the ANC on a construction management plan?

11 MR. KAYE: Yes.

12 CHAIR HILL: All right. So that's what I think  
13 we should do as a Board in order to move forward with this  
14 unless have any ---

15 ZC MEMBER MAY: I'm sorry, we should do what?

16 CHAIR HILL: Pardon me?

17 ZC MEMBER MAY: We're not going to put a condition  
18 about the construction management plan?

19 CHAIR HILL: Well, if we put a condition on the  
20 construction management plan, then I would be in agree ---  
21 or what I thought OAG was saying was that we should see the  
22 construction management plan --

23 ZC MEMBER MAY: Right.

24 CHAIR HILL: -- before making a ---

25 ZC MEMBER MAY: I just don't know if you're

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1 suggesting that's what we should do.

2 CHAIR HILL: I wasn't suggesting a condition. I  
3 was comfortable with ---

4 ZC MEMBER MAY: It was your last sentence that  
5 threw me off.

6 CHAIR HILL: Oh, that's all right. I'm glad it  
7 was only the last one. That's like, you know ---

8 ZC MEMBER MAY: Right. Because I would not be  
9 supportive of waiting for a waiting for a construction  
10 management plan or requiring it as a condition.

11 CHAIR HILL: Okay, all right. You're on ---

12 ZC MEMBER MAY: I'm with you.

13 CHAIR HILL: You're with me. Okay, all right.  
14 So again then, what I was going to now do is make a motion  
15 to approve Application Number 19787 as captioned and read by  
16 the Secretary and ask for a second.

17 ZC MEMBER MAY: Second.

18 CHAIR HILL: Motion made and seconded. All those  
19 in favor, say aye?

20 (Chorus of ayes)

21 CHAIR HILL: All those opposed?

22 (No audible response)

23 CHAIR HILL: The motion passes, Mr. Moy.

24 MS. LOVICK: Excuse me, I just want to clarify  
25 something. Are you imposing a condition with regard to the

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1 parking?

2 CHAIR HILL: No.

3 MS. LOVICK: Okay.

4 CHAIR HILL: Okay. So thank you very much.

5 (Off the record comments)

6 CHAIR HILL: Thank you very much, thank you very  
7 much, thank you very much.

8 MS. MARLIN: You need to think --

9 CHAIR HILL: I'm about to ---

10 MS. MARLIN: -- about the community.

11 CHAIR HILL: Oh, you're really loud. I've never  
12 turned this off before. Wow. Ma'am, I'm sorry.

13 (Off the record comments)

14 CHAIR HILL: And, ma'am -- oh, oh.

15 (Off the record comments)

16 MR. MOY: Mr. Chairman, the recorded vote is five  
17 to zero to zero. That's on motion of Chairman Hill to  
18 approve the application for the relief being requested.  
19 Second to the motion, Mr. Peter May, also in support, Ms.  
20 White, Ms. John, and Vice Chair Hart. The motion carries.

21 CHAIR HILL: Thank you, Mr. Moy.

22 So we're going to take lunch. And we'll be back  
23 here hopefully around 2:30.

24 (Whereupon, the above-entitled matter went off the  
25 record at 1:48 p.m. and resumed at 2:37 p.m.)

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1 CHAIR HILL: All right. Mr. Moy, let's get started  
2 again, please.

3 MR. MOY: Thank you, Mr. Chairman. The Board is  
4 back in session. The time is 2:37. All right.

5 Here we go. I see the parties are at the table.  
6 This is Case Application Number 19775 of the District of  
7 Columbia Public Schools.

8 This is a request, Mr. Chairman, for a Special  
9 Exception under Subtitle C, Section 1504, from the Penthouse  
10 Setback Requirements of Subtitle C, Section 1502.1B and C.  
11 This would construct a rooftop mechanical equipment screening  
12 on an existing public school in the RF-1 Zone. This is at  
13 1755 Newton Street, Northwest, Square 2619, Lot 654.

14 CHAIR HILL: Okay, great. Welcome back. If you  
15 haven't been sworn in and you plan on testifying, if you  
16 could please let me know or stand. If everyone who is here  
17 not been sworn in that plans on testifying. Okay. If you  
18 could please stand and take the oath administered by the  
19 Secretary to my left.

20 (Witnesses sworn.)

21 CHAIR HILL: Okay, great. And then also we are  
22 going to be proceeding in terms of the order with which was  
23 in the agenda that is over to the door to the left. If also  
24 there are any ANC Commissioners here in terms of kind of  
25 timings or needs if you could let the Secretary know at our

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1 next break and we'll see what we can do about that.

2 So, that being the case if you could please go  
3 ahead and introduce yourself please from my right to left.

4 MR. LABROI: Good morning, ladies and gentlemen of  
5 the Board. My name is Jonathan LaBroi. I am a project  
6 manager from DPS representing DCPS in this matter.

7 CHAIR HILL: Can you say you last name again, sir?

8 MR. LABROI: LaBroi.

9 CHAIR HILL: LaBroi, thank you.

10 MS. FREDERICK: Good afternoon. I'm Caroline  
11 Frederick with Ayer Saint Gross Architects.

12 MR. BROOK: Yes, good afternoon. My name is Sam  
13 Brook and I'm here with Garrison and Gross Architects.

14 CHAIR HILL: Okay, great. Who is going to be  
15 presenting to us today?

16 MR. BROOK: I will.

17 CHAIR HILL: Okay, great. So, Mr. Brook, I think  
18 the record is actually full in terms of what you're trying  
19 to accomplish today and so I don't really need a lot of  
20 detail in terms of what you're doing unless the Board has any  
21 more specifics. If you would just pretty much go in general  
22 what you're trying to achieve and also the standard in which  
23 you are looking for us to provide relief from. And if you  
24 would do that as briefly as possible then we'll move over to  
25 the Office of Planning.

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1 MR. BROOK: Thank you very much.

2 Yes, we are seeking relief for the one-to-one  
3 setback requirements for Section C 1502.1 B and C,  
4 specifically. The project itself is the Bancroft Elementary  
5 School Modernization. It's a renovation of 36,000 square  
6 feet and an addition of 92,000 square feet.

7 The overall project maintained the original 19,  
8 22, 23 wings of the building fronting Newton Street and there  
9 was a raising of existing additions that were problematic to  
10 the modernization project. These were additions from 1938,  
11 1961 and 1974.

12 The modernization or the addition to the existing  
13 23 and 32 wings, it's a two-story structure housing a program  
14 such as cafeteria, media center, gymnasium, two classroom  
15 wings and a partially below grade parking garage.

16 The addition was designed to step with the grade  
17 that falls at approximately 11 percent to the north towards  
18 Rock Creek Park. The intention being to reduce the impact  
19 of the building mass relative to the surrounding residential  
20 context.

21 CHAIR HILL: Mr. Brook, I'm sorry, could you just  
22 speak to the relief you're requesting?

23 MR. BROOK: Oh, yes. I said it initially. The  
24 relief is a request -- the request is for relief from the  
25 one-to-one-setback requirements per C 1502.1 B and C.

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1 CHAIR HILL: Okay. Does the Board have any  
2 questions concerning this particular relief?

3 ZC MEMBER MAY: I just want to know. Is this  
4 project already under construction?

5 MR. BROOK: The project is complete.

6 ZC MEMBER MAY: Oh, okay. So, why are we here?  
7 I mean, who screwed up is what I want to know?

8 MR. BROOK: Well, what happened, sir, was there was  
9 a very complicated and long and involved permitting process.  
10 We weren't able to submit for the Special Exceptions until  
11 after our permits were issued was my understanding at the  
12 time.

13 ZC MEMBER MAY: Oh, no, no. That is not a really  
14 good answer.

15 So, stuff like this has to be thought out in  
16 advance and I'm going to rant a little bit because this is  
17 like the fifth or sixth case of DGS or predecessor agencies  
18 bringing before the Board of Zoning Adjustment a case for  
19 rooftop setback relief for a project that's already been  
20 built or is under construction. And it shouldn't happen that  
21 way.

22 You're architects. You understand the zoning  
23 regulations. You should know what the requirements are even  
24 if you are doing this on a fast track and you've already  
25 filed your foundation permit and you're doing everything in

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1 bits and pieces because the schedule requires you to do that.  
2 But I'm getting pretty tired of this stuff. I mean, it's  
3 been a little while but this is a repeat of a show we've seen  
4 before. So, that's not to say that we're not going to grant  
5 the relief. I just, you know, this is not normal. It's not  
6 okay and DGS should not bring stuff to us like this.  
7 Somebody has got to think it thorough in advance.

8 Sorry, I'm done.

9 CHAIR HILL: Okay. All right. Does anyone have  
10 any other questions for the Applicant from this particular  
11 relief? Okay.

12 I'm actually going to turn to the Office of  
13 Planning. Office of Planning.

14 MS. FOTHERGILL: Good afternoon. I'm Anne  
15 Fothergill with the Office of Planning and we rest on the  
16 record in support of the application. And I'm happy to take  
17 any questions.

18 CHAIR HILL: Okay. Does the Board have any  
19 questions for the Office of Planning? Does the Applicant  
20 have any questions for the Office of Planning? Okay.

21 Is there anyone here wishing to speak in support  
22 of the application?

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

25 All right. Is there anything else you'd like to

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1 speak to in conclusion?

2 MR. BROOK: No, sir.

3 CHAIR HILL: Okay. So, other than the comment from  
4 Commissioner May which I also agree with in terms of, you  
5 know, this is -- it has happened before. It is something  
6 that is probably just more a great risk than anything else  
7 in terms of, you know, whether or not you'd have to tear down  
8 something if it didn't actually pass the standard. I would  
9 agree with Commissioner May's comments. But I'm going to go  
10 ahead and close the hearing.

11 Is the Board ready to deliberate? Okay.

12 I can start in that I think that the Office of  
13 Planning's report is thorough in terms of how they're meeting  
14 the standard for us to grant this application. Also, in  
15 addition to that, the ANC 1D has submitted their support  
16 unanimously five to zero. DDOT has not objections and I  
17 don't have any questions. I think it's pretty  
18 straightforward and so I would be voting to approve.

19 Does anyone else have anything else they'd like  
20 to add?

21 ZC MEMBER MAY: I would just want to say I hope we  
22 don't see any more of these. And I'm not sure that, I mean,  
23 I'll vote in favor today but I'm not sure I'm going to do it  
24 ever again because I just think it's just shoddy and it  
25 shouldn't be happening this way.

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1           And, you know, the ANC is supportive. I think  
2 that weighs in your favor. But it's clear from the way they  
3 wrote the letter that I think they would rather this not be  
4 something that's visible from across the street, you know,  
5 even with the grades. And I don't think there's any reason  
6 why it couldn't be. I mean, if this were a project that we  
7 were reviewing in advance of its construction there's no way  
8 I would say this is okay. You know, these things can be  
9 moved. They can be placed in such a way that they're not  
10 visible. You have a lot of roof there. So, I just -- I'll  
11 vote in favor but I'm not going to do it again.

12           CHAIR HILL: Who is here from DGS again?

13           MR. WRIGHT: Ian Wright.

14           CHAIR HILL: Oh, there's other people from DGS.  
15 That's okay. You're here representing DGS, correct?

16           MR. LaBROI: That's correct.

17           CHAIR HILL: Okay. And your name again, sir?

18           MR. LaBROI: Jonathan LaBroi.

19           CHAIR HILL: Mr. LaBroi, please do your best not  
20 to let this happen in this particular way because I'll let  
21 you know. Hopefully, you don't get the draw with Mr. May  
22 here at the same time if you come part on this particular  
23 thing because I've already had a day and I don't need to have  
24 any more days like this. So, go back and take a look at  
25 everything you got going, okay. Particularly, the schools

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1 have been coming forward with this type of activity and so  
2 go and see if you have anything back in the books and get it  
3 up here as quickly as you can. Okay?

4 MR. LaBROI: Yes, sir.

5 CHAIR HILL: All right.

6 ZC MEMBER MAY: Or better yet. Fix it so that it  
7 doesn't need the relief because, again, in this case I think  
8 that would have been possible.

9 MR. LaBROI: Understood.

10 CHAIR HILL: Okay. All right. So, that all  
11 being said unless anyone else has anything else they'd like  
12 to add, I'm going to make a motion to approve Application  
13 Number 19775 as captioned and read by the Secretary and ask  
14 for a second?

15 ZC MEMBER MAY: Second.

16 CHAIR HILL: Motion made and seconded. All of  
17 those in favor say aye.

18 (CHORUS OF AYES)

19 CHAIR HILL: All those opposed.

20 The motion passes, Mr. Moy.

21 MR. MOY: Staff would record the vote as five to  
22 zero to zero this is on a motion, Chairman Hill, to approve  
23 the application for the relief being requested. Seconding  
24 the motion, Vice Chair Hart. Also in support is Ms. White,  
25 Ms. John and Mr. Peter May. The motion carried, sir.

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1 CHAIR HILL: All right. Thank you, guys. Thank  
2 you so much.

3 All right. Mr. Moy, whenever you're ready.

4 Hold on one second actually. Could you all just  
5 wait a second until we call the next case?

6 MR. MOY: All right. Mr. Chairman, that would  
7 be --

8 CHAIR HILL: I was going to wait, Mr. Moy, until  
9 they approached -- it looked like someone had something they  
10 wanted to approach you with.

11 MR. MOY: This would be Case Application Number  
12 19794 of Scott Gerring as amended for a Special Exception  
13 under Subparagraph E, Sections 205.5 and 5201 from the rear  
14 addition requirements of Subparagraph E, Section 205.4, lot  
15 occupancy requirements, Subparagraph E, Section 304.1, rear  
16 yard requirements, Subparagraph E, Section 306.1 and from the  
17 nonconforming structure requirements of Subtitle C, Section  
18 202.2 which would construct a two-story rear addition to an  
19 existing principal dwelling unit, RF-1 Zone at 744 Hobart  
20 Place, Northwest, Square 2888, Lot 117.

21 CHAIR HILL: Okay. Thank you, Mr. Moy.

22 Could you please introduce yourselves from right  
23 to left.

24 MR. GRANT: Aubrey Grant, Emotive Architecture.

25 CHAIR HILL: Could you say your name again?

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1 MR. GRANT: Aubrey Grant.

2 CHAIR HILL: Grant. Okay, thank you.

3 MR. HEISEY: Joel Heisey, Architect and Agent for  
4 Mr. Gerring who sends his apologies. He had to be out of  
5 town today for work.

6 CHAIR HILL: Okay. Mr. Heisey, are you going to  
7 be presenting to us?

8 MR. HEISEY: Yes, I will.

9 CHAIR HILL: Okay. So, as I don't have a lot of  
10 questions, in particular, about this one. I think that if  
11 you want to do an explanation as to the project that you're  
12 proposing as well as the standard of relief you're asking for  
13 and then we'll see how the Board -- if they have any  
14 questions. But if you could summarize it because I think the  
15 record is relatively full and you can begin whenever you  
16 like.

17 MR. HEISEY: Yes, I'm liking the new pace after  
18 lunch of going through cases and I hope we can continue it  
19 here.

20 This is a small addition for a small house on a  
21 small lot. It's a 380 square foot addition to the rear. It  
22 will be two stories. Because of the way the -- and I'll rely  
23 mostly on the record. These photos are all in your packets  
24 and everything else, if you can switch pages.

25 It has neighbor support. The ANC supports this

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1 and the Office of Planning supports it. I guess the easiest  
2 way is if you just have any specific questions. It's fairly  
3 self-explanatory with the presentation. If we go here to the  
4 plat you'll see down at the addition is here in the back.  
5 It's an 11-foot addition matching with the addition to the  
6 west and slightly extending three and a half feet further  
7 than the existing addition to the property to the east.

8 We were advised by Office of Planning to ask for  
9 the 10-foot extension because the Zoning Administrator  
10 apparently does floor by floor on 10-foot extensions, not  
11 just a general. So, we're asking for that rear addition in  
12 an abundance of caution over the Zoning Administrator's  
13 request. Otherwise --

14 CHAIR HILL: Okay, the other quick question I have  
15 for you is the neighbor to the east. Did you speak to the  
16 neighbor to the east?

17 MR. HEISEY: I think it's a rental unit, an  
18 absentee landowner and they weren't -- no. That's the one  
19 that -- 742 is the one we do have the neighbor's agreement  
20 with. I think it's the other one that's an absentee  
21 landowner and he wasn't able to get a direct letter of  
22 support. But, yes. There is a letter of support in the  
23 files from the person from 742 Overet Place.

24 CHAIR HILL: That's the one from the east?

25 MR. HEISEY: Yes.

1 CHAIR HILL: Okay. All right.

2 Does the Board have any questions of the  
3 Applicant? Okay. Sorry, go ahead, please.

4 MEMBER WHITE: Just verifying. So, the additional  
5 one foot is on the second level?

6 MR. HEISEY: Yes. Both the first and second floor  
7 extend 11 feet. But the addition to the west is only a  
8 single story and the way the Zoning Administrator's  
9 interpreting that rule of 10 feet, it's per floor. So, since  
10 there's no second floor adjoining we are extending to what's  
11 there and just having a continuous two-story building of 11  
12 feet.

13 MEMBER WHITE: Okay.

14 CHAIR HILL: All right. Going to turn to the  
15 Office of Planning.

16 MS. ELLIOT: Good afternoon, Mr. Chairman and  
17 Members of the Board. Brandice Elliot representing the  
18 Office of Planning.

19 The Office of Planning is recommending approval  
20 for the requested relief. I'll go ahead and stand on the  
21 record of our report but I'm happy to answer any questions  
22 you have.

23 CHAIR HILL: Does the Board have any questions of  
24 the Office of Planning? Does the Applicant have any  
25 questions of the Office of Planning?

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1 MR. HEISEY: No, I think we like the report. Thank  
2 you.

3 CHAIR HILL: Is there anyone here who wishes to  
4 speak in support of the application? Is there anyone here  
5 wishing to speak in opposition to the application?

6 All right. Mr. Heisey, do you have anything else  
7 you'd like to add?

8 MR. HEISEY: No, I think it's fairly self-  
9 explanatory. Like I said it's a very small addition on a  
10 small property and look forward to you approving the request.

11 CHAIR HILL: Okay. I'm going to close the hearing.  
12 Is the Board ready to deliberate? Okay. I can begin if you  
13 like. I didn't have a lot of questions with it. I think  
14 that they are meeting the standard. I agree with the  
15 analysis the Office of Planning has provided in terms of the  
16 relief requested and I'll be voting in favor.

17 Does anyone have anything else they'd like to add?

18 MEMBER WHITE: I would concur with you, Mr. Chair.  
19 The special exemption relief that they've requested for the  
20 rear addition, lot occupancy, rear yard and nonconforming  
21 structure, they've met the criteria. It doesn't appear to  
22 have any adverse impacts to the community or the immediate  
23 neighbors. So, I would be in support, especially, because  
24 we also have support from the ANC and Office of Planning as  
25 well.

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1 CHAIR HILL: Okay, thank you. And thank you for  
2 mentioning that. Yes, ANC 1B was in support unanimously ten  
3 to zero to zero as well as you mentioned Office of Planning.  
4 DDOT also has no objection and there was a few letters of  
5 support into the application.

6 So, I'll go ahead and make a motion to approve  
7 Application Number 19794 as captioned and read by the  
8 Secretary and ask for a second.

9 MEMBER WHITE: Section.

10 CHAIR HILL: Motion made and seconded.

11 All those in favor say aye.

12 (CHORUS OF AYES)

13 CHAIR HILL: All those opposed? The motion passes.

14 Mr. Moy?

15 MR. MOY: Staff would record the vote as five to  
16 zero to zero based on the motion of Chairman Hill to approve  
17 the application for the relief requested. Seconding the  
18 motion, Ms. White. Also in support Mr. Peter May, Ms. John  
19 and Vice Chair Hart. Motion carries.

20 CHAIR HILL: Thank you all very much. Thank you.

21 MR. HEISEY: Would this be a Summary Order then,  
22 sir?

23 CHAIR HILL: Yes, at the beginning of the  
24 announcement and this is also for --

25 MR. HEISEY: Asking --

1 CHAIR HILL: Oh, yes, no, they don't. This is a  
2 new process and so if you'd like to check with the Office of  
3 Zoning across the hall they can tell you how the process is  
4 going to move forward.

5 MR. HEISEY: Okay. All right. Thank you.

6 CHAIR HILL: Okay. So we had September, or not  
7 September, we had August where we were off. And so we took  
8 a look at some of the things that were moving -- what we're  
9 trying to do here with the Board. Some of that is in terms  
10 of like Summary Orders versus full orders and other things.  
11 We're trying to do our best to accommodate ANC commissioners  
12 as they've been so helpful to us. And so that being said,  
13 we are at the beginning of our day asked about ANC  
14 commissioners as to whether they've been here or not. We do  
15 have one with us and we're going to move up that case next.

16 So, Mr. Moy, if you could do that when you have  
17 an opportunity.

18 MR. MOY: Thank you, Mr. Chairman.

19 That would be Case Application Number 19816 of  
20 InSite Real Estate Investment Properties, LLC. This is a  
21 request for a special exception under the use requirements,  
22 Subtitle U, Section 203.1G. This would permit a daytime care  
23 use in the R-12 Zone. This is at 2461 Wisconsin Avenue,  
24 Northwest, Square 1299, Lot 959.

25 CHAIR HILL: Okay, all right. If you could please

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1 go ahead and introduce yourself from my right to left.

2 MR. GEBAUER: My name is Ed Gebauer with InSite  
3 Real Estate Investment Properties.

4 MR. KYES: JR Kyes, with InSite Real Estate  
5 Investment Properties.

6 MR. GAON: Gaon with the law firm Holland & Knight,  
7 counsel for the Applicant.

8 MS. MILANDOVICH: Jami Milandovich with Glos and  
9 Associates, Traffic Consultant for the project.

10 MR. WARREN: Mark Warren, Kinder Care Education,  
11 LLC.

12 MR. BROWN: Preston Brown, Kinder Care Education.

13 MS. BLUMENTHAL: Jackie Blumenthal, Commissioner  
14 ANC 3B.

15 CHAIR HILL: Welcome, Commissioner Blumenthal.

16 Commissioner Blumenthal, were you here with us the  
17 whole day?

18 MS. BLUMENTHAL: No.

19 CHAIR HILL: Oh, okay. All right. Okay. All  
20 right.

21 Somebody will let you in on that joke later.

22 So, let's see. Okay. I believe Mr. Gaon -- I  
23 always pronounce your name a little incorrectly.

24 MR. GAON: It's Gaon, that's all right.

25 CHAIR HILL: Gaon. So, you'll be presenting to us,

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1 I would imagine?

2 MR. GAON: I will.

3 CHAIR HILL: Okay.

4 MR. GAON: I will.

5 CHAIR HILL: So, Mr. Gaon, I'm going to go ahead  
6 and let you start and go through the application in terms of  
7 what you're trying to achieve and also the standard with  
8 which we are going to approve that application.

9 One of the things that I did want you to kind of  
10 talk about which we are going to probably have a little bit  
11 of a discussion on are all of the different conditions that  
12 have been kind of put forward. And I guess I'm going to  
13 start with that. Meaning, go ahead and do -- tell us about  
14 the project, tell us about, you know, how you're meeting the  
15 standard and then speak to the conditions and we'll see how  
16 the Board might have any questions for you. I am going to  
17 throw 15 minutes up on the clock just so I know where we are  
18 and you can begin whenever you like.

19 MR. GAON: Good afternoon, Chairman, Members of the  
20 Board. My name is Joe Gaon of the law firm of Holland and  
21 Knight. I'm here on behalf of the Applicant.

22 The Applicant is requesting special exception  
23 approval to locate a daytime care use at the site. To  
24 address your specific question, we have just submitted  
25 revised conditions. They reflect the conditions in DDOT's

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1 report except for one condition with respect to the Capital  
2 Bikeshare and DDOT is in agreement with the condition as it  
3 is currently proposed and is being handed to you right now.

4 CHAIR HILL: When you say they're acceptance of the  
5 current condition as being proposed do you mean all of them  
6 or one particular one?

7 MR. GAON: Well, five of the six have been -- were  
8 as suggested in DDOT's report. The one with respect to  
9 Capital Bikeshare we are proposing a slight tweak on that  
10 condition and --

11 CHAIR HILL: Which number are you speaking of?

12 MR. GAON: It is --

13 CHAIR HILL: Okay. Four is what I was just told.

14 MR. GAON: Four, yes, that's correct.

15 And the crux of this case is essentially the  
16 traffic and parking implications, so what I'm going to do is  
17 I'm going to turn it over to our traffic consultant Jami  
18 Milandovich, and she can walk you through that. And she can  
19 talk specifically to the conditions.

20 CHAIR HILL: Okay.

21 MS. MILANDOVICH: Hey, good afternoon.

22 The site is situated on the southeast corner of  
23 the Wisconsin Avenue/Calvert Street intersection as shown on  
24 the slide before you. We are proposing to utilize the  
25 existing parking lot and the existing curb cut with a couple

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1 of notable exceptions. We will be narrowing the existing  
2 curb cut which is about 55 feet wide to a width of 24 feet  
3 to bring it into compliance with DDOT guidelines.

4 There is also a portion of the existing parking  
5 lot that is in public space and at DDOT's request we are  
6 going to remove that pavement from public space and put grass  
7 in that area.

8 The six parking spaces that are in the parking lot  
9 will be used and signed as short-term parking for drop off,  
10 pick up operation. There is a seventh tandem parking space  
11 shown in the corner of the parking lot that will be designed  
12 for use by the director of the daycare who will arrive before  
13 the pick up, drop off -- I'm sorry, arrive before the drop  
14 off operation, leave after the pick up operation. So,  
15 they'll be blocked in but it won't matter.

16 And there will be bicycle parking on the first  
17 floor of the facility for employees who bike to work and that  
18 can be accessed through one of the pedestrian entrances which  
19 are shown with the blue triangles.

20 I should also note that we are working with the  
21 DDOT to designate three parking spaces on Calvert Street for  
22 short-term drop off, pick up parking. Two of those spaces  
23 are new parking spaces that are created as a result of  
24 narrowing the curb cut. So, we're really only eliminating,  
25 if you will one unrestricted parking space. But the parking

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1 along Calvert Street today is unrestricted. It's not  
2 metered. There's no time limit. It's not RPP. So, we've  
3 taken one of those spaces plus the two new spaces and  
4 designating those as short-term drop off, pick up.

5 The site is located adjacent to an existing Metro  
6 bus stop on Wisconsin Avenue that serves four Metro bus  
7 routes. There's another two routes that are within a quarter  
8 miles of the site. We also are just about a block away from  
9 an existing Capital Bikeshare station.

10 In order to estimate the trip generation for the  
11 site, we took a look at some other daycare facilities in the  
12 District, four daycare facilities, in particular. And based  
13 on the data from those facilities we estimated that about 49  
14 percent of the trips would be made by non-auto modes of  
15 transportation. So, that would be parents who are walking  
16 or biking their children to the center or taking public  
17 transportation.

18 I would note that the daycare facilities that we  
19 looked at had a range of non-auto modes was from 34 percent  
20 to 70 percent. So, there is quite a bit of a range but to  
21 be a little bit conservative we did use the average -- we  
22 know that there's a tremendous need for daycare facilities  
23 in this neighborhood, as has been indicated to us by the ANC.  
24 KinderCare is specifically marketing this center to that  
25 neighborhood so we do anticipate that this would have a

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1 significant number of students from the immediate  
2 neighborhood and imagine that the mode split percentage, the  
3 non-auto modes percentage could be even higher than what  
4 we've indicated here.

5 In terms of the transportation management plan,  
6 the items listed here do reflect the conditions that are in  
7 DDOT's report. We will provide the signage as DDOT required  
8 in the parking lot indicating that those six compliant spaces  
9 are for pick up/drop off operation. KinderCare will  
10 participate in WMATA's Smart Benefits Program which allows  
11 employees to use pre-tax dollars to pay for transit.

12 We will be offering a transit subsidy of \$25 per  
13 paycheck for employees. They will submit a car pool plan to  
14 DDOT's TDM coordinator for review.

15 The one caveat that Joe mentioned at the outset,  
16 DDOT had initially asked us to provide annual Capital  
17 Bikeshare memberships every year for all employees. We have  
18 proposed because of the significant transit subsidy that  
19 KinderCare is going to offer, we've proposed that we will  
20 provide a one-time Capital Bikeshare membership for employees  
21 at the time the center opens and beyond that if they wanted  
22 to continue to use the Capital Bikeshare membership they  
23 could either pay for it themselves or use the subsidy to do  
24 that.

25 CHAIR HILL: Okay. I understand.

1 MS. MILANDOVICH: I do have email correspondence  
2 with DDOT if you would like us to submit that that reflects  
3 their agreement to that proposed alternative condition.

4 CHAIR HILL: Yes, that would be great. Thank you.

5 MS. MILANDOVICH: Okay. And then the final  
6 condition was that DDOT requested that we conduct monitoring  
7 studies for two times after the site is open. We have agreed  
8 to do that in accordance with all of the details outlined in  
9 DDOT's report.

10 CHAIR HILL: Okay. Does anyone have any questions  
11 for Mr. Milandovich?

12 MEMBER WHITE: Could you just confirm for me the  
13 approximate number of students and staff again? I had 128  
14 students and 26 staff. If that correct?

15 MS. MILANDOVICH: That is correct. Yes.

16 MEMBER WHITE: Okay. Thank you.

17 CHAIR HILL: Okay. Anyone else?

18 All right. Commissioner, since you came would you  
19 like to provide some testimony for us in terms of the  
20 experience that you've had with this project?

21 MS. BLUMENTHAL: Yes, thank you very much, Mr.  
22 Chairman.

23 Good afternoon, Members of the Board.

24 This is my first time testifying here so I'm going  
25 to read my testimony. But I did turn it in.

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1 CHAIR HILL: Sure enough, thank you.

2 MS. BLUMENTHAL: Okay. So, my name is Jackie  
3 Blumenthal. And I'm a Vice Chairman of ANC 3B which serves  
4 the neighborhoods of Glover Park and Cathedral Heights. The  
5 single member district that I represent, 3B02 includes the  
6 Glover Park commercial area and the property under discussion  
7 at this hearing.

8 On June 14th, 2018, ANC 3B unanimously passed a  
9 resolution expressing enthusiastic support for the approval  
10 of a special exception to the zoning code. A copy of that  
11 resolution has previously been submitted.

12 The Glover Park community was offered a chance to  
13 comment on the project by announcing in May the ANC's intent  
14 to vote on such a resolution in June. We also widely  
15 advertised the public presentation by InSite Real Estate, the  
16 Applicant and its potential childcare tenant that would occur  
17 at the ANC's regularly scheduled meeting.

18 During that meeting, attendees were offered every  
19 chance to ask questions and raise issues and no objections  
20 or obstacles surfaced.

21 Additionally, the project was written about in the  
22 Glover Park Gazette, a monthly newsletter distributed by hand  
23 to homes and apartment buildings in the current newspaper and  
24 in the ANC's meeting minutes.

25 We are fully confident that our support for this

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1 project is shared by the vast majority of residents. Instead  
2 of hearing concerns from people, in fact I received several  
3 emails from parents asking how soon the facility would open  
4 and how to enroll their children.

5           The chief reason that we favor granting this  
6 exception is that there is a real need for childcare and  
7 early learning facilities not only in Glover Park and  
8 Cathedral Heights but in the surrounding neighborhoods as  
9 well.

10           At our local public elementary school, for  
11 example, the demand is so strong for admission to the pre-  
12 kindergarten classes the children can only be admitted by  
13 lottery even if they live with the school's service  
14 boundaries. Those who lose the lottery must make other  
15 arrangements, often far from home.

16           The overcrowding at Stoddert School reflects the  
17 growing population of young families in Glover Park which has  
18 created a demand for goods and services in the community that  
19 cater to their needs. Having a child care facility at this  
20 gateway location where the Glover Park neighborhood begins  
21 would significantly boost ongoing efforts by the community  
22 to strengthen the commercial center and attract more family  
23 friendly retail services.

24           Right now the property sits vacant, visibly so,  
25 and instead of advertising a vital family message about

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1 Glover Park as the proposed childcare facility would, the  
2 vacancy projects a negative image of otherwise up and coming  
3 area.

4           Back in 2014 we were hopeful that a deal between  
5 the union that owns the building and a D.C. charter school  
6 would go through. When it did not, due to the school  
7 deciding at the last minute to relocate elsewhere -- while  
8 it did not, the surrounding communities were very involved  
9 in assessing the feasibility of having a school and children  
10 at that location. At two well attended public meetings we  
11 discussed pedestrian safety issues, parking, traffic, drop  
12 off and pick up concerns as well the effect on the much used  
13 playground that abuts the building.

14           Everything we learned then was brought to bear on  
15 the preliminary discussions with InSite Realty and Kinder  
16 Care.

17           The Applicant for the zoning variance were  
18 respectful of community concerns and responses to our  
19 suggestions for overcoming them. The plans for moving the  
20 front entrance of the building away from the bus stop as well  
21 as for managing drop off, pick up and parking all reflect  
22 concerns that we raised and solutions we proposed.

23           There interactions have assured us that should any  
24 other issues arise, the Applicants would listen and would be  
25 quick to address them.

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1 Another aspect of this project that strengthened  
2 its appeal to the neighborhood is that it involves no  
3 alteration of the building's footprint. Some of those with  
4 interest in the vacant Union Building wanted to add a third  
5 floor, for example, something that would have been  
6 unacceptable to the residents of the Georgetown Heights  
7 condominiums across Calvert Street. Others foresaw major  
8 construction to refit the site for residential units which  
9 would have been impossibly disruptive at that busy  
10 intersection and bus stop.

11 I note for the record that Georgetown Heights  
12 Condo Association representing the residents who live the  
13 closest to this project has submitted a letter of support for  
14 granting the requested special exception approval.

15 The property at 2461 Wisconsin Avenue occupies --  
16 I said Northwest, you said Southeast, who knows -- corner  
17 parcel of land devoted entirely to recreation on which sits  
18 Guy Mason Rec Center, a regulation size baseball field and  
19 one of the city's most popular playgrounds for young  
20 children. The building itself is separated from that parcel  
21 by its position on the top of a hill overlooking the grounds.  
22 A daytime child care facility at that site would be in  
23 perfect harmony with the surrounding area and will not in any  
24 way adversely affect the use of that neighboring property.

25 While that corner of land has always been zoned

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1 for residential use it has never been put to that use. We  
2 can think of no better way to redesignate the use of that  
3 parcel of land than to allow a special exception for the  
4 child care facility.

5 On behalf of the residents of Glover Park and  
6 Cathedral Heights, and in my position as Advisory  
7 Neighborhood Commissioner, I urge the Board to approve the  
8 Applicant's request for the special exception.

9 Thank you.

10 CHAIR HILL: Thank you, Commissioner.

11 Does anyone have any questions for the  
12 Commissioner? Sure, please.

13 ZC MEMBER MAY: So, we did receive a letter of I  
14 don't know opposition or concern from somebody in ANC 3C and  
15 I know that it's to like people don't communicate across  
16 these ANC boundaries, but sometimes the distribution of  
17 information isn't always as complete. And according to the  
18 map it looks like 3C is right across the street, right across  
19 Calvert from here.

20 So, I mean have you talked to commissioners within  
21 ANC 3C about this?

22 MS. BLUMENTHAL: Yes. The ANC Commissioner whose  
23 SMD that includes lives in that neighborhood, or did up until  
24 August, and she and I along with other commissioners from my  
25 ANC are the ones who met with everybody for preliminary

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1 discussions throughout the whole process as we were moving  
2 forward. And she submitted a letter on behalf of her SMD in  
3 support of the project.

4 The trouble with ANC 3C commenting as an ANC is  
5 that ANC 3C is about this big and this much of it is the part  
6 that's down near the project. And so what they don't like  
7 to do is comment on things that are clearly in the purview --  
8 more in the purview of 3B, because they don't want 3B  
9 commenting on little things in their slice of ANC.

10 ZC MEMBER MAY: Right.

11 MS. BLUMENTHAL: So, we have that sort of  
12 relationship.

13 ZC MEMBER MAY: Right. The other thing I would  
14 observe for your information is that when the Zoning  
15 Commission takes up like a PUD the ANC that's across the  
16 street has the same status as the one in which it is located.

17 MS. BLUMENTHAL: And they decided not to --

18 ZC MEMBER MAY: Right.

19 MS. BLUMENTHAL: -- comment.

20 ZC MEMBER MAY: Yes.

21 MS. BLUMENTHAL: And if I may, since I just read  
22 the letter that you got this morning, the citizens  
23 association in that part of ANC 3C is a very active citizens  
24 association. It's the Massachusetts Avenue Heights Citizens  
25 Association and back in July I heard from neighbors that they

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1 had just realized that this was happening even though they  
2 had been notified and it had been out there. And as I said,  
3 we had done a huge publicity to get people to come to the  
4 meeting and learn about it and they only live a block away.

5           So, they said that maybe they wanted to know more  
6 about it and I said just let me know, Citizens Association,  
7 if you want to schedule a meeting I will talk to the people  
8 at Inite and Kinder care and they will be glad to come and  
9 present to you. And this was the end of July and the  
10 president of MAHCA said, okay. We're going to put out a  
11 call to all of our residents and see if enough people care  
12 he said because I have heard no scuttle about this at all  
13 prior to somebody, the person who wrote the letter stirring  
14 this up. And there was no response until last week. And  
15 then last week this man who does not live near the project  
16 decided to intervene and try to cause this --

17           ZC MEMBER MAY: Well, that's okay. We're happy to  
18 hear whatever comments people have but I what I was concerned  
19 about was the extent of the outreach directly to the ANC,  
20 which is normally a format for people to learn about it. I  
21 mean, there are many way in which folks try to get the word  
22 out and we require certain means of getting the word out.

23           MS. BLUMENTHAL: But we felt we --

24           ZC MEMBER MAY: Somebody always gets missed. So --

25           MS. BLUMENTHAL: I'm sorry. Yes, we felt like we

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1 had done a sufficient job and --

2 ZC MEMBER MAY: Well, it sounds like it.

3 MS. BLUMENTHAL: -- and trusted the SMD --

4 ZC MEMBER MAY: Yes.

5 MS. BLUMENTHAL: -- ANC to handle her own --

6 ZC MEMBER MAY: Right. And I appreciate the  
7 thoroughness of your answer because I wasn't sure you were  
8 going to have that much to say about what another ANC is  
9 doing. But you know a lot.

10 MS. BLUMENTHAL: Well, we do a lot with them.

11 ZC MEMBER MAY: Right.

12 MS. BLUMENTHAL: And just on my own guess I'm  
13 fairly certain that the majority of the community over there  
14 is very supportive of this project. This person who wrote  
15 this is an outlier almost every case.

16 ZC MEMBER MAY: And I'm not asking for your  
17 judgment on him, we'll judge his comments --

18 SPECIAL AGENT SPEEDY: Okay, all right.

19 ZC MEMBER MAY: -- as need may be. And I  
20 appreciate the fact that you want to answer but we'll just  
21 continue with the proceeding.

22 CHAIR HILL: Okay. Does anyone have any more  
23 questions for the Commissioner? All right.

24 Commissioner, thanks so much for coming down and  
25 providing testimony. It really is great to hear from the ANC

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1 coming down here. Actually one way or the other I just --  
2 I always have said that and I do mean it.

3 Let's see. Mr. Gaon, you haven't submitted these  
4 proposed conditions to the record yet, correct?

5 MR. GAON: I just submitted --

6 CHAIR HILL: No, meaning the ones that you just  
7 gave us, you haven't put those into the record yet, correct?

8 MR. GAON: That is correct.

9 CHAIR HILL: So, you will put those in the record.

10 MR. GAON: That's correct.

11 CHAIR HILL: in addition to, Mr. Moy, I believe you  
12 just gave an email chain that DDOT was in agreement to the  
13 change that you had talked about in terms of number four.  
14 Correct?

15 MR. MOY: That is correct.

16 CHAIR HILL: Okay. I'm going to turn to the Office  
17 of Planning.

18 MR. KIRSCHENBAUM: All right. Good afternoon,  
19 Board Members. Jonathan Kirschenbaum for the Office of  
20 Planning.

21 We recommend approval of the special exception  
22 relief that would permit a child care use in an existing  
23 office building. This approval is based on compliance with  
24 DDOT's conditions, which can be found in Exhibit 38 and the  
25 modified condition in front of you, that modified condition

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1 number four.

2 Please let me know if you have any questions.

3 CHAIR HILL: Okay, thank you. Does anybody have  
4 any questions for the Office of Planning? Does the Applicant  
5 have any questions for the Office of Planning?

6 MR. GAON: I do not.

7 CHAIR HILL: Is there anyone here who wishes to  
8 speak in support of the application? Is there anyone here  
9 wishing to speak in objection to the application?

10 Mr. Gaon, do you have anything else you'd like to  
11 conclude with?

12 MR. GAON: That would be all.

13 CHAIR HILL: Okay. Does the Board have any other  
14 final questions?

15 ZC MEMBER MAY: I do. I mean, I was a little bit  
16 confused on the conditions and the difference on the  
17 monitoring plan. Has that all been resolved as well?

18 MS. MILANDOVICH: There's no change to the  
19 monitoring plans.

20 ZC MEMBER MAY: But I thought there was some  
21 difference between what they were suggesting and what you  
22 were suggesting, is that wrong?

23 MS. MILANDOVICH: Well, it has to do with the  
24 Capital Bikeshare membership which is one of the --

25 ZC MEMBER MAY: And that one I understand.

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1 MS. MILANDOVICH: Okay. That's the only change.

2 ZC MEMBER MAY: That was the only --

3 MS. MILANDOVICH: The monitoring plan we were in  
4 100 percent agreement with.

5 ZC MEMBER MAY: Agreement with what they want?

6 MS. MILANDOVICH: Yes.

7 ZC MEMBER MAY: Okay. Well, I misunderstood that  
8 in my reading of the two reports so I appreciate that. Thank  
9 you.

10 CHAIR HILL: Okay. Anyone else? Okay. I'm going  
11 to close the hearing.

12 Let's see. Is everyone ready to deliberate?  
13 Okay. I can start.

14 Really I thought the record was very full in terms  
15 of the application as to how they're meeting the special  
16 exception requirements. I think that it's great to have the  
17 ANC here. It's always good to have the ANC here in support  
18 and they are in support. And also the question that  
19 Commissioner May had asked concerning the adjacent ANC, I  
20 thought that that helped to provide further clarity.

21 I think that the ANC 3B in recommendation in terms  
22 of a unanimous five to zero, DDOT's conditions have been  
23 satisfied now in terms of their revised conditions that will  
24 be submitted into the record and that will be part of the  
25 vote if we actually do approve this. I'd be in support of

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1 the application. Does anyone have anything else they'd like  
2 to add?

3 MEMBER WHITE: Mr. Chair, I would just concur that  
4 this seems like a very exciting project. It's good to see  
5 that you've got buy-in from the community, from the ANC, from  
6 Office of Planning and DDOT, those tremendous list of  
7 conditions which are all relevant. So, I would definitely  
8 be in support of this particular application. I'm familiar  
9 with that building, operating engineer, building for local  
10 99 has been vacant for a little while so it's good that it's  
11 going to be put to good use to support working families.

12 CHAIR HILL: Okay, great. Anyone else? Okay.  
13 With that, I'm going to make a motion to approve Application  
14 Number 19816 as captioned read by the Secretary including the  
15 list of conditions that we've spoken about one through six  
16 including A through G that's going to be submitted into the  
17 record by the Applicant and ask for a second.

18 MEMBER WHITE: Second.

19 CHAIR HILL: Motion made and seconded. All those  
20 in favor say aye.

21 (CHORUS OF AYES)

22 All those opposed? The motion passes, Mr. Moy.

23 MR. MOY: The staff would record the vote as five  
24 to zero to zero. This is on a motion of Chairman Hill to  
25 approve the application for the relief being requested along

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1 with the conditions as the Chair has cited in his motion.  
2 Seconding the motion Ms. White. Also in support, Ms. John,  
3 Vice Chair Hart and Mr. Peter May. The motion carries.

4 CHAIR HILL: Thank you all very much.

5 MR. GAON: Thank you.

6 CHAIR HILL: Thank you. Thank you, Commissioner.

7 All right. Mr. Moy, we're going to go back in the  
8 order in which we were going when you have a moment.

9 MR. MOY: I'm shuffling through my paperwork.  
10 Okay.

11 So, parties to the table to Case Application  
12 Number 19814, Stanton View Development, LLC. This is a  
13 request for a variance from the side yard requirements of  
14 Subtitle D, Section 307.4 to construct a new principal  
15 dwelling unit, R-3 Zone because this is at 1724 Gainesville  
16 Street, Southeast, Square 5822, Lot 103.

17 CHAIR HILL: Okay, great. Let's see, Mr. Moy. If  
18 you could go ahead and introduce yourselves, please, from my  
19 right to left.

20 MS. WILSON: Alexandria Wilson from Sullivan and  
21 Barra on behalf of the Applicant.

22 MS. ROBINSON: Norene Robinson, I'm a homeowner at  
23 2523 D Street, Southeast, it's around the corner.

24 CHAIR HILL: Okay. And your name again, please,  
25 I'm sorry?

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1 MR. BISHOP: Norene Robinson.

2 CHAIR HILL: Robinson. Okay. And, Ms. Robinson,  
3 are you here as part of the application in one way or another  
4 or are you here speaking in support or opposition?

5 MS. ROBINSON: In opposition.

6 CHAIR HILL: Okay. Then that part of the hearing  
7 will take place after we go through our presentations. So,  
8 we'll go ahead and call you to the table at that point, okay.

9 All right. Let's see. So, Ms. Wilson, I assume  
10 you're going to go ahead and present to us?

11 MS. WILSON: Yes.

12 CHAIR HILL: Okay. So, if you could go ahead and  
13 again run through the application for us, including what  
14 you're trying to do as well as how you're meeting the  
15 standard for us to grant the application. It being a  
16 variance, obviously there's a little bit more that is  
17 involved in terms of the application. I'm going to go ahead  
18 and throw 15 minutes up on the block just so I know where we  
19 are and you can begin whenever you like.

20 MS. WILSON: Great, thank you.

21 Good afternoon, Chairman Hill and Members of  
22 Board. I'm here on behalf of the owner of 1724 Gainesville  
23 Street, Southeast, to request variance relief from the side  
24 yard requirements of the R3 Zone.

25 Some brief background on this case. This property

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1 is one of 13 identical separate lots from 1700 to 1724  
2 Gainesville Street. Each lot is currently improved with a  
3 single family dwelling except for the subject property. The  
4 lots were subdivided in 2016 and no issues were raised. But  
5 then in 2017, the Zoning Administrator approved construction  
6 for only 12 of the 13 lots contingent upon BZA approving  
7 relief for the side yard for 1724 Gainesville.

8           And we understand that there is a Text Amendment  
9 proposed that would eliminate the need for the relief. But  
10 at the time of the filing it wasn't clear when the amendment  
11 would be heard or approved, and as the application meets the  
12 variance test it was decided the best approach would be to  
13 apply for a relief.

14           Specifically, the Applicant is requesting relief  
15 from D307.4. As this property abuts an alley it does not  
16 have a common division wall on its eastern most side and  
17 therefore requires a side yard. The property is in the R-3  
18 Zone which requires a five-foot side yard. As this would  
19 result in a 15-foot wide road line the Applicant is  
20 requesting relief.

21           Diving into the variance test. The subject  
22 property is a uniquely under-developed lot. Every other lot  
23 of this size on the 1600 to 1700 blocks of Gainesville Street  
24 has been developed as a matter of right without a side yard.

25           With regard to the practical difficulty, a five-

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1 foot reduction in width would result in a 15-foot wide road  
2 line. Practically speaking this results in the loss of a  
3 parking space, bathroom, loss of five feet in the living  
4 room, dining room and kitchen and the loss of at least one  
5 bedroom.

6 The next slides are also included in our pre-  
7 hearing submission as Exhibit 32. So, I'm going to briefly  
8 highlight the key points.

9 Now, I'm going to skip to Slide 12.

10 So, this is a photo of the ground floor which  
11 shows the flex room in the lower level plan. A loss of five  
12 feet would result in a substantially smaller flex room, loss  
13 of light due to one less window and the loss of a parking  
14 space due to the size of the entrance of the garage.

15 These are photos of the living and dining spaces.  
16 Again, the space would be severely limited due to a loss of  
17 five feet.

18 This is the third floor layout. As the staircases  
19 and hallways cannot be made any smaller, a five foot loss  
20 would result in elimination of a bedroom and likely a  
21 bathroom.

22 So, all of the units except for the subject  
23 building has been constructed. The building's facade will  
24 look identical to the other 12 units on this 1700 block of  
25 Gainesville.

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1           A strict application of the zoning regulations  
2 would result in a building completely different than all the  
3 other buildings on this block. Since the loss of five feet  
4 limits the available living space if the zoning regulations  
5 were strictly applied the living space would have to be moved  
6 towards the rear of the lot resulting in a longer and  
7 narrower end unit than the identical 12 units which were  
8 approved at the subject property.

9           While it is possible to construct a 15-foot wide  
10 dwelling, it would be unnecessarily burdensome to the  
11 Applicant. And as the test for an area variance is a  
12 practical difficulty and unnecessary burden but not  
13 impossible we believe this meets the variance test as  
14 redesigning one unit on a block of otherwise identical units  
15 would result in a practical difficulty and be unnecessarily  
16 burdensome for the Applicant.

17           ANC 8B unanimously supported the application and  
18 noted that the Applicant is doing outstanding work in their  
19 community. The project overall has provided two inclusionary  
20 zoning units. The uniqueness of the situation means that  
21 relief can be granted without impairing the intent, purpose  
22 and integrity of the zone plan.

23           And that concludes my presentation. I'm happy to  
24 answer any questions.

25           CHAIR HILL: All right. Great. Thank you.

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1 Does the Board have any questions for the  
2 Applicant?

3 ZC MEMBER MAY: Yes. So, this is a subdivision of  
4 a previously single large property?

5 MS. WILSON: Yes, that is correct.

6 ZC MEMBER MAY: Okay. So, why wasn't it planned  
7 with the side yard in mind then? Because the zoning  
8 regulations were pretty clear back then and if you have 12  
9 properties and you're trying to allow for a five-foot side  
10 yard, you'd lose a few inches off of all the rest of them.  
11 Right? Do you know what I'm saying? You could have allowed  
12 that final property to have the proper side yard. Why didn't  
13 that happen?

14 MS. WILSON: I'm not entirely sure. The Applicant  
15 unfortunately couldn't be here today but I was not there  
16 during those discussions and it's my understanding that the  
17 Zoning Administrator approved this contingent on us coming  
18 here to get BZA relief.

19 ZC MEMBER MAY: Well, it's a workaround. It's a  
20 way of somebody avoiding the requirements of the zoning  
21 regulations. It is a regulation that we changed so I'm not  
22 too bothered by it but, you know, this is just a game on the  
23 part of the developer to bypass the zoning regulations. Oh,  
24 I'm going to go for 12. I'll leave myself with the one lot  
25 and then I can go for zoning relief on that. And the Zoning

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1 Administrator goes along with that unfortunately too often.  
2 But it could have been solved at the time of the subdivision  
3 and it wasn't so now we're in this spot.

4 I mean, this is a circumstance. We changed the  
5 zoning regulations because it didn't make as much sense to  
6 require the side yard when you're abutting an alley. And  
7 that's the circumstance here and that certainly happens a  
8 lot. So, I just -- I can't help myself from pointing out  
9 these attempts on the part of the developer to kind of  
10 circumvent the intent of the regulations at the time.

11 CHAIR HILL: Does anyone have anything else for the  
12 Applicant? The question I had which actually Commissioner  
13 May just answered is, what is to the -- there's an alley next  
14 to the side yard there.

15 MS. WILSON: Correct. There's an alley and then  
16 the next spot over is unimproved.

17 CHAIR HILL: Is an improved? Unimproved.

18 MS. WILSON: It's unimproved.

19 CHAIR HILL: Unapproved, right. Okay. And how  
20 wide is the alley?

21 MS. WILSON: I believe it's 10 feet.

22 CHAIR HILL: Okay. Fine. All right. I'm going  
23 to turn to the Office of Planning.

24 MS. MYERS: Hello. Crystal Myers for the Office  
25 of Planning.

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1           The Office of Planning is recommending approval  
2 of this case. We stand on the record of the staff report.

3           CHAIR HILL: All right. Does anybody have any  
4 questions of the Office of Planning? Okay. I guess someone  
5 is just pointing out the alley is 15 feet wide, I guess. So,  
6 at this point is there anybody here -- do you have any  
7 questions of the Office of Planning?

8           MS. WILSON: No, thank you.

9           CHAIR HILL: Okay. Is there anyone here wishing  
10 to speak in support? Is there anyone here wishing to speak  
11 in opposition? If you could please come forward.

12           And is the ANC here by any chance? No, okay. All  
13 right.

14           How are you again?

15           MS. ROBINSON: Hi.

16           CHAIR HILL: If you could please go ahead and  
17 introduce yourself and as a member of the public you'll have  
18 three minutes to give your testimony.

19           MS. ROBINSON: Okay.

20           CHAIR HILL: But first we'll go ahead and start  
21 with your name and address, please.

22           MS. ROBINSON: Okay. My name is Norene Robinson.  
23 My address is 2523 18th Street, Southeast. I am right  
24 behind the alley part of where they're going to build the  
25 home.

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1 CHAIR HILL: Okay.

2 MS. ROBINSON: And my understanding was that they  
3 were going to try to take part of the alley. That's why I  
4 came into the future of building of the home.

5 CHAIR HILL: Okay.

6 MS. ROBINSON: But now that I found out that the  
7 ANC and all them agreed upon it, you know, as long as they  
8 don't take the alley.

9 CHAIR HILL: No, nothing is happening to the alley  
10 as I understand it.

11 MS. ROBINSON: I hope not because I park my car  
12 back there. I have a driveway in the back of my house that  
13 I need the alley to get in to park. They also need the alley  
14 to get for the park, the Senior Citizen Park.

15 CHAIR HILL: Okay. So, Ms. Wilson, to firm, you  
16 guys aren't going into the alley at all?

17 MS. WILSON: No, not at all. We're leaving the  
18 alley.

19 CHAIR HILL: So, Ms. Robinson, does that change  
20 your position in terms of support or opposition?

21 MS. ROBINSON: Yes.

22 CHAIR HILL: So, you're just making a comment?

23 MS. ROBINSON: Just making a comment.

24 CHAIR HILL: Okay.

25 MS. ROBINSON: And I'm glad I found out because we

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1 were concerned about that.

2 CHAIR HILL: Okay. All right. Well, good. Thank  
3 you. Thank you so much for coming down. I'm sorry it took  
4 you so long today to find that out.

5 Okay. Thank you.

6 Anything else for the Applicant? Okay. I'm going  
7 to close the hearing.

8 Is the Board ready to deliberate? Okay. I can  
9 start.

10 I do think again that -- I mean, I do think it's  
11 interesting what Commissioner May is bringing up in terms of  
12 his discussion. However, I suppose it doesn't matter that  
13 the Text Amendment, you know, whether that changes or not.  
14 It's not in front of us. It is interesting I suppose that  
15 the Zoning Commission is looking at this. However, I do  
16 believe that it meets the variance test. I also do  
17 appreciate and agree with the analysis that was provided by  
18 the Office of Planning. And I'm further comforted by the  
19 fact that there's an alley there and it's at the end and that  
20 the alley obviously is not going to be affected.

21 So, I would be -- and the fact that the ANC 8B was  
22 in approval unanimously four to zero and that DDOT has no  
23 objection. I do think that they meet the variance test and  
24 so I'll be voting in approval.

25 Does anyone else have anything else they'd like

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1 to add? Okay. Then I'll go ahead and make a motion to  
2 approve Application Number 19814 as captioned and read by the  
3 Secretary and ask for a second.

4 MEMBER HART: Second.

5 CHAIR HILL: Motion made and seconded. All those  
6 in favor say aye.

7 (CHORUS OF AYES)

8 Motion passes, Mr. Moy.

9 MR. MOY: The staff would record the vote as five  
10 to zero to zero. This is on the motion of Chairman Hill to  
11 approve the application for the relief being requested.  
12 Seconding the motion, Vice Chair Hart. Also in support Ms.  
13 White, Ms. John and Mr. Peter May. The motion carries.

14 CHAIR HILL: Thank you, Mr. Moy. Thank you.

15 All right. Mr. Moy, we can start whenever you  
16 like.

17 MR. MOY: Thank you, Mr. Chairman.

18 The next Case Application before the Board is  
19 Application Number 19806 of Multi-Therapeutic Services, Inc.  
20 This is a request for a special exception under the use  
21 provisions of Subtitle U, Section 203.1 and G to permit an  
22 adult daytime care use in the R-2 Zone at premises 927 55th  
23 Street, Northeast, Square 5214, Lot 128. And, let's see, I  
24 think the only thing I want to add for the record, Mr. Chair,  
25 is that we do have an ANC 7C report that was filed this

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1 morning at 8:00 or actually 8:12 to be exact this morning.

2 I also want to mention that I also in that same  
3 filing got a copy by email and this is from Commissioner  
4 Holmes and if you don't mind if I can read this into the  
5 record.

6 CHAIR HILL: Please do.

7 MR. MOY: Where he states that, ANC 7C supports the  
8 applicant on this matter and will take an official vote on  
9 this Thursday, September 13th at our next general meeting,  
10 end quote. So, I just wanted to tee that up before the  
11 Board.

12 CHAIR HILL: Okay, thank you.

13 All right. If you could please introduce  
14 yourselves from right to left.

15 MS. BRITTINGHAM: Lacy Brittingham, I'm an  
16 architect and agent for the Applicant.

17 MR. BROWN: Woodrow Brown. I'm with Multi-  
18 Therapeutic Services, Inc.

19 CHAIR HILL: Okay, Ms. Brittingham, are you going  
20 to be presenting to us?

21 MS. BRITTINGHAM: Yes.

22 CHAIR HILL: Okay. I guess there was some  
23 questions that I initially had with concerns to the ANC and  
24 I guess there has been something now that has been provided  
25 to us that Mr. Moy had just talked about.

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1 I guess if you could go ahead and give a  
2 presentation as to what you are trying to do as well as the  
3 standard in which you are meeting so that we can grant this  
4 application. Also, there was some question about parking  
5 relief, whether that was needed or not, and so maybe we can  
6 just kind of figure that out as we kind of move through this.  
7 But you can begin whenever you like.

8 MS. BRITTINGHAM: Hello. Good afternoon. Lacy  
9 Brittingham for the Applicant.

10 The Applicant is requesting special exception  
11 relief under U 203.1G to operate an adult daytime care  
12 facility on the property. They have leased and operated a  
13 different program as a community residence on this property  
14 for a number of years. The current use has been as a  
15 community residence as sort of a 24-hour occupation of the  
16 site and use of the site by staff and the people that live  
17 there.

18 And so our proposal is to actually reduce sort of  
19 the use of the site to business hours. As an adult daytime  
20 care center the clients of the program would be dropped off  
21 at the site in the morning and buses or small vans would come  
22 periodically through the day to take them into the community  
23 for activities and sort of social development and bring them  
24 back to the site and then at the end of the day the vans  
25 would return and take them back to their place of residence.

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1           The staff is anticipating -- the program is  
2 anticipating opening with five, maybe six clients to begin  
3 with. And that would require two staff persons. It's one  
4 staff person per five clients. And then their licensing has  
5 a maximum of 15 clients allowed, so the maximum staff at this  
6 location would ever be three staff persons.

7           We originally the Applicant started a BZA  
8 application process without my involvement and they had  
9 requested the zoning memo from the Zoning Administrator. The  
10 Zoning Administrator indicated that they needed parking  
11 relief. When I started preparing the application we were  
12 going to move forward with that request and then it was  
13 determined we can provide these two spaces required on the  
14 site so we would just simplify the application and provide  
15 those two spaces.

16           So, it was -- the record was amended with a  
17 revised plat or revised burden of proof and the self-  
18 certification Form 135 saying that we no longer need the two  
19 spaces as relief.

20           As far as our burden of proof according to  
21 Subtitle X we shall be designed to create no objectionable  
22 traffic condition and unsafe condition for picking up and  
23 dropping off of persons. According to the program that I  
24 described just a few minutes ago the clients would be picked  
25 up and dropped off within the existing very wide driveway

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1 that is currently on the site. There are photographs of the  
2 property showing this wide driveway that have been included  
3 in the record.

4 And then a second criteria is that the play area  
5 shall be located so as to not danger individuals traveling  
6 between the play area and the center. All activities would  
7 be happening within the building or they will be transported  
8 off the facility through the vans which, of course, would be  
9 unloaded and loaded from the driveway so no unsafe condition  
10 is created there.

11 If the Board requires any kind of special  
12 treatment in the way of designs or plan things we would  
13 gladly comply with that and we are not aware of any other  
14 adult day time care facilities within 1,000 feet of the  
15 property.

16 Additional requirements of 901.2 we believe that  
17 we are in harmony with the general purpose and intent of the  
18 zoning regulations and zoning maps. This is a residential  
19 building existing, originally built as a residential home.  
20 We are utilizing the small facility for a small program and  
21 as I mentioned at the outset we are actually reducing our  
22 operation on the site from a 24-hour to a sort of a more  
23 business use, more in line when people are -- we will not be  
24 at the site with staff at the time when people are coming  
25 home from their jobs. And the staff will be there at the

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1 time when most people are away from their homes.

2 The last item that we will not adversely affect  
3 the use of the neighboring properties in accordance with the  
4 zoning regulations.

5 We mailed letters to the six abutting neighbors,  
6 three of the six are absentees landlords and basically saying  
7 we would be, explaining who we are, what we're proposing to  
8 do. We would be coming to the ANC. We included a letter of  
9 support that they could sign and easily mail back to us with  
10 an envelope that was stamped. We received nothing in return.

11 We have been reaching out to the ANC since March  
12 trying to establish communication, discussion of our request  
13 and have been unsuccessful in that effort. Mostly, we did  
14 have the Commissioner, the Chair contact us at the end of  
15 August requesting us to come to the executive committee  
16 meeting which we did and presented the project there. They  
17 seemed in favor and then as Mr. Moy explained we have the  
18 letter this morning of support. So, I think we have the ANC  
19 support, the Office of Planning support and that concludes  
20 my presentation. I'd be happy to answer questions.

21 CHAIR HILL: Okay. Okay. Great.

22 Does the Board have any questions of the  
23 Applicant?

24 MEMBER WHITE: Just one question out of curiosity.  
25 What kind of internal configuration do you have set up for

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1 this type of operation? I mean, I'm looking at the house  
2 from the outside. I think there's some plans in the record.  
3 But I'm just curious, you know, just in terms of safety and--

4 MR. BROWN: Right. Yes.

5 MEMBER WHITE: -- comfort.

6 MR. BROWN: Yes, it's a group home. It will be  
7 9:00 to 5:00. In terms of safety of the clients, we have a  
8 high staff to client ratio. I think the District allows us  
9 one to five. But we usually do, you know, better than that  
10 with these individuals. They are developmentally disabled.  
11 We're regulated and monitored by the District very heavily  
12 on everything.

13 And we have seasoned staff and ADT and, you know,  
14 and they don't -- nobody will be going outside and playing.  
15 All the activities take place in the home. And we have been  
16 a provider here in the District for about 33 years. We have  
17 group homes for developmentally disabled individuals ranging  
18 from moderate to severe. So, we've been in the business a  
19 while and have not had any problems.

20 MEMBER WHITE: Okay. Thank you.

21 CHAIR HILL: When you say developmentally disabled  
22 what does that mean to you?

23 MR. BROWN: Developmentally disabled. Well,  
24 they're not able to function in society. And what we try to  
25 do is get them involved in the community to try to get them

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1 to be more independent individuals. They need assistance.

2 CHAIR HILL: I understand. I was just curious.

3 I mean I'm thinking more of my elderly parents and kind of,

4 you know --

5 MR. BROWN: Yes, we don't do that.

6 CHAIR HILL: It's not so much the dementia and

7 Alzheimer's --

8 MR. BROWN: Right.

9 CHAIR HILL: -- is what you're saying.

10 MR. BROWN: All our clients are District residents

11 and we are contracted to take care of them.

12 CHAIR HILL: I see. Okay. All right. Anyone

13 else? Okay. I'll turn to the Office of Planning.

14 MR. MORDFIN: Good afternoon, Chairman, and Members

15 of the board. I'm Stephen Mordfin. And the Office of

16 Planning is in support of this application finding it in

17 conformance with the criteria necessary for its approval.

18 And, therefore, supports the application as it stands on the

19 record. Thank you.

20 CHAIR HILL: Okay, thank you.

21 Does the Board have any questions for the Office

22 of Planning? Does the Applicant have any questions for the

23 Office of Planning? No. Okay. Could you say no into the

24 microphone?

25 MS. BRITTINGHAM: No.

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1 CHAIR HILL: Thank you. Is there anyone here  
2 wishes to speak in support? Is there anyone here who wishes  
3 to speak in opposition? Is there anything else you'd like  
4 to say in conclusion?

5 MS. BRITTINGHAM: No.

6 CHAIR HILL: Okay. I'm going to go ahead and close  
7 the hearing.

8 Is the Board ready to deliberate? Okay. I can  
9 start.

10 MS. LOVICK: Excuse me, Mr. Chair. So, the ANC has  
11 not voted officially on this. There's a letter that was  
12 submitted into the record but it's dated for September 13th.  
13 And so, you know, they could vote tomorrow and that vote may  
14 not be --

15 CHAIR HILL: I appreciate. I appreciate that.

16 MS. LOVICK: -- so I just want to raise that issue.  
17 And suggest that maybe you wait until after that vote occurs  
18 to decide this case.

19 CHAIR HILL: Yes, that's fine. So, okay. But when  
20 I heard what Mr. Moy had said I heard that the ANC was in  
21 support. This letter, right, is postdated, whatever predated  
22 for tomorrow in terms of that's when they are meeting.  
23 Obviously that means that we can't give the ANC great weight  
24 much like in a previous case we couldn't give the ANC great  
25 weight.

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1 I will turn to the Board as to whether they want  
2 to postpone the deliberation in terms of moving forward. I  
3 do appreciate LAG bringing this up to me -- up to the Board  
4 and that is helpful because if we were going to rely heavily  
5 on the ANC's participation we actually can't give them great  
6 weight right now. I, however, am comfortable moving forward  
7 based upon just the standard of review that we have before  
8 us and so would anyone else like to wait or what are your  
9 thoughts?

10 Okay. No one is saying that they want to wait so  
11 I'm going to go ahead and move forward. But, hold on, Mr.  
12 Moy. I mean, Mr. May. Did you have something to say?

13 ZC MEMBER MAY: No. I just thought you might want  
14 to hear it on the record.

15 CHAIR HILL: Sure, no, okay.

16 ZC MEMBER MAY: I appreciate, you know, being  
17 reminded that we don't have an official vote but we don't  
18 have any indication that there are concerns either from the  
19 ANC or from neighbors and so I think it's safe to move  
20 forward. Besides the Applicant explained how they did  
21 attempt to get the ANC's vote before this hearing. And the  
22 ANC didn't act very quick.

23 CHAIR HILL: No, I appreciate it. And so for the  
24 record would anyone else like -- you can something or nod yes  
25 in agreement and I will take either one.

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1           MEMBER JOHN:     Mr. Chairman, I'm in agreement.  
2 We should move forward on the basis that the Applicant made  
3 a good faith effort to reach the ANC and I think the record  
4 is full enough for us to proceed.

5           CHAIR HILL: Okay. All right. Anyone else?

6           MEMBER HART: Just out of curiosity, we've now  
7 accepted the letter from the ANC that is dated for tomorrow  
8 so I just don't know what that -- no, no, I'm just saying,  
9 well, I just don't want somebody to think it's a typo or  
10 whatever. I just don't know would they submit something  
11 tomorrow and say, oh, yes, we do agree with this?

12          MR. MOY: Well, clearly it's -- it should be  
13 tomorrow. But this deliberation is on the transcript.

14          MEMBER HART: Yes.

15          MR. MOY: The other way is you could strike it from  
16 the record. I think that sounds like where you're headed.

17          MEMBER HART: I was just curious as to how we would  
18 be --

19          MR. MOY: I understand.

20          MEMBER HART: You see what I'm saying. I mean it's  
21 something that we have now but we are not -- we can't really  
22 use it for any purposes because it's dated, you know, a  
23 particular time. Somebody coming back and looking at this  
24 they may say, oh, well, this thing was just a mistake and  
25 they just dated it wrong. I just don't know.

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1 MR. MOY: Depending on the designs of the Board,  
2 you know, I could always incorporate an OZ letter into the  
3 record that would explain that if you wanted to keep it in  
4 the record. That's another option.

5 CHAIR HILL: Okay. Well, I'd like to keep it in  
6 the record. So, if the Office of Zoning could put something  
7 in after the fact to help explain this for all posterity in  
8 moving forward as, you know, 100 years from now somebody can  
9 look it up and like oh, it wasn't a typo after all. So,  
10 let's see.

11 But once again, and I do mean this, I appreciate  
12 LAG point that out because often times, anyway, I don't want  
13 anyone else to think that we're giving something great weight  
14 when we're not supposed to be able to give it great weight.  
15 So, I appreciate that.

16 All right. Again, in continuation with the  
17 discussion here I do think that the Office of Planning's  
18 report has been pretty clear in terms of their analysis and  
19 how they are getting to the point where they're providing  
20 their support for the application and how they're meeting the  
21 standard. And so I would be moving forward in terms of my  
22 support for this application.

23 Is there anything else anyone else would like to  
24 add?

25 MEMBER JOHN: Mr. Chairman, I reviewed the record

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1 and listened to the testimony and I believe that this  
2 application is fairly straightforward and the Office of  
3 Planning has done a very thorough analysis. And I am  
4 prepared to give great weight to the recommendation and the  
5 analysis of the Office of Planning and based on all of that  
6 I will am in support of this application.

7 CHAIR HILL: Okay, great. Then I am going to go  
8 ahead make a motion. Mr. Brown, I wish you the best of luck  
9 in all of these activities. It's very important work and it  
10 requires a lot of compassion and so I hope you have that.  
11 You appear to be at least today.

12 So, I'll go ahead and say I make a motion to  
13 approve the Application Number 19806 as captioned and read  
14 by the Secretary and ask for a second.

15 MEMBER HART: Second.

16 CHAIR HILL: Motion made and seconded. All those  
17 in favor say aye.

18 (CHORUS OF AYES)

19 All those opposed? The motion passes, Mr. Moy.

20 MR. MOY: The staff would record the vote as five  
21 to zero to zero this on the motion of Chairman Hill to  
22 approve the application for the relief being requested.  
23 Seconding the motion, Vice Chair Hart. Also in support Ms.  
24 White, Ms. John and Mr. Peter May. The motion carries.

25 CHAIR HILL: All right. Thank you Mr. Moy. Thank

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1 you all very much. We're going to take a quick three-minute  
2 break.

3 (Whereupon, the above-entitled matter went off the  
4 record at 3:56 p.m. and resumed at 4:11 p.m.)

5 CHAIR HILL: All right, Mr. Moy, whenever you're  
6 ready.

7 MR. MOY: Thank you, Mr. Chairman. The Board is  
8 back in session, it is 4:10 p.m.

9 Because of recent filings in the record, Mr.  
10 Chairman, I'm going to read the recaption or revision to the  
11 application and ask that the Applicant confirm. So, this is  
12 as revised --

13 CHAIR HILL: Before you do that real quick, could  
14 you just please introduce yourselves?

15 MS. FERREIRA: Caterina Ferreira, architect.

16 MR. TESFAYE: Yared Tesfaye, owner.

17 CHAIR HILL: Could you say your last name for me  
18 please?

19 MR. TESFAYE: Tesfaye, T-E-S-F-A-Y-E.

20 CHAIR HILL: Okay, great. So, you've heard that  
21 Mr. Moy is going to now help us try to clean up so please go  
22 ahead, Mr. Moy.

23 MR. MOY: All right, so as revised language to the  
24 caption to the application, this is a request for special  
25 exception relief pursuant to Subtitle U, Section 320.2, to

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1 convert a two-unit flat to an apartment house.

2 I believe it's still a three-unit apartment house  
3 along with a waiver from the requirements of Subtitle U,  
4 Section 320.2E to extend further than ten feet past the  
5 furthest rear wall and a special exception from the  
6 requirements of Subtitle E, Section 307.4 to eliminate an  
7 existing non-conforming side yard.

8 And this is, as I said earlier, based on the new  
9 Exhibits in the record. There's a solar study under Exhibit  
10 39, Office of Planning Supplemental Report under Exhibit 44  
11 revised burden of proof from the Applicant, including the  
12 request for a waiver under Exhibit 46 and a letter from the  
13 owner, the property owner, being at 3328 Sherman Avenue under  
14 Exhibit 47.

15 CHAIR HILL: What was under Exhibit 47, Mr. Moy,  
16 I'm sorry?

17 MR. MOY: A letter from the property owner next  
18 door, the next-door neighbor.

19 CHAIR HILL: I'm sorry, a letter from the next-  
20 door property.

21 So Ms. Ferreira, I always have trouble with your  
22 name, I'm sorry, I guess if you could go ahead and start  
23 walking us through the application again in terms of what  
24 you're trying to propose and how you're meeting the standards  
25 for that?

1 I would like to hear that from the letter of  
2 support or the neighbors from either side because of request  
3 that you're having for the ten-foot waiver and the feedback  
4 you've had from them. And this is where I'm not really sure  
5 how I'm going to go with this.

6 First of all, do your presentation, tell us what  
7 you're trying to do, tell us how you're meeting the standard,  
8 and then also what the ANC has heard.

9 So, you can start whenever you'd like and I'll put  
10 15 minutes on the clock Mr. Moy, just so I know where I am.  
11 And please begin whenever you'd like.

12 MS. FERREIRA: Thank you.

13 3324 Sherman Avenue LLC are seeking a special  
14 exception relief from the requirements of Subtitle E, Section  
15 302.1 for converting an existing two-unit property to a  
16 three-unit apartment house per Section U 320.2.

17 And within Section U 320.2, we're also requesting  
18 a waiver from the ten-foot extension limit at the rear. We  
19 are also requesting relief from Subtitle E, Section 307.4,  
20 for eliminating an existing non-conforming side yard along  
21 the north side of the lot.

22 The lot is located in RF1, which allows two units  
23 as a matter of right, and again, the relief that we are  
24 requesting is mainly for making it into a three-unit  
25 property. And in order for that to happen, per Subtitle U

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1 320.2, there are certain conditions that must be met.

2           And those conditions are first and foremost that  
3 the height does not exceed 35 feet, which in our case it does  
4 not with the exception of roof access, a penthouse that we  
5 are proposing that exceeds less than 4 feet above that  
6 height.

7           And therefore, it is not required to conform with  
8 other requirements for penthouses other than the site  
9 setbacks, which we conform with. The next condition is that  
10 a certain amount of land area must be available for each  
11 additional unit beyond two units and that is 900 square feet  
12 per unit.

13           This is an unusually large lot, it's 3229 square  
14 feet, which allows for 1076.33 square feet of land for each  
15 unit, even with three units. So that condition is also met.  
16 And in light of the large lot, we are also proposing  
17 extending the building at the rear.

18           It was initially a ten-foot extension past the  
19 building to the south which is 3422 Sherman Ave, Northwest.  
20 We then revised it to be a ten-foot extension past the  
21 building to the north which is 3328 Sherman Avenue,  
22 Northwest.

23           And that was done after consulting with the ANC  
24 and actually, after the ANC Hearing because there was a  
25 request made that we try to make the units into three

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1 bedrooms because that is what the community really wanted.

2 So, we went ahead and made that revision and we  
3 are, therefore, requesting a waiver from that ten-foot  
4 exception requirement and as a basis for that waiver, I would  
5 like to

6 point out that for RF1, actually, there is no stipulation in  
7 the regulations for the ten-foot limit. What there is is a  
8 requirement for a 20-foot rear yard setback, and I included  
9 that information in the burden of proof.

10 From my reading of it, the R zones have that limit  
11 of ten feet past the adjoining rear property walls. But in  
12 our RF1, that condition was not listed.

13 But even if there were, basically, what we are  
14 proposing is what would be allowable in a normal R zone,  
15 which is ten feet past the farthest rear wall of an adjoining  
16 building.

17 ZC MEMBER MAY: I would just point out, I think  
18 you're reading of that is incorrect. We passed specific  
19 regulations for RF1 zones, for RF zones, that you can't  
20 exceed ten feet beyond either one, either property, when  
21 you're building an additional off the back.

22 And that's the waiver that's being requested, that  
23 is now being requested and that's a requirement. I don't  
24 remember any requirements in the R zones but in the RF zones  
25 it's very clear you can go ten feet out, ten feet beyond the

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1 shallower of the two houses, not even the one that's deeper.

2           So if there's one that's here and one that's here,  
3 if you're going in this direction, you've got to go the one  
4 that's the shallower house.

5           MS. FERREIRA: Okay, thank you for clarifying.

6           CHAIR HILL: So Ms. Ferreira, I'm just looking at  
7 -- I don't know which one I'm looking at here but I'm looking  
8 at one of your side presentations and I'm looking at the  
9 rear. You're the blue house, correct?

10           MS. FERREIRA: No, we are the one to the north of  
11 the blue house. We're the red brick house.

12           CHAIR HILL: Yes, I was looking at the rear.  
13 Grey-blue?

14           MS. FERREIRA: It's the grey-blue, yes.

15           CHAIR HILL: Okay, all right, and so you have  
16 letters of support from neighbors on either side of you?

17           MS. FERREIRA: We have a letter of support from  
18 the neighbor on the north which is the one with the  
19 shallowest rear addition.

20           CHAIR HILL: That's the one to the left?

21           MS. FERREIRA: Correct. The neighbor on the south  
22 is actually absentee. The property is currently undergoing  
23 a renovation. No one lives there right now.

24           CHAIR HILL: We've had a lot of absentees.  
25 Absentee means what? Nobody says anything about anything,

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1 is that what absentee is? All right, I was just saying  
2 something out loud, I wasn't really asking a question.

3 I apologize, I'm sorry. So, I understand, please  
4 continue Ms. Ferreira.

5 MS. FERREIRA: The next condition is that any  
6 addition including a roof structure or penthouse should not  
7 block or impede functioning of a chimney or other external  
8 vent, et cetera. In our case, we are actually taking care  
9 to make sure that condition is met as well.

10 We will be extending a chimney that is located,  
11 you can actually see it in that same photo on Page Z003  
12 between the two properties.

13 The next condition, Condition G, any addition  
14 including the roof structure or penthouse should not  
15 significantly interfere with the operation of existing solar  
16 energy on an adjacent property, it shall not also affect  
17 access to light and air.

18 I'm skimming ahead but that's the next section.  
19 We actually completed a solar study, a very detailed solar  
20 study, showing how the proposed addition with the additional  
21 eight feet that were going back beyond the allowable by-  
22 right.

23 CHAIR HILL: And you just submitted the solar  
24 study, correct?

25 MS. FERREIRA: Correct, and that was something

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1 that we coordinated pretty closely with the Office of  
2 Planning and I would like to thank them for their guidance  
3 on that.

4 We wanted to make sure that it was as accurate and  
5 as complete as possible but it did take a while to develop  
6 so my apologies for submitting that into the record so late.

7 But that was done as part of the support of our  
8 request for the waiver on the ten-foot extension.

9 CHAIR HILL: And just quickly again, how far back  
10 are you going from the property to the south?

11 MS. FERREIRA: 10 feet, and we are going 18 feet  
12 back from the property to the north, which is the one that's  
13 farther in.

14 CHAIR HILL: All right, thank you.

15 MS. FERREIRA: So we are basically going eight  
16 feet beyond what would be normally allowable without the  
17 waiver.

18 CHAIR HILL: Okay, is that it?

19 MS. FERREIRA: I believe so.

20 CHAIR HILL: Because there are going to be some  
21 questions for now; let's see what happens. So the Office of  
22 Planning, please? Or actually, first, does anybody have any  
23 questions for the Applicant right now?

24 ZC MEMBER MAY: I do. What's the name of the  
25 neighbor to the north? Because the copy of the letter we got

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1 is illegible. And as if this were a recurring theme for the  
2 day, the letter was written in the future. August 30, 2019.

3

4 MS. FERREIRA: That's clearly a typo.

5 CHAIR HILL: Is it clearly a typo?

6 MEMBER WHITE: Do you know the name of the  
7 neighbor?

8 MR. TESFAYE: I forgot it because it was my  
9 brother who went and talked to him. I can call him right  
10 now, see if he can remember. I can call him.

11 CHAIR HILL: We can come back to whoever that  
12 guy's name is. So other than that, and I'm not trying to be  
13 flippant about this, this is a letter from the neighbor to  
14 the north, correct?

15 We're just trying to find out what his name is?  
16 And he or she has submitted this and you're testifying under  
17 oath that this is actually that letter, and you are under  
18 oath, correct?

19 MR. TESFAYE: Correct.

20 MS. FERREIRA: Just in recognition of that fact  
21 that we are under oath, I'd like to add that I provided the  
22 letter as a template, as I often do for various projects, to  
23 make it easier for neighbors to offer support of projects.

24 We usually do provide the blank letter that they  
25 can sign.

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1 CHAIR HILL: So how did that neighbor get that  
2 letter?

3 MR. TESHAYE: We knocked on the door and we talked  
4 to them and told them about our project.

5 CHAIR HILL: Okay, then they signed the letter in  
6 front of you?

7 MR. TESHAYE: Yes.

8 CHAIR HILL: And then gave back the letter?

9 MR. TESHAYE: It was my brother, yes, 100 percent.

10 CHAIR HILL: I'm going to turn to the Office of  
11 Planning for now --

12 (Simultaneous Speaking.)

13 ZC MEMBER MAY: Aren't there two units, though,  
14 next door to the north? 3328?

15 MR. TESHAYE: Which one is 3328?

16 MS. FERREIRA: 3328 is right here.

17 MR. TESHAYE: The blue one?

18 MS. FERREIRA: There are two units to the south.  
19 To the north, I'm not sure.

20 MR. TESHAYE: This one is two units.

21 MS. FERREIRA: To the north is a smaller property  
22 and shorter.

23 ZC MEMBER MAY: There are two mailboxes on it,  
24 though.

25 MS. FERREIRA: There are, you're correct. And is

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1 it a condominium?

2 MR. TESHAYE: I don't think so. They're fixing  
3 it right now.

4 CHAIR HILL: I thought this letter is from the  
5 owner?

6 MR. TESHAYE: This is the house on the side.

7 MS. FERREIRA: So from what we know today, one of  
8 the residents in that building signed the letter but it does  
9 appear to be a two-unit building.

10 CHAIR HILL: But it's not the owner of the  
11 building?

12 MR. TESHAYE: We knocked on the door, we told them  
13 we are --

14 ZC MEMBER MAY: It's a good idea to get their  
15 names too.

16 MS. FERREIRA: The signature is hard to read. We  
17 did also mail notifications.

18 ZC MEMBER MAY: Perchner?

19 MR. TESHAYE: It might be Perchner.

20 ZC MEMBER MAY: Melanie Perchner, 3328 Sherman  
21 Avenue. Is that the address?

22 MS. FERREIRA: Yes, it starts with a P. Yes, it's  
23 3328.

24 ZC MEMBER MAY: I'm just looking at the mailing  
25 list at 200 feet.

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1 MS. FERREIRA: Thank you. They also received  
2 notifications through DCRA's Neighbor Notification Program.

3 ZC MEMBER MAY: Actually, it could be Natalie  
4 Politis. It's just the list that we have, the mailing list.  
5 So there are two women, I guess, Ms. Perchner and Ms.  
6 Politis.

7 MS. FERREIRA: Politis sounds right.

8 ZC MEMBER MAY: Natalie Politis.

9 CHAIR HILL: But this does bring up a question and  
10 I guess I'll ask the Office of Planning when we get to them  
11 as well, you don't know if these are the owners or not?  
12 These are just the people that answered the door.

13 MR. TESFAYE: We asked them if they are the owner.

14 CHAIR HILL: Oh, you asked them if they were the  
15 owners and they said yes?

16 MR. TESFAYE: Yes, we told them we're the owner.

17 ZC MEMBER MAY: You keep saying we but it was your  
18 brother.

19 MR. TESFAYE: Yes.

20 MS. FERREIRA: But it is a condominium building.

21 CHAIR HILL: That's fine but I'm just saying they  
22 identified themselves as the owner, at least the one person  
23 that signed? But the other person you don't know what  
24 happened?

25 MR. TESFAYE: No, we couldn't reach them because

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1 they said it looks like it's under construction.

2 CHAIR HILL: No, we're speaking of the unit next  
3 door that has two units.

4 MR. TESFAYE: We just spoke to one person.

5 CHAIR HILL: You spoke to one person of the two  
6 units. Okay, if one of you could turn off your microphone?  
7 We're getting feedback. Thanks. Okay, we'll come back. The  
8 Office of Planning, please?

9 ZC MEMBER MAY: I'm sorry, one other question.

10 CHAIR HILL: Sure.

11 ZC MEMBER MAY: There was a question we had about  
12 the chimney. Your agreement from the next-door neighbor, the  
13 blue house, I guess, right, to extend the chimney, is there  
14 actually an agreement to extend that chimney?

15 MS. FERREIRA: We have not been able to reach that  
16 person yet to make that agreement. It is our intent to do  
17 so; as part of our permitting process through DCRA, we will  
18 be required to extend that chimney.

19 MEMBER WHITE: Can you give me a little bit more  
20 information about your interaction with the ANC? I noticed  
21 that this property used to be Charles Drew's house?

22 MS. FERREIRA: Correct.

23 MEMBER WHITE: So that's why you're naming it Drew  
24 Condominium?

25 MS. FERREIRA: Correct.

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1           MEMBER WHITE:    So I'm just curious about what  
2 other community feedback you've gotten from the ANCs with  
3 respect to this and the design?

4           MS. FERREIRA:    It was mixed.  There are various  
5 Members in the ANC Commission and some of them were actually  
6 quite close to this project and actually knew the daughter  
7 of Charles Drew and had some pretty strong opinions about it.

8                           And we did our best to respond to their concerns  
9 but overall, the ANC was in support of the project and I  
10 think part of the reason that we were able to obtain support  
11 is that we demonstrated that we were conforming with the  
12 zoning regulations in every other way that we could, and that  
13 making this a three-family house is really the only  
14 significant relief that was required.

15                           And at that time, to be transparent, we thought  
16 it was the only relief that we required.  Through our work  
17 with the Office of Planning in developing and fine-tuning the  
18 project, we revised the application and included the  
19 additional relief required for the side yard, the non-  
20 conforming side yard.

21                           We're eliminating the non-conforming side yard and  
22 then the waiver for the larger rear addition.  So those two  
23 items were not discussed with the ANC.  The focus of our  
24 conversation with the ANC was not so much the size of the  
25 property, it was the fact that they found that three bedrooms

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1 would be more desirable, which is part of the reason we made  
2 it larger in the back.

3           And they did have some questions about the design  
4 intent; there was one Commissioner in particular who thought  
5 it looked a bit outlandish so I went through the process of  
6 explaining to her the rationale behind the design and why it  
7 looks the way that it does. And I'll be glad to do that here  
8 as well.

9           As you probably noticed from the photos, the  
10 property is really one of two twins, so to speak, and adding  
11 onto such a structure is a very tricky proposition from a  
12 design standpoint.

13           So, my intent here was to provide a design that  
14 was clearly distinct from that existing structure so that it  
15 allows that existing structure to still read, versus trying  
16 to add onto it in the way that would be convoluted and make  
17 it look like a bit of a Frankenstein.

18           That is something that was not well received by  
19 everyone on the ANC Commission but it was well received by  
20 most. And the intent here is to generate something that  
21 stands alone as its own building while still remaining  
22 respectful of what it was.

23           We also discussed at the ANC Hearing that we  
24 propose a larger plaque to celebrate the heritage of the  
25 building and the fact that this was Dr. Charles Drew's house,

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1 and we talked about that at length. And we intend to honor  
2 that legacy as much as possible.

3 I also consulted with the Historic Preservation  
4 Office and they said that they had no jurisdiction over this  
5 building because it is not a historic landmark.

6 So, first of all, we named the building the Drew,  
7 that's part of the celebration, and we can also have in the  
8 public hallway a display area that talks about the history  
9 of Dr. Charles Drew a bit more and elaborates on it so that  
10 the residents themselves can take pride in their heritage.

11 MEMBER HART: I think I know the answer to this,  
12 this is a semi-detached house?

13 MS. FERREIRA: Yes, you could call it that,  
14 correct.

15 MEMBER HART: So it's attached to the south but  
16 it's not attached to the north?

17 MS. FERREIRA: Currently, right.

18 MEMBER HART: Is it going to be in the future?

19 MS. FERREIRA: In our proposed design, yes, we're  
20 proposing eliminating the side yard and attaching it, and  
21 there are no windows on the property to the north on that  
22 particular exterior wall.

23 CHAIR HILL: Okay, all right. I'll turn to the  
24 Office of Planning.

25 MR. JESICK: Thank you, Mr. Chairman and Members

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1 of the Board, my name is Matt Jesick. The Office of Planning  
2 initially had some concerns regarding the amount of  
3 information in the record dealing with the light impacts to  
4 the neighbors to the north.

5 So we really appreciate the Applicant working with  
6 us to provide more information, providing the solar study at  
7 Exhibit 39. And with that additional information, we were  
8 able to fully recommend approval of the application.

9 Other than that, I'll stand on the record but I'd  
10 be happy to take any questions. Thank you.

11 CHAIR HILL: Does anybody have any questions for  
12 the Office of Planning? I just have a quick one.

13 Again, as we see the waivers for the ten feet  
14 thing, the property to the north, which is the property that  
15 is going to go back 18 feet, the Office of Planning has  
16 received a letter of support, and not that that is, again,  
17 how the Office of Planning necessarily arrives at a  
18 conclusion -- and you can just say yes to this I suppose --  
19 but is that like you've taken a letter, you've gotten support  
20 from the most affected property, and you've done a shadow  
21 analysis that it's not necessarily going to be unduly  
22 burdensome?

23 Is that basically how you get to how far back one  
24 can go to the property?

25 Because, again, we, or at least myself in terms

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1 of the Board, struggles with the ten foot, like how far back  
2 one gets to go is what I'm trying to just hear from the  
3 Office of Planning, again, how they go about analysis.

4 MR. JESICK: Well, let me just say first that I  
5 have not seen the letter from the neighbor to the north. I  
6 believe that just came in last night or maybe this morning  
7 so that didn't weigh into our analysis in this particular  
8 case.

9 Just speaking in general, something like an eight-  
10 foot distance beyond the ten feet, especially when you're  
11 talking about lots that are pretty deep like these ones are,  
12 that felt like a small deviation to us.

13 Initially, like I said, we didn't feel comfortable  
14 without the actual hard evidence making a recommendation.  
15 That's why we asked for the shadow study and I think that  
16 provided the data that, in this particular case, and all  
17 cases are different of course, but in this particular case,  
18 we felt comfortable that the impact would not be undue.

19 That this percentage of impact that was quantified  
20 in the shadow study seemed to be relatively small.

21 CHAIR HILL: Okay, thanks.

22 And again, just for my clarification, I'm just  
23 trying to figure this out as we go along in that if there was  
24 a huge uproar here from the community over this eight feet,  
25 we would just be -- I'm just trying to again understand how

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1 the analysis and how the Board can look at things on a  
2 case-by-case basis.

3 And I'm realizing as far as the two units to the  
4 south, they're only going back ten feet so you're doing  
5 matter of right for the units to the south.

6 So it's the units to the north or the building to  
7 the north that is at issue. Does anybody else have any  
8 questions for the Office of Planning? Does the Applicant  
9 have any questions for the Office of Planning?

10 MS. FERREIRA: No.

11 CHAIR HILL: All right, is there anybody here  
12 wishing to speak in support of the application? Is there  
13 anybody here wishing to speak in opposition of the  
14 application?

15 Ms. Ferreira, you're usually here at the end of  
16 the day now that I think about it. This room is usually  
17 empty, you're pretty lucky that you can see, you can just  
18 turn around and be like, well, probably not, right?

19 MS. FERREIRA: It's the first time I've been last  
20 though.

21 CHAIR HILL: Really? Okay, anyway, we have  
22 decision cases but there's no more public testimony that's  
23 going to take place today. So, let's see, that being the  
24 case, you don't have any questions for the Office of  
25 Planning? Nobody to give public testimony?

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1 Do you have anything else you'd like to add at the  
2 end?

3 MS. FERREIRA: Yes, I would like to add that the  
4 ten-foot extension is something that was done after our  
5 initial filing for the BZA relief and it is not something  
6 that is crucial to this case.

7 It is certainly desirable for the project and for  
8 the community that the units be three bedrooms, but it is  
9 something that -- I would like to reiterate that the main  
10 relief we are requesting is to create a three-dwelling  
11 property instead of two.

12 And the ten-foot extension is just to be able to  
13 provide three-bedrooms units instead of two-bedroom units,  
14 but it is not a crucial deal-breaker part of this  
15 application.

16 CHAIR HILL: No, I appreciate that, Ms. Ferreira.  
17 I don't know why you would clarify this right now at this  
18 point because things are working well. But again, the unit  
19 to the south --

20 MS. FERREIRA: I'm just trying to make it clear  
21 that we didn't try to sneak this in.

22 CHAIR HILL: That's okay but now you're just  
23 making me question and make sure I understand what's going  
24 on which is the unit to the north, you are going 18 feet  
25 beyond the unit to the north?

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1           So you're going eight feet past what you would be  
2 able to do to the unit to the north. So in other words, your  
3 design would have to be eight feet less?

4           MS. FERREIRA: As it was originally, and we've  
5 revised it in recognition of the ANC's request that we try  
6 to provide three bedrooms.

7           CHAIR HILL: So now I am curious, originally, you  
8 were actually going to go eight feet farther?

9           MS. FERREIRA: And that's in the application  
10 that's in the record, yes. The original design was for a  
11 two-bedroom unit.

12          CHAIR HILL: I'm sorry, ten feet from the property  
13 to the north?

14          MS. FERREIRA: Correct. So I just want to clarify  
15 how that occurred because I certainly wouldn't want the ANC  
16 to think that we were trying to sneak this past them.

17                 That was really not the intent. In actuality, we  
18 extended it the additional eight feet in order to provide  
19 three bedrooms which they requested.

20          CHAIR HILL: That's interesting. All right, thank  
21 you for that clarification. Okay, anybody else?

22          MEMBER WHITE: So again, the ANC is aware that  
23 you're going back 18 feet?

24          MS. FERREIRA: We have not had the discussion with  
25 them explicitly. Unfortunately, I was hoping that

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1 Commissioner Boese would be here for this particular case  
2 because he was pretty intimately involved in it but we did  
3 not discuss that explicitly.

4 And these revisions have been ongoing in  
5 coordination with the Office of Planning as well. So I'm not  
6 sure how up to date he is, I cannot speak for him.

7 ZC MEMBER MAY: So I think that's a little bit of  
8 a concern from my perspective. Commissioner Chairman Boese,  
9 was he Chairman? I can't remember.

10 MS. FERREIRA: Yes, he's a Chairman.

11 ZC MEMBER MAY: The Chairman was here earlier for  
12 another case and left and honestly, basically all the ANC  
13 weighed in on what was the conversion, right, to three units?

14 MS. FERREIRA: They weighed in on that but the  
15 design was discussed pretty extensively.

16 ZC MEMBER MAY: It's not the matter of the design  
17 but in terms of the zoning relief, it was only that?

18 MS. FERREIRA: Correct.

19 ZC MEMBER MAY: They didn't weigh in on the  
20 reduction of the side yard and they didn't weigh in on the  
21 extension. I would rather hear from them before we make a  
22 decision on that. Is that possible for you to go back to  
23 them and get more?

24 I'm also a little bit uncomfortable with the  
25 letter from the abutting neighbor because it doesn't have

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1 anybody's name on it and it has a scrawled signature and it's  
2 a letter that you wrote.

3           And the person who actually collected that  
4 signature is not here, not that I have particular reason to  
5 disbelieve what you're telling us. It's just that it's not  
6 very highly factual because we don't have the person's name,  
7 we don't have the person who took the signature.

8           It would be better to have that, and it's because  
9 it is on the north side and the north side of an extension  
10 like this is going to be the most affected by going past that  
11 ten feet.

12           So I just would rather hear more affirmative  
13 support, preferably from both of the neighbors to the north  
14 and a clearer message from the ANC that they're in favor of  
15 this.

16           Now, that's just my reaction to it. If the rest  
17 of the Board wants to go ahead, that's up to you.

18           MEMBER HART: I could say a few words. I think  
19 I would agree with what Commissioner May just brought up.  
20 I just feel like we've gotten a lot of data really, really,  
21 really close to the actual meeting date and it's hard to  
22 process some of this stuff.

23           But with that, right now we're not really sure  
24 what name is on here. I threw out some names only because  
25 those were the names that were on the mailing list for

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1 property owners that were at this location, but I'm not  
2 exactly sure that person is this person that has actually  
3 signed this.

4           And it would be helpful to be able to understand  
5 that or just have something that says, okay, so we have  
6 something in the record that says this person at this  
7 location has done that and we know who that person is.

8           And right now, I am not exactly sure who that is.  
9 I think what I'm saying is that there are a couple of things  
10 that we haven't gotten together, the ANC report that says,  
11 oh, yes, we know that this is going back 18 feet and we're  
12 fine with that.

13           The person that is the neighbor or the people that  
14 own the condos that are to the north, we don't really know  
15 if we have that.

16           We have something that says that we think that's  
17 what that is but it would be helpful to actually know who  
18 those people are, and I think those things would help me  
19 understand that, okay, we have looked at this, the community  
20 has been aware of this, and they are approving of all of  
21 these changes that are being proposed, the requested relief.

22           So, I think that it would be out of the abundance  
23 of caution that to be able to get something would be helpful  
24 in my mind.

25           MEMBER WHITE: I would concur with your thoughts

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1 there. I would feel more comfortable if we had some  
2 validation on that letter and a little bit more validation  
3 on the ANC's perspective as well.

4 ZC MEMBER MAY: And Ms. Ferreira, please  
5 understand, I had these reservations before you started  
6 talking at the end.

7 If anything, you comforted me by some of the  
8 things that you said but I was going to say the same thing  
9 anyway so it's not like you said too much, even though the  
10 Chairman thought you were doing pretty well.

11 MS. FERREIRA: I speak the truth.

12 ZC MEMBER MAY: And I appreciate that. Because  
13 I think you're making a good case and I appreciate the fact  
14 that you're trying to responsive to what the ANC says. We  
15 don't usually get the ANC saying, hey, make it bigger and  
16 longer.

17 We would rather have two and three-bedroom units,  
18 that certainly happens. I appreciate everything that you've  
19 told us and I had reservations anyway simply because of the  
20 18-foot extension on its own and the fact that the ANC, we  
21 knew that they had not weighed in on a couple of these other  
22 aspects of the relief.

23 CHAIR HILL: So just before you weigh in, I'd be  
24 outvoted at this point kind of, it sounds like, anyway? But  
25 I have a couple of questions before we decide to do this one

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1 way or the other, whatever way it seems to be going right  
2 now.

3 I think that, just to let you all know, I don't  
4 necessarily know -- to comfort, not comfort, to provide  
5 further colored commentary on what Commissioner May said,  
6 yes, this wasn't necessarily moving all the way to the end  
7 before you made a comment there. So you don't have to worry  
8 about that.

9 I also, in the beginning when we were talking  
10 about this, had the question which was what did the ANC know?  
11 However, I don't know if it was necessarily going to sway me  
12 one way or the other.

13 My question now to you is that the ANC was a split  
14 vote four to three, right? So, I don't know what you would  
15 have to do now. You could get some kind of clarification  
16 from them because they didn't know about the waiver, correct?

17 MS. FERREIRA: I don't know if they did or not.  
18 This information is public record, right?

19 CHAIR HILL: No, but you presented --

20 MS. FERREIRA: I did not personally discuss it  
21 with them.

22 CHAIR HILL: Who presented it to the ANC?

23 MS. FERREIRA: No, I presented it to the ANC but  
24 the need for a waiver emerged after our ANC Hearing.

25 CHAIR HILL: So they didn't know about the waiver?

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1 MS. FERREIRA: Correct.

2 CHAIR HILL: I'm just saying the waiver is needed.  
3 I'm letting you know the waiver is needed and so they didn't  
4 know, and that's the discussion that's taking place right  
5 here, is that they didn't know that a waiver was needed.

6 So whether that changes their vote or not, and I  
7 don't necessarily know whether that would have changed our  
8 vote or not, but I'm saying they didn't know about the  
9 waiver.

10 And so then also, they didn't know about the side  
11 yard so you didn't present about the side yard.

12 MS. FERREIRA: No, we did not present about the  
13 side yard because we were not aware of that requirement at  
14 that time and it is a requirement that's specific to the RF  
15 zones for non-conforming side yards and we verified that with  
16 the Office of Planning.

17 CHAIR HILL: Right, so that's something you  
18 learned since presenting to the ANC?

19 MS. FERREIRA: Correct.

20 CHAIR HILL: And I guess you presented this design  
21 to the ANC is what you're saying?

22 MS. FERREIRA: We presented the design with the  
23 in-filling of the side yard with every aspect of the project.

24 CHAIR HILL: And the three bedrooms?

25 MS. FERREIRA: No, with two bedrooms in each unit,

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1 which is one of the most significant comments that the ANC  
2 did make, that they would prefer to see three bedrooms.

3 CHAIR HILL: Which made you have to go back  
4 another whatever it is, the 18 feet from the property to the  
5 north?

6 MS. FERREIRA: No, actually, we went back only  
7 eight feet more than what we were already going back.

8 CHAIR HILL: Yes, I'm sorry, what I meant is a  
9 total of 18 feet?

10 (Simultaneous Speaking.)

11 MS. FERREIRA: A total of 18 feet.

12 CHAIR HILL: Okay, so you would have to do what  
13 now? You would have to go back -- in order to provide  
14 further clarity into the record, do you know if you could get  
15 just a letter from the ANC clarifying these things? I'm  
16 saying you don't have to present again, you don't know?

17 You would hope that you could just get a letter  
18 from the ANC with these clarifications because this is what  
19 they want anyway.

20 But then we would need a full vote again from the  
21 ANC to provide great weight on all of the other outstanding  
22 issues, unless it was just a letter again that we could then  
23 just take under consideration but not give great weight.

24 So then that takes care of the ANC or whatever you  
25 might be able to get to us from the ANC. The letter that

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1 they're speaking of, now that, again, is to the property to  
2 the north again?

3 MS. FERREIRA: Correct.

4 CHAIR HILL: So that I would imagine shouldn't be  
5 that difficult to provide clarity from.

6 MS. FERREIRA: It's more difficult than one would  
7 think.

8 CHAIR HILL: Well, it's all more difficult than  
9 one would think. But this is what I'm unclear on, there's  
10 only one resident at that property?

11 MS. FERREIRA: Apparently, there are two owners.  
12 It's a condominium building.

13 CHAIR HILL: So, I'm currently being outvoted here  
14 so I'm just trying to understand what we'd be asking of you,  
15 which is that we would close this Hearing, we wouldn't take  
16 anymore testimony from anyone, all we would need is something  
17 from the ANC clarifying that they understand what you're  
18 actually now requesting relief from, okay?

19 MS. FERREIRA: Correct.

20 CHAIR HILL: And so that's what I would be looking  
21 for. If you can go back and get a full vote, even better,  
22 but I suppose, and now I'm looking to the Board, if a letter  
23 would suffice -- a letter would suffice for me, okay?

24 So if I could get a letter and not give it great  
25 weight I'm saying, the Board it seems like would prefer a

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1 full vote back from the ANC in order to give great weight to  
2 the application.

3 Now, whether or not that changes the  
4 deliberations, I don't know. And I guess I could ask right  
5 now, does the Board need a full vote?

6 ZC MEMBER MAY: I agree it's better but if we had  
7 some insurance that they're aware what the project is, then  
8 they don't see a need to reconsider, that would be fine.

9 CHAIR HILL: So you guys might as well turn off  
10 your microphones for a minute. Both of you, just turn them  
11 off. You can turn off yours too just for a second, thanks.  
12 There's a little bit of feedback up here.

13 So, a letter indicating, again, clarifying, what  
14 it is now that you're asking relief from, from the ANC, as  
15 well as clarification as to who it is that's next door and  
16 that they understand what you're doing.

17 So, how long do you think it might take you to get  
18 those two items?

19 MS. FERREIRA: We will inquire as soon as possible  
20 after this Hearing, tomorrow, and find out.

21 I would like to add some clarifications about the  
22 history of the project and how long it has been on their  
23 public review for because I think that might help to perhaps  
24 shed some light onto all of this.

25 CHAIR HILL: I don't think it's going to change

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1 this discussion so I don't know why it would help  
2 necessarily, unless you think that's going to convince  
3 somebody.

4 Well, actually, before I do that, these are the  
5 two things that I think we're asking for right now. So the  
6 sooner you could maybe get that back to us, I don't know how  
7 long you think that may or may not happen from the ANC. So  
8 now, after that, you would like to make a plea?

9 So please go ahead.

10 MS. FERREIRA: Yes, thank you. I would just  
11 simply like to clarify that the project was actually reviewed  
12 at the ANC I believe in June, and I don't have the exact date  
13 but I can provide that in a separate correspondence.

14 And we actually submitted all the paperwork for  
15 the BZA case in time to be heard in July, but because of the  
16 overload of cases, we got bumped until September. As you  
17 know, in August, there are no cases.

18 So the project has, in effect, been in their  
19 public review with an open record on the system for several  
20 months. That has given interested parties a larger than  
21 normal amount of time to have the opportunity --

22 CHAIR HILL: I'm going to just interrupt you for  
23 one second. That's not with the eight-foot addition at the  
24 end?

25 MS. FERREIRA: That was revised at some point

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1 during that process, I don't know exactly when.

2 CHAIR HILL: So that's where I think that it's  
3 part of the discussion that we're having. So I understand  
4 you are saying this has been open since June, okay, or at  
5 least the ANC aspect, so is there anything else?

6 MS. FERREIRA: No, that's all, thank you.

7 CHAIR HILL: Okay, did that sway anybody? I was  
8 already on your side so I'm not the one.

9 MR. TESFAYE: Can I say something?

10 CHAIR HILL: Sure, go ahead.

11 MR. TESFAYE: We initially, like she said, we  
12 worked with the ANC so we figured that adding the third  
13 bedroom was trying to make her more happier.

14 So right now by doing that, we have been forced  
15 to come back again. So, we were trying to make the whole  
16 neighborhood happy, that's basically what we were trying to  
17 do.

18 CHAIR HILL: Are you in any other financial  
19 constraint in terms of a couple of weeks with this?

20 MR. TESFAYE: In a couple of weeks. Mind you,  
21 after this we have to go to DCRA. DCRA might take another  
22 six months. We're paying \$8000 a month mortgage for this  
23 house.

24 It says APLOP so there is a huge financial burden  
25 upon us and all we're trying to do is be a nice neighbor for

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1 the ANC, trying to make everybody -- and I guess we kind of  
2 punish ourselves by doing that.

3 CHAIR HILL: I'm still up for having the  
4 discussion. Because the part that I'm getting with this from  
5 me again is that I don't think that the ANC -- it's the  
6 shadow study that we are taking the information that we've  
7 been given to judge whether or not we think the standards  
8 have been meet.

9 I think the standards have been met so if the ANC  
10 is unhappy about it or not --

11 ZC MEMBER MAY: Because we explicitly do not have  
12 feedback from the ANC about going another eight feet further  
13 back, nor do we have clear support from both of the abutting  
14 neighbors to the north, I don't feel like we have completely  
15 cleared the hurdle on that 18-foot extension.

16 If the project were what you originally proposed  
17 and the only thing that was being added was the reduction of  
18 the side yard, you were not explicit in the ANC to say you  
19 need that reduction but it was in what you presented.

20 So, if what we were deciding was just on a ten-  
21 foot extension, we could decide that today but I appreciate  
22 the fact that you're trying to do something in response to  
23 what the ANC said.

24 I think this could also be a simple question to  
25 the ANC, hey, we tried to respond to that, it means going

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1 back another eight feet, what do you think?

2           And if they say, oh, that's a great idea and  
3 somebody gives you a nod of approval in some form or an  
4 indication that they're not going to want to review it again,  
5 maybe that's enough.

6           But if they say, oh, no, we're going to have to  
7 review this and you have trouble getting a hold of the  
8 people, you could let us know next week that you want to go  
9 back to the original plans and we could make a decision next  
10 week.

11           CHAIR HILL: So before you say anything, we're  
12 still where we are over here? So nobody is changing? So go  
13 ahead and get something from the ANC, email, nod, whatever  
14 you can try to get. Because again, you can also understand  
15 that this just kind of happened on us today.

16           We're just getting things right now. You're also  
17 just understanding that you needed the waiver, you're also  
18 understanding the side yard, so if I could bless it right now  
19 and everybody was on board with blessing it right now, then  
20 you can see the struggle that we're having.

21           But I think you have your marching orders now,  
22 okay? So, go ahead and get something from the ANC, get some  
23 clarification on whoever is signing off and what they're  
24 signing off on, get that back to us and then we can come back  
25 and make a decision.

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1           So, you're thinking you could do that within a  
2 week? You don't know, right?

3           MS. FERREIRA: I would imagine, yes.

4           CHAIR HILL: So we'll give you a week's time in  
5 terms of doing it and then we'll go ahead and put this on for  
6 decision in two weeks. So, unless you think you can get it  
7 by next week? That's the thing I'm not clear on.

8           That just surprises me. you could come back and  
9 ask for postponement. You wouldn't have the information that  
10 you would need for us. So we could put it on next week, go  
11 ahead and see what you can do this week. Today is Wednesday,  
12 Wednesday comes back pretty fast.

13           And we need to have it before -- is there any  
14 timeframe?

15           MR. MOY: No, the Board can set whatever time you  
16 want for her to submit. You could do Tuesday if you like.

17           CHAIR HILL: Okay, so if you can get it to us by  
18 next Monday or Tuesday so we have time to look at it. What  
19 was your question?

20           MS. FERREIRA: Two things. One is that I did have  
21 the same concern about the ANC not being informed about this  
22 latest change and it did happen pretty late in the game as  
23 we've all discussed.

24           I discussed it with the Office of Planning and our  
25 discussion was that since the design has not changed in any

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1 other way, and this is just a waiver, not another special  
2 exception, it's a waiver and in this Section you're allowed  
3 three waivers according to the zoning regulations, the Office  
4 of Planning did not feel that would be a necessity.

5 We certainly could have gone to the ANC at the  
6 time this revision were made if we had understood that there  
7 was an absolute necessity as today it appears to be. So,  
8 that's just an aside.

9 But it is a fairly complex project, it has several  
10 rooftop elements that had to be closely coordinated and  
11 manipulated to meet all kinds of conditions in the zoning  
12 regulations.

13 So it's been an ongoing process of refinement and  
14 I appreciate the Office of Planning's help in that process  
15 to bring it into compliance as much as possible. I do wish  
16 that we had discussed this with the ANC previously,  
17 obviously, for all the reasons we're talking about today.  
18 So that's the aside.

19 Now, the question is could we revert back to our  
20 original design and get approval for that today? Because  
21 that is what the ANC supported, and then we can come back and  
22 revisit. Our concern is timing.

23 ZC MEMBER MAY: If we're approved today, then it  
24 would be over. You'll have to file a new application to  
25 extend it further.

1 MR. TESFAYE: That could make us start the drawing  
2 process, approval process from DCRA. Because it will be easy  
3 just to ask for the back right.

4 MS. FERREIRA: If it's a matter of a week  
5 possibly, then that's what we're talking about in terms of  
6 delaying, right?

7 CHAIR HILL: If you guys had this stuff right  
8 here, I'd be done with you all. So, it's not right, so just  
9 try. Because what Commissioner Mayor is saying is true and  
10 I don't even know, we'd still need to see the design.

11 So I don't still even have the design for whatever  
12 it is that you were originally -- even if you went with the  
13 original thing -- so anyway, forget it.

14 Come back, okay, try to come back, try to get what  
15 you need to get on Monday or Tuesday, and then I suppose if  
16 by Monday or Tuesday you can't get what you need and you want  
17 to go with the original design, then submit the original  
18 design again.

19 And then just let us know you're changing. I  
20 don't know if that does anything different. If they went  
21 back to the original design -- I just want to know what's  
22 going to happen to me -- by Tuesday, what happens? That's  
23 okay?

24 MS. LOVICK: Yes, they would just clarify.

25 It would be clear in the record if they just

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1 resubmit their burden of proof and resubmit the original  
2 drawings because at present, you've got a burden of proof  
3 that addresses the ten foot and I just totally lost my train  
4 of thought.

5 CHAIR HILL: Burden of proof.

6 MS. LOVICK: Yes, and the drawings, the drawings  
7 that are in the record reflect the eight additional feet so  
8 --

9 CHAIR HILL: You'd have to submit new drawings for  
10 the original drawings.

11 MS. LOVICK: Yes, you would submit the old burden  
12 of proof and the old drawings into the record as the most  
13 recent things.

14 CHAIR HILL: And readjust the self-cert back to  
15 whatever you're asking for?

16 MS. LOVICK: Well, the self-cert is fine. I think  
17 the self-cert is okay.

18 CHAIR HILL: Except for the waiver?

19 MS. LOVICK: Well, the waiver is technically not  
20 on there.

21 CHAIR HILL: Okay, so I'm just trying to give you  
22 both scenarios. So, go ahead, see if you can get what you  
23 get from the ANC.

24 If you're going to go back to the other design,  
25 then you're going to go back to the other design but you're

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1 still asking for the side yard, okay?

2           So, you're still going to have to then probably  
3 get something from the ANC that says that the -- who knows?  
4 I'm just saying -- that says that the side yard is okay.  
5 Because the ANC didn't know about the side yard, right?

6           MS. FERREIRA: They did know about the side yard  
7 in terms of design, they did not know about the relief.

8           CHAIR HILL: So yes and no, right? Because the  
9 ANC usually only pays attention to the things that they say  
10 that they're supposed to pay attention to, right? So, okay,  
11 there you go, we'll put this on for decision.

12           I'm closing the record so everybody knows. We're  
13 not taking anything else from anybody, I just want the two  
14 items from the --

15           MS. LOVICK: Actually, you shouldn't close the  
16 record because the ANC is going to submit something.

17           CHAIR HILL: I'm saying I'm closing the record  
18 except for the things we're asking for.

19           MS. LOVICK: I'm sorry, excuse me.

20           CHAIR HILL: No, that's okay.

21           MS. LOVICK: You moved too quickly.

22           CHAIR HILL: So I'm closing the record except for  
23 the items that the Board is asking for, which is, again, the  
24 clarification on the ANC for the waiver and the side yard,  
25 okay, and the current design?

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1           And then the clarification on the neighbor's  
2 letter that we can't read the signature for that they  
3 understand what is being proposed, okay? Right? The 18 feet?  
4 And so that should be fine.

5           If you can get that to us by whenever you can get  
6 it to us, because Tuesday would be really good because  
7 Wednesday we're here. If you can get it Monday, even better,  
8 so that way we can actually kind of look at it a little bit.

9           Mr. Moy, if you can clarify again when that  
10 actually comes in so that we know when it comes in and/or if  
11 you're going to do it the other way and just go back to the  
12 original design, then I'll be disappointed also because  
13 you've got three bedrooms right now which is better for what  
14 the City is trying to do in terms of family housing.

15           So, Dr. Charles Drew, right? It shouldn't be easy  
16 anyway. His stuff wasn't easy. So, you understand? We will  
17 see you on Wednesday. No, we'll have paperwork and then  
18 we're going to make a decision on Wednesday and Mr. May, you  
19 can submit?

20           ZC MEMBER MAY: We'll take care of it one way or  
21 another.

22           CHAIR HILL: Okay, sounds good. All right, so  
23 then we're done. Thank you.

24           MS. FERREIRA: Thank you.

25           CHAIR HILL: Now, Mr. Moy, we still have to do

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1 decisions, correct?

2 MR. MOY: That is correct, sir.

3 CHAIR HILL: So we're going to take a two-minute  
4 break so we get one more Board Member.

5 (Whereupon, the above-entitled matter went off  
6 the record at 5:03 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 09-12-18

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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Court Reporter

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