

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY,

OCTOBER 3, 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
- ANTHONY J. HOOD, Board Member
- ROB MILLER, Board Member

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- BEVERLEY BAILEY, Sr. Zoning Specialist
- TRACEY W. ROSE, Sr. Zoning Specialist
- ESTHER BUSHMAN, General Counsel
- JOHN NYARKU, Zoning Specialist
- STEPHEN RICE, Zoning Specialist
- STEPHEN VARGA, Zoning Specialist
- PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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HILLARY LOVICK, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
JOEL LAWSON  
KAREN THOMAS  
MAXINE BROWN-ROBERTS  
MATT JESICK

The transcript constitutes the minutes from the  
Public Hearing held on October 3, 2018.

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

(11:06 a.m.)

1  
2  
3 SECRETARY MOY: Thank you, Mr. Chairman. We've  
4 moved into our public hearing session.

5 First case application before the Board is  
6 Application 19783 of Beyond Light, Inc. or Incorporated. The  
7 caption advertised for a special exception under the use  
8 requirements, Subtitle U, Section 420.1(a) to permit a  
9 community-based institutional facility, RA-1 Zone, and 4212  
10 Livingston Road, S.E., Square 6119, Lot 15.

11 As the Board will recall, this was last heard at  
12 its hearing session on July 18, 2018. The Board completed  
13 its hearing procedures, but continued the hearing to request  
14 additional information from the applicant, and I believe  
15 that's in the case record, and participating with the Board  
16 is Mr. Anthony Hood.

17 CHAIRPERSON HILL: Okay, will the applicant come  
18 forward? Okay, could you please introduce yourself for the  
19 record from my right to left? Just push the button right  
20 there.

21 MS. LATHAM: My name is Shana Latham. I'll be the  
22 Clinical Director of the transitional program at 4212  
23 Livingston Road.

24 MS. FLETCHER-LANGLEY: Good morning, again. I'm  
25 Tywania Fletcher, the Executive Director of Beyond Light

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1 Incorporation.

2 CHAIRPERSON HILL: Okay, thanks Ms. Fletcher. So  
3 was anyone who was opposed to this project here as well?  
4 Were there people here in the audience that were opposed to  
5 this project? Okay.

6 So Ms. Fletcher, the last time you were here, we  
7 asked for a list of basically how you were going to run the  
8 facility. And we were supposed to get those, I don't know  
9 Mr. Secretary, Mr. Moy, I don't know if you know the date  
10 that we were supposed to have received all of the  
11 information, if that's in the record or with you.

12 SECRETARY MOY: I'm told that by September 12th.

13 CHAIRPERSON HILL: September 12th. So September  
14 12th we were supposed to receive all of the information that  
15 we were going to have to be able to evaluate basically the  
16 questions that we had, and I think we got it last night?

17 MS. FLETCHER-LANGLEY: Oh no. I have  
18 confirmations here on the days they actually were submitted  
19 into the system. And so they actually were submitted -- let  
20 me find the dates, as you get a printout for each one. And  
21 I just had them in my hand. No they actually was submitted.

22 CHAIRPERSON HILL: Mr. Moy, do you know when  
23 everything, because we looked. When I reviewed the docket,  
24 I didn't see any of this additional information. And then  
25 in addition to that, there were --

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1 MS. FLETCHER-LANGLEY: Oh we will --

2 CHAIRPERSON HILL: One moment please, that's all  
3 right. And in addition to that, Mr. Moy, there was I  
4 believe, there was two ANC Commissioners that were here in  
5 opposition. And then they were going to have, the ANC was  
6 going to have an opportunity to respond to those submissions  
7 by 10/1, and we did not get any response to those  
8 submissions, correct?

9 SECRETARY MOY: I don't believe so.

10 CHAIRPERSON HILL: Okay. Is there something,  
11 because again, I didn't see this in the record until last  
12 night unless that -- is there a timestamp or any kind of  
13 stamp as when --

14 SECRETARY MOY: On the system that we're using  
15 here on the dais, I don't have the dates. I have to actually  
16 go out and go back to the external site to see the dates that  
17 fall into the documents.

18 CHAIRPERSON HILL: Did any of the Board Members  
19 see any of this material before last night?

20 VICE CHAIRPERSON HART: I don't remember seeing  
21 the -- I guess there was a burden of proof in there. There  
22 were some comments from Beyond Light, and something from D.C.  
23 Office of Contracting and Procurement. Oh, that's Department  
24 of Behavioral Health. There were just a number of documents.

25 CHAIRPERSON HILL: So Ms. Fletcher, you were

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1 stating you submitted them when?

2 MS. FLETCHER-LANGLEY: I'm sorry. I have  
3 7/21/2018. This is also a printout once you actually insert  
4 the information, and attach it to the application. Also,  
5 that's one date --

6 CHAIRPERSON HILL: 7/21? July? You mean July?

7 MS. FLETCHER-LANGLEY: I'm sorry, I'm in July.

8 CHAIRPERSON HILL: That's good. Ms. Fletcher, I  
9 just want to cut right to the chase on this one. We didn't  
10 get any of this information until last night. At least I  
11 didn't see it until last night. I'm going to have Mr. Moy  
12 look into the record as to when it was submitted.

13 And then we're going to have to make sure that the  
14 people that were here, that were here in opposition as well  
15 as the ANC, has an opportunity to respond to the documents  
16 that were submitted.

17 I know for me, the whole reason that we wanted to  
18 see the -- or the reason why I wanted to see the documents  
19 was again, as far as the criteria under X901 will not tend  
20 to affect adversely the use of neighboring property in  
21 accordance with the zoning regulations and zoning maps.

22 So I was trying to again understand how this was  
23 going to be run so as not to affect the neighboring  
24 properties. And a lot of the information that you submitted  
25 -- there was a lot of information that was submitted -- and

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1 so there's no way that we can look at that right now and be  
2 able to provide any kind of analysis.

3           So I'm going to go back and ask Mr. Moy to find  
4 out when it was submitted. And if was submitted last night,  
5 then I'm confused, okay, because there was a time that you  
6 were asked to submit it, and then there was going to be an  
7 opportunity for everyone else to respond.

8           And so this doesn't give me great faith in terms  
9 of how the property, how the facility will be run if you guys  
10 can't submit the documents on time. So I'm going to first  
11 look at that and ask Mr. Moy to check that out for us. But  
12 beyond that, I can't look at anything or talk about anything  
13 today because I haven't had a chance to look at the  
14 documents. Ms. Latham, you had a question?

15           MS. LATHAM: I'm looking at this document, and it  
16 has a confirmation date of 7/19/2018.

17           CHAIRPERSON HILL: Well, I don't which document  
18 that is, but that's July.

19           MS. LATHAM: Yes.

20           MS. FLETCHER-LANGLEY: Yes, we know.

21           MS. LATHAM: Yes.

22           MEMBER JOHN: The information was due by, I  
23 believe, September the 12th, right? So we had between the  
24 date of the last hearing until September 12th to submit all  
25 of the documentation that was requested, which was pretty

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1 much a security plan, the operational functioning of the  
2 transitional housing.

3 CHAIRPERSON HILL: All right, Ms. Fletcher. Okay.  
4 I'm going to do a little research, okay, as to when it  
5 actually got into the record, but we didn't see it, so we  
6 weren't able to look at any of it. Unless the Board has any  
7 other comments, I can't comment on anything, right?

8 And so, you know, we're going to have to  
9 reschedule this for a continued hearing again. And then have  
10 the ANC have an opportunity to respond, and make sure Mr. Moy  
11 that the ANC knows that this material is in there, and then  
12 go ahead and get a response from them.

13 Because the people that came the last time, and  
14 as Chairman Hood has pointed out now a few times, they're  
15 from the community and we haven't heard anything back from  
16 them and they were very passionate at the first hearing. So  
17 I'm surprised if they hadn't heard anything back. Chairman  
18 Hood, you had a comment?

19 MEMBER HOOD: I think we might have some  
20 information.

21 CHAIRPERSON HILL: Okay, Mr. Moy.

22 SECRETARY MOY: I was waiting for you, Mr.  
23 Chairman. But that sounds like a good solution, especially  
24 since if the Board hasn't reviewed the post-hearing filings.  
25 But according to the official record, what we usually do is

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1 the last exhibit after a hearing will be the witness cards,  
2 so that's the date of July 18th, and after that there are  
3 one, two, three, four, five, six, seven, eight, nine filings.  
4 The first one beginning at July 19.

5           The last hearing was, as I said before, July 18th.  
6 The next filing from the applicant is July 19, July 20, 21st,  
7 26th, August 5th, August 5th, September 10th, September 10th,  
8 and I believe these are additional information that the Board  
9 was requesting. And of course, no response from anyone else  
10 after that. So that's what we have. I can't explain why you  
11 didn't see these exhibits in your --

12           CHAIRPERSON HILL: All right, Ms. Fletcher, I  
13 apologize in terms of the timing that they came in. For  
14 whatever reason, we didn't see them until last night. So  
15 we're going to have to postpone now so we can take a look at  
16 the filings.

17           And then I want to find out -- I mean because  
18 again, I'm confused now. Because that means that perhaps no  
19 one else was able to see them until last night, I don't know.  
20 And so I do want to hear Mr. Moy -- I at least want some  
21 confirmation from the ANC because they had an opportunity to  
22 respond to these filings. So I'd like to do that.

23           So we'll go ahead and reschedule this for a  
24 continued hearing because we don't have an opportunity to  
25 review all these right now, and try to see when -- I guess

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1 if -- Mr. Hood, when are you back again?

2 MEMBER HOOD: I'm back October the 17th I think.  
3 That's correct. October 17th.

4 CHAIRPERSON HILL: Okay. So that's actually not  
5 that far away. So then we'll go ahead and reschedule this  
6 for October 17th. And then, Mr. Moy, you'll find out from  
7 the ANC what their position is?

8 SECRETARY MOY: I'll follow up with them, Mr.  
9 Chair.

10 MS. FLETCHER-LANGLEY: May I say two things?

11 CHAIRPERSON HILL: Sure.

12 MS. FLETCHER-LANGLEY: The ANC Board also was  
13 contacted on numerous occasions and those email  
14 correspondences as well are attached to the documents that  
15 was requested. As to this date until 2017 -- January -- I'm  
16 sorry, December of 2017 until today, the ANC Board has not  
17 responded.

18 As stated previous, that we were notified two days  
19 before the last ANC meeting. During the last hearing you  
20 requested that they at least notify us. So you suppose they  
21 had attended the ANC Board meeting by I believe he said the  
22 fourth Thursday that the Board meets in the month of  
23 September.

24 We weren't contacted nor notified, nor had they  
25 responded to any of the email correspondence that we sent.

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1 We sent it to Mr. Jordan's email as well as ad03@anc.dc.gov,  
2 and along with mrabsolomonjordan@gmail.com, and this has been  
3 back-and-forth since 2017.

4 CHAIRPERSON HILL: Okay.

5 MS. FLETCHER-LANGLEY: So we have made numerous  
6 attempts to contact the Board, and they have been --

7 CHAIRPERSON HILL: You mean the ANC?

8 MS. FLETCHER-LANGLEY: Correct, the ANC Board  
9 since the first date of the filings and the paperwork that  
10 was submitted in July.

11 CHAIRPERSON HILL: Okay.

12 MEMBER HOOD: Mr. Chairman, may I suggest  
13 something?

14 CHAIRPERSON HILL: Sure.

15 MEMBER HOOD: And I'm sure Commissioner Jordan and  
16 others usually respond. And if you don't get a response, and  
17 if you take that extra step, I think would give this Board  
18 some certainty. Because they also go through Godley Simon  
19 to help get in touch with them. Maybe he can connect with  
20 them as well. He's over at ANC here in the city. So that  
21 would give us a comfort level in the moving forward.

22 So that way, we know we've exhausted all  
23 resources. Because one thing we don't want to do is get  
24 caught and be said that we did not give them an opportunity  
25 to respond.

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1 MS. FLETCHER-LANGLEY: Well, they do well,  
2 Chairman, but I did also contact the Commissioner as well.

3 MEMBER HOOD: Godley Simon?

4 MS. FLETCHER-LANGLEY: I believe so. I have it  
5 in my email.

6 MEMBER HOOD: He's not a Commissioner, he's over  
7 the ANC's across the city. That would be very advantageous  
8 to you.

9 MS. FLETCHER-LANGLEY: Yes. And I believe I have  
10 it on email, and I'm not sure if I attached it to the  
11 documents as well, but he was contacted as well about the  
12 Board, I mean the ANC Board not responding to us. And --

13 MEMBER HOOD: And maybe I'd ask him to help.

14 MS. FLETCHER-LANGLEY: -- viewed his behavior, and  
15 so he emailed back, and I do have the correspondence as well.  
16 So I can attach it today.

17 MEMBER HOOD: Let's try again though. Just as the  
18 Chairman said, let's try that again.

19 CHAIRPERSON HILL: Ms. Fletcher, actually if you  
20 would submit that into the record in terms of the email  
21 correspondence that you've tried to contact the ANC,  
22 particularly just since the last hearing. Because what's --  
23 since our last hearing.

24 Because again, what the, you know, you remember  
25 the last hearing. Like people were pretty passionate, so I

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1 was surprised that, and you understand now that we just saw  
2 this last night. So I don't know what happened with the  
3 electronic version. So I was just surprised that they hadn't  
4 responded in some form.

5 And we had asked, right, that the ANC I think had  
6 put you on their agenda, or they were going to maybe put you  
7 on their agenda, and they didn't, is what you're saying.

8 MS. FLETCHER-LANGLEY: Well it was a part of what  
9 you had suggested prior to having this hearing today.

10 CHAIRPERSON HILL: Right. You were supposed to  
11 have opportunity --

12 MS. FLETCHER-LANGLEY: -- it was supposed to have  
13 been scheduled with a -- well it was recommended that ANC  
14 Board meet with us again prior to having the hearing today.  
15 So again, as I stated, we then contacted them since July 19th  
16 up until --

17 CHAIRPERSON HILL: The last hearing, the last  
18 hearing. Okay. If you want to go ahead and submit that  
19 evidence into the record.

20 MS. FLETCHER-LANGLEY: Well, some of it is  
21 submitted, but I will absolutely forward, I mean attach the  
22 last correspondence with the gentleman Mr. Hood just -- or  
23 someone from that office just mentioned.

24 CHAIRPERSON HILL: Okay. Does anybody have any  
25 questions for the applicant at this point?

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1 MS. WHITE: No, I'm fine. I just, it would be  
2 helpful to get that information in the record so that we can  
3 see. At least it will show that we've given them an  
4 opportunity to respond for the next hearing date.

5 CHAIRPERSON HILL: All right, okay. Ms. Fletcher,  
6 we will see you on the 17th. And then Chairman Hood, thank  
7 you for your time. We're going to take a quick break, thank  
8 you.

9 (Whereupon, the above-entitled matter went off the  
10 record at 11:22 a.m. and resumed at 11:36 a.m.)

11 CHAIRPERSON HILL: All right, Mr. Moy, we're all  
12 back here. And just to let everybody know, we're probably  
13 going to do like another hour or so, and then we're probably  
14 going to break for lunch around 12:30, and then come back.

15 SECRETARY MOY: Thank you, Mr. Chairman. A very  
16 quick announcement before I call the next case. I was just  
17 notified by staff moments ago that Case Application 19753 of  
18 Brendan and Claire Smollen, the applicant has withdrawn their  
19 application, so that's off the docket now.

20 So that leaves as the Case Application on deck now  
21 is Application 19758 of 1505 Neal Street, LLC, caption  
22 advertised for a special exception under the residential  
23 conversion requirements of Subtitle U, Section 320.2, which  
24 would convert the existing principal dwelling unit into a  
25 seven-unit apartment house, RF-1 Zone, at 1505 Neal Street,

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1 N.E., Square 4072, and Lots 48 and 47.

2 The Board will recall there's a preliminary matter  
3 where there's a request to postpone this application to a  
4 future hearing date.

5 CHAIRPERSON HILL: Okay. If you would please  
6 introduce yourselves for the record.

7 MS. MOLDENHAUER: Good morning, Meredith  
8 Moldenhauer from Cozen O'Connor, land use counsel for the  
9 applicant.

10 MR. HORGAN: Kevin O. Horgan. I'm representing  
11 the neighbors, Roberta Merchant Studemeyer, Tom Whiskey, and  
12 myself who are parties in opposition.

13 CHAIRPERSON HILL: Okay. Could you say your last  
14 name again, sir?

15 MR. HORGAN: Last name is Horgan, H-O-R-G-A-N.

16 CHAIRPERSON HILL: Horgan, okay, I see it. Thank  
17 you. So Ms. Moldenhauer, you're asking for a postponement,  
18 is that correct?

19 MS. MOLDENHAUER: It is, yes. I've actually been  
20 working with Mr. Horgan and the other individuals, and we are  
21 hopeful that we are actually close to a potential resolution  
22 on the matter. And so we have also had Mr. Horgan confirm  
23 that, and we would hope to get a postponement until January,  
24 but may be able to file something sooner in the record to  
25 resolve the matter. Thank you.

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1 CHAIRPERSON HILL: Mr. Horgan?

2 MR. HORGAN: I have a statement here. Greetings  
3 Chairperson Hill and members of the Board. Good morning and  
4 thank you for your service.

5 On September 21st we filed a letter asking that  
6 you decide upon the applicant's motion to postpone at today's  
7 pre-hearing. We are relieved and happy to announce that in  
8 the past 24 hours, we have reached a tentative framework  
9 agreement with the applicant for a development that we  
10 believe is the best path forward for our block.

11 We have exchanged emails and a letter of intent.  
12 We anticipate having a signed agreement shortly that could  
13 be part of the public record. We reached a tentative  
14 agreement only hours ago, so we haven't yet had an  
15 opportunity to speak to our fellow neighbors, many of whom  
16 voiced their opinion with letters into the case record.  
17 However, we believe that they will share our opinion that  
18 this is the best path forward.

19 We thank Global Street Development and their  
20 counsel for their latest proposal. We hope to finalize an  
21 agreement in the coming weeks, and we hope to be  
22 accommodating and supportive of them during their upcoming  
23 construction efforts.

24 CHAIRPERSON HILL: So Ms. Moldenhauer, did you  
25 guys present to the ANC already?

1 MS. MOLDENHAUER: We had presented twice to the  
2 ANC, yes.

3 CHAIRPERSON HILL: Okay. Have you presented your  
4 most revised plans to them?

5 MS. MOLDENHAUER: No. We are still in  
6 deliberations and discussions, so we have not presented to  
7 the --

8 CHAIRPERSON HILL: So if you did move forward with  
9 this, you'd work with Mr. Horgan and then you'd present to  
10 the ANC again?

11 MS. MOLDENHAUER: Potentially, or there may be a  
12 withdrawal.

13 CHAIRPERSON HILL: You'll figure it out. Okay.  
14 So Mr. Horgan, the applicant's requesting January 20th, and  
15 I think in your filings -- and this is what I was a little  
16 confused about -- you were in agreement with January 20th or  
17 you weren't?

18 MR. HORGAN: I would --

19 CHAIRPERSON HILL: Does the 30th -- January 30th?

20 MR. HORGAN: I am happy to support their  
21 postponement request.

22 CHAIRPERSON HILL: Okay. So you were asking for  
23 the, was the 30th --

24 MS. MOLDENHAUER: Yes.

25 CHAIRPERSON HILL: Ms. Moldenhauer? Mr. Moy, are

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1 we that far out?

2 SECRETARY MOY: That date of January 30th is wide  
3 open.

4 CHAIRPERSON HILL: Okay, great. All right. So  
5 we're going to move you to January 30th then, okay. Thank  
6 you.

7 (Simultaneous speaking)

8 MEMBER MILLER: Mr. Chairman, I would just like  
9 to interject. I'm glad that the parties are in discussions,  
10 and we always like to an applicant and the neighbors resolve  
11 a case instead of us resolving it for you. Thank you.

12 CHAIRPERSON HILL: Amen. Okay. Thank you. Mr.  
13 Moy, whenever you'd like. Take your time.

14 SECRETARY MOY: All right. The next case  
15 application before the Board is Application 19757 of 1201  
16 Staples, LLC, as amended for special exceptions under the  
17 residential conversion requirements, Subtitle U, Section  
18 301.2(e) under Subtitle C, Section 1504, from the Penthouse  
19 Setback Requirements of Subtitle C, Section 1502.1(c)(2), and  
20 under Subtitle E, Section 5203, from the upper floor addition  
21 requirements of Subtitle E, Section 206.1.

22 This would convert an existing non-residential  
23 building to a three-unit apartment house, RF-1 Zone at 1201  
24 Staples Street, N.E., Square 4067, Lot 2.

25 For the record Mr. Chair, on July 11, the Board

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1 had granted party status in opposition to a Mark Stilp.

2 CHAIRPERSON HILL: Okay. If you could introduce  
3 yourselves from my right-to-left please.

4 MR. STILP: Mark Stilp.

5 MR. TEASS: Will Teass, a principal with Teass  
6 Warren Architects here on behalf of the applicant.

7 CHAIRPERSON HILL: All right. So Mr. Teass, I  
8 assume you're presenting to us?

9 MR. TEASS: Actually I'm here to request a  
10 postponement. I had filed something on Monday, which is  
11 Exhibit 54, which requested a postponement. We are in active  
12 negotiations with the adjacent neighbor to try to reach an  
13 amicable solution to some of his concerns.

14 So I think at this point, we need to make some  
15 revisions to the drawings but we also need to come to terms  
16 with an agreement with the neighbor.

17 CHAIRPERSON HILL: Okay, Mr. Stilp -- Stilp -- is  
18 that how you pronounce it?

19 MR. STILP: Yes, sir.

20 CHAIRPERSON HILL: You're aware of the request for  
21 postponement. Do you have any objection to that request?

22 MR. STILP: I don't have any objection. We've had  
23 dialogue and it seems to be progressing slowly. I would, you  
24 know, ask that the next hearing hopefully would be, you know,  
25 the last one. I don't have that much --

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1           CHAIRPERSON HILL: Okay. Mr. Teass, how much time  
2 do you need?

3           MR. TEASS: I think that we're -- I think we can  
4 wrap-up the negotiation piece in the next two weeks, and then  
5 we'll have to revise some drawings likely. So --

6           CHAIRPERSON HILL: And you're going to present for  
7 the ANC?

8           MR. TEASS: I think if we had a revised that  
9 required zoning relief, we would need to go back to the ANC.

10          CHAIRPERSON HILL: Right. So you'll have to do --  
11 so when do you think you'd be able to get back to us?

12          MR. TEASS: I think that the ANC meets next  
13 Wednesday, and I don't think that we'd be able to make that  
14 deadline, so it would be the November hearing. So sometime  
15 after that, mid-November.

16          CHAIRPERSON HILL: Mr. Moy?

17          SECRETARY MOY: Okay, Mr. Chairman, I think at  
18 this point as you'll recall, the Board has appeals on the  
19 docket for every hearing through the rest of the year. So  
20 hopefully when this application comes back before the Board,  
21 it'll be in pretty good shape. So with that in mind, staff  
22 would recommend either rescheduling this to November 14th or  
23 November 28th. But, and I don't think this is a deal-  
24 breaker, but Mr. Miller is sitting with us on November 14th.

25          CHAIRPERSON HILL: I don't think -- I mean the

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1 28th -- if we put it back to the 28th, that probably gives  
2 you enough time to get to the ANC?

3 MR. TEASS: Yes. I believe the ANC meets the  
4 evening of the 14th, so I think that date wouldn't work, but  
5 the 28th would because we could file --

6 CHAIRPERSON HILL: I don't think Mr. Miller needs  
7 to be here for it. Mr. Moy, last week I think you said that  
8 we had appeals through the end of November. Are you saying  
9 we have appeals through the end of the year?

10 SECRETARY MOY: Up to December 5th.

11 CHAIRPERSON HILL: So that changed?

12 SECRETARY MOY: There's nothing on the 5th,  
13 nothing on the --

14 CHAIRPERSON HILL: This is new. I'm just curious,  
15 okay. All right. So let's go ahead and put you on November  
16 -- what'd I say?

17 SECRETARY MOY: November 28th.

18 CHAIRPERSON HILL: And hopefully, Mr. Teass, you  
19 can kind of get this tidy as best you can. And Mr. Stilp,  
20 do you have anything that you want to add? Does that day  
21 work for you?

22 MR. STILP: No. I hope that the 28th can be the  
23 final hearing.

24 CHAIRPERSON HILL: Okay, yes, so do I.

25 MR. STILP: Great.

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1 CHAIRPERSON HILL: And let's see, what was I going  
2 to say -- oh, and for the record, I moved you guys up. You  
3 were last.

4 MR. STILP: I appreciate it. Thank you very much.

5 CHAIRPERSON HILL: All right.

6 SECRETARY MOY: Mr. Chairman?

7 CHAIRPERSON HILL: Yes.

8 SECRETARY MOY: If Mr. Teass also can help me to  
9 be certain that we can have some resolution or filing from  
10 the ANC into the record prior to November 28th would be  
11 helpful.

12 MR. TEASS: We absolutely will commit to making  
13 sure we get a response.

14 CHAIRPERSON HILL: Okay. We'll see you guys then.

15 MR. TEASS: Thank you for your time.

16 CHAIRPERSON HILL: I think -- didn't somebody  
17 thank us for our service in the last one? That was nice.  
18 That was really nice.

19 SECRETARY MOY: Sorry, Mr. Chairman. So I believe  
20 the next case application before the Board for hearing is  
21 19796 of 3324 Sherman Avenue, LLC, as amended for a special  
22 exception under Subtitle E, Section 5201, from the side-yard  
23 requirements of Subtitle E, Section 307.4; and under the  
24 residential conversion requirements, Subtitle U, Section  
25 320.2, to convert an existing flat to a three-unit apartment

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1 house, RF-1 Zone. This is at 3324 Sherman Avenue, N.W.,  
2 Square 2841, Lot 864.

3 As the Board will recall at its September 19th  
4 meeting, the Board reopened the record and scheduled the case  
5 for further hearing.

6 CHAIRPERSON HILL: Okay. If you could please  
7 introduce yourselves from my right to left.

8 MR. BOESE: Sure. Kent Boese, ANC-1A.

9 MS. FERREIRA: Caterina Ferreira, Principal  
10 Architextual. I am the architect.

11 CHAIRPERSON HILL: You need to push the  
12 microphone.

13 MR. YARED: Good morning. Dabori Yared. I  
14 testify for the owner.

15 MR. DAMASEE: Good morning. Binyam Damasee,  
16 owner.

17 CHAIRPERSON HILL: Could you say your last name?  
18 I'm sorry.

19 MR. DAMASEE: Binyam Damasee.

20 CHAIRPERSON HILL: How do you say it?

21 MR. DAMASEE: Damasee.

22 CHAIRPERSON HILL: Damasee.

23 MR. DAMASEE: Yes.

24 CHAIRPERSON HILL: Okay.

25 MEMBER MILLER: Mr. Chairman?

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1 CHAIRPERSON HILL: Sure, of course.

2 MEMBER MILLER: For some reason I was under the  
3 impression that Commissioner May was on this case so I did  
4 not review the -- I had not reviewed the record, so I won't  
5 be participating.

6 CHAIRPERSON HILL: Okay. So there's just the  
7 three of us. Well, we'll see what --

8 MEMBER MILLER: If you want me to --

9 CHAIRPERSON HILL: No, no, no, that's all right.  
10 He did provide -- he provided an absentee, and that's what  
11 Chairman, Vice Chair Hart just mentioned. But we will see  
12 what happens. Because if this turns into more of a  
13 discussion, then Commissioner May might have to look, review  
14 the tape.

15 So a couple things. I just want to start out.  
16 Is anyone here that has not been sworn in? Okay. If you  
17 could please stand, and then let the Secretary administer the  
18 oath here to the left, my left. Raise your left hand.

19 SECRETARY MOY: Do you solemnly swear or affirm  
20 that the testimony you are about to present at this  
21 proceeding is the truth, the whole truth, and nothing but the  
22 truth?

23 GROUP: Yes, sir.

24 SECRETARY MOY: Thank you. You may be seated.

25 CHAIRPERSON HILL: Okay. Ms. Ferreira, I know

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1 we're going to get to you in a second. I just wanted to make  
2 a mention or a comment to the audience. We are going to take  
3 testimony from people so people have an opportunity to speak.  
4 This might have to become a little controversial, I'm not  
5 really sure. And so I would like everybody to kind of remain  
6 as calm as possible, hopefully.

7 Has everyone been here since the morning? If  
8 you've been here since the morning, yes, sort of, kinda?  
9 Then it's been a day. So I'd appreciate just before lunch  
10 not having more of a day. And Commissioner Boese?

11 MR. BOESE: Yes.

12 CHAIRPERSON HILL: Mr. Commissioner, I want to  
13 thank you for your service. I really do. I'm not kidding.  
14 It's a difficult job.

15 MR. BOESE: Well, clearly we're building a  
16 relationship. Last time I think you referred to me as Mr.  
17 ANC Guy.

18 CHAIRPERSON HILL: No, that wasn't me. I always  
19 say Commissioner Boese. I certainly -- gosh, it must've been  
20 a late night or something. I was, no? Well then, I  
21 apologize for that one. That's definitely not the case. But  
22 I am sorry you lost earlier today. Yes, okay.

23 All right. So Ms. Ferreira, can you tell us what  
24 happened since the last time? What was supposed to happen  
25 was that you were either going to submit everything clearly

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1 in terms of the current design that we would be able to  
2 evaluate it, including the waiver of the 10-foot rule. Or  
3 you were going to submit whatever the matter of right was.

4 And so the matter of right, nothing really got  
5 cleared up as far as I understand. So why don't we just  
6 start, why don't you just tell me what happened since the  
7 last hearing?

8 MS. FERREIRA: Good morning Mr. Chairman, members  
9 of the Board. Thank you for your service. It's a good line.

10 CHAIRPERSON HILL: I'm going to do that every day.

11 (Laughter)

12 MS. FERREIRA: And thank you for the opportunity  
13 to hear us again. I know it has been a long and somewhat  
14 convoluted case. I would like to clarify first and foremost  
15 why you have not received a revised design proposal. That  
16 is, it's already in the record. It's the initial design  
17 proposal that was submitted. That was the design proposal  
18 without the need for the 10-foot waiver for the rear  
19 extension. And --

20 CHAIRPERSON HILL: Say that again? I'm sorry.  
21 Or repeat what you said?

22 MS. FERREIRA: Sure. The initial design that was  
23 submitted for the project, with the initial application, did  
24 not include the additional eight feet. So that design is the  
25 matter of right as far as the rear addition is concerned,

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1 just to answer your question on that. And that is why it was  
2 not submitted.

3 In my recollection of the hearing and after  
4 watching the tape, I do not recall it being explicitly  
5 requested, and I had stated at the hearing that it was  
6 already in the record. And I can give you the exhibit number  
7 for that.

8 CHAIRPERSON HILL: That's okay.

9 MS. FERREIRA: So what has happened since the last  
10 hearing is that we concentrated our effort on trying to  
11 obtain -- first of all, trying to establish dialogue with the  
12 adjoining property owners and hopefully obtain their support.

13 At the last hearing, as you might recall, there  
14 was a letter of support that was submitted from the owner at  
15 3322 Sherman Avenue, N.W., and I have since added to the  
16 record some additional correspondence from that property  
17 owner. That letter had been attached to that email.

18 And I believe the authenticity of that letter had  
19 been questioned as had been the authenticity of the previous  
20 letter. And on that topic, we also received a letter of  
21 opposition from an adjoining neighbor to the north at 3328  
22 Sherman Avenue, N.W., and I assume you've had the opportunity  
23 to read that letter. It is in the record. I believe it was  
24 uploaded yesterday, and I have prepared a response to that  
25 letter that I would like to read through now, and I also have

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1 printed copies of it that I can submit into the record.

2 VICE CHAIRPERSON HART: Can I ask, so you're also  
3 telling us that you are not wanting the extra rear addition.  
4 You're saying that you want to move forward with the -- I  
5 found it, it's Exhibit 10, which were the original drawings  
6 that you submitted? That's what you're --

7 MS. FERREIRA: I would like to reserve that  
8 decision for further along in this hearing if I may. We --

9 VICE CHAIRPERSON HART: It is really hard for us  
10 to kind of figure out which one we're kind of talking about,  
11 so that --

12 MS. FERREIRA: We are talking about the latest  
13 design with the additional eight feet at the rear.

14 VICE CHAIRPERSON HART: Okay.

15 MS. FERREIRA: Because we have received no  
16 opposition to that from adjoining neighbors specifically, and  
17 I'll get into that in a second.

18 VICE CHAIRPERSON HART: Okay.

19 CHAIRPERSON HILL: What I think you just said was  
20 that you're here right now before us again with the project  
21 that needs the waiver from the 10-foot rule?

22 MS. FERREIRA: That's what we are here with.

23 CHAIRPERSON HILL: At this moment.

24 MS. FERREIRA: At this moment. Because --

25 CHAIRPERSON HILL: And you're saying in 30

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1 minutes, you might be back to the other thing, depending upon  
2 what happens?

3 MS. FERREIRA: No, I'm not saying that. We want  
4 to proceed with the design as proposed because the Office of  
5 Planning has supported that design and determined that, per  
6 the zoning regulations, it is not causing an adverse effect  
7 on neighboring properties.

8 So we did obtain -- after providing a very  
9 detailed solar study, we obtained the evidence that was  
10 required by the Office of Planning in order to make that  
11 determination. And we appreciate the Office of Planning's  
12 agreement with us that what we are doing actually is not  
13 providing a detrimental effect.

14 I would also like to add that between our  
15 property, or Mr. Despuy's property and 3328, there's a very  
16 tall fence and there's actually a stair leading up to a  
17 second story. So there isn't much on that side of their  
18 property that would really be impacted by this addition,  
19 which also doesn't have any windows on the side.

20 So yes, our preference is to proceed with the  
21 project as designed. And specifically, because it addresses  
22 the ANC's request, that we try to incorporate as many  
23 bedrooms as possible.

24 CHAIRPERSON HILL: Okay, give me one second. All  
25 right, Commissioner Boese, I appreciate you being here to

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1 provide some clarity on this. Can you explain the ANC's  
2 position on this project?

3 MR. BOESE: How much time do you have?

4 CHAIRPERSON HILL: I've got plenty of time. We  
5 just lost two cases.

6 MR. BOESE: Okay. So part of the reason I'm here  
7 is that I was informed that there was some ambiguity to where  
8 the ANC was on this. Based on the report that we filed, I  
9 believe it was a 4-3, so it's a close vote, but it was a  
10 split vote, but it was in favor of the project.

11 We were aware of that the property would abut the  
12 property to the north. That was in the discussion of our  
13 meeting. We were aware that they were asking for possibly  
14 more depth in the back.

15 The primary concerns, however, if I'm  
16 characterizing it correctly, I believe many of the concerns  
17 were aesthetic in nature. I don't personally think  
18 aesthetics is a zoning issue, and it's not a historic  
19 district.

20 But we have been asking several of the BZA cases  
21 coming before us if they can get family-sized units in. That  
22 is something we're asking. Perhaps it wasn't in the report  
23 clearly, or perhaps it was omitted, because -- I've  
24 apologized for not reading their report right before here.  
25 But I can attest we do talk about size of units.

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1           We see a neighborhood that's changing. We see a  
2 neighborhood that's becoming more unaffordable. We're  
3 sinking a lot of money into renovating our schools. And the  
4 question keeps coming, why are we fixing our schools and our  
5 education if we're not going to have any children in a  
6 generation because there's no place to raise a family?  
7 That's counterintuitive. So that is something.

8           Now what I will say is, with regards to things  
9 that we typically ask, and one of the reasons why I put it  
10 in the letter that I've since submitted, is we always ask has  
11 there been outreach to the neighbors?

12           It doesn't mean that we always vote the way the  
13 neighbors want us to vote, because we're trying to deal with  
14 the merits of the case. But we do like to have outreach.  
15 We do like to hear what's going on with the neighbors. We  
16 like to hear if they're supportive. We like to hear if  
17 they're in opposition and why.

18           Are they in opposition because it's a zoning  
19 issue? Are they in opposition because they just don't like  
20 construction? Are they in opposition because they don't like  
21 the way the building looks? And then we try to weigh that  
22 as what of those issues are relevant to the case before us.

23           CHAIRPERSON HILL: Okay, thanks so much. Because  
24 what was unclear was whether or not the ANC was supportive  
25 based upon whether or not the neighbors were supportive, and

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1 that was unclear to us. And so what you're clarifying is  
2 that the ANC's position was what the ANC's position was,  
3 regardless of what those neighbors' position themselves were,  
4 correct?

5 MR. BOESE: Right. We always like to know that  
6 there's been outreach. We like to have people come before  
7 us if they're concerned.

8 One thing that I can say with regards to this one  
9 is there was an initial presentation before the ANC, and we  
10 asked to put them on the agenda the following month so that  
11 we could actually provide notice for this twice. So this  
12 applicant did come before the commission twice. The first  
13 time it was just a presentation, and the second time there  
14 was more presentation and a vote.

15 Some of our concerns were the community outreach.  
16 We wanted to give them time to do that, or at least let us  
17 know that they attempted it. There was a concern with  
18 possible historic nature of the building, which the applicant  
19 did reach out the historic preservation office and the  
20 architecture itself does not rise to the level of being an  
21 historic building, you know, despite its association with Dr.  
22 Drew.

23 And so it was important for us to get those things  
24 figured out because we don't want to do any harm to the  
25 community. I will say that I think it's a very strong

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1 architectural solution which is why it's probably had  
2 responses strongly positive or strongly negative. It's  
3 certainly not cookie-cutter architecture. And so I think  
4 that's in part what led to some of the votes against this.  
5 It's such a departure.

6 CHAIRPERSON HILL: Right. And my question to you  
7 in terms of the split vote, as you were saying, it was more  
8 along the lines of design, not zoning necessarily for the  
9 three nays?

10 MR. BOESE: I think that's true. There's a  
11 concern with changing architectural character of the  
12 neighborhood. We have a number of cases coming before us now  
13 where they are distinct departures, and that architectural  
14 solution will probably similarly get some opposition.

15 But primary questions that are asked every time  
16 are going to be: are you seeking a variance or relief from  
17 parking requirements? This project is not. Are you seeking,  
18 you know, how much affordability will you be providing? This  
19 one doesn't require any beyond by right. And then, have you  
20 talked to the neighbors?

21 Those are three questions that are always going  
22 to come before us on any case. And then of course,  
23 individual questions that may come up to the unique  
24 application.

25 CHAIRPERSON HILL: Sure, great. Ms. White?

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1 MS. WHITE: When you say neighbors, my  
2 understanding was that you had concerns, or you at least  
3 wanted to have some comfort that the abutting neighbors were  
4 supportive. Can you provide any feedback on that?

5 MR. BOESE: We always like to see a demonstration  
6 that abutting neighbors are supportive. Again, as I  
7 indicated earlier, it's not required that they be supportive,  
8 but we like to know what or if the issues are.

9 I don't recall a strong focus on abutting  
10 neighbors. I don't recall any abutting neighbors actually  
11 being at the meeting despite having seen this twice. We did  
12 know that we had to make a decision because this was already  
13 filed for a hearing, and we didn't feel strongly enough that  
14 this needed to be postponed.

15 I don't think we got necessarily what we wanted  
16 from abutting neighbors, but I recall we did ask for that,  
17 and it was addressed as best as possible during our meeting.

18 MS. WHITE: Thank you.

19 CHAIRPERSON HILL: Okay. Thanks. Ms. Ferreira,  
20 the outreach to the neighbors again, can you explain that?  
21 I'm a little lost with the letter in opposition you said was  
22 from an adjoining neighbor and then -- if you could walk me  
23 through the outreach to the two neighbors.

24 MS. FERREIRA: I actually have a prepared written  
25 statement about that --

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1 CHAIRPERSON HILL: About that letter in  
2 opposition?

3 MS. FERREIRA: Yes, can I bring that up? Or I can  
4 just read it first?

5 CHAIRPERSON HILL: Yes, just give me one second.  
6 Are the neighbors who are in opposition here?

7 MS. FERREIRA: No, they are not.

8 CHAIRPERSON HILL: Okay, you can go ahead and give  
9 it to the Secretary then. You just have one copy?

10 MS. FERREIRA: No, I have several copies. All of  
11 them -- my apologies. I didn't understand that point.

12 CHAIRPERSON HILL: Since it is a pretty extensive  
13 letter, do you just want to go ahead and summarize what's in  
14 the letter?

15 MS. FERREIRA: Sure. And actually, the last two  
16 pages are a timeline and I will not go through that. That's  
17 really just for your information if you want to read through  
18 it. But the letter itself is just the first two pages, and  
19 I will read through it as quickly and clearly as possible,  
20 and this is directly in response to the letter from Ms.  
21 Pershner.

22 I respectfully provide the following  
23 clarifications in response to Ms. Pershner's letter of  
24 opposition to our BZA case 19796, 3324 Sherman Avenue, N.W.  
25 Personally I will state that we tried to reach Ms. Pershner

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1 along with additional property owner Natalie Politas several  
2 times, but never received a response.

3 I have attached a timeline listing some of the  
4 various formal and informal ways that both Ms. Pershner and  
5 Ms. Politas were notified of the upcoming project. Included  
6 in that timeline and submitted to the record are certified  
7 mail receipts sent through DCRA's Neighbor Notification  
8 Program on August 15th, with instructions for accessing the  
9 complete set of permit documents online. And just to  
10 clarify, this project has already been submitted for permit  
11 application.

12 I was informed by Ms. Pershner during our meeting  
13 on September 25th that she spent the summer in India, and in  
14 addition is often at her boyfriend's property in Maryland,  
15 and never received the formal notifications. She also  
16 informed me that two additional persons reside at her  
17 property.

18 In addition, Ms. Pershner stated that Ms. Politas  
19 currently resides in Boston and recently gave birth to twins,  
20 hence her absence and inability to comment. Ms. Pershner  
21 also stated that Ms. Politas had given her permission to  
22 speak on her behalf.

23 Ms. Politas' property is currently occupied by  
24 renters per Ms. Pershner. So the point of this statement is  
25 just to illustrate that the actual owners of the property

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1 have not been spending much time at the property, which I  
2 think helps to explain also why we had such a time to getting  
3 ahold of them, and their absence from the ANC hearings, their  
4 lack of participation up to this point.

5 CHAIRPERSON HILL: Okay. Let me must interrupt  
6 you. I'm sorry.

7 MS. FERREIRA: Sure.

8 CHAIRPERSON HILL: So another issue that was of  
9 question was, you know, the need to raise the chimney or  
10 otherwise comply with U302.2(f). You're aware of this,  
11 correct?

12 MS. FERREIRA: Yes.

13 CHAIRPERSON HILL: And your need to comply with  
14 that? Okay. Because if we do move forward with that, that's  
15 going to end up probably being a condition of the order.

16 MS. FERREIRA: Okay.

17 CHAIRPERSON HILL: All right. Does anybody have  
18 any questions for Ms. Ferreira or the applicant?

19 MS. FERREIRA: Could I have the opportunity to  
20 just summarize very quickly the rest of the letter?

21 VICE CHAIRPERSON HART: I don't think you need to  
22 do that. We were just trying to figure out the timeline, and  
23 I think the timeline that you provided is sufficient for us  
24 to be able to kind of see when certain things have been --  
25 you've either attempted to or had gotten in contact with

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1 them. So I don't think that we need to go through the entire  
2 letter, but I do appreciate the letter because it does  
3 provide a little bit more clarity around them.

4 MS. FERREIRA: Okay. Let me know if you have any  
5 additional questions. Thank you.

6 CHAIRPERSON HILL: Does the Board have any  
7 additional questions? I'm going to turn to the OP again.  
8 So could the Office of Planning again clarify and go over  
9 their report?

10 MR. JESICK: Sure. Thank you Mr. Chairman and  
11 members of the Board. My name is Matt Jesick. The Office  
12 of Planning actually originally recommended denial of the  
13 application -- that's at Exhibit 37 -- due to a lack of  
14 information regarding the impacts of the project on adjacent  
15 properties.

16 After that report was filed, the applicant  
17 submitted a shadow study which looked at the impacts the  
18 proposed addition would have compared to a matter of right  
19 solution. And based on that shadow study, we filed an  
20 additional report at Exhibit 44 recommending approval of the  
21 project as proposed including the 18-foot rear addition past  
22 the rear wall to the north.

23 We found that the proposed addition would not  
24 create an undue impact on adjacent properties. That the  
25 delta in the amount of light impact for the proposed addition

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1 compared to the matter of right addition, would be relatively  
2 minor, so we were comfortable in recommending approval of the  
3 application.

4 CHAIRPERSON HILL: Okay, great. Does anybody have  
5 any questions for the Office of Planning? Does the applicant  
6 have any questions for the Office of Planning?

7 MS. FERREIRA: I do not.

8 CHAIRPERSON HILL: Okay. Does the Commissioner  
9 have any questions for the Office of Planning?

10 MR. BOESE: No.

11 CHAIRPERSON HILL: Okay. I think that probably  
12 if we did again move forward with this in terms of a  
13 condition, Ms. Ferreira, it would be prior to the issuance  
14 of any building permit authorized by this order. The  
15 applicant shall obtain the insurance of a building permit for  
16 3322 Sherman Avenue, N.W. to raise the chimney or otherwise  
17 comply with the requirements of Subtitle U, 302.2(f). Do you  
18 understand that condition?

19 MS. FERREIRA: Yes, I do.

20 CHAIRPERSON HILL: Okay, all right. Is there  
21 anyone here wishing to speak in support of the application?  
22 Is there anyone here wishing to speak in opposition to the  
23 application? Okay. Mr. Commissioner, that's so kind of you  
24 to stay for the whole thing. Do you have anything else you'd  
25 like to add?

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1 MR. BOESE: I think I'm good. We all want lunch,  
2 right?

3 CHAIRPERSON HILL: Did you just get elected? How  
4 long have you been serving?

5 MR. BOESE: I'm wrapping up my eighth year, going  
6 into my ninth.

7 CHAIRPERSON HILL: Wow, fantastic. Okay. So Ms.  
8 Ferreira, do you have any final questions or thoughts?

9 MS. FERREIRA: Very briefly. I will just state  
10 that my client and I had really put an enormous amount of  
11 effort into this project. I understand that it is an unusual  
12 architectural solution, but it is one that we feel will be  
13 a positive contribution to the neighborhood. And we hope to  
14 work out our differences, or rather Ms. Pershner's  
15 differences, with a pre-construction agreement and that is  
16 something that was discussed with her when we met and we made  
17 that offer. And we will continue to do our best to try to  
18 keep the neighbors happy.

19 And with that in mind and the fact that we do have  
20 the support of the ANC, of the Office of Planning, DDOT, I  
21 kindly request your support as well, and I look forward to  
22 receiving your approval. Thank you.

23 CHAIRPERSON HILL: Okay, thank you. Ms. Ferreira,  
24 you're definitely lucky that the Commissioner stayed.  
25 Really, you should be really thankful because it provided a

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1 lot of clarity as to what had happened and how they got to  
2 their decision.

3 Does the Board have any final questions? No? I'm  
4 going to close the hearing. Is the Board ready to  
5 deliberate? Okay, actually good, because I'm actually ready  
6 to deliberate also.

7 So, I mean the things that I was confused about  
8 is that I didn't understand what we had in front of us. So  
9 now I at least understand the design concerning the larger  
10 units for the family units, and that also the waiver in terms  
11 of the 10-foot. Mr. Moy, you had a comment?

12 SECRETARY MOY: Yes. For the staff's own  
13 clarification, or maybe I'm speaking for myself, in listening  
14 to Ms. Ferreira speak earlier on, I just need a little bit  
15 more clarity in terms of the relief that's being requested  
16 at the moment. Whether or not there is still a request for  
17 the waiver from the rear addition of Subtitle U, 320.2(e),  
18 and if not -- she mentioned the revised plan, so we're going  
19 back to the original plans? Do you know which exhibit number  
20 that is?

21 VICE CHAIRPERSON HART: It's Exhibit 40 which are  
22 the revised original plans. Ms. Ferreira originally said  
23 that they may go back to the original plans, which were I  
24 think like Exhibit 10. And so, but they're not doing that.  
25 She was just letting us know that the original plans were

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1 already on the record, and if they were going to move down  
2 that path, we already had those documents in our -- that's  
3 what I'm understanding from the applicant.

4 MS. FERREIRA: Yes. And my point in making that  
5 statement of course was just to make it clear that we do  
6 compromise, it's part of the process, and it's usually when  
7 neighbors provide feedback that requires us to compromise,  
8 and we make our best to adjust to their request.

9 In this case, no one has requested that we shorten  
10 the rear addition. And actually, Ms. Pershner stated a few  
11 times when we met that the length of the rear addition was  
12 not a concern to her. Does that answer your question, Mr.  
13 Moy? So we are proceeding with the latest version of the  
14 plans, which includes the waiver for -- yes. For an  
15 additional eight feet.

16 SECRETARY MOY: And these plans would be Exhibit  
17 40 then?

18 MS. FERREIRA: Correct.

19 SECRETARY MOY: Okay. Thank you.

20 CHAIRPERSON HILL: Okay. So I was again confused  
21 as to the position with the ANC, and also was confused about  
22 the neighbors in terms of what their position was. I feel  
23 more comfortable and understanding of their position.

24 But even in addition to that, the analysis that  
25 the Office of Planning has provided I believe is what I'm

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1 going to agree with in terms of how the requirements are  
2 being met for this particular application.

3           So I think they've met their requirements, or met  
4 the standards I should say, and I would be in favor of this  
5 application. Does the Board have anything they would like  
6 to add?

7           VICE CHAIRPERSON HART: And with the condition  
8 that you --

9           CHAIRPERSON HILL: Yes, I'll read it.

10           VICE CHAIRPERSON HART: Okay, that's fine. Mr.  
11 Chairman, the concern that I think I was having at our last,  
12 I guess it was a meeting that we had -- when was that, on  
13 September -- was that 19th, wow -- was that in my reading of  
14 the ANC report was that the ANC was not actually in, they had  
15 a conditional support which was conditioned on the neighbors  
16 not having an issue. Mr. Boese -- Boese?

17           MR. BOESE: Yes. It's not how it's spelled.

18           VICE CHAIRPERSON HART: I know, and it throws me  
19 off, so I apologize, but you said it, that's fine. But the  
20 testimony that we got today clarified that for me, and I now  
21 understand where the ANC is.

22           I wanted to make sure that we had some clarity  
23 also around the chimney issue which I think you've, actually  
24 I know you've provided some language for what a condition  
25 might be to the project to be included in the BZA order if

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1 we are to approve it. And I thought that they met the  
2 criteria under Subtitle U, 320.2. I just didn't have an  
3 issue with, if any, of the criteria that were there. I  
4 thought they met them.

5 The one issue was around U320.2(i), which had to  
6 do with the substantial adversely affect the use of enjoyment  
7 of any adjacent property. I think that through the shadow  
8 study, it helped me to understand what the impacts would be,  
9 and I think that I could be -- I know I would be able to  
10 support the application. So that's it.

11 MS. WHITE: Mr. Chair, I also had, you know,  
12 concerns about the case weeks ago because one, I wanted to  
13 make sure that the abutting neighbors had been contacted, had  
14 a chance to weigh in, and that their comments were being  
15 represented accurately.

16 And I think with respect to that issue, I'm more  
17 comfortable today. I wasn't last time, but I think I am  
18 today, and I think the abutting neighbors did submit some  
19 information. I think she submitted, Ms. Pritchard submitted  
20 something on the 9th, but with the subsequent information  
21 that you submitted today, I'm a little more comfortable.

22 I'm really comfortable with the fact that the ANC  
23 is here. So that was very helpful in giving me comfort that  
24 he was representing the feedback of the community.

25 OP is supportive. The shadow studies are in

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1 place. You agreed to the conditions with respect to the  
2 chimney. And they're family-style units, right, so I think  
3 it will be of benefit to the neighborhood, and it's a very  
4 historical building as well. So I hope you'll maintain  
5 somewhat of the essence of that building. So I would be in  
6 support of the special exception application for this case.

7 CHAIRPERSON HILL: Okay, great. Thank you. So  
8 I'm going make a motion to approve Application 19796 of 3324  
9 Sherman Avenue, LLC, as amended pursuant to 11 DCMR Subtitle  
10 X, Chapter 9, for special exceptions under Subtitle E,  
11 Section 5201; for the side-yard requirements of Subtitle E,  
12 307.4; and under the residential conversion requirements of  
13 Subtitle U, 320.2; as well as the waiver from the rear  
14 addition requirements of U320.2(e) to the plans that are in  
15 Exhibit 40 to convert an existing flat to a three-unit  
16 apartment house in the RF-1 Zone at premises 3324 Sherman  
17 Avenue, N.W., Square 2841, Lot 864, with the condition that  
18 prior to the issuance of any building permit authorized by  
19 this order, the applicant shall obtain the issuance of a  
20 building permit for 3322 Sherman Avenue, N.W. to raise the  
21 chimney or otherwise comply with the requirements of Subtitle  
22 U, 302.2(f). Can I ask for a second?

23 VICE CHAIRPERSON HART: Second.

24 CHAIRPERSON HILL: Motion is made and seconded.

25 All those in favor say aye.

1 ALL: Aye.

2 CHAIRPERSON HILL: All those opposed? Motion  
3 passes, Mr. Moy?

4 SECRETARY MOY: Staff would record vote as three  
5 to zero to two. This is on the motion of Chairman Hill to  
6 approve the application for the relief as requested, along  
7 with the conditions as cited by the Chair in his motion.  
8 Second of the motion, Vice Chair Hart, and also in support  
9 Ms. White. We have two Board members not participating.  
10 Motion carries.

11 CHAIRPERSON HILL: Okay, thank you, Mr. Moy.  
12 Thank you all very much.

13 MS. FERREIRA: Thank you.

14 MR. BOESE: Enjoy lunch.

15 (Off microphone comments)

16 CHAIRPERSON HILL: Okay, just so everybody knows,  
17 I guess we kind of have a preliminary matter that we're going  
18 to address, and then we'll probably take a break for lunch.

19 SECRETARY MOY: Yes. Thank you, Mr. Chairman.  
20 This is additional information that was related to me by the  
21 staff that references two case applications. One is  
22 application 19808 of Marc M-A-R-C Rogers, and application  
23 19809 of Shomari Jennings.

24 As related to me, apparently the representative  
25 to Shomari Jennings had business where he had to leave the

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1 hearing, and that the application to Marc Rogers, there may  
2 be a request for a postponement. So maybe if the Board would  
3 like to entertain that preliminary matter before you break  
4 for lunch, it might be desirable.

5 CHAIRPERSON HILL: Okay. Is application 19808 of  
6 Marc Rogers here?

7 MR. ROGERS: Yes, sir.

8 CHAIRPERSON HILL: Okay. If you could please come  
9 forward. Please go ahead and have a seat Mr. Rogers. If you  
10 could just introduce yourself for the record please?

11 MR. ROGERS: Marc Rogers.

12 CHAIRPERSON HILL: All right, so Mr. Rogers, I  
13 guess there's another application. And I know you guys are  
14 adjoining neighbors of 19809, and Mr. Moy, just so I kind of  
15 understand this for the record. So was 19809 asking for a  
16 postponement as well? You don't know, Mr. Moy that is.

17 So Mr. Rogers, let me do this first. So there's  
18 two separate applications, okay? And so you are here for  
19 application 19808, which is your application, correct? And  
20 you're asking for postponement, correct?

21 MR. ROGERS: Since the project is going to be  
22 worked together, and he had to take a flight. That was Mr.  
23 Jennings; he was actually here and he had to take a flight.  
24 We're citizens, I don't understand, and I'm not making up an  
25 excuse for not understanding the process. We thought it was

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1 like at 9:30 we present --

2 CHAIRPERSON HILL: That's okay, that's fine.

3 MR. ROGERS: So I apologize. We didn't  
4 understand. We didn't really plan enough time in our day for  
5 this, so I apologize for that. And since we're doing it  
6 together, it probably would make more sense for us to try to  
7 do this together instead of me trying to get out and present  
8 my case.

9 CHAIRPERSON HILL: Okay. Let me do something real  
10 quick. So is there anybody here that was interested in  
11 speaking in support or opposition on case 19808 of Marc  
12 Rogers or case 19809? Okay. So I guess, Mr. Moy, we can  
13 reschedule these?

14 SECRETARY MOY: I believe so.

15 CHAIRPERSON HILL: Okay. Mr. Rogers, when would  
16 be a time that you would be interested in coming back?

17 MR. ROGERS: I can make whatever work except the  
18 week of November 5th through 9th, but any other time I can  
19 make it work.

20 CHAIRPERSON HILL: So Mr. Rogers, I'm confused.  
21 Was there someone else that was representing you guys or are  
22 you just both here on your own?

23 MR. ROGERS: We're here on our own.

24 CHAIRPERSON HILL: Okay. So you know about the  
25 objections that DDOT is raising, correct?

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1 MR. ROGERS: Yes, I read that.

2 CHAIRPERSON HILL: Okay. And then I guess, are  
3 you working with somebody with the Office of Planning?

4 MR. ROGERS: Mr. Jesick gave his opinion on it  
5 also. There was no opposition --

6 CHAIRPERSON HILL: Sorry, I'm just going to get  
7 OP up here anyway, even though I know they're asking for a  
8 postponement. Could you introduce yourself for the record,  
9 please?

10 MR. JESICK: Thank you, Mr. Chairman. My name is  
11 Matt Jesick.

12 CHAIRPERSON HILL: Mr. Jesick, I mean I was a  
13 little confused by -- and I'm just trying to get this as  
14 clean as I can by the time they come back here again. Like  
15 there was some discussion as to whether or not they even  
16 needed the relief that they're asking for?

17 MR. JESICK: Yes. We raised the question, I  
18 believe it was for Mr. Rogers' property, 1740 40th Street,  
19 whether he would even need the relief for parking in the  
20 front yard. It appears, and you can see this on page 3 of  
21 our report, it appears that a legal parking space would fit  
22 entirely within the side-yard of his property based on the  
23 plans that have been submitted to the record.

24 CHAIRPERSON HILL: And then it was the same Office  
25 of Planning report for the other case, for 19809. So was it

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1 the exact same situation?

2 MR. JESICK: It is not. At 1736 40th Street, that  
3 house is actually set back a little bit farther, so it  
4 appears that an 18-foot legal parking space would extend into  
5 the front yard by maybe three or four feet.

6 I should emphasize these are our kind of  
7 preliminary analyses. What we had recommended was that the  
8 applicants should speak to the zoning administrator to get  
9 a definitive ruling on whether that relief would be  
10 necessary.

11 In lieu of that, we don't have any problem  
12 granting the relief, you know, and then they can go to DCRA  
13 for their building permits. If it's decided at that time  
14 they don't need relief, well they already have it and there's  
15 no harm done.

16 CHAIRPERSON HILL: Okay. So Mr. Rogers, I assume  
17 since you're here anyway, go ahead and kind of confirm with  
18 the office of planning and see if you can straighten these  
19 two applications out so they're a little bit more clean  
20 and/or whether you need them.

21 Mr. Jesick, I'm a little confused in terms of like  
22 in for application 19809, you're saying that they will need  
23 relief?

24 MR. JESICK: It appears so, yes.

25 CHAIRPERSON HILL: Okay. So Mr. Rogers, if you

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1 can do whatever you can again to get this kind of cleared up  
2 before you come back to us again. Or perhaps you're not  
3 going to be here at all, and we'll just be here with Mr. &  
4 Ms. Jennings, whoever that is.

5 So in terms of rescheduling, Mr. Moy, I want to  
6 give Mr. Rogers and -- is it Mr. Jennings or Ms. Jennings?

7 MR. ROGERS: Mister.

8 CHAIRPERSON HILL: Mr. Jennings -- you need to  
9 speak into the microphone, sorry.

10 MR. ROGERS: Sorry. Mister.

11 CHAIRPERSON HILL: Mr. Jennings a little time to  
12 again kind of work with the Office of Planning, but Mr. Moy?

13 SECRETARY MOY: Thank you, Mr. Chair for --

14 CHAIRPERSON HILL: When is Mr. Miller back again?

15 SECRETARY MOY: November 14th.

16 CHAIRPERSON HILL: Okay.

17 SECRETARY MOY: I was going to suggest that  
18 because although I had possibility of next week, but  
19 considering the things that applicants are going to have to  
20 do to supplement the record, we're into November. And  
21 although there are other cases on for the 14th, I think  
22 having these two could be doable.

23 CHAIRPERSON HILL: Okay. Anyway, Mr. Miller's  
24 going to be here and so he's already reviewed the record for  
25 these two. So Mr. Rogers, go ahead and work with the Office

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1 of Planning. See what you can do with your application as  
2 well as what you can do to help out I guess, or convey  
3 information to Mr. Jennings, and we'll see whether we see you  
4 or not, okay, on November 14th.

5 SECRETARY MOY: November 14th, and this would be  
6 for two cases?

7 CHAIRPERSON HILL: Both cases. And if you could  
8 convey that to Mr. Jennings.

9 MR. ROGERS: Thank you, sir.

10 CHAIRPERSON HILL: All right. Thank you.

11 MR. ROGERS: Could I ask a question if it's not  
12 out of line?

13 CHAIRPERSON HILL: Sure. We'll let you know.

14 MR. ROGERS: All right. I read the DDOT report,  
15 and they say they wouldn't suggest it. Am I really just  
16 wasting my time, because I may go through all this and spend  
17 a couple other thousand dollars, thousands of dollars just  
18 to find out I can't get this anyway.

19 So based upon experience, if they say they  
20 probably wouldn't allow this, is it even worth me pursuing  
21 this any further?

22 CHAIRPERSON HILL: I'll tell you what. I'm just  
23 going to refer you to the Office of Planning on that, and  
24 they can give you a little bit of feedback perhaps. It  
25 wouldn't be something that we would necessarily comment on.

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1 MR. ROGERS: I got you.

2 CHAIRPERSON HILL: So that's it.

3 MR. ROGERS: Thank you. I appreciate it. You  
4 have a good day.

5 CHAIRPERSON HILL: Thank you, Mr. Rogers. You  
6 too. So Mr. Moy, we're doing 11/14, right?

7 SECRETARY MOY: Continue to November 14 --

8 CHAIRPERSON HILL: Continue to 11/14 --

9 SECRETARY MOY: -- for both cases, 19808 of Mark  
10 Rogers, and well as 19809 of Shomari Jennings.

11 CHAIRPERSON HILL: Okay. And now we're going to  
12 take a lunch everybody, okay? We will be back in 45 minutes?  
13 So we'll be back here at 1:15.

14 (Whereupon, the above-entitled matter went off the  
15 record at 12:32 p.m. and resumed at 1:28 p.m.)

16 CHAIRPERSON HILL: All right, Mr. Moy, whenever  
17 you'd like.

18 SECRETARY MOY: Thank you, Mr. Chairman. The  
19 Board is back in session, and I have at or about 1:28. So  
20 if we could have parties to the table to Case Application  
21 19791. This is of Chelsea Zitnay, caption advertised for a  
22 special exception under Subtitle C, Section 1504, from the  
23 penthouse setback requirements of Subtitle C, Section 1502.1,  
24 and pursuant to Subtitle X, Chapter 10, for variances from  
25 the nonconforming structure requirements of Subtitle C,

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1 Section 202.2, and for the lot occupancy requirements,  
2 Subtitle E, Section 504.1 to construct a new roof deck and  
3 access stair on an existing principal dwelling unit, RF-3  
4 zone. This is at 433 New Jersey Avenue, S.E., Square 693,  
5 Lot 48.

6 CHAIRPERSON HILL: Okay great. Thank you. If you  
7 could please introduce yourselves for the record from my  
8 right to left.

9 MR. WILLIAMS: Yes, hi. My name is Chris  
10 Williams. I'm with Lamas Architects Builders, Project  
11 Designer.

12 MR. ZITNAY: My name is Andrew Zitnay, one of the  
13 homeowners.

14 CHAIRPERSON HILL: Okay, great. Thank you. Mr.  
15 Zitnay, are you going to be presenting to us?

16 MR. ZITNAY: I believe Chris will be doing most  
17 of the presenting.

18 CHAIRPERSON HILL: Okay, Mr. Williams, so if you  
19 could go ahead and walk us through what you're doing, and the  
20 relief that you're requesting from us, and how you're meeting  
21 the standards for us to grant that relief. And also we'll  
22 get a little bit more of this I think from the Office of  
23 Planning.

24 But also there seems to be some comments in terms  
25 of you possibly needing relief from E5202, or that you need

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1 E5202. And so we can kind of talk through that, or you can  
2 talk through that now, or you know, you can address that in  
3 your presentation as well as we'll hear from the Office of  
4 Planning.

5 If one of you could turn off your microphone,  
6 there's feedback. Thank you. I'm going to put 15 minutes  
7 on the clock just so I know where I am, and you can begin  
8 whenever you'd like.

9 MR. WILLIAMS: Okay. We want to put a roof deck  
10 on top of a row house; it's a middle-unit row house. The  
11 roof deck is going in the middle of the property. The roof  
12 deck itself is available to do by right. The access to the  
13 roof deck though we want to do from an exterior stair that  
14 comes up a narrow, open courtyard to the side, that leads  
15 from the second story exercise room outside into this open  
16 roof deck, and then goes up the side of this open court up  
17 to the roof deck.

18 The house itself is over a lot occupancy at it  
19 exists. The courtyard is very narrow; it's only 4'3" wide.  
20 It also houses in an historic area, so we felt that this  
21 compromises the best way to get the stairs up to the roof  
22 deck. It's almost impossible to put an internal set of  
23 stairs, and if we did, it would probably require the roof --  
24 it would have snow start to build up on the roof of the  
25 neighboring properties. So that's why we're pursuing the

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1 stair -- the open courtyard to the side.

2 CHAIRPERSON HILL: Okay. Does the Board have any  
3 questions for the applicant?

4 MS. WHITE: I guess the main question is, I just  
5 wanted you to kind of walk me through the variance and  
6 special exception standards just in terms of how you're  
7 meeting the criteria for non-conforming structure lot  
8 occupancy under variance and penthouse setback under special  
9 exception. If not, I'll have the OP address it.

10 MR. WILLIAMS: The Office of Planning was in  
11 agreement with everything. It gets a little complicated  
12 because the open corridor that we're working in is too narrow  
13 to be considered open space when you calculate lot coverage.  
14 However, when you do add the stair, it increases the  
15 footprint of the building.

16 So in essence, we're adding into an area that  
17 isn't counted as like a viable space. The zoning rules have  
18 gotten a little confusing even for the Zoning Department, and  
19 even they weren't able to necessarily get their letter to  
20 agree with what the Office of Planning was asking for.

21 CHAIRPERSON HILL: Okay. I'd like to hear the  
22 Office of Planning, and so can I have the Office of Planning  
23 provide some clarity for us?

24 MS. BROWN-ROBERTS: Good afternoon Mr. Chairman  
25 and members of the BZA. Maxine Brown-Roberts for the record.

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1 The applicant has requested variance relief from the lot  
2 occupancy requirement and from the enlargement of a non-  
3 conforming structure, and then the special exception  
4 regarding the guardrail setback.

5           Regarding the two variances, the enlargement of  
6 the non-conforming structure is derived from the fact that  
7 the existing building has non-conforming lot occupancy. And  
8 so the applicant is proposing to do a roof deck which is  
9 allowed as a matter of right. However, to access the roof  
10 deck, there needs to be stairs.

11           The most usual way that it's done is that the  
12 stairs would go internally from the building, and at that  
13 time there would be no resultant increase in the lot  
14 occupancy. However, as demonstrated in the applicant's  
15 plans, the existing stairs are narrow and don't meet the  
16 building code at this time. And trying to, they would have  
17 to put in a conforming stairs. Trying to do that would be  
18 a difficulty in getting up to the roof.

19           In addition to that, because of the angle and how  
20 the stairs would have to be configured, it would take up a  
21 living space within the building, and so it wouldn't be  
22 feasible. So that's what is the practical difficulty.

23           And so the next option was to put it on the  
24 outside. The stairs will come from, would be from the second  
25 floor and not from the first floor. And so that seems to be

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1 a better option of placing the stairs there.

2           It will not be of substantial detriment to the  
3 public good as the stairs will be in an area that is not  
4 visible neither from the front of the building or from the  
5 rear just because there is currently some fencing that covers  
6 that, and therefore it would not be visible.

7           The stairs would not affect the light and air of  
8 the adjacent properties because the adjacent properties don't  
9 have any windows, and so it would not have any views into the  
10 adjacent building. In addition, as the applicant stated,  
11 that the chimney on the neighbor to the north would not be  
12 affected.

13           Granting the variances would not have any  
14 substantial harm to the zoning regulations, and I think that  
15 the increase in the lot occupancy is 3.34 percent. In  
16 addition to that, it will be open stairs which is not covered  
17 and will not take up -- there will not be any living space  
18 associated with that. And again, it would allow for adequate  
19 light and air and privacy to the adjacent properties.

20           Regarding the special exception for the guardrail  
21 on the roof, the requirement is for a 3-foot setback and the  
22 applicant is providing zero setback. Again, because of the  
23 angle or the placement of the stairs, which is along the side  
24 of the building, having the 3-foot setback you'd have a wall,  
25 the wall of the building. And then having a 3-foot setback

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1 could be a dangerous area, because it will be just an open  
2 area where, you know, somebody could climb over. And so  
3 having the setback will not result in any additional  
4 detriment. And as outlined in our report, it meets all the  
5 requirements of Section 1504.

6 And also because the building or the property is  
7 in the Capitol Interest zones, Section 5202 outlines special  
8 exception for all additions and buildings within that area.  
9 And it has to deal with visibility to the National Capitol,  
10 and the proposal meets all the requirements of that in that  
11 it will retain the character along New Jersey Avenue, and  
12 will not provide any views onto the capitol grounds and  
13 related areas. And based on that, we recommend approval.  
14 Thank you, Mr. Chairman, and I'm available for questions.

15 CHAIRPERSON HILL: Thank you. So just for  
16 clarification, I'm a little confused. Does E5202 need to be  
17 added in some capacity, or you're just saying you reviewed  
18 that?

19 MS. BROWN-ROBERTS: It has to be, the regulations  
20 state explicitly that. Any development within that area has  
21 to meet this requirement.

22 CHAIRPERSON HILL: But I'm saying does that get  
23 added to the application?

24 MS. BROWN-ROBERTS: Yes.

25 CHAIRPERSON HILL: Okay. So do you understand

1 that they're trying to add E5202 to the application?

2 MR. WILLIAMS: Yes, I do.

3 CHAIRPERSON HILL: And they're in approval of  
4 that?

5 MR. WILLIAMS: Yes.

6 CHAIRPERSON HILL: So you are changing the  
7 application right now to include E5202?

8 MR. WILLIAMS: Yes, whatever.

9 CHAIRPERSON HILL: All right. Okay.

10 MEMBER MILLER: Mr. Chairman?

11 CHAIRPERSON HILL: Yes, sure.

12 MEMBER MILLER: Just on that point, and we do have  
13 a form in the record from the architect at the Capitol saying  
14 that they've reviewed it. It's Exhibit 36. It's dated  
15 September 26 saying that they have no objection and that it  
16 does meet the standards and regulations.

17 CHAIRPERSON HILL: Okay. Is there anybody here  
18 wishing to speak in support? I'm sorry, does the applicant  
19 have any questions for the Office of Planning?

20 MR. WILLIAMS: No.

21 CHAIRPERSON HILL: Is there anyone here wishing  
22 to speak in support? Is there anyone here wishing to speak  
23 in opposition? All right Mr. Williams, do you have anything  
24 you'd like to add at the end?

25 MR. WILLIAMS: No. Just thank you for your

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1 consideration.

2 CHAIRPERSON HILL: Okay, great. Is there anyone  
3 here from the ANC also? Okay. Does the Board have any  
4 questions of the applicant?

5 MEMBER MILLER: No, I have no questions Mr.  
6 Chairman, but I just wanted to then, since you raised the  
7 ANC, just note for the record that the ANC 6B letter is in  
8 the record. September 26th is the date of the letter that  
9 they had voted on September 11th, eight to zero to two in  
10 support of the application.

11 CHAIRPERSON HILL: Okay. So I'm going to go ahead  
12 and close the hearing. Is the Board ready to deliberate?  
13 Okay. I'm comfortable with the application, and also the  
14 criteria that they're meeting the standards for us to grant  
15 the application as well as the analysis that was provided by  
16 the Office of Planning.

17 As Commissioner Miller has mentioned, the ANC also  
18 did provide their support for the application with no  
19 conditions or objections, and I am comfortable in moving  
20 forward and approving the application. Is there anything  
21 else anyone would like to add?

22 Okay. I am going to make a motion to approve  
23 Application 19791 of Chelsea Zitnay pursuant to 11 DCMR  
24 Subtitle S, Chapter 9, for a special exception under Subtitle  
25 C 1504 from the penthouse setback relief, and Subtitle C

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1 1502.1, and pursuant to Subtitle X, Chapter 10 for variances  
2 from the nonconforming structure requirements of Subtitle C,  
3 202.2, and from the lot occupancy requirements of Subtitle  
4 E, 504.1, including E5202 to construct a new roof deck and  
5 access stair on the existing principal dwelling unit in the  
6 RF-3 zone at premises 433 New Jersey Avenue, S.E., Square  
7 693, Lot 48, and ask for a second.

8 VICE CHAIRPERSON HART: Second.

9 CHAIRPERSON HILL: Motion made and seconded. All  
10 those in favor say aye.

11 ALL: Aye.

12 CHAIRPERSON HILL: All those opposed? Motion  
13 passes. Mr. Moy?

14 SECRETARY MOY: The staff would record the vote  
15 as five to zero to zero. This is on the motion of Chairman  
16 Hill to approve the application for the amended relief.  
17 Seconding the motion the Vice Chair Hart. Also in support  
18 Ms. White, Ms. John, and Mr. Miller. Motion carries.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,  
20 gentlemen.

21 MR. WILLIAMS: Thank you.

22 SECRETARY MOY: All right. The next case  
23 application before the Board is 19802 of, pardon my  
24 pronunciation, of Ajit and Aditi Kulkarni, as amended for a  
25 special exception relief under Subtitle E, Sections 205.5 and

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1 5201 for the rear addition requirements of Subtitle E,  
2 Section 205.4, and Subtitle C, Section 1504; from the  
3 penthouse setback requirements of Subtitle C, Section  
4 1502.1(b) and (c). This would construct a rear roof deck and  
5 access stairwell in the RF-1 zone at 1318 Constitution  
6 Avenue, N.E., Square 1033, Lot 44.

7 CHAIRPERSON HILL: Okay, great. Could you  
8 introduce yourselves for the record please?

9 MS. KULKARNI: Yes. My name is Aditi Kulkarni,  
10 I'm one of the homeowners.

11 MR. KIM: My name is Daniel Kim from SoeLin &  
12 Associates Architects, representing the homeowner.

13 CHAIRPERSON HILL: Okay. So Mr. Kim, are you  
14 going to be presenting to us?

15 MR. KIM: Yes.

16 CHAIRPERSON HILL: Okay. So again, if you could  
17 go ahead and tell us about the project as well as the relief  
18 that you're asking for, and how you're meeting the standards  
19 for us to grant that relief. There was a question about  
20 whether or not in the posting, whether you mentioned that you  
21 needed penthouse relief. And so if you kind of clarify that  
22 during your presentation. And I'm going to put 15 minutes  
23 up on the clock just so I know where I am, and you can begin  
24 whenever you like.

25 MR. KIM: Thank you, Mr. Chairman. What we are

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1 trying to do is put a roof deck on a top. We right now have  
2 a basement cellar, so the third-floor addition as a matter  
3 of right, we can build a third-floor addition. But the  
4 existing house is built in such a way where the abutting  
5 neighbor, our exterior wall goes 20 feet beyond the  
6 neighbor's far back wall.

7 We tried to put the staircase going up to the roof  
8 deck. We studied a lot. The current roof we have, front  
9 being high and the back being low. So we placed staircase  
10 all the way to the back, and we tried to meet the building  
11 height restriction which we are at 34 feet high tall. So  
12 that is Section 205.4, the relief that we are asking for.

13 As we push the stair towards the front, because  
14 of the existing roof slope, our building will get taller  
15 which will trigger another probably special exception or  
16 variance that we have to ask. So that's why we put the stair  
17 all the way in the back to keep the height limit.

18 Second item is the railing being one to one  
19 setback from the top of the roof. We are -- if we set back  
20 three feet because of three-foot tall fence, our deck will  
21 reduce down to three more feet which will give about 12 by  
22 12-foot area, which is very small for the roof deck. That's  
23 the another relief that we are seeking for.

24 We reached out to the neighbors and received a  
25 half-dozen letters with signature support of this project.

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1 And ANC A-6 is also supportive to this project. This design  
2 has taken measure to insure that the addition is harmony with  
3 the neighborhood character. Nothing from the front, and  
4 addition is at the north end of the property towards the back  
5 alley which its visual and shade will not destruct privacy,  
6 air, or light of the neighbors.

7 CHAIRPERSON HILL: Okay. Does anybody have any  
8 questions for the applicant? All right. I'm going to turn  
9 to the Office of Planning.

10 MS. THOMAS: Good afternoon, Mr. Chairman, members  
11 of the Board. Karen Thomas for the Office of Planning. And  
12 we concur with the applicant's design, and we saw that that  
13 location was the best place to put the partial third-floor  
14 addition because it would reduce visibility from the front.

15 And with respect to the railings, we also believe  
16 that putting the railings at three feet on both sides would  
17 significantly reduce the deck area to make it infeasible to  
18 a great extent. And we appreciated the fact that they added  
19 seating all around, which helped to reduce visibility further  
20 into others' yards because they would be facing inward and  
21 not outward.

22 So with that, we would rest on the record in  
23 support of the application. Thank you.

24 CHAIRPERSON HILL: Thank you. Does the Board have  
25 any questions for the Office of Planning?

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1           MEMBER JOHN: Yes, Mr. Chairman. So I'm a little  
2 confused when you talk about the third-floor addition. Are  
3 we just talking about the roof deck? Or are they putting on  
4 a third-floor addition. I think the applicant said as a  
5 matter of right or --

6           MS. THOMAS: Yes, it is a matter -- you can have  
7 a third floor. Where the stairs are coming up it's  
8 considered, in this case, a partial third-floor because  
9 they're allowed -- they're within the height limits. And  
10 because of the area of it, OP and the Zoning Administrator  
11 concurred that this would be a partial third floor.

12           MEMBER JOHN: Well I'm not sure why this one would  
13 be, if you were here for the previous case, why this would  
14 be a partial third floor, and the other one was viewed as a  
15 roof deck.

16           MS. THOMAS: Well it depends on -- the way this  
17 is constructed, all the way flush with the sidewall of the  
18 house, and the area takes up such a large area. Not just  
19 from -- I think it has a five-foot storage I believe. And  
20 so it was the zoning administrator's determination that this  
21 is considered a partial third floor, and not just stair  
22 access. It functions a little bit differently.

23           MEMBER JOHN: Thank you.

24           CHAIRPERSON HILL: Okay. Does the applicant have  
25 any questions for the Office of Planning?

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1 MR. KIM: No.

2 CHAIRPERSON HILL: Okay. Is there anyone here  
3 wishing to speak in support? Is there anyone here wishing  
4 to speak in opposition? Does the Board have any further  
5 questions for the applicant? All right. Is there anything  
6 else you'd like to add? All right.

7 I'm going to go ahead and close the hearing. Is  
8 the Board ready to deliberate? Okay. I'm comfortable and  
9 satisfied with the application the way it is, and I don't  
10 have any questions or concerns.

11 I do again think that the analysis that the Office  
12 of Planning has provided is efficient, and also glad to see  
13 that the ANC 6-A has voted to support with no issues or  
14 concerns, so I'll be in favor of this application. Is there  
15 anyone who would like to add anything else?

16 Okay, I'm going to go ahead and make a motion then  
17 to approve Application 19802 as captioned and read by the  
18 Secretary, and ask for a second.

19 MS. WHITE: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All  
21 those in favor say aye.

22 ALL: Aye.

23 CHAIRPERSON HILL: Motion passes. Mr. Moy?

24 SECRETARY MOY: Staff would record vote as five  
25 to zero to zero. This is on the motion of Chairman Hill to

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1 approve the application for the relief requested. Seconding  
2 the motion, Ms. White. Also in support Ms. John, Mr. Miller  
3 and Vice Chair Hart. Motion carried.

4 CHAIRPERSON HILL: Thank you. Okay Mr. Moy, if you  
5 could go ahead and start whenever you like.

6 SECRETARY MOY: Yes. Thank you, Mr. Chairman.  
7 I see the parties are to the table. This is application  
8 19824 of 1347 G Street, S.E., LLC. Caption advertised for  
9 area variances from the lot occupancy requirements Subtitle  
10 E, Section 304.1, and the nonconforming structure  
11 requirements, Subtitle C, 202.2. This would construct a  
12 third-story addition and convert the existing principal  
13 dwelling unit to a flat RF-1 zone. This is at 1347 G Street,  
14 S.E., Square 1044, Lot 19.

15 CHAIRPERSON HILL: Okay. If you could introduce  
16 yourselves for the record please, from my right to left.

17 MR. MEDVENE: Yes. Sam Medvene, and I represent  
18 the owners.

19 MS. WILSON: Alex Wilson from Sullivan & Barros  
20 on behalf of the applicant.

21 CHAIRPERSON HILL: Okay. Have you guys both been  
22 sworn in? Anyway, have you been sworn in, sir? Okay. If  
23 you could please stand up, and if anybody else is going to  
24 be here or say anything that hasn't been sworn in, if you  
25 could please stand up and get sworn in by the Secretary to

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1 my left.

2 SECRETARY MOY: Do you solemnly swear or affirm  
3 that the testimony you are about to present at this  
4 proceeding is the truth, the whole truth, and nothing but the  
5 truth? Thank you.

6 CHAIRPERSON HILL: Okay, great. Ms. Wilson, I  
7 assume you're going to present?

8 MS. WILSON: Yes.

9 CHAIRPERSON HILL: Okay. You have a preliminary  
10 matter for a motion to accept a late filing. Is that  
11 correct?

12 MS. WILSON: Correct.

13 CHAIRPERSON HILL: Why is it late, and why should  
14 we accept the filing?

15 MS. WILSON: So the applicant worked with the  
16 adjacent neighbors to come up with a new design and  
17 rendering, and our filing deadline was September 12, which  
18 was one day after the ANC and the architect needed I think  
19 it was two more days to finalize the approved plans.

20 CHAIRPERSON HILL: Okay. I don't have any  
21 problems accepting the late filing. Does the Board have any  
22 problems with that? Okay. Then Mr. Moy, we're going to  
23 accept the late filings. Ms. Wilson, I'm going to go ahead  
24 and put 15 minutes up on the clock just so I know where we  
25 are.

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1           And if you could go ahead and again just kind of  
2 walk us through your presentation as well as, you know, what  
3 you're proposing, the relief you're asking for, and why we  
4 should grant it. And you can begin whenever you like.

5           MS. WILSON: Great, thank you so much. Good  
6 afternoon Chairperson Hill and members of the Board. We are  
7 here today seeking variance relief in order to construct a  
8 third-story addition on top of the existing building at 1347  
9 G Street, S.E.

10           The property already has an existing lot occupancy  
11 of 77 percent, and the applicant is proposing a third-story  
12 addition on top of the existing building footprint.  
13 Accordingly, we are seeking variance relief from the lot  
14 occupancy requirements of E304.1, and the prohibition against  
15 extending an existing nonconforming aspect of the structure  
16 of C202.2.

17           This is a rendering of the existing rear  
18 perspective. As you can see, the rear already extends a bit  
19 further than the adjacent properties.

20           The third-story will be directly on top of the  
21 existing building footprint, and we are not expanding the  
22 existing building footprint in any way.

23           These are the renderings of the proposed building.  
24 The applicant worked with the adjacent property owners and  
25 neighbors to come up with the third-story design.

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1           Regarding the first prong of the variance test,  
2 the building was constructed in 1918 prior to the enactment  
3 of the 1958 zoning regulations. The lot area is only 1,014  
4 square feet and has an existing nonconforming lot occupancy  
5 of 77 percent.

6           These exceptional conditions make it unnecessarily  
7 burdensome to expand the existing building without zoning  
8 relief. Specifically, limiting the addition to only 60  
9 percent or even 70 percent -- as is permitted by special  
10 exception -- would create significant issues relating to  
11 construction costs and the internal configuration of the  
12 existing space on the first two floors.

13           Not only would it result in the loss of living  
14 space, reducing the third floor would also require the  
15 applicant to introduce load-bearing points a third of the way  
16 into the second floor layout.

17           The load-bearing points would have to be supported  
18 by columns and load-bearing walls, creating additional costs  
19 and impacting the open-floor design of the existing lower  
20 levels. Relief can be granted without substantial detriment  
21 to the public good and without impairing the intent, purpose,  
22 and integrity of the zone plan.

23           OP is recommending approval. Multiple neighbors  
24 are in support. ANC 6-B is in support, and the building  
25 footprint is not being increased.

1           That concludes my overall presentation, but we are  
2 happy to answer any questions and happy to go through the  
3 shadow studies on the following slides if the Board would  
4 like.

5           CHAIRPERSON HILL: Okay. Does the Board have any  
6 questions for the applicant?

7           MS. WHITE: Just on a high level. The shadow  
8 studies, I know it's --

9           MS. WILSON: Sure.

10          MS. WHITE: -- if there's a shadow that's  
11 partially covering the abutting property so -- and also if  
12 you could just give some feedback regarding neighbor support.

13          MS. WILSON: So I'm going to turn it over to Sam  
14 to discuss that as he was the one working with the neighbors.

15          MR. MEDVENE: Yes. So thankfully we have two  
16 neighbors here in support today, so thank you guys for being  
17 here. And then, so regarding the shadow studies, as you can  
18 see, there's minimal effect on the neighboring building.  
19 Both of them, especially the one that is to the right,  
20 because there was already an addition that was put on that  
21 affects that.

22                 There's -- whatchamacallit -- to the right of  
23 their stairwell and window, that would have been affected  
24 majorly already. Well, not majorly but minorly. And then  
25 on this rendering, it's actually going to be brick that's

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1 going to be two-thirds of the way up which -- but  
2 nevertheless.

3 But the design is -- the reason it filed late was  
4 because again we were working through the ANC as well as with  
5 the neighbors to perfect the design. Both trying to get it  
6 to be a look that, you know, they want to maintain the  
7 neighborhood. And, you know, they've got a vested interest  
8 in it as well as, you know, our goal as well is not to just  
9 come in and try to do something without getting the support  
10 of the people around us that are affected by it as well.

11 So that's sort of how we ended up at the design  
12 where we did. We went through, you know, a decent amount of  
13 iterations on it, and ended up on something that we're all  
14 happy with.

15 CHAIRPERSON HILL: Ms. Wilson, you guys didn't  
16 present to the Capitol Hill Restoration Society, is that  
17 correct?

18 MS. WILSON: Correct.

19 CHAIRPERSON HILL: But you're aware they're in  
20 opposition?

21 MS. WILSON: We are. We saw that letter filed  
22 yesterday.

23 CHAIRPERSON HILL: Do you have any response to  
24 that letter?

25 MR. MEDVENE: So I wasn't able to attend,

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1 unfortunately, because of scheduling conflicts. Otherwise,  
2 I would have been there.

3 CHAIRPERSON HILL: To get the no in person?

4 MR. MEDVENE: It helps to present in person and  
5 review it if they have questions and such.

6 CHAIRPERSON HILL: So Ms. Wilson, do you have any  
7 comments on the letter?

8 MS. WILSON: Sure. I'm happy to respond to the  
9 substance. Essentially, they're saying we did not meet the  
10 variance in their opinion because the existing structure can  
11 easily be used without any variance. And I would just argue  
12 that that's not really the variance test. It's whether a  
13 strict application of the zoning regulations will result in  
14 a practical difficulty, not whether it is impossible to do  
15 an addition within the regulations.

16 CHAIRPERSON HILL: Okay. All right. Does anybody  
17 have any questions for the applicant? All right. I'm going  
18 to turn to the Office of Planning.

19 MS. ELLIOT: Thank you, Mr. Chairman, members of  
20 the Board. I'm Brandice Elliott representing the Office of  
21 Planning. The Office of Planning is recommending approval  
22 of the requested variances for lot occupancy and additions  
23 to nonconforming structures.

24 I think the applicant has already gone through the  
25 test pretty thoroughly, but if there are any questions for

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1 me, I'm happy to address them.

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

4 VICE CHAIRPERSON HART: Did you look to see if  
5 there were any other buildings that were -- I mean I know  
6 this height is a matter of right height, but were there any  
7 other buildings that were at this height along the block or  
8 you're aware of? And I'll ask the applicant too, but I just  
9 was curious.

10 MS. ELLIOT: Sure. There are other three-story  
11 row dwellings on this block, and they do incorporate similar  
12 architectural features as to what's been proposed for this.  
13 And so we thought that it was retaining the existing  
14 neighborhood character in that regard.

15 But you are correct. The third-story itself, you  
16 know, minus the lot occupancy, is a matter of right, and the  
17 height I believe is just under 35 feet.

18 VICE CHAIRPERSON HART: Thank you, ma'am.

19 CHAIRPERSON HILL: Okay. Does the applicant have  
20 any questions for the Office of Planning?

21 MS. WILSON: No, thank you.

22 CHAIRPERSON HILL: Okay. Is there anybody wishing  
23 to speak in opposition? Is there anyone here wishing to  
24 speak in support? All right. Is there anyone here from the  
25 ANC? Okay. Ms. Wilson, is there anything you'd like to add

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1 in conclusion?

2 MS. WILSON: No. Thank you.

3 CHAIRPERSON HILL: All right. Does the Board have  
4 any final questions? Okay, I'm going to close the hearing.  
5 Is the Board ready to deliberate? I just feel so -- I'm just  
6 dead. It's the end of the day. It's like I'm finished.

7 I don't have any questions. I thought the  
8 applicant has met their burden in terms of how we can grant  
9 the relief that's requested. I think that the Office of  
10 Planning report is -- their analysis is efficient, and I  
11 would agree with it. And then also the fact that the ANC was  
12 approving with no issues or concerns. There are letters in  
13 support from the neighbors, including adjacent property  
14 owners, and I don't have any issues with this application.  
15 Does anyone have anything else that they'd like to add?

16 Okay. I'll make a motion to approve Application  
17 19824 as captioned and read by the Secretary, and I ask for  
18 a second.

19 VICE CHAIRPERSON HART: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All  
21 those in favor say aye.

22 ALL: Aye.

23 CHAIRPERSON HILL: All those opposed? Motion  
24 passes, Mr. Moy?

25 SECRETARY MOY: Staff would record the vote as

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1 five to zero to zero. This on a motion of Chairman Hill to  
2 approve the application for the relief requested. Second of  
3 the motion, Vice Chair Hart. Also in support Ms. White, Ms.  
4 John, and Mr. Rob Miller. Motion carries.

5 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you  
6 all very much. Mr. Moy, do we have anything else before the  
7 Board?

8 SECRETARY MOY: Not from the staff, sir.

9 CHAIRPERSON HILL: Okay, then we stand adjourned.

10 (Whereupon, the above-entitled matter went off the  
11 record at 2:04 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: 10-03-18

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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