

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 19, 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
LORNA JOHN, Board Member
CARLTON HART, Vice Chairperson (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice Chairperson
MICHAEL TURNBULL, FAIA, Commissioner (AOC)
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
JACOB RITTING, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
JONATHAN KIRSCHENBAUM
ELISA VITALE

The transcript constitutes the minutes from the
Public Hearing held on December 19, 2018.

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

2 (9:39 a.m.)

3 CHAIRPERSON HILL: Good morning. The hearing will
4 come to order. We're located in the Jerrily R. Kress
5 Memorial Hearing Room at 441 4th Street, Northwest. This is
6 the December 19th public hearing of the Board of Zoning
7 Adjustment, District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today is -- again, joining me today is Carlton Hart, Vice
10 Chair, Lorna John, and Lesyllee White, Board members. And
11 representing the Zoning Commission is Michael Turnbull for
12 one case, Rob Miller for another, and then Peter May will be
13 joining us for the day.

14 Copies of today's hearing agenda are available to
15 you and are located in the wall bin of the door. Please be
16 advised that this proceeding is being recorded by a court
17 reporter, and is also webcast live.

18 Accordingly, we must ask you to refrain from any
19 disruptive noise or actions in the hearing room. When
20 presenting information to the Board, please turn on and speak
21 into the microphone, first stating your name and home
22 address. When you're finished speaking, please turn off your
23 microphone so that your microphone is no longer picking up
24 sound or background noise.

25 All persons planning to testify -- either in favor

1 or in opposition -- must have raised their hand, have been
2 sworn in by the secretary. Also, each witness must fill out
3 two witness cards. These cards are located on the table near
4 the door and on the witness table. Upon coming forward to
5 speak to the Board, please give both cards to the reporter
6 sitting to the table to my right.

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

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

19 The Board and the staff will specify at the end
20 of the hearing exactly what is expected and the date when the
21 persons must submit the evidence to the Office of Zoning.

22 After the record is closed, no other information
23 shall be accepted by the Board. The Board's agenda includes
24 cases set for decision. After the Board adjourns, the Office
25 of Zoning, in consultation with myself, will determine

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whether a full or summary order may be issued. A full order is required when the decision it contains is adverse to a party, including an affected ANC.

A full order may also be needed if the Board's decision differs from the Office of Planning's recommendation. Although the Board favors the use of summary orders whenever possible, an applicant may not request the Board to issue such an order.

The Board may, consistent with its rules of procedures and the Act, enter into a closed meeting on a case for purposes of seeking legal counsel on the case pursuant to DC Official Code, Section 2-575(b)(4), and/or deliberating on a case pursuant to DC Official Code, Section 2-575(b)(13), but only after providing the necessary public notice, and in the case of an emergency closed meeting after taking a roll call vote.

21 The decision of the Board in cases must be based
22 exclusively on public record. To avoid any appearance to the
23 contrary, the Board requests that persons present not engage
24 the members of the Board in conversation.

Please turn off all beepers and cellphones at this

1 time so as not to disrupt the proceeding. Preliminary
2 matters are those which relate to whether a case will or
3 should be heard today, such as requests for a postponement,
4 continuance for withdrawal, or whether proper and adequate
5 notice of the hearing has been given.

6 If you're not prepared to go forward today with
7 your case, or if you believe that the Board should not
8 proceed, now is the time to raise such a matter.
9 Mr. Secretary, do we have any preliminary matters?

10 MR. MOY: Good morning, Mr. Chairman and members
11 of the Board. I do have a few words for the record very
12 briefly. As to today's docket, for the record case
13 application number 19815 of MMC Properties LLC has been
14 withdrawn by the applicant.

15 Case application number 19851, RUPSHA -- which is
16 spelled R-U-P-S-H-A 2011 -- has been postponed, rescheduled
17 to February 13, 2019.

18 Finally, Mr. Chairman, we have a preliminary
19 matter to one of the case applications on today's docket.
20 This is case number 19885, of Lorens Helmchen.

21 The applicant filed yesterday -- late yesterday --
22 requesting a postponement of the hearing and asking for a
23 postponement to the Board's hearing scheduled for
24 January 9th. So, that's before the Board for action.

25 CHAIRPERSON HILL: Okay, thanks. So, the

1 preliminary matters -- thank you, Mr. Moy -- a request for
2 postponement for 19885. I mean, I've looked at the
3 postponement. I don't necessarily have an issue with the
4 request.

5 Is anybody here that was going to speak for 19885?

6 (No response.)

7 CHAIRPERSON HILL: Okay, so, unless the Board has
8 any issues, I'll go ahead and agree to the postponement.
9 Okay, by consensus. They don't seem to mind. So, I guess
10 you want to do January 9th, Mr. Moy?

11 MR. MOY: Yes. That's available to be added to
12 that.

13 CHAIRPERSON HILL: Okay, great. Okay, so let's do
14 that.

15 (Whereupon, the above-entitled matter went off the
16 record at 9:44 a.m. and resumed at 10:52 a.m.)

17 VICE-CHAIR HART: Okay, Mr. Moy, I think we can
18 begin.

19 MR. MOY: Very good. The time is 10:53. So, this
20 is, I believe, the continued hearing. So, we can get parties
21 to the table to case application number 19751, of Med --
22 M-E-D -- Developers LLC, as amended, for special exception
23 under the use provisions of Subtitle U, Section 203.1F, to
24 construct a new, continuing care retirement community in the
25 R-1-B zone. This is a 2619 through 2623 Wisconsin Avenue,

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1 NW, Square 1935, Lots 44 and 812.

2 VICE-CHAIR HART: Thank you, Mr. Moy. The party
3 in opposition, are they here, as well? And the ANC is not
4 here. Okay. So, thank you all for coming, and I did look
5 through the docket --

6 MR. MOY: Excuse me, Mr. Vice-Chair. Sorry to
7 interrupt. You may want to get the introductions --

8 VICE-CHAIR HART: I was going to. I wanted to
9 kind of give a little bit of an intro, but --

10 MR. MOY: Yeah, I'm sorry.

11 VICE-CHAIR HART: No, no. It's fine. So, I do
12 appreciate the Secretary to remind me that we need to do some
13 introductions. And I just wanted to kind of make sure that
14 we were -- have an understanding as to why we're here
15 today -- that this is a limited-scope hearing and it pertains
16 to a few issues, one having to do with parking, and the other
17 having to do with the sun study and the information that has
18 been provided regarding that.

19 I -- because we have had a fairly lengthy hearing
20 already and we have gone through the public testimony, we are
21 going to be focusing on the applicant's presentation, and
22 then comments. And of course, the party in opposition has
23 their opportunity to provide their comments, as well, and a
24 presentation.

25 And I want to make sure that we are kind of moving

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1 in a fairly respectful -- and a pace that makes -- that we
2 can hear all of the information that has been presented, or
3 that has been submitted to us following the previous hearing.
4 And with that, I will --- like to hear from everybody, just
5 to make sure what -- who everyone is at the table. So, we
6 can start from my right to left. If you could just please
7 give your name and your address. Good morning.

8 MS. FERSTER: Good morning. My name is Andrea
9 Ferster. I'm counsel for the party in opposition, MAHCA --
10 Massachusetts Avenue Citizens Association -- and after we
11 finish our introductions, I do have a preliminary matter that
12 I would like to raise.

13 MS. CRABTREE: Good morning. My name is Anita
14 Crabtree and I'm the Zoning Coordinator for MAHCA.

15 MR. FINLAND: Good morning. Nick Finland with MED
16 Developers.

17 MS. MOLDENHAUER: Good morning. Meridith
18 Moldenhauer, land use counsel from the law firm of Cozen
19 O'Connor.

20 MS. DICKEY: Hello, good morning. My name is
21 Claire Dickey. I'm an architect with Perkins Eastman.

22 MR. GONZALES: Good morning. John Gonzales with
23 Guest Services Senior Living.

24 MR. ANDRES: Good morning, Vice-Chair Hart, Erwin
25 Andres with Gorove/Slade Associates.

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1 VICE-CHAIR HART: Okay. Ms. Ferster, you said you
2 had a preliminary matter? And was this a request?

3 MS. FERSTER: It is a request. Yes, thank you.
4 And I'll be brief.

5 VICE-CHAIR HART: Was it a request that was
6 submitted in the -- as an exhibit?

7 MS. FERSTER: No.

8 VICE-CHAIR HART: Okay.

9 MS. FERSTER: It has been a standing request on
10 the part of MAHCA, though. And just to back up a minute.
11 You know, MAHCA has been very clear during the last hearing
12 that we feel strongly that proposed findings of fact and
13 conclusions of law are very appropriate, if not necessary,
14 in order to render a decision that fully assembles and
15 analyzes and considers all the very lengthy testimony that
16 was submitted, as well as dealing with what I think are some
17 very substantial legal issues.

18 And that issue was left unresolved at the last
19 hearing. I understand that the Board was going to take that
20 into advisement -- under advisement. So, we'd like to now
21 reiterate that request for proposed findings of fact and
22 conclusions of law.

23 We feel that it is essential in this matter, where
24 there's a substantial opposition where the ANC has opposed,
25 thus requiring this Board to not render a summary decision,

1 but must issue a written decision with full proposed findings
2 of fact and conclusions of law.

3 We think that this will help the Board and it will
4 be efficient -- the most efficient way of dealing with the
5 issues that -- the kind of synthesis that we think is
6 necessary at this point.

7 And so -- but to just comment on your description
8 of what the understanding was about what this hearing would
9 be, I would say we did not have the understanding actually
10 that the opposition would be allowed to present its own
11 surrebuttal, if you will, or rebuttal testimony in terms of
12 our expert witnesses, to the testimony that's presented
13 today.

14 So, we are not prepared because we did not
15 understand that that was something that we would be allowed
16 to do. I think the transcript reflects that the applicant's
17 witnesses were requested to return for this hearing. So, we
18 have no testimony.

19 But we would suggest and request that if this
20 Board continues to believe --

21 VICE-CHAIR HART: I'm sorry. I'm sorry. You
22 have -- what were you expecting to do at the hearing?

23 MS. FERSTER: Cross-examination.

24 VICE-CHAIR HART: And cross-examination only?

25 MS. FERSTER: That's -- our understanding is that

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1 applicants were requested to return with their witnesses, not
2 us.

3 VICE-CHAIR HART: And so you don't have your
4 transportation person --

5 MS. FERSTER: No, we don't.

6 VICE-CHAIR HART: How would they cross-examine if
7 your --

8 MS. FERSTER: I would cross-examine.

9 VICE-CHAIR HART: You would cross-examine for
10 transportation issues?

11 MS. FERSTER: For the applicant advocates.

12 VICE-CHAIR HART: For the transportation issues?

13 MS. FERSTER: Sure.

14 VICE-CHAIR HART: Well, I'm --

15 MS. FERSTER: Sure. And I have conferred with my
16 transportation expert, who has, you know, reviewed the
17 filing. So, I'm prepared to ask some knowledgeable questions
18 with his assistance. But we were not under the understanding
19 that he would be allowed to actually present this himself.

20 So, let me -- let me -- if I could just finish my
21 request at this point. We did not have the understanding
22 that we would be allowed to present our own witnesses. So,
23 in the alternative, particularly if the Board does not want
24 proposed findings of fact and conclusions of law, and since
25 you contemplated at this point some testimony from

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1 intervenor, we would suggest that you allow the intervenor
2 to present a closing argument, as well.

3 Our preference, again, is proposed findings of
4 fact and conclusions of law, because that's the best way to
5 synthesize all the relevant testimony and all the legal
6 issues. But if that's not what the Board wants to do, and
7 you have that authority, we would ask that we be allowed a
8 closing argument.

9 VICE-CHAIR HART: Okay. So, the findings of fact
10 issue I think -- you're just wanting to -- you're wanting
11 that to be something that we do. I know that the appellant
12 has stated that they think that it's fairly straightforward
13 that they didn't think that they needed to do them.

14 And so, I just wanted to make sure that -- well,
15 I do want to make sure that they understand what the
16 applicants -- if they're still in that understanding -- I
17 think that they were there at the first part of this hearing.
18 So Ms. Moldenhauer, the intervenor -- the party in
19 opposition -- is looking for findings of fact and conclusions
20 of law. Do you have any thoughts on that?

21 MS. MOLDENHAUER: So, yes, thank you for letting
22 us have a moment to talk, Vice-Chair Hart. I think, one, this
23 is premature. I think the Board needs to hear the rest of
24 the case. But since this has been brought up, I will just
25 quickly address and kind of provide our opinion on this.

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1 Under Section Y-601.2, findings of fact can be
2 requested at the request of the Board -- when the Board deems
3 them to be appropriate. I know the Board has recently
4 changed their process to not allow applicants or applicants'
5 counsel to ask for summary orders, and I feel like this is
6 a similar situation, where opposition is asking for it.

7 However, I don't believe it's necessary. I think
8 that, you know, we will continue through our presentation.
9 We believe that it is the opposition's obligation and their
10 burden, if they were prepared to bring witnesses, bring
11 experts to this hearing to advise them, to consult with them,
12 that that was their obligation. They knew of this date.

13 All of their opposition and their expert witnesses
14 were present at the prior hearing when the date was
15 identified, and that we would strongly not allow this to be
16 used as a delay tactic, but rather to have this case move
17 forward.

18 And, you know, there has been a change on the
19 parking condition. They were aware of that. That was filed
20 pursuant to the timeline required. And so, we think we
21 should be able to move forward with the case today, and that
22 we are prepared -- as I believe was discussed the prior
23 hearing -- to have oral stated closings.

24 And I have prepared my oral stated closing, and
25 we would ask that obviously opposition present theirs today,

1 and that if the Board then -- in the Board's determination --
2 deems it to be appropriate to rule on the case today, that
3 the Board can either determine that the findings of fact are
4 necessary, or are not necessary, based on their own
5 evaluation. Thank you.

6 VICE-CHAIR HART: And what I've understood, as
7 well, my understanding was that we had gone through the
8 hearing procedures, and that the kind of -- the one thing
9 that we really hadn't gotten to was the closing.

10 And we had requested some additional information.
11 So, I think that that's what -- that is actually what we're
12 going to move forward with for today. Let's --

13 MS. FERSTER: Mr. Vice-Chair, just to be clear,
14 the rules don't allow the opposition to have a closing. So,
15 are you permitting us to make a closing?

16 VICE-CHAIR HART: I think I can -- I'll permit you
17 to do that. I would like to actually have this hearing
18 completed today. I will note that we do have some time
19 constraints on the entire -- our entire day. So, we are not
20 spending another six hours on this. But we will spend
21 sufficient time to be able to go through the material that
22 has been submitted.

23 And I think that the Board members have gone
24 through this information, so it is -- it is -- in its
25 understanding of what we have before us. And I'm trying to

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1 think what the other issue that you -- so, yes, a closing.
2 You may do a closing.

3 MS. FERSTER: Thank you.

4 VICE-CHAIR HART: So, today I know that there were
5 some things that were in Exhibit 485, which was -- MAHCA had
6 requested a few things. There were five things that you were
7 looking for. The DDOT evaluation of the new plan, this has
8 been submitted -- it's in Exhibit 488, I think -- if I'm not
9 correct, 489 -- 488.

10 The OP evaluated the new plan. This has also been
11 submitted and it is Exhibit -- sorry -- 486, thank you. The
12 MAHCA wanted to have time for their traffic expert to review
13 the reviewed plan and testify at the hearing. These plans
14 were submitted by the applicant three weeks ago on
15 November 26th, which I think is more than enough time.

16 We were looking at this as being -- the last
17 hearing was October 31st. This is about six weeks later.
18 So, I think that that is sufficient time for the applicant
19 to have provided the information about the drawings. And
20 then, the MAHCA -- the party in opposition -- to have
21 responded to that.

22 And this is also the issue -- my response for the
23 architectural review. I think that, again, this three-week
24 time from November 26th to today was enough time to prepare
25 for this.

1 And you also asked for an opportunity to cross-
2 examine any testimony about the new plans. And, as a party
3 in the case, you will have an opportunity to cross-examine
4 any testimony, as set forth in the zoning regs.

5 So, anyhow -- so, for this case I wanted to note
6 a few things. As I noted earlier, this was a fairly lengthy
7 hearing the last time we heard this case. Again, I want to
8 focus this hearing on the basement plan. I do not need to
9 have any information about the other plans for the building.
10 So -- and in the sun study, I think that the -- from what
11 I've seen from the presentation that the applicant has
12 provided -- that information is included in there.

13 I noted about DDOT's response to -- actually, I
14 didn't note about DDOT's response to Councilmember Cheh's
15 letter, but DDOT has responded to that in Exhibit 476, and
16 this response from DDOT was actually before hearing from the
17 applicants -- their change in their plan.

18 And so, DDOT has also provided another
19 supplement -- an amendment, another report -- at 488. So,
20 we have had -- these pieces of the case have been submitted
21 to us right now.

22 MS. FERSTER: Mr. Vice-Chair, if I may make one
23 observation and point out that we did not know about this
24 DDOT report that was submitted yesterday.

25 VICE-CHAIR HART: It's a page.

1 MS. FERSTER: Can we see a copy of it?

2 VICE-CHAIR HART: It's in the -- I mean, I saw it
3 because it was in the case file. It was submitted yesterday
4 and it says that -- give me a sec -- so --

5 MS. MOLDENHAUER: With any electronic device, it
6 can be obtained on the website.

7 MS. FERSTER: We were here today when it was
8 uploaded.

9 (Simultaneous speaking.)

10 VICE-CHAIR HART: If you could, please. The
11 Secretary is providing a copy.

12 MS. FERSTER: Thank you.

13 VICE-CHAIR HART: So, as I said earlier, I
14 would -- I will provide -- I will allow the applicant to
15 provide a presentation about these changes. Again, we're
16 focused on these two particular things that were requested
17 from the Board. And I'm looking at like --

18 MS. MOLDENHAUER: Fifteen minutes.

19 VICE-CHAIR HART: Ten -- 15 minutes.

20 MS. MOLDENHAUER: Ten to -- I think the sun
21 studies just sometimes take a little bit of time to walk
22 through. That's why I would ask for 15, but we might not
23 even use all of it.

24 VICE-CHAIR HART: But I do appreciate the
25 applicant providing this information in a fashion so that we

1 could actually review this. So, I've actually looked through
2 these. I do have some -- a few questions, but that's fine.

3 And the applicant has 15 minutes for their
4 presentation. Ms. Ferster, you will have 15 minutes --
5 you'll have the ability to cross. If you'd like to give a
6 presentation, that's up to you, as well. But -- that's it.

7 MS. FERSTER: I would like to move to strike the
8 DDOT report, particularly since DDOT is not present for the
9 hearing. Perhaps they're going to come, but it -- you know,
10 there is -- you know, there's no reason why DDOT -- you know,
11 applicant had made their submission on November 26.

12 We were held to a one-week requirement to respond,
13 and it's really prejudicial for them to come up with a letter
14 that says -- you know, very vaguely -- that we don't think
15 there's a problem, without any level of detail or any
16 explanation of what analysis they undertook, without them --
17 and particularly without them being present here today.

18 This was uploaded this morning. We would have had
19 no way to even look at it anyway. We think it's prejudicial
20 to allow it in the record and we move to strike it.

21 VICE-CHAIR HART: Did you also see the Office of
22 Planning report from 2014? Sorry, from December 14th?

23 MS. FERSTER: We did see that.

24 VICE-CHAIR HART: And they actually said, actually
25 in the summary fashion, what the DDOT concerns were at that

1 point.

2 MS. FERSTER: Well, we were mystified by it
3 because we didn't see any DDOT report and basically assumed
4 that the OP sentence about DDOT having no concerns was
5 basically hearsay, and, you know, proceeded to assume that,
6 you know, some conversation happened, but there would be no
7 report that substantiated that until this morning. So --
8 again, we would ask --

9 VICE-CHAIR HART: Yes --

10 MS. FERSTER: -- that this be struck.

11 VICE-CHAIR HART: Well, I understand that and I
12 am not going to -- I'm not looking for that to be struck.
13 I appreciate them for submitting it to us and -- I don't
14 know, I'll hear from the other Board members if they have any
15 comments.

16 VICE-CHAIR MILLER: I just wanted to note,
17 Mr. Chairman, that it was uploaded yesterday. Not that --
18 that's late, as well, but it was uploaded yesterday. I think
19 that's when I saw it.

20 VICE-CHAIR HART: And, OAG, do we have any -- do
21 you have any thoughts on the issue that the opposition party
22 has raised?

23 (No audible response.)

24 VICE-CHAIR HART: So --

25 MS. MOLDENHAUER: Vice-Chair Hart, could I just

1 note that we would obviously object to a motion to strike.
2 Just formally on the record --

3 VICE-CHAIR HART: That's fine. You don't have to
4 go any further. I appreciate it. I think that what we'll
5 do is, we will look at this as -- we'll accept this and if
6 we -- what is today, the -- if we allow some time for the
7 opposition party to respond to this, so we at least have
8 something in the record.

9 MS. FERSTER: You mean from our expert after this
10 hearing?

11 VICE-CHAIR HART: That would be -- yeah.

12 MS. MOLDENHAUER: Objection.

13 VICE-CHAIR HART: That's fine. I'm just saying
14 that that's the -- that would be the -- I understand what
15 you're -- what the issue is. I'm just trying to get to the
16 actual presentation. So, your objection is?

17 MS. MOLDENHAUER: My objection is that
18 Ms. Ferster, on behalf of the opposition party, is now asking
19 to file some additional, unrequested --

20 VICE-CHAIR HART: She actually -- she didn't
21 actually -- she --

22 MS. MOLDENHAUER: -- post-hearing.

23 VICE-CHAIR HART: -- I suggested that she would
24 have that chance to do that. And I was trying to do that so
25 that we would at least have some response from the opposition

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1 for something that was submitted by DDOT yesterday. So, we
2 have a time issue that we're trying to -- that I'm trying to
3 deal with. I understand -- go ahead.

4 MS. MOLDENHAUER: The document didn't change
5 DDOT's position, and we have simply provided more parking,
6 so -- and I think that the Board would have the ability to
7 say that this document doesn't change anything. No
8 additional information would change -- potentially again,
9 once we finish the hearing, you know -- the Board's position.

10 So, it's the Board's decision whether they need
11 additional information, not a question as to whether or not
12 this one piece of evidence is actually substantial to sway
13 a decision one way or another. But we can just start our
14 case and we can obviously decide, maybe hold these issues in
15 abeyance and decide them at the conclusion.

16 VICE-CHAIR HART: I -- I -- please.

17 MEMBER JOHN: Mr. Vice-Chair, I would just like
18 to make one observation for the record. I don't know how my
19 fellow Board members are viewing all of this. If I look at
20 MAHCA's requests, and so MAHCA requested that DDOT evaluate
21 the new plan and submit a revised report. They have done
22 that.

23 And MAHCA's given time -- is given an opportunity
24 to cross-examine any testimony at the hearing about the new
25 plan. And MAHCA also wants to be given time for its traffic

1 expert to review the revised plan and testify at the
2 December 19 hearing. So, I'm not sure why we're hearing this
3 morning that the expert is not here, because this is part of
4 MAHCA's request.

5 VICE-CHAIR HART: Yes, and I ---

6 MS. FERSTER: A question?

7 VICE-CHAIR HART: -- I appreciate that. And
8 I'm --

9 MEMBER JOHN: So, I'd just like to note that for
10 the record.

11 VICE-CHAIR HART: And I appreciate that. And I
12 actually raised the same issue. And my response to that is
13 that these plans were provided three weeks ago, and that has
14 been -- that is sufficient a time to be able to have their
15 traffic expert give any comments on the -- on what was
16 proposed. So, I didn't think that that was a particular
17 issue. And -- why don't we just hold this issue about the
18 DDOT report. But I do want to get to the actual presentation
19 so we can get through that aspect of it.

20 The applicant said they needed 15 minutes.
21 Mr. Secretary, if could put 15 minutes on the board and you
22 may start at your convenience.

23 MS. MOLDENHAUER: I will turn over to Ms. Dickey
24 and she will start with walking through the plans quickly.

25 MS. DICKEY: All right. Good morning, Vice-Chair

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1 Hart and Board members. I'm here this morning to present the
2 design updates that were implemented in response to feedback
3 received at the previous zoning hearing on November 14th.

4 So, we start with the revised site plan. You can
5 see that the building orientation, size, general shape and
6 position within the project boundaries did not change
7 significantly from the previous design.

8 We still meet or exceed all zoning-required
9 setbacks. The main entrance remains in the center of the
10 building off of Wisconsin Avenue, and there is still a
11 secondary entrance at the alley side to allow for easier
12 access from the east, although it was moved north a bit to
13 work better with the new loading location.

14 Moving on to the portion of the design that has
15 been modified, I would like to direct your attention to the
16 public alley side. As you can see, the garage access ramp
17 is now located where the loading area was previously. As a
18 result, the loading area shifted north to the north end of
19 the site closer to Edmunds Street.

20 In between the garage ramp and the loading area
21 where surface parking spaces used to be, the garden has been
22 expanded eastward by ten feet. And a generous planted buffer
23 was also added beyond the fence line to provide extra visual
24 screening for people on both sides of the alley.

25 At the new garage level, there are 19 total

1 parking spaces provided. This allows for one parking space
2 above and beyond the 17 spaces required by Zoning, as well
3 as a dedicated space for a community van, should the
4 community eventually decide to invest in one.

5 From a visitor and resident drop-off perspective,
6 the garage provides convenient, covered access to the
7 building via the public elevator located at the south side
8 of the site. And then, as you can see, there's other admin
9 spaces there.

10 At the cellar level, having the garage ramp take
11 up a major chunk of the footprint required some redesign of
12 this floor of the building, as you can see here, and then,
13 in its new location further north, the loading area's now
14 elevated above the cellar level by about five feet. This is
15 due to the topography change across the site.

16 This means that delivery trucks would parallel
17 park in the loading space, bring their goods to either the
18 service elevator or the short flight of stairs, and then go
19 down. The service elevator has direct access to both the
20 cellar and garage levels.

21 Just as in the previous iteration, the garden is
22 located across an open corridor from the dining room. The
23 exterior wall's been shifted inward a little to create a
24 small covered porch.

25 And beyond the porch, the expanded garden provides

1 1,500 square feet of secure outdoor space for building
2 residents. This is 500 square feet larger than what was
3 presented previously. And then, there is another 14 feet of
4 planted buffer beyond.

5 I'm going to skip over the first, second, third
6 and roof levels, we didn't want to dwell on those. And then,
7 I'm going to move into talking about the new renderings. So,
8 here you can see that this is a view taken from Edmunds
9 Street close to the corner of 36th Place, and looking west
10 towards Wisconsin Avenue. You can see our building here in
11 the middle ground kind of beyond the trees there.

12 From height perspective, you'll note that we are
13 not out of scale with the single-family homes in the
14 neighborhood, such as this one here to the left, kind of in
15 the foreground of the photo.

16 I'd like to point out while we're looking at this,
17 that as currently designed, the building complies with all
18 zoning requirements, including building height. I know I
19 mentioned at the previous hearing that we might need to make
20 the building taller in order to accommodate the garage level,
21 but luckily that was not the case, after all. Next.

22 So, this is a view taken from Wisconsin Avenue
23 looking back at the site. Again, you can see that the
24 building height is not significantly out of scale with the
25 other buildings in the immediate context.

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1 And in response to the opposition's comment about
2 this view being deceptive because the trees hide the homes
3 south of the site, I'd just like to clarify that I actually
4 drove out to the site after the last hearing and I took this
5 photo myself.

6 So, other than the building, the four partially
7 transparent trees that are at the corner, and then the folks
8 walking down the street who are woefully underdressed for how
9 cold it was that day, but we did not add to or alter any of
10 the existing site conditions. And I would like to say there
11 was no intent to deceive with these renderings. Next.

12 So, this is an aerial rendering of the building
13 placed within the context, and you can kind of see how it
14 fits within the neighborhood. And I think that really kind
15 of speaks for itself. Next.

16 Here's the prospective view from the alley looking
17 north towards the building. It's a little bit hard to
18 differentiate some of the -- where our building is separated
19 from the house in front of it because the colors are really
20 similar.

21 But what we wanted to convey here was what the
22 alley would look and feel like once the new building is
23 complete.

24 All right, so moving into the sun study, I'd like
25 to talk about this information for a couple of minutes. So,

1 as mentioned briefly in the last hearing, we did do one. We
2 actually did two, one of the site as it exists currently --
3 which you see here without the building -- and then one with
4 the proposed building in place -- next -- which is here.

5 So, as part of our analysis, we looked at one day
6 per season for both scenarios, at 8 a.m., noon, 4 p.m. and
7 8 p.m., to get an idea of how the shadows would fall across
8 the day from sunrise to sunset.

9 I realize it's a little hard to read some of the
10 detail in these diagrams, so please bear with me for a moment
11 and we'll review the information at a closer view in the next
12 couple of slides. But also, if you'd like to study these
13 diagrams more closely, you can refer to Exhibit 483F in the
14 record.

15 All right, so here are larger images from our sun
16 study on a single slide, to show you the existing and the
17 proposed next to each other. But before we kind of dig too
18 far into this content, I'd like to briefly explain how we
19 generated these diagrams.

20 So, as you're aware, most design firms draft using
21 a program called Revit, which allows architects to model
22 things at a true-to-life scale in a virtual world.

23 Within the model, it is possible to replicate
24 real-world conditions, such as a building's geographical
25 location, the time of year, construction materials, even the

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1 building's energy usage, in order to better understand during
2 the design phase how a building will work after completion.

3 So, besides building virtual models, Revit also
4 has a feature that allows one to assign a date and time to
5 the model, in order to study things such as solar orientation
6 and shadows, which we have used to generate these diagrams.

7 So, with that bit of background, hopefully you
8 have a better understanding of how these little virtual
9 worlds are generated. It's a complicated process, takes time
10 and practice to master, but actually it's pretty cool.

11 So -- all right, back to the images you see here
12 on the screen. You'll see they all portray the site in the
13 later afternoon, because that's when the adjacent neighbors
14 would potentially be cast in shadow by the proposed building.

15 Earlier in the day, the building shadow falls out
16 onto Wisconsin Avenue. So, here we're looking at the spring
17 and summer scenarios. The image on the left shows just the
18 context without the building. And then, the one on the right
19 shows the site with the proposed building. Next.

20 So, on this slide you can see the autumn and
21 winter views. Obviously, the sun doesn't rise as high in the
22 winter, so the shadows tend to be longer and the days are
23 shorter.

24 This is when the proposed building would
25 potentially have a perceivable impact on the neighbor. But

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1 that impact would still be minor, considering it's a short
2 duration across the entire year.

3 So, I also want to point out that besides the
4 buildings shown here, there are also mature trees along the
5 alley that would intercept the building's shadow. The
6 proposed building shadow will have to overcome the height of
7 the existing buildings, as well as the existing buildings'
8 shadows, in order to reach the houses beyond.

9 All right, so when we first looked at the
10 opposition's sun study, which was prepared by Ms. Dana
11 LePere, it was immediately evident that there was a
12 significant disconnect between the work we had generated,
13 versus what the opposition had generated.

14 In fact, seeing the images for the first time, I
15 felt strongly that there was something that was not quite
16 right or missing. And after we had completed a more thorough
17 review of the opposition's work, ultimately, we determined
18 that Ms. LePere's diagrams are flawed.

19 For the record, I'd like to present one image as
20 a case study example, to better illustrate how we reached our
21 conclusion. I will refer to the June 21 at 7:15 p.m.
22 diagram, because it was one of the more exaggerated images.

23 But please note that these comments would apply
24 not only to this instance, but actually, they are true across
25 the board.

1 So, first I would like to point out that
2 Ms. LePere rendered all of her diagrams as though the
3 proposed building essentially exists in a flat, open field,
4 rather than in a moderately dense urban neighborhood.

5 There's no acknowledgment that the context
6 buildings and vegetation have their own mass and height, that
7 they cast their own shadows of similar length and darkness
8 to what we will, and also that the proposed building's
9 shadows would be bent, warped, and otherwise ultimately
10 shortened, as it hits the neighboring objects.

11 It would not be cast in a perfect, continuous
12 shaft as what is shown here. Further exacerbating the
13 misperception --

14 MS. FERSTER: I'm going to interrupt briefly to
15 make an objection for the record.

16 VICE-CHAIR HART: Thank you. And it's noted.
17 Thank you. Thank you.

18 MS. FERSTER: Can I articulate --

19 VICE-CHAIR HART: Thank you.

20 MS. FERSTER: I do need to articulate it.

21 VICE-CHAIR HART: Thank you. Thank you.
22 Thank you very much. Thank you very much. Let me -- let her
23 finish it. We can ask questions after.

24 MS. DICKEY: So, further exacerbating the
25 misperception that the building shadow is enormous,

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1 Ms. LePere lightened the Google image background and possibly
2 also darkened the proposed building's shadow, which creates
3 a misleading graphic.

4 This is simply not a realistic depiction of the
5 site condition. And, in fact, the building shadow would
6 never look like what is shown here.

7 So, what you are looking at on this slide is a
8 comparative study showing the opposition's diagram to the
9 left, and Perkins Eastman's diagram on the right.

10 In our diagram, you can see the shadows cast by
11 all of the buildings in the immediate context, to get a sense
12 of how long they are for the purposes of comparison,
13 although, I'll point out again, that there are no trees here,
14 and many of the trees are far taller than the buildings.

15 So, the reason why I wanted to show these two
16 images next to each other is because you can see how long the
17 opposition has rendered the proposed building's shadow.

18 As a reminder, what we have designed for this site
19 is a three-story building with a mechanical penthouse on top.
20 But this shadow is significantly longer even than the hotel
21 shadow you can see in our diagram, to the south, which is an
22 eight-story building.

23 The embassy building across the street is
24 approximately nine stories tall -- it's a little hard to
25 tell -- and is possibly even shorter than what the opposition

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1 is showing as the shadow.

2 So, in order to get a closer approximation to the
3 opposition image, we fiddled with the sun angles and model
4 settings, and eventually we theorized that maybe Ms. LePere
5 had not set the model to account for daylight savings time,
6 which meant that all of her simulations for both spring and
7 summer would be off by an hour.

8 So, rather than looking at a hypothetical shadow
9 cast by the building at 7:15 p.m., the diagram would actually
10 be for 8:15 p.m. instead. Does that really matter? Yes, I
11 think it does, because if you go to the next slide, you can
12 see two snapshots taken of the site from Google Earth on
13 June 21st at 7:15 p.m. on the left, and 8:15 p.m. on the
14 right.

15 As you can see, by 8:15 it's dark enough outside
16 that the building's shadows are absorbed into the falling
17 darkness. The shadow is illustrated in the opposition's
18 late-day diagram -- which you can see in the right corner
19 there -- does not reflect that fact, which you can easily see
20 here.

21 So, while I've used the June 21 image as the case
22 study example, these same points would be applicable to all
23 of the diagrams included in the opposition's mission.
24 Unfortunately, we found they are misrepresentational at a
25 fundamental level and convey flawed information.

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1 It's my professional opinion that none of these
2 diagrams are relevant as a design critique of the proposed
3 building.

4 So, one last point that I'd like to make about the
5 existing conditions, on the left you see the site without the
6 proposed building in it. In the middle, you see the site
7 with the proposed building in it.

8 And then, looking east of the building, if you
9 examine these two diagrams, it appears that there would be
10 a shadow cast by the building onto the houses in the middle
11 of the block.

12 However, in referring back to the aerial
13 rendering, which you can see there on the right, it is
14 evident that the existing trees already cast a shadow on
15 those houses, and the proposed building shadow would not
16 create a new darker condition, or further worsen the existing
17 shadow condition.

18 In closing, our shadow study shows that the impact
19 to neighboring properties will be minimal. So, having said
20 that, thank you very much for your time and attention. I'm
21 happy to answer any questions about the revised information,
22 but at this time I'm going to turn the presentation over to
23 Erwin Andres.

24 MR. ANDRES: Good morning, Vice-Chair Hart. This
25 is my only slide, so I'll briefly go through it. As you have

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1 identified in the plan, the plan provides 19 spaces and the
2 requirement is only 17.

3 So, parking relief is no longer necessary, which
4 is why DDOT's report is rather succinct, because of the fact
5 that it is -- that it does meet all of the District
6 guidelines for access and parking and loading.

7 In addition to that, we've also confirmed that our
8 practical demand, which I've gone through extensively in our
9 previous hearing, was only seven spaces. And case in point,
10 what we've done is, our manual -- our industry manual that
11 looks at parking demand -- states that if this facility were
12 in a suburban condition -- whether it's in Fairfax or
13 Rockville -- the practical demand would be 13 spaces, which
14 is still well below the 19 spaces that we're providing.

15 So, we're looking at it both in urban context, and
16 even in this case suburban context. In addition to that, as
17 you can remember from our last hearing, the parking supply
18 that we're proposing onsite is supplemented with over 100
19 available parking spaces in the neighborhood within a short
20 walking distance, and I've also identified nearby offsite
21 parking facilities, which can also be available.

22 And as indicated in the filings, DDOT issued a
23 letter of support on September 14th. They issued a
24 subsequent letter of support on November 26th, and issued
25 their latest letter in support on December 18, again given

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1 the fact that parking relief is no longer necessary. So, I
2 am available for questions. Thank you.

3 MS. MOLDENHAUER: So, we will just conclude -- I
4 won't go through them, but obviously we have a list, very
5 succinctly, of our transportation demand management program,
6 which the applicant is still providing, even though we're no
7 longer asking for parking.

8 As a mitigation option, we have a loading
9 management plan that we also have agreed to and are providing
10 in conjunction with the project. We have agreed to the
11 conditions that OP had put forward, and we had requested
12 flexibility to revise the interior layouts, if necessary.

13 With that, I will then reserve -- I'd like eight
14 minutes for closing, but we'll obviously go through rebuttal
15 and cross-examination.

16 VICE-CHAIR HART: Thank you. Ms. Ferster?
17 Actually, does the Board have any questions for the
18 applicant?

19 ZC VICE-CHAIR MILLER: I don't have any questions.
20 I just wanted to thank the applicant for providing a revised
21 design with the underground onsite parking without having to
22 increase any height of the building.

23 And that is -- I just want to clarify that that
24 is your proposal. It is not an alternative proposal, it is
25 your proposal that -- before the Board, and you're no longer

1 seeking relief from the parking requirement.

2 MS. MOLDENHAUER: Correct, Commissioner Miller.
3 We have withdrawn our parking relief request. All of the
4 plans have been submitted, so if the Board were to evaluate
5 it, it would be evaluating a case based on the recent revised
6 plans and revisions, as discussed today.

7 ZC VICE-CHAIR MILLER: Okay, thank you for that
8 clarification. And I also appreciate the prospective
9 renderings that the Board requested at the close of the last
10 hearing, and they are helpful.

11 And the increase in the garden area for the use
12 of the residents there, I think, is a positive revision, as
13 well as the buffer -- the planted buffer area where the
14 surface parking for seven spaces used to be, I think is also
15 a positive revision. So, just wanted to make those comments,
16 Mr. Chairman. Thank you.

17 VICE-CHAIR HART: Thank you. Any other questions
18 from the Board? Okay. And I appreciate Commissioner -- wow,
19 this is so hard, Miller -- Commissioner Miller. Wow. We've
20 had several of the Zoning Commission here today, so --

21 I appreciate your question regarding whether or
22 not this was the actual plan, because I also had that
23 question. I thought that the applicant was submitting this
24 as a revised plan, that they were no longer pursuing the
25 original plan. But I'm glad you asked that question because

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1 that is one last question that we have. Okay --

2 MS. MOLDENHAUER: Can I just note we did file a
3 revised self-cert --

4 VICE-CHAIR HART: Yes, I ---

5 (Simultaneous speaking.)

6 MS. MOLDENHAUER: -- very clearly that we have
7 revised our relief being requested. That's at Exhibit 483B.

8 VICE-CHAIR HART: While I appreciate that, it was
9 also very helpful to ask the question so that we are clear
10 on that. So, since the Board doesn't have any questions,
11 Ms. Ferster, do you have questions for the applicant?

12 MS. FERSTER: I do. But to start out with, we do
13 move to strike the testimony relating to the response to our
14 sun study.

15 It should have been filed on December 3rd when all
16 the responses to the November 26th filings were due. So, we
17 could have had an opportunity to review that and prepare.
18 It is late now and we think it's untimely and prejudicial,
19 and we move to strike it.

20 VICE-CHAIR HART: I understand that. I actually
21 had some questions myself on the differences between the two.
22 And it's not that this testimony was the -- was -- kind of
23 put me forward -- put me over the line.

24 I had questions because there were no other
25 buildings on the shadows that you'd typically do for -- when

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1 you're doing sun study, so you understand what the particular
2 proposal is within a context.

3 And so, it was kind of hard for me to kind of see
4 that. I don't know if the Board members have any other --
5 have any comments on the party in opposition's wanting to
6 strike the testimony of the -- of at least that particular
7 portion of it.

8 MEMBER WHITE: I was more interested in their
9 feedback on why there were differences. So -- but I find
10 both documents to be very helpful and should remain in the
11 record.

12 MS. MOLDENHAUER: Vice-Chair Hart, we would
13 obviously object to the motion --- oh, sorry.

14 VICE-CHAIR HART: Yeah, hold on.

15 MEMBER JOHN: Mr. Vice-Chair, I was not sure what
16 the response date was for the sun study, and whether or not
17 the applicant made that date -- you know, submitted it on
18 time. I know we asked for the sun study, and I don't
19 remember what date we requested to have the sun study back.

20 I believe that that's what the party in opposition
21 is saying.

22 VICE-CHAIR HART: No, I think what they're saying
23 is that the -- what the -- what Ms. Dickey just testified
24 to -- and I guess the PowerPoints themselves -- were done
25 either today or this week, and they show the kind of

1 differences between the two sun studies.

2 And the party in opposition is just saying that
3 they didn't have an opportunity to have their architect here
4 or their -- you know, a way to kind of rebut that. So, I
5 think that that's the issue that they're raising.

6 MS. MOLDENHAUER: And no, we believe that
7 everything was filed timely. This obviously -- this was a
8 continued hearing, as I think, Vice-Chair Hart, you
9 articulated at the beginning.

10 This was not a situation in which there was
11 required filings, everything had to be in the record, but
12 rather, it was anticipated that we were going to be able to
13 testify and provide verbal testimony, which is exactly what
14 Ms. Dickey did, and allow -- which is why it should not be
15 stricken -- but allow opposition and their counsel to
16 question her on any clarifications or discussions, and allow
17 the Board to also question and confirm and clarify those
18 points.

19 So, we believe that a motion to strike would be
20 inappropriate here.

21 VICE-CHAIR HART: Thank you. Okay, thank you all
22 for your thoughts. I see this as the -- this particular date
23 was set so that we could have a continued hearing on the two
24 issues of the sun study and the parking.

25 I understand that you have an opposition to that,

1 Ms. Ferster, but I don't think that I will strike the
2 information that was provided. And -- do you have any other
3 questions? You have cross-examination questions for the --
4 for what testimony that was -- and information that was just
5 presented?

6 MS. FERSTER: Yes, I do, and appreciate your
7 ruling on my motion, for the record. It's good to have that
8 in the transcript.

9 Let me start with the -- Ms. Dickey. And if you
10 don't mind, if you could just tee up the beginning of your
11 slide so that I can refer to them?

12 Okay, so if you move to the revised garage plan,
13 which I believe is the next slide, I have a couple of
14 questions about that. I see that there is some additional
15 administrative offices that have been added. Can you explain
16 what's new and what's not?

17 MS. DICKEY: Sure. So, we had to bring some of
18 the administrative spaces to a different location since the
19 garage access ramp kind of ate up a chunk of the footprint.

20 So, we took the opportunity to create essentially
21 an administrative suite on this level, as well as in response
22 to some of the comments that were made last time, that the
23 generator and the laundry, which were areas of concern, would
24 be relocated to a different area where they would be less
25 objectionable. And those were the changes that we made here.

1 MS. FERSTER: And just to follow up, some of these
2 administrative offices are labeled in a way that is different
3 from the prior plans. For example, there's a beautician/spa.

4 MS. DICKEY: There was previously a beauty and
5 barber salon that was located on the -- on cellar level
6 before. So, I don't think we have substantially changed.
7 We just moved.

8 MS. FERSTER: And I appreciate that. I was
9 particularly referring to the word spa. Is that a new
10 function that's been added?

11 MS. DICKEY: Not necessarily. It would have been
12 part of the project regardless. You know, as we were making
13 these design changes, we also kind of evolved the design a
14 little bit, so just kind of made some forward progress. And
15 that was part of that progress.

16 MS. FERSTER: And so, in reconfiguring the space
17 and relabeling some of the office space and putting new
18 labels, I guess my bottom-line question is, do these changes
19 come with any staffing-level changes, including any space for
20 contractors, or full-time or part-time staff?

21 MS. DICKEY: We did not dedicate -- we didn't
22 increase the number of staff as part of this change. The
23 staff stayed the same.

24 MS. FERSTER: And by staff you refer to also part-
25 time or contract workers?

1 MR. GONZALES: There's no change to the staffing
2 pattern as originally presented.

3 MS. FERSTER: Okay. I'm going to move down
4 to -- let's see, I think the renderings. If you could, just
5 move down to the renderings.

6 MS. MOLDENHAUER: Do you know which PowerPoint?

7 MS. FERSTER: There we go -- renderings. Thank
8 you.

9 Okay, so if you could move to the next slide,
10 please. Okay, yeah, I have a question about this slide. So,
11 this slide appears to show what is a single-family house on
12 the north side of Edmunds Street.

13 And my question for you, isn't it correct --
14 because this doesn't show it -- that in fact, you know,
15 Wisconsin Avenue going north is on an upward incline. Isn't
16 that correct?

17 MS. DICKEY: Yes.

18 MS. FERSTER: So, this rendering would make it
19 appear that the house is more comparable in size than the
20 facility.

21 MS. DICKEY: The intent of the rendering was to
22 show the context across the street from the project site,
23 which we were requested to provide.

24 MS. FERSTER: Sure, but my question is just a yes
25 or no answer, if you don't mind.

1 MS. DICKEY: I'm sorry, could you repeat the
2 question?

3 MS. FERSTER: Wouldn't it seem that because it is
4 on the -- Wisconsin is an upward incline, that that single-
5 family house on the north side of Edmunds Street would appear
6 to be the same size as the facility, when in fact it is
7 smaller?

8 MS. DICKEY: I mean, I -- I would say in response
9 that this rendering depicts the condition accurately. So,
10 the way that it seems is the way that it is.

11 MS. FERSTER: Okay. If you could go to the next
12 slide, please. So this is, I think, a better visual. And
13 if you wouldn't mind, can you somehow point out -- you can
14 see that the single-family house that I was pointing out on
15 the previous rendering to the -- again, to the north side of
16 Edmunds Street -- and in this visual, would you say that that
17 accurately depicts the relative size differential between
18 that single-family house and the proposed facility?

19 MS. DICKEY: Yes.

20 MS. FERSTER: Okay. And how about the one on the
21 other side of the facility?

22 MS. DICKEY: Yes. We placed the building within
23 the context. So, this would be an accurate representation.

24 MS. FERSTER: Okay, thank you. And if you could
25 move, then, to the next rendering, please. Keep going,

1 please.

2 VICE-CHAIR HART: Are you looking for one of the
3 sun --

4 MS. FERSTER: No, I'm not. I'm actually -- you
5 know, part of your testimony you pointed out that you did not
6 believe that there was any falsification in the rendering,
7 in one of your renderings that we kind of blew up on Tab E,
8 that showed the trees to the right of the facility, and is
9 there a visual -- is that slide here?

10 Okay, thank you. Thank you. So, I just wanted
11 to point out about that slide, is that -- not that there's
12 any falsification, that was not intended. But this slide,
13 because it shows a full leafed-out tree, does obscure the
14 relative size of the single-family housing.

15 VICE-CHAIR HART: Just a yes or no would be --

16 MS. DICKEY: I'm sorry, could you repeat it one
17 more time. I apologize.

18 MS. FERSTER: Because the tree is shown in a --
19 fully-leafed, it does obscure the relative size of the
20 single-family house that's behind that tree.

21 MS. DICKEY: Yes.

22 MS. FERSTER: Okay, thank you. That was it.

23 VICE-CHAIR HART: And do you have any questions
24 regarding the sun study, itself?

25 MS. FERSTER: I do.

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1 VICE-CHAIR HART: And about how many questions do
2 you have left?

3 MS. FERSTER: You know, I did not count them. I
4 do have an --

5 VICE-CHAIR HART: Can you give me an estimate?

6 MS. FERSTER: For the sun study?

7 VICE-CHAIR HART: Yes. Are there five? Ten?
8 Twenty?

9 MS. FERSTER: Maybe four.

10 VICE-CHAIR HART: Okay.

11 MS. FERSTER: I mean, I think --

12 VICE-CHAIR HART: Thank you.

13 MS. FERSTER: -- I've been running about four
14 questions per issue, so that's probably about --

15 VICE-CHAIR HART: That's fine. I was just
16 curious, that's all.

17 MS. FERSTER: -- what I'm going to do. Yeah, I
18 didn't count them up. So, yeah, so if we could move to the
19 sun study briefly. So, you know, one of the -- if you keep
20 going to the -- when you showed the winter and summer. Okay,
21 there we go.

22 Well actually, the prior slide. That would be
23 helpful. So, in each of the proposed sun studies, the
24 slide -- the afternoon slides all show a pretty substantial
25 shadow. Isn't that correct?

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1 MS. DICKEY: I wouldn't say substantial. But
2 there is a shadow. Yes.

3 MS. FERSTER: Okay. And I see that, you know, the
4 single-family houses are depicted on that slide as having a
5 flat roof. And so, they're shown as having light, you know,
6 on top of that.

7 And my question is, isn't it correct that in fact
8 the single-family houses are not flat-roofed, they are
9 hipped-roof and would not have those flat roofs, and
10 therefore, would not show that kind of reflection of the sun
11 the way your visual does.

12 MS. DICKEY: That is true. The context was
13 modeled as an approximation, not as a duplication.

14 MS. FERSTER: Okay. And the building, again,
15 would be -- not allow any light to come between -- if there
16 were single-family houses on that light, there would be light
17 coming between the houses. Isn't that correct? And the
18 proposed building does not allow any light to come between
19 the buildings. So that's -- hence, the shadow.

20 MS. DICKEY: That is true. But the shadow doesn't
21 fall on anyone's property.

22 MS. FERSTER: Okay. It looks like it does to me.

23 VICE-CHAIR HART: And I can see that there is --
24 there are shadows that do hit the buildings. But that's
25 fine. If we -- and your next question after that,

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1 Ms. Ferster?

2 MS. FERSTER: So, my last question, I believe for
3 Ms. Dickey, has to do with the -- if you could go back to the
4 garage -- no, I'm sorry -- the first floor-level drawing in
5 the beginning of your slides?

6 MS. DICKEY: Mm-hmm.

7 MS. FERSTER: No, the ground level. I apologize.
8 The one prior to that. The one that shows -- yes, okay. So,
9 there -- if you could point out the garden area that you've
10 relocated is a little different now. Right? You noted that
11 there -- it's essentially between the loading dock and the
12 parking driveway. Is that correct?

13 MS. DICKEY: The garden stayed substantially in
14 the same location that it was previously, except the change
15 is that it's now ten feet deeper. So, it is at the center
16 of the building, as it was before. But yes, the garage ramp
17 is located to the south and the loading area is located to
18 the north.

19 MS. FERSTER: Okay. So, this outdoor area, people
20 who go there will essentially have traffic coming on both
21 sides. All three sides, actually. Isn't that correct?

22 MS. DICKEY: No --

23 MS. FERSTER: From the garage, from the loading
24 area and from the alley?

25 MS. DICKEY: No. There is a bit of a grade change

1 between the garden space and then the area outside of the
2 fence, as well as the planted buffer and walkways that are
3 located around. And so, all of those would provide a visual
4 screen to the garden space and occupants of --

5 MS. FERSTER: But no protection from fumes, or
6 anything like that. Right?

7 MS. DICKEY: The fence line that is there is
8 required by code to be at least six to six-and-a-half feet
9 tall, as well as the fact that the landscape plan would most
10 likely be developed to have a very substantial planted buffer
11 along the perimeter there.

12 So --- would feel that those plants and fence
13 would mitigate fumes.

14 MS. FERSTER: A fence would mitigate fumes, and
15 plants? That's your testimony?

16 MS. DICKEY: Yes.

17 MS. FERSTER: Okay.

18 VICE-CHAIR HART: Any other questions,
19 Ms. Ferster?

20 MS. FERSTER: Yeah. Yeah, I would like to ask
21 some questions of Mr. Andres. Okay, thank you. And I guess
22 one question is, are any of the -- are all the slides that
23 were submitted -- like the autoturn diagrams and that sort
24 of -- those slides that were submitted as part of your post-
25 hearing submission, are they on your PowerPoint?

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1 MR. ANDRES: I'm not sure if they are. They might
2 be in the back.

3 MS. FERSTER: Okay. I do have some question about
4 them, so if they are there, that would be helpful to have
5 them blown up and available. Are they present in the
6 autoturn diagrams in that slide deck?

7 MS. MOLDENHAUER: For efficiency of the Board, we
8 will provide images for the opposition for the cross-
9 examination.

10 MS. FERSTER: Appreciate it.

11 VICE-CHAIR HART: Ms. Ferster, do you -- okay.

12 MS. FERSTER: Thank you. Thank you. So --

13 MS. MOLDENHAUER: These are, just for the record.
14 These are not part of our filed PowerPoint but they're
15 actually part of the original exhibits that are in the
16 record.

17 MS. FERSTER: That's correct. Yes. So, I guess
18 one sort of a basic question, is that previously the
19 applicants had represented that the nine parking
20 spaces -- off-street parking spaces -- that were provided
21 would be sufficient for all the employees and visitors who
22 were on the site.

23 And now you have more parking spaces. And so, my
24 question -- one of my questions -- is what do you envision
25 in terms the use of these new parking spaces as between

1 visitors and staff who will be there -- short-term --
2 short -- not just visitors, but short-term contractors,
3 vendors, visitors, medical personnel, delivery -- you know,
4 anybody who's coming for a short-term, versus, you know, a
5 staff member coming for a longer shift.

6 MR. ANDRES: So, in my previous testimony, which
7 does not change, you know, what we've identified is that
8 seven spaces was what we projected for the ultimate demand
9 related to all of the users -- not just the employees, not
10 just the visitors, but all of them.

11 Given that we are in an urban condition where
12 there's ride-share opportunities, transit, and there's -- the
13 intent is for this facility to --

14 MS. FERSTER: I'm going to interrupt you, because
15 your testimony is in the record and that was not my question.

16 MR. ANDRES: Okay.

17 MS. FERSTER: So, my question is strictly related
18 to, what is the breakdown between your envisioned use of
19 these spaces between short-term parking for visitors, vendors
20 and the such, versus employees who are going to be there for
21 a whole shift?

22 MS. DICKEY: I would object. That's beyond the
23 scope of the original direct.

24 VICE-CHAIR HART: Actually, I think the question
25 is, you have the 19 spaces, who's going to use them.

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1 MR. ANDRES: We have 19 spaces. Our initial
2 testimony was that our need was seven. So, we had provided
3 two for potential visitors and that stays the same. We --
4 you know, the demand doesn't change because we've built a
5 bigger garage.

6 VICE-CHAIR HART: So, you now have more spaces
7 than you will need for your -- for the --

8 MR. ANDRES: Yes.

9 VICE-CHAIR HART: -- for the building.

10 MR. ANDRES: Absolutely.

11 VICE-CHAIR HART: And that may be somewhere around
12 12 spaces more than --

13 MR. ANDRES: Well, what we've identified was 13
14 spaces, if this facility were not located in the District and
15 in a suburban condition.

16 VICE-CHAIR HART: No, I meant 12 additional
17 spaces.

18 MR. ANDRES: Yes.

19 VICE-CHAIR HART: Because it was seven and twelve
20 ---

21 MR. ANDRES: So, for all intents and purposes we
22 believe that 12 spaces are not going to be used on a regular
23 basis.

24 VICE-CHAIR HART: Ms. Ferster.

25 MS. FERSTER: Okay. So, you know, I'm not a

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1 transportation expert, but my lay experience is, when parking
2 is available in the District of Columbia anywhere, people
3 will use it. Is your testimony that you're not going to let
4 people use -- short-term visitors use, you know, those seven
5 extra spaces?

6 MR. ANDRES: You can check the transcript. I
7 didn't say that we would restrict anybody from using them.
8 My point is very clear in that there are 19 spaces available.
9 We think only seven of them will be used.

10 MS. FERSTER: Understood. Understood.

11 VICE-CHAIR HART: Okay, so --

12 MS. FERSTER: Let's just talk about a worst-case
13 scenario, then. Just --

14 MS. MOLDENHAUER: I believe it's been asked and
15 answered.

16 VICE-CHAIR HART: So, hold on, hold on. Hold on.

17 MS. FERSTER: I'm getting --

18 VICE-CHAIR HART: Please. Please. Hold on a
19 second. The question, Ms. Ferster, that you had was, who's
20 going to use the parking spaces. The -- Mr. Andres --

21 MS. FERSTER: That's not my question.

22 VICE-CHAIR HART: That's the question that I
23 understood that you asked.

24 MS. FERSTER: No. I wanted to know the breakdown
25 between long-term --

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1 VICE-CHAIR HART: Well, he provided that
2 information for you.

3 MS. FERSTER: Okay, so that -- yes, seven --

4 VICE-CHAIR HART: He said that there were seven
5 people several times, that they were going to be using
6 these --

7 MS. FERSTER: Right. And that only two people
8 would be using -- that only two spaces would be used by
9 visitors.

10 VICE-CHAIR HART: Yes.

11 MS. FERSTER: So --

12 MR. ANDRES: That could be available for visitors.
13 Correct.

14 MS. FERSTER: Okay. And so eight spaces would be
15 empty most of the time. Okay, so my next question --

16 MEMBER JOHN: Excuse me, Mr. Vice-Chair. I --

17 VICE-CHAIR HART: So -- so --

18 MEMBER JOHN: Mr. Vice-Chair?

19 VICE-CHAIR HART: Please.

20 MEMBER JOHN: There was some mischaracterization
21 there of Mr. Andres' testimony. And I'm not sure where all
22 this is headed, but maybe it would be helpful for Mr. Andres
23 to just clearly state what he intended to say. That would
24 be my suggestion to you.

25 And then, perhaps we can move on, because the

1 applicant is no longer requesting --

2 VICE-CHAIR HART: I know.

3 MEMBER JOHN: -- parking variance. This is way
4 beyond the scope of the direct. And so, I'm not sure why
5 we're allowing it. But in the interest, and out of an
6 abundance of caution, we're allowing these questions to
7 continue.

8 MS. FERSTER: And I would just say I'm laying a
9 foundation for directly relevant questions. And that -- as
10 a lawyer, I'm supposed to lay a foundation. So, I need this
11 foundation --

12 VICE-CHAIR HART: Well, actually, what we're
13 supposed to do is to be able to provide -- you're supposed
14 to be asking question that are helping us --

15 MS. FERSTER: And to create a record.

16 VICE-CHAIR HART: Excuse me. Excuse me. No,
17 that's not -- that's for you. For me, we are here to ask --
18 to find out whether or not the applicant has provided
19 sufficient information for us to be able to either grant or
20 deny that application. That's it.

21 You're asking questions so that you can help us
22 clarify -- and to clarify information for us. I've been
23 allowing the information for the last 20 minutes, and I'm
24 kind of looking for an end to this. So, if you could provide
25 two more questions, and then we can move on to your

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1 presentation.

2 MS. FERSTER: I know I have a right to ask
3 questions.

4 VICE-CHAIR HART: Okay?

5 MS. FERSTER: I know I have a right to ask
6 questions.

7 VICE-CHAIR HART: Okay?

8 MS. FERSTER: The Board does not agree that I have
9 a right to ask questions, so I'm not going to make that
10 point. But that's --

11 VICE-CHAIR HART: So, we have -- we have two --

12 MS. MOLDENHAUER: The Board hasn't stopped you
13 from asking questions.

14 MS. FERSTER: Understood. And I'm trying --

15 VICE-CHAIR HART: Excuse me. Excuse me. Excuse
16 me. Okay. You have two more questions that you will be
17 able -- that I'll allow you to ask. And then you can move
18 on to your presentation. Thank you.

19 MS. FERSTER: All right, well, I actually had some
20 questions about the autoturn, and it might be four, and I
21 would ask your indulgence to allow me to ask about four
22 questions relating to these autoturn diagrams, because I
23 think they're very important.

24 VICE-CHAIR HART: How many other sections of --
25 how many other -- is this the --

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1 MS. FERSTER: That's it. That's it.

2 VICE-CHAIR HART: -- last topic that you're
3 looking for?

4 MS. FERSTER: That is it.

5 VICE-CHAIR HART: That's fine. Thank you.

6 MS. FERSTER: I would just like to explore these
7 au- -- because that's an important issue for my clients. So,
8 one of the biggest questions, you know, I have is why you
9 have not shown any of the autoturn diagrams for Davis Street.

10 Isn't it correct that as I see the trucks making
11 a right out of the alley, and they will be turning left on
12 Davis Street. So, why is there no autoturn diagram?

13 MR. ANDRES: So, this slide is not relevant for
14 the loading. These are the vehicles entering and exiting the
15 garage. That's why they're going down the ramp into the area
16 where the cars are parked.

17 So, this slide depicts passenger vehicles coming
18 in and out of the proposed garage units.

19 MS. FERSTER: Okay, and is there a slide -- if you
20 could move to the next slide, please. Okay, so the slide to
21 the right shows a turn a vehicle -- is that -- no, I'm sorry.
22 Yeah -- no, maybe the next slide is the one that does that.
23 Move to the next slide?

24 MR. ANDRES: That's it. Those are all the slides
25 we have.

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1 MS. FERSTER: Okay. So, in your slide, this
2 autoturn diagrams that you provided of -- you know,
3 evaluating the traffic impact of this new underground parking
4 garage and this new loading deck, you actually provided some
5 additional slides, one of which showed the turning movement
6 going west on Edmunds, to show that there was enough space
7 on Edmunds Street in order for the truck to make that turning
8 movement.

9 So, my question was, why didn't you make the --
10 provide a slide also showing that trucks could safely make
11 the turning movement on Davis Place, where trucks will also
12 be turning.

13 MR. ANDRES: So, our previous submittal has those
14 movements, coming in off of Davis and exiting off of Edmunds.
15 There is no change in that. The only difference is that the
16 loading dock has been moved from essentially the southeast
17 corner of the site to the northeast corner, which, in
18 essence, actually makes it a much better condition for the
19 neighbor to the south of us.

20 So, if anything, this loading condition is
21 improved in that it creates more separation to the
22 residential neighbor to the south. Now, the movements into
23 and off of Edmunds Street are completely the same, because
24 they're essentially accessing that same part of the alley.

25 Okay, so the -- my next question is, now that we

1 have this new parking garage that's coming, you know, having
2 potentially, in a worst-case scenario, more cars exiting from
3 the garage --

4 MS. MOLDENHAUER: Objection. Is this testimony,
5 or is this a question?

6 VICE-CHAIR HART: Okay.

7 MS. FERSTER: Can I ask my question?

8 VICE-CHAIR HART: Hold on a second. So, your
9 question is --

10 MS. FERSTER: Has not been completed.

11 VICE-CHAIR HART: I'm sorry, the what?

12 MS. FERSTER: I have not finished my question.

13 VICE-CHAIR HART: Okay, good. Finish you're your
14 question.

15 MS. FERSTER: Okay, so now, potentially --

16 VICE-CHAIR HART: Objection's --

17 MS. FERSTER: -- under a worst-case scenario, if
18 you have more cars exiting from the garage, the question that
19 I have is, have you attempted to quantify how many cars will
20 be leaving the garage and exiting on the alley? Cars or
21 vehicles?

22 MR. ANDRES: Ms. Ferster, you're asserting that
23 more vehicles will be leaving the garage. You know, my --
24 our statement is that, because we're providing more parking,
25 and -- you know, for the record, we're also committing to the

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1 TDM that was associated with the parking relief.

2 There's no parking relief, but guess what? We're
3 still committing to the TDM to make sure that our vehicles
4 are minimized. So, if you're asserting that there are more
5 vehicles coming out of that driveway, then that's your
6 assertion, not mine.

7 MS. FERSTER: Okay. Would you be willing to agree
8 to a condition to the BZA order that limits --

9 VICE-CHAIR HART: Hold on, hold on, hold on --

10 MS. FERSTER: -- the number of vehicles --

11 VICE-CHAIR HART: -- hold on, hold on.

12 MS. FERSTER: -- coming out of the garage?

13 VICE-CHAIR HART: Ms. Ferster -- the BZL are the
14 ones that are asking the questions whether or not there's a
15 condition that we will be providing or not providing.

16 MS. FERSTER: Understood.

17 VICE-CHAIR HART: So, we'll get to that.

18 MS. FERSTER: Understood, but typically --

19 VICE-CHAIR HART: So, if you could ask --

20 MS. FERSTER: -- we would propose conditions.

21 VICE-CHAIR HART: Excuse me. Excuse me. If you
22 could ask questions pertaining to the testimony that was
23 provided today.

24 MS. FERSTER: Are you going to overrule my
25 question?

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1 VICE-CHAIR HART: I'm not overruling anything.

2 MS. FERSTER: I would ask --

3 VICE-CHAIR HART: I'm asking --

4 MS. FERSTER: -- asking you --

5 VICE-CHAIR HART: -- I'm asking you to ask your
6 next question. That's what I ask you to do.

7 MS. FERSTER: If my question is not --

8 VICE-CHAIR HART: I'm asking you to ask your next
9 question, please.

10 MS. FERSTER: -- going to be overruled, I would
11 ask him to answer the question.

12 VICE-CHAIR HART: Are you finished with your
13 questions? Because I'm asking you to ask your next question.

14 MS. FERSTER: Then I state -- I re-ask my
15 question.

16 VICE-CHAIR HART: I'm just saying that -- we
17 are -- you're asking whether or not they will approve on
18 something that the Board has to approve. They do not have
19 to approve it, we do. We provide -- we are the ones that
20 give conditions for whatever the permits -- the BZA orders
21 are.

22 They're BZA orders. So, you can ask them, but
23 they're not the ones that are actually doing that.

24 MS. FERSTER: Understood. I understand that. I
25 would like to ask him that question --

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1 VICE-CHAIR HART: So, you're not --

2 MS. FERSTER: -- would he theoret- --

3 VICE-CHAIR HART: No, no. What I'm saying is, we
4 are the ones that will make sure that -- if there are or need
5 to be any conditions. That's it.

6 MS. FERSTER: Okay. Just for the record, I object
7 to the fact that I wasn't allowed to ask my question. Okay,
8 so the alley -- how many feet wide is the alley?

9 MR. ANDRES: I believe it varies. I believe some
10 measurements are in the 12-foot range.

11 MS. FERSTER: Okay. And so, is that sufficient --
12 this is a two-way alley. Isn't that correct?

13 MR. ANDRES: Yes, it is, and it's consistent with
14 other alleys within the District?

15 MS. FERSTER: So, is that width -- that 12-foot
16 width sufficient to allow a truck -- two trucks or a truck
17 and another vehicle to pass each other?

18 MR. ANDRES: It's the same condition as two
19 neighbors on a street coming down the alley.

20 MS. FERSTER: So, it's not --

21 VICE-CHAIR HART: So, this is -- Ms. Ferster, this
22 is your last question? Because you're asking questions, and
23 then asking like four other questions after that. I'm trying
24 to get to your presentation. Okay? So, if you'd like to
25 make points, you can make them during your presentation.

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1 MS. MOLDENHAUER: I would just like to note this
2 beyond the scope of our direct testimony.

3 VICE-CHAIR HART: I understand that.

4 MS. FERSTER: Yeah, I have maybe one more question
5 that I will ask. I have a number of others, but understood
6 that your --

7 VICE-CHAIR HART: You may make a presentation.
8 You have an opportunity to do that. So, I'm giving that
9 opportunity to do that. And you can make up any -- you can
10 make any point that you'd like to make at that time. I'm
11 asking you to provide information that for us, as we are
12 having to deliberate on this at some point --

13 MS. FERSTER: And I understand you're worried
14 about time. So, for the record I will say we actually only
15 came prepared to make a closing, not a presentation. So, you
16 know, we don't have a presentation to make.

17 VICE-CHAIR HART: Okay.

18 MS. FERSTER: So -- so, I just want to just finish
19 up with these traffic movements here. So, two cars -- two
20 vehicles can't pass each other. Correct? They would have
21 to stop and wait for one other vehicle to go by?

22 MR. ANDRES: As is the situation today, yes --

23 MS. FERSTER: That's correct.

24 MR. ANDRES: --even with that development

25 MS. FERSTER: But when your proposed facility goes

1 online, there will be more vehicles than there are today,
2 isn't that correct?

3 MR. ANDRES: Yes, that's correct.

4 MS. FERSTER: And have you quantified the vehicles
5 and the number that -- the vehicle load on the alley as a
6 result of this new --

7 MS. MOLDENHAUER: Can I object?

8 VICE-CHAIR HART: Hold on -- hold on a second.

9 MS. FERSTER: -- parking?

10 MS. MOLDENHAUER: How does this have to do with --

11 VICE-CHAIR HART: Hold up the objection, please.
12 Please let her ask the question so we can finish the line of
13 questioning. Ms. Ferster.

14 MS. FERSTER: Have you quantified what the total
15 vehicle load on the alley will be after the parking garage
16 is built and after the facility is constructed, including all
17 dropoffs, deliveries, etc., and the current traffic on the
18 alley?

19 MS. MOLDENHAUER: And I will note my objection to
20 this question, because it is beyond the scope, one, of our
21 direct, and two, of the purpose of this limited testimony.
22 That question could have been asked during the primary
23 hearing --

24 VICE-CHAIR HART: I understand that.

25 MS. MOLDENHAUER: -- in regards to the overall

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1 project. Nothing has changed, I think, as has been testified
2 to by Mr. Andres.

3 MS. FERSTER: Well, the -- I mean, the garage --

4 VICE-CHAIR HART: Hold on -- hold on -- hold on
5 a second, please. Mr. Andres, if you could provide the
6 information.

7 MR. ANDRES: Yes. So, previously we identified
8 that there's -- with the nine spaces in the previous
9 application, that seven of them would be -- that we would
10 anticipate seven of them would be employee-related and the
11 other two related to visitors.

12 So, if you take those nine and say that, you know,
13 during a, you know, peak shift change in the morning, that
14 you would have roughly nine vehicles. Now, that can
15 fluctuate throughout the course of the day. That could
16 fluctuate depending on when the delivery arrives. So, you
17 know, that's what my answer is.

18 VICE-CHAIR HART: Thank you. Okay, so we are --
19 I think we've gotten to the last question, Ms. Ferster?
20 Okay.

21 MS. FERSTER: That's my last question.

22 VICE-CHAIR HART: So, for -- you said you are not
23 making a presentation today?

24 MS. FERSTER: No, we're not.

25 VICE-CHAIR HART: Okay. So, you are going to

1 be -- I will provide you a time to give your closing, and
2 then I'll let the applicant give their closing. And if we
3 have any -- actually, does the Board have any questions at
4 this point?

5 ZC VICE-CHAIR MILLER: No, I don't have any
6 questions. I just do want to give the Office of Planning an
7 opportunity to supplement -- to say something about its
8 supplemental report. They can just stand on the record, but
9 I just -- if they're here --

10 VICE-CHAIR HART: Thanks.

11 ZC VICE-CHAIR MILLER: -- and have a supplemental
12 report --

13 VICE-CHAIR HART: Thank you --

14 ZC VICE-CHAIR MILLER: -- which is helpful.

15 VICE-CHAIR HART: -- I hadn't -- I'm trying to get
16 through this portion of it and hadn't even looked over to my
17 right. I apologize that --

18 MS. MOLDENHAUER: Before that starts, could I just
19 make a comment?

20 VICE-CHAIR HART: Yes.

21 MS. MOLDENHAUER: That the Board is giving the
22 opposition 15 minutes to provide testimony and they have
23 refused to present, or are not presenting. Is that clear?
24 I just --

25 VICE-CHAIR HART: That's -- that is clear. That

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1 was what we stated.

2 MS. FERSTER: Well, because we have a closing.

3 VICE-CHAIR HART: Excuse me. Excuse me. I didn't
4 ask. I just was trying to get to the Office of Planning.
5 Thank you. And because we get feedback, can you all turn off
6 your mics, please. Thank you -- besides the Office of
7 Planning.

8 MS. ELLIOTT: Good morning, Mr. Vice-Chair,
9 members of the Board. I'm Brandice Elliott, representing the
10 Office of Planning, and I appreciate the recognition and head
11 nods -- bring me out of the shadow here.

12 The Office of Planning will stand on the record
13 of its reports. We did file a supplemental report last
14 Friday, indicat- -- just, you know, verifying that the
15 applicant has now dropped the special exception relief for
16 parking. And so, the analysis of our -- of the special
17 exception relief for the continuing care retirement facility
18 essentially stands.

19 There were a couple of items noted in our
20 report -- that they're part of the criteria for the
21 continuing care retirement facility that may have been
22 impacted by the addition of the garage.

23 And so, we tried to put something in the record
24 to explain, you know, how the addition of the garage -- with
25 the addition of the garage, we can continue to support it.

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1 So, if there are any questions about that, I'm
2 happy to address them.

3 VICE-CHAIR HART: Does the Board have any
4 questions?

5 MEMBER WHITE: Yes. So, with the addition of the
6 garage, are there any negative, adverse impacts that you've
7 identified? Or is it just basically the same recommendation?

8 MS. ELLIOTT: Well, it's the same recommendation
9 with some tweaks. What we -- some small tweaks. What we
10 noted in our report is that with the garage, most of what
11 might be considered an objectionable condition would actually
12 occur below grade.

13 So, you know, the sound from vehicles and the
14 traffic, that -- a lot of that would actually happen -- that
15 the parking garage, and because it is below grade, would
16 actually result in less noise and traffic on the property,
17 and should be less of a nuisance to the neighbors. I think
18 that was the largest change to the plans. Thank you.

19 VICE-CHAIR HART: Any other questions from the
20 Board? Does the applicant have any questions for the Office
21 of Planning? Sorry.

22 MEMBER JOHN: I have a point of clarification for
23 Ms. Andres. I know I'm out of --

24 (Laughter).

25 MEMBER WHITE: No, no, no.

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1 VICE-CHAIR HART: Okay. Hold on, hold on. Thank
2 you very much.

3 MEMBER WHITE: I think it's important that we --
4 it's important that we do it, because the Office of Planning
5 is saying that a total of 17 parking spaces would have been
6 required based on the number of units in the building, and
7 that you're providing two more than would be required.

8 I think there was a little lack of clarification
9 between the seven parking spaces and the nine. You asked for
10 relief to provide nine parking spaces. So, the intent was
11 always to meet the regula- -- well, the regulation required
12 17 parking spaces to begin with, which was based on the
13 number of units.

14 You're providing two parking spaces more than the
15 regulations require.

16 MR. ANDRES: That is correct.

17 MEMBER WHITE: Okay. Thank you.

18 VICE-CHAIR HART: Does the applicant have any
19 questions for the Office of Planning?

20 MS. MOLDENHAUER: I was just going to ask the
21 Office of Planning -- I think a lot of the questions have
22 been on the CCRC conditions for the special exception, and
23 some of the questions on sufficiency, that -- the section
24 that actually says, you know, does the project provide
25 sufficient parking.

1 Is it Office of Planning's opinion that we satisfy
2 that condition?

3 MS. ELLIOTT: The project is complying with
4 parking requirements, so yes, it is providing sufficient
5 parking.

6 MS. MOLDENHAUER: Thank you.

7 MS. ELLIOTT: In this case.

8 MS. MOLDENHAUER: No other questions.

9 VICE-CHAIR HART: Does the opposition party have
10 any questions for the Office of Planning?

11 MS. FERSTER: Yeah, I just have one. So, your
12 presumption is that 17 spaces is sufficient off-street
13 parking, and that is based on the fact that that would be
14 sufficient parking for an apartment building having the same
15 number of units? Is that correct?

16 MS. ELLIOTT: So, the regulations -- right. This
17 is a little different because, you know, there are dementia
18 patients that aren't expected to actually be driving. So,
19 I think we rely on the expertise that DDOT has provided. And
20 they have indicated that there is sufficient parking onsite,
21 and so, we're in line with their analysis.

22 MS. FERSTER: Okay. So, you're testimony that
23 there's sufficient parking is based on DDOT's, as opposed to
24 the -- you know, the standard that would apply to apartment
25 buildings? Is that your -- just to clarify?

1 MS. ELLIOTT: Well, in this case they're providing
2 sufficient parking, and DDOT has indicated that they are
3 providing sufficient parking. So, they're complying with the
4 regulations --

5 MS. FERSTER: Uh-huh.

6 MS. ELLIOTT: -- and we have the nod from DDOT
7 saying that there's enough parking. So, both parts are a
8 part of our analysis.

9 MS. FERSTER: Yeah, just one clarification --

10 MS. ELLIOTT: Sure.

11 MS. FERSTER: -- and then I'm done. So, when you
12 say they're complying with the regulations, are you talking
13 about the residential -- this parking standard for
14 residences? Is that --

15 MS. ELLIOTT: Yes.

16 MS. FERSTER: Okay.

17 (Off microphone comments.)

18 VICE-CHAIR HART: So, are there any other
19 questions?

20 MS. FERSTER: No, that's it.

21 VICE-CHAIR HART: Thank you. So, we're going to
22 be moving to the conclusion statements. Ms. Ferster, you
23 will have -- yeah, I know, I was just thinking of time -- 15
24 minutes? Ten minutes?

25 MS. FERSTER: Is that what the applicant's taking?

1 We would like equal time.

2 VICE-CHAIR HART: You will have equal time. I
3 just want to know --

4 MS. MOLDENHAUER: You will go first.

5 VICE-CHAIR HART: I just want to know how much
6 time you will need.

7 MS. MOLDENHAUER: I will meet whatever time you
8 go.

9 VICE-CHAIR HART: And I'm saying that it should
10 be no more than 15 minutes.

11 MS. FERSTER: And you want the applicant -- you
12 want me to go first?

13 VICE-CHAIR HART: Yes.

14 MS. FERSTER: Okay. We're making up the rules.
15 So, appreciate the opportunity to make a closing statement.
16 I'd just like to make a couple of procedural points to begin
17 with.

18 You know, one is for the record, and I do need to
19 state these things for the record, understanding that cross-
20 examination and testimony is also for the Board's benefit,
21 because they are making a decision.

22 But I do need to make objections for the record
23 and have them ruled on, because your decisions may be
24 appealed and it creates unclarity. So, I do apologize if I
25 seem to be persistent on insisting upon those, but that is

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1 my job as a lawyer.

2 So, you know, moving into -- and again, I will
3 reiterate our point that, you know, this application has been
4 revised pretty substantially. And so, we do feel that it's
5 appropriate to have proposed findings of fact and conclusions
6 of law, because there's only so much you can do with a
7 transcript of this size and the amount of written testimony
8 of this size, to pull together the relevant findings of fact
9 and connect them to the conclusions of law to provide, you
10 know, a good record of your decision.

11 With that said, we are also -- and we still would
12 like that. So, just turning to a brief closing statement,
13 you know, the one issue -- you know, under the standard in
14 the regulations, you know, we want to reiterate that the
15 applicants have the full burden. Okay?

16 This is the applicant's burden. So, despite what
17 Ms. Moldenhauer seems to be talking about our burden, we do
18 not have the burden.

19 Under the regulations, we could come and say
20 nothing, and they still have the burden of demonstrating that
21 there are no objectionable impacts under the regulations, and
22 that there is sufficient parking.

23 So, there are a couple of areas where I think
24 they've clearly failed to provide their burden. One is
25 noise. They have not provided any testimony relevant to the

1 noise issues.

2 We were -- many of us were at the sunrise hearing.
3 There was discussion about ambulances and other sort of
4 related noise -- vehicles, trucks, turning in and out of the
5 neighborhood, etc. -- and there has been no -- you know,
6 noise -- substantial noise testimony on the part of the
7 applicant, whereas the neighbors have indicated that they are
8 very concerned about the noise from the vehicles, as well as,
9 you know, emergency vehicles.

10 So, that's one area where they haven't met their
11 burden of proof. But I think that a really interesting legal
12 question for you, as the Board, and for the Zoning
13 Commission, is the question of the sufficiency of off-street
14 parking.

15 And the -- you know, it seems quite clear that the
16 applicants believe that if they provide 17 spaces because an
17 apartment building is required to have 17 spaces, that that's
18 sufficient off-street parking.

19 And we submit that, you know, there's no basis for
20 that assumption. The Zoning Commission adopted a different
21 standard for a CCRC based on the fact that, unlike an
22 apartment building, there will be a lot of very different
23 vehicular traffic coming in and out of the facility.

24 And even if the residences will not -- the
25 residents will not have vehicles, there will be so many other

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1 people coming in, in addition to more staff, in an apartment
2 building, obviously.

3 And so many more emergency vehicles, doctors,
4 personal aides, beauticians, people making deliveries, and
5 providing other important services to the people at the CCRC
6 who will be not able to really go any -- many of them will
7 not be able to go anywhere for those.

8 And they will have visitors and some of them will
9 come with vehicles. And their visitors may not be family
10 members. Their visitors may be, you know, people who are
11 providing services to the facilities. And I don't think the
12 applicant has done an adequate job at all of quantifying, you
13 know, other than the fact that they believe the number of
14 employees they will have, of the number of visitors. That's
15 a big imponderable.

16 And so, one of the problems is that this
17 assumption -- this regulatory assumption that 17 parking
18 spaces -- because it's adequate for an apartment building,
19 is adequate for a CCRC -- I don't think is substantiated on
20 the record, and I don't think the applicant has satisfied
21 their burden of proof.

22 And I refer you to the testimony of Dr. Billig,
23 you know, who I think very powerfully told the likely number
24 of visitors -- private aides, delivery persons,
25 contractors -- to provide ancillary services for residents --

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1 activities for the residents, people taking the residents to
2 their medical appointments and from their medical
3 appointments, etc. -- who would likely come to and from the
4 facility.

5 And the applicant's statement, two visitors --
6 only two visitors -- in addition to their full-time staff is,
7 I just think, clearly not credible. At the minimum, they're
8 going to be going to doctor's appointments. There's no
9 onsite medical facility here.

10 And the idea that 34 senior citizens with memory
11 care issues, and probably a host of other medical problems,
12 are not coming and going to doctors, is just not credible.

13 They haven't addressed the issues raised by the
14 neighbors in terms of other objectionable impacts in addition
15 to parking.

16 And then, I would also say that there's a
17 reasonable solution to this problem. And the big issue is --
18 you know, that absolutely not been addressed here -- is not
19 just -- and again, I will say I'm going to assume for the
20 record that more than nine cars will be coming in and out of
21 that facility per day.

22 There's going to be shift changes and there -- I
23 believe there are likely -- unless the Board chooses to
24 condition the parking so that they can't use those eight
25 extra spaces that they're providing -- they will be used and

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1 people will be coming in and out of that garage.

2 And they will be coming on an alley. There was
3 compelling testimony that has not been rebutted, that
4 children play in that alley, that all the residents who
5 reside on Wisconsin Avenue and on 36th Place -- this alley's
6 the only way they access their off-street parking spaces.

7 So, there is plenty of local use and kid use.
8 They got their bicycles, they got scooters that come out of
9 the garage. And the applicant has declined to quantify the
10 additional load of traffic going on this alley. But we
11 believe it's going to be substantial, and there's going to
12 be serious safety issues.

13 And there's a solution. There's a reasonable
14 solution to this problem, and that's what our expert, Joe
15 Mehra, said. Why don't you put the access on Wisconsin
16 Avenue? Why not? You know, every other major facility up
17 Wisconsin Avenue -- Temple Micah, St. Albans -- they have
18 major access points on Wisconsin Avenue. Glover Park Hotel,
19 you know, just a few yards south of Wisconsin Avenue, also
20 has their major access point on Wisconsin Avenue.

21 Why isn't this facility having their access on
22 Wisconsin Avenue, and why do the residents on this narrow
23 alley, which the applicant's expert has said is basically the
24 equivalent of only 12, 13 feet wide, why are the neighbors
25 bearing the brunt of what is going to be, you know, noise,

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1 fumes and, you know, safety problems, when there's an obvious
2 solution.

3 DDOT hasn't appeared anywhere here, so we don't
4 know what their position is. But it seems like -- and the
5 applicant hasn't addressed it. Our expert said, why not put
6 it on Wisconsin Avenue?

7 Silence.

8 Then, the -- you know, then there's the
9 objectionable impacts that the applicants have also not
10 addressed, and that, you know, is the loss of natural
11 light -- the light pollution, the air pollution, of these
12 vehicles entering and exiting on this garage, and of course,
13 the noise.

14 And again, the applicant has the burden of proof
15 here, and their failure to address these issues, you know,
16 really does compel the Board to deny the application.

17 And then, there's the whole other issue of the
18 construction of the facility. If this Board is inclined to
19 approve the special exception, there will be construction
20 issues. Why hasn't the applicant, you know, developed a
21 proposed construction mitigation plan that many developers,
22 you know, do propose and provide to protect the residents
23 from the impacts of construction.

24 They haven't done that, and we think that should
25 be a condition if the Board chooses to approve the condition.

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1 We think that they applicant should be directed
2 to go to the neighbors in the neighborhood -- including
3 MAHCA, but also the ANC -- and develop a construction
4 mitigation plan, and return to the Board with some proposed
5 conditions, so that these construction-related impacts could
6 develop and those conditions could be appended to any Board
7 order approving the special exception.

8 And so, that leads me to the question of other
9 conditions. And understood that this Board is the one who
10 decides the special exception, and who decides what
11 conditions will be appended to the order if it's approved.

12 But there's a long history of this Board
13 considering neighbors' requests for conditions. And we would
14 ask that this Board consider our request. If you are
15 inclined to approve the condition -- this is the sort of
16 thing that we could do in more detail in proposed findings
17 of fact and conclusions of law -- but I'm going to sketch out
18 the sorts of conditions we would urge this Board to approve
19 and append to the order, if, in fact, you are inclined to
20 approve the special exception.

21 One issue, of course, is an issue that we have
22 raised in our testimony. And that is, we do have serious
23 concerns about the long-term financial viability of this
24 facility.

25 || We don't think that the app-- even though the

1 applicants believe that they have somebody who's going to
2 provide financing for the construction of the facility, we
3 continue to find the -- you know, we find more credible our
4 witnesses' testimony that a facility of this size cannot
5 operate on a quality basis -- in particular, provide the kind
6 of quality that their residents deserve -- with only 34
7 units.

8 Economies of scale, as Sunrise testified, require
9 a much larger facility, and this facility doesn't have that.
10 So what do you do? When they build the facility -- because
11 somebody's giving them a loan -- what do you do when they
12 come back, you know, a couple of years later and they say,
13 we got this building, but we can't really use it for CCRC.
14 You know, we'd like to turn it into something else.

15 We believe that a condition should be imposed that
16 holds the applicant to their testimony that they're only
17 seeking a CCRC and nothing else, and to bar them from coming
18 back in some kind of condition with a bait-and-switch type
19 of position for any other use other than a matter-of-right
20 use, or CCRC.

21 We also think the design of the facility doesn't
22 fit the neighborhood aesthetically, and, you know, we think
23 that that's an issue, that there should be some -- you know,
24 more discussion on that.

25 We definitely think that a condition should be

1 attached asking the applicants to explore a curb cut on
2 Wisconsin Avenue as an alternative place to allow vehicles
3 to enter and exit the facility, to protect the neighbors from
4 the load.

5 We have not heard anything from DDOT on whether
6 or not that's feasible. And the applicant's provided no
7 rebuttal of our testimony, you know, when our expert
8 suggested that.

9 In terms of traffic mitigation, you know, we
10 understand that the residents, you know, will not be driving,
11 likely because of their -- you know, their infirmities. But
12 we think it makes sense to ensure that there would be no --
13 that that assumption is honored by prohibiting residential
14 parking permits and visitor parking permits to be issued to
15 the facility, which, you know, not -- often is requested as
16 a part of, you know, a order.

17 We think the facility ought to be designed to LEED
18 standards, quite frankly, and that would be an appropriate
19 condition, as well.

20 And, you know, there are others that, if we are --
21 you know, and I see I'm out of time, so -- there are other
22 conditions that, you know, we would want to suggest in a
23 proposed -- if we were allowed proposed findings of fact and
24 conclusions of law. And -- yeah.

25 So, in closing, I would say that, again, we do

1 urge you to deny the application. We do not believe that
2 they've met their burden in any way, shape or form.

3 But we do believe that proposed findings of fact
4 and conclusions of law will allow that decision to be made
5 in a more careful, deliberative manner, and that there should
6 be conditions that address what I think are some very
7 substantial concerns by the neighbors that have not been --
8 that have been denied and, you know, rebutted, but not
9 addressed.

10 VICE-CHAIR HART: Thank you. We now move to
11 Ms. Moldenhauer. You're waiting for the time to go again?
12 Thank you, Mr. Moy.

13 MS. MOLDENHAUER: Good evening, members of the
14 Board. We are here today after a full and complete hearing,
15 full and complete transcript and record, and we believe that
16 the record fully shows that the applicant -- MED -- has
17 satisfied the special exception relief for a continuing care
18 retirement community in the R-1-B zone.

19 I will just start off by briefly addressing some
20 of the preliminary matters. In regards to cross-examination,
21 we believe that the Board has allowed an abundance of
22 opportunities for cross-examination and for questioning, and
23 that the burden is with the applicant.

24 When the applicant satisfies that burden -- as
25 here the Office of Planning has concurred and the Board has

1 not yet evaluated -- but legally, if the applicant satisfies
2 the burden, the burden then switches to the opposition party
3 to present evidence, which then might switch the burden back
4 to us.

5 And so, we believe that obviously we have
6 satisfied the burden, but that the opposition party does have
7 a burden, as well, to potentially show substantial adverse
8 impacts, which then might potentially switch the burden back
9 to our side. But I will go back into our closing argument.

10 MED has provided the Board with testimony and
11 evidence that the proposed memory care facility has been
12 thoughtfully designed and developed to serve a vulnerable
13 population and a growing need in the District, and also
14 across the country.

15 Dr. Keller testified during the November hearing,
16 that this project and the proposed use will be a place to
17 hold individuals in the best nurturing type of environment
18 possible when no longer able to be safely within their homes.

19 After the November hearing, MED revised the plans
20 to incorporate a parking garage with 19 parking spaces. The
21 parking garage now allows MED to meet and exceed the zoning
22 requirements, where the zoning requirements were 17, and they
23 are providing 19, thus withdrawing the area of relief, and
24 only leaving one area of relief, which is the special
25 exception use here.

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1 As the prior iteration of the project, the design
2 met the special exceptions standard, as found by Office of
3 Planning and by DDOT, in that the requirement -- or the need
4 or sufficiency -- was only for seven.

5 And we still believe that that is still the same
6 sufficiency or need. However, now we are also satisfying the
7 legal zoning requirement.

8 The evidence and testimony in the record
9 demonstrates that CCRC use is in harmony with the purpose and
10 intent of the zoning regulations.

11 The CCRC use is a residential use -- these are
12 individuals and people that are staying here, not in
13 institutional use that will be provided at the building. And
14 it is designed to comply with of the physical design
15 standards applicable in the R1B zone.

16 Ms. Dickey -- the project's architect and
17 expert -- testified during the November hearing that the
18 project was designed to look and feel like a home, not an
19 institutional building.

20 Indeed, the architectural team at Perkins Eastman
21 has studied many of the nearby buildings -- including the
22 single-family homes -- in developing a design that is
23 cohesive and harmonious with the nearby area.

24 In the testimony that -- given that the local
25 homes do not have one singular design character, as is found

1 in some other areas of the city, that Ms. Dickey then stated
2 that she found a design inspiration from the other art deco
3 buildings along Wisconsin Avenue, resulting in a design that
4 is one that reflects its location on Wisconsin Avenue, while
5 remaining harmonious with the residential neighborhood and
6 community to its east.

7 Mr. Varga testified that this proposed use is in
8 harmony with the zoning regulations and meets the dual goals
9 of the District's comprehensive plan that encourages infill
10 development on vacant lots on a major arterial street, as
11 well as providing housing for elderly in the District.

12 The Board has repeatedly found similar community
13 residential facilities are a harmonious use with the
14 residential R-zone. For example, in BZA case 18791, the
15 Board found that housing for a mentally-ill was in harmony
16 with the R-1-B zone. In that case, the Board's order stated,
17 and I quote, R-1 District is intended to serve as a quiet
18 residential area. The Board finds that the operation of a
19 community residential facility as a permanent housing for
20 individuals with mental illnesses issues, fits within that
21 stated purpose.

22 We find that this proposed use is very similar.
23 While it is not mentally ill, it is individuals that are
24 obviously struggling from dementia. But they are residents,
25 as is then identified and permitted by the CCRC and by the

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1 special exception use.

2 This Board, in many other cases, has found that
3 either independent living facilities or retirement facilities
4 such as 17055, 17144, 181898, and in other CDCs -- child
5 development centers -- 18148, 18392 and 181400, only to name
6 a few, have all been deemed to be appropriate.

7 And those are cases in which you have either
8 numerous children or numerous residents living in a
9 neighborhood where you have single-family homes, and then
10 having both employees, and either children, or whether it's
11 a CDC or whether it's a senior living facility, co-living in
12 that same environment. And those are multiple cases in which
13 the Board has found and granted those approvals.

14 We would ask the Board find that same be true
15 here, and grant this approval -- that a memory care facility
16 is in harmony with the purpose and intent of the zoning
17 regulations in the R-1-B zone.

18 Now, to speak to the adverse effect -- aspect and
19 element of the special exception test, both in terms of the
20 general standard and the use-specific conditions.

21 MED has provided extensive evidence that the
22 building and its operation have been designed to limit any
23 adverse impact on the neighboring properties. The property
24 is a corner lot that only directly abuts one single-family
25 home on Wisconsin Avenue.

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The proposed building has been designed to have large and oversized side yards and rear yards, beyond the zoning requirements. The revised garden area and new, larger buffering space will also then limit any adverse noise or privacy concerns.

6 Mr. Gonzales testified there were questions raised
7 about the ambulances and noise impacts. One, Mr. Gonzales
8 did testify at the November hearing that ambulances would be
9 picked up off of Wisconsin Avenue, not impacting noise, then,
10 to the residential community.

11 And Mr. Varga testified concerning the arterial
12 nature and the number of trips currently generated along
13 Wisconsin Avenue, meaning that obviously this building will
14 be buffering those homes, potentially making the condition
15 better, rather than worse. And I think that that is a very
16 common, or clearly indicative aspect where a building now
17 will provide a buffering from potentially the existing level
18 of noise, since it is a vacant lot and that is part of the
19 record, as well as, potentially, ambulances that may come to
20 the front of the building along Wisconsin Avenue.

21 MED's sun study demonstrates that the structure
22 will not unduly impact light and air in the surrounding
23 neighborhood. Given the structure in trees on the alley,
24 this impact will be limited even further.

25 || To the extent Ms. Dickey's testimony that Dana

1 LePere's sun study, presented as Exhibit 484, is misleading
2 and fails to take into account their surroundings, I would
3 note for the record that Ms. LePere is in the audience today,
4 and if they so choose, could have come forward to actually
5 provide testimony during the 15 minutes that the Board
6 provided, to articulate how that sun study was given.

7 Again, the burden was with them, as an opposition
8 party, to potentially, you know, rebut or improve upon any
9 questions that were raised about the sun study. That was not
10 done, and we believe that the testimony provided by
11 Ms. Dickey is very clear, showing and comparing the
12 accuracies of the sun studies that the applicant has
13 presented.

14 Mr. Gonzales' wealth of experience on operations
15 of memory care and assisted living programs will contribute
16 to a safe and secure facility, with operations that serve the
17 residences, while being respectful to the surrounding
18 neighborhoods.

19 Both Mr. Gonzales and Ms. Dickey testified
20 regarding the self-contained nature of the memory care
21 program. Mr. Gonzales also testified extensively on the
22 staffing of the facility, which would be staggered to avoid
23 large amounts of staffing entering or exiting the property
24 at any given time.

25 This information was then bolstered by testimony

1 by Dr. Keller. Mr. Andres provided expert testimony as to
2 the traffic and loading. Both the parking and loading
3 arrangements is supported by DDOT and OP.

4 MED is providing an additional amount of parking
5 for the use of staff and visitors based on the record, and
6 specifically, based on the need. The record clearly reflects
7 that there will be a limited number of visitors at the memory
8 care facility, and many staff members will take public
9 transportation.

10 Obviously, also given the fact that we have
11 provided the transportation demand management program that
12 encourages, and that all of those proffers presented by
13 Mr. Gonzales at the original hearing, stay true. That is
14 still part of the record in regards to the opportunity to try
15 to encourage those staff members to take non-vehicular means.
16 And, as part of the record also, that there is a bus stop
17 literally located, and could not be more convenient, right
18 in front of the building.

19 Mr. Andres testified that DDOT was very clear at
20 the beginning that the parking and loading must be accessed
21 from the alley. And that is part of the record, in regards
22 to responses to opposition's comments.

23 MED has incorporated a loading area, even though
24 loading is not required by the zoning regulations.
25 Gorove/Slade provided turning diagrams to illustrate that a

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1 30-foot truck could pull into and out of the loading area.

2 There's also testimony that this is currently --
3 the alley is currently being utilized by the hotel shown and
4 provided in the transcript. So, the ability to access and
5 utilize this is part of the record.

6 The Board has also heard testimony that the
7 loading needs of the site are relatively minimum, and that
8 no more than two food deliveries would occur per week.
9 Nevertheless, MED has proffered both traffic demand
10 management and loading demand management to minimize any
11 disruption along the alley.

12 We've also had in the record, testimony that the
13 driveway meets DDOT requirements, that the DDOT design
14 requirement and engineering manual prohibit access on a
15 public street if you have access off of an alley. And that
16 was testified to by Mr. Andres.

17 All of these elements should lead the Board to
18 conclude that the CCR use -- the special exception request
19 that we're asking -- will not adversely affect or create
20 objectionable conditions for the neighboring property.

21 In general, the special exception standard MED has
22 met its burden for this proposed condition. Some of the
23 conditions are straightforward, but I would like to just
24 mention four of the specific conditions under the special
25 exception requirement regarding the sufficiency of off-street

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1 parking.

2 Despite MED now exceeding the number of parking
3 needs, the opposition still claims that the off-street
4 parking is not sufficient. Nine spaces are sufficient to
5 meet the needs as previously testified to.

6 Mr. Andres testified that based on the industry
7 standard and the transportation mode split, and the actual
8 demand for the parking at the facility, would only be seven
9 spaces.

10 Even so, based on testimony, the fact that the
11 reduced practical demand for parking, such as that no
12 residents will have personal cars at the adequacies of supply
13 of on-street parking, and that good access to public
14 transportation and the availability of nearby private
15 parking, exceed the mode split for employees and the
16 applicable TDM plan.

17 Opposition wishes for the Board to apply an
18 incorrect standard that ignores the plain language of the
19 regulations. To satisfy this condition, MED must simply
20 prove that there is sufficient parking.

21 In other words, as defined by Webster's
22 Dictionary, parking must, quote, be enough to meet the needs,
23 unquote, of the project.

24 The applicant meets this burden showing that as
25 few as nine would be sufficient to meet the needs of the

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1 employees, residents and visitors, and that certainly 17
2 would go above and beyond what -- the sufficient conditions.

3 Furthermore, the opposition has not stated that
4 they believe -- what they believe would be sufficient. Their
5 traffic expert has not stated that they have a specific
6 number that they would believe, which would be sufficient,
7 but simply stating that, you know, what we are providing is
8 not.

9 Finally, much of the information you've heard
10 about opposition parties' concerns are not germane to the
11 special exception standard, including viability of a memory
12 care facility.

13 These issues are not within the purview of the
14 Board and do not speak directly to the special exception
15 standard. The Board should disregard such issues as outside
16 the scope, even though if they do, the Board does have
17 sufficient testimony from expert witnesses -- such as
18 Mr. Gonzales, Dr. Keller and Mr. Gale -- testifying that this
19 project size and type is a very viable, and will actually
20 flourish, Dr. Keller testified, as the growing means of
21 memory care, both nationally and locally.

22 More importantly, that Dr. Keller testified that
23 based on his extensive experience of memory care, that the
24 program will most likely thrive and have a wait list before
25 it even opens.

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1 Mr. Gale testified to the ability of the
2 financial -- to be able to finance this specific memory care
3 facility, based on his experience in financing and
4 underwriting.

5 And his experience, we believe, is much more
6 substantial than that which was provided by the opposition's
7 witness.

8 To speak to the questions of conditions, the
9 construction management agreement was never requested. This
10 is an extensive hearing where we attended initial meetings.
11 We even have testimony from Mr. Finland that these
12 conversations with the parties go back to 2016, when this was
13 originally supposed to be the homeless shelter site.

14 If the opposition wish to engage in a construction
15 management agreement, that would have been the time. Or in
16 any other prior opportunity. Construction management
17 agreements are not required. There are code requirements
18 that require communication in regards to DCMR 3307, which
19 requires communication with abutting property owners.

20 We do not believe that a construction management
21 agreement would be appropriate or necessary here. Long-term
22 financial viability's already been addressed. Design has
23 been more than adequately addressed, and I refer to the
24 character and design.

25 We have addressed whether or not to explore a curb

1 cut on Wisconsin Avenue, and we have stated that curb cuts
2 on Wisconsin Avenue are not within the guidelines of DDOT,
3 and that when you have an alley that has the appropriate
4 location, residences, in regard to the required parking and
5 LEED certification, would not be a requirement, but rather,
6 we would be satisfying the building code requirements, as is
7 required.

8 I would also just note that this case has been
9 carefully considered, that the opposition party has asked for
10 findings of facts and conclusions of law, and we do not
11 believe that those would be necessary. We would ask the
12 Board to enter into deliberations today.

13 This case has been continued in multiple
14 occurrences, and we have -- this case has a contract
15 purchaser. We are not the owner of the property, as is
16 evident in the record. And this is a need that the city
17 needs to support.

18 Rather than allowing continued delay and, you
19 know, obstruction of this case, we would ask the Board,
20 rather, rest on the record and hear all the facts that are
21 in the record today, and allow the Board to move forward.
22 Thank you very much. We believe that we've met the standard.

23 VICE-CHAIR HART: Thank you very much. So, I
24 wanted to kind of start to hear from my Board members.
25 First, I want to make sure that there is no other information

1 that we are requesting from anyone.

2 Okay. So -- and that includes whether or not you
3 want to have the findings of fact and conclusions of law.

4 MEMBER JOHN: Mr. Vice-Chair, now that relief for
5 parking has been removed, this case just boils down to the
6 issue of whether or not the applicant has met the standard
7 for continuing care facility. And we have, you know, done
8 a lot of these cases, and we understand, you know, what the
9 standard is and what the applicant needs to meet -- needs to
10 do to meet the standard.

11 Now, there is a lot of testimony from neighbors.
12 And so, I would not be prepared to render a decision today,
13 because I would like -- am I doing the second question first?
14 Should I wait?

15 VICE-CHAIR HART: No, it's fine. I just wanted
16 to try to understand -- what I wanted to do was to close the
17 hearing. And I wanted to see if there was anything else that
18 we needed to have to add to that. So --

19 (Off microphone comment.)

20 That's okay. So, the question's still --

21 ZC VICE-CHAIR MILLER: I support closing the
22 hearing.

23 VICE-CHAIR HART: Okay.

24 ZC VICE-CHAIR MILLER: I also would support
25 proposed findings of fact and conclusions of law being

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1 submitted --

2 VICE-CHAIR HART: Okay.

3 ZC VICE-CHAIR MILLER: -- by both the applicant
4 and the opposition.

5 VICE-CHAIR HART: Okay. So, Ms. --

6 MEMBER WHITE: Well, I'm also in favor of closing
7 the hearing. I think --

8 VICE-CHAIR HART: Yeah. I wasn't asking about
9 that part of it. But feel free.

10 MEMBER WHITE: Yeah. But I just want to say it
11 for the record, because how many exhibits do we have? And
12 we've heard a lot of testimony. But it is very, very
13 important. So, I don't want to minimize the importance of
14 this, and I definitely want everyone to know that I respect,
15 you know, opinions on both sides.

16 I think I have sufficient information to be able
17 to render a decision. But to be on the safe side, you know,
18 if my fellow Board members feel like it would be helpful to
19 sort of package this in one place to go through it very
20 carefully because of the importance of this, and the huge
21 community feedback that we've gotten on this case, I'd be
22 willing to stand down until we got that information.

23 VICE-CHAIR HART: Okay. Okay, so I think 400 and
24 almost 90 exhibits is definitely -- it's close to a record
25 for me. I think there's another case that we had that was

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1 a little more. But it is a lot of information to kind of go
2 through.

3 In terms of what has been submitted, I think that
4 the case is -- has been made a little bit easier in terms of
5 understanding it, because there is no longer the request for
6 parking.

7 And I appreciate my fellow Board members' comments
8 on the findings of fact and conclusions of law, and
9 understand that it seems at least somebody needs a little bit
10 more time to kind of think about this.

11 I would, therefore -- I think that it may be
12 better for us to set the date for a decision. And I think
13 that we would then also get the findings of fact and
14 conclusions of law and have it before that decision, and then
15 have just a hearing -- meeting case -- a decision case on it.

16 And I think my fellow Board members are okay with
17 that. I'm getting nods. We're not?

18 (Off microphone comments).

19 VICE-CHAIR HART: Okay. So, if we could,
20 Mr. Moy -- I'm looking at you for some dates, and I think the
21 issue really is around, you know, kind of timing. And I
22 understand that the applicant is -- would like to have this
23 decided sooner than later.

24 So, I'm looking at what dates that might be
25 available for that decision.

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1 MR. MOY: Yeah, sure, Mr. Vice-Chair. For my own
2 edification -- I apologize, I was away from the desk a bit
3 earlier on -- the Board addressed the opposition party's
4 motion to strike?

5 VICE-CHAIR HART: The testimony?

6 MR. MOY: On the -- yeah, the DDOT --

7 VICE-CHAIR HART: On the sudden -- but --

8 MR. MOY: -- earlier.

9 VICE-CHAIR HART: There was a lot of motions to
10 strike. So --

11 MR. MOY: Okay.

12 VICE-CHAIR HART: -- I'm trying to make sure I got
13 them.

14 MR. MOY: Okay.

15 MR. MOY: There was -- the DDOT letter keeper --
16 the strike to keep the DDOT letter, and whether or not the
17 findings of fact, we would be doing that. The DDOT letter,
18 I actually think that we need to keep it in, because I think
19 it's just -- it's -- there was something that we were looking
20 for. And now that we're going to be having a decision
21 meeting coming up, that that will be part of that record.

22 So -- I don't know if my fellow Board members have
23 any other objection to that, but that's where I'm standing.
24 So, it looks like getting nodding, so it looks like we're a
25 yes to that -- that the DDOT letter would remain in the

1 record.

2 MR. MOY: Okay.

3 VICE-CHAIR HART: So, regarding the dates that
4 we're looking at --

5 MR. MOY: Yes.

6 VICE-CHAIR HART: -- what are some possible dates?

7 MR. MOY: Okay, the Staff would suggest, Mr. Vice-
8 Chair, as you said earlier, given the size of the case
9 record, a decision date of either January 30th or
10 February 6th. Those are the two dates I'm looking at.

11 If the applicant and the parties need more time,
12 obviously that can be adjusted for that. But I don't think
13 I would suggest doing it any sooner than either of these two
14 dates.

15 VICE-CHAIR HART: And that's just because we have
16 the amount of cases that we have on --

17 MR. MOY: Well, most of the -- because of the size
18 of this particular case --

19 VICE-CHAIR HART: Yeah.

20 MR. MOY: -- and the transcript won't be available
21 until two weeks from today.

22 VICE-CHAIR HART: Okay.

23 MR. MOY: Approximately.

24 VICE-CHAIR HART: Okay. So, the 30th would be the
25 date for the decision. And two weeks from today would be

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1 the -- January 2nd or 3rd, I guess, given the holiday --

2 MR. MOY: That's right.

3 VICE-CHAIR HART: -- when the transcript would be
4 available.

5 MR. MOY: Yeah. So, if the Board were to set a
6 decision date of January 30th, I would suggest, then, the
7 applicant and the parties to make their filings by let's say
8 Friday, January 25th, unless the Board feels like they need
9 more time to review.

10 VICE-CHAIR HART: Okay. So, maybe a little bit
11 of time more than that. I think that the -- yeah, I'm just
12 making sure.

13 MR. MOY: I'm sorry.

14 VICE-CHAIR HART: No, that's okay. I think that
15 maybe the 23rd? That would be at least --

16 MR. MOY: Let's do that.

17 VICE-CHAIR HART: -- a week to review them. I'm
18 fine with the 30th for the decision date. And --

19 MR. MOY: Yeah, I --

20 VICE-CHAIR HART: -- Commissioner Miller, now that
21 I remember your name.

22 ZC VICE-CHAIR MILLER: I'll be there whenever it
23 is.

24 VICE-CHAIR HART: I appreciate it.

25 MR. MOY: All right, submissions by the parties

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1 January -- Wednesday, January 23rd.

2 VICE-CHAIR HART: Yes. And just so that I have
3 this also clear, that the findings of fact, are all the
4 parties would be providing them? The ANC is a party, as
5 well, in this?

6 MR. MOY: That's correct, sir.

7 VICE-CHAIR HART: So, it would be the ANC, the
8 party-in-opposition and -- well, I guess the ANC is in
9 opposition, but the party-in-opposition and the applicant.

10 MR. MOY: That's right.

11 VICE-CHAIR HART: Okay. Yes, yes. They are all
12 providing this information -- the findings of fact -- on the
13 same date. And this is the only document that we'll be
14 looking to receive from each of them. Okay, I think we're
15 done.

16 Thank you all very much. I know it's been a long,
17 fairly contentious, hearing. But I do appreciate the time
18 and effort that everyone has put into it. We're going to
19 take a -- well, actually, I don't know. It's 1 o'clock.
20 We'll probably do lunch. But maybe one -- gosh, 1:40 --
21 wow -- 1:45 maybe, we'll come back. So, that's it. Thanks.

22 (Whereupon the above-entitled matter went off the
23 record at 12:59 p.m. and resumed at 1:51 p.m.)

24 CHAIRPERSON HILL: All right, Mr. Moy, let's get
25 started again.

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1 MR. MOY: Thank you, Mr. Chairman. The Board is
2 reconvening and the time is 1:52. And I believe the next
3 case application before the Board is application
4 number 19757, of 1201 Staples LLC, as amended, for a special
5 exception under the residential conversion requirements,
6 Subtitle U, Section 320.3, to convert an existing non-
7 residential building to a three-unit apartment house, R-F-1
8 zone. This is at 1201 Staples Street, NE, Square 4067,
9 Lot 2.

10 CHAIRPERSON HILL: Okay, if you could introduce
11 yourselves for the record, please.

12 MR. GRASS: Yes, my name is Edward Grass --
13 G-R-A-S-S. I'm the attorney representing 1201 Staples LLC.

14 CHAIRPERSON HILL: Okay, Mr. Grass. So, if you
15 could tell us a little bit about -- we looked, I thought, for
16 some clarification from the person who was in opposition at
17 one point. And then, something like an A&C report since the
18 last time. So, could you just maybe start from there as to
19 what has happened since the last time you were here?

20 MR. GRASS: Yes. You've explained it right.
21 There were just a couple of issues that there -- a full
22 presentation was done and there were a few issues to clarify,
23 and hold the record open.

24 The adjacent neighbor at the last hearing had
25 switched from opposed to unopposed. And, in fact, in favor

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1 of the proposed variance and the whole project. And he said
2 that in person. I believe he's also submitted into the
3 record confirmation of that in writing.

4 The Board had asked us to submit, then, into the
5 record a copy of the agreement between the
6 developer -- 1201 Staples LLC -- and Mr. Stilp, who's that
7 adjacent neighbor. We have gone ahead and done so, as well.
8 That is in the record, so you can see that and perch that
9 however you like.

10 And then really, the final issue was the ANC had
11 asked for some additional time to make sure that any other
12 neighbors, if there were any remaining concerns, would have
13 an opportunity to address those. They -- I'm sorry, go
14 ahead.

15 So, there was a scheduled 5D meeting on
16 December 8th. I believe that may not have gone forward
17 because of lack of interest. But Chairman Lee had been --
18 received some paper copies.

19 Some of the concern was that some people might not
20 have electronic access. He canvassed the neighborhood, make
21 sure that people had copies that wanted them, and could
22 attend the full ANC meeting, which was on December 11th.

23 At the December 11th meeting there was a full
24 presentation and discussion, and there were no objections
25 lodged by any of the neighbors at that meeting. In fact,

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1 there was one other person who indicated -- who had the solar
2 issue. He was sort of similar to our solar issue.

3 And he indicated, at least orally, that he was now
4 in favor of the project. I don't know if he's filed anything
5 in writing. I believe he was indicating he might. But this
6 is a neighbor down the street somewhere, not an adjacent
7 neighbor.

8 And then the ANC deliberated and there was a 4-1
9 vote in favor of supporting the plan by the full ANC. We had
10 followed up with them to ask them to do the form -- you know,
11 to provide that. But that has not been completed and
12 submitted.

13 I personally was there. I can at least tell you
14 based on personal knowledge and as an attorney, that in fact
15 they voted 4-1 in favor. And so, there's certainly no
16 opposition. So, as far as we are aware, there -- everybody
17 is in consensus.

18 CHAIRPERSON HILL: Okay.

19 MR. GRASS: In favor of it.

20 CHAIRPERSON HILL: All right, Mr. Grass. Does the
21 Board have any questions for the applicant? Okay. I think
22 we did hear from the Office of Planning at the last hearing.
23 Correct?

24 MS. VITALE: That is correct.

25 CHAIRPERSON HILL: Okay, but does the Board have

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1 any questions of the Office of Planning? No? Okay. Does
2 the applicant have any questions of the Office of Planning?

3 MR. GRASS: No.

4 CHAIRPERSON HILL: Okay. I think we did ask for
5 members of the community if they were present, but I'm going
6 to do it anyway again. Does anyone here wish to speak in
7 support or opposition? Okay. Does anybody have any final
8 questions for this continued case for Mr. Grass?

9 All right. Mr. Grass, you have anything else
10 you'd like to add?

11 MR. GRASS: No, that's it. I know I'm not
12 supposed to request anything. So, I'll wait for your
13 decision.

14 CHAIRPERSON HILL: That's great. I wish you could
15 request stuff, but apparently that's no longer available.
16 So, I'm going to go ahead and close the hearing. Is the
17 Board ready to deliberate? Okay, I can start.

18 After reviewing the record and the additional
19 testimony that we're getting, which I really just wanted to
20 kind of clear up what we had heard the last time, I do feel
21 comfortable with the testimony that Mr. Grass had given
22 concerning the ANC and their participation.

23 I also do believe that the Office of Planning's
24 analysis of the special exception is -- I would agree with
25 their analysis and would be voting in favor of this. Does

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1 anyone have anything that they'd like to add?

2 Okay, I'm going to go ahead and make a motion to
3 approve application number 19757, as captioned and read by
4 the Secretary, and ask for a second.

5 VICE-CHAIR HART: Second.

6 CHAIRPERSON HILL: Motion made and seconded. All
7 those in favor say aye.

8 (Chorus of aye.)

9 CHAIRPERSON HILL: All those opposed?

10 (No audible response)

11 CHAIRPERSON HILL: Motion passes, Mr. Moy.

12 MR. MOY: Staff would record the vote as 5-0-0.
13 This is on the motion of Chairman Hill to approve the
14 application for the relief requested. Seconding the motion,
15 Vice-Chair Hart. Also in support, Ms. White, Ms. John and
16 Mr. Peter May. The motion carries.

17 CHAIRPERSON HILL: All right, Mr. Grass, thank you
18 so much.

19 MR. GRASS: Thank you.

20 MR. MOY: All right. Sorry, Mr. Chairman. So,
21 I believe the next case application is 19887, of Marjorie
22 Hutchinson.

23 If the parties are here, if they can come to the
24 table. Caption as advertised for use variance, from the use
25 provisions of Subtitle U, Section 301, to permit the

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1 conversion of an existing non-conforming, non-residential use
2 to a restaurant, RF-1 zone. This is at 1724 North Capitol
3 Street, NW, Square 3105, Lot 72.

4 CHAIRPERSON HILL: Hello. Did you guys get sworn
5 in earlier? Okay, great.

6 MS. JANET STEADMAN: Yes.

7 CHAIRPERSON HILL: So, if you could just introduce
8 yourself for the record. You just have to push it once and
9 the light will stay on.

10 MS. JANET STEADMAN: Janet Steadman.

11 MS. JOSEPHINE STEADMAN: Josephine Steadman.

12 MS. HUTCHINSON: Marjorie Hutchinson.

13 MS. HOLLIDAY: I'm Bertha Holliday and I'm a
14 Commissioner for ANC 5E07.

15 CHAIRPERSON HILL: Okay. Madam Commissioner,
16 could you state your name again?

17 MS. HOLLIDAY: Bertha Holliday -- H-O-L-L-I-D-A-Y.

18 CHAIRPERSON HILL: Okay, great. So, as the
19 applicant, who's going to be presenting to us?

20 MS. JANET STEADMAN: Janet Steadman.

21 CHAIRPERSON HILL: Okay, Ms. Steadman.
22 Everybody's pointing to you and looking to you. So, I hope
23 you're ready. Okay? So, I guess you could go ahead and kind
24 of walk us through what you're trying to do. And really --
25 I mean, I assume you did -- you have talked to the Office of

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1 Planning, and so you understand that this is a variance.
2 Right?

3 MS. JANET STEADMAN: Yes.

4 CHAIRPERSON HILL: And so, there are different
5 prongs that you need to meet in order for us to approve a
6 variance. And then, I guess we'll see what the Office of
7 Planning is, or where they are.

8 But they're also in, you know -- their
9 recommendation is to approve in part and deny in part,
10 meaning they're going to approve -- they are on the same side
11 in your argument for the first floor, but denying the second
12 floor. So, you can also speak to that during your testimony.

13 And then, I guess -- that's basically what I
14 thought you could maybe try to focus on again. So, what
15 you're trying to do -- right? -- and how you're meeting the
16 variance test for us to approve it.

17 I'm going to put 15 minutes on the clock just so
18 I know where we are, and you can begin whenever you like.
19 You know the clocks are on either side. Right?

20 MS. JANET STEADMAN: Yes, I've been here all
21 morning.

22 CHAIRPERSON HILL: Okay. Well, you're lucky
23 you're not going to be here all night, because, you know, if
24 you saw the first -- you're only the third case. Okay? All
25 right. So, there you go. Start whenever you like. Thank

1 you.

2 MS. JANET STEADMAN: Okay. So, my name is Janet
3 Steadman and I'm here representing Jam Doung Style Cuisine.
4 That is a carry-out that we have had in Washington, DC for
5 almost 20 years. And we're located at 1726 North Capitol
6 Street.

7 And recently, we purchased the building next door,
8 which is 1724 North Capitol Street, in an effort to relocate
9 our business right next door.

10 Before, the area was zoned as a mixed-use,
11 commercial area, where we was allowed to use a portion of the
12 building for residential and a portion for commercial. And
13 then, for some reason, they rezoned, and now they're saying
14 that they want all of the building to be used as residential.
15 And that is not what the place was built for, and I've
16 uploaded some pictures to indicate that.

17 We've been in the community for, like I said,
18 almost 20 years, and we are a part of the community. And
19 I've seen the letters that came in opposition to us, and I
20 was pretty much impressed with the opposition letters,
21 because for business being in the community for almost 20
22 years, no one in opposition had a problem with us as business
23 owners, the way we carried ourselves, or the business.

24 It just seems like all the opposition was with
25 DDOT and how they can manage traffic and get traffic not to

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1 be such a big issue. And I was pleased with that because I
2 was a little concerned that we weren't the best business
3 owners. But I see that we're doing pretty well.

4 We also had some issues with the trash collection
5 in the opposition letters. And we do agree to have trash
6 collection twice a week, and if anyone had any opposition to
7 that, I'd be willing to hear any recommendations.

8 And another concern that -- I think that was
9 mainly the concern in opposition. And according to the
10 opposition with Park and Planning -- and I spoke with
11 Jonathan and I wrote the letter for us to get the use
12 variance.

13 I know that one of the criteria for the use
14 variance is a burden of hardship, and as I was explaining,
15 that it would be an extreme hardship for us to have to
16 convert something that was supposed to be commercial, to
17 convert it back into a residential living situation.

18 The place is built as a storefront. It has no
19 front yard, it's no privacy for residential living. We did
20 not purchase it -- it was purchased primarily to be a
21 business. So, a hardship would be for us to come up with
22 maybe \$150,000, \$200,000 to convert that place into
23 residential living. That is a direct hardship.

24 Another standard for the variance was if we were
25 in harmony -- I think it was -- with the community, and I

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1 think you guys might agree with me that we are in harmony
2 with the community, from the letters of opposition, because
3 they weren't nasty, bad letters in opposition.

4 Like I said, it was just mainly about parking.
5 So, I would argue that we are, in essence -- what's the
6 word -- we're in with the community. So -- and another thing
7 I notice with Jonathan -- Mr. Jonathan Letter from Office of
8 Park and Planning -- one of the reasons that he gave for us
9 not to -- for him not to approve the second floor, was that
10 he received my supplement email on the 5th, but he wrote his
11 decision on the 7th, and he said that wasn't enough time for
12 him to consider the supplement pictures that I sent, and it
13 was -- he had two days.

14 So, I don't understand why that wasn't enough
15 time. But I read his letter again, and it seems that the
16 only reason he's giving for not approving the first floor is
17 that -- well, it's ground floor and first floor, so we're
18 going to refer to the ground level as the ground floor, and
19 the level above that as the first floor, just for clarity.

20 So, the reason he gave was he didn't receive the
21 supplement pictures in time. And I read his email again to
22 see if that was the only reason why he's not approving the
23 second floor.

24 And it seems to be that was the only reason. He's
25 saying that he didn't get the pictures and the supplement

1 information in time for him to make -- to approve the second
2 floor, as well. And if there's another reason, I guess we'll
3 hear that today.

4 CHAIRPERSON HILL: Okay. Ms. Steadman, are you
5 an attorney? You're one of the owners?

6 MS. JANET STEADMAN: I'm one of the owners.

7 CHAIRPERSON HILL: So, you're not an attorney.

8 MS. JANET STEADMAN: No.

9 CHAIRPERSON HILL: Okay. You're doing pretty
10 good.

11 MS. JANET STEADMAN: Thank you.

12 CHAIRPERSON HILL: But still, you know, it is a --
13 I mean, you were able to remember some of the standards and
14 everything. That's pretty good. So, does the applicant have
15 any -- I'm sorry, does the Board have any questions of the
16 applicant at this point? Okay, please, go ahead.

17 COMMISSIONER MAY: So, the evidence that you are
18 citing that demonstrates that the second floor was used for
19 commercial, is that just that single photograph of the first
20 floor that we have in the record?

21 MS. JANET STEADMAN: No. I uploaded four
22 pictures. Let me backtrack a bit. When I went to DCRA, one
23 of the qualification for us to have the restaurant on the
24 first floor is that we need to have a second exit.

25 The second floor -- I'm sorry, the ground floor,

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1 first floor -- so, the first floor is what's providing the
2 second exit, to be able to comply with DCRA. So, I uploaded
3 three pictures. One of them, it's a back exit on the first
4 floor.

5 COMMISSIONER MAY: Do you know the exhibit number
6 by any chance?

7 MS. JANET STEADMAN: It's near the end.

8 MS. HOLLIDAY: Yeah, it's close to the -- and it
9 says photos.

10 COMMISSIONER MAY: Yeah, there were -- I mean,
11 there are four or five things that are in there as photos,
12 and none of them seem to match what you are describing. Let
13 me take another look.

14 MS. HOLLIDAY: Well -- yeah. I think the point
15 that she was trying to make is that the --

16 COMMISSIONER MAY: I'm just looking for the
17 photographs that she's talking about. That's all.

18 VICE-CHAIR HART: Commissioner May, I think it's
19 33A.

20 MS. HOLLIDAY: Yeah, it's totally open. That's
21 the point she was trying to make. That it --

22 COMMISSIONER MAY: And I'm not -- I'm just trying
23 to find the photo, that's all. Just let me find the photo
24 and -- so I can understand. Because I did not see -- okay,
25 so that's 33A and it's showing a partial build out --

1 MS. JANET STEADMAN: Yeah.

2 COMMISSIONER MAY: -- of a gutted space.

3 MS. JANET STEADMAN: Right.

4 COMMISSIONER MAY: And there's the back door.

5 Okay.

6 MS. JANET STEADMAN: And that would be the second
7 exit.

8 COMMISSIONER MAY: Okay, and then, I'm not
9 questioning the second exit. What I'm questioning is why you
10 think this is evidence that it was previously used for a
11 restaurant or a commercial purpose.

12 MS. JANET STEADMAN: Okay. So, I've been in the
13 area for almost 20 years.

14 CHAIRPERSON HILL: Ms. Commissioner? Can I just
15 ask if you could just turn off that microphone for a second,
16 just because it feeds back when there's two on at the same
17 time. Thank you.

18 COMMISSIONER MAY: Yeah. I'm really just curious
19 about the --

20 MS. JANET STEADMAN: Okay, so --

21 COMMISSIONER MAY: -- photograph. Because you
22 were trying to demonstrate to --

23 MS. JANET STEADMAN: -- the photograph -- the
24 photograph was taken in an effort to show that there is not
25 a living space. It's not a bedroom, there's no bathroom.

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1 It was taken to show that it had not been previously used --
2 COMMISSIONER MAY: But there's -- I mean, it's
3 under --
4 MS. JANET STEADMAN: -- as residential.
5 COMMISSIONER MAY: -- actively under construction.
6 Right?
7 MS. JANET STEADMAN: No, it's not under
8 construction, because I am not --
9 COMMISSIONER MAY: So, I mean, you bought it while
10 it was --
11 MS. JANET STEADMAN: Yeah, I bought --
12 COMMISSIONER MAY: -- gutted and partially re- --
13 under reconstruction.
14 MS. JANET STEADMAN: Exactly.
15 COMMISSIONER MAY: Okay. All right.
16 MS. JANET STEADMAN: But it was -- it was a
17 hairdresser.
18 COMMISSIONER MAY: And when did the hairdresser
19 operation stop?
20 MS. JANET STEADMAN: The hairdresser operation
21 stopped maybe three years ago.
22 COMMISSIONER MAY: Maybe three years ago. So, if
23 it was three years ago or less, there is a way to revive
24 that --
25 MS. JANET STEADMAN: Correct.

1 COMMISSIONER MAY: -- non-conforming use.

2 MS. JANET STEADMAN: It is.

3 COMMISSIONER MAY: Did you look into that?

4 MS. JANET STEADMAN: It is. It's a way to revise
5 that. But there's a catch to it. You can only have a
6 hairdresser or a nail salon, or something in that field.
7 They will allow you to put something --

8 COMMISSIONER MAY: Something that's of equivalent
9 level.

10 MS. JANET STEADMAN: -- to a hairdresser.

11 COMMISSIONER MAY: Right.

12 MS. JANET STEADMAN: But --

13 COMMISSIONER MAY: And that was going to be one
14 of my questions for the Office of Planning, whether they
15 looked at that question, as well. But was it -- do you know
16 that that was within three years of when you filed your
17 application for this?

18 MS. JANET STEADMAN: Yeah. They said -- Zoning
19 said that they will give me a permit to do a hairdresser or
20 a nail salon, or something in that field. They just can't
21 give me occupancy for a restaurant because it's a
22 completely --

23 COMMISSIONER MAY: It's a different use.

24 MS. JANET STEADMAN: -- different use.

25 COMMISSIONER MAY: Yeah. I mean -- but evidence

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1 of the prior commercial use is one of the things that the
2 Office of Planning was looking for. So, it was --

3 MS. JANET STEADMAN: They have it. They have the
4 certificate of occupancy.

5 COMMISSIONER MAY: So, they have the previous
6 certificate of occupancy.

7 MS. JANET STEADMAN: Yeah, they were able to find
8 the --

9 COMMISSIONER MAY: So, I can ask the questions of
10 them, is what you're saying.

11 MS. JANET STEADMAN: Yeah. The certificate of
12 occupancy's there. That's not the issue. The only thing
13 that's not the issue --

14 COMMISSIONER MAY: No, for me it's an issue. So,
15 that's why I'm curious about it.

16 MS. JANET STEADMAN: Oh, it's the use. Okay.

17 COMMISSIONER MAY: We're the ones who decide it.

18 MS. JANET STEADMAN: Okay.

19 COMMISSIONER MAY: Not the Office of Planning, not
20 the Zoning Administrator. Right?

21 MS. JANET STEADMAN: All right.

22 COMMISSIONER MAY: At this point. And I did have
23 one other question, which has to do with the plans that you
24 provided.

25 MS. JANET STEADMAN: Mm-hmm.

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1 COMMISSIONER MAY: So, what's going to happen on
2 the top floor of the building?

3 MS. JANET STEADMAN: The top floor of the building
4 is actually going to be my residency.

5 COMMISSIONER MAY: Oh, okay. And is it outfitted
6 right now as an apartment or something?

7 MS. JANET STEADMAN: Yes.

8 COMMISSIONER MAY: Okay. All right, and then, the
9 last -- sorry, one more. One of the concerns that the
10 neighbors had, had to do with noise, and the noise of an
11 outdoor cafe operation -- a terrace level, especially.

12 But even the one that would be on the sidewalk,
13 which would be now on the side street, rather than on North
14 Capitol Street. So, have you had discussions with them? Or
15 do you have -- you know, what are your thoughts on trying to
16 address that?

17 Because, you know, an outdoor cafe can be very
18 loud, even if there's no amplified music or anything else.
19 It's people talking and, you know, I don't know what your
20 hours are going to be. But I can see why people would not
21 necessarily want to have an outdoor terrace restaurant
22 operation next to their house, or even a few doors away.

23 MS. JANET STEADMAN: Right. I agree with that.
24 I can see that. So, what I did was, when I read the opinions
25 of the neighbors, I actually went and see what was the noise

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1 decibel for DC, which is 55. So, what I did was, I spoke to
2 some other owners of outdoor cafes and asked them how did
3 they quell the noise issue.

4 And also, I did some reading, and it was suggested
5 that if I get a gardener to come and plant certain ferns and
6 shrubs and make it more like a garden style cafe, the --
7 apparently, the certain shrubs and ferns were supposed to
8 lower the decibel to at least 25 percent. That's impressive.
9 I did not know -- that's why --

10 COMMISSIONER MAY: I'm not sure that's completely
11 accurate. It's certainly not consistent --

12 MS. JANET STEADMAN: That was -- I was impressed
13 with that.

14 COMMISSIONER MAY: Not consistent -- I mean,
15 not -- you know, I am an architect. One of the things I did
16 have to study in school was sound transmission, and you need
17 a lot of vegetation to really get that.

18 MS. JANET STEADMAN: Yeah. They say holly and
19 junipers.

20 COMMISSIONER MAY: Yeah.

21 MS. JANET STEADMAN: Another thing they --

22 COMMISSIONER MAY: Yeah. So, those are very
23 dense, evergreen shrubs. Would be very thick. I mean, I
24 don't know how much space there is there. You might wind up
25 losing a lot of seating space to shrubs in order to keep the

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1 sound down. Did you talk to any of the concerned neighbors
2 about it directly?

3 MS. JANET STEADMAN: Yes, we did.

4 COMMISSIONER MAY: Okay.

5 MS. JANET STEADMAN: And some of the neighbors --
6 at least one -- one of the neighbors, she admit that, you
7 know, she have to live there and she have to be in
8 communication with her neighbors, and she really didn't have
9 an issue with us.

10 But other neighbors do, and it was three in
11 opponents, and she didn't have an issue with the noise. She
12 was basically understanding that we're not DDOT and we can't
13 do anything to control the traffic. Which, primarily, that
14 is their concern is the traffic. And --

15 COMMISSIONER MAY: Well, there are certain steps
16 that recommended that you could take.

17 MS. JANET STEADMAN: Yeah.

18 COMMISSIONER MAY: Right? The more aggressive and
19 forceful on your own, and calling when -- you know --

20 MS. JANET STEADMAN: Yeah. One thing I did agree
21 with --

22 COMMISSIONER MAY: -- telling your customers where
23 not to park, and things like that.

24 MS. JANET STEADMAN: I agree with we could help
25 to keep the --

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1 COMMISSIONER MAY: Yes.

2 MS. JANET STEADMAN: -- 200 radius clean, because
3 that is an issue. And I've already been doing that because
4 that is where I do my business, and I like for it to be
5 clean.

6 COMMISSIONER MAY: Mm-hmm.

7 MS. JANET STEADMAN: So, I did agree with I would
8 help to keep the area clean. That wouldn't be an issue with
9 me, because it would be in my best interest, as well. And
10 I'm -- and keep in mind that I'm not just somebody coming
11 into the community to do business and then leaving. I also
12 live in the community.

13 COMMISSIONER MAY: Right.

14 MS. JANET STEADMAN: So, I'm a resident, as well.

15 COMMISSIONER MAY: I appreciate that. All right,
16 that's it for my questions.

17 CHAIRPERSON HILL: Okay, so as -- Commissioner
18 Holliday? So, you're here representing the ANC. And so, you
19 have an opportunity to -- you're an active -- you're a party
20 in this hearing. Do you have any questions from the
21 testimony that was given? Oh, you have to say yes or no in
22 the microphone, ma'am.

23 MS. HOLLIDAY: No.

24 CHAIRPERSON HILL: Okay. All right. So, I'm
25 going to go ahead and turn to the Office of Planning. And

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1 if you could -- yeah, thanks so much.

2 MR. KIRSCHENBAUM: Good afternoon, Board members.
3 Jonathan Kirschenbaum for the Office of Planning. We
4 recommend approval for the first floor to be converted to a
5 restaurant use. Historical certificates of occupancy and
6 exterior photographs demonstrate that the first floor has
7 been used for commercial purposes.

8 Historically, the COs have always referred to what
9 the applicant calls the ground floor as the first floor, and
10 what the applicant calls the first floor as the second floor.
11 So, to be consistent, I'm just -- we refer to the first floor
12 as the first floor and the second floor as the second floor.

13 And that's the way the COs for the building have
14 always labeled those floors.

15 Regarding the second floor, the applicant stated
16 that this floor had already been configured for restaurant
17 use. OP requested that the applicant submit interior
18 photographs demonstrating this configuration, and these
19 photographs were submitted after our report had to be
20 internally finalized.

21 But we have not reviewed this, and we find that,
22 you know, the photographs do not show that the second floor
23 historically was, or currently is, configured as restaurant
24 use or any other type of commercial use. And inside, it
25 shows an interior space that was recently demolished and is

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1 now a hollow shell. And the -- you know, this is a use
2 variance and there is a very -- as we know, this is a very
3 strong test to meet and a very large threshold to meet.

4 And in this case, the applicant would have to
5 prove that, you know, they can't use that second floor for
6 any sort of permitted matter-of-right use; that what they're
7 proposing -- which is a restaurant use -- is the only use
8 that can be used in this space.

9 And for right now, the photographs don't show that
10 this space can't be used as a matter-of-right residential
11 use. And therefore, we can't recommend approval for the
12 second floor. Please let me know if you have any questions.

13 CHAIRPERSON HILL: Does anyone have any questions
14 for the Office of Planning?

15 COMMISSIONER MAY: Of course. So, to the C of O
16 question first. You found evidence of C of O for the -- what
17 you call the first floor, what they call a ground floor --
18 the bottom floor -- the commercial use that was the
19 hairdresser, or something like that. Right?

20 MR. KIRSCHENBAUM: Yes. Yeah, I mean,
21 historically, there's been many different uses that were
22 commercial in nature on that floor. Yes.

23 COMMISSIONER MAY: And the most recent one was
24 when?

25 MR. KIRSCHENBAUM: 1970 -- the last CO that DCRA

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1 had in their records is from 1974, and that was for a beauty
2 salon.

3 COMMISSIONER MAY: Okay, and of course that's
4 issued at the beginning of the period but not -- you know,
5 it's not like it gets closed out at the end. Do we have
6 evidence that they were actually operating within the last
7 three years as a hairdresser?

8 MR. KIRSCHENBAUM: No evidence was submitted to
9 the record, and this application was referred to by DCRA,
10 which stated that the first floor needed a use variance. It
11 was actually silent on the second floor --

12 COMMISSIONER MAY: Right.

13 MR. KIRSCHENBAUM: -- and we can discuss that,
14 too.

15 COMMISSIONER MAY: Yeah. So, we don't really know
16 for sure that the hairdresser was operating within the last
17 three years.

18 MR. KIRSCHENBAUM: You know, nothing has been
19 submitted into the record to address suggest that --

20 COMMISSIONER MAY: Yeah, for sure. Yeah, okay.

21 MR. KIRSCHENBAUM: -- suggest that it --

22 COMMISSIONER MAY: Right. And their current
23 operation next door -- this restaurant operating next door,
24 they have a C of O that goes back probably that long, as
25 well, I guess.

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1 MR. KIRSCHENBAUM: You know, regarding that space,
2 that space is a BZA space.

3 COMMISSIONER MAY: Oh, so it was previously --
4 they were previously granted a use variance to operate the
5 current restaurant.

6 MR. KIRSCHENBAUM: They have a valid CO for the
7 restaurant. That space was last before the BZA in the '80s.
8 I'm not sure --

9 COMMISSIONER MAY: Okay. That's fine. Yeah, so
10 there was a variance of some sort granted back then. Okay,
11 and just to be clear, your understanding of the hardship here
12 has to do with the fact that they have purchased it for this
13 purpose, and because it was previously -- well, I guess I'm
14 trying to understand what the hardship is.

15 Because for me, knowing the number of cases that
16 come before us and the number of times a property like this
17 that was originally built as a residence, the prospect of it
18 going back to being a residence is not unheard of.

19 I mean, certainly that's happened to, you know,
20 corner stores and things like that, across the city, where
21 they're being lost because the price of real estate -- price
22 of housing -- across the city in desirable neighborhoods --
23 well, all of it's a -- every neighborhood, it seems.

24 So, I'm trying to understand why you agree that
25 there is actually a hardship in this circumstance.

1 MR. KIRSCHENBAUM: We would say that the hardship
2 would exist for the first floor because it's been
3 historically configured for commercial use. The windows go
4 essentially from the bottom of the wall to the top of the
5 wall, and it's also situated on a busy intersection, and the
6 other buildings on this intersection have commercial uses on
7 the first floor -- or three of the buildings do on the
8 intersection -- and one building's a church.

9 COMMISSIONER MAY: Okay. Okay, I appreciate that.
10 Thank you. Oh, one last thing. Do you -- with the concerns
11 of the neighbors for noise, trash, traffic, things like that,
12 are there conditions that you would recommend on the -- if
13 we were to grant the variance for the first floor?

14 MR. KIRSCHENBAUM: Sure. So -- yeah. Well, when
15 we originally reviewed this, we did speak to the ANC, and we
16 did ask the ANC, or suggested to the ANC, that if there are
17 any sort of quality-of-life issues that, you know, the agency
18 would be concerned about, to definitely comment on that.

19 The ANC did not raise any quality-of-life issues.
20 So, at that time we also didn't feel like conditions at that
21 point were necessary. But if the Board does have any
22 conditions that they would like OP to review, we certainly
23 would review them and comment.

24 COMMISSIONER MAY: All right, thank you.

25 CHAIRPERSON HILL: Okay, does anyone else have

1 anything for the Office of Planning?

2 MEMBER WHITE: I guess I have one question for the
3 applicant. So, if you were just granted the relief for the
4 first floor and not the second floor, would that pose a
5 serious challenge to you being able to operate a business?

6 MS. JANET STEADMAN: Yes, that would pose a very
7 serious challenge, because one of the challenges for having
8 the restaurant is a need to have two exits. And if I only
9 have the first floor, I only have one exit.

10 And, essentially, I wouldn't be able to
11 open -- use it with just the one exit. I need the second
12 exit. And I think that's probably why they were using both
13 floors as commercial space, because there's a step leading
14 to the second floor. Both space was being used as a
15 commercial space.

16 And maybe it was -- I don't know for sure -- but
17 it's because you need that second exit. Every commercial
18 space must have two exits. And we don't have an alley to
19 have the second exit through the alley. We go up the steps
20 and use the back and the terrace for that second exit.

21 So, granting the first floor wouldn't work because
22 I wouldn't be able to open, because I wouldn't meet the
23 qualifications.

24 COMMISSIONER MAY: Did you investigate putting a
25 door on the ground floor, or first floor, as they call it?

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1 MS. JANET STEADMAN: I did. There is
2 absolutely -- the place isn't that big to begin with. So,
3 I've looked all around. There's no place to put a second
4 exit. There's the steps --

5 COMMISSIONER MAY: Have you consulted with an
6 architect?

7 MS. JANET STEADMAN: I did.

8 COMMISSIONER MAY: And they said that it's
9 impossible to put an exit --

10 MS. JANET STEADMAN: It's not impossible. It's
11 not impossible. If -- it's finding the space to put a
12 step -- to put a door. If the only place I can put a door
13 would be right next to the door, and that's the only space
14 because there's a -- if you look at the picture that I upload
15 with the posting on the window, that's the only big space I
16 have. It would be right beside the door.

17 And one of the reasons for moving was to have a
18 sit-down, and if I put a door there, it would take away from
19 the eight seats that I have.

20 COMMISSIONER MAY: Well, what if you a door
21 between the powder room and the -- or the restroom -- and the
22 stairway?

23 MS. JANET STEADMAN: There's no room on the --
24 that's the first floor you're looking at.

25 COMMISSIONER MAY: I'm looking at the as-built

1 ground floor, and there's a restroom in the corner on the
2 exterior face of the building --

3 MS. JANET STEADMAN: Yes.

4 COMMISSIONER MAY: -- and then, there's a stairway
5 that goes up to the second floor.

6 MS. JANET STEADMAN: Yes.

7 COMMISSIONER MAY: And that space between the
8 stairway and the restroom should be wide enough to have a
9 door there to the outside.

10 MS. JANET STEADMAN: There's -- yeah, it's a huge
11 column -- concrete column -- there.

12 (Off microphone comments.)

13 CHAIRPERSON HILL: You need a microphone.

14 COMMISSIONER MAY: If you're going to speak, you
15 need to have your microphone on.

16 MS. HUTCHINSON: Yes, as she was saying, inside
17 that space that you're looking at is a huge concrete column
18 that would prevent a door from going right there. We've
19 looked at every possibility that we can look at that we could
20 probably put another door on the first floor, which is the
21 ground floor.

22 And if we should put a door -- because we only
23 have one side to work with, and that's the Randolph Street
24 side, because we're adjacent to another building and we don't
25 have an alley, like she was saying.

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1 So, for us to put a door in, we would have to find
2 a space on the Randolph Street side to put another door. We
3 already have two door. One is from the kitchen, but we're
4 not allowed to use that back door as an exit for patrons.

5 COMMISSIONER MAY: Mm-hmm.

6 MS. HUTCHINSON: So, that leave us with no other
7 space to put a door.

8 COMMISSIONER MAY: Yeah. You know, I don't know
9 who your architect is, but, you know, you should probably
10 have another conversation with him, because there are
11 definitely other solutions.

12 And it may require additional work, like
13 reconfiguration of the restroom, but -- you know -- it's also
14 not sensible that people would exit -- a secondary exit would
15 be to go upstairs and out. And I'm -- have you actually run
16 that by the fire marshal to know that that would be
17 acceptable to them?

18 MS. JANET STEADMAN: I did. I went down to DCRA
19 and I met with Fire --

20 COMMISSIONER MAY: Yeah.

21 MS. JANET STEADMAN: And -- because I consider
22 every possibility.

23 COMMISSIONER MAY: Yeah.

24 MS. JANET STEADMAN: Because it's kind of smart
25 to do that. So, I met with Fire and we looked over -- we

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1 looked over the plan and there is -- we definitely need the
2 second exit. And he looked over the plan and he approved the
3 second exit on the first floor. That's not an issue. That
4 is an acceptable exit.

5 COMMISSIONER MAY: Okay, I'm just surprised to
6 hear that, because it's counter to the way people react in
7 an emergency. If there's a fire, you don't want to run up
8 in a building. And that's why I'm really surprised. But
9 I -- you know, I won't question it any further.

10 You know, I appreciate the fact that you
11 investigated that. But I do think you could take another
12 look at what you do on the first floor. That's it.

13 MEMBER JOHN: So, I have a question for the Office
14 of Planning. So, you are not able to determine for sure that
15 the first floor -- second floor -- was not used as a part of
16 the hairdressing salon before.

17 MR. KIRSCHENBAUM: No. I mean, not through the
18 certificates of occupancy.

19 MEMBER JOHN: They've testified that -- applicant
20 has testified that there was that commercial use. So, does
21 that information change your decision or recommendation, in
22 terms of converting to another type of commercial use?

23 MR. KIRSCHENBAUM: For the second floor. You
24 know, it makes it very difficult. There's just -- it's very
25 hard to comment on something that there's just no sort of

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1 evidence either way.

2 CHAIRPERSON HILL: Okay. Does the appl- -- sorry.

3 VICE-CHAIR HART: Sorry. One follow-up question
4 to that. So, they have provided some photographs of the
5 second floor, so we know what the second floor at least looks
6 like inside. And there's not a lot there to make that
7 determination.

8 What else would you need -- what else could you
9 get from them that showed that there was -- besides the --
10 it sounds like they probably wouldn't be able to get a
11 C of O.

12 I mean, is there -- I mean, there's like
13 historical documents that kind of, you know, that kind of
14 talk about that, as well? I mean, what else would you --
15 what else would you accept?

16 I'm just trying to understand -- I understand that
17 they have provided some photographs. The photographs are
18 really not that helpful in terms of what used to be there,
19 because it has been -- the construction has been started on
20 it. So, a lot of stuff that was actually there is no longer
21 there.

22 So, is there anything else that you would suggest
23 that they look at, or -- I'm just trying to figure out if
24 there's any way for them to be able to provide information
25 that might help.

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1 MR. KIRSCHENBAUM: You know, historical
2 documentation of some sort, whether it's plans that were
3 approved by DCRA in recent times showing that this at least
4 had been approved for commercial use.

5 You know, it's -- again, the threshold issue cares
6 that, you know, this is a use variance. This is a very hard
7 test. This is the toughest thing that, you know, that I get
8 that you have to prove to get relief.

9 And the test here is some -- they have to prove
10 that they cannot use the second floor for any matter-of-right
11 use.

12 VICE-CHAIR HART: Thank you.

13 MEMBER JOHN: So, I have a question for
14 Ms. Steadman. Ms. Steadman, so what's the sign on the first
15 floor -- second floor? The floor above the ground floor.

16 MS. JANET STEADMAN: Okay.

17 MEMBER JOHN: What's that sign say? Do you know?
18 Is it still there?

19 MS. JANET STEADMAN: It's -- yeah, it say McCoy
20 Sisters.

21 MEMBER JOHN: The address of McCoy Sisters --

22 MS. JANET STEADMAN: McCoy Sisters --

23 MEMBER JOHN: -- Hairdressing Salon?

24 MS. JANET STEADMAN: -- Hairdressing -- yes.

25 MEMBER JOHN: And you have lived there for 20

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1 years?

2 MS. JANET STEADMAN: Yes. I've been in the store
3 for --

4 MEMBER JOHN: In the area for 20 years.

5 MS. JANET STEADMAN: -- yes, 20 years.

6 MEMBER JOHN: Have you ever been upstairs?

7 MS. JANET STEADMAN: Yes.

8 MEMBER JOHN: What did you see when you went
9 upstairs?

10 MS. JANET STEADMAN: It's a very bad hair salon.
11 It have a lot of clutter, plants, maybe one hair dryer.

12 MEMBER JOHN: Okay, I get it. I get it. And so,
13 they also operated on the first floor, and then --

14 MS. JANET STEADMAN: Yeah. The first floor
15 somehow turned into like storage, where they would store
16 material. Like the ground floor, it look like that could
17 have been the hairdresser at one point.

18 But they just turned that into storage and a
19 holding spot for everything they didn't want upstairs. They
20 would just put it downstairs as a holding pen.

21 MEMBER JOHN: Okay. That's enough. Thank you.

22 CHAIRPERSON HILL: Ms. Steadman, you don't have
23 any pictures of the first floor, right -- or the ground
24 floor -- in the record?

25 MS. JANET STEADMAN: No.

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1 CHAIRPERSON HILL: Okay. Okay, do you have any
2 questions for the Office of Planning? You'll get a chance,
3 Commissioner.

4 MS. JANET STEADMAN: I can't think of any
5 questions right now.

6 CHAIRPERSON HILL: Okay. So, Commissioner, I
7 guess your -- right now, you're up -- Commissioner Holliday,
8 if you want to ask any questions of the Office of Planning,
9 and Ms. Steadman, if you could turn off the microphone.
10 Thank you. You need to turn on your microphone,
11 Commissioner.

12 MS. HOLLIDAY: Mm-hmm. I really don't quite
13 understand this issue. Because I don't -- you know, I don't
14 see -- perhaps I haven't heard correctly, but I haven't heard
15 anything where you have documentation, or the Office of
16 Planning has documentation, indicating that the second floor
17 was used for non-commercial purposes.

18 So, I find it difficult to understand why you are
19 so adamant about this.

20 CHAIRPERSON HILL: No, that's all right,
21 Commissioner. Commissioner Holliday, what do you think --
22 what's your question for him, though?

23 MS. HOLLIDAY: Well, I don't -- it's a comment
24 more than -- I mean, you know more -- than anything else.
25 But I would suggest -- Bloomingdale did recently become a

1 historic district. There's a listing of every house in
2 Bloomingdale. It's part of their final report. It's part
3 of HPO's final report.

4 CHAIRPERSON HILL: Commissioner, I need to
5 interrupt just one second. This is just -- you're going to
6 get a chance to provide testimony as a party --

7 MS. HOLLIDAY: Well, I'm trying to help him with
8 his historical documents. So, I'm --

9 CHAIRPERSON HILL: I'm just trying to get to your
10 ques- -- you're just asking the Office of Planning for a
11 question. I'm just trying --

12 MS. HOLLIDAY: I was going to tell him where he
13 can get some historical documents, possibly.

14 CHAIRPERSON HILL: Okay, so your question is where
15 he can get some historical documents.

16 MS. HOLLIDAY: Well, my answer. Someone
17 mentioned --

18 CHAIRPERSON HILL: Okay, where can he get
19 historical documents? No, that's okay.

20 MS. HOLLIDAY: Okay. You know -- I don't know if
21 they exist or not. But again, the application was quite
22 lengthy and it had special sections on commercial buildings
23 in Bloomingdale, on churches in Bloomingdale, and there might
24 be some reference to this particular building in that
25 report --

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1 CHAIRPERSON HILL: Okay.

2 MS. HOLLIDAY: -- and how it was used.

3 CHAIRPERSON HILL: Okay, okay. Okay. All right,
4 so, Commissioner, so you're here now and have an opportunity
5 to testify. I assume you're here to testify in support
6 because of the vote that the ANC took. So, I'm going to go
7 ahead and put again ten minutes on the clock here, just so
8 I know where we are. And you can begin whenever you like.

9 MS. HOLLIDAY: Okay. You all have my testimony.
10 So, I just want to first of all just sort of reiterate some
11 of the reasons ANC finally did vote support for the variance.

12 First of all, we feel that the next door
13 relocation to a renovated 1724 North Capitol, NW, featuring
14 a sit-down restaurant, will be experienced, you know, not as
15 an adverse impact, but indeed as an upgraded use for that
16 building.

17 That building has been sitting there for several
18 years, it continues to deteriorate, it is a corner building,
19 it is a blight on the neighborhood. Nobody has offered to
20 buy it, especially for residential purposes, because it
21 doesn't look like a residence. It looks like a commercial
22 building.

23 Second of all, we are concerned that after ANC
24 sent in its testimony, I did get comments from some of the
25 neighbors, in terms of their concerns. Basically, their

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1 concerns relate to trash, parking, additional traffic at the
2 corner of North Capitol and Randolph Place, which is a very
3 narrow two-way street -- when I go down it, I go down it at
4 about 15 miles an hour, because if an SUV is coming the other
5 way, you have to stop; you all can't both move at the same
6 time -- loitering -- although the person who complained about
7 loitering indicated that that concern has pretty much been
8 remediated -- rodent control and noise.

9 And I, you know, think these are legitimate things
10 to complain about. I also believe that these are things that
11 can -- are fixable. If neighbors and the owners get
12 together, I think all of these things are quite fixable. So,
13 you know -- except for the narrow street. That's not
14 fixable -- although one neighbor suggested it become a one-
15 way street.

16 So, therefore, we do not feel there are
17 significant adverse impacts related to this building. We
18 also feel that the property has distinct uniqueness -- that
19 1724 is next door to the current Jam Doung, and they have
20 over 20 years, developed a very well-established clientele
21 and a well-known brand throughout the neighborhood.

22 And, you know, we do note that across the street
23 on Randolph Place, there is commercial use that goes down to
24 R. Immediately across the street is a funeral home that
25 takes up about four row houses.

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1 Across the street on North Capitol there is
2 commercial use, and it just -- and then, where this building
3 is located -- on the northeast corner -- northwest corner --
4 of Randolph Place and North Capitol, there are three row
5 houses that are clearly commer- -- you know, are commercial
6 buildings.

7 And they appear to have been built as commercial
8 buildings, which is why I wanted to look at that HPO
9 application, to see if they indicate that those three
10 buildings were actually built as commercial buildings,
11 because they look very different from the remainder of the
12 buildings on the block which are used for residential
13 purposes.

14 Also, I want to call to the Board's attention that
15 the mid-city, small area plan, which is produced by Office
16 of Planning, notes, quote, commercial revitalization
17 opportunities along North Capitol Street should be focused
18 on the area between New York and Randolph -- they say Street,
19 but it should be Place -- and recommends activation of foot
20 traffic on North Capitol Street, where the main entrance of
21 1724 will be located. So, I think that's a big plus.

22 I think, in terms of hardship, I think the ladies
23 here are being much too nice. That, in fact, if they are
24 limited to only the first -- the ground floor or first floor,
25 you will note in the blueprints that half of that floor is

1 devoted to kitchen.

2 So, it becomes a very small space, especially for
3 a sit-in res- -- sit-down restaurant. And I do not think the
4 use of the first floor only, personally, would be
5 economically viable.

6 I also, in my presentation -- and I do -- I've
7 done this printout of PowerPoints now to give it to whoever
8 I'm supposed to give it to, so it can't officially be part
9 of the effort.

10 But we do have several restaurants in Bloomingdale
11 that have two floors. Okay, so this is not a total oddity
12 in Bloomingdale. And the testimony really presents a case
13 study of one restaurant that has two stories. It just got
14 approval for a rooftop deck, it has expanded. It has a
15 sidewalk cafe, which has been expanded.

16 And in, you know, I would say 15 years, that owner
17 has gone from about 40 seats to over 200 seats. And the case
18 study indicates what kinds of changes he had to make and how
19 DCRA and -- I believe it was the Zoning Commission --
20 responded to those requests and what their thinking was in
21 terms of supporting this -- you know, what started off as a
22 small restaurant tour -- in Bloomingdale.

23 So, he has two stories plus a rooftop. Okay?
24 Another one that has two stories is located at First Street
25 and P -- that's Crisp Restaurant. And they have two stories.

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1 And then, I can't think of any other restaurant that has two
2 stories -- their's will be the third. But it's not an
3 oddity, and people are able to get these two-story
4 restaurants.

5 In fact, in a neighborhood such as Bloomingdale,
6 what nearly all of the restaurants -- with the exception of
7 the firehouse and a pub and the people -- all the other
8 restaurants, pretty much, are in row houses -- okay? --
9 16 feet row houses. Okay?

10 And so, you almost have to have two stories to
11 make them viable. What these ladies -- the advantage they
12 have is they have enough business acumen to understand that
13 one of your biggest expenses in a restaurant is rent, so they
14 buy their buildings. Okay?

15 And that's -- I mean, that's very smart, because
16 a lot of our restaurants have gone out of business because
17 they're small restaurants. People like them because of their
18 intimacy, but, you know, it's a limited clientele. It's a
19 limited turnover. You know?

20 And then, the rent goes up and they can't handle
21 it.

22 CHAIRPERSON HILL: All right, Commissioner. We
23 do have your testimony in the record, also.

24 MS. HOLLIDAY: No, this is new -- this is
25 additional.

1 CHAIRPERSON HILL: Okay. Does anybody have any
2 questions for the Commissioner?

3 MEMBER JOHN: One question. Are you familiar with
4 the Big Bear Cafe?

5 MS. HOLLIDAY: That's the case study.

6 MEMBER JOHN: Okay. I --

7 MS. HOLLIDAY: And it's in here.

8 MEMBER JOHN: Well, they have an outdoor seating
9 area. Are you aware of how they handle noise?

10 MS. HOLLIDAY: Yes. As a matter of fact, I
11 can -- they just got permission to expand that outdoor cafe.
12 And in addition, they got permission to do a rooftop garden.
13 Okay?

14 Now, the rooftop garden seem to be the biggest
15 concern, because I guess noise travels down. You know?
16 So --

17 CHAIRPERSON HILL: Okay. I'm sorry. I guess
18 Ms. -- she got her answer.

19 MS. HOLLIDAY: Basically, they were required to --

20 CHAIRPERSON HILL: Okay.

21 MS. HOLLIDAY: -- build walls on the rooftop
22 garden of -- in terms of any spaces that face residents, and
23 to insulate those walls.

24 CHAIRPERSON HILL: Okay. Commissioner Holiday,
25 I think -- you've been down here before. Correct? No?

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1 MS. HOLLIDAY: I don't think I've been to a
2 variance case.

3 CHAIRPERSON HILL: But, I mean, you've been down
4 before us before.

5 MS. HOLLIDAY: Yeah, I guess.

6 CHAIRPERSON HILL: Well, at least -- well, you
7 look a little familiar, but maybe not. I guess it wasn't it
8 wasn't that exciting if you don't remember whether you came
9 to see us or not. I'm going to try to make it a little more
10 exciting next time. But so, you or ANC -- I mean, you are
11 aware of the variance test. I mean, what -- the prongs that
12 are necessary and how you go through it, and you or ANC went
13 through that exercise, and you believe they met the variance
14 test for this use.

15 MS. HOLLIDAY: Yes, we do.

16 CHAIRPERSON HILL: Okay. All right. Do you have
17 any questions for the -- as the applicant, do you have any
18 questions for the Commissioner?

19 MS. JANET STEADMAN: No.

20 CHAIRPERSON HILL: Okay, great. Commissioner
21 Holliday, you can turn off your microphone if you wouldn't
22 mind, because it feeds back. Thank you so much. Does
23 anybody have any questions for the applicant or the
24 Commissioner at this point? Okay? Is there anybody wishing
25 to speak in support? Okay. All right.

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1 Well, you all are already at the table, so --
2 that's okay. Give me a second. So, could -- please, whoever
3 wants to speak in support, please come forward.

4 MS. JOSEPHINE STEADMAN: I also wanted to state
5 that early in the morning we had more people to testify --

6 CHAIRPERSON HILL: Okay.

7 MS. JOSEPHINE STEADMAN: -- and one person, they
8 had to go to work.

9 CHAIRPERSON HILL: Okay.

10 MS. JOSEPHINE STEADMAN: But one person actually
11 typed something up while she was here that she asked me to
12 read.

13 CHAIRPERSON HILL: I think you can submit that
14 into the record if you want to. You can't read it for them
15 unless you have permission to read it for them, and that gets
16 more complicated.

17 So, why don't you go ahead and take your -- let's
18 take your testimony first. We'll go out of order here for
19 one second. But -- and so, if you could just please
20 introduce yourselves for the record, the two of you that just
21 sat down, please.

22 MS. GREEN: Santasia Green -- Green like the
23 color.

24 CHAIRPERSON HILL: Green? Okay.

25 MS. MEBRAHTU: My name is Liah Mebrahtu.

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1 CHAIRPERSON HILL: Can you spell your last name,
2 please?

3 MS. MEBRAHTU: M-E-B-R-A-H-T-U.

4 CHAIRPERSON HILL: Okay. Did you guys get sworn
5 in at the beginning?

6 MS. MEBRAHTU: Yes.

7 CHAIRPERSON HILL: Okay. And just making sure
8 everybody fills out their witness cards -- two witness cards
9 to give to the -- okay, great. Wonderful. Ma'am, I'm sorry,
10 I can't remember your name.

11 MS. JOSEPHINE STEADMAN: Josephine Steadman.

12 CHAIRPERSON HILL: Okay. Everybody's going to get
13 three minutes as a member of the public, so you can also get
14 three minutes. I thought you guys were all part of the
15 application, but we're just going to do it this way anyway.

16 And so, you'll get three minutes. Okay? And
17 then, ma'am, you'll also get three minutes. But since you
18 have something to give to the record, why don't you give your
19 three minutes first, and then hand whatever you want to hand
20 to the Secretary. Okay?

21 MS. JOSEPHINE STEADMAN: Well, it's electronic.
22 So, how would you like me to do that?

23 CHAIRPERSON HILL: You can give your testimony
24 first, then ask the Secretary how to do that. Okay? So, go
25 ahead and -- Mr. Moy, you got three minutes on the clock, and

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1 you can begin whenever you like.

2 MS. JOSEPHINE STEADMAN: All righty. So, we've
3 been -- I personally -- I've spent a lot of time talking with
4 different involved parties in the neighborhood about our
5 desired growth, our desired expansion.

6 And the primary concerns that you've brought up
7 and that they've brought up continuously is the parking and
8 the trash and the policing of the parking space. Now, with
9 us being able to move to the corner lot, we'll be able to do
10 a better job at policing the parking. You know?

11 Of course, we ask our customers not to, but as a
12 carry-out, no one really expects to be there for any longer
13 than five/ten minutes. So, even though technically they're
14 breaking the law, like because it's supposed to -- this is
15 Washington, DC. That is kind of the culture of the city,
16 because even -- that is the culture of the city.

17 But of course, if by being a sit-down that will
18 eliminate that problem, because people who know that they're
19 coming to our restaurants will now know that they will have
20 an opportunity to actually stay and enjoy their lunch and
21 their dinner.

22 So, that will be far less of an issue. That --
23 like there is a part of me that kind of feels like a lot of
24 the issues that they bring up is more of a DDOT issue.

25 Because of the way the area that we are in is

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1 situated, a lot of the commercial property is driven to
2 Randolph because of the way the street is zoned. Like our
3 street, which is the street beside us, they have the red
4 residential zoning. They have the red residential zoning,
5 which means only Zone 5 members can park there, which means
6 a lot of the commercial patrons of those establishments are
7 parking on Randolph in order to go to them, and Jam Doung is
8 getting the brunt of the blame since we're the ones who are
9 actually there.

10 But the vast majority of our patrons aren't on
11 Randolph Street for more than 20 minutes. It's a rarity if
12 one of our patrons is there for longer than 20 minutes. And
13 even to address that issue, we as an entity, we've agreed to
14 give discounts to our patrons who come to the new place if
15 they choose to use ride-share options, such as Uber and Lyft.

16 And we're even looking into like potentially
17 hiring a valet company to come in and valet cars, which will
18 also take care of the parking issue, which seems to be a
19 large issue.

20 And like before the gentleman asked about one of
21 the things that we were doing about the potential noise
22 pollution that an outside environment would create, we
23 learned that there's actually a machine -- a contraption that
24 creates night sounds and night ambiances that drown out talk,
25 which has been found to solve that particular problem.

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1 So, of course, we will do all that is necessary,
2 because we like our neighbors.

3 CHAIRPERSON HILL: Okay, great. Thank you.
4 Ms. Hutchinson? Okay, Hutchinson. Okay, and Ms. Steadman,
5 if you want to give whatever you want to the Secretary right
6 over there.

7 MS. JOSEPHINE STEADMAN: Okay.

8 CHAIRPERSON HILL: Oh, Hutchinson. I'm sorry.

9 MS. HUTCHINSON: Hutchinson.

10 CHAIRPERSON HILL: Hutchinson.

11 MS. HUTCHINSON: Yes.

12 CHAIRPERSON HILL: Ms. Hutchinson, I'm going to
13 put three minutes on the clock there, Mr. Moy, if you would.
14 And, Ms. Hutchinson, the clocks are on either side in front
15 of you, I think, and you can begin whenever you like.

16 MS. HUTCHINSON: Okay. I just want to say a
17 little bit more and how disenfranchised we would be if we
18 don't get this restaurant on the corner, 1724.

19 See, presently, we've been grass roots. We've
20 been there from the beginning. We've been there when people
21 were saying, don't go there, it's not a good neighborhood.

22 I've seen a lot of my original customers in
23 t-shirt. We've been there. I, myself, have been a victim
24 of crime in that neighborhood. I was held up and shot four
25 times coming from my business. And I survived it. And I

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1 still want to be there. Okay?

2 This is where I pay my rent, this is where I pay
3 my bills, this is where I hire. I have ten employees. This
4 is where they pay their bills, they pay their rent. This
5 is -- presently, where I'm at now, my lease is up in April.
6 And the owner of that building have expressed to me that he's
7 going to sell.

8 So, more than likely I am not going to get my
9 lease renewed. So, therefore, this is why I purchased this
10 building next door. If I don't get this use, I am going to
11 be -- I won't be able to pay my bills. Ten more people won't
12 be able to pay their bills.

13 And this is going to be a disenfranchise to me and
14 ten more people, because we won't have anywhere to go. I
15 would end up with a building that I can do nothing with. I
16 don't want to live there, I already live somewhere. I don't
17 want to be a landlord to rent the property.

18 I purchased a building personally to turn it into
19 a sit-down restaurant. Ever since we've been at this address
20 at 1726, our customers have expressed the interest of us
21 getting a sit-down. This is all they talk about. This is
22 all they need from us.

23 We want somewhere where we can come in and sit
24 down. And I see that most of our customers, that they're
25 dealing with trash right now, talking about the trash. Most

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1 of our customers are sitting in their car eating their food.

2 And this, sometime, that's what commute to the
3 trash. They throw their trash out the door. If they have
4 a place where they can sit and eat their food, then that
5 problem would be at least eliminated at least 50 percent.

6 And I don't have a problem cleaning up, because
7 I like clean places, too. So, I just want you to know that
8 I spent a lot of money for the little that we can save up
9 during the years of business, to purchase this building.

10 And to not have this restaurant and this corner
11 would definitely put me in a bind. And plus, with the
12 possibility of losing the business that I'm currently in,
13 because this owner don't want to redo the lease, I'm going
14 to have to do something. And what am I going to do? I'm --
15 I have nowhere else to go.

16 CHAIRPERSON HILL: Okay, Ms. Hutchinson. Thank
17 you so much. By the way, like -- I mean, honestly, like, you
18 know, I know from here, from the Board, everybody gets much
19 respect for being here and being in the community for a long
20 time. And it's not like something that we're trying to do
21 in terms -- I mean, we're just here to talk about zoning.

22 I'm just saying, the -- I know that Ms. Steadman,
23 she's not an attorney now. We've already figured that out.
24 But she did read through the regulations. She saw what we're
25 actually trying to figure out, which is the variance test.

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1 And we have had some testimony from the Office of Planning.

2 I think probably we're going to ask you to kind
3 of maybe go back and work with the Office of Planning, but
4 we'll see what happens. Now -- oh, we have somebody else
5 that just joined us. And, have you -- were you sworn in this
6 morning?

7 DR. KNIGHTS: Yes.

8 CHAIRPERSON HILL: Okay. Could you introduce
9 yourself for the record, please?

10 DR. KNIGHTS: Yes. My name is Dr. Shaundel
11 Knights.

12 CHAIRPERSON HILL: Last name, please?

13 DR. KNIGHTS: Knights.

14 CHAIRPERSON HILL: Knights.

15 DR. KNIGHTS: Knights.

16 CHAIRPERSON HILL: Okay. All right, Dr. Knights.
17 I'm going to give you three minutes, which is on the clock.
18 And, Mr. Moy, you're going to give me three minutes, and
19 you're going to start the clock when she starts, Mr. Moy?
20 And you kind of put it up there sometimes and it just seems
21 like it's on display. I don't know -- you know.

22 So, Dr. Knight, you can go ahead -- Dr. Knights,
23 you can begin whenever you like.

24 DR. KNIGHTS: Yeah, I came back. I came this
25 morning and, you know, all the things were happening. I went

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1 to see patients and came back because I believe so much in
2 this business that, you know, I would put my patients on hold
3 to come in and speak on behalf of the owners of Jam Doung.

4 I've been a patron since they opened. And as a
5 Caribbean-American, like it's hard to find a good place that
6 can do what they've done. You know? To be such a pillar of
7 the community and to own a business.

8 I'm also an entrepreneur. I have a business in
9 Friendship Heights. And, you know, making sure, you know,
10 everything is right and having place for people to come and
11 have an experience is so important.

12 And I just felt that I needed to come here and
13 share my voice, because not having a place -- another
14 Caribbean place shut down would be so important to me,
15 because I heard about their lease with the current building.
16 And I -- remember, I went over maybe a month ago and I saw
17 the new building.

18 And Ms. Steadman took me up- -- Mrs. Hutchinson --
19 sorry, I forgot you got married -- that's how long I've been
20 with them, before she was married.

21 And she took me through and was so proud of the
22 new building and what they were going to do, and open up such
23 a beautiful space for people like myself and in my community,
24 as a Caribbean American, to be able to sit down and have
25 something.

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1 So, for that zoning -- for the zoning to inhibit
2 all that or prevent this from happening seems so unthinkable
3 to me, especially from a business owner, as well. If I
4 couldn't imagine that, you know, spending time and planning
5 out having a new location and serving my customers, and then
6 finding out that this is not -- this is probably not going
7 to happen, I can't imagine how that would rock my world.

8 So, I just wanted to take some time out of my day
9 to speak up for them as much as I can, just as a member of
10 the community, a business owner, and a patron of their
11 restaurant.

12 CHAIRPERSON HILL: All right, Dr. Knights. Thank
13 you. Hi.

14 MS. GREEN: Hello. Okay, so I don't know a lot
15 about this zoning and stuff like that. But I just feel like
16 a lot of the reasons why they're trying to keep them from
17 opening --

18 CHAIRPERSON HILL: Mr. Moy, can you start that
19 clock for us. Thank you.

20 MS. GREEN: Oh, yeah, start it for me. Thank you.

21 CHAIRPERSON HILL: That's all right.

22 MS. GREEN: It's really petty, like the whole
23 parking thing. Everyone knows in DC it's hard to park. Like
24 wherever you go out to eat, you're going to Uber or whatever,
25 because parking -- I'm pretty sure a lot of people Ubered

1 here today because parking is so bad. Like -- and I just
2 feel like you people are saying they can't move on. Office
3 of Planning is like saying they can't build their family, or,
4 you know, make it bigger, because it is -- like I know a
5 lot -- I've been doing this since I was younger, because I'm
6 Jamaican and I don't live with my mother anymore. So, you
7 know it's good to have a place where I can go and get real
8 culture food, instead of like, you know, ordering out and
9 stuff like that.

10 And even a lot of local celebrities come back into
11 town and go to Jam Doung. So, I feel like it's just a place
12 where everyone kind of knows about. And it's just, you know,
13 they go through a lot.

14 I feel like it's going to hurt their family,
15 because -- sorry.

16 CHAIRPERSON HILL: That's all right. You're doing
17 good.

18 MS. GREEN: Yeah, I just feel like it's going to
19 hurt their family because I just feel like you're telling
20 them they can't live their dream or do what they want to do
21 because you're scared of trash, when everybody knows
22 people -- trash, those big green bins get taken out every
23 week.

24 Like they're just being petty at this point. And
25 it's just -- you know, they just need to let people live.

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1 That's all. Thank you.

2 CHAIRPERSON HILL: Okay. Thank you.

3 MS. GREEN: Mm-hmm.

4 CHAIRPERSON HILL: Thank you.

5 MS. MEBRAHTU: So, I live in the neighborhood.
6 I live at 18th Street -- I mean, 1803 Second Street. It's
7 just around -- like two blocks away. And we don't have that
8 much -- there's not a lot of restaurants around there.

9 We have one Indian, we have the carry-outs -- it's
10 not a restaurant -- and we have some coffee shops around
11 there. But not really big restaurants. And I am one of the
12 customers that go there and ask for, you know, a sit-down
13 place.

14 So, I thought I came here and give my support,
15 because it would be nice to have, you know, more restaurants
16 in that neighborhood. It would bring more diversity, I
17 believe, in my opinion. So, I am for it. That's it.

18 CHAIRPERSON HILL: Okay, great. Thank you. Does
19 anybody have any questions for the witnesses? Okay. All
20 right, thank you all very much. Thank you. All right, so,
21 Ms. Steadman, I guess I got one question for you.

22 So, when -- just so I'm clear, when you guys
23 bought the place, right? So, you bought it and you assumed
24 there was retail on the first floor, second floor -- whatever
25 we're calling it now -- right? So, you just assumed that you

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1 were going to be able to continue this use before you bought
2 it? Or how did you kind of --

3 MS. JANET STEADMAN: Well, that is correct. I
4 assumed that because it's being used as commercial, once I
5 buy it, I would be able to continue using it as commercial.
6 When I went to DCRA and they're telling me that it can be
7 used as commercial -- and this is just the craziest thing --
8 it can be used for commercial. They're not telling me it
9 cannot. But only for commercial in the respect of a
10 hairdresser.

11 CHAIRPERSON HILL: Sure, I understand.

12 MS. JANET STEADMAN: A hair salon.

13 CHAIRPERSON HILL: Right. Okay.

14 MS. JANET STEADMAN: But because it -- they're
15 telling me that had it been used as a restaurant, I can still
16 use it as a restaurant. One of the representatives down at
17 DCRA was trying to figure some things out and he found a
18 certificate of occupancy as it being a restaurant in -- well,
19 we can't see the date.

20 So, because, you know, he found that and we was
21 trying -- he was trying to see if this certificate of
22 occupancy that say it was a restaurant, we can still use it.
23 But then, there's another law in the book that a certificate
24 of occupancy have to be within three years.

25 CHAIRPERSON HILL: Right, right. Okay.

1 MS. JANET STEADMAN: So, then, that couldn't work.

2 CHAIRPERSON HILL: Okay.

3 MS. JANET STEADMAN: And --

4 CHAIRPERSON HILL: Let me just interrupt you just
5 one second. So, I just had a question for the Office of
6 Planning. So, Mr. Kirschenbaum -- I pronounce your name
7 sometimes wrong, is that correct?

8 MR. KIRSCHENBAUM: Oh, yeah.

9 CHAIRPERSON HILL: Okay. All right. The -- so,
10 the Office of Planning did their analysis on the first
11 floor -- ground floor. Right? And you did that analysis
12 based on what, their photographs that you're like -- because
13 I don't see any photographs from the first floor.

14 I'm trying to understand what you used to
15 determine that you were going to -- that the Office of
16 Planning was going to be able to approve the variance relief
17 for the use on the first floor.

18 MR. KIRSCHENBAUM: So, yes, there were no interior
19 photographs submitted of that space, but we did on our own
20 because the applicant is not represented by a lawyer or an
21 architect. You know, in these situations, we really do try
22 and work very closely with the applicant to help them, you
23 know, sort of navigate this very sort of complicated and
24 confusing process.

25 So, we did look on our own at the certificates

1 of occupancy, which did sort of provide a story that the
2 first floor of this building, which is the bottom floor, had
3 been historically used as a commercial use. And then, the
4 applicant also did provide exterior photographs of the site,
5 which does clearly show that it has been configured as a
6 commercial space from the outside, in terms of the size of
7 the windows, the placement of the door, and also there's
8 existing signage to show from the beauty shop.

9 CHAIRPERSON HILL: So, then, if -- so, I'm just
10 trying to be clear. So, if you had more -- is it that you
11 didn't have proof of the analysis for the variance for the
12 second floor, in terms of it being a commercial use? Or that
13 you were also in agreement that it was, you know, a beauty
14 salon, and therefore, you weren't able to agree to the
15 variance in terms of the use moving from a beauty salon to
16 a restaurant?

17 MR. KIRSCHENBAUM: No, I mean, the analysis didn't
18 have much to do with changing one use to another. It -- we
19 more looked at it that it had -- the first floor has been a
20 commercial use.

21 Regarding the second floor, the certificates of
22 occupancy have said that it has been used for residential
23 use. So, you know, it was sort of up to -- it's the
24 applicant -- to provide the burden of proof that somehow that
25 it hasn't been, or there is some reason why it can't continue

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1 to be used for residential use.

2 And this is how we -- you know, it's not leasing.
3 This is just how the Office of Planning reviews these use
4 applications, and this is the general sort of --

5 CHAIRPERSON HILL: No, I understand. I
6 understand.

7 MR. KIRSCHENBAUM: -- guidelines.

8 CHAIRPERSON HILL: I understand. No, I know it's
9 not personally you. If -- so -- but if the applicant had
10 provided more -- what do you think could have helped the
11 Office of Planning come to a different conclusion if -- I'm
12 just trying to understand in terms of like if the applicant
13 were able to provide more proof on the second floor use, is
14 that what would be more helpful to the Office of Planning.

15 MR. KIRSCHENBAUM: That's correct. You know, if
16 there was -- again, if there were -- there have been plans,
17 you know, approved by DCRA at some point showing it
18 configured as a restaurant use.

19 If it is actually is configured -- fully outfitted
20 as a restaurant currently and it looks like it had been used
21 as a restaurant, I mean, I know that the Board and OP in
22 other instances have approved things when, you know, an owner
23 had bought a use that had been converted to something, and
24 then they come here to seek relief.

25 But in this case, we just don't have an evidence

1 at the moment showing that the second floor -- we just -- you
2 know, either way we just --

3 CHAIRPERSON HILL: It's okay. I'm not trying to
4 grill you.

5 MR. KIRSCHENBAUM: Yeah, yeah.

6 CHAIRPERSON HILL: You're all right. I'm just
7 trying to -- so --

8 MR. KIRSCHENBAUM: Unfortunately, yeah.

9 CHAIRPERSON HILL: -- the -- because, you know,
10 as we've been kind of looking here, even on Google, seeing
11 like kind of like old photographs of like the hair salon that
12 was above. Like, I mean, I'm just -- what I'm trying to
13 understand is that if it were a hair salon and there was a
14 proof that it was a hair salon, that wouldn't have changed
15 the Office of Planning's opinion necessarily.

16 MR. KIRSCHENBAUM: No. I mean, again, it was not
17 what the actual -- so --

18 CHAIRPERSON HILL: Commercial use.

19 MR. KIRSCHENBAUM: Yeah. I mean, essentially, you
20 know, it was more about it's being used as a commercial use.

21 CHAIRPERSON HILL: Okay, all right. Okay. Okay,
22 I'll let you all answer questions. Hold on one second. So,
23 does anybody have any questions for the Office of Planning
24 anymore?

25 MS. JANET STEADMAN: Yeah.

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1 CHAIRPERSON HILL: Wait, wait, wait, wait. Over
2 here on the Board. You can turn off your microphones again
3 just for a second. Thank you. No. Okay. So -- all right.
4 Commissioner, you had a question for the Office of Planning?

5 MS. HOLLIDAY: Yes. I still do not understand
6 what is being protected. We have almost every restaurant in
7 Bloomingdale has residential use above it, beside it, behind
8 it, and/or across the street from it. Every one.

9 CHAIRPERSON HILL: Now, Commissioner Holliday,
10 what's your question for the Office of Planning?

11 MS. HOLLIDAY: I don't understand what is being
12 protected.

13 CHAIRPERSON HILL: He's not protecting anything.
14 He's just saying that they're not meeting the variance
15 standard that you --

16 MS. HOLLIDAY: Yeah, I understand --

17 CHAIRPERSON HILL: Okay, that's all --

18 MS. HOLLIDAY: -- but I presume the variance
19 standard is -- I mean, there's language. I can get the
20 language.

21 CHAIRPERSON HILL: Okay. That's all right.
22 Commissioner Holliday, I'm not trying to cause problems. I'm
23 saying, you asked -- I'm just trying to get the question.
24 You don't seem to have a question --

25 MS. HOLLIDAY: We have a variance evidence --

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1 CHAIRPERSON HILL: You're arguing again.

2 MS. HOLLIDAY: -- adverse impact on the
3 neighborhood. Right?

4 CHAIRPERSON HILL: A variance -- I'm looking right
5 at the standard right now, and the number one prong is what
6 we're having trouble with. It's not -- so, I can give them
7 to you later. Okay.

8 So, Ms. Steadman, you have a question for the
9 Office of Planning?

10 MS. JANET STEADMAN: Well, the Office of Planning
11 is having the same issue that I'm having. You have me here
12 testifying that the second floor above -- the second floor --

13 CHAIRPERSON HILL: We understand.

14 MS. JANET STEADMAN: Yeah. You have me here
15 testifying that the second floor was used as a hairdresser.
16 When I went to DC- --

17 CHAIRPERSON HILL: I don't think there's a
18 question that it was used as a hairdresser. I mean, we're
19 just talking about the use variance now going to restaurant.

20 MS. JANET STEADMAN: Right. Now, what Jonathan
21 is saying, and what DCRA is saying, is confusing me. And I
22 don't know which one is correct.

23 When I met with Zoning at DCRA -- and it was
24 Zoning that recommended me to file this BZA case -- the
25 reason why Zoning was telling me that I could not get the

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1 certificate of occupancy, was not because they didn't think
2 it wasn't a hairdresser.

3 It was because I was changing the use of the
4 business. Zoning never said that it wasn't a hairdresser.
5 They acknowledged it was a hairdresser, but I was changing
6 the use from a hairdresser to a restaurant, and they weren't
7 permitted to give me that change of use.

8 CHAIRPERSON HILL: Okay.

9 MS. JANET STEADMAN: But you guys were.

10 CHAIRPERSON HILL: Okay. Well, we're permitted
11 to grant or deny a variance. So -- but yes. Okay, do you
12 have any final comments?

13 MS. JANET STEADMAN: No.

14 (Off microphone comment.)

15 CHAIRPERSON HILL: No, just do you have any final
16 comment?

17 MS. JANET STEADMAN: Well, my only comment would
18 be, is if we're all clear -- I'm a little confused with the
19 Office of Planning. I'm a little confused with him saying
20 that he don't have anything saying that the second floor was
21 used as a restaurant. And if -- like, I want to ask you, if
22 you thought that the second floor was used as a hairdresser,
23 would your opinion be different.

24 Because I hear you saying that you don't think the
25 second floor was used as a hairdresser.

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1 MR. KIRSCHENBAUM: You know, just at this point
2 we just don't have anything in the record to demonstrate
3 that. That's --

4 CHAIRPERSON HILL: Okay, hold on, hold on.

5 MS. JANET STEADMAN: But that's what I'm -- that's
6 what I'm asking you. If you could have found something in
7 the record that demonstrate that the second floor was used
8 as a hairdresser, would that have changed your opinion?

9 MR. KIRSCHENBAUM: So, you know, if -- we were
10 looking to have evidence in the record to show that somehow
11 that the second floor was already configured as a commercial
12 use. That's sort of where -- you know, the direction we were
13 trying to head in.

14 CHAIRPERSON HILL: Okay. All right, I'm going to
15 stop this for one second. Okay. So, then, I don't know
16 where the Board is. Okay? So, then, what I'd be kind of
17 interested in is asking the applicant to go ahead and see if
18 they can find -- work with the Office of Planning to see if
19 there's any other additional information that they might be
20 able to find the Office of Plan- -- provide the Office of
21 Planning on the use on the second floor.

22 And then -- I mean, I'm not -- I just need to
23 think about this anyway. So, I wasn't ready to decide this
24 today anyway. So, my thought would be for the applicant to
25 go ahead and see if they can work with the Office of Planning

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1 on continuing to find proof for the second floor concerning
2 their variance test, and then ask for another report from the
3 Office of Planning if, you know, one way or the other -- if
4 you're going to stay the same way, then stay the same way,
5 but if you think that like you've been convinced otherwise,
6 then supply a different report. And then, we can go ahead
7 and set this for a decision. Does the Board have any other
8 thoughts? Okay. So -- I'm sorry?

9 MEMBER JOHN: Just one.

10 CHAIRPERSON HILL: Sure.

11 MEMBER JOHN: Just wanted to say that the
12 hairdresser's name, I believe, was the McCoy Sisters. And
13 that was a very famous hair salon. So, I'm sure there should
14 be something in Bloomingdale's records that might show, even
15 if there's no legal certificate of occupancy, that it was
16 used for sometime as a salon.

17 So, that might be a way to go. So, I'll defer to
18 what the Chairman just suggested.

19 MS. JANET STEADMAN: Can I --

20 CHAIRPERSON HILL: Hold on. Give me one second.
21 Give me one second. Okay, we're going to take a quick five-
22 minute break. Okay? We're going to take a quick five-minute
23 break. Okay, thank you.

24 (Whereupon the above-entitled matter went off the
25 record at 3:13 p.m. and resumed at 3:17 p.m.)

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1 CHAIRPERSON HILL: Okay. I got a note that a
2 council member is on his way to testify. So, that's why
3 we're just going to see whether or not that happens or not.

4 But in the meantime, is there anybody here that
5 wishes to speak in opposition?

6 Okay. All right. So, that was -- I thought that
7 was going to eat up some time. It's not. So -- all right.
8 We're going to hold you guys for now. Okay? We're going to
9 stop this portion of the case. We're going to keep it open.

10 Just stay here, because we're going to see if we
11 do get a council member to come testify, and we're going to
12 move on to the next case. And so, if you just kind of bear
13 with me.

14 (Pause.)

15 CHAIRPERSON HILL: We have to wait until Mr. Moy
16 calls the next case, though, because I'm not sure what it is.
17 I hope it's the case that you're walking up for, but you
18 don't know.

19 (Laughter.)

20 CHAIRPERSON HILL: Actually -- okay. So, there
21 has been clarification and we're going to call back, again,
22 Application No. 19887. So, if you can come on back -- and,
23 Mr. Moy, I don't know if that's enough what I just did or you
24 have to call it back.

25 MR. MOY: No, that's perfect.

1 CHAIRPERSON HILL: Okay. Great. If you could all
2 please come back to the table?

3 (Pause.)

4 CHAIRPERSON HILL: Okay. So, what basically
5 happened -- so, there's a letter coming. So, we're going to
6 keep the letter open from Council Member McDuffie.

7 And so, the record is still going to remain open
8 and, still, what the plan was, what we're going to try to do,
9 which is, Ms. Steadman, if you could go ahead and consult
10 with the Office of Planning, see what kind of evidence they
11 might want to try to find, I think the -- what was the name
12 of the hairdressing salon again?

13 (Speaking off mic.)

14 CHAIRPERSON HILL: Okay. I'm glad I don't have
15 to say it out loud then. All right. So, you all know what
16 you're going to Google. Okay. And so -- yeah.

17 And then, so, Mr. Moy, when can we set this back
18 before us for decision?

19 Unless the Board needs anything else, we can do
20 a decision or do you want a continued hearing?

21 (Speaking off mic.)

22 CHAIRPERSON HILL: Right. But we'll go to
23 decision, we're not -- I see nods. Okay.

24 So, we're closing the hearing for everything but
25 -- the applicant is going to work with the Office of

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1 Planning, and the Office of Planning is going to submit a
2 supplemental report as to what they find one way or the
3 other. Okay.

4 And so, Mr. Moy, if you can come up with dates,
5 that would be great.

6 MR. MOY: Okay. Mr. Chairman, I would suggest
7 January the 30th. All right.

8 CHAIRPERSON HILL: Okay. I'm looking to you, Ms.
9 Steadman, because you have to now work with -- so, you have
10 to get all your stuff together from the Office of Planning
11 and work with them before -- and Mr. Moy is going to tell you
12 a date that the Office of Planning is supposed to give us a
13 report, I assume, Mr. Moy?

14 MR. MOY: So, if the Board is scheduling this for
15 decision on January 30th, then if the applicant can file the
16 additional information that the Board is asking for by
17 January the -- can you do it by January the 16th?

18 MS. STEADMAN: Yes.

19 MR. MOY: Okay. And then Office of Planning can
20 file its supplemental report, let's say, a week later, which
21 would be January 23rd.

22 MR. KIRSCHENBAUM: Yes.

23 MR. MOY: Okay. And then the Board will make its
24 decision on the 30th of January.

25 CHAIRPERSON HILL: Okay. Great.

1 Ms. Steadman, do you have any questions?

2 MS. STEADMAN: No.

3 CHAIRPERSON HILL: Okay. All right.

4 COMMISSIONER MAY: Mr. Chairman?

5 CHAIRPERSON HILL: Okay.

6 COMMISSIONER MAY: Having quickly scanned the
7 letter from Council Member McDuffie, there is a -- I mean,
8 he's indicating his support, but he said his support is
9 contingent upon the applicant's ability to negotiate and
10 coordinate with neighboring residents impacted by sanitation,
11 traffic and loitering. It is my request that this letter be
12 made part of the official record.

13 So, I would suggest that Ms. Steadman talk to the
14 neighbors who are in opposition and work with ANC and whoever
15 else to try to address the concerns that were raised by the
16 council member.

17 And if you want a copy of his letter, you can have
18 that.

19 CHAIRPERSON HILL: Okay.

20 MS. STEADMAN: Thank you.

21 CHAIRPERSON HILL: All right. So, the dates
22 remain the same. Do you have any questions, Ms. Steadman?

23 MS. STEADMAN: No.

24 CHAIRPERSON HILL: Okay. All right. Well, thank
25 you all for coming down.

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1 MS. STEADMAN: Thank you.

2 CHAIRPERSON HILL: Bye-bye.

3 (Pause.)

4 MR. MOY: All right. I believe the next
5 application before the Board is Case No. 19894 of 2020 M
6 Street, LLC, and 2030 M Street -- I feel like I'm repeating
7 myself -- captured and advertised for special exceptions
8 under Subtitle C Section 1304.2 and 1312 from the roof-
9 mounted antenna setback and height requirements of Subtitle
10 C Section 1304.1(a) and (b), to locate three antennas on the
11 roof of a to-be-constructed 11-story office building in the
12 D-5 Zone. This is at 2050 M Street, N.W. (Square 100, Lot
13 122).

14 Here we go again. I'm sorry. So, the title is
15 19894 of 2020 M Street, LLC, and 2030 M Street, LLC.

16 CHAIRPERSON HILL: Okay. If you could please
17 introduce yourselves for the record?

18 MR. HUGHES: Good afternoon, Mr. Chair. Dennis
19 Hughes with Holland & Knight.

20 MR. KLOS: I'm Daniel Klos with CBS.

21 MR. BELL: I'm Steven Bell with Kendall Heaton
22 Associates, architects.

23 CHAIRPERSON HILL: Okay. Great.

24 Mr. Hughes, I assume you're presenting to us?

25 MR. HUGHES: Yes, I am.

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1 CHAIRPERSON HILL: Okay. So, I don't really have
2 a lot of questions at this point. I suppose if you can
3 briefly go over what you're doing and how you're meeting the
4 standard, I know that some members of the Board are going to
5 have some questions for you.

6 So, I'm going to go ahead and put five minutes on
7 the clock so I know where we are, and you can begin whenever
8 you like.

9 MR. HUGHES: Well, I'll begin by passing the baton
10 to my neighbor.

11 CHAIRPERSON HILL: Great. Mr. Klos, you could
12 give us just a brief summary, and then we'll let Mr. Bell
13 review the roof.

14 MR. KLOS: I'm the director of operations for CBS
15 News Washington. CBS News is an international news-gathering
16 organization and we've been on M Street for over 50 years.

17 Our bureau is now in a new state-of-the-art
18 building. When completed next year, our building will be
19 part of the new 2050 building.

20 Every Sunday morning we originate the public
21 affairs program Face the Nation from our studios. During the
22 rest of the week, the Washington Bureau covers the day-to-day
23 news activities of our capital and the region.

24 As part of this news gathering, we need to receive
25 satellite signals from various locations. Having these

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1 antennas on the roof is vital to our operation. We did have
2 these satellite antennas on our old building.

3 The antennas are also part of the CBS News
4 Disaster Recovery Plan. If there is a problem in New York,
5 our Washington bureau, via these antennas, would keep CBS
6 News on the air.

7 We have met with and we do have the support of our
8 neighbors on M Street, and I thank you for your time and
9 consideration.

10 CHAIRPERSON HILL: Thank you.

11 MR. HUGHES: Mr. Chair, could we just pause for
12 a moment? I feel like -- we have the drawings that are
13 submitted to the record that we can review --

14 CHAIRPERSON HILL: Sure.

15 MR. HUGHES: -- but we're having difficulty
16 getting those up on the --

17 CHAIRPERSON HILL: Sure. Maybe somebody can come
18 help you.

19 MR. HUGHES: Yeah. I have the login information,
20 but I'm not getting a --

21 CHAIRPERSON HILL: Okay. Okay.

22 MR. KLOS: Sorry about that.

23 CHAIRPERSON HILL: That's all right. We'll go
24 ahead and actually just stop the clock, Mr. Moy. We'll just
25 see what happens. And then if someone could come help with

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1 that --

2 COMMISSIONER MAY: Maybe I could go ahead and
3 start asking some of the questions that are --

4 CHAIRPERSON HILL: Sure. Is that what you would
5 like to do?

6 COMMISSIONER MAY: Well, I mean, you know,
7 assuming someone is going to help log on --

8 CHAIRPERSON HILL: Sure. That's great. Sure.
9 Go ahead.

10 COMMISSIONER MAY: So, I mean, I do have questions
11 about this because the -- I don't have any problem with the
12 height of the antennas. I mean, that is what it is, right --
13 it has to be a certain way -- but the setback relief is a
14 concern.

15 And it's a concern, because I have always held
16 since we opened the door for occupied space on the penthouse
17 level of a building, that all setback requirements had to be
18 met before you could fill out the rest of the space with
19 occupiable space. And you have a very large occupied space
20 on the top floor here on the penthouse level.

21 So, my question is: Would it have been possible
22 for you to design that penthouse in such a way that the
23 antennas could be set back if that occupiable space had been
24 smaller?

25 MR. BELL: I would have to say that, possibly,

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1 yes. The orientation of the dishes when they're pointed
2 towards the southwest, the elevation off of the horizon is
3 only 9 degrees at a 15 percent slope.

4 COMMISSIONER MAY: Right.

5 MR. BELL: As it rotates around to the south, the
6 elevation goes higher. As it rotates around to the
7 southwest, it goes back down a bit from 44 degrees down to
8 about 32 degrees.

9 COMMISSIONER MAY: Uh-huh.

10 MR. BELL: We start to run into issues, when we're
11 rotated around to the southwest, with the actual elevator
12 core of the machine rooms over there.

13 COMMISSIONER MAY: Right.

14 MR. BELL: The -- so, I don't have a definitive
15 answer for you at this moment.

16 COMMISSIONER MAY: Uh-huh. Okay. Well, that's
17 all right. I understand. I'm asking you to sort of, like,
18 on the spot mentally redesign the top floor of the building.

19 And is this building now under construction?

20 MR. BELL: It is. It was permitted last year.

21 COMMISSIONER MAY: And how far along -- is it
22 topped out?

23 MR. BELL: No. No. No. The portion that CBS is
24 occupying now, which was Phase 1 --

25 COMMISSIONER MAY: Uh-huh.

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1 MR. BELL: -- literally, they're in the new
2 portion of that --

3 COMMISSIONER MAY: Okay.

4 MR. BELL: -- which becomes part of the overall
5 building later. The construction right now is down in the
6 basement level, P2 and P3.

7 COMMISSIONER MAY: Okay. All right. So, it's not
8 very far out of the ground.

9 MR. BELL: Yeah.

10 COMMISSIONER MAY: Because I understand if all you
11 did was take the antennas and shift them further to the west
12 and into what is now planned as mechanical space on the
13 penthouse level, that would be difficult, right?

14 You know, since you're already coming out of the
15 ground, the idea of shifting a lot of mechanical when it's
16 been planned based on vertical shafts and things like that,
17 could be very difficult to do.

18 MR. BELL: Agreed.

19 COMMISSIONER MAY: It would be different if your
20 party room or whatever it is, you know, that occupiable
21 space, if it was immediately adjacent or, you know, closer
22 by, that's the stuff that's most flexible.

23 And I'm not asking for you to push it further to
24 the south so that it could cut into that space -- that
25 doesn't make sense either -- but it is problematic.

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1 And I don't think -- I think that, you know -- I
2 mean, it's been a while since I had to give this lecture.
3 I gave this lecture repeatedly when the penthouse regulations
4 were first changed, and I know the Office of Planning has
5 been quite vigilant about it, and I know that law firms
6 around town got the message that you've got to meet your
7 setbacks first before you start planning for a lot of
8 occupiable penthouse space. So, I'm disappointed to have
9 seen it this way.

10 All that being said, you know, I'm done with the
11 lecture. The practical issue now is whether those antennas
12 are at all visible from public space.

13 So, the question I have -- because you have -- as
14 I understand it, that top floor is the top floor, the highest
15 level of the building, and then it steps down, the building
16 steps down a little bit into a -- like a side yard space.

17 MR. BELL: Uh-huh.

18 COMMISSIONER MAY: So, that can help block the
19 views of the antennas.

20 My question is: Can you see it from the sidewalks
21 of the street to the south? I can't remember what street is
22 that. Is that K Street?

23 MR. BELL: 21st on the west and M on the north.

24 COMMISSIONER MAY: M on the north. Oh, okay.

25 So, across 21st Street where you would be looking

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1 into that side yard, can you actually see up to that rooftop
2 level?

3 MR. BELL: No, you cannot. And on the last page
4 of the PDF presentation, we had some 3-D images because we
5 took a look at that from --

6 COMMISSIONER MAY: Okay. Were they in your
7 original presentation or just in the presentation you brought
8 today?

9 MR. BELL: They should be in the original.

10 COMMISSIONER MAY: Okay. Because I didn't see
11 anything in the original that --

12 MR. BELL: They're computer models or renderings.

13 COMMISSIONER MAY: Is that Exhibit 4?

14 MR. BELL: Tab A of Exhibit 31, the applicant's
15 prehearing statement. Those drawings are identical to the
16 drawings that we submitted originally --

17 COMMISSIONER MAY: Yeah.

18 MR. BELL: -- except for a dimension line that was
19 added.

20 COMMISSIONER MAY: All right. Okay. Yeah. So,
21 the upper left-hand image --

22 MR. BELL: This is from across the street on 21st
23 Street.

24 COMMISSIONER MAY: Okay.

25 MR. BELL: About as far away as you can get with

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1 your back against the opposing buildings over there.

2 COMMISSIONER MAY: Right.

3 MR. BELL: And so, the satellite dishes are far
4 enough east that you cannot see them from here.

5 COMMISSIONER MAY: Right.

6 MR. BELL: The image below it is moving to the
7 north a little bit and still looking --

8 COMMISSIONER MAY: Right.

9 MR. BELL: -- in that yard area between them. You
10 still cannot see it. And then we put an image in here from
11 the corner of 21st -- the upper right-hand image, the corner
12 of 21st and M Street --

13 COMMISSIONER MAY: Okay.

14 MR. BELL: -- which, clearly, you can't see it.

15 COMMISSIONER MAY: All right.

16 MR. BELL: I mean, even the penthouse doesn't
17 appear.

18 COMMISSIONER MAY: Okay. All right. That's more
19 convincing than I thought. I mean, it wasn't totally clear
20 to me.

21 In this 3-D model that you did, did you actually
22 model the antennas?

23 MR. BELL: We did, yeah.

24 COMMISSIONER MAY: Okay.

25 MR. BELL: The whole project was done --

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1 COMMISSIONER MAY: Okay. All right. That helps.
2 So, I know that the -- if they were there, I would see them,
3 but they're not visible.

4 MR. BELL: Yeah. I mean, we understand the
5 sensitivity about the appurtenances that are up on the roof,
6 and our goal was to push this as far away from the public way
7 as we could so it would not be visible.

8 COMMISSIONER MAY: Right.

9 MR. BELL: And even given the height of these
10 dishes, fortunately it is not visible.

11 COMMISSIONER MAY: Right. Okay. No, I'm
12 satisfied now. I mean, I would prefer it if they were -- if
13 you had met the setbacks. In which case, you wouldn't --
14 when you measured for the height of the antennas, but that's
15 a very easy thing to decide, but the setback issue is one
16 that I'm particularly sensitive to because of the whole --
17 you know, how it all came about and, you know, we wanted to
18 open the door for rooftop uses, but we also did not want that
19 to prompt a whole lot of exceptions to rooftop setbacks.

20 So, as long as I'm convinced now that it's not
21 going to be visible, then I'm not going to have a problem
22 with it.

23 MR. HUGHES: Mr. Chair, it sounds that the Board
24 members are very well familiar with the project, so we'll
25 yield our --

1 CHAIRPERSON HILL: That's great.

2 MR. HUGHES: Any questions you have --

3 CHAIRPERSON HILL: That's great. I mean, you went
4 over, Mr. Hughes.

5 (Laughter.)

6 CHAIRPERSON HILL: Let's see. I'm going to go
7 ahead and -- does anyone else have any questions for the
8 applicant at this time?

9 All right. The Office of Planning, please.

10 MS. THOMAS: Yes. Good afternoon, Mr. Chairman,
11 members of the Board. I'm Karen Thomas with the Office of
12 Planning.

13 We support the antenna's location on the roof due
14 to its minimal visibility, if at all, from the area way that
15 is left on the applicant's property.

16 That will be the only location that you will be
17 able to detect those antennas and, at that point, visibility
18 is minimal, if none, if at all.

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

21 COMMISSIONER MAY: I just want to make sure, Ms.
22 Thomas, you guys are all still aware of my particular
23 sensitivity on this issue, right?

24 MS. THOMAS: Yes.

25 COMMISSIONER MAY: And I'm not asking you to

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1 customize your reports and address them specifically to me
2 and my concerns, but, you know, sometimes I need that
3 reassurance that we're all paying attention to it and it's
4 not just me.

5 MS. THOMAS: No, it's not just you.

6 COMMISSIONER MAY: Okay. Thank you.

7 CHAIRPERSON HILL: Mr. Hughes, do you have any
8 questions for the Office of Planning?

9 MR. HUGHES: No, sir.

10 CHAIRPERSON HILL: All right. Is there anyone
11 here wishing to speak in support?

12 Is there anyone here wishing to speak in
13 opposition?

14 Mr. Hughes, do you have anything else you'd like
15 to add at the end?

16 MR. HUGHES: I just would like to thank the Office
17 of Planning for their report and note that there's a report
18 from DDOT that has no objection, and a report from ANC 2A
19 that supports our application.

20 CHAIRPERSON HILL: Okay.

21 MR. HUGHES: That's it.

22 CHAIRPERSON HILL: Thank you. Actually, is the
23 ANC here?

24 Okay. Great. Mr. Klos.

25 MR. KLOS: Yes.

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1 CHAIRPERSON HILL: No disrespect to the host, but
2 I miss Mr. Schieffer.

3 MR. KLOS: Noted. Thank you.

4 CHAIRPERSON HILL: Yeah. And whether or not you
5 really are news, it's the current administration who knows
6 what the -- so, all right. I'm going to close the hearing.

7 Let's see. Is the Board ready to deliberate?

8 Okay. Mr. May, would you like to begin the
9 deliberations?

10 COMMISSIONER MAY: I think I pretty much said what
11 I had to say about it. No, I mean, as I said earlier, the
12 height is understandable, the equipment is what it is, and
13 the use is understandable.

14 The setback is always a concern. Again, I would
15 have preferred that the setback relief not be necessary, but,
16 in this circumstance, given where you are in the project and
17 the fact that it's not visible from the street, and
18 demonstrably so based on the information in the record, then
19 I can go along with that.

20 CHAIRPERSON HILL: Okay.

21 COMMISSIONER MAY: So, I'd be in favor and I would
22 make a motion to approve BZA Case No. 19894, 2020 M Street,
23 LLC, and 2030 M Street, LLC, as captioned by the secretary.

24 MS. WHITE: Second.

25 CHAIRPERSON HILL: Motion made and seconded.

1 All those in favor say "aye."

2 (Chorus of ayes.)

3 CHAIRPERSON HILL: All those opposed?

4 The motion passes, Mr. Moy.

5 MS. WHITE: And, Mr. Chair, I'll keep an eye on
6 that. My office is right down the street. So, if I can see
7 it from the sidewalk, I'll give my colleague a call.

8 MR. MOY: The staff would record the vote as five
9 to zero to zero. This is on the motion of Mr. Peter May to
10 approve the application for the relief requested.

11 Seconded the motion, Ms. White. Also in support,
12 Ms. John, Chairman Hill and Vice-Chair Hart. The motion
13 carries.

14 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,
15 gentlemen. Thank you very much.

16 MR. MOY: The next case application before the
17 Board is No. 19200B of Jemal's Pappas Tomato's, LLC,
18 captioned and advertised -- this is a request for
19 modification of significance to the plans and relief approved
20 by BZA Orders No. 19200 and 19200A to include special
21 exceptions under Subtitle U Section 802.1(d) from the use
22 provisions of Subtitle U Section 802, under Subtitle C
23 Section 703.2 from the minimum parking requirements of
24 Subtitle C Section 701.5, under the penthouse use provisions
25 of Subtitle C Section 1500.3(c), and under Subtitle J Section

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1 210.1 for the rear yard requirements of Subtitle J Section
2 205.2; and the variance from the use provision Subtitle U
3 Section 802.1(d)(3).

4 This would expand an existing mixed use building
5 in the PDR-1 one. This is at 1401 Okie, O-K-I-E, Street,
6 N.E. (Square 4093, Lot 22).

7 CHAIRPERSON HILL: Okay. All right. Thank you,
8 Mr. Moy.

9 Please introduce yourselves for the record.

10 MS. GOURDINE: Andrea Gourdine, Douglas
11 Development.

12 MR. MILLSTEIN: Paul Millstein, Douglas
13 Development.

14 MS. BLOOMFIELD: Jessica Bloomfield with Holland
15 & Knight.

16 MS. LOONEY: Julian Looney with Antunovich
17 Associates.

18 CHAIRPERSON HILL: Could you spell your last name
19 for me, sir?

20 MS. LOONEY: L-O-O-N-E-Y.

21 MR. ANDRES: Good afternoon. Erwin Andres with
22 Gorove-Slade Associates.

23 CHAIRPERSON HILL: Hi, Mr. Andres.

24 MR. ANDRES: Good afternoon.

25 CHAIRPERSON HILL: All right. Ms. Bloomfield, so

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1 are you going to be presenting to us?

2 Okay. Great. So, basically, I mean, there's a
3 lot of different things that you're asking for here. So, if
4 you could kind of just walk us through what you're asking for
5 as well as, I guess, earlier there was some comments from
6 DDOT and it's -- I guess, in the record something came in
7 from DDOT last night and I don't know if you're aware of the
8 couple of items of conditions they're mentioning on page 3.

9 So, if you could speak to, again, what you are
10 trying to do and how you're meeting the standard for us to
11 grant the application, I'm going to put 15 minutes on the
12 clock, Mr. Moy, just so I know where we are, and you can
13 begin whenever you like.

14 MS. BLOOMFIELD: Great. Thank you so much.

15 As Mr. Moy mentioned, this is an application for
16 modification of significance for revised architectural
17 drawings previously approved.

18 We also request special exception relief to permit
19 entertainment use in the building, a bar and restaurant uses
20 and new outdoor roofdecks, a reduction in the number of
21 required parking spaces and a rear yard that does not meet
22 the minimum requirements.

23 We're also requesting one variance which is to
24 provide an entertainment use within 1,000 feet of an existing
25 live performance venue, which, in this case, is City Winery,

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1 also owned by the applicant development company.

2 The application meets the special exception
3 standards set forth in detail in our filing materials. I'm
4 going to go through them quickly, because you asked.

5 For the entertainment use, it meets the special
6 exception standards because it will not be objectionable to
7 a neighboring property.

8 The site does not abut a residential zone or any
9 residential uses. It is bounded on two sides by public
10 streets, and on two sides by vehicle storage yards that are
11 owned by the district and also zoned PDR.

12 Any noise or lighting associated with the
13 entertainment use will, therefore, not impact surrounding
14 residents.

15 The entertainment use will also not create adverse
16 on-street parking impacts because patrons will be parking in
17 the above-ground parking garage also owned by the applicant
18 development company and located directly across the street,
19 less than 150 feet from the site.

20 That garage is over 1,000 parking spaces and
21 operates at less than 50 percent capacity even in peak
22 periods.

23 The entertainment use will not impact trip
24 generation created by the project, as evaluated in our
25 transportation report and as confirmed by DDOT in their

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1 supplemental report that was filed yesterday.

2 Second, the application meets special exception
3 standards to locate bar and restaurant uses in the
4 penthouses.

5 These uses are permitted as a matter of right in
6 the PDR-1 Zone generally and will create an enjoyable
7 experience with patrons of the site.

8 The structures will comply with all DC development
9 standards and the regulations, and with the DC noise
10 regulations, and the site does not abut any residential uses,
11 as I said before, that could be negatively impacted.

12 Regarding parking, the third special exception,
13 the regulations permit a special exception for parking if
14 there is existing public, commercial or private parking in
15 the neighborhood that will be available when the subject
16 building is in use.

17 And, as I mentioned, the applicant owns a parking
18 garage located across Okie Street, which will be available
19 for use by patrons of the site.

20 Fourth, the rear yard special exception is needed
21 to house brewery equipment for one of the tenants that will
22 be located in the building.

23 This equipment is exceptionally heavy such that
24 it has to be located slab on grade. The only slab on grade
25 in the existing building is in the cellar, which does not

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1 have enough vertical clearance to accommodate the equipment,
2 or on the ground floor -- on the ground in a portion of the
3 rear yard, which is what we have requested.

4 As I mentioned before, the rear yard is located
5 adjacent to district-owned vehicle storage yards so that the
6 building's minor encroachment into the rear yard will not
7 create adverse impacts to light or air or open space to any
8 surrounding residents or residential uses.

9 The application meets the general special
10 exception standard as well since the proposed mix of uses
11 that we're proposing are in harmony with the mixed use Ivy
12 City neighborhood, and because the site does not abut any
13 residential zones or uses that could be negatively impacted
14 by the proposed uses or by the parking or rear yard relief.

15 Finally, the application meets the variance test
16 with respect to the entertainment use being located less than
17 1,000 feet from the existing live performance venue.

18 This site is exceptionally situated because it is
19 improved with a very large existing warehouse building that
20 is being renovated for new uses.

21 This results in a practical difficulty, because
22 few traditional retailers are able to operate in these
23 warehouse spaces even when they are divided into smaller
24 spaces, but that these spaces do appeal to entertainment-type
25 users who are attracted to the larger floor plate.

1 The relief will not result in substantial
2 detriment to the public good or zone plan because the
3 entertainment use is consistent with other uses currently in
4 the neighborhood and operating successfully, and will operate
5 within the building only, thus avoiding any concerns with
6 light and noise, and will not generate any more foot traffic
7 or vehicular traffic than would be generated by traditional
8 retailers that are permitted as a matter of right on the
9 site.

10 We are pleased to have support from the Office of
11 Planning and ANC 5D in this application. You referenced
12 DDOT's report. They submitted an initial report which they
13 supplemented yesterday.

14 The supplemental report included two conditions
15 on page 3 that you mentioned, and we've discussed these
16 conditions with DDOT and were agreeable to both of them, and
17 we would agree to include them as conditions in the order.

18 So, with that, I think I answered both of your
19 questions. I will turn it over to Paul Millstein of Douglas
20 Development to give a brief overview of the project and
21 development in the area.

22 MR. MILLSTEIN: Okay. Thank you. Good afternoon.
23 So, I'll try to keep it brief. It's not so easy for me all
24 the time, but I'll try.

25 We're here and this seems complicated and a lot

1 of things going on, and it actually is; but what we've
2 actually done is we've consolidated three cases that were
3 going to come before you.

4 The restaurants, the breweries and the axe-
5 throwing bar -- and it's an axe-throwing bar -- were all
6 going to have their own actions.

7 And we met with Office of Planning and the tenants
8 and said, "It might be more productive for your time and ours
9 to just bring it all together and clean up the whole
10 property." So, that's why you're seeing multiple things
11 going on here.

12 This project is like a transformer for us. It's
13 like Megatron. It is started here and it went here, here,
14 and now it's here, and I can tell you that was a true
15 evolution.

16 When we first signed our first lease with Compass
17 Coffee, who is a local coffee manufacturer in the District
18 and they have coffee shops in the District, they needed about
19 20,000 feet and a certain amount of area. And that was in
20 2015.

21 As we sit today, they've grown to 45,000 feet,
22 they've expanded their manufacturing. The factory that
23 they're going to build, they're now building a full-service
24 commercial bakery bringing more jobs to the neighborhood.

25 These are manufacture uses and maker uses that we

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1 all work so hard to bring into the neighborhood and jobs with
2 all the right reasons.

3 And if we don't have the ability to expand and
4 conform and morph into a building that can accommodate them,
5 they leave, which is exactly what Pappas Tomato did when they
6 were -- they were sorting strawberries there when we bought
7 the building, and it was Driscoll Berries, that Safeway, you
8 know, but they went out to Maryland. They left us. They
9 went to Jessup to the food distribution center.

10 So, then we had this brewery. We had this really
11 good -- we had the number-one-rated brewery in New York and
12 they have these vessels that weigh 50,000 pounds. Incredibly
13 heavy.

14 You just don't put them on slab on grade. You're
15 putting in micropiles, you're putting in foundation systems.
16 It's a huge investment, but they're a 30,000-foot user, they
17 want a rooftop deck, they'll do outdoor -- there will be beer
18 gardens and manufacturing and tasting rooms and they're good.
19 They're good. And they also sell wholesale to the community
20 as well. So, we had to accommodate them.

21 And then our leasing team a year ago said, "Hey,
22 we're going to do a deal with an axe-throwing bar." And I
23 fell out of my chair.

24 I had never heard of an axe-throwing bar. The
25 whole concept was nerve-wracking to me because it's drinking

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1 and throwing axes.

2 And I looked at the video, they're in
3 Philadelphia, and I found out it's super popular and
4 everybody is excited, so we do a deal with an axe-throwing
5 bar.

6 Well, they need certain things. And what I didn't
7 realize is we signed a lease, they go to drawings, they're
8 well-vested into this, we go through velocity permit, and
9 they get a zoning comment that they need -- whatever they
10 need in this -- whatever we're here for today, to operate an
11 entertainment use, and I didn't understand that was different
12 from a brewery, from a beer garden.

13 So, now I'm learning because this is my first axe-
14 throwing bar, right? Hope to be many. So, we need to fix
15 the axe-throwing bar, so we come here today.

16 What we think is an amazing project, it's got a
17 lot of things going on and I get it, but we're trying to make
18 this industrial building work for all these different users
19 to make Ivy City and continue what we've got going over there
20 that's truly amazing.

21 So, I apologize for all the complications, but
22 we're going to try to work it out. That's it.

23 CHAIRPERSON HILL: Okay. Great. All right, Mr.
24 Millstein. I don't think you're energetic enough, Mr.
25 Millstein.

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1 || (Laughter.)

2 CHAIRPERSON HILL: I think you should work on
3 that.

4 All right. Does anybody have any questions for
5 the applicant?

6 COMMISSIONER MAY: I'm sorry. The DDOT conditions
7 and the things that need to be fixed from 1401, I think, is
8 the case.

9 MR. MILLSTEIN: So, I have an interesting
10 relationship with DDOT over the years. This particular
11 issue is, we had discussed a dedicated left turn signal
12 heading from the east to the west on New York Avenue on
13 Fenwick Street.

14 And we spent two years in design and approvals and
15 signals and we were ready to go, and then VRE came in and
16 said that they were going to take the land.

17 They worked out a deal with Amtrak to take the
18 land on New York Avenue, and we were going to have to roll
19 up our -- we were going to do a farmer's market and this
20 whole container village.

21 They said we're going to have to leave, that
22 Amtrak was granting easement to VRE and everything was
23 changing.

Well, part of that intersection was a dedicated
left turn into our market, which is now going to be train

1 tracks. So, we pumped the brakes and said, you know, "I'm
2 not sure this makes the most sense right now."

3 And then -- so, then we got into conversations
4 with DDOT and they actually agreed, and this is what we
5 worked out the last two weeks, that that's not the best place
6 to do the dedicated left turn signal. And, in fact, we're
7 going to add one further away on -- further down New York
8 Avenue in light of the Target.

9 The Target is coming on New York Avenue as part
10 of the Hecht's development. A whole other thing. But, in
11 any event, we came to terms with them to what makes more
12 sense. We're going to put the ADA ramps in as we agreed to
13 do and everybody is in the same place now.

14 CHAIRPERSON HILL: Okay. Ms. Bloomfield, what I
15 was just going to clarify, I just wanted to make sure I
16 understood, the new report that we got from DDOT just last
17 night, the two conditions that you're talking about are the
18 ones that are on page 3, right?

19 MS. BLOOMFIELD: Correct. I was about to clarify
20 the same thing --

21 CHAIRPERSON HILL: Okay.

22 MS. BLOOMFIELD: -- because the turn signals that
23 Paul is talking about are certainly issues that we've talked
24 about with DDOT a lot over the past couple of weeks, but
25 their report for their conditions to this BZA application

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1 have nothing to do with that.

2 It's still very important, but that is part of the
3 continued coordination that we have agreed to do with them.
4 The two conditions are; one, that we implement the loading
5 management plan that was in our CTR and copied back in -- on,
6 you know, at the end of the DDOT report. The same language
7 on page, I think, eight of the DDOT report.

8 And we -- which is the loading management plan.
9 And we agree to implement that loading management plan as a
10 condition of the order.

11 And then, second, is the pedestrian ADA
12 improvements at the corner of Fenwick and New York Avenue,
13 and we agreed to do those as well.

14 CHAIRPERSON HILL: All right. Just so I'm clear
15 again, implement the loading management plan as proposed by
16 the applicant in the November 5th, 2018, CTR for the life of
17 the project unless otherwise noted.

18 The applicant shall -- the applicant will also be
19 required to secure public space -- permit approval for all
20 work in public space and design and construct pedestrian
21 improvements at the New York Avenue and Fenwick Street
22 intersection to DDOT standards, including installing ADA-
23 compliant curb ramps at all pedestrian crossing, upgrade
24 crosswalks with high-visibility stripping and modifying any
25 storm water inlets or infrastructure that conflicts with

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1 these improvements.

2 MS. BLOOMFIELD: Yes.

3 CHAIRPERSON HILL: Okay. All right.

4 COMMISSIONER MAY: All right. So, you've agreed
5 to all the DDOT conditions on this approval.

6 MS. BLOOMFIELD: Yes.

7 COMMISSIONER MAY: But back to the left turn lane,
8 which is also an undone thing, does that mean that you're
9 going to have to come back to the Zoning Commission to get
10 a modification from the --

11 MS. BLOOMFIELD: Of the PUD?

12 COMMISSIONER MAY: Yeah.

13 MS. BLOOMFIELD: We don't know yet.

14 COMMISSIONER MAY: Okay. But it's an undone
15 condition.

16 MS. BLOOMFIELD: Well, it's actually not a
17 condition in the order. It's not in the "Decision" section
18 of the order.

19 COMMISSIONER MAY: Okay.

20 MS. BLOOMFIELD: It is included as an attachment
21 that is referenced in the findings of fact. We committed to
22 it at the hearing, and there's documentation that we
23 committed to it; but the reason it wasn't triggered when they
24 were getting a C of O is because it was not part of the
25 section of the order that they look at.

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1 COMMISSIONER MAY: Okay. I'm not sure why we
2 would do it that way. Might be crafty order writing. Who
3 knows.

4 CHAIRPERSON HILL: That sounds like a Zoning
5 Commission problem.

6 COMMISSIONER MAY: Yeah. You know, I am here
7 representing the Zoning Commission, so --

8 CHAIRPERSON HILL: Oh, that's true. I'm sorry.
9 Okay. Sorry.

10 Ms. John.

11 MS. JOHN: Yes. I have a question for the
12 applicant.

13 So, what were the efforts you made to lease that
14 warehouse? Because that's part of your hardship
15 justification that you made. For four years you were not
16 able to lease the warehouse. Did I read that correctly?

17 MR. MILLSTEIN: Yes.

18 MS. JOHN: Okay. So, what were your efforts?

19 Why weren't you able to lease that space?

20 MR. MILLSTEIN: Well, that's a great question.

21 I think -- I mean, our efforts are the same
22 efforts we've used in the city for the last 30 years since
23 we've been here.

24 We reach out to tenants, we market it, we use all
25 the social media, we use all -- we commit with brokers. A

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1 lot of it is timing, a lot of it is we were in an emerging
2 area -- and we still are. We still have a lot of work to do,
3 you know.

4 Retail needs retail, and entertainment needs
5 entertainment, and residential needs residential, and they
6 all -- and when they're all on an island by themselves, they
7 don't do well.

8 So, there's a lot of struggling in the beginning,
9 and we just keep marching forward, and then we found these
10 great users, and then finally that triggered the need to make
11 these changes.

12 MS. JOHN: Thank you.

13 CHAIRPERSON HILL: Okay. All right. I'm going
14 to turn to the Office of Planning.

15 MS. THOMAS: Yes. Good afternoon, Mr. Chair.

16 I can't top that performance by Mr. Millstein, and
17 I will rest on the record of our report. I'll be happy to
18 take any questions.

19 Suffice it to say, though, that we -- I believe
20 the applicant has met the test for special exception for the
21 entertainment use, including the penthouse -- use of the
22 penthouse and the reasons for encroaching into the rear yard
23 and the parking relief, which was approved in the prior
24 application.

25 In this relief, the parking spaces needed for this

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1 application is less than the one that was previous, so we
2 would support it.

3 And with respect to the variance relief, we
4 believe that we -- we support the applicant's practical
5 difficulty.

6 It has been empty there for the past four years
7 since we had the initial approval and we support his attempts
8 at marketing the space.

9 And this was the only application received, so
10 applicant, he seems to be able to take the space and we will
11 support it. Thank you.

12 CHAIRPERSON HILL: Okay. Anyone have any
13 questions for the Office of Planning?

14 Just so I understand, so the underlying conditions
15 from Order 19200 are still in effect?

16 MS. BLOOMFIELD: Yes. Yes.

17 CHAIRPERSON HILL: Okay. All right. Okay.

18 Does the applicant have any questions for the
19 Office of Planning?

20 MS. BLOOMFIELD: No.

21 CHAIRPERSON HILL: All right. Is there anyone
22 here wishing to speak in support?

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

25 Okay. Is there anything else you'd like to add?

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1 MS. BLOOMFIELD: No. Thank you. We would request
2 respectfully that you deliberate today on this application,
3 unless there's anything that you need from us; but I didn't
4 hear anything from the Board so far. Thank you.

5 CHAIRPERSON HILL: Okay. I like the "respectful"
6 part. That's great. So, okay. All right. I'm going to
7 close the hearing. Is the Board respectfully ready to
8 deliberate?

9 COMMISSIONER MAY: I'll be respectful.

10 CHAIRPERSON HILL: Yeah. I don't know.

11 So, I'm going to go ahead and -- actually, I mean,
12 you know, we actually do read the whole record and I'm in
13 agreement with the analysis that was provided by the Office
14 of Planning.

15 I also think that the variance was -- you know,
16 it is an issue that we have to take a little bit of a closer
17 look at, but I do also think that they seem to have been
18 unable to find tenants in four years for this space.

19 I also am -- I'm glad that we cleared up the
20 condition of the order number. 19200 will still remain in
21 effect.

22 There are other conditions that we talked about
23 with the loading management plan that DDOT is now -- I'm
24 sorry, the two conditions that DDOT has put forward as well,
25 but I am -- do also, again, agree with the analysis of the

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1 Office of Planning.

2 Also, the great weight that we afford ANC 5-D in
3 their -- and support 4 to 1 of the application, and I will
4 be voting in approval.

5 Would anyone else like to add anything?

6 COMMISSIONER MAY: I would like to add that my son
7 went to an axe-throwing bar once, and he returned having
8 enjoyed it. and all of his limbs were intact, his digits,
9 he didn't lose any -- it was a fun experience and it's an
10 exciting thing.

11 I mean -- you know, it's been a while since I've
12 been out to the neighborhood that you've created there, but
13 it looks like it's shaping up in exciting ways every time I'm
14 out there.

15 And it's nice to see that warehouse reused. I
16 mean, I think I've told you before that I've been in there
17 and, you know, I -- when I worked for the city government,
18 we were looking at potentially buying it.

19 I'm glad that you bought it and the city didn't,
20 because it's turning out better than I think the city would
21 have done with it. So, I'm very happy to see this moving
22 forward.

23 MS. BLOOMFIELD: May I add one comment? I'm sorry
24 to interrupt. I'm not sure if it's appropriate for me to do
25 so right now.

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1 CHAIRPERSON HILL: I wouldn't.

2 MS. BLOOMFIELD: Well, I wanted to add something
3 to make sure you -- it's in the record, but we had requested
4 flexibility to increase the amount of entertainment use in
5 that building.

6 And I just want to make sure that that gets into
7 the record because we didn't talk about it today. It was
8 requested at the very initial part of our application.

9 COMMISSIONER MAY: Well, that completely changes
10 the picture.

11 MS. BLOOMFIELD: Well, I just want to make sure
12 that everybody understands that.

13 CHAIRPERSON HILL: I'm going to reopen the record
14 here. So, I'm officially reopening the record. I don't know
15 what you're talking about, Ms. Bloomfield, exactly.

16 So, where was it that you're speaking to?

17 MS. BLOOMFIELD: So, we requested it in the
18 initial application and in our prehearing submission. It's
19 nothing new.

20 It's the fact that the entertainment use is a
21 special exception. And if we were to increase that use, it
22 would require us to come back to the Board in the future.

23 And so, our analysis assumed the worst case
24 scenario for the parking and loading and for all the areas
25 of relief and I -- it just -- it was not called

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1 out/highlighted in the application, and I want to make sure
2 that that makes it into the order.

3 CHAIRPERSON HILL: Does the Office of Planning
4 have any comments?

5 MS. THOMAS: Our report says the special exception
6 will be for any tenant space -- proposed for any tenant space
7 in the building. So, we are aware of it and we support it.

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

10 Okay. All right. I'm going to close the hearing
11 again. I'm going to stick back with the original discussion
12 that I had and I'm going to make a motion to approve
13 Application No. 19200B, Jemal's Pappas Tomato's, LLC, as
14 captioned and read by the secretary, including the conditions
15 that we spoke about with the underlying Order No. 19200, as
16 well as the conditions that DDOT had implemented, as well as
17 the comments about the increased use from the applicant.

18 Ask for a second?

19 VICE-CHAIR HART: Second.

20 CHAIRPERSON HILL: Motion made and seconded.

21 All those in favor say "aye."

22 (Chorus of ayes.)

23 CHAIRPERSON HILL: All those opposed.

24 Motion passes, Mr. Moy.

25 MR. MOY: Staff would record the vote as 5 to 0

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1 to 0. This is on the motion of Chairman Hill to approve the
2 application for all the relief being requested.

3 Seconded the motion, Vice-Chair Hart. Also in
4 support, Ms. White and Ms. John and Mr. Peter May. Motion
5 carries.

6 CHAIRPERSON HILL: Okay. Thank you.

7 Thank you all very much.

8 We're going to take a break real quick before our
9 last case.

10 (Whereupon, the above-entitled matter went off the
11 record at 4:01 p.m. and resumed at 4:12 p.m.)

12 CHAIRPERSON HILL: All right. Mr. Moy, you ready?

13 MR. MOY: Thank you, Mr. Chairman. So, parties
14 are to the table. This is to appeal No. 19818 of Stephen
15 Cobb.

16 This is an appeal of the decision made on May 18,
17 2018, by the zoning administrator, Department of Consumer and
18 Regulatory Affairs, to issue Building Permit No. B1804093,
19 to construct a third floor and a three-story rear addition,
20 and convert the existing principal dwelling unit to a flat
21 in the RF-1 Zone. This is at 1267 Penn Street, N.E. (Square
22 4060, Lot 233).

23 This was last heard on September 26th and November
24 28th and there are prehearing statements from all the parties
25 in the record, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay. Introduce yourselves for
2 the record, please.

3 MS. LORD-SORENSEN: Good afternoon, Chairman Hill
4 and members of the Board. Adrienne Lord-Sorenson, assistant
5 general counsel with the DC Department of Consumer and
6 Regulatory Affairs.

7 MR. LEGRANT: Good afternoon. Matthew LeGrant,
8 zoning administrator, DCRA.

9 MR. SULLIVAN: Good afternoon. Marty Sullivan
10 from Sullivan & Barros on behalf of the property owner.

11 MR. COBB: Good afternoon. Stephen Cobb, the
12 appellant, appearing pro se.

13 MS. TELLE: Hi. Shelby Telle. I'm the intervenor
14 along with my husband Adam, and the owners of the property
15 1267 next door to the property in question -- 1267 Penn.

16 CHAIRPERSON HILL: Okay. So, Mr. Cobb, we are
17 going to end up starting with you. And the way this is going
18 to end up going is you'll present, everybody will get a
19 chance to cross you, then we'll just kind of do the same
20 thing with everybody else.

21 There are a couple of things that I have to talk
22 about. The application with the intervenor. So, we're going
23 to have to work through some of that.

24 It might change some of the way you're going to
25 approach this, but I'm just kind of putting you on notice for

1 a second because Commissioner May has to leave at 4:30.

2 And so, he does have some questions that I'd like
3 to get into the record, and also I believe they're primarily
4 for the zoning administrator.

5 And probably we're not going to decide this today.
6 We're going to go through everything, we're going to figure
7 out what we're going to do and then we're going to think
8 about it.

9 So, that being the case, I'm going to just -- if
10 it's all right with everyone -- let the commissioner ask his
11 questions prior to having to leave at 4:30.

12 Is that all right with everyone?

13 Everyone is nodding. I'm going to say that's
14 okay. So, with that, sir, I'm going to turn the questions
15 over to you.

16 COMMISSIONER MAY: Thank you very much. And I
17 appreciate everybody's understanding on this. Unfortunately,
18 I'm obligated to be somewhere at five o'clock, and I have to
19 get there.

20 So, the -- I mean, they're probably questions that
21 I would have over the rest of the material, but I will listen
22 to the -- or listen to the recording, read the transcript,
23 whatever, to get caught up in the end and hopefully
24 everything will be covered at that point and --

25 CHAIRPERSON HILL: If not, we can come back and

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1 have questions --

2 COMMISSIONER MAY: Right. And I'll participate
3 in the decision-making whenever that happens.

4 So, my questions for the zoning administrator,
5 this really revolves around sort of the building footprint
6 and how it seems that most of the building can be demolished,
7 but the original footprint can be replicated with an entirely
8 new structure, including a couple of things that do not seem
9 to be consistent with current zoning regulations. Namely,
10 your rear yard setback and then the side yard setback.

11 And so, I'm puzzled by one thing -- I mean,
12 there are aspects of your argument, first, that seem to speak
13 of the projecting bay that's in the side yard as it is a
14 structure in and of itself. Did I misunderstand that?

15 MR. LEGRANT: The bay that projects into the side
16 yard is not a separate structure, in my opinion. It's part
17 of the overall structure that --

18 COMMISSIONER MAY: Right.

19 MR. LEGRANT: -- is the building that is -- that
20 there is present on the lot.

21 COMMISSIONER MAY: Okay. So, the test for whether
22 something is considered a complete raze, there were several
23 prongs to it. Some of them are easily understood.

24 The 40 percent of the exterior walls -- so for the
25 purpose of that definition, a "party wall" is not an

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1 "exterior wall"?

2 MR. LEGRANT: No. No. The party wall is actually
3 an exterior wall. And so, I can walk through that standard
4 if you'd like.

5 MS. LORD-SORENSEN: I do have an image as well,
6 Commissioner.

7 COMMISSIONER MAY: No. And I saw those in the
8 record and I don't think I -- I mean, it's probably best for
9 me to start with my questions, and then we'll see whether --

10 MR. LEGRANT: Sure.

11 COMMISSIONER MAY: -- we need further explanation.

12 So, one of the tests is that there's no change to
13 the gross floor area, is that right, of the nonconforming
14 structure?

15 MR. LEGRANT: Well, I'll put it in a little bit
16 of context. The -- if you have an existing, nonconforming
17 structure --

18 COMMISSIONER MAY: Right.

19 MR. LEGRANT: -- and it's not razed and the test
20 is in terms of a partial demolition, as I believe is the case
21 here, is that that nonconforming feature can be then rebuilt
22 and -- as long as it does not increase the size.

23 And the test I usually apply is expansion of the
24 footprint, expansion of the gross floor area, and expansion
25 of height. Those are the prongs that I would look at, oh,

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1 that is not permissible. You get to keep in kind the same
2 volume, but based on those criteria.

3 COMMISSIONER MAY: So, there was no expansion in
4 the gross floor area of the building in its entirety?

5 MR. LEGRANT: That's correct -- well, in terms of
6 the -- for the nonconforming aspects, which include the --

7 COMMISSIONER MAY: The bay projection on the side
8 yard.

9 MR. LEGRANT: Right. Right.

10 COMMISSIONER MAY: So, to that extent, you're
11 considering that an independent -- I mean, not an independent
12 structure, but that's what you're -- what I was missing was
13 this notion that it will be a nonconforming aspect of an
14 otherwise conforming building?

15 MR. LEGRANT: Correct.

16 COMMISSIONER MAY: Right. And so, the fact that
17 they are adding space to the building as a whole does not
18 figure in to your raze calculation.

19 MR. LEGRANT: Correct.

20 COMMISSIONER MAY: Do you understand why that
21 might not seem logical?

22 MR. LEGRANT: Well, the way I approach the
23 analysis of the threshold decision as to whether the building
24 was razed, which then you would lose a nonconforming feature,
25 is -- and we talked a little bit -- about the test a little

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1 bit -- once that is satisfied, then the question is, can an
2 applicant, as is the case here, in my view, do something else
3 that's allowed as a matter of right?

4 In this case, add a third floor that is compliant
5 with all other applicable zoning regulations.

6 COMMISSIONER MAY: Yeah. But, I mean, it seems
7 to me that if -- I mean, here's the inherent logic, right?
8 This is just -- sort of put aside for a second zoning
9 regulations and how they're interpreted.

10 And I'm not claiming that you're misinterpreting
11 them --

12 MR. LEGRANT: Sure.

13 COMMISSIONER MAY: -- I'm just speaking to them
14 just from a straight, logical point of view.

15 There's a nonconforming condition --

16 MR. LEGRANT: Right.

17 COMMISSIONER MAY: -- that has been demolished.

18 There are two nonconforming conditions that were
19 demolished, right? The rear wall, which was too close to the
20 rear property line, and the projecting bay were both
21 demolished, right?

22 MR. LEGRANT: Correct.

23 COMMISSIONER MAY: And yet, we are allowing those
24 nonconforming conditions to be replicated simply because they
25 left 40 percent of the exterior walls intact.

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1 MR. LEGRANT: Just one clarification.

2 The only thing that's been allowed to be
3 replicated is the nonconforming projection in the side yard.

4 The rear yard -- the original plans depicted a
5 compliant rear yard. Upon construction -- construction to
6 date, it was discovered in the wall test that the rear yard
7 was not compliant.

8 The applicant has applied for a revision to pull
9 back that rear wall so it has to be compliant. So, there is
10 no -- ultimately in the applicant --

11 COMMISSIONER MAY: So, they're going to modify the
12 plans to move that rear wall?

13 MR. LEGRANT: Correct.

14 COMMISSIONER MAY: Okay. Somehow I missed that
15 in the application. All right. So, the only thing that's
16 a noncompliant condition is that projecting bay in the side
17 yard.

18 So, one other question about that -- I mean, when
19 you talk about an expansion of that, one of the issues is
20 gross floor area.

21 And your brief states that the only expansion of
22 that -- or, rather, the expansion of the building with the
23 cellar component doesn't count as an increase in gross floor
24 area because cellars don't count, right?

25 MR. LEGRANT: That's correct.

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1 COMMISSIONER MAY: Right. So, how is the cellar
2 measured in this circumstance where there is such a steep
3 slope in the property?

4 MR. LEGRANT: Well, the way that my analysis
5 approached this was that level -- and the cellar level, of
6 course, in this particular district, which does not have an
7 FAR limitation, in any event, a cellar level does not
8 contribute to gross floor area.

9 I think I would look at it differently if it was
10 in a zone that had a FAR limitation. Then, that's the point
11 that we can apply a great plain measurement that allocates,
12 on a slope, that lower level to charge partially -- that area
13 as gross floor area if it was a basement versus a cellar.

14 In a zone such as this, again, the RF Zone that
15 does not have an FAR limitation, I have considered the lower
16 level as a cellar and there's no gross floor area --

17 COMMISSIONER MAY: In its entirety even though,
18 if you used the great plain method, it probably would be.

19 I think one of the reasons I'm concerned about
20 this is that the projection bay, as you call it -- I mean,
21 it's a single-story addition on stilts, the way it was
22 originally built. That's what the photographs show.

23 MR. LEGRANT: Yes.

24 COMMISSIONER MAY: And so, they're filling in that
25 space below it --

1 MR. LEGRANT: Correct.

2 COMMISSIONER MAY: -- which you are considering
3 "cellar" --

4 MR. LEGRANT: Yes.

5 COMMISSIONER MAY: -- but, by normal zoning
6 definitions, would be considered "basement" because it is
7 well above ground by that standard.

8 It's more than -- I mean, just -- again, I'm just
9 going by what I see in the drawings. I don't have anything
10 that's field verified or anything like that, but it appears
11 to me that the distance between the grade, on average,
12 through that projecting bay, is such that the distance
13 between the grade and the underside of the ceiling of the
14 lowest floor is more than four feet.

15 So, I would think that that would add gross floor
16 area within that projecting bay area, which you, on some
17 level, are considering separately because it is the
18 nonconforming component of the building.

19 MR. LEGRANT: Well -- right. The issue at hand
20 is that projection is nonconforming in terms of the side
21 yard. So, the test, which we'll get into in our -- for the
22 discussion, nonconforming features, especially an addition,
23 cannot be expanded.

24 COMMISSIONER MAY: Right.

25 MR. LEGRANT: As I noted, I basically posit that

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1 level because it's determined at the front of the building,
2 BHMP, building height measuring point at the front, I will
3 grant that is the slope and it falls away, but then I deem
4 that as a cellar.

5 And so, therefore, it's a cellar level, cellar
6 area, and I understand your --

7 COMMISSIONER MAY: Uh-huh. Yeah. I think
8 my point is just that -- I mean, you said yourself that the
9 nonconforming structure cannot be expanded, right, or the
10 nonconforming aspects of the structure cannot be expanded.

11 MR. LEGRANT: Correct.

12 COMMISSIONER MAY: And, in effect, that's what's
13 happening that they are building another floor below the
14 existing nonconformity. And, therefore, it is being expanded
15 and you are relying on a definition that is tied to how we
16 measure basements and cellars in zones where there's no FAR
17 limit.

18 I mean, effectively there is an FAR limit in RF-1
19 simply because of lot occupancy limits and how many stories
20 you can have, right?

21 And at a certain point if -- you know, if the
22 slope were such that the majority of that lowest level would
23 be considered a floor, then arguably you couldn't add that
24 third story above it.

25 MR. LEGRANT: Right.

1 COMMISSIONER MAY: And, again, I'm not approaching
2 this because I've done a careful exam of the zoning
3 regulations and can say definitively that I think that you've
4 misinterpreted it, I'm just approaching it from a more common
5 sense perspective that, you know, we are saying that this
6 extension into the side yard can be recreated when, arguably,
7 it shouldn't be because it is expanding an existing
8 nonconformity. And I think that's -- I mean, that's the sort
9 of logical conclusion that I've come to.

10 Of course, I'm -- you know, that conclusion is
11 quite tentative because we haven't heard the entirety of the
12 case and, unfortunately, I'm going to have to leave in just
13 a second. So, I will have to listen to the arguments and
14 read the transcript to be able to continue.

15 I think that covers the questions that I have.

16 MR. LEGRANT: Okay.

17 COMMISSIONER MAY: Yeah. I mean, I do appreciate
18 everyone's arguments and the analysis that I've read so far
19 and look forward to hearing the rest of it.

20 And I do think that this is a question where
21 perhaps the Zoning Commission can be helpful on how such
22 things are interpreted because it doesn't -- it's always
23 concerning to me when we run into circumstances like this,
24 we are -- you are left in a position to make judgment calls
25 about things in which we haven't necessarily given you all

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1 of the guidance that should be provided.

2 So, maybe we do need to have a definition of what
3 constitutes a demolition in circumstances like this rather
4 than relying -- I mean, and we may well adopt the standard
5 that you've done, but it certainly seems like it would be
6 logical that that should be codified and not just left
7 because I think it opens -- I mean, it leads to some
8 confusion and it leads to appeals that, you know, may not be
9 necessary.

10 So, all right. Anyway, I appreciate it. I
11 appreciate the Chairman's patience with me and your
12 accommodating my schedule.

13 CHAIRPERSON HILL: Sure. Thank you. Hang on one
14 second.

15 (Pause.)

16 CHAIRPERSON HILL: Okay. All right. So, OAG has
17 helped to clarify some things for me, which is that some of
18 the things that we were going to talk about at the beginning
19 are everything that you just asked about, meaning whether or
20 not they relate to this case or not at this time as to
21 whether or not the arguments that were brought up by the
22 intervenor are expanding the appeal outside of what the
23 appeal originally was.

24 So, we're going to have that discussion after
25 you're leaving now and we'll see just where we end up. Okay?

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1 All right.

2 COMMISSIONER MAY: So, I may have just done all
3 that for nothing.

4 CHAIRPERSON HILL: Or you confused us all quite
5 a bit. We'll see how that goes.

6 Well, first of all, I'd like to start again. I
7 mean, I appreciate a bunch of things here from the appellant
8 and the intervenor.

9 First of all, that you don't do this for a living,
10 this is not what you do, and I appreciate that you guys have
11 been here a long time. You've been here a variety of
12 different days.

13 And, again, I only do it because we were all silly
14 enough to volunteer for this job, so -- and they do do this
15 for a living, so I'm aware of that.

16 So, I first want to say I appreciate the fact that
17 you guys are here a long time and there's really no other way
18 to get around it, unfortunately.

19 What was starting to be of issue, I guess, or
20 discussion, and now we're going to have this discussion, I
21 guess, now, first, first I'm going to explain how this is
22 going to work -- or how this works, right.

23 So, you, Mr. Cobb, as the appellant, you brought
24 forth an appeal. Okay. And you've brought forth some points
25 that you think the zoning administrator erred in. Okay.

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1 So, you will get to present your argument or your
2 case, then everybody is going to get a chance to cross
3 examine, then everyone else is going to get a chance to
4 present their case.

5 Prior to this hearing, I can't remember when it
6 was, we granted the Telles intervenor status. Okay. And we
7 granted that pretty much without really understanding
8 everything that you might have been arguing about, right?

9 Because, I mean, I know primarily, I mean, I can't
10 remember exactly the day, but I think it was another day like
11 this where it was late, it took a long time, and we just
12 wanted to -- we weren't able -- oh, I'm sorry, I think there
13 was a postponement and we needed to, again, determine
14 intervenor status.

15 Normally, when we have -- I mean, it's not always
16 the case, but it's pretty much always the case when you share
17 a party wall with what's going on, we think that you meet the
18 standard to join as an intervenor.

19 The things that were brought up by -- and now I'm
20 kind of all talking out loud with the Board and we'll see
21 where we go with this, is that what you -- what you, as the
22 intervenor -- I'm going to start here with this issue: What
23 you as the intervenor are doing, is you are being allowed to
24 intervene on what the appellant has put forth, right, as an
25 argument. Okay.

1 So, you're not -- you don't have your own appeal
2 about your issues, your arguments. You're actually an
3 intervenor supporting his appeal or, you know, her, whatever
4 the case may be, right.

5 So, the issues that I think that the intervenor
6 has brought up are actually those that Mr. May was more
7 talking about, which kind of is like with the side yard
8 issues, okay, which I think were outside of the scope of what
9 the appellant was originally bringing forward.

10 So, the appellant -- and I'm glad OAG stepped
11 back, and we'll see what happens with this as well, but the
12 appellant brought forth kind of four issues.

13 One was the permit issued to a name of a deceased
14 person -- and I'm just kind of, you know, summarizing here.
15 the other was that the third story and roof deck construction
16 were improperly removed, existing parapets.

17 Three, the proposed roof deck is prohibited by
18 C1500.4. And then, four, the roof deck would be determined
19 to be the neighborhood character overall. So, those are the
20 four things that the appellant brought forward.

21 So -- and I'm not trying to -- and I just want to,
22 again, continue to clarify clearly how I'm getting to this
23 point in my decision where at least as we're having this
24 discussion even with the Board, which is that, you know,
25 those are things that I think you should be allowed to be an

1 intervenor for, right.

2 So, the things that the appellant brought forth,
3 you should be able to argue in favor or support or however
4 you feel that that's necessary.

5 Anything outside of those four things, I think,
6 is your own appeal. And that now would be -- and you'll have
7 an opportunity to speak.

8 And that would be now untimely because you're not
9 here on your own appeal. You're here as an intervenor for
10 this appeal. Okay.

11 So, before I let you kind of defend the little
12 comment that I made, does the Board have any thoughts on
13 anything I just said?

14 VICE-CHAIR HART: Yeah. I think that the -- I
15 think your -- the information in the discussion -- that the
16 OAG has provided us information about -- and this is really
17 how we've been operating, which is the appellant is the main
18 person that has brought forward this case.

19 And, as you said, the intervenor would be signing
20 on to whatever -- the issues that were raised by the
21 appellant when they originally brought their case.

22 And you've stated the four issues that were raised
23 at that point, and it is not our -- there is no ability to
24 go outside of those four issues.

25 And so, the intervenor and the appellant are both

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1 focused on those four aspects of what the appellant
2 originally submitted as their issues that they wanted to --
3 that they said that the ZA erred or their -- some other
4 issue.

5 So, those are the four things, so I would agree
6 with what you've put forward.

7 MS. LORD-SORENSEN: So, in looking at that, we're
8 looking at -- with respect to the intervenor issue, we're
9 looking at Subtitle Y 501.3, which sets the criteria for the
10 framework for what the intervenor can raise.

11 So, the main thing is that we have to make sure --
12 and I have to make sure that the intervention would not be --
13 would not unduly broaden the issues or delay the proceeding,
14 so that's what I'll be looking towards.

15 MS. JOHN: So, Mr. Chairman, when we -- when I
16 spoke in favor of granting the intervenor status, I was not
17 -- I have to do a mea culpa here. I was not looking at the
18 standard that we should meet in the regulation.

19 And it is clear to me, on further reflection, that
20 we can't expand the scope of the appeal by granting
21 intervenor status to now discuss a different issue which was
22 not raised by the appellant. In this case, the side yard
23 issue.

24 So, allowing that issue to come into the appeal
25 would expand the scope of the appeal.

1 CHAIRPERSON HILL: Okay. So, Ms. Telle, I'm sorry
2 that you're getting here at the end, but, please, go ahead
3 and comment on everything you've heard.

4 MS. TELLE: Sure. So, my understanding of the
5 scope of the appeal was a request to fully revoke the entire
6 permit, in which case it would be my understanding that any
7 other element within that permit would be within the scope
8 of the appellant's request being to fully revoke the entire
9 permit.

10 Further, in order to unduly burden or delay the
11 proceedings, we're also looking at potentially having another
12 permit granted to where -- I mean, that's what the DCRA is
13 discussing, that a permit has been filed to revise the rear
14 wall.

15 So, I'm not understanding how it would unduly
16 burden or delay, it would just add yet another matter onto
17 your calendar to come back with a separate issue for side
18 yard when everything can be put into one case, which is the
19 permit as a whole, not individual components of the permit.
20 It was the entirety.

21 CHAIRPERSON HILL: I mean, I -- okay. Mr. Cobb.

22 MR. COBB: I just have two points to make.

23 First, I agree with Ms. Telle here about the fact
24 that the relief sought here was vacating the permit outright.
25 And so, any argument she makes to that affect are in line

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1 with the relief sought.

2 But even if what is really considered is the
3 arguments raised, I actually raised the side yard argument
4 in one of my supplemental prehearing statements, either
5 Exhibit 29 or 41, which were accepted at the first -- at the
6 September 26th hearing along with the intervenor -- along
7 with the motion for intervenor status and the rear yard and
8 the driveway.

9 And then at the end of the day, the zoning
10 regulations do not provide a mechanism to involuntarily
11 terminate intervenor status. The only way it can be
12 terminated, is if the Telles were to voluntarily withdraw
13 from this case.

14 CHAIRPERSON HILL: We're not trying to -- that's
15 okay. We're not trying to -- we're not going to -- we're not
16 trying to withdraw the intervenor status, we're trying to
17 understand the parameters which we're here for.

18 And so, I guess I'm kind of curious with OAG --
19 now, I don't know -- so, okay, after listening to the little
20 man over here, I think that what we're going to do is --
21 well, I guess it -- so, I'll be very -- I just want to be --
22 again, I'm sorry to keep saying this over and over again.

23 I know you guys have been here a lot. And so,
24 this is the first time we actually have gotten in front of
25 you, so this is the first time we actually have had to talk

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1 about all of this.

2 So, I'm not trying to surprise you guys, I'm just
3 saying this is the first time that we've actually gotten in
4 front of you guys to talk, right. So, I'm just trying to be
5 as transparent as I possibly can in terms of my thinking,
6 right.

7 So, still at this point, what you just said, Mr.
8 Cobb, which now kind of throws a wrench into it, is that you
9 think you raised the side yard issue at possibly an
10 appropriate time for this now to be part of the appeal.
11 Okay.

12 I don't really have enough clarity on that, so
13 what we're going to do is you can go ahead and make your
14 arguments for the issues that you have brought up as the
15 intervenor, and I'm just letting you know that we'll probably
16 hold, in abeyance, whether or not we're going to listen to
17 those issues after we've figured out whether or not you are
18 outside of the time parameters.

19 Because in my opinion, and, please, anyone can
20 speak up whenever they want in terms of just how I'm kind of
21 going through the thought process, the appellant brought up
22 four issues, and those are the issues that the appellant is
23 here to argue. Okay.

24 You are now saying that you also brought up a side
25 yard issue, which is, I guess, an issue that you're going to

1 argue.

2 We're going to go back and take a look at whether
3 or not you are timely in terms of bringing that side yard
4 issue up.

5 Okay. Meaning, it has to be -- I don't know what
6 the time parameters are right now. I just have to figure it
7 out later.

8 So, if it turns out that -- you know, everybody
9 is going to get a vote, but if it turns out that I think
10 you're outside of the time parameters, I'm not going to
11 listen to side yard stuff after the fact in terms of making
12 a decision, but we might as well listen to everything now
13 because I don't know, right.

14 So, we're back to the beginning. Whatever you
15 were going to argue, go ahead and argue, I guess, and we'll
16 see later on whether or not the side yard issue is left in
17 there keeping in mind that what I'm going to be focusing on
18 is the four issues that Mr. Cobb originally brought up in his
19 appeal.

20 Now, Mr. Cobb, moving to your appeal, a couple of
21 things that, again, the Office of the Attorney General has
22 kind of helped to clarify, issues concerning construction is
23 not in the Board's purview. So, that's something that you
24 don't even have to worry about arguing.

25 And then the other thing that's not in the purview

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1 of the Board is the No. 1 in terms of the permit issuing to
2 Annie Clayton, and she's now deceased.

3 I mean, that's something that -- again, I would
4 focus your testimony on Issues 2, 3 and 4 and the side yard,
5 which whether or not we'll see if that is timely.

6 Okay. So, you're ready, Mr. Cobb?

7 MR. COBB: I'm ready.

8 CHAIRPERSON HILL: Okay. Mr. Cobb, how much time
9 do you think you need?

10 MR. COBB: 15 minutes.

11 CHAIRPERSON HILL: Okay. We'll let you go if it
12 goes over that because that was actually a very -- this
13 process is very lengthy and I think there's a lot of
14 information that we've already taken a look at as provided
15 by -- you see that Commissioner May had a bunch of questions
16 that he's already read through, that we all have read through
17 the record, but I appreciate your brevity and staying
18 focused. So, thank you. Mr. Sullivan.

19 MR. SULLIVAN: Mr. Chair, I have a question.

20 So, are we talking about the side yard claim in
21 the substance of this appeal?

22 CHAIRPERSON HILL: Yeah. We're going to find out
23 later whether or not it's timely. Okay. So, all right.

24 MS. LORD-SORENSEN: Excuse me. One other question

25 --

1 CHAIRPERSON HILL: Sure.

2 MS. LORD-SORENSEN: -- or clarification. We're
3 not discussing a possible raze and we're not discussing the
4 nonconforming structure?

5 CHAIRPERSON HILL: Yeah. I mean, I don't even
6 remember the question. I mean, if nothing else, I took notes
7 when Mr. May was talking, so I might as well learn as well.
8 Okay.

9 So, we are going to talk about the raze and the
10 nonconformity. Okay. I mean, whatever Mr. Cobb kind of
11 raises, I guess, you know. And so, he's the person who is
12 going to -- it's his appeal.

13 Ms. John.

14 MS. JOHN: Just for the record, I was looking at
15 Exhibit 2, the applicant's statement -- appellant's
16 statement, and he raised five issues in that initial
17 statement that do not include the side yard. And that was
18 done on May 30th. I don't recall when the permit was issued.

19 So, I'm just adding --

20 MS. LORD-SORENSEN: May 18th.

21 MS. JOHN: -- that for the record.

22 May 18. Okay. So, he would have 60 days after
23 May 18. All right. Thank you.

24 CHAIRPERSON HILL: Okay. Mr. Cobb, are you ready?

25 MR. COBB: I'm ready.

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1 CHAIRPERSON HILL: Okay. Go ahead.

2 MR. COBB: Okay. All right. So, thank you,
3 everyone, for giving us the opportunity to speak here today.
4 My name is Stephen Cobb. I'm the appellant.

5 At issue here is Permit B1804093 to convert a
6 single-family dwelling into a two-family flat, and the
7 intervenors and I ask that the Board vacate that permit based
8 on zoning violations involving the third story, the rooftop
9 penthouse and the side yard.

10 Now, it's an end-unit rowhouse, it was bought in
11 January, the permit did issue on May 18th and construction
12 started July 30th.

13 The bottom unit will be the cellar and the first
14 floor, and the top unit will be the second and new third
15 floor with a house roofdeck.

16 Here are the issues on appeal as we finally
17 whittled them down throughout all the filings. The third
18 story, parapets are rooftop architectural elements, and so
19 they cannot be removed except without a special exception.

20 For the roof are, the roof area is a penthouse and
21 it exceeds the area limit and lacks setbacks.

22 As for the side yard, I'll just go ahead and
23 incorporate, by reference, any and all arguments that Ms.
24 Telle may make here today. I'm going to let her handle that.

25 Okay. So, the third story --

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1 CHAIRPERSON HILL: Mr. Cobb, by the way, you can
2 take your time. Like, I don't want you to worry about the
3 15 minutes exactly.

4 MR. COBB: Right.

5 CHAIRPERSON HILL: Just kind of go through your
6 process here.

7 MR. COBB: Okay. All right. Thank you.

8 Now, for the third story, at issue here is the
9 language in 11-E DCMR Section 206.1(a), which says, in
10 relevant part, that "A rooftop architectural element original
11 to the building such as cornices, porch roofs, a turret,
12 tower or dormers, shall not be removed or significantly
13 altered."

14 Now, the big issue here is whether this list of
15 elements is exclusive or illustrative, whether there can be
16 anything else that's a rooftop architectural element that's
17 not on this list.

18 And I say that it is illustrative based on "such
19 as" because of its common usage, how that phrase is used in
20 other zoning regulations and the regulation's interpretive
21 guidance.

22 One of the first tenants of interpreting
23 regulations is that they must be construed according to their
24 ordinary sense and what the meaning commonly attributes to
25 them.

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1 "Such as" is commonly used to mean examples of
2 something. I like animals such as dogs and cats. I might
3 also like parrots, too, but I didn't name them in that list.

4 Now, for other zoning regulations, consider this:
5 Section H 1101.4(c). It lists transient uses such as hotels
6 or inns.

7 Under DCRA's and the property owner's
8 interpretation, the only transient uses would be hotels or
9 inns, but Section U 301.1(h)(4) lists a whole host of others;
10 motel, hostel, bed and breakfast, private club, tourist home,
11 guesthouse and even other.

12 Regulations must be interpreted to create a
13 harmonious whole. The only way to harmonize these
14 regulations is to read "such as" in Section H 1101.4(c) as
15 just illustrative and listing types of transient uses.

16 And finally, for the interpretative guidance,
17 Section 8101(b), which lists the interpretive tenants of the
18 zoning regulations, says that they should be interpreted, in
19 part, to prevent undue concentration of population and
20 overcrowding of land.

21 If parapets are rooftop architectural elements,
22 they can be removed only with a special exception, which
23 creates an additional step to building a third story. And
24 so, it follows that fewer third stories will be built,
25 creating fewer two-unit houses, which will result in a --

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1 less concentration of population and less crowding of land.

2 So, under common usage of "such as," its usage
3 elsewhere in the regulations and the zoning regulation's
4 interpretive guidance, Section E 206.1(a) just lists examples
5 of rooftop architectural elements, not the only possible
6 ones. And so, parapets should be within that group of
7 elements.

8 The elements in 206.1(a) do not have to be
9 attached to the roofs. The list includes cornices, which are
10 on walls and parapets walls.

11 Instead, what those elements listed in that
12 section all have in common, is that they're elements that
13 complement the roof in some way.

14 Porch roofs cover porches, dormers provide light
15 to upper-floor rooms that are covered by the roof. Turrets,
16 towers and cornices provide accents to the roofline, and
17 parapets have multiple purposes with respect to the roof.

18 They accent the line, they protect rooftop gardens
19 and solar panels from wind, they prevent water damage to the
20 exterior and they prevent people from falling off the roof.

21 This relationship between parapets and roofs is
22 also implied in other district regulations. For example,
23 Section 10-C DCMR Section 2513.13 says that "a historic sign
24 integral to the sign of an historic property, such as a sign
25 carved or etched into masonry, or included as part of the

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1 design of the parapet or cornice, shall be retained."

2 So, there you have a direct link between one
3 element that's expressly in Section 206.1(a) and one that's
4 not listed on there.

5 And many other district laws and regulations
6 expressly recognize the interrelationship between roofs and
7 parapets typically including parapets in building height when
8 determining how tall something can be in relation to the roof
9 or the top of the parapet wall.

10 So, functionally and as reflected in other DC laws
11 and regulations, parapets are rooftop architectural elements
12 under Section E 201.6(a). They, therefore, require special
13 exception, but none has been sought here.

14 Okay. Now, for the penthouse. First, the roof
15 structure here is a penthouse. This is, first of all, under
16 the zoning regulations themselves, a penthouse is "a
17 structure on or above the roof of any part of the building.
18 And a structure is anything attached to something having a
19 permanent location on the ground."

20 The parapets here are attached to the roof, but
21 they're also attached to the external walls below the
22 roofline, which, under the International Building Code,
23 incorporated into Title 10 of the DC regulations, parapet
24 walls are separate from exterior walls. So, the parapet
25 walls here are structures on or above the roof of any part

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1 of the building.

2 Functionally, this same conclusion follows: The
3 penthouse has roofdeck features. The roof is not rolled tar
4 or shingles or anything like that, it's a flooring veneer.
5 And it also -- and, in addition, the parapet walls are
6 attached to the -- includes a parapet wall.

7 Under the construction code, all penthouses must
8 have walls. And here, that's exactly what the parapet walls
9 are doing, serving the same safety features and other
10 features that any guardrail or handrail or any other
11 protective device on a penthouse would serve.

12 Finally, the property owner here has referred to
13 the structure as a "roofdeck" throughout the drawings
14 submitted in support of this petition.

15 So, under the regulations, under functionality and
16 under the property owner's own statements, the roof structure
17 here is a penthouse.

18 Finally, as a penthouse, it's too big and lacks
19 the one-to-one setback. It has a 1/3rd roof area maximum,
20 but here it covers the entire roof. It must have one-to-one
21 setbacks, but here it has none.

22 And so, for these reasons and those that will be
23 said by Ms. Telle, I ask that the court -- I ask that the
24 Board vacate this permit.

25 CHAIRPERSON HILL: Thank you, Mr. Cobb.

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1 Okay. Hold on a second.

2 (Pause.)

3 CHAIRPERSON HILL: Okay. I think you made it
4 under 15 minutes, actually.

5 MR. COBB: All right.

6 CHAIRPERSON HILL: Yeah. But I guess what that
7 does, that sets the bar now, Mr. Cobb. So, let's see.
8 First, let's go ahead and see does anybody have any questions
9 for Mr. Cobb? We're going to start with DCRA.

10 MS. LORD-SORENSEN: No.

11 CHAIRPERSON HILL: Okay. Does the property owner
12 have any questions for Mr. Cobb?

13 MR. SULLIVAN: No. Thank you.

14 CHAIRPERSON HILL: Okay. Does the intervenor have
15 any questions of Mr. Cobb?

16 MS. TELLE: No.

17 CHAIRPERSON HILL: Okay. Great. So, then I guess
18 -- OAG, I can't -- the order -- okay. I think the -- Mr.
19 Cobb, maybe you're better than you know, meaning in terms of
20 what you're supposed to be doing here.

21 So, the intervenor is going next. We don't
22 normally have the intervenor, necessarily. So, Ms. Telle,
23 you can go ahead and you'll have 15 minutes again -- Mr. Moy,
24 if you could put that on the clock there for me -- and you
25 can begin whenever you like.

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1 MS. TELLE: Okay. So, DC's very famous for its
2 grid system, including in the Trinidad neighborhood, but Penn
3 Street is unique in that it meets in with Holbrook Terrace
4 forming a semicircle, and our house and the property in
5 question are on the outer edge of that curve.

6 So, we actually are not attached on both sides.
7 We have five feet of side yard in the front, and then our
8 properties expand in the back along the curve.

9 We have been in our home since 2014 and the
10 original nonconforming structure that existed on the
11 property, 1267 Penn, was on stilts, as Mr. May mentioned.

12 It was a structure that was not attached -- well,
13 it was attached to the home, but it had exterior walls
14 original to the home. You can see that in Architectural Plan
15 A0100 Part 2.

16 So, we would like to argue kind of three reasons
17 why we view that nonconforming structure as should not be
18 rebuilt in the current permit.

19 Under 11-C DCMR 201.2, it holds that a
20 nonconforming structure existing at the time of a zoning law
21 can be continued, operated, occupied or maintained.

22 In the case at hand, however, if we use the zoning
23 administrator's 40 percent of existing walls and we look at
24 the actual structure that was nonconforming and was not fully
25 part of the original home, we see that it has been completely

1 razed. The entire structure is gone.

2 11-C DCMR 203 goes to great lengths discussing
3 when a nonconforming structure may or may not be rebuilt when
4 destroyed by fire, collapse, explosion, an act of God. So,
5 rebuilding a nonconforming structure is not a guaranteed
6 right.

7 And so, it is our belief that a purposeful
8 destruction of a nonconforming structure when an act of God
9 is not clear, that you can rebuild a purposeful destruction,
10 should not be permitted to be rebuilt in a nonconforming
11 aspect.

12 Separately, however, if you determine that, in the
13 alternative, the nonconforming structure that was off of the
14 main house is, in fact, permitted, 11-C DCMR 201.1 states
15 that a nonconforming structure cannot be enlarged upon,
16 expanded or extended, nor may it be used as a basis for
17 adding other structures or uses prohibited elsewhere in the
18 same zone district.

19 The plans, as currently presented, include
20 building down, which, as Mr. May discussed, we are on a
21 pretty steep slope. We have full walkout basements.

22 This is -- the original nonconforming structure
23 stood on these four posts -- actually, I'm not sure it's
24 actually four, but it stood on posts and there have been
25 times when neighborhood children used it as a cut-through.

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1 They were able to fully walk and go from the front into the
2 alley.

3 This would enclose that space and allow it to pass
4 into the basement or cellar -- I'm not sure of the
5 terminology here, but the lowest level.

6 The DCRA laid out in their statement in response
7 to our filing that they look at -- when they're considering
8 what's an enlargement or what's an expansion, they look at
9 things that include floor area, but they also outlined
10 looking at mass.

11 The very nature of enclosing a structure indicates
12 that the mass of the nonconforming structure has, in fact,
13 increased.

14 Furthermore, the plans proposed also include
15 building up with parapets on that nonconforming structure to
16 allow a deck which would increase the height of the
17 nonconforming structure.

18 Separately, as counsel for the property owner
19 mentioned last time, and we've discussed today, during a wall
20 check it was discovered that the rear wall has been built at
21 a level that is further towards the alley. The rear yard has
22 been reduced.

23 The nonconforming structure is at the rear of the
24 house and on the side, so the very essence that the rear wall
25 has now been built out further and it is all along one line,

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1 indicates that, in fact, the nonconforming structure has been
2 expanded if we are in agreement that the rear wall is no
3 longer at the place that was originally discussed.

4 And then I'd also like to just talk about how
5 nonconforming side yards still must be two feet even if
6 there's an exception granted. That's under 11-E DCMR 307.4
7 for RF-1 districts, that you should still have two feet of
8 side yard.

9 Here, we're talking about 11 inches. And so, in
10 the alternative, I would just argue that that is, again, a
11 third reason that this is an improper building of a
12 nonconforming structure.

13 Separately, on the issue of intervenor status, I'd
14 just like to note that we originally filed a motion for an
15 untimely party status and we were told by the zoning office
16 that we needed to file as intervenor.

17 So, we subsequently, that day, I believe, filed
18 intervenor and then were before you the following week.

19 CHAIRPERSON HILL: Okay. Thanks. Even if it was
20 party status, it would still be the same issue in that -- at
21 least I think so, that it would be -- you would still be a
22 party to whatever the appeal was.

23 So, you'd still have -- and I'm looking at OAG to
24 ask whether you think that's -- if somebody were a party
25 rather than an intervenor, isn't it the same issue?

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1 MR. RITTING: Ultimately, it goes to the issue of
2 the timeliness of raising these issues, and I'd have to study
3 the party status rule to give you a separate opinion about
4 that.

5 CHAIRPERSON HILL: Okay.

6 MR. RITTING: But this all goes back to the fact
7 that they're raising these issues for the first time some
8 time after the permit issues. And there's a rule that deals
9 with when an appeal may be filed, and it's required to be
10 filed within 60 days of the issuance of the building permit.

11 And by raising new issues as an intervenor at
12 sometime after that, it's sort of a back door around the --

13 CHAIRPERSON HILL: I understand what you're
14 saying. So, I guess what I was just trying to figure out is
15 if that were any different if it were party status, and
16 you're saying you don't know.

17 MR. RITTING: I don't know the answer to that.

18 CHAIRPERSON HILL: Okay. All right.

19 MS. TELLE: And finally --

20 CHAIRPERSON HILL: Sure.

21 MS. TELLE: -- just on the matter of timeliness
22 and we're talking about unduly burdening the property owner
23 at 1267, we, since the very beginning, since March, have been
24 outlining this issue to them.

25 We did not know of the BZA's existence until our

1 side yard collapsed and we began speaking with other
2 neighbors.

3 And that's how Mr. Cobb and I came to the
4 realization that he had an appeal going on already regarding
5 the entire permit, but since March we've talked to the --
6 we've sent letters to the property owner, we've sent letters
7 to -- or we cc'd DCRA, didn't get a single response, didn't
8 even know that the permit had been issued until they showed
9 up and started building.

10 We requested that -- once we saw some of the wood
11 going down at the foundation level, again we requested that
12 they look at DC zoning codes, because we said five feet was
13 a requirement, and we were brushed aside.

14 So, we did not even know that the BZA existed
15 until we filed in September.

16 CHAIRPERSON HILL: Okay. All right.

17 Is that the end of your testimony?

18 MS. TELLE: Yes. Thank you for your indulgence.

19 CHAIRPERSON HILL: Thank you. Does DCRA have any
20 questions for the intervenor?

21 MS. LORD-SORENSEN: No.

22 CHAIRPERSON HILL: Does the property owner have
23 any questions for the intervenor?

24 MR. SULLIVAN: No. Thank you.

25 CHAIRPERSON HILL: Okay. Does the applicant have

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1 any questions?

2 MR. COBB: Just one question.

3 CHAIRPERSON HILL: Sure.

4 MR. COBB: When you discuss that side bump-out
5 cannot be expanded, you mention that they were building down,
6 but are they also building anything on top of the first floor
7 bump-out?

8 MS. TELLE: They're building parapets and they are
9 planning to have a terrace that would be 11 inches from our
10 property line.

11 MR. COBB: All right. That's all.

12 CHAIRPERSON HILL: Okay. Thank you.

13 All right. So, before I keep moving on --
14 actually, did the Board have any questions at this point for
15 either the appellant or the intervenor, or we can just think
16 of them as we kind of hear things.

17 Ms. John, you look like you have a question.
18 Sure. Go ahead.

19 MS. JOHN: Yes. Just clarification.

20 So, the issues you outline in your presentation,
21 so everything that you have discussed in your application
22 now, you sort of whittled them down to these specific issues.

23 MR. COBB: Exactly.

24 MS. JOHN: Okay.

25 MR. COBB: And through the process of the

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1 prehearing statements and responses and replies, we really
2 managed to focus down.

3 And especially because with the rear yard and the
4 driveway, it appears that the new permit application
5 basically moots that as far as this application is concerned.

6 MS. JOHN: Okay. Thank you.

7 MR. COBB: Except as it relates to the side yard.

8 CHAIRPERSON HILL: Okay. I was just told by OAG
9 -- I thought the property owner went last.

10 MR. RITTING: The next is DCRA.

11 CHAIRPERSON HILL: Okay. Right. And then the
12 property owner. Okay. And so -- yeah, never mind. All
13 right. So, I'm going to turn to DCRA.

14 DCRA, you'll have 15 minutes. I'm going to put
15 it on the clock, Mr. Moy.

16 MS. LORD-SORENSEN: Board's indulgence, I need to
17 get the HDMI cord.

18 CHAIRPERSON HILL: Sure. Of course.

19 (Pause.)

20 MS. LORD-SORENSEN: DCRA's ready.

21 CHAIRPERSON HILL: Okay. All right.

22 MS. LORD-SORENSEN: Thank you.

23 CHAIRPERSON HILL: Mr. Moy, if you could start the
24 clock for us. And, please, start whenever you like.

25 MS. LORD-SORENSEN: Okay. So, just before I get

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1 into DCRA's presentation, I just want to bring to the Board's
2 attention BZA Exhibit 28.

3 That was an exhibit -- a filing made by the
4 appellant where he mentions, in passing, that the Telles will
5 present arguments related to the side yard. And this filing
6 was made on September 18th, 2018.

7 And as we are aware, the permit was issued on May
8 18th, 2018, so this -- any mention of the side yard was
9 raised approximately four months after the building permit
10 was issued. So, it is untimely.

11 CHAIRPERSON HILL: Okay. We'll take a look at
12 that. I mean, OAG, could you make a note of that also and --
13 okay. All right.

14 MS. LORD-SORENSEN: Okay. Thank you.

15 CHAIRPERSON HILL: Okay.

16 MS. LORD-SORENSEN: All right. So, good
17 afternoon, Chairman --

18 CHAIRPERSON HILL: But still speak to the --

19 MS. LORD-SORENSEN: Yes.

20 CHAIRPERSON HILL: We're not ruling on that now,
21 so you will defend yourself and --

22 MS. LORD-SORENSEN: Yes.

23 CHAIRPERSON HILL: Okay. Thank you.

24 MS. LORD-SORENSEN: So, good afternoon, Chairman
25 Hill and members of the Board. We are here today because

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1 appellant Stephen Cobb alleges that the zoning administrator
2 erred in issuing Building Permit B1804093.

3 On May 18th, 2018, 1267 Penn Street, N.E., LLC --
4 the owner of 1267 Penn Street, N.E., obtained the building
5 permit B1804093, which permits the owner to build a third-
6 story popup with a roofdeck on the top of the third story.

7 In addition, Mr. and Mrs. Telle, owners of 1265
8 Penn Street, N.E., and the intervenors in this case, have
9 alleged that the proposed construction at 1267 Penn Street
10 ends approximately one foot from their property line in
11 violation of the five-foot side requirement.

12 And also, the intervenors assert that the proposed
13 construction violates 11-C DCMR 201.1 and that the property
14 was razed. DCRA asserts that the proposed construction, in
15 fact, conforms with the applicable zoning regulations.

16 So, with respect to the appellant, there are three
17 zoning-related matters. One, the third story, whether or not
18 the parapets were improperly removed; two, the roofdeck, and;
19 three, whether the third story and roofdeck would be
20 inconsistent with the neighborhood's character and would be
21 a detriment to the overall environment.

22 So, now I'm going to ask the zoning administrator
23 a couple of questions with respect to those three issues.
24 So, Mr. LeGrant, the appellant claims that the third story
25 would improperly remove the existing parapets.

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1 Are parapet walls protected by the zoning
2 regulations?

3 MR. LEGRANT: No, they are not.

4 MS. LORD-SORENSEN: Okay. And which regulation --

5 CHAIRPERSON HILL: Can I interrupt you guys?

6 Did you guys get sworn in today?

7 MS. LORD-SORENSEN: Yes.

8 MR. LEGRANT: Yes.

9 CHAIRPERSON HILL: Okay. All right.

10 Did all of you get sworn in today?

11 Okay. All right. Okay. Sorry. Go ahead. I
12 don't remember.

13 MS. LORD-SORENSEN: Which regulation are you
14 referring to?

15 MR. LEGRANT: So, the applicable regulation that's
16 been noted here already is Subsection E 206.1, which states
17 "In an RF zone district," which is the subject zone district
18 here, "the following provisions apply: A rooftop
19 architectural element original to the building such as
20 cornices, porch roofs, turret, tower or dormers shall not be
21 removed or significantly altered, including shifting its
22 location, changing its shape or increasing its height,
23 elevation or size."

24 The regulation further goes on, "For interior
25 lots, not including through lots, a rooftop architectural

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1 element shall not include identified rooftop architectural
2 elements facing the structure's rear lot line. For all other
3 lots the rooftop architectural element shall include
4 identified rooftop architectural elements on all sides of the
5 structure."

6 It's my view that that provision does not include
7 parapet walls. There's no prohibition on the removal of
8 parapet walls.

9 I'll note that this provision, as written, was
10 originally written by the zoning commission and it listed
11 certain elements, but they revisited that in 2017 and added
12 other elements such as -- I believe they added, at that time,
13 cornices and porch roofs.

14 They did not add parapets at that time. That
15 would have been an opportunity if I think the Commission felt
16 like, "oh, we should include parapets as well," they could
17 have added it and they did not.

18 Furthermore, I'm not aware of any Board case
19 deeming the parapets as a significant architectural element
20 for which removal triggered special exception relief.

21 MS. LORD-SORENSEN: Okay. So, appellant also
22 claims that the proposed roofdeck comprises more than 2/3rds
23 of the total roof area, which violates 11-C DCMR 1503, as
24 well as the claim -- he claims that the proposed roofdeck
25 does not show the setbacks required under 11-C DCMR 1502.1.

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1 Now, in your opinion, Mr. LeGrant, does the
2 roofdeck design at 1267 Penn Street, N.E., trigger the
3 penthouse requirement?

4 MR. LEGRANT: No, it does not.

5 MS. LORD-SORENSEN: And why not?

6 MR. LEGRANT: Okay. So, the key here is whether
7 this roofdeck, and other roofdecks that my office has
8 considered, become a penthouse structure. And in this case,
9 my assertion is it does not because the roofdeck extends
10 over, basically, the entire roof area.

11 It's my belief that the roofdeck is synonymous
12 with the roof. And based on the approved architectural plan,
13 and I think we're going to pull that up, it's Plan Sheet
14 A0301, to describe the construction of the roof --

15 VICE-CHAIR HART: Which exhibit are we looking at?

16 MS. LORD-SORENSEN: Okay. Well, let's take a step
17 back.

18 VICE-CHAIR HART: That's fine.

19 MS. LORD-SORENSEN: So, Mr. LeGrant, you said that
20 the roofdeck comprises the entire roof area. So, I'd like
21 to direct your attention to Architectural Plan A0502.

22 MR. LEGRANT: Yes.

23 VICE-CHAIR HART: And which exhibit are you in?

24 MS. LORD-SORENSEN: Exhibit 4 from the Agency's
25 prehearing statement, which would be BZA Exhibit 33A.

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1 VICE-CHAIR HART: Thank you. Okay. Go ahead.

2 Thank you.

3 MS. LORD-SORENSEN: Okay.

4 MR. LEGRANT: Go ahead.

5 MS. LORD-SORENSEN: Okay. So, looking at
6 Architectural Plan A0502, could you please explain to the
7 Board how you reached the conclusion that the roofdeck
8 comprises the entire roof?

9 MR. LEGRANT: All right. So, as labeled in this
10 drawing, which is, you know, it's the bird's eye view looking
11 down on top of the building's roof, which shows the roofdeck,
12 there's really -- there's the parapet that surrounds the roof
13 edges, the roofdeck itself, and then the stair access to the
14 roof.

15 So, as I noted, the -- in this case, I believe the
16 roofdeck is synonymous with the roof and it's not a separate
17 penthouse structure.

18 MS. LORD-SORENSEN: Okay. I'm going to direct
19 your attention now to Architectural Plan A0301, and this has
20 the detail showing the roof of -- well, the proposed
21 construction at 1267 Penn Street and the parapet wall.

22 MR. LEGRANT: Yes.

23 MS. LORD-SORENSEN: So, if you could just look at
24 the detail?

25 MR. LEGRANT: Sure. So, first of all, this

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1 drawing is a section. This is cut through the building that
2 shows, in the larger drawing, all the different floors.

3 You get up to the top, there's the roof. And then
4 the detail, Label No. 2, as you noted, shows both the
5 construction detailing the materials for the parapet and then
6 the subject here is the roof.

7 And I'll note that the height difference between
8 the top of the roofdeck and the top of the third floor
9 ceiling is approximately three feet one inch.

10 This three-foot area consists of insulation, the
11 roofing membrane, sleepers -- two times sleepers, which is
12 the structural elements, followed by a two-by-six Versadeck.

13 This three-foot area between the third-floor
14 ceiling and the top of the roofdeck also serves -- they
15 changed the roof from the present -- from a slope to a flat
16 roof.

17 Based on these materials, the owner is laying
18 insulation across the entire roof, followed by a flooring
19 veneer.

20 So, this entire roof assembly, in my view,
21 includes this roofdeck. You can't separate out the roofdeck
22 as a separate penthouse structure.

23 MS. LORD-SORENSEN: And next, the appellant claims
24 that the proposed third story and roofdeck at 1267 Penn
25 Street, N.E., would be detrimental to the neighborhood's

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1 character and overall environment.

2 Okay. So, which zone is 1267 Penn Street, N.E.,
3 located?

4 MR. LEGRANT: RF-1 Zone.

5 MS. LORD-SORENSEN: Is there a height limitation
6 in RF-1 Zone?

7 MR. LEGRANT: There is.

8 MS. LORD-SORENSEN: Okay. And what is the height
9 limitation?

10 MR. LEGRANT: Okay. Per Section E 303.1, the
11 maximum permitted height of the buildings or structures or
12 any additions thereto, not including the penthouse, in an RF-
13 1 one, shall not exceed 35 feet and three stories.

14 MS. LORD-SORENSEN: Okay. I'd like to direct your
15 attention to Architectural Plan A0301.

16 What is the proposed height at 1267 Penn Street,
17 N.E., from grade to the top of the parapet wall?

18 MR. LEGRANT: It's 35 feet one inch.

19 MS. LORD-SORENSEN: Doesn't the height of 35 feet
20 and one inch exceed the RF-1 height limitation you previously
21 mentioned?

22 MR. LEGRANT: Well, yes, it does.

23 MS. LORD-SORENSEN: So, why was this construction
24 approved?

25 MR. LEGRANT: Well, the -- when you measure the

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1 height of the building in an RF-1 Zone, the parapet wall is
2 excluded from the building height.

3 MS. LORD-SORENSEN: Okay. So, when you exclude
4 the parapet wall, so this area right here, what is the height
5 of the proposed construction at 1267 Penn?

6 MR. LEGRANT: 31 feet seven inches.

7 MS. LORD-SORENSEN: And this is an approvable
8 height?

9 MR. LEGRANT: It is. It's within the 35-foot
10 maximum height limit.

11 MS. LORD-SORENSEN: Okay. And how many stories
12 are permitted in this particular zone?

13 MR. LEGRANT: Three.

14 MS. LORD-SORENSEN: Okay. And approximately --
15 excuse me. Let me direct your attention again to A0301.
16 There's this bottom level down here.

17 MR. LEGRANT: Yes.

18 MS. LORD-SORENSEN: Is this bottom area included
19 -- or counted as a story?

20 MR. LEGRANT: It is not.

21 MS. LORD-SORENSEN: And why not?

22 MR. LEGRANT: It is a -- as I noted -- or
23 discussed earlier with Commissioner May, it is deemed a
24 "cellar." By definition of "stories," cellars are not
25 included as a -- in the story -- in the calculation of

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1 stories.

2 MS. LORD-SORENSEN: So, the third story was
3 correctly approved?

4 MR. LEGRANT: Yes. It is a three-story, over-a-
5 cellar building.

6 MS. LORD-SORENSEN: Okay.

7 CHAIRPERSON HILL: I'm sorry, Ms. Lord. So, your
8 slide kind of disappeared there for second. Did you mean to

9 --

10 MS. LORD-SORENSEN: Yes.

11 CHAIRPERSON HILL: Okay. Can you go back to it
12 again just about the story again, the cellar area?

13 MS. LORD-SORENSEN: Sure. Give me one second.

14 (Pause.)

15 CHAIRPERSON HILL: Okay. And that's also in the
16 same set of exhibits -- I mean, I'm sorry, the same --

17 MS. LORD-SORENSEN: It would be BZA Exhibit 33A.

18 CHAIRPERSON HILL: Okay. I see it. Okay. Thank
19 you.

20 VICE-CHAIR HART: And if you could describe,
21 again, Mr. LeGrant, how the -- why this isn't considered a
22 basement?

23 MR. LEGRANT: Right. So, the zoning regulations
24 specify how -- when there's the lowest level of building, how
25 to classify that.

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1 So, you have to look to the point in which it's
2 measured, and the regulations specify that the building
3 height measuring point, also known as a BHMP, which, in the
4 subject zoning district, is at the middle of the front of the
5 building, is the point which we count both the building
6 height and we calculate the number of stories.

7 This section, I believe, illustrates that at the
8 -- well, this section shows the four -- there is four levels
9 to this building, three stories over the cellar.

10 But at the front of the building basically where
11 the floor level of the first floor meets the grade, that
12 level below it, which is the cellar, is then deemed a cellar
13 for purposes of calculating the number of stories for this
14 building.

15 VICE-CHAIR HART: Ms. Lord-Sorenson, can you move
16 this appendage over so we can see the --

17 MS. LORD-SORENSEN: Certainly.

18 VICE-CHAIR HART: To the -- I don't know. To the
19 other direction, yeah.

20 MS. LORD-SORENSEN: Okay.

21 VICE-CHAIR HART: I just want to see the back of
22 the building.

23 So, right now, the issue that Commissioner May
24 raised was whether or not this bottom level would be
25 considered a basement or cellar, and that would be because

1 if you take that -- because I think that's that average --
2 I just did the drawing.

3 MR. LEGRANT: Okay.

4 VICE-CHAIR HART: If you did the average grade
5 looking at that, that that might be considered a cellar --
6 or, sorry, excuse me, a basement. And that's what I was just
7 trying to understand a little bit better because that might
8 increase the size of the -- what you consider the -- as the
9 gross floor area.

10 MR. LEGRANT: Yeah. A couple things. In the
11 discussion with Commissioner May, the -- the two issues are
12 how many -- first, overall, what is the number of stories of
13 the building.

14 And, as I've discussed, you go to the middle from
15 the building, BHMP, and that's the point where we start
16 counting stories up.

17 And then you'd say, well, there's a level below
18 that, which this drawing doesn't really show that clearly
19 because I believe this is a cross-section that is further
20 down the slope of the structure, is that's the point where
21 we deem the overall number of stories.

22 In the discussion with Commissioner May, it was
23 like, well, but this slopes away, so are there portions of
24 that that could be classified as a basement?

25 And that's a fair question, but my analysis is

1 such that in those districts in which there is an FAR
2 limitation -- and, again, the RF Zone is not one of those --
3 it becomes important not for determination number of stories
4 of the building, because that is the same, but you can then
5 start charging that lower level as partial basement and
6 partial cellar for FAR-charging purposes.

7 And, in this case, because there's not a FAR
8 limitation, we do not -- my office does not look at deeming
9 -- calculating any gross floor area of what would otherwise
10 be a basement.

11 VICE-CHAIR HART: Thank you.

12 MS. JOHN: Okay.

13 CHAIRPERSON HILL: Sure. Of course. Go ahead.

14 MS. JOHN: So, could you put back that --

15 MS. LORD-SORENSEN: Uh-huh.

16 MS. JOHN: And can you draw that line again
17 sloping down to the back?

18 So, in this background, if there was a FAR
19 limitation, how would you -- would you say this part then
20 would convert it to a basement?

21 MR. LEGRANT: The standard, which changed in
22 August of this year, this application is treated in the
23 regulations prior to the August 17th approval of Zoning
24 Commission case 1718, which changed the standard.

25 So -- but the applicable standard here is from

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1 grade to the ceiling of the level. And if that -- as the
2 circle, as you noted, if that exceeded four feet, then it
3 would be, in fact, deemed a basement for a gross floor area
4 calculation purpose.

5 VICE-CHAIR HART: I think what you were looking
6 at -- you're saying if this number were more than four feet,
7 that it would be -- you would then go forward with the
8 calculation.

9 MR. LEGRANT: Right. If that was more than four
10 feet, then that lower level now becomes a basement, and when
11 both -- A would be deemed a story, okay, and, B, if it was
12 in a zone that had an FAR limitation, it would be area -- the
13 horizontal area of that level would then be deemed gross
14 floor area for FAR calculation purposes.

15 MS. JOHN: So, something like that that's four
16 feet --

17 MR. LEGRANT: Right.

18 MS. JOHN: -- would be a basement.

19 MR. LEGRANT: If that was the case. If it was
20 over four feet, then it would become a basement, yes.

21 MS. JOHN: And assuming that you were in an area
22 that you had to calculate the floor area ratio where there
23 was a slope in the back and you'd be concerned about taking
24 into account an area that could possibly come as another
25 story, you would then -- something with this sort of slope,

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1 then this part here would become a basement for the purpose
2 of calculating another story.

3 MR. LEGRANT: That's correct.

4 MS. JOHN: Okay. Thank you.

5 VICE-CHAIR HART: Actually, I know we're kind of
6 eating into your time, so I did have a question about the --
7 I guess it was a question about the parapet issue.

8 So, we brought up the parapet issue and both of
9 you have kind of talked about it, the appellant and DCRA now.
10 So, I guess this is for Mr. LeGrant: So, why do you think
11 the rooftop architectural elements were included in the --
12 why were they called out in the zoning regulations?

13 MR. LEGRANT: The ones that were listed in E --

14 VICE-CHAIR HART: Yes.

15 MR. LEGRANT: -- 206.1?

16 VICE-CHAIR HART: Yes.

17 MR. LEGRANT: I believe the Commission in
18 furtherance of the goal of protecting -- and I think the word
19 here that's key is "significant architectural rooftop
20 elements," is those things that have some design aspect that
21 have a feature that helps articulate a building that project
22 above the roof that are usually designed by the designer or
23 architecture to bring interest to the building and,
24 especially in our older buildings, are to be preserved.

25 It is very clear from the Commission and I think

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1 enumerating those features that should -- that merit
2 protection.

3 VICE-CHAIR HART: And the last question on this:
4 If parapets were included in that list, let's say that they
5 were, what would be excluded from that list if you included
6 parapets and the other elements that are in there, cornices
7 and all that other stuff?

8 I'm just trying to figure out what's --

9 MR. LEGRANT: Yeah.

10 VICE-CHAIR HART: It seems like you would have
11 everything. So, it would then be, why do you have that rule
12 if you were including everything on top of the -- you know,
13 on top of the roof?

14 MR. LEGRANT: Okay.

15 VICE-CHAIR HART: I can't figure out what's kind
16 of left.

17 MR. LEGRANT: Well, chimneys are another thing
18 that project above a roof. Now, I will say -- let's take
19 chimneys for example.

20 The chimneys sometimes are very simple. I have
21 seen, on occasion, chimneys that have a lot of design
22 aspects. They have a brick pattern, they have undulations
23 that change the shape that are called out specifically.

24 And I think I've had at least one or two cases
25 where people have come in -- because the list does include

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1 the words "such as," if a -- for example, the chimney had a
2 very fancy brick pattern, then I would consider that as
3 keeping with the intent of the Commission of an architectural
4 interest feature is worthy of preservation.

5 VICE-CHAIR HART: Thank you. That's it for me.

6 CHAIRPERSON HILL: Actually, we're going to take
7 a break real quick. We'll be right back.

8 (Whereupon, the above-entitled matter went off the
9 record at 5:30 p.m. and resumed at 5:41 p.m.)

10 CHAIRPERSON HILL: All right, let's get started
11 again. So you were near the end, I think. I don't know
12 where you were, so go ahead.

13 MS. LORD-SORENSEN: I'm almost done.

14 CHAIRPERSON HILL: Okay.

15 MS. LORD-SORENSEN: Okay, so now I'd like to
16 address intervenor's claims. So there are three zoning
17 related issues; one, the proposed construction violates the
18 5-foot side yard regulations; the proposed construction
19 violates 11 DCMR 201.1; and the allegation that the property
20 was razed. So, first with respect to the 5-foot side yard
21 requirement, does the proposed construction violate the 5-
22 foot side yard requirement?

23 MR. LEGRANT: No, it does not.

24 MS. LORD-SORENSEN: And why not?

25 MR. LEGRANT: There is a pre-existing, non-

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1 conforming projection in the side yard that the proposed
2 construction that does not further reduce the side yard.

3 MS. LORD-SORENSEN: Okay, so I'm going to direct
4 your attention to, it can be found at BZA Exhibit 53A as in
5 apple, A0100 is the architectural plan. And Mr. LeGrant, I'm
6 showing you the proposed site plan.

7 MR. LEGRANT: Yes.

8 MS. LORD-SORENSEN: You mentioned that there's a
9 non-conforming structure in the side yard.

10 MR. LEGRANT: Correct.

11 MS. LORD-SORENSEN: Is that the structure right
12 here?

13 MR. LEGRANT: It is.

14 MS. LORD-SORENSEN: Okay. And so right here it
15 notes that there's a 5-foot side yard; is this the reason why
16 it comports with the 5-foot side yard requirement?

17 MR. LEGRANT: Right, it's a pre-existing, non-
18 conforming condition that is a projection into that side
19 yard.

20 MS. LORD-SORENSEN: Okay. Now, is a 5-foot side
21 yard required for a RF-1 zone?

22 MR. LEGRANT: The zoning regulations specify that
23 a side yard is not required, but if one is provided, then it
24 should meet the standard of 5 feet.

25 MS. LORD-SORENSEN: Okay, so ignoring the non-

1 conforming structure, the proposed construction does provide
2 for a 5-foot side yard?

3 MR. LEGRANT: Right. Yes.

4 MS. LORD-SORENSEN: Okay. Now, the interveners
5 contend that a 2-foot minimum side yard is required under 11E
6 DCMR 307.4; what is your opinion, if you have one?

7 MR. LEGRANT: Well, if you have an existing side
8 yard, the 2-foot minimum it can't be reduced any less than
9 the 2 feet.

10 MS. LORD-SORENSEN: Okay, so according to the
11 proposed construction -- here, let me zoom out -- when you
12 compare the footprint of the existing to the proposed, the
13 side yard does not change?

14 MR. LEGRANT: Yes, the side yard is not being
15 further -- there's no reduction in that sub-standard side
16 yard dimension.

17 MS. LORD-SORENSEN: So a 2-foot minimum side yard
18 is not required?

19 MR. LEGRANT: It's not required here.

20 MS. LORD-SORENSEN: Okay. The intervenor also
21 claims that the proposed plans expand the non-conforming
22 structure. Now, do the zoning regulations allow for the
23 alteration, repair or modernization of a non-conforming
24 structure?

25 MR. LEGRANT: They do.

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1 MS. LORD-SORENSEN: Okay. And what's actually --
2 I guess, in this particular case is the property owner
3 expanding this non-conforming structure?

4 MR. LEGRANT: They are not.

5 MS. LORD-SORENSEN: And why do you say that?

6 MR. LEGRANT: Okay, so the applicable section here
7 is actually Subtitle C 202.1 and shall read, except as
8 provided in C 203.8, ordinary repairs, alterations and
9 modernization of structure, including structural alterations
10 shall be permitted. Furthermore, Section C 202.2,
11 enlargements and additions may be made to the structure
12 providing the addition/enlargement itself shall conform to
13 the use and development standard requirements and neither
14 increase or extend an existing non-conforming aspect of the
15 structure, nor create any new non-conformity of the structure
16 and addition combined.

17 MS. LORD-SORENSEN: Okay, so when you compare the
18 existing site plan to the proposed site plan, and looking
19 specifically at the non-conforming structure, does the
20 proposed construction change or alter the gross floor area
21 of this non-conforming structure?

22 MR. LEGRANT: It does not.

23 MS. LORD-SORENSEN: Does it change the footprint
24 of the non-conforming structure?

25 MR. LEGRANT: It does not.

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1 MS. LORD-SORENSEN: And actually the interveners
2 allege that the proposed railings, which the property owner
3 proposes to install on top of the non-conforming structure,
4 increases the height. Would the proposed railings on top of
5 the non-conforming structure increase the height of the non-
6 conforming structure?

7 MR. LEGRANT: They do not.

8 MS. LORD-SORENSEN: Okay.

9 MR. LEGRANT: So as I noted previously, when I
10 look at the expansions of the non -- well, the test of
11 expansion of the non-conforming feature, look at is the
12 footprint being expanded, is the gross area being expanded,
13 or is the height being expanded, and in my analysis of this
14 case, none of those thresholds were crossed.

15 MS. LORD-SORENSEN: Okay, thank you. And then
16 lastly, the interveners allege that a raze had in fact
17 occurred at 1267 Penn Street; in your opinion did a raze
18 occur or a demolition?

19 MR. LEGRANT: It's a demolition.

20 MS. LORD-SORENSEN: Okay. So first, do the zoning
21 regulations define "raze?"

22 MR. LEGRANT: They do not.

23 MS. LORD-SORENSEN: Okay. Do the regulations
24 define "demolition?"

25 MR. LEGRANT: No.

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1 MS. LORD-SORENSEN: Okay, so if they do not define
2 "raze" or "demolition," how do you determine the construction
3 activity that occurs at a particular property?

4 MR. LEGRANT: All right, so what I've -- in the
5 absence of any specific definition of "raze" or "demolition,"
6 my office has developed a standard going back approximately
7 seven years, determining whether a structure, whether an
8 application for a building permit that comes in that shows
9 removal of portions, any or all portions of the structure as
10 to whether it can be classified either as a demolition or
11 partial demolition, or a raze which is complete removal. And
12 I look at what changes, the changes of gross floor area, is
13 there a change in lot occupancy, and has it changed the
14 height, and specifically for an instance in which a footprint
15 is, something is changing the footprint, it's retention of
16 at least 40 percent of the pre-existing walls of the
17 enclosure of the building.

18 MS. LORD-SORENSEN: Okay, so based on the plans,
19 did the gross floor area of the property change?

20 MR. LEGRANT: It did not.

21 MS. LORD-SORENSEN: Did the lot occupancy change?

22 MR. LEGRANT: No.

23 MS. LORD-SORENSEN: Did the plans change the
24 height of the non-conforming structure?

25 MR. LEGRANT: They didn't. They did not.

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1 MS. LORD-SORENSEN: Okay, so I'd like to direct
2 your attention --

3 CHAIRPERSON HILL: Ms. Lord-Sorenson, I know we
4 asked a lot of questions. Do you know how much time you
5 still need? Are you getting near the end?

6 MS. LORD-SORENSEN: Probably two minutes.

7 CHAIRPERSON HILL: Okay.

8 MS. LORD-SORENSEN: I'd like to direct your
9 attention to A0101 which we found at BZA Exhibit 53A as in
10 apple. So based on this particular plan, approximately how
11 much of the wall was retained?

12 MR. LEGRANT: So, again, the pre-existing walls
13 based on the plans presented and the photographic evidence
14 that was presented, that I found that 44 percent of the
15 enclosing exterior walls of that building are being retained.

16 MS. LORD-SORENSEN: Okay. So the proposed
17 construction met your standard for a demolition or a partial
18 demolition?

19 MR. LEGRANT: Yes.

20 MS. LORD-SORENSEN: Okay, and my last question;
21 the interveners raised in their filing that the non-
22 conforming structure was purposely destroyed, and thus may
23 not be rebuilt. So they were citing 11 DCMR 203 which
24 discusses when a non-conforming structure may or may not be
25 built following a fire, collapse, explosion or act of God.

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1 Is this provision applicable to this case?

2 MR. LEGRANT: No, it is not.

3 MS. LORD-SORENSEN: And why not?

4 MR. LEGRANT: Okay, so the cited section which is
5 Section C203 speaks specifically to cases where the owner of
6 a building is the victim of a fire, collapse, explosion or
7 act of God, and this is not applicable to this situation.

8 MS. LORD-SORENSEN: No further questions.

9 CHAIRPERSON HILL: Okay, thank you. Does the
10 Board have any questions at this time of the zoning
11 administrator?

12 VICE CHAIR HART: No question, I just wanted to
13 note for the -- for Ms. Lord-Sorenson, if you could provide
14 updated, or actually say more clear images on 33A. What we
15 have -- the images that you were showing were very crisp and
16 it's impossible to see anything beyond some very general
17 things on the actual, what was submitted. I think it was
18 just that the -- you can see lines but you can't read any of
19 the text.

20 MS. LORD-SORENSEN: Oh.

21 VICE CHAIR HART: I think the PDF was just messed
22 up, that's all. Sometimes it's the, I don't know, resolution
23 of the PDF when you're making them, that it just was -- I
24 could see it when you were showing it, but that was the only
25 time I could actually see it.

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1 MS. LORD-SORENSEN: That's 33A.

2 VICE CHAIR HART: It was 33A, it was all the
3 exhibits that you had. You didn't have the problem I don't
4 think in the others, but that one seemed like it was -- or
5 maybe --

6 MS. LORD-SORENSEN: Or was it 53A, the one with
7 the demolition?

8 VICE CHAIR HART: No, it's this one.

9 MS. LORD-SORENSEN: 33?

10 VICE CHAIR HART: Yes, because it's really hard
11 to read anything, any of the writing in it beyond fairly
12 large writing, so.

13 MS. LORD-SORENSEN: Okay.

14 VICE CHAIR HART: Like I said, it's a minor thing
15 but it's just helpful for us to be able to see that. Thank
16 you.

17 CHAIRPERSON HILL: Okay. Does the appellant have
18 any questions for the zoning administrator?

19 MR. COBB: Just a few.

20 CHAIRPERSON HILL: Sure.

21 MR. COBB: First, just one quick question about
22 the procedure in this case; about the intervenor's claims
23 related to the side yard, were you able to respond fully to
24 those claims?

25 MR. LEGRANT: I'm trying to understand. You mean

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1 respond fully today or previously to the hearing?

2 MR. COBB: Previously. Before today did you have
3 an opportunity to fully respond to these questions and upload
4 them to the docket?

5 Did you respond to the questions?

6 CHAIRPERSON HILL: Oh, I'm just trying to
7 understand your question, also. I'm just trying to
8 understand. So you're asking -- it's a fine question; I'm
9 just trying to understand it -- you're asking whether or not
10 the zoning administrator answered -- provided answers to your
11 argument about the side yard?

12 MR. COBB: Right. Well, the intervener --

13 CHAIRPERSON HILL: No. I mean, was that the
14 question?

15 MR. COBB: It was about the intervener's arguments
16 to the side yard, which have been said they were filed
17 untimely.

18 CHAIRPERSON HILL: So, tell me your question
19 again.

20 MR. COBB: Even if they were filed untimely, did
21 DCRA -- was DCRA able to fully comply?

22 CHAIRPERSON HILL: That's okay. He's asking
23 whether or not you guys were able to respond, provide an
24 argument and provide the side yard thing?

25 MS. LORD-SORENSEN: When we were here last time

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1 it was suggested that we file a response to the intervenor's
2 statement, but at that time we had not filed a response. So
3 yes, DCRA did file a response to the intervenor's statement.

4 CHAIRPERSON HILL: Okay, so the answer's yes.

5 MR. COBB: Okay, great. Now, just want to move
6 onto the parapets; you mentioned that you're not aware of any
7 board case saying that parapets are rooftop architectural
8 elements; are you aware of any case saying that they're not?

9 MR. LEGRANT: No.

10 MR. COBB: Okay. Now, can you just describe
11 briefly again the changes that were made in E206.1A with the,
12 I think it was the 2016 changes you mentioned?

13 MR. LEGRANT: Yes, the -- let me get the language
14 in front of me here -- You're talking about, again, E206.1A
15 -- There is original language there, and the additional
16 language added the cornices, porch roofs as listed elements,
17 and it went on the second sentence for interior lots, the
18 additional language about interior lots, for all of the lots.

19 MR. COBB: Okay, so just to really focus on those
20 elements before; so it added cornices and porch roofs?

21 MR. LEGRANT: Yes.

22 MR. COBB: Okay, did it remove anything?

23 MR. LEGRANT: Not to my understanding, no.

24 MR. COBB: Okay, so before it was turrets, towers
25 and dormers. Those three elements must they necessarily be

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1 -- I don't want to say part of, that's a little vague, but
2 must they necessarily be physically attached to the roof?

3 MR. LEGRANT: Yes, it's a rooftop architectural
4 element provision.

5 MR. COBB: Well, I'm asking if turrets, towers and
6 dormers must necessarily be physically attached to the roof?

7 MR. LEGRANT: Yes.

8 MS. LORD-SORENSEN: Objection, asked and answered.

9 MR. COBB: Okay. Well, I just wanted him to
10 answer that using the phrase "rooftop architectural element"
11 because that's circular is what's at issue here. Okay, so
12 must cornices necessarily be physically attached to the roof,
13 or can they be attached to walls?

14 MR. LEGRANT: A cornice can be at the junction of
15 the -- in some cases it's right at the junction of the
16 exterior wall at the roof, at the corner is often where a
17 cornice can be at.

18 MR. COBB: Okay, so with the 2016 amendments an
19 element was added that offered a new characteristic that
20 wasn't shared by the elements previously listed in that list.

21 CHAIRPERSON HILL: You're asking a question?

22 MR. COBB: So did it expand the type, the
23 characteristics that could define a rooftop architectural
24 element?

25 MR. LEGRANT: It added other named elements to the

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1 list.

2 CHAIRPERSON HILL: Okay, he answered it. I'm just
3 trying to follow up.

4 MR. COBB: All right, yes. All right. Okay.
5 Now, are there houses in D.C. without anything -- let's
6 assume right now that the list of things in that provision
7 is just illustrative; other things can be rooftop
8 architectural elements, too. Are there homes in D.C. that
9 lack anything that could be considered a rooftop
10 architectural element?

11 MS. LORD-SORENSEN: Objection, calls for
12 speculation.

13 CHAIRPERSON HILL: Objection, calls for
14 speculation. What was your question, again?

15 MR. COBB: Okay. Are there homes in D.C. without
16 cornices, porch roofs, turrets, towers, dormers, parapets or
17 chimneys?

18 CHAIRPERSON HILL: He's leading -- he's getting
19 to something. I mean, Mr. LeGrant, do you know? Do you have
20 an answer?

21 MR. LEGRANT: I would agree that there are homes
22 in the district without any of those elements.

23 CHAIRPERSON HILL: Okay.

24 MR. COBB: Okay, so it is possible that there are
25 homes where if parapets are included, you can build a third

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1 story without needing a special exception?

2 MR. LEGRANT: Well, the way I'll answer this is,
3 if you present -- an application is presented to me in which
4 it includes an upper story addition on a roof that has no
5 protected architectural -- significant architectural rooftop
6 elements, yes you can do so.

7 MR. COBB: Okay, now --

8 CHAIRPERSON HILL: How many more you got?

9 MR. COBB: Just a hand -- just four.

10 CHAIRPERSON HILL: Okay, I was just kind of
11 curious as to where we are.

12 MR. COBB: That's okay. Now for the penthouse;
13 what is the purpose of the size requirement, the 1/3 size
14 limitation and other penthouse size limitations like that?
15 Why were they enacted, to your knowledge?

16 MR. LEGRANT: I believe the commission wanted to
17 limit the size of specified penthouses.

18 MR. COBB: Well, that's evident from the text --
19 I'm just asking what was the motivation, what were the
20 reasons behind wanting to limit that, to your knowledge?

21 CHAIRPERSON HILL: Didn't he just answer that?

22 MR. COBB: I asked him why those -- I asked him
23 why --

24 CHAIRPERSON HILL: I'm just trying to understand
25 again.

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1 MR. COBB: No, no. I asked him why the size
2 limits existing and he said because they wanted to limit the
3 size.

4 MR. LEGRANT: Yes, I would be speculating --

5 MEMBER JOHN: Gentlemen --

6 CHAIRPERSON HILL: Wait, wait, wait, wait. Ms.
7 John has something to add. Ms. John? No, okay.

8 Okay, all right. Now, you were in the middle of
9 an answer, Mr. LeGrant, or no?

10 MR. LEGRANT: I believe I'd be speculating on the
11 commission's intent behind those.

12 CHAIRPERSON HILL: Okay.

13 MR. LEGRANT: I'm not aware of the exact
14 commission intent.

15 CHAIRPERSON HILL: Okay.

16 MR. COBB: Okay, two more questions. That four-
17 part standard for determining razed versus demolition, where
18 does that come from? I searched and I found only one
19 determination letter even mentioning anything like it.

20 MR. LEGRANT: As I testified, they're not
21 specified in the regulations themselves, it's an
22 interpretation. In a case many interpretations on a case-by-
23 case basis I may issue a letter or an email confirmation, but
24 I adhere to those standards in multiple -- consistently in
25 cases where the question arose.

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1 MR. COBB: Okay. So would you say that for -- you
2 said it's been seven years you've been applying that
3 standard?

4 MR. LEGRANT: Yes.

5 MR. COBB: Okay, so for every time that the
6 "razed/demolition" issue came up, you applied that four-part
7 test?

8 MR. LEGRANT: Right. There's a test we look at
9 as to the extent of the retention of the pre-existing
10 structure.

11 MR. COBB: Okay, I apologize. May I snag the HDMI
12 cable just very quickly?

13 It just takes about -- there we are, okay. Okay,
14 I just have --

15 CHAIRPERSON HILL: Oh, you want -- Mr. LeGrant,
16 he has a question about this exhibit that's pulled up on
17 here.

18 MR. COBB: Yes, yes, yes.

19 CHAIRPERSON HILL: So, Mr. Cobb, what's your
20 question?

21 MR. COBB: So this is a determination letter from
22 2016, right?

23 Okay, and so there are a bunch of different
24 questions/answers in here, but what is this for addition
25 alteration?

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1 MR. LEGRANT: You're referring to No. 2?

2 MR. COBB: Yes.

3 MR. LEGRANT: Let me read it out loud. No. 2,
4 addition/alteration for the proposed project will be
5 considered an alteration or addition of existing row house
6 of approximately 65 percent of the exterior envelope being --

7 MR. COBB: Sorry. Okay, well, my computer's
8 acting up.

9 CHAIRPERSON HILL: That's all right.

10 MR. COBB: Okay.

11 CHAIRPERSON HILL: So, anyway, that's okay. So
12 what's your question or what was the point? I don't
13 understand.

14 MR. COBB: So is the alteration/addition issue,
15 is that the same as raze or demolition?

16 MR. LEGRANT: Well, as I recall in this case from
17 a couple of years ago, the inherent in my answer was is this
18 an addition/alteration; well, retaining 65 percent of the
19 exterior walls --

20 CHAIRPERSON HILL: Okay, can I interrupt one
21 second? What did you pull up?

22 MR. COBB: That was a 2016 determination letter
23 from the zoning commissioner.

24 CHAIRPERSON HILL: Okay, but nothing about this
25 case? You're giving an example of a time when he ruled

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1 something differently?

2 MR. COBB: I'm giving an example of a time when
3 he did not apply that four-part standard.

4 CHAIRPERSON HILL: Okay. Ms. John?

5 MEMBER JOHN: Was that in connection with a raze
6 or demolition?

7 MR. COBB: Well, one of the questions answered was
8 addition or alteration, so I asked how that corresponds to
9 the raze/demolition; are they the same thing or how are they
10 related to one another?

11 MR. LEGRANT: In this particular case regarding
12 2717 Ontario Road I issued a determination letter; part of
13 that determination letter was whether this incident deemed
14 an addition an alteration of an existing building. In order
15 to be deemed an existing building as being retained, the
16 question because there was, it's not explicitly stated, but
17 there was partial removal of existing building. So the
18 question arose and what I attempted to speak to in the letter
19 is well, okay, you're removing a portion of the building; how
20 much are you retaining. I noted that 65 percent of the
21 exterior envelope is being retained. As I testified earlier,
22 my basic test is if you are retaining at least 40 percent of
23 exterior walls of the building as the key criterion, then you
24 are not razing the structure; in this case since it was 65
25 percent, they met the standard and the rest of analysis

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1 presumes that it's existing --

2 CHAIRPERSON HILL: Okay, okay. Mr. Cobb, how many
3 more you got?

4 MR. COBB: One more.

5 CHAIRPERSON HILL: Okay.

6 MR. COBB: Maybe one follow-up after that, but
7 that's it.

8 CHAIRPERSON HILL: Okay.

9 MR. COBB: So, when you say 40 percent of the
10 exterior walls, does that include the roof?

11 MR. LEGRANT: No.

12 MR. COBB: What does it say in No. 2; can you just
13 read that again verbatim?

14 MR. LEGRANT: I'll try. The copy we have has a
15 big white stripe through it, but -- oh, Marty has it -- I'll
16 read it again.

17 MR. COBB: Okay.

18 MR. LEGRANT: The proposed project shall be
19 considered an alteration, an addition of existing row house
20 of approximately 65 percent of exterior walls being retained,
21 period. The rear wall and roof, 1,040 square feet, will be
22 removed and the front party walls will remain, 1,197 square
23 feet.

24 MR. COBB: So there you looked at the four walls
25 and the roof?

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1 MR. LEGRANT: I do not actually recall the roof.

2 MR. COBB: But that's --

3 MR. LEGRANT: I don't recall in that specific
4 instance whether the roof was included. I'd have to look at
5 that; I don't believe it was the standard.

6 CHAIRPERSON HILL: Okay. Mr. Cobb, I get where
7 you're going with all of this, but I'm just saying like, you
8 can disagree -- we're going to get to decide whether or not
9 the zoning administrator erred in his determination. I
10 understand that you found something that you think was
11 different than what he's saying, and so do you have any other
12 questions?

13 MR. COBB: That was the last one.

14 CHAIRPERSON HILL: Okay. Ms. Telle, do you have
15 any questions for the zoning administrator?

16 MS. TELLE: Yes, just a few.

17 CHAIRPERSON HILL: Sure.

18 MS. TELLE: Could you explain why you include the
19 party wall in the account for the 40 percent of walls
20 retained?

21 MR. LEGRANT: Yes, it's part of the structural for
22 a building, whether a wall is a party wall or a free-standing
23 wall, it's still integral to the structure, structural
24 integrity, it's necessary for the structure to exist.

25 MS. TELLE: But in counting the party wall as part

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1 of the 40 percent, how does that relate back into the D.C.
2 building code's definitions of a raze which says that, with
3 or without the removal of a party wall you can still have a
4 raze? So, how does including that party wall in the 40
5 percent when you're not required to tear it down to have a
6 raze to begin with?

7 MR. LEGRANT: The standard for the building code
8 is different than the zoning regulations. I'm aware that the
9 building code has a specific definition of raze that I've --

10 CHAIRPERSON HILL: Okay, you're saying it's
11 different?

12 MR. LEGRANT: Yes.

13 CHAIRPERSON HILL: Okay, fine.

14 MS. TELLE: And I'm just asking because the zoning
15 administrator says that he's created a standard and we have
16 definitions within the D.C. code that do discuss and define,
17 so.

18 CHAIRPERSON HILL: Okay, I'm just saying he
19 answered your question, that's all.

20 MS. TELLE: Understood. Could you just explain --
21 you said that the lot occupancy did not change on the
22 property; could you explain how you determined that?

23 MR. LEGRANT: We showed in the drawings the site
24 plan looking down the footprint of the building, and
25 specifically the non-conforming side yard encroachment that

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1 was at issue here. All form the footprint or what's called
2 the building area. Lot occupancy is calculated by the ratio
3 of building area to lot area; in this particular case,
4 although that existing non-conforming structure is
5 cantilevered, when we do a lot of lot occupancy calculation,
6 you project it down the ground. Therefore, from the existing
7 to the proposed condition, there was no change to the lot
8 occupancy.

9 MS. TELLE: Could you please then explain how in
10 the DCRA approved plan that the permit was issued off of, why
11 in Architectural Plan CS2 the building occupancy has -- or
12 excuse me, the lot occupancy has in fact increased by 4
13 percent, but you testified that it remained unchanged?

14 MR. LEGRANT: Okay, the --

15 CHAIRPERSON HILL: What are you referring to, what
16 exhibit talking about? I'm just trying to figure it out.

17 MR. LEGRANT: This is Architectural Plan CS2; it
18 was listed as part of my exhibits that I introduced, but this
19 was DCRA's --

20 CHAIRPERSON HILL: I'm just trying to find where
21 it is you're talking about. Which exhibit are you in?

22 MS. TELLE: I believe it was -- I don't know the
23 number of my exhibit -- I believe it would have been 89 or
24 90, but this would have been the response to the property
25 owner by the intervener.

1 MR. COBB: It's 57.

2 MR. LEGRANT: Give me a moment to get it in front
3 of us.

4 CHAIRPERSON HILL: Yes, give me a second, too.

5 MS. TELLE: This is Page 5 of that document, 5 and
6 I've expanded so you can read easier, since it's small.

7 CHAIRPERSON HILL: Which -- so where are you --
8 you're on A0100?

9 MS. TELLE: CS2. I'm in CS2 which was part of the
10 plan that has been approved for this permit. And it is a
11 chart that lists out height, square, lot, year, et cetera
12 from the existing, original structure to the proposed, which
13 has now been the structure that has been permitted.

14 CHAIRPERSON HILL: Is this on Page 6?

15 MS. TELLE: Yes, on Page 6, but on Page 5 you see
16 the entire document. I have just expanded that chart so you
17 could hopefully read the numbers a little easier.

18 CHAIRPERSON HILL: Okay, so I'm just being -- I
19 just want to understand, I just want to be clear -- you're
20 asking the zoning administrator a question about something
21 that you submitted?

22 MS. TELLE: I resubmitted portions of the building
23 permit that have been -- the plans that went into the permit.
24 These are stamped by DCRA and these are the plans that the
25 zoning administrator used in issuing the permit.

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1 MR. LEGRANT: I can speak to this. So, I believe
2 -- and I might have the property owner's representative speak
3 to this as well -- is the architect who prepared the plans,
4 including this table and this chart and provided information,
5 okay. It does say under lot occupancy that the existing is
6 49.3 and the proposed 53.3. I disagree with that. What my
7 reviewers look at is, in this case it was the plat, the plat
8 that showed the footprint of the building; the footprint was
9 unchanged. Why the architect put this information in, I do
10 not know, I still maintain that it's my understanding that
11 the lot occupancy is unchanged in this application.

12 MS. TELLE: Ms. Sorenson, would you mind putting
13 up the document again that you had that showed the original
14 first floor and the revised, the permitted first floor? I
15 think you'll see that the entire building has expanded to run
16 along the side yard, so to say that lot occupancy is the same
17 would not be accurate, and that is in part what we are basing
18 or we're discussing as part of deciding the raze.

19 CHAIRPERSON HILL: That's okay, we're pulling it
20 -- let them pull up what you're looking for.

21 MS. LORD-SORENSEN: Is it a cross-section, aerial
22 view? Excuse me --

23 MR. SULLIVAN: I can clear this up. There is an
24 addition; it went to the 5-foot side yard. The lot occupancy
25 was increased, but that doesn't change the fact that it

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1 wasn't a raze, so I'm not sure where we're going with this.

2 CHAIRPERSON HILL: Wait, wait, wait. That's okay.

3 So, I thought the question was that Mr. LeGrant said the lot
4 occupancy had not increased, right?

5 MR. LEGRANT: Let me explain my view of this;
6 perhaps the property owner has a different view. The
7 existing non-conforming feature and the side yard is
8 cantilevered; it doesn't touch the ground.

9 CHAIRPERSON HILL: I understand.

10 MR. LEGRANT: When I look at lot occupancy that
11 feature we do a building area, or a building footprint. We
12 project that down to the ground and include it in lot
13 occupancy. So when they, the proposed construction plans
14 show that volume is in a horizontal dimension going down to
15 the ground is unchanged, that is my understanding of the lot
16 occupancy for this application.

17 CHAIRPERSON HILL: Okay, next question.

18 MS. TELLE: I would just like to point out that
19 the property, if you look at the one, the one existing down
20 below, and you look along the side yard line, the property
21 is up higher above the side yard line, but if you look in the
22 revision up above, the new proposed site it runs along the
23 property line. So I just am trying to get a -- the zoning
24 administrator has testified that lot occupancy has not
25 changed and --

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1 MR. LEGRANT: Okay, so let me correct it. Thank
2 you. Now I understand the point, is that -- and the property
3 owner can speak to it -- they're pulling out a portion of the
4 building, yes, so I have to correct my understanding. It did
5 increase lot occupancy. Filling in that triangle, maybe this
6 triangle here, there, there and there is being filled in;
7 it's being brought out to -- there we go -- to the -- it's
8 increasing the lot occupancy, so I stand corrected.

9 CHAIRPERSON HILL: Okay.

10 MS. TELLE: No further questions from me, thank
11 you.

12 CHAIRPERSON HILL: All right. Okay, so I might
13 have a question about that later. Okay, so let's go with the
14 property owner now. You get 15 minutes, Mr. Sullivan. Mr.
15 Moy, if you could put that on the clock.

16 MR. SULLIVAN: I have a cross examination question
17 for Mr. LeGrant.

18 CHAIRPERSON HILL: Oh, sorry. Sure.

19 MR. SULLIVAN: Mr. LeGrant, the parapet, if it had
20 -- actually, two questions -- if it had a cornice on the
21 parapet, some sort of ornamental cornice that's part of the
22 parapet, might that be an architectural element then?

23 MR. LEGRANT: If it included a cornice, yes.

24 MR. SULLIVAN: Okay. And then I would have to
25 preserve that and could I still build a third story right

1 behind that parapet?

2 MR. LEGRANT: Yes.

3 MR. SULLIVAN: Thank you. I'll try to be as brief
4 as I can. I want to talk about the substantive issues first
5 and then I'll end talking about the intervenor timeliness
6 issue. On substance, the appellant and intervenor come here
7 with conclusions without evidence, without authority, without
8 expertise and without precedent -- simple conclusions. They
9 say that a penthouse, or a roof deck is a penthouse with no
10 evidence whatsoever. Everybody knows that a roof deck is not
11 automatically a penthouse; a penthouse has to be a structure.
12 They also say that a parapet has a setback requirement, and
13 then they submit evidence, that same letter that we were just
14 talking about, Paragraph 8 says "Parapet penthouses, no
15 penthouses are provided" -- which tells you that a parapet
16 is not a penthouse -- "Thus no compliance with the regulation
17 set forth is required. The proposed parapet is 4 feet above
18 the roof high point and is not subject to any setbacks." So
19 in the evidence that they've submitted, they've knocked out
20 two of their arguments.

21 And the "such as" argument; just because it says
22 "such as," yes we agree that that means there might be other
23 things not listed that are in that group, but that does not
24 mean that everything in the universe not listed is also in
25 that group. It still needs to be an architectural element

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1 and they still need to prove that it is. Right now this
2 parapet is a continuation of the brick facade, so to say that
3 the parapet is an architectural element, you would say every
4 brick on the front facade is an architectural element.

5 Regarding the non-conforming structure, I think
6 where we're getting confused is there's a standard for what
7 is a full zoning raze or not, and then there's a separate
8 standard for what is the expansion of a non-conforming
9 condition, and that's why we're getting confused. There's
10 nothing about whether or not you're determining something to
11 be a full raze that prevents you from increasing your lot
12 occupancy, obviously. I can do an addition to a building,
13 so every time I do an addition to a building that's not a
14 full zoning raze, I'm increasing the lot occupancy; as long
15 as I don't go past 60 percent, I'm not creating a new non-
16 conformity or expanding an existing one. In this case the
17 existing non-conformity relates to the side yard; the side
18 yard setback is not being decreased; it's as simple as that.
19 And I would compare this to the case of a covered porch; in
20 a RF-1 zone if you have a covered porch and you exceeded lot
21 occupancy, you can enclose that porch because you're not
22 increasing your lot occupancy. And I think that's what
23 addresses the issue of going down as well, because the ground
24 is covered here; not increasing lot occupancy with the bump-
25 out, not increasing or decreasing the side yard.

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1 In response to something Commissioner May brought
2 up; the non-conforming structure regulations relate to the
3 structure, they don't relate to portions of the structure.
4 So I think the answer there can be found in the regulations
5 themselves. They talk about additions to non-conforming
6 structures.

7 The intervener mentioned using the building code
8 as a raze; there are many times I would love to use the
9 building code definition of a full zoning raze or a full raze
10 because that definition says that a raze is when the building
11 is down to the ground. There are many times when we would
12 love a building not to be a zoning raze, and we could do that
13 under the building code definition by saving two or three
14 courses of brick. But of course the building code definition
15 doesn't apply.

16 So, regarding timeliness -- and this is an
17 important issue here -- the Y 501.3 says that an intervener
18 shall not unduly broaden the issues in a case, and I think
19 the reason that it says that is because there really is no
20 timeliness factor for filing as an intervener. There is a
21 timeliness factor for claims, for alleged violations, and for
22 administrative decisions of the zoning administrator. The
23 first time that the side yard alleged violation was mentioned
24 was four months after permit issuance and five months after
25 the intervener included a description of the alleged

1 violation in a letter to the then property owner. In that
2 letter sent on April 10th the intervenor stated,
3 "Additionally, please note that your existing plans for
4 construction include expansion of a non-conforming structure.
5 Our street requires houses with side yards to have 5-foot
6 setback. The existing wooden first-floor dining room that
7 was added is currently a non-conforming structure violating
8 the 5-foot setback requirement. Under 11C DCMR, Section
9 201.1, non-conforming structures may not be enlarged upon,
10 expanded or extended. So they included -- they researched
11 the zoning regulations, at least as far back as April 10th,
12 and that included notice of the alleged violation. And then
13 five months later they filed this appeal. The only way that
14 the board can extend the 60 days is if the intervenor shows
15 that there's exceptional circumstances beyond their control
16 that prevented them from filing the appeal. And the language
17 is important here, because it says, "Outside the appellant's
18 control and that could not have been reasonably anticipated
19 that substantially impaired the appellant's ability to file
20 a zoning appeal to the board." The intervenor had the
21 ability to file the zoning appeal. There's plenty of court
22 of appeals cases that talk about an appellant's alternative
23 strategies that they might take instead of filing an appeal,
24 and that doesn't toll the time limit.

25 The other aspect of the extension, the board can

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1 extend the 60-day deadline only if two things are present;
2 the second thing that needs to be present, that the extension
3 of time will not prejudice the party's zoning appeal. In
4 this case we're talking about prejudice to the party owner.
5 In the time between issuance of the permit and the filing of
6 the claim against the side yard, the property owner laid a
7 foundation for this structure, and that's the whole purpose
8 of having the 60 days so that a property owner can rely on
9 issuance of a permit, and they know within that 60 days
10 they're at risk of challenge, and after that they can move
11 forward. So because they laid that foundation, they're
12 certainly prejudiced if the board were to extend the 60-day
13 deadline.

14 That's it. Thank you.

15 CHAIRPERSON HILL: Okay. All right, so let's see
16 -- we've all been here a long time, okay, meaning we've all
17 been here all day -- and so I think that -- again, Mr.
18 Sullivan, you made so many points -- I mean, some of those
19 things, again, we're going to try to figure out later in
20 terms of what we think about the side yard, so I appreciate
21 you bringing that up again. I just wanted to, again, as
22 we're kind of working through this, we're going to ask our
23 questions, we're going to get our questions answered, and
24 we're going to do so in a very calm way, okay. So, Mr. Cobb,
25 do you have any questions for the property owner?

1 MR. COBB: We'll get time for closing statement,
2 right?

3 CHAIRPERSON HILL: Yes, you'll get rebuttal.

4 MR. COBB: Okay then no.

5 MS. TELLE: Just one question.

6 CHAIRPERSON HILL: Sure.

7 MS. TELLE: When the foundation was laid, was the
8 property owner on notice that there was a pending appeal
9 before the BZA already?

10 MR. SULLIVAN: I would say they would probably
11 have notice by the fact that you sent the letter, and then
12 if they would wait --

13 CHAIRPERSON HILL: Hold on, hold on. Just let him
14 answer.

15 MR. SULLIVAN: And if you sent the letter on April
16 10th and they got the permit, they would know to wait 60
17 days, but if they were 120 days passed, they would expect an
18 appeal wouldn't be filed.

19 MS. TELLE: My question is Mr. Cobb filed an
20 appeal; did they know of the appeal being filed in May when
21 they laid the foundation in July?

22 MR. SULLIVAN: Yes, I'm sure they did, but there
23 were side yard violations included in that appeal.

24 CHAIRPERSON HILL: Okay, that's fine.

25 MR. SULLIVAN: Right.

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1 CHAIRPERSON HILL: Okay, is that it?

2 Okay. All right, so now -- DCRA, do you have any
3 questions?

4 MS. LORD-SORENSEN: No.

5 CHAIRPERSON HILL: Okay. All right, let's see,
6 so we have rebuttal now from the appellant -- thank you --
7 rebuttal from the appellant and then everybody will get an
8 opportunity -- everyone gets rebuttal?

9 Right now you get rebuttal. So I'm going to go
10 ahead and put five minutes up just for rebuttal, if you don't
11 mind, Mr. Cobb, and you can start whenever you'd like.

12 MR. COBB: Okay, I just have three very short
13 points to make. I'll make this in 90 seconds. One, the
14 property owners claims I don't have any facts, evidence or
15 anything of the like; I cite the law, I cite D.C. Court of
16 Appeals, precedent, this isn't a trial with evidence and
17 circumstantial evidence and direct evidence; this is really
18 more in the nature right here with this and the appellant
19 arguments. All we can do is cite controlling and persuasive
20 sources, and that's exactly what I've done; I don't really
21 know what else I can do. Second, as far as the argument that
22 every brick on a facade would be an architectural element;
23 that's why I cited the international building code; it draws
24 a distinction at the roof line. Above the roof line,
25 parapet, below the roof line, load bearing wall. That's it.

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1 And third, I do agree that even if parapets are roof top
2 architectural elements, someone could build a third story
3 within them, I agree, but that's not what the plans call for
4 here.

5 That's all.

6 CHAIRPERSON HILL: Yes, what?

7 Hey, OAG? I'm trying to remember if everybody
8 gets rebuttal.

9 MR. COBB: I believe it's just the appellant and
10 interveners because we spoke first, so they already had a
11 chance to respond.

12 MR. RITTING: Yes, the relevant rule says rebuttal
13 evidence from the appellant, followed by rebuttal evidence
14 from the parties in support of the appeal.

15 CHAIRPERSON HILL: Okay, and then I usually do
16 give everybody a conclusion. I can't remember if it's in the
17 regulation.

18 MR. RITTING: Yes, the next paragraph says closing
19 arguments in the same order as the previous testimony.

20 CHAIRPERSON HILL: Okay.

21 MR. RITTING: So everyone gets a closing.

22 CHAIRPERSON HILL: Okay. Mr. Sullivan, I'm
23 looking at you because you became a little hot right at the
24 beginning there. I thought you came a little hot.

25 MR. SULLIVAN: I'm sorry.

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1 CHAIRPERSON HILL: I was just like, it's been a
2 long night, I'm trying to get out of here and go to frickin'
3 Christmas and New Years, okay right, and you're just like
4 showing up and like just right away no evidence, no evidence,
5 blah, blah. So I'm just letting you know it was originally
6 directed to you.

7 MR. SULLIVAN: No doubt.

8 CHAIRPERSON HILL: There you go. All right. So
9 now after that, Ms. Telle, any rebuttal?

10 MS. TELLE: I will be brief. I just want to say
11 that the zoning administrator has in large part determined
12 whether or not a raze has occurred, in part based upon lot
13 occupancy that he has said today did not increase, then has
14 said later that it in fact did increase. If that was in part
15 considered into his determination as to whether or not a raze
16 took place, that's very relevant in whether or not a non-
17 conforming structure can be rebuilt and is pertinent here.

18 Separately, I'd just like to say that in terms of
19 the prejudice to the party, it's difficult for me to
20 understand the prejudice. Mr. Sullivan has mentioned that
21 in the time between when we first mentioned the side yard via
22 letter to the property owner that they had since laid a
23 foundation, but they laid a foundation at their own risk
24 knowing that a BZA appeal had been filed two months earlier
25 and was not to be heard until September. So to say that

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1 there has been prejudice to the party based on our claims
2 being added in I think is not accurate.

3 And finally, on the issue of intervenor status,
4 I'm just a little taken aback by the fact that we're debating
5 that today; the OAG has been here every single time we've
6 been here. This is our third hearing, we've mentioned side
7 yard and non-conforming structures every single time and
8 nothing has been discussed, so I'm not sure why today the
9 standard is one thing, but in September and November the
10 standard was something different.

11 That's it.

12 CHAIRPERSON HILL: Okay. And as I said, I know
13 that you guys have been here a lot, quite a few times, and
14 as far as us or my trying to be as transparent as possible
15 in terms of what, no one's doubting that you have intervenor
16 status; it's more or less, again, and I thought it was very
17 clear and I'm going to continue to reiterate, it's when these
18 other things got brought up and whether or not -- you don't
19 have to respond; I'm just kind of sharing with you what I was
20 originally speaking to.

21 MS. TELLE: May I respond very, very briefly?

22 CHAIRPERSON HILL: Sure.

23 MS. TELLE: Again, we would argue the appellant
24 brought this case on the basis of the entire permit; his
25 requested relief in every document has been revocation of the

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1 entire permit, as has our requested relief.

2 CHAIRPERSON HILL: I understand, and I did reply
3 to that the first time you brought it up at the very
4 beginning of the -- you can go back and watch, which I'm sure
5 you guys will, because it matters to you guys, which I would
6 understand why. Okay, so that being the case now, we're
7 going to go to conclusions in the order which we did the
8 hearing. So what that means it's going to be the appellant,
9 intervener, DCRA, and then finally the property owner. And
10 we're going to go ahead and start with you, Mr. Cobb. I'm
11 going to put five minutes up on the clock and we'll just kind
12 of work our way through that.

13 MR. COBB: All right. First just to talk about
14 the parapet walls and whether special exception is required,
15 I would --

16 CHAIRPERSON HILL: I'm just going to interrupt you
17 one second because I think we're going to lose a board member
18 at some time, perhaps, and then she will review the record
19 on the tape. And then --

20 Okay, all right. Okay, let's see how it goes.
21 The parking garage will lock up, and so cars will be locked
22 in downstairs.

23 MR. COBB: Okay.

24 CHAIRPERSON HILL: That's why we're trying to
25 figure out how to get out by 7:00 p.m.

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1 MR. COBB: Okay.

2 CHAIRPERSON HILL: So, and if I lose two board
3 members, then everybody has to come back. So, why don't you
4 go ahead and give a three-minute conclusion. And actually,
5 I'll do it this way also -- go ahead and do a three-minute
6 conclusion. We'll see what happens, we'll see if we have to
7 ask for more time for conclusions. So go ahead, Mr. Cobb.

8 MR. COBB: Okay, just want to highlight a few
9 things; one, the parapets being a roof top architectural
10 element; cornices, everything on there has to touch the roof,
11 except for cornices, they don't even have to touch the roof
12 and they're roof top architectural elements. Parapets do
13 touch the roof, they rise above it, they serve a purpose
14 toward it, and so they should be considered as requiring a
15 special exception. And in doing so wouldn't cause any huge
16 backlog of people seeking new special exceptions. Plenty of
17 homes don't have parapets, and even those that do, plenty of
18 people get a special exception.

19 Now for the roof top; whether parapets are part
20 of the structure, that can make the roof area a penthouse.
21 I would just point again to the distinction between parapet
22 walls and load bearing walls, above the roof line, below the
23 roof line.

24 And then as far as the procedure of this case with
25 the intervenor's claims, I would just echo everything that

1 Ms. Telle has said here today and just reiterate that we
2 sought the same relief the whole time. The parties have
3 gotten a full chance to brief the issues raised in the
4 intervener's statements and they have done so, and everyone
5 has read and considered all the arguments. No one's been
6 prejudiced by the untimely filing, if it was untimely.

7 And finally, we have relied on, in part on OAG's
8 guidance to notify us or at least imply that there wasn't a
9 problem by not bringing it up for two meetings. And now here
10 we are and it's brought up at the third. So we have the same
11 -- we made the same requests for relief, everyone's gotten
12 a chance to answer these arguments and we have a reliant
13 interest on what we've been doing for the last two months
14 over three hearings.

15 So that's all I have, thank you.

16 CHAIRPERSON HILL: Okay, that's all right.
17 Actually, I rethought this because I don't want conclusions
18 to be rushed, so we're going to have conclusions submitted
19 into the record in writing and then that way it'll be easier
20 for us to just kind of like see what everyone has to say in
21 conclusion.

22 So, Mr. Moy, I want to set this for decision and
23 then when we can get conclusions -- I'm going to close the
24 hearing and close the record for everything other than just
25 the conclusions, and the conclusions will be due on a certain

1 day. It's not like you put your conclusion and then you
2 respond to somebody's conclusion. The conclusion is the last
3 thing that everybody's going to put forth in the record. Mr.
4 Moy?

5 MR. MOY: Okay. Mr. Chairman, I think this is
6 going to be similar to an earlier case today where we were
7 looking at a decision on January 30th, okay. So --

8 CHAIRPERSON HILL: Oh, when is Commissioner May
9 back?

10 MR. MOY: He is back -- okay, just a second --
11 January 30th.

12 CHAIRPERSON HILL: Okay, look at that.

13 MR. MOY: So, January 30th because also the
14 parties needed to refer to the transcript. Of course that
15 would be two weeks; that's why I'm going on that. So that
16 transcript should be available that second week of January,
17 all right, the week of the 7th, so that'd give ample time.

18 CHAIRPERSON HILL: Okay. How do they get the
19 transcript, again?

20 MR. MOY: Well, the transcripts are --

21 CHAIRPERSON HILL: Distributed to the parties?
22 I don't even know.

23 MR. MOY: No, it's on our website.

24 CHAIRPERSON HILL: Okay, I just wanted to make
25 sure because I'm actually not sure where they are. So all

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1 right.

2 MR. MOY: So if the parties are to file their
3 closing statements, we could set a deadline of, let's say
4 Wednesday, January the 23rd for closing statements and then
5 decision-making on the 30th.

6 CHAIRPERSON HILL: Okay, so you guys understand?

7 Okay, all right. I mean, my final little comment
8 here, again, is just that -- yeah, it's just disappointing;
9 like you have a property, something next to you that you
10 don't want and you hopefully are able to prove that the
11 zoning administrator erred and the other person built
12 something that they thought they could build. And so we see
13 this a lot and I just wanted to kind of point out that
14 unfortunately at the end of the day somebody's going to lose.

15 So with that, have a Merry Christmas. Happy
16 Holidays and Happy New Year.

17 Okay. Mr. Moy, do we have anything -- oh, yeah,
18 yeah, yeah -- and Chairman Hood -- I'm sorry; Vice Chair Hart
19 is mentioning to me that, again, during the decision thing,
20 we don't take testimony from anybody, we don't talk to
21 anybody so you can watch on the video if you want, or you're
22 welcome to come down. So, okay. So thank you all very much.
23 Mr. Moy, is there anything else for the board today?

24 MR. MOY: Nothing from the staff, other than the
25 staff wishes the board and our audience Happy Holidays.

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1 CHAIRPERSON HILL: Okay, great. Thank you. The
2 board also wishes the staff the same. We stand adjourned.
3 (Whereupon, the above-entitled matter went off the
4 record at 6:40 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 12-19-18

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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