

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 15, 2019

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

ANTHONY J. HOOD, Chairman
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
KEARA MEHLERT, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOT
MATTHEW JESICK
MAXINE BROWN-ROBERTS
KAREN THOMAS

The transcript constitutes the minutes from
the Public Hearing or held on May 15, 2019.

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

9:43 a.m.

CHAIRPERSON HILL: All right, good morning. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. This is the May 15th, 2019 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, Lesyllee White and Lorna John will also be joining us in a moment. Representing the Zoning Commission will be Michael Turnbull and then also Anthony Hood for the day.

Copies of today's agenda are available to you and located on the wall near the door. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address.

When you're finished speaking, please turn your microphone off, so that your microphone is no longer picking up sound or background noise. All persons planning to testify either in favor or in opposition must have raised their hand and been sworn in by the Secretary. Also, each

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

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

12 The order of procedures for special exceptions,
13 variances and appeals is also listed as you come walking in
14 through the door. The record shall be closed at the
15 conclusion of each case, except for any materials
16 specifically requested by the Board. The Board and the staff
17 will specify at the end of the hearing exactly what's
18 expected and the date when the persons must submit the
19 evidence to the Office of Zoning.

20 After the record is closed, no other information
21 shall be accepted by the Board. The Board's agenda include
22 cases set for decision. After the Board adjourns, the Office
23 of Zoning, in consultation with myself, will determine
24 whether a full or summary order may be issued. A full order
25 is required when the decision it contains is adverse to a

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1 party, including an affected ANC. A full order may also be
2 needed if the Board's decision differs from the Office of
3 Planning's recommendation.

4 Also the Board favors the use of summary orders
5 whenever possible, an applicant may not request the Board to
6 issue such an order. The District of Columbia Administrative
7 Procedures Act requires that the public hearing on each case
8 be held in the open before the public pursuant to Section
9 405(b) and 406 of that Act.

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

18 The decision of the Board and case must be based
19 exclusively on the public record. To avoid any appearance to
20 the contrary, the Board requests that persons present not
21 engage the members of the Board in conversation. Please turn
22 off all beepers and cell phones at this time, so as not to
23 disrupt the proceeding.

24 Preliminary matters and those which relate to
25 whether a case will or should be heard today, such as a

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1 request for postponement, continuance or withdrawal or
2 whether a proper or adequate notice of the hearing has been
3 given. If you're not prepared to go forward with the case
4 today or believe the Board should not proceed, now is the
5 time to raise such a matter. Mr. Secretary, do we have any
6 preliminary matters?

7 MR. MOY: Good morning, Mr. Chairman, members of
8 the Board. I do have a few announcements related to today's
9 docket. First off are case applications that have been
10 postponed and rescheduled. Appeal Number 19961 of ANC 1C has
11 been rescheduled to June 2019.

12 MEMBER WHITE: June what?

13 MR. MOY: June 19th, 2019, and Case Number 2004
14 of General Services, Inc. has been postponed or rescheduled
15 to June 19th, 2019 as well. 2008 of Brighter Chapter
16 Investment, LLC postponed and rescheduled to June 19th, 2019,
17 and finally Case Application Number 20009 of Amanuel has been
18 postponed, rescheduled to June 19th as well, 2019.

19 Finally Mr. Chairman, we have -- which was
20 submitted very early this morning, a request for postponement
21 and they go to Case Application Number 20001 of Simone
22 Management, LLC and Application Number 19996 of Mallard
23 Estates, LLC. And that's it from the staff, Mr. Chair.

24 CHAIRPERSON HILL: Okay. Mr. Moy, let's go ahead
25 and just address some of those preliminary matters when we

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1 call each one of those cases, okay?

2 MR. MOY: Thank you.

3 CHAIRPERSON HILL: And then as far as the audience
4 is concerned, we are going to go a little bit out of order
5 in our decisionmaking process. We're going to start with
6 Application 19972, followed by 19954 and then ending in
7 19942. In terms of the hearings agenda, we're going to
8 follow it more or less until we get to whatever preliminary
9 matters we need to handle with some of the cases.

10 If you're here wishing to testify, if you would
11 please stand and take the oath administered by the Secretary
12 to my left.

13 MR. MOY: Good morning. I'm looking around the
14 corner here.

15 (Witness sworn.)

16 (Whereupon, the above-entitled matter went off the
17 record at 9:49 a.m. and resumed at 10:20 a.m.)

18 BZA CHAIR HILL: Okay, great. Mr. Moy, there's
19 I guess a preliminary matter-ish or something with 20006.
20 Whenever you get a chance, you can call it, but I think
21 that's what we're doing.

22 Application No. 20006

23 MR. MOY: Thank you, Mr. Chairman. So that would
24 be Case Application Number 20006 of T-Mobile Northeast, LLC.
25 This is captioned advertised for a special exception under

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1 the use permissions of Subtitle C, Section 1313.2, to erect
2 a monopole in the RA-1, no?

3 This is in the RA-1 Zone. This is at 3675 I guess
4 it's pronounced Ely Place, E-L-Y Place, Southeast, Square
5 5438, Lot 801, and as the Board will recall, there is a
6 request for a postponement.

7 BZA CHAIR HILL: All right. As the Board will
8 recall last week, there was a request for a postponement of
9 this case, but they did not meet the filing deadline. And
10 so I was concerned that, in terms of anybody who was showing
11 up for that hearing. So nobody was showing up for that
12 hearing; nobody did show up for that hearing.

13 Since that time, they have now met the filing
14 deadline timeline in terms of like we don't have any
15 opposition in the record in terms of to the postponement.
16 I just will ask, there's nobody here for 20006, is that
17 correct?

18 (No response.)

19 BZA CHAIR HILL: Okay, either in support or
20 opposition? Okay. So I'm going to ahead and postpone the
21 hearing. Unless the Board has any other questions, we'll go
22 ahead and postpone the hearing. Mr. Moy, when's a good date?

23 MR. MOY: All right, Mr. Chairman. The dates in
24 June starting with June 5th, June 12th and June 19th. I
25 would say no to June 19th. We have an appeal on that day,

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1 and for both June 5th, which applicant is requesting, June
2 5th and June 12th, the Board has 11 cases on the docket for
3 those two days. So I can place it on any of those two dates,
4 and then of course -- and then once we get the June 19th.

5 BZA CHAIR HILL: Yeah, that's okay. June 19th is
6 too --

7 MR. MOY: Too, too --

8 BZA CHAIR HILL: The applicant was requesting
9 which day?

10 MR. MOY: June 5th. So that would be your 12th
11 case, and I was going to suggest that if the Board wanted to,
12 would have -- there's more room on the docket for June the
13 26th, which we're looking at about six cases. So it was your
14 choice.

15 BZA CHAIR HILL: Okay. Let's do June the 26th.

16 MR. MOY: All right, done.

17 BZA CHAIR HILL: Okay.

18 Appeal No. 19938, ANC 1C

19 MR. MOY: All right, Mr. Chairman. Thank you for
20 that pause on my part. So this is a continued hearing.
21 Yeah, this is Appeal Number 19938 of ANC 1C. So we have
22 parties to the table. This appeal application was captioned
23 for appeal from the decision made on October 5th, 2018 by the
24 Zoning Administrator, Department of Consumer and Regulatory
25 Affairs, to issue Building Permits Numbers B1900300, B1900301

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1 and B1900302 to renovate three existing attached principal
2 dwelling units, RF-1 Zone. This is at 1630 through 1634
3 Argonne Place, N.W., Square 2589, Lot 480.

4 BZA CHAIR HILL: Okay, good morning. If you could
5 please introduce yourselves for the record from my right to
6 left.

7 MS. LORD-SORENSEN: Good morning. Adrienne Lord-
8 Sorenson, Assistant General Counsel with the D.C. Department
9 of Consumer and Regulatory Affairs.

10 MR. LEGRANT: Good morning, Matthew LeGrant,
11 Zoning Administrator, DCRA.

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

14 MS. PERRY: Amanda Perry, ANC 1C.

15 MR. GAMBRELL: Alan Gambrell with ANC 1C.

16 BZA CHAIR HILL: All right. Okay, welcome back,
17 everybody. Let's see. Commissioner, nice to have you again.
18 Let's see. So what I think I'd like to do is just kind of go
19 over what we had asked for. So again, just to clarify what's
20 going on here. We're just talking about the stuff that we
21 have added to the record after the last hearing.

22 I mean we had our whole hearing. We heard
23 everything, we had our arguments, our questions, our
24 deliberations. Or not deliberations, our discussion, and now
25 we're going to do the same thing, but just on the items that

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1 were presented or what we asked for. So I'm trying to
2 recall, was it DCR -- we asked for information from DCRA;
3 correct?

4 MS. LORD-SORENSEN: From all the parties.

5 BZA CHAIR HILL: Okay. So let's go. Let's start
6 this way. Could the applicant, the appellant just tell us
7 what was asked for from them?

8 MS. FOX PERRY: We were asked to speak to the
9 questions that were raised at the close of the Board meeting
10 in March, April 10th, I'm sorry.

11 BZA CHAIR HILL: Okay.

12 MS. FOX PERRY: And Mr. Gambrell has been
13 authorized by ANC 1C to speak on this appeal. So he might
14 want to elaborate on that.

15 BZA CHAIR HILL: Sure. Mr. Gambrell.

16 MR. GAMBRELL: Yes, just to paraphrase, top of my
17 head.

18 BZA CHAIR HILL: Sure.

19 MR. GAMBRELL: The questions that the Board asked
20 were, could DCRA simply revert back to the single record
21 lots. DCRA did address that. The other questions had to do
22 with what's the definition of construction, what's the
23 definition of addition, conversion, and I don't recall every
24 question. I apologize.

25 BZA CHAIR HILL: Right, right. Okay, that's

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1 right. DCRA is here, and so and DCRA, can you clarify again
2 what you were asked to give?

3 MS. LORD-SORENSEN: Certainly. We had five
4 questions. One, when the 12-unit apartment project was
5 abandoned, why didn't the record lot revert back to three
6 record lots. Number two, did the Zoning Administrator
7 approve the subdivision, consolidating the lots into a single
8 record lot. Three, when the permit for the 12-unit apartment
9 was abandoned, why wasn't the subdivision also abandoned?

10 Four, what's DCRA's process for determining when
11 a permitted project is abandoned, and five, how has the
12 Zoning Administrator interpreted the word construction in the
13 past.

14 BZA CHAIR HILL: Okay, thanks. Mr. Sullivan, did
15 we ask anything of you, the property owner, that is?

16 MR. GAMBRELL: Yeah. It was an abbreviated
17 version all included in that list.

18 BZA CHAIR HILL: Okay. So why don't we do this?
19 Why don't, DCRA, if you could just kind of go over what you
20 did present or did give to the Board, right, and then we can
21 have questions from the Appellant and the property owner to
22 that. I don't think you guys have anything necessarily to
23 present; correct? I mean it's just in response to the
24 questions that we asked of DCRA; correct?

25 MS. FOX PERRY: Yeah. I mean we can certainly

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1 speak to our response to what they're submitting.

2 BZA CHAIR HILL: Sure. So I mean I'd just go
3 ahead -- what I'm trying to get at is what I'm going to do
4 in terms of the order. So we're going to -- and they're
5 providing -- they've been the ones that have been asked to
6 provide all of the information. So they can go ahead and
7 present the information that they've been asked to present.
8 Then you guys can do Q and A on that, okay.

9 And then I guess, and this way I even might turn
10 to OAG, because sometimes I'm trying to figure out who. Then
11 there would be rebuttal from -- well, I'll figure it out.
12 Okay, and then there will be a conclusion at the end again.
13 So DCRA, why don't I put 15 minutes on the clock, just so I
14 know where I am, Mr. Moy, and then why don't you just kind
15 of walk us through what you present to us in answering the
16 questions.

17 MR. GAMBRELL: Excuse me, Chairman, a procedural
18 question.

19 BZA CHAIR HILL: Sure, sure.

20 MR. GAMBRELL: As the Board had instructed all the
21 parties, DCRA was to submit first, I believe it was May
22 first, and then the property -- actually it's the property
23 owner. ANC 1C had until May 8th to submit something to the
24 record. Something was filed last night or yesterday
25 afternoon by the property owner, which was contrary to the

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1 Board's instructions.

2 BZA CHAIR HILL: Okay, and you're bringing this
3 up now because?

4 MR. GAMBRELL: Because ANC 1C has had no
5 opportunity to analyze --

6 BZA CHAIR HILL: Okay. Let's see how we get
7 through this, Mr. Gambrell. I mean the only other option I
8 have is to postpone again. And so, you know, I think you've
9 already been involved in a postponement that we have coming
10 up, and so in any case. But I appreciate your pointing that
11 out. I'll take a look at whatever's in the record now. So
12 we'll go ahead and start with DCRA again. But thanks Mr.
13 Gambrell.

14 MS. LORD-SORENSEN: Mr. LeGrant, we're here today
15 because the ANC appealed the issuance of three building
16 permits, B1900300, B1900301 and B1900302, which were issued
17 to the owner of 1630-1634 Argonne Place, Northwest. Now
18 let's first take a step back. Are you familiar with the
19 current property?

20 MR. LEGRANT: Yes, I am.

21 MS. LORD-SORENSEN: And how are you familiar with
22 that property?

23 MR. LEGRANT: Okay. Well, prior to the current
24 project that was the subject of the appeal, a developer had
25 previously applied for a project to develop the property.

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1 MS. LORD-SORENSEN: Do you recall what type of
2 project that was supposed to be?

3 MR. LEGRANT: Yeah. That was a proposed
4 conversion of the existing three rowhouses into a 12-unit
5 apartment building.

6 MS. LORD-SORENSEN: So you mentioned that there
7 were three existing buildings. So how -- how did the
8 developer plan to create the 12-unit building?

9 MR. LEGRANT: Okay. So concurrent with that
10 building permit application, they applied for and received
11 approval of a subdivision of combining the three lots per
12 each that were -- that existed for each rowhouse into a
13 single record lot.

14 MS. LORD-SORENSEN: Okay. So when the subdivision
15 occurred, what happened to the three original record lots?

16 MR. LEGRANT: They were -- the original three lots
17 were basically eliminated. They were consolidated into one
18 record lot.

19 MS. LORD-SORENSEN: And did your office approve
20 the subdivision?

21 MR. LEGRANT: Yes, we did.

22 MS. LORD-SORENSEN: Okay. So if the property
23 consisted originally of three single family homes and the
24 former developer wanted to create an apartment building, was
25 a change of use permit required?

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1 MR. LEGRANT: Yes. That previous owner had
2 applied for a building permit to change the use of the then
3 -- the now three rowhouses on the single record lot into a
4 12-unit apartment building.

5 MS. LORD-SORENSEN: Okay, and do you know whether
6 the 12-unit apartment building was ever erected?

7 MR. LEGRANT: It was not.

8 MS. LORD-SORENSEN: Okay. So since the apartment
9 building was not built, did the single record lot return to
10 its original condition, the three separate record lots?

11 MR. LEGRANT: No, it did not.

12 MS. LORD-SORENSEN: Why not?

13 MR. LEGRANT: Okay. So the single record lot did
14 not automatically revert back to three record lots. The
15 subdivision rules as administered by the Office of Surveyor,
16 once the subdivision was approved, that was the state of the
17 property, which continues until today.

18 MS. LORD-SORENSEN: Okay. So earlier you
19 mentioned that the former owner obtained a change of use
20 permit. Now if the apartment was never built, did the use
21 ever change?

22 MR. LEGRANT: No.

23 MS. LORD-SORENSEN: Why not?

24 MR. LEGRANT: Well, because that building permit
25 was never exercised. There was an application for a permit

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1 to do that change, but that permit then never was ultimately
2 approved, that building permit, so it expired.

3 MS. LORD-SORENSEN: Okay, okay. So if the use
4 didn't change because the permit expired, wouldn't it make
5 sense for the subdivision to revert back since the apartment
6 was never erected?

7 MR. LEGRANT: Well, the permit had -- as it
8 expired, if it had been issued, it would have a clock of time
9 in which it would have to be exercised, within one year of
10 issuance. But the permit was not issued, the construction
11 did not occur, so the permit building is basically invalid.
12 It never occurred, and so the subdivision again, as I noted,
13 it's a separate process. Once it was recorded as one single
14 record lot, it doesn't have an expiration date. It's a done
15 deal basically.

16 MS. LORD-SORENSEN: Okay. Now the final question
17 that the Board asked was how has the Zoning Administrator
18 interpreted the word construction in the past. So based upon
19 your experience, information and belief, how has the Office
20 of Zoning Administrator interpreted the word construction?

21 MR. LEGRANT: Okay. So I consistently applied the
22 word, the word construction in the context of 11A 301.3. My
23 explanation is in this regard, that my interpretation is
24 consistent with what I understood my predecessors, the Zoning
25 Administrators. The portion that is at issue here, and I'll

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1 quote an excerpt of A301.3, is a building permit shall not
2 be issued for the proposed erection, comma, construction,
3 comma, or conversion of any principal structure, comma, or
4 for any addition to a principal structure, comma, unless the
5 land for the proposed erection, comma, construction, comma,
6 or conversion has been divided so that each structure will
7 be in a separate lot of record.

8 The word construction here refers to a creation
9 of a principal structure, such as the construction of a new
10 house on a vacant lot. The crucial word here is of, and
11 that's as looked up, of is a preposition and it means it
12 belongs to something. So those three actions: erection,
13 construction or conversion of a principal structure, the way
14 I've applied A301.3 is that its only reference to that action
15 that's creating a principal structure, erecting, constructing
16 or converting, which is a change of use.

17 I nor my predecessors to my knowledge have ever
18 applied it to the alteration, repair or modernization of an
19 existing building in the purposes of A301.3. So as a result,
20 hundreds if not thousands of building permits for alterations
21 of usually houses on tax assessment, taxation assessment
22 lots, also known as tax lots, are approved routinely by my
23 office without the need to convert said tax lots into a
24 record lot.

25 The reason for this distinction makes sense. A

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1 new or enlarged building requires a zoning analysis in which
2 the lot area, yard setbacks, lot occupancy needs to be
3 analyzed. Furthermore, creating a record lot subdivision
4 requires an official document from the D.C. Office of
5 Surveyor to independently confirm that the area, dimensions,
6 frontage and boundary lines of said record lot.

7 On the other hand, an interior alteration of an
8 existing principal building, which is the case here, does not
9 necessitate an assessment of lot occupancy, yard setbacks or
10 density in those zones if there's an FAR limitation. In
11 summary, the word construction in the context of a A301.3
12 refers to the creation of a new principal structure, and not
13 the broad meaning of any construction like an alteration or
14 repair of an existing principal building.

15 MS. LORD-SORENSEN: And I'll need to direct your
16 attention to BZA Exhibit Number 49. It's ANC 1C's response
17 to the May 1st, 2019 submission by DCRA and the owner, as
18 well as Exhibit 49A, the photographs.

19 MR. LEGRANT: Yes.

20 MS. LORD-SORENSEN: So in the response, the ANC
21 1C, and I quote, ANC 1C provides for the Board photo evidence
22 of what is clearly work that can be logically defined as
23 construction and an addition to the principal structures.
24 And they go on to say, as for the meaning of addition,
25 Webster's Dictionary states a part added, as well as -- and

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1 they also cite to the D.C. Construction Codes or they mention
2 the D.C. Construction Codes, saying, addition: an extension
3 or increase in the building area. Aggregate floor area,
4 number of stories or height of a building or structure.

5 So looking at BZA Exhibit Number 49A, ANC 1C has
6 provided a number of photographs, and they have some labels.
7 Like if you look at the bottom half of the first page, it's
8 labeled addition, construction and so forth. When you turn
9 to the second page specifically, there's like this opening,
10 the former garage, which I believe will be turned into a
11 bedroom. Could you please explain to the Board why this area
12 would not be considered construction?

13 MR. LEGRANT: Okay. Well, the key here again is
14 going to back to A301, is that an addition, I've already
15 addressed I believe construction, but the addition to -- this
16 is an addition to the building. Consistent with prior
17 appeals before this Board, the test I would like to add,
18 whether the addition is increasing the gross floor area or
19 is adding to a lot occupancy. Lot occupancy, as the Board
20 I think is aware, is the ratio of building area to lot area.

21 In this case, this former garage, which was
22 already covered with a roof, already enclosed on three sides
23 with walls, is already deemed gross floor area and lot
24 occupancy. So the change of putting the wall in at the face
25 of the rear, at the rear of the face building, you know,

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1 arguably enclosing it, does not change the calculation of its
2 gross floor area nor its lot occupancy.

3 It's already deemed gross floor area. It's
4 already deemed lot occupancy. Therefore it doesn't -- that
5 enclosure doesn't turn it into an addition. It's already
6 part of the building.

7 MS. LORD-SORENSEN: And just to -- I just want to
8 go back to something you said at the earlier hearing, just
9 to clarify. So is there any sort of conversion here?

10 MR. LEGRANT: No.

11 MS. LORD-SORENSEN: And why not?

12 MR. LEGRANT: Okay. So a conversion would be like
13 a change, is a change of use. The current status of those
14 properties are single-family row dwellings. The proposed use
15 is single-family row dwellings. There is no conversion.
16 There is no change of use. It's a continuation of that pre-
17 existing use. Therefore, that third criteria of A301.3
18 itself is also not triggered, because it's not a change of
19 use or a conversion.

20 MS. LORD-SORENSEN: So it's your opinion today
21 that there was no -- there's no erection of a new building;
22 correct?

23 MR. LEGRANT: Correct.

24 MS. LORD-SORENSEN: Okay, and there's no
25 construction, conversion or addition?

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1 MR. LEGRANT: Correct.

2 MS. LORD-SORENSEN: No further questions.

3 BZA CHAIR HILL: Okay. Let's see. Does the Board
4 have any questions -- well, before we do that, can I ask
5 something from the Zoning Administrator? So the caption, the
6 caption, does that have to change because of the revised
7 permits, in terms of the -- there's all these revised permits
8 now that we have, and so the caption -- for the appeal. The
9 caption during the appeal, does that have to -- would that
10 have to change because the permits have been revised? In
11 other words, are the permit numbers wrong now in the appeal?

12 MR. LEGRANT: Well, when there is -- when there
13 is a revision to a building permit, the revision itself gets
14 assigned a new building permit number. From my attitude as
15 the Zoning Administrator is the original permit number that
16 was referenced, it's still carrying in terms of the appeal.
17 This Board, as a I recall, incorporated the revised permit
18 into the base original building permit.

19 So regardless of the numbering of the permits, you
20 have an original building permit number A and revised
21 building permit number B. Since it's been incorporated, it's
22 treated as the same project.

23 MS. LORD-SORENSEN: And just in general, when you
24 obtain a revised building permit, they can normally reference
25 back to the original building permit as well. So it's all

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1 connect.

2 BZA CHAIR HILL: OAG had a little bit of a
3 question about that. OAG, do you have clarifying questions?

4 MS. LOVICK: Yeah. It was just -- it was just
5 confusing because it wasn't clear whether or not they operate
6 together, or whether or not a new permit that's a revised
7 permit replaces the old permit, and therefore the work that
8 was authorized under the old permit is no longer authorized?
9 You know, if they're contradictory.

10 MR. LEGRANT: Right, right, no, no.

11 MS. LOVICK: So that's what was confusing.

12 MR. LEGRANT: Okay. So the fact that the revised
13 permit is a revision does not contradict the prior base
14 building permit. You know, I believe the language on the
15 revised permit says this is a revision of the original permit
16 number. Therefore, as my counsel noted, that's the
17 connection and we're able to see okay, we have the base
18 building permit and we have a revision to that base building
19 permit, albeit with a new number.

20 To distinguish it, if that first -- if an
21 applicant came along with a project saying you know, I don't
22 want to do that, what the base building permit originally
23 approved, I'm going to do something else now, then there will
24 not be a revision. There'd just be a new building permit
25 that would then substitute for that original permit.

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1 BZA CHAIR HILL: Okay, fine.

2 MS. LOVICK: Okay, so there's no need to change
3 the caption. I just wanted to clarify that.

4 BZA CHAIR HILL: Okay. Yeah, I appreciate it.
5 It just was more administrative. So okay. That's that. So
6 just to let you guys know -- what's feeding back? Oh. Just
7 to let you guys know how we're going to do this. So we're
8 going to go ahead and we're going to ask our questions of the
9 Zoning Administrator.

10 Then we're going to have questions to DCRA by the
11 appellant and the property owner, and then the appellant will
12 have rebuttal, a chance for rebuttal again on what's
13 happening today, because you already had rebuttal on what
14 happened the last time, right, and then rebuttal again from
15 the property owner and then closing arguments from the
16 appellant as well as the owner, again as to what is happening
17 today and what has been asked about today.

18 In terms of the filings that we've put in, and I
19 know that there's one that the appellant has brought forward,
20 that there's something that came in last night. So let me
21 think about that a little bit in terms of, you know, what
22 came in last night from the property owner was fairly
23 extensive. However, also I think that the responses that
24 we've gotten from both the appellant -- in other words, I
25 don't want to rehear everything, right? I don't want to

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1 reargue everything.

2 I mean we already had the arguments and we
3 already, you know. It's just really we're arguing -- we're
4 not arguing. We're trying to ask questions of what is being
5 discussed today, right. So a lot of the material that both
6 the appellant and the property owner submitted kind of just
7 reargues what the case was in the original case. You're
8 putting in more evidence, you know. We'll look at everything
9 again, right?

10 So but and then probably what we'll end up doing
11 is leaving the record open now so they, I don't know. I'll
12 talk with the Secretary of the Board here, and we can see
13 whether or not we're going to leave the record open for you
14 guys to respond to what the property owner submitted last
15 night.

16 But we'll see how we get to all that, okay. But
17 in terms of just what's happening right now, we're going to
18 ask questions of DCRA off of the things that we asked them
19 to give us, and then you guys will be able to ask questions
20 from everything that's being talked about today, as well as
21 rebuttal from everything that's being talked about today,
22 okay. All right. Does anybody have any questions for the
23 Zoning Administrator?

24 MR. GAMBRELL: Just one.

25 MS. LOVICK: Sorry, excuse me. I just want to --

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1 I wanted to just say something about that filing. So that
2 filing came into the record, but it really shouldn't have
3 come into the record. There should have been a motion for
4 an untimely filing to accompany it, and since there wasn't,
5 the Board can basically just, here on the dais, rule on
6 whether or not you want to accept that document into the
7 record, and whether or not the owner has shown good cause and
8 -- I mean the standard is it's in Subtitle Y, Section 101.9.
9 So the standard is good cause or whether or not there would
10 be prejudice to any party for that to come into the record.
11 Now I just -- I just want to raise that, because I don't want
12 to have a scenario where the owner is arguing things that are
13 in that document in the proceeding as we move forward,
14 without clarity.

15 BZA CHAIR HILL: No, I appreciate that, and I
16 guess that's something that we can kind of start to walk
17 through. I mean Mr. Sullivan, obviously then you would have
18 made, or I shouldn't say obviously. You would have made a
19 motion to put that into the record; correct?

20 MR. SULLIVAN: No, and we didn't because the
21 intention was that it was our PowerPoint presentation for
22 today, which typically, at least in an application, the
23 applicant files their PowerPoint presentation the night
24 before rather than just handing it out. That was the
25 intention of how it would be.

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1 If it needs to be -- if it's seen more as rebuttal
2 evidence or if that doesn't fit in that category, then we
3 would like to request that it be accepted. It is
4 specifically I think just addressing one point, the
5 appellant's claim that the -- that DCRA has submitted no
6 evidence whatsoever to support its sweeping claim that this
7 is the way things have been done for the last 60 years. So
8 that's --

9 BZA CHAIR HILL: Okay, okay, okay. So that's
10 right. So, and this is actually I'm turning to my
11 colleagues. At some point we can think about this. I mean
12 I also saw it as a PowerPoint presentation, and so but it is
13 -- I mean we do accept PowerPoint presentations. It's
14 basically just to help us in terms of -- or I shouldn't say
15 basically. It does help us in terms of we're looking at
16 their PowerPoint presentation that they're giving for that
17 day.

18 But I haven't, we haven't dealt really kind of
19 with this issue too much before, in that we've just kind of
20 always taken the PowerPoint presentation because, right, it's
21 in an application and we're hearing the application. They're
22 showing us a PowerPoint presentation so that we can follow
23 along. And so it's not necessarily argumentative or, you
24 know.

25 VICE CHAIR HART: The only problem that I would

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1 bring up is that Mr. Sullivan would be correct if this were
2 an application. It's not an application. It's an appeal,
3 which kind of throws it into a different -- it's a different
4 aspect. I honestly have not gone through it, so I don't know
5 what the -- I mean I've seen it, but I don't know what the,
6 what information is in there that may be new information, and
7 the appellant is the person that, or the group that has
8 brought this case before us, and I would almost give them a
9 chance to be able to at least look at it and provide some
10 comment on it if they were --

11 This is kind of why you don't allow folks to
12 submit documents without having -- without us having,
13 especially now, having asked for it, because now it becomes
14 well, does DCRA or does the appellant have any questions on
15 that or any information it provided in there? I understand
16 what Mr. Sullivan said; it's just -- it just kind of throws
17 it open and I just don't like, you know, throwing it open
18 unnecessarily.

19 I will say that I wouldn't mind it staying in, if
20 then we would allow the appellant a chance to be able to --
21 some days, and I don't know what that timing is, but to be
22 able to respond to anything that they felt was, you know, new
23 information or whatever. I just don't know how to categorize
24 the information that's inside the PowerPoint because we
25 haven't had a chance to actually see it and take a look at

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1 it so --

2 BZA CHAIR HILL: Okay, let's talk about this now.
3 So what does everybody else say?

4 MS. JOHN: So Mr. Chairman, I don't have any
5 objection to the PowerPoint, if it is what the property owner
6 intends to speak to in his presentation, and to the extent
7 that it's relevant to the questions we asked, I would not
8 have an objection because it gave me an opportunity as of
9 last night to see what you were going to talk about today.

10 So I'm not seeing it for the first time today.
11 So that would be my feeling about that. I don't really see
12 a difference, so we can exclude it and the property owner can
13 still talk to it as part of, you know, his presentation.

14 MR. TURNBULL: I have not had a chance to review
15 it, so I'm not sure of the content and what it does. But
16 I'll go along with whatever the Board wants to go with on
17 this.

18 MEMBER WHITE: I haven't reviewed it either, but
19 the one issue is that if it relates to the issue that's up
20 for appeal and it's relevant to the issue of whether or not
21 the ZA erred in its decision to issue the building permits,
22 I would be supportive of it. But again, I'm flexible in
23 terms of what OAG thinks we should do in this particular
24 instance.

25 BZA CHAIR HILL: Okay. Let's talk about it a

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1 little bit more, so because -- and the reason why we're
2 talking about it a little bit more also because, right, this
3 hasn't happened yet, in that we have taken PowerPoint
4 presentations for applications, and I want to say we might
5 have even taken one for appeals before I -- and no one has
6 just necessarily objected. I just can't remember, right.

7 And so if we did put this into the record, right,
8 if we did have this into the record, then I suppose I could
9 be open to either having the appellant have time to respond,
10 right, keep the record open for that. I mean I'm looking to
11 kind of like, you know, what we have asked for, and that the
12 filing deadlines as was brought up by the appellant, they
13 were due on May 1st and the responses were due on May 8th.

14 So then everybody would have had a chance to look
15 at everything by May 8th. Then I guess the record would have
16 been closed, and then we would -- and then anybody would have
17 responded to things here in front of us, right? So by --
18 sorry. Go ahead, Mr. Sullivan.

19 MR. SULLIVAN: Thank you, Mr. Chairman. The
20 intent is just that this is what I was going to speak on in
21 rebuttal today, and I didn't want to submit any information
22 in addition to that. So I'm not trying to submit any
23 additional written information other than what I would speak
24 to, and the Board's become accustomed to having the
25 PowerPoint in front of them when I speak.

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1 BZA CHAIR HILL: No, I understand. I mean we're
2 -- this is something we're just kind of talk through right
3 now. I'm trying to --

4 MR. SULLIVAN: The other thing I would say it's
5 just publicly available information. It's just a couple of
6 BZA orders and permits and --

7 BZA CHAIR HILL: That's okay. Mr. Sullivan, I
8 mean I just saw it last night also, right, so I can't just --
9 I can't just decide right now like that.

10 MR. SULLIVAN: No.

11 BZA CHAIR HILL: So just turn off the microphone
12 a second. Give me a second to talk this through. So we
13 would still have, right. So you still would have -- so if
14 the PowerPoint presentation you should take a look at it, and
15 then we have time for the people to respond. The thing that
16 I couldn't figure out in this, I guess it's just in the
17 rebuttal, as Mr. Sullivan just said. Like this is during the
18 rebuttal, and we had rebuttal on the previous stuff. So we
19 have to kind of figure out if this is rebuttal on just what's
20 going on today, right.

21 So I'm going to hold this little decision off for
22 a little while, and we can all think about, okay, as we kind
23 of like go through this. So Mr. Gambrell.

24 MR. GAMBRELL: Yes. Just a brief comment. I am
25 just picking my jaw up for the jaw-dropping assertion by the

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1 property owner's attorney that this is merely his
2 presentation. In fact, if you look at the slides, there's
3 new information there. There are three BZA cases that have
4 never been presented by the property owner for you. There's
5 one zoning determination letter that's never been presented
6 for you.

7 This is new information. The ANC has not had an
8 opportunity to fully vet this information. It's just simply
9 betrays the rules and procedure, and we happen to believe
10 that you should play by the rules when you come before the
11 Board.

12 BZA CHAIR HILL: Okay, I know. We're all talking
13 out here, you know. No betrayal, no you know. So just we're
14 trying to figure this out, trying to figure this out.

15 MR. GAMBRELL: Yeah.

16 BZA CHAIR HILL: And so I appreciate it.

17 MR. GAMBRELL: Okay.

18 BZA CHAIR HILL: And I'm saying in your, and I'm
19 looking through your records, right. You're presenting new
20 information also that's not necessarily, I think, just
21 rebuttal of what we asked for from DCRA. I'm just saying we
22 get new stuff all the time, and we have to determine whether
23 it's just from DCRA. I'm saying it's not going unheard, and
24 so let's go ahead and table this. We'll figure it out, and
25 let's go ahead and just listen to --

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1 We asked -- this was just supposed to be a
2 continued hearing on things that we asked for. That's all
3 this is. The last hearing, I think, was probably four hours
4 or something like that, right. So we did everything. We
5 already argued all of this, right? So we just are here to
6 talk about the information that we as a Board are trying to
7 get from DCRA, okay?

8 That's all I want to talk about today. So I mean,
9 you know, I mean and we'll see what the Board. I mean we can
10 just forget the PowerPoint presentation and just never mind,
11 you know. I mean so -- and then we're just back to ground
12 zero, which may be now what's the best -- if there's that
13 much objection from the appellant and it's your appeal, you
14 know, you're bringing this to us, so then we could maybe
15 reject it and that solves that.

16 So okay. Does anybody have any questions for the
17 Zoning Administrator?

18 VICE CHAIR HART: Just so that I have this, and
19 I appreciate the information about the building construction,
20 kind of where you see that, that it's -- building
21 construction is kind of building new. So you're kind of --
22 you didn't have anything there. You're building, you're
23 constructing a building and so that's how you kind of see
24 that, as opposed to being a renovation of an existing
25 building.

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1 So in that is also the building erection, and
2 there's building construction. So if you could just talk to
3 the difference that you see between the two of those, just
4 so that I have that straight in my head. I understand what
5 conversion is.

6 MR. LEGRANT: Yes.

7 VICE CHAIR HART: So those two just seemed a bit
8 close to each other, and I don't know if you're talking about
9 like erecting steel. So that's kind of what that is, you
10 know, kind of talking about, which is why it's separate from
11 construction. I'd just like to make sure that's --

12 MR. LEGRANT: So I do not know why erection and
13 construction are both listed. It could be one or the other.
14 I see them as referring to the same thing.

15 VICE CHAIR HART: Okay. So you see it as
16 redundant?

17 MR. LEGRANT: Yes.

18 VICE CHAIR HART: Okay, thank you.

19 MEMBER WHITE: Yeah. I just wanted to go back
20 just to a basic question, because I'm having a hard time with
21 this. What zone is this?

22 MR. LEGRANT: It's RF-1.

23 MEMBER WHITE: Okay. So in the RF-1 zone, is it
24 true that only one flat is allowed on a record lot, and is
25 that what we have here in this case?

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1 MR. LEGRANT: Well, the zoning regulations for RF-
2 1 allows a matter of right single family, as well as a flat
3 or a two-unit use. The present condition here are three
4 single-family homes on one record lot, and I believe through
5 our past discussions we know how we got here because of the
6 previous application and subdivision. So I would treat this
7 as a non-conforming condition of three single-family homes
8 on one record lot.

9 MEMBER WHITE: So to have three homes on one lot,
10 is this a permitted use? Is this an authorized use?

11 MR. LEGRANT: Well, it's authorized by virtue of
12 the, how the previous application got us here. I believe the
13 previous owner of this property, at least in good faith at
14 that point in time, was pursuing an application that was
15 before DCRA to convert those buildings to an apartment
16 building.

17 He knew that he needed for that arrangement a
18 single record lot, and he applied for it and secured that
19 single record lot through the subdivision process. Then, for
20 whatever reason, that project was abandoned but the single
21 record lot remained, and that was the condition the new
22 property owner inherited when he purchased the property.

23 MEMBER WHITE: So a record lot. So is a record
24 lot required for each permit that is issued?

25 MR. LEGRANT: Well, A301.3 that we've been

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1 discussing here, requires that each building in a residential
2 zone be on a single record lot if there certain conditions
3 are met, and that is the erection, construction, conversion
4 or addition to the principal building.

5 BZA CHAIR HILL: Commissioner Turnbull.

6 MR. TURNBULL: Thank you, Mr. Chairman. So Mr.
7 LeGrant, let me just clarify. In the RF-1, only two dwelling
8 units are really allowed on a single record lot or a tax lot?

9 MR. LEGRANT: Well, the regulations specify that
10 as a matter of right, a single-family home or a flat is
11 allowed. Now in terms of the lot arrangement, it depends on
12 the history. If it was a vacant lot, it would need to be its
13 own record lot, okay. If as is the case here, there was --
14 the building housing the single family use is already
15 present, then the test of A301.3 applies.

16 What are you doing to this building? Are you
17 doing something that would trigger the need for a separate
18 record lot. In my estimation obviously no, because there's
19 already the use is established. There's three row dwellings,
20 each on their own tax lot.

21 MR. TURNBULL: Are you telling us that you are
22 going to issue one certificate of occupancy for this whole
23 setup?

24 MR. LEGRANT: No. There will be no certificates
25 of occupancy.

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1 MR. TURNBULL: No certificate of occupancy.

2 MR. LEGRANT: Because the zoning regulations
3 require a certificate of occupancy for any use of the
4 property except single-family homes and some CBRFs of six or
5 less people.

6 MR. TURNBULL: Why would you allow a non-
7 conforming use to exist such as this in an RF-1 zone?

8 MR. LEGRANT: I don't think I have any discretion
9 to -- I do not believe I have discretion to deny an
10 application, as is the case here, for rehabilitation of an
11 existing, lawful single-family home, in this case three of
12 them on each of their own tax lots, that is not triggering
13 any other zoning regulation. I believe I have no discretion,
14 and that's why my office approved those building permits.

15 MR. TURNBULL: So you're saying you had no
16 authority to not approve them?

17 MR. LEGRANT: Correct.

18 MR. TURNBULL: You felt obligated by the law to
19 approve them?

20 MR. LEGRANT: Yes.

21 MR. TURNBULL: Not even considering the zoning
22 that's present in the area?

23 MR. LEGRANT: Well, let me say this. The property
24 owner's counsel came to me last summer, after his client
25 purchased the property and retained him, and posed -- and I

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1 think we covered this in our previous testimony, you know,
2 and filings, to check on this very question.

3 I responded to him very comfortably, after he
4 presented the information, that the present condition that
5 the present, the current property owner inherited, three
6 rowhouses on a single record lot could be developed in terms
7 of the rehabilitation or restoration of those to single-
8 family use as long as there is not an addition or conversion,
9 and that I communicated to Mr. Sullivan last summer, I
10 believe it was in an email in August of 2018.

11 MR. TURNBULL: Okay. Let me just ask one more
12 question. It's just to clarify what the Vice Chair had asked
13 earlier. It's your opinion, your understanding that
14 erection, construction and conversion in 301.3 are all
15 redundant. They mean the same thing.

16 MR. LEGRANT: No. Let me clarify it. Erection and
17 construction. A conversion is a separate category.

18 MR. TURNBULL: So you're just saying that
19 construction and erection are synonymous?

20 MR. LEGRANT: Yes.

21 MR. TURNBULL: Why would that be? Why don't you
22 interpret them as three different categories?

23 MR. LEGRANT: Because I do not understand the
24 difference between erection and construction of a principal
25 dwelling. I don't, I'm not ever in my tenure ever seen the

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1 distinction of what those would be.

2 MR. TURNBULL: Okay, thank you.

3 VICE CHAIR HART: Just so that I kind of piggyback
4 on Commissioner Turnbull's questions, because they kind of
5 hit me as something. So you see this as kind of a unique
6 condition?

7 MR. LEGRANT: Well --

8 VICE CHAIR HART: It's a -- I shouldn't use the
9 word unique. It is a condition that is not regularly kind
10 of seen, that you're having to kind of deal with?

11 MR. LEGRANT: Correct.

12 VICE CHAIR HART: Okay. So usually when you see
13 conditions that are fairly unusual or not regularly dealt
14 with that are somewhat, and it sounded like you were saying
15 that they were somewhat outside of the zoning regulations,
16 or they were nothing that you could say that it was in
17 violation of it, it seems as though the one place that the
18 folks would go when they have that situation is seeking a
19 variance in front of this commission, this Board.

20 And so it seems odd to me that the way in which
21 you would move is towards well, this seems like it kind of
22 works, so that we'll move in that direction, as opposed to
23 saying it is something that is outside of what we would
24 necessarily -- that the DCRA would necessarily be able to
25 approve.

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1 So that maybe this is best held or best decided
2 within a body that is given the ability to give variances
3 for, you know, situations that are fairly unusual. I mean
4 a variance is that. It's varying outside of the zoning
5 regulations. So I just don't -- I'm having a hard time
6 trying to get to why that -- it seems like there's a lot of
7 movement or a lot of trying to figure stuff out to get to a,
8 okay, this kind of makes sense, as opposed to well, it seems
9 like it might be actually a variance and they can, you know,
10 be sent to this Board.

11 MR. LEGRANT: Sure.

12 VICE CHAIR HART: So can you -- can you talk a
13 little bit about how you see that this -- like how would this
14 be different from something that you would send to this
15 Board?

16 MR. LEGRANT: Okay, okay. I was very comfortable
17 in making this determination. I did not see a need to refer
18 the applicant to this Board for their answer, any type of
19 relief. When I had the initial discussion, I did my analysis
20 at that point in time when I looked at A301.3, and that
21 situation. It is a rare situation.

22 It's a rare situation simply because of the
23 predecessor applicant who created the situation by starting
24 -- that put the three lots into a single record lot, and then
25 basically walked away from the property. So at the time the

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1 appeal was filed, and this is what I always do, is you know,
2 I work with the Office of General Counsel to see if that
3 decision was consistent with the zoning regulations. I have
4 that extra set of eyes and the expertise of the Office of
5 General Counsel looks at that, and that's why we're here
6 today continuing to defend my decision, because I felt very
7 comfortable in that.

8 I'll distinguish it from a situation where it's
9 something I believe is not consistent with the zoning
10 regulations, and of course I would tell an applicant this is
11 an area that would have to -- that would be a scenario that
12 would require relief. It's not consistent with the zoning
13 regulations, and I would, I would and I have sent applicants
14 to this Board.

15 VICE CHAIR HART: Thank you.

16 MR. TURNBULL: Mr. Chair? Mr. LeGrant, let me go
17 back and maybe I'm -- maybe I'm repeating myself or I'm a
18 little bit confused.

19 MR. LEGRANT: Okay.

20 MR. TURNBULL: When the building permit for the
21 apartment house was abandoned, was the use for three single
22 family dwellings a permitted use in the RF-1 Zone, or was it
23 illegal?

24 MR. LEGRANT: I would not use the term illegal.
25 At the instant that application was abandoned, it turned into

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1 a non-conforming condition that oh, now there's three single-
2 family dwellings on a single record lot.

3 MR. TURNBULL: So you wouldn't advise the
4 applicant to correct that?

5 MR. LEGRANT: Well, the applicant came to me to
6 see if it was -- needed to be corrected, and I determined it
7 not to be.

8 I guess the thing, and I think we touched on it,
9 although we didn't expand on it, was that the question was
10 posed to the surveyor like, okay, that building permit
11 application to convert to 12 units is gone. Can't we just
12 go back to the prior record lot arrangement of three record
13 lots? Can we do that?

14 The answer from the surveyor was no. He did not
15 see a process for that, to be able to do that, and Mr.
16 Sullivan may be able to speak further to his conversations
17 with the surveyor. So and that's and then -- then the
18 question was posed to me that I've discussed of, well, can
19 the applicant restore, rehabilitate and restore the single-
20 family dwellings there on this one record lot, a non-
21 conforming condition. Because today if it was vacant, I
22 agree you cannot do that and my answer was yes, they could.

23 MR. TURNBULL: So basically you're saying three
24 single-family dwellings on one lot is legal?

25 MR. LEGRANT: In this scenario yes, because of the

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1 history that brought us to this point.

2 MR. TURNBULL: Okay, thank you.

3 MS. JOHN: Mr. LeGrant, I've been sort of quiet
4 because I've been struggling with these same questions, and
5 in my view it seems that you've created a use that's not
6 allowed in the RF-1 Zone, by allowing -- by not requiring the
7 property owner to go back and either seek a variance, an area
8 variance which as you readily admit based on the unique
9 conditions.

10 In this particular case, that's something the
11 Board would entertain. So I'm not sure why it seems to me
12 we went through a constrained process to make this work,
13 instead of using the process that's available to the
14 applicant. I've been struggling with that, and in my view
15 and maybe you can explain to me why this isn't a use that by
16 your action you are authorizing in the RF-1 zone, which does
17 not permit three dwellings, three principal dwelling units
18 on one record lot. I can't get beyond that, and that's the
19 crux of this whole decision.

20 MR. LEGRANT: Oh absolutely. So this Board
21 obviously ultimately will decide on the appeal if my decision
22 was correct. Again, the way I approach applying the zoning
23 regulations to each project or case that's brought before me
24 is, is it compliant with the zoning regulations or not.

25 I'll reiterate I was very comfortable in making

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1 this decision, given that there's three single-family homes
2 that are there that are, albeit, vacant, decaying that we've
3 heard. They're not providing housing for the District, the
4 residents of the District of Columbia that can be restored.
5 It's not -- zoning in my mind regulates things that, you
6 know, that are changed, the regulations speak to things that
7 are constructed anew or added to or intensified or a use is
8 established.

9 Here the buildings exist, the uses exist. It's
10 rehabilitating and restoring that use, okay. I felt it met
11 the zoning regulations. I never put any applicant through
12 an unnecessary process that, you know, obviously takes time
13 and costs money to do so, unless the zoning regulations
14 require it.

15 I'm not going to tell somebody you know I'm not
16 so sure. Go get a variance. I have to make a determination,
17 does it comply with the zoning regulations or not. Here, I
18 felt that they did. If the Board disagrees, obviously, and
19 I think we touched upon in a previous hearing, the scenario
20 would they need to be on each separate -- or each existing
21 row dwelling would be on a separate record lot.

22 It's substandard. They'd have to get relief.
23 They'd apply for a variance before this Board to consider
24 that relief.

25 MS. JOHN: So I accept your position with respect

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1 to one principal dwelling unit on a tax lot, where that makes
2 sense to me. But I can't see creating -- I can't see
3 creating this new use really, which is what has happened
4 because of your action. That right now the use is for one
5 record lot, right? The established use is single dwelling
6 unit on one record lot. That's the established use that
7 exists now, right?

8 MR. LEGRANT: The current situation is there's
9 three single-family row dwellings on one record lot. The
10 applicant, the property owner has applied for and received
11 approval to create as a subset a tax lot for each one. So
12 they'd be on their own tax lot because they'll be ultimately
13 sold to separate owners, and each owner then purchased that
14 tax lot with the row dwelling on it to inhabit a single-
15 family use.

16 So I guess I take issues a little bit that there's
17 a -- there's no change of use here. There's three single-
18 family dwellings, albeit on one record lot, but the situation
19 that we've -- the history of this that gave rise to the case,
20 there's one record lot, but they're going to be ultimately
21 each on a separate tax lot and there's no change that
22 triggers the zoning regulations.

23 There's no new building being erected. There's
24 no addition, there's no conversion that would trigger the
25 need for a separate record lot for each of the single, those

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1 three single dwellings.

2 MS. JOHN: Okay. Thank you, Mr. LeGrant.

3 MR. LEGRANT: Certainly.

4 BZA CHAIR HILL: Okay, all right. So just to let
5 a couple of clarifying issues here for me. So normally we
6 hear appeals at the end of the day, okay, just to let
7 everybody else know here, right. That means usually when
8 it's at the end of the day, I don't know how long it's
9 necessarily going to go. So that's why they get put at the
10 end of the day.

11 It was put at the beginning of the day today
12 because Commissioner Turnbull is not usually our commissioner
13 for today. There's another commissioner waiting in the other
14 room to participate in all the other hearings. So we are
15 back here as a continuing, and I'm just going to keep saying
16 this over and over again, so I can clarify.

17 We're back here as a continued hearing on
18 information that the Zoning Administrator has brought
19 forward, so that we can clarify what we think we're going to
20 decide, right? So in the interest of making this as
21 efficient as possible I suppose, and we can discuss this
22 later more or we can discuss this now, I mean I think that
23 we could, in terms of the responses and what Mr. Sullivan has
24 put into the record, like we'll just strike that for the
25 record.

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1 He can speak to whatever he wants to speak about
2 on rebuttal, and then -- and I don't know what to do about
3 it in terms of -- see, the part that, and now we're talking
4 about something completely different, but it's that, you
5 know, if he were here doing his PowerPoint presentation, then
6 we'd see the PowerPoint presentation and then we'd ask for
7 that to be put in the record. So I suppose Mr. Sullivan can
8 go ahead and do his PowerPoint presentation the way he wanted
9 it, and we can pick and choose what we think is actually new
10 information and what is not new information, and then figure
11 out what we're going to do with it, okay.

12 So as of now, unless the Board has any objections,
13 we'll strike that last item from the record. Okay, fine.
14 So that handles that, because I have to get to the rest of
15 our cases, okay. So now we're going to turn to questions
16 from the appellant, and I'm going to be very -- I'm going to
17 try my best to be as focused as possible, as I really want
18 you guys to be focused about --

19 We will probably have you in more questions than
20 everyone, so this is going to continue to go on long. It's
21 been now, whatever, 35 plus 15 as I went to public school.
22 So you can go ahead and please start your questions.

23 MR. GAMBRELL: Okay, thank you. Mr. LeGrant, you
24 had stated that redividing the lot, single record lot into
25 three record lots would require a variance. Does the zoning

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1 regulations require a variance or a special exception?

2 MR. LEGRANT: To establish a lot that does not
3 meet the lot area requirements, now that I actually think
4 about it, it may -- I'd have to double-check frankly. But
5 I believe under D5200, it may be an area that could be done,
6 instead of under the variance with a special exception.

7 MR. GAMBRELL: Yes, you are correct.

8 MR. LEGRANT: Oh. So I'll amend that. We talked
9 about variances. The relief type is special exception.

10 MR. GAMBRELL: Mr. LeGrant, you said that the
11 three single-family homes on a record lot in RF-1 was non-
12 conforming -- well, non-conforming to RF-1. How are they now
13 conforming? They're still --

14 MR. LEGRANT: I don't understand your question.

15 MR. GAMBRELL: Sure. You said that when the homes
16 were left vacant and abandoned and shells, that they were
17 three single-family homes on a record lot that was non-
18 conforming to RF-1. My question is how are they now
19 conforming?

20 MR. LEGRANT: How are they now conforming?

21 MR. GAMBRELL: Yeah. What has changed to make
22 them conforming?

23 MR. LEGRANT: Well, I would say they're non-
24 conforming in terms of not having the record, separate record
25 lot that we discussed. But otherwise, the use is conforming,

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1 the lot occupancy is conforming, the yards are conforming,
2 the height is conforming, I believe. I haven't done a
3 separate analysis frankly of looking at all those aspects,
4 and the parking. Those would all be conforming.

5 BZA CHAIR HILL: Okay, Mr. Gambrell. What's your
6 next question?

7 MR. GAMBRELL: Sure.

8 BZA CHAIR HILL: And how many questions do you
9 have, by the way?

10 MR. GAMBRELL: I just have three or four more, and
11 they're all focused on his testimony.

12 BZA CHAIR HILL: Okay.

13 MR. GAMBRELL: Mr. LeGrant, I wanted to turn to
14 the actual words in 301.3, A301.3, the following words,
15 creation, new, proposed, prospective. Are any of those words
16 in 301.3?

17 MR. LEGRANT: Repeat your question please?

18 MR. GAMBRELL: Sure. I want to read you four
19 words that were presented in your testimony. Creation, new,
20 proposed and prospective. Are any of those words found in
21 A301.3?

22 MR. LEGRANT: Well, I did quote the excerpt of the
23 provision that talked about the proposed erection,
24 construction or conversion, and then I may have generally
25 referred to the section in my further description of those --

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1 of the wording of A301.3.

2 MR. GAMBRELL: I want to turn to the photograph
3 that the ANC 1C presented by May 8th, the deadline, and the
4 purpose of that photograph was in fact to respond to the
5 Board's questions that you posed. I don't believe it was new
6 information. On the photograph, do you have a copy?

7 MR. LEGRANT: Yes.

8 MR. GAMBRELL: There's a -- one photograph of an
9 area that was described in your testimony as a garage. Can
10 you read the caption on that page?

11 BZA CHAIR HILL: What does it say? What does the
12 caption say?

13 MR. GAMBRELL: Unfortunately, I didn't bring my
14 copy. There are a number of them.

15 BZA CHAIR HILL: Which exhibit? You're in your
16 photographs?

17 MR. GAMBRELL: My photographs, yes.

18 BZA CHAIR HILL: Okay.

19 MR. LEGRANT: Did you want to refer to them?

20 MR. GAMBRELL: Sure, thank you. Unfortunately,
21 it doesn't have a caption.

22 BZA CHAIR HILL: Which photograph are you on?

23 MR. GAMBRELL: Sure. It's the first one, and I'll
24 go ahead and go through this. In your testimony, this was
25 described -- this is a clarifying comment. This was

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1 described as a garage.

2 BZA CHAIR HILL: Uh-huh, okay. What's your
3 question?

4 MR. GAMBRELL: That's actually not a garage.
5 That's a crawl space.

6 BZA CHAIR HILL: Okay. That's a space that then
7 got built into.

8 MR. GAMBRELL: Yeah.

9 BZA CHAIR HILL: Okay.

10 MR. GAMBRELL: So is this -- do you want this
11 back?

12 MS. FOX PERRY: Just to clarify, we were on the
13 second page of your photographs.

14 MR. GAMBRELL: Yeah, that's fine. That one as
15 well. Same photo. Both are crawl spaces. Are those crawl
16 spaces enclosed conditioned space in their former status?

17 MR. LEGRANT: So your question is are they are in
18 closed conditioned space?

19 MR. GAMBRELL: Yes.

20 MR. LEGRANT: I would say no.

21 MR. GAMBRELL: Okay. What is that space now, and
22 those are also represented on the photos in terms of how they
23 currently have been changed?

24 MR. LEGRANT: You mean the after photos?

25 MR. GAMBRELL: Yes.

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1 MR. LEGRANT: Yeah. They're enclosed, and I
2 believe the plans show them as bedrooms.

3 MR. GAMBRELL: Mud rooms, actually. Would you say
4 that change in status from being non-conditioned, non-
5 enclosed crawl spaces to a new status as conditioned new
6 space --

7 VICE CHAIR HART: Mr. Chairman --

8 MR. GAMBRELL: --constitutes conditioned space?

9 MR. LEGRANT: Can you repeat, please repeat?

10 MR. GAMBRELL: Sure. Do the crawl spaces as they
11 were formally, how they've changed in terms of now being
12 enclosed spaces, what would you characterize that change in
13 status as?

14 MR. LEGRANT: Well, as I just noted, there was a
15 -- or previously spoke to, there was a wall erected along the
16 rear facade to enclose the space. I believe the floor plans
17 showed them as bedrooms.

18 MR. GAMBRELL: Yeah, no. Those were actually
19 constructed --

20 BZA CHAIR HILL: Okay. What's your -- okay. I'm
21 going to give you two more questions, Mr. Gambrell, because
22 I mean we've already talked about this. Like it was a
23 garage. They turned it into a living room or whatever it
24 was.

25 MR. GAMBRELL: That's my point. They're not

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1 garages; they're crawl spaces.

2 BZA CHAIR HILL: They're crawl spaces. I mean he
3 spoke to whatever they were before, and you're disagreeing
4 on, you know.

5 MR. GAMBRELL: No I'm not. No, I'm not
6 disagreeing.

7 BZA CHAIR HILL: Okay.

8 MR. GAMBRELL: What I'm doing is I'm making a
9 distinction. Mr. LeGrant's testimony characterized this
10 photo as garages. This is an important point. They're not
11 garages, they're crawl spaces and I'm ceding the point raised
12 in the March 27th hearing that the garages are conditioned
13 spaces. What I'm talking about is the crawl spaces next to
14 the garages.

15 BZA CHAIR HILL: And what's your question?

16 MR. GAMBRELL: My question is -- I'll get to the
17 heart of the matter. The spaces, I'll form this as a
18 question. Is the change in the status of the crawl spaces,
19 those unconditioned exterior spaces into interior conditioned
20 living space, does that represent an addition to the
21 buildings?

22 MR. LEGRANT: No.

23 MR. GAMBRELL: Why would that not be an addition?

24 MR. LEGRANT: Because as I previously testified
25 to, an addition is a change which -- an area change becomes

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1 new gross floor area or increases the lot occupancy, is
2 deemed building area, would increase the lot occupancy,
3 because I noted that the change as illustrated in the
4 photographs do neither.

5 BZA CHAIR HILL: So Mr. LeGrant, I'm sorry, okay.
6 Mr. Gambrell, I'm going to give you one more question. If
7 you'd go ahead please.

8 MR. GAMBRELL: That's all I need.

9 BZA CHAIR HILL: Okay, and the reason why I'm also
10 just clarifying in my head, we were talking about the
11 building permit. I'm sorry, we were talking about the lots,
12 right? What we wanted clarification on was there was one
13 record lot and there were three homes, single family homes
14 on one record lot. We were talking about the record lots.
15 Like we're all here, the new information that came forward
16 was about the record lots. That's all I want to hear about.
17 Mr. Sullivan, do you have any questions for the --

18 MR. GAMBRELL: I had one more question though.

19 BZA CHAIR HILL: Oh, I'm sorry. Okay. I thought
20 you said no, you had no more questions.

21 MR. GAMBRELL: Yeah. No, I know said it. I have
22 just one more.

23 BZA CHAIR HILL: Oh okay, great. Go ahead.

24 MR. GAMBRELL: Yes, and just for clarification,
25 the questions that were presented were about the record lots,

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1 but they also were about the meaning of the things like
2 construction in addition, which is what I'm driving at.
3 Final question, Mr. LeGrant. In BZA 17971, Outerbridge case,
4 I'm going to read a quote here.

5 It says, and this is your testimony, or actually
6 the Board's testimony. "It says rather, the Board credits
7 the Zoning Administrator's testimony that the deck did not
8 constitute an addition because the deck was not an enclosed
9 space and thus did not create interior usable space in the
10 dwelling."

11 So I point that out in terms of a prior case,
12 where you've taken a position about what represents an
13 addition in terms of creating new interior space, which you
14 did in *Outerbridge*. Could you explain how your
15 interpretation is different in this case from *Outerbridge*?

16 MR. LEGRANT: Absolutely. In that case, there was
17 -- the question was was the addition -- there was two
18 elements. There was a roof deck, and then there was a rear
19 porch or balcony off the back, and that portion of the Order
20 speaks to, in that case, was there an addition or not, and
21 the Board agreed with me and said no, it's not an enclosing,
22 enclosure.

23 Here, as consistent with my application of the
24 zoning regulations, this space is already covered with a
25 roof, already has walls on in this case three sides, already

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1 is deemed gross floor area, already is deemed lot occupancy.
2 The change that we've discussed does not -- there's no delta.
3 There's no change that makes it into a new gross floor area,
4 nor new lot occupancy. Therefore, I conclude in this
5 scenario, as well as other cases, it's not an addition.

6 BZA CHAIR HILL: Okay. All right. Mr. Sullivan,
7 do you have any questions for the Zoning Administrator?

8 MR. SULLIVAN: No thank you.

9 BZA CHAIR HILL: Okay, all right. So we're going
10 to go ahead and do -- well, I've got a couple of questions
11 though. So -- and then y'all can make comments. I didn't
12 get to ask these. So the Zoning Administrator, this is what
13 I also am kind of just talking through a little, right? So
14 there's, and I know how we got to this point. There's one
15 record lot. There's three single family homes on that one
16 record lot because they tried to make it into an apartment
17 building, right.

18 So then if you agreed with the ANC, okay, or the
19 appellant, then the person would have to then tear those
20 three single family homes down and build two single family
21 homes; is that what? Or they would have to come to us for
22 a variance or a special exception? I'm just saying like if
23 you agreed with the appellant, the way the appellant wants
24 this property to now be used is to tear those three single
25 family homes down and put on two single family homes; is that

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1 correct?

2 MR. LEGRANT: Well, I would say that scenario
3 would apply -- if the Board were to grant the appeal, the
4 property owner then would be faced with one scenario coming
5 before this Board relief, special exception relief I guess,
6 to have each of those three single family homes on a
7 substandard record lot, to create record lots under
8 substandard. That would be the relief.

9 If they -- either if the Board denied that or if
10 the applicants, the property owner decided no, we're not
11 going to do that, then to have a compliant project in that
12 scenario yes, that scenario of okay, we're going to remove,
13 raze those three buildings, make two compliant lots and then
14 come in with a single family or flat on each lot, that's a
15 possible scenario.

16 BZA CHAIR HILL: Okay, and then last question.
17 So then in your -- if they had come to you with three flats,
18 right, or they were converting it into three flats, you still
19 would have thought that this would -- you would have still
20 approved that?

21 MR. LEGRANT: Yes.

22 BZA CHAIR HILL: Okay. So I'm turning to the ANC
23 now. So again, these were questions that I had also, or
24 either one of you actually, that so right now there are three
25 single family homes there that have been basically, you know,

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1 abandoned or what have you, right. This I think was the
2 initial question that I had for you guys, right.

3 So as I just said, one alternative would be that
4 you would tear down those three single family homes and you
5 have like an awkward weird gap then there, right. And so I
6 continue to kind of try to understand why you guys are here,
7 right? So you're here for the added density in the bottom
8 space. Like that's what you guys are really opposed to?

9 MR. GAMBRELL: Actually, absolutely not.

10 BZA CHAIR HILL: Okay. So what is it then?

11 MR. GAMBRELL: I mean the ANC's been very clear,
12 if you reviewed the records, that our position is we're not
13 opposed to the redevelopment of these properties. In fact,
14 we recognize that under RF-1, if they got special exceptions
15 and redivided into three separate record lots, they could do
16 six units here, two each. So we're not opposed to the
17 development.

18 What we're in support of is adherence to the
19 zoning regulations as written, and a caution to the Board to
20 not endorse an interpretation that's not supported in the
21 actual words and the zoning regulations, because that could
22 open up the door to new interpretations which will create
23 more cases for you and more work and more confusion for
24 people.

25 BZA CHAIR HILL: Commissioner.

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1 MS. FOX PERRY: I don't have a lot that I can add
2 to what Mr. Gambrell just said, but I agree that this for us
3 has been about getting clarity on, you know, why this is not
4 being treated as construction and addition. The frustrating
5 thing is we seem to be not much closer to that. We don't
6 support tearing them down, but we said we would support --

7 (Simultaneous speaking.)

8 BZA CHAIR HILL: We're six hours closer to that.
9 We're six hours closer to that. So the -- and so again what
10 I'm saying is that you just heard from the Zoning
11 Administrator. If we were to approve -- this is what I'm
12 just trying to understand, right. If we were -- I understand
13 Mr. Gambrell, and I kind of understand, you continue to point
14 out to me that you guys are here out of principle, okay, that
15 this is a slippery slope and you're here out of principle,
16 okay, and that's the part that I kind of struggle with,
17 because this takes a tremendous amount of time, a tremendous
18 amount of effort, a lot of energy and so it just surprises
19 me a little bit that you're here out of principle for the
20 zoning regulations. So maybe that may be the case, okay.

21 And so I'm not looking for a response. So then
22 because what could happen then to the community is that if
23 we, you know, approve this appeal, those three homes could
24 get torn down and then you're left with whatever you're left
25 with, and then there could be like a gaping hole there were

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1 you just have the two lots.

2 I'm just trying to point out and understand, and
3 so now I've gotten further clarity. And so that's the end
4 of my comments. I have further clarity. So now you have
5 rebuttal to what was presented today, okay, Mr. Gambrell that
6 is, or we're going to do rebuttal now. So now it's rebuttal
7 as to what was presented today, and then you're going to have
8 a little time for a conclusion as to what was presented
9 today.

10 So in terms of rebuttal, I'm going to go ahead and
11 give you five minutes, okay, and then you can go ahead and
12 give rebuttal, and then Mr. Sullivan you can give your five
13 minutes of rebuttal, and then we're going to hear conclusions
14 from you and that's it, okay.

15 MR. GAMBRELL: Just a clarification. When you say
16 "rebuttal," are you speaking of rebuttal of the testimony
17 today, which I think was essentially done just now, or would
18 it be the ANC's brief presentation before the Board?

19 MS. LOVICK: Rebuttal to the testimony that was
20 given today.

21 BZA CHAIR HILL: Yeah. I didn't think, and that's
22 where I guess now there's kind of the procedural issue. Like
23 there wasn't necessarily testimony, right?

24 MS. LOVICK: Right. Well, I mean there was -- I
25 think it's arguable that DCRA provided testimony, and so at

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1 this point the appellant has had an opportunity to cross-
2 examine. If they want to, they can --

3 BZA CHAIR HILL: This rebuttal could be your --
4 this could be your presentation, correct.

5 MS. LOVICK: Yes. It would be an additional
6 opportunity for them to rebut and just have the floor to do
7 that, if they choose.

8 BZA CHAIR HILL: Got it, got it. Okay. Is that
9 clear, Mr. Gambrell?

10 MR. GAMBRELL: Yes. The Commissioner will do
11 that.

12 BZA CHAIR HILL: Okay, great.

13 MS. FOX PERRY: Okay. Thank you. Respondents
14 start out by saying we recognize this is a limited scope
15 hearing, and part of that was just to determine what was
16 meant by construction, conversion, addition. We're not here
17 to relitigate the case. ANC has never been opposed to this
18 project. As I said a moment ago, we believe it's
19 construction and an addition, which requires separate record
20 lot numbers, and we would support a BZA application if the
21 owner were to go in that direction.

22 ANC 1C supports applying the actual wording in the
23 regulations, and we believe that Subtitle A301.3 is
24 sufficiently clear. DCRA's response to this Board was a
25 disservice, we believe, to all parties who should be able to

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1 rely on a clear reading of the regulations. DCRA in the
2 response introduced new, unsupported positions and introduced
3 new words to interpret Subtitle A301.3, like creation,
4 alteration, repair, modernization and they say they've never
5 apply construction to those new terms, alterations, repairs,
6 modernization.

7 So that gets us no closer to clarity on the issue
8 of construction, and saying the Zoning Administrator has
9 never done, has never done, has never applied construction
10 to those things doesn't provide an answer to the Board's
11 questions. It really just says because I said so. This
12 Board recognized that construction doesn't just mean new.
13 It can also mean renovation.

14 At the April 10th hearing, Board member Lorna John
15 had asked why isn't this considered construction or
16 conversion and that question remains. Specifically
17 construction. The easiest way to settle this now would be
18 to have the Zoning Administrator to do what wasn't done at
19 the previous hearing, which would be to review the plans and
20 the photos and to make a determination as to what's going on.

21 If Mr. Gambrell has anything to add, he can.
22 Otherwise, that's it. Thank you.

23 BZA CHAIR HILL: Okay. Mr. Sullivan, five minutes
24 for you.

25 MR. SULLIVAN: Can I insert the PowerPoint and go

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1 through that or do you just want me to --

2 BZA CHAIR HILL: What does the Board want to do?

3 MEMBER WHITE: I have no objection to the
4 PowerPoint.

5 MR. SULLIVAN: Thank you. If I could take a
6 minute.

7 BZA CHAIR HILL: Sure.

8 (Pause.)

9 MS. FOX PERRY: Excuse me. I thought you strick
10 it from the record, or struck --

11 BZA CHAIR HILL: This is where like this is
12 turning in to the Circle of Hell.

13 MS. FOX PERRY: No. I mean --

14 BZA CHAIR HILL: No, no, I did. We struck it from
15 the record, and while we were striking it from the record,
16 there was a discussion in terms of they would then -- he's
17 giving his PowerPoint presentation, and so this is where I
18 got confused and I'm looking out to OAG again. He's now
19 trying to just present, right, in rebuttal.

20 So he's giving his slide presentation for
21 presenting in rebuttal, and that's what I thought is now
22 taking place. So therefore, we would just -- the Board seems
23 to want to take a look at the slide presentation. Does that
24 seem correct to OAG?

25 MS. LOVICK: I mean as long as there's no new

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1 information, that the appellant isn't having an opportunity
2 to respond to.

3 BZA CHAIR HILL: Okay. So Mr. Sullivan, you're
4 not going to get to your PowerPoint presentation. So go
5 ahead and get to your five minutes of rebuttal.

6 MR. SULLIVAN: I have to submit some new
7 information, because I'm responding to their claim, and
8 overall I want to get to the standard first of all.

9 BZA CHAIR HILL: So you're responding to who's
10 claim?

11 MR. SULLIVAN: Their claim, that nobody has
12 submitted any evidence on this side.

13 BZA CHAIR HILL: So you're submitting -- so you're
14 submitting -- well first of all --

15 MR. SULLIVAN: Well, I have to speak to the
16 issues.

17 BZA CHAIR HILL: That's okay. I mean I'm just
18 trying to -- you see where I am, okay. I'm trying to figure
19 this out right, and I guess this is just helping us provide
20 further clarification for all of us moving forward, in terms
21 of how these PowerPoint things are going to necessarily be
22 put in. You know, we now have to analyze and figure out what
23 is -- we had a continued hearing on specific things, and I
24 can go back and look at all the language, which was the
25 construction and the record lots.

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1 That's all we were trying to clarify, and I think
2 the Board is having a fair opportunity to ask questions of
3 the Zoning Administrator, so they can find clarification on
4 that, right? That's all we're trying to talk about. And so
5 if you now are going to argue their -- if you now are going
6 to argue what they submitted, right, then submissions were
7 due on the 1st, and the responses to the submissions were due
8 on the 8th.

9 So I don't think that you should have an
10 opportunity now to respond to those submissions, if you were
11 supposed to have responded to those submissions by the 8th.

12 MR. SULLIVAN: I wasn't offered an opportunity to
13 respond to the submissions. It was the owner and DCRA filed
14 first, and the appellant responded and there was no response.
15 So if I'm ever going to get to rebut what they wrote, or to
16 get all of the information out here, then I'll have to have
17 some leeway to respond to what they submitted last week.

18 BZA CHAIR HILL: So I'm looking at OAG.

19 MS. LOVICK: And that can happen in the rebuttal
20 that's going to occur on the record, and I mean this is kind
21 of -- this is a little bit of a unique situation. And so I
22 don't think that you're setting some horrible precedent if
23 you were to be more lenient in the situation. I just want
24 to make it clear that because it's a limited scope hearing,
25 I don't want to have a situation where the owner is

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1 presenting all this new information that the appellant has
2 no opportunity to speak to.

3 BZA CHAIR HILL: I agree, and that's what I'm
4 trying to figure out, and what --

5 MS. LOVICK: So maybe what can happen is there can
6 be the rebuttal, and then in the closing statement that the
7 appellant gives, they can -- they can respond to it and I
8 guess if they feel that there's some unfairness, we can
9 address it at that point, just to sort of move this forward.

10 BZA CHAIR HILL: Okay. All right, Mr. Sullivan.

11 MR. SULLIVAN: Thank you, and I assure you I'm
12 focused on the point, on 8301 and what is the meaning of the
13 word "construction." I think though I'd like to give some
14 context to the Board. When you're talking about can you have
15 three single family dwellings on one record lot, that's a
16 question about can something exist.

17 Something does exist. It's not for the Zoning
18 Administrator or the Board to say that can no longer exist
19 and you have to fix it. So the condition of a single family
20 house existing that's not on its own record lot or it shares
21 a record lot with other single family houses, there are
22 thousands of homes like that across the District.

23 There were 50 building permits issued for
24 renovation or repair, non-addition type work. Two buildings
25 on tax lots in the past week. That means there's 2,500 of

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1 these a year. If you want to talk about a slippery slope,
2 go the other way. So the question we're talking about is,
3 is this particular permit applicant allowed to renovate an
4 existing single family dwelling or not, and A301.3 determines
5 whether or not they can renovate when it's not on a record
6 lot.

7 We're not talking about whether or not the houses
8 can exist on one record lot, because that exists. That's an
9 existing situation. I don't even think it's a non-conforming
10 situation. It just is. This Board in Appeal No. 16791
11 stated, in a discussion about the predecessor to A301, which
12 was 3202.3 first -- and this is a quote. First the purpose
13 of 3202.3 is building lot control. The Zoning Administrator
14 uses the record lot as a fundamental tool to enforce the area
15 restrictions of the zoning regulations relating to yards,
16 courts, other open space, minimum lot with minimum lot area,
17 FAR, percentage of lot occupancy, parking spaces and loading
18 docks.

19 This fits perfectly into what is an addition and
20 is not an addition. If something is an addition, it affects
21 these areas. It affects the FAR. It affects the yards and
22 the courts, the open space. The questions really before you
23 is if somebody has a house on a tax lot, what are they
24 allowed to do to it? A301.3 says you can do renovations to
25 it, you can do anything short of an addition.

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1 The Board has -- well, this is interesting. The
2 Zoning Administrator has testified that this has always been
3 the interpretation. It's the regular interpretation and he's
4 never interpreted it any other way. The appellant has the
5 burden to prove that he's wrong, and they've submitted no
6 other information other than their argument. They're
7 confused by it. They don't understand. This Board has never
8 been confused by it.

9 BZA Appeal 18439, "The Board recognizes the long-
10 standing practice of DCRA to issue building permits.
11 Although not C of O's, before a subdivision has been
12 completed to create a lot of record, notwithstanding the
13 provision in 3202.3 of the zoning regulations, stating that
14 a building permit shall not be issued for the construction
15 of any principal structure, or for any addition to any
16 principal structure."

17 Another BZA Appeal, 16693, said the exact same
18 thing. Now here, the Board laid out their interpretation of
19 this provision, and the word "erection" was in the
20 predecessor language too. They essentially threw out the
21 word "erection" and shortened it and said "shall not be
22 issued for the construction of any principal structure, or
23 for an addition to any principal structure."

24 I don't think -- the fact that erection and
25 construction might mean the same thing does not destroy the

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1 context of the language itself. If you were going to do
2 that, then the word "addition" has no meaning, because if you
3 were going to apply any construction whatsoever to the
4 standard, then what's the purpose of saying "an addition,"
5 because an addition would be redundant at that point. So one
6 or the other is redundant.

7 This is not a non-conforming use. It's not a non-
8 conforming structure. It's an existing single family house,
9 and don't forget this got caught in a map amendment in the
10 down-zoning. So that's one reason why we're in the position
11 we're in. So one other thing, standard of review. The
12 appellants must show that the Zoning Administrator acted in
13 an unreasonably or an arbitrary or capricious manner, abused
14 his discretion or otherwise committed an error in finding
15 that the project complied with the above-challenged portions
16 of the zoning regulations.

17 Based on that standard, nothing that the Zoning
18 Administrator has testified sounds unreasonable or capricious
19 to me. What happens if the applicant loses that special
20 exception case. What do we do then? We have three existing
21 single family homes that we can't touch. Not only that,
22 thousands of other homes across the city now can't get a
23 building permit to invest in their existing houses.

24 These single family homes have been here for 89
25 years. We're not asking for new construction. We're asking

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1 just to be able to renovate them. This goes part and parcel
2 into the question of aggrieved and why are they are.
3 Nobody's aggrieved by this because nobody could be aggrieved.
4 Basically what they're saying --

5 BZA CHAIR HILL: I'm sorry. Mr. Chairman, Mr.
6 Vice Chair.

7 VICE CHAIR HART: That's not something that
8 anybody has talked about today, so we're not going to talk
9 about anything that has to do with the aggrieved.

10 MR. SULLIVAN: Okay, I'm sorry. The Chairman
11 brought the issue up, and Mr. Gambrell responded to it in
12 saying that they had an interest in this. They're supposed
13 to be significantly, distinctively or uniquely affected in
14 character or kind, not just offended by the principle. I
15 would just ask the Board just to focus on the provision
16 A301.3, and whether or not an owner of a single family house
17 is going to be able to renovate his house if he happens to
18 exist on a tax lot. Thank you.

19 BZA CHAIR HILL: Okay, Commissioner, Mr. Gambrell.
20 You've got the conclusion.

21 MR. GAMBRELL: Would that be rebuttal or questions
22 to the property owner or --

23 BZA CHAIR HILL: It's not questions. It's just
24 conclusions. You know, we're just concluding and as OAG has
25 just mentioned, if there's something in there that you think

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1 you need to respond to, then go ahead and respond to it in
2 your conclusions and we'll see where we get.

3 MR. GAMBRELL: How much time sir for the
4 conclusion?

5 BZA CHAIR HILL: You can put five minutes on
6 there.

7 MR. GAMBRELL: Unlikely to need that. Thank you
8 Board members for your time, and I do believe on behalf of
9 ANC 1C, that the Commission has stayed focused on the
10 questions before the Board, in order to make wise use of your
11 time, and I think that's clear in terms of the submissions
12 we provided by the May 8th deadline, in terms of the
13 conclusion, just a few very broad comments.

14 This is going to sound like a broken record, but
15 I just want to really drive the point home. We really do
16 believe that the zoning regulations and the words are
17 important. So I don't think that's anything we have to be
18 defensive about. We are most certainly in favor of these
19 properties being developed. We do not want to see them torn
20 down.

21 That's an idea that just came up today, which kind
22 of threw me back and I certainly hope that's not the
23 resolution. It's quite clear what the resolution could be
24 and should have been in the beginning, which is to seek the
25 special exception process, which I guarantee you would have

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1 taken less time in this case.

2 As the Commissioner has stated, the ANC would
3 certainly be in support of the special exception along those
4 lines. In terms of the information that you just heard, the
5 non-PowerPoint presentation, you know, I just happened to
6 look at the ISIS this morning and was just floored by the
7 fact that something else was being provided. Just for your
8 clarification from the standpoint of me having 30 minutes
9 before I rushed out here, let me give you my quick closing
10 statements about some of these cases that were presented
11 before you, and there's always the devil in the details.

12 BZA Case 16693 was described as supportive of
13 Zoning Administrator precedent. Well that actually, if you
14 have to actually read the report, that's not true. That case
15 was the denial of a variance request for having an addition
16 to two principal structures on one lot because it failed to
17 meet the three-pronged variance test. You've got to read
18 these things to figure out what they really say.

19 The other case that was cited was 16791. That was
20 I believe the Boys and Girls Club, and I think they bought
21 four properties and they wanted to convert them into a
22 structure for the Boys and Girls Club. The question before
23 the Board is could they combine those lots, and the
24 discussion was they could not do so without variance relief
25 in terms of how those four record lots were located in

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1 proximity to a residential district.

2 The last case that was cited, and this Case 18439,
3 I'm going to not address what the property owners' attorney
4 said, but I'm going to conclude with what I think is your
5 path forward, and I think the path forward for the property
6 owner is the path forward for the ANC, which is what that
7 case did. 18439, the Board in that case in 2012 gave the
8 property owner time to do what they needed to do, which is
9 to secure separate record lot numbers.

10 In this case, I think that's precisely what can
11 be done. Give them time to secure the separate record lot
12 numbers through a special exception process, sell the homes,
13 get people in there, everybody's happy, and the zoning
14 regulations are followed. Thanks.

15 BZA CHAIR HILL: Okay, great. All right. So
16 unless we need anything else from today, what I would like
17 to do is I do need time now, and so I'm not ready to do this
18 now. So I would like to ask for findings of facts and
19 conclusions of law from everybody, we can figure out what
20 time we can get those things by, Mr. Moy, and then probably
21 come back for a deliberation day that Mr. Turnbull is here.
22 Yeah, and then we're going to take a break.

23 MR. MOY: Okay, Mr. Chairman. So today's May 15.
24 It takes about 10 to 14 days for the transcripts to be
25 prepared and submitted to the record. So that takes us to

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1 the end of May. If parties can prepare their draft findings
2 and conclusions of law let's say in about two weeks, then we
3 start without and then we can decide if you need more time
4 or not.

5 So if I go in two weeks, that takes me to June
6 12th. After June 12th, the next time that Mr. Turnbull is
7 back with the Board actually is July 24th, which is a long
8 period of time, unless he can appear sooner. Okay. So let's
9 say two weeks for the parties to prepare, then I suppose then
10 the Board can make its decision, either June 19th or June
11 26th. I would say actually there's a heavy docket on June
12 19th.

13 BZA CHAIR HILL: Oh my God, not the 19th.

14 MR. MOY: June 26th for a decision?

15 BZA CHAIR HILL: Yeah. Like I'm not coming on the
16 19th now. I've decided.

17 MR. MOY: Oh. So you want it on June 19th.

18 BZA CHAIR HILL: No, no. So the 26th --

19 (Simultaneous speaking.)

20 BZA CHAIR HILL: Actually I may be out on the 26th.

21 MR. MOY: Oh.

22 BZA CHAIR HILL: You know.

23 MR. MOY: Okay.

24 BZA CHAIR HILL: Then what's the one after the
25 26th?

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1 MR. MOY: It would be July 3rd.

2 BZA CHAIR HILL: Okay, so July 3rd.

3 MR. MOY: July 3rd for a decision.

4 (Pause.)

5 BZA CHAIR HILL: Okay. What happened?

6 MR. MOY: No, no. There was a discussion between
7 the staff.

8 BZA CHAIR HILL: July 3rd, okay.

9 MR. MOY: Yeah. If we're going to make a decision
10 on July 3rd, and if that's going to be the case, then I think
11 my suggestion we should give more time for the parties to
12 prepare their drafts, more than two weeks. So we can make
13 that by June 19th. That gives you another week. So that
14 gives you three weeks.

15 MR. GAMBRELL: I've got a procedural question.
16 Since I don't need to incur any more billable hours, since
17 I don't bill for the time I've spent here, is it necessary
18 for findings of fact to be prepared by the parties, or can
19 the Board make that decision without that, and then write its
20 own findings of fact?

21 BZA CHAIR HILL: Sure. I don't think -- I mean
22 you can submit it or not submit it. It's up to you. Like
23 I think that, you know, we're interested in seeing them, and
24 so if you want to submit them you can. I'm sure the attorney
25 will submit them. I'm sure DCR will submit them and so, you

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1 know, it's up to you.

2 MS. LORD-SORENSEN: Excuse me, Chairman Hill.

3 BZA CHAIR HILL: Sure.

4 MS. LORD-SORENSEN: Are the parties expected to
5 appear on July 3rd, because I'll be out of town.

6 BZA CHAIR HILL: No.

7 MS. LORD-SORENSEN: Okay.

8 BZA CHAIR HILL: You're going somewhere on the 4th
9 of July? All right. Let's see, okay. So is that it? So
10 just before we go, like I just want to -- because I don't
11 know. I want to kind of just share a little bit of my
12 thoughts before, and then y'all can share your thoughts if
13 you want to or not. I mean I think that I'm a little -- I
14 am going to look at this. I'm a little confused about some
15 things, and I'm just kind of giving my opinion, in that
16 again, you've got three single family homes that are there
17 now.

18 And so I still am a little confused as to what --
19 because going down the line that would happen, they would be
20 torn down and then two single family homes would be built.
21 And so that -- because on one record lot you can build two
22 single family homes. Then there's the tax lot discussion in
23 terms of there's three tax lots, and so they're going to go
24 ahead and, you know, make alterations to the homes that are
25 on three tax lots. I'm kind of sharing this with the Board

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1 up here, right?

2 And so whether or not -- how the single lot. So
3 that's kind of where I am. I don't know what the Zoning
4 Administrator was necessarily supposed to do, you know. I
5 mean I see how they got to that point, and I still continue
6 to be, you know, I hear the attorney's argument in terms of
7 the tax lots and so forth, and then I hear the appellant's
8 argument, or not argument that the discussion that words
9 matter, and that, you know, they should tear down the homes.
10 And so, you know, I'm still not -- so that's kind of my
11 thinking. Does anybody have anything else that they'd like
12 to add?

13 MR. TURNBULL: Well, I don't think the appellant's
14 talking about tearing down the homes. They're talking about
15 a different process.

16 BZA CHAIR HILL: Right. Coming back for a special
17 exception or a variance --

18 (Simultaneous speaking.)

19 MR. TURNBULL: -- to those three homes, right.

20 BZA CHAIR HILL: Right. Which again I still, you
21 know, am confused. But so okay. All right. Then that's it.
22 So we'll see y'all when we y'all. So we're going to take a
23 break.

24 MS. FOX PERRY: I just want to make clear we don't
25 support tearing down the homes.

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1 BZA CHAIR HILL: No, that's okay. I don't think
2 you did. But it is a possibility if this goes this way. So
3 you all have a good day, and for everyone who is continuing
4 to be here with us, it will be a 15 minute break. So we'll
5 see you back here in 15 minutes. Thank you.

6 (Whereupon, the above-entitled matter went off the
7 record at 12:03 p.m. and resumed at 12:29 p.m.)

8 BZA CHAIR HILL: All right Mr. Moy. Let's get
9 back and let's see what we can do. If we can, okay let's --
10 Mr. Moy, there was a bunch of postponements, right, or a few
11 postponements that we wanted to get to.

12 MR. MOY: On two cases, sir.

13 BZA CHAIR HILL: And which cases were those on?

14 MR. MOY: One is Case No. 20001 of Simone.

15 BZA CHAIR HILL: Uh-huh.

16 MR. MOY: And the second one is 19996 of Mallard
17 Estates.

18 BZA CHAIR HILL: Okay. Is anybody here for either
19 one of those cases? Okay, all right. Then Mr. Moy, let's
20 go ahead and call those two cases first.

21 MR. MOY: All right, thank you sir.

22 (Pause.)

23 Application No. 20001

24 MR. MOY: All right, Mr. Chairman. We're going
25 to have parties to the table to Case Application No. 20001

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1 of Simone Management, LLC. I'm going to read this for the
2 transcript.

3 This is -- the application has been amended for
4 a special exception under the new residential development
5 requirements, Subtitle U, Section 421.1 and pursuant to
6 Subtitle C, Section 703.2, from the parking requirement,
7 minimum parking requirements pursuant to Subtitle C, Section
8 701.5, to construct seven new attached flats in the RA-1 Zone
9 at 6003 through 6015 Eads Street, E-A-D-S, N.E., Square
10 5261, Lots 50 through 56, and as I mentioned before Mr.
11 Chairman, there's a request from the ANC 7C for a
12 postponement.

13 BZA CHAIR HILL: Okay, you guys can come forward,
14 and others with this case can come forward. Okay. If you
15 could please introduce yourselves for the record from my
16 right to left?

17 MR. KUNLIPE: Hi, Johnson Kunlipe with Simone
18 Management.

19 BZA CHAIR HILL: Can you spell your last name for
20 me sir?

21 MR. KUNLIPE: K-U-N-L-I-P-E.

22 MR. CARBALLO: Adam Carballo, Carballo
23 Architecture.

24 MS. BREEDLOVE: Hannah Breedlove with Carballo
25 Architecture.

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1 BZA CHAIR HILL: Okay, great. So who would have
2 presented to us?

3 MR. CARBALLO: I would have.

4 BZA CHAIR HILL: Okay, okay. So you know that the
5 ANC is requesting a postponement?

6 MR. CARBALLO: I'm aware of that as of 7:30 this
7 morning.

8 BZA CHAIR HILL: 7:30 this morning, okay. And so
9 they asked for a postponement because you haven't presented
10 before the whole ANC yet; is that correct?

11 MR. CARBALLO: Not exactly.

12 BZA CHAIR HILL: Okay. You want to then tell us
13 what you have done before the ANC?

14 MR. CARBALLO: Yes sir. We contacted the ANC back
15 in March, contacted them several times in the beginning of
16 April. They requested I come in on April 25th to present to
17 their next available meeting. I presented to their next
18 available meeting. I think we had a very good presentation
19 to them.

20 BZA CHAIR HILL: But that was to the Executive
21 Committee or who was it to?

22 MR. CARBALLO: It was a meeting that they asked
23 me to come in to. I can't speak to it specifically.

24 BZA CHAIR HILL: That's fine. It wasn't the full
25 ANC. That's what I'm trying to understand, right. Okay.

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1 MR. CARBALLO: Yeah. I mean I was in a room with
2 about 12 people, so I don't know if that constitutes. I mean
3 there was quite a few people at that meeting, and we
4 presented to the parties that were in that meeting.

5 BZA CHAIR HILL: Mr. Carballo, is this the first
6 project you've done in D.C.?

7 MR. CARBALLO: It is not, no.

8 BZA CHAIR HILL: Okay. So you know what an ANC
9 meeting is?

10 MR. CARBALLO: Of course.

11 BZA CHAIR HILL: Did you present to the full ANC?

12 MR. CARBALLO: I believe I did.

13 BZA CHAIR HILL: All right. You can keep going.
14 I don't know what "believe" means so --

15 MR. CARBALLO: All I know is the ANC invited me
16 to that meeting. I presented. I showed up to the meeting.

17 BZA CHAIR HILL: Did they take a vote?

18 MR. CARBALLO: No, but they gave me feedback.
19 There was no vote taken.

20 BZA CHAIR HILL: Okay.

21 MR. CARBALLO: But they had positive things to say
22 about my project. I also requested that they provide some
23 type of letter to that effect. We followed up with an email,
24 followed up with several other emails, and the first we've
25 actually heard a response from them, from that April 25th

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1 meeting was this morning at 7:30, asking for a postponement.

2 There was never a request for us to come back to
3 any additional meetings. So this was all news to us this
4 morning when we -- when I was copied on that email.

5 BZA CHAIR HILL: Okay. Yeah, I mean and I'm not
6 trying to be short with you, but the -- what the email says,
7 and I've got the email right in front of me. So what it says
8 and that you've seen this morning, right, is that they
9 presented to the Executive Meeting on 4/25. So I assume
10 that's the meeting that you presented on?

11 MR. CARBALLO: I presented at that meeting.

12 BZA CHAIR HILL: On 4/25?

13 MR. CARBALLO: That was the meeting I was invited
14 to and we, you know.

15 BZA CHAIR HILL: That's fine. So you presented
16 at the executive meeting, but you didn't present before the
17 full ANC yet, wherein they would be able to take a vote on
18 your project. That's what I'm just trying to clarify. So
19 what does the Board think about if we were to move forward
20 with this, after the ANC has asked for a postponement so that
21 they can present to the full ANC and take a vote. Does the
22 Board have any thoughts?

23 MEMBER WHITE: Do we know when the ANC meeting
24 would actually take place? I'm looking -- if I'm looking at
25 the right one. Is that, is this the right one?

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1 BZA CHAIR HILL: It says here that the next
2 meeting is on 6/13.

3 MEMBER WHITE: 6/13, right. So I imagine if we
4 were going to give them an opportunity to take a formal vote
5 and provide input, we would need to give them time to write
6 up a report, submit it into the record and then hear the case
7 fully.

8 BZA CHAIR HILL: Yeah. I mean or we could hear
9 the case I guess, and then leave the record open for the ANC.

10 MEMBER WHITE: We could do that as well.

11 ZC CHAIR HOOD: Mr. Chairman, the only drawback
12 that I always find with that -- Mr. Chairman, the only
13 drawback that I find in moving in that fashion is if the ANC
14 has something I want to question the applicant on, I think
15 sometimes then we'd be coming to doing repetitive work. But
16 it's up to the Board. I don't have any problems either way,
17 but I'd rather hear it all at once, have the ANC issues in
18 front of me all at once or whoever the Commissioner's going
19 to be on that case, and move forward in that fashion. But
20 I'll leave it up to the Board as well.

21 BZA CHAIR HILL: Okay well --

22 ZC CHAIR HOOD: I'm sorry that he didn't find out
23 until 7:30 this morning.

24 BZA CHAIR HILL: Well there's another wrinkle here
25 in this, that we don't have a report from DDOT, because DDOT

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1 needed to be a TDM plan from them. And so DDOT hasn't
2 submitted anything into the record yet either. So I don't
3 see how we could hear this today anyway. We don't have
4 anything from DDOT, we don't have anything from the ANC. So
5 I would just say we go ahead and postpone it until we get
6 everything we need.

7 Okay. So you still need to get the DDOT report
8 for us, and you still need to get your TDM plan into DDOT,
9 and so they can go ahead and give us their report. So they
10 say that they can hear you, I guess, on 6/13. So Mr. Moy,
11 when would we be able to do this after 6/13?

12 MR. MOY: The earliest, Mr. Chairman, would be --
13 the Board will possibly have seven cases on June 26th, but
14 I'm not clear on this DDOT review of the TDM, because if
15 that's going to take a little longer time, then I would
16 recommend July 10th when Mr. Hood would be here.

17 BZA CHAIR HILL: Okay, and you guys we might have
18 been able to at least hear this and keep the record open for
19 the ANC, but we need the DDOT report. And so, you know,
20 until we get the DDOT report, we wouldn't be able to hear it
21 anyway. So do you know, have you started work with DDOT to
22 get the TDM plan and get the report done?

23 MS. BREEDLOVE: I've been communicating with
24 Cynthia in DDOT, and I was under the impression that she had
25 actually filed her report with the instructions to us to have

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1 this traffic observation consultant. I'm not entirely sure
2 of the details, they were forwarded over. But under the
3 impression that we would have time to do that and still be
4 able to present today, that she still had a report that she
5 was able to submit.

6 BZA CHAIR HILL: Yeah. We don't have a report
7 from DDOT.

8 MS. BREEDLOVE: I'll have to follow up directly
9 with her and find out what --

10 MS. LOVICK: Well, there is a report. It just
11 makes no recommendation.

12 BZA CHAIR HILL: Right, I'm sorry. It makes no
13 recommendation because they don't have the TDM plan.

14 MS. BREEDLOVE: Right, and so that just wasn't
15 communicated with us. But I'll follow up her --

16 BZA CHAIR HILL: Okay, sure.

17 VICE CHAIR HART: They're also looking for a
18 parking, a parking occupancy study?

19 MS. BREEDLOVE: Right.

20 VICE CHAIR HART: So it just -- if you could make
21 sure that you have that in there, and supply it to DDOT, so
22 that they can then give us a report.

23 MS. BREEDLOVE: Okay, will do.

24 VICE CHAIR HART: As I said, make a recommendation
25 as part of their report.

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1 BZA CHAIR HILL: So what was your suggestion, Mr.
2 Moy, in terms of giving them enough time to work with DDOT?

3 MR. MOY: Well as I said, I think the earliest the
4 Board can hear this would be June 26th, because there's room
5 on the docket for that. Depending on whether or not they can
6 be -- to supply the information the Board needs. And the
7 other date I would suggest would be July 10th.

8 BZA CHAIR HILL: Okay. I mean I don't mind June
9 26th if I guess you have the DDOT report by then, right?
10 Because you've got the ANC meeting on the 13th, and so you
11 have to get something from the ANC to put into the record by
12 the time the meeting takes place, which is on -- you know,
13 we can put it on the 26th for now, and I guess if you guys
14 don't get a report from the ANC, you might want to kick it
15 back another week. Okay? So does the Board want to put it
16 on the 26th?

17 MEMBER WHITE: That's fine.

18 BZA CHAIR HILL: Okay. Do you guys have any
19 questions?

20 MR. CARBALLO: No.

21 BZA CHAIR HILL: Okay, all right. So then we'll
22 -- I don't know if it's a continued hearing -- we'll have a
23 continued hearing, technically a continued hearing on the
24 26th of June.

25 MR. MOY: Mr. Chairman, if I might suggest. If

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1 the applicant can make their filing, let's say a week in
2 advance. It will make it that June 19th. Is that long
3 enough for you?

4 MS. LOVICK: And Mr. Chair, technically we're just
5 postponing the hearing. We didn't start it, so just making
6 that.

7 BZA CHAIR HILL: Okay, all right. Postpone. I
8 just wasn't clear. Okay. I will see you guys on the 26th.
9 Thank you.

10 (Pause.)

11 Application No. 19996

12 MR. MOY: All right, Mr. Chairman. The other case
13 application where there is a request to postpone. Actually
14 in this application, it's a consent motion to postpone on the
15 part of the applicant and the ANC I believe, which would be
16 ANC 5D. So that's Case Application No. 19996 of Mallard
17 Estates, LLC, and I'll leave it at that for brevity.

18 (Pause.)

19 BZA CHAIR HILL: Okay. If you'd please introduce
20 yourselves for the record.

21 MS. GUNDRUM: I'm Tory Gundrum with R. Michael
22 Cross Design Group.

23 MR. CROSS: Michael Cross, Architect.

24 BZA CHAIR HILL: Oh okay, great. Let's see. So
25 you have a request for postponement. What was the day that

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1 you were trying to get postponed to?

2 MR. CROSS: Some time after the next ANC, which
3 is the second Tuesday in June, June 11th. Any time after
4 that date.

5 BZA CHAIR HILL: Okay, and then I guess if you
6 could also put a shading study in there. In terms of -- some
7 of the things that I think are still missing, there's the
8 solar -- so you have the chimney agreement, you have the
9 solar panel agreement, but you still didn't actually submit
10 anything in terms of how the five percent for the adverse
11 impact in terms of the solar array.

12 MR. CROSS: Can you clarify what you're looking
13 for there, because the solar agreement is basically
14 acknowledging that it will exceed five percent, and therefore
15 we have neighbor consent to do so.

16 VICE CHAIR HART: Yeah. I think we just need to
17 have some information in there that kind of describes what
18 the actual impact is. I understand that you have an
19 agreement, but the agreement is with you and that person.
20 We have to make sure that there isn't -- we need to
21 understand what that is, what that actual impact is.

22 And so it's helpful for us to have the information
23 in the record, besides just an agreement. The actual date
24 of it says this is -- or the study that says this is how we
25 got to this point. So that's what we're looking for.

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1 MR. CARBALLO: Understood. Thank you.

2 VICE CHAIR HART: And I guess there's some other
3 information about the -- how the requested waiver from the
4 rooftop architectural elements meets the criteria under
5 Subtitle U, 320.2. If you could add some information into
6 the record that -- or I guess bolster the information into
7 the record.

8 (Pause.)

9 BZA CHAIR HILL: Mr. Moy, when would be a good day
10 for this to come back?

11 MR. MOY: For this case --

12 BZA CHAIR HILL: Is everything going to the 26th?

13 MR. MOY: Well, right now we have -- we will have
14 eight cases, and this would be the ninth case for June 26th.
15 Otherwise, we're looking into July.

16 BZA CHAIR HILL: Okay. Let's do June 26th, and
17 then when would you -- and then I guess is there a date where
18 we would try to get the information we requested?

19 MR. MOY: To give the staff time for review, I
20 would propose at least if the applicant can submit by
21 Monday, June 17th.

22 BZA CHAIR HILL: And if you all can try to get the
23 ANC report in by that time, that would, you know, be
24 beneficial. Okay, okay. All right, great. Thank you all
25 very much.

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1 MR. CROSS: Thanks for your time. Appreciate it.

2 BZA CHAIR HILL: Thank you. Okay, just to let
3 everybody know what we're going to try to do here now. It's
4 12:45, and we're trying to -- we will have lunch, meaning the
5 Board's going to have to have lunch. So we're going to try
6 to get through as many as we can. The most we're going to
7 get through probably is two, and then we're going to take
8 lunch probably.

9 Yeah. So we'll just see where we get, okay? So
10 Mr. Moy, you can call the next one when you get a chance.

11 (Pause.)

12 Application No. 20005

13 MR. MOY: All right. Thank you, Mr. Chairman.
14 I believe the next case application for a hearing is 20005
15 of Laura Takas, T-A-K-A-S, and Bob Payne. That is captioned
16 advertised for special exception under the use requirements,
17 Subtitle U, Section 301.2(e). This would replace the
18 existing one-story accessory building with a two-story
19 building contained in accessory apartment, RF-1 Zone. This
20 is at 1719 C Street, S.E., Square 1100, Lot 66.

21 BZA CHAIR HILL: Okay, great. Thank you Mr. Moy.
22 Could you please introduce yourself for the record?

23 MR. PETERSON: Yes. My name is Eric Peterson.
24 I'm the architect representing the owners.

25 BZA CHAIR HILL: Okay, great Mr. Peterson. I

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1 guess Mr. Peterson, if you can go ahead and just walk us
2 through your application and what you're trying to achieve,
3 and how you're meeting the criteria for us to grant the
4 application. I don't have any specific questions, other than
5 just your presentation I suppose. And I'm going to put 15
6 minutes on the clock so I just know where we are, and you can
7 begin whenever you like.

8 MR. PETERSON: Okay, thank you. So by right,
9 we're going to be proposing a two-story structure, accessory
10 structure on the property, and we're asking for the relief
11 of the five year --

12 VICE CHAIR HART: Will you pull the mic a little
13 closer please?

14 MR. PETERSON: Excuse me. So we're looking to
15 get the relief of the five-year waiting period for that by
16 right structure, to have an apartment placed in the
17 structure.

18 BZA CHAIR HILL: I understand that part. Do you
19 have any further discussion on your burden of proof as to how
20 you're meeting the criteria?

21 MR. PETERSON: Well, we have the support from the
22 Office of Planning, and then you know, the description that
23 I put that, you know, given that the lot size and the nature
24 of the block that has numerous accessory buildings on that
25 block, that we feel that we meet the burden of proof,

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1 particularly the structure itself being by right.

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

4 MEMBER WHITE: Yeah. Could you just provide some
5 feedback on what feedback you've gotten from the next door
6 neighbors? Is there any -- are there any adverse impacts
7 with light, air?

8 MR. PETERSON: No. So we presented to the ANC.
9 The Board was very receptive to that. We have two support
10 letters from adjacent neighbors that support the project.
11 I understand there is one property owner within the block
12 that had some general disagreement with having development
13 on the block. I think the specifics have been placed in the
14 record, but I don't have those with me at this time.

15 MEMBER WHITE: Thank you.

16 VICE CHAIR HART: Okay. It seems as though the
17 person lives at 1732 D Street. They were just -- they said
18 they have strong opposition, and that they just thought that
19 there was -- development on the alley would create more,
20 maybe a dangerous condition because there would be more
21 people. You start building this and then other people may
22 want to build one as well, which would then lead to more
23 people on the alley.

24 And so I think that they were more in opposition
25 because of the, this kind of not starting. But this would

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1 be one project that may lead to other projects that are
2 there. So I think it's more around traffic concerns than
3 anything. I didn't know if you had any thoughts on that.

4 MR. PETERSON: Right. So the project does have
5 a garage space, but the owners are intending to use that more
6 for storage than for traffic. If -- the tenant for the
7 apartment would not be having the use of that garage. So it
8 would be the sole use of the occupants of the main property.
9 So there would be essentially no additional traffic, you
10 know, other than, you know, if we were to put a parking space
11 back there, then that obviously would be by right as well.

12 VICE CHAIR HART: And these are fairly deep lots?

13 MR. PETERSON: Yes. These are I believe over 150
14 feet. It's 170 feet total lot depth, but almost 100 foot
15 clear in the back of the property.

16 VICE CHAIR HART: And what's the setback? What's
17 the rear yard setback that's required? Do you recall?

18 MR. PETERSON: Well, for a rowhouse there's --
19 from the, an accessory structure, it would be 30 feet. So
20 this well exceeds that 30 foot requirement.

21 VICE CHAIR HART: And this is the -- there's a
22 setback also from the rear of the property for any structure?

23 MR. PETERSON: Right. But if you have -- this
24 is 30 foot wide alley, and so it's from the center line of
25 the alley, which is the 15 feet. So we can build to the edge

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1 of that enlarged alleyway.

2 VICE CHAIR HART: Okay, thank you.

3 BZA CHAIR HILL: Okay. I'm going to turn to the
4 Office of Planning.

5 MS. THOMAS: Good afternoon, Mr. Chairman, members
6 of the Board. Karen Thomas with the Office of Planning.
7 This is a principal dwelling unit in an accessory structure,
8 which is permitted under the regulations in the RF-1 Zone.
9 It would conform to all height and bulk requirements. But
10 for the fact that the accessory structure was not built prior
11 to 2013, this would be a matter of right.

12 So it will be in harmony with the general intent
13 on purpose of the regulations, and would not affect the use
14 of neighboring properties, due to the lot size and where it
15 would be positioned, and the way it was constructed, would
16 be constructed. I'd also note that the Capitol Hill
17 Restoration Society included its approval, even though it's
18 not part of the Capitol Hill Historic District.

19 But they did send their approval, recommendation
20 of approval and the ANC as well. Thank you.

21 BZA CHAIR HILL: Okay, great. Thank you. Does
22 anybody have any questions for the Office of Planning? Does
23 the applicant have any questions of the Office of Planning?

24 MR. PETERSON: No, thank you.

25 BZA CHAIR HILL: Is there anyone here who wishes

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1 to speak in support? Is there anyone here who wishes to
2 speak in opposition? Is there anything you would like to add
3 at the end?

4 MR. PETERSON: No, I'm fine. Thank you.

5 BZA CHAIR HILL: Okay, all right. We'll close the
6 hearing. Is the Board ready to deliberate?

7 Okay. I don't have any issues with the
8 application. I thought that the analysis that was performed
9 by the Office of Planning was good and well-founded and I
10 would agree with that, as well as the support and analysis
11 from ANC 6B.

12 I didn't think that the letter in opposition was
13 something that I had an issue with after hearing the
14 applicant, and so I'll be voting in favor. Does anyone have
15 anything else they'd like to add?

16 I'm going to go ahead and make a motion to approve
17 Application No. 20005, as captioned and read by the Secretary
18 and ask for a second.

19 VICE CHAIR HART: Second.

20 BZA CHAIR HILL: Motion made and seconded. All
21 those in favor say aye?

22 (Chorus of ayes.)

23 BZA CHAIR HILL: Motion passes. Mr. Moy?

24 MR. MOY: Staff would record the vote as 5 to 0
25 to 0, this is on the motion of Chairman Hill to approve the

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1 application for the relief requested. Seconding the motion
2 is Vice Chair Hart. Also in support Ms. John, Ms. White and
3 Mr. Anthony Hood.

4 BZA CHAIR HILL: Okay, great. Thanks, Mr. Moy.
5 Thank you to the applicant.

6 So just so the people here know what we're going
7 to try to do, I think the next one is 20014. So we're going
8 to hear that and then we're going to jump to the bottom. Is
9 everyone here -- is anyone here for 19990 of Thomas Houston?
10 Okay, great. So we're going to do that also before lunch,
11 and there are some issues, I think, with your case so we'll
12 see happens with that.

13 And then we're going to hear District Properties
14 after lunch, because all three of them are with one
15 applicant. So just to let everybody know. So we're going
16 to go ahead and hear Mr. Moy, if you want to announce our
17 next case please.

18 Application No. 20014

19 MR. MOY: So if we can have parties to the table
20 to Case Application No. 20014. This is Addisleigh, A-D-D-I-
21 S-L-E-I-G-H Park, Washington Properties, LLC.

22 This application has been captioned, advertised,
23 for a special exception under Subtitle U, Section 513.1(n)
24 from the prepared food shop requirements, Subtitle U, Section
25 512.1(d)(3), Subtitle C, Section 1500.3 from the penthouse

1 regulations of Subtitle C, 1500 under Subtitle C, Section
2 703.2 for the minimum parking requirements of Subtitle C,
3 Section 701.5 and under Subtitle G, Section 1201 from the
4 rear yard requirements of Subtitle G, Section 405.2 and
5 pursuant to Subtitle X, Chapter 10, for area variances from
6 the loading requirements, Subtitle C, Section 901 and under
7 Subtitle G, Section 101.5 from the FAR, the floor area ratio
8 requirements, Subtitle G, Section 402.2. This would
9 construct a new two-story commercial building with a cellar
10 level and penthouse habitable space in the MU-4 Zone. This
11 is at 1803 Rhode Island Avenue, N.E., Square 4209, Lot 5.

12 Mr. Chairman, I'm passing out hard copies from the
13 applicant. I believe in the set of drawings there are two
14 new sheets. So the applicant can specify for the Board which
15 are the two new sheets, and I believe I have to administer
16 the oath one of the witnesses.

17 BZA CHAIR HILL: Okay. We'll slowly work through
18 this. Let's see. Let's start with introductions. Give me
19 one second because I -- okay. Could we please introduce
20 ourselves from my right to left?

21 MR. MONTAGUE: Commissioner Jeremiah Montague,
22 Jr., Commissioner ANC 5C, Single Member District 5CR7.

23 MR. BLANCHARD: Good morning Mr. Hill, or
24 afternoon. It is afternoon. Chairman Hill and members of
25 the BZA, my name is Lyle Blanchard. I'm from Greenstein,

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1 Delorme and Luchs, and I'm representing the applicant,
2 Addisleigh Park Washington Properties, LLC. With me today
3 are --

4 MEMBER WHITE: Hi, good afternoon. Nicole White
5 with Symmetra Design, transportation planning and parking
6 consultant.

7 MR. UPWALL: Good afternoon. I'm Greg Upwall with
8 Studio Upwall Architects, the project architect.

9 MS. WASHINGTON: Good afternoon Chairman and
10 Board. I am Lenda Washington, property owner.

11 BZA CHAIR HILL: Okay, great. Who's going to be
12 presenting to us?

13 MR. BLANCHARD: I'm going to start with an
14 overview.

15 BZA CHAIR HILL: Okay. Okay, great. So before
16 you do, there's a bunch of little things we're going to try
17 to tackle first. I guess there is a preliminary matter in
18 terms of Exhibit 52 and 38. They are -- they've been --
19 they're in violation of the 21 day filing deadline, and so
20 I assume that you are asking us to waive that deadline; is
21 that correct Mr. Blanchard?

22 MR. BLANCHARD: Blanchard, that is correct.

23 BZA CHAIR HILL: The Commissioner is over here,
24 right Commissioner. Well, Commissioner, you're getting in
25 at least before lunch, you know, right. So right. So you're

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1 asking for us to waive the requirements. I didn't see there
2 would be necessarily any violation of the requirements, but
3 why are they late?

4 MR. BLANCHARD: Well, this project, as you'll note
5 from looking at the application itself and the original
6 filings, the applicant is looking at multiple options for
7 developing, an Option A and a Option B for this property, and
8 went back and forth a couple of times, and inadvertently left
9 out the Option A solar plan when we originally filed, and
10 then did not catch that when we filed the prehearing
11 statement. So that's why it is coming in after the time
12 deadline.

13 BZA CHAIR HILL: Okay, and then what about the
14 other one?

15 MR. BLANCHARD: And then the traffic study, the
16 applicant had been diligently working for over a year, to try
17 and find alternative lots where parking spaces could be
18 provided within the 600 feet radius that's allowed by the
19 zoning regulations, and that effort did not bear fruit
20 unfortunately.

21 And so again, after, after the 30-day prior
22 deadline for filing a traffic study, we then switched gears,
23 retained Ms. White as the traffic consultant and worked with
24 DDOT to do a parking occupancy study, which was filed, and
25 I'll let Ms. White tell --

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1 BZA CHAIR HILL: No, no, no, that's fine. Okay.

2 MR. BLANCHARD: That's essentially what happened.

3 BZA CHAIR HILL: So okay. I don't have any
4 issues, and as I started to mention, a line goes into the
5 record. Does the Board have any issues?

6 MEMBER WHITE: No, I don't have any issues. It
7 doesn't seem to prejudice anybody.

8 BZA CHAIR HILL: Okay, all right. So we'll go
9 ahead with deadline and allow those into the record. So that
10 brings me to the next thing, which is a way more bigger issue
11 for us, in that it seems again like you have two things that
12 you're proposing to do or two different options, and I don't
13 know -- I mean Mr. Blanchard, Blanchard, correct?

14 MR. BLANCHARD: Blanchard.

15 BZA CHAIR HILL: Blanchard, like I haven't seen
16 you here before, correct?

17 MR. BLANCHARD: No. I moved here before you.
18 I've appeared before prior Board chairs.

19 BZA CHAIR HILL: Oh, okay. No, I just was trying
20 to remember.

21 MR. BLANCHARD: And I have appeared before the
22 Commission. Mr. Hood, but not recently either.

23 ZC CHAIR HOOD: Mr. Blanchard's well known.

24 BZA CHAIR HILL: Okay.

25 ZC CHAIR HOOD: I won't vouch for him, but he's --

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1 so is the gentleman here, and I'm trying to remember your
2 name since I have the mic.

3 BZA CHAIR HILL: Right, right.

4 ZC CHAIR HOOD: I have worked with you some years
5 before I got here, and I can't -- you work with Andy
6 Bonicello (phonetic), and I just can't remember your name.
7 So somebody's going to give me his name, because I'm sitting
8 here. Edgestone, yeah. You don't remember me?

9 (Off-microphone comments.)

10 ZC CHAIR HOOD: Okay, all right. I wasn't here
11 then, though, was I? Okay, all right. I shouldn't have
12 probably done all that, but you know when you're sitting here
13 trying to figure out who that is.

14 BZA CHAIR HILL: Right. That's so funny. I
15 totally went by Chairman Hood. I was like you're kind of
16 quiet today, and then it just all came out. You know, it was
17 just all bottled up.

18 ZC CHAIR HOOD: Trying to be quiet, you know.

19 BZA CHAIR HILL: So all right. So Mr. Blanchard,
20 that's still not going to help you with what the next
21 question is, is that you've got two options, right? You have
22 to pick one of the options, because we're not going to give
23 you the flexibility for two different options. So you're
24 going to have to pick one of the options to argue.

25 And so that right away might stop this from moving

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1 forward today, okay. But we'll see how the Board wants to
2 proceed, because if you're ready to argue one or the other
3 option, you can't argue both. You can't argue both. We're
4 either going to do grocery store or we're going to do coffee
5 shop. They're either going to be this design or it's going
6 to be that design, right.

7 And so, and the other thing that is still a little
8 bit of a sticking point is we don't actually have a
9 recommendation from DDOT yet. And so, you know, you've
10 already seen somebody I think get postponed because they
11 didn't have a recommendation from DDOT. So I don't know what
12 the Board wants to do.

13 VICE CHAIR HART: I mean I think that -- I
14 understand that DDOT is not -- we don't give great weight to
15 the DDOT report. However, this is a case, as was the
16 previous case that we didn't have a DDOT recommendation, it
17 makes it hard when there are traffic or transportation issues
18 that might be -- that might arise.

19 Then not to have that report, then we are now
20 going to have to have another meeting. So we would -- sorry,
21 another hearing or have this hearing either postponed or
22 continued. I just think that it would be helpful to have all
23 of the stuff kind of together, so that then we can kind of
24 say this is the one option we're looking at. That one option
25 has these impacts. Those impacts have been looked at and

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1 given some weight or some rationale or analysis from DDOT,
2 and then we can look to make our, you know, our decision
3 after that point.

4 I think in the -- in just our time management, it
5 makes it harder for us to have meetings where we have kind
6 of part of the information that we need. I think it would
7 be helpful for us to have all that information at one point,
8 so that we can then proceed in a more efficient manner.

9 BZA CHAIR HILL: Okay. So that's part of -- okay,
10 sorry.

11 MEMBER WHITE: I was just going to say, I agree
12 with your assessment. But it also seems as though that the
13 Office of Planning would also be on board with things if they
14 had that TDM plan. So I mean the good news is that you've
15 got some ANC support there.

16 So but I think just to make the case smoother, if
17 you could have the TDM information for DDOT, their response
18 and I think we would be set to move forward, along with just
19 some of the specific details about what this project is going
20 to look like with you doing the coffee shop or the grocery
21 store, so that we know exactly what we're approving.

22 OP is in support, but was it on -- was it
23 conditioned on getting DDOT's?

24 MS. BROWN-ROBERTS: As the --

25 MEMBER WHITE: Is that a fact or no?

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1 MS. BROWN-ROBERTS: Yes. Maxine Brown-Roberts
2 from the Office of Planning. Yes, because some of the
3 special exception criteria had some specific things to do
4 with transportation that we were not able to answer because
5 we didn't have the information. So yes, that was why it was
6 conditioned.

7 MEMBER WHITE: At the risk of speaking out of
8 turn, if I may say some words in response to the DDOT issue.
9 So we have had the opportunity after DDOT's report to
10 coordinate and approve --

11 BZA CHAIR HILL: Yeah, thanks. Sorry. It feeds
12 back if more than one mic's on. Sorry.

13 MEMBER WHITE: I was going to say we have had the
14 opportunity to coordinate with DDOT after the report was
15 submitted from DDOT, so we had an approved scope of work with
16 the parking study and the TDM and the loading management
17 plan. And so our report that has been submitted is in
18 response to that approved scope of work and DDOT,
19 understandably so, did not have time to respond to our
20 report.

21 But as an option could the record remain open?
22 They seem to, from an email, believe that the record could
23 remain open to allow their report to be submitted. I think
24 we've clearly outlined and addressed those three outstanding
25 issues that DDOT has laid out. So just as an option to be

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1 considered.

2 BZA CHAIR HILL: Okay, okay. I guess that's --
3 I mean definitely I want to hear from people that have come
4 down to speak, like the Commissioner and people that we --
5 if we did end up postponing this. I mean I'm just trying to
6 understand. I guess so right. The discussion is, and I
7 guess so the Office of -- so I'm coming down to the Office
8 of Planning.

9 So the Office of Planning, I know that we're kind
10 of going out of order all around today. You're in support
11 of both designs.

12 MS. BROWN-ROBERTS: Yes, Mr. Chairman.

13 BZA CHAIR HILL: Okay, all right. So what does
14 the Board want to do? So we could hear the application or --

15 MR. BLANCHARD: So Mr. Hill, if I could --

16 BZA CHAIR HILL: Sure, of course.

17 MR. BLANCHARD: --help the Board, I think I had
18 a moment to caucus with my client while this discussion was
19 going on, and the applicant would like to pursue with just
20 Option B. And what that would end up doing, I believe, is
21 remove the Internet café from the cellar level, which would
22 remove one of the variance requests for special, I'm sorry,
23 one of the special exception requests for a coffee shop with
24 more than 18 seats.

25 BZA CHAIR HILL: Okay. So you're -- okay. So

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1 you're ready to argue Option B, right?

2 MR. BLANCHARD: Correct.

3 BZA CHAIR HILL: And then I guess I'm back to Mr.
4 Hart's comments about DDOT. So are you -- you guys want to
5 -- I'm just trying to figure out whether we're going to move
6 forward to hear this now or whether we're going to postpone
7 it to June 26th.

8 VICE CHAIR HART: Well, I'd just say this. We
9 will have to -- we will have to have the DDOT report at some
10 point anyway. So if we hear it today or I mean I don't know
11 if we will have any questions after the report. I just don't
12 know where we're going to be once we get, once we get that.
13 They may say sure, that's not a problem and then it's -- I
14 don't know. I just feel a little uncomfortable not having
15 all of that information in front of me.

16 I understand that the applicant has submitted
17 their own response to the DDOT stuff. I just would like to
18 have the, you know, understand where DDOT is on it and right
19 now we just don't know that.

20 BZA CHAIR HILL: That's all right. So we could --
21 sorry.

22 ZC CHAIR HOOD: Mr. Chairman, I would agree with
23 the Vice Chair. While I particularly -- whether you move to
24 the 26th or whenever, I'm going to stay on this case, because
25 I'm also interested in the parking. We approved some years

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1 ago the Woodridge Library, a parking variance and I'd like
2 to make sure that we do this right. I would also like to
3 hear what DDOT is saying.

4 So when Mr. Blanchard was mentioning that he went
5 around looking for the parking in the neighborhood, I'm sure
6 that wasn't a long look. Am I safe to say that wasn't a long
7 look?

8 MR. BLANCHARD: I'd like Ms. Washington to speak
9 to that.

10 ZC CHAIR HOOD: Yeah, because I'm sure that was
11 not a long look.

12 MEMBER WHITE: Well, there's lots of options for
13 parking.

14 ZC CHAIR HOOD: Okay, all right. That's why I
15 want to stay on this case, Mr. Chairman. But anyway, thank
16 you. But anyway, I think it's -- I'm sure the ANC supports
17 it. I think it would be advantageous to move forward, but
18 we need to make sure that the record is complete, especially
19 with the -- with the way things are going in this city, you
20 want to make sure that the record is complete, especially
21 with the expertise of the District Department of
22 Transportation in the file.

23 That goes actually to you, to your case, to your
24 being able to move forward. You want to make sure that they
25 have their ducks in a row as well. That's just my two cents.

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1 BZA CHAIR HILL: Okay, that's fine. Is there
2 anybody here wishing to speak in support of this case? Is
3 there anyone -- well, I mean besides the ANC. Is there
4 anyone here wishing to speak in opposition to this case?
5 Okay. So --

6 ZC CHAIR HOOD: -- this too, Mr. Chairman. Since
7 you said I was quiet, I don't want you to ever say that
8 again. So Mr. Blanchard, you mentioned about taking away
9 the coffee shop? Maybe that went over me.

10 MR. BLANCHARD: Okay. I'm sorry, Mr. Hood. So
11 let me clarify. There are actually -- it's a two story
12 building with mezzanines, including a cellar level. So the
13 cellar level option is really where the options come in. So
14 one was, one proposal was an Internet café like a WeWork
15 space or one of those places, where people in the community
16 could come in, get some coffee, use their laptop and, rather
17 than trying to work from home with all that --

18 ZC CHAIR HOOD: Or at the library.

19 MR. BLANCHARD: Or if they're at the library, and
20 they want to take a break and get some refreshments.

21 ZC CHAIR HOOD: So I think that's important, yeah.
22 So we're not taking that away.

23 MR. BLANCHARD: No. Actually, the preference is,
24 and there's a long history of effort by Ms. Washington and
25 with DMPED, to get a grant, because this was -- this area of

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1 Rhode Island Avenue is considered a food desert. I was going
2 to talk about the comp plan at some point. The comp plan
3 notes that Rhode Island Avenue used to have a lot of food
4 purveyors, and that kind of fell away.

5 So what the community's been asking for, and what
6 Ms. Washington is trying to deliver, is a sit-down restaurant
7 and a grocery store. So rather than the basement Internet
8 café, we're going to have, try and have a small grocery store
9 like a Mom's or a Yes! or -- it's not a Safeway, it's not a
10 big footprint grocery store, but a smaller neighborhood-
11 oriented store. So that's more important.

12 ZC CHAIR HOOD: All right. I just don't want to
13 take away from the approvals that you already have from the
14 ANC. I'm not trying to guide you in any way. I am familiar
15 a little bit with the neighborhood, so I just want to make
16 sure that we are going along the lines that you've already
17 worked out with the community. I think that's very
18 important. All right. I don't know which way we're going,
19 but either way Mr. Chairman, I'd like to stay on this case.
20 Thanks.

21 BZA CHAIR HILL: Okay, okay. I think -- I've gone
22 back and forth in my head now, but I think we'll just go
23 ahead and hear the case, and just leave the record open for
24 DDOT, and see where we get.

25 Then I guess we could leave the record open for

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1 DDOT, and then if during deliberations we wanted to have a
2 continued hearing, we could reopen the record in order to
3 have, bring DDOT or bring the applicant forward to ask them
4 further questions. Is that good? Okay, because everybody's
5 here.

6 All right. So Mr. Blanchard, you can go ahead and
7 present. The concept that you will be presenting to us,
8 meaning the grocery store, and if you wouldn't mind again,
9 if you wouldn't mind specifying which exhibit you're in terms
10 of the --

11 MR. BLANCHARD: Plans.

12 BZA CHAIR HILL: The plans, thank you.

13 MS. LOVICK: Excuse me. I just want to add one
14 thing. I just want to put this on the record, so that the
15 applicant's aware. It would be helpful if you would revise
16 your self-certification. If you're going with the grocery
17 store option, then you are no longer requesting the relief
18 under U513 for the prepared food shop that would exceed 18
19 seats, and you'll need to revise the self-certification to
20 remove that relief please.

21 BZA CHAIR HILL: So we need the revised self-cert,
22 and then we'll probably hold that open -- we'll hold the
23 record open for the revised self-cert, as well as the DDOT
24 report. Mr. Blanchard, do you have any questions about that?

25 MR. BLANCHARD: No. No, Mr. Hill.

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1 BZA CHAIR HILL: Okay.

2 MR. BLANCHARD: In fact as a preliminary matter,
3 I wanted to bring up that we had offered in the alternative
4 in our prehearing statement, rather than -- because we had
5 originally requested four special exceptions and two
6 variances. One of those variances was for loading, and we
7 want to switch the loading variance request to a special
8 exception, so we will under -- bear with me one second. And
9 so we will put on the self-supervised self-certification as
10 well.

11 BZA CHAIR HILL: Okay.

12 MR. BLANCHARD: That's under Subtitle C, Section
13 909.2(a).

14 BZA CHAIR HILL: Okay, okay. All right. I'm
15 going to put 15 minutes on the clock, Mr. Blanchard, and you
16 can begin whenever you'd like.

17 MR. BLANCHARD: Thank you. Well one --

18 BZA CHAIR HILL: Oh, I'm sorry. People haven't
19 been sworn in. So is anybody going to testify? If anybody
20 wants to testify and hasn't been sworn in, if you'd please
21 stand and take the oath administered by the secretary to the
22 left.

23 (Witnesses sworn.)

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

25 MR. BLANCHARD: And Mr. Hill, just as one final

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1 preliminary matter, and that is I would ask the BZA to
2 recognize Ms. White as an expert witness, because she has
3 testified here before.

4 BZA CHAIR HILL: Yeah. I think she got -- she's
5 been recognized before as an extra witness, but I think she's
6 in the book then, right? Yeah. She is already recognized
7 as an expert witness.

8 MR. BLANCHARD: Mr. Upwall's earning his dues, so
9 we're not asking him to rise to that level yet.

10 BZA CHAIR HILL: Okay, all right.

11 MR. BLANCHARD: Okay, all right. We are asking
12 for special exceptions for under Subtitle C 1500.3 for the
13 roof penthouse under C703.2 for the minimum parking
14 requirements and C701.5 under G1201, from the rear yard
15 requirements under Section 405.2 and Chapter 10 for area
16 variances for -- I'm sorry, not for area variances, from
17 G101.1 for the floor area ratio requirements under G402.1.

18 And again, this is a two story building with some
19 mezzanines, a grocery store in the cellar level, a restaurant
20 and coffee shop above, and a rooftop penthouse bar or
21 restaurant that could be in a level that's connected to the
22 restaurant itself.

23 With that, I will turn to the applicant to talk
24 about the history of the property, some community outreach,
25 Main Street, the DMPED grant and some interaction with the

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1 neighbors.

2 MS. WASHINGTON: Again, good morning. I've been
3 asked to just provide some comments about the history of the
4 building. So I bought the property in October 2016, and it
5 is -- well, as you saw in the prior picture, just a one story
6 sort of distinguished building, bright yellow with red
7 concrete windows. It used to be a Dunkin' Donuts and what
8 was it, ice cream place, Baskin-Robbins, right, and then it
9 became a Golden Skillet and now it's the home to the Soul
10 Kitchen.

11 The area -- and so it's a really underdeveloped
12 piece of property. The tenant is still there, although his
13 lease is now short term. But it's just about 25 steps or so
14 to the brand new Woodridge Library that's right off of Rhode
15 Island Avenue.

16 In an effort to redevelop the property into a
17 retail asset that was needed by the community, I spent a lot
18 of time talking to neighbors, talking to commercial as well
19 as residential neighbors, getting familiar with the executive
20 director and some of the board members for Rhode Island Main
21 Street, to see what it was that was missing in that corridor
22 and what would be needed by the neighborhood. So I spent a
23 lot of time thinking about the development before I wanted
24 to, or how I was going to redevelop it.

25 I decided to do an all commercial, all retail

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1 development. It was almost unanimous when I spoke to
2 neighbors and went to subsequent neighborhood meetings and
3 ANC meetings, that people wanted a place that would serve
4 health food options, particularly breakfast on the weekends
5 and the morning. So I have been consulting with brokers and
6 doing outreach myself, in terms of trying to market the
7 property.

8 That development plan has been supported by DMPED
9 through a neighborhood prosperity fund grant for construction
10 support. The location, as I said, is within steps of the
11 library, which has really become a community center for that
12 particular neighborhood. It is almost overflowing all the
13 time with people using the library. They've got a very
14 robust children's program.

15 There's lots of mothers that are there any given
16 day during the week with their children, and yet they don't
17 have a whole lot of options for getting a cup of coffee or
18 you know, overpriced croissant or anything. So that area to
19 me begs for -- I'm calling it a generic -- I'm using
20 Starbucks in a generic terms, but sort of a coffee shop, as
21 well as an upgrade to the existing restaurant. It's a food
22 desert, and so it needs a small footprint neighborhood
23 grocer.

24 DDOT, after I bought the property came out in
25 January 2017, and I think it was just after I had met Greg

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1 Upwall and decided to engage Studio Upwall to help me design
2 the development. I should also mention that Gene Edgecombe
3 is my partner in development. This is not the first time
4 that we've developed commercial properties, and Gene is very
5 much a part of my team when I'm considering developing any
6 property.

7 DDOT came out. We scheduled an appointment in
8 January 2017. They wanted to talk about the streetscape and
9 their vision for improving the entire Rhode Island Avenue
10 N.E. corridor. So we talked about that corner and we talked
11 about the opportunity to develop it into a very nice
12 community asset, and they talked about the fact that they
13 wanted to close in curb cuts.

14 We agreed to do that as part of our development
15 and to re-landscape. So that dovetails nicely with the
16 streetscape and improving the walkability that DDOT and the
17 city envisions for that area of Woodridge. So very much
18 looking forward to developing this property. This is the
19 nexus to the Woodridge community, and you know, we'll be
20 happy to see our plans come to fruition, and provide the
21 gateway to what we think is an improving and thriving
22 northeast community.

23 BZA CHAIR HILL: Great, thank you. That's
24 wonderful. Yeah, I thought it was wonderful. All right.
25 So I haven't used the word wonderful all day long. Let's

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1 see. Sir, please. Sure -- yeah, no. I was just -- there
2 was just a pause, so please go ahead.

3 MR. UPWALL: Thank you. Good afternoon members
4 of the Board. I appreciate your time today. So my name is
5 Greg Upwall. Lenda Washington came to my office and we met
6 back in 2017 with this property, and with what I would call
7 probably the most unique project I've designed in my 20 years
8 of working as an architect.

9 The Triangle, the Point, its position on Rhode
10 Island Avenue, its interaction with the library, its having
11 very different natures on all sides. It's a fantastic
12 project. It's filled with potential. It's an exciting
13 opportunity. Early on we did discuss the sort of obvious
14 observation that the site is under-utilized, to pick a word
15 that I think is sort of, you know, keeping it.

16 It could use something, I think most would agree.
17 So we started out early on in 2017. We met with DDOT. Mr.
18 Blanchard and I were part of an earlier meeting with them as
19 far back as that. In January of 2018, we had a PDRM with
20 DDOT and our civil engineer, to identify any issues they
21 might have. Beyond that, we started pursuing the ANC. Had
22 our first round of meetings with ANC Single Member District
23 and the full ANC back in the summer of 2018. Subsequently,
24 we met with the Zoning Administrator. We met with the Office
25 of Planning, and then more recently have gone back to Mr.

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1 Montague's Single Member District, and then finally back to
2 the full ANC. So we've been to both groups twice; that's
3 four ANC meetings.

4 On that last meeting, we did get a vote of
5 approval and I'm sure we can allow Mr. Montague to voice
6 whatever his thoughts are on that meeting. What I'd like to
7 point out a little bit are -- I've mentioned the existing
8 conditions. But primarily as an architect and how to take
9 advantage of this, in a way that helps the developer have a
10 feasible project, but also become something that benefits the
11 community.

12 Largely our outreach has been that effort. I live
13 in the Shaw neighborhood of D.C. We all are part of, you
14 know, all of our projects are here in D.C. It's very
15 important to my firm's philosophy, I think to Ms. Washington
16 as well, that we make it a statement that is something that's
17 going to benefit, you know, the neighborhood. We would love
18 to see that happen here.

19 So particularly food-related, we've mentioned
20 that. These are some early slides to just show you kind of
21 the Hamlin view, both ways. That's a nice view that gives
22 us a perspective with the library and then the sites within
23 the background there. This is sort of the glossy or the nice
24 renderings that we've produced for the proposed building.
25 What we have ended up with over the course of all those

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1 meetings is a design that is two stories of commercial use,
2 three or four tenants.

3 If I could speak very briefly to this idea of why
4 we presented that many options, none of us really would have
5 chosen to do so originally. But given that we were really
6 interested in finding something that would have a lot of
7 commercial viability, we wanted to sort of leave the door
8 open because Ms. Washington has done such an ongoing effort
9 to try to identify commercial tenants.

10 It's a challenging situation because we're a
11 little early on in the game. The corridor, we can all see
12 the direction it's headed. But I think it's a little early
13 to secure, or a lot of tenants might have some concerns given
14 that, you know, much of the corridor is under-developed at
15 the moment.

16 BZA CHAIR HILL: And Mr. Upwall, if Ms.
17 Washington, if this goes forward, it will just come back to
18 us in terms of, like, a different kind of design or if you
19 needed different types of relief. But that type of
20 flexibility it just difficult for us to kind of get our heads
21 around.

22 MR. UPWALL: Understood, understood. So that's
23 why we quickly consulted and said if we had to pick one, we'd
24 pick the grocery store. It's quite that simple, you know.
25 If we could pick the tenants, if she had a magic wand, I

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1 think we'd love to see the grocery store. That's what I
2 think everybody has identified as their primary concern. I
3 mean there's just no place to get fresh food nearby.

4 I'm going to kind of jump forward to some of the
5 site plan. So the building, as you can see, has the
6 triangular shaped frontages both onto Rhode Island and to
7 Hamlin. The projections are rendered darker in this -- were
8 actually requested by DDOT and Office of Planning when we met
9 with them, as were the closures of the street of the curb
10 cuts.

11 DDOT is very much in favor of this design, in the
12 sense that it is consistent with the master plan for the
13 Rhode Island corridor. I wanted to just quickly. There's
14 a lot of plans, but I would like to sort of stare at this one
15 right here, which is B, which is the one we would choose if
16 we had to.

17 The beige colored narrow end on the left of the
18 screen at the point of the building is where we envision the
19 Starbucks or, you know, Peet's Coffee, Compass Coffee, some
20 sort of a coffee shop, and that primarily has been something
21 that's been requested a lot by the community, and also
22 observations in the library itself, which we've just noticed
23 on repeated visits that it's overflowing, and there really
24 is just not a place to even grab a cup of coffee nearby. So
25 it seems like that's one of the more obvious uses.

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1 The yellow-rendered spaces to the right of the
2 design are envisioned as that small grocer. We're sort of
3 modeling it on say a Streets Market or a Yes! Organic,
4 something of that scale. It's certainly not even as large
5 as a Trader Joe's or any of the larger grocers.

6 And then in the upper level, we've envisioned a
7 family sit down restaurant with multiple levels and rooftop
8 use. So if there's any specific questions about the design,
9 I'd be happy to answer those. But just to sort of apologize
10 a little bit for the confusion created by all the options,
11 it wasn't what we had hoped for.

12 This particular rendering, I think, is very
13 important to show also, because if there's any concern that
14 the building might be felt as large, this puts it into
15 perspective with the library. So it we feel is very much in
16 scale. The design of the exterior of the building, the
17 language and vocabulary is very much in response to the
18 design of the library.

19 We would like to sort of -- we saw that as an
20 opportunity and would like to carry it forward. We also see
21 the building as forming sort of a gateway experience to that
22 neighborhood, to that Woodridge neighborhood. And so with
23 that said I think I'll, you know, in the interest of brevity,
24 try to stop there and just say that, you know, we have had
25 a lot of interaction with neighbors. We've discussed parking

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1 and trash removal and loading, how those would best be
2 addressed, and everyone -- to the best of our ability, we've
3 tried to address everybody's concerns. At this point, we
4 feel like the design that we are proposing is very well
5 supported by the community and, you know, and is a success.
6 We hope it will be a successful --

7 BZA CHAIR HILL: Okay, okay. Mr. Blanchard, I
8 know you see that I've got my mic on. So can -- let's just
9 ask some questions. Like I just -- I know that there's still
10 the transportation expert, and as well as -- but I think
11 we're -- just let's go to questions perhaps, and then Mr.
12 Blanchard, I'm sorry. You had something you'd like to say?
13 You need a microphone.

14 MR. BLANCHARD: I just wanted to point out in the
15 handout that was given to the Board today, a lot of these are
16 plans that are already in the record. What's not in there
17 are the first five pages of photographs, the 14th page, which
18 is the second floor mezzanine Options A and B because it
19 shows a different arrangement of the balconies, and page 16,
20 which is the Rhode Island Avenue elevation facing north. The
21 last two pages, 18 and 19, I just asked Mr. Upwall to confirm
22 that those are new.

23 VICE CHAIR HART: Where are the page numbers? I
24 just can't find them on there.

25 MR. BLANCHARD: Unfortunately, there aren't page

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1 numbers. I had to write them on myself this morning so --

2 VICE CHAIR HART: That's fine. Yeah, I did have
3 a couple of questions. So Mr. Upwall, did the neighborhood
4 ask for more of a solid wall along Hamlin Street?

5 MR. UPWALL: Yes.

6 VICE CHAIR HART: And why were they looking for
7 that?

8 MR. UPWALL: I think there's been concern about
9 just noise or a nuisance or, you know, a lack of privacy
10 because it is a residential scale street.

11 VICE CHAIR HART: Because I mean I understand that
12 part of it. It seems as though the building has -- which I
13 understand to some degree. It has a lot of porosity through
14 the Rhode Island Avenue facade, which I kind of understand.
15 It makes sense, and I understand to some degree why this
16 would not necessarily have as much.

17 But it almost feels like it is a wall, and reading
18 more of a wall and it's -- and because this is a building
19 that would likely have -- because this is a building that has
20 two main facades, that people would likely come in from both
21 sides. If that were the case, it's less of a -- it looks
22 like you're coming in the back of a building on the Hamlin
23 side than it does in the -- than, you know, than coming from
24 the other side, and it kind of reads more strongly that way.

25 I think that that's -- I don't think that that's

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1 necessarily -- that's what you want or intend to do. But it
2 does read that way, and there's a lot of -- I don't know what
3 the word I want to use, movement in the facade. The bays
4 come out. There's some areas that are, you know, kind of in.
5 Did you say that DDOT or OP wanted that?

6 MR. UPWALL: The projections. Specifically they
7 said make sure you -- they didn't want a flat-faced building.
8 They advocate for projections into the public space, yeah.

9 VICE CHAIR HART: That's fine, that's fine. I
10 just wanted to make sure I heard you say that.

11 MR. UPWALL: Yeah.

12 VICE CHAIR HART: And you did, so that's good.

13 MR. UPWALL: Right.

14 VICE CHAIR HART: Regarding the cellar, why are
15 you calling this a cellar?

16 MR. UPWALL: It's just it qualifies as a cellar
17 by zoning regulations.

18 VICE CHAIR HART: Why?

19 MR. UPWALL: Because the first floor level is not
20 higher than four feet above grade. So a basement versus a
21 cellar, it's just --

22 VICE CHAIR HART: No, no, I know that. I'm just
23 trying to figure out -- what's the -- this is not a -- you
24 come in, you have to go into an elevator. Maybe I just
25 missed it. You have to go into an elevator to get down to

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1 the -- to that level?

2 MR. UPWALL: Yes. It's completely below grade.

3 VICE CHAIR HART: Okay. Can you point that out
4 in the plans, because I just missed it and I'm like we're
5 trying to figure out like what am I -- why are they calling
6 this a cellar?

7 MR. UPWALL: Okay. So yeah. The cellar level,
8 this is completely -- these, the Option A/Option B cellar
9 levels are completely below grade. In fact, the sidewalk
10 level is right -- I mean I guess the best way to describe it
11 is that first floor plans are at sidewalk level. So there
12 would be no steps, no --

13 VICE CHAIR HART: Do you have any sections?

14 MR. UPWALL: Currently we don't.

15 VICE CHAIR HART: Okay. I think that's what's
16 throwing me off.

17 MR. UPWALL: We could easily -- we could, you
18 know, provide those.

19 VICE CHAIR HART: No, that's fine. I think what
20 was kind of throwing me off was when I was looking at --
21 because there were so many options and I was looking at the
22 elevation, the elevation looks like it's actually four
23 floors, I mean you know, with mezzanine.

24 MR. UPWALL: Two stories with mezzanine, yeah.

25 VICE CHAIR HART: Yes, and I couldn't -- I

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1 understood that. I was just trying to figure out, it reads
2 one way and then you add another level in there. That's the
3 part that I was trying to figure out. Like, where's the
4 cellar?

5 MR. UPWALL: The cellar's not shown, yeah, in the
6 --

7 VICE CHAIR HART: And so then it becomes gosh,
8 well you know, what is that space like? And I didn't know
9 if there were any area ways or anything to be able to bring
10 some light down there, if there were. That's why I was
11 trying to figure out, is there an actual cellar or is it at
12 just a different level, a slightly different level and that's
13 why you're calling it that. So --

14 MR. UPWALL: Right, right, right. So if I could,
15 can I respond?

16 VICE CHAIR HART: Sure, sure.

17 MR. UPWALL: Oh great. So first of all, thank you
18 for your questions, because I think they're really good ones.
19 As far as the back of the building seeming like a front and
20 a back, and are we disregarding the neighbors on the Hamlin
21 side, I would say that we certainly are not, and that's
22 something that I'm passionate about not doing.

23 I really dislike buildings that sort of have a
24 great front and then a really bad or poorly conceived rear.
25 So the rendering on the upper left-hand corner I think is the

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1 best to sort of make this point. The way we've sort of
2 treated the exterior of the building is sort of taking a
3 level of porosity or fenestration and wrapping it, and we
4 certainly didn't stop that at the point. So that continues
5 down one-third. The full curtain wall exposure continues
6 onto the Hamlin side for the first one-third of the western
7 portion of the building.

8 VICE CHAIR HART: You're talking about the area
9 that I just, I just --

10 MR. UPWALL: Yes. Thank you, yes. And then
11 beyond that, if you'll notice just beyond that is a very
12 large window, probably the largest window in the entire
13 building, which would be from the restaurant level, again
14 thank you facing, facing onto Hamlin.

15 VICE CHAIR HART: There's actually that next to
16 you is a -- it's actually an interactive -- that monitor is
17 actually something you can draw in so --

18 MR. UPWALL: Okay. But basically you're doing a
19 great job at doing it for me.

20 VICE CHAIR HART: That's okay.

21 MR. UPWALL: So the idea being not that it is a
22 complete back, but as we move down Hamlin, we have made
23 actually intentional efforts to continually sort of diminish
24 or reduce the fenestration, because we wanted to get more
25 quiet and more, less you know. And so the idea is that they

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1 know that there's a use there, but it doesn't disrespect them
2 in any ways. That's been our intention anyway.

3 VICE CHAIR HART: And I understood, and I think
4 I appreciate that. I understand where you're coming from
5 with that. I guess part of it is this is the -- would be the
6 kind of how you can come in off of Hamlin?

7 MR. UPWALL: Well the --

8 VICE CHAIR HART: Or is it the only, the only
9 entrance actually? Is this kind of like an exit and then the
10 entrance itself for the building is on, is on Rhode Island?

11 MR. UPWALL: I guess I can't circle. We don't
12 have this turned on.

13 VICE CHAIR HART: Just touch the bottom right-hand
14 side, right-hand side.

15 ZC CHAIR HOOD: Just hit the screen, and it will
16 come on. Yeah.

17 MR. UPWALL: Thank you. So actually --

18 VICE CHAIR HART: And can you -- you can turn the
19 other mic on that's in front of you. That's -- yeah, there
20 you go.

21 MR. UPWALL: Okay. So I just circled kind of the
22 bottom right-hand corner of the coffee shop curtain wall or
23 storefront there. You see that?

24 VICE CHAIR HART: Yes, yes.

25 MR. UPWALL: That one actually is an entrance into

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1 the coffee shop.

2 VICE CHAIR HART: Ah okay.

3 MR. UPWALL: Okay. So there is actually both --
4 and the sidewalk café wraps the corner as well. So if you
5 look at the site plan, you see how the sidewalk café actually
6 starts there and goes all the way to there.

7 VICE CHAIR HART: Okay.

8 MR. UPWALL: So by no means are we disregarding
9 Hamlin. In fact, we're trying to make the site, particularly
10 the coffee shop a use that is really enjoyed by everybody,
11 right. In other words, that we wrapped that sidewalk café
12 with the idea that it really engages as a neighborhood
13 gathering point. But like it or not, we have to get into the
14 building and have a kitchen entrance and deliveries and so
15 forth.

16 So at some point we have to decide where to do
17 that. So there is a functionality, I guess, a limitation
18 that at some point -- oh how do I clear it? Clear. There
19 we go, okay.

20 VICE CHAIR HART: Yeah. It's above there.

21 MR. UPWALL: Thank you, yeah. Thank you so much.
22 This is really fun. So but then sort of, you know, in this
23 area, like it or not, that is some required kitchen delivery,
24 trash, loading. We've made a very concerted effort to do
25 indoor trash, ventilated, locked, you know, controlled by the

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1 trash delivery and so forth so there's not a nuisance. The
2 current space has a dumpster outside and, you know, vermin
3 or whatever.

4 So I guess to your questions, you know, to the
5 best of our ability, we've tried to again address everybody's
6 concerns. And I think that the better design would be a
7 quieter, more closed facade that faces onto Hamlin.

8 VICE CHAIR HART: And so when you come in on this
9 level, you enter off of Rhode Island, you are coming in here,
10 right?

11 MR. UPWALL: Yep.

12 VICE CHAIR HART: And then when you want to go to
13 this area, how do you get there?

14 MR. UPWALL: So there's three -- that's an
15 entrance. Okay. The entrance I just marked as the entrance
16 for Retail B, which is now going to be the grocery --

17 VICE CHAIR HART: The grocery store, okay.

18 MR. UPWALL: The entrance you marked, the one in
19 the middle --

20 VICE CHAIR HART: Is the stairs up --

21 MR. UPWALL: -- is the entrance to the cellar
22 level and to the restaurant.

23 VICE CHAIR HART: Got you, got you.

24 MR. UPWALL: So right here is a grand sort of
25 monumental staircase that would wrap up into that atrium

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1 level, kind of restaurant use, and then the coffee shop has
2 an entrance both here and here.

3 VICE CHAIR HART: I understand this now. It was
4 hard for me to try to figure out. I was thinking that there
5 was an entrance, since we did all the drawings. I thought
6 there was an entrance along Hamlin like there, and so that
7 was like well how do you then, you know, how do you get
8 through the building? But I think that the section would
9 have helped, would help, and I know you all are kind of going
10 through this process. So I appreciate the drawings so far.

11 I think that they are -- it is an interesting
12 design, in that you are taking cues from the library, the new
13 library that's there, and I think that that's helpful to do
14 that. I was just trying to understand how you got to where
15 you got to in some of this, and I understand there's also a
16 -- there is a, you know, the utilitarian types of things that
17 happens in every building that you have to deal with.

18 I just was trying to figure out how, if somebody
19 was actually entering the building that way, you know, and
20 I think what you're looking at is having the orientation of
21 the building along Rhode Island, and then have the
22 orientation of the -- of three of the entrances along Rhode
23 Island, and then there's an entrance for the café on Hamlin
24 Street?

25 MR. UPWALL: Yeah. My best way to describe it

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1 would be that we've thought of this much of the building as
2 being the most public, right? And then from that point east,
3 we've started to say it's really not a public space anymore,
4 but it's certainly not as sort of clear cut that we just have
5 not --

6 VICE CHAIR HART: It's a transition into the
7 residential.

8 MR. UPWALL: It's an intentional transition, yeah.
9 We've really thoughtfully tried to do so, yeah.

10 VICE CHAIR HART: Okay, thank you.

11 MR. UPWALL: Thank you.

12 ZC CHAIR HOOD: Mr. Chairman, I'd like to follow
13 up on some of that.

14 BZA CHAIR HILL: Sure, of course.

15 ZC CHAIR HOOD: You mentioned about the loading.
16 Now explain to me. It may have went over. First of all, let
17 me just say I'm not sure of the materials used and I know the
18 BZA probably doesn't get into that. But the courts have told
19 me on the Zoning Commission that I can get into all that.
20 So you may get some of that here from me.

21 MR. UPWALL: Okay.

22 ZC CHAIR HOOD: But let me just say this. I do
23 think this is definitely an improvement, so I understand why
24 you've got so much support, especially what we have now. One
25 of the things -- let me just ask this. I'm not going to --

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1 when you consider your materials, and I know we haven't
2 gotten to that, we want to make sure we consider materials
3 that will not get dirty, you know what I mean?

4 I'm sure you've figured all this out. I'm sure
5 that's the way you're going, because I think this right here
6 again, when this Board approved the library, we was hoping
7 it would continue to help jump-start Rhode Island Avenue, and
8 I'm glad to hear you saying that you took a lot of your cue
9 from what's already there on 18th and Rhode Island, right on
10 the corner, which is the Woodridge Library.

11 So I appreciate that. And I think this is
12 definitely an important improvement, which will also help us
13 across the street, on down the street and continue to help
14 build that part of Rhode Island Avenue down to Eastern
15 Avenue, because if you leave Mount Rainier, sometimes you can
16 always tell when you get into the District.

17 The former planning director and I had that
18 conversation when we rode around. You could tell when you
19 leave out of Mount Rainier. They got way out ahead of us,
20 and I think this helps us, even though we're down on the 18th
21 Street side.

22 But let me ask about the loading. What would you
23 do? Would you load off of -- explain that whole loading way
24 to me, how you're going to load?

25 MR. UPWALL: Maybe we can let Ms. White.

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1 MEMBER WHITE: Sure. So the proposed plan is to
2 load on Rhode Island Avenue. We looked at Hamlin Street as
3 an option, but wanted to avoid any impact to the residents.
4 Rhode Island Avenue does have rush hour restrictions from
5 4:00 p.m. to 6:30 on this side, which works well because we
6 expect loading would take place between 7:00 a.m. and 4:00
7 p.m., primarily for the type of uses that are proposed.

8 ZC CHAIR HOOD: What time are we going to load on
9 that side?

10 MEMBER WHITE: 7:00 a.m. to 4:00 p.m.

11 ZC CHAIR HOOD: Okay. So we're also going to have
12 a designated area, no parking, loading zone? Are we going
13 to do that --

14 MEMBER WHITE: At this point, we don't think it's
15 necessary. When we looked at the parking that's available
16 during the peak times, there were 11 spaces just in that
17 block alone of Rhode Island Avenue. Closing the curb cut is
18 going to add another couple of spaces. So there's more than
19 adequate space from what we can see for -- during loading to,
20 you know, for vehicles to use the space on Rhode Island
21 Avenue on that same block.

22 ZC CHAIR HOOD: So one of the things that we don't
23 want to create is an impact.

24 MEMBER WHITE: Right, absolutely.

25 ZC CHAIR HOOD: So we don't want to create one,

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1 and you're saying there's not one there now?

2 MEMBER WHITE: Exactly.

3 ZC CHAIR HOOD: When you build it, we're going to
4 come, because I know I plan on -- Mr. Montague, I'm going to
5 meet him up there. So I already know that's going to happen.

6 MEMBER WHITE: I already know you're going to walk
7 there, though.

8 ZC CHAIR HOOD: No I'm not, I'm going to be looking
9 for a parking space. So but seriously, let's make sure.
10 Let's just think about that again, because I'm not -- it's
11 not a show-stopper for me, but I just think we need to think
12 about that.

13 MEMBER WHITE: Yeah. Separate from this, down the
14 road as the project is developed, if there is a need for an
15 application for a reserve loading space, that can certainly
16 happen separate from this process.

17 ZC CHAIR HOOD: Okay, okay. So you're saying that
18 can happen after the fact?

19 MEMBER WHITE: Yeah, absolutely.

20 ZC CHAIR HOOD: Okay, all right, all right. I'm
21 going to take your word on it. Now I'm looking here at the
22 pictures. A picture is worth a thousand words to me. I'm
23 looking at the mural. Was that discussed also with the
24 community? If there's going to be a mural, and I know the
25 BZA might not get into that, but I'm going to get into it.

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1 MR. UPWALL: There it is. I'm glad you brought
2 that up. It really hasn't been brought up, but again it's
3 sort of -- it sort of furthers the concern that Commissioner
4 Hart mentioned, and that is we really -- I think in my nature
5 I just don't want to ever sort of create a blank wall that
6 people have to stare at.

7 So that's a demising wall. It's a party line.
8 It's a property line wall. It's not like we can do much with
9 it. But our thought is that we would commission it or try
10 to engage a local artist to do a mural, until which time
11 eventually the property to the east were developed.

12 ZC CHAIR HOOD: Okay. So we're going into that
13 knowing that's an at risk wall. We know that eventually
14 somebody may come along and develop, and that will be
15 covered.

16 MR. UPWALL: Yeah, and get it covered, yeah, yeah.

17 ZC CHAIR HOOD: Okay, okay. And Hamlin Street,
18 let me ask. The neighbors on Hamlin Street, what was their
19 response? I know what the ANC, but you know I pretty much
20 know that ANC. But the neighbors who live on Hamlin Street,
21 what has been their interaction? Because they're the ones
22 who are most affected. Ms. Washington, can help me? What
23 was their interaction?

24 MS. WASHINGTON: We've got a lot of support from
25 neighbors that live on Hamlin Street, as a matter of fact.

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1 ZC CHAIR HOOD: Okay, right across the street on
2 Hamlin?

3 MS. WASHINGTON: In fact, they were -- well, I'm
4 going to tell you. Mostly it has been support. We've had
5 one resident voice concerns about loading and also about
6 trash pickup, and we've taken those comments into
7 consideration in our design and, you know, trying to load in
8 the front. I don't know -- we've got -- right now, we've got
9 empty dumpsters that are on both sides of Rhode Island, also
10 Hamlin Street.

11 The grease traps, the dumpsters are out there.
12 They're unsightly and they're problematic. So we want to
13 close in. So that's the other reason why our design
14 incorporates a compacter and trash removal inside the
15 building. So we'll eliminate, yeah. So we'll eliminate those
16 things now which are really unsightly and as I said,
17 problematic, and we're going to put the trash inside the
18 building.

19 So, but there probably will be a trash truck that
20 comes down the street, you know, sometime during the day.
21 It's a private, it's going to be a private trash collector,
22 so we can limit the hours of trash removal. But we can't
23 totally insulate from --

24 ZC CHAIR HOOD: Okay. I understand that. So I
25 think though, and this will be my last comment, I think

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1 though I really am concerned about that loading, because I
2 know the BZA and I know the Commission. One of the things
3 that we get -- we actually need to try to improve is make
4 sure that we don't start blocking up streets when it comes
5 to loading.

6 As you know that's -- Ms. White knows I'm sure,
7 this is a big issue around the city, and we don't want this
8 to start here. But anyway, it is what it is. I think this
9 is definitely an improvement, definitely an improvement to
10 what I see now. So, okay. Thank you Mr. Chairman.

11 BZA CHAIR HILL: Okay, thank you. Actually, I'm
12 going to try to move this along here just a little bit. Mr.
13 Blanchard, a couple of things. I guess what -- I think we're
14 going to end up having a continued hearing, just so we can
15 get if we need to have any kind of comments or questions from
16 you, we will. But some of the things, just so I don't forget
17 it again.

18 We need the revised self-cert from you before
19 then. I'd also like to see like all of whatever the final
20 plans are, you know. If you could just give us an exhibit
21 with that, okay, that separates from all the different
22 options. And then also the DDOT report, right? So that's
23 something that we would also want to see.

24 We would also want to see anything from the Office
25 of Planning if they do want to submit a supplemental, in

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1 terms of -- we haven't gotten to you yet, but in terms of
2 like, you know, any of the things that they have, we'll be
3 putting forward.

4 And then, and I'm going to turn to the
5 Commissioner here because you've been so patient all day
6 long. But also, and I don't mean this as too much of a joke.
7 But just so, you could also submit -- you could submit
8 something that asks Mr. Upwall to be an expert, you know, so
9 that he will be in our book perhaps if you want to. It's up
10 to you, because he seems like an expert to me.

11 We've approved a whole lot of people with a lot
12 less, you know, to him. Then so, we might as well get that
13 out of the way, so I don't have to do that again if he ever
14 comes before us, but I don't know. So Commissioner, do you
15 have any -- well first of all as you know, because you've
16 been here before, you get an opportunity to ask questions if
17 you do have any questions, and an opportunity also to present
18 in the same capacity that the applicant does, because you as
19 an ANC are a party.

20 And so I'm just going to go ahead and let you do
21 whatever you'd like to do, and then we'll see where we go.

22 MR. MONTAGUE: Thank you very much. I'm going to
23 be brief because it's been a long day, and this -- I still
24 have other cases to come. One of the things, the conditions
25 for the SMD approval was the handling of traffic, trash, and

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1 some other elements.

2 Commissioner Hart mentioned about the blank wall.
3 One of the mitigating factors is that there are old growth
4 trees along Hamlin that won't be removed. So neighbors who
5 live behind it, they visually don't see the building,
6 whatever we put up there. So it's a limited view. So even
7 if it was a curtain wall, they're not so much objecting.
8 They were more concerned about walkability, about traffic
9 that would come.

10 Ms. Washington had a compactor room put in, so
11 limited trash pickup, which was a major concern. She's
12 removing the curb cuts. So there was a concern about
13 traffic. But they are adding back spaces. In addition, she
14 is working hard because this won't come to fruition for 18
15 months. So she's been working with other area people to find
16 parking within a walkable distance. Woodridge is not filled
17 with a lot of people who walk, okay. We have a lot of
18 seniors.

19 So they would like to avail themselves of this,
20 and so of course I'm going to drive. I'm not -- if I've got
21 to walk, I'm not going to walk, okay. So I'm like get out
22 of your car. But one of the things that this does that
23 Woodridge itself is sorely in need of, particularly Rhode
24 Island Avenue, the original -- when the \$20 million library
25 was built, it was to have a coffee house/luncheon room built

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1 into it.

2 Library administration converted that into a main
3 reading room, which we sorely needed. The library is
4 literally at capacity every time those doors open until they
5 close. They have great programs, this, that and the other.
6 But again, there's a place -- there's no quick place for, as
7 you say, healthy options to eat. I'm not always a healthy
8 option person, but one of the things that we're getting
9 almost immediately come this summer is the transition housing
10 at 1700 Rhode Island Avenue.

11 The encouragement is that they -- we want them to
12 have a place that they can go and get proper food, as opposed
13 to junk food, okay. The closest place they would have to go
14 is 7-Eleven. They could walk all the way down to Good Foods.
15 But if this is across the street, there's a chance, greater
16 chance they're going to go there and find something to eat.
17 There is development which is coming across the street at
18 18th and Rhode Island Avenue, which will be finished in the
19 next two years.

20 There's parking across the street, where there's
21 the old car shop or whatever, which is up for sale for now
22 for like a million and a half. We expect that there is going
23 to be a need, an immediate need for a place for people to go
24 and be able to eat and sit down, which is in short supply in
25 Woodridge, okay.

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1 So we're very much in favor of this happening.
2 We've in favor of development done right. And so we, as Ms.
3 Washington well knows, I'm on it, okay. I'm all over it.
4 So regardless of who's bringing the projects, they get the
5 same scrutiny. They get the same concerns about traffic.
6 They get the same concerns about trash pickup. They get the
7 same concerns about parking and how you're going to address
8 it. If it's not done in a way that we feel benefits the
9 neighborhood, we won't approve it. Thank you.

10 BZA CHAIR HILL: Okay Commissioner. Well first
11 of all, again thanks for coming down here. Thanks for
12 staying so long.

13 MR. MONTAGUE: Sure, sure.

14 ZC CHAIR HOOD: I just have a question for my
15 friend. Commissioner, I heard you mention about traffic
16 impacts and how you talked to Ms. Washington, because I do
17 know there are adverse impacts. It's just how we address
18 them. How did you all address the adverse impact of parking?
19 What was mentioned?

20 MR. MONTAGUE: One of the concerns was, and this
21 goes back to my work at the Friends of the Woodridge Library,
22 is that there has been talk about closing that section of
23 Hamlin Street right at that intersection because people will
24 come and they will jump that and not stop, and there have
25 been several accidents.

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1 But DDOT and Emergency Services say that's an
2 central route for them to get into Woodridge. So closing it
3 is almost a non-option. So how do you -- we limit, parking
4 is normally limited there, to library deliveries and this,
5 that and the other. But people will come and they will still
6 park.

7 The issue as far as traffic, which Ms.
8 Washington's project isn't even creating, it's traffic coming
9 off of Rhode Island Avenue onto Hamlin. So if there are
10 still options that are being investigated even outside of her
11 project, to manage that small piece of area, given the flow
12 of just the normal traffic, people going to the library,
13 this, that and the other.

14 ZC CHAIR HOOD: So let me ask you this. Has ANC
15 5C asked for an overall traffic study from the city?

16 MR. MONTAGUE: No.

17 ZC CHAIR HOOD: Okay. That's a hint.

18 MR. MONTAGUE: But --

19 ZC CHAIR HOOD: That's a hint. Just take that.

20 MR. MONTAGUE: I took it.

21 ZC CHAIR HOOD: Okay, all right. That's all I've
22 got Mr. Chairman. Thank you. Not necessarily germane to
23 this project, just we need to probably start looking at that.
24 Thank you.

25 MR. MONTAGUE: Commissioner Hood, I will mention

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1 this. One of the shortcomings of the comprehensive plan of
2 the city was the shortcomings of how the city viewed areas
3 out in the county, okay, and this was one of the things that
4 we have repeatedly talked about, the traffic management.
5 Because it's an in and out for commuters. There's no stop
6 off and this, that and the other.

7 So projects that will come before you in the
8 future, and there will be many, will all have that same
9 concern.

10 ZC CHAIR HOOD: Okay, and I know you're on the
11 comp plan as well, so okay.

12 BZA CHAIR HILL: Commissioner, just real quick.
13 When you said that one was for sale that then will be
14 developed, is that the one in the top right corner there?

15 MR. MONTAGUE: Yes.

16 BZA CHAIR HILL: That little island thing?

17 MR. MONTAGUE: Yes.

18 BZA CHAIR HILL: Do you know what the address is
19 of that?

20 MR. MONTAGUE: It's 18, is it 1800? No, it's
21 because it's on the side, on the east side of -- I think it's
22 1800. It's got to be 1800 Rhode Island.

23 ZC CHAIR HOOD: What's the address of the library,
24 1801?

25 MR. MONTAGUE: 1801 Hamlin.

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1 ZC CHAIR HOOD: So it's probably 1800.

2 MR. MONTAGUE: 1800. It's got to be --

3 ZC CHAIR HOOD: Mr. Montague will give that to us.
4 When he walks past there tomorrow, he'll call us.

5 BZA CHAIR HILL: I was just curious. Okay. Let's
6 see, right. So does anybody have any questions? Do you have
7 any questions? I hope you say no. Do you have any questions
8 for the ANC?

9 MR. BLANCHARD: No.

10 BZA CHAIR HILL: Okay, great, all right. Oh and
11 just so everybody knows now, we are going to put -- we're
12 going to take lunch after this. So whoever's still here is
13 going to be here after lunch, and yeah. So can I turn to the
14 Office of Planning please?

15 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman.

16 BZA CHAIR HILL: So that means best case, 2:45.
17 We're back here at 2:45, okay. There you go please.

18 MS. BROWN-ROBERTS: Okay, good afternoon Mr.
19 Chairman and members of the BZA. Let's see. The applicant
20 has requested a variance from the FAR and special exception
21 from a number of other things as outlined in our report. I
22 wanted to address the FAR variance and question. As you see
23 outlined in our report, that within this zone there's a
24 maximum FAR of 2.5 which is allowed, and with a maximum of
25 1.5 FAR for residential.

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1 And in this case, the applicant is asking for a
2 full 2.49 FAR for commercial uses. As you may know, the
3 Office of Planning has been -- not been very supportive of
4 increases in FAR above what's allowed, and in this case, the
5 FAR that is taking out some -- the FAR for the residential,
6 that is allowed within this zone.

7 In this case, we have made the exception because
8 we think that the applicant has demonstrated that there is
9 an exceptional situation that would not readily -- I'm sorry,
10 would not readily accommodate the residential use along with
11 the commercial use on this site. Therefore, we think that --
12 and they have met the exceptional situation resulting in a
13 practical difficulty basically because of the frontage on two
14 streets.

15 Again, it's a very -- it's a triangular lot that
16 also causes some problems. Having residential would also --
17 having to put in a separate core for the residential and the
18 commercial use, and therefore -- and because of the size
19 again, that would eat into how much habitable space that
20 would be left for the -- for the development. Therefore, we
21 are supportive of the reduction -- of the increase in FAR for
22 the commercial use on this site.

23 We also think that that will not be a substantial
24 detriment to the public good, and there will be no harm to
25 the zoning regulations. Regarding the special exception for

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1 the penthouse rooftop bar, the applicant has provided
2 buffering from Hamlin Street, and we think that its enclosed
3 nature, that the effect on neighbors, on the neighborhood
4 properties will be minimal.

5 Regarding the parking, I think for Option B nine
6 spaces are required, and zero will be provided. Again, due
7 to the size and shape of the property, it is not feasible for
8 the applicant to provide the required parking on site.
9 However, there are some -- there are some parts of the
10 requirements that have to deal with parking off site, and
11 again we are going to depend on the recommendation from DDOT
12 to address some of those issues.

13 Regarding the loading, again we are supportive of
14 not providing the loading space, again because it will take
15 up so much space and reduce the usable space on the property,
16 and the applicant has demonstrated that they're able to
17 provide on-street loading.

18 Then they've also requested a special exception
19 from the rear yard and again, as demonstrated in the
20 applicant's -- as demonstrated by the applicant, that to
21 provide the rear yard would significantly eat into the size,
22 the developable area that will be left, and therefore the
23 rear yard, they've asked for the special exception from the
24 rear yard, and we believe that they have met all the
25 requirements for not providing the rear yard.

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1 Therefore, we can -- we recommend approval.
2 Again, dependent on DDOT addressing some of the issues
3 regarding parking. Thank you Mr. Chairman.

4 BZA CHAIR HILL: Okay. Does the Board have any
5 questions for the Office of Planning?

6 MEMBER WHITE: It's just a comment. Thank you,
7 Ms. Brown-Roberts, for providing the detail regarding how the
8 criteria was met. I think your report was very good. So
9 yeah, I did have concerns initially about the floor area
10 ratio for the variance request that was being made. As you
11 know, that's a higher bar to reach.

12 But I think you spelled it out to my satisfaction,
13 and based on the facts and based on the unique nature of that
14 property, I'm satisfied with your analysis. And just for a
15 comment, I think the project is very interesting. Food
16 deserts are real in urban areas, so I think this really
17 presents a very exciting opportunity. But we have to get
18 through the rest of the analysis and make a decision on it
19 first. But I think it's a very unique and very attractive
20 project.

21 BZA CHAIR HILL: Okay. Anyone else for the Office
22 of Planning? Does the applicant have any questions for the
23 Office of Planning?

24 MR. BLANCHARD: No questions.

25 BZA CHAIR HILL: Does the ANC have any questions

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1 for the Office of Planning?

2 MR. MONTAGUE: I'm good.

3 BZA CHAIR HILL: Okay, all right. Let's see. Is
4 there anyone here who wishes to speak in support? Is there
5 anyone here who wishes to speak in opposition? Okay. Mr.
6 Blanchard, is there anything you'd like to add before we
7 adjourn for the continued hearing?

8 MR. BLANCHARD: Yes. I'd just like to mention,
9 quickly.

10 BZA CHAIR HILL: Sure.

11 MR. BLANCHARD: So I'm going to make kind of an
12 abbreviated conclusion now, and if we need to say anything
13 later at the continued hearing about traffic. But I'm going
14 to stand on the record of our filings, and as far as meeting
15 their requirements for both special exception relief and
16 variance relief. In our prehearing statement, we expanded
17 on the issues dealing with FAR, to fill out the record as to
18 how we have met the unique circumstances, how the triangular
19 lot creates a practical difficulty and how the additional FAR
20 really does not adversely impact the zoning regs or the
21 zoning map.

22 And I just wanted to add one thing about, a couple
23 of things about the comp plan compliance, that we're not
24 inconsistent with the comp plan. We're consistent with the
25 generalized policy map. This is a main street, mixed use

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1 corridor. We're consistent with the existing land use map.
2 This is a designated commercial, this particular site.

3 We're consistent with a future land use map, and
4 this is a striped, moderate density commercial. It's also
5 moderate density residential. But this is a moderate density
6 commercial used for this particular site. And we're
7 consistent with the area elements in the comp plan Chapter
8 24 for the Upper Northeast area element with regards to
9 neighborhood shopping. That's 1.1.6, and with regards to
10 infill development with retail and that is 2.5.4. Finally,
11 the implementation element in Chapter 25 under 2.2. That's
12 using zoning to achieve design goals and promote using,
13 exploring zoning and other regulatory techniques to promote
14 excellence in the design of a new building.

15 So we believe, based on those components of the
16 comp plan, that this project also meets -- it's not
17 inconsistent with the comp plan. And that's my conclusion.

18 BZA CHAIR HILL: Okay, great. Thank you. Let's
19 see. So how long do you think it will take to get something
20 from DDOT? I know nobody has an answer for me, okay. I
21 don't know what to do in terms of postponement is what I'm
22 trying to get to. Like how long would it take to do the
23 other things, like the revised self-cert and the plans. That
24 won't take you very long; correct?

25 MR. BLANCHARD: Correct.

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1 MEMBER WHITE: We think two weeks for DDOT would
2 be reasonable.

3 BZA CHAIR HILL: Okay. So two weeks for DDOT
4 let's say. Mr. Hood, when are you back with us?

5 MR. MOY: June, June 12th.

6 ZC CHAIR HOOD: June 12th.

7 BZA CHAIR HILL: June 12th.

8 ZC CHAIR HOOD: Is that too late? I'll come in for
9 this.

10 BZA CHAIR HILL: No, but June 12th, that sounds
11 about right, right? That's three weeks from now; correct?
12 So let's go ahead and do this for a decision on June 12th.
13 That's pretty good; it's only three weeks from now, and
14 right. Continue, well I mean continued hearing and we can
15 just deliberate if we get everything we need. And then let's
16 see. Yeah, does anybody got anything else?

17 All right, okay. Well thank you all very much.
18 Also to voice Ms. White, second Ms. White, I think it's an
19 interesting project. I think, you know, what you guys have
20 got going on is really nice. I like everything that you said
21 and what the architect did and, you know, looks nice. So
22 let's see. So we're going to break. We'll see you guys back
23 on June 12th. Is that what I said?

24 MR. BLANCHARD: Yeah. I was going to add that if
25 it's fine with the Board, if we could ask for materials by

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1 Friday, May the 31st, if it's possible?

2 BZA CHAIR HILL: Yes.

3 MR. BLANCHARD: Okay, thank you.

4 BZA CHAIR HILL: Okay, and then I do see the
5 people from Houston, I don't know, whatever that -- Houston,
6 Howston, I can't remember the application. You might want
7 to check with the Office of Attorney General just before at
8 some point when we're -- just before you go for lunch,
9 because there was a question that I have asked through her.

10 And that's it. You guys have a nice rest of your
11 day, and we're going to go for lunch, you know. If we get
12 back here at 2:45, that would be pretty strong. So probably
13 between 2:45 and three o'clock, okay. Thank you all very
14 much. Thank you.

15 MR. BLANCHARD: Thank you.

16 (Whereupon, the above-entitled matter went off the
17 record at 2:15 p.m. and resumed at 3:11 p.m.)

18 BZA CHAIR HILL: All right, Mr. Moy. We're going
19 to try to get back started here again, and we're going to go
20 a little bit in a different order or whatever. We're down
21 to our last four. So we're going to go with 19967 next Mr.
22 Moy, and then we're going to see if we jump around, because
23 I know there's three from one particular owner, and then
24 we'll see what happens. But okay, thank you.

25 Application No. 19967

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1 MR. MOY: Thank you, Mr. Chairman. So the Board's
2 back from recess, and it's about 3:15 p.m. So the Chair
3 actually just called to the table Case Application No. 19967
4 of District Properties.com, and I'm going to read the amended
5 caption, which is relief for area variances from lot
6 dimension requirements of Subtitle D, Section 302.1 and the
7 side yard requirements of Subtitle D, Section 206.2, to
8 construct a new detached principal dwelling unit in the R-1-B
9 Zone at premises 2429 Girard, G-I-R-A-R-D Place, Northeast,
10 and it's parcel 15519.

11 BZA CHAIR HILL: Okay, great. Can everybody come
12 to the table please? Okay, if you can please introduce
13 yourselves for the record, from my right to left?

14 MR. MONTAGUE: Jeremiah Montague, Jr.,
15 Commissioner, ANC 5C, SMD 5C07.

16 BZA CHAIR HILL: Great. Thank you Mr.
17 Commissioner.

18 MR. DAVIS: Adam Davis, District Properties.

19 MR. SECK: Omar Seck, District Properties.

20 BZA CHAIR HILL: Okay, great. All right. Well,
21 Mr. Seck, are you going to be presenting to us today?

22 MR. SECK: Yes.

23 BZA CHAIR HILL: And Mr. Davis, with his help?

24 MR. SECK: Yes.

25 BZA CHAIR HILL: Okay, all right. So --okay.

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1 Well Mr. Seck, let me go ahead and start with, you know, what
2 happened since the last time you were here, and kind of walk
3 us through that. What happened since the last time you were
4 here?

5 MR. SECK: Yes, good afternoon Chairman and all
6 Board members. Last time, the case was a little bit heard,
7 I would say, but we had a problem with the affidavit of
8 posting and maintenance. Commissioner Montague was here as
9 well, and he was heard, and I did explain our experience with
10 the ANC meeting that day, and the rejection from the ANC, not
11 to support the project. And you decided, Chairman Hill, to
12 postpone it until the affidavit of posting and maintenance
13 are accurate.

14 BZA CHAIR HILL: All right. At the time,
15 Commissioner, were you down here for that case? Okay.

16 MR. MONTAGUE: I'm always here.

17 BZA CHAIR HILL: Right.

18 MR. MONTAGUE: Seems like it.

19 BZA CHAIR HILL: Okay. All right Mr. Seck. Well,
20 why don't you go ahead and walk us through your project and
21 what you're trying to do and how you think you're meeting the
22 standard for us to grant your request, and then we'll just
23 kind of go from there. I'll put 15 minutes on the clock, Mr.
24 Moy, so I know where we are, and you can begin whenever you
25 like.

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1 MR. SECK: Thank you, Chairman Hill. What we're
2 seeking here is the side yard variance for a record lot, an
3 existing lot, to go from eight feet to three feet on either
4 side of the building. We're proposing to build a building
5 that is 19 feet wide on a lot that's 25 feet wide, and it's
6 going to be three, a two story and a basement.

7 We -- from last time we were asked to look at the
8 side elevation with the window, to make sure the windows are
9 not falling directly in line with the side neighbors, and we
10 revised that and uploaded it in the system. We also changed
11 the front elevation from last time to look close to the
12 neighboring houses, by making the porch a full porch and also
13 -- I'm sorry.

14 MR. DAVIS: Yes, we amended, we have typical floor
15 plans and elevations that we use for our houses, but we got
16 the feedback that make sure that our site elevations -- the
17 windows do not line up with the existing houses adjacent to
18 the property, as well as make them A-frame houses, consistent
19 with the existing houses around. So we've made those updates
20 based on the recommendations of the ANC.

21 BZA CHAIR HILL: Is that over in -- is that
22 Exhibit 33?

23 MR. SECK: I don't know the exhibit number, no.

24 BZA CHAIR HILL: You're not sure. Okay. You can
25 keep going, you can keep going.

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1 MR. DAVIS: Is that a rendering that you're
2 looking at?

3 BZA CHAIR HILL: No, there's updated architectural
4 plans in 33, but I'm not sure if those are the ones you're
5 speaking about.

6 MR. SECK: I do have a copy here that I don't know
7 if I can pass it on.

8 BZA CHAIR HILL: No, that's okay. I mean they
9 must be in the record, if you did upload them into the
10 record.

11 MR. SECK: Yes, yes.

12 BZA CHAIR HILL: I guess and Mr. Seck, you know,
13 I'll go ahead, you know. I did pat you on -- I didn't
14 formally pat you on the back from last week, but I'm glad
15 that you're moving us along in the proper direction. It is
16 helpful if you know what the exhibits numbers are, just when
17 you kind of put them in the record, so that I don't have to
18 search so hard or we don't have to search so hard.

19 MR. SECK: Thank you, Mr. Chairman.

20 BZA CHAIR HILL: But please continue.

21 MR. SECK: Yes. So basically that is what we did
22 as far as --

23 VICE CHAIR HART: Mr. Chairman, just -- I'm sorry,
24 Mr. Seck. I just saw this and I thought we probably should
25 kind of deal with this before we started to have this kind

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1 of discussion. There was a request for party status in
2 opposition that was submitted, I guess it was submitted --
3 it's dated today. So I just want to make sure that we kind
4 of deal with that, since it is part of the record.

5 And I literally just saw it like five minutes ago.
6 Yeah, so I think it was submitted today. So I think that we
7 should probably deal with this, so that -- to address this
8 now, so that we can -- because if we were to grant it, then
9 there might, there may be --

10 BZA CHAIR HILL: Yeah, that's fine, that's fine.
11 I understand.

12 VICE CHAIR HART: Okay.

13 BZA CHAIR HILL: Okay.

14 VICE CHAIR HART: It's Exhibit 46.

15 BZA CHAIR HILL: So first of all -- yeah I see it,
16 now that you're mentioning it. So first of all, isn't there
17 a timeliness issue here?

18 MS. LOVICK: Yes. It's supposed to be submitted
19 14 days prior to the hearing, so it is untimely and so you
20 can decide whether or not you want to -- assuming that the
21 person's here. First, I would just -- I would see if the
22 person is present.

23 BZA CHAIR HILL: Sure, I understand, I understand,
24 but then --

25 MS. LOVICK: And then you would do -- but it is

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1 untimely, and so you would need to waive -- you would need
2 to determine whether you want to waive the fact that it's
3 untimely.

4 BZA CHAIR HILL: Right.

5 MS. LOVICK: Then if you did decide that you want
6 to waive the fact that it's untimely, if the person's here
7 you could consider the merits.

8 BZA CHAIR HILL: Okay, as to why it's untimely.

9 MS. LOVICK: Well no, the merits as to whether or
10 not --

11 BZA CHAIR HILL: Oh right, I'm sorry. She meets
12 the standard.

13 MS. LOVICK: -- you want to grant it or whether
14 you want to deny it.

15 BZA CHAIR HILL: Right, okay. Is the person here?
16 Okay, no.

17 MR. MONTAGUE: She was here earlier today.

18 BZA CHAIR HILL: Okay, okay, so all right. So
19 then since the person's not here, we're just going to dismiss
20 the request. I forget how it works.

21 MS. LOVICK: Right. I mean what you can do is you
22 can just -- you can just -- you can decide that you're going
23 to just not consider it because of the fact that --

24 BZA CHAIR HILL: Yes, but I'm sorry. There was
25 something in the regulation. I'm trying to remember the

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1 wording exactly.

2 (Simultaneous speaking.)

3 MS. LOVICK: -- if the person --

4 BZA CHAIR HILL: The person doesn't show.

5 MS. LOVICK: If you consider the merits of it,
6 then it's deemed withdrawn if the person doesn't show.

7 BZA CHAIR HILL: Right. So it's deemed withdrawn
8 if the person doesn't show.

9 MS. LOVICK: Yeah. You can do it that way.

10 BZA CHAIR HILL: Right. So it's withdrawn. The
11 person isn't here. Okay, thank you.

12 MS. LOVICK: But you waived, you decided to waive.
13 You're saying you waive the fact that it was untimely?

14 BZA CHAIR HILL: I can't -- I don't know if I
15 waive the fact that it's untimely, because I can't talk to
16 the person to figure out whether or not they're meeting the
17 criteria.

18 MS. LOVICK: Right.

19 BZA CHAIR HILL: And in the application it doesn't
20 do it. They didn't, they didn't do -- they didn't fill out
21 what they needed to fill out.

22 MS. LOVICK: Exactly. So I would suggest that you
23 just, you just -- you don't accept it into the record,
24 because you'd need to waive the fact that it was untimely to
25 consider the merits.

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1 BZA CHAIR HILL: Okay. So all right. Does OAG
2 follow along? So I mean are you guys following along? So
3 we're not going to accept it into the record, unless I hear
4 anything different from the Board. Okay. So we're not
5 accepting it into the record. So thank you Vice Chair Hart,
6 and Mr. Seck, please continue. Oh sorry.

7 MR. MONTAGUE: Can I ask a quick question?

8 BZA CHAIR HILL: Sure.

9 MR. MONTAGUE: On this same thing.

10 BZA CHAIR HILL: Sure.

11 MR. MONTAGUE: So if a person asks for party
12 status and they must be present at the time of the hearing,
13 right?

14 BZA CHAIR HILL: That's okay. They have to be
15 present at the time of the hearing, and they also have to
16 have applied for party status 14 days before the hearing.
17 And so --

18 VICE CHAIR HART: Yeah, in this case this was 14
19 days before -- this is the second time we've had this.

20 BZA CHAIR HILL: Right.

21 VICE CHAIR HART: So they would have had to have
22 done it 14 days before that.

23 BZA CHAIR HILL: Before the first one.

24 VICE CHAIR HART: Yeah.

25 BZA CHAIR HILL: They would have had to -- they're

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1 like, you know, they're way late. So, but just for future
2 reference, yeah. That's what you're asking about.

3 MR. MONTAGUE: Exactly. So I need to be able to,
4 when they go off the rails, I have to be able to --

5 BZA CHAIR HILL: Right. Fourteen days before --
6 14 days before the first hearing.

7 MR. MONTAGUE: The first hearing.

8 BZA CHAIR HILL: They have to apply, and then they
9 have to fill out and meet the criteria for which they can be
10 granted party status, which is in the regulations. And so,
11 okay. So Mr. Seck, please continue.

12 MR. SECK: Thank you, Chairman Hill. So the
13 variance request, we did answer last time that this is a
14 record lot. It's only 25 feet. The only way to build a
15 habitable house would be to consider the 19 feet width and
16 leave out three feet on the side. We can't add on either
17 side of the building, because it's already existing
18 properties there.

19 Also, this particular house, its narrowness falls
20 in line with the existing houses that have been there for
21 years. And we have done the rendering to fall in line with
22 the look of it by changing the roof frame, making --

23 BZA CHAIR HILL: I'm sorry. Falls in line with
24 the existing house that's been there for years? What do you
25 mean? I thought the lot's empty.

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1 MR. SECK: No, the existing houses beside --

2 BZA CHAIR HILL: Oh, on the side of it. Okay.

3 MR. SECK: Yes, on the side. Right, right, right.
4 The lot is empty, yes. And so we could not add extra space
5 for the side yard variance request, and also the -- excuse
6 me one second. I just lost something.

7 BZA CHAIR HILL: Sure.

8 MR. SECK: Yes. The windows, I did say that. I
9 think it was brought up to our attention, either by the
10 Commission or the Office of Planning, which we answered that
11 as well. So we just would like to have this variance
12 granted, considering --

13 BZA CHAIR HILL: Okay. Mr. Seck, I'm going to
14 move on from you, because I know we did talk about a lot of
15 these things the first time, and you've been before us
16 several times about this exact same design that you've tried
17 to do around the city. And so I'm going to go ahead and turn
18 to the Commissioner.

19 Commissioner, so do you have first of all, would
20 you like to make your presentation now, and also do you have
21 any questions for the applicant?

22 MR. MONTAGUE: I don't really have a -- the house
23 itself is on -- it's actually on a parcel. So one of the
24 questions I actually had, and based on the discussions that
25 we had earlier today, it says it's on a record lot. But it's

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1 described as a parcel, not a lot, as far as the records that
2 I can see. So I don't know if that makes a difference or
3 not.

4 But the parcels would actually go back to the
5 1840s, and how, how we got into this probably at this point
6 is not -- is moot. The issue that the constituents have
7 raised about it and their vehement objection to it is
8 sticking that house on that tiny lot. So I heard the
9 question well, what is a person supposed to do if they
10 purchase a lot and they know that they're going to have to
11 get a variance in order to build on it?

12 Well my response to that and to everybody else
13 who's asked is that you knew it. You walked into it eyes wide
14 open, that you knew that you were buying a lot that you
15 potentially may not be able to build on. We never think that
16 far ahead. We just see open space, I can build on it, cha-
17 ching, cha-ching, cha-ching, right?

18 So the -- not introducing the other side issues,
19 which is what is the complaint of the neighborhood from this
20 particular developer, in the adjacent lot what the concern
21 is is that if you grant a variance for this particular house,
22 the developer has an adjacent Parcel No. 7, which is on the
23 other side of 2431, which they own, and do they intend to do
24 the same thing.

25 So we will be dealing with this issue again. So

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1 if we settle this matter now about sticking a house on a non-
2 conforming, under-sized lot, then we will have not set a
3 precedent to allow this to occur on a nearby lot by the same
4 developer. I think that that's what's driving people, beyond
5 the destruction of property and public space and this, that
6 and the other.

7 That's what's driving it, and it's that particular
8 set of houses along that street go back to 1905. So they
9 were pre-1958 zoning regulations, you know. So they were --
10 that particular area was granted certain things because
11 planning back then didn't see it as an important issue. What
12 they did is most people who bought lots, they would buy one
13 parcel and then buy an adjacent one as their side yard, so
14 therefore nobody would build on it.

15 We got to this because the previous owner owned
16 three parcels, the one where the house is and the two on each
17 side to prevent building on either side. So when it was sold
18 by the heirs and the parties came in and purchased them, it
19 unraveled. And now we have the problem where we have an
20 existing residence which is being renovated by one property,
21 and then we have an issue, a residence which has just been
22 renovated, and now we're trying to stick another residence
23 in between those two.

24 BZA CHAIR HILL: Okay. I think the Office of
25 Planning might be able to answer some of the questions that

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1 you're having. At least I'm going to ask the Office of
2 Planning in terms of parcel versus, you know, record lot or
3 I don't know. And also then however the -- so we'll get to
4 the Office of Planning. Does the applicant have any
5 questions of the Commissioner?

6 MR. SECK: No.

7 BZA CHAIR HILL: Okay. Commissioner, did you have
8 any questions of the applicant?

9 MR. MONTAGUE: I'll ask this question. If you
10 don't, if you don't get the variance that you're seeking,
11 what happens next?

12 MR. SECK: Commissioner with all due respect, I
13 would not be able to answer that question right now. We do
14 believe that the lot is buildable and the house we're putting
15 in there will look similar to what's there. Those houses
16 beside them have three feet side yard, and it would be hard
17 for me to believe that.

18 BZA CHAIR HILL: So Mr. Seck, I'm just -- just
19 because I'm actually curious then too. If you don't get the
20 variance, what are you going to do with the lot? You just
21 don't know.

22 MR. SECK: I do not.

23 BZA CHAIR HILL: Okay, all right.

24 VICE CHAIR HART: Can I ask a question?

25 BZA CHAIR HILL: Sure.

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1 VICE CHAIR HART: Mr. Seck, did you have the --
2 did you consider selling the -- splitting it in half, and
3 selling the lot to the neighbors that are on either side of
4 this lot? I mean there are -- you're saying that the
5 development is the only way that you can go, and I'm kind of
6 saying well, it's not. You could sell it to the people that
7 are actually, you know, currently living in the houses that
8 are on either side of this lot.

9 MR. SECK: Commissioner Hart, that consideration
10 has not been made yet, so it would be hard for me to
11 elaborate on that, and it would be something that I would
12 have to take back to my office and discuss it, if that was
13 to be considered, in case this is denied. We hope not.

14 VICE CHAIR HART: Okay.

15 BZA CHAIR HILL: Okay. Anybody have any questions
16 for the Commissioner? All right. Let's turn to the Office
17 of Planning.

18 MR. JESSICK: Thank you Mr. Chairman and members
19 of the Board. The Office of Planning doesn't have very much
20 to add to our testimony from the last hearing. We feel that
21 the application meets the variance test. There are three
22 variances here. Because it is a parcel, it needs to be
23 converted to a record lot in order to obtain building
24 permits.

25 So the applicant needs variances to lot area, lot

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1 width, and side yard. We feel that they have made the
2 variance test, so we're recommending approval. We did speak
3 to the applicant about some of the design changes. We
4 appreciate those changes, which we feel will help the house
5 in question blend in better with the adjacent houses on that
6 street. But I'm happy to take any questions.

7 MEMBER WHITE: Just a quick clarification. So the
8 area variance, is it for side yard and lot, or just side
9 yard? I thought it was just side yard, but I guess I need
10 to just verify that.

11 MR. JESSICK: Often what we see in these cases is
12 it's an existing record lot. If you have that, you don't
13 need the variances for lot area and lot width. In this case,
14 it is a partial. So in order to convert to a record lot,
15 they do need the variances to lot area and lot width, plus
16 the variance for side yard.

17 MEMBER WHITE: Okay, thank you.

18 BZA CHAIR HILL: I know we did go through this
19 again. If you could quickly kind of go through how you got
20 to the analysis in terms of their meeting the variance test,
21 because I just want to remember again. And then are there --
22 so we see this one or we see this particular design a lot
23 from this particular applicant.

24 So are there other three foot side yards around
25 in this row? Is that what the applicant was stating, that

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1 before the '58 regs, I guess that there are a lot of like
2 three foot side yards in this neighborhood?

3 MR. JESSICK: Yes, that's correct Mr. Chairman.
4 In fact, if you take a look at Sheet 002 of I believe it's
5 Exhibit 33 or 34, no I guess 33, that does show this property
6 together with some of the adjacent properties, and --

7 BZA CHAIR HILL: Right. 061, 060, 008. They're
8 all the same?

9 MR. JESSICK: Yes and they all, according to this
10 image, they all have 2-1/2 foot side yards on both sides.

11 BZA CHAIR HILL: Okay.

12 MR. JESSICK: And then I can also refer you to the
13 vicinity map on page four of the Office of Planning report,
14 which is Exhibit 31.

15 BZA CHAIR HILL: Okay.

16 MR. JESSICK: Which shows Girard Place, but also
17 if you look at Mills Avenue, there's that same pattern
18 repeated even further to the east on 26th Street. Although
19 the homes are bigger, they do tend to have narrow side yards.

20 BZA CHAIR HILL: Okay, and that was all just
21 because of the prior '58 reg, I mean before '58 regs?

22 MR. JESSICK: Yes. I think I would attribute it
23 to that. When these homes were built, there were probably
24 no -- there was probably no requirement for an eight foot
25 side yard. So --

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1 BZA CHAIR HILL: Okay, okay, all right. Anybody
2 else have questions for the Office of Planning?

3 VICE CHAIR HART: Yeah. Just to also kind of
4 follow up on that, so this is -- while this particular
5 portion of this particular part of Girard Place has this kind
6 of development pattern, it's also true that there's a lot of
7 other different types of development patterns in this, even
8 in the several blocks around on Hamlin Street, on 25th
9 Street, 24th Street.

10 I mean they have larger side yards. They have
11 smaller side yards. They have, you know, houses that are on
12 much larger lots. So while I understand what you're saying
13 along this like five, you know, six different parcels in this
14 particular part of the neighborhood, the larger neighborhood
15 has kind of a variety of different housing types. Not
16 housing types, side yard examples, I guess.

17 MR. JESSICK: Yes, I think that's a fair
18 statement.

19 VICE CHAIR HART: Thank you.

20 BZA CHAIR HILL: One more question I guess. So
21 again this is a variance, and I think that they are making
22 a good argument for the variance. What would you do with the
23 lot if -- I mean the Office of Planning thinks that the
24 variance is needed so that the lot can be used. If it
25 weren't used, then I mean what could the applicant do with

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1 it?

2 MR. JESSICK: If the variance were to not be
3 granted, I don't believe they could obtain a building permit.

4 BZA CHAIR HILL: Right, because the house would
5 be like nine feet wide or something, or what is it?

6 MR. JESSICK: Well, they would even need a
7 variance to create the record lot itself, regardless of what
8 the side yard is. So they couldn't get a building permit
9 even for a nine foot house. So --

10 BZA CHAIR HILL: All right. The record -- if you,
11 okay, I got it. Okay, okay. Does anyone else for the Office
12 of Planning?

13 ZC CHAIR HOOD: Yeah. I didn't see this in your
14 analysis, and I know the Vice Chair mentioned this. Well
15 maybe this is better suited for District Properties. Mr.
16 Chairman, can I ask District Properties? In that area, how
17 many other infills have you done? Can you name some, since
18 you have probably done some real recently?

19 MR. SECK: In this particular area, none.

20 ZC CHAIR HOOD: This is your first one?

21 MR. SECK: For this particular area.

22 ZC CHAIR HOOD: So you've had other attempts
23 though; correct?

24 MR. SECK: Well, as the Commissioner mentioned,
25 there's another lot beside it on the other side of the

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1 existing house, that we're looking to --

2 ZC CHAIR HOOD: That you're looking to do. But
3 District Properties has done some -- has either attempted --
4 this may, I don't know. How long have you been with District
5 Properties?

6 MR. SECK: Almost 15 years.

7 ZC CHAIR HOOD: Okay. So you know -- you all have
8 attempted to do one, or maybe I'm getting it mixed up with
9 Ward 7. So I'm looking at -- I think you did one in this
10 area. You got to do one in this area. I know you did Ward
11 7.

12 MR. SECK: Ward 7, right.

13 ZC CHAIR HOOD: But I think you attempted to do
14 one in this area, and I just don't remember what the outcome
15 was. Okay, all right. Thank you, Mr. Chairman.

16 BZA CHAIR HILL: Okay. Does the applicant have
17 any questions for the Office of Planning?

18 MR. SECK: No Chairman.

19 BZA CHAIR HILL: Does the ANC have any questions
20 for the Office of Planning?

21 MR. MONTAGUE: No, because I know how we got to
22 where we are. As far as the land distribution and the
23 variety of houses and this, that and the other. So I was
24 trying to say was going through that little history lesson.

25 BZA CHAIR HILL: Yep.

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1 MR. MONTAGUE: The reason that the uniformity in
2 Mills and Belair, although it's not evident, obvious in
3 Belair and Girard, which was originally Randall Avenue back
4 in the 1900's, they were all parceled out specifically with
5 12 to 15 foot lots, and they were -- and they eventually,
6 through negotiation or whatever, the folks that live on 25th
7 and 26th and whatever, different developer.

8 So that was Henry Veith, and he owned a lot of the
9 property and this, that and the other. So that's why those
10 houses are distinctly different from the ones that were on
11 Mills, because two separate subdivisions, original
12 subdivisions. The Mills subdivision was from where 25th and
13 Girard meet east, I mean west, and Calvert property ran from
14 there east.

15 And so that's how all of this is not
16 characteristic. So back in 1909, when they extended the
17 permit system of highways out in that area, the Surveyor,
18 Office of Surveyor basically said "Doesn't connect to major
19 roads, doesn't do this, doesn't do, so we'll just leave it
20 alone." So we have inherited this situation, and
21 characteristically --

22 BZA CHAIR HILL: Commissioner, I've got to cut you
23 off. Just one second. I do appreciate it and I do remember
24 this. You walked us through this the last time. Do you have
25 a question for the Office of Planning?

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1 MR. MONTAGUE: No. Oh yes.

2 BZA CHAIR HILL: Sure, okay.

3 MR. MONTAGUE: So they can't build -- unless they
4 get the variance, they can't create a record lot?

5 MR. JESSICK: Correct.

6 MR. MONTAGUE: So they couldn't build on it. So
7 it's in your court.

8 BZA CHAIR HILL: It's always in our court. It's
9 in our court right now. Okay. So all right. Let's see, oh.
10 Anybody here wish to speak in support? Anyone here wish to
11 speak in opposition? Mr. Commissioner, would you like to add
12 anything at the end?

13 MR. MONTAGUE: I'm good.

14 BZA CHAIR HILL: Okay. Would you guys like to add
15 anything at the end?

16 MR. SECK: Thank you, Chairman.

17 BZA CHAIR HILL: Okay. Yes, go ahead.

18 MS. JOHN: I have one question for District
19 Properties. So if I look at page four of OP's report, you
20 purchased all three lots, three parcels?

21 MR. SECK: No Commissioner Johns, no.

22 MS. JOHN: Okay. What did you purchase, just the
23 subject site?

24 MR. SECK: 09 and 007.

25 MS. JOHN: Well, I'm looking at -- I don't have

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1 those numbers.

2 MR. SECK: Okay.

3 MS. JOHN: So if you look at page four, you just
4 purchased the subject site?

5 MR. SECK: Well another one, but I don't have OP's
6 report to be -- to refer to page number. But on the site
7 plan, which I'm sure it's the same, after 2431 is decided.
8 Then after 2431 is the next lot.

9 MS. JOHN: So there's a house on the one next to
10 it?

11 MR. SECK: Yes.

12 MS. JOHN: So did you purchase that lot?

13 MR. SECK: You mean the existing --

14 MS. JOHN: The house.

15 MR. SECK: The existing house? No. That's under
16 another developer who's renovating it right now.

17 MS. JOHN: I see, okay. So there really is no way
18 for you to enlarge that parcel?

19 MR. SECK: That's correct.

20 MS. JOHN: Okay, thank you.

21 BZA CHAIR HILL: And then following up that
22 question, you guys -- I think I asked this last time. You
23 guys own 007?

24 MR. SECK: Yes.

25 BZA CHAIR HILL: And so you're going to be back

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1 before us for 007 at some point?

2 MR. SECK: Yes.

3 BZA CHAIR HILL: Okay, all right. Okay. Anybody
4 else? Okay. Mr. Seck, you said you don't have anything else
5 to add at the end?

6 MR. SECK: No Chairman, thank you.

7 BZA CHAIR HILL: All right. I'm going to close
8 the hearing. Is the Board ready to deliberate? Okay. Do
9 you want to start? Somebody else want to start? No. Okay,
10 fine. I can start. I don't know. I mean I shouldn't say
11 I don't know. I agree that I think that, you know, they meet
12 the variance test I think, you know. I think that, you know,
13 they can't -- that's the whole point of having this ability.

14 It's not that the city is supposed to have lots
15 that they can't develop on. I don't know what they were
16 supposed to do with it if we didn't grant the variance, and
17 I guess I don't even know what's going to happen now. It
18 looks like to the Commissioner's point, and this is true.
19 I mean you can easily see what's going to happen next to 007.

20 And so, you know, I think that they've made their
21 argument that this is something that is not necessarily, you
22 know. They're filling out that row, but I do think that
23 according to the analysis that was provided by the Office of
24 Planning, I would agree with that analysis as to how they 're
25 meeting the requirements for us to grant this.

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1 I guess my only hesitancy is that, you know, in
2 terms of like you know, I guess I don't think substantial
3 harm or detriment to the public good, you know. I suppose
4 those two homes next door to the vacant lot, you know,
5 they're not entitled to that view. I think this might have
6 been the case where I was -- where there was another one
7 maybe in this particular ANC, where they could -- I think
8 somebody said they were going to maybe pool their money
9 together and buy the lot, you know, or something.

10 And so but -- so okay. So I'm going to be in
11 favor. I'm disappointed that obviously the ANC is not in
12 favor, but I do think they're meeting the criteria. So
13 anyone else?

14 MS. JOHN: I thought that the Office of Planning
15 did a good analysis, and it doesn't appear that the applicant
16 is able to expand the site, to purchase additional property
17 to make the site wider. And so in order to build a usable
18 building, this relief is required. So I believe that
19 applicant has satisfied the practical difficulty prong of the
20 test, and I would have no objection to supporting the
21 application.

22 VICE CHAIR HART: So I've had some, which you're
23 probably well aware, I've had some reservations about this
24 because I am still not sure that I -- that there aren't other
25 avenues for the owner of the property to go down. I think

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1 that they might be able to actually just sell the land to the
2 adjacent owners.

3 I mean this is -- I understand that the variance
4 test is a very high bar. I do -- and in saying that, I do
5 think that the applicant has met the actual, the first two
6 prongs of the variance test. But I'm just -- I'm just not
7 sure about the substantial detriment to the public good
8 aspect of it.

9 And actually I think that there is -- that there
10 is a detriment to the public good. My problem is that I
11 haven't figured out whether or not I think that's
12 substantial, and I just -- I have a hard time with it because
13 I think that these are -- this is -- the building on the, I
14 guess that's east of the existing building that's being
15 renovated, that's east of this vacant lot, has stood there
16 for a very long period of time.

17 The houses that are to the west have also stood
18 there for a very long period of time. So at some point this
19 lot seemed as though it were a side yard, and because it
20 isn't a -- you know, because the entire block is not this
21 same way, like on both sides and you kind of say oh okay, I
22 get it, I get the development style, I just get a -- you
23 know, this is just a -- this could be construed as being a
24 different configuration for this particular lot, that the
25 renovated house that's next door to them is on.

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1 So it just -- I've been pulled in I guess a couple
2 of directions. So I have a hard time saying that I would be
3 able to support the application. I just don't feel that they
4 have -- I just don't feel that they have dealt with the
5 substantial detriment to the public good aspect of it. I
6 just think that putting a house there is, you know, it hasn't
7 been there in quite a long time.

8 So I just think that that's not something that
9 people would have really have expected there to be on this
10 site. So because of that, I don't think I can support the
11 application.

12 BZA CHAIR HILL: Mr. Chairman, we'll jump --
13 (Simultaneous speaking.)

14 ZC CHAIR HOOD: I would just add on to what the
15 Vice Chair mentioned. But I was not going to support it,
16 because again, while I know that the -- I know that the
17 numbers and I know what the BZA looks at, to me I have a
18 problem with it. Maybe we need to look at our regulations
19 again, even though we just did.

20 I have a problem with us, some of these infills.
21 I haven't -- this doesn't, just doesn't start tonight, today.
22 I've had a problem for years of how we deal with this, and
23 I think the Vice Chair brings up a valid point. I don't
24 believe that the applicant has exercised all of his options.
25 For me though, and I know this is not something the BZA looks

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1 at and I have never understood why. I think, and it goes
2 along with what the ANC is saying about changing the
3 character of their neighborhoods.

4 This to me does that. But I think the Vice Chair,
5 I would agree with him. Maybe we need to ask him to start
6 looking at other avenues of how to -- maybe to sell to both
7 other property owners or do something else, because I think
8 this is very -- every little piece of green grass we have in
9 this city, we don't always have to try to find a place to
10 squeeze something in.

11 I think it just goes against what people who have
12 long-standing folks and even the newer folks who are coming
13 to the city and changing their look, and look and feel of
14 their neighborhood. I think that's right along with the ANC,
15 especially one of them. I looked at a couple of the items
16 that the ANC had, but I think that one to me spells out,
17 stands out the most for me, along with what the Vice Chair
18 mentioned. So I too will not be supporting this application.

19 (Pause.)

20 MEMBER WHITE: Yeah. This is tough one because
21 I guess you could kind of make an argument either way. I
22 mean I've got the Office of Planning on one side that's made
23 a pretty strong case in terms of how the criteria was made
24 from a variance perspective.

25 But I also have the ANC Commissioner here that

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1 represents the community, and it's kind of the voice of the
2 area and has expressed some of the concerns that he has with
3 respect to granting the variance relief for the side yard,
4 as well as lot occupancy as well? Or is it just side
5 subdivision?

6 So I think for me, I'm probably going to side with
7 the community with respect to this, because I think the
8 community is kind of like the best measure for what they feel
9 comfortable with in terms of whether or not it's meeting the
10 prong of substantial detriment to the public good. And also,
11 you know, with respect to harm to the zoning regulations.

12 So I think an argument could probably be made
13 either way, but I think at this point I'm going to give, side
14 on the weight of the community for this particular one, and
15 not vote in support of this particular application.

16 BZA CHAIR HILL: Okay. So I'm going to keep
17 talking for just one second, just because I want to
18 deliberate, right? I actually want to deliberate a little
19 bit, because this is now something that we've had and this
20 is coming up, and this is -- you know, I just want to know
21 where we kind of are talking and leaning with my colleagues
22 here, right.

23 So I'm not -- I suppose with this, and this is why
24 I'm thinking this through a little bit. Like to your
25 comment, Commissioner Hood again, that these infill lots.

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1 Like I'm a little confused as to also, you know, while we've
2 been here now for a little while, like how we seem to be
3 going through these in terms of these infill lots, and how
4 they are getting approved or not approved.

5 You know, like I'm trying to figure out at least
6 mentally my own consistency. Like what is it that I'm trying
7 to get to. I don't, I don't, I can easily start that I
8 wouldn't want to suddenly have my side yard disappear and
9 have something come next to me that is in this way.

10 In this particular case, because each one is
11 different, right, or is supposed to be different, right, in
12 this particular case it actually is an infill that seems to
13 complete kind of the row. And although I guess I could see
14 that that is then more a detriment. When you say "the public
15 good," the public good of those particular units on either
16 side of the lot, right.

17 I mean the public good in general, I think it
18 actually kind of looks nicer and now whether or not it's not,
19 I mean that doesn't really go to the variance test, as to
20 whether or not I think it looks nice. But as far as the
21 public good detriment goes, I think that it completes kind
22 of the row. Then this particular -- and now I'm even kind
23 of thinking that this is kind of something that, you know,
24 I'm saying this out a little bit more clearly, so that I can
25 understand where myself and we might fall on future cases,

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1 right.

2 Because then there's the other issue now, that
3 even the same developer has another lot that now is going to
4 be here, but it's not the end, right. So that means that one
5 side is going to have, you know, a three foot side yard and
6 the other side's going to have the alley, you know. So is
7 that something that we would then maybe get behind.

8 I mean I'm just trying to kind of understand a
9 little bit more, so that you know, so that even the people
10 know. And then, no that's okay. No, that's right. And let
11 me just -- the last statement is that like, you know, I again
12 am just kind of stuck with like what are you supposed -- like
13 what are you supposed to do with these things, right?

14 And so like, you know, we as a board are like
15 supposed to decide whether or not this variance test is being
16 met, not to then say hey, you've got to go figure it out more
17 creatively, you know. So I'm just, I'm kind of opening it
18 up. I'm not really trying to change everybody's mind. I'm
19 just trying to understand how we're going to move forward
20 with this in the future.

21 VICE CHAIR HART: I think that -- again, I think
22 I'll say, if this were a road that had a kind of uniform
23 along the entire road, it looked to it and this was a missing
24 piece, then I would say okay, I think I'd be more amenable
25 to that. But I think that there is a -- there seems to be

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1 a variety of different types of building types in this area,
2 and it doesn't seem like it's missing.

3 I mean one of the things that brought, that was
4 brought up, and I think it was during the -- in the OP
5 report, it was this kind of, you know, and I use the term
6 because it's -- well, kind of a gap tooth. There's like a
7 missing something that's there.

8 And I would -- there are places that I could agree
9 with that, and say yeah, I think you're right. This kind of
10 looks like it's missing and, you know, it's probably that
11 kind of -- I can understand this. This seems to make sense.
12 But in this case, I mean these houses have been here for, you
13 know, many, many decades.

14 This is not a -- this is not like something was
15 there and it was taken down and it's like oh my gosh, now
16 we've got to fill it. Or this was, you know, they are. I
17 don't know. It just doesn't seem like there is a consistent
18 look along this street, and that because of that, then it's
19 -- there are different types of housing that's happening
20 here. And so it doesn't seem as though this kind of needs
21 to be filled like you might do in an area that there are, you
22 know, 20 houses in a row and one's missing from that block.

23 And so I just feel that there's this -- I don't
24 think that there is a -- I think the issue about the
25 detriment to the public good is whether or not -- to me it

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1 seems as though there, that you'd have to say that there is.
2 I don't know. I just don't think that that's, that the
3 applicant has met to my understanding of what that is, that
4 this is not going to be detrimental.

5 I think that it might be, and that's the part that
6 -- that's the problem that I have with it, is because it's
7 not a -- to me, it's not a clear cut, oh yeah I can clearly
8 see that, and I can agree with what the applicant is saying.
9 I just don't agree with them. So I just kind of see it as
10 in this particular case, I think that that's the way that I
11 feel about it, and where I come down on it.

12 Now if we have another, you know, parcel, I'll
13 look at that parcel and determine if that's something that
14 I could. I'm not going to say because I don't know all of
15 the pieces to any other parcel that's on here. I'm just
16 trying to look at this particular parcel. That's it.

17 BZA CHAIR HILL: Okay, and since you know, we all
18 want to be here forever, and again I'm sorry. I mean this
19 is something I'm trying to figure out, right. And Ms. John,
20 you know anybody can chime in. But I'm having a discussion
21 with the Vice Chair a little bit it sounds like, that like,
22 you know, so what would happen -- so people buy these things
23 and then it's obviously a gamble, right. It's a risk as to
24 whether or not they can make some use out of these infill
25 lots.

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1 I mean that's what I'm trying to -- kind of I'm
2 understanding more about the infill lot situation, right.
3 And so, you know, this particular applicant has a lot of
4 chips out there it seems like, in terms of whatever. But I
5 mention that because then I'm thinking, and I'm just having
6 this public discussion thing that we do, right, which is that
7 then you the applicant, again it's kind of like you're
8 hanging this on the detriment to the public good, right.

9 I'm just kind of talking this through a little
10 bit, which is that now we put this particular piece of
11 property in kind of a loser situation, right. Like they have
12 to -- I mean that's why I'm saying that it's, you know, the
13 practical difficulty of it. So now it's like you can't do
14 anything with it, so now what are you going to do with it,
15 and it's on the owner, right. They have to figure it out.

16 But like so then now they either have to see if
17 they can get any money as they said, the other side
18 neighbors, which at this point they're the only people that
19 can buy anything. So like they have no negotiating place.
20 Or you kind of wait and hold out until the next board comes
21 through, which is like you know, in whatever that is. But
22 I mean they can't come back for a year, right.

23 So you can roll the dice every year, right, and
24 see what you've got with that.

25 VICE CHAIR HART: I mean I kind of see it as --

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1 to me, it is you. It wasn't as though this were a done deal
2 and being able to easily convert this into a house. When you
3 put money down, you are putting money down on a -- it is a --
4 in some ways it is a gamble, and the gamble is I think that
5 this is something that I can develop and I'm going to try to
6 do that.

7 You know, I can't say that that's going to be
8 -- it is going to be something that I can -- I have to say
9 that in this case, I don't think that I can support that.
10 I don't know about other developments, so someone else might
11 say that --

12 BZA CHAIR HILL: Well that's -- I guess what I'm
13 just saying is like it's again, it's the substantial
14 detriment to the public good is what this particular case is
15 being -- you know, y'all are like saying no to, right. So
16 just kind of trying to understand for future. Does anybody
17 have anything else they'd like to add?

18 MS. JOHN: I think I would like to add something.
19 Oh, Mr. Commissioner.

20 ZC CHAIR HOOD: I don't think -- no. I was just
21 -- one thing. I don't think you can even bring another case.
22 This case has to stand, as you already know, has to stay in
23 the zone. This is not precedent-setting for anything else.
24 This is, the arguments and the factual issues that have been
25 argued in this case, and I think that this case, it may be

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1 different from the next one.

2 I don't know. I probably won't be on that one.
3 But I can just tell you that I think the Vice Chair -- I
4 already had character issues, but I think what the Vice Chair
5 said. We're not telling anybody what to do, but when you buy
6 stuff and if you go ahead and develop something, you proceed
7 at your own risk.

8 But I don't think we'll start saying okay, now
9 every case is going to rest its head on that, because look
10 at the setbacks. Every case doesn't rest their hat on one
11 particular issue. You all took them case by case, and I
12 think this is the same procedure that you have to go by. I
13 just don't think this is flavored right, and I don't think
14 this is -- I think in this particular case, I have problems
15 with the character issues within this community and this
16 neighborhood. So that's where I am, along with the what the
17 Vice Chair mentioned.

18 So I just -- I just don't want to leave -- I don't
19 want anyone to leave the impression that okay, we did it in
20 this case and now we've got to do the same thing here. No,
21 it doesn't work that way.

22 BZA CHAIR HILL: No, I'm not saying -- we're not
23 setting -- that's not what I'm saying at all. There is no
24 standard that's being set. However, sometimes there's a
25 trend, and so I just kind of want to talk through a little

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1 bit more what kind of we are. So Ms. John, you had a
2 question?

3 MS. JOHN: I don't have a question, but the test
4 is substantial detriment to the public good. So here, we
5 have housing being created. It's a 19 foot wide building,
6 and the three foot side yard is not unusual in that
7 neighborhood. First thing is that we have approved similar
8 projects before, and with the same scenario, 25 foot wide lot
9 with a narrow building.

10 So I'm with you, Mr. Chairman. I don't know if
11 we adopt that standard, this standard, then where we go from
12 here. I think, you know, it's an infill lot. It means that
13 there's space that can be built on. And are we saying that
14 it's fine, it's better to have this lot sit vacant than to
15 allow it to be developed for housing?

16 So I respectfully disagree with my esteemed
17 colleagues, and I would support. I will continue to support
18 this application, because I can't see where this is different
19 from others that we have approved. And so that's where I am.

20 ZC CHAIR HOOD: You know Mr. Chairman, let me just
21 add to what Ms. John. It's fine to have this. That's why
22 it's five of us. It's good to have this debate and this
23 discussion. It maybe needs some fine tuning. But that's why
24 it's five of us. We don't always have to agree on anything
25 anyway, you know. So I say call for the vote.

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1 BZA CHAIR HILL: No, yeah. I mean and I agree.
2 Like this is why there's five of us, and this is the longest
3 discussion we've had in a long time. And so, but I think
4 that, you know, definitely the four of us that are here every
5 week, we know that like, you know, how we kind of talk
6 through things.

7 And so there you go. So I'll make the first vote.
8 I'm sorry, I'll make the first motion, unless you had
9 something else to add Ms. John.

10 MEMBER WHITE: Ms. White.

11 BZA CHAIR HILL: Ms. White, sorry.

12 MEMBER WHITE: That's okay, that's okay. No, I
13 think, you know, it is hard to be consistent on every case
14 and, you know, I did struggle with this case a bit. But the
15 variance test for me was just a very high bar, and I did give
16 weight to the comments of the community and the ANC. I
17 thought that they identified issues that told me that they
18 believe that this would have a detrimental impact on their
19 community. So I'm going to stick with my opinion at this
20 point.

21 BZA CHAIR HILL: Okay, no problem. All right.
22 So I'm going to make a motion that's going to fail, but I'll
23 make a motion that we approve Application No. 19967, as
24 captioned and read by the Secretary and ask for a second.

25 MS. JOHN: Second.

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1 BZA CHAIR HILL: Motion made and seconded. All
2 those in favor say aye?

3 (Chorus of ayes.)

4 BZA CHAIR HILL: All those opposed?

5 ZC CHAIR HOOD: Opposed.

6 MEMBER WHITE: Opposed.

7 BZA CHAIR HILL: Motion fails. Mr. Moy.

8 MR. MOY: Yes. I would record the vote as 2 to
9 3 to 0, this is on the Chairman's motion to approve the
10 application for the relief, seconded by Ms. John. Opposed
11 to the motion is Vice Chair Hart, Ms. White and Mr. Anthony
12 Hood. The motion fails.

13 VICE CHAIR HART: And I'd like to also propose a
14 motion --

15 ZC CHAIR HOOD: Before you do that, let me just
16 ask because my memory sometimes goes away. Previously when
17 it happened like that, do we need to make a motion, a
18 different motion, because sometimes I've been counseled over
19 the years no. Now I'm seeing -- Mr. Moy is shaking his head
20 yes, we do. I was asking Ms. Lovick.

21 MS. LOVICK: I mean you can, you can --

22 ZC CHAIR HOOD: But it's not really necessary.

23 MS. LOVICK: No, you don't have to. I don't think
24 you have to, but because of the fact that -- I mean you did
25 it as an approval initially. Now you're doing -- you're

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1 doing the reverse, and I guess that's what the BZA typically
2 has done with this.

3 ZC CHAIR HOOD: And I just, yeah. But I'm just,
4 because we've been through this before, and I've been through
5 this on the BZA about that. But if you all have done it that
6 way, I will do it again. Yeah, but previously --

7 BZA CHAIR HILL: You've been here longer than us.

8 ZC CHAIR HOOD: That's what I'm saying.

9 (Simultaneous speaking.)

10 BZA CHAIR HILL: This was the way we had done it
11 before. But if what you're now saying is that we don't need
12 to make another motion, because the motion failed. And so,
13 and now I guess he's just asking for future clarity --

14 ZC CHAIR HOOD: Let me just say I'm just asking,
15 because I've been counseled both ways.

16 BZA CHAIR HILL: Right, and so I guess now we're
17 asking OAG, do we make another motion or is that the end of
18 the discussion.

19 MS. LOVICK: I mean if you -- I don't think it
20 matters. I mean the motion failed. If you -- the
21 application is denied.

22 ZC CHAIR HOOD: So you still end up saying well,
23 I did that for a reason because I just -- and Ms. Lovick
24 wasn't here who advised me, so I want to make sure that's
25 clear. But so it won't be that Anthony Hood said it. So go

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1 ahead and make your motion, so it won't be any problems later
2 on.

3 MS. LOVICK: Yes, please do.

4 VICE CHAIR HART: So I'll just make a motion to
5 deny Application No. 19967 of District Properties as read
6 and captioned by the Secretary. Do I have a second?

7 MEMBER WHITE: Second.

8 VICE CHAIR HART: All those in favor of denying
9 say aye?

10 (Chorus of ayes.)

11 VICE CHAIR HART: Those opposed to denying it?

12 BZA CHAIR HILL: Aye.

13 VICE CHAIR HART: I don't know how that --

14 BZA CHAIR HILL: Ms. John?

15 MS. JOHN: Aye.

16 VICE CHAIR HART: So the vote is 3 to 2 to deny.

17 MR. MOY: Staff will record the vote as 3 to 2 to
18 0. This is on the motion of Vice Chair Hart to deny the
19 application for the relief requested. Seconding the motion
20 Ms. White. Also in support of the denial motion is Mr. Hood.
21 Opposed to the motion is Chairman Hill, Ms. John.

22 BZA CHAIR HILL: Okay. The motion fails or motion
23 carries. The application is denied. Okay, thank you
24 gentlemen. And you know what? I'm going to let you guys
25 take a break, because I'm going to come up and take the one

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1 that's not you guys, and we will come back and finish up with
2 you guys, okay?

3 MR. SECK: Thank you.

4 (Whereupon, the above-entitled matter went off the
5 record at 4:06 p.m. and resumed at 4:12 p.m.)

6 Application No. 19990

7 MR. MOY: Okay. So the parties at the table to
8 Case No. 19990 of Thomas Houston, captioned and advertised
9 for area variances from the lot dimension and lot width
10 requirements, Subtitle D, Section 302.1 and the side yard
11 requirements, Subtitle D, Section 307.1, to construct two new
12 semi-detached principal dwelling units, R-2 Zone, at 992 47th
13 Place, N.E., Square 5151, Lot 105.

14 BZA CHAIR HILL: Okay, great. Could you introduce
15 yourselves for the record please?

16 MR. HOUSTON: Yes. For the record, my name is
17 Thomas Houston, here representing Medici Road.

18 MR. CLARK: I'm Sheldon Clark, the principal with
19 the Fine Design Group, the architect of record on the
20 project.

21 BZA CHAIR HILL: Okay. Houston?

22 MR. HOUSTON: Houston, yes.

23 BZA CHAIR HILL: Mr. Houston. So you named your
24 project after yourself?

25 MR. HOUSTON: Just a clerical error. It's Medici

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1 Road throughout the whole project, but the one line where it
2 said put owner name, I put Thomas Houston.

3 BZA CHAIR HILL: Got it, okay. I was like that's
4 pretty good. All right. So why don't you go ahead and
5 explain to us what you're trying to do, and how you think
6 you've met the criteria for us to grant this relief. I'm
7 going to put 15 minutes on the clock Mr. Moy, and you can
8 begin whenever you like.

9 MR. HOUSTON: Sure, and if we could also just for
10 the record say we're also asking for the special exceptions
11 for the IZ as well.

12 BZA CHAIR HILL: Okay. OAG, I think they --

13 MR. MOY: Mr. Chairman?

14 BZA CHAIR HILL: Yeah sure. Okay, go ahead sir.

15 MR. MOY: I just want to amend the caption I just
16 read, because the side yard requirement should be under the
17 citation Subtitle D, Section 206.3, and that's all I have.

18 (Off microphone comments.)

19 MR. MOY: Okay. I've been advised by counsel that
20 it's Section No. 206.2. So Subtitle D, Section 206.3. This
21 is the side yard requirements.

22 BZA CHAIR HILL: Okay. So did they add the IZ to
23 the caption?

24 MR. MOY: Yes. I didn't read that yet? I believe
25 Subtitle C, Section 1001.2.

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1 BZA CHAIR HILL: Okay. So now we're all clear?

2 MR. HOUSTON: Yes.

3 BZA CHAIR HILL: Okay. So you can go ahead and
4 start whenever you like.

5 MR. HOUSTON: Perfect. Again my name is Thomas
6 Houston, and thank you, good afternoon. I just wanted to
7 take a couple of minutes to introduce Medici Road, as this
8 also hopefully won't be the first time that you see us for
9 projects. I'll talk to a little bit about what we think
10 about housing, and then spend some time talking about this
11 specific project.

12 So at Medici Road, we actually are an organization
13 that looks to reduce generational property by creating
14 products, and we recognized about a year ago that affordable
15 housing is one of the main products that we should actually
16 be creating, particularly in Wards 5, 7 and 8.

17 Just really quickly, we're really looking at how
18 do we reduce the gap between the poor and the upper class,
19 and again like looking at housing as being one of those
20 opportunities to create wealth. I'll first talk a little bit
21 about our viewpoint on affordable and workforce housing.

22 So what we're looking to do with housing is create
23 for-sale starter homes in the District. We also want to
24 control the sale price point to ensure that buyers are
25 walking into their home with 5 to 18 percent in equity, and

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1 we want to work with lower income D.C. residents that aren't
2 often outbid by people with larger disposable incomes.

3 We're looking at really creating a portfolio that
4 looks like single family homes that we're turning into two
5 or four unit homes or condos, finding vacant lots on the east
6 end and building one or two single family homes, or finding
7 empty 8 to 12 unit multi-buildings that we can turn into
8 condos, that we can do as mixed income to the 30 to 120
9 percent AMI levels.

10 Just really quickly. We are right now in the area
11 starting with small affordable housing projects, and look to
12 grow and start parting on those 40 plus unit projects that
13 we can start creating mixed income. The process to date.
14 In Q3 of 2018, we actually purchased a property through the
15 Vacant to Vibrant process. So 919 47th Place is a Vacant to
16 Vibrant project.

17 In Q4, we actually met with a Single Member
18 District ANC Commissioner Green about the project, and then
19 in Q1 made design adjustments based on his feedback. In Q2
20 of 2019, we actually met with OP about the project and made
21 some additional changes based on their feedback. December
22 of last year, we made some unofficial presentations to the
23 Deanwood Civic Association and the 7C ANCs.

24 In April of this year, we actually made the
25 official presentation to the Deanwood Civic Association and

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1 got their project support. Didn't get a letter of
2 recommendation, but we did get their support. April of 2019,
3 we actually met with the ANC Executive Committee meeting, and
4 then most recently had the official public support meeting
5 last week, where I believe they should have sent in a letter
6 of support.

7 And then there was one in opposition, and so even
8 though we didn't get an official letter of support, we did
9 speak to Ms. Tucker, to address her concerns and get support
10 for this project.

11 Just a couple of quick changes that we actually
12 made based on the community feedback. The buildings are no
13 longer three levels, they're two levels. We're adding brick
14 fronts so the homes aren't all vinyl. We're actually not
15 even using vinyl; we're using cement siding to protect
16 against fires, rot, etcetera.

17 We're creating the three foot side yards that are
18 building to the lot line. We're adding additional space to
19 the front yard. So requests to have landscaping where
20 traditionally landscaping doesn't exist on that street, and
21 then we're not asking for a parking variance. So we're
22 actually making, ensuring there's one parking spot in the
23 rear for each home.

24 And so just quickly I want to go over the overall
25 proposal, and then we'll go into talking about the actual

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1 what the project looks like and the variances that we're
2 requesting. We have currently a 33,589 square foot lot that
3 we want to separate into two equal lots of 20 feet in width
4 and 1,791 square feet in area.

5 Each lot will be developed with one family semi-
6 detached residence with a three foot side yard. There will
7 be a parking pad at each lot that will be accessed by a 15
8 foot wide alley. We're actually -- Medici Row is opting into
9 IZ, to utilize the IZ bonus for the lot dimensions, and then
10 one unit will be limited to the 80 percent median family
11 income for the life of the project, and lot area and lot
12 width will be lower than the minimum permitted under IZ in
13 the lower density zones, and so that's where the variance
14 relief will be required.

15 And so now I want to actually on the record submit
16 as our expert architect, to kind of go over the actual
17 dimensions and the specifics of the project.

18 MR. CLARK: All right. Thank you again for your
19 time. What we're proposing to provide are family-friendly,
20 three bedroom, two and a half bath homes in this area, that
21 provide some what we believe are market rate amenities at a
22 more affordable price point.

23 We're providing off street parking as well as the
24 front porches that will increase activity level on both sides
25 of the property, the alley side as well as the street side,

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1 promoting a safer community. Regarding the exterior of the
2 homes, we are -- and the approach up to the homes, since
3 they're elevated up off of the sidewalk and the road there,
4 proposing to rebuild the retaining wall along there. That's
5 consistent with the other homes on the surrounding block, and
6 create some more defensible space actually between the yard
7 and the front porch of the house and the street side there.

8 Aesthetically, the surrounding community is made
9 up of a mix of styles that are representative of their time,
10 but are tied together from scale and material and other
11 architectural features. It's throughout in the wider
12 context. It can be sometimes seen as a hodgepodge. On our
13 particular block, there are a number of one story bungalows
14 with sloped roofs that give it a two story feel, as well as
15 some post-war homes in the area on that block and just to the
16 south of that block, that are the post-war duplexes with flat
17 roofs.

18 What we're proposing is something that's really
19 part of our time. We'll make our contribution to the
20 community of our time, but do that in a way that's respecting
21 the materials and the size of what's happening actually in
22 the surrounding community there.

23 Let's see here. And the other thing that I'll
24 really comment on as we look through this, and if we go
25 through on the -- I believe it was here -- on the site plan.

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1 You can see here what the lot that's neighboring goes to the
2 south, as well as other homes that are along that street
3 there, that there is a series of smaller side yards that are
4 in the three foot to four and five foot range, that yield
5 basically six feet to ten feet between homes on the block.

6 We feel that going with this three foot side yard,
7 we're able to maximize the area of the house while still
8 providing the separation that's consistent with the
9 neighborhood, as well as access to the rear of the house is
10 there. So with this yielding a 20 foot yard -- a 20 foot
11 wide lot, with the three foot side yard, we're getting down
12 to 17 foot wide, which is a foot wider than the smallest
13 affordable housing units that we produce out on the market,
14 the 16 foot wide kind of AD/UAZ/IZ units.

15 Yeah, and just to walk through the floor plan
16 here, making sure that we actually create, even though there
17 are smaller homes, smaller units, but that they're family-
18 centric in the sense of that we actually have space for
19 dining rooms and not just eat-in kitchens that are sometimes
20 more appealing to the younger generations; that we actually
21 have three full-sized bedrooms and not, you know, kind of
22 that nursery minimal size bedroom that gets close in there,
23 but something that a family can actually use, as well as full
24 master suite. And I will yield the rest.

25 MR. HOUSTON: So I want to spend a little bit of

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1 time talking about the actual zoning relief that we're
2 requesting. First on the special exception for the IZ bonus,
3 1001.23. Based off that, opting into that and accessing that
4 bonus density, needing variance for the lot area, D302,
5 trying to go from the requirement of 2,500 of the IZ
6 requirement to 1,791.

7 The lot width IZ requirement is 25 feet,
8 requesting 20 feet, and then the side yard requirement of 8
9 feet, requesting 3 feet. I want to spend some time talking
10 about the burden of proof. So for the lot area and lot width
11 pursuant to 900, the harmony with the zoning regulation
12 intent. We actually recognize that both proposed semi-
13 detached structures are actually presented in the zone.

14 We've talked a little bit about the development.
15 Actually, it's filling in an infill and so that's vacant land
16 right now. But we're also including an IZ unit in the
17 overall proposal. The effect on the neighboring property.
18 We talk about no adverse impact, as light and air abutting
19 to the neighbors will be maintained. And then the onsite
20 parking will be consistent with zoning, because -- as that
21 will be providing that.

22 We'd like to talk about the area variance burden
23 of proof and asking for relief from lot width, lot area and
24 side yard. So the exceptional situation resulting in a
25 practical difficulty. The DACD covenant of the Vacant and

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1 Vibrant program actually requires a 15 year covenant, and if
2 we have a market rate home with a 15 year covenant next to
3 other market rate homes with no covenant, it makes it very
4 hard to sell that property.

5 And the 8 foot side yard result in a footprint
6 that's very narrow, undersized and inefficient for the
7 desired family size homes. No substantial detriment to the
8 public good. The proposed subdivision actually will be in
9 character with the surrounding development. Construction of
10 new homes on the subdivided lot would improve the residential
11 streetscape by providing desired housing that is actually the
12 last vacant lot on that whole street, and then three foot
13 side yards will allow for open space and landscaping.

14 If you look at the rest of the homes on that
15 street, the side yards are essentially the same, and our
16 homes are actually bigger than most of the other homes on
17 that street. Continuing the area of variance burden of
18 proof, the no substantial harm to the zoning regulations.
19 Our proposed development actually satisfies the intent to
20 ensure adequate open space on individual lots, and sufficient
21 space between existing and proposed uses.

22 And then this relief will actually allow for us
23 to create two record lots, resulting in family-sized housing
24 consistent in size and scale with existing development on the
25 street. With that, that's our presentation. Again, we thank

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1 you for your time and look forward to questions and
2 conversation.

3 BZA CHAIR HILL: Okay, great. Thank you. I have
4 a quick question. Could you go back to your plans, where you
5 had like the bedrooms?

6 MR. HOUSTON: Keep going back. One more I think.

7 BZA CHAIR HILL: Yeah. I was just curious. So
8 is that a bathroom door like on an angle in the top right?

9 MR. HOUSTON: Yeah. So that's a bath --

10 BZA CHAIR HILL: Oh, they're just -- there's two
11 doors, right. But it's on the angle there. So like one
12 opens and the other's closed or, okay.

13 MR. HOUSTON: Yes.

14 BZA CHAIR HILL: Okay. It's an angled wall, okay.
15 All right. Does the Board have any questions for the
16 applicant?

17 MEMBER WHITE: Which one has the IZ unit?

18 MR. HOUSTON: They're both equal. You won't be
19 able to tell.

20 MEMBER WHITE: Good, good. Good answer. I had
21 one other question, but go ahead, Mr. Hart.

22 VICE CHAIR HART: Just a quick question. So this
23 is actually for the architect. I'm sorry, what is your name
24 again?

25 MR. CLARK: Sheldon Clark.

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1 VICE CHAIR HART: Clark, Mr. Clark. So you were
2 looking at other houses up the street as precedent.
3 Typically what I look to see is how does this kind of fit
4 within, you know, the neighborhood and you know I see that
5 there were some, of course they're single family houses.
6 They all have -- most of them along this particular block
7 have, you know, some sort of a pitched roof, whatever. But
8 you're looking at a flat roof and I was trying to figure out
9 where did you get that from. I see some up the street but --

10 MR. CLARK: So about three or four houses further
11 up the hill, which would be further south. There's one post-
12 war, and I believe it looks like it's being subdivided up
13 into a duplex. As it is right now are multiple units. But
14 it's a flat roof, two-story flat roof structure there. And
15 then the ones at the end of that block are flat roof
16 structures.

17 I don't recall what the cross street is right
18 there, but basically it dead ends to the south at a -- it's
19 probably about either three or four post-war, two-story brick
20 flat roof structures.

21 VICE CHAIR HART: And so you're looking at that
22 as being --

23 MR. CLARK: We're looking even at the wider area
24 than that. We did a survey around Deanwood some years back,
25 prior to the Vacant and Vibrant program being issued, looking

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1 at a variety of lots that are in the area and different small
2 lots. And so we see stuff that is, you know, whether it's
3 from closer to early 20's and 30's with the bungalows, to
4 some of the post-war stuff in the 40's and 50's.

5 And then even some more adventurous stuff that was
6 done in the neighborhood that are flat roofs, very much in
7 their time in the late 70's-80's. It seems like there's a
8 lot of experimentation in the neighborhood. Some of it goes
9 over well; some of it doesn't go over well. We find the ones
10 that were more successful are more related in scale and
11 materials, versus some of the other ones that may have still
12 have a sloped roof, but are too large or too tall or too
13 skinny.

14 We feel that this is a -- will be a meaningful
15 contribution to the context, as well as where the
16 neighborhood is going towards the Sheriff Road intersection
17 just to the north of us, which is an MU Zone and we're the
18 transition point between the neighborhood and there.

19 VICE CHAIR HART: And thank you very much. And
20 which kind of leads me to, you have to have very good
21 materials to be able to pull of the, you know, to make it
22 look like you have some nice buildings that you're trying to
23 create. I was also looking at some of the houses that are
24 in the vicinity also have some like a porch area.

25 I mean I think you have an overhang, but I'm not

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1 really sure that's not necessarily a porch per se. Did you
2 think about it?

3 MR. CLARK: Yes. We're looking to basically
4 create porches there. So we have the stoop area, and then
5 creating the overhang and it's not illustrated on the
6 elevations, but there will be railings to protect from
7 falling off of the porch down into the landscaped area.

8 VICE CHAIR HART: And could you -- thank you very
9 much. Could you also kind of tell me a little bit again why
10 you have them -- you have them on like a plinth because you
11 -- because of the topography in the back? I'm trying to
12 figure out why they're as elevated as they are along the
13 street itself, because they seem somewhat high.

14 I mean you said something about it being kind of
15 defensible. I don't necessarily like the language, but I
16 think I understand what you're trying to do with it. I just
17 was trying to figure out what that -- why it was as high as
18 it was.

19 MR. CLARK: So to maintain crawl space on the
20 rear, and looking to build that way instead of going slab on
21 grade. So it's elevated off of the rear, and that's what's
22 dictating our elevation at the front of the home. It's
23 elevated in the same way that many of the homes are
24 elevated, but not to the same degree as some that are much
25 more dramatic or drastic.

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1 VICE CHAIR HART: So you -- you didn't want to
2 have slab on grade on the rear. You just wanted to have a
3 crawl space along the entire length?

4 MR. CLARK: Yes.

5 VICE CHAIR HART: And to do that, you thought that
6 it -- you are proposing this to address, to the crawl space,
7 which would then kind of elevate the building somewhat?

8 MR. CLARK: Yes, and then that we are able to --
9 with providing the landscape area in the front, that we would
10 be able to do shrubbery and other things that actually mask
11 the front of the porch. But having a nice play between the
12 contemporary materials, whether it's stamped concrete or a
13 block. That's creating that wall there with nice greenery,
14 and pulling all those elements together where sometimes you
15 might see an attempt at a contemporary composition, but
16 without the details and other things to pull it together.
17 It could just look undecorated box.

18 VICE CHAIR HART: Yeah. I mean I like the -- it's
19 a very uncluttered look, and I like that. It's a very clean
20 look. So I like, I generally like it. I'm not exactly sure
21 about the materiality, because I'm almost wanting to see like
22 brick on the entire front, but we don't really do that so --

23 I mean that's not something that we, that this
24 Board does. We're typically looking at whether or not you're
25 meeting the criteria and all that. But it just, I guess it's

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1 more of a personal preference --

2 MR. CLARK: And we don't -- when we bring in
3 masonry elements to help kind of ground elevation or space,
4 we'll look to do it at a limited way, unless it's something
5 that we feel is appropriate, that the whole brick, the whole
6 building be brick. I'm not a fan of the facadalism of
7 basically like we're just going to do brick on the front,
8 not return it around the edges.

9 So with this, we had the brick action to kind of
10 weight it, add some more warmth to the material pallet, but
11 not to do a brick facade that takes over the whole front.
12 But then you don't see it anywhere else in the project.
13 That's not that consistent with you look at the bungalows or
14 the cottage style homes in the area versus the things that
15 popped up in the early 2000's or late 90's.

16 That's not really part of our vernacular here in
17 Deanwood, and a lot of parts of actually inside D.C. It's
18 either all siding with the water table, or there's some play
19 with materials, but not just a stuck on brick facade.

20 VICE CHAIR HART: The contractor's special. Okay,
21 thank you.

22 BZA CHAIR HILL: Anyone else? Okay, turn to the
23 Office of Planning.

24 MS. THOMAS: Good afternoon Mr. Chairman, members
25 of the Board. We support the applicant's request for his

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1 special exception for the IZ and the variances for the lot
2 area dimension and side yard that's being requested. We do
3 support the fact that there's an exceptional situation with
4 respect to the programmatic requirements for the Vacant and
5 Vibrant program.

6 In this situation, where we have one single lot
7 and we are in support of the -- of having an IZ unit on this,
8 on the lots. So with that, I would stand on the record of
9 our report, and I'd be happy to take any questions. Thank
10 you.

11 BZA CHAIR HILL: Does anybody have any questions
12 of the Office of Planning?

13 ZC CHAIR HOOD: Ms. Thomas, typically we don't
14 have a lot of applicants who opt in. We usually have them
15 trying to opt out. Is that correct or am I incorrect?

16 MS. THOMAS: Yeah, and when we looked at this,
17 this was the better route. He could have gone without doing
18 optimum and perhaps gone the road of a subdivision, a
19 theoretical lot in a sense. But it was a little bit too
20 messy and this is the cleanest route, plus we get an IZ.

21 ZC CHAIR HOOD: Okay. I probably should have --
22 so thank you, Ms. Thomas. I probably should have said this,
23 Mr. Chairman, when you were talking to her. But I really
24 appreciate them opting, and I actually had to read that same
25 line three times, opting in. I'm usually hearing about

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1 people opting out.

2 And also I look at the ANC letter, which I know
3 we're going to get to. But it looks like they're very
4 enthusiastic. So you all obviously have done your homework
5 and found out what the neighborhood wanted. So I want to
6 commend you on that. So anyway, thank you.

7 BZA CHAIR HILL: Okay, thank you. Does the
8 applicant have any questions for the Office of Planning?

9 MR. HOUSTON: No questions.

10 BZA CHAIR HILL: Okay. Is there anyone here that
11 wishes to speak in support? Please, come on up. Did you get
12 sworn in earlier?

13 (Off mic comments.)

14 BZA CHAIR HILL: Okay. If you'd get sworn in by
15 Mr. Moy here. Just stand right there and just raise your
16 right hand.

17 (Witness sworn.)

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

19 BZA CHAIR HILL: Well welcome. Could you please
20 just start with your name?

21 MS. JACKSON: Hi. My name is Talayah Jackson, and
22 I am actually a resident in ANC 7C, and I am fully in support
23 of this project. Mr. Thomas has engaged the community from
24 the very beginning, has gone through a requisite series of
25 community meetings. So the design you see here is actually

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1 reflective of a lot of the feedback that we did provide, and
2 was incorporated.

3 Also to Mr. Hart, your comments about the design
4 of the neighborhood. Deanwood is a unique mix and blend of
5 different house styles. Even on my street, there's three
6 different house styles. So I think just going by based on
7 what's on that street does not always serve the best
8 standard, and this style design is actually I think a good
9 respect for sort of the old and new styles.

10 We are a transitioning neighborhood, and looking
11 to bring in more unique character elements. So I say all
12 that to say I support it, hope you all would as well, and I
13 thank you for the opportunity to testify.

14 BZA CHAIR HILL: Great. Well Ms. Jackson, thanks
15 for coming down, for staying so long. Normally people don't
16 stay this long if they're in support, and so you know, we
17 appreciate it. Let's see. Does anybody have any questions
18 for Ms. Jackson?

19 VICE CHAIR HART: No, only that I appreciate your
20 comment, and I was actually -- I wanted to understand what
21 the whole context was, because the photographs that they
22 provided only showed pitched roofs. So there had to be
23 something that they were taking, and I was just trying to
24 figure out where that was from. So I appreciate the comment
25 though. Thank you.

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1 BZA CHAIR HILL: Okay, great. All right. Do you
2 guys have anything that you'd like to add? Is there anybody
3 here in opposition? Nobody in opposition. All right. Is
4 there anything else you guys would like to add at the end?

5 MR. HOUSTON: No additional comments.

6 BZA CHAIR HILL: Okay, all right. Then I'm going
7 to close the hearing. Is the Board ready to deliberate?
8 Okay, I can start. I will echo Commissioner Hood's comments
9 in terms of I think that, you know, these gentlemen seem like
10 they're doing, you know, just a great service. They're
11 trying to bring something to the community.

12 I always notice that younger people bring in
13 younger people. I was like they look kind of young to me,
14 you know. So but I'm glad that, you know, that I think that
15 they are meeting the burden with which we can grant this.
16 I do believe that the Office of Planning in their analysis
17 has provided the correct and accurate analysis.

18 I am also glad to see that the ANC is in support
19 of this application, and as I mentioned, I do think they are
20 meeting the standard and the test for us to grant the
21 application, and so I will be voting in support. Is there
22 anything else anyone would like to add?

23 MEMBER WHITE: I'd just like to add that I am also
24 impressed with the preparation and their expertise, and it
25 was good to see that, you know, that it was easier for me to

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1 come to the conclusion to support the application given OP
2 and the ANC's support, and the community's support, as well
3 as the IZ units. I love IZ units, but I think -- clearly I
4 think you've met the criteria in order to get my support for
5 this particular application. So thank you.

6 VICE CHAIR HART: Only that I would echo the
7 comments from my colleagues. I would be in support of the
8 application as well. I felt that they did meet the criteria,
9 including for the variances, and I'm not going to add
10 anything else.

11 ZC CHAIR HOOD: I would just concur with
12 everything I've heard, and looking forward to seeing some
13 more good projects come from you guys. Thank you.

14 BZA CHAIR HILL: Okay. I'm going to make a motion
15 to approve Application No. 19990 pursuant to 11 DCMR Subtitle
16 X, Chapter 10, for area variances from lot dimension and lot
17 width requirements of Subtitle D, Section 302.1, and the side
18 yard requirements of Subtitle D, Section 206.2, and a special
19 exception pursuant to Subtitle C, Section 1001.2(e), to opt
20 into IZ, to construct two new semi-detached principal
21 dwelling units in the R-2 Zone at the premises at 919 47th
22 Place, N.E., Square 515, Lot 105 and ask for a second?

23 VICE CHAIR HART: Second.

24 BZA CHAIR HILL: Motion made and seconded. All
25 those in favor say aye?

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1 (Chorus of ayes.)

2 BZA CHAIR HILL: All those opposed?

3 (No response.)

4 BZA CHAIR HILL: Motion passes. Mr. Moy.

5 MR. MOY: Staff would record the vote as 5 to 0
6 to 0, this on the motion of Chairman Hill to approve the
7 relief requested, the amended relief. Seconding the motion
8 is Commissioner Hood. Also in support Ms. John, Ms. White
9 and Vice Chair Hart. The motion carries.

10 ZC CHAIR HOOD: Mr. Chairman, if you could record
11 Vice Chair Hart, because he seconded. I just was louder than
12 him because I sit closer.

13 (Off-microphone comment.)

14 ZC CHAIR HOOD: I thought you -- no, but I don't
15 want, I'd rather for your name to be on there as second. We
16 are going do a second. Put both of us down.

17 BZA CHAIR HILL: You've got it covered Mr. Moy,
18 right?

19 MR. MOY: I've got it covered Mr. Chairman.

20 BZA CHAIR HILL: All right, okay. Thank you,
21 thank -- oh hold on. Wait, something's happening.

22 MS. LOVICK: And I just want to make one
23 clarification. The side yard relief, it was from D206.3.
24 We've said things back and forth, but it's D206.3. Just
25 that's fine. I just wanted to add that.

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1 BZA CHAIR HILL: It is D206.3?

2 MS. LOVICK: Yeah. You said 2.

3 BZA CHAIR HILL: I said D? I said -- okay, all
4 right. I believe, okay. I'm listening to you. Whatever you
5 said, that's what I meant to say. Okay, okay, all right.
6 Thank you all very much. Thank you.

7 BZA CHAIR HILL: All right, Mr. Moy. Let's keep
8 moving along here.

9 Application No. 19962

10 MR. MOY: All right. Thank you Mr. Chairman. So
11 up next before the Board is Case Application No. 19962 of
12 District Properties.com, pursuant to 11 DCMR Subtitle X,
13 Chapter 10. This is for an area -- this is amended for area
14 variances from the side yard requirements of Subtitle D,
15 Section 206.3, to construct a new detached principal dwelling
16 unit R-2 Zone. This is at premises 917 43rd Place, N.E.,
17 Square 5096, Lot 20.

18 BZA CHAIR HILL: Okay, great. Could you please
19 introduce yourselves for the record?

20 MR. SECK: Omar Seck, representing District
21 Properties.

22 MR. DAVIS: Adam Davis, District Properties.

23 BZA CHAIR HILL: Okay. All right, so Mr. Seck,
24 we are going to -- you've heard my little spiel before I'm
25 sure, but if you could please go ahead and walk us through

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1 your project and what you're trying to achieve, and how you
2 believe you've reached the standard and the criteria for us
3 to grant the application. I'm going to put 15 minutes on the
4 clock Mr. Moy, just so I know where we are, and I think
5 right.

6 I mean, if you want to, you can talk about a
7 little bit of what happened from the last time. But I think
8 it's pretty clear what happened from the last time. So you
9 can just go ahead and walk us through if you want to what
10 happened from the last time, as well as everything I just
11 said, okay.

12 MR. SECK: Yes. Thank you, Chairman Hill. Good
13 afternoon again, Board members. This case here, and I want
14 to say quickly if we went yesterday, the gentleman beside me,
15 Adam Davis, went to make an attempt to present the case to
16 the ANC, and they ran out of time. They had to vacate the
17 library so they couldn't hear the case.

18 The case was heard at the executive meeting with
19 our correspondents, with Commissioner Sherice Muhammad and
20 Adam Davis took it upon himself to go and just make an
21 attempt to present the case and that was not heard. So I
22 want to bring that to you. We do not have the support of the
23 ANC or a denial. At the executive meeting, Sherice Muhammad,
24 the Commissioner, had questions regarding the variance and
25 the occupancy of the lot.

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1 We responded to that back in April 9th. The
2 executive meeting was on February 26th, and since then
3 correspondence has been pretty tough, and I can move along
4 with -- the previous time was the -- when we were here
5 previously on April 10th, was the lack of affidavit of
6 maintenance on the record, and that had been corrected. So
7 if you want me to proceed with the case, I can. If you
8 choose to postpone to give them a chance --

9 ZC CHAIR HOOD: Were you on the agenda for --
10 because she's the chairperson, Ms. Muhammad. She's the chair
11 of that ANC; correct? Were you on the agenda?

12 MR. SECK: For yesterday, no.

13 ZC CHAIR HOOD: Did you ask to be on the agenda,
14 or you just showed up? She runs a pretty tight ship. She's
15 pretty good at what she does.

16 MR. SECK: Absolutely. I agree with you Chairman
17 Hood, and I made it clear to my office.

18 MR. DAVIS: Yeah. I thought that we were on the
19 agenda, but I went and showed up. But I found out when I got
20 there that we were not on the agenda. But I still made an
21 attempt to --

22 ZC CHAIR HOOD: If you weren't on the agenda, you
23 weren't on the agenda. Okay.

24 MR. DAVIS: Right.

25 ZC CHAIR HOOD: All right, thank you.

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1 MR. SECK: So I wanted to lay this out first.

2 BZA CHAIR HILL: I appreciate that, and I'm sorry.
3 I actually shouldn't say I'm sorry, but I know you guys are
4 the last ones here, and so I don't know where we were with
5 this. I mean again, you've been here a number of times in
6 terms of basically a lot of the criteria that we even kind
7 of -- that kind of gets you through the door, right.

8 And so is the next one -- is the next one also
9 lacking things with you guys? I mean I'm just kind of
10 jumping around here, but okay. So okay, all right. Okay.
11 All right. So you presented at the executive level, okay,
12 with the ANC right, and what Chairman Hood was just asking
13 is you were supposedly -- you didn't, you weren't actually
14 on the agenda for last night's meeting. But you showed up
15 and tried to present; correct? If you can just say yes in
16 the microphone.

17 MR. DAVIS: Yes.

18 BZA CHAIR HILL: And then so it wasn't
19 necessarily, and I mean I know this is just maybe the way it
20 was being presented, it wasn't that you ran out of time; it's
21 just that -- I mean you ran out of time, meaning they had to
22 leave the library. Otherwise, they would have heard you?

23 MR. DAVIS: Yes. I asked at the very end if I
24 could get up and speak, you know, and address and get
25 support, but there was no time for me to do so.

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1 BZA CHAIR HILL: Right, so and I'm just kind of --
2 and I don't know whether this is going to happen one way or
3 other with this right now. But so if there -- if the library
4 was not going to close and the ANC meeting could have gone
5 on, you were going to be able to present, or you don't know?
6 Or you don't know.

7 MR. DAVIS: Yes. Well, I got up and had like five
8 seconds to --

9 BZA CHAIR HILL: To start to present.

10 MR. DAVIS: Yeah, but then --

11 BZA CHAIR HILL: So they were starting to listen
12 to you?

13 MR. DAVIS: Yes.

14 BZA CHAIR HILL: Okay, all right. So let's get
15 through this part even with us now. I mean I don't know.
16 What do you all want to do?

17 VICE CHAIR HART: Why don't we hear it, and then
18 we hear whatever the ANC has to say. Was the ANC here
19 earlier?

20 BZA CHAIR HILL: No.

21 VICE CHAIR HART: The only reason I'm asking is
22 sometimes if they come, they are interested in the project
23 and they really want to say something here. But we can see
24 what they -- we can see what the presentation is, and then
25 get something from the ANC.

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1 ZC CHAIR HOOD: So for me, knowing Muhammad and
2 how she works, I would really encourage, Mr. Chairman, if we
3 give her an opportunity, that ANC to listen to it at least.
4 I don't know if you all have already done it, but I would
5 just -- let me ask you this. What kind of vibe? I mean did
6 she kind of express that she was supportive or not
7 supportive? But you said she had questions, which makes me
8 have questions.

9 MR. SECK: Yes, yes. Well, I was at the
10 executive. Mr. Davis was not there at the time, and when I
11 presented the case to the Commissioners, she had the
12 impression that we were going to do like 100 percent lot
13 occupancy, and I told her no.

14 ZC CHAIR HOOD: Okay.

15 MR. SECK: And she said well, why don't you send
16 me the table we put in on this BZA report, that shows the
17 side yard, the rear yard, et cetera. That's what we did.
18 We emailed it to her and didn't hear back from her.

19 ZC CHAIR HOOD: Okay. Did she get the email?

20 MR. SECK: The email never came back, and we
21 didn't get a response.

22 ZC CHAIR HOOD: But did she get the -- we don't --
23 did you ever follow up to see if she got the email, made a
24 phone call, anything? Did you do your due diligence to make
25 sure? Emails sometimes don't always go where people think

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1 they're going.

2 MR. SECK: I agree.

3 ZC CHAIR HOOD: Okay. So did you do your due
4 diligence to make sure she had the email?

5 MR. SECK: That I would say that my office staff

6 --

7 ZC CHAIR HOOD: Oh, back to the office. The same
8 lady?

9 MR. SECK: Yes, yes.

10 ZC CHAIR HOOD: Okay. I will tell you this, Mr.
11 Chairman. Knowing, and I would for me, I don't know what
12 others feel, and I know everybody's here and they waited all
13 day, but for me and knowing this ANC and the Chairperson how
14 they operate and how they -- I think we need to make sure
15 that they've done their due diligence. We can hear it now
16 and maybe do -- possibly have a limited scope hearing or
17 however the Board decides.

18 But I want to make sure we hear from this ANC and
19 give them an opportunity, and not close them out. But I'll
20 leave it up to what the Board decides.

21 BZA CHAIR HILL: Yeah, I don't know. I mean it's
22 like we can hear -- okay. I mean we're just leaving it open.
23 I mean I guess it's late in the day, right, and so like if
24 we now hear the case and then we wait for the ANC and keep
25 a continued hearing open for the ANC basically, we're

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1 basically doing the same thing again.

2 So it doesn't seem like it's necessarily of any
3 value to anybody if we're going to keep it open for a
4 continued hearing. If we were going to just go ahead and
5 hear the case and close the record, except keeping the record
6 open for the ANC, and then have a decision. But then the ANC
7 has anything that they did have questions about, we would be
8 back at the beginning again. So I think I should postpone
9 it, I guess.

10 VICE CHAIR HART: Actually, I said that I would
11 be -- we should hear it now. But you're right. We probably
12 need to wait and just hear it once, with the ANC report.
13 Just make sure that Mr. Seck, if you could or Mister --

14 MR. SECK: Davis.

15 VICE CHAIR HART: Davis. I was getting ready to
16 call you Adam, and I was like that's not Mr. Adam. So if you
17 could just make sure that they -- not make sure. Just try
18 to ensure that we can get some, a report, so that then we can
19 understand what their position is and we can kind of hear
20 this at once, I think is probably the best route to go.

21 BZA CHAIR HILL: So you guys, you're not on the
22 agenda yet, right? You don't know when you're going to get
23 on the agenda for the ANC. So do you know when the next ANC
24 meeting is?

25 MR. DAVIS: I don't know when the next ANC is, but

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1 she said we can ask to be put on that agenda, yes, for that
2 meeting.

3 BZA CHAIR HILL: Okay, for the next one. So you
4 just had it. You said there was one last night?

5 MR. DAVIS: Yesterday.

6 BZA CHAIR HILL: So they'll meet four weeks from
7 whatever, so that means it will be June.

8 MR. DAVIS: The second Tuesday, so I guess June
9 11th.

10 BZA CHAIR HILL: Right. They'll meet on June
11 11th. So maybe you get back here on -- well, the 19th is
12 already jammed up. I think the 19th is jammed up, and the
13 26th is now really starting to get jammed up. I guess I'm
14 trying to figure out, Mr. Moy then -- now I know, and I'm
15 making somewhat of -- I've already made it clear that I'm not
16 here on the 26th, and so I feel bad that everything's going
17 to the 26th.

18 But I'll still do it. I'm just need to see how
19 many, how many cases do we have on the 26th versus any other
20 day? Right, I mean after -- I've forgotten now after the
21 26th, when does it start to free up again?

22 MR. MOY: At the moment, we potentially have nine
23 cases for the 26th of June. July 3rd, we have 11 cases, and
24 actually I'm putting out the notice of cases for July 10th.
25 So but I think I have eight cases for that day.

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1 BZA CHAIR HILL: Okay. Let's put it on the 26th,
2 because that's still a month away now, you know. It's a
3 month plus, and so they have been trying something, you know.
4 They have been trying something, and so let's go ahead and
5 put you on June 26th, and you have to get to the ANC. The
6 ANC has to get their report in to us, by when do you think
7 Mr. Moy?

8 MR. MOY: I would suggest -- I would suggest any
9 of that week, which would be June the 14th, okay?

10 BZA CHAIR HILL: I make a motion we move a lot of
11 stuff to the 26th. Let's move everything to the next week
12 on the 26th.

13 BZA CHAIR HILL: Okay. So we're going to move it
14 on to June 26th. Okay, thank you gentlemen. And now we have
15 one last case I believe with you gentlemen.

16 MR. SECK: Should we remain seated?

17 BZA CHAIR HILL: Yeah, that's fine.

18 Application No. 19968

19 MR. MOY: All right. That's correct, Mr.
20 Chairman. So that would be Case Application No. 19968, and
21 this is a request for an area variance from the side yard
22 requirements of Subtitle D, Section 206.2. All this I'm
23 reading an amended caption, and this would construct a new
24 detached principal dwelling unit in the R-2 Zone at premises
25 4461 B as in Bravo Street, S.E., Square 5351, Lot 62.

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1 BZA CHAIR HILL: Okay. Could you please introduce
2 yourselves for the record.

3 MR. SECK: Omar Seck, District Properties.

4 MR. DAVIS: Adam Davis, District Properties.

5 BZA CHAIR HILL: Okay, great. Thanks. Mr. Seck,
6 I'm going to let you go ahead and tell us about your project,
7 and what you're trying to do, and also how you think you're
8 meeting the standard for us to grant the application. I do
9 see, unless I'm wrong, that the ANC is in denial of your
10 application. So you might as well speak to that as well as
11 you kind of go through it.

12 I'm going to go ahead and put 15 minutes on the
13 clock, and you can begin whenever you like.

14 MR. SECK: Thank you, Chairman Hill. Thank you
15 Board members. This is pretty much a similar properties, an
16 infill lot 25 feet wide, with a request for side yard relief
17 from 8 feet to 3 feet, in order to build a habitable house
18 19 foot wide. This house exists between properties that are
19 already occupied --

20 BZA CHAIR HILL: Can I interrupt you one second
21 Mr. Seck, and I apologize for interrupting you.

22 MR. SECK: Yes.

23 BZA CHAIR HILL: I just have maybe something wrong
24 in my notes. Did the ANC put a report in here?

25 MR. SECK: I don't know if they put a report. I

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1 know that they denied the case.

2 BZA CHAIR HILL: Okay. So you did -- you did
3 present to them?

4 MR. SECK: Yes, personally.

5 BZA CHAIR HILL: And how long ago was the
6 presentation?

7 MR. SECK: It's been a while. The date, I should
8 have the date, you're right, but at least a couple of months
9 ago.

10 BZA CHAIR HILL: Okay.

11 MR. SECK: Yes.

12 BZA CHAIR HILL: And so then how do we know that
13 the ANC denied it? I'm trying to see where it is that --
14 okay. You can continue on. I'm sorry. Please continue.

15 MR. SECK: Sure, no problem. So we're proposing
16 this two level dwelling, detached and as I was saying, this
17 property exists between existing buildings. On that street,
18 there are various style of homes and apartment building as
19 well. Some of them are semi-detached, narrow buildings.
20 Here, we just proposed to have side yard 3 feet on both
21 sides, and there is no access to the back of the building for
22 parking, so it would be on-street parking.

23 The lot sits up a little bit on a hill, and we
24 have complied with the Office of Planning as far as access
25 and architecture of the building. We are meeting the other

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1 criteria as far as building heights, rear yard and front yard
2 setbacks. This will be a two-story with a crawl space, and
3 offering three bedroom, two and a half baths and a kitchen,
4 dining room, living room in this R-2 zoning.

5 We don't feel that this will have any public
6 detriment in the neighborhood. It's a variety of buildings
7 in that, on that street, and we feel that it will blend in
8 properly. It has a brick elevation. There's a lot of brick
9 homes on that street, and we seek your approval for the side
10 yard relief.

11 The ANC, to speak to that as you asked me to do
12 so, Chairman Hill, I presented the case. We have the Single
13 Member Commissioner, Commissioner Carr, who was very
14 cooperative with us I do feel at the time when I came there
15 and during our correspondence with her that she was in
16 support of this.

17 But right before the voting, she had to leave for
18 personal matters, and left it with her colleagues. The
19 colleagues, I'm not sure if they were very well versed into
20 the project, but the opposition was no. They didn't give any
21 specific reason why. They just say oh, you're trying to put
22 a house in this small lot, you know. How can that be, et
23 cetera. Those are the comments that I was hearing back and
24 forth, and are you going to rent it or is it going to be for
25 sale? Is it going to be market price, and I answered it

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1 accordingly.

2 They decided to vote unanimously against it, and
3 our Single Member was not there. When I reached out to her
4 right after the meeting and told her the news, she was
5 shocked, and I do feel that if she was present, she would
6 have probably defended the case at least, as we felt that she
7 would. Thank you.

8 BZA CHAIR HILL: Okay. Does the Board have any
9 questions for the applicant?

10 MEMBER WHITE: Okay. Just one question. So you
11 kind of gave us a rundown of what happened at the ANC. Other
12 than not having the person there that was kind of going to
13 be more of the advocate and the spokesperson there for you,
14 what did they say specifically, or did they identify any
15 issues that express how the project would have any kind of
16 negative impact to the neighborhood, or at least that
17 immediate area?

18 MR. SECK: Commissioner White, they basically
19 asked a few questions as I elaborated, like are you trying
20 to build on this small lot. This is 25 feet. Not to me
21 considering some of the other lots in the area. Maybe not
22 25, but you can see the side yard and the split level, I mean
23 split dwelling. And then how much is it going to be? But
24 it was like a puzzle to them that this particular lot was
25 buildable.

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1 And when they voted, they didn't give me any
2 specific reasons. That's exactly what I expressed to
3 Commissioner Carr, that they just all of the sudden asked a
4 few questions that were answered. They decided to vote no,
5 and it was a tight meeting as well. They had the police
6 department. They had Council Member Gray. He was pretty
7 long, so I couldn't really have too much time to ask them
8 why, et cetera.

9 ZC CHAIR HOOD: You said Council Member Gray took
10 up most of the time?

11 MR. SECK: No.

12 ZC CHAIR HOOD: Is that what you said? I'm just
13 asking.

14 MR. SECK: No. I said Council Member Gray was
15 presenting.

16 ZC CHAIR HOOD: Oh, I thought you said he took up
17 most of the time.

18 MR. SECK: No, no, no. He was presenting some
19 kind of budget thing. They had a lot of people presenting,
20 yes. But I appreciate the flavor you add to this all the
21 time Commissioner Hood. Thank you.

22 BZA CHAIR HILL: All right. Anyone else have
23 questions for the applicant? All right. Turn to the Office
24 of Planning please.

25 MS. ELLIOTT: Good evening Mr. Board Member and

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1 members of the Board. I'm Brandice Elliott, representing the
2 Office of Planning, and before I get into too much detail,
3 I just wanted to make a minor revision to OP's report. At
4 the beginning, we note that the relief is from Subtitle D,
5 307.1 and there has been a text amendment since that time.
6 These got shifted around, so the correct area -- and it's
7 correct in the notice that Mr. Moy read. But it's Subtitle
8 D, 206.2.

9 This case is a little bit different from the
10 Girard case that you heard earlier. This is an existing non-
11 conforming lot, so it is a lot of record, and the lot is non-
12 conforming in terms of frontage. It has 25 feet of frontage,
13 where 40 feet is required, and also in terms of area where
14 it has 3,875 square feet and 4,000 square feet would be
15 required.

16 So it already has some challenges. The frontage
17 is actually 38 percent smaller than what's required by the
18 regulations. The Office of Planning has determined that
19 these are unique features that make development of the lot
20 practically difficult, particularly when it does permit, you
21 know, a larger detached or semi-detached home.

22 So in order to have a single family structure with
23 a layout that, you know, exhibits contemporary standards, you
24 do need to have a reduced side yard in order to make that
25 home fit. So OP is recommending approval of the relief

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1 that's been requested, and I'm happy to answer any questions
2 you have.

3 BZA CHAIR HILL: Okay. Does the Board have any
4 questions for the Office of Planning?

5 VICE CHAIR HART: So you're saying that this is
6 a project that is consistent with the development in the
7 neighborhood, or not inconsistent with it?

8 MS. ELLIOTT: It's not inconsistent. The street,
9 the block itself actually exhibits several different building
10 typologies, apartments, semi-detached and detached dwellings.
11 So there is really not a whole lot that is consistent about
12 it. Every property exhibits different front setbacks, rear
13 yards, side setbacks. And so the fact that it's really not
14 that consistent actually makes this -- I mean the proposal
15 fits in.

16 MEMBER WHITE: And you don't see any detriment to
17 the public good in this particular application for variance
18 relief?

19 MS. ELLIOTT: No. OP does not believe that there
20 would be a substantial detriment to the neighborhood. Side
21 yards are still provided, and I'm not sure what exhibit it
22 is, but the first page of the applicant's architectural
23 drawings actually provides a little more context. It shows
24 the locations of the existing structures on the block.

25 And so to the -- to the east, there's an existing

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1 dwelling that is actually pushed back substantially from the
2 street frontage. So that actually gives I guess more of an
3 openness, a sense of openness to the area. And then to the
4 west there is a larger structure, but it's providing a larger
5 side setback, so there is more separation between the two
6 structures.

7 BZA CHAIR HILL: Okay. Does the applicant have
8 any questions for the Office of Planning?

9 MR. SECK: No Chairman.

10 BZA CHAIR HILL: Okay. Is there anyone here who
11 wishes to speak in support? Is there anyone here who wishes
12 to speak in opposition? Does anyone have any questions of
13 the applicant before I close the hearing? Does the applicant
14 have anything they would like to say at the end?

15 MR. SECK: No. Thank you for the opportunity.

16 BZA CHAIR HILL: Okay. I'll go ahead and close
17 the hearing. Is the Board ready to deliberate? Okay. I'm
18 going to start, and this is kind of, you know, I guess yeah.
19 So I do think that -- and each case is different, but I
20 guess I'm just kind of starting this discussion, because it's
21 kind of the same -- it's the same applicant, and a similar
22 type of case.

23 I mean I suppose in the previous case, where the
24 person got denied, you know, that was again its own separate
25 case. However, part of that was that it wasn't a record lot.

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1 So you know, they did need the variance to get -- thank you,
2 to get to a record lot that they could actually build on,
3 which actually might even be more of an argument for the
4 other one, now that I'm thinking about it a little bit.

5 So this one, they can -- it is a record lot. I
6 do think that it -- I think it meets the criteria. I think
7 it's exceptionally narrow. I think that in order for it to
8 be made useful, I think that the analysis of the Office of
9 Planning has given, has provided I would be in agreement of.
10 I don't think it causes a detriment to the public good, and
11 so -- and I think it fits within the zoning plan.

12 So I am going to -- oh wait. We were going to
13 keep it open maybe for the ANC. We're not deliberating.
14 Wait.

15 MR. SECK: It's a different one.

16 BZA CHAIR HILL: I don't know. It's that long of
17 a day. So it was right. So right. It was right. No we did
18 -- right. So we did have a report from the ANC. However,
19 we did hear from the applicant that they were in denial of
20 the application.

21 MS. LOVICK: No, you didn't have a report.

22 BZA CHAIR HILL: No, no, I'm saying. What I said
23 was out loud. I'm sorry.

24 MS. LOVICK: I'm sorry.

25 BZA CHAIR HILL: That's okay. Well, I just got

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1 confused. I thought I was talking about the previous case.
2 We did not have a report from the ANC. However, we have
3 testimony that the ANC voted in denial, and the testimony
4 that we have doesn't seem that there was any specific issues
5 or concerns that I could understand.

6 So I'm just going to go with what I got in front
7 of me, if in fact we're in deliberations, which I think we
8 currently are, unless you guys want to do something different
9 in terms of hearing from the ANC. So I will go just to
10 complete my statement, which is I think that they are meeting
11 the standard and criteria for us to approve this application,
12 and I will be voting in support. I'll let whoever wants to
13 go next go next.

14 MEMBER WHITE: I'll jump in. I think I can
15 support this application. That's why I was asking questions
16 about what happened with the ANC, asking questions of OP
17 regarding the criteria. Chairman Hill indicated this is a
18 record yard, record lot. There were some unique lot features
19 here, where you needed -- where there was a reduced side
20 yard, and so I mean it's extremely narrow.

21 I think that also there's no alley access from
22 what I understand, but each case is different, and you take
23 the facts and you apply them to the criteria for meeting the
24 variance standard. For this particular one, especially with
25 the support of Office of Planning, I think I could support

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1 this particular application, in spite of the fact that we
2 didn't get a positive report from or any report from the ANC
3 as part of the record.

4 ZC CHAIR HOOD: Mr. Chairman, I too think I can
5 support this. But the hesitancy, what I'm hesitant is that
6 we did not get a report from the ANC. I know verbally we've
7 heard they had a concern, but to be able to look at the
8 issues, you know, you can tell me off the cuff what the
9 issues are. But I would like to see what the issues are,
10 because those issues by law are supposed to be accorded great
11 weight, and we're supposed to be able to answer those issues.

12 I don't know if we want to give them an
13 opportunity, and I hate to do that to District Properties.
14 I know they've had probably a rough day. Well actually
15 probably had a good day, but to help them move in a different
16 direction to some degree in some cases. But what helps me
17 with this is the report from Ms. Elliott. Did I get -- Ms.
18 Elliott, did I get your name correct? I actually -- Ms.
19 Lovick reminded me, so I wouldn't get it messed up.

20 But so I mean that's just where I am about the
21 ANC. I'm very hesitant. I don't want to disregard any ANC,
22 especially if they have concerns. That needs to be recorded,
23 because I think this could -- we're the Board. We're
24 supposed to first of all give them great weight, but we don't
25 know what to give them great weight for. That's just where

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1 I am.

2 BZA CHAIR HILL: I'm sorry. So I mean I again am
3 -- I want to get something done today, and so like, you know,
4 the ANC. So I don't know whether Chairman Hood is saying to
5 wait or not. So let's just keep how this goes. I mean I'm
6 -- you know, the ANC's in denial. If they were really that
7 much -- if they had such an issue, somebody would be here
8 and/or somebody would have submitted a report, you know, and
9 this is something that went on a couple of -- you know,
10 months ago or a month ago, whenever the testimony was.

11 So I guess we have one that wants to wait maybe.
12 I'm not sure yet.

13 ZC CHAIR HOOD: I didn't necessarily say wait.
14 I wanted to put that on the record, that's my concern,
15 because I don't want it to come back well we just disregarded
16 the ANC, because we take what they do and the work they do
17 very valuable.

18 So I just wanted to make sure they understand.
19 If they ever watch this tape, whether we move or not, I'm not
20 sure what the full body wants to do. But I think Ms.
21 Elliott's report for me helps me get over the hump.

22 BZA CHAIR HILL: Okay. Well I agree. I also am
23 concerned. I mean I don't like the fact that we haven't
24 gotten something from the ANC. But I'm just now saying, you
25 know, I think they've had an opportunity to speak upon it.

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1 But so okay. There's two other Board members over to my
2 right.

3 MEMBER JOHN: So Mr. Chairman, I typically am also
4 interested in hearing from the ANC. But in this case, the
5 ANC, if we accept the applicant's statement, was not in
6 support of this application. So we can take into
7 consideration the fact that they didn't, the ANC did not
8 support the application.

9 And so on the other hand, we have a very
10 straightforward analysis from the Office of Planning, which
11 goes through how the project satisfies the variance, the
12 criteria for the variance test. So I think I am able to
13 support this application, based on the fact that it is a very
14 narrow record lot and cannot be built on without getting some
15 sort of relief. So I'm in support of the application.

16 I will say that I cannot see any discernible
17 difference in terms of character of the neighborhood between
18 this case and the previous case. But I digress. Thank you,
19 Mr. Chairman.

20 BZA CHAIR HILL: That's fine, and I will -- I want
21 to have this discussion if we can, not necessarily -- and I
22 appreciate you mentioning this. I mean another thing, and
23 this is I was just kind of looking at when I was first
24 looking at the plans, and I don't know what Vice Chair Hart's
25 about to say. So that other lot, it is -- the home to the

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1 other lot is shifted back, is set back quite a bit. So
2 they're not right up against -- I mean as far as like there
3 being some kind of difference, that was at least a
4 difference.

5 I'm saying that, I'm sharing that again, because
6 like we will be here again talking about this again with
7 another house again.

8 VICE CHAIR HART: Yeah. Well, and the only thing
9 I will say is in the other case, I didn't kind of bring it
10 up last time, but that's fine. But in this case we have a --
11 it is a -- this is a record lot. So that in itself is a
12 difference. There is a building that is set back from this
13 building significantly. It's not directly next door to it,
14 even though it is an adjacent property.

15 I'll also note that the property next door is
16 actually two different lots. So I don't know if they're
17 record lots or if it's whatever. But that's an interesting,
18 you know, tidbit as well. So anyhow, I don't have anything
19 else to add, other than what my colleagues have said. I can
20 support the application and I'll leave it at that.

21 BZA CHAIR HILL: Okay.

22 ZC CHAIR HOOD: I just want to -- you know what?
23 I'm going to leave Board Member John alone about the
24 character. So okay. No, that's okay.

25 BZA CHAIR HILL: Okay. Make a motion to approve

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1 Application No. 19968 as captioned and read by the Secretary
2 and ask for a second.

3 VICE CHAIR HART: Second.

4 BZA CHAIR HILL: Motion's been made and seconded.

5 All those in favor say aye?

6 (Chorus of ayes.)

7 BZA CHAIR HILL: All those opposed?

8 (No response.)

9 BZA CHAIR HILL: The motion passes. Mr. Moy.

10 MR. MOY: Staff would record the vote at 5 to 0
11 to 0. This is on the motion of Chairman Hill to approve the
12 application for the relief requested. Seconding the motion
13 is Vice Chair Hart. Also in support Ms. John, Ms. White and
14 Commissioner Anthony Hood.

15 BZA CHAIR HILL: Okay great, thank you. Thank you
16 gentlemen.

17 MR. SECK: Thank you, Chairman Hill, and everyone
18 else.

19 BZA CHAIR HILL: Mr. Moy, is there anything else
20 before the Board today?

21 MR. MOY: Not from the staff sir.

22 BZA CHAIR HILL: Okay. We stand adjourned. Thank
23 you.

24 (Whereupon, the above-entitled matter went off the
25 record at 5:17 p.m.)

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C E R T I F I C A T E

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In the matter of: PUBLIC HEARING

Before: BOARD OF ZONING ADJUSTMENT

Date: 05-15-19

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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