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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:32 a.m. to 1:58 p.m.
Wednesday, February 15, 2017

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

OLENDER REPORTING, INC.
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1 Board Members:

2 FREDERICK HILL, Chairperson

3 CARLTON HART, Board Member

4 ANTHONY HOOD, Zoning Commission

5 CLIFFORD MOY, BZA Secretary

6

7 Office of Attorney General

8 SHERRY GLAZER, Esq.

9

10 Office of Planning

11 MATT JESICK

12 ANNE FOTHERGILL

13 KAREN THOMAS

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

2 CHAIRPERSON HILL: All right. Good morning,
3 everybody. The hearing will please come to order.

4 Just to let everyone know here in the
5 audience, we're going to go a little bit out of order.
6 We're going to start off with the Application 19134A,
7 which is the application of the Embassy of Zambia, and
8 then that's in the hearing docket. And then we're
9 going to jump to the meeting agenda again, and do in
10 order, the meeting cases, and then come back to the
11 hearing agenda and start from 19423 and then just
12 follow the agenda that's in the back of the room
13 there.

14 So, good morning again, ladies and gentlemen.
15 We're located in the Jerrily R. Kress Memorial
16 Hearing Room at 441 4th Street Northwest. Today's
17 date is February the 15th. My name is Fred Hill,
18 Chairman of the Board of Zoning Adjustment.

19 Joining me today is Marcel Acosta and Peter
20 May. Marcel is representing the National Capital
21 Planning Commission, and Peter May is representing the
22 U.S. National Park Service.

23 Today this announcement is for the Foreign
24 Mission Composition of the Board of Zoning Adjustment,
25 so an FMBZA case. Copies of today's hearings are

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

12 All persons planning to testify either in
13 support or in opposition today are to fill out two
14 witness cards. These cards are located on the table
15 near the entrance door, and on the witness table.
16 Upon coming forward to speak to the Board, please give
17 both cards to the reporter sitting to the table at my
18 right.

19 The order of procedures for a Foreign Missions
20 case is as follows: statement and witness of the
21 application, government reports including the United
22 States Secretary of State and District of Columbia
23 Office of Planning on behalf of the mayor, reports or
24 recommendations by other public agencies, report of
25 the Advisory Neighborhood Commission, persons in

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1 support and persons in opposition.

2 Please note that requests for party status and
3 chancery applications are not applicable because it is
4 a rulemaking proceeding. The following time
5 constraints will be maintained. The applicant, and
6 including witnesses, are permitted to 60 minutes each
7 case, persons testifying whether in support or
8 opposition will be permitted three minutes each,
9 except the ANC which receives five. These time
10 constraints do not include time used during questions
11 for the Board. The Board may place further reasonable
12 restrictions on, or permit additional time for
13 testimony as is deemed appropriate.

14 Because this is a rulemaking procedure there
15 are no parties and therefore there is no cross-
16 examination. The record will be closed at the
17 conclusion of each case, except it will remain open
18 for any material specifically requested by the Board.
19 The Board and the staff will specify the end of the
20 hearing exactly what is expected, and the date when
21 the material must be submitted to the Office of
22 Zoning. After the record is closed, no other
23 information will be accepted by the Board.

24 The District of Columbia Administrative
25 Procedures Act requires that the public hearing on

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1 each case be held in the open before the public
2 pursuant to Section 405B and 406 of that act. The
3 Board may, consistent with its rules of procedure and
4 the act, enter into a closed meeting on a case for
5 purposes of seeking legal counsel on a case, pursuant
6 to D.C. Official Code 257(b)(4), and/or deliberating
7 on a case pursuant to D.C. Official Code 257(b)(13),
8 but only after providing the necessary public notice.

9 And in the case of an emergency closed meeting, after
10 a taking a roll call vote.

11 The decision of the Board in this legislative
12 proceeding must be based exclusively on the public
13 record. To avoid any appearance to the contrary the
14 Board requests that persons present not engage the
15 members of the Board in conversation. Please turn off
16 all beepers and cell phones at this time so as to not
17 disrupt these proceedings.

18 Mr. Moy, do we need to swear in people ahead
19 of this or --

20 MR. MOY: Well, I'm thinking, Mr. Chairman,
21 maybe it wouldn't be a bad idea to catch everyone all
22 at one time.

23 CHAIRPERSON HILL: Okay. So, everyone who is
24 here today who hasn't -- or please, is planning on
25 testifying, please go ahead and stand up and be sworn

1 in by the secretary. Thank you.

2 MR. MOY: Good morning.

3 [Oath administered to the participants.]

4 MR. MOY: Ladies and gentlemen, you may
5 consider yourselves under oath.

6 CHAIRPERSON HILL: All right, Mr. Moy. So, I
7 guess if you want to call the case that is before us?

8 MR. MOY: Yes. Good morning, Mr. Chairman and
9 members of the Board, the Foreign Missions. That
10 would be Application No. 19134A of the Embassy of
11 Zambia. That's captioned and advertised for -- under
12 Subtitle Y, Section 301, and the Foreign Missions Act.
13 This application would -- request would allow the
14 continued contemporary location of a chancery in the
15 D-R3 District at premises 2200 R Street Northwest,
16 Square 2512, Lot 808.

17 And as the Board is aware, this is a request
18 to allow the continued contemporary location of a
19 chancery where the applicant is requesting a one-year
20 extension of Order No. 19134.

21 CHAIRPERSON HILL: Okay. Great. Thank you.
22 Good morning.

23 If you could please introduce yourselves from
24 my right to left?

25 MS. CHOI: My name is Grace Choi. I'm here --

1 CHAIRPERSON HILL: I'm sorry, could you push
2 the microphone maybe there? I don't know. Is the
3 light on? Okay.

4 MS. CHOI: Actually, oh no. I'm sorry.

5 CHAIRPERSON HILL: Okay. There you go.

6 MS. CHOI: There we go. Grace Choi, U.S.
7 Department of State, Office of Foreign Missions?

8 MR. SNYDER: My David Snyder. I'm a resident
9 here in Washington, D.C., and my address is 5815 4th
10 Street Northwest, Washington, D.C., 20011. And I'm
11 here on behalf of the Embassy of Zambia.

12 CHAIRPERSON HILL: Okay, great. Thank you,
13 Mr. Snyder. You look familiar from the last time, I
14 think.

15 Okay. So, I don't know what other particulars
16 the Board might be interested in hearing from. I
17 mean, in my -- after reading through the record,
18 seemed relatively straight forward to me in terms of
19 the extension that you're looking for. I mean, you
20 are here because you wanted to -- there was work that
21 was being done at the Embassy. Is that correct?

22 MR. SNYDER: Last year they began, the Embassy
23 began its renovation last year, and it's an 89-year
24 old house, 10,000 square foot building at 2419
25 Massachusetts. And when the renovation began, things

1 were going well until they hit a giant resource of
2 asbestos. And as you know the asbestos remediation is
3 an actual hazardous material location once remediation
4 gets started. It's very dramatic with all the big
5 plastic sheets and everything, so it slow -- it
6 completely destroyed the timeline for a one-year
7 renovation. So, they're deep into it and they just
8 need more time to finish.

9 So, they'd like to ask for this extension for
10 this year to complete the renovation.

11 CHAIRPERSON HILL: Okay. Do you think, and I
12 remember when you were here last -- and I know, you
13 don't know how timelines work and everything, but when
14 you were here last year you thought it was going to be
15 done in a year. Do you think this will probably be
16 done in another year? That's the hope?

17 MR. SNYDER: Before the end of this year.

18 CHAIRPERSON HILL: Okay. And you did get, it
19 looks like, support from the ANC?

20 MR. SNYDER: No, the ANC divided their support
21 upon the -- they don't like residential buildings in
22 Kalorama to be turned into permanent embassies or
23 permanent commercial locations, so the Embassy of
24 Zambia is still not requesting any diplomatic parking
25 locations outside the house so that the residences can

1 still park around the building from the neighborhood.

2 The Zambian staff still parks their cars three blocks
3 away at the permanent chancery location. They're good
4 neighbors. They keep it very clean. They don't
5 disturb anybody.

6 CHAIRPERSON HILL: But the ANC did recommend
7 the extension.

8 MR. SNYDER: Yes, they did. They agreed to
9 let the embassy rent the building. But they just
10 don't want it to be a permanent --

11 CHAIRPERSON HILL: Permanent, sure. Right. I
12 understand. That's not your intent.

13 MR. SNYDER: No.

14 CHAIRPERSON HILL: Okay. Mr. May, Mr. Acosta,
15 do you have any questions for the --

16 MR. ACOSTA: Just one quick question. When do
17 you actually expect the construction to be finished?
18 I mean, do you have a --

19 MR. SNYDER: I was given a broad period of the
20 second half of this year. So, asbestos is expensive
21 to remove and has to be done carefully, and it just
22 pushed everything backwards. So, that's what I was
23 told as the second half of this year.

24 CHAIRPERSON HILL: Is that, Mr. Acosta? Does
25 the State Department have anything they'd like to add?

1 MS. CHOI: We support their extension in their
2 temporary swing space.

3 CHAIRPERSON HILL: Okay. Mr. Snyder, unless
4 you have anything else, I was just going to go ahead
5 and turn to the Office of Planning.

6 MR. SNYDER: No.

7 CHAIRPERSON HILL: All right.

8 MS. THOMAS: Good morning, Mr. Chair and
9 members of the Board. Karen Thomas for the Office of
10 Planning, and we are in support of the Embassy's
11 request to remain at a temporary location for a period
12 of an additional one-year period in support of the
13 unanticipated renovation, extension. Thank you.

14 CHAIRPERSON HILL: Okay, thank you.

15 All right. Okay. Do you have anything else
16 you'd like to add to the discussion? All right.

17 Does the Board have any questions? No? Okay.
18 Then, I'm going to check if there's anyone here from
19 the audience. Is anyone here from the ANC wishing to
20 speak?

21 [No audible response.]

22 CHAIRPERSON HILL: Is there anyone here
23 wishing to speak in support of the application?

24 [No audible response.]

25 CHAIRPERSON HILL: Is there anyone here

1 wishing to speak in opposition to the application?

2 [No audible response.]

3 CHAIRPERSON HILL: All right. Then, I would
4 normally turn back to the applicant. Do you have
5 anything further you'd like to add?

6 MR. SNYDER: No, thank you.

7 CHAIRPERSON HILL: Okay. All right. Okay.
8 Then, I'm going to go ahead and close the hearing. Is
9 the Board ready to deliberate?

10 MR. ACOSTA: Yes.

11 CHAIRPERSON HILL: All right.

12 MR. ACOSTA: I am fine with this extension and
13 I think we should proceed forward.

14 CHAIRPERSON HILL: Okay. I also don't have
15 anything further to add in terms of the deliberation.

16 I mean, I think that again, they have gone through
17 the -- Office of Planning is in support of the
18 extension. Hopefully you guys can get finished in a
19 year, in another year, which would be great. I'm sure
20 you also want to get finished. And also, that the ANC
21 is in support, knowing that they just don't want to
22 see it turn into a permanent type situation.

23 And so then, and this is where I'm a little --
24 I think what I now say, Mr. Moy, if I'm correct, is
25 that I'd make a motion to not disapprove Application

1 No. 19134A of the Embassy of Zambia, and ask for a
2 second.

3 MR. HART: Second.

4 CHAIRPERSON HILL: Motion has been made and
5 seconded.

6 [Vote taken.]

7 CHAIRPERSON HILL: All right. The motion
8 passes, Mr. Moy.

9 MR. MOY: Staff would record the vote as
10 three, to zero, to one. This is on the motion of
11 Chairman Hill voting to not disapprove the request to
12 extend the period another year, which would be
13 December 31st, 2017. Seconded the motion, Mr. Peter
14 May. Also in support, Mr. Marcel Acosta. We have two
15 seats not present. Well, the seats are present, but
16 two vacant seats. Motion carries, sir.

17 CHAIRPERSON HILL: Thank you, Mr. Moy. I
18 guess we'll ask for -- wait for the other members to
19 join us. Unless I get to decide everything on my own
20 now.

21 [Pause.]

22 CHAIRPERSON HILL: All right, ladies and
23 gentlemen, well I get to go through this again because
24 we're moving on to a -- we're done with the Foreign
25 Missions Act cases.

1 So, we're again here in the Jerrily R. Kress
2 Memorial Hearing room. This is a public hearing of
3 the Board of Zoning Adjustment. Joining me today now
4 is Anthony Hood, Chair of the Board of Zoning, as well
5 as Carlton Hart, Vice Chair of the Board of Zoning
6 Adjustment.

7 Copies of today's hearings and agenda are
8 available to you and are located on the wall bin near
9 the door. Please be advised this proceeding is being
10 recorded by a court reporter and is also webcast live.

11 Accordingly, we must ask you to refrain from any
12 disruptive noises or actions in the hearing room.

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

19 All persons planning to testify either in
20 favor or opposition must have raised their hand and
21 been sworn in by the secretary. Also, each witness
22 must fill out two witness cards. These cards are
23 located on the table near the door and on the witness
24 table. Upon coming forward to speak to the Board,
25 please give both cards to the reporter sitting at the

1 table to my right.

2 If you wish to file written testimony or
3 additional supporting documents today, please submit
4 one original and 12 copies to the secretary for
5 distribution. If you do not have the requisite number
6 of copies, you can reproduce copies on an office
7 printer in the Office of Zoning located across the
8 hall.

9 The order of procedure for special exceptions
10 and variances and appeals are also located in the bin
11 to the right as you walk into the room. The record
12 shall be closed at the conclusion of each case, except
13 for any materials specifically requested by the Board.
14 The Board and the staff will specify at the end of
15 the hearing exactly what is expected and the date when
16 the persons must submit the evidence to the Office of
17 Zoning.

18 After the record is closed no other
19 information shall be accepted by the Board. The
20 District of Columbia Administrative Procedures Act
21 requires that the public hearing on each case be held
22 in the open before the public, pursuant to 405. The
23 Board may, consistent with its rules and procedures
24 and the Act, enter into a closed meeting on a case for
25 purposes of seeking legal counsel on a case, pursuant

1 to D.C. Official Code 2575(b)(4) and/or deliberating
2 on a case pursuant to D.C. Official Code 2575(b)(13),
3 but only after providing the necessary public notice
4 in the case of an emergency closed meeting after
5 taking a roll call vote.

6 The decision of the Board in these contested
7 cases must be based exclusively on the public record.

8 To avoid any appearance to the contrary the Board
9 requests that persons present not engage the Board in
10 members of conversation. Please turn off all beepers
11 and cell phones at this time so as to not disrupt
12 these proceedings.

13 Preliminary matters are those which relate to
14 any -- relate to whether a case will or should be
15 heard today, such as request for postponement,
16 continuance, or withdrawal, or whether proper and
17 adequate notice of the hearing has been given. If
18 you're not prepared to go forward with the case today,
19 or if you believe that the Board should not proceed,
20 now is the time to raise such a matter.

21 Mr. Secretary, do we have any preliminary
22 matters?

23 MR. MOY: I do, Mr. Chairman, but these
24 matters are in regards to the case docket for today,
25 and for the transcript.

1 The first case, which is or was a case for
2 decision for today, 16334A of Bright Beginnings, there
3 was a request to postpone and reschedule. And that
4 new rescheduled date for decision is March 15. March
5 15, 2017.

6 Other cases that were originally scheduled for
7 today, Mr. Chairman, have also been postponed and
8 rescheduled. The first is Application No. 19424 of
9 Young Soo Kim, rescheduled to March 29, 2017. Case
10 No. 19428, 1937 2nd Street Northeast, LLC, postponed
11 and rescheduled to February 22nd, 2017. Application
12 19400 of Alabama Avenue, LLC, postponed, rescheduled
13 to March 15, 2017. Application 19398 of Jim Borbely,
14 Borbely, rescheduled to March 8th, 2017. And
15 Application No. 19427 of The Bird, rescheduled to
16 March 8th, 2017.

17 And I believe that's it for me, Mr. Chairman.

18 CHAIRPERSON HILL: Okay, great. Thank you,
19 Mr. Moy.

20 Could we go ahead and call our, I guess one
21 and only meeting case?

22 CHAIRPERSON HILL: Yes. This would be Appeal
23 No. 19356 of the Argonne, LLC. This was captioned and
24 advertised as an appeal from the June 8th, 2016th
25 decision by the Zoning Administrator, Department of

1 Consumer and Regulatory Affairs to issue Building
2 Permit No. B-1508236, requiring conformance with the
3 R-4 regulations at 1630 through 1634 Argonne Place
4 Northwest, Square 2589, Lot 840.

5 In your case records, Mr. Chair, there is a
6 filing from the appellant dated February 2nd, 2017,
7 requesting that the Board postpone their decision of
8 today, pending a rulemaking before the Zoning
9 Commission, as well as other preliminary matters,
10 including extending the filing deadlines and I believe
11 striking the ANC submission under Exhibit 66 from the
12 record.

13 [Pause.]

14 CHAIRPERSON HILL: All right. Is the Board
15 ready to deliberate on this? Or talk about it, I
16 suppose?

17 I guess, you know, there's a request to
18 postpone, waiting until the Zoning Commission has had
19 a chance to -- until they get some further
20 clarification from I guess, waiting -- something
21 they're awaiting from the Zoning Commission. And that
22 supposedly, is going to come down I guess at the end
23 of June. It was June 26th.

24 There was also a submission from the, I guess
25 the past SMD from the ANC there, and then the

1 applicant was in opposition to that being submitted
2 into the record. What I recall from the previous case
3 is we had -- I mean, I'm sorry. The previous hearing
4 was that we had asked for a time line from the
5 applicant as well as the zoning administrator. And we
6 haven't gotten that yet.

7 And so, also again, the applicant was in
8 opposition to the letter being -- that was submitted
9 by the SMD. And then there was a letter from the ANC
10 in opposition to the applicant being opposed to the
11 submission by the SMD.

12 I'm inclined to grant the postponement and
13 then also allow the letter from the SMD into the
14 record. Does my -- do my colleagues have any
15 thoughts?

16 MR. HART: Just had a, actually a question.
17 Would we be opening the record? Are we opening the
18 record for this? Or, to allow -- because I don't know
19 if we're going to be getting further information about
20 -- from the -- after the zoning case. If we're going
21 to be getting further information about, I don't know,
22 from the applicant or from anyone else. It's just a
23 question.

24 I would think we'd keep the record open to the
25 people -- to the applicant. I guess, the ANC, it's

1 always open to the ANC. Is that not correct, Ms.
2 Glazer?

3 MS. GLAZER: Well, that's for a letter in
4 support. My understanding is the Board asked for a
5 filing from the ANC. So, you could determine that
6 this was the filing, or you could close the record, or
7 you could leave it open for limited purposes.

8 MR. HART: I think we should keep -- I think
9 we should look at this, the information that was
10 submitted to us from the ANC, as being their filing
11 from the ANC, and keep the record closed, and then
12 wait until we hear the rest of the information from
13 the zoning case. Whatever that resolution is, because
14 this seems like that's what the applicant is waiting
15 for.

16 MS. GLAZER: Well, there's a pending motion to
17 strike, so you could either hold the motion in
18 abeyance, or you can decide it now. And if you're
19 inclined to deny it I suppose you could deny it and
20 accept the filing. Or you could wait and determine it
21 on the continued date.

22 MR. HOOD: Chairman, I would -- my
23 recommendation, I'm not sure if I'm going to be here.
24 I would agree with the postponement as you stated.
25 But I don't have a problem with accepting anything

1 from the ANC. I would not be willing to strike that.
2 Those are our volunteers, our frontline workers, and
3 I have a problem with anyone even having the audacity
4 to come down and ask me to strike something from a
5 community group. That's just where I am. And I'm not
6 going to pull no punches. That's just where I am.
7 And I think due to the fact of what the Commission may
8 do, they may change some things. So, I would suggest
9 leaving the record open, even more so, I don't think
10 it's a major issue of the applicant agrees with what
11 the ANC says. I still don't believe that you strike a
12 community group. That's just where I am.

13 CHAIRPERSON HILL: Yeah, no. I agree with
14 you, Chairman Hood, and I would also be making a
15 motion to deny, striking the letter from the record.

16 I guess now what we're just speaking of is
17 keeping the record open for -- I mean, I still haven't
18 gotten the information that I -- that I think the
19 Board asked for from the Zoning Administrator, nor the
20 applicant in terms of the timeline. So, I'd still
21 like to see those submitted into the record, unless,
22 depending upon what happens with the Zoning
23 Commission, that changes the whole -- the situation.

24 So, I would leave the record open for the
25 items still continued to be requested by the Board

1 from the Zoning Administrator and the applicant
2 concerning the timeline, and/or leaving the record
3 open for whatever might happen after the ruling comes
4 from the Zoning Commission.

5 And then I'd also be, you know, still even
6 able, you know, to leave the record open for the ANC
7 to respond to whatever comes from the applicant. So,
8 that's what my thoughts would be.

9 MR. HOOD: I would concur, Mr. Chairman.

10 CHAIRPERSON HILL: So, now Ms. Glazer, I'm a
11 little lost as to what motion I'm making here. So, I
12 would make a motion to strike. No, I'm sorry. I
13 would make a motion not to strike.

14 MS. GLAZER: No, the motion has been made to
15 strike. You would move to deny the motion to strike.
16 You would move to grant the motion to continue, the
17 request to continue, and you would state that the
18 record will remain open.

19 CHAIRPERSON HILL: I make a motion to do what
20 Mr. Glazer just said.

21 MR. HOOD: I'll second the motion to what Ms.
22 Glazer just said.

23 CHAIRPERSON HILL: The motion has been made
24 and seconded.

25 [Vote taken.]

1 CHAIRPERSON HILL: Okay, thank you.

2 MR. MOY: Staff would then, would record the
3 vote as three, to zero, to two on the motion of
4 Chairman Hill, on his motion. Seconding the motion,
5 Mr. Anthony Hood. Also in support, Mr. Carlton Hart,
6 two board members seats vacant. Motion carries, sir.

7 CHAIRPERSON HILL: Actually, Mr. Moy, I'm
8 going to start again because Chairman Hood's helping
9 me out here. He's clarifying. Again, I'm going to
10 make a motion that we deny the motion to strike. I
11 also make a motion to keep the record open for the
12 applicant and the Zoning Administrator to provide the
13 timeline as requested, as well as anything they might
14 want to add after the ruling from the Zoning
15 Commission, as well as keeping the record open for the
16 ANC to respond.

17 MR. HOOD: I'll second the motion.

18 CHAIRPERSON HILL: The motion has been made
19 and seconded.

20 [Vote taken.]

21 CHAIRPERSON HILL: Okay. Sorry, Mr. Moy, I'm
22 trying to keep it straight also over here.

23 MR. MOY: No, not at all. Not at all. Once
24 again, the vote count still three, to zero, to two on
25 your motion. Seconding the motion, Mr. Hood. And

1 also in support, Mr. Hart.

2 One final thing, Mr. Chair, although not
3 related directly on the Board action and vote, setting
4 a date. Although it's unclear when the Zoning
5 Commission will be taking action, final action, the
6 staff has speculated maybe towards the end of June.
7 But the staff suggestion might be to set a deadline of
8 say, I would suggest July 12th for the parties to --
9 in this case, the applicant to give a status of where
10 we are with the appeal, with regards to the Zoning
11 Commission.

12 CHAIRPERSON HILL: Okay. That sounds fair.
13 Okay, thank you, Mr. Moy.

14 So, I'm sorry. Did you say, again, July 12th?

15 MR. MOY: July 12th.

16 CHAIRPERSON HILL: Okay. Thank you. You can
17 call the next case whenever you'd like, Mr. Moy.

18 MR. MOY: All right, Mr. Chairman, I believe
19 the first case application in the hearing session is
20 Case No. 19423 of James Courtney. This application is
21 captioned and advertised for special exception relief
22 under Subtitle E, Section 5201, from the lot occupancy
23 requirements of Subtitle E, Section 504.1, which would
24 construct a second-story addition to an existing one-
25 family dwelling, RF-3 Zone at 416 G Street Southeast,

1 Square 822, Lot 803.

2 CHAIRPERSON HILL: Good morning. If you could
3 please introduce yourselves from my right to left?

4 MS. SHARE: Yeah. My name is Tahani Share
5 from Landis Architects/Builders, and I am an agent for
6 my client, Mr. Courtney.

7 CHAIRPERSON HILL: I'm sorry, could you say
8 your last name again?

9 MS. SHARE: Share.

10 CHAIRPERSON HILL: Okay.

11 MR. COURTNEY: And I'm James Courtney. I'm
12 the owner of 416 G Street Southeast, Washington, D.C.

13 CHAIRPERSON HILL: All right. Ms. Share, are
14 you going to be speaking to us? Is that correct?

15 MS. SHARE: Yes.

16 CHAIRPERSON HILL: Okay. I don't really have
17 a lot of questions concerning the case. I mean, I
18 wouldn't -- if you want to go ahead and give us kind
19 of a high-level presentation on what you're trying to
20 do. I did see that the Office of Planning, I guess,
21 is suggesting 202.2 be added to your application. Are
22 you aware of that?

23 MS. SHARE: I read the amendment to the
24 application, and I think the issue is with the second
25 story being at 51 percent and the first story being at

1 66.9 percent, and then they added that additional
2 relief, which is fine with us.

3 CHAIRPERSON HILL: Okay. So, you would be
4 fine amending your application to include that relief.
5 Okay.

6 So yeah, if you could just go ahead and give
7 us kind of a high-level presentation on what you're
8 trying to do?

9 MS. SHARE: Yes. So, we're applying for a
10 special exception for an addition, second story
11 addition on a structure that doesn't meet lot
12 occupancy. The existing structure has a first-floor
13 structure, and a second floor that doesn't go all the
14 way to the first floor; first floor.

15 So, we are proposing building on the existing
16 first floor part of the first floor, and the open
17 court, which means that we are not going to affect the
18 lot occupancy. It remains at 66.9 percent, and we
19 will not also affect the front setback or the side
20 setbacks.

21 The existing property is in the Capitol Hill
22 Historic District, and the plans were presented to the
23 Historic Board and they determined, given the date of
24 the structure, being built in 1963 -- okay. In 1963,
25 that this is a noncontributing structure. But the

1 concept and the design are in harmony and compatible
2 with the Capitol Hill Historic District.

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

5 [No audible response.]

6 CHAIRPERSON HILL: Okay. Then if it's all
7 right, I'm going to go ahead and turn to the Office of
8 Planning and hear what they have to say.

9 MR. JESICK: Thank you, Mr. Chairman, and
10 members of the Board. The Office of Planning is happy
11 to rest on the record in support of the application.
12 Thank you.

13 CHAIRPERSON HILL: Okay. Great. Thank you.
14 Do you have any questions for the Office of Planning?

15 MS. SHARE: No, I read the report and it seems
16 very in accordance with what we're doing.

17 CHAIRPERSON HILL: Okay, great. Thank you.
18 All right. Then I'm going to go ahead and turn to the
19 audience here and see if there's anyone here from the
20 ANC wishing to speak.

21 [No audible response.]

22 CHAIRPERSON HILL: Is there anyone here who is
23 wishing to speak in support of the application?
24 Anyone here who's wising to speak in opposition to the
25 application?

1 [No audible response.]

2 CHAIRPERSON HILL: All right. Then, I'd turn
3 back to the applicant. Do you have anything further
4 you'd like to add?

5 MS. SHARE: No, thank you.

6 CHAIRPERSON HILL: All right. Then I'm going
7 to go ahead and close the hearing. Is the Board ready
8 to deliberate?

9 MR. HART: Yes.

10 CHAIRPERSON HILL: Okay. So again, based upon
11 the reading of the record and the report from the
12 Office of Planning concerning how the criteria has
13 been met for the special exception, and then in
14 addition the ANC 6B voted nine, to zero, to zero in
15 support, as well as seven letters in support. I'm
16 also in -- comfortable supporting this application.

17 So, I would go ahead and make a motion to
18 approve Application No. 19423 as read by the --
19 announced by the secretary.

20 MR. HART: Second.

21 CHAIRPERSON HILL: Motion has been made and
22 seconded.

23 [Vote taken.]

24 CHAIRPERSON HILL: The motion passes, Mr. Moy.

25 MR. MOY: Staff would record the vote as

1 three, to zero, to two. This is on the motion of
2 Chairman Hill to approve the application for the
3 relief requested. Seconding the motion, Mr. Hart.
4 Also in support, Mr. Hood. We have two seats vacant,
5 Mr. Chair. Motion carries.

6 CHAIRPERSON HILL: Thank you, Mr. Moy. If we
7 could get a summary order?

8 MR. MOY: Yes, thank you.

9 CHAIRPERSON HILL: Thank you. Thank you.

10 MS. SHARE: Thank you.

11 MR. MOY: The next case, application before
12 the Board is Application No. 19425 of William Gowin,
13 as amended I believe, for special exception relief
14 under the rooftop upper floor addition requirements of
15 Subtitle E, Section 206.1A, which would add a third
16 floor with roof deck to an existing flat in an RF-1
17 Zone at 30 Quincey Place Northeast, Square 3521, Lot
18 57. And let's see.

19 For the record, the applicant had withdrawn
20 their relief for special exception under the height
21 regulations, under Subtitle E, 303.1. And there's a
22 revised self-certification on the record under Exhibit
23 36.

24 CHAIRPERSON HILL: Good morning.

25 MR. GOWIN: Good morning.

1 CHAIRPERSON HILL: If you could just introduce
2 yourselves from my right to left?

3 MR. GOWIN: How do I turn it on?

4 CHAIRPERSON HILL: I think, yeah, just push
5 the button. No, no, it's the other one there.

6 MR. GOWIN: Okay.

7 CHAIRPERSON HILL: Yeah.

8 MR. GOWIN: So, my name is William Gowin, the
9 owner.

10 MS. GARDNER: I'm Lindsey Gardner, also a
11 resident of 30 Quincey Place.

12 CHAIRPERSON HILL: Okay. Okay, Mr. Gowin.
13 So, I would like to hear, I guess, a little bit about
14 what you're proposing to do. And I do see again that
15 you have done a lot of the work ahead of time in terms
16 of working with the Office of Planning, and then
17 the -- your ANC 5A, you went and presented in front of
18 them and got their support, eight to zero. There's
19 also a letter in support from the Eckington Civic
20 Association. And then as well as 20 letters in
21 support. You guys have a lot of support. That's
22 great.

23 The one question that I did have, as you're
24 kind of just going through, you know, the presentation
25 if you would just give me a high-level presentation as

1 to what you're trying to do, there was some question
2 from the Office of Planning it looks like, and we will
3 get a chance to hear from the Office of Planning. But
4 the one-to-one setback for the railing. I don't know
5 if that's something that you've kind of already spoken
6 about with the Zoning Administrator and Office of
7 Planning. So, that's something I'd be kind of
8 interested in hearing about.

9 I don't know if there is anything else that
10 the Board is interested in specifically.

11 MR. HOOD: Mr. Chairman, I also would like to
12 hear and respond to some of the letters in opposition
13 as well.

14 CHAIRPERSON HILL: Okay, great. Thank you.
15 So, if you could go ahead, Mr. Gowin, or whoever is
16 going to be speaking, just tell us about your
17 proposal.

18 MR. GOWIN: So, first addressing the setback
19 for the roof deck, we'll either have a parapet or just
20 nix the deck. But we will work with DCRA and the
21 normal rules to make sure that isn't an issue.

22 So, that's -- so, that's number one. And so
23 then, you know, do you want me to give an overall of
24 what we're trying do or --

25 CHAIRPERSON HILL: Sure. Just go ahead. Tell

1 us a little bit about what you're trying to do, and
2 then also if you could just respond to Chairman Hood's
3 questions about the opposition.

4 MR. GOWIN: Okay. Largely we're trying to --
5 we have a large turret and with -- that doesn't have
6 a, like a -- it's not really high enough that it has
7 the third-floor attic windows. It doesn't have like a
8 large mansard. So, we're dealing with kind of a
9 larger structure and a small footprint. We're one of
10 the few houses that don't have a bump back.

11 So, given all the constraints and wanting to
12 raise and put a third floor on, I'm an owner since
13 2011 and I bought it with the intention of adding a
14 third floor, knowing I'd have a family, that all of
15 the by-right third-floor additions, we tended to feel
16 were very disjointed and nonharmonious with the
17 neighborhoods that we see all over the city.

18 So, we looked with our architect design team,
19 looked at various designs, came up with a design. We
20 then, you know, put in our permit back in July, you
21 know. We were told about the zoning and we sat on it
22 for about two to three months trying to decide whether
23 we wanted to go through this process. Whether we
24 really -- you know, were we absolutely certain that we
25 wanted to take off the turret to hopefully get a

1 design that will frankly look original and look like,
2 you know, just about any building in the city, right?

3 This is a very popular design, mansard roof,
4 corbeling. You know, it's all over P Street, 15th
5 Street, and in Bloomingdale. So, that's what we're
6 hoping to accomplish.

7 Per your, the opposition, Mr. Hood, the -- we
8 have three letters from the actual neighborhood that
9 are in opposition. The rest are from outside the
10 neighborhood. And my understanding they're largely in
11 opposition to the fact that you know, with the Office
12 of Planning and this process of going forward, and
13 they're afraid that this is setting a dangerous
14 precedent.

15 To my actual neighbors on the street, I've
16 spoken to one of them. In his letter of opposition,
17 he said he hadn't actually looked at the designs, was
18 afraid about the precedent. I spoke to him last
19 night. I can show you the nice e-mail saying that
20 once he saw the design, you know, he thought it was
21 very beautiful. Now, he's still worried about the
22 overall trend, you know, and making sure that you guys
23 are basically going through the correct process. And
24 this isn't easy for developers to do something like
25 this.

1 My other two neighbors, you know, they don't
2 want any change. And essentially my feeling is that
3 putting a by-right pop-up changes the -- is going to
4 change the characteristic and pattern no matter what.
5 So --

6 MS. GARDNER: Just to address the two, the
7 other two letters in opposition --

8 CHAIRPERSON HILL: I'm sorry, is your
9 microphone on? Or just maybe --

10 MS. GARDNER: It is, I think I'm just not
11 close enough.

12 CHAIRPERSON HILL: Okay.

13 MS. GARDNER: One of them suggested that we do
14 a similar design to a house across the street. That
15 house is architecturally completely different than
16 ours. If we of had that small turret we would have
17 kept it. The turret kind of doesn't extend on to the
18 roof, so they were able to use the entire footprint of
19 their house. So, I mean, I would be in agreement with
20 that letter of opposition. If we could have done
21 that, we would have.

22 And then the other one, we actually showed him
23 our plans and asked -- prior to all this process, and
24 asked him for his opinion because we knew he was sort
25 of anti-third-floor at all, and he refused to even

1 look at the plans. So, that kind of characterizes the
2 three letters in opposition that we got.

3 MR. GOWIN: Yes.

4 MR. HOOD: Can I ask you --

5 MR. GOWIN: Yes, sir.

6 MR. HOOD: You mentioned what was going on all
7 over the city, and I know what's going on all over the
8 city. But what's going on, on 30th Street, on your
9 street? That's what I want to know.

10 MR. GOWIN: So, presently we have two previous
11 third-floor additions which I don't think ruin the
12 characteristic of the neighborhood, or the patterns of
13 the peaked roofs. And one of them was in a row of
14 turrets. And they're not my favorite, but I think
15 they were done acceptable.

16 There's another one coming up in the process
17 where they've actually changed their mansard, so I
18 hope they have to go through this process.

19 And, there's another one that's in the
20 permitting process. So, the neighborhood as a whole
21 is frankly coming up. There's, you know, three houses
22 that have been empty for years.

23 MS. GARDNER: The second block of Quincey
24 Place, as well, has --

25 MR. GOWIN: Ten.

1 MS. GARDNER: -- 10 third-floor additions
2 already.

3 MR. GOWIN: In the last six years.

4 MR. HOOD: What I'm --

5 MR. GOWIN: So as a whole --

6 MR. HOOD: The reason I asked that question is
7 because you said one of your neighbors was talking
8 about the trend. But specifically, we just have to
9 deal with the merits of your case.

10 Let me ask you, your two side neighbors, you
11 have two neighbors on both sides, correct? I'm
12 looking at your shadow studies. Have they -- have you
13 shared the shadow studies with them?

14 MR. GOWIN: Yes, and both support it, sir.

15 MR. HOOD: Okay.

16 MS. GARDNER: As well as the renters.

17 MR. HOOD: Yeah, I saw they supported it, but
18 I just wanted to make sure that the shadow studies
19 were shared with the --

20 MR. GOWIN: Yes. And largely because we do
21 face south, the majority of the sun is when it's
22 overhead, when it's most direct. So, in the future if
23 they would put solar panels on, it would be a margin
24 effect.

25 MR. HOOD: And for the record, I just want to

1 be clear, you are within the height restriction of the
2 -- you are at 35 feet.

3 MR. GOWIN: Yes, sir.

4 MR. HOOD: All right. You're not going over
5 that.

6 MR. GOWIN: No.

7 MR. HOOD: Okay. And we're going to do away
8 with the rails. I think you already have taken care
9 of that issue.

10 MR. GOWIN: Yes. And one of the -- that's one
11 of the things we changed for going through this
12 process, is originally we had asked for a couple feet
13 of height, and due to the going through the, you know,
14 ECA, ANC, and just neighbors, we decided to take that
15 off and only ask for the -- only ask for the removal
16 of the turret, 206.

17 MR. HOOD: Now let me ask you. From looking
18 at it from the street level, I mean, some of the
19 photos show me that it cannot be seen, you know, it's
20 not -- you really have to pay attention. It's not
21 something that's just obtrusive that you can just see.

22 MR. GOWIN: Correct.

23 MR. HOOD: From the street level.

24 MR. GOWIN: Yes. That was one of the things
25 we were trying to show, and by picking the design we

1 did and keeping the --

2 MS. GARDNER: The trim.

3 MR. GOWIN: -- the trim going across, but also
4 the -- right where the turret begins it basically --
5 sorry, I'm not an architect. I don't know what the
6 correct term is. But it goes out about a foot, right?
7 You know, that would then block, you know, the view
8 of it. So.

9 MR. HOOD: Okay. Thank you, Mr. Chairman.

10 MR. HART: Yeah, just one question about the
11 roof, the roof deck.

12 MR. GOWIN: Uh-huh.

13 MR. HART: You said that you are going to be
14 working with the DCRA to get -- or figure out what
15 kind of works. I kind of would like to have the
16 drawings that show that, you know, because right now
17 what we were looking at are the drawings that are
18 before us which don't actually have that setback in
19 them.

20 MR. GOWIN: So, the setback most likely, which
21 is my understanding seeing various things get through
22 these, is that the party walls in the back would be
23 the three feet high enough. And so therefore it's
24 blocked, would be one way. Or, we just get rid of the
25 roof deck, whichever one gets through. So.

1 MR. HART: Yeah, I'm just saying that we, what
2 we have before us right now is --

3 MR. GOWIN: What you would --

4 MR. HART: -- what you've submitted to us.
5 So --

6 MR. GOWIN: Correct. But you would not be
7 able to -- from the front exterior you would never see
8 the roof deck. It's offset further back, far enough
9 back. Since --

10 MR. HART: What I'm -- I'm not disagreeing
11 with you on that point. I'm just saying that what we
12 have to do is to look at the drawings and the
13 information that we've been presented --

14 MR. GOWIN: Correct.

15 MR. HART: And be able to deliberate and to
16 make a decision on that information. It's hard for us
17 to kind of assume that someone is going to do
18 something, and we don't know exactly what that is.
19 And so, I just wanted to get, I don't know, maybe
20 something from DCRA that says that this is what the
21 resolution of this is.

22 So, I don't know if it's something that we
23 need to necessarily have a conversation about. It's
24 more just getting information from you all from DCRA
25 that says, in the record, that says this is what has

1 been decided for this particular issue, because it was
2 raised by OP. It has not had a resolution yet, and so
3 we just need to have some sort of resolution with
4 that. And maybe it's just us keeping the record open
5 so that we can receive this information from DCRA, but
6 I just don't think we can be able to kind of vote on
7 this right now, given that information.

8 MR. GOWIN: So, not to --

9 MS. GLAZER: Pardon me. If I can just
10 interject. I mean, the Board is free to rule on this
11 now. It is a self-certified application, and the
12 applicant has self-certified and of course the
13 applicant does that at his own risk if it turns out
14 that they're incorrect and additional relief is
15 needed. It's up to them. But if the applicant feels
16 confident there's no need for the Board to require him
17 at this point to go back to DCRA. If he chooses to he
18 can request the ability to do that.

19 MR. GOWIN: And --

20 MR. HART: Thank you for that clarification.

21 MR. GOWIN: DCRA has already pointed out that
22 it would be an issue with the turret, so they would
23 never approve, because since it's in violation of
24 zoning. I just haven't had my architect change, since
25 we don't know where we're going, you know, if you guys

1 would approve or not, like what's going forward. So,
2 we just haven't addressed that as a whole, but that,
3 we already know is an issue and we will, by the normal
4 DCRA process, resolve this.

5 CHAIRPERSON HILL: During your testimony Mr.
6 Hood had asked about the railing. So, and he said
7 that the railing is gone. I got a little lost, and
8 you seemed to agree. The railing is still there,
9 right? That's, at this point?

10 MR. GOWIN: So, you're talking about the roof
11 deck, correct?

12 Yes, and so I would --

13 MS. GARDNER: The railing is still there.

14 MR. GOWIN: If there is any -- if it was
15 something we were not able to resolve with the DCRA,
16 we would just remove the deck.

17 CHAIRPERSON HILL: Okay. Okay.

18 MR. GOWIN: In a whole, so.

19 MR. HOOD: You're saying you removed the deck
20 all together. I'm not following you now. I got lost.
21 I was --

22 MS. GLAZER: Can I just clarify one thing?
23 The applicant itself certified, however any approval
24 by the Board has to be approval of specific plans that
25 are in the record.

1 So, it either has to show the railing on or
2 off.

3 MR. GOWIN: My understanding, since I'm not
4 seeking that, that it's a -- I thought it was
5 something that didn't need to be addressed yet,
6 because DCRA would nix that no matter what. I'm not
7 seeking any zoning, you know, approval for, for the
8 roof deck, for the setback, penthouse setback
9 requirements.

10 MR. HOOD: So, Ms. Glazer, let me just ask Ms.
11 Glazer a question because this is something that we're
12 going to actually, that we're going to try to push for
13 the Board.

14 The final plans, I know in the past plans
15 didn't have to be final, final. Have we changed that?
16 We've changed so much stuff I get confused.

17 So now, have the final plans need to be
18 exactly what he's prescribing to do, correct? If not,
19 we need to get --

20 MS. GLAZER: In general, yes, that's true
21 because the approval is the approval --

22 MR. HOOD: Of the plans.

23 MS. GLAZER: -- of a proposal including the
24 plans. There are times when applicants, as you know,
25 ask for flexibility with certain aspects. But usually

1 those aspects are items that would not change the
2 relief required. They relate to more minor design
3 features.

4 MR. HOOD: So, in other words, with the
5 railing issue it needs to either be there or not, one
6 or the other? Okay. Well, I see we've made
7 accomplishments then. I didn't know. That's what I
8 actually like.

9 MR. MOY: Chairman Hood, if I may also add,
10 and I know you know this, but it's always been our
11 understanding at DCRA that when the order -- when the
12 applicant takes an order with them as part of the
13 application for the building permit, that the people
14 at DCRA also inspects the drawings that were approved
15 by the Board.

16 MR. HOOD: Right. But the order, the language
17 in the order is what supersedes the plans at one time.
18 But what we're trying to do, at least on the
19 Commission, what we were intending to do, was to bring
20 all that together so the language matches the plans.

21 MS. GLAZER: They should be consistent.

22 MR. HOOD: Well, it hasn't always been that
23 way and that's been an issue. So, I'm glad to see
24 we're making some strides.

25 CHAIRPERSON HILL: Mr. Gowin, Ms. Gardner,

1 you'll get there. We'll get you there. Okay?

2 So, do you have anything else to add because
3 I'm going to turn to the Office of Planning?

4 MS. GARDNER: There's just one thing I wanted
5 to say is that --

6 CHAIRPERSON HILL: Sure.

7 MS. GARDNER: -- in this process we took into
8 account several designs that kept the turret. We
9 thought about building around the turret, like we've
10 seen a lot of places do. And in our opinion as the
11 homeowners, none of those designs looked original.
12 They kind of looked like the ugly pop-ups that our
13 community is frankly trying to avoid.

14 So, that was the intention of the design in
15 removing the turret, was to keep it consistent with
16 the house and with the historic nature.

17 CHAIRPERSON HILL: Okay.

18 MS. GARDNER: We did take all of those things
19 into account.

20 CHAIRPERSON HILL: Okay. All right. So, I'm
21 going to turn to the Office of Planning. Okay?

22 Office of Planning, hopefully you can put a
23 little clarification on this, the railing setback
24 issue.

25 MS. FOTHERGILL: Good morning. For the

1 record, I'm Anne Fothergill with the Office of
2 Planning.

3 In terms of the railing, my understanding is
4 that the plans as submitted, the railing is not in
5 compliance and would need relief. But, as Ms. Glazer
6 said, they are not requesting relief, they are self-
7 certified.

8 So, we raised it to them as something to look
9 into. The applicant has indicated that they would
10 either do a parapet wall, I think, or remove the roof
11 deck and not have a setback for the railing. That's
12 what it sounds like. But that's the only light I can
13 shed on that.

14 And in terms of the application, the Office of
15 Planning has struggled with this one. This is a new
16 regulation and this, from initially the Office of
17 Planning talked to the applicant about retaining the
18 turret to comply with the regulations and because of
19 their programmatic needs, they had considered that and
20 there is the special exception provision and they
21 wanted to pursue requesting relief and on balance,
22 looking at the language of the review criteria and the
23 proposal, and the strong community support, the Office
24 of Planning supported it. It has, as you see in the
25 record, there has been recent opposition and there --

1 I believe there are people here today to speak in
2 opposition, and it has become a contentious issue and
3 the Office of Planning continues to struggle with this
4 one. It's a challenge, but we have been working with
5 the applicant.

6 We are happy to continue working with the
7 applicant should the Board not support the relief, and
8 there is a need for height relief to get the space
9 they need while retaining the turret. But for now,
10 this is the application before us and we have
11 supported the application. I'm happy to answer any
12 questions.

13 CHAIRPERSON HILL: So, for further
14 clarification, when you say the Office of Planning
15 struggled, what part was -- what were you guys
16 struggling about, so just so I know for future cases
17 as well as this.

18 MS. FOTHERGILL: This is a new zoning
19 regulation that is the language requires the retention
20 of original architectural elements. And then there is
21 a special exception with a waiver process. And, so in
22 order to meet those review criteria, we really had to
23 look at a number of factors since the new regulation
24 is -- this is not in keeping with that regulation. I
25 mean, they're asking for relief.

1 And so, we are looking to the Board for some
2 guidance on -- and direction for future cases. But in
3 terms of this case and the review criteria, we
4 reviewed the factors and supported it.

5 MR. HOOD: Ms. Fothergill, let me ask you,
6 with the review criteria that the Commission put in
7 place, was that helpful or was it -- or did it cause
8 more of a problem? Now, I really want to know because
9 I was not supportive. To be frankly honest, I was not
10 in support of all that, but I'm just curious.

11 MS. FOTHERGILL: It is helpful to have the
12 specific review criteria to go through.

13 MR. HOOD: It's helpful, but was it in this
14 situation as you stated, because we're all trying to
15 get adapted to the new regulations and how they work,
16 including myself, and I help write them. So, I'm just
17 trying to figure out, was all that criteria that we
18 put down there for things to look at, was that
19 helpful?

20 MS. FOTHERGILL: Yes.

21 MR. HOOD: Truthfully, was it helpful? It
22 was? I'm serious.

23 MS. FOTHERGILL: Yes.

24 MR. HOOD: It was -- okay. Thank you.

25 CHAIRPERSON HILL: Mr. Hart?

1 MR. HART: I don't have any questions.

2 CHAIRPERSON HILL: Okay. Does the applicant
3 have anything for the Office of Planning? No? Okay.
4 All right. Then --

5 MS. GARDNER: Just want to thank Office of
6 Planning.

7 CHAIRPERSON HILL: Sure.

8 MS. GARDNER: They've been great. They've
9 been very helpful in helping us understand the new
10 regulations.

11 CHAIRPERSON HILL: Sure. Okay. All right.
12 Before I turn to the audience, does anybody have any
13 further questions for the applicant?

14 [No audible response.]

15 CHAIRPERSON HILL: All right. Is anyone here
16 from the ANC?

17 [No audible response.]

18 CHAIRPERSON HILL: Is anyone here wishing to
19 speak in support?

20 [No audible response.]

21 CHAIRPERSON HILL: Is there anyone here
22 wishing to speak in opposition?

23 If you could please come forward?

24 [Discussion off the record.]

25 MS. BERK: My name is Sally Berk, and for

1 those of you who don't know me, but I have testified
2 before, at BZA before, I have an undergraduate degree
3 in architecture, a graduate degree in historic
4 preservation, and have been a preservation activist in
5 the city for more than three decades. But --

6 CHAIRPERSON HILL: Ms. Burk, can I just
7 interrupt one second? Where do you live, or where are
8 you around in connection with this property?

9 MS. BERK: I live in the Sheridan Kalorama
10 Historic District, but I will in fact in my statement,
11 explain why I feel invested in this.

12 CHAIRPERSON HILL: That's all right. I was
13 just curious.

14 MS. BERK: Okay.

15 CHAIRPERSON HILL: Okay.

16 MS. BERK: Okay.

17 CHAIRPERSON HILL: And then, if you could
18 introduce yourself to her right there?

19 MS. MILLER: My name is Rebecca Miller. I'm
20 the Executive Director of the D.C. Preservation
21 League. We're the city-wide advocate for historic
22 resources.

23 CHAIRPERSON HILL: Okay. Great. Welcome, Ms.
24 Miller. All right. Ms. Burk, I'm just going to let
25 you know, I'm going to put three minutes on the clock

1 for you, okay?

2 MS. BERK: Okay. Then, I'm going to have to
3 read this really, really quick because I also have a
4 few images to show.

5 CHAIRPERSON HILL: Okay.

6 MS. BERK: What is relevant to me in this case
7 is that I wrote my Master's thesis on the rowhouses at
8 Harry Wardman, the most prolific residential developer
9 in the history of the city. And I also co-curated an
10 exhibit on rowhouses, and wrote a chapter in a book on
11 Washington houses, about rowhouses.

12 And, these projects have taught me that one of
13 our city's most valuable assets from a housing
14 standpoint, is rows of identical or nearly identical
15 houses. They are an icon of our city, and one of the
16 primary features that attract people to our
17 residential neighborhoods. And those neighborhoods
18 have remained amazingly intact. There has been very
19 little change.

20 I am here to testify, as you know, in
21 opposition to the removal of the turret. While the
22 architect has done a satisfactory job of designing a
23 third-floor addition that is not incompatible with the
24 house, and I commend you for hiring an architect to do
25 that, the architect failed to consider the greater

1 context. And in fact, amongst the drawings there is
2 not a single drawing of the proposed façade in
3 context. And that lack of context, I think, is very
4 important.

5 Others -- the Office of Planning, has
6 mentioned that the turret, and you're aware that the
7 turret violates a zoning regulation. So, I prefer to
8 concentrate on the impact of the turret removal. Once
9 gone, it is unlikely to ever be reconstructed. It is
10 not a simple reversible change, and if this act were
11 to be repeated, no matter how seldom nor how few
12 houses per row, eventually there would be an insidious
13 change, not only in Eckington, but all over the city.

14 It would be preferable for the applicant to
15 retain the turret and find another way to meet the
16 needs. Even if it does in fact reduce the program.

17 There is an unfortunate misunderstanding that
18 the best way to increase the value of our rowhouses is
19 to increase them in size. But that's just not true.
20 Retaining the house as they were originally designed,
21 most of them by very capable architects, is the best
22 way to retain their value, to contribute to our
23 neighborhoods, and to contribute to our city.

24 This is a city-wide issue. If you approve the
25 removal of this turret, how will you deny the removal

1 of front porches and turrets and other primary
2 features of our thousands, and thousands, and
3 thousands of rowhouses?

4 So, let me quickly show you some images of
5 intact rows. And where do I -- okay. I have quite a
6 collection of rowhouses.

7 An historic image. An architect's original
8 drawing of some with turrets. An interesting row of
9 varied house, but still completely intact, and showing
10 the cohesion that results from keeping the architect's
11 original design. More with turrets, and a whole row
12 still intact. More with the cohesive design. More.

13 And now, here is one where a change was made,
14 and it detracts from the value of the whole row. Here
15 is another completely intact row. This is one of a
16 pair of three in a row that, can you imagine making a
17 change to this design? No. More.

18 And then here is the proposal, which the
19 architect did not provide, but Rebecca sat down and
20 created it for us to use today.

21 CHAIRPERSON HILL: Okay.

22 MS. BERK: Did I make it within three minutes?

23 CHAIRPERSON HILL: Pretty good. Pretty good.
24 Pretty good.

25 Ms. Miller, are you representing your --

1 MS. MILLER: The Preservation League.

2 CHAIRPERSON HILL: Okay. Well, then as you
3 know, you get five minutes. A whole two --

4 MS. MILLER: I don't think I'll need the whole
5 five, but --

6 CHAIRPERSON HILL: A whole two minutes more.

7 MS. MILLER: Yes. I mean, this is just kind
8 of a mock up. I mean, my design skills are limited.
9 So, okay.

10 So, Chairman Hill and members of the Board, my
11 name is Rebecca Miller. I'm the Executive Director of
12 the D.C. Preservation League. We're a Washington
13 city-wide non-profit advocate for the preservation and
14 protection of our city's unique historic resources.

15 I would like to call the Board's attention to
16 several troubling elements of the request to remove
17 the turret from 30 Quincey Place Northeast. DCPL
18 became involved to the numerous calls we received from
19 residents of Eckington and others throughout the city
20 who were concerned with the precedent this ruling may
21 set for future cases in their neighborhoods.

22 30 Quincey Place is a middle unit in a row of
23 seven houses built in 1903 by Alex Milar (phonetic).
24 The architect of these houses, whose name is
25 unrecorded, differentiated them by alternating arched

1 and rectangular doorways, but gave the row a coherent
2 visual identity by giving each house a tall pyramidal
3 turret. Removing the turret of an inner unit would
4 break the essential visual link, and destroy the
5 essential character of the row. It would adversely
6 affect the character of this block that is one of the
7 finest and intact rows in this area of the city.

8 While in past years the previous zoning rules
9 permitted a few houses to gain a third story, none are
10 close to 30 Quincey Place Northeast. This project
11 thus represents the introduction of an outsized
12 element into this view shed.

13 On March 30th, 2015, the Zoning Commission
14 voted to reduce the allowable heights from 40 to 35
15 feet in R-4 districts to basically downzone, or more
16 appropriately right-size these neighborhoods. Yet,
17 the Office of Planning's report supporting the turret
18 removal stated that the proposed addition, including
19 the removal of the turret should not substantially
20 visually intrude upon the character, scale, and
21 pattern of houses along the street and alley, as there
22 are other three-story houses on this street and there
23 are other houses with rooftop front gable features, so
24 that the proposed design would not be out of character
25 for the area.

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1 This suggests that because of previously
2 permitted pop-ups, new pop-ups that are prohibited by
3 the current zoning regulations are permissible. This
4 would make moot, the new zoning regulations.

5 206.1 specifies that in an RF Zone district,
6 the following provision shall apply; a rooftop
7 architectural element original to the building, such
8 as a turret, tower, or dormers, shall not be removed
9 or significantly altered, including changing its shape
10 or increasing its height, elevation, or size.

11 This rule seemed to clearly conflict with the
12 request.

13 DCPL, as especially just made by the section
14 in the Office of Planning's report which states that
15 the proposed addition, including the removal of the
16 turret should not substantially visually intrude upon
17 the character, scale, and pattern of the houses along
18 the street and alley, as there are three-story houses
19 on this street and others.

20 This assertion does not adequately acknowledge
21 that each of these buildings were designed with a
22 pyramidal turret, specifically to express the coherent
23 visual identity of the row. DCPL believes that the
24 Office of Planning report's failure to acknowledge the
25 relationship between 30 Quincy Place Northeast, and

1 its neighbors, greatly diminishes its conclusions.
2 And with that, also the owner's burden of proof.

3 DCPL sees an opportunity for this homeowner
4 and others to add additional square footage to their
5 row houses. However, this should not be to the
6 detriment of the City's historic character. We would
7 ask that the members of the BZA ask the applicant to
8 study a concept that retains the turret, thus
9 retaining the character of this historic row.

10 A ruling in favor of removing this turret will
11 set a negative precedent across the city and continue
12 to allow the degradation of the character of some of
13 Washington's most historic neighborhoods. We urge the
14 BZA to deny this special exception. Thank you very
15 much.

16 CHAIRPERSON HILL: Thank you, Ms. Miller.
17 Does the Board have any questions for the parties in
18 opposition?

19 MR. HOOD: I just wanted to ask Ms. Miller.
20 So basically, Ms. Miller, you're operating on, which
21 is D as you mentioned, the rooftop architectural
22 element original to the house, such as a turret,
23 tower, or dormer, shall not be removed or
24 significantly altered, including the change in the
25 shape or increasing its height, elevation, or size.

1 MS. MILLER: Correct.

2 MR. HOOD: But it also goes on to say -- where
3 did I read this? "The Board of Zoning may modify or
4 waive not more than two or the requirements specified
5 in Subtitle E." 5203.1, "Through provided that any
6 modification or waiver granted pursuant to this
7 section shall not be in conflict with Subtitle E,
8 5203.1E."

9 MS. MILLER: I find the language very
10 confusing.

11 MR. HOOD: Don't tell me that.

12 [Laughter.]

13 MR. HOOD: That was not the intent. Okay.
14 So, you see what I'm saying? The Board has the right
15 to waive.

16 MS. MILLER: Yes, I understand that this Board
17 has the right to waive. I don't believe, however,
18 that the owners met their burden of proof. And
19 especially when you're looking at the row of houses in
20 this particular row, you have seven row houses of
21 turrets in a row, that you can't state that this will
22 not drastically change the sightline of these
23 buildings, or the view shed of these buildings.

24 MR. HOOD: So, what you're saying, a different
25 design will help rectify D, 5203.1D? A roof

1 architectural element original to the house, such as a
2 turret or tower, shall not be significantly changed,
3 including the change of shape or -- so, a different
4 design, which I think the Commission was trying to go
5 after, would help rectify some of the opposition I
6 guess that you have. I'm not sure, Ms. Burk. But
7 would have -- would deal with the opposition that you
8 have.

9 MS. MILLER: Correct. I mean, the
10 Preservation League, we spend most of our time, of
11 course, primarily focused on Historic Preservation
12 Review Board. I think in the 14 years I've worked at
13 the league I've actually never been before you before.
14 But they felt that it was important, that this is a
15 new regulation, and by you know, this first case that
16 comes before you that has, you know, it has a lot of
17 support from the neighborhood, but also has some
18 opposition from a city-wide perspective, that their
19 concern is that, is there another alternative.

20 And when I met with the owners yesterday one
21 of the things I was explaining about, and I know this
22 doesn't have to do with BZA, but in historic
23 preservation if something is denied you can appeal it
24 and you make the case as to why you have to do
25 something. So, you have to prove to the mayor's

1 agent, for instance, that there is no alternative to
2 demolition, or no alternative to something else. And
3 that's what we're seeking here, is that this be shown
4 that there's no alternative to keeping the turret.
5 So, to not keeping the turret.

6 MR. HOOD: Okay. Thank you.

7 CHAIRPERSON HILL: Did you -- I'm just
8 curious, did either one of you happen to go to the ANC
9 meeting when this came up?

10 MS. BERK: I only -- is this on or off?

11 MS. MILLER: It was on.

12 MS. BERK: I only learned about this on
13 Saturday. And the way I learned about it was an entry
14 on the Historic Washington listserv, which then
15 generated, you know, some discussion. Nobody in
16 support of this.

17 But no, I didn't go to the ANC meeting because
18 I didn't know about this until after the ANC meeting.

19 CHAIRPERSON HILL: Sure. And I'm going to ask
20 the applicant here in a second, but Ms. Miller, do you
21 know why, then, the Eckington Civic Association would
22 have signed a letter in support?

23 MS. MILLER: I can't answer that question.

24 CHAIRPERSON HILL: Okay.

25 MS. MILLER: I can't begin to --

1 CHAIRPERSON HILL: Sure.

2 MS. MILLER: -- assess as to why. I know that
3 in the last year DCPL was the fiscal sponsor for a
4 grant that several members of the Eckington community
5 pursued for -- to research and document, survey
6 Eckington neighborhood, from the National Trust of
7 Historic Preservation. So, there are people within
8 the community who are interested in preserving the
9 character of the neighborhood. There are other people
10 who are not interested in necessarily having historic
11 designation.

12 So, that is our interest in particular in the
13 neighborhood. In this particular case, though, it is
14 based on the precedent that it could set city-wide.

15 CHAIRPERSON HILL: Okay. Okay. So, just
16 turning to the applicant on this issues again, the --
17 a couple of things. I mean, you know, we look at
18 these as individual cases. And so, I understand, you
19 know, how the Office of Planning, and I actually have
20 more questions now of the Office of Planning after we
21 heard from the opposition.

22 But in terms of the ANC meeting and then also
23 the support that you got from the Eckington Civic
24 Association, can you kind of walk me through that,
25 because they saw the plans, correct? And so, can you

1 tell me how that went?

2 MR. GOWIN: So, one in May of 2016, Eckington
3 had a rather contentious vote to whether to go forward
4 or not with a historic. And Eckington voted
5 overwhelmingly to go to not be historic. And that was
6 the, largely the choice of the neighborhood of
7 worrying about, you know, essentially there's too many
8 homes that are boarded up, too many homes that need to
9 be, you know, fixed up, and needs, you know, the --
10 needs to be developed. And the ones that, you know,
11 that were there, we felt that you know, we didn't want
12 another set of rules to, you know, do things to our
13 homes.

14 CHAIRPERSON HILL: But that's okay. That's
15 the other vote. That's not about you all's project.
16 Right. Okay.

17 MR. GOWIN: Right. Starting with that, we see
18 the ones, the by-right pop -- go ahead.

19 MS. GARDNER: Just to answer your question,
20 though. When we went before the ECA we showed them
21 our design, we talked to them through the other
22 designs that we had thought about, to include keeping
23 the turret. We showed them examples, pictures from
24 the neighborhood of people who have kept the turret,
25 examples of original three-story houses, and that was

1 how the ECA came to decide that they actually
2 preferred our design to ones that kept the turret.
3 And we basically replicated that presentation to the
4 ANC, who also supported us. So, just to answer --

5 CHAIRPERSON HILL: What were the other designs
6 that kept the turret, that they weren't in support of?

7 MR. GOWIN: So, if you see the burden of
8 proof, the last one, I kind of go through some
9 examples of that. But largely the by-right ones,
10 that's a box, is what everyone is afraid of and no one
11 wants. You know, they basically want the neighborhood
12 to look nice, and as someone who --

13 MS. GARDNER: Right. Putting like a --

14 MR. GOWIN: As someone who has been in the
15 neighborhood --

16 CHAIRPERSON HILL: I'm sure everybody wants
17 their neighborhood to look nice. That's why I'm just
18 laughing, right.

19 MR. GOWIN: As someone who has been in the
20 neighbor since 2011, my mother who also lives with us,
21 is the Treasurer of the ECA. I mean, we've --

22 CHAIRPERSON HILL: That's okay. So, that last
23 -- from your burden of proof submission, the last
24 page, the example that you've put, again that is a by-
25 right example.

1 MR. GOWIN: Correct.

2 MS. GARDNER: And there is a lot of those in
3 the neighborhood.

4 CHAIRPERSON HILL: Uh-huh.

5 MS. GARDNER: Which is exactly what we're
6 trying to avoid. And actually, one of the people who
7 posted a letter in opposition, posted several pictures
8 of that type of pop-up, which is, like I said, exactly
9 what we're trying to avoid.

10 MR. GOWIN: And if we chose to go down that
11 route, which we could be, basically we'd be already
12 done building, since we put our permit in in July.
13 So, we took a long hard thought of whether we wanted
14 to go down this road or not.

15 MS. GARDNER: I also do want to say, it was
16 mentioned that the third-floor additions currently on
17 Quincey Place, are not close to us. You can see both
18 of -- you can see three of them from our house. So, I
19 mean, one of them is literally across the street. So,
20 I mean, to say they're not close to us is kind of
21 arbitrary.

22 MR. GOWIN: And erroneous.

23 MR. HART: And you did just say that Eckington
24 is not a historic district either.

25 MR. GOWIN: Correct.

1 MR. HART: Either as a local or a national
2 historic.

3 MR. GOWIN: Correct.

4 MR. HART: It has no designation.

5 MS. GARDNER: Correct.

6 MR. GOWIN: Yeah. I mean, there might be one
7 or two buildings, but --

8 MR. HART: Yeah, but as a district, I mean --

9 MR. GOWIN: Correct.

10 MR. HART: Yeah, the buildings are -- that
11 might happen, but I was just trying to understand if
12 that was correct. I mean, Ms. Miller was talking
13 about some aspects that were kind of what makes up a -
14 - the neighborhood. And I wasn't sure if that was --
15 these were things that are contributing elements to a
16 district or these are things that are contributing to
17 a, what you would consider a cohesive look to a
18 neighborhood. And those are kind of different --

19 MS. BERK: May I answer?

20 MR. HART: -- elements.

21 CHAIRPERSON HILL: No, one second, please.

22 MS. BERK: Are you asking?

23 CHAIRPERSON HILL: No.

24 MS. BERK: Okay.

25 MR. HART: No, Ms. Miller. It wasn't a

1 question. I was just saying that that's what I was
2 trying to understand.

3 CHAIRPERSON HILL: Ms. Miller, I was just
4 curious. I do have a question. Have you seen like
5 kind of like the by-right options that the applicant
6 has?

7 MS. MILLER: I have not seen their options,
8 no.

9 CHAIRPERSON HILL: Okay.

10 MS. MILLER: We, you know, there are different
11 perspectives around the city. People, there's the
12 contention that, well, I can just build this by-right
13 thing. People can make choices for their own homes in
14 a by-right manner, absolutely. But this is taking it
15 a step further. They're asking you to be able to
16 remove a turret; something that's in your regulations
17 that says that they shouldn't remove their turret.

18 And so, when saying, well I can just build
19 this box in lieu of doing something that's more
20 architecturally pleasing, I mean, people can design
21 something that keeps the character of their block.
22 You don't have to just put an ugly box on top of your
23 house.

24 CHAIRPERSON HILL: No, no, I understand. But
25 I mean, that's --

1 MS. MILLER: So, I mean, there's opportunity.

2 CHAIRPERSON HILL: But, I understand, but the
3 by-right is to put an ugly box on top of the roof.
4 So, I'm just making sure you understood.

5 MS. MILLER: It's just like penthouses. And
6 I've testified before that on penthouses, you can
7 design a penthouse too. So, if you could -- you have
8 the opportunity to design something that has
9 architectural detailing to it that makes it less
10 intrusive in your neighborhood. It's just sometimes
11 people choose not to.

12 MR. HOOD: And let me just say, that was the
13 whole intent, when we started doing the pop-ups, pop-
14 backs, pop-around, pop-down, or whatever you want to
15 call them pops.

16 One of the things that I'm looking here, I'm
17 not sure who supplied this, while they -- the
18 applicant. While they preserve the turret, and I
19 understand that whole argument, but I believe that the
20 Commission's intent was to do exactly what you're
21 saying. And that was to preserve some of the turrets
22 and what's out in front of the structures. But, you
23 know, that's all right. I've been through -- I'm not
24 going to rehash those hearings. Okay. Thank you, Mr.
25 Chair.

1 CHAIRPERSON HILL: Chairman Hood, I wish that
2 I was at some of those hearings, then I don't have to
3 rehash these right now for me.

4 Okay. I'm going to ask the Office of
5 Planning, if I could, a question. Ms. Miller had
6 brought up the issue about like, had you looked at the
7 other homes, you know? Again, the Office of Planning
8 had said they struggled with this. We, as a board,
9 have an opportunity and ability to waive this or
10 approve this, based on again, the individual case.
11 But did the Office of Planning look at the row itself
12 and take that into consideration?

13 MS. MILLER: Yes. In the RF-1 the property
14 owner is allowed to construct a third-story. The
15 adjacent houses are two stories. So, right there,
16 there will be an impact. They are not asking for
17 height relief, but they are adding a third story to a
18 two-story house, and the two adjacent properties are
19 two stories.

20 So, we did look at that, and we looked at the
21 block, and the neighborhood. Yes.

22 CHAIRPERSON HILL: Okay. And I thought you
23 had mentioned in your testimony, maybe I'm mistaken,
24 something about like additional height relief,
25 perhaps, if they had kept the turret.

1 MS. MILLER: So, my understanding from talking
2 to the applicant, we did encourage retention of the
3 turret, which is our -- you know, to be in compliance
4 with the regulations and not seek relief. My
5 understanding is that that -- that they couldn't get
6 the space that they needed, but that perhaps one
7 option, and I have not seen the alternate design
8 options. But one option might require height relief
9 and not this relief, retain the turret, so not relief
10 from 206.1, but perhaps height relief. And that what
11 I was suggesting is that the Office of Planning is
12 open to that if the Board does not support this relief
13 and the applicant wants to pursue another design
14 option. We would be happy to work with them.

15 CHAIRPERSON HILL: So, getting to the 40 feet.

16 MS. MILLER: Of somewhere within 35 to 40,
17 yes.

18 CHAIRPERSON HILL: Okay.

19 MS. MILLER: Originally their application did
20 ask for height relief, and so I think that is
21 something that could be contemplated. I mean, we you
22 know, we understand both sides of this issue. The
23 opposition and the concern. And so, we have been
24 trying to work with the applicant as well, to find a
25 solution that would have the least amount of impact.

1 CHAIRPERSON HILL: Okay. Does anyone have any
2 more questions for the Office of Planning?

3 MR. HOOD: Ms. Fothergill, you heard my
4 conversation with Ms. Harris? I'm sorry, what --

5 MS. MILLER: Miller.

6 MR. HOOD: Miller. Where did I get Harris
7 from? You've heard my conversation. And one of the
8 regulations, it talks about design. Do you simply
9 think that -- and I'm not trying to put more burden on
10 the applicant because the regulations are what they
11 are. From a design standpoint, I really think that
12 this could be resolved. I think that you can get some
13 support. Not that you necessarily -- according to the
14 regulation, not that you need it. But it also
15 complies with the regulation. I don't like to write
16 regulations and then turn around and ignore them.
17 That's just how I've always been.

18 And, Ms. Miller is exactly correct. It does
19 say to preserve those, the turret. But then when you
20 look at, it's either one or the other, and I think Ms.
21 Fothergill has mentioned that. You know, when you
22 look at what's by right in the preservation of what
23 we're trying to preserve, I don't know which one is
24 even better. And I think the Commission intended to
25 try to resolve some of that with design. I don't know

1 if -- my opinion, I don't know if we got there, from
2 what I'm seeing here and what I'm experiencing. But,
3 Ms. Fothergill, do you think a design would -- and I
4 guess I can ask anybody this. I think from where I
5 see it, a design situation would solve, from what I
6 see there, but then again what I see here, there's no
7 better.

8 But, I think it would preserve exactly what
9 Ms. Miller is speaking of. So, I guess my question
10 is, do you think a design -- and I'm not trying to put
11 no more on you, but I think I agree with one of -- one
12 of my issues has always been, and I know I'm rambling
13 because this has been a rambling pop-up issue -- has
14 always been to preserve the character of the
15 neighborhoods. That's what this Commissioner has
16 always been, try to preserve it. But also, try to, as
17 under Mayor Williams, what he tried to do when he was
18 here to make sure that people, families that grow,
19 would be able to stay here in the city. So, it's a
20 mixture of trying to make that balance.

21 So, I don't want to put any more burden on you
22 but I'm not going to go to Ms. Fothergill, but I mean,
23 do you think we can go back to your architect and we
24 can design a little differently?

25 MR. GOWIN: Sir, respectfully, we began this

1 process almost a year ago.

2 MR. HOOD: Uh-huh.

3 MR. GOWIN: And so, we came up with a design
4 and, you know, we took a lot of, lot of effort and
5 thought. And, you know, one of the reasons we did
6 historic, you know, checkpointing, we took off the
7 paint, we did the checkpointing was to make sure I'm
8 like, do I have to worry about having the same brick?
9 Like, do I have basically good brick, or am I going
10 to paint it above, right? Found out I have really
11 nice brick. Took it off, found the same company that
12 would match the exact brick so the exterior looks
13 essentially the same, right? And looks like it had
14 been there all along.

15 So, back in -- you know, I didn't submit the
16 zoning until November. I knew about, I needed this
17 since August. I took that time to fully take into
18 account the gravity of, you know, do I really want to
19 take off the turret? Do I really want to go through
20 this process? You know, do we really want -- how much
21 do we want this? You know? And every time I saw
22 other pop-ups, even the ones I think that are decent,
23 they still don't look harmonious, right? They look
24 disjointed. They don't look like they're, you know,
25 were original, and they look like an afterthought.

1 And so, we decided we were willing to take
2 this on and go through the ECA, the ANC, all the
3 things that are you know, your -- this waiver was only
4 for a special exception. We've met the burden of
5 proof for a variance, which is much harder -- higher.
6 So, and with the numbers of support, we have I think,
7 25 letters of support, including adjacent neighbors.
8 So, what, essentially what more, you know, can one ask
9 for, you know, through this process? I mean, that's
10 why you, in the regulations, set this process up to
11 make it available.

12 CHAIRPERSON HILL: Okay. Well, Mr. Godwin,
13 and it's Ms. Gardner, correct?

14 MS. GARDNER: Yes.

15 CHAIRPERSON HILL: Gardner. I mean, I've got
16 to let you know, I think you understand that the Board
17 fully appreciates everything that you've done. And I
18 think even the people in opposition are appreciative
19 to the fact that you sound like, obviously very good
20 neighbors, you very much want the character of the
21 neighborhood to stay the same, and you're just trying
22 to accommodate your growing family, which is something
23 that Chairman Hood mentioned in terms of why this
24 process also has begun.

25 For me, not speaking for the rest of the

1 Board, I mean, I'm just trying to kind of work through
2 this as well, be it that you know, somewhat of a
3 standard that is going to now be -- even though it is
4 a special exception and not a variance, something that
5 is going to be now, you know, basically again the
6 whole block is going to end up doing it. You know, or
7 could possibly end up doing it, right?

8 And, I'm just giving you my thoughts. And so,
9 and you can respond in a second if you'd like.

10 But, and so, just trying to kind of work
11 through that and listen to what the Office of Planning
12 has to say and how they now -- I mean, my question to
13 you, I suppose, because again, I don't want, you know,
14 you to have to go through further architectural fees,
15 and/or have to go back to the -- you know, I don't
16 think you'll have to go back through this process
17 again if we did -- I mean, we are probably going to
18 need specific drawings as to what you are intending on
19 doing, because there was the whole issue with the
20 railing, right? And so, that's something that we
21 definitely are going to want to take a look at. So,
22 we are going to have to at least see that, right?

23 What I would be interested, and depending upon
24 the Board here, what they have to say, like see is,
25 you know, the Office of Planning is speaking of, you

1 know, a waiver, you know, that you would get the
2 increased height. So, going from 35 to 40 feet, and
3 then what that might do to your -- you know, have you
4 looked into that and whether that accommodates your
5 program while keeping the turret, getting the
6 increased height?

7 And so, that would be one question that I
8 would have for you that you can answer in a second,
9 because as you have submitted, and I'm sure that
10 neither person in opposition would like what is, again
11 the box that's in the back of the turret by-right,
12 just trying to figure out what to do.

13 So, have you looked at the additional height
14 in terms of a design in order to keep the turret?

15 MS. GARDNER: So, I'm not actually sure where
16 that came from. I know we did ask for height, but we
17 never said that this was like a either/or. We kept
18 the same design and reduced the height. And I think
19 there is like a little appreciation for just how big
20 the turret really is. Like, it would cut, if we had
21 to keep it there, there is 10 feet of turret in, I
22 mean, like our current master bedroom. It goes in 10
23 feet into the bedroom. I mean, it's really big.

24 So, the burden of, you know, where that pop-up
25 would have to sit, we would lose well over 120 square

1 feet of space up there. So, I don't know how height,
2 like actually affects square footage. Like --

3 MR. GOWIN: I would also say that if I was
4 doing something by-right, could I use more height?
5 Sure. But, if your goal is to not change the
6 characteristics and patterns of the neighborhood,
7 that's going to be even more intrusive. So, I mean,
8 if that's your goal, is to keep a turret but have a
9 very intrusive third floor, that's your decision,
10 prerogative.

11 And second, to address the precedent, I think
12 this is the type precedent you'd want to set for this,
13 right? That no developer is going to get, you know,
14 the civic association, get the ANC, and get the
15 numerous neighbors and adjacent neighbors. Right?
16 So, like we've more than, you know, met and shown that
17 if you would approve this, this is a very rare and you
18 know, the fact that we actually got Office of
19 Planning's approval, between Office of Planning and
20 this Board, I would think that very few in the future,
21 in the next 10 years, would ever get through, because
22 it would be so -- you would expect it to be so onerous
23 and have to make it, you know, look so good and worth
24 it, right? So.

25 CHAIRPERSON HILL: Okay. Does the Board have

1 any thoughts?

2 MR. HOOD: Yeah, I think you mentioned earlier
3 that the neighborhood -- and I'm sitting here looking
4 across at your street, your neighborhood. And I don't
5 see any other -- if they are, they're well-hidden. I
6 don't see any, any other pop-ups or anything. And
7 maybe this is a bad picture I'm looking at.

8 But I would agree with the chairman that we do
9 need some specific drawings. I know Ms. Miller -- for
10 some reason I want to call her Ms. Harris. Maybe I
11 know somebody that looks like her that's named Harris.
12 But, Ms. Miller had done this rendering but, I think,
13 Chairman, I think that's what you're requesting. Am I
14 correct?

15 CHAIRPERSON HILL: Yeah. I mean, I was
16 requesting drawings that were actually what you're
17 trying to do. And so, I'd like to see those, you
18 know, in terms of the railing again is the thing that
19 I was most interested in. You know, go ahead and
20 figuring out what you guys are going to do with that,
21 whether you're going to keep the roof deck or get rid
22 of it based upon the regulations.

23 And, I guess I would you know -- you did
24 submit something to the record for what the by-right
25 options are, or what you're able to do by right that

1 you put in your burden of proof, I think. So, I'd
2 like to see something that again shows the by-right
3 options. And, I guess did you just kind of photoshop
4 this in here? I guess, just kind of put a -- right,
5 you put the box on the top there of your -- of the
6 roof.

7 And so, if I could see something that's like
8 your by-right option? If you could just show me a
9 drawing about that.

10 And, I guess I wish that there was some way
11 that -- you know, I mean, I understand that the
12 criteria that we look at in order to grant the special
13 exception, and again the Office of Planning has
14 already spoken about how they've struggled with this,
15 and I'm also struggling with it.

16 And so, you know, I guess seeing kind of what
17 the by-right option is, and that would be helpful to
18 me, seeing what your drawings are, clearly in terms of
19 what you're proposing. That would be something I'd
20 like to see.

21 And then if -- and I guess I just don't want
22 to increase your architectural fees, but if there was
23 something that showed what you could do to save the
24 turret, and I know that's the by-right option. The
25 by-right option turret gets saved, and so you have the

1 little box in the back. But if there's something you
2 can do -- and you can speak with the Office of
3 Planning. Like, I don't know whether we're allowed --
4 we're able to also, if you meet the regulation, go
5 from 35 to 40 feet. I don't know if that does
6 anything for you in terms of more space. You're
7 saying it doesn't. But maybe you can talk to the
8 architect and see if that does anything for you. So,
9 I'd be interested in seeing those things.

10 Mr. Hart?

11 MR. HART: I think my fellow board members
12 have provided you with some additional information.
13 The only thing that I would add to that is, you noted
14 earlier that you had some -- an e-mail or something,
15 from your next-door neighborhood that said that they
16 were okay with the design, or if you could add that
17 into --

18 MR. GOWIN: They're already in support.

19 MR. HART: They are. Okay. You said you got
20 an e-mail like yesterday or something.

21 MR. GOWIN: One of the opposing.

22 MR. HART: Yes.

23 MR. GOWIN: That was on our street. So, his,
24 basically it was saying that he thinks we have
25 beautiful, you know, design and that we --

1 MS. GARDNER: We can enter it into the --

2 MR. GOWIN: Yes, I could.

3 MR. HART: That's all I was asking you to do.
4 So, thank you.

5 MR. HOOD: Again, Mr. Chairman, back to my
6 original point. I've been looking around the street,
7 even to T Street, and they are well hidden. At least
8 from what I can see here. But then, again, let's just
9 wait and see what you come back with so we can see
10 fully what you're trying to accomplish.

11 And it's no small feat on me that you got
12 approval from ANC, and from, what was it, Eckington
13 Civic Association and those, because they don't play a
14 whole lot. They are very serious. So, I commend you
15 on doing that. That's why I'm at a sticking point for
16 me.

17 Okay. Thank you, Mr. Chair.

18 CHAIRPERSON HILL: Are you guys clear what
19 we're asking for?

20 MS. GARDNER: I mean, I guess kind of not
21 really because -- so, you're asking us to come back
22 and show you it's by-right or this? Like --

23 CHAIRPERSON HILL: If you could show me what
24 the by -- I mean, I know you have a photograph here,
25 right? And I guess you can just submit the photograph

1 again if you like. But I mean, if you have something
2 that can show me what you would do by right if you
3 don't get this approval. Okay? And so --

4 MS. GARDNER: I guess, I mean, if we're going
5 to spend the money on the architect to get that drawn,
6 I mean, we may --

7 MR. GOWIN: We're going to go forward.

8 MS. GARDNER: Like, why wouldn't we just do it
9 by-right then, I guess?

10 MR. GOWIN: I mean, like, if you're going to
11 make us pay --

12 CHAIRPERSON HILL: I'm not saying you have to
13 go -- you don't have to go through all the
14 architectural drawings to, you know -- they can do --
15 then you can resubmit what you submitted. Okay? Or
16 don't submit it. I'm saying, I need to see what the
17 by-right -- nothing is going to happen right now.
18 Okay? We're not going to vote on this right now,
19 okay?

20 So, because I need to see for sure what you
21 are proposing with the railing being gone, or the roof
22 deck. You know, we need to approve the -- I'd like to
23 see whatever it is that you're going to do with the
24 railing if we do move forward and approve this. So,
25 that right there, gets you back with us. Okay?

1 So, in addition to that I'd like to see what
2 the by-right option is. You don't have to pay for
3 your architect if you want to, you can go ahead and
4 take photographs again that you've submitted and
5 resubmit them to the record, just so it's easier for
6 us to see what the by-right option is.

7 Also, what I -- you know, again, to make your
8 case, you could go ahead and speak with your architect
9 and see if the additional five feet might do something
10 for you in terms of space, and keep the turret. I
11 don't know. That is a discussion you can have with
12 your architect. And if you want to submit something
13 that says there's no need to do that, the you can
14 again remain where we are.

15 And then, again, Mr. Hood has mentioned a
16 couple of times, you had talked about people in the
17 neighborhood that they have done this and he can't
18 seem to find it. So, if you want to take a couple of
19 photographs as to whether those people are in the
20 neighborhood, and then submit those. Okay?

21 MS. GARDNER: Yeah, those are in our burden of
22 proof already, actually. The one that just popped up,
23 popped up last week, so that one is not in there,
24 but --

25 MR. HOOD: That's the Exhibit 33. I saw

1 those, but I can't locate them. But anyway, maybe --

2 MS. GARDNER: The addresses are in the --

3 MR. HOOD: If it was just -- yeah, 28 T
4 Street, I think is one.

5 MS. GARDNER: No, there's two on Quincey Place
6 Northeast, the unit block of Quincey.

7 MR. HART: I think part of what we were
8 looking at, we have like three, I think, burden of
9 proof statements.

10 MR. GOWIN: It would be the last -- sorry, it
11 would be the last one that has the most up to date.

12 MR. HART: So, I think it's 41.

13 MR. HOOD: Forty-one. Oh, okay. Maybe
14 it's --

15 MR. GOWIN: Sorry, I went --

16 MS. GARDNER: It's 41 and --

17 MR. GOWIN: To meet the Office of Planning's
18 very rigorous burden of proof we went through --

19 CHAIRPERSON HILL: Okay. So, I suggest you go
20 ahead and just resubmit those into -- so we can take a
21 look at it in a more easier way, the photographs in
22 the area that have done this. You know, that you
23 think are not --

24 MR. HOOD: So --

25 CHAIRPERSON HILL: Go ahead, Mr. Hood. Sure,

1 of course.

2 MR. HOOD: So, 27 Quincey Place. What's your
3 address?

4 MR. GOWIN: Thirty. Twenty-seven, presently,
5 is vacant. And --

6 MR. HOOD: Oh, so somebody came and developed
7 it, 27 Quincey?

8 MR. GOWIN: I believe they -- I'm sure they
9 will be but --

10 MR. HOOD: And you're already showing me where
11 the turret has been removed.

12 CHAIRPERSON HILL: You need to turn your
13 microphone on.

14 [Discussion off the record.]

15 MR. HOOD: Yeah, that's the front, so it's
16 already been removed. And I think Ms. Miller is
17 saying that they're asking where that was -- I guess
18 that was a matter of right, I believe. And they
19 didn't have to ask. So, I think that's kind of where
20 you're going.

21 CHAIRPERSON HILL: Okay. So, I'd submit,
22 again, the photographs that are of -- I know you
23 submitted them in different places. Maybe put them
24 all in one place for us. So, yeah. Do you understand
25 what we're asking for?

1 [No audible response.]

2 CHAIRPERSON HILL: Okay. Okay. And then
3 we'll come back and I guess I -- and then, Mr. Moy,
4 I'd like to do a continued hearing again, just so I
5 can speak to the applicant. But as far as the
6 information in the record, it's just what we've asked
7 of the applicant. Otherwise, we'll close the record.

8 MR. MOY: Yes, sir. While we're on that same
9 note, I was looking at the schedule, on the Board's
10 schedule. I think given the size of the docket for
11 the Board, I would suggest to rescheduled hearing
12 dates, as early as March 15th or March 22nd. And it
13 just so happens, Mr. Hood is coming back with the
14 Board on March 22nd.

15 CHAIRPERSON HILL: Will March 22nd work for
16 you guys?

17 MS. GARDNER: I think so. We travel a lot for
18 work. Right now, we're scheduled to come on the 21st.

19 CHAIRPERSON HILL: Okay.

20 MS. GARDNER: So, if we make it --

21 CHAIRPERSON HILL: Okay.

22 MS. GARDNER: If we actually get home we could
23 be here, but --

24 CHAIRPERSON HILL: Okay. Well, let's put you
25 down for the 22nd, and see what happens.

1 MS. GARDNER: Okay.

2 CHAIRPERSON HILL: And I suppose, if you
3 submit everything into the record you could just send
4 somebody else on your behalf on the 22nd, if you're
5 not here.

6 MS. GARDNER: Could our architect come on our
7 behalf?

8 CHAIRPERSON HILL: Sure, absolutely.

9 MS. GARDNER: Yeah.

10 CHAIRPERSON HILL: But I think you have to
11 submit a letter of authorization. Is that correct?
12 So, a letter of authorization.

13 MR. MOY: With regards to the filing, Mr.
14 Chair, and I would ask the applicant when they would
15 be able to file these additional information by. So,
16 if we're looking at a continued hearing date of March
17 22nd, I would suggest, Mr. Chair, that they file by
18 March -- well, you're going out of town, but
19 obviously, you could submit it earlier. But let's
20 say, let's give it a week at least, by March 15th.
21 Obviously, you could submit it much earlier, which
22 would be helpful.

23 MS. GARDNER: Just a question for you guys.
24 Are you guys going to continue to allow the opposition
25 to garner opposition throughout the city to this? I

1 mean, like, there's people all over the city that hate
2 pop-ups, like --

3 CHAIRPERSON HILL: That's okay. We're just
4 closing the record, except for what we're asking for.

5 MS. GARDNER: Okay. Okay. Perfect.

6 CHAIRPERSON HILL: Okay? And if you want to
7 talk again with the Office of Planning, see if they
8 can help you get to where -- just talk with the Office
9 of Planning, see what their thoughts are also, okay?
10 Because they said they struggled a little bit.

11 MR. HOOD: Can I just also add?

12 CHAIRPERSON HILL: Sure.

13 MR. HOOD: Your architect should have
14 supplied, and if it's in there I may have missed it
15 and I think we alluded to that, exactly what you're
16 trying to do. So, that may release some of the cost
17 because we need to know what we're voting on, and we
18 need to see it. So, hopefully he will understand that
19 and hopefully he will not charge a whole lot because
20 that was not done.

21 And yes, we do listen to people all over the
22 city. That's right. That's the different between
23 maybe Washington, D.C. and Houston. In Houston, they
24 just go ahead and do it. And in Washington D.C. we
25 open up a process and there's input, and we get

1 responses and everyone is able to be at the table.

2 CHAIRPERSON HILL: I missed the Houston
3 connection. Was there a Houston person?

4 MR. HOOD: Well, when I was in Houston I
5 mentioned to them what I do --

6 CHAIRPERSON HILL: Oh.

7 MR. HOOD: -- and they told me down there, we
8 don't go through all that.

9 CHAIRPERSON HILL: Oh.

10 MR. HOOD: We just do it.

11 CHAIRPERSON HILL: Oh.

12 MR. HOOD: When you see it, it's done.

13 CHAIRPERSON HILL: Oh. Oh. They do a lot of
14 things different in Texas.

15 So, okay. And I did want to mention, and this
16 was also again -- well, not before my time, but not on
17 this Board. Again, all of the work that the Zoning
18 Commission has gone through, with all of this. And,
19 so again, it's more to that I know that Ms. Miller
20 went down there, I'm sure, during the deliberations
21 with the Zoning Commission to a lot of these issues.
22 And so, I appreciate you all being here now, and I
23 wish that -- well, I'm teasing the Zoning Commission.

24 I wish the Zoning Commission had been more clear that
25 nobody's here in opposition. You know.

1 MR. HOOD: You know, one thing about blame?
2 We sure get it, and I'm used to it now. Like Mr.
3 Barrett told me, I just let it roll off my back now.

4 CHAIRPERSON HILL: All right. All right.

5 MR. HOOD: I just try to do the best I can.

6 CHAIRPERSON HILL: I agree. I agree. I
7 agree. All right.

8 So, are we all good? Okay, we're going to
9 take a five-minute break. Okay?

10 MR. MOY: Mr. Chair.

11 CHAIRPERSON HILL: Yes, sir.

12 MR. MOY: Before you just break, while the
13 parties are here, you closed the record but I just
14 want to point out, Mr. Chair, that Ms. Miller provided
15 a PowerPoint. We can have those slides into the
16 record.

17 And I believe Ms. Berk, in her testimony,
18 expanded on her letter that was submitted. So, if the
19 Board wanted her to provide her written testimony,
20 then I'll leave that up to you, Mr. Chair.

21 MS. MILLER: May I respond?

22 CHAIRPERSON HILL: Yeah. Sure, of course.

23 MS. MILLER: Just, so the PowerPoint was Ms.
24 Berk's.

25 CHAIRPERSON HILL: Okay.

1 MS. MILLER: So, I'm more than happy to upload
2 my testimony or hand it to the court reporter, and
3 with this image.

4 CHAIRPERSON HILL: Okay. All right, great.
5 You don't want to do anything more, Ms. Miller. Is
6 that your -- you're done there?

7 MS. MILLER: Oh, I'm more than happy --

8 CHAIRPERSON HILL: Okay. No, no, no, no.

9 MS. MILLER: -- to work with the applicants as
10 well.

11 CHAIRPERSON HILL: Oh, yeah. I mean, that
12 would be --

13 MS. MILLER: I'm more than happy to.

14 CHAIRPERSON HILL: I mean, if you want -- I
15 mean, obviously, I know that everyone wants the same
16 thing. I mean, you want to be able to work your
17 program out, and you want to keep your neighborhood
18 the way it is. And so, you're doing the best you can.

19 I mean, I appreciate that, and I understand that.
20 Okay? We all do. So, but okay. Great. Thank you.

21 MS. MILLER: Thanks.

22 CHAIRPERSON HILL: So, Ms. Berk, you know what
23 you're supposed to do in terms of like fulfilling the
24 record. Filling out the record, right. Exactly.
25 Submit that in your slides. Okay, great.

1 So, we can take a five-minute break. Okay.

2 Thank you.

3 [Off the record from 11:20 a.m. to 11:33 a.m.]

4 CHAIRPERSON HILL: Mr. Moy, are we ready?

5 MR. MOY: Yes, sir.

6 CHAIRPERSON HILL: Okay. All right. We are
7 going to resume, please.

8 MR. MOY: Okay. So, before calling the next
9 case I just want mention for the record, with all
10 these cases that have been postponed and rescheduled.

11 Application No. 19391 of Katherine O'Connor, has been
12 withdrawn by the applicants. I just wanted to record
13 that for the record.

14 So, with that, if I can call parties to the
15 table to Application No. 19426 of 699 14th Street
16 North -- or, rather, 14th Street, LLC as captioned and
17 advertised for special exception relief under the rear
18 yard requirements of Subtitle -- I'm going to say,
19 Subtitle I, Section 205.1, 205.5, variances from the
20 habitable penthouse requirement, Subtitle C, 15 --
21 Section 1500.3D. And this is from the ground floor
22 preferred use requirements of Subtitle I, Section
23 601.2A, proposal to construct an addition to the rear
24 of an existing historic commercial building for use as
25 an office building with ground floor retail in the D-7

1 Zone. 619 14th Street Northwest, and 1336 through
2 1342 G Street Northwest, Square 253, Lots 53 to 55,
3 67, 817, and 818. And for the record, the applicant
4 had withdrawn the variance from Subtitle I, Section
5 606.2A, ground floor preferred use requirement, which
6 was shown on your Exhibit 37.

7 And this is the proposed project.

8 CHAIRPERSON HILL: Okay. Great. Thank you,
9 Mr. Moy. Good morning, gentlemen. Could you please
10 introduce yourself from my right to left?

11 MR. KADLECEK: Good morning, Cary Kadlecek
12 from Goulston and Storrs on behalf of the applicant.

13 MR. GILLIAND: Mark Gilliland, architect with
14 Shalom Baranes Associates.

15 MR. BOWERS: Donald Bowers with Lincoln
16 Property Company Contract Purchaser.

17 CHAIRPERSON HILL: All right. Great. So, Mr.
18 Kadlecek, I guess you're going to be speaking for
19 everyone, is that correct? Or starting to?

20 I don't really need a lot. I mean, I would
21 like to hear what my colleagues have to ask in
22 specific. I would like to have kind of like a high-
23 level presentation as to what you're -- you know, what
24 you're adding or what you're trying to do because I
25 know you guys were here before. But, there was

1 something, I guess, from DDOT concerning C905.4. I
2 don't know if that's still -- and they were interested
3 in whether you agree, or I was interested in whether
4 you agree that you need the relief from that. Then
5 also, three conditions that I'm going to go through as
6 well. But if you want to touch on them, that would be
7 helpful during your presentation.

8 And then, I guess, the ANC, they noted
9 something about a narrow alley and then working with
10 the neighbors there at 1330G. So, if you can just
11 kind of touch on that for me during your presentation?

12 Other than that, again, it would be just kind of a
13 more of a high-level overview as to what you're
14 requesting.

15 Does the Board have anything other
16 specifically they'd like to hear about? Okay.

17 [No audible response.]

18 CHAIRPERSON HILL: So, Mr. Kadlecek, you can
19 go ahead if that's good with you.

20 MR. KADLECEK: Yeah. I'll let Mr. Gilliland
21 give you a brief overview of the project. But just a
22 couple points, preliminarily.

23 First, if you've seen in the record, Exhibit
24 37A, I just wanted to make sure the Board had seen the
25 e-mail from the United States Secret Service

1 acknowledging that they did not have any concerns with
2 the habitable penthouse. And then in Exhibit 37B,
3 that's a revised ground floor plan. That's in
4 response to DDOT's concern about direct access to the
5 loading delivery space. So, now that that ground
6 floor plan, which would substitute for the previous
7 drawings has the direct access to the loading delivery
8 space, so there's no issue there anymore.

9 But with that I'll let Mr. Gilliland give a
10 brief overview of the project and then I'll let Mr.
11 Bowers speak to the communication they've had with the
12 adjacent office building.

13 MR. GILLIAND: I apologize that the images, as
14 they project, seem to be a bit elongated, altering the
15 proportions of the design a bit. But I'll just give
16 you a real kind of high-level. Hopefully, I can get
17 through this in roughly five minutes.

18 The project site is located in the southeast
19 corner of 14th and G Streets Northwest. It's about
20 two blocks east of the White House, and as has been
21 mentioned, the zoning classification is a D-7 Zone.
22 It's a corner lot, with about 83 feet of frontage
23 along the 14th Street side, a little over 200 feet,
24 east/west, down G Street, and it abuts a public alley
25 to the south which is what provides access to the

1 parking and loading areas.

2 It's currently improved with two existing
3 structures, one on the far east side, which is a non-
4 historic building that will be demolished as part of
5 the project. And then of course there's the historic
6 landmark, Federal America National Bank building that
7 sits on the corner as an historic landmark.

8 And because the site is included in the
9 financial historic district, we have taken this design
10 through HPRB and gotten their concept review and
11 approval.

12 So, this is a view from the corner of 14th and
13 G, looking back at the historic bank building in the
14 foreground. 14th Street extends off to the right, G
15 Street off to the left, and you can see the 11-story
16 130-foot tall addition here, and in total it's about
17 163,000 square feet of GFA in the project. And it's a
18 single building, pending a subdivision, you know,
19 there will be connections on multiple floors between
20 the historic structure and the new addition. Primary
21 use is office. There's also ground floor retail and
22 below grade parking.

23 One thing I'll note here, just quickly, is the
24 primary entrance to the project will be through that
25 historic front door on 14th Street in the bank

1 building. And, in this section, which is kind of cut
2 east/west, you have 14th Street on the right, the
3 historic bank building right off of it, and then the
4 11-story addition on the left part of the page. And
5 that kind of yellowish arrow does describe that kind
6 of entry sequence up and through -- up off of 14th
7 Street, up a stairway into the historic lobby that
8 will provide access to an elevator bank in the new
9 addition. It will access all the floors above and
10 below grade, including that habitable space up top,
11 top of the building. And also, you can see the floors
12 below.

13 Now just to kind of just focus in on the two
14 areas of relief that we're requesting. There's
15 variance relief for the habitable space in the
16 penthouse, because it's a structure that's located
17 within that geographic area that has proximity to the
18 White House. And, the second area of relief is shown
19 in that hatched area on the south side. It's a relief
20 sought from rear yard requirements. And it's along
21 that public alley, and this by the way, is kind of a
22 rough plan, just trying to summarize those two areas
23 of relief.

24 This is a north/south section. So, G Street
25 would be on the left, the public alley on the right,

1 cut through the addition, and so that's that hatched
2 area, which is the area that we're proposing to build
3 into that would be in a zoning complying rear yard.

4 Relief from the rear yard requirement would be
5 in harmony with the general purpose and intent of the
6 zoning regulations, and the map, and would not tend to
7 affect, adversely, the use of neighboring properties.

8 Additionally, the application materials that
9 OP -- application materials and OP's report have noted
10 that rear yard relief was granted on the project site
11 on two separate occasions in the past for different
12 designs, earlier designs.

13 And then kind of back to the issue of the
14 habitable space. We did have the opportunity to work
15 with the Secret Service, kind of thinking about sight
16 lines from the habitable space up on top, to the west
17 to the White House. And this diagram illustrates that
18 there is a sight line. It's kind of sort of the
19 blinders of the buildings to the west on G Street,
20 130-foot tall structures, shows that there is a view
21 corridor that does catch part of the White House
22 grounds, a little bit of Lafayette Square. But we,
23 you know, did demonstrate in the application, I
24 believe, that we've met the three-prong test.

25 And as I said, we walked the site with Secret

1 Service and have correspondence from them indicating
2 that they have no objection to the proposed
3 construction.

4 So, that's a high-level summary.

5 CHAIRPERSON HILL: That's great.

6 MR. GILLIAND: Okay.

7 CHAIRPERSON HILL: Okay.

8 MR. KADLECEK: I think you had asked also
9 about the communication with respect to the adjacent
10 building and all of that, with respect to that.

11 CHAIRPERSON HILL: Uh-huh. Yeah, I'm sorry.
12 Oh, okay. Yes.

13 MR. BOWERS: With regard to 1330 G Street,
14 that's the Kaiser Family Foundation. We have met with
15 them on several occasions to talk about our
16 development and how the two buildings adjoin, and
17 they've actually shown interest in taking space in our
18 building. So, they're quite aware.

19 And then to the south is the Westory. We also
20 know the owner of that building and they're aware of
21 our project as well, and we've had discussions with no
22 objections.

23 CHAIRPERSON HILL: Okay. All right. Does the
24 Board have any questions for the applicant at this
25 time? No? All right.

1 Then, actually, I had a quick question for
2 you. I live in the neighborhood. There was like a
3 painting of a Lebanese tree or something on the wall.
4 Do you guys know about that?

5 [No audible response.]

6 CHAIRPERSON HILL: No? Okay. I was just
7 curious if there was a restaurant there or something
8 at some point. All right. Okay. All right.

9 So, I'm going to turn to the Office of
10 Planning if I could.

11 MR. GOLDEN: Good morning. Bryan Golden with
12 the Office of Planning. We are continuing to
13 recommend approval for the project. However, one of
14 the conditions of approval was that the applicant
15 provide adequate detail regarding the method of
16 meeting the affordable housing linkage so that it may
17 be included within the BZA order if this is -- if the
18 Board chooses to approve this.

19 The applicant has proffered a payment into the
20 affordable housing fund in compliance with that
21 condition, and we would just request that the
22 applicant add this to the record.

23 CHAIRPERSON HILL: Is the applicant fine with
24 that?

25 MR. KADLECEK: Yeah, we can do that. That's

1 required as part of the permit process in any event.

2 CHAIRPERSON HILL: Okay. Okay. And then, I
3 don't know whether the Office of Planning, I thought -
4 - did you have something in there, another condition?

5 The Board would impose a condition that any
6 substantial changes to the current proposal must be
7 reviewed by the Secret Service?

8 MR. GOLDEN: Yes, that's another condition.

9 CHAIRPERSON HILL: Okay. And the applicant is
10 fine with adding that condition?

11 MR. GOLDEN: Yes.

12 CHAIRPERSON HILL: Okay. All right. Does the
13 Board have any questions for the Office of Planning?

14 MR. HART: Just one. Regarding the first
15 prong of the variance test, or actually just in
16 general, there is a -- about the prongs for the
17 variance test, you said that there would be -- the
18 factors of the practical difficulty in kind of
19 creating this -- not being able to use, I guess, the
20 bank building because of its historic status, would
21 result in a financial burden for them. Did you
22 receive information regarding that, or --

23 MR. GOLDEN: So, some of that is provided by
24 the applicant's explanation of that prong of the
25 variance test, which I did agree with because the

1 interior, as well as the exterior of the bank space,
2 can't be modified to a use that modern office
3 requirements would ask. And they are in fact keeping
4 this and retaining this and rehabilitating the bank,
5 which is the financial investment portion there.

6 MR. HART: And this is not necessarily because
7 they can't build above it, this is just because they
8 have to maintain the historic structure, and they
9 would -- this is not because they are having to --
10 they might lose some developable land because they're
11 not -- or envelope, because they wouldn't be able to
12 build above the historic building.

13 MR. GOLDEN: Right. So, it's in combination
14 of not really being able to modify that existing bank
15 building. And then typically the downtown zones do
16 allow a habitable penthouse, this being the exception
17 because of the security zone. So, that's why there
18 was a default to the secret service. If they were
19 okay with this, then we felt that that condition was
20 exceptional, but waivable, if they were okay with it.

21 MR. HART: Thank you.

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

24 MR. KADLECEK: No questions, thank you.

25 CHAIRPERSON HILL: All right. I'm going to

1 turn to the audience. Is there anyone here from the
2 ANC?

3 [No audible response.]

4 CHAIRPERSON HILL: Is there anyone here
5 wishing to speak in support of the application?

6 [No audible response.]

7 CHAIRPERSON HILL: Is there anyone here
8 wishing to speak in opposition to the application?

9 [No audible response.]

10 CHAIRPERSON HILL: All right. With that,
11 then, I'll turn back to the applicant. Do you have
12 anything further to add?

13 MR. KADLECEK: We have nothing further to add.
14 Thank you.

15 CHAIRPERSON HILL: Okay. Does the Board have
16 any further questions of the applicant? Okay.

17 Then, I'm going to go ahead and close the
18 hearing. Is the Board ready to deliberate?

19 [No audible response.]

20 CHAIRPERSON HILL: Okay. I again am
21 comfortable with the analysis that has been done by
22 the Office of Planning and how the applicant meets the
23 standard. I also wanted to again read into -- or I
24 should say the applicant did agree to the condition
25 that the Board impose a condition that any substantial

1 changes to the current proposal must be reviewed by
2 the Secret Service. They have already submitted a
3 letter concurrence with the Secret Service
4 establishing that the penthouse would not create a
5 security concern, and they also have provided adequate
6 detail regarding the method for the mandatory
7 affordable housing linkage.

8 So, and also then again, the ANC 2C, which is
9 my ANC, recommended by a vote of three, to zero, to
10 zero to approve. DDOT doesn't have any objections now
11 that also the applicant has cleared up the question
12 concerning DDOT's comments.

13 So, I would go ahead and move to approve
14 Application No. 19426 as read by the secretary.

15 MR. HOOD: I will second that, and I will also
16 add that I think it will help lighten up that corner
17 because it's kind of dead around there right now.

18 CHAIRPERSON HILL: Yeah, it needs -- I agree.
19 It's been a long time since that -- that project has
20 been going on for a long time, all kinds of different
21 things. And so, I also, again being in the
22 neighborhood and looking forward to it being
23 completed.

24 So, I again made the motion. Did someone
25 second it?

1 MR. HOOD: I second it.

2 CHAIRPERSON HILL: Motion has been made and
3 seconded.

4 [Vote taken.]

5 CHAIRPERSON HILL: Motion passes, Mr. Moy.

6 MR. MOY: Staff would record the vote as
7 three, to zero, to two. This is on the motion of
8 Chairman Hill to approve the application for the
9 relief requested, as well as citing one condition to
10 the order. Seconded the motion, Mr. Hood. Also in
11 support, Mr. Carlton Hart. We have two seats vacant.
12 Motion carries, sir.

13 CHAIRPERSON HILL: Great, Mr. Moy. Could we
14 get a summary order?

15 MR. MOY: Yes, thank you.

16 CHAIRPERSON HILL: Thank you. Thank you,
17 gentlemen.

18 MR. MOY: Okay, I believe the next case
19 application before the Board, if I can have parties to
20 the table to Application No. 19390 of Jason Burnett.
21 This application has been amended and I believe it is
22 now advertised for special exceptions under the
23 penthouse requirements of Subtitle C, 1500.4,
24 penthouse enclosure wall requirement, Subtitle C,
25 Section 1500.9, penthouse setback requirements of

1 Subtitle C, Section 1502.1. This would allow the
2 addition of a penthouse and roof deck to an existing
3 three-story one-family dwelling in the R-1-B Zone,
4 2316 Tracy Place Northwest, Square 2520, Lot 31.

5 And I think -- let's see, the Board last heard
6 this on December 21st, 2016.

7 CHAIRPERSON HILL: Okay, great. Thank you.
8 If you could please just introduce yourselves from my
9 right to left.

10 MS. BURNETT: Melissa Burnett, homeowner.

11 MR. BROWN: Patrick Brown from Greenstein,
12 DeLorme, and Luchs on behalf of Mrs. Burnett and her
13 husband.

14 MS. OLSON: Kate Olson from Greenstein,
15 DeLorme, and Luchs.

16 MR. BEIDLER: Michael Beidler from Trout
17 Design Studio.

18 CHAIRPERSON HILL: Okay. So, Mr. Brown, are
19 you going to be speaking for us initially here? Is
20 that -- okay.

21 MR. BROWN: Very briefly. Just --

22 CHAIRPERSON HILL: That's okay. Just before
23 you start, I mean, I just want to kind of go over at
24 least what I kind of was interested in.

25 Again, you know, we're back because of kind of

1 how the penthouse was, I think some concerns about the
2 design. And that was something I kind of like, would
3 like to hear a little bit more about, I suppose,
4 walking through the changes.

5 And so, that's basically what I'd like to hear
6 at this point. I mean, as well as the rest of the
7 Board, I guess. So, please, I didn't mean to
8 interrupt you. Go ahead and begin.

9 MR. BROWN: No, and very briefly and then I'll
10 turn it over to Mr. Beidler, because I think you were
11 more interested in the architectural discussion.

12 What we've done, we've filed a prehearing
13 submission, or a supplemental prehearing submission on
14 the 6th of February. That was sent to, among others,
15 the ANC, which acknowledged its receipt but indicated
16 that they had no further input on the matter. It went
17 to Ms. Moldenhauer and her client, the Sheridan
18 Kalorama Neighborhood Committee that participated last
19 time. And she's here today to provide any input as
20 needed. And obviously, OP and others.

21 What we've provided in the supplemental
22 submission is an updated set of plans. When we were
23 here in February we had made a change. One, to change
24 the configuration of the shed roof to a shed roof from
25 a peaked roof. And also as a result of the

1 discussions with the Sheridan Kalorama Group, had
2 pulled back the planters on the rear and west side.

3 CHAIRPERSON HILL: And, I don't mean to
4 interrupt you, and maybe the architect can -- can you
5 just show me where you're describing?

6 MR. BROWN: Sure.

7 CHAIRPERSON HILL: We have your slide, so I'm
8 just trying to follow along.

9 MR. BROWN: If you look here, and the south is
10 top, north is bottom, west, and east. As a result of
11 discussions with the Sheridan Kalorama Neighborhood
12 Citizen's Association or Neighborhood Committee, the
13 west side was pulled back one-to-one, and the rear
14 which is the south side, was pulled back one-to-one,
15 leaving only relief for the location of the actual
16 penthouse and the planters on the east side of the
17 property. The east side being the one that shares a
18 common wall, or a face-on wall attached with the
19 neighboring property. The neighboring property having
20 indicated earlier, their support for the project.

21 We also, and if we could -- Michael, could you
22 show a profile? And you can see the penthouse there
23 is a shed roof as opposed to what was in the original
24 application. And that lowers the height and profile
25 of the penthouse. Then, the other thing we did, and

1 this was of importance or interest to the Board, is we
2 went through in I think a great amount of detail,
3 showing four matter-of-right options that didn't
4 require any zoning relief.

5 What we're asking for now requires special
6 exception relief for the penthouse itself and special
7 exception relief to not set back the penthouse on
8 those two sides, one-to-one.

9 And also, as a result of changing to the shed
10 roof, which by definition doesn't have equal height
11 walls, we've revised our relief to include 1500.9.
12 Again, a special exception to accommodate the uneven,
13 by definition, uneven penthouse walls, enclosing walls
14 for the shed roof.

15 CHAIRPERSON HILL: And, Mr. Brown, and maybe
16 you did mention this in a minute. So, the ANC,
17 they're aware of 1500.9?

18 MR. BROWN: Yes.

19 CHAIRPERSON HILL: Okay. As is the Sheridan
20 Kalorama Group? That's what you were saying earlier?
21 Okay.

22 MR. BROWN: Ms. Moldenhauer is here, but she's
23 aware of it.

24 CHAIRPERSON HILL: Okay.

25 MR. BROWN: On behalf of her client.

1 CHAIRPERSON HILL: Okay. That's all right.
2 We don't need to call Ms. Moldenhauer up unless we
3 need to, but, thank you.

4 MR. BROWN: She's available.

5 CHAIRPERSON HILL: Okay. Thank you.

6 MR. HOOD: Question, Mr. Brown. So, we're not
7 meeting the setback here, right? Do one of you have a
8 pointer? Okay. Yeah. Okay.

9 So, show me where we're not meeting the
10 setback.

11 MR. BEIDLER: On the preferred option, we're
12 not meeting the setback on the east side, which is the
13 side that's adjacent to the neighbor on the east.
14 There's a house here, and there's an adjoining house
15 as well. This is a tripartite assembly of houses.

16 On the west side, the north side, and the
17 south side, we are meeting the setback requirement.

18 MR. HOOD: So, we're meeting the setback on
19 three sides.

20 MR. BEIDLER: Yes, sir.

21 MR. HOOD: So, we're not meeting the setback
22 on one side.

23 MR. BEIDLER: Yes, sir. Just the side and --

24 MR. HOOD: And why can't we meet that setback?

25 MR. BEIDLER: Well --

1 MR. HOOD: Is it a design issue?

2 MR. BEIDLER: Well, yes, and a practicality
3 issue. And in response to your inquiry last hearing,
4 this location for the penthouse is directly over the
5 existing staircase in the house. And with this option
6 we don't have to make alterations to the third-floor
7 plan, which is a very large added expense.

8 This also brings light down through the middle
9 of the house, a design issue that is much more
10 favorable than the other options. And I'm happy to go
11 through the other options with you, Chairman Hood,
12 that locate the penthouse in the center that meet the
13 setbacks on all the sides, which would require us to
14 completely alter the third-floor plan of the entire
15 house, and the ceilings of the second-floor in order
16 to move plumbing and everything else like that.

17 So, this option is not visible from anywhere,
18 Tracy Place, at all. And it's directly over the
19 existing staircase which allows us to do a very
20 minimum amount of construction on the second floor,
21 leaving the second-floor rooms in place.

22 Can we go to the second-floor plan?

23 MR. HOOD: I'm sorry, Mr. Chairman. I didn't
24 mean to interrupt, I just --

25 CHAIRPERSON HILL: It's all right.

1 MR. BEIDLER: This is the one. So, there.

2 So, this --

3 CHAIRPERSON HILL: Let me just interrupt you,
4 Mr. Brown. No, Mr. Hood, I mean Chairman Hood.
5 Again, this was part of the crux of the discussion
6 last time was why they can't keep the -- or what
7 reason it was that they can't meet the setback. And
8 so again, kind of I would also be curious as to -- and
9 it was put in the side presentation but just where
10 moving the stairwell --

11 MR. BEIDLER: Sure.

12 CHAIRPERSON HILL: -- how that would be
13 impractical.

14 MR. BEIDLER: Sure. Okay. If you'll indulge
15 me for just a minute?

16 This plan allows us to just alter this part of
17 the third floor, leaving the rest of the third floor
18 intact, which is a bedroom and office, and the master
19 bedroom suite, including the bathroom and the walk-in
20 closets. All that have extensive millwork in them.

21 I'm going to try my best -- is it this one?
22 Okay.

23 So, this option shows where the penthouse
24 would need to fall in order to be a matter of right
25 option, which pulls it back from the east side, the

1 south side, and the west side, putting the penthouse
2 in the center, which minimizes the amount of space
3 around the sides to really just circulation, and then
4 only providing a small area here to the north in the
5 shadow of the penthouse for the planting that the
6 client really is trying to achieve on the site.

7 And on this third-floor plan, all of these
8 spaces in the core basically have to be gutted out and
9 redone because the staircase would come in sort of
10 this way off of the -- so, you come up to the top of
11 the steps, you come in this way. So, the middle of
12 the house all has to be taken out in order to
13 accommodate the new stair going in here with head
14 clearances below and the rise and run to get up to the
15 penthouse.

16 And then this is what that looks like from
17 Tracy Place. You can see it here. To the east on
18 Tracy Place, none of the options are visible here.
19 But then from 24th Street it's also very, very
20 visible. And this is a view from California Street
21 and all the options when there's only just a little
22 window between the two buildings.

23 All of the options that we drew affect
24 essentially the same core of the second floor in just
25 different configurations on the third floor to get up

1 to the roof. But essentially all of them have a
2 similar impact on the skyline, and similar impacts on
3 the third floor requiring us basically to gut the
4 middle of the house. Not only on the third floor, but
5 also the second floor because we have to change the
6 plumbing which requires us to get into the ceilings of
7 the second floor.

8 And then the third option, again, is basically
9 the same place on the roof with the stair starting
10 more toward the back. And again, it just affects all
11 of these core spaces in the middle which is where the
12 two bathrooms are, and an office, which is fully built
13 out with Millwork, and then the master bedroom suite.

14 So, the preferred option again, has the
15 minimum impact on the third-floor plan, and also
16 provides us with a penthouse that's not visible. From
17 the original design, we changed the massing of this
18 with use of a flag test on site so that it's not
19 visible from anywhere on Tracy Place.

20 Here, and then here's your views from Tracy
21 Place. The other penthouses stick up back in this
22 area, and no matter what the configuration is. And
23 they're grossly visible from 24th Street as well.

24 So, we again continue to feel that the
25 proposal that we originally made makes sense not only

1 fiscally for the project, but also contextually it's
2 the most appropriate because it's not visible and it
3 won't have any architectural impact on the neighbors.

4 Does that answer your question?

5 MR. BROWN: Could you go back to the slide
6 that shows the --

7 CHAIRPERSON HILL: I'm sorry. You need to
8 turn on your microphone.

9 MR. BROWN: Could you go back to the slide
10 that shows the cost analysis? It's 12.

11 MR. BEIDLER: So, here we did -- we asked our
12 contractor to give us a fair and reasonable cost
13 projection for the different options. And the
14 proposed option, you know, is here.

15 And then as we go into the other options,
16 because of their impact on the third-floor plan, and
17 the plumbing on the ceiling of the second floor, you
18 know, adds substantial amounts of cost for the
19 comparable impact of those different projects.

20 MR. HART: And the cost of the roof hatch, you
21 all didn't do because it didn't meet the -- some of
22 the requirements that you had? I mean, I noticed that
23 you had it at the very end.

24 MR. BEIDLER: Yeah.

25 MR. HART: And you kind of have a discussion

1 about it at number 5, here, but --

2 MR. BEIDLER: We've gone away from that and
3 I'd love the homeowner to speak to this. But, it's a
4 very dangerous option because you have to, when you're
5 trying to go in or out, you're always on the stair
6 trying to open the hatch. If we try to do it as --
7 with a mechanical system, if there's a storm and the
8 thing is open and the power goes out, you know, even
9 if there's a battery backup there's always a risk that
10 you're not going to be able to get it closed.

11 They have a young son. It's not a safe option
12 that we would ever recommend to a client. And we did
13 look at it, and but I don't know if Melinda --
14 Melissa, you don't have any thoughts about that that
15 you want to express?

16 MS. BURNETT: Just to further that, that we
17 currently live -- that we have a neighbor, not at this
18 property, where we're living currently, and our
19 neighbor has a hatch. And we've watched him, and he
20 has struggled to get that closed in a rain storm or in
21 a wind storm. And he's a big guy. He's, you know,
22 six-foot, six. And with a five-year old, with you
23 know, my husband travels a lot, I can't even imagine
24 having something like that to deal with in a storm, in
25 a situation where it was, you know, the weather was

1 acting like it's been for the last week. I can't
2 imagine having to deal with that and my son up 40 feet
3 in the air.

4 MR. HART: Thank you.

5 CHAIRPERSON HILL: Is it pronounced Beidler?

6 MR. BEIDLER: Sorry. Thanks. Beidler.

7 CHAIRPERSON HILL: Beidler. Sorry. So, Mr.
8 Beidler, I mean, this is -- and I'm asking this also
9 because the hatch issue does come up a lot now
10 concerning the penthouse relief that's being asked.
11 And I'm just curious, is there a hatch picture? I'm
12 curious like more what the hatch -- oh, that's on the
13 slides?

14 MR. BEIDLER: In this option, again, let's
15 see. Because of the configuration of the stair below
16 in this location, there's a -- and the height between
17 the floors requires us to have you know, 22 risers
18 because it's a very tall third-floor. So, you're
19 coming around like this and so when you're at the top,
20 at the hatch -- so, I'm not getting -- I just want to
21 get back to the last sort of -- where is the --

22 CHAIRPERSON HILL: That's all right. That's
23 okay. I see the slide you're speaking of.

24 MR. BEIDLER: You're on the winder trying
25 to --

1 CHAIRPERSON HILL: Right.

2 MR. BEIDLER: -- open the hatch.

3 CHAIRPERSON HILL: I understand.

4 MR. BEIDLER: Here we go.

5 CHAIRPERSON HILL: I understand the
6 impracticality of it. But, so, again I mean, my
7 concern is less with -- and we'll see where my
8 colleagues are, with the penthouse due to the fact
9 that you're right next to that neighbor. And I'm kind
10 of just thinking about future cases for myself, that
11 if you did have that hatch you wouldn't need the
12 relief, right?

13 And then except -- I guess you would still
14 need the relief for the planter there. If you -- you
15 would just move the planter over if you went with the
16 hatch option; probably not be here at all. That
17 planter is still not one-to-one. Right?

18 MR. BEIDLER: Yes. That could be moved over.

19 CHAIRPERSON HILL: Okay. Okay. All right.
20 Okay. Does the Board have any other questions of the
21 application?

22 [No audible response.]

23 CHAIRPERSON HILL: Okay. Then, does the --
24 you have any more comments before I turn to the Office
25 of Planning?

1 MR. BROWN: We'll defer to the Office of
2 Planning.

3 MR. BEIDLER: Can I make one more comment?

4 CHAIRPERSON HILL: Sure, go ahead.

5 MR. BEIDLER: So, of course you're aware that
6 we do have a letter of support from the contextual
7 neighbor. And, you know, in situations like this, I'm
8 on the ANC Planning and Zoning Board, and also on the
9 DuPont Circle Conservancy. And often times we run
10 into cases like this that may or may not set a
11 precedent. We always try to clarify the contextual
12 significance of the contextual uniqueness of the
13 project and try to support projects that seem fair and
14 reasonable based on their specific context not to set
15 a precedent for every future thing that comes along
16 but saying, this specific thing in this specific
17 location with the kind of support that we've all gone
18 to great lengths to develop, are generally
19 supportable.

20 So, I think it is a unique situation. It
21 doesn't have to set a precedent, and hopefully
22 you'll --

23 CHAIRPERSON HILL: Yeah, I see what you're
24 saying. And I think you're doing a lovely job for
25 your client. So, --

1 MR. BEIDLER: Sure. There was one other
2 issues. Can we go back to the section?

3 MR. BROWN: We just want to clarify one thing.

4 CHAIRPERSON HILL: Sure, go ahead.

5 MR. BEIDLER: The neighbor -- the Kalorama
6 Citizen's Association representative, there's a
7 dimension here that's two inches different than what
8 was in an agreement that we made. And that's probably
9 more of a drafting error than anything else like that.
10 It's seven -- what is it, seven feet, two? It's just
11 two inches taller.

12 The intent wasn't to do anything deceptive
13 here, but you know, we know this can't be visible.
14 That's the only way that we're going to get support
15 from historic and from the ANC and the contextual
16 historic folks. And the reason why the massing of
17 this was altered the way it was, was to make it not
18 visible. And that's the intent, and that is always
19 what will be built.

20 So, just to the point of the two-inch
21 discrepancy in that dimension, that's not a
22 significant thing for us in that it can be adjusted to
23 satisfy the neighbors to make sure that it meets their
24 -- whatever specific requirements they have.

25 CHAIRPERSON HILL: Okay. So, Mr. -- I'm

1 sorry, Beidel (sic), correct?

2 MR. BEIDLER: Beidler.

3 CHAIRPERSON HILL: Beidler. Sorry, Mr.
4 Beidler. So, Mr. Beidler, we'll see where we get to.
5 I mean, if we get to this point then you can make
6 those changes really quickly here, perhaps, and
7 resubmit them because we still have one more case to
8 go, so that I don't have to -- I would like accurate
9 drawings.

10 Okay. So, I'm going to go ahead and turn to
11 the Office of Planning.

12 MS. VITALE: Good afternoon, Mr. Chair and
13 members of the Board. Elisa Vitale with the Office of
14 Planning.

15 OP continues to support the requested relief.
16 We do understand that the applicant has modified the
17 application to reduce the setback relief required for
18 the planters, and to include the new relief for
19 penthouse walls of unequal height. And again, we do
20 support those requests.

21 The relief, if granted, would minimize the
22 visibility of the penthouse, would allow the applicant
23 to align the access stairwell with an existing
24 stairwell in the house, and then would reduce
25 alterations to the existing interior floorplans of the

1 house.

2 And we believe the relief is in keeping with
3 the spirit of the penthouse special exception
4 provisions, which you know, seek to reduce visibility
5 and minimize impacts.

6 That concludes my additional comments today.
7 I'm happy to answer any questions that you might have.
8 Thank you.

9 CHAIRPERSON HILL: Okay. Does the Board have
10 any questions for the Office of Planning? Okay. Does
11 the applicant have any questions for the Office of
12 Planning?

13 All right. Then, I'm going to go ahead and
14 turn -- did I do this already? I'm going to, just out
15 of an abundance of caution, see if I did this the last
16 time, but is there anyone here from the ANC?

17 [No audible response.]

18 CHAIRPERSON HILL: Is there anyone here
19 wishing to speak in support of the application?

20 Someone is wishing to speak in support of the
21 application? If you could please state your name?

22 MS. MOLDENHAUER: Good afternoon, Chairman and
23 members of the Board. My name is Meredith
24 Moldenhauer. I represent the Sheridan Kalorama
25 Neighborhood Association.

1 As indicated, we had entered into a settlement
2 agreement on December 21st. That settlement agreement
3 had indicated that we would be supportive. It did
4 indicate that the penthouse height would be six-feet,
5 four inches, and five 16ths. My client is aware that
6 based on this revised design that it's now 2.5 inches
7 different.

8 And so, they are still supportive of that. We
9 would just also want to indicate that we were under an
10 agreement that if the rear spiral staircase was not
11 required by code, that it was the preference of the
12 application and the Sheridan Kalorama Neighborhood
13 Civic Association, the applicant would then use its
14 best effort to remove that spiral staircase on the
15 rear. Thank you.

16 CHAIRPERSON HILL: Thank you. Mr. Beidler,
17 where is the spiral staircase?

18 MR. BEIDLER: We did some due diligence. It
19 was traveling from this deck level up to the roof, but
20 we don't want it, we never wanted it, but we had --

21 CHAIRPERSON HILL: Okay. So, you've removed
22 it?

23 MR. BEIDLER: We removed it. We only would
24 ever ask for it if it was required by DCRA, but we do
25 not believe it will be required.

1 CHAIRPERSON HILL: Okay. All right. Okay.
2 And then right, just the change that you need to make
3 to the drawing now that is existing.

4 All right. Is there anyone here -- sorry, go
5 on.

6 MR. BROWN: Based on Ms. Moldenhauer's
7 comments, we don't need to make the change; that her
8 client is okay with the two and a half inches higher.
9 Am I --

10 CHAIRPERSON HILL: Ms. Moldenhauer, if you
11 could just come back jus to clear this up for me?
12 Thank you.

13 MS. MOLDENHAUER: Yes. I had a conversation
14 in the hallway, both with my client and then with the
15 applicant's counsel and their architect. We are okay
16 with the additional 2.5 inches. I believe we want to
17 just confirm, and I've heard Mr. Beidler say it on the
18 record, that that would still then not be visible;
19 that the 2.5 inches would not change the flag test or
20 the visibility of the structure.

21 CHAIRPERSON HILL: Mr. Beidler, is that
22 correct?

23 MR. BEIDLER: That is correct.

24 CHAIRPERSON HILL: So, I don't need new
25 drawings. Okay. All right. Thank you.

1 Is there anyone here wishing to speak in
2 opposition to the application?

3 [No audible response.]

4 CHAIRPERSON HILL: All right. Then, with
5 that, do you have anything else to add, the applicant?

6 MR. BROWN: And I think we've laid out in
7 great detail in the revised or supplemental
8 submission, I think certainly the economic numbers
9 speak for themselves. We're providing a penthouse.
10 It's a matter of right. There's a 50 to 60 percent
11 increase in costs, on top of one dramatically altering
12 the interior of this property, which is really
13 unnecessary and disruptive.

14 But also, it has an ongoing effect, whether it
15 relates to Sheridan Kalorama, or the Historic
16 Preservation, making it one-to-one dramatically
17 increases the visibility of the penthouse. And that
18 certainly will not pass with Historic Preservation.
19 Speaking for Sheridan Kalorama and our agreement, that
20 would be in violation of the agreement and be much
21 more visible.

22 So, that, on balance we've offered a sensitive
23 plan, sensitive to the Historic Preservation, to the
24 neighbors, in accordance with the agreement, and
25 pulled it back in the areas as you've seen, that where

1 there is any chance of visibility.

2 And two, we've satisfied, you know, rational
3 economics for my client in trying to build something
4 important to them at a cost that's reasonable. And I
5 think if you look at the costs, you know, and the
6 increases, spending \$300,000 for a penthouse of this
7 size just isn't reasonable. And not something that I
8 think the regulations intended to impose on homeowners
9 trying to make a very limited improvement to their
10 home. So --

11 CHAIRPERSON HILL: Okay. Does anyone have any
12 final questions for the applicant?

13 [No audible response.]

14 CHAIRPERSON HILL: All right. So, I'm going
15 to close the hearing. Is the Board ready to
16 deliberate?

17 I actually am going to start the
18 deliberations, then. I took a lot of thought in this
19 in terms of the comments that my colleagues had
20 previously during the hearing. And all of the kind of
21 issues that have come up with the penthouse relief. I
22 was not -- I'm not particularly swayed, in this
23 particular case, with economics insofar as, you know,
24 the costs are what the costs are, if you need to do
25 something that requires a special exception or a

1 variance. You know, that's -- the changes that you
2 need to make in order not to be here, that's just kind
3 of how -- with the economics of it.

4 So, but, I also thought that the applicant has
5 done a good job in terms of working with the different
6 neighborhood associations, and the ANC, and the fact
7 that the one-to-one, really is just on the neighboring
8 property. Like, they're adjacent to the neighboring
9 property, where the -- really, I had most issue with
10 the setback relief.

11 Also, that being the case, I mean, I was, even
12 though not completely swayed by the economics of it, I
13 am aware that the program is much better suited,
14 continuing to keep the stairwell the way it is.

15 I am also feel comfortable with the analysis
16 that the Office of Planning had given. So, I would be
17 interested in hearing what my colleagues have to say.

18 I mean, I'm convinced, I'm able to support this
19 application, based upon what has been presented. But
20 I'll wait to hear what everyone else has to say as
21 well.

22 MR. HART: I would tend to agree with you, Mr.
23 Chairman. The applicant has, I think, done their due
24 diligence in terms of the information that they
25 provided in looking at different alternatives,

1 understanding that the various options that you looked
2 at with kind of making sure that the stair would be
3 set back from all sides, I think makes the rooftop,
4 the deck really almost unusable. And it would be kind
5 of, why would you spend that much money to make it
6 something that was unusable.

7 I also appreciate the information that we
8 received from the report from the Office of Planning.
9 And with regard to this case, I also understand that
10 this is an element. Where the stairs come up, that is
11 actually an element that is next to a neighbor. You
12 have talked to the neighbor and their neighbor is in
13 support of that as well, and in addition, the fact
14 that you really can't see this from a variety of
15 vantage points, again, this goes back to the due
16 diligence and understanding, you know, what the
17 different options would look like from various vantage
18 points. I think it speaks well for the application
19 and I could support it. So, that's it.

20 MR. HOOD: Mr. Chairman, you know, I always
21 have a problem and I say this all the time when we
22 write regulations to meet a setback one-to-one, and
23 we're not able to meet it. And I understand in this
24 case, I think in this case I think the applicant has
25 made the case for me, to where we can't meet it

1 because of the stairwell.

2 I still say we could do some more designing,
3 but I'm not going to go to that far, to that extent.
4 I think they have done, as one of my colleagues, one
5 of you all have mentioned already, due diligence, in
6 trying to make it meet the setbacks and being very
7 careful of how the integrity of the zoning regulations
8 and the penthouse setbacks are written.

9 So, I think this is one of those cases where I
10 just have to go ahead and go with it. Especially with
11 the costs. I don't normally agree with everything Mr.
12 Brown says, but we don't want to put a whole lot of
13 cost on a resident in the city. So, I don't have any
14 problems with moving forward and I'll be supporting
15 this application.

16 CHAIRPERSON HILL: And just to follow up, Mr.
17 Hood, Chairman Hood, about like, you know, this is
18 something that has come up and is going to continue to
19 come up, and that's why I was kind of asking about the
20 hatch and what other options might be available for
21 future situations. I mean, again, we are charged with
22 looking at things at a case-by-case basis, and so this
23 is something that on a case-by-case basis, I could see
24 getting behind. Wherein, in another situation it
25 might be, you know, the hatch is a better solution so

1 as to meet the requirements if the program is what the
2 applicant needs. So --

3 MR. HOOD: Let me --

4 CHAIRPERSON HILL: Sure. Please.

5 MR. HOOD: What got it for me, I think the
6 applicant -- didn't you say you didn't want your son
7 up there, or something about your child up there,
8 about a hatch? Did I hear that, or was that another
9 case?

10 MS. BURNETT: That was me.

11 MR. HOOD: Okay. Well, that's what got me,
12 okay? So, so, I would agree with the applicant on
13 that.

14 CHAIRPERSON HILL: All right. I'm going to go
15 ahead and then make a motion to approve Application
16 19390 as announced by the secretary.

17 MR. HART: Seconded.

18 CHAIRPERSON HILL: Motion has been made and
19 seconded.

20 [Vote taken.]

21 CHAIRPERSON HILL: The motion passes, Mr. Moy.

22 MR. MOY: Staff would record the vote as
23 three, to zero, to two. This is on your motion, Mr.
24 Chairman, Chairman Hill. Seconded the motion, Mr.
25 Carlton Hart. Also in support, Mr. Anthony Hood. We

1 have two seats vacant at the moment. Motion carries.

2 CHAIRPERSON HILL: Thank you, Mr. Moy. Can we
3 do a -- we can do a summary order.

4 MR. BROWN: That would be greatly appreciated.

5 CHAIRPERSON HILL: Yeah, I was just checking
6 with the secretary to make sure we could. But yes,
7 thank you.

8 Summary order, Mr. Moy.

9 MR. MOY: Yes, sir.

10 CHAIRPERSON HILL: Thank you. Thank you.

11 MR. BROWN: Thank you.

12 CHAIRPERSON HILL: All right. Thank you,
13 guys.

14 MR. MOY: The final --

15 CHAIRPERSON HILL: Mr. Moy, just give me one
16 second.

17 MR. MOY: All right.

18 [Pause.]

19 CHAIRPERSON HILL: All right. Thank you, Mr.
20 Moy.

21 MR. MOY: Okay. So, I believe the final case
22 application before the Board today is Application No.
23 19417 of A3 Development, LLC. As captioned and
24 advertised for special exception under the RF use
25 requirements, Subtitle U, Section 320.2, variance from

1 the height and number of story requirements, Subtitle
2 E, Section 303.2. Or rather, 303.1, which would
3 convert an existing flat into a three-unit apartment
4 house, R-1 Zone, at 1219 Park Road Northwest, Square
5 2839, Lot 122.

6 CHAIRPERSON HILL: Okay, great. Thank you,
7 Mr. Moy. Could you please introduce yourselves, from
8 my right to left?

9 MR. KEARLEY: My name is Greg Kearley. I'm the
10 architect with Inscape Studio.

11 MS. MOLDENHAUER: Good afternoon, Meredith
12 Moldenhauer from the law firm of Griffin, Murphy,
13 Moldenhauer, and Wiggins, on behalf of the applicant.

14 MR. FARAZAD: Good morning. My name is Javid
15 Farazad and I represent A3 Development, LLC.

16 CHAIRPERSON HILL: All right, great. Thank
17 you. All right. Ms. Moldenhauer, I guess there are
18 quite a few things that I'd like to hear, so
19 basically, we can go ahead -- I mean, I know you
20 submitted your PowerPoint presentation, and so if you
21 want to go ahead and walk us through that.

22 You're obviously aware of the concerns from
23 the Office of Planning, and we've all read the record,
24 so we do know where you are with this case. I mean, I
25 basically have a full presentation form you. So, does

1 anyone else have anything specifically they'd like to
2 add before the applicant begins their presentation?

3 [No audible response.]

4 CHAIRPERSON HILL: Okay. So, please, whenever
5 you're ready.

6 MS. MOLDENHAUER: Good afternoon. As
7 indicated, we represent A3 Development, the owner of
8 the property at 1219 Park Road. With me today is
9 Javid Farazad, the Principal of A3 Development. My
10 client is here today seeking the relief in order to
11 convert an existing residential building to an
12 apartment building in the RF-1 Zone.

13 As part of that relief, A3 seeks a waiver of
14 the conditions limiting the rear addition to 10 feet
15 past the adjacent neighbor, as well as a variance from
16 the height and the number of stories. I will not
17 focus on the special exception relief that OP has
18 supported, which is a special exception to allow for
19 the three units, since we are complying with the 900-
20 square foot requirement, and the other sub conditions
21 of that relief.

22 I will, however, focus on the relief that is
23 directly connected with the unique permitting history
24 of the property. My client and his architect will
25 explain in detail how A3 Development purchased the

1 project with a valid building permit to convert the
2 building to a three-unit apartment building, with a
3 rear addition, a third floor, and a mezzanine.

4 My client will tell you about how he applied
5 for and obtained then, a modification to that building
6 permit, to move forward with underpinning for the
7 three units and the four stories of the project.

8 My client completed 75 percent of the
9 underpinning of the project, and then after that, DCRA
10 issued a notice to revoke the building permit.

11 This unique permit history coupled with the
12 timing of the important changes of the zoning
13 regulations, creates an exceptional condition and
14 practical difficulty in complying with the 10-foot
15 rear addition requirement and the height and story
16 relief.

17 The applicant has conducted significant
18 outreach as you will hear, and we obtained ANC 1A's
19 support, 10 to zero with one absentee.

20 OP recommends support, as I said, on this
21 special exception relief for the three units. While
22 OP does indicate they do not support, but rather does
23 not recommend denial of the 10-foot relief, they do
24 recommend denial of the height, and that perspective
25 is taken from a policy perspective. But we ask the

1 Board to look and obtain their authority as the Board
2 has the ability to balance the inequities and balance
3 the detrimental reliance that this applicant had on
4 the issued permit.

5 There's numerous Court of Appeals cases that
6 have affirmed the fact that the Board has the unique
7 ability to take into consideration, zoning history.
8 Monaco versus the BZA, states quote, that past zoning
9 history can be taken into account in the uniqueness
10 facets of a variance test. The Court also, in
11 evaluating that case that was based on specific zoning
12 action from the zoning commission, and that
13 detrimental reliance on that back and forth discussion
14 in regards to the national, Republican National
15 Committee's ability to construct an office building in
16 a residential zone. That was in regards to a use
17 variance.

18 Here, we're seeking an area variance. The
19 Court of Appeals, in that case, held that the action
20 of the zoning authorities had provided implicit
21 assurances that that project could be completed, and
22 the assurances upon that were exceptional conditions
23 that would meet the variance test.

24 As you'll hear today, there were similar
25 zoning assurances based on a validly issued building

1 permit that was then later revoked.

2 Oakland Condominium, which this Board heard
3 and was then challenged to the Court of Appeals and
4 affirmed, also indicated a prior owner who had a
5 certificate of occupancy for a specific use, and that
6 owner's reliance on that permit, and on the fact that
7 that permit had -- the C of O had been posted in the
8 building when they purchased it. The prior owner's
9 certificate of occupancy for 15 units, as well as the
10 issuance of a building permit in that case for 12
11 units of an inn, gave them, quote, the Court said, a
12 good faith detrimental reliance, leading them to
13 believe that they were entitled to operate that 12-
14 unit rooming house.

15 That is a similar situation that we will hear
16 testimony today, in regards to the legal ability for
17 the applicant to have relied upon the issuance of the
18 permit that was clearly stated, three stories with a
19 mezzanine, which is now four stories, and was beyond
20 the 10 feet that is now part of the regulation.

21 We ask the Board to balance and weight the
22 inequities here, and to find in support of our client.

23 At this point in time we'll turn to Mr. Farazad to go
24 through our full presentation.

25 MR. FARAZAD: Good afternoon, Commissioners

1 and members of the Board. My name is Javid Farazad
2 and I am the Principal of A3 Development. I am a
3 resident of D.C., living at 2112 New Hampshire Avenue,
4 Northwest. And I grew up in the area, did my
5 undergrad in architect at Catholic University, and
6 studied my Masters in Real Estate Development at
7 University of Maryland.

8 My experience is primarily in architect and
9 construction management, where I have worked
10 previously at Turner Construction and with AI
11 Construction, and most recently starting A3
12 Development, which is a small boutique development
13 firm focusing on these types of projects.

14 On this slide, you will see some of the
15 contextual images showing -- actually, if we could go
16 back to the previous slide?

17 On this slide, here you can see the
18 characteristics of the neighborhood, primarily zoned
19 RF-1, with some MU-4, which makes up some cafes,
20 retail shops, and other local amenities.

21 We are also very close to D.C. USA, and the
22 Columbia Heights Metro, which has provided a
23 neighborhood where there are young professionals as
24 well as long-time residents.

25 In this slide, here you will see some of the

1 surrounding buildings that we have communicated with
2 and garnered letters of support, most significantly
3 from two of the abutting property owners. One of
4 which is a younger couple who lives in the 1215 Park
5 Road, which is a three-unit building with the first-
6 floor unit currently for sale.

7 The neighbor on our left at 1221 is a single-
8 family home, both whom are architects for very well-
9 known firms in Washington, D.C., who have also
10 provided letters of support for this project.

11 Our project is to convert a flat into a three-
12 unit apartment house, which would be composed of
13 family sized units. One, which is 2,500 square feet,
14 fairly large unit, an additional just 1,630 square
15 feet, and also a 1,250 square feet. All above, two-
16 bedroom and two-bath, with the 2,500-square foot being
17 three-bedroom, four-bath, with a den.

18 We are in addition, providing two off-street
19 parking spaces, which my understanding, satisfy any
20 parking requirements.

21 And one of the difficulties that we're facing
22 is the 10-foot limitation which would then reduce the
23 size of this building to zero family sized units,
24 since they would only have one bedroom in each unit.
25 One-bedroom, one-bath. And we can talk more about

1 that later on.

2 MS. MOLDENHAUER: Can I just ask you a
3 question? During your extensive outreach with the
4 community, was the size of the units and the need for
5 family sized units important to the ANC?

6 MR. FARAZAD: Yes, the size of the units was
7 one of the major concerns of the ANC, to which we've
8 indicated that we will be providing family sized
9 units.

10 To discuss the unique permitting history, the
11 project was originally purchased and developed by a
12 previous owner, who then marketed the project as a
13 fully permitted and documented project. The building
14 permit, which was obtained in September 24, 2015,
15 clearly stated that it was an additional alteration
16 and repair of the two-story, plus cellar, two-unit
17 flat, and converting to a three-unit apartment house
18 with a third-floor mezzanine roof deck addition on top
19 of existing structure, and a rear three-story
20 structure added per -- addition per plan. So, it was
21 very clear what we were purchasing at the time.

22 Upon purchasing the project, we subsequently
23 obtained an additional permit for revised
24 underpinning, at which point we then mobilized and
25 started with the underpinning.

1 Shortly after we were well into our
2 underpinning process, 75 percent complete, we received
3 a letter from DCRA, a notice of revocation of the
4 permit.

5 CHAIRPERSON HILL: So, I just want to
6 interrupt you a second. So, you would have hoped that
7 in August of 2016, that's when perhaps you would have
8 been notified that there was an issue?

9 MR. FARAZAD: Correct.

10 CHAIRPERSON HILL: Okay. That's okay. You
11 got the underpinning. You were able to move forward
12 with the underpinning. That's all I was just trying
13 to understand.

14 MR. FARAZAD: And receive inspection, as
15 partial inspection.

16 CHAIRPERSON HILL: Okay.

17 MR. FARAZAD: Since it was done in sequence.

18 CHAIRPERSON HILL: Okay, thank you.

19 MR. FARAZAD: At that point, when we received
20 the notice of revocation, we met with DCRA and Matt
21 LeGrant to discuss the issues that had recently rised
22 to our surprise. And we relinquished the permit with
23 the understanding that Matt LeGrant explained the
24 different avenues that we could take, so we discussed
25 a course of action moving forward, and subsequently

1 received a two-unit permit to further secure the site,
2 and prevent any issues with erosion and site security
3 and safety.

4 MR. HART: Was there no indication that there
5 would be -- was there any indication that any of this
6 might -- anything might change between the time that
7 you started your construction and during the, you
8 know, the ZC -- I mean, the ZR process had been going
9 on for years. And so, it was kind of coming to a
10 close as of probably the beginning part of the '16.
11 And so, they were kind of getting to that point.

12 So, was there any indication that that would
13 be -- that would have an effect on your project?

14 MR. FARAZAD: When we reviewed the project
15 before purchase, we did not see any issues in regards
16 to the timeline and the vesting of the project. And I
17 don't know, Meredith if that -- Ms. Moldenhauer.

18 MS. MOLDENHAUER: Yes. I mean, I guess the
19 question is, you know, did you have any indication
20 that there would have been any questions about the
21 validity of the permit before you purchased?

22 MR. FARAZAD: Absolutely not. We would not
23 have purchased it.

24 MS. MOLDENHAUER: And was there any questions
25 about vesting? I mean, if the permit was valid, was

1 there any questions that that had then vested under
2 the old regs?

3 MR. FARAZAD: No.

4 MS. MOLDENHAUER: And I can go through this a
5 little bit more in detail when we kind of draw some of
6 the -- because there are specific timing issues here,
7 which I think you're getting at, but it's not really
8 as much of the ZR -- because there's no question when
9 he purchased the property, that the permit was not
10 valid. And it was only once he became aware that they
11 were revoking the permit that then, that was informed
12 to him, based on the timeline, after he received the
13 notice to revoke on September 23rd. ZR-16 had already
14 taken effect.

15 And there was no -- so just confirm for the
16 Board, when you purchased it when you filed your
17 underpinning permit, there was no indication, everyone
18 reviewed that, but there was no indication that there
19 was any problem with the underlying permit. Is that
20 correct?

21 MR. FARAZAD: That is correct.

22 CHAIRPERSON HILL: So, Mr. Farazad. Farazad?

23 MR. FARAZAD: Yes, sir.

24 CHAIRPERSON HILL: When you did your due
25 diligence, when you were initially buying the

1 property, so, did you have counsel at that time?

2 MR. FARAZAD: We did not.

3 CHAIRPERSON HILL: Okay. Okay.

4 MS. MOLDENHAUER: And I'll go through in a
5 little more detail, the fact that there was no way to
6 have even known that it could not have been properly
7 vested. I'll go through the timing on that a little
8 more in detail later on.

9 MR. FARAZAD: In this slide here you will see
10 a shot interior of the existing structure. And I
11 would like to highlight the challenges with
12 underpinning. Underpinning as many of you may
13 realize, is done in a proper sequence to ensure the
14 stability and structure of the building.

15 We used 35 cubic yards of 4,500 square foot --
16 4,500 Psi. high strength, ready mixed concrete, which
17 is extremely strong. And those footings are three-
18 foot six, by two feet, which will also have grade
19 beams to further structurize the building.

20 We had basically underpinned and poured these
21 foundations with the understanding that our project
22 was going to be a specific height, which was currently
23 permitted at the time. Therefore, the cellar floor is
24 at an elevation, which provides practical difficulty
25 with any changing of the height to meet a special

1 exception of 40 feet, as opposed to going for a
2 variance of 42 feet, six inches, which we explored
3 before coming before you today, if that was an option
4 for us to do a special exception for 40 feet, rather
5 than --

6 CHAIRPERSON HILL: Why is that a problem?

7 MR. FARAZAD: And, Mr. Kearley can explain
8 this better in a few slides, but from a construction
9 standpoint, we have -- we will -- it is very difficult
10 now to reunderpin and remove any potential
11 underpinning that has already been completed due to
12 the fact that there is high strength concrete and
13 rebar included in that underpinning, and --

14 CHAIRPERSON HILL: Okay, I'm sorry. I'm just
15 confused. You're saying it's difficult to go from 42
16 feet to 40 feet?

17 MR. FARAZAD: Yes. And when we explored this
18 option, it -- we originally thought we, you know, can
19 we reduce the elevation of the cellar to --

20 CHAIRPERSON HILL: Oh, you're talking about
21 digging down.

22 MR. FARAZAD: -- accommodate --

23 CHAIRPERSON HILL: Okay. Right.

24 MR. FARAZAD: -- the height and still have our
25 same floor to floor. And the answer to that is no,

1 because of the structure that was poured at the time
2 of the valid permit in August.

3 CHAIRPERSON HILL: I mean, you could do 40
4 feet, you just can't get 42 feet. You can't dig out
5 anymore, is what you're saying.

6 MR. FARAZAD: Right. And the 40 feet --

7 MS. MOLDENHAUER: Well, I think the question
8 is not that you couldn't dig out more, it's that you
9 already have done the underpinning and the challenge
10 in -- is that correct? So, it's not a question of if
11 this -- if you had not already done the underpinning,
12 could that have been done. The question is, now that
13 you have the underpinning already poured, would it be
14 challenging to then dig that out, and can you kind of
15 walk through that, and then recreate something that is
16 just two feet lower, to then bring you under special
17 exception.

18 CHAIRPERSON HILL: No, I understand. I
19 understand why it's challenging. It's okay. It's all
20 right. That's okay. Right. That's okay. No, I
21 understand. I'm just saying, you'd have to leave it
22 the way it is.

23 MR. FARAZAD: Correct.

24 CHAIRPERSON HILL: Right?

25 MR. FARAZAD: On this slide, you will see the

1 same -- almost the same image that indicates how far
2 back the existing structure goes. And if you look
3 just beyond that middle ladder, that would be where we
4 would have to adhere to the 10-foot rule.

5 CHAIRPERSON HILL: Uh-huh.

6 MR. FARAZAD: That is also a high-strength
7 concrete wall, which would create lots of practical
8 difficulties.

9 CHAIRPERSON HILL: Okay. I'm sorry, I'm just
10 trying to move you along because I want to get to the
11 timing thing. Like, you know, that's what's going to
12 be the crux of it I think. But, I understand. Right,
13 you already dug it out, and you're already all the way
14 back there. You've gotten your permit for the
15 underpinning.

16 MS. MOLDENHAUER: I think it's just important
17 to understand that, you know, that wall would have to
18 be demolished in order to comply.

19 CHAIRPERSON HILL: Okay.

20 MS. MOLDENHAUER: And that's the existing
21 current condition.

22 CHAIRPERSON HILL: Okay.

23 MR. FARAZAD: Upon receiving the notice from
24 DCRA to revoke the permit, we quickly discovered that
25 the previous owner had not done significant -- or

1 sufficient community outreach, at which point we
2 hosted and met with neighbors on an ongoing basis by
3 going door to door, receiving 12 letters of support,
4 two of which are the abutting neighbors I spoke of
5 earlier. I'm sorry, adjacent neighbors.

6 We held -- we had two meetings with our
7 single-member district commissioner, we gave two full
8 presentations to the ANC, both in January and
9 February, and we had an additional meeting on January
10 28th, for the community. And we received, recently, a
11 unanimous vote from the ANC with some suggestions that
12 we had worked through with them from the beginning.

13 And if I can go over those very quickly. Some
14 of the concerns from the neighbors and the community
15 and the ANC was the character of the property and the
16 façade. So, we have worked with them to retain the
17 existing dormer, for which we are not seeking any
18 relief now. And the idea was to maintain a rhythm
19 that is true to the Wardman style rowhomes. Although
20 there are properties on that road that do not adhere
21 to that, we wanted to -- and this is from Commissioner
22 -- Chairman Ken Base, said he would like to use this
23 project as a precedent for additional ANC cases, that
24 even though we have the opportunity to do so, that we
25 are working with the community to maintain the

1 character of the neighborhood. So, we will not be
2 changing the dormer. We have agreed to maintain the
3 retaining wall in the front, with the exception that
4 we will need to put an entrance there. And we will do
5 -- be lightly modifying the porch roof to adhere to a
6 traditional style roof.

7 MS. MOLDENHAUER: And with that being said,
8 we'll turn over to the architect to walk through the
9 plans.

10 MR. KEARLEY: I was also the architect for the
11 original owner, so if there's some questions you need
12 in terms of some of the history of some of the choices
13 for architecture, I've been with the project
14 throughout.

15 So, this slide really just shows the
16 relationship of the site with adjacent neighbors. The
17 Les D (phonetic) property to the west, and then the
18 two similar sized developments to the east.

19 The next slide really just shows the same
20 information in more detail, but I think we all know
21 where the site is in relationship to the neighboring
22 properties.

23 This slide really talks about the mix of --
24 this particular image just show properties on this
25 block, the block of Park between 11th and 13th, so

1 there is a mix of conversions, apartment buildings,
2 and single-family attached homes on the block.

3 So, we're consistent with the density and the
4 feel of the block.

5 This next slide shows some more properties on
6 Park, but also shows a couple of the properties on
7 13th Street, the adjacent block. So, again, there is
8 a mix of different scales of projects and different
9 scales of multi-family and single-family homes.

10 This is our property and as Javid had
11 mentioned, we're keeping the dormer and going to
12 upgrade the finishes, but keep the character of the
13 dormer. We're going to have a new structure for the
14 porch, but we're going to be consistent to the
15 neighbors to the east, and have the canopy and roof --
16 to the west, excuse me, the canopy and the roof be
17 consistent with the style of the adjacent property.

18 Again, this is a photoshop rendering which
19 might not be -- the character will be similar in the
20 same of existing, but it's just showing the proposed.

21 And again, the same comments about the porch, and the
22 roof canopy being consistent with the property to the
23 west in terms of the style and feel.

24 MR. HART: And that, the drawings that you're
25 showing, I guess that's slide 14. Is that slide 14?

1 MS. MOLDENHAUER: Uh-huh.

2 MR. HART: You have a -- I mean, it is a
3 different look to the front.

4 MS. MOLDENHAUER: That's one of the reasons
5 why we're saying that this is conceptual. And so,
6 based on conversations with the ANC, this portion of
7 the porch will be more similar to what is next door to
8 it, and that the plans that we're showing are just
9 conceptual.

10 MR. KEARLEY: The biggest concern from the ANC
11 and the neighbors were the roof canopy, not the
12 structure per se. And so, what we're doing is, in
13 order to bring light down into the cellar, and to deal
14 with access to utility meters, et cetera, we're
15 creating a steel structure. But then the canopy will
16 be similar, and that was the big concern of the
17 neighbors, that the canopy -- and so the -- you almost
18 want to take the canopy of the neighboring property
19 and put it on to this image.

20 MR. HART: And you're using the steel because
21 the stone is not -- you're not really --

22 MR. KEARLEY: We're using the steel as to --

23 MR. HART: You can't really use it.

24 MR. KEARLEY: We can't really use it, and
25 we're also trying to open up to bring more natural

1 light down into the cellar, and also bring access
2 underneath the porch, and so we don't have unsightly
3 metered gas meters, and electrical meters, and water
4 meters, that are visible from the street. So, we're
5 tucking all that in under the front porch. And to do
6 that we are making the choice, or we're proposing the
7 choice to do a steel structure instead of the concrete
8 and stone structure that is there.

9 MS. MOLDENHAUER: Well, actually, and just to
10 make sure we clarify what is actually there, is this
11 picture right here, which is a metal structure here.

12 MR. KEARLEY: Yeah.

13 MS. MOLDENHAUER: And metal railings, since it
14 has been modified. But --

15 MR. HART: Yeah, I mean, the previous image,
16 yeah, shows -- 13 shows what it looks like now.

17 MS. MOLDENHAUER: Now. And as one of the
18 reasons I want to make sure on the record is that this
19 image is conceptual, and the ANC did ask that it
20 appear similar to the property to the west.

21 MR. KEARLEY: And one thing to note on this
22 slide, too, the proposed addition and even the
23 proposed guardrail for the roof deck, will not be
24 visible from the street. So, we're really trying to
25 stay in character with the original structure, and the

1 rhythm of the original structures, much more so than
2 the properties to the east that are conversions as
3 well.

4 And so, yeah, this is existing conditions so
5 we can move past there. What you're looking at here
6 is the proposed plans. And what we're trying to note
7 by showing the plans is that one of the directives
8 from the ANC and the neighbors is that they wanted to
9 have family appropriate units. And so, two of the
10 three units are above the 1,500 or threshold for
11 family units.

12 This particular unit has three bedrooms and a
13 den, and four bathrooms. Now, if we were to deal with
14 the 10-foot setback from the neighboring property, I
15 don't know if I'm saying that correctly or not, but
16 the -- here is the next slide that shows what part of
17 the actual proposed development would be eliminated.
18 Everything to your right would be eliminated, and so
19 we would be left with two small bedrooms, and two
20 baths, and not necessarily family-friendly.

21 What you're looking at here, and I don't want
22 to get confused that they're two separate units, it's
23 one unit, the cellar has a wet bar for a family room.
24 So, sort of a media TV room for the family. That is
25 not a kitchen.

1 And so, when you're looking at this, where
2 also the practical difficulty -- we've already -- the
3 cellar is already built. And so then to take that
4 cellar out, the practical difficulty, we also believe
5 that it would have problems with the structure of the
6 neighboring properties, particularly the retaining
7 walls because our new concrete and masonry foundation
8 walls for that cellar abut up against, and in some
9 ways support the neighboring properties, the hardscape
10 of the neighboring properties. And so, to pull that
11 out would one, eliminate the family nature of the
12 units, and also provide some structural gymnastics
13 that we would have to do not to damage any of the
14 neighboring properties.

15 And so, now we're looking at the bottom is the
16 second floor, which is the single floor unit, which is
17 a two-bedroom and one-bath unit. And then the floor
18 above is the unit which is -- it was the third floor
19 and mezzanine. Now it's the third and fourth floor
20 unit, and you can see what happens if we go back and
21 chop off the back of the building. You would actually
22 eliminate the fourth floor in its entirety if you take
23 out the back of the building. It wouldn't be a viable
24 option. And then you're losing the family nature of
25 that particular unit, and you're losing a bedroom and

1 a bathroom. That whole second floor would have to be
2 completely redesigned.

3 And what we're showing on this slide is a big
4 concern in the neighbor, is water runoff. They've had
5 a lot of different problems with erosion and water
6 actually moving from one property to the next. The
7 neighboring property was actually dumping all their
8 water in our property at one time. And so, what we're
9 doing is we're having plenty of green space, and
10 pervious pavers for the parking. So, we have -- so
11 we're helping to mitigate storm water management and
12 soil erosion for this property and for the neighboring
13 properties.

14 This is the proposed elevations. Elevations,
15 as you know, are not always true in terms of how you
16 visualize. You will not see the addition and the
17 rail, but it shows it in an elevation.

18 MS. MOLDENHAUER: Importantly, can you discuss
19 if the property had not already been permitted, but if
20 there were modifications to the floor to ceiling
21 height, how that would create challenges with the
22 existing façade and the existing window penetrations
23 and door penetrations?

24 MR. KEARLEY: Sure. If we were going to drop
25 down the two-foot-six, which we're asking for the

1 relief from the special exception, then in order to do
2 that we would actually have to change the character of
3 the building significantly because the floors would
4 actually be dropped down into the windows.

5 If we're trying to drop everything down two-
6 foot-six to get the fourth floor, within that 40-foot
7 limit, then you would actually have to change the
8 entire fenestration windows and doors and the layout
9 of everything on this particular rowhome, because the
10 floors would be dropped to such an extent that they
11 would be within the openings of the windows.

12 CHAIRPERSON HILL: Okay, I understand. I
13 understand.

14 MR. KEARLEY: Yeah. The character of the --

15 CHAIRPERSON HILL: I understand.

16 MR. KEARLEY: -- whole place would be --

17 CHAIRPERSON HILL: I'm just trying to move us
18 along here, still a little bit, to get to the time. I
19 mean, you just lose the fourth floor. You know, and
20 so --

21 MS. MOLDENHAUER: So, one --

22 MR. KEARLEY: Yeah, exactly.

23 CHAIRPERSON HILL: Right. So, I mean again,
24 I'm back to your slide, which is, I think it's 25.
25 Was it 25? No. That had the timeline on there.

1 MS. MOLDENHAUER: Well, we'll just for
2 purposes of the record --

3 CHAIRPERSON HILL: Sure.

4 MS. MOLDENHAUER: -- we'll want to walk
5 through. If you can -- let's just walk through, Greg,
6 this slide about the line of sight, and just make sure
7 that the Board is aware of that.

8 MR. KEARLEY: Sure. So, this is what we had
9 talked about previously when you look at the line of
10 sight from either side of the street the rail and/or
11 the addition are not visible.

12 MS. MOLDENHAUER: And can you just confirm
13 that when this permit was initially approved, it was
14 at 40 feet.

15 MR. KEARLEY: Well, the regulations was 40
16 feet from the ceiling, from the underside of the
17 ceiling, and that's what we designed towards.

18 And so, now that the 40 feet is actually the
19 roof, and then that's the reason why we have that two-
20 foot-six that we're asking relief from.

21 MS. MOLDENHAUER: Thank you very much. And
22 then as the record has -- we can answer questions if
23 the Board has specific questions. But we have
24 materials that the ANC -- I know that the Board has
25 been identifying the need and kind of provide

1 information on materials and character. We also have
2 sun studies which show that there is no substantial
3 impact in change, and then we have an image of the
4 rear rendering which shows the fact that this project
5 is actually a little shorter than the three-unit
6 project that exists two houses over, and the extent of
7 the open nature for the rear aspect, given how deep
8 this lot is, in that regard, and that there is a
9 sufficient amount of light and air throughout the
10 property.

11 We also would just like to point out that at
12 Exhibit -- sorry. At Exhibit, I believe it is 43,
13 this property owner has indicated their support. And
14 they have --

15 CHAIRPERSON HILL: Which one? I'm sorry. The
16 one in yellow?

17 MS. MOLDENHAUER: This one right here.

18 CHAIRPERSON HILL: Oh, I couldn't see. All
19 right.

20 MS. MOLDENHAUER: The one next door to it,
21 right here.

22 CHAIRPERSON HILL: Okay.

23 MS. MOLDENHAUER: So I just -- and then the
24 one in yellow has support, and the property owner
25 right here has support as well, and all of those

1 letters are in the record. But just to kind of walk
2 through the one property owner on 13th Street, their
3 letter of support specifically identifies the fact
4 that not only in our opinion, obviously, would it be
5 practically difficult and wasteful to require the
6 demolition of the existing underpinning and the
7 existing wall, as Mr. Farazad already walked through,
8 but that owner is actually asking and requesting the
9 Board not to require the applicant to have to do that
10 because of the impact it would have. We've actually -
11 - they've attended multiple meetings, and they've
12 indicated that they work from home, and the impact of
13 having to go through the demolition and repouring of
14 new concrete would be substantially adverse in their
15 personal opinion, to their own public good and their
16 own mental good, and so they have actually filed a
17 letter of support, supporting both -- and it
18 specifically outlines the 10-foot relief that we're
19 asking for.

20 CHAIRPERSON HILL: That's the property owner
21 in yellow?

22 MS. MOLDENHAUER: It's, no, no, no.

23 CHAIRPERSON HILL: Oh.

24 MS. MOLDENHAUER: We have a letter from
25 yellow.

1 CHAIRPERSON HILL: Right. But I was just
2 trying to --

3 MS. MOLDENHAUER: And we have a letter --

4 CHAIRPERSON HILL: The person who works at
5 home.

6 MS. MOLDENHAUER: Is --

7 CHAIRPERSON HILL: Okay.

8 MS. MOLDENHAUER: You can't really see it in
9 there.

10 CHAIRPERSON HILL: Okay. I got it.

11 MS. MOLDENHAUER: Right here on 13th Street.
12 But if you look -- let me just -- sorry, I'm going in
13 the wrong direction.

14 [Pause.]

15 MS. MOLDENHAUER: So, it is, if this is the
16 10-foot here, it's this property owner right here.
17 Right here.

18 CHAIRPERSON HILL: Okay. And just on this
19 slide, since you came all the way back here, where is
20 the building, the end of the building as proposed?

21 [No audible response.]

22 CHAIRPERSON HILL: Okay. Okay, great. Thank
23 you.

24 MR. HART: The photograph that we -- that you
25 showed from the rear, you just had an image showing

1 the rear of the --

2 MS. MOLDENHAUER: Uh-huh. I can go back.

3 MR. HART: -- photograph and you kind of --
4 you don't have to go back to it. Can you point out
5 where that photograph is taken from here?

6 MS. MOLDENHAUER: Sure.

7 MR. HART: And so, what you're looking at are
8 the garages for the back of the -- and so, that's like
9 a one-story garage, and then you have the -- then you
10 have where your actual house is. The building.

11 MR. FARAZAD: It's a roll up door and there's
12 six feet of our property, which helps widen the alley.
13 So, it's not just a 10-foot alley. So, our property
14 line actually ends right about here.

15 MR. HART: Uh-huh.

16 MR. FARAZAD: And then that portion is also
17 our property, which widens the alley.

18 MR. HART: And are you -- you're not keeping
19 where that roll up door is. You're replacing that?

20 MR. FARAZAD: The door?

21 MR. HART: I'm just -- or that whole area,
22 that whole portion of the building is not going to be
23 there.

24 MR. FARAZAD: It's not a building. It's just
25 a garage door.

1 MS. MOLDENHAUER: There's no existing garage.
2 Are we --

3 MR. HART: Okay. Yeah, that's the part I was
4 trying to -- because when I saw it I was thinking that
5 there was a garage there, but you're saying that
6 there's nothing that's --

7 MR. FARAZAD: It's just a door. And if you go
8 to the landscaping plan. Sorry.

9 MR. HART: Okay.

10 MS. MOLDENHAUER: So, there's no structure
11 there now.

12 MR. FARAZAD: This portion is our property,
13 and then this is the roll up door.

14 MS. MOLDENHAUER: Does that answer your
15 question, Commissioner Hart?

16 MR. HART: Yes, thank you. It was just a
17 little unclear from the photograph, what I was looking
18 at. Trying to think of that actually being a portion
19 of the building. That's why I was like, where is --
20 and I couldn't figure out why I wasn't seeing it in
21 the elevations or the sections. And so, I'm like
22 okay, what am I missing?

23 MR. FARAZAD: It's far back.

24 MR. HART: So, I understand that now. Thanks.

25 MS. MOLDENHAUER: Thank you. Okay, so let me

1 walk through just some of the specific history and the
2 timing. So, we are requesting the 10-foot relief is a
3 waiver under the new zoning regulations. Office of
4 Planning is supportive of the conversion. We meet the
5 900-square foot requirement, and comply with the other
6 elements, and we are no longer asking for a waiver on
7 the modification of the architectural detailing. We
8 are then also asking for a variance for the building
9 height and stories.

10 The special exception relief here, and the
11 uniqueness specifically stems, as I had indicated
12 earlier, from the detrimental reliance on DCRA's
13 issuance of a building permit. And the applicant's
14 review of that permit, the clear facial language on
15 that permit stated, three units, and it stated third-
16 story and mezzanine. There was no ambiguity. There
17 was no need to kind of question it. And it was issued
18 in a timely -- in a way in which there was a good
19 faith reliance that it had been issued properly, as
20 I'll go through in a moment.

21 That obviously then indicated that my client
22 purchased the property without understanding he did
23 not purchase just a regular property. He purchased a
24 project that was already permitted and was ready to go
25 through construction. He obtained an underpinning

1 permit that also then went back through DCRA and had
2 reviews and inspectors that came out and reviewed the
3 underpinning, and there was no indication that he
4 should stop work, or that there should be an issue.
5 He continued through until 75 percent of the
6 underpinning was completed, under the reliance that
7 everything was approved until after when he finally
8 got issued the notice of revocation. It was the first
9 time he was aware that there was a problem.

10 That being said, let's just walk through the
11 timing. The property, prior property owner, purchased
12 the property in December of 2014. At that time,
13 Zoning Commission Case 14-11 had not yet been
14 effective. There was -- and at that time, a mezzanine
15 was not counted as a story, and would have been
16 permitted, and 40 feet was still deemed to be a matter
17 of right.

18 So, in reviewing this, kind of in hindsight,
19 there was no reasonable expectation if looking back at
20 this, that any owner would have been able to say, oh,
21 he -- let's say he had purchased it in March, or he
22 had purchased it after, you know, the zoning
23 regulations went into effect after July. It would
24 have been a clear question of, okay, there's something
25 that doesn't seem right here. The timing here is

1 clear that there was no expectation that there would
2 have been an issue with this permit.

3 Six months after the prior owner purchased it,
4 the zoning regulations went into effect. As we all
5 know, the zoning regulations even went retroactive
6 back to February, so there was time that he could have
7 filed and vested that permit under the old
8 regulations.

9 In September of -- September 24th, 2015, is
10 when the permit was actually issued. The permit on
11 its face as I indicated, indicated that it was three
12 stories and a mezzanine. Mr. Farazad purchased the
13 property in July of 2016, under the understanding that
14 this is what would be able to be constructed and
15 relied upon that to his detriment. And to the
16 practical difficulty that we're seeking now.

17 He revised the permit and obtained an
18 underpinning permit, still while the ZR-58 was in
19 effect. He started work at the time that ZR-58 was in
20 effect. Not until three weeks after ZR-16 took
21 effect, did DCRA issue a notice to revoke.

22 Commissioner, or Chairman Hill asked the
23 question about you know, that timing and I think that
24 that's actually a very important aspect that, you
25 know, is an unfortunate situation again. This is

1 where this Board has the ability to weigh these
2 unjustices here, and if DCRA, or if even the ANC or
3 any of the neighbors had said, look, we have a problem
4 with your project, and he had been informed of that
5 prior to the zoning regulations taking effect, there
6 may have been an opportunity to cure that or to go
7 through under the old regulations.

8 The old regulations, as we know, measured a
9 building in the old R-4, the RF Zone here, to the top
10 of the ceiling. The permit plans here are at 40 feet
11 to the top of the ceiling. One of the challenges is
12 the fact that this project hit at this timing. Now
13 we're measuring to the top of the roof, which changes
14 the difference of this project from a special
15 exception at 40 feet under the old ZR-58, to now a
16 variance of that two feet, two feet, six inches, under
17 the new ZR-16.

18 The applicant did not challenge DCRA's notice
19 to revoke. They went through. They said we will turn
20 back our permit. They had conversations, they secured
21 the site in order to do that, and as indicated there
22 were issues with water runoff. They completed what
23 was necessary to protect the property and protect the
24 abutting property. But now there is a condition in
25 which there is practical difficulty.

1 DCRA's issuance of that permit created a
2 situation in which the applicant had undergone such a
3 substantial amount of work that the ability to comply
4 now with the zoning regulations creates a practical
5 difficulty. If this was a situation where 75 percent
6 of that underpinning had not been completed, or if
7 that lower level had not been required to be completed
8 to secure the property, the applicant may have been
9 able to make modifications to that two feet, six
10 inches, to make this case a special exception.

11 But because of the fact that it had already
12 been done, it limited the ability for the applicant
13 now to go back and make changes.

14 And just to this point, we worked very closely
15 with the ANC. And as this Board is probably is very
16 much aware, this ANC is very concerned with and
17 maintaining this relief. We have a 10, to zero, to
18 one vote from this ANC. And we were specifically
19 told, this is not how this ANC typically works, but
20 they understand the practical difficulty and the
21 uniqueness of this situation for this owner, but that
22 they would typically never support this type of height
23 or this type of 10-foot relief, but that that was
24 something that they understood the uniqueness and the
25 factors and the practical difficulty here.

1 Let me just quickly, then, walk through the
2 fact that the Board in Oakland, I should point out,
3 *Oakland Condominium v. D.C. BZA*, Office of Planning
4 could recommend a denial in that case. The Board
5 found that there was a reasonable reliance, and they
6 actually had three hearings in that case, but they
7 went back and forth and they really created a very
8 good case law, and case history, where they required
9 that the applicant show good faith reliance. And that
10 was a situation in which the Rosens had actually
11 purchased the property as an inn, and they went to go
12 get a change of use for that use, and they determined
13 that the use was not permitted as a matter of right,
14 based --

15 CHAIRPERSON HILL: Ms. Moldenhauer, I'm just
16 going to kind of keep you moving along here just a
17 little bit. I mean, it's all in the record and we've
18 looked through the cases. I want to get to the Office
19 of Planning, and --

20 MS. MOLDENHAUER: Okay.

21 CHAIRPERSON HILL: Okay. Go ahead. Yeah.

22 MS. MOLDENHAUER: So, I just, I want to make
23 sure obviously that the Board understands that in
24 other cases where OP has not recommended support
25 recommended denial, this Board has found that they can

1 rely upon an applicant's assurances and zoning history
2 to satisfy the first and second prong of the variance
3 test.

4 There are also, we have in addition to the
5 record, there are three other cases that we just
6 provide evidence of, where the applicant -- you know,
7 the Board had found that the applicant acted in good
8 faith reliance upon DCRA issuing a permit, and that
9 based on those factors, they granted in Case 18570, it
10 was a situation in which the Board granted approval
11 for the 900-square foot relief, and height, up to 46
12 feet in that case, in an RF Zone, where the Office of
13 Planning had not supported it, but the Board found
14 that they met the standard under the Court of Appeals
15 case, Oakland.

16 There is also 17264, and 18725, which are
17 other examples where the Board has found that reliance
18 on DCRA approval of permits is sufficient to prove the
19 first and second prong of the variance test.

20 We feel as though the public good would not be
21 impacted, and we believe that OP's report also
22 indicates that as well, in the fact that they are
23 supportive of the three units, in the fact that we
24 have letters of support from the ANC and letters of
25 support from abutting property owners, and those

1 property owners that would be individually and
2 uniquely impacted by this project, and those
3 applicants understand the challengers here, and they
4 would support the project as well.

5 We believe that the harmonious concept with
6 the zoning plan would also not be impacted, and that
7 this property actually provides a benefit to the
8 neighborhood for having family-sized units if the 10-
9 foot relief were not granted, or that waiver. It
10 would drastically reduce the ability to provide family
11 sized units, as we showed and as the applicant's
12 architect indicated. It would cut off the rear of the
13 building, creating one-bedroom units, rather than
14 having three-bedroom, two-bedroom, and a one-bedroom
15 unit, creating a diversification of the unit mix here
16 on this project.

17 And as indicated, there would be no adverse
18 effect on the neighbors, no change to the existing
19 residential use. This project would not be visible
20 from the street. We heard earlier testimony from the
21 D.C. Preservation League about preserving and
22 maintaining the property. We believe that this does
23 create that relief, even with the requested relief for
24 the fourth story, this would be the visible appearance
25 from the street. The mezzanine level would not be

1 visible, as you've shown in our line of sights, and as
2 we've shown in the architectural plans.

3 At this point in time I will be available for
4 questions or conclusion.

5 CHAIRPERSON HILL: Okay. I'm going to let the
6 Board ask questions, and then we're going to go to the
7 Office of Planning. But I've got to take a quick
8 break. And so, I'm going to take a quick five-minute
9 break. Thank you.

10 [Off the record from 1:16 p.m. to 1:22 p.m.]

11 CHAIRPERSON HILL: All right. We're going to
12 get started again.

13 So, let's see. So, we're going to turn to the
14 Office of Planning. And also, does the Board have any
15 questions for the applicant at this -- I mean, there's
16 a lot of questions I think maybe we'll get to, so
17 maybe we'll hear from the Office of Planning first.

18 I have a quick question. If I had put you on
19 the clock, how much time would you have asked for?

20 MS. MOLDENHAUER: Forty minutes.

21 CHAIRPERSON HILL: You would have asked for 40
22 minutes?

23 MS. MOLDENHAUER: I would have asked for 40
24 minutes.

25 CHAIRPERSON HILL: Okay. You would have asked

1 for 40 minutes.

2 MS. MOLDENHAUER: And we're at --

3 CHAIRPERSON HILL: Now, whether you had been
4 granted 40 minutes or not I don't know, but you would
5 have asked for 40 minutes. In the future I am going
6 to ask for sure, just so I can mentally prepare.

7 MS. MOLDENHAUER: I'm just, I'm looking at --

8 CHAIRPERSON HILL: That's okay. I'm just
9 letting you know.

10 MS. MOLDENHAUER: -- my PowerPoint right now.

11 CHAIRPERSON HILL: That's all right.

12 MS. MOLDENHAUER: And it says we've been on
13 for 47 minutes.

14 CHAIRPERSON HILL: That's all right. That's
15 okay. I'm just letting you know. I'm sure you're
16 right. You're the attorney, so you know, right.

17 Okay. So, the Office of Planning, if you
18 could please -- there's a lot that the applicant has
19 put forward, and I know that we're going to have a lot
20 of questions of you. But please, if you wouldn't
21 mind, and if you need 40 minutes, please, we'll do
22 equal time here. Thank you.

23 MS. FOTHERGILL: I will not take 40 minutes.
24 Good afternoon. For the record, I'm Anne Fothergill
25 with the Office of Planning.

1 As the applicant stated, the Office of
2 Planning does support the conversion to three units.
3 They meet the 2,700-square foot minimum lot area that
4 is required. But the Office of Planning does not
5 support the waiver that is requested as part of the
6 conversion regulations. The requirement is that an
7 addition shall not extend further than 10 feet past
8 the furthest rear wall of an adjacent property
9 building and they are proposing to extend 29 feet and
10 three inches beyond the adjacent house to the west.
11 We recognize that that property owner has submitted a
12 letter of support for this proposal, but the
13 requirement of 10 feet, adding an additional 19 feet,
14 does not seem in keeping with this regulation, and
15 while we understand -- oh, and I should start with, we
16 are very sympathetic to the erroneous permit situation
17 and we understand that the foundation has been built
18 for that 29-foot addition.

19 And the question that we raised is, perhaps
20 there's some solution so that there is not a four-
21 story block that is 29-foot deep, and that seems very
22 incompatible with the RF-1 restrictions. And so, we
23 don't support the 29-foot at four stories. Maybe
24 there is some other solution, since the foundation has
25 already been built and the applicant is in this tough

1 position that they didn't create themselves.

2 But at this point, OP does not support that
3 waiver, and the applicant meets the other criteria of
4 the conversion. In terms of the variance for height
5 and stories, the RF-1 regulations do not allow for a
6 four-story building and a 42-foot, six-inch tall
7 building and again, we recognize that the applicant
8 based this on the erroneously approved permits, but it
9 is -- and we recognize that the Board has, in the
10 past, found that the previously approved permits do
11 meet the variance test for the first prong of the
12 variance test.

13 But, again, in the OP report we raised the
14 question of, since it is not yet constructed why the
15 applicant cannot revise the plans to comply with the
16 height, and with the stories for that matter. So, we
17 -- new information has been presented tonight and -- I
18 mean, today, and you know, the discussion, obviously
19 there are questions and there will be more
20 explanation. But it seems that they could comply
21 because it is not completely constructed, and that --
22 and since it is not compliant with the RF-1 regs, we
23 do not -- and we do not find that it meets the first
24 prong. In terms of the second prong, we have concerns
25 that a four-story massing at more than -- you know,

1 four story, more than 40 feet tall, 29 feet deep,
2 would be -- would have substantial detriment to the
3 public good. Again, we recognize that the neighbors
4 are supportive, and you know, that is good. But in
5 terms of the impacts on the neighborhood and on the
6 zoning, we don't find that it -- we can support it.

7 And, the other thing that is mentioned in the
8 staff report is that there is a pending Zoning
9 Commission decision that is not in effect yet. And
10 so, in fact the -- it is our understanding that the
11 applicant could, because of this timing, could
12 construct the 29-foot addition that right now, in a
13 few months, that wouldn't require a special exception.
14 But if they remained a flat, they -- and then in fact
15 they got the approved permits so that they could
16 finish up some work in securing the site, as the
17 applicant explained.

18 And so, it seems there are other options, and
19 in the variance test is a tough test to meet. And at
20 this point we did not find that it met the variance
21 test and we recommend a denial of the height and
22 stories. And I'm happy to answer any questions.

23 CHAIRPERSON HILL: Okay. Does the Board have
24 some questions for the Office of Planning?

25 MR. HOOD: Ms. Fothergill, you mentioned that

1 in a couple of weeks or months, that the pop-back may
2 not be an issue. Can you help me clarify that? Can
3 you help me --

4 MS. FOTHERGILL: Sorry. What I meant, sort of
5 the opposite, so --

6 MR. HOOD: Okay. That's what --

7 MS. FOTHERGILL: -- the pending regulations
8 that are awaiting final action, but that the Zoning
9 Commission has recommended approval of, would mean
10 that in the RF-1 -- right now, conversion cannot pop
11 back more than 10 feet. But when those are finally
12 approved, a flat also could not pop back more than 10
13 feet.

14 So, right now, if they did a -- my
15 understanding is if they did a flat, if they stayed a
16 flat and they didn't do the conversion, they could use
17 that foundation they've constructed and do that rear
18 addition. Does that explain what I was trying to say?

19 MR. HOOD: Yes. Yes. Let me ask, Mr.
20 Chairman, I have a question for Ms. Glazer.

21 Ms. Glazer, when the Zoning Commission puts
22 something, when they have a set down rule, Ms.
23 Fothergill is mentioning that right now what they can
24 do, but I've always been under the impression, when
25 the Zoning Commission does a set down rule, the set

1 down rule is in effect. The set down rule applies.

2 Can you help me with that? Or do you --

3 MS. GLAZER: The set down rule that was just
4 described?

5 MR. HOOD: The case that's in front of the
6 Zoning Commission now, the set down rule applies. So,
7 she's saying that they can do it now and actually, I
8 disagree with that because I think the set down rule
9 applies.

10 MS. GLAZER: But also, so I may not be clear,
11 I believe they have approved permits to do that.
12 They, when their permit was revoked, they then revised
13 and reduced their height and stayed -- remained a flat
14 so that they could continue construction.

15 MR. HOOD: So, they already have the permits
16 to do that.

17 MS. GLAZER: Yes. That's --

18 MR. HOOD: Okay.

19 MS. GLAZER: And I was sort of --

20 MR. HOOD: Okay. All right. That's the
21 difference. Okay.

22 MS. MOLDENHAUER: And I can elaborate on that
23 if the Commission would like.

24 MR. HOOD: No, I think I got it. Unless you
25 want to make -- confuse me more, of course.

1 CHAIRPERSON HILL: That's okay. That's all
2 right. That's okay. Okay.

3 So, the argument that the applicant is making
4 in terms of timing, and I appreciate that the Office
5 of Planning is understanding of the situation, but as
6 far as the timing going to the first prong of the
7 test, the Office of Planning does not think that's the
8 case.

9 MS. FOTHERGILL: I think the Office of
10 Planning has not been convinced that there isn't
11 another solution, that they cannot solve the problem
12 in other ways. And so, they do have these previously
13 approved permits, but they also have -- that were
14 erroneously approved, but they also have approved
15 permits showing another solution. And so, we don't
16 find that the -- it's unclear why they couldn't revise
17 the plans to --

18 CHAIRPERSON HILL: Okay.

19 MS. FOTHERGILL: -- comply.

20 CHAIRPERSON HILL: I understand. Can you help
21 me understand that again, why, and I'm a little
22 unclear on this one, that they did get the permit for
23 the underpinning, when -- you don't know why that
24 would have happened, there would have been a red flag
25 or something would have gone --

1 MS. FOTHERGILL: I don't understand what
2 happened with DCRA.

3 CHAIRPERSON HILL: Okay. Do you have any
4 theory as to what happened with DCRA? No, that's
5 just, we just got the permit. That's just the way
6 that is.

7 MS. MOLDENHAUER: There was an error.

8 CHAIRPERSON HILL: Okay. That's the answer.

9 MS. MOLDENHAUER: Yes.

10 CHAIRPERSON HILL: Okay.

11 MS. MOLDENHAUER: They should have reviewed it
12 and --

13 CHAIRPERSON HILL: They should have told you
14 at that point that there is an issue.

15 MS. MOLDENHAUER: If it had not been
16 identified previously, or if the original permit had
17 not been -- not supposed to have been properly issued,
18 one, it should have been caught initially, when the
19 permit was first issued in September of 2015.

20 If it was not caught then, then it should have
21 been caught when the perimeter reviewed the structural
22 requirements for the underpinning, and the building
23 permit was then reprocessed. It again was overlooked
24 at that time.

25 CHAIRPERSON HILL: Right. And you got

1 approval, though, for the underpinning.

2 MS. MOLDENHAUER: Yes, and DCRA --

3 CHAIRPERSON HILL: Meaning, if you had gotten
4 caught --

5 MS. MOLDENHAUER: -- approved --

6 CHAIRPERSON HILL: -- you might not have
7 gotten approval for the underpinning.

8 MS. MOLDENHAUER: Yeah. If DCRA had reviewed
9 it and said, oh, there is an issue here, we will --
10 before we issue the underpinning permit, we want to go
11 back and look at the --

12 CHAIRPERSON HILL: So, you would not have
13 gotten -- and I'm sorry to interrupt. You would not
14 have gotten, then, approval for the going as far back
15 as you did?

16 MS. MOLDENHAUER: The underpinning permit was
17 issued before any of the set down or any of those
18 changes occurred. The underpinning permit was
19 actually approved before ZR-16 took effect. And so,
20 based on that approval, the applicant would not have
21 started construction and done all of that work. Does
22 that answer your question?

23 CHAIRPERSON HILL: Yes.

24 MR. HART: And the previous owner had not
25 actually started any of the work, they just had gotten

1 - or maybe they had gotten a permit to start the work,
2 but they actually hadn't done any work.

3 MS. MOLDENHAUER: Exactly. So, it's in the
4 development community where someone goes through,
5 maybe goes through all the entitlement work, or goes
6 through a PUD process, and then they sell it. What
7 had happened was the prior owner went through and they
8 got all of their permits, they had bought the
9 property, they got their permits approved, and then
10 they sold it as a package deal. And my client bought
11 it, but they hadn't done any work themselves.

12 MR. HART: And, you've stated that doing the
13 two flats is not something that you want to do. Or I
14 mean, I understand that there is, you know, the idea
15 of kind of a different -- different types of housing -
16 - different housing types in this same kind of
17 building. I kind of understand that. But, you do
18 have a permit in hand that would allow you to do two
19 flats, four bedrooms apiece, I would assume. And you
20 could kind of be done with it and move on.

21 So, it just seems a bit -- I'm just not clear.
22 I mean, beyond the financial aspect of it, I'm just
23 not clear why you would want to continue going through
24 a process when you could, it seems as though you could
25 actually just kind of move forward with the two flats.

1 MR. FARAZAD: Mr. Hart, to answer your
2 question, one of the -- based on the discussions that
3 we've had with the community and specifically the
4 property owner at 1217, which is the yellow house to
5 the east, it's in that property owner's best interest
6 to allow us to proceed with the relief that we've
7 requested because they have a rooftop deck currently.

8 And if we were to move forward with the two-unit
9 option, the front setback of the third story would
10 then block their view to the west, sunsets.

11 So, they've actually, they prefer us to
12 proceed with the relief that we've requested.

13 MR. HART: Can you say that again? I mean,
14 you're making an argument that somebody next to you
15 needs to have --

16 MS. MOLDENHAUER: Is supportive of this
17 relief. Let me see if I can --

18 MR. HART: I understand they're supportive of
19 it, but you're saying that you need to do this so that
20 they can benefit in some way from this, and I'm not
21 really sure why we're --

22 MS. MOLDENHAUER: I think that there's
23 obviously the practical difficulty that the property
24 was purchased with this intention, but then also in
25 addition to that we want to just point out this issue

1 from the abutting property owner.

2 MR. FARAZAD: If we look at the elevation
3 here, you can see the property owner to the right, to
4 the east. They have a rooftop deck. If we were to
5 proceed with the two-unit option, the rear addition
6 would actually be -- would have less of a set back
7 from the front, thereby blocking their view to the
8 west on their rooftop deck.

9 MR. HART: Hold on. Could you go back to
10 that?

11 MS. MOLDENHAUER: Sure.

12 MR. HART: What I'm trying to understand is,
13 you have the basement and the first floor would be one
14 flat.

15 MR. FARAZAD: Uh-huh.

16 MR. HART: And then the second floor and third
17 floor would be another flat.

18 And then you have, you're asking for the
19 addition, which is that one, two, three, four -- and I
20 mean, counting the -- and I know they're not all
21 stories, so -- but the fourth level -- the fifth
22 level, the fourth floor, is adding -- you're using
23 that to create another -- a third unit.

24 If you only go for two flats, then that means
25 you don't need to do the top of it. So, that's what

1 I'm trying to understand. What do you mean that
2 they're getting something from this? If you have two
3 floor units, two floor flats, then you don't need to
4 go up to 40 feet, or whatever the -- 42 feet. You
5 just use the existing building and you're just kind of
6 building back. You're not also building up.

7 MR. FARAZAD: Can I explain that? So, in this
8 image here, if we were to then use this as the third
9 floor, we would be able to go up to 35 feet is my
10 understanding, plus a parapet. And we would push the
11 front set back further to the front -- I'm sorry, the
12 setback for the third floor closer to the front of the
13 building, which would then create a parapet wall at
14 the abutting property, which would potentially block
15 his view.

16 MS. MOLDENHAUER: And that's what is
17 permitted. The permit for the two units has an
18 increase in the height of the existing structure, to
19 35 feet. Is that correct?

20 MR. FARAZAD: Yes.

21 MS. MOLDENHAUER: And the existing two-unit
22 permit has a massing that is pushed forward and up to
23 the 35 feet.

24 MR. HART: Is this what you're showing in the
25 shadow studies?

1 MS. MOLDENHAUER: Yes.

2 MR. HART: Because there's a shadow study on
3 slide 26 and 25 --

4 MS. MOLDENHAUER: That compares --

5 MR. HART: -- that show something like this.
6 But, I'm -- and maybe I'm just being dense here, but
7 if you have the cellar floor, the basement floor as
8 being the first level of the first unit, and you have
9 the first floor as being the second level of the first
10 unit. The third -- the second and third floors should
11 be the first and second level of the second unit. And
12 you're saying that you need to have another unit,
13 another pop-up on top of that. So, that's the part
14 I'm trying to -- I'm missing.

15 MS. MOLDENHAUER: And I think what you're -- I
16 think there's two issues. One, the matter of right
17 two-unit scenario was never intend -- the only reason
18 why that was obtained, I think that this maybe clarify
19 an issue. The only reason why the two-unit permit was
20 obtained was in order to protect and obtain a permit
21 to complete the work on that first level to preserve
22 the structural integrity of the building and the
23 properties next door, because once the old permit that
24 was issued, that was revoked, work then obviously, you
25 know, is supposed to be stopped and you're not able to

1 do work until you get a valid permit. So, they
2 completed certain work and then a new permit needed to
3 be obtained in order to preserve and protect the
4 existing structure, and the abutting structures. That
5 was the reason for the two unit. Not because the two-
6 unit was something that was ever the intention or the
7 -- or was not practically difficult for my client.

8 Then, now obviously, Office of Planning is
9 supportive of three units because we comply with the
10 other elements of the regulations of the 900-square
11 feet. So, if the three units was supported, you're
12 not talking about kind of -- and again, there's just
13 so many factors here. I know it's confusing. But
14 you're not talking about two large, two-units, you're
15 then talking about a little over 800-square foot three
16 units, rather than having family sized units that are
17 being proposed.

18 MR. HART: It's not that I didn't understand
19 that. The part that I was trying to get to was that
20 you said that you were never really looking to do the
21 two-unit flat. And I didn't hear that before, so
22 that's the part that I -- because I was trying to
23 figure, why are you trying to go up if you already
24 have that. So, you've clarified it.

25 MS. MOLDENHAUER: The only reason for that,

1 and we can explain that timing, but it was to preserve
2 and protect the property. And to properly work under
3 a validly issued permit.

4 CHAIRPERSON HILL: Okay. Does anybody have
5 any more questions for the applicant?

6 [No audible response.]

7 CHAIRPERSON HILL: Does anyone have more
8 questions for the Office of Planning?

9 [No audible response.]

10 CHAIRPERSON HILL: Does the applicant have any
11 questions for the Office of Planning?

12 MS. MOLDENHAUER: I would just have one
13 question. If there was, hypothetically, and I've
14 explained why it's not possible, but if it was
15 hypothetically a way to get this to 40 feet, that
16 would be a special exception and OP would under -- I
17 guess my question is, OP understands the difference of
18 the lower degree of relief that would be required for
19 the 40 feet.

20 MS. FOTHERGILL: Yes. Yes, it would be a
21 lesser review standard and more commonly approved in
22 the RF-1.

23 MS. MOLDENHAUER: Thank you.

24 CHAIRPERSON HILL: Okay. All right. So, I'm
25 going to turn to the audience here, which there isn't

1 anybody. Is anyone here from the ANC? Is anyone here
2 from the ANC?

3 [No audible response.]

4 CHAIRPERSON HILL: Is there anyone here
5 wishing to speak in support of the application?

6 [No audible response.]

7 CHAIRPERSON HILL: Is there anyone here
8 wishing to speak in opposition to the application?

9 [No audible response.]

10 CHAIRPERSON HILL: All right. I'm kind of,
11 and I don't want to give the applicant here a little
12 bit more time. I'm not really sure where the Board
13 is. I mean, I'm not fully ready to deliberate. I'm
14 also not completely convinced, and I want the
15 applicant to have kind of an opportunity, I guess,
16 continue to talk with the Office of Planning about
17 some -- what I heard from the Office of Planning today
18 also, that there was some new information that you
19 heard today that you hadn't had before.

20 MS. FOTHERGILL: Sorry, I just meant as the
21 applicant describes more than was in their submission.

22 CHAIRPERSON HILL: I see. You heard more.
23 Okay.

24 MS. FOTHERGILL: More in the submissions,
25 right.

1 CHAIRPERSON HILL: And so, I am interested in,
2 I guess, the applicant continuing to work with the
3 Office of Planning before deliberating on this. I
4 don't know how the Board feels or if the Board is at a
5 point where they feel they can deliberate.

6 MR. HART: No, I mean, the questions that I
7 was trying to get to was, we're looking to -- we're
8 being asked to look at the zoning that's in place for
9 this particular residence, and say that we agree that
10 yes, there were errors or whatever the issues were
11 with DCRA, that occurred, and that we think that
12 that's created this situation where the applicant
13 should be provided a pass or allowed to be able to
14 build what it is that they would like to build. And
15 I'm just, I'm not -- I understand that the applicant
16 has said that there is -- it is not viable for them to
17 build smaller units. I don't know that for sure.
18 They're asking for things that are outside of zoning,
19 and I just have a hard time trying to get to a, yeah,
20 I kind of agree with that.

21 And, I think that part of this is maybe we --
22 maybe seeing the -- well, I mean, I guess the two-unit
23 would be fairly easy to draw or to show.
24 Understanding what the three smaller units might look
25 like, I mean, is it just taking off the top or is it

1 actually having to do movement on the floorplans, what
2 those floorplans might -- how they might change.

3 MS. MOLDENHAUER: Can we address some of that
4 now, just --

5 MR. HART: Well, I mean, some of it -- and
6 there was a discussion also about you know, you can't
7 -- if you -- that the elevation would be really -- the
8 window location would really be impacted by having to
9 move up or, you know, up or down the -- actually, down
10 the floors. There just seemed to be a lot of little
11 questions out there in my mind that I need to think a
12 little bit more about.

13 So, I'm not ready to --

14 CHAIRPERSON HILL: Okay. So, before you
15 respond, or if you want to respond, I mean, I don't
16 know if there's -- I think what Mr. Hart is asking,
17 you want to see some drawings for three units or --

18 MR. HART: Well, I mean, it's you know, it is
19 -- yeah. I think showing at least the -- or
20 explaining why that's not viable, because you're
21 telling us that this is the only option that you have.
22 And right now what we have is -- are some drawings
23 that show that what you want. But what you want is
24 not necessarily what is -- is definitely what is not
25 allowed in zoning. And so, there should be some way

1 of saying, this is why this is the only option,
2 because that's what you're telling us.

3 MS. MOLDENHAUER: And can I just have Mr.
4 Farazad walk through? I think one of your comments is
5 based on Office of Planning's statement that, you
6 know, why couldn't the applicant pull back further on
7 the second or third floor, rather than having the
8 waiver all the way up. And so, I want Mr. Farazad
9 just to address the practical difficulty given the
10 existing condition of the site, and where the
11 construction is so far, and how that would create a
12 challenge.

13 MR. HART: Well, I think it would be helpful
14 to actually understand -- I mean, you've shown it in
15 kind of a drawing, you know, the line. I don't think
16 that actually is in our packet. I think you changed
17 it.

18 MS. MOLDENHAUER: No, that's a PowerPoint kind
19 of zoom in thing that --

20 MR. HART: Yeah.

21 MS. MOLDENHAUER: -- doesn't print out.

22 MR. HART: But to understand what that, you
23 know, where that is on the drawings that we have, I
24 think it would be helpful as well.

25 MR. FARAZAD: The reason why the shifting of

1 the 42 feet, six inches cannot go down is because
2 currently the mezzanine, the proposed fourth floor, is
3 at seven feet, four inches. So, that would not be
4 allowable to create a habitable space.

5 And if we move down to the third floor, we
6 would be reducing that floor height to seven foot,
7 four as well. And the reason why the mezzanine works
8 at seven foot, four is because it's also looking down
9 at an open space, so it feels a lot larger and it's
10 within the limitations. But on the third floor it
11 would be an uncomfortable and practical --

12 CHAIRPERSON HILL: And, Mr. Farazad, I'm going
13 to interrupt you. I mean, basically, I mean, the
14 situation is, you would just lose that mezzanine. I
15 mean, that's how you couldn't make it work. You know.
16 I mean, I understand your argument, but it's still
17 you wanting what you want, you know?

18 And so, I think that -- I mean, I'd like to
19 see you work with the Office of Planning and
20 understand what you might be able to do with them. I
21 am empathetic to the situation that you got yourself
22 in. However, it still seems you're in kind of a good
23 place, okay? But I'm not convinced that you need
24 this.

25 And so, I don't know if my colleagues, and it

1 sounds like at least maybe Mr. Hart is open to the
2 option, or at least at this point is not convinced
3 that you can't -- you can't do this project without
4 the relief that you need.

5 So, I'd like to see -- I'd like to see you
6 work with the Office of Planning. I'd like to see, I
7 guess, you submit something if you'd like to continue
8 this line, that you need what you need. Like, show
9 something to Mr. Hart's question about why the three
10 units won't work, and whatever else Chairman Hood
11 might be interested in hearing about. I haven't heard
12 from him yet. And then I'd be fine with, you know,
13 whatever's submitted in the record and then having a
14 decision on this.

15 MR. HART: Whether three smaller units
16 wouldn't work.

17 CHAIRPERSON HILL: Why the three smaller units
18 would not work.

19 MR. HART: You already have three units,
20 but --

21 MS. MOLDENHAUER: And we can walk through. I
22 mean, obviously the three smaller -- the three smaller
23 units would require obviously, the demolition of that
24 wall that we went through and discussed, because it
25 was smaller -- it would require, obviously, a

1 demolition of that wall that we showed.

2 MR. HART: Yeah.

3 MS. MOLDENHAUER: The demolition of this wall
4 that currently exists.

5 MR. HART: I'm sorry. I meant three smaller
6 in terms of not the 10-foot -- not the waiver thing.

7 MS. MOLDENHAUER: You're saying, so --

8 MR. HART: I'm just saying that you -- I'm
9 looking at the variance for the height issue.

10 MS. MOLDENHAUER: That's your main focus.
11 Okay.

12 MR. HART: And so, if -- yeah, if you can show
13 that yeah, well, you know, you can't do a, you know,
14 two two-bedroom and one three-bedroom, you know, if
15 that's -- because I just am, I have a hard time with
16 the variance aspect of it.

17 MS. MOLDENHAUER: Okay. But just so I'm
18 understanding that you would not be asking us to
19 supplement the record to further prove the waiver.
20 You would be asking us to focus on supplementing the
21 record to possibly further prove the story and the
22 height. Is that correct?

23 MR. HART: I think that's what I'm looking at
24 because right now you have two things that you're
25 actually trying to do. You're going up and you're

1 going back. And so, one of them seems like it's --
2 the one I'm focusing on is the one that's a variance.

3 And so, that's why I'm looking at the height as
4 opposed to looking at the back. So, at least it's
5 just going back, not up. So.

6 CHAIRPERSON HILL: And then what I understood
7 from the Office of Planning was that they weren't
8 speaking as possible options was tearing out the
9 underpinning, correct? Office of Planning?

10 MS. FOTHERGILL: We recognize that the
11 foundation is there for the basement level and the
12 first floor, is my understanding. And so, we were
13 suggesting that maybe an option could be explored
14 where it's pulled in on the upper floors, so that you
15 don't have a four-story massing that extends 29 feet.

16 CHAIRPERSON HILL: Right.

17 MS. FOTHERGILL: But we recognize that the
18 work has been done and that's a major impediment to
19 changing.

20 CHAIRPERSON HILL: Right. Okay. So again, it
21 sounds like the Office of Planning is interested in a
22 dialog with you.

23 Chairman Hood, do you have anything to add?

24 MR. HOOD: Well, due to the comments of my
25 colleagues, Mr. Chairman, I would agree. Maybe you

1 can go back and have some more discovery with the
2 Office of Planning and also try to see what -- how we
3 can come closer to what's within the zoning
4 regulations. I understand about the three-unit. And
5 I also understand about the government being
6 predictable. Sometimes we run into that.

7 And I also knew that some of these things
8 would come up as the ZR-16 too effect. I think it was
9 September the 6th. So, you know, I think maybe they
10 can continue to have some discussions with Ms.
11 Fothergill. I am not a proponent of a lot of
12 conversions, but the law is the law. So, for me, it
13 takes away the character of the neighborhood. But,
14 you know, the regulations speak for themselves.

15 So, again, I think the chairman mentioned
16 something, some of this is what you want. So, I would
17 ask you to revisit some of your thinking and I know
18 some of it can be dealt with, with -- whether it
19 exists there. But that's up to you. And definitely
20 have an issue with the pop-back. So, that's going to
21 be a heavy lift for me. I call it a pop-back, but the
22 29 feet. So, that's all I have, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Does the applicant
24 know what we're asking for?

25 MS. MOLDENHAUER: I believe I understand what

1 we're asking for, but I believe it seems as though Mr.
2 Hart and Mr. Hood are addressing two different issues.
3 So, we can go through that. I mean, obviously, I
4 just want to address Mr. Hood's comment about the pop-
5 back. And I just want to flesh out this issue while
6 we're here, that the current two-unit plans that have
7 been approved and issued by DCRA are for the full
8 three stories and the 29 feet back that are currently
9 approved.

10 So, you know --

11 MR. HOOD: I understand that. But okay, now
12 we're going to go with DCRA. And then sometime we
13 don't go with DCRA. So, I guess for me, for me it
14 would be better to have it in a submission as they've
15 already requested. And do me a favor, do a soundbite
16 submission. We read a lot of books around here. It's
17 good to get right to the point.

18 MS. MOLDENHAUER: We will do that and at this
19 point then we'll hold any additional supplemental
20 information for a written supplement with the
21 submission, and we'll work with Office of Planning as
22 we continue to provide that information.

23 CHAIRPERSON HILL: Okay. So, Mr. Moy, we're
24 going to keep the record open for the information
25 that's been requested by the applicant. And then, I

1 am comfortable moving to a decision. Do you need
2 anything else from the applicant?

3 [Discussion off the record.]

4 CHAIRPERSON HILL: Okay. So, yeah, we'll do a
5 meeting after. We're just going to go to a -- put
6 them on the meeting agenda after we get submissions.

7 MR. MOY: Okay. Staff would suggest, based on
8 your docket sizes next couple months, Mr. Chairman,
9 that the earliest date for a decision meeting on this
10 application would be next week, February 22nd.
11 Otherwise, I'm looking at -- otherwise I'm looking at
12 a decision meeting on March 15th.

13 CHAIRPERSON HILL: Is Chairman Hood here then?

14 MR. MOY: Chairman Hood would be here the
15 following week.

16 MR. HOOD: No, the following week. Can you
17 just move that to the following week? I mean, one
18 week, it's not going to make a difference.

19 CHAIRPERSON HILL: So, the 22nd.

20 MR. HOOD: If not, whoever sits the 15th can
21 read the record, because I'm not going to come in
22 every week.

23 CHAIRPERSON HILL: Right. I want to push you
24 to -- I'm just letting you know, I'm going to push it
25 the 22nd. Okay? And I would strongly encourage you

1 to -- you have -- excuse me? Go ahead.

2 MS. MOLDENHAUER: I'm confused. I'm sorry.
3 22nd of what day?

4 CHAIRPERSON HILL: Isn't it the March 22nd?

5 MR. MOY: March.

6 CHAIRPERSON HILL: March 22nd.

7 MS. MOLDENHAUER: Okay.

8 CHAIRPERSON HILL: For decision. And again,
9 Mr. Farazad, Farazad?

10 MR. FARAZAD: Yes, sir.

11 CHAIRPERSON HILL: I'm having a bad day with
12 pronunciation today. Mr. Farazad, again like, again,
13 you've heard Chairman Hood. You've heard Mr. Hart.
14 You've heard me. You have your underpinning finished.
15 You know. I would strongly encourage you to work
16 with the Office of Planning and submit anything you
17 want to submit, and then we're going to go to a
18 decision. Okay?

19 Okay. Anything else?

20 MR. MOY: Yes, a deadline for filing.

21 CHAIRPERSON HILL: Oh.

22 MR. MOY: So, I would say, let's say a week
23 before the 22nd, which would be Wednesday, March 15th.
24 Ides of March.

25 CHAIRPERSON HILL: I know, I don't want to be

1 the Chairman on that day. Mr. Hood, will you come in
2 and sit in for me? The 15th of March, when the leader
3 got stabbed.

4 MS. MOLDENHAUER: Thank you very much.

5 CHAIRPERSON HILL: All right. Thank you, all.
6 Mr. Moy, do we have anything else today?

7 MR. MOY: That's it from the staff, Mr. Chair.

8 CHAIRPERSON HILL: Then, we are adjourned.
9 Thank you.

10 [Whereupon, at 1:58 p.m., the Public Hearing
11 was adjourned.]

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