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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

9:42 a.m. to 7:03 p.m.
Wednesday, February 22, 2017

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

1 Board Members:

2 FREDERICK HILL, Chairperson

3 CARLTON HART, Vice Chair

4 LESLYEE WHITE, Board Member

5 MICHAEL TURNBULL, Zoning Commission

6 ROBERT MILLER, Zoning Commission

7 CLIFFORD MOY, BZA Secretary

8

9 Office of Attorney General

10 SHERRY GLAZER, Esq.

11

12 Office of Planning

13 MAXINE BROWN-ROBERTS

14 CRYSTAL MYERS

15 KAREN THOMAS

16 STEPHEN MORDFIN

17 BRIAN GOLDEN

18 ELISA VITALE

19

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

2 CHAIRPERSON HILL: All right, good morning,
3 everyone. So, the hearing will please come to order.

4 We're located in the Jerrily R. Kress Memorial
5 Hearing Room at 441 4th Street Northwest. This is the
6 February 22nd, 2017 public hearing of the Board of
7 Zoning Adjustment of the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chair, Leslyee White,
10 board member, and representing the Zoning Commission
11 is Michael Turnbull.

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

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

24 All persons planning to testify either in
25 favor or in opposition must have raised their hand and

1 been sworn in by the secretary. Also, each witness
2 must fill out two witness cards. These cards are
3 located on the table near the door and on the witness
4 table. Upon coming forward to speak to the Board,
5 please give both cards to the reporter sitting to the
6 table at my right. If you wish to file written
7 testimony or additional supporting documents today,
8 please submit one original and 12 copies to the
9 secretary for distribution. If you do not have the
10 requisite number of copies, you can reproduce copies
11 on an office printer in the office of the zoning,
12 located across the hall.

13 The order of the procedure -- the order of
14 procedure for special exceptions and variances and
15 appeals are also located at the bin to my left. The
16 record shall be closed at the conclusion of each case,
17 except for any materials specifically requested by the
18 Board. The Board and the staff will specify at the
19 end of the hearing exactly what is expected, and the
20 date when the persons must submit the evidence to the
21 Office of Zoning.

22 After the record is closed, no other
23 information shall be accepted by the Board. The
24 District of Columbia Administrative Procedures Act
25 requires that the public hearing on each case be held

1 in the open before the public, pursuant to Section
2 405B and 4056 of that act, the Board may, consistent
3 with its rules and procedures of the act, enter into a
4 closed meeting on a case for purposes of seeking legal
5 counsel on a case pursuant to D.C. Official Code,
6 Section 2575(b)(4), and/or deliberating on a case
7 pursuant to D.C. Official Code 2-575(b)(13), but only
8 after providing the necessary public notice. And in
9 the case of an emergency closed meeting after taking a
10 roll call vote.

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

13 To avoid any appearance to the contrary, the Board
14 requests that persons present not engage the members
15 of the Board in conversation. At this time, please
16 turn off all beepers and cell phones so not as to
17 disrupt the proceeding.

18 Preliminary matters are those which related to
19 whether a case will or should be heard today, such as
20 request for a postponement, continuance, or
21 withdrawal, or whether proper and adequate notice of
22 the hearing has been given.

23 If you're not prepared to go forward with the
24 case today, or if you believe that the Board should
25 not proceed, now is the time to raise such a matter.

1 Mr. Secretary, do we have any preliminary
2 matters?

3 MR. MOY: Good morning, Mr. Chair and members
4 of the Board, and the staff, on behalf of the staff,
5 we welcome Ms. White to the Board. Welcome.

6 Very quickly, Mr. Chairman, With regarding the
7 -- today's docket and for the transcript, we have
8 three cases that will not be heard today because at
9 the applicant's request and granted, has been
10 rescheduled. The first is Application No. 19439 of
11 311 P Street, LLC, rescheduled to March 8th, 2017.
12 Also, that same hearing date, March 8th, is
13 Application No. 19440 of 311 P Street, LLC. Third
14 application is 19377, the Boundary Companies and the
15 Missionary Society of St. Paul, the Apostle,
16 rescheduled to April 26th, 2017.

17 And finally, Mr. Chairman, we have very early
18 this morning, a motion to continue the hearing on
19 Application No. 19404 of Belleview Development, Inc.
20 I do believe the applicant's attorney is present this
21 morning, so that's preliminary matter for the Board,
22 whether to grant or not.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
24 Before we get to the preliminary matter, perhaps we
25 could go ahead and you could administer the oath to

1 anyone here who was -- if anyone was wishing to
2 testify, if you could please stand to take the oath
3 administered by the secretary?

4 MR. MOY: Good morning.

5 [Oath administered to the participants.]

6 MR. MOY: Ladies and gentlemen, you may
7 consider yourselves under oath.

8 CHAIRPERSON HILL: Mr. Moy, considering the
9 preliminary matter, let's just go ahead and do that as
10 we were going to go through the agenda, and we'll get
11 to it when we get to that point in the agenda.
12 Concerning, I'm sorry, concerning the Belleview 19404.

13 MR. MOY: Okay. So, we'll get to that when we
14 call the case?

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: All right. Thank you, sir.

17 CHAIRPERSON HILL: Okay.

18 MR. MOY: I'm sorry.

19 CHAIRPERSON HILL: I'm sorry. No, go ahead.

20 MR. MOY: I'm sorry. Just a quick reminder,
21 are you going to go through the order of the --

22 CHAIRPERSON HILL: So, basically for everyone
23 here in attendance, we're going to go through the --
24 we're going to first do our meeting agenda, which is
25 what we normally do here in terms of our meeting cases

1 in order to -- for decision. And then we're going to
2 go ahead and do our continued case of which one has
3 been asked to postpone. So, again, if you see the
4 agenda that was on the wall there.

5 Then we're going to go into the appeal, and so
6 I think the appeal is probably going to take the most
7 amount of time from our docket today, and then
8 followed up by the rest of the cases. So basically,
9 we're going to follow the order of the agenda that's
10 over there to the left.

11 So, that's that item. I also would like to,
12 on behalf of the Board, Ms. White, welcome you.

13 MS. WHITE: Thank you.

14 CHAIRPERSON HILL: And, you know, hope that
15 you enjoy your time here with us.

16 MS. WHITE: Thank you very much.

17 CHAIRPERSON HILL: And then, let's see. Oh,
18 and then also I guess, you're going to be just
19 observing with us for the meeting portion as well as
20 the appeal, but participating in all the other cases.

21 MS. WHITE: That's correct. That's correct,
22 Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Great. Thank you.

24 So, Mr. Moy, do you want to go ahead and call
25 our first meeting case?

1 MR. MOY: Okay. So, that would be Application
2 No. 18464A, A as in Alpha, of McKinley Battle. I
3 guess I'll read the relief for the record.

4 This is a request for a -- this is for a
5 special exception under Subtitle E, Section 5201 from
6 the lot occupancy requirements of Subtitle E, Section
7 304.1, nonconforming structure requirements, Subtitle
8 C, Section 202.2, special exception from the R use
9 requirement, Subtitle U, Section 203.1(G) to construct
10 a rear addition and expand an existing child
11 development center to 40 children, 10 staff, in a RF-1
12 Zone, 4124 3rd Street Northwest, Square 3312, Lot 61.

13 This is before you, before the Board, Mr.
14 Chairman, because there's a preliminary matter where
15 the applicant filed a motion to waive notice
16 requirements pursuant to Subtitle Y, Section 402.1,
17 because this application, this case application is
18 scheduled for March 15th, 2017.

19 CHAIRPERSON HILL: Okay. Now, I'm sorry, Mr.
20 Moy. Are they asking to postpone the hearing date to
21 March 15th?

22 MR. MOY: With the change in relief to add a
23 variance relief, it would extend that time.

24 CHAIRPERSON HILL: Right.

25 MR. MOY: To meet public notice requirements.

1 CHAIRPERSON HILL: So, they're asking to waive
2 the 40-day public notice requirement, correct?

3 MR. MOY: That's correct, and to keep it on
4 March 15th.

5 CHAIRPERSON HILL: Oh, I'm sorry. To keep it
6 on March 15th, and waiving the 40-day public notice.
7 Is the Board ready to --

8 MS. GLAZER: Mr. Chair, I think it's to
9 continue the case, which is now scheduled for March
10 8th, to March 15. And to waive the notice
11 requirements.

12 CHAIRPERSON HILL: Okay. Thank you. Is the
13 Board ready to deliberate on this matter? I know --
14 well, I can -- yeah. So, in general I know the Board
15 in the past, as well as my own thoughts have been that
16 moving from kind of like a special exception to a
17 variance is one that normally one would -- I would
18 want one to go ahead and repost and I guess somewhat
19 begin the process again. However, you know, it seems
20 as though it is the same project, and it being a
21 childcare center, that the applicant is trying to make
22 changes to there, and it has been -- they, I think,
23 made an error in what they thought they were going to
24 have to do.

25 I'm pretty comfortable with, you know, moving

1 the 40-day requirement and then postponing the hearing
2 to March 15th. But I'd be curious as to what the
3 other members of the Board have to say.

4 MR. TURNBULL: Mr. Chair, I would concur with
5 your analysis. I think this is -- I would agree too,
6 when you switch to a variance often times you're
7 raising the bar. There's more things to look at, but
8 I think here this is fairly straight forward. So, I
9 would be willing to go along with that.

10 CHAIRPERSON HILL: Okay.

11 MR. HART: Yeah, I also think that we -- the
12 merits of the case, or the case itself seems like
13 there aren't that many -- there aren't changes to what
14 is being proposed. It's more of a procedural thing
15 and we'll hear from the applicant as well as the other
16 folks during the hearing, which is in two weeks, I
17 guess. So --

18 CHAIRPERSON HILL: Okay. Well, that being the
19 case, Mr. Moy, I guess I would go ahead and agree to
20 postpone the hearing to March 15th, and to waive the
21 40-day public notice requirement.

22 MR. MOY: Yes.

23 CHAIRPERSON HILL: Okay?

24 MR. MOY: I'll take that as a unanimous
25 consent.

1 CHAIRPERSON HILL: All right. So, that's the
2 first order of business today.

3 MR. MOY: Okay. This is a request for a minor
4 modification, Application No. 18908A of Donald E.
5 Hurlbert, Hurlbert, H-U-R-L-B-E-R-T, and Barbara
6 Watanabe. This minor modification pursuant to
7 Subtitle Y, Section 703.3, originally approved for
8 variances from the lot occupancy requirements under
9 Section 403.2, rear yard requirements under 404.1,
10 nonconforming structure requirements under Section
11 2001.3, which would allow the construction of a two-
12 story addition to an existing single-family dwelling
13 in an R-4 District, 1401A Street Southeast, Square
14 1059, Lot 119.

15 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the
16 Boar ready? Okay.

17 So, again, after reviewing the record for this
18 minor modification, and this is originally approved
19 under ZR-58, and now under the new regulation, under
20 703.15, I guess they've filed within, just within the
21 two years. The Office of Planning is also in
22 agreement that this is a minor modification and they
23 could get behind this modification.

24 I don't have a lot of comments, and I would be
25 in favor of approving this minor modification. Does

1 the Board have any other thoughts?

2 MR. HART: Yeah, it seemed a little strange.
3 But it seems as though they are minor modifications
4 that are being requested, and I would be able to
5 support that as well.

6 MR. TURNBULL: I would agree. I just think
7 it's combination, some stupid mistakes along the way
8 from the processing of how they went ahead with this.
9 But, I think in the bottom line is, that it is minor.

10 CHAIRPERSON HILL: All right. Well, thank
11 you, Mr. Turnbull.

12 I'm going to go ahead, then, make a motion to
13 approve Application No. 18908A.

14 MR. HART: Second.

15 CHAIRPERSON HILL: As read by the secretary.
16 Sorry. Second -- motion been made and seconded.

17 [Vote taken.]

18 CHAIRPERSON HILL: The motion passes.

19 MR. MOY: Staff would record the vote as
20 three, to zero, to two. This is on the motion of
21 Chairman Hill to grant the request for minor
22 modification. Seconding the motion, Mr. Hart. Also
23 in support, Mr. Turnbull. Ms. White not
24 participating, not voting. We have a board seat
25 vacant. Motion carries, sir.

1 CHAIRPERSON HILL: Thank you, Mr. Moy. Can we
2 do a summary order?

3 MR. MOY: Yes, sir.

4 CHAIRMAN HOOD: Okay. Great. Thanks.

5 MR. MOY: Okay. For decision, Application No.
6 19403 of Grant Barker, advertised, captioned for
7 special exception relief under the height requirements
8 of Subtitle E, Section 5203.1. This would permit the
9 conversion of an existing two-story, three-unit
10 apartment house into a three-story, three-unit
11 apartment house in the RF-1 Zone, 821 Randolph Street
12 Northwest, Square 3027, Lot 85.

13 As the Board will recall, this was last heard
14 on January 18th, 2017. The record was closed. The
15 Board requested additional information from the Office
16 of Planning and from the applicant. The preliminary
17 matter here, Mr. Chair, is that there have been
18 subsequent filings dated February 15th under Exhibits
19 44, 48, and 49, I believe, from a neighbor in
20 opposition. And that's for a preliminary matter.

21 CHAIRPERSON HILL: All right. Thank you, Mr.
22 Moy. Is the Board ready to deliberate?

23 [No audible response.]

24 CHAIRPERSON HILL: I'm a little torn on the
25 opening the file for the letter from the neighbor. I

1 suppose, you know, we did -- we heard the -- we went
2 through the hearing. We took testimony, we heard
3 opposition, we heard from the neighbors concerning I
4 guess, you know, trash was one of the more prevalent
5 concerns. And then we asked the applicant to go ahead
6 and work with the opposition to see if they were able
7 to come to some kind of an agreement. And then there
8 was a letter submitted from a neighbor after the
9 record had been closed.

10 I'm a little interested in hearing what the
11 Board's thoughts are on opening the record for the
12 letter. I suppose I could also, you know, the record
13 was closed and so I can understand not allowing the
14 letter in, and then at the same time it was, it's the
15 immediate next door neighbor. So, that's why I would
16 be interested in hearing what the Board has to think
17 about that.

18 MR. HART: It is troubling that the neighbor
19 that would be likely impacted the most is -- the next-
20 door neighbor is unsatisfied, or at least not really
21 liking this design, or actually what's being proposed.
22 So, I understand that.

23 I'm also somewhat torn as well because it's
24 hard to -- you want there to be an effort that the
25 applicant has, you know, gone through trying to work

1 with the neighbor, and it just seems as though there
2 is still some issues that probably should be addressed
3 at some point. So, I don't think I have a resolution
4 to it. I just, some thoughts.

5 CHAIRPERSON HILL: Mr. Turnbull, do you have
6 any thoughts?

7 MR. TURNBULL: Well, I would agree with the
8 two of you. I think it's opening the record. It's
9 one of those things that you don't do lightly. You
10 want to make sure that there is an adequate reason.
11 But, you know, one of the standards of the special
12 exception review is that adversely affecting
13 neighboring property. So, and this has been an
14 ongoing issue for the whole time. So, I would be
15 willing to open up the record.

16 CHAIRPERSON HILL: Okay. All right. Well,
17 Mr. Turnbull, I also think that, you know, it is in,
18 really in response to kind of the applicant's filings
19 also. And so, I would also just go ahead and allow
20 them into the record.

21 So, Mr. Moy, if you will just go ahead and
22 allow those filings into the record. And then, as far
23 as the deliberation, I did see that the applicant did
24 work with, or try to work with the neighbors to come
25 up with a solution concerning their issues about

1 trash. I don't know if -- it doesn't seem like they
2 did come to a solution, or something that they could
3 both agree on. Going back on the merits of the case
4 itself, again, I you know, thought that the relief was
5 best analyzed by the Office of Planning and that you
6 know, the Office of Planning analyzed well, the
7 request and that the relief should be granted.

8 And then also, the applicant had worked with
9 the ANC 4C to get their approval, and also DDOT didn't
10 have any concerns. I am again disappointed that there
11 was -- it's something that the applicant couldn't get
12 together with the neighbors in order to satisfy their
13 issues. I mean, one of the issues was parking, that I
14 thought was, you know, the proper itself, they have
15 four spots and they're only required to have one spot.
16 And so, they were getting more parking than they were
17 going to get anyway.

18 And so, you know, after the hearing and the
19 record, you know, I would again be in support of
20 approving this application. Does the Board have any
21 thoughts?

22 MR. TURNBULL: Mr. Chair, in one way I would
23 agree with you. My only concern right now is that the
24 applicant has put in -- submitted a new set of
25 drawings in which he has added an exterior stair on

1 the back of it and extended. The original plan had a
2 deck at each floor at the rear, and those decks were
3 inset about three feet or so from each side, from each
4 property line. The plan that he's showing now, as
5 these decks going from property line to property line,
6 and they're about seven-foot wide. And my only
7 concern is that again, going back to the standards of
8 looking at the special exception is the impact on the
9 use of the neighbors.

10 And although it's a domino effect, although
11 we're looking at height primarily, the height transfer
12 to the length of the building and now he's made a
13 significant change. And my only concern is that I
14 don't know if the neighbors have had a chance, or have
15 seen the impact of what he's done to the plan on their
16 properties.

17 So, my only -- that would be my only concern
18 about how the change effects, especially the neighbor
19 on the other side who he's already had some issues
20 with. That the deck now overlooks their property
21 directly.

22 So, that's my only concern, whether we leave
23 the record open for more comment. I don't like doing
24 this, but again, there has been a significant change
25 on the rear of the building, which from the standpoint

1 of privacy could be an issue, and is there going to be
2 a screen, some kind of a screen wall at the end of the
3 decks to prevent someone looking over? I mean, those
4 are the kinds of things that ought to be addressed, I
5 would think, in this.

6 CHAIRPERSON HILL: So, then Mr. Turnbull,
7 would you want to speak with the applicant again?

8 MR. TURNBULL: Or he can address the issues in
9 a separate filing.

10 CHAIRPERSON HILL: Okay. Is the applicant
11 here?

12 MR. MOY: The Board has, on occasion, reopened
13 the record for specific questions of the applicant.

14 CHAIRPERSON HILL: Okay. Could the applicant
15 come forward? No, just the applicant. Sorry. Could
16 you introduce yourself for the record?

17 MR. BARKER: Yes, Grant Barker, owner at A21
18 Randal Street Northwest.

19 CHAIRPERSON HILL: So, Mr. Barker, you've
20 changed the plans, then, and on the back deck I guess,
21 and you've heard Mr. Turnbull's comments?

22 MR. BARKER: Yes. In fact, it was Mr.
23 Turnbull, I believe, who asked me in the previous
24 hearing to submit plans with the showing the decking
25 because the original plans didn't have rear egress on

1 all three floors. Just the top one.

2 And to address Kimberly Lyles, and Ms.
3 Manozza's concerns about the trash and the people
4 living in A21 having to walk through the alley to put
5 trash in the trash cans, I added the decks on all
6 three levels.

7 MR. TURNBULL: But the decks were -- had
8 originally were set back several feet from the
9 property line on either side. Now, they go right to
10 the property line. I mean, we can pull up the
11 drawings. I can --

12 MR. BARKER: I don't -- yeah, I would need to
13 review the drawings, but that may be the case.

14 MR. TURNBULL: Right. And I'm just saying
15 that, if you've now moved to the property line I'm
16 just concerned that it's, again, it's a privacy issue
17 and there's no screening, there's nothing. It's the
18 whole thing of your impact of what you're doing on
19 your adjacent neighbors.

20 MR. BARKER: It may be a privacy issue.
21 However, I don't need any relief to build a deck that
22 is the length of my property. It's within zoning
23 rights.

24 MR. TURNBULL: Right. The only problem --

25 MR. BARKER: And it's not related to the

1 height of the property.

2 MR. TURNBULL: The only problem is, there is a
3 domino effect by you wanting your extra height, the
4 fact that it's going back to the other, to the old, to
5 the whole length of the property. You've now changed
6 the configuration of what you're trying to do. And I
7 think for us to grant -- I mean, for me to look at the
8 special exception and look at your extra height, I
9 would say yes. But it's tangential to the issue,
10 which I think you would be, as a good neighbor, would
11 be wanting to address.

12 MR. BARKER: I've attempted to address every
13 issue that my neighbors have brought forth, and I
14 successfully addressed the issues with the trash and I
15 addressed the concerns that I had with my next-door
16 neighbor. None of her concerns were about the width
17 of the deck. They were about runoff from rain on her
18 roof, and shading on her roof.

19 CHAIRPERSON HILL: Mr. Barker, it does -- so,
20 concerning the trash, when you said that you came to
21 agreement --

22 MR. BARKER: And the windows.

23 CHAIRPERSON HILL: -- I wasn't clear as to
24 what agreement you had come to.

25 MR. BARKER: If you see in the record, there

1 are two letters submitted saying, I have come to an
2 agreement of the trash and the conditions that the
3 neighbors placed on me, concerning where I can store
4 the trash on my own property.

5 CHAIRPERSON HILL: Right. That was the
6 handwritten note. Is that correct?

7 MR. BARKER: Yeah.

8 CHAIRPERSON HILL: Okay. And so, you're in
9 agreement with the handwritten note.

10 MR. BARKER: Yes.

11 CHAIRPERSON HILL: Okay. All right. Well, I
12 think maybe what would be helpful, and I think that
13 Mr. Turnbull is bringing up something and he'd like to
14 address and hear you, you know, flesh out a little
15 bit. If you could submit something to the record that
16 speaks to the decks. Mr. Turnbull, I guess the decks
17 and how it affects the neighbors, is that what you're
18 looking for?

19 MR. TURNBULL: That's correct. Privacy.

20 MR. BARKER: It's in the -- that's already in
21 the record. It says that the decks were added to
22 address Kimberly Lyles' concern about the path that my
23 tenants can take in order to get to the trash cans.

24 MR. TURNBULL: Well, the decks were already
25 there on previous drawings. No stair.

1 MR. BARKER: No, there was one deck only on
2 the top floor.

3 MR. TURNBULL: Okay.

4 MR. BARKER: There was no egress for the
5 second or first floors.

6 MR. TURNBULL: And the deck --

7 MR. BARKER: And that --

8 MR. TURNBULL: -- was primarily three to four
9 feet in on either side. Now you've got full-length
10 decks on all floors?

11 MR. BARKER: Let's -- why don't we check that
12 out, because it's in the record.

13 CHAIRPERSON HILL: Well, that's, I mean,
14 that's what the drawings, that's what the drawings
15 show.

16 MR. BARKER: Then, yes.

17 CHAIRPERSON HILL: Okay. So, then I guess the
18 question is, you know, the plans have changed, and
19 whether or not your neighbors have seen those plans,
20 the new plans with the decks going from edge to edge.
21 And I suppose -- and I guess, Mr. Turnbull, I don't
22 know what the Office of Planning, if they had any
23 comments on --

24 MR. BARKER: So, Ms. Roy has seen the new
25 plans. As you can tell, her letter of opposition

1 directly addresses the new plans. And I don't believe
2 Kimberly Lyles and Ms. Manozza are concerned about the
3 width of the deck since they live about 200 feet due
4 north of me and their only concerns, initially, were
5 about the trash.

6 MS. GLAZER: Mr. Chair, I'm sorry to
7 interrupt. But just for your information, in OP's
8 report, OP discusses the decks on page 2 of its report
9 and says that there will be no additional zoning
10 relief needed as a result of the decks. However, the
11 applicant may wish to consider the addition of side
12 screening on the decks, and the stairwell to minimize
13 impacts on privacy.

14 CHAIRPERSON HILL: And have you thought about
15 the screenings on the decks to minimize privacy?

16 MR. BARKER: Yes. For the record, I offered
17 screening and frosting the windows to satisfy my
18 neighbor and gain her support in this application.
19 Neither are satisfied.

20 CHAIRPERSON HILL: Okay. Well, I guess, Mr.
21 Turnbull, it's whether, you know, the Office of
22 Planning's comments satisfies your questions or if
23 there's something else you might like to see.

24 MR. TURNBULL: Well, I guess I'm confused.
25 Neither one was satisfied with the screening?

1 MR. BARKER: The neighbor wasn't satisfied to
2 support this application by screening on the deck or
3 frosting on the two windows.

4 Also, I get the deck by matter of right. So,
5 I don't have to -- there's nothing special about the
6 deck. I can do that anyway. I can take the deck off
7 right now in these plans. I can stick it on. I can
8 make it any -- you know, I can make it smaller or
9 bigger. I don't have -- I don't need an exception for
10 that. That's doesn't seem material to this
11 application and request for a relief from the building
12 height.

13 MR. TURNBULL: So, it all comes down to
14 whether we agree whether you should get the special
15 exception for the height.

16 MR. BARKER: Say that again?

17 MR. TURNBULL: It all comes down to whether we
18 agree you should get the special exception for the
19 height.

20 MR. BARKER: And under what conditions the
21 relief from the height -- what conditions am I failing
22 to be the --

23 MR. TURNBULL: No, I'm just saying, it all
24 depends --

25 MR. BARKER: -- variance --

1 MR. TURNBULL: -- whether we do that.

2 MR. BARKER: -- the requirements for the
3 tests. Right, for --

4 MR. TURNBULL: Well, we've already had issues
5 with your next-door neighbor about future solar panels
6 on her house that are going to be --

7 MR. BARKER: Yes, and the BZA encouraged my
8 neighbors to extract favors from me in order to get
9 their approval for the project.

10 MR. TURNBULL: And have you done that?

11 MR. BARKER: And I have offered what I can
12 offer.

13 CHAIRPERSON HILL: Okay. Just give us one
14 second.

15 MR. BARKER: Okay.

16 [Discussion off the record.]

17 CHAIRPERSON HILL: Okay. Well, Mr. Turnbull,
18 I mean, I understand where you are with the change of
19 plans and your concerns. I suppose if we were to
20 follow how the Office of Planning's recommendations
21 concerning the decks and ask the applicant to -- the
22 applicant, so you would be comfortable with the
23 screenings or the frosted glass that you had initially
24 proposed or proffered for the applicant -- for the
25 neighbors?

1 MR. BARKER: I'm willing to do that. I don't
2 know if my neighbor is interested in that.

3 CHAIRPERSON HILL: They won't sign off on it,
4 but it would satisfy, I think possibly, the Board in
5 terms of being able to move forward.

6 MR. BARKER: Oh, if it satisfies the Board,
7 then by all means.

8 CHAIRPERSON HILL: Okay.

9 MR. BARKER: Whatever --

10 CHAIRPERSON HILL: Okay.

11 MR. BARKER: -- is necessary.

12 CHAIRPERSON HILL: All right. So --

13 [Discussion off the record.]

14 CHAIRPERSON HILL: All right, Mr. Barker.
15 This is -- okay, all right. So, this has gone on more
16 than I thought to be quite honest. But I see that
17 there's somebody here -- there's somebody who wants to
18 speak in opposition is that correct?

19 MR. BARKER: Yes.

20 CHAIRPERSON HILL: Okay. And actually, why
21 don't you go ahead and come forward, since we opened
22 the record now for Mr. Barker, we're going to go ahead
23 and hear from you since you came this morning.

24 If you could just give your name. That's so
25 nice you guys said good morning to each other. That's

1 good. I like it. Okay. All right. Let's keep it
2 that way. Okay? Good. Could you please give us your
3 name again?

4 MS. ROY: My name is Patricia Roy.

5 CHAIRPERSON HILL: All right.

6 MS. ROY: I live at 819 Randolph Street
7 Northwest.

8 CHAIRPERSON HILL: Okay. All right, Ms. Roy.
9 So, we opened up the record for your letter. And I'm
10 going to go ahead and give you like three minutes just
11 to tell us about the opposition that you have, and
12 possibly the Board might have some questions for you.
13 Okay?

14 MS. ROY: Okay.

15 CHAIRPERSON HILL: Okay.

16 MS. ROY: My main concern, also, is my
17 skylight. That was the one thing that I submitted
18 pictures of. I don't know if you've received the
19 pictures for that.

20 CHAIRPERSON HILL: We did see them, yeah.

21 MS. ROY: By him putting up that extension, it
22 would completely block the sunlight, natural sunlight,
23 coming into my hallway. That was one major concern.

24 The other one was, I understand what he said
25 about the maximum amount of sunlight that would come

1 down on the solar panels. But I feel it is my right,
2 also, to get the maximum that I can, regardless if
3 it's a little bit at the end or at the beginning. So,
4 that's taking away that from me.

5 And then also, there was there issue about the
6 water running off on to the roof. And then granted
7 that -- I know that that's an issue that could be
8 solved with, you know, probably rain gutters on the
9 side. But, you know, I am concerned about that.

10 But, it's mainly taken away my sun -- the
11 natural sunlight coming into my house from my solar --
12 from my skylight.

13 And I do have two, but I don't know how far --
14 by the 10 feet, by him going up 10 feet, I don't know
15 how it will affect my other sunlight that's into my
16 bathroom. But the main one is right there, the
17 adjoining, the house going down my, my steps.

18 CHAIRPERSON HILL: Okay. All right.

19 MS. ROY: And also, about the window, now
20 granted he could put frost windows in there today, but
21 there's nothing to say down the road, future down the
22 road, that someone else will come in and change and
23 put natural windows that, you know, clear windows in.

24 And from what I understand, now the previous
25 owner, he did something where he put the extension in,

1 which totally blocked my window on my side. And when
2 I complained to DCRA about the situation, they said to
3 me that, oh, it was okay as long as no windows were
4 added on the side of the property. That's why I told
5 Grant that I did not agree with him adding frost
6 windows on that side, because I was told that he
7 couldn't do it, and also the fact that in the future
8 it could change to clear windows, invading my privacy.

9 CHAIRPERSON HILL: Okay. All right. Thank
10 you.

11 Does the Board have any questions for the
12 witness?

13 [No audible response.]

14 CHAIRPERSON HILL: No? Okay. All right.
15 Thank you so much.

16 All right. So, let's see. I guess my
17 comments about the opposition now is more,
18 unfortunately, kind of the, what is you know, unduly
19 burdensome, is what I'm thinking of in terms of the
20 amount of light and what appears to be, you know --
21 well, I'll wait until we get to deliberation.

22 So, all right. So, that's -- does anybody
23 have any more questions for anyone?

24 All right. Then I'm going to go ahead and --
25 was there anyone else here wishing to -- since I

1 opened it up again, is there anyone here wishing to
2 speak in opposition?

3 [No audible response.]

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

6 [No audible response.]

7 CHAIRPERSON HILL: Is there anyone here from
8 the ANC?

9 [No audible response.]

10 CHAIRPERSON HILL: All right. Then, I'm going
11 to close the record again. Is the Board ready to
12 deliberate? All right.

13 So, I again, was -- I thought that the
14 applicant has done a good job of working with the
15 community. I think that if we can, as the applicant
16 has agreed, put the frosting or the same type, you
17 know, blocking the windows there from the -- on the
18 decks, to provide more privacy for the neighbors. And
19 then, and I am sorry that the neighbor there is
20 concerned about the sunlight.

21 I again, would agree with the Office of
22 Planning that it is not unduly burdensome, and that
23 it's a 2.3 degrees of reduction in the light that
24 would actually put on to the property. And if the
25 solar panels could possibly be moved forward, which

1 they don't have right now, there aren't any solar
2 panels there right now. This is just something that
3 might happen in the future. But if they were moved to
4 a different area, then it might not even affect them
5 at all.

6 So, I would -- I don't really have a lot of
7 thoughts other than, again, from the full hearing in
8 the record and reviewing what the Office of Planning
9 has said concerning the standard, I would be in
10 approval of this application. And also, knowing that
11 now the Office of Planning, in their supplemental
12 report, spoke a little bit about the increase in the
13 balcony size.

14 Does the Board have any other questions or
15 comments?

16 MR. HART: No, I think that as I would be in
17 support of the application, provided that we include
18 the conditions that we stated earlier about the
19 screening and the windows. I think the Office of
20 Planning report is fairly straight forward. I
21 understand that you know, what really is before us is
22 the height issue, and that what the Office of Planning
23 has provided is a detailed discussion of how it --
24 your project meets those requirements and I don't have
25 a problem with supporting the application.

1 I do understand that there are -- there's a
2 next-door neighbor, Ms. Roy, that you have some
3 concerns about this. I would continue to -- it seems
4 like you do have somewhat of a still cordial
5 relationship, you're going to be next door neighbors.
6 It would be good to continue to have that kind of
7 discussion about that, things that he can do to make
8 it a little better for you. But I do understand that,
9 you know, there are -- we always can't come to
10 agreement on things. So, but again, I would be in
11 support of the application.

12 CHAIRPERSON HILL: Okay. Mr. Turnbull, do you
13 have any thoughts?

14 MR. TURNBULL: No, I'll go along with this as
15 long as the conditions clearly state what we're asking
16 for, and what the applicant has agreed to.

17 CHAIRPERSON HILL: Okay. So, the conditions
18 would be, then, screening for the decks.

19 MR. TURNBULL: And stairwell. I think is what
20 OP said.

21 CHAIRPERSON HILL: And stairwell. And then
22 also the condition concerning the trash agreement that
23 was entered into the record by the opposition.

24 MS. GLAZER: I'm not sure if the applicant
25 proffered it or not.

1 CHAIRPERSON HILL: He did say that they had
2 come to an agreement with the trash.

3 MR. BARKER: Oh, yeah. We did.

4 CHAIRPERSON HILL: Yeah. And that was the
5 letter that was -- the handwritten note that was
6 submitted into the record.

7 MS. GLAZER: By a neighbor, though.

8 CHAIRPERSON HILL: By a neighbor.

9 MS. GLAZER: So, if the applicant is willing
10 to state on the record that he agrees to that
11 condition being imposed, I think it would be legally
12 sufficient. Otherwise, it might be beyond the scope
13 of the Board.

14 MR. BARKER: If that's required by the Board,
15 I will agree to it.

16 CHAIRPERSON HILL: Okay. All right. Okay.
17 Then, that being the case --

18 MS. GLAZER: Mr. Chair, there is one other
19 condition that OP recommended in its original report,
20 that does relate directly to the height relief being
21 requested. And that is that the additional height
22 will not exceed the roof height of the adjacent
23 properties.

24 CHAIRPERSON HILL: Does the applicant agree
25 with that condition?

1 MR. BARKER: No, that's the whole purpose of
2 the relief.

3 MS. GLAZER: Wait a minute.

4 MR. BARKER: Do they mean the façade? They
5 mean the façade height, the height of the front of the
6 buildings, that it will match the neighboring
7 buildings as is drawn in the architectural plans?

8 CHAIRPERSON HILL: I'm looking, Mrs. Glazer,
9 Ms. Glazer, as well.

10 MS. GLAZER: Trying to find it now.

11 [Pause.]

12 MS. GLAZER: I can't seem to find it, but I
13 think the applicant is correct that it involved the
14 façade from the front.

15 CHAIRPERSON HILL: Ms. Glazer, I'm sorry. I
16 just, I don't recall that condition. I'm trying to --

17 MS. GLAZER: It was within the body of the
18 report. If the Board's not comfortable with it, I
19 just wanted to raise it.

20 CHAIRPERSON HILL: Okay, I'm --

21 MR. TURNBULL: Which report are you referring
22 to?

23 MS. GLAZER: There are two OP reports.

24 MR. TURNBULL: Are you looking at the first
25 one?

1 MS. GLAZER: The first one, yes. The second
2 one says that it incorporates the conditions in the
3 first report too.

4 MR. BARKER: In the third point under Bullet
5 E, it says, "The proposed third-story addition will
6 add a more consistent roofline to this block of homes.
7 The new roofline will align with the height of the
8 adjacent buildings and will utilize existing roof
9 shingles to maintain aesthetic continuity." I believe
10 that's -- is that what we're talking about, because
11 that's fine.

12 MR. TURNBULL: Right. And I think that's --
13 yeah, that's on the last page of the OP report, or
14 page 3. Yeah.

15 CHAIRPERSON HILL: Okay, Mr. Barker, so you
16 agree to that?

17 MS. ROY: Can I say something?

18 MR. BARKER: Yes.

19 CHAIRPERSON HILL: Okay. No, not just right
20 now.

21 All right. Okay. So, that being one of the
22 conditions. And then the other condition being that
23 we have the trash agreement that was submitted by the
24 neighbor, as well as the screenings for the porches
25 and the stairwell.

1 Ms. Glazer, is that good with the OAG?

2 MS. GLAZER: Yes.

3 CHAIRPERSON HILL: All right. Great. So,
4 then that being the case I would make that motion to
5 approve Application No. 19403 with those conditions,
6 and as read by the secretary.

7 MR. HART: Seconded.

8 CHAIRPERSON HILL: Motion has been made and
9 seconded.

10 [Vote taken.]

11 CHAIRPERSON HILL: Motion passes, Mr. Moy.

12 MR. MOY: Sorry to do this to you but --

13 CHAIRPERSON HILL: Sure.

14 MR. MOY: -- in the conditions you just cited,
15 you included the frosted windows? Because you didn't
16 repeat that so --

17 CHAIRPERSON HILL: Oh, I'm sorry. I thought I
18 did repeat it.

19 MR. MOY: Okay. Just wanted to --

20 CHAIRPERSON HILL: Frosted windows, privacy
21 screening for the decks and the stairwell.

22 MR. MOY: Okay. Well, I got those. Just
23 wanted to be sure.

24 CHAIRPERSON HILL: Okay.

25 MR. MOY: So, staff would record the vote as

1 three, to zero, to two. This is on the motion of the
2 Chair, Chairman Hill, with the conditions as he cited.
3 This was for approval of the requested relief, on
4 conditions.

5 Seconded the motion, Mr. Hart. Also in
6 support, Mr. Turnbull. A member not participating,
7 one seat vacant. The motion carries, sir.

8 CHAIRPERSON HILL: All right. Now, Mr. Moy,
9 I'm not sure, can we do a summary order? No.

10 MR. MOY: There was no party status, sir.

11 CHAIRPERSON HILL: Okay. Then I'd like a
12 summary order, please. Okay, great. Thank you all
13 very much.

14 MR. MOY: Thank you. Sorry for the delay,
15 sir. I was checking the ANC report.

16 Okay. Moving right along. The next case, or
17 last case for decision is Application No. 19414, of
18 Power Brokers Property, LLC, captioned and advertised
19 for special exception relief under Subtitle E, Section
20 5201, nonconforming structure requirements, Subtitle
21 C, Section 202.2, lot occupancy requirements, Subtitle
22 C, Section 304.1, special exception from the height
23 requirements of Subtitle E, Section 303.1, and 5203.1
24 to renovate an existing 20-unit apartment building,
25 RF-1, 1315 Park Road Northwest, Square 2838, Lot 823.

1 CHAIRPERSON HILL: All right. Is the Board
2 ready to deliberate? Okay. At the last hearing, you
3 will recall there was opposition and we did ask for
4 the parties to meet and try to see if they could
5 resolve their issues. It seems as though they were
6 unable to do so.

7 I then went back and took a look at the
8 record, as well as the previous hearing. And, I was
9 again convinced by the Office of Planning in terms of
10 the relief that was needed, and also was swayed by the
11 eight letters of support by nearby residents, and also
12 that the ANC 1A was in approval, 11, to one, to zero.

13 I didn't really have a lot of questions for
14 the Board here on this in terms of my thoughts. I
15 guess they did submit some proposed conditions, the
16 applicant. And I think that, Mr. Turnbull, you did
17 have some comments on those conditions. But before I
18 turn to you, Mr. Turnbull, if I could just ask Mr.
19 Hart if he has any thoughts on this matter?

20 MR. HART: No, generally I think that the
21 applicant was good -- was good to see that the
22 applicant had actually negotiated with the next-door
23 neighbors. It seems like there was still an
24 outstanding concern about access to an alley by the
25 adjacent neighbor. And that seemed like it was the

1 remaining kind of holdout piece of information.

2 Generally, I think I could support the
3 application and I know that Commissioner Turnbull has
4 some conditions that he'd like to massage, to talk
5 about a little bit more, so wait to hear from those.

6 CHAIRPERSON HILL: Okay. Great. Mr.
7 Turnbull.

8 MR. TURNBULL: Thank you, Mr. Chair. I think
9 we brought up at least one of these during the hearing
10 and I thought the applicant was going to correct it,
11 but that really hasn't been done. Basically, there's
12 four conditions by the applicant under Tab B of their
13 submittal, which was Exhibit 64, is it? I think
14 Exhibit 64.

15 First of all, though I talk about exterior --
16 interior partitions, blah, blah, blah, and making
17 changes. I just want to add such that the variations
18 do not change the external configuration or appearance
19 of the building.

20 On Number 2 they talk about the exterior
21 materials. I would change it. We talked about not
22 changing the materials, but they have the ability to
23 change the color ranges within the materials,
24 flexibility depending upon. So, I would delete "and
25 material types," and say, "of the material types

1 proposed, based on the availability at time of
2 construction."

3 The other one was making refinements to the
4 exterior belt courses, railings, trims, cornices. I
5 would simply add, "Such that the variations do not
6 change the external configuration or appearance of the
7 building."

8 The last one is on 4, regarding the planters,
9 vegetation up on the roof. This is overlooking the
10 neighbor's building. The applicant had proffered
11 providing vegetation planting to a maximum height of
12 six feet, to be located along the perimeter of the
13 roof deck, for the purpose of screening and privacy,
14 and I would simply add, to be maintained at all times
15 during the year for the life of the project.

16 CHAIRPERSON HILL: Okay. Thank you,
17 Commissioner Turnbull. I would agree with those
18 comments in terms of clarification on their proposed
19 conditions.

20 Is the applicant here by any chance? Oh,
21 okay, could you come on forward, please?

22 If you could introduce yourself for the
23 record, please?

24 MS. MAZO: Sure. Samantha Mazo, on behalf of
25 the applicant.

1 MR. HERNANDEZ: Bill Hernandez, the applicant.

2 CHAIRPERSON HILL: Okay. So, Mr. Hernandez,
3 did you hear all the conditions here that we're just
4 clarifying some of the conditions that you've actually
5 proffered, and are you fine with those conditions?

6 MR. HERNANDEZ: Yes, I am.

7 CHAIRPERSON HILL: Okay. All right. So, then
8 that being the case, do you have any other comments,
9 Mr. Turnbull?

10 MR. TURNBULL: That's all I have.

11 CHAIRPERSON HILL: Okay. All right. Then, I
12 would go ahead and make a motion to approve
13 Application 19414, with the -- and adding the comments
14 for clarification that Mr. Turnbull has offered.

15 MR. HART: Seconded.

16 CHAIRPERSON HILL: Motion has been made and
17 seconded. Thank you. There was a little pause there,
18 right? Motion has been made and seconded.

19 [Vote taken.]

20 CHAIRPERSON HILL: Mr. Moy?

21 MR. MOY: Staff would record the vote as
22 three, to zero, to two. This is on your motion, Mr.
23 Chairman, to approve the application for the relief
24 requested, along with the changes to the applicant's
25 proposed conditions as cited by the Board.

1 Seconded the motion -- seconding the motion,
2 Mr. Hart. Also in support, Mr. Turnbull. Board
3 Member not participating, board seat vacant. Motion
4 carries.

5 CHAIRPERSON HILL: Okay. Thank you. And I
6 think we're done with our meeting cases today. Is
7 that correct?

8 MR. MOY: Would this be a summary order, sir?

9 CHAIRPERSON HILL: Oh, I'm sorry. Yes,
10 please, a summary order.

11 MR. MOY: Yes, that would be it for the
12 meeting session.

13 CHAIRPERSON HILL: And I think now we're going
14 to ask for another commissioner to join us from the
15 audience. We need some coffee today or something.
16 It's so quite in here today. I don't know what --
17 come on down, you're the next contestant.

18 So, we're going to have a couple of continued
19 hearing cases here, and just to keep everyone apprised
20 of what I think is going to happen. Then we're going
21 to go the appeal. We are going to take a break before
22 the appeal. So, that's where we are. All right?

23 Hello, Commissioner Miller. Welcome.

24 MR. MILLER: Good morning.

25 CHAIRPERSON HILL: Good morning.

1 MR. MOY: All right, Mr. Chairman. This is
2 Application No. 19386 of IREI, 22nd Street, LLC,
3 captioned and advertised for variance relief from the
4 lot width and lot area requirements, Subtitle D,
5 Section 302.1, variance from the side yard
6 requirements, Subtitle D, Section 307.1. This would
7 construct a -- this would construct a new one-family
8 dwelling, R-1-B Zone, 3702 22nd Street Northeast,
9 Square 4226, Lot 42.

10 CHAIRPERSON HILL: All right. Great. Thank
11 you, Mr. Moy. I'll let everybody get a chance to get
12 settled.

13 All right. If you could please just introduce
14 yourselves from my right to left. Just push the
15 button there.

16 MR. CHANG: My name is Sung Chang. I live in
17 1920 14th Street. I'm one of the property owners.

18 CHAIRPERSON HILL: Okay.

19 MR. DEVERGER: Paul Deverger, 1316 Webster
20 Street Northeast, Washington, D.C. I'm a owner in the
21 entity.

22 MR. SULLIVAN: Marty Sullivan, attorney for
23 the applicant.

24 MR. WARREN: Charles Warren, Teass Warren
25 Architects, here on behalf of the applicant.

1 MR. DEADWYLER: John Deadwyler, 3706 22nd
2 Street, owner of the adjacent property in question.

3 MS. STEVENS: Apologies.

4 CHAIRPERSON HILL: No, that's all right.
5 That's all right.

6 MS. STEVENS: Nicole Stevens, owner of 3700
7 22nd Street, adjacent to the property.

8 MR. THOMPSON: Good morning. I'm Enoch
9 Thompson and I'm a witness with --

10 CHAIRPERSON HILL: Okay. All right, great.
11 Yeah, thank you. Okay.

12 So, all right. Well, great. Everybody is
13 here then.

14 So, Mr. Sullivan, as I recall, the last that
15 we had asked was for the applicant to sit down with
16 the parties in opposition in order to see whether
17 there could be some kind of a resolution. And, I'd
18 like to hear, I guess, how that went.

19 I have read your -- well, I'll go ahead and
20 first see how it went, if you could just kind of tell
21 us a little bit about that?

22 MR. SULLIVAN: Sure. Thank you, Mr. Chairman
23 and members of the Board. I will, I'll turn it over
24 to Mr. Deverger to talk about his outreach with the
25 neighbors.

1 MR. DEVERGER: Yes. So, as directed by the
2 Board at our last hearing, we set up a meeting with
3 the neighbors, and we talked through several of their
4 concerns in order to get to a place where we could
5 memorialize our response to those concerns, in order
6 to address them in a construction management
7 agreement.

8 We talked through several concerns, and some
9 of which I'll go through here. One was lighting. So,
10 in terms of addressing lighting concerns, we revised
11 the plans to revise window location and sizes to
12 address privacy concerns by the neighbors.
13 Cleanliness was a topic that was brought up in our
14 initial agreement.

15 We provided a section where we talked about we
16 would clean the property on a regular basis. The
17 neighbors wanted more substance to that section of the
18 agreement so we added a permitted dumpster location
19 for the site, and also a portable lavatory that will
20 be on the property during construction activities.

21 Pest control was another topic that was
22 raised, and in our agreement, we added that we would
23 institute a program of pest control during the
24 duration of our construction activities just to ensure
25 that any pest problems would be addressed.

1 Root pruning, as you recall in our last topic,
2 a tree on the property was an issue and the roots with
3 that tree was brought up in discussion. We had
4 conversations. The applicant and our team had a
5 conversations with a certified arborist, and per the
6 direction we included in our agreement that we would
7 root prune the perimeter of the property. And that
8 was to address two items that would be any roots that
9 would be coming from our property on to the neighbor's
10 property, as well as any roots stemming from the
11 neighbor's property on to our property to ensure the
12 health of those trees on the neighbor's property, as
13 well as addressing any potential issues with pulling
14 or removing the roots during excavation.

15 Also, one of the other topics was hours of
16 construction. In our agreement, we established hours
17 of construction that we would operate under, which
18 were limited, far more limited than DCRA requires.
19 Also, we established that we would designate a
20 construction representative to be the main point of
21 contact with the neighbors during the construction, as
22 this was an issue of theirs from a past experience
23 from an adjacent construction project.

24 One of the other topics I felt that we
25 instituted that would go a long way to address any

1 potential damages to the neighbors' property, was to
2 add them to our general liability policy as
3 additionally insured. So, in the event that any
4 damages would occur, that they would have the
5 insurance, that we would address those issues.

6 And then one of the kind of final topics, and
7 this was brought up initially, but it wasn't
8 necessarily memorialized anywhere, was a
9 preconstruction survey. So, we agreed to go into the
10 neighbor's property if they would allow us, and
11 monitor or, sorry, do a survey of their properties
12 preconstruction. I'll monitor that throughout
13 construction to identify any damages that were a
14 result of our construction activities.

15 Outside of that, I mean, those were the items
16 that were discussed and were included in our
17 agreement. We had one initial meeting with the
18 neighbors where we discussed the agreement and then we
19 had a follow-up response where we included two
20 additional items, those being removal of languages
21 that sort of -- that the neighbors pointed out as
22 ambiguous, where we use best efforts language, and we
23 remove that language out of the agreement and then we
24 also included the port-a-john and dumpster items into
25 the agreement. And this was the final agreement that

1 was provided to the neighbors.

2 MR. SULLIVAN: And, Mr. Deverger, I understand
3 you returned to the ANC as well. Can you talk about
4 that, please?

5 MR. DEVERGER: Yes. Yes. So, we were asked
6 to go back in front of the ANC where we presented a
7 revised plan with the reduced windows. Also, we
8 talked through the points that we included in the
9 construction management agreement and our efforts to
10 address the neighbor's concerns.

11 Unfortunately, the result was pretty much the
12 same as our initial ANC meeting, but we did go back
13 and present our efforts to address the concerns.

14 MR. SULLIVAN: I'd also like to point out, one
15 other outcome of the outreach was that there is a
16 person in support that, if that's possible, I believe
17 is here and would like to speak today as well. So, if
18 that's still available in this proceeding. I can't
19 remember if it went through in the first hearing or
20 not; if we went past that or not.

21 So, I think that's all we have as an update.

22 CHAIRPERSON HILL: Okay. Does the -- well,
23 first of all, Ms. White is going to be joining us
24 again for this hearing.

25 MS. WHITE: Yes, I am, and I've familiarized

1 myself with the record, so I'm prepared to go.

2 CHAIRPERSON HILL: Okay, great. Wonderful.
3 We'll officially welcome now into not just observing
4 for the first part of the day.

5 So, does anyone have any questions for the
6 applicant?

7 MR. HART: Just one question. You said that
8 the --

9 CHAIRPERSON HILL: Sorry. I didn't realize
10 we've got the Office of Planning again. I was so
11 excited I get to --

12 MR. HART: So, you saw that and --

13 CHAIRPERSON HILL: Yeah, exactly. That was
14 it.

15 MR. HART: Glad I could do that.

16 CHAIRPERSON HILL: Yeah.

17 MR. HART: So, the question that I -- the only
18 question I had was around the construction management
19 agreement. Can you talk about what things -- where
20 you still had some -- I mean, was it the entire
21 agreement, were there particular issues that were
22 still at odds? And I'll ask that same question of the
23 folks that are in opposition as well. Your neighbors,
24 I should say. So.

25 MR. DEVERGER: Yeah, I guess I left that part

1 off. So, we met with the neighbors. We presented the
2 items that we would be willing to do, and we were open
3 for suggestions of any additional items they would
4 like to see as part of the agreement.

5 Essentially, we were told that regardless of
6 what we included in the agreement, they would not
7 support the project. And to that point, the things
8 that were discussed and were brought up, we did add to
9 the agreement and provided a revised agreement back to
10 the neighbor, although they were pretty clear and
11 adamant about not supporting.

12 CHAIRPERSON HILL: Okay. Mr. Devenger --
13 Devenger. Is that correct?

14 MR. DEVERGER: Deverger.

15 CHAIRPERSON HILL: Deverger. So, Mr.
16 Deverger, I guess you know, I mean, I am interested in
17 hearing from the opposition as to how the discussions
18 went. I guess, whether or not they sign off or agree
19 to it is important, but it's also very important that
20 we sign off and agree to it.

21 And I read through your construction
22 management agreement, and to be quite honest, I didn't
23 think it was all that great. You know, I mean, I
24 thought that I'm kind of curious as to how you kind of
25 got to some of the things, you know, the lighting and

1 like, you know, you're putting in a bathroom. I mean,
2 I kind of didn't see exactly what it was, maybe, that
3 you had gone through to kind of try to make the
4 neighbor feel more comfortable with the project. I
5 mean, we're not even necessarily talking about the
6 merits yet, of whether or not you meet the test and
7 whether or not, you know, we move forward. And so,
8 that is another discussion.

9 I guess I didn't feel -- I didn't really get a
10 whole lot of, you know -- I wasn't really sure what
11 you were offering. You know, I mean, so like -- and I
12 do have one question. I mean, again, and I'm going to
13 go over the opposition. But like the hours that you
14 were proposing again, how are those any different from
15 the normal hours that are allowed for under
16 construction?

17 MR. DEVERGER: I believe the start times were
18 a little bit later, an hour or so later.

19 CHAIRPERSON HILL: A little bit later --

20 MR. DEVERGER: In terms of earlier in the
21 morning.

22 CHAIRPERSON HILL: Earlier in the morning.
23 So, I don't think you can go any earlier than 7:00
24 a.m.

25 MR. DEVERGER: We proposed, I believe, a hour

1 later, after the initial start time, I believe, is
2 what was in the agreement.

3 CHAIRPERSON HILL: Right. So, your operations
4 of time were 7:00 a.m. to 7:00 p.m. And then on the
5 weekends they're 8:00 a.m. to 4:00 p.m. I guess
6 you're saying on the weekends you pushed it back an
7 hour?

8 MR. DEVERGER: Yes.

9 CHAIRPERSON HILL: Right. So, you gave them
10 an hour on the weekends.

11 MR. DEVERGER: Yes.

12 CHAIRPERSON HILL: And then one of the things
13 that you proposed was a bathroom. Like, that's
14 something you were offering.

15 MR. DEVERGER: Well, no. This was something
16 that the neighbors brought up that it wasn't included
17 in the initial agreement. I mean, that was something
18 that we were already going to do anyway.

19 CHAIRPERSON HILL: Okay.

20 MR. DEVERGER: But they wanted to see it
21 specifically --

22 CHAIRPERSON HILL: Okay. And I understand, I
23 understand what you're trying to do and I understand
24 that it's difficult to come to agreement. In some
25 cases it's, you know, if some people don't want it

1 there at all then you're kind of at an impasse, I
2 suppose. That's another thing. But I'm just kind of
3 letting you know where I am right now after reading
4 your construction management agreement. Okay?

5 So, I'm going to turn to the opposition now
6 unless Mr. Miller or Ms. White, do you have anything
7 real quick for the applicant?

8 MS. WHITE: Not at this time.

9 CHAIRPERSON HILL: No? All right, thank you.

10 So, before -- I'm going to left to right if
11 that's okay, because I know that a lot of your issues,
12 sir, was for your yard and the root system I think,
13 and your putting green that was there, you know. You
14 know, right?

15 UNIDENTIFIED SPEAKER: [Speaking off
16 microphone.]

17 CHAIRPERSON HILL: Right. Okay. So, please,
18 go ahead. I'd like to hear how the discussions went.

19 MR. DEADWYLER: Absolutely. Good morning to
20 the Chairman and the Board. My name is John
21 Deadwyler. I, along with my wife, Andrea Deadwyler,
22 are the residents and owners of 3706 22nd Street
23 Northeast. As stated on January 11th, we jointly
24 opposed the requested special exception to D.C. Zoning
25 Regulations as it would adversely impact the community

1 by establishing a precedent, which would allow large
2 structures to be built on small lots, thus making
3 applicable zoning regulations null and void.

4 In addition, there would be significant
5 adverse impact on the neighboring properties, which I,
6 the Deadwylers, as well as my neighbors, own.
7 Exposing us to unreasonable and costly risk of
8 property damage with no way to guarantee that we will
9 be made whole.

10 Very quickly, these risks include but are not
11 limited to, number one, let me speak directly to the
12 proposed construction agreement. And before I move
13 forward, as we stated in our meeting, we appreciated
14 the effort. This is not personal, it's protecting our
15 properties.

16 The proposed construction agreement whereas
17 all of those things were stated, we never spent a lot
18 of time on those because most importantly foundation
19 and structural damage was our most concern. But the
20 proposed construction agreement does not provide any
21 protection and is not enforceable. So, again, it's
22 not worth the paper that it's written on.

23 We did not, for the record, sign anything that
24 was presented to us, and we also stated in our meeting
25 directly, that we would not sign anything, nor support

1 this effort.

2 Secondly, the proposed pruning of the
3 remaining stumps pose potential damage to the living
4 trees on my property. Even though it was stated, you
5 know, the putting green, the play area, whatever the
6 case, it's an investment to my home. And then, again,
7 those pruning efforts that they proposed, also posed
8 potential damage and possible disruption to the
9 utilities for the community.

10 For the record, as is stated, we have full
11 support of our neighbors by way of the petition, the
12 ANC, and our councilmember, which has been submitted,
13 opposing the granting of this variance.

14 And then finally I must state in closing, I
15 must ask the question of the Board as well as the
16 Office of Planning, if this proposed development was
17 next door to you, would this still be reasonable?

18 And then finally, we kindly request the
19 special exception is denied. I thank you for my time.

20 CHAIRPERSON HILL: Okay. Thank you. So, I am
21 going to -- we're just having a continued hearing. I
22 mean --

23 MR. DEADWYLER: Sure.

24 CHAIRPERSON HILL: -- you guys did tell me
25 everything about, you know, last time you were here

1 and I remember where everybody stood, and so I do have
2 some questions about that, what your concerns were,
3 how they were addressed or were they not addressed?

4 MR. DEADWYLER: Sure.

5 CHAIRPERSON HILL: Now, I'm just going to move
6 through, I guess, actually because the questions that
7 I remember that you had were again, Ms. Stevens, was
8 again like the windows and privacy, and I think also
9 there was someone in your home that had some issues
10 that you were concerned about in terms of construction
11 and such.

12 Did the moving of the -- and the Office of
13 Planning actually did speak to the windows on your
14 side of the house. And so, did they move the windows?
15 Did they satisfy that for you?

16 MS. STEVENS: I'm not satisfied. I'm sorry.

17 CHAIRPERSON HILL: Okay.

18 MS. STEVENS: Essentially, I'm with Mr.
19 Deadwyler and I completely oppose this. If we want to
20 talk specifically about the construction agreement,
21 essentially, as I stated at the last hearing, I said I
22 would meet in good faith with them. I set up a
23 meeting, I arranged to have it at a very neutral place
24 in a room. And Mr. Chang and Mr. Deadwyler -- I mean,
25 Mr. Deverger, showed up and we did sit down. We had a

1 discussion, and I've reviewed the agreement thoroughly
2 beforehand, and I met with the Deadwylers, and we went
3 over the agreement because as I stated, I wanted to
4 have a good faith meeting as the Board requested.

5 The agreement, I believe, was poorly crafted.
6 It was aspirational at best. I thought it, in the
7 end, it was unenforceable and it did not provide -- we
8 were going to end up in court, either way, on either -
9 - each provision or just in general. The whole issue
10 about the insurance, again, this is an LLC. I don't
11 know if they're paying the insurance. I don't know
12 how solvent they are. I don't know whether they will
13 remain solvent. I don't know what the long-term
14 consequence is. Even if the inconvenience of the
15 construction is minor in duration, there could be
16 long-term consequences we're dealing with for the next
17 10, 20 years.

18 The root system, the runoff, I understand that
19 they do have support from the neighbor directly behind
20 us who -- and the way I see it and from my
21 understanding of what is going to happen with this
22 bill and the way our alley is, the runoff is going to
23 go directly into their yard. It's going to fill that.
24 It's going to fill that yard once that -- once
25 something is built there.

1 There are other issues that just cannot be
2 addressed that are incident to this development. I
3 think there were very little considerations at the
4 risk at play in the agreement. You're -- this is a
5 very small space. It's, there's a -- I think there's
6 a deliberate indifference to the problems that
7 excavation are going to be -- that are going to
8 entail. Even at the ANC, the ANC asks for specific
9 things and asks them to come back. They talked about
10 silk nettings and how they were going to protect the
11 fence. They did not address that.

12 They're response, in my opinion, was pretty
13 overconfident in that there's no way they're going to
14 harm their fence, on my property, in any way. So, and
15 kind of like, even if we do, we'll take care of it.
16 It's going to be minor. It's going to be -- it's not
17 going to be an issue.

18 I think the whole purpose of zoning
19 regulations is to control space, to control
20 development, control density, light for the neighbors.
21 None of that, in my opinion, is being addressed here,
22 that a variance of this size, it's -- I mean, we're
23 talking a three and a half foot -- this is it. It's
24 probably the three of us. It's probably less than
25 that. Compared to eight feet.

1 I believe that the -- to briefly, I'm going to
2 try to briefly discuss the Office of Planning --

3 CHAIRPERSON HILL: No, that's okay. I mean,
4 honestly, I wasn't -- I was just trying to figure out
5 what had happened since the last time you were here.

6 MS. STEVENS: Nothing.

7 CHAIRPERSON HILL: And I know that -- and I
8 know that basically, you don't want it there. Right?
9 Like, I mean, there's nothing --

10 MS. STEVENS: I do not want it there.

11 CHAIRPERSON HILL: You just don't want it
12 there. And again, we had this discussion the last
13 time in that what our job is, is again to see if
14 something is supposed to receive a variance, right?

15 MS. STEVENS: Yes.

16 CHAIRPERSON HILL: The lot, how can the lot be
17 used, right? Is there standards that the applicant
18 can satisfy in order to make use of that lot? And so,
19 what I had wanted to do was, you know, see that if the
20 applicant can kind of work with the neighbors to see
21 that they could somehow -- and I mean, you might not
22 get to agreement, and you didn't get to agreement,
23 obviously. But from your construction management
24 agreement, again, I didn't really see anything also
25 that I mean, you did offer, proffer adding them to

1 your insurance, right? You know, whether that -- that
2 being kind of a complicated thing. You know, now
3 whether or not there was a way to indemnify, you know,
4 the two neighbors, whether that would be something
5 that you would be able to proffer so that they could
6 at least feel comfortable that there is not
7 deductibles and there is not things that they're going
8 to have to change.

9 And I know this is getting into the minutia of
10 it that normally the Board does not get into. And the
11 reason why I'm kind of talking about it a little bit
12 more is because the ANC -- there's a lot of
13 opposition. The ANC is in opposition. I think it was
14 -- you know, when you came here and the tree was cut
15 down, and it was cut down, I don't know when, when it
16 happened, but it seemed like you didn't follow the
17 correct process, which makes me a little question as
18 to -- it's great the tree is not there anymore.
19 Right?

20 So, and then you paid the penalty of the
21 \$8,500. So, I am kind of now turning to you, I
22 suppose, which is to ask whether or not you thought
23 of, you know, indemnifying the neighbors for any
24 damage that might -- because you can say that you're
25 going to fix everything, right? But how do they know?

1 Right?

2 So, is that something that you could, you
3 know, beef up the construction management agreement in
4 some fashion?

5 MR. DEVERGER: Yeah, certainly. I mean,
6 that's something that we would be willing to go back
7 and revisit.

8 I mean, I think our thought was that the main
9 concerns were construction activity and any damage to
10 their property, and the two items that we proposed to
11 address that was the construction survey,
12 preconstruction just to observe anything in the
13 property before, and then adding them to our
14 insurance. We thought that that sufficed that
15 concern. But yes, certainly we would be willing to
16 add them, or indemnify them as part of the agreement
17 as well.

18 CHAIRPERSON HILL: Okay. Does the Board have
19 any questions for the applicant? Give me one second,
20 sir.

21 MR. THOMPSON: Okay.

22 CHAIRPERSON HILL: No? Okay. Just before you
23 go back, now, Mr. Thompson, I remember when you were
24 here before, and I'm going to give you just a couple
25 minutes to again reiterate what I think you said

1 before, but please, go ahead.

2 MR. THOMPSON: Yes, good morning. I'm Enoch
3 Thompson, and I've been in the neighborhood for over
4 40-something years.

5 This type of development really shows no
6 respect for the environment. It shows no respect for
7 the neighborhood, because it doesn't create a hardship
8 to the owner. What is a hardship? Disrespecting
9 what's there already.

10 I'm not saying they're disrespectful to
11 people. Please, don't look at it that way.

12 CHAIRPERSON HILL: Thank you.

13 MR. THOMPSON: I'm looking at the impact, the
14 environmental impact of this small project on the
15 community, the support, the nonsupport, and the fact
16 that we are sitting here talking about it.

17 We can see that this project, as I show it and
18 discuss, and which is documented by the owners, will
19 never meet and never comply. I don't see how they can
20 address the issues with a construction management
21 agreement. That's not going to solve the problem,
22 because if you go through D.C., and I've applied and
23 went through a lot of permits that require soil report
24 and all those things before you even consider this,
25 feasibility this project is not feasible for what they

1 I don't see that in this building for the size
2 in terms of some of the material chosen to represent -
3 - moving a window is not going to make this building
4 safe.

5 CHAIRPERSON HILL: Okay.

6 MR. THOMPSON: I want you to look at -- one,
7 quick. You see these two ceiling tile right here.
8 Can anybody tell me what size that? That's four feet.
9 That's four feet right there. Three feet, six inches
10 is that much. Imagine we have, God forbid, a
11 catastrophe that we have to have emergency things
12 happen. That's why we have these to protect.

13 CHAIRPERSON HILL: Okay.

14 MR. THOMPSON: So --

15 CHAIRPERSON HILL: So, I'm just going to ask
16 you to wrap it up if you could.

17 MR. THOMPSON: Okay. Personally, when I
18 really look at the project, I'm not against them.
19 However, this project does not meet --

20 CHAIRPERSON HILL: Okay.

21 MR. THOMPSON: -- the board standard.

22 CHAIRPERSON HILL: Okay, you --

23 MR. THOMPSON: So, I really request that this
24 one --

25 CHAIRPERSON HILL: I understand.

1 MR. THOMPSON: -- be denied on what they
2 presented to us.

3 CHAIRPERSON HILL: And you've read the Office
4 of Planning's report?

5 MR. THOMPSON: Yes.

6 CHAIRPERSON HILL: Okay. All right.

7 MR. THOMPSON: And I'm quite familiar with it
8 and --

9 CHAIRPERSON HILL: Okay. That's all right. I
10 was just asking if you ever --

11 MR. THOMPSON: -- what they've projected, it
12 doesn't really meet --

13 CHAIRPERSON HILL: Okay. All right.

14 MR. THOMPSON: -- those requirements.

15 CHAIRPERSON HILL: Okay. Mr. Deadwyler, you
16 had something to add?

17 MR. DEADWYLER: Yes. I wanted to just state
18 for the record, I appreciate the -- I'm somewhat
19 confused. As you stated the construction management
20 agreement, even the initial outreach, most
21 importantly. We can talk about port-o-johns, we can
22 talk about adding us to the insurance. We, the two
23 properties that are affected, we jointly oppose. And
24 there is nothing proposed by RE, LLC that offers any
25 protection for the neighbors that are adversely

1 impacted.

2 To state offering some type of indemnification
3 today, again, I'm confused as to why appearing
4 additional efforts to try to work this out when,
5 again, I stated in the first meeting, or the first
6 hearing, and I'll state it here today. Not stating
7 that I'm an expert, but every one of us in this room
8 who has participated in any type of construction
9 project, when you excavate, there are the unforeseens.
10 The best efforts and all of the degrees and theory is
11 great, but when you hit a gas line, when you hit a
12 water line, when you do something that you were not
13 prepared for, there is nothing protecting us.

14 CHAIRPERSON HILL: Right. Okay. Okay. I
15 understand.

16 MR. DEADWYLER: I just wanted to make that
17 clear.

18 CHAIRPERSON HILL: No, and Mr. Deadwyler, I
19 think you all have been very -- no, no, just let me
20 talk for a second, okay?

21 Now, I know that you all don't want the
22 project. Okay? Right? That's very clear.

23 MR. DEADWYLER: Uh-huh.

24 CHAIRPERSON HILL: Okay. And we here, as a
25 board, we're here to see whether or not they meet the

1 standard in order to allow the project, right? And,
2 so that the land can be used properly and so that it
3 meets with the Comprehensive Plan and that, you know,
4 housing -- and all the things that are good for a
5 city, right?

6 And the applicant is offering to indemnify,
7 and I'm not a lawyer, there is a lawyer here,
8 indemnify you, which should clearly then protect you
9 and the two neighbors, right, from any harm that
10 happens to your property, right? If it's a gas line,
11 a root system, anything such as that. Is that
12 correct, Mr. Sullivan?

13 MR. SULLIVAN: Yes, Mr. Chairman. It's in the
14 applicant's interest to do so anyway. They wouldn't
15 want to get involved in some sort of protracted --

16 CHAIRPERSON HILL: I understand. But it
17 wasn't clearly articulated that way, it sounds like --

18 MR. SULLIVAN: Right.

19 CHAIRPERSON HILL: -- at the meeting. It was
20 just said, we're going to go put you on your
21 insurance. Now, I'm asking for a further
22 clarification, where as you were actually going to
23 do --

24 MR. SULLIVAN: Sure.

25 CHAIRPERSON HILL: -- you know, indemnify the

1 two next door neighbors concerning any issue with the
2 project.

3 MR. DEADWYLER: Why wasn't that done from the
4 beginning?

5 CHAIRPERSON HILL: You know, I don't know.
6 Okay? Right. So --

7 MR. DEADWYLER: Good question, right?

8 CHAIRPERSON HILL: Okay. So, nonetheless, it
9 doesn't matter. So, I'm going to turn to the Office
10 of Planning here in a second, just because the Office
11 of Planning is here, and I don't know if the Office of
12 Planning has anything additional to add for
13 clarification.

14 As I recall, and I just would like
15 clarification again, Mr. -- oh, gosh, Devenger?
16 Devenger? Deverger? Deverger? Sorry. Mr. Verger
17 (sic). Now, the project again, is how wide right now?

18 MR. DEVERGER: So, right now we're proposing
19 an 18-foot wide structure.

20 CHAIRPERSON HILL: Okay, right. And the by-
21 right is how wide again?

22 MR. DEVERGER: Nine foot.

23 CHAIRPERSON HILL: Nine foot. Okay. There
24 you go. So, I'm going to just turn to the Office of
25 Planning real quick if you have anything to add, or

1 also to clarify for anyone here.

2 MS. BROWN-ROBERTS: Good morning, Mr. Chairman
3 and members of the Board. Maxine Brown-Roberts from
4 the Office of Planning.

5 Again, as I stated in my reporter earlier in
6 the first hearing, we do think that the application
7 meets the requirements for the variance test. We had
8 asked that the applicant look at the location of the
9 windows, and we see that they've done that, and we're
10 satisfied with that. That the variance, if it is
11 granted, would not cause any substantial impact on the
12 adjacent properties.

13 Regarding the construction management, we have
14 no comments on that because we don't have any
15 specialty to review that, so I won't have anything to
16 say on that. I'm available for questions.

17 CHAIRPERSON HILL: Okay, great. Does the
18 Board have any questions for the Office of Planning?
19 All right.

20 MS. STEVENS: Can I ask a question of the
21 Office of Planning?

22 CHAIRPERSON HILL: No. That's okay. Thank
23 you so much. I appreciate it.

24 Yeah, sure. Go ahead, Mr. Miller.

25 MR. MILLER: Thank you. And, thank you, Ms.

1 Roberts for appearing here again, and thank everybody
2 for appearing here again.

3 But, you, I think in your report, alluded to
4 the character of the neighborhood, that they are small
5 -- a number of small lots in this neighborhood that
6 was developed prior to the '58 regulations, even. Can
7 you just go over the -- if you have the information,
8 I'll ask the applicant and the neighbors the question
9 as well. But do you have information on the width of
10 the houses in that block?

11 MS. BROWN-ROBERTS: I don't have that
12 background information with me right now. But from my
13 recollection is that there were a number of houses,
14 during the committee, that were built on similar size,
15 similar size lot, and did not have the -- did not have
16 the required eight-foot setback on either side. So,
17 there are existing houses within the community which
18 do not meet the requirement.

19 MR. MILLER: Okay. I don't have any other
20 questions of the Office of Planning. I do want to
21 talk to the neighbors and the applicant in a minute.

22 MS. WHITE: Yes, I have one question. Can you
23 comment in a little bit more detail regarding the
24 Office of Planning's position on the fact that it has
25 no substantial detriment to the public good?

1 MS. BROWN-ROBERTS: I'm sorry. Let's see.
2 The relief that the setback relief, the side yard
3 relief is that the existing lot is substantial. It is
4 substandard. And therefore, they can't meet the
5 requirement.

6 So, one of the things that we look at is,
7 okay, what is being provided and how far would that
8 impact the privacy and light and air to the adjacent
9 properties.

10 And, so one of the things that we looked at
11 was you know, how close was the adjacent neighbor, and
12 we realized that the neighbors' houses are set back,
13 at least on one side is greater than -- much greater
14 than the eight feet. And, therefore, when we looked
15 at the location of the building regarding, you know,
16 shadows and that sort of thing, that is one of the
17 reasons why we recommended that they relocate the
18 windows to make sure that there were no direct views
19 into the neighbors' houses.

20 We thought that, or it is our assessment, that
21 the light will be adequate. However, we are concerned
22 about the -- concerned about the privacy. And that's
23 why we ask for the location of the windows to be
24 looked at. And therefore, that's why we came to the
25 conclusion that there isn't a substantial detriment

1 because those issues have been addressed.

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

4 [No audible response.]

5 CHAIRPERSON HILL: All right. And, Ms.
6 Stevens, I didn't mean to cut you off there. I'm jus6
7 trying to work together and I know that you don't want
8 the project there. You know? And that's really what
9 you don't want, you know? And so --

10 MS. STEVENS: I do. I don't, I don't want the
11 project there, but I also don't feel that the Office
12 of Planning has met their own requirements. A small
13 lot, okay, and knowing it's a small lot, it's not an
14 exceptional situation or undue hardship. What these
15 developers have done is they have bought a lottery
16 ticket and now they're asking you to validate it.

17 CHAIRPERSON HILL: No, no, Ms. Stevens, that's
18 okay. That's all right. I mean, they haven't bought
19 a lottery ticket. We're not trying to validate it.
20 We're following the regulation. And so --

21 MS. STEVENS: They have not met any
22 compelling --

23 CHAIRPERSON HILL: We're following the
24 regulation --

25 MS. STEVENS: They haven't even met --

1 CHAIRPERSON HILL: You can read the Office of
2 Planning's report, and so --

3 MS. STEVENS: I did read it. And I read 10
4 others just like it.

5 CHAIRPERSON HILL: Okay. All right. Okay.
6 Okay. But anyway, so there you go.

7 All right. I'm going to see, there was some
8 people here, I guess, in the audience. I'm going to
9 open it up since we have a continued hearing, which is
10 to say, is there anyone here in opposition, further
11 opposition? Oh, there's more people. Okay.

12 Is there anyone here in support? All right.
13 Let's go ahead and take the two people in opposition
14 as well, then.

15 If you guys wouldn't mind just giving up a
16 couple of your seats there, and then we can take two
17 more people here that are in opposition?

18 MR. MILLER: I did want to ask --

19 CHAIRPERSON HILL: Oh, sure. I'm sorry. I'm
20 sorry. Just wait one second. Mr. Miller has a
21 question for you.

22 MR. MILLER: I did want to ask the neighbors
23 and the applicant about this width of the houses in
24 your neighborhood issue. Are the houses mostly 18
25 feet wide? Or, what is your own house, if you know?

1 MR. DEADWYLER: I apologize. It's -- I
2 apologize, I don't have the exact information at the
3 moment.

4 MR. MILLER: Not the width of the lot, but the
5 width of the house.

6 MR. DEADWYLER: Yeah, the width of the house.
7 Well beyond 22, if I'm not mistaken.

8 MR. MILLER: And, Ms. Stevens?

9 MR. DEADWYLER: It's 22.

10 MR. MILLER: If you happen to know?

11 MR. DEADWYLER: It's 22 feet.

12 MR. MILLER: It's okay if you don't.

13 MS. STEVENS: I don't know.

14 MR. DEADWYLER: Twenty-two.

15 MS. STEVENS: Ours is relatively the same size
16 as theirs.

17 MR. DEADWYLER: I just received confirmation,
18 it's 22.

19 MR. MILLER: So, here was one thought, which I
20 don't even know if the applicant would be willing to
21 do, and I don't even know if they were willing to do
22 it, it would -- whether it would help alleviate some
23 of your concern, if they were willing to cut back on
24 the relief that they're requesting. Right now,
25 they're only proposing three and a half feet side

1 yard, setback on each side. If they were, instead of
2 the eight feet that's required, if they were willing
3 to do a foot or so more, would that provide you some
4 additional protection? And then the width of their
5 house would have to shrink to 16 feet. I don't know
6 if they're even be willing to do that. They may be
7 even willing to go a little bit further there. At
8 some point, it isn't functional as a house.

9 MR. DEADWYLER: Let me address it as the owner
10 of 3706. The rules and regulations are in place for a
11 reason. I understand the support of trying to promote
12 infill development and all of that, but again, I stand
13 by what the regulations are. And regardless of a play
14 area or putting green, they're in position to protect
15 and I stand by that. No.

16 MS. STEVENS: I'd have to agree with my
17 neighbor. One of my problems here is that this isn't
18 -- this isn't my neighbor asking to extend their
19 property to put a deck or an addition on their home
20 for a growing family. This is a developer who is
21 trying to make a dollar. He's going to sell this
22 home. He is not going to be my neighbor. Okay? He
23 lives somewhere else in this city.

24 So, that would be probably a no for me. Okay,
25 I --

1 MR. MILLER: Okay. Thank you.

2 MS. STEVENS: And it, out of respect for the
3 Board, I'd like to see the plans if that is one of
4 their offers, but I'm pretty sure that's not going to
5 happen, because that's going to reduce the bottom
6 line.

7 MR. MILLER: Is the applicant willing to
8 adjust their side back -- side yard setback?

9 MR. DEVERGER: So, that is something that our
10 team has discussed previously. Seventeen would
11 probably be the narrowest that we would want to go,
12 and that would represent, you know, the lot is 25-foot
13 wide, and that would be essentially half of the
14 regulated --

15 MR. MILLER: Four feet on each side.

16 MR. DEVERGER: Exactly.

17 MR. MILLER: Well, they just rejected four and
18 a half, so.

19 CHAIRPERSON HILL: Okay. Okay. If you guys
20 wouldn't mind, if I could -- sir, I'm sorry, you've
21 got your -- please, go ahead.

22 MR. THOMPSON: Okay. Now, just one question.
23 The zoning, specifically same things --

24 CHAIRPERSON HILL: Who are you asking? I'm
25 sorry, sir.

1 MR. THOMPSON: Yes, my name is Enoch Thompson.

2 CHAIRPERSON HILL: No, no, no, who are you
3 asking the question to?

4 MR. THOMPSON: I'm asking the question to
5 everyone, generally here.

6 CHAIRPERSON HILL: Okay.

7 MR. THOMPSON: Especially the owner. The
8 zoning here specifically clarifies the difference
9 between single-family home, semidetached, and others.

10 CHAIRPERSON HILL: Okay.

11 MR. THOMPSON: This is a single-family on a
12 lot. If we go back historically, and somewhere in the
13 surveyor's office, they will show you all the history
14 of what took place in the city.

15 CHAIRPERSON HILL: Okay.

16 MR. THOMPSON: Real estate wise. What I'm
17 saying is that for a single-family home on this
18 property, the way it is for a single family, he has to
19 meet the requirement on the side yard.

20 CHAIRPERSON HILL: Right. No, that's the
21 whole thing, Mr. Thompson. But he's here --

22 MR. THOMPSON: No, no. No, no, there --

23 CHAIRPERSON HILL: He's here to ask for a
24 variance.

25 MR. THOMPSON: -- there is another -- let me

1 explain again.

2 CHAIRPERSON HILL: No, no, what's your
3 question, sir?

4 MR. THOMPSON: The question is, it might help
5 them versus me. What I'm saying is that their
6 approach should not be maybe a single-family, but look
7 at it from the perspective where a duplex, where this
8 property, those smaller properties have specific
9 development volume and requirements. Those smaller
10 ones that were 2,500 square feet, 3,000 square feet --

11 CHAIRPERSON HILL: Okay.

12 MR. THOMPSON: -- this is in your boiler
13 plate.

14 CHAIRPERSON HILL: Okay. Okay.

15 MR. THOMPSON: They have specific development
16 criteria as opposed to a single-family, what other
17 buildings could you put.

18 CHAIRPERSON HILL: Okay. Okay.

19 MR. THOMPSON: Not that. That's all I'm
20 saying.

21 CHAIRPERSON HILL: Okay.

22 MR. THOMPSON: So, look at it with a different
23 perspective and show that there is an honest effort to
24 come up with something that everyone will accept.

25 CHAIRPERSON HILL: Okay. I just want to let

1 you know, I'll go ahead and ask the question, but I'm
2 letting everybody know, like normally, again
3 everyone --

4 MR. THOMPSON: I apologize.

5 CHAIRPERSON HILL: That's okay. Normally
6 everyone is getting -- everyone gets three minutes in
7 opposition. And we have heard like, you know, you
8 guys aren't -- you don't have party status. I mean,
9 this is something that I'm just trying to -- try to
10 accommodate everyone. I mean, we're actually, in
11 fact, working outside of some of the things that we
12 normally look at.

13 But your question, then, was whether or not
14 you looked at a duplex possibility?

15 MR. DEVERGER: I mean, per the zoning
16 requirements, it's regulated for a single-family
17 dwelling, so we did not look at --

18 CHAIRPERSON HILL: Right.

19 MR. DEVERGER: -- an attached dwelling.

20 CHAIRPERSON HILL: Okay. All right. So,
21 thank you very much. Okay?

22 So, all right. So now, if I could get the --
23 now, how many people are here in opposition, further
24 in opposition? So, there's four, five. Oh, my gosh.
25 Okay. So, so, come on up again if you could. And

1 now, we had a full hearing the last time and you all
2 weren't here at the full hearing.

3 MS. SCRUGGS-TATE: No, I was.

4 CHAIRPERSON HILL: Okay. Oh, so, did you
5 speak at the full hearing the first time?

6 MS. SCRUGGS-TATE: Yes.

7 CHAIRPERSON HILL: Okay. So, go ahead and
8 introduce yourselves, if you would, from my left to
9 right here.

10 MR. JACKSON: Mark Jackson.

11 CHAIRPERSON HILL: Oh, just push that green
12 button.

13 MR. JACKSON: Mark Jackson, 3700 22nd Street.
14 I'm the husband of Nicole. I'm the quiet one.

15 CHAIRPERSON HILL: Okay.

16 MR. JACKSON: The less vocal one.

17 CHAIRPERSON HILL: All right. Uh-huh.

18 MS. SCRUGGS-TATE: My name is Annette Scruggs-
19 Tate, I'm here, 2227 Perry Street Northeast, and I'm
20 here representing TTOP, which is our block club.

21 CHAIRPERSON HILL: Okay.

22 MS VOLLINS: I'm Sue Vollins (phonetic), and
23 I'm 3710 22nd Street, next to the Deadwylers, and also
24 a neighbor. In the neighborhood.

25 CHAIRPERSON HILL: Okay. Okay. And there's

1 two others here, is that correct?

2 UNIDENTIFIED SPEAKER: I'm the ANC.

3 CHAIRPERSON HILL: Oh, okay. Oh, the ANC. I
4 had asked for the ANC before. I didn't -- okay. All
5 right.

6 So, I'm going to give you all two minutes
7 each, okay? Right? To tell us again, we've gone
8 through already support and opposition. This is our -
9 - this was a continued hearing, and so please go ahead
10 and Mr. Jackson, if you wouldn't mind?

11 Mr. Moy, thanks for putting the clock on there
12 for us.

13 MR. JACKSON: Sure, I'll be brief. I'm in
14 opposition, obviously.

15 One of the first things -- when they purchased
16 the lot, the gentleman who is one of the partners who
17 is not here, I remember him walking the neighborhood
18 saying, we want to be good neighbors. And as soon as
19 they -- I believe this was before. So, right after,
20 the first thing they did is they cut down the trees,
21 no permit. Okay?

22 Speaking today, I'm still trying to figure out
23 what their hardship is, as Mr. Enoch, you know,
24 stated, you know, not being able to make as much money
25 as you'd like, you know, I don't consider that a

1 hardship.

2 CHAIRPERSON HILL: I think everything has been
3 clearly articulated in the Office of Planning's report
4 as to the hardship. I'm just telling you how --

5 MR. JACKSON: Okay. Also --

6 CHAIRPERSON HILL: Yeah.

7 MR. JACKSON: -- in our meeting with them, at
8 the library a few weeks ago, we asked for examples of,
9 you know, properties that they've built, you know,
10 that were similar on the size lots -- on the size lot
11 that we have, you know, next to the Deadwylers and our
12 self. We asked for that, and you know, we've not
13 received anything. I mean, or who's going to do the
14 building. I mean, you know, if you're going to build
15 a house next to me and, you know, we're going to be
16 careful, is not enough.

17 I want to know, who's doing the building, and
18 you know, can they do this. You know, if you, if the
19 Board approves them, they still have to find the
20 builder, all right? And, you know, builder's going to
21 come in and say, well, you know, I'll be careful.
22 Okay?

23 And, well you know, we have a -- my sister,
24 who is autistic, you know, we talked about the
25 construction, and all. And, I mean, I don't think

1 people realize, this is three and a half feet. Okay?
2 This is three and a half feet. Okay? They want to
3 build a house three and a half feet to our property.
4 I mean, take, take a look at this. Three and a half
5 feet. That's all I have to say.

6 CHAIRPERSON HILL: Okay. So, Mr. Jackson, I
7 appreciate it, and I appreciate the efforts that your
8 wife had spoken about the last time, and again for us,
9 you know, we're actually I think trying to do a lot
10 for this particular case in terms of the community.
11 Also like, construction is not usually something that
12 is in our purview. And so, the applicant is doing
13 their best to try to help with some of the
14 construction issues.

15 I'm just letting you know, right.

16 MR. JACKSON: No, I understand that.

17 CHAIRPERSON HILL: And so --

18 MR. JACKSON: I understand.

19 CHAIRPERSON HILL: And so, that's asking for
20 references and --

21 MR. JACKSON: I'm not totally opposed. But
22 everything they've done to this point is wrong.

23 CHAIRPERSON HILL: Okay. Okay.

24 MR. JACKSON: Everything. And I don't think
25 they should be rewarded --

1 CHAIRPERSON HILL: Okay.

2 MR. JACKSON: -- for that.

3 CHAIRPERSON HILL: Okay. Ms. Bates. Bates?

4 MS. SCRUGGS-TATE: Yup. Okay. My, first my
5 comment is highest and best use of the land study.
6 That's number one.

7 Number two, I'd just like to approach you all.

8 I took a picture of something that's been approved
9 here, and show you on this street, where they are,
10 where all this is happening, to show you what monster
11 houses are being built in our neighborhood now.

12 So, I'm just going to --

13 CHAIRPERSON HILL: I don't know, Mr.
14 Secretary, how that would work or what you do there.
15 I'd also --

16 MS. SCRUGGS-TATE: That's the -- that's 22nd
17 street.

18 MR. MOY: Yeah, I understand. This --

19 MS. SCRUGGS-TATE: Yeah, that (speaking off
20 mic.)

21 CHAIRPERSON HILL: Ms. Bates, just give me one
22 second.

23 MR. MOY: Yeah, the protocol would -- what's
24 typical would be for you to submit that into the
25 record.

1 CHAIRPERSON HILL: Everything has to be in the
2 record.

3 MS. SCRUGGS-TATE: [Speaking off microphone.]

4 CHAIRPERSON HILL: Okay. You can e-mail it to
5 us. And again, all right. So, go ahead, Ms. Tates.
6 Again, we're just trying to talk about this case.

7 MS. SCRUGGS-TATE: Right. And that -- but
8 this is the case. It hasn't been changed yet. You
9 all haven't approved anything.

10 So, I was just trying to show you what you all
11 had approved in the past, which is now a reality in
12 our neighborhood, two blocks away. Now, we go from
13 our fire is being inundated. Our police services are
14 being inundated. We're getting more people with these
15 kind -- with different types of development that's
16 being approved on a planning level, or to change
17 ordinance.

18 So, my thing is, we went to them as you
19 suggested, and we haven't heard one thing from them
20 through our TTOP, which is 22nd, 24th, Otis and Perry
21 Block Club. The gentleman had two cars, one for me
22 and one for our Vice President of TTOP, and we've had
23 our first meeting since our coming here, and we
24 haven't heard anything.

25 So, that's the community involvement that we

1 want, that we're not getting. So, that's all I have
2 to say.

3 CHAIRPERSON HILL: Okay. Thank you.

4 MS VOLLINS: I am --

5 CHAIRPERSON HILL: Oh, you can sit there. We
6 still might have some questions for you.

7 MS VOLLINS: I'm also in opposition and I want
8 to just bring up a couple of points. Number one,
9 originally why was the variance changed? I know that
10 you say that there are many lots in this neighborhood
11 that are this size with houses on it. But at some
12 point there was a law and it changed.

13 So, I want -- I mean, I do want you to think
14 back to why originally, was that changed then, because
15 obviously there was something or somethings that have
16 happened to have to change it from eight feet.

17 I also just want to be more visual. I know
18 it's like looking at paper and you're looking at lots,
19 and you're looking at numbers, and you're seeing that
20 like, yeah, the building won't be right next to the
21 other building, but I want to have a visual. Like,
22 you're putting, or they're proposing to put a single-
23 family home on truly a lot that should be a D.C.
24 rowhouse size. I mean, literally, it's a tiny, tiny
25 lot.

1 If you were to walk up the street and look at
2 it, granted, okay, it's not right on top. It's next
3 to the yards. But it's a tiny lot. It doesn't even
4 take up this entire room. So, I think like I said,
5 for you guys and you're, you know, you're looking at
6 the paper part of it. But I encourage you to like
7 really think about, think about what a, you know, a
8 single-standing, single-family home and then think
9 about the size of a true D.C. rowhouse, and that's
10 what the lot is. I mean, if you put a D.C. rowhouse
11 on this lot you would literally have no yard. You
12 would have just a walkway on each side of the --

13 I'm also good friends with Andrea Deadwyler,
14 John Deadwyler's wife. And she's not able to be here,
15 so I did want -- her and I have talked about her
16 concern is I believe she says they want to dig 10 feet
17 down. And so, her concern is that yes, they do have
18 lots in this neighborhood that size that they dug and
19 built on in the '20s. So, you're talking about --
20 you're talking about structures that have been
21 untouched and undisturbed since the '20s. Now you're
22 going to dig 10 feet down right next to, not even
23 near, right next to these two structures.

24 So, you know what I mean? I know the windows,
25 the window thing seems complete -- I think the real

1 issue is that it's absolutely too small to build a
2 house on. Like, it's 100 percent too small. And I
3 know that the construction, they're saying the
4 construction, yeah, the construction is going to be a
5 huge inconvenience to all of us on the block. But I
6 mean, to me it's just a no-brainer. If you made the
7 rule that it had to have eight feet on each side, I
8 encourage you to ask yourselves, why was that rule
9 originally made.

10 And I know that eight feet to three feet is a
11 huge difference in terms of building a structure next
12 to someone's house.

13 And like John Deadwyler said originally, if it
14 were your house, would three feet be substantial?
15 Would that be a substantial enough space to build, to
16 dig 10 feet down, and to build a house next to?

17 CHAIRPERSON HILL: Okay. Does the Board have
18 any questions for the witnesses?

19 [No audible response.]

20 CHAIRPERSON HILL: All right. Could I have --
21 thank you all very much.

22 Could I have the next group of witnesses come
23 forward? I thought there was two, and then the ANC,
24 if you wouldn't mind coming on --

25 MS. BREVARD: [Speaking off microphone.]

1 CHAIRPERSON HILL: You have nothing more to
2 add? You don't want to get on the record here? You
3 came all the way down and -- yeah, we'll get to
4 support. Yeah.

5 Okay. All right. So, if you could just give
6 me your name, please?

7 MR. R. DEADWYLER: Richard Deadwyler.

8 CHAIRPERSON HILL: Is your microphone on? The
9 green light is on?

10 MR. R. DEADWYLER: The green light is on.

11 CHAIRPERSON HILL: Oh, okay.

12 MR. R. DEADWYLER: I'll speak louder.

13 CHAIRPERSON HILL: Okay. That's all right.

14 MR. R. DEADWYLER: My name is Richard
15 Deadwyler.

16 CHAIRPERSON HILL: Okay, great. Thank you.

17 MR. R. DEADWYLER: My father, John Deadwyler.

18 CHAIRPERSON HILL: Okay.

19 MR. R. DEADWYLER: My parents bought the
20 property at --

21 MR. MOY: Excuse me. Excuse me, sir. I'm
22 sorry to interrupt. Could you push the button again
23 until it glows green, like a neon green?

24 MR. R. DEADWYLER: Okay. Okay.

25 CHAIRPERSON HILL: Oh, there you go. Thank

1 you.

2 MR. R. DEADWYLER: Okay, my parents --

3 CHAIRPERSON HILL: Mr. Deadwyler, before you
4 move on, I'm sorry, if I could get introduced to the
5 ANC. If you could just put your name there? Tell me
6 your name.

7 MS. BREVARD: I'm Gail Brevard, ANC 5C-01.

8 CHAIRPERSON HILL: How do you pronounce your
9 name again?

10 MS. BREVARD: Brevard.

11 CHAIRPERSON HILL: Okay, Mr. Deadwyler, I'm
12 going to go ahead and give you two minutes like
13 everyone else. Okay?

14 MR. R. DEADWYLER: Okay. Again, my parents
15 bought the property at 3706 22nd Street back in early
16 1955. So, the property has been in the family until
17 this point.

18 And my point, my only point is this, in terms
19 of the size of the property, in terms of what's being
20 planned there, I think the -- some consideration, and
21 much consideration should be given to the character of
22 the neighborhood, and also the impact on the
23 neighbors.

24 As previously stated, the developers will not
25 live in the property that's being proposed to be built

1 there. Some consideration has to be given to the
2 existing owners, long-term, and moderately, in terms
3 of moderate ownership.

4 My point is, the City is under major
5 development. Consideration has to be given to the
6 continuity, the relationships that have to be
7 maintained with citizens who are living in the city.
8 The neighbors are in major objection. Are the laws in
9 place to protect the citizens or the developers?
10 That's my point.

11 CHAIRPERSON HILL: Okay. Thank you, Mr.
12 Deadwyler. Does anyone have any question for this
13 witness? Okay.

14 Ms. Brevard -- I'm having a hard time with
15 names today. Are you the SMD for the ANC there?

16 MS. BREVARD: Yes, I am.

17 CHAIRPERSON HILL: Okay. And I know that you
18 didn't have anything to say, and I can't remember
19 whether you spoke the last time or not. Did you?

20 MS. BREVARD: I did.

21 CHAIRPERSON HILL: Okay. So, you didn't have
22 anything else to add. You weren't interested in
23 adding anything, or would you like to add anything?
24 And I think maybe the Board might have questions of
25 you so that's why I also brought you up.

1 MS. BREVARD: No. There is one thing I would
2 like to add, and that is the inexperience of the
3 developer. At the ANC meeting we asked him, has he
4 ever built a house on a lot that small, as small as it
5 is, with the three-foot, six-inch side yard. His
6 answer was no. So, this is new to him. It's risky,
7 and that's all I have to add.

8 CHAIRPERSON HILL: Okay. Does the Board have
9 any questions for the commissioner?

10 MS. WHITE: Were there any other concerns that
11 were communicated by the ANC?

12 MS. BREVARD: Yes. It's in my report. I can
13 go through it if you'd like. One is the disruption of
14 the foundations which was already mentioned today, and
15 the utility lines. We don't know where these roots
16 go. And, the other concern with the roots is that the
17 Deadwyler's roots may have crossed property lines on
18 to this lot, and cutting, severing the roots at the
19 property line might damage the vegetation on her
20 property. We don't know. We don't know if the roots
21 are wrapped around the gas lines, the water lines, and
22 just the jarring from severing the roots may disrupt
23 these lines.

24 This was also mentioned; the construction
25 management agreement is inadequate. It does not meet

1 the unique situation of the neighbors.

2 And, the DDOT report is clear that -- and that
3 was brought up already, RIEI did not have a permit to
4 cut the trees down. And they were fined for that.
5 And because of those actions, or that action, we can't
6 trust this LLC.

7 MS. WHITE: Thank you.

8 MS. BREVARD: To be honest and up front with
9 us.

10 CHAIRPERSON HILL: Okay. Thank you. Does
11 anyone have any more questions for the ANC?

12 [No audible response.]

13 CHAIRPERSON HILL: All right. Thank you all
14 very much.

15 I just had a question for the applicant again.
16 The side yard relief, what Mr. Miller had -- or
17 Commissioner Miller had mentioned again, what was the
18 difference between -- I know you're going -- 17 feet
19 is how small you think you can go and still make it
20 work. What was it otherwise?

21 MR. DEVERGER: So, we're proposing 18, and we
22 had discussed previously, prior to, you know,
23 submitting the 18-foot wide, a 17-foot wide structure,
24 which would be essentially a foot smaller.

25 CHAIRPERSON HILL: Right. So, people will get

1 six inches again, on either side.

2 MR. DEVERGER: Yes.

3 CHAIRPERSON HILL: Okay. Okay. Oh, yeah, is
4 there anyone here in support of the application?
5 Would the lone sole person please step up? You are a
6 brave man.

7 MR. CRONENBERG: Our neighborhood barbeques
8 just got a lot more interesting.

9 CHAIRPERSON HILL: Yeah, no. Please, have a
10 seat. Please introduce yourself.

11 MR. CRONENBERG: This is on?

12 CHAIRPERSON HILL: Yeah.

13 MR. CRONENBERG: James Cronenberg. I live at
14 2032 Otis Street Northeast, which is the lot across
15 the alley.

16 CHAIRPERSON HILL: Behind the proposed?

17 MR. CRONENBERG: Behind the proposed house.

18 CHAIRPERSON HILL: Could you say your name
19 again for me?

20 MR. CRONENBERG: James Cronenberg.

21 CHAIRPERSON HILL: Cronenberg.

22 MR. CRONENBERG: C-R-O-N-E-N-B-E-R-G.

23 CHAIRPERSON HILL: All right. There's a beer
24 named after you, I can remember that. Okay. All
25 right.

1 MR. CRONENBERG: Close.

2 CHAIRPERSON HILL: Oh, so, I'll remember.

3 MR. CRONENBERG: Well, I'm clearly --

4 CHAIRPERSON HILL: Please, you're going to get
5 two minutes. I'm going to go give you two minutes.

6 MR. CRONENBERG: All right, thank you.
7 Clearly a nonconformist in a nonconforming lot. We
8 live in a 17-foot wide house on a 20-foot wide lot.
9 The alley is our side yard, in effect. Our house is
10 built right on the alley.

11 So, in reality we would probably be affected
12 on a daily basis by headlights turning in and out of
13 the driveway, neighbor activity in the rear yard. But
14 we've you know, watched this lot for years. We think
15 that the -- when I say we, I mean, my wife, daughter,
16 and I.

17 Look at the plans on paper. I'm an architect.
18 So, I kind of go by what I see on the page and what's
19 been designed. And it seems to me to be a perfectly
20 reasonable request. It's a house that is not out of
21 scale with other homes in the neighborhood. It's a
22 house that's not out of scale with other homes across
23 the street, on the east side of 22nd Street. And it's
24 also exactly the size of our home.

25 So, they've had a wider lot with the same size

1 house as ours, and I just wanted to speak in support
2 because I think it's a reasonable request.

3 CHAIRPERSON HILL: Okay, great. Does the
4 Board have any questions for the applicant? I mean,
5 I'm sorry, for the witness?

6 Your home is currently -- is 17-feet wide?

7 MR. CRONENBERG: Yes. Yes.

8 CHAIRPERSON HILL: Okay. So, that's what you
9 maybe kind of propose? All right. I'm sorry, go on.

10 MR. HART: I have a question. Is your -- does
11 the house that you live in, is that a new house, or is
12 that an existing house that's --

13 MR. CRONENBERG: 1934, it's -- it predates the
14 zoning code, the '58 zoning code.

15 MR. HART: Thank you. Thank you.

16 CHAIRPERSON HILL: Okay. Mr. Cronenberg,
17 thanks so much. That's a -- yeah, I mean, it's very,
18 what's the word, I don't know, bold of you to come
19 down and lend your support. You know, and so I hope
20 that --

21 MR. CRONENBERG: Well, I do still love our
22 neighbors.

23 CHAIRPERSON HILL: And that's good. That's
24 good. And it's nice that you can express your
25 opinion. You know, we still live in a place where you

1 can do that, apparently.

2 MR. CRONENBERG: Yes. Thank you.

3 CHAIRPERSON HILL: Okay. Let's see. So, does
4 anybody have anything else for the applicant?

5 MR. HART: So, you've -- you would consider,
6 or you said you looked at the 17-foot wide house.
7 Would you consider that or that's something that you -
8 - I mean, you didn't submit that to us, so --

9 MR. DEVERGER: Yeah. So, that was initially
10 when we started looking at this property and really
11 sort of programming it. We bounced back and forth on
12 whether we should proceed with the 18 or 17. So,
13 that's definitely something that we would be open to
14 and have already considered.

15 MR. HART: And have you done any sort of -- a
16 look at the widths of existing houses?

17 MR. DEVERGER: Yes.

18 MR. HART: Be able to have that --

19 MR. DEVERGER: Yes, certainly we canvased the
20 neighborhood, and there is significant examples of
21 structures that are this width and that's something in
22 terms of the design and layout that, you know, we feel
23 that we can still make it, make it work and be a
24 habitable residence.

25 MR. HART: And, can you provide that

1 information to us?

2 MR. DEVERGER: I mean, we would have to -- I
3 mean, this was the project team, but yes, certainly.
4 Yeah.

5 MR. HART: So, I think it would be helpful to
6 understand part of what the discussion here, and
7 you've heard that there is considerable opposition to
8 this because of the construction impacts that you're
9 talking about -- sorry, because of the construction
10 impacts -- I mean, in all construction has to -- is,
11 you know, you don't exactly know what is going to
12 happen. You know what you expect to happen, but one
13 of the things that it would be helpful for us to have
14 is really what is it that you kind of looked at the
15 range of the house that are in the community so that
16 we have a better understanding.

17 We've heard some anecdotal information about
18 it.

19 MR. DEVERGER: Uh-huh.

20 MR. HART: But I think having that information
21 would be helpful for us as we're making that decision.

22 And, you know, it sounds like you've actually done
23 some of this work already, so it's really just kind
24 of, you know --

25 MR. DEVERGER: Now, to just to clarify that.

1 Now, this was our internal project team just sort of
2 when we were internally programming. So, when we
3 brought our architect on board we had already made a
4 decision to go with an 18-foot wide structure.

5 MR. HART: I understand that.

6 MR. DEVERGER: And, that was the drawings that
7 were prepared. But internally, yes, we did explore 17
8 foot as an option and we feel that that would be a
9 viable option for us as well.

10 MR. HART: And I'm just looking at the --
11 because we've heard quite a bit of information about
12 again, it's anecdotal information about what the size
13 of houses are, it would be helpful for us to
14 understand that this house -- is 17-foot the norm, or
15 is that really narrow for this neighborhood, or are
16 most of the houses a much larger, you know, size.

17 What I'm asking you to do is to not
18 necessarily respond right now. It's just to provide
19 the information for us.

20 MR. DEVERGER: Okay.

21 CHAIRPERSON HILL: Okay. So, it sounds like
22 there's more information that's going to be asked.
23 What I would be -- then, I guess if we're going to go
24 down this road in terms of asking for further
25 information, again, we would need drawings then, for

1 the 17-foot home and I don't know if they need to
2 change the application then to revise it for the
3 relief being requested, if you went to 17 feet.

4 And then, also, I'd like to see again -- and I
5 would like to see, again, something that clearly
6 provides indemnification for the two neighboring
7 properties. And I guess if you can, you know, ask
8 your attorney to clearly set an e-mail that explains
9 what that means, and how you are now -- and how the
10 neighbors, the neighbors are now protected from, you
11 know, anything that might happen in construction,
12 right? They're not on the hook for anything that
13 might happen during the construction.

14 I also am aware and understand and am, you
15 know, thankful, pleased, whatever, that you guys are
16 trying to work with us in terms of the construction
17 management agreement, knowing that that's kind of
18 outside of our purview. Right?

19 And the reason why, again, I mentioned before
20 that I'm more particularly interested in this, is
21 again, there's so much opposition. The ANC is
22 opposed. You bought a small lot knowing you were
23 going to need some kind of relief, right? I mean, you
24 weren't going to be able to probably do anything with
25 it, and the tree got cut down. So, I'm just kind of

1 giving you where I am as to why I'm asking for these
2 things that you have now proffered.

3 So then, Mr. Sullivan, if you can make one
4 file, you know one exhibit, that encompasses the other
5 things that you already have proffered, which is the
6 lighting and the bathroom, and you know, the hours,
7 you know, that you have there, including the
8 indemnification, and then add the drawings for the 17
9 feet, rather than the 18 feet. And then, if you have
10 to clarify anything in terms of the relief being asked
11 for, then that would all that I'd be interested in
12 seeing.

13 Mr. Miller?

14 MR. MILLER: Thank you, Mr. Chairman. Yeah, I
15 support each of my colleagues' request for that kind
16 of information. I also would like to -- information
17 in addition to that, as to why even a narrower width
18 house is not viable. Some kind of statement as to why
19 a 16-foot wide, 15-foot wide, if you're saying -- but
20 to the extent you can make any submission that
21 increases the side yard, I think that would be
22 helpful.

23 CHAIRPERSON HILL: Okay. Does the applicant
24 have any questions about what's being asked of them?

25 MR. SULLIVAN: No, I don't think that we do.

1 But, I just, I agree with you on the issues of
2 construction. It's a real and substantial concern for
3 neighbors all the time. They don't know what they're
4 going to get. So, I will think creatively about
5 putting more assurances in the CMA that would solve a
6 lot of problems for me in many of my cases.

7 Regarding the issue of the width, we do have
8 some information in the record. It's Exhibit 48.
9 There's been a survey of the surrounding properties.
10 And the overwhelming majority of lots are this width.
11 They're 25 feet. And the overwhelming majority have
12 side yards that would be smaller than what we would
13 end up proposing at four feet each.

14 So, and this kind of relief, the Board is,
15 obviously, they've done many cases over the years
16 about substandard lots, and the related setback relief
17 requested for that. And one of the primary aims of
18 the variance relief process is to utilize idle land
19 that can't be used.

20 Now, that doesn't mean that every lot that's
21 empty gets to be built on. What it usually means is
22 that if the lot is in the character of the other lots
23 around it, the Board would approve a house that's in
24 the character of the lots around it. And I think
25 that's what's shown in Exhibit 48, and there's photos

1 in there too, of the small size of the side yards and
2 the small width of the lots. We think it's a modest
3 proposal. It's only two stories, and they squeezed as
4 much side yard out of it as could, and willing to
5 squeeze a little more.

6 So, if the Board wants more specific data on
7 the number, you can tell from the photos in there,
8 there's general information and you can see that the
9 lot size is -- most of them are 25 feet. Overwhelming
10 majority on the square are 25 feet wide. And there's
11 a diagram in there that shows the houses that have
12 similar or smaller side yards. We can be more exact
13 if you want, but I --

14 CHAIRPERSON HILL: I mean, Mr. Sullivan, if
15 you just want to go ahead and resubmit that then --

16 MR. SULLIVAN: Sure.

17 CHAIRPERSON HILL: -- in a package that would
18 be easier for Mr. Hart to review, that would be
19 helpful.

20 MR. SULLIVAN: Sure.

21 CHAIRPERSON HILL: And so, then anybody have
22 anything else? Okay.

23 So, again, you're clear as to what we're
24 asking for and for the people here and that have come
25 to speak in opposition, you know, we're again asking

1 for further clarification in terms of the -- what's
2 been proffered, including the indemnification. And
3 then, if you could send something -- and you could
4 even submit that into the record, like the e-mail that
5 you submit to the neighbors, kind of explaining -- I
6 mean, that's one piece that didn't, for me, come
7 across in your construction management agreement.
8 Like, you know, that you really kind of went through
9 and tried to make the neighbor feel comfortable with
10 the fact that if this were to move forward, their home
11 would not be damaged. Right?

12 And so, that's what I'm kind of looking for
13 with that. And again, to the members of the
14 opposition in the audience here, it's something that
15 the applicant -- it's kind of out of our purview. And
16 so, the applicant is trying to work with us, to work
17 with the opposition.

18 What has been -- I've found this also a
19 difficult case to kind of go through in some regards.
20 But in some regards not, in that that's why we're
21 here, is to see whether or not there are lots that can
22 be used, and accordingly that meet the standard for
23 the variance of relief that's being asked.

24 And so -- but so, any case, that's kind of my
25 thoughts and what we're asking for in terms of

1 submission. So, Mr. Moy, when would we -- then I
2 would close the record, Mr. Moy, except for what was
3 asked for of the Board. And then set for a hearing
4 date. I'm sorry, a meeting date.

5 MR. MOY: A meeting date. Well, I think the
6 earliest we can do this, and assuming that the
7 applicants can make their filing quickly, and I know
8 the architect, Mr. Warren, is very talented because
9 the next hearing is next week, Wednesday. So, if you
10 can make the filing --

11 CHAIRPERSON HILL: Next Wednesday Mr. Miller
12 is here, you mean? Right.

13 MR. MOY: Yes.

14 CHAIRPERSON HILL: Right. Right.

15 MR. MOY: So, that might be appropriate since
16 Mr. Miller will be with us. So, in other words, if
17 the applicant can make their filing quickly, of course
18 I would say Friday, but because of the number of days
19 I'm willing to go into Monday if the Board was okay
20 with it. But, Friday would be preferable.

21 CHAIRPERSON HILL: I'm fine with Monday.

22 MR. MOY: Mr. Sullivan.

23 MR. SULLIVAN: Yeah, that's fine with us.
24 Thank you.

25 CHAIRPERSON HILL: For which day?

1 MR. SULLIVAN: Monday.

2 MR. MOY: Okay.

3 CHAIRPERSON HILL: All right? Okay. All
4 right. Then, there you go.

5 [Discussion off the record.]

6 CHAIRPERSON HILL: Okay. Thank you,
7 gentlemen.

8 MR. SULLIVAN: Thank you.

9 MR. DEVERGER: Thank you.

10 CHAIRPERSON HILL: Mr. Moy, I think we have
11 one more -- or one more case, I suppose, before the
12 appeal.

13 MR. MOY: Yes, we do.

14 CHAIRPERSON HILL: If we can kind of speak
15 about that. And there was a preliminary matter I
16 think, correct?

17 MR. MOY: Yes.

18 CHAIRPERSON HILL: And I think it was Mr.
19 Sullivan, actually, as well. Correct?

20 MR. MOY: That's correct.

21 [Discussion off the record.]

22 MR. SULLIVAN: I didn't know if you wanted to
23 hear from us or not, about the request.

24 CHAIRPERSON HILL: Yeah, he's going to call
25 the case. Just give one second.

1 [Discussion off the record.]

2 MR. MOY: Sorry, Mr. Chairman. Okay. So,
3 this would be -- yes, this is Application No. 19404 of
4 Bellview Development, scheduled for today's hearing.

5 Mr. Chairman, there's a preliminary matter in
6 that the applicant made a motion to postpone, or
7 rather continue the hearing to a future date, so I'll
8 let the applicant speak for himself.

9 CHAIRPERSON HILL: Okay, great. Since
10 everyone sat at the table, and I don't know if we're
11 going to get to everybody or not, if you could just
12 introduce yourselves from my right to left?

13 MR. SULLIVAN: Thank you, Mr. Chairman. My
14 name is Marty Sullivan on behalf of the applicant.

15 MR. ALI: Ramy Ali from Ram Design, the
16 project architect.

17 MR. BRAND: Good afternoon, I'm Michael Brand.
18 Still good morning. Michael Brand, counsel for the
19 Burreesses.

20 CHAIRPERSON HILL: Counsel for whom?

21 MR. BRAND: The Burreess parties.

22 CHAIRPERSON HILL: Oh, okay.

23 MS. HOGAN-BURRESS: Good morning. I'm Valeria
24 Hogan-Burreess, I'm the -- my husband and I own the
25 property, 436 3rd Street, next door to the new

1 property that's proposed.

2 CHAIRPERSON HILL: Okay. All right. Now,
3 that's -- now I remember this.

4 So, Mr. Sullivan, can you explain the
5 postponement?

6 MR. SULLIVAN: Yes. Thank you, Mr. Chairman.
7 The applicant has been working with both neighbors
8 and have secured an agreement and a construction
9 management agreement with the neighbor to -- at 432.
10 And the neighbor on the other side is here.

11 We haven't submitted it yet, but we have come
12 up with a proposal that's a, we think, a substantial
13 change that would lessen any impact on this neighbor.
14 But we just proposed that yesterday, and they
15 requested more time to have his architect review it
16 and we would like to request a continuance for that
17 purpose.

18 CHAIRPERSON HILL: Okay. When do you think
19 you'll be able to come back to us?

20 MR. SULLIVAN: It would be up to her counsel.

21 MR. BRAND: I'm out of town next week. Either
22 the week of the --

23 [Discussion off the record.]

24 CHAIRPERSON HILL: Mr. Miller, when are you
25 with us again after this next hearing?

1 MR. MILLER: I was just going to ask Mr. Moy,
2 that. I don't know.

3 MR. MOY: April. April 26th.

4 CHAIRPERSON HILL: April 26th?

5 MS. HOGAN-BURRESS: That will work.

6 CHAIRPERSON HILL: Was April 26th okay with
7 you guys? Okay.

8 MR. SULLIVAN: I was hoping for something
9 sooner, but if that --

10 CHAIRPERSON HILL: How --

11 MR. SULLIVAN: It is what it is.

12 MR. MILLER: I can come back earlier if that -
13 -

14 CHAIRPERSON HILL: Well, it's more like when -
15 - I mean, I'm trying to be accommodating. I mean, we
16 were ready to go today and we were asking for a
17 postponement and I appreciate that because hopefully
18 you can tidy up some things that seem to be issues.

19 So, let's go with the 26th, okay?

20 MR. SULLIVAN: Yeah, it's worth if it we can
21 come to an agreement.

22 CHAIRPERSON HILL: Okay, yeah. Let's try to
23 come to agreement and get us back here on the 26th
24 because when Mr. Miller is going to be here.

25 So, I would go ahead and approve a

1 postponement until the 26th. Does the Board have any
2 opposition to that? Okay. All right.

3 Mr. Moy, would that work for your office?

4 MR. MOY: Actually, if it works for the Board,
5 it works for our office, sir.

6 CHAIRPERSON HILL: Okay. Then that's what I
7 would propose, and we'll see you guys on the 26th.
8 And then just again, we're going to take a break here.

9 We have a pretty long appeal coming up, and so maybe
10 we'll come back and we'll take like a five, seven-
11 minute break. Okay? Thank you.

12 MS. HOGAN-BURRESS: Thank you.

13 MR. BRAND: Thank you.

14 [Off the record from 11:56 a.m. to 12:09 p.m.]

15 CHAIRPERSON HILL: All right. If we could all
16 just please come back to order? I just want to kind
17 of let everybody know here in the audience kind of
18 what our timeline seems to be. If you're here for a
19 case that's not the appeal, I mean, the appeal is
20 going to take some time, I would say even an hour and
21 a half, two hours, and so then we'll probably take a
22 break after that. So, if you're not here for the
23 appeal, then you know, we won't need you for a little
24 while.

25 Just out of curiosity, who's here not for the

1 appeal?

2 Oh, okay. All right. So then, you're good.
3 Just enjoy yourselves. All right.

4 So, okay. So, if we could, I'm going to go
5 from my right to left if you could just introduce
6 yourselves, please?

7 MR. TONDRO: Yes, Maximilian Tondro on behalf
8 of the Zoning Administrator.

9 MR. LeGRANT: Matthew LeGrant for DCRA.

10 MR. CASEY: John Casey, the developer for 1514
11 Q Street.

12 MR. COLLINS: Christopher Collins with Holland
13 and Knight, representing the property owner.

14 MR. GELFAND: Brian Gelfand with DCCA.

15 MS. DIENER: Good afternoon, Robin Diener.
16 I'm president of the DuPont Circle Citizen's
17 Association.

18 MR. HAWKINS: Don Hawkins, architectural
19 consultant.

20 MR. GAMBRELL: Alan Gambrell, citizen and in
21 support of DCCA.

22 MR. FLINN: Susan Flinn, citizen and with
23 Square 150.

24 CHAIRPERSON HILL: Okay, great. Well, thank
25 you all. Welcome. Thanks for being here. Again, we

1 did our best to get you up as soon as possible. It
2 took me a little longer than I thought, but I'm glad
3 we're settling in here.

4 Let's see, there are some issues concerning, I
5 guess, Mr. Tondro, the standing and the timeliness.
6 And so, what I'd like to do is go ahead and first hear
7 those. We, as a Board, I think, unless the Board has
8 any other questions. And before I move forward again,
9 Board Member White is here, sitting in observing as
10 she was not previously here. And so, just to clear
11 that for the record.

12 MR. MOY: Mr. Chair.

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: While you are caught in the middle
15 of your breath.

16 CHAIRPERSON HILL: Sure.

17 MR. MOY: Should I call the case really
18 quickly first?

19 CHAIRPERSON HILL: Oh, sure. No, I'm sorry.
20 I'm getting far ahead of myself.

21 MR. MOY: Very quickly, this is Appeal Number
22 -- this is for the record. This is Appeal No. 19374
23 of DuPont Circle Citizen's Association, captioned,
24 advertised for an appeal from the July 18, 2016
25 decision by the Zoning Administrator, Department of

1 Consumer and Regulatory Affairs, to issue Building
2 Permit No. B-1603105, for the conversion of a one-
3 family dwelling into a four-unit apartment house, R-5-
4 B District, 1514 Q Street Northwest, Square 194, Lot
5 27, and as the Board is aware, there were motions
6 before the Board from the property owner and DCRA.

7 CHAIRPERSON HILL: Okay. So, again, it was
8 the lack of standing and then the timeliness were the
9 first two, or were the two issues. And then, so what
10 I'd like to do is go through those first and then
11 we're probably going to hold those in abeyance, and
12 then we're going to hear the merits of the appeal.

13 So, I just want to let everyone know kind of
14 our thoughts, unless the Board has any objection to
15 that. Mr. Tondro, you seem like you want to say
16 something.

17 MR. TONDRO: Don't worry, it's not another
18 motion. It's rather the fact that the Zoning
19 Administrator still needs to be sworn in.

20 CHAIRPERSON HILL: Oh, okay. Great. Please,
21 Mr. LeGrant, if you wouldn't mind swearing in to tell
22 the truth? Mr. Moy, when you have an opportunity.

23 MR. MOY: Sorry about that.

24 [Oath administered to the Mr. LeGrant.]

25 CHAIRPERSON HILL: Mr. LeGrant, did you know

1 that lawyers don't have to be sworn in? Like, you
2 could be a lawyer maybe, or maybe you should --

3 MR. LeGRANT: I think I knew that already.

4 CHAIRPERSON HILL: Yeah, so, being the Zoning
5 Administrator I would think that you should just be
6 sworn in all the time. That's what I think, okay?
7 But that is not up to me.

8 So, Mr. Tondro, as I said before, that was the
9 hope in terms of the process. So, would you like to -
10 - I guess it's kind of up to you. Do you want to talk
11 about -- or, I shouldn't say up to you. Let's maybe
12 talk about the standing first, and then we'll talk
13 about the timeliness.

14 MR. TONDRO: Yes.

15 CHAIRPERSON HILL: And I'll let the opposition
16 have -- or the appellant have an opportunity to
17 respond.

18 MR. TONDRO: Sure. And I believe that the
19 owner in this case also had filed a motion on
20 timeliness grounds as well, just to -- for the Board's
21 information.

22 MR. MOY: Sorry, sir. Sorry to intervene
23 again.

24 CHAIRPERSON HILL: That's all right.

25 MR. MOY: How much time do you want to give

1 for this, or we have --

2 CHAIRPERSON HILL: Mr. Tondro, I mean, I'm
3 trying to do this as expeditiously as possible. How
4 much time do you think you need for the standing
5 portion?

6 MR. TONDRO: I can't imagine more than maybe
7 five minutes. I will try to keep it as limited as
8 possible.

9 CHAIRPERSON HILL: Okay. I appreciate that.
10 I'm just going to put five minutes on the clock, just
11 so we know where we are on things. Okay? And then
12 we'll just see how it goes.

13 MR. TONDRO: That sounds great.

14 CHAIRPERSON HILL: Thank you.

15 MR. TONDRO: Thank you. Good afternoon, or
16 are we afternoon already? Chairman Hill and members
17 of the Board, thank you for your attention in this
18 matter.

19 I think you've had extensive briefs that have
20 been back and forth and back and forth on this matter
21 probably far too much at this point to read. The
22 issue that we raise in terms of standing and
23 timeliness, they are actually sort of fairly
24 inextricably linked. But I'll try to keep them
25 somewhat separate in light of what Chairman Hill just

1 said.

2 The issue for us in terms of standing is that
3 the DDCA, in response to our request or note that they
4 had not provided what we believed was a clear enough
5 statement as required under the zoning regulations, of
6 their standing, affirmed only -- the only evidence
7 they provided was -- or the only assertion, or the
8 basis for which they provided was the fact that Mr.
9 Gelfand was a member of the organization.

10 And Mr. Gelfand, presumably, as a direct
11 neighbor, presumably is going to be affected by this,
12 I think that that is probably pretty clear, although
13 it hasn't been entirely stated as to exactly how the
14 alleged errors of the Zoning Administrator have --
15 would direct affect and aggrieve him as a neighboring
16 property owner. I assume it's because he's on the
17 upper floors. And if this was allowed to be built
18 out, he would no longer be able to be overlooking a
19 lower roof. But that hasn't been clearly stated as to
20 what that is.

21 But apart -- but the key issue is that even if
22 Mr. Gelfand -- once Mr. Gelfand comes in as the locust
23 of standing for DDCA, then there's a real problem with
24 timeliness, because Mr. Gelfand clearly received
25 notice of the final decision of the Zoning

1 Administrator back in March. At that point it's very
2 clear that he had notice that it was a -- and it was
3 direct notice provided directly to him, to Mr.
4 Hawkins, to Commissioner Nichols, to Commissioner
5 Gambrell as well, addressing all of the issues that
6 are raised in the appeal.

7 At that point, that's when the 60-day clock
8 started. Instead, what ended up happening is that Mr.
9 Gelfand and the others decided just to wait. They let
10 the clock run out.

11 And then in September, so, remember, in March,
12 after the Zoning Administrator worked with the ANC
13 Commissioner Nichols and went and sent inspectors --

14 MR. TURNBULL: Mr. Tondro, I might just --
15 you're talking of 2016?

16 MR. TONDRO: Yes. I'm sorry. Yes, 2016.
17 Thank you, Commissioner Turnbull. Yes, of 2016.

18 And just for your -- to keep track of things,
19 if you look at my filing, my most recent filing,
20 Attachment A is a timeline which has reference to all
21 of these, so you can look back and you see the March
22 9th e-mail.

23 CHAIRPERSON HILL: Mr. Tondro, which exhibit
24 is it in? Do you now?

25 MR. TONDRO: Not off -- oh, yes. I'm sorry.

1 Exhibit No. 50.

2 CHAIRPERSON HILL: All right. Thank you.

3 MR. TONDRO: Sure. And so, just going through
4 -- and again, this is more extensively described in
5 the briefing documents, but you can see there, the e-
6 mail is already -- and March 9th. That specifically
7 raised the same questions to the Zoning Administrator.
8 The Zoning Administrator responds with a
9 determination letter.

10 And again, I would emphasize that the Zoning
11 Administrator spent time drafting that and sending
12 that out as a final decision, and then in addition
13 responded not only published it on the website, but
14 more importantly provided it directly by e-mail to the
15 parties, including Mr. Gelfand. And then the next
16 day, responded again to another aspect that is not in
17 the determination letter, but that had been raised
18 about the issue of the habitable room, how that
19 interacted with the determination of the basement
20 cellar classification.

21 And those were all then -- that date was March
22 the 22nd. So, you end up in a situation where from
23 there, you have two months, 60 days. And in that time
24 period nothing was filed. Instead, Mr. Gelfand waited
25 until after the building permit was issued, and then

1 subsequent to that, in September, so almost six months
2 after the -- after he had received notice of the fact
3 that the Zoning Administrator made a determination,
4 had stated that he would approve the permit as shown
5 on the approved plans, and addressing this issue of
6 that basement cellar determination, six months later
7 then, Mr. Gelfand says he went to DCCA and said, hey,
8 this is an issue you should be worried about.

9 It's six months after the fact. He sat for
10 two months. And when he had his appeal period, and
11 decided not to take the appeal at that time, Mr.
12 LeGrant, the Zoning Administrator, took the time to
13 make sure there was a concrete decision that could be
14 appealed. The Zoning Regulations, Y-302.5 make it
15 clear that that is not necessarily a building permit.

16 It's the first writing of a final decision if notice
17 is provided. I think it's clear that notice has been
18 provided in this case, to Mr. Gelfand. And so, and
19 Commissioners Gambrell, Commissioner Nichols, at that
20 time, Commissioner Gambrell, as well as also, Mr.
21 Hawkins. So, I think all of those were charged with
22 notice.

23 So, getting back to this issue of standing, I
24 think Mr. Gelfand and the others, who were notified,
25 they sat on their appeal rights. They chose not to

1 file. That's their prerogative not to. But they
2 can't, after the fact, get a second bite at the apple.

3 If DCCA -- I think there's two questions. If
4 Mr. Gelfand is removed because he's timed out, then
5 there's a question of do they have standing?

6 We raised this issue of standing precisely to
7 understand what it was, who it was that they were
8 representing. And I think without Mr. Gelfand you end
9 up in a situation where they haven't stated anything
10 for the record, other than an amorphous statement that
11 they represent the area. But again, no relationship
12 to the specific errors that they allege that the
13 Zoning Administrator committed that would have a
14 specific impact on them.

15 And in addition, even if you were to determine
16 that they had standing, then there's the question of
17 the imputation of knowledge. If they had the standing
18 through Mr. Gelfand you ended up in a situation where
19 they should have notice as well. And I would argue,
20 even if you took Mr. Gelfand out of the equation
21 completely, you end up in a situation still, where
22 this neighborhood, already back in November of 2015,
23 the ANC had a presentation on this project. You had
24 various different emails going back and forth that
25 you're involving the ANC commissioner, and the ANC --

1 the whole purpose of having the Advisory Neighborhood
2 Commissions is precisely to make sure that this kind
3 of information is disseminated at a local level. So,
4 this was the -- the zoning determination letter was
5 published at the time. We have a very clear sense
6 that this decision was made, and that was out there in
7 the community. And I have a really hard time seeing
8 how it is that DCCA can pretend that they've heard
9 absolutely nothing about it, and yet they're very
10 worried about if they're going to be directly
11 aggrieved by it.

12 They seem to say that the only time that they
13 had any knowledge or awareness of it was when Mr.
14 Gelfand approached them in September. And that, I
15 think, addresses a really big problem that the Zoning
16 Administrator has, which is that if this is allowed to
17 go on, and I don't want to sound like Chicken Little
18 again, Chairman Hill, but if this appeal is allowed,
19 is deemed timely, we end up in a situation where
20 somebody can go and force the Zoning Administrator to
21 take time to answer their specific questions, their
22 challenges to a permit, which is absolutely a valid
23 exercise of their rights. The Zoning Administrator
24 responds, says okay, here's my decision, it's done,
25 and then they sit on it and they don't appeal it. And

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1 then they just wait until they can find some other
2 neighborhood organization, or they found a
3 neighborhood organization in order to include
4 themselves and get out of the requirements.

5 The Zoning Commission just passed new -- they
6 just issued the new zoning regulations. They kept
7 this requirement of the 60 days. They didn't amend
8 it, and I really think that this is -- this presents a
9 clear path if it is -- if our motion to dismiss on
10 timely and standing grounds, is not granted, we risk
11 ending up in a situation where that's basically made a
12 mockery. The 60 day no longer applies and it becomes
13 a situation where you just have to say, oh well, this
14 other group, they didn't have any notice. And
15 therefore, since they didn't really notice, even
16 though I knew, but since I can use them to go and note
17 my appeal.

18 CHAIRPERSON HILL: Okay.

19 MR. TONDRO: I'll rest on that. Thank you.

20 CHAIRPERSON HILL: Okay. Thank you. And I
21 think you addressed both issues, correct?

22 MR. TONDRO: Yes.

23 CHAIRPERSON HILL: Yeah. Okay. Now again,
24 I'm just going to go left to right, if that's okay,
25 and let the property owner go next. Now, again, there

1 was -- I'm going to stay with the clock at five
2 minutes. If you don't mind. Again, if you could
3 speak to both issues, the standing and the timeliness,
4 because they do seem to be intertwined (sic).
5 Interwoven. And so, that would be great.

6 MR. COLLINS: All right. Christopher Collins,
7 Holland and Knight. I am going to rely upon Mr.
8 Tondro's argument, the standing issue.

9 In terms of the timeliness, Subtitle Y,
10 Section 302 of ZR-16 imposes a higher burden on
11 appellants than in the prior regulations. The March
12 21 -- I'll just follow through, and just explain my
13 filings, Exhibits 49 and 57. Exhibit 49 is my motion
14 to dismiss the appeal, and Exhibit 57 is the reply.

15 The March 21 and 22nd, 2016 ZA determinations
16 are appealable administrative decisions. The permit
17 application was pending when these -- when he decided
18 this. It was not a speculative advisory opinion that
19 he was giving to anybody in the public. The March 21
20 determination was a five-page exhaustive review where
21 he said, it is my determination that the project may
22 be constructed as a matter of right.

23 CHAIRPERSON HILL: Which date again, are you
24 referring to again?

25 MR. COLLINS: That's the March 21 --

1 CHAIRPERSON HILL: Okay.

2 MR. COLLINS: -- letter.

3 CHAIRPERSON HILL: The determination letter?

4 MR. COLLINS: Determination letter.

5 CHAIRPERSON HILL: Okay.

6 MR. COLLINS: The next day, on March 22nd, in
7 his e-mail, in response to Mr. Gelfand's request, he
8 said, I hope this information is helpful in the
9 explanation of my office's approval of the project.
10 Nothing could be clearer.

11 Second point, the appellants had notice or
12 knowledge of those decisions, or should have had
13 notice or knowledge of those decisions in time to file
14 the appeal within 60 days. That is the 60-day
15 requirement as Mr. Tondro mentioned. It's still under
16 regulation, Section 302.2 of Subtitle Y.

17 Mr. Gelfand, Mr. Hawkins, and Mr. Gambrell,
18 the appellant's witnesses today, all were served with
19 copies of the March 21 determination letter, and the
20 March 22 e-mail.

21 Third point, the March 21 and 22 rulings were
22 the first writing of the decision. That's a new
23 regulation that the Zoning Commission adopted in
24 Section 302.5, Subtitle Y. The first writing does not
25 need to be a building permit. It can be something

1 prior to the building permit. The building permit
2 application was pending when he made his
3 determinations.

4 The permit plans attached to the March 21
5 decision, are the same as those with the building
6 permit application itself. It's the same plans. The
7 building permit was subsequently issued, but did not
8 modify or reverse the March 21 and 22 rulings, or
9 reflect a new decision. It was the same decision.
10 The issuance of the building permit was the same
11 decision as when he said March 21 and 22. It conforms
12 to the regulations, we approve it.

13 Fourth point, the building was under roof by
14 July 31, which was more than 10 days before the appeal
15 was filed, Subtitle Y, Section 302.3, and keeps that
16 requirement. That is the requirement that existed in
17 ZR-58 as well, that the appeal must be filed within 10
18 days of the building being under way.

19 And then finally, Item 5, there's no basis for
20 an extension of time under 302.6. They have not
21 alleged any circumstances that meet the regulations of
22 Section 302.6, nor could they. And that concludes my
23 presentation.

24 CHAIRPERSON HILL: All right. Great. Thank
25 you.

1 MR. TONDRO: Chairman Hill.

2 CHAIRPERSON HILL: Sure.

3 MR. TONDRO: Just one question. I realized I
4 inadvertently misreferenced when I talked about the
5 exhibits. Not Exhibit 50. That was the original
6 filing with the timeline. But there's a revised
7 filing, the revised timeline is Exhibit 72, and it's
8 page 12 of that. I only bring that up because again
9 property owner's counsel had referred to some of those
10 dates, so I guess a broader sense of the timeline.

11 Again, Exhibit 72, page 12.

12 CHAIRPERSON HILL: My computer is moving slow.

13 [Pause.]

14 CHAIRPERSON HILL: Okay. All right. I guess
15 maybe we'll go to the appellant first, and then we'll
16 ask the Board for any questions they might have. Or
17 also, you know, any cross you might have now for the
18 building owner or DCRA.

19 Who is going to be speaking?

20 MS. DIENER: Well, if it's okay, please, Chair
21 Hill, I'd like to begin. If I may? And identify
22 myself, Robin Diener, President of the DuPont Circle
23 Citizen's Association, duly elected in May of 2016.
24 We have --

25 CHAIRPERSON HILL: Before you begin, I don't

1 mean to interrupt. Just so we're all -- I'm going to
2 just put five minutes on the clock, just so we kind of
3 know where we are with stuff.

4 MS. DIENER: I think I'll be brief.

5 CHAIRPERSON HILL: That's okay.

6 MS. DIENER: And I did want to welcome Ms.
7 White, who -- I was at your nomination hearing. I
8 don't know why they gave you such a hard time, but you
9 are very good, so thank you. And, Mr. Turnbull,
10 always good to see you. And, Mr. Hart, nice to see
11 you again. So --

12 CHAIRPERSON HILL: What about me? I didn't
13 get --

14 MS. DIENER: You also. Well, I'm sorry, I
15 opened. By all means.

16 CHAIRPERSON HILL: Thank you.

17 MS. DIENER: It's always a pleasure. Citizens
18 associations have standing, is my understanding, in
19 these matters. We represent hundreds of members of
20 the DuPont Circle neighborhood. Many people come to
21 us and ask us to take up cases. I mean, we must be
22 asked four or five times every year, year in and year
23 out. Be they alcohol, be they historic preservation,
24 be they zoning, be they DCRA. We simply cannot deal
25 with all of them.

1 This case came to our attention, and I believe
2 we filed timely, because it is simple and clear, we
3 feel, and it is something that goes to the heart of
4 what a citizen's association does by explaining the
5 law, interpreting to its members, and it's a very
6 important role for us.

7 Mr. Gelfand is a member of DCCA. He is not
8 the locust of standing of standing. I've never heard
9 that phrase before. I'm not quite sure what it means.
10 He is, in this case, someone I would like to
11 designate to represent us as the expert in the case,
12 but he is representing DCCA, which I fully believe has
13 standing in this matter, and other matters like this.
14 We chose this case because it is very clear, it's
15 something that is a situation that arises over and
16 over again in our historic district. It's something
17 we care about and we thought this was a good clear
18 case that we could easily prove to you. And so,
19 that's why we brought it.

20 MR. GELFAND: Thank you. I will add, DCCA
21 strongly opposes DCRA and the owner's motions to
22 dismiss, and we submitted detailed response. In it we
23 cite multiple BZA and court cases. We cite the actual
24 zoning regulations, and the obvious, DCCA is a
25 community association with an interest in zoning

1 matters, and we filed within 60 days of issuance of
2 the building permit.

3 Regarding timeliness in our filing, we
4 presented detailed evidence to refute claims of
5 untimeliness under six broad categories. I will
6 highlight them.

7 Zoning determination letters are provisional
8 and still require completion of a building permit
9 review process that may change conditions. Just to
10 look at the wording in this letter, in this case.
11 Quote, "Provided that the project plans filed with the
12 applicable building permit do not substantially
13 deviate from the plans attached." End quote. Or, "My
14 approval does not obviate the need to obtain all of
15 the other approval required for a building permit."

16 We cite four prominent cases where the Board
17 has found that neither zoning determination letters,
18 nor e-mail correspondence are appealable decisions,
19 and that determination letters are not authorization
20 to grant building permits.

21 Zoning determination letters are not publicly
22 available. In contrast, many steps are taken to make
23 sure building permits are publicly available. There
24 are two public DCRA databases, building permits are
25 posted on buildings, good luck trying to find zoning

1 determination letters. DCRA is also claiming an
2 interpretation of the ZR-16 provision on the 60-day
3 clock that is without precedent or support, the
4 reference to the first writing of an administrative
5 decision.

6 Finally, we are mystified by the board cases
7 cited by the owner's representative to claim we were
8 untimely. As we document, each of those cases has
9 very particular circumstances. Several of those cases
10 in fact are Board conclusions that the 60-day clock
11 starts with the issuance of a building permit, like
12 BZA 18070 in 2010, where the Board rejects an ANC's
13 claim that it had no way of knowing that a building
14 permit had been issued.

15 Now, moving on to standing. We have standing
16 in five broad areas. The Board has long recognized
17 the standing of community associations in matters that
18 occur within their boundaries. To, take the
19 interpretation that if one member of a citizen's
20 association had knowledge that a citizen's association
21 was then barred from bringing forward the case, it
22 would be highly prejudicial against a citizen's
23 association ever bringing a case.

24 DCCA has established that its mission is to
25 preserve the historic, architectural, and aesthetic

1 value of property within its boundaries. Board case
2 precedent supports the standing of community
3 associations before the Board. We cite *Shaw DuPont*
4 *Citizen's Alliance* and *Citizen's Association of*
5 *Georgetown* as examples.

6 Finally, look to the form for filing an
7 appeal. The BZA process anticipates community
8 association participation. At the very bottom of the
9 application to file an appeal, the signature line
10 reads, "Citizen's association, association created for
11 civic purpose that is not for profit." Thank you.

12 CHAIRPERSON HILL: Okay. Thank you. So, just
13 so I'm a little clear, Mr. Gelfand, you're not a land
14 use attorney, correct?

15 MR. GELFAND: No.

16 CHAIRPERSON HILL: Okay. No, I'm just trying
17 to see where we are on this side of the table. And
18 so, you're representing DCCA. Correct? With --
19 you're with DCCA. And again, you're an architect. Is
20 that correct, sir?

21 MR. HAWKINS: That's right. Architect, and
22 architectural historian of the City of Washington.

23 CHAIRPERSON HILL: Okay. And, Mr. Gelfand,
24 you were the commissioner at that time?

25 MR. GAMBRELL: Gambrell. Yes.

1 CHAIRPERSON HILL: Gambrell.

2 MR. GAMBRELL: Actually, no, in Adams Morgan,
3 not in the DuPont Circle area. I'm just helping out
4 with this case.

5 CHAIRPERSON HILL: Okay. And you, again, your
6 expertise? I'm sorry.

7 MS. FLINN: I am a community member. We are
8 facing the same issue in our neighborhood with the
9 designation of cellars as habitable spaces, which is
10 why our community group is interest -- we submitted
11 the petition with the 60 signatures supporting the
12 appeal.

13 CHAIRPERSON HILL: Okay. Okay, great. Thank
14 you.

15 So, as far as the standing and timeliness
16 issues, does the Board have some questions now of
17 either the DCRA, or the building owner, or the
18 applicant?

19 MR. HART: Yeah. This is for the appellant.
20 So, DCCA, which is -- I find that DCCA and DCRA are --
21 you know, really, really confusing trying to
22 understand this.

23 And so, regarding the timeline that DCRA has
24 put forward, they have a timeline that kind of talks
25 about kind of when certain e-mails had kind of gone

1 back and forth between you know, different -- the
2 groups. And I think that that was, Mr. Gelfand, you
3 had had some e-mail traffic with DCRA.

4 So, your contention is because the zoning
5 determination is not a final document that the
6 building permit should be seen as the document that
7 you are using to measure the 60 days from. Is that
8 correct?

9 MR. GELFAND: That's one of the arguments.
10 But DCC --

11 MR. HART: I understand that. I'm just trying
12 to understand that part of it. That portion of it.

13 MR. GELFAND: That's one, one of the points,
14 yes.

15 MR. HART: Okay. So, the hard part for me --

16 MR. GELFAND: However, DCCA was not a
17 recipient of the zoning determination letter.

18 MR. HART: Okay. I understand that as well.

19 The hard part about this for me is trying to
20 understand kind of where DCCA kind of should have
21 known about this. And I understand that you're, you
22 know, a part of that, of that group. It doesn't seem
23 like there was a -- it seems like there was
24 information that was out. It was not just an internal
25 discussion that was happening. And so, that's the

1 difficulty in trying to understand how DCCA -- and I
2 understand that there are other things that are going
3 on, and it's just understanding where this particular
4 group would have been, kind of informed about this
5 outside of the discussions that you all have had. And
6 you're saying that it was just the building permit and
7 that was it.

8 MR. GELFAND: That's right. That's when they
9 became aware.

10 CHAIRPERSON HILL: Okay. So, yeah, now just
11 for final clarification, your testimony is that DCCA
12 became aware only at the point when the building
13 permit was issued.

14 MR. GELFAND: It was after the building permit
15 was issued.

16 CHAIRPERSON HILL: And how did that come
17 about? I am now curious. Like, how did -- when did
18 you actually know about the building permit being
19 issued, DCCA, if you don't mind?

20 MS. DIENER: Well, we have monthly meetings
21 and these things often come to the floor at a meeting.

22 CHAIRPERSON HILL: Sure.

23 MS. DIENER: Like that. I don't remember the
24 timeline.

25 MR. GELFAND: It was early September.

1 MS. DIENER: Early September.

2 CHAIRPERSON HILL: Do you think you might be
3 able to trace it back to an actual meeting if you had
4 a chance to look?

5 MS. DIENER: Of course, yes. And I'm just
6 recalling that we have a meeting September. So, that
7 raises a question. But we -- civic associations are
8 not the ANCs. We do not follow every case that comes
9 to our neighborhood, and we're not required to in any
10 way. But when something is brought to us, then we
11 take it up.

12 This was brought to us and I can find for you,
13 from our minutes, exactly when that was. Of course.

14 CHAIRPERSON HILL: Okay, great. Yeah, I would
15 be interested. Thanks.

16 MS. DIENER: Absolutely.

17 CHAIRPERSON HILL: Mr. Tondro, so, as far as
18 the timeline, from the submissions again, your clock
19 began on March 21st, as in your argument for the
20 timeline, which is when the determination letter was
21 issued. So, and I am kind of curious. This is
22 something that I think is helpful to us, the Board,
23 also moving forward with, you know, things as they
24 come before us. I mean, I also think that, you know,
25 March 21st, 2016 through September 16th, 2016 is a

1 long period of time.

2 However, I don't understand how did you think
3 that DCCA -- I mean, how is it that everyone is
4 notified? Like when do you -- you think the clock
5 should have begun on March 21st because determination
6 letter is posted and people should just know about
7 that? I don't --

8 MR. TONDRO: Yes. Pardon me. Thank you,
9 Chairman Hill.

10 There are, I think, sort of two different
11 aspects. That's why the standing and the timeliness
12 are, I think, inextricably linked, or interwoven. And
13 just the reason for that is because of the prominent
14 role that Mr. Gelfand --

15 CHAIRPERSON HILL: No, I understand. And I'm
16 not trying to interrupt you. I have read the record,
17 I understand the --

18 MR. TONDRO: But, no I --

19 CHAIRPERSON HILL: I understand the
20 interweven, woven, and how/why. But let's just take
21 him out of the equation for a second, right? You,
22 then, would think that the -- or DCCA should have
23 known the clock should have started at the
24 determination letter. If Mr. Gelfand was not part of
25 this conversation.

1 MR. TONDRO: Yes. So, assuming that ANC
2 Commissioner Nichols, who represents that district,
3 had not been involved heavily in raising this issue
4 and also received that e-mail and the determination
5 letter, then we might be talking about a different
6 circumstance. In other words, let's just pretend it
7 was a situation where as Mr. Gelfand, who was the
8 neighbor, and just him on his self, and he was the
9 only one who communicated with Mr. LeGrant, and it was
10 a situation where then the Zoning Administrator
11 reviewed it, then issued a determination letter,
12 published it on the website, and only provided it by
13 e-mail to Mr. Gelfand, and Mr. Gelfand alone.

14 There have been times before where zoning --
15 where once a zoning determination letter is published
16 on the website that it is deemed as knowledge. It is,
17 as I understand, included in the list of building
18 permits that are sent out bi-weekly to all ANC
19 commissioners. So, there is awareness. There should
20 be some notice in that way.

21 But again, that clear distinction where Mr.
22 Gelfand, acting by himself, without anybody -- anybody
23 else from the community on the issue, that would be
24 one thing.

25 But instead, here what we have is a situation

1 where the ANC Commissioner was involved. She
2 specifically says, and I think it's my Exhibit B, to
3 the most recent one, Attachment B to again, Exhibit
4 72, where she specifically says, this is a whole block
5 of residents. In other words, she's saying, she is
6 getting involved with DCRA. She was carrying the
7 water for the residents, bringing up this issue for
8 the overall community that's there.

9 That's the problem that I think that we're
10 having in those circumstances. We're dealing with a
11 situation where there were multiple people involved.
12 There is an awareness in the neighborhood that there
13 is a problem and this issue is being addressed as
14 brought to DCRA's attention. And then there is a
15 response by DCRA. A response that says, this is our
16 final determination.

17 And again, in terms of that I just want to
18 point out that the specific language of why 302.5,
19 which was added, I think it codified prior practice,
20 but it was added specifically as part of the zoning
21 regulations, and I believe that appellant is asserting
22 that basically we should just throw that out and not
23 give it any weight whatsoever, despite the fact that
24 it went through a seven-year, or eight-year process,
25 as part of the zoning regulations rewrites.

1 But it specifically says, A., should be taken
2 for the first writing, which is not necessarily a
3 building permit. But then it says, in terms of what
4 the appellant had raised, that no subsequent document
5 may be appealed unless the document modifies or
6 reverses the original decision. In this context, what
7 that means is, yes, it is true that Mr. LeGrant, when
8 he issued the determination letter, couldn't promise
9 that the entire permit would be approved. He doesn't
10 have that authority.

11 But what he was addressing in the
12 determination letter, he was asked a series of
13 questions, and he gave an answer to those questions.
14 And he said, these questions are settled. That's a
15 final decision.

16 CHAIRPERSON HILL: Okay.

17 MR. TONDRO: And then the permit, when it was
18 issued, didn't depart from -- we have no evidence that
19 they departed from that. I'm sorry.

20 CHAIRPERSON HILL: That's okay. I'm just
21 going to interrupt you one second.

22 So, then the ANC received notice on March
23 21st. That's what you're --

24 MR. TONDRO: Right. On March 21st and March
25 22nd. Yes.

1 CHAIRPERSON HILL: And I see the 302.5. You
2 know, a zoning appeal may only be taken from the first
3 writing that reflects the administrative decision
4 complained of to which the appellant had notice. So,
5 I'm just trying to figure out again, to which the
6 appellant had notice.

7 And so, if you take Mr. Gelfand out of the
8 equation, and this is where, you know, the Zoning
9 Commission maybe, you know, there was something clear
10 cut, I mean, if like, you know, if the -- if the
11 publication of the determination letter is when the
12 clock starts, then I don't have -- then it's clearer
13 to -- it's easier to understand. It's the, "of
14 notice," part that is -- I'm trying to struggle with.

15 So, your claim, and the building owner's claim
16 again, is that if Mr. Gelfand was out if it, okay,
17 DCCA should have known that on March 21st, when the
18 determination letter was issued -- I'm just asking you
19 now. That's when the clock would have started? Or,
20 is the clock, in your opinion, starting then when the
21 permit is issued?

22 MR. TONDRO: If the DCCA was able to show that
23 there was no linkage and they had no knowledge and
24 that was a reasonable --

25 CHAIRPERSON HILL: All right. So, the ANC

1 meeting would have had him before, and they should
2 have heard about it.

3 MR. TONDRO: [Simultaneous speech.] I was here
4 a couple months ago for ANC, I believe it was 3B,
5 appealing a determination letter related to the Spring
6 Valley Shopping Center that was just great. And they
7 specifically chose to appeal the determination letter,
8 and the Board ruled in that case, so there have been
9 recent examples when determination letters have been
10 deemed appealable. And in that case, once the Board's
11 decision was rendered, that rendered it final for
12 whatever building permit that would come afterwards.

13 But yes, here again there's an issue. The
14 standing, I don't believe that DCRA would have raised
15 the issue of standing had Mr. Gelfand and Commissioner
16 Nichols not been in receipt of those e-mails. Right?

17 Because this is a clear indication in both cases, not
18 just Mr. Gelfand because he's hearing clearly the
19 leading light. I mean, as President Diener just said,
20 she gets requests all the time, or the DCCA gets
21 requests all the time to give their status to various
22 different appellants, potential appellants.

23 That's fine, but the problem is, what happens
24 if that particular appellant, Mr. Gelfand in this
25 case, already knew about it, failed to appeal in the

1 time --

2 CHAIRPERSON HILL: No, I understand. It's
3 okay. I mean, I understand. I understand your
4 argument and DCCA had just testified that they heard
5 about it at their meeting in September, whenever that
6 date was. And so, that's when you knew about it.
7 Okay?

8 So, does the Board have any other questions
9 for the DCRA or the building owner, or DCCA,
10 concerning these issues?

11 MR. TURNBULL: Yes, Mr. Chair, I do. I'm just
12 wondering if the appellant, in looking at Mr. Tondro's
13 timeline, if you agree or you don't agree with that
14 timeline.

15 MR. GELFAND: We don't agree with any of the
16 logic presented by Mr. Tondro.

17 MR. TURNBULL: No, I'm not talking about
18 logic. I'm talking about the timeline, the dates and
19 everything in it. And what don't you agree with?

20 MR. GELFAND: It might be -- we wholly
21 disagree with the whole line of argument and logic.

22 MR. TURNBULL: No --

23 CHAIRPERSON HILL: That's okay. All he's
24 asking --

25 MS. DIENER: We don't have any knowledge --

1 MR. GELFAND: I don't have the timeline.

2 CHAIRPERSON HILL: You don't have the timeline
3 in front of you? Right. All right.

4 So, March -- well, anyway. Sorry, Mr.
5 Commissioner. March 21st was when the determination
6 letter was issued. And that's what the first --

7 MR. GELFAND: I don't think DCCA is
8 disagreeing with the date that the determination
9 letter --

10 CHAIRPERSON HILL: Right. When the
11 determination letter was issued.

12 MR. GELFAND: But to try to ascribe it to
13 knowledge of DCCA then is just factually wrong.

14 MS. DIENER: Chair Hill, may I ask? Would you
15 be interested, we'd love to have Alan Gambrell speak
16 to this. He's also an expert in this.

17 CHAIRPERSON HILL: Sure.

18 MS. DIENER: Would you --

19 CHAIRPERSON HILL: Sure.

20 MS. DIENER: Okay.

21 MR. GAMBRELL: Okay. Thanks, Robin. And Alan
22 Gambrell --

23 CHAIRPERSON HILL: Mr. Gambrell, I'm going to
24 put three minutes on the clock for you, just so I
25 know.

1 MR. GAMBRELL: Sounds good.

2 CHAIRPERSON HILL: Okay.

3 MR. GAMBRELL: Former ANC 1C Commissioner.
4 The people on this side of the room, none of us are
5 lawyers. I'm not a lawyer. I did used to work at
6 Holland and Knight, well over 30 years ago as a
7 proofreader, and I made 3.50 an hour. That's \$3 and
8 50 cents.

9 CHAIRPERSON HILL: That's a long time ago, Mr.
10 Gambrell. Nobody at that place makes 3.50 an hour
11 anymore.

12 MR. GAMBRELL: I think you're right.

13 I find the DCRA's argument on timeliness and
14 standing, frankly quite baffling. And I don't want to
15 repeat what Brian has already, I think, covered well,
16 and I think we've covered it quite well in our nine-
17 page response to their motion to dismiss.

18 But, regarding the zoning determination
19 letter, there is so much evidence that we presented to
20 demonstrate and show that a zoning determination
21 letter is a provisional document. I mean, Brian
22 already went through a number of these things. I'm
23 going to try to pick out a couple of things to really
24 drive the point home.

25 If you look at DCRA's own website, they talk

1 about what they refer to, zoning determination letters
2 as being quote, "A preliminary review of the building
3 plans prior to filing," end quote.

4 So, that's just a, you know, a piece of
5 evidence there that the agency itself sees the zoning
6 determination letters as being provisional. The
7 language in a zoning determination letter is
8 provisional. It makes reference to having to go
9 through the building permit review process. So,
10 there's really no question there that these documents
11 have that status.

12 We also, in our filing, exhaustively went
13 through a number of Board of Zoning Adjustment cases,
14 specific to the question of zoning determination
15 letters, and are they the basis upon which the 60-day
16 clock starts. And the cases we cite clearly show
17 that's not -- this body has demonstrated, that's not
18 when the 60-day clock starts.

19 Just to pull a few out from our filing, there
20 is BZA 18793. I'm looking for the name of the
21 parties. I'll skip that one.

22 There's 18522, Washington Harbor Condominium
23 Association in 2012. There's BZA 18568, Shaw DuPont
24 Citizen's Alliance in 2013. There is 16998 in 2003.

25 All of these cases clearly documented a robust

1 Board of Zoning Adjustment discussion about a zoning
2 determination letter and is that when the clock starts
3 ticking. And all of those cases have determined that
4 that is not when the clock starts ticking. It's a
5 building permit.

6 So, we feel like we've documented, based upon
7 the actual reading of the law and how this board has
8 seen fit to interpret the meaning of zoning
9 determination letters. And we feel like we've really
10 made our case. So, I just want to stop there because
11 my three minutes is up.

12 CHAIRPERSON HILL: Okay, great. Thank you,
13 Mr. Gambrell.

14 Yeah, before -- I did have a question for the
15 building owner. And you may respond, Mr. Collins.

16 But the one question I did have for the
17 building owner is again, and this is where I just
18 can't recall from my very limited development
19 experience, however painful, the determination letter,
20 once you receive that, what do you start doing again
21 as a -- I mean, because to me, again, six months is a
22 long time between that and when the 60-day filing
23 clock -- I mean, you move forward with the project,
24 correct? You don't wait for the building permit?

25 MR. CASEY: Yes, we were moving forward. We

1 had other permits that were pulled on the project that
2 we were working under. And then we were waiting for
3 the main building permit to be finally approved.

4 CHAIRPERSON HILL: Right. And the other one
5 was like asbestos and things like that or --

6 MR. CASEY: Demolition and repair and replace
7 four joists for the existing structure.

8 CHAIRPERSON HILL: Right. Okay. Okay. Mr.
9 Collins, you had a comment you wanted to make?

10 MR. COLLINS: I do. There were a number of
11 cases cited, 2012, earlier cases, by Mr. Gambrell.
12 The Zoning Commission changed the regulations to say
13 that the first writing is when you appeal. And the
14 first writing doesn't have to be the building permit.

15 So, I ask you, if the first writing comes
16 before the building permit, what else would it
17 logically be?

18 Mr. Gambrell mentioned that, citing the Zoning
19 Administrator's website about what are zoning
20 determination letters, they're provisional, they're
21 issued prior to the filing of a permit application.
22 The permit application was pending when this zoning
23 determination letter was issued on March 21.

24 The issue was brought to the attention of DCCA
25 in September, by Mr. Gelfand. So, going back to what

1 Mr. Tondro was saying, if they can cloak themselves in
2 a member who knew about this six months earlier, and
3 now says, oh well, now I'm handing it off to you so
4 that the 60-day clock can start with you because you
5 didn't know about this, but I did. I knew about it
6 for six months. And so, where does it stop? How far
7 can you hand something off and allow the 60-day clock
8 to start?

9 CHAIRPERSON HILL: Okay. I understand.

10 MR. GELFAND: To clarify.

11 CHAIRPERSON HILL: Just one second. Just give
12 me one second. Sorry.

13 Does the Board have any questions of the
14 property owner and the comments for Mr. Collins? No?
15 All right. Yes?

16 MR. GELFAND: Just one response to what was
17 just said. You cannot proceed on a building permit
18 until the permit is issued. So, the owner just
19 testifying that he went and proceeded after the zoning
20 determination letter, you cannot proceed until the
21 permit is actually --

22 CHAIRPERSON HILL: I understand. What I meant
23 to say is that he is moving forward as -- you know, he
24 has a determination letter now that says that he is
25 going to get a permit. And so, that's what I'm just

1 trying to figure out with the clock.

2 And again, I'm not -- I'm just trying to
3 listen and understand. And again, everyone keeps
4 going back to the new code, which is true, that they -
5 - and the word that I'm hung up on, again, is, "When
6 the appellant had notice." And so, had the new code
7 said it's the determination letter, then I wouldn't
8 have to worry about it. And so, that's where I'm just
9 trying to think through.

10 And so, I don't really have a whole lot more
11 questions. I suppose, you know, we can keep going
12 around. Does the Board have any more questions about
13 the timeliness issue, or the standing issue?

14 Mr. Tondro, you seem like you want to say
15 something there, considering this is your motion.

16 MR. TONDRO: Yes. Thank you, Chairman Hill.
17 Just a very brief response to Mr. Gelfand and Mr.
18 Gambrell.

19 On page 6 of my most recent filing, 72, I'm
20 referring there in footnote 7, to an appeal, 18300 of
21 Lawrence and Kathleen Ausibow (phonetic), which is
22 also referred to by the property owner. And the quote
23 there, "Appellants could not wait to appeal the
24 building permit where the ZA e-mail clearly indicated
25 permit would issue based upon resolution of zoning

1 issue presented."

2 So, in other words, there's both the fact that
3 the new code is absolutely explicit about the fact
4 that a decision can take place before the building
5 permit. But as I said, that merely -- that was new,
6 but what was new was the codification of prior
7 practice. And in prior practice it was the situation
8 of the fact that a zoning -- in that case it was a ZA
9 e-mail. Not even a determination letter like this one
10 that was actually published on the website that --

11 CHAIRPERSON HILL: Mr. Tondro, can you tell me
12 where that is again? You said it was page 6?

13 MR. TONDRO: I'm sorry. It's page 6, footnote
14 7.

15 CHAIRPERSON HILL: Oh, I see. Okay.

16 MR. TONDRO: And referring also to another
17 case, the Baskin case. And BZA Appeal 18568, by the
18 way, is the Shaw Dupont Citizen's, which was just
19 cited by the appellant.

20 MR. GAMBRELL: May I respond?

21 CHAIRPERSON HILL: Sure, Mr. Gambrell. Go
22 ahead.

23 MR. GAMBRELL: Sure. Again, nonlawyer here.

24 Yes, 18300 from 2012 is actually a different
25 situation. And the devil is definitely in the details

1 when you look at these cases. That was actually a
2 situation where the zoning determination letter dealt
3 with a project, or whether or not it complied with the
4 tree protection plan. It was very specific.

5 What's different about this case is we have a
6 zoning determination letter that contains multiple
7 provisional statements and uncertainty. So, again,
8 the 2012 cases that Mr. Tondro just cited, was a very
9 specific response on the part of the Zoning
10 Administrator regarding the tree protection plan,
11 period. So, it's quite cut and dried.

12 I did want to also briefly comment, that as
13 far as ZR-16 is concerned, and the whole issue of
14 first writing, you won't find the words, "Zoning
15 determination letter" anywhere in either the 1958 or
16 the ZR 16 regulations, nowhere. You will find
17 building permit in there quite a bit.

18 I contacted the Office of Planning to find out
19 if there was some legislative or Zoning Commission
20 history regarding the provision and if first writing
21 in fact meant zoning determination letter, and in fact
22 there was no reference that it meant that.

23 So, I think what the DCRA is asking you to do,
24 they're asking you to create a meaning of first
25 writing that simply does not exist in the record.

1 CHAIRPERSON HILL: Okay, thank you. Would you
2 like to comment back, Mr. -- I'm going to give you the
3 last word, obviously, because it's your motion, so --

4 MR. TONDRO: Thank you, Chairman Hill. I'm
5 sorry to --

6 CHAIRPERSON HILL: That's all right.

7 MR. TONDRO: -- take it back in the badminton
8 game.

9 CHAIRPERSON HILL: No.

10 MR. TONDRO: But, just briefly again, I'll
11 point that there was -- this Board did just hear the
12 issue of an appeal of a determination letter. Again,
13 that was the Spring Valley Shopping Center issue that
14 was raised. And the ANC in that situation chose
15 specifically to appeal, as was their right, to appeal
16 before the building permit was actually issued. And
17 at that point, those issues that were raised in that
18 appeal, those were -- that was decided.

19 And then to the extent the building permit
20 issues later on, those issues are already -- are
21 decided. If there's a change, right, because I think
22 that's the key here, and again you can see that in
23 that second sentence of Y-302.5, that it's the
24 original decision is -- that that's the first one that
25 must be appealed, unless a later decision, which could

1 be the building permit, modifies or reverses it. And
2 I haven't heard anything here that says anything from
3 appellants that have said that there was something
4 that the ZA -- they talk about the zoning
5 determination letter is provisional. But what they
6 don't address, that we've addressed, is the fact that
7 the ZA made very clear, address those issues that are
8 the fundamental arguments of this appeal, the basement
9 versus cellar determination, and the issue of
10 habitable space. The ZA responded and made it very
11 clear that those decisions were decided. That was the
12 first writing of that aspect. That is then binding,
13 and particularly on these appellants at that point.

14 The other thing, I just want to just
15 underscore here. The appellants, in their filing for
16 the response, the DCRA's motion to dismiss, they say,
17 and I don't think it's by accident, they say DCCA was
18 not aware. The matter was brought to the attention of
19 DCCA the week of September 5th.

20 What's missing? Who? Who brought it to
21 DCCA's attention? I, at the very least, would think
22 that the Board should -- would be well --

23 CHAIRPERSON HILL: No, it's okay. No, I got
24 you. No, I want to ask a question now. I'm going
25 where you're going.

1 So, the appeal that you keep citing, which one
2 was it again? Is that the 18568?

3 MR. TONDRO: No, I'm sorry. I don't have it
4 on me. I was just looking at my --

5 CHAIRPERSON HILL: Okay.

6 MR. TONDRO: It's the -- it was Commissioner
7 Smith, Tom Smith.

8 CHAIRPERSON HILL: Okay. Could you submit
9 that later for us, because that would be helpful to
10 look at?

11 So, back to Mr. Gelfand, because this is how
12 they're tying you to this timing issue. And so, you
13 know, I want to drill down a little bit more as to
14 when did you -- I mean, DCCA is testifying that they
15 knew in September, the September 5th meeting. So,
16 prior to September 5th DCCA did not know about this
17 appeal. I mean, I'm sorry, about this determination
18 letter.

19 MR. GELFAND: Correct.

20 CHAIRPERSON HILL: Okay. So, who told DCCA
21 about the determination letter?

22 MR. GELFAND: I did.

23 CHAIRPERSON HILL: You?

24 MR. GELFAND: Yeah.

25 CHAIRPERSON HILL: On September 5th?

1 MR. GELFAND: On or about, yes.

2 CHAIRPERSON HILL: On or about. So, I really
3 want to know because this is all about the dates,
4 right? So, when do you think you let them know?

5 MR. GELFAND: It was in that first week of
6 September.

7 CHAIRPERSON HILL: Okay. And so, you can
8 provide something to me in the record that's when you
9 let DCCA know.

10 MR. GELFAND: Yes.

11 CHAIRPERSON HILL: Okay.

12 MS. DIENER: Mr. Chair, may I ask a question?

13 CHAIRPERSON HILL: Just one second. All
14 right? You can, of course, just give me one second
15 because I just want to -- I don't want to --

16 MR. HART: And actually, another -- if I may,
17 Mr. Chairman?

18 CHAIRPERSON HILL: Yes, sure.

19 MR. HART: Excuse me. Mr. Gelfand, with
20 regard to, why did you feel that the ZA determination
21 letter was not something that you would want to
22 appeal, because really, that's given you indication
23 that -- that's telling you what the Zoning
24 Administrator and DCRA is likely going to move forward
25 with.

1 MR. GELFAND: Yeah. I didn't bring an appeal.
2 DCCA brought the appeal. I raised the issue to DCCA.

3 MR. HART: What I was asking is, why are you -
4 - why did you feel that there was nothing that you
5 wanted to discuss at that point? And --

6 MR. GELFAND: I'm an individual. I'm not a
7 civic association, I'm not a law firm. I wasn't
8 bringing forth an appeal. I brought the issue to
9 DCCA, which organization I'm a member of. DCCA
10 discussed it, DCCA looked at the issue, DCCA heard it
11 before their subcommittee, DCCA decided this was an
12 appeal they wanted to take up, and in turn filed the
13 appeal. It wasn't done by me as an individual.

14 MR. HART: But, I guess what I'm trying to
15 understand is, between the time that you understood
16 that this was going to move in a particular direction,
17 you had e-mails that said, this is what's actually
18 going to happen. I'm not saying DCCA. Just listen to
19 my question before you answer. Thank you.

20 You understood that there was a decision that
21 -- and you and others, there were several others that
22 Mr. Tondro has given us information about who were in
23 this e-mail chain that had gotten what the
24 determination was going to be. At that point there
25 had to be a reaction that you had, so, what was your

1 reaction at that point?

2 MR. GELFAND: My reaction was that there was
3 questions that were being looked at and debated, and
4 that we had to wait and see what actually happened in
5 terms of the building permit.

6 The building permit came July 18th. Then we
7 had knowledge that it was actually permitted, it was
8 going forward, there was a 60-day period in between
9 building permit issuance and the 60-day time period
10 for timely filing. It was brought to DCCA's
11 attention. DCCA then reviewed it, determined whether
12 it was a case it wanted to take up or not.

13 MR. HART: So, hold on. Hold on. Hold on a
14 second. So, between July and September, what
15 happened?

16 MR. GELFAND: What happened?

17 MR. HART: Yes, because there was a point of
18 time that this information -- when did you become
19 aware? Not DCCA. When did you become aware of the
20 building permit?

21 MR. GELFAND: Building permit?

22 MR. HART: Yes.

23 MR. GELFAND: Sometime near or after July
24 18th, when the permit was issued.

25 MR. HART: And, what was your reaction at that

1 point?

2 MR. GELFAND: Wanted to know more information
3 as to what was actually being permitted, and what did
4 DCRA approve.

5 MR. HART: And so, what did you do? Did you
6 send an e-mail to the -- I mean, you had had an e-mail
7 traffic with the -- with DCRA, excuse me, and about
8 what this was. When did you find all of this out?
9 That's what I'm trying to understand.

10 MR. GELFAND: I don't know exactly. Around
11 the beginning of September is when I brought the issue
12 to DCCA.

13 MR. HART: I'm not asking about when you
14 brought it to -- what I'm trying to get to is, at some
15 point between July and September, you had an epiphany.
16 And that epiphany was, oh my gosh, they're doing
17 this. And that's what I'm trying to understand, when
18 did that happen?

19 MR. GELFAND: In the beginning of September
20 when DCCA and I were discussing it and said, this
21 might be an issue that is --

22 MR. HART: Okay. So, hold on. So, you
23 brought it to DCCA for a reason, because you were
24 concerned about that.

25 MR. GELFAND: Right.

1 MR. HART: When did your concern begin?

2 MR. GELFAND: I was concerned about the
3 project, from an ongoing period of time. I mean, I
4 can't --

5 MR. HART: For several months, because you
6 understood the discussion that you had in March was
7 when you were -- when you were interested. People are
8 -- you're saying that you were not interested in this,
9 or at least aware of this, or you brought it to DCCA's
10 attention in September. But in March there was a
11 discussion that you had via e-mail, about the
12 particular project and the specifics of the project.
13 Because then you would understand, this is what is
14 being decided. Once the building permit was actually
15 approved, then you can kind of say -- then you're
16 saying that you said, well, you know, this has now
17 been approved, the things that I was interested in,
18 and I'm now trying to figure out, what can I do about
19 this.

20 There isn't -- I'm having a hard time trying
21 to understand what the connection is with DCCA between
22 July and September, because at some point there was --
23 you were concerned enough to have some sort of e-mail
24 traffic with DCRA in March. And so, I'm trying to
25 understand what that lag time between when the

1 building -- the permit was issued, and DCCA gets
2 involved. And you're saying that you brought it to
3 their attention in September, but I don't know why
4 September. Why not earlier? That's what I'm trying
5 to get to.

6 MR. GELFAND: Just, I think you just said that
7 I had communication with DCCA in March and you meant
8 DCRA.

9 MR. HART: DCRA. Excuse me. As I said, I've
10 been having a hard time with --

11 MR. GELFAND: Right. Right. It's not under
12 debate whether I had communication involvement on a
13 personal level with this, with DCRA in March. Nothing
14 was done until -- you're asking about that time period
15 between building permit issuance, July 18th, and early
16 September. And I think you were just asking me, why
17 didn't you do something sooner, maybe in August. What
18 was happening in August.

19 And I don't think that's the question being
20 looked at because the appeal was filed timely from the
21 building permit issuance. You're not saying, well, it
22 should have been filed by August 15th and not
23 September 15th. It's a whole other question, trying
24 to impute it back to March when DCCA had no awareness
25 or involvement.

1 MR. HART: Well, what I'm asking is that you
2 had an issue with the particular aspects of this
3 project, and I understand that it is DCCA that has
4 brought the appeal. I understand that. That's not
5 what I'm asking about.

6 What I'm trying to get to is, there was a
7 period of time between when you had these discussions,
8 when you personally had these discussions with the e-
9 mail traffic that are shown in discussions.

10 MR. GELFAND: Are you asking me why I didn't
11 go to DCCA with what was happening between March --

12 MR. HART: Yes.

13 MR. GELFAND: -- and July 18th, when --

14 MR. HART: No, March and September. I mean,
15 there was a six-month period and I'm not exactly sure
16 what happened --

17 MR. GELFAND: Because I was waiting to see
18 what happened with the building permit.

19 MR. HART: Which happened in July.

20 MR. GELFAND: Right. And then --

21 MR. HART: That's what I'm getting at.

22 MR. GELFAND: -- everything that was done, was
23 done within 60 days from that date issuance.

24 MR. HART: You're killing the 60 days and
25 saying that that's well within what you're required to

1 do. I'm not talking about what you're required to do.
2 I'm talking about, as someone that is already
3 concerned about it, why is it that you've had such a
4 long period of time? I'm not going to have a --

5 MR. GELFAND: There's no specific reason.

6 MR. HART: Hold on. Hold on. There's no
7 specific reason? Well, I mean, if I'm interested in
8 something and something is not going the way that I'm
9 looking for it, I'll be very timely about it. And so,
10 it makes it -- it makes it very -- it's a very strange
11 timeline and that's what I'm trying to get to. It's -
12 -

13 MR. GAMBRELL: Brian, may I?

14 MR. GELFAND: Sure. Sure.

15 CHAIRPERSON HILL: No, wait, let -- you don't
16 have to answer, Mr. Gambrell.

17 MR. HART: No, I just --

18 MR. GELFAND: You're presupposing that it was
19 my intent to file this appeal right after the building
20 permit was issued, and that's not the way this came
21 about. This came about through conversation with
22 members of DCCA, discussing what was happening in
23 early September, and then coming to a realization that
24 this was something that DCCA felt strongly about and
25 wanted to appeal. And then the appeal was progressed

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1 at that point in time. There wasn't some grand plan
2 to wait between July 18th and --

3 MR. HART: I didn't say there was any --

4 MR. GELFAND: -- September.

5 MR. HART: I didn't -- and you're putting
6 words in my mouth. I'm not exactly sure why. I
7 didn't say there was a grand plan. I'm just saying
8 that it's a very -- the six-month period between when
9 this was first understood by anybody in the
10 organization, because people make up the organization.
11 So, you are -- and I'm not exactly sure, what was
12 your role in DCCA?

13 MR. GELFAND: I'm a member.

14 MR. HART: And how long have you been a member
15 of the organization?

16 MR. GELFAND: About two years.

17 MR. HART: Okay. So, at some point this could
18 have been brought to their attention during that six-
19 month period. I'm just saying that the six-month
20 period between March and -- actually, this is maybe
21 even earlier than that. So, it is, again, it's a very
22 curious timeline. That's the point that I'm trying to
23 bring. It is -- I have a hard time trying to
24 understand all of the pieces of this because some of
25 it doesn't seem to jive with what I think it should

1 actually occurred.

2 And, again, I don't know where you got the
3 grand scheme or grand plan from, but that's not what I
4 was saying. I'm just trying to understand the
5 timeline. Several different groups are presenting
6 this to us and it is, again, the different of opinion
7 of certain things, but there are certain things that
8 are kind of set as in when certain e-mails were
9 happening. There were several people that were from,
10 I'm assuming that they were all on DCCA. I do not
11 know that for sure, but the e-mails that Mr. Tondro
12 described in March had several members that were from
13 DCCA.

14 And so, I just am again the -- it's curious as
15 to why there was such a lag time between when this
16 information was known and when we -- the appeal was
17 filed.

18 CHAIRPERSON HILL: Okay.

19 MR. HART: And I'll leave it at that.

20 CHAIRPERSON HILL: All right.

21 MR. HART: That's just a comment, not a --
22 it's not a question.

23 CHAIRPERSON HILL: All right.

24 MS. DIENER: Just add for what it's worth.

25 CHAIRPERSON HILL: Sure.

1 MS. DIENER: We thought the clock started with
2 the permit. And July and August are very off times
3 for civic associations and ANCs. It's hard to get the
4 committees to meet. We don't even have a membership
5 meeting.

6 We also do the DuPont Circle House tour. And
7 this is a very big deal and it's the third Sunday in
8 October, and we're totally stressed out and working on
9 that. So, Brian may have had trouble getting our
10 attention. I don't recall. I know this was vaguely
11 on my radar.

12 Then it became urgent in terms of timing,
13 where we would miss the closing of the 60 days, as I
14 recall.

15 Also, I just have a question. So, if a
16 determination letter is issued about something, is the
17 builder then required to build that? I mean, how do
18 we as an organization know what in fact will be built
19 that we might not like, until the building permit is
20 issued?

21 MR. TURNBULL: Well, the determination letter
22 as issued by the ZA, and then this case in Mr.
23 LeGrant's letter it says, "Accordingly, it is my
24 determination that the project may be constructed as a
25 matter of right provided that the project plans filed

1 with the applicable building permit, do not
2 substantially deviate from the plans attached here as
3 Exhibit A."

4 Now, unless he makes a change, he's building
5 it as per this determination letter. I mean, it's
6 basically saying, you're good to go. I mean, he's
7 basically giving his approval that he sees nothing
8 wrong. And the letter goes and addresses it. So,
9 he's basically saying that the building permit, unless
10 there's something outrageous or something different,
11 can go ahead.

12 MR. GAMBRELL: If I may? Thirty seconds? No.

13 CHAIRPERSON HILL: I mean, Mr. Turnbull, that
14 was a comment. I guess it wasn't --

15 MR. TURNBULL: Yeah, no.

16 CHAIRPERSON HILL: -- what you were answering.

17 MR. TURNBULL: I'm just making a comment.

18 CHAIRPERSON HILL: Okay. So, before I get to
19 you, Mr. Gambrell, and then we're going to wrap this
20 up, this portion of it, all right, unless, you know,
21 the Board has further questions. Again, I'm just kind
22 of curious when DCCA meets and how you guys kind of --
23 because again, you can see what is the comments that
24 are in terms of like the timeline and when you
25 possibly knew, and when you should have known. Right?

1 So, you don't meet in August. Is that what
2 you're saying?

3 MS. DIENER: Right.

4 CHAIRPERSON HILL: Okay. So, when do you
5 meet? You meet once a month?

6 MS. DIENER: Our board of directors meets once
7 a month.

8 CHAIRPERSON HILL: Board of directors. Okay.

9 MS. DIENER: But not in July or August.

10 CHAIRPERSON HILL: Okay. So, the board of
11 directors, so your association does not meet in July
12 and August.

13 MS. DIENER: That's right.

14 CHAIRPERSON HILL: Okay. So, then your
15 association met in June?

16 MS. DIENER: In June.

17 CHAIRPERSON HILL: Okay. And when do you
18 meet, normally?

19 MS. DIENER: We meet October through June.

20 CHAIRPERSON HILL: October through June. Once
21 a month? Once a month?

22 MS. DIENER: Membership meetings.

23 CHAIRPERSON HILL: Once a month?

24 MS. DIENER: Yes, of our full membership.

25 CHAIRPERSON HILL: Do you have a date? A

1 regular date?

2 MS. DIENER: The first Monday.

3 CHAIRPERSON HILL: First Monday. Okay. So,
4 first Monday. And then, and I'm just kind of trying
5 to understand what you guys do. So, I mean, the whole
6 -- there's the board that's there, then anyone who is
7 a member comes to -- and what do you normally do at
8 the meetings?

9 MS. DIENER: Well, generally the meetings have
10 speakers on various topics related to civic rules and
11 regulations, agency projects, cultural projects that
12 are going on. Sometimes speakers of -- who have
13 written books about DuPont Circle or something like
14 that.

15 CHAIRPERSON HILL: Okay.

16 MS. DIENER: But then the members are
17 permitted to bring before us, any business that they
18 think we should know about, or that they want to
19 share.

20 CHAIRPERSON HILL: Okay. And that's when
21 something would have come up in June or, you know,
22 April, May, whatever, at that time. And then
23 September is when Mr. Gelfand brought this up to you
24 at that meeting, or -- I'm sorry, now I forget even
25 the timeline was, but it was before the meeting that

1 Mr. Gelfand brought this up to you in September.

2 MS. DIENER: Yeah, you know. It's a little
3 bit hard. I don't have a documented day by day.

4 CHAIRPERSON HILL: That's okay.

5 MS. DIENER: I was not prepared for this level
6 of discussion, and we will gladly provide it to you.
7 I apologize.

8 CHAIRPERSON HILL: That's all right. You
9 don't have to apologize.

10 MS. DIENER: But, you know, we live a few
11 blocks from each other, we see each other all the
12 time, in the coffee shop, walking our dogs. I mean,
13 it's hard to remember exactly when was the first time
14 you learned something about this.

15 CHAIRPERSON HILL: Okay. I mean, you can see
16 it's important, right? We're trying to figure out the
17 timeline so that's why I'm asking you.

18 MS. DIENER: Well, it seems like you have two
19 things. You think that it's possible that the
20 determination letter is the starting of a 60-day
21 clock. But it was our impression that the permit
22 issuance was the starting of the clock.

23 CHAIRPERSON HILL: Right, well --

24 MS. DIENER: And I mean, that's the --

25 CHAIRPERSON HILL: -- the regulations state

1 when the starting of the clock is, and it again, is
2 the first writing that reflects the administrative
3 decision and when the appellant had notice. So,
4 that's the first writing, I would agree, is the
5 determination letter.

6 Now, whether or not you had notice of it or
7 not, that's where I'm trying to kind of like get to,
8 you know? And so --

9 MS. DIENER: But notice would be just from
10 someone telling us? Not an official notice from the
11 agency?

12 CHAIRPERSON HILL: Well, that's where I think
13 there is confusion as to how one does get notice, you
14 know, but -- so, okay. So, I don't have any -- Mr.
15 Gambrell, you had a comment?

16 MR. GAMBRELL: Yeah, I wanted to give a
17 perspective on a zoning determination letter from the
18 world we live in, as nonlawyers, nondevelopers.

19 When I was on the --

20 CHAIRPERSON HILL: I'm a nonlawyer and I'm a
21 nondeveloper. I understand. I mean, I'm in your
22 world. Okay? You don't have to like, point it out.

23 MR. GAMBRELL: When I was on the ANC, and we
24 would have developers come in, and I remember there
25 was a case actually on Susan's block with a zoning

1 determination letter in hand, and the developer came
2 in and we had robust discussions, surprise, surprise,
3 about the basement cellar issue. Nobody in that room
4 thought that was the start of the 60-day clock for the
5 ANC to take action.

6 So, you know, from the standpoint of when you
7 have discussions around zoning determination letters,
8 to the extent the community even knows about it, which
9 happened in the case of Susan's block, it was a point
10 from which we were having a discussion about, do we
11 have comments on this project, should it move forward?

12 Nobody on the ANC ever thought, oh my god, this is a
13 60-day clock, we have to think about our position on
14 this in relation to timeliness.

15 CHAIRPERSON HILL: Okay. Okay.

16 MR. GAMBRELL: This is absolutely alien.

17 CHAIRPERSON HILL: Okay.

18 MR. GAMBRELL: And I might just wrap up by
19 saying again, we quoted extensively from BZA case
20 history that shows that this board does not see a
21 zoning determination letter as an appealable decision.
22 It's simply in your case record. The issue of first
23 writing in ZR-16, there's nothing to say first writing
24 means a zoning determination letter.

25 CHAIRPERSON HILL: It just says first writing.

1 MR. GAMBRELL: But it doesn't say --

2 CHAIRPERSON HILL: All right. Okay. It's
3 okay, Mr. Gambrell. We're there, we're talking this
4 all through. You made your point on that issue.

5 And so, and for the record, I'm a small
6 developer, not a big developer. But okay. And yes,
7 of course, Mr. Tondro, you get -- well, hold on.
8 Before --

9 MR. TURNBULL: Mr. Chair.

10 CHAIRPERSON HILL: Yes, please. Go ahead.

11 MR. TURNBULL: Before Mr. Tondro jumps in, one
12 of the things, just continuing on with the line of
13 comments and questions that Mr. Hart had, one of the
14 things we're trying to do is to establish time limits,
15 involvement, and knowledge.

16 Now, from what I can understand Mr. Gambrell,
17 Mr. Gelfand, Mr. Nichols, and Mr. Hawkins are all
18 members of DCCA. No? No? You're not a member.

19 Just Mr. Gelfand.

20 MS. DIENER: And Commissioner Nichols.

21 MR. TURNBULL: And Commissioner Nichols.

22 MS. DIENER: Here at the table.

23 MR. TURNBULL: Well, I mean, if I go back to
24 the four of you were all copied with the e-mail,
25 according to Mr. Tondro's timeline, on March 21st.

1 MR. GELFAND: We weren't all copied. It was,
2 it was just me. Mr. Gambrell and -- was not copied.
3 I don't know if Mr. Hawkins was. Mr. Gambrell
4 certainly wasn't.

5 CHAIRPERSON HILL: Was Mr. Nichols?

6 MR. GELFAND: Ms. Nichols, I don't know if she
7 was or wasn't. She was serving in a role as ANC
8 commissioner representing the district where this
9 property is.

10 CHAIRPERSON HILL: Okay, the building owner
11 has something to say.

12 MR. CASEY: They were all notified.

13 CHAIRPERSON HILL: Who was all notified?

14 MR. CASEY: Gelfand, Nichols, and --

15 CHAIRPERSON HILL: And you have an e-mail
16 there that's been submitted in the record?

17 MR. CASEY: Yes.

18 MR. TONDRO: Yes, it's the owner's original
19 prehearing statement. I don't have the exhibit number
20 on me, but it is their Exhibit B. Commissioner
21 Abigail Nichols and --

22 CHAIRPERSON HILL: Okay, Mr. Tondro, I'm just
23 going to cut you off. Can you submit that again?
24 Like, I want to see all this again. We're going to
25 have to -- we're not going to make a decision on the

1 timeliness or the --

2 MR. TONDRO: The merits.

3 MS. DIENER: Standing.

4 MR. TONDRO: The standing.

5 CHAIRPERSON HILL: Thanks so much. The S word
6 was just killing me. I got it. So, standing at this
7 point.

8 So, if you could submit that.

9 MR. TONDRO: And I'm sorry --

10 CHAIRPERSON HILL: Yeah. Yeah. Yeah.

11 MR. TONDRO: -- I do have -- that's Exhibit 27
12 on the record, I believe.

13 CHAIRPERSON HILL: Okay. If you wouldn't mind
14 submitting it again?

15 MR. CASEY: 27B, to be exact.

16 CHAIRPERSON HILL: Okay. Can you submit that
17 again at the -- just, I want this all tidy so that I
18 can take a look at it if you wouldn't mind. Okay?

19 MR. TURNBULL: I guess my question is that --

20 CHAIRPERSON HILL: Sure.

21 MR. TURNBULL: -- if all four copied you must
22 have talked about whatever the -- and you must have
23 brought up the issue, whatever the issue was, at some
24 point during those six months. No? I'm just trying
25 to find out.

1 MR. GELFAND: DCCA -- he did not.

2 MR. GAMBRELL: I mean, absolutely. I mean, we
3 all became aware of this whole basement cellar issue
4 over time and we certainly would talk. There's no
5 question that we talked about it, but you know, you're
6 waiting for the building permit to be issued because
7 it's our understand, you know, as we well documented,
8 that you have to appeal something that is specific and
9 that's what a building permit is.

10 You do not think a zoning determination letter
11 is appealable either.

12 CHAIRPERSON HILL: Well, Mr. Gambrell, we'll
13 see what we end up deciding on, you know. But I
14 appreciate your comment. So, I'm going to end this,
15 wrap this up. Yeah. And I'm going to let Mr. Tondro
16 finish.

17 And so, is there anything in particular --
18 well, I'll let you finish first, then we'll clarify
19 what we'd like to see.

20 MR. TONDRO: Thank you. I just wanted to get
21 back to you. The number of that appeal with the
22 Spring Valley determination, with the determination
23 letter that was appealed to the Board that the Board
24 ruled on, that was 19274. 19274.

25 CHAIRPERSON HILL: Okay. And would you submit

1 that please?

2 MR. TONDRO: I will submit that.

3 CHAIRPERSON HILL: And would you highlight the
4 area that you're referring to?

5 MR. TONDRO: Yes, absolutely. I will do that.

6 CHAIRPERSON HILL: Thank you.

7 MR. TONDRO: And I just wanted to also call
8 attention to the fact that when, that the zoning
9 determination letter is not just only a document, but
10 in this case also included plans. And so, it was
11 possible -- and it's not just sort of an expression
12 that he can build 2,700 square feet that's 42-feet
13 tall. They're actually building plans to show exactly
14 what it is that corresponded to that.

15 CHAIRPERSON HILL: Okay. All right, Mr.
16 Tondro.

17 MR. TONDRO: So it makes it clear to the
18 building permit when it comes to the building permit
19 stage, the person reviewing for zoning compliance will
20 look back to that zoning determination letter, compare
21 the plans --

22 CHAIRPERSON HILL: I got you. I understand.

23 MR. TONDRO: Just wanted to make sure that was
24 on the record. Thank you.

25 CHAIRPERSON HILL: I understand. So, the

1 building owner gets to go last, if you have anything
2 to add. I'd like, you know, findings of fact and
3 conclusions of law of these issues so that we can make
4 a determination on the standing and the timeliness.
5 Okay?

6 It's confusing. It is confusing. And yet, at
7 the same time, you know, we have to try to figure out
8 what is within the regulation and how the regulation
9 is supposed to be read. And there is some difference
10 of opinion as to what that timeline is. Okay?

11 So, we're going to go ahead -- no, no, please.
12 Let's not do it. We still have to go to a whole
13 other thing. Okay?

14 So, you can go ahead and submit whatever you
15 want to submit, because we're going to take a look and
16 decide on the standing issue and the timeliness issue.
17 Is there anything else from the Board before I close
18 this portion?

19 MR. TURNBULL: I guess just one thing. We
20 need to understand what the appellant's -- I guess I'm
21 trying to find out what kind of an exceptional
22 condition you believe you meet if you don't feel that
23 the administrator's letter is not from the date that
24 it stats, that the 60 days start. We need to
25 understand why you feel that you are in an exceptional

1 position to merit going -- that you should be only by
2 the building permit.

3 CHAIRPERSON HILL: So, what I think, Mr.
4 Turnbull, if I understand correctly, so, you don't --
5 I mean, the appellant doesn't think that the clock
6 should have started on March 21st. However, if we
7 think the clock should have started on March 21st
8 within the regulations, you can submit reasoning as to
9 why you think that there are -- and what's, Sherry,
10 the legal term within the --

11 MS. GLAZER: An exceptional circumstance to
12 justify an untimely filing.

13 CHAIRPERSON HILL: Exceptional circumstance to
14 justify an untimely filing.

15 MS. GLAZER: But also, they would have to
16 establish that there was no prejudice to any of the
17 other parties.

18 CHAIRPERSON HILL: Okay. So, that's again,
19 within the regulation. And where is that within the
20 regulation? Okay, you don't know off the top of your
21 head. Okay.

22 MR. COLLINS: Sub 303.2.

23 CHAIRPERSON HILL: Sorry, could you say that
24 again, Mr. Collins?

25 MR. COLLINS: Sub Y, Section 302.2.

1 CHAIRPERSON HILL: Okay. Thank you. And
2 you'll be charging us for that time?

3 MR. COLLINS: It has to be a exceptional
4 circumstances outside of the appellant's control.

5 CHAIRPERSON HILL: Okay. So, I don't know. I
6 guess we're -- I don't know exactly what we're doing
7 here. In terms of like, if you want to offer that up
8 for the Board, to take into consideration. However,
9 it seems as though you don't think that you, you know,
10 the March 21st date counts.

11 So, you can submit whatever you would like to
12 submit. We're pointing out this regulation to you if
13 you'd like to make use of it.

14 Okay. So, is there anything else before I go
15 back to the building -- I'm sorry, before I go back to
16 the -- thank you, Mr. Turnbull. Before I go back to
17 the building owner in conclusion of this portion?
18 Anyone else from the Board want anything else?

19 Does everybody know what we're asking of?

20 [No audible response.]

21 CHAIRPERSON HILL: Okay. All right. Please,
22 Mr. Collins.

23 MR. COLLINS: Thank you. I think you've heard
24 everything on our position her to summarize. We don't
25 believe that they meet the test. The first writing

1 was the March 21, 22, 2016 documents from the Zoning
2 Administrator's office. There were -- the appellants
3 have testified that they have had several meetings
4 between March 21 and their filing in September, where
5 members can bring up issues of concern. That didn't
6 happen. The 60-day clock clearly has passed.

7 In addition, Mr. Chair, we also raise in our
8 writing and mentioned it today, but I want to
9 reiterate that the appeal was filed more than 10 days
10 after the building was under roof. That's an
11 important issue. We're talking about a basement
12 versus cellar, but they also, the appellants are also
13 alleging that the building is over FAR because in
14 their world, the cellar is actually a basement and
15 counts in FAR. So, the building would be --

16 CHAIRPERSON HILL: No, I understand. I
17 understand. Yeah.

18 MR. COLLINS: So, don't lose sight of the fact
19 that we also claim that the building was under roof by
20 July 31.

21 CHAIRPERSON HILL: Sure. And you can go ahead
22 and submit that as well, again.

23 MR. COLLINS: I've already submitted it in our
24 pleading, but we'll be happy to resubmit.

25 CHAIRPERSON HILL: Yeah, please resubmit

1 everything, so that it's easy for us to take a look --
2 I mean, it makes it easier for us, okay, to not have
3 to hunt through different exhibits to try to figure
4 out again what was brought up. So, if you can, that
5 would be very helpful. The -- yeah.

6 MR. COLLINS: Okay.

7 CHAIRPERSON HILL: So, does the Board have
8 anything else they'd like to ask for, and I know I've
9 already asked this a few times, of anyone here to
10 submit for -- oh, yeah, now I remember what I was
11 going to say. Sorry.

12 So, the -- thanks. So, the standing issue,
13 I'm not as concerned about, okay? Like it's the
14 timing, the timeliness that is really what you can
15 already tell has been the focus of this conversation.

16 Okay? And even though I understand the appellant's
17 argument in terms of the timeliness, you know, we
18 again continue to get brought back to 302.5. And, the
19 discussion as to what is the first writing and when
20 the appellant knew. So, that's where we are with the
21 timeliness.

22 So, I'm just kind of making that as a final
23 statement on those two issues. All right?

24 Before we start the merits of the appeal,
25 we're going to take a three-minute break. Okay?

1 [Off the record from 1:28 p.m. to 1:38 p.m.]

2 CHAIRPERSON HILL: Okay. So, what I'd like to
3 do is start hearing the merits of the appeal. And the
4 way I'd like to try to do this in order of, you know -
5 - and I am trying to do this as expeditiously as
6 possible. I mean, we have a very full record on this
7 appeal, and we've read, believe it or not, all of it.
8 And so, we are well versed in what is there, meaning
9 you don't have to repeat it all, you don't have to go
10 through all of it all again.

11 So, what I'd like to do, since everyone is
12 here, I guess, you know, I would like for one person
13 to be kind of the person speaking for the appellant.
14 Who would be leading that? Or no. You? Okay, so Mr.
15 Gelfand. All right.

16 So, Mr. Gelfand, then, I'm going to let you,
17 you know, present your case. Okay? Right? The
18 merits of the case, all right. And then the DCRA will
19 have an opportunity to speak, and also cross-examine
20 your presentation, as well as then, the building
21 owner, okay? And then we're going to go through and
22 hear from your witnesses. I assume these are your
23 witnesses, correct?

24 So, then we'll go ahead and go through the
25 witnesses. Is there anyone else here wishing to speak

1 in opposition or support of this particular appeal?

2 Okay. All right. So, I have one, two people.

3 Okay. So, that will be afterwards, at the end.

4 MR. COLLINS: Mr. Chair, could I ask for
5 clarification?

6 CHAIRPERSON HILL: Sure. Sure.

7 MR. COLLINS: Unlike applications for special
8 exceptions and variances, in an appeal case there's no
9 provisions for persons in support or opposition to
10 testify.

11 CHAIRPERSON HILL: Oh, I thought though, you
12 had -- you had -- well, that's what I thought the -- I
13 thought I was just --

14 MR. COLLINS: It's in Sub Y, Section 507.

15 CHAIRPERSON HILL: I thought I was just told
16 that, actually, so, no? Well, then I misheard, I
17 apologize. So, the members of the audience here, you
18 won't have an opportunity to speak as in the new
19 regulations for this appeal. So, I hope you can learn
20 something from the presentation.

21 And so, I suppose, can they submit something
22 into the record, Sherry?

23 [No audible response.]

24 CHAIRPERSON HILL: No? No one submits
25 anything. They, anyone in support or opposition. I

1 don't know, I can't remember the regulation right now.

2 MR. COLLINS: You've gotten a lot in the
3 record already. You left the record open in our last
4 hearing.

5 CHAIRPERSON HILL: Right. Now that I think
6 about it, I did realize everyone that did submit
7 things, now that I think about it.

8 MR. TONDRO: And I would -- so, it's Subtitle
9 Y through 2.12 H requires that as part of the initial
10 filing, that is 302.12 H, that all statements,
11 information, briefs, reports, including reports and
12 statements of experts and other witnesses, plans,
13 photographs, and other exhibits that appellant may
14 wish to offer in evidence at the public hearing be
15 filed with that initial appeal. So, I think if it's
16 already been extended and incorporated in much more.
17 Thank you.

18 CHAIRPERSON HILL: All right. Thank you, Mr.
19 Tondro. So, that means that I hope that the people in
20 the audience had already submitted whatever they
21 wanted to submit into the record.

22 So, okay. So, I'm back to here. So, Mr.
23 Gelfand, if you want to go ahead and present your
24 argument. Again, how much time do you think you need
25 for your portion?

1 MR. GELFAND: I need 15, 20 minutes.

2 CHAIRPERSON HILL: Okay. Why don't we start
3 with 15 minutes? Okay? Because we have -- yes? Oh,
4 sorry. Because we have a lot of things to go through.

5 And again, I'm just letting you know, we have
6 read the record extensively. So, you're just
7 basically highlighting what you want to highlight for
8 us to take into consideration. Okay? So, please.

9 MR. GELFAND: Thank you. We're happy to move
10 on to the merits.

11 CHAIRPERSON HILL: Fifteen minutes.

12 MR. GELFAND: Okay. As an introductory
13 comment, wanted to note a few points about what this
14 case is not, and what this case is.

15 Not a question of whether you can habitable
16 units in a partially below-grade space. You can.
17 It's called a basement.

18 Not a question as to affordable housing
19 policy. It's not a subjective view of what is the
20 best unit mix, single-family, multi-family, micro-
21 units, and it's not a debate as to whether the
22 allowable FAR should or should not be increased in the
23 zoning district.

24 The case is a question of adherence to the
25 current zoning regulations as written for the

1 classification of two types of partially below-grade
2 space, basements and cellars. Why are there two
3 distinct classifications of partially below-grade
4 space in the regulations? What is the applicant and
5 enforcement of the different requirements and
6 restrictions for both basements and cellars?

7 Prior cases have focus --- related to the
8 basement/cellar question have focused solely on
9 measurements. The BZA has never heard a
10 basement/cellar case on the basis of the cellar
11 definition in relation to habitability.

12 And we'll go through three errors that the
13 Zoning Administrator made. Error No. 1, is that the
14 permit and plans fail to achieve the cellar
15 measurement on the plans that the Zoning Administrator
16 approved.

17 The above slide shows a photo of the existing
18 conditions of the property. This was prepared by
19 architect, Don Hawkins here. On the left is the
20 existing conditions prior to the submission of a
21 permit application. On the right, are the plans that
22 were submitted. The black writing on the right is the
23 plans as submitted by Casey D.C. Architect, I believe
24 without a stamp. In red are corrections to these
25 plans performed by Don Hawkins, making the

1 from the last slide, juxtaposed with the actual plans,
2 which were submitted to the Zoning Administrator
3 LeGrant. If you look at the height of the ceiling on
4 the plans in the below right section of the slide, on
5 the plans it's labeled as three-foot, 11-inch as a
6 dimension. But you can see on this measurement, which
7 was performed by those three, you know, prior
8 mentioned people. You look at that same height and
9 it's actually four-feet, five-inches, not three-foot,
10 11-inch.

11 The next two slides also show inconsistencies
12 between the approved plans and the zoning
13 determination letter. This plan was taken from the
14 approved plans and shows an eight-foot, eight-inch
15 interior ceiling height of the partially below-grade
16 space.

17 The following slide, from Exhibit C in the
18 zoning determination letter shows that same
19 measurement at seven-foot, 10-inch, showing further
20 differences between the zoning determination letter
21 and the actual approved permit.

22 Okay. All of those were related to the
23 measurement error where the Zoning Administrator did
24 not follow his own standard, which solely looks at the
25 four-foot measurement to determine the ceiling height

1 of the partially below-grade space.

2 Moving on now to error 2 is the failure to
3 follow clear language in the zoning regulations. The
4 cellar is defined under habitable room definition for
5 a reason. Is it functioning as a cellar? Space that
6 is defined as a cellar should function as a cellar.

7 The chart on this slide shows some of the
8 differences between basements and cellars as it
9 relates to various criteria. The first one, is it
10 habitable? Cellars are not, basements are.

11 Is it included in gross floor area? Cellars
12 are not, basements are.

13 And then, as it relates to the rule of
14 measurement, cellars are less than four feet ceiling
15 height above adjacent grade, basements are greater
16 than four feet.

17 There are two different classifications for
18 partially below-grade space with different
19 requirements and different treatment under gross floor
20 area. The actual definitions are listed here. As you
21 mentioned, I'm sure you've read these definitions, but
22 the relevant portion from habitable room, the term
23 habitable room shall not include attics, cellars, and
24 on and on.

25 Further, the definition of an apartment is one

1 or more -- it starts with consisting of one or more
2 habitable rooms with kitchen and bathroom facilities
3 exclusively for the use of and under the control of
4 the occupants of those rooms. So, habitable room
5 excludes cellar, and apartment must consist of
6 habitable rooms.

7 The definition of a cellar is in two parts.
8 One is a rule of measurement. The other is a rule of
9 use. You cannot cherry-pick which definitions to
10 apply. The Zoning Administrator has only applied the
11 rule of measurement, but has ignored the rule of use.
12 It's like having your cake and eating it too.

13 The attached slide outlines some of the cross-
14 references and inter-relatedness of various
15 definitions throughout the zoning regulations.
16 Habitable room has attics and cellars. Gross floor
17 area, basements and cellars. Apartment habitable
18 room, which is not a cellar.

19 Okay. The law of surplusage. The basic
20 principle of statutory construction that the words in
21 the regulations have meaning, and you cannot interpret
22 the words so as to render them meaningless. By
23 ignoring the restrictions on cellars as habitable
24 space, the Zoning Administrator has rendered
25 meaningless, the definitional difference between a

1 basement and a cellar. The effect of this is to
2 change the FAR in an R-5-B District, from 1.8 to
3 approximate 2.4. Again, apartments clearly consist of
4 habitable rooms. Habitable rooms clearly exclude
5 cellars.

6 The Zoning Administrator uses imprecise
7 justification of a cellar definition. And this is
8 excerpted from an e-mail that he wrote to me, and
9 says, "Although a preliminary reading of the
10 definitions of these terms supports the exclusion of
11 such rooms from cellars, my office's approval of
12 numerous other projects with below-grade dwelling
13 units is consistent with the District's Zoning
14 Regulations. Although cellars and attics are excluded
15 from the definition of habitable room, the regulations
16 do not prohibit those spaces from being used for
17 sleeping, cooking, and living. This has been DCRA's
18 long-standing interpretation of the regulations, and
19 is consistent with many provisions of the District of
20 Columbia Construction Codes, including the building
21 code, property maintenance code, and fire prevention
22 code that specifically allow for the occupancy of
23 partially below-grade dwelling units."

24 Here, as in other projects, the cellar units
25 must provide light, ventilation, and emergency egress

1 required by those codes. Emphasis was added.

2 To clarify the Zoning Administrator's e-mail,
3 we agree that it's possible to have a partially below-
4 grade habitable living space. It is called a
5 basement. The zoning regulations do not state that
6 habitable space or apartments are allowed, and
7 cellars. Two wrongs do not make a right. If the
8 Zoning Administrator previously allowed habitable
9 cellar space, that does not mean it is the correct
10 application of the zoning regulations, and cannot be
11 used as justification to rationalize this new question
12 before this Board.

13 In fact, a prior Zoning Administrator ruled
14 differently on this issue in 2007. In the case of
15 1736 Corcoran Street, a 2007 DCRA review by then
16 Zoning Administrator, Bill Crews, considered the
17 question as to whether a cellar could be a habitable
18 apartment and also be excluded from GFA and FAR.

19 In order to gain approval of their planned
20 expansion the owners converted an existing basement
21 apartment into a cellar so as to exclude the newly
22 created cellar from GFA, so as to allow the building
23 to remain within allowable FAR levels.

24 In this strikingly similar precedent the
25 Zoning Administrator used a two-part test according to

1 the zoning definitions that in order to classify the
2 space as a cellar, and exclude that space from GFA,
3 this space had to both have ceiling height less than
4 four feet above grade, and not be used as an
5 apartment. See our Exhibit 41 on this topic. This is
6 the same question before this Board.

7 The Zoning Administrator references, quote,
8 "Other codes," to justify his approval. Alignment
9 with other regulations is justified per DCMR 11 1014D,
10 which states, "The provisions of any statute or other
11 municipal regulations shall govern whenever they
12 impose higher standards than are required by this
13 title."

14 The latest version of the final adopted rule
15 presented in DCMR, as posted at the bulleted link,
16 Chapter 1404, prohibits partially below-grade
17 habitable space if more than 50 percent of the
18 exterior wall area is below ground.

19 Moving on to error No. 3. Failure to apply
20 the clear intent of the density formula. If you use
21 it, you should count it.

22 Density formulas exist to limit the height,
23 bulk, and number of stories, size of buildings,
24 density of population. Again, two parts to the
25 definition, rule of measurement, and habitable room,

1 rule of use. The D.C. Office of Zoning handbook
2 reads, "The zoning controls of a particular zoned
3 district applicable to a property govern many aspects
4 of use and development, including maximum permitted
5 building bulk or gross FAR, which is a general measure
6 of building scale." End quote.

7 The above reference equates bulk and FAR.
8 Ignoring the cellar restriction as habitable space
9 does just the opposite. Instead of controlling bulk
10 it facilitates the transfer of bulk from partially
11 below-grade space, to the top and the back of the
12 building.

13 FAR counts all livable space. Not all livable
14 space is defined as habitable in the definition of
15 habitable room. However, FAR is clearly tied to the
16 relationship of space being occupiable for purposes of
17 living, sleeping, and eating.

18 Why is cellar space excluded from FAR? The
19 regulations do not envisage cellar space as being used
20 for human habitation.

21 So, there have been manipulations to evade the
22 rule of FAR. Manipulation of grade and ceiling height
23 seeks to evade FAR by changing the definition, while a
24 redefined cellar is still being used as habitable
25 space. This trick is both against the plain English

1 of the zoning regulations, as well as the intent of
2 the difference between a basement and a cellar.

3 Habitable is included in eight definitions
4 across the zoning regulations. Each of the eight
5 terms is included in density formulas by inference.

6 So, in summary, the Zoning Administrator
7 approved plans that do not even meet his own
8 requirement that the measurement from ceiling to
9 adjacent finish grade is less than four feet. The
10 Zoning Administrator has ignored the full inter-
11 related definitions which in plain English require
12 that apartments consist of habitable rooms and
13 restrict cellars from the definition of habitable
14 rooms.

15 There is precedent to support the appellant's
16 reading of the regulations which requires both the
17 measurement requirement and the use restrictions to be
18 followed, and the Zoning Administrator's failure to
19 enforce the cellar's restriction as habitable space
20 ignores the intent of the zoning regulation FAR rules
21 to control bulk, and facilitates the creation of more
22 bulk above and beyond the allowable levels in the
23 regulations.

24 Thank you.

25 CHAIRPERSON HILL: Wow, that's pretty good.

1 I'm impressed. You should get a balloon for that.

2 Mr. Moy, is there -- Mr. Moy is gone. How do
3 you turn that buzzer off? Thank you.

4 Before I guess, Mr. Tondro, you go ahead and
5 then I guess, Mr. Collins, you're going to speak on
6 behalf of the building owner. I mean, I know that
7 we're all basically, you know, we have difference of
8 opinion here, right? And so, we want to hear from --
9 I guess I'm just trying to make sure we just try to
10 keep it all kind of relaxed. In terms of like, you
11 know, trick. Nobody is trying to trick anybody.
12 Nobody is trying to game the system. I mean, we're
13 trying to figure out the facts here, and the Zoning
14 Administrator has also -- their opinion as the
15 building owner does as well.

16 I'm just trying to say, let's try to stick
17 with the case itself and not infer that something else
18 is happening. Okay?

19 So, I don't know if I've hampered your
20 discussion, Mr. Tondro, or not, but you know, please
21 may I put -- I mean, how much time do you need, Mr.
22 Tondro?

23 MR. TONDRO: For now, 10 minutes should be
24 fine.

25 CHAIRPERSON HILL: Okay. All right. Thank

1 you so much.

2 MR. COLLINS: I'm sorry. Can I just get some
3 clarification?

4 CHAIRPERSON HILL: Sure, Mr. Collins.

5 MR. COLLINS: Are we taking the entire
6 appellant's case first and then the Zoning
7 Administrator, and then --

8 CHAIRPERSON HILL: I guess what I had planned
9 on was the presentation, presentation cross,
10 presentation cross, hearing from the witnesses, and
11 then you would get a chance to cross the witnesses as
12 well, was kind of the process that I thought. But
13 maybe Sherry or Ms. Glazer can help me with the
14 procedures.

15 MS. GLAZER: Well, I think the appellant needs
16 to present its case first, and that would include the
17 witnesses.

18 CHAIRPERSON HILL: Okay. All right. Well,
19 then you can take a break there, Mr. Tondro.

20 So, if we could go ahead and have the four
21 witnesses here, and Mr. Gambrell, I assume you're
22 going to start because you're switching chairs. And
23 so, what I'm going to go ahead and do is, I'm going to
24 limit you each to three minutes and you can take a
25 second there to get yourself all settled -- situated.

1 MR. MOY: While he's getting situated, Mr.
2 Chair, unless I'm wrong, but the PowerPoint
3 presentation that was given by the appellant looks a
4 little bit different than the one that was submitted
5 into the record. But if it's been updated, I
6 appreciate having the most recent one in the record.
7 All right? Thank you.

8 MR. GELFAND: Not to our knowledge, but we'll
9 check.

10 CHAIRPERSON HILL: All right, yeah, Mr.
11 Gelfand, just take a look. Again, as I was kind of
12 going through the PowerPoint it didn't completely line
13 up so I don't know which one we have, but if you can
14 make sure that we have the one that you just
15 submitted, that would be great. Thank you.

16 All right, Mr. Gambrell.

17 MR. GAMBRELL: Okay. Great. Good afternoon.
18 As I mentioned, Alan Gambrell, former ANC 1C
19 commissioner, but I'm just a citizen today, speaking
20 on my own behalf.

21 I wanted to go through some examples. My key
22 point here is to show that this basement cellar issue
23 is not an isolated incident in terms of this case.
24 It's quite pervasive in terms of interpretation of the
25 zoning regulations.

1 I just want to start out by showing this one
2 slide, just to make clear to everybody what we deal
3 with in terms of basement cellars, as far as the
4 measurements are concerned, and apologies for the
5 word, manipulations.

6 What typically happens is in order to have
7 this entire lower level excluded from FAR, or as a
8 story in the old R-4, is often times the grade will be
9 raised to make it three-feet, 11-inches, or in this
10 case to lower the ceiling. However, what goes on, on
11 here, remains constant, which is its habitable space,
12 as Brian documented. And that clearly appears, to us,
13 to be contrary to what's written in the zoning
14 regulations.

15 Here's a map to show, and this is just in
16 Adams Morgan. I didn't have time to cover a lot of
17 area, but I just wanted to show the extent to which
18 this problem in the basement cellar interpretation is
19 resulting in over-density in neighborhoods. And it's
20 quite extensive.

21 Would like to show you a couple of examples.
22 This is actually on my block, on a case that did go
23 before the BZA. Here's the neighboring property, and
24 this is of course normally where you would perceive
25 the grade to be. I won't even go into why this is

1 here, but as a result of this case, DCRA identified
2 the grade as inside the building envelope in order to
3 say this was less than four feet from here to the
4 ceiling. I'm not making this up.

5 Here's an example of a project where it would
6 create a planter in order to make this distance less
7 than four feet. But this of course remains occupied
8 space. Here's another planter situation. I believe
9 this is up in Petworth where this used to be a
10 building like this, but this is now a four-story
11 building, but with this planter it's considered a
12 three-story building.

13 Here's a project that actually was not built
14 at this point, but this grade was raised right here,
15 outside of this egress window in order to achieve a
16 three-foot, 11 distance. This, of course, would be
17 the half-million dollar, one-bedroom condo in here.
18 This all being an effort to exclude this from FAR.

19 This is a project in the Old R-4. My
20 understanding, I'm less familiar with this case, but I
21 believe this grade was removed in order to construct
22 this building. This is a three-story district. The
23 grade was never replaced. Perhaps it has been today,
24 I don't know, but this is clearly four stories in a
25 three-story zone.

1 This is a case, also in Adams Morgan, where
2 the permit showed this to be a grade of less than four
3 feet. The builder did not build it as such. The
4 neighbors and the ANC alerted DCRA, and DCRA made the
5 developer raise the grade again, although the
6 retaining wall is in violation of the retaining wall
7 rule in terms of being approximately the same as the
8 neighboring properties, and I think you're going to
9 hear this case in a few months.

10 Final slides, getting back to the topic at
11 hand here, and I think Brian has pointed this out.
12 Where is the ceiling, exactly, to achieve this four-
13 foot measurement? Is it here? Or is it where it
14 shows on the plans? And where do you measure the
15 grade? Do you measure it here, or do you measure it
16 on this elevated point here?

17 These sort of uncertainties really would be
18 addressed if there would be a more full robust and
19 what the zoning regulations say in interpretation of
20 the zoning regulations on the basis of both its
21 measurement and it's use. Thanks.

22 CHAIRPERSON HILL: Thank you, Mr. Gambrell.

23 MS. DIENER: I could speak last, if that's
24 okay.

25 CHAIRPERSON HILL: Sure. Oh, you want to

1 speak last? Sure. Of course.

2 MR. HAWKINS: My name is Don Hawkins. I first
3 became --

4 CHAIRPERSON HILL: Mr. Hawkins, I'm giving you
5 three minutes as well, okay?

6 MR. HAWKINS: Okay.

7 CHAIRPERSON HILL: Just to let you know where
8 the clock is.

9 MR. HAWKINS: Okay. Good. I was getting my
10 introduction before the three.

11 CHAIRPERSON HILL: Oh, sorry.

12 MR. HAWKINS: My introduction to this project
13 was at an ANC meeting in November of 2015, when the
14 developer brought in a set of drawings that it
15 contained contradictory and inconsistent information
16 and I realized it was a replacement of a drawing, or
17 it was meant to be substituted for a drawing that he
18 had submitted earlier that had correct dimensions on
19 it. What the first drawings describe, showed
20 accurately, was a five-foot, six-inch difference in
21 elevation between the basement ceiling and the grade
22 in front of it.

23 The way it was introduced and the fact that
24 the developer had gotten a preliminary kind of reading
25 from the Zoning Administrator was -- seemed to me a

1 process when much work was being done, note that the
2 roof was -- that the house was under roof on July
3 31st, as has been mentioned several times. The permit
4 was only issued on July 18th. I have a lot of
5 photographs showing you the process of the work that
6 was going on from November of 2015 to you know,
7 through the period when they were supposedly getting
8 building permits. It was just irregular. I'm not
9 going to make any accusations particularly about them.

10 But, what was done -- this case would not have
11 gotten to you if the developer had not reduced the
12 size of the window on an historic building in order to
13 be able to raise the grade.

14 The reasons given for lowering the ceiling, as
15 an architect I could see where -- not the reason it
16 was really being done. It was said that the developer
17 said that the structure needed to be thicker. The
18 first thickening he did was with a deeper joist, which
19 were necessary. But those joists were only 11 and a
20 half inches deep, as I remember it. They may have
21 been 16 inches. They were not enough to make the
22 difference between the five-foot, six-inch ceiling
23 above grade, and the final conditions. Thank you.

24 CHAIRPERSON HILL: Thank you, Mr. Hawkins.
25 Hawkins. Is that correct?

1 MR. HAWKINS: That's right.

2 CHAIRPERSON HILL: Thank you.

3 Ms. Flinn? Was it Flinn?

4 MS. FLINN: Flinn.

5 CHAIRPERSON HILL: Flinn. Thank you. I'm
6 going to go ahead and put three minutes on the clock
7 also as well.

8 MR. COLLINS: Mr. Chair, I'm sorry.

9 CHAIRPERSON HILL: Yes. Sure.

10 MR. COLLINS: I'm sorry.

11 CHAIRPERSON HILL: It's all right.

12 MR. COLLINS: Last time we were here, January
13 18th, because the appellants had not listed any
14 witnesses --

15 CHAIRPERSON HILL: Uh-huh.

16 MR. COLLINS: -- you instructed them to list
17 all their witnesses in their revised prehearing
18 statement. And they submitted a revised prehearing
19 statement with three witnesses. Mr. Gelfand, Mr.
20 Hawkins, and Mr. Gambrell.

21 MR. GELFAND: I think the issue comes from,
22 you also said that the people that were there to speak
23 could have a chance to speak at the next meeting.

24 MR. COLLINS: If their names were listed in
25 the appellant's documents.

1 CHAIRPERSON HILL: I did. I did. I did. So,
2 Mr. Collins, do you have -- I agree with what you're
3 saying. Do you have an objection to Ms. Flinn having
4 three minutes?

5 MR. COLLINS: Well, I do, and that is because
6 I was asked by several people if they could come down
7 and testify in support of our position, and I told
8 them no because the only witnesses are those listed in
9 the filings.

10 CHAIRPERSON HILL: Okay. Ms. Flinn, have you
11 submitted something for the record concerning your
12 testimony?

13 MS. FLINN: I have. And the petition signed
14 by 60 neighbors in support of the appeal.

15 CHAIRPERSON HILL: Okay. Then, I'm just going
16 to go stick with the one that's in the record because
17 of the way that this was put forward at the end of the
18 last hearing.

19 MS. FLINN: Okay.

20 CHAIRPERSON HILL: So, thank you, though.

21 Now, and I apologize, Diener. Diener. Thank
22 you. So, Ms. Diner, I'm going to go ahead and give
23 you -- I'm sorry?

24 MS. DIENER: Very briefly.

25 CHAIRPERSON HILL: Okay, sure. Well, I'll go

1 ahead and put three minutes on the clock for you just
2 so you know where you are. Okay?

3 MS. DIENER: Okay, thank you.

4 CHAIRPERSON HILL: Sure.

5 MS. DIENER: Because I thought I was required
6 to be here. And I missed another hearing.

7 Anyway, I --

8 CHAIRPERSON HILL: Well, that's good you're
9 here. This is something that comes up a lot. You
10 might as well, you know, spend the time here with us
11 together to know what happens.

12 MS. DIENER: Precisely, and that's one of the
13 reasons why we chose this case. And we don't come
14 before you often with this kind of thing.

15 And I kind of want to summarize.

16 CHAIRPERSON HILL: Okay.

17 MS. DIENER: From my position, where I'm
18 coming from as a civic leader, someone who believes in
19 being involved at the local level with our government,
20 and trying to make it work so we can all live together
21 well.

22 But I just want to tell you, I'm an educator.
23 I am a trained linguist and I specialize in teaching
24 low literate adults how to read. The students that
25 come to me of all ages, native speakers of English,

1 because that's what we specialize in, not ESL, can't
2 even say the alphabet. They don't understand what
3 it's for. And I urge them through all kinds of ways
4 to stick with the program, stay in here, you're going
5 to learn how to read. You've got to learn how to read
6 for your children, for you know, yourself to protect
7 your rights, and to participate in this civic life,
8 that it's available to you here.

9 And when I come to a hearing like this and
10 there seems to be a lot of confusion about definitions
11 and where things stand, and is it this or is it that,
12 and I think that we have a responsibility to clarify
13 these things in our laws. So, that I'm not telling my
14 students in vain, to learn how to read because if they
15 get here, having learned how to read and they feel
16 like me, that they don't understand entirely what's
17 being discussed, that will be, I think, a very -- a
18 detriment to our society.

19 So, again, we chose this case because we
20 thought it was so clear. The definition of a cellar
21 versus a basement. I don't see what there is to argue
22 about that, and then measurements are measurements.
23 So, that's why we're here and we wouldn't really
24 trouble you with something that was a lot more
25 complicated because it's a little bit above our

1 paygrade as volunteers. But thank you for hearing us
2 on this.

3 MR. TONDRO: Chairman Hill. Pardon me.

4 CHAIRPERSON HILL: Give me one second. So,
5 Ms. Diener, no I agree with you and I've got to let
6 you know that, you know, everything that we hear is
7 complicated. Right? And if it were really, really
8 clear, none of us would ever be here because there
9 would be no need for us to be here. And so, again,
10 the words that are, you know, as a linguist and the
11 words that get choosed (sic), there's different
12 definitions, there's different ways to read those
13 words. Again, I had to read that -- you know, what's
14 it call, the regulation, this morning over and over
15 again, right? Just to kind of clarify.

16 I'm just trying to respond to your comment
17 which is that it's not that clear cut. If it was,
18 then we wouldn't be here. Right?

19 So, in your opinion, it is clear cut. I
20 understand. So, I'm about to turn this over to
21 somebody else who doesn't think it's clear cut in the
22 same way that you think it's clear cut. So, now, Mr.
23 Tondro.

24 MR. TONDRO: Yes. Pardon me, Chairman Hill.
25 I'm sorry for the interruption. I did want to,

1 however, register an objection to Ms. Diener's
2 testimony on the same grounds that Mr. Collins had
3 already raised. However, I want to be clear, I didn't
4 -- which is that she was not listed as a witness. And
5 I just want to be clear, I did not raise that
6 beforehand because I'm very aware that what she
7 represents, and I respect her role in this process.

8 However, I do believe that we are dealing with
9 new zoning regulations which were the result of seven
10 years or more, and as a result we have very clear
11 rules that are established in Section Y, 302.12. And
12 what concerns me about this case is we do have
13 something where that was explicitly laid out as to
14 what had to be provided. And now we're in a situation
15 where less than seven, eight months out from the
16 adoption, from the effective date of this, we're all
17 of a sudden saying, well, that doesn't really apply
18 here. It doesn't really apply here. You don't really
19 have to bring the witness list.

20 Again, we already had this situation was
21 raised back at the last hearing in January when they
22 were supposed to, according to the rules of why 302.12
23 filed this with their initial appeal all the way back
24 in September. And I guess I'm responding here.
25 There's certainly no advantage. I'm aware that I'm

1 not making DCRA's position --

2 CHAIRPERSON HILL: Okay. I understand. I
3 understand. I hear what you're saying.

4 MR. TONDRO: -- (simultaneous speech) point of
5 view and from the issue of the regulations, if what
6 we're really discussing here today is the regulations
7 and making sure that they're followed, the new
8 regulations are very, very explicit, and I want to
9 make sure -- so I just, what I'd like, you've already
10 heard it, heard Ms. Diener's testimony. I understand
11 that. I didn't raise objection before. But I would
12 like at least in the record later on, to make clear
13 there's no precedent going forward so that everyone is
14 on notice that what the regulations say is what the
15 regulations say, and that they're not in a position
16 where they can get around it afterwards. Thank you.

17 CHAIRPERSON HILL: Okay, Mr. Tondro. I thank
18 you for not interrupting ahead of time. I do also
19 think that there are new regulations that we are all
20 trying to kind of start to work through. And so, you
21 know, there is a witness list. We did point out the
22 witness list. We've already stopped one person from
23 speaking. And I do appreciate. I mean, Ms. Diener
24 does represent a community group that holds a lot of
25 weight. All community groups hold a lot of weight

1 with us here. And so, I do appreciate you pointing
2 that out.

3 I don't think, Ms. Glazer, I have to strike
4 this from the record or anything, because I do not
5 want to, unless the Board has some issue with what was
6 --

7 MS. GLAZER: The Board has the authority to
8 waive most rules.

9 CHAIRPERSON HILL: Okay. So, you've given me
10 far too much leniency here, now. But so, but I do
11 appreciate that, Mr. Tondro. And it is helpful moving
12 forward to further clarify that there is a witness
13 list, people need to be on this witness list. Again,
14 as we work through this, you know, they are not
15 attorneys. They are community groups. But I do
16 appreciate you pointing that out.

17 So, I was smiling earlier because again,
18 everything is not crystal clear. You know? And so,
19 that's what people try really hard, and people that
20 are way above my pay grade have tried to make things
21 very crystal clear, with the new zoning regulations,
22 over and over and over again, and yet still were
23 trying to figure something out.

24 But I do appreciate you pointing that out.
25 And so now, may I ask for you to make your

1 presentation and also comment upon everything that was
2 presented?

3 MR. TONDRO: And I just had a question about
4 that as to whether or not I believe that the appellant
5 has to finish, present their full case. I don't know,
6 Ms. Glazer. Is that --

7 MS. GLAZER: I thought that's what was
8 happening.

9 CHAIRPERSON HILL: What I thought was that
10 again, you guys got the last word.

11 MS. GLAZER: No.

12 CHAIRPERSON HILL: No?

13 MS. GLAZER: No. The appellant presents their
14 case, then there should be cross-examination by the
15 other parties of the appellant. Then DCRA should
16 present its case. Then the owner, and then the ANC.
17 If the ANC is here to testify.

18 Cross-examination is usually done after each
19 party presents. In fact, it's usually done after each
20 witness, but in Board proceedings, sometimes they're
21 all done at one time, if the testimony is short.

22 CHAIRPERSON HILL: All right, Mr. Tondro.

23 MR. TURNBULL: Mr. Chair, I just wanted to --

24 CHAIRPERSON HILL: Sure.

25 MR. TURNBULL: Very welcome Mr. Tondro's

1 comments. He's obviously very astute and has read our
2 new zoning regulations many times.

3 The only question as a fine point is that -- I
4 mean, the Board can look at this is that since Ms.
5 Diener is president of the civic association. Is she
6 really a witness or representing? It's a fine point.
7 So, I think giving her the ability to testify is
8 within the purview of the Board, I think, to be able
9 to do that.

10 CHAIRPERSON HILL: Okay.

11 MR. TONDRO: Well, I was going to say, that's
12 exactly what I was hoping for, was something on the
13 record that would state the reasons for why so we
14 understand going forward, how it works. Thank you
15 very much.

16 MR. TURNBULL: Yeah, it's a fine point. But -
17 -

18 CHAIRPERSON HILL: Okay. Mr. Tondro, would
19 you like to go ahead?

20 MR. TONDRO: I'm sorry. Have the appellants
21 finished their case?

22 CHAIRPERSON HILL: I believe the appellants
23 have finished their case, correct? Yes.

24 MR. TONDRO: So, I guess I -- thank you,
25 Chairman Hill, members of the Board.

1 CHAIRPERSON HILL: How much time do you need,
2 or should I put it on the clock for you?

3 MR. TONDRO: You can put on 10 minutes.

4 CHAIRPERSON HILL: Okay. Thank you.

5 MR. TONDRO: I was going to start with this by
6 saying, I thought this was --

7 CHAIRPERSON HILL: Yeah, sorry. You're cross-
8 examining here. Is that correct?

9 MR. TONDRO: Am I cross-examining? I'm sorry.
10 Thank you. Sorry, I got confused myself.

11 CHAIRPERSON HILL: Sorry. I also got
12 confused. I'm trying to clarify.

13 MR. TONDRO: Yes, if I can start -- should I
14 start in the order in which we heard the witnesses, or
15 can I choose -- okay. If I can ask Mr. Hawkins just a
16 couple questions? I again, I apologize if -- I don't
17 mean to come across as pedantic, but I do think that
18 the records needs to show this.

19 You devoted a fair amount of your time to
20 discussing what happened in terms of historic
21 preservation and interactions with that office. Can
22 you please clarify who has the authority, what body,
23 what entity, and what rules govern historic
24 preservation in those windows? And particularly is it
25 the zoning regulations that govern it, or are there

1 other regulations?

2 MR. HAWKINS: The building regulations require
3 a permit for changing windows. And I'd say that's the
4 most relevant.

5 MR. TONDRO: So, if I can -- I'm sorry, don't
6 mean to interrupt. But I guess the question is, first
7 of all, in terms of the aspect of the historic,
8 approving whether or not they are able to be changed,
9 those regulations are under the zoning regulations, or
10 are those regulations under some other part of the
11 DCMR?

12 MR. HAWKINS: The historic preservation laws.

13 MR. TONDRO: Okay. And the Historic
14 Preservation office, is it correct, are the ones who
15 administer that on behalf of the Historic Preservation
16 Review Board?

17 MR. HAWKINS: That's right.

18 MR. TONDRO: And they have made a
19 determination that this is not an issue?

20 MR. HAWKINS: They have not because the
21 project isn't finished and there is a huge issue that
22 we haven't talked about that is still pending.

23 MR. TONDRO: But then it would be pending
24 before that board and not before this board. Is that
25 right? This board or the Zoning Administrator will

1 not make that determination.

2 MR. HAWKINS: That's true.

3 MR. TONDRO: Okay. Thank you. Second of all,
4 in terms of you mentioned the building code, do you
5 happen to know off-hand where it is that appeals and
6 building code decisions are supposed to be -- in whose
7 jurisdiction appeals of building code, alleged
8 building code violations is?

9 MR. HAWKINS: I would imagine not the -- not
10 this body.

11 MR. TONDRO: Again, I don't mean to be
12 pedantic, I understand.

13 MR. HAWKINS: Depending upon what the problem
14 was, I would know how to appeal it, but I wouldn't
15 come here.

16 MR. TONDRO: All right. Thank you. That was
17 what I was looking for. Thank you. I appreciate your
18 help.

19 The other question in terms of you raised the
20 issue about the lowering of the ceiling. And I -- the
21 question I would like to understand is can you point
22 me somewhere in the appeal materials where it shows in
23 terms of the alleged violations, the alleged errors of
24 the Zoning Administrator that the lowering of the
25 ceiling was raised as an issue, because I don't

1 believe it's raised -- I believe, in other words, that
2 it was raised by your testimony that has not been
3 included in any of the filings as it's supposed to be
4 raised in the appeal. In the initial appeal, what
5 were the alleged errors? Can you tell me if they're
6 incorporated therein?

7 MR. HAWKINS: I mentioned the ceiling because
8 there were at least three or four different ceiling
9 heights given in the permit drawings.

10 MR. TONDRO: I understand, but that was not
11 part of this appeal, is the question.

12 MR. HAWKINS: It's information that I think is
13 in --

14 MR. TONDRO: But it was not an alleged error
15 of the Zoning Administrator --

16 MR. HAWKINS: No. No.

17 MR. TONDRO: Thank you. Okay. I just want to
18 make clear what is -- there's enough complicated
19 questions in this case --

20 MR. HAWKINS: Yeah.

21 MR. TONDRO: -- and I'm trying to help the
22 Board come to -- narrow down to the specifics of what
23 it is that it raised.

24 MR. GAMBRELL: Mr. Tondro, would you like me
25 to try to answer your question?

1 MR. TONDRO: If you would like to answer, that
2 would be fine.

3 MR. GAMBRELL: My best of my ability.

4 MR. TONDRO: Thank you.

5 MR. GAMBRELL: Is that okay?

6 CHAIRPERSON HILL: Sure, go ahead.

7 MR. GAMBRELL: In my understanding from the
8 architect's testimony is that the floor sandwich is 11
9 and a half inches, but I believe our understanding is
10 that it's actually six inches thicker than that. So,
11 before this -- you've had, before this Board before,
12 the question of whether or not a given condition has
13 some legitimacy. And I think there's not a question -
14 -

15 MR. TONDRO: And excuse me, I'm sorry. Mr.
16 Gambrell, I apologize, but the question again was not
17 all the other information you're adding in now. I
18 understand that that's an issue, but the question is
19 when the appeal was filed, was this an issue that was
20 raised. And I will point this out in the context that
21 the Zoning Administrator spent time getting letters
22 from the architect and from the engineer on
23 specifically this issue which was included. And so,
24 there was ample evidence to provide an opportunity to
25 say, we believe this is wrong. But was that included

1 as an issue as an alleged error or no?

2 [No audible response.]

3 MR. TONDRO: Okay. Thank you. I'm sorry.

4 MR. HAWKINS: May I say, in that regard, an
5 issue is the correctness of the building permit
6 drawings. I think that it --

7 MR. TONDRO: I agree.

8 MR. HAWKINS: And, and the drawings that I
9 have seen, and the drawings that were supplied to Mr.
10 Gelfand were never, never comprised a complete and
11 consistent set of drawings for the building.

12 MR. TONDRO: Have you seen the approved plans
13 that were filed as part of my original statement that
14 those are the plans to which they have to build?

15 MR. HAWKINS: I saw --

16 MR. TONDRO: There may have been other plans.
17 That's one of the problems that happens with building
18 permit applications, is there are a series of -- as
19 I'm sure you're well aware, there are a series of
20 plans and then they're revised and revised, and -- and
21 actually, if --

22 MR. HAWKINS: I have not seen the set that you
23 may have supplied, no.

24 MR. TONDRO: Okay. I just --

25 MR. HAWKINS: I did see the ones that were

1 upon which the permit was said to have been based.

2 MR. TONDRO: Okay. And just for the record,
3 those are the ones that are included. Those are the
4 approved plans with the official DCRA stamp. I just
5 pulled out the two elevations to show. I think there
6 may be three elevations, to show just from that
7 approved plan set. So, you say you have consulted the
8 approved plan set that are stamped by DCRA as the
9 approved version?

10 MR. HAWKINS: I saw copies of those. I don't
11 think there were -- I don't think they were stamped.
12 I'm not remembering that. I remember what was issued
13 in July.

14 MR. TONDRO: Okay. Thank you. And then the
15 follow up question I have to that, and maybe it's
16 something that the Board would want to have a follow
17 up on in terms of other submissions is just, the
18 details that were shown, those plans off of which you
19 were measuring and so forth, can you provide those
20 what -- whether those were the approved plans that
21 were approved with the building permit in July, or
22 were they some of the other plans that were issued or
23 submitted earlier?

24 MR. HAWKINS: They were earlier. All of the
25 diagrams that I --

1 MR. TONDRO: So, they may have been changed
2 until the -- by the final plans.

3 MR. HAWKINS: They were changed, but they were
4 not consistent.

5 MR. GELFAND: Are you implying the plans
6 changed between the zoning determination letter and
7 the building permit?

8 MR. TONDRO: I'm not implying anything. I'm
9 merely asking Mr. Hawkins, and in fact you're not the
10 witness right now, but thank you.

11 I'm trying to understand when you were
12 providing those illustrations of which you assert what
13 was going on, that there was a mismeasurement, what it
14 was, what those plans were. Were they in fact those
15 ones that were issued with the permit, were they the
16 ones that were issued with the determination letter,
17 or were they some other one that happened in the
18 meantime?

19 MR. HAWKINS: I saw, I think each issuance of
20 drawings as they were done from November through July.

21 CHAIRPERSON HILL: Mr. Tondro, so which set of
22 plans should he have looked at then?

23 MR. TONDRO: Well, then there should be two
24 sets of plans, depending on what's being appealed.
25 First of all, there should be the plans that were

1 submitted with the determination letter, okay?

2 CHAIRPERSON HILL: Yes.

3 MR. TONDRO: Because then we're going all the
4 way back to that, which I believe is what Mr. Gelfand
5 was trying to get to, and I will note that Mr. Gelfand
6 was raising specifically in both his brief and here,
7 main case was about the determination letter. So,
8 those should be those plans.

9 To the extent there's a discrepancy with those
10 plans, with the approved plans, which I'm not aware
11 of, but if there have been changes that we can talk,
12 then it would be the approved plans.

13 CHAIRPERSON HILL: Okay. Okay.

14 MR. TONDRO: But those are, they're two
15 different objects.

16 CHAIRPERSON HILL: Okay. I was trying to
17 clarify. Okay. You can continue.

18 MR. GELFAND: I think it's noted in the
19 PowerPoint --

20 CHAIRPERSON HILL: That's okay.

21 MR. GELFAND: -- that we just went through.
22 It says in the slides we just went through.

23 CHAIRPERSON HILL: The ones that we don't have
24 in the record.

25 MR. GELFAND: That were submitted to the

1 record.

2 CHAIRPERSON HILL: Okay. I'll take a look.
3 I'll take a look.

4 MR. TONDRO: And what does it say,
5 specifically, because I didn't see it when I --

6 MR. GELFAND: If you'd like to go back to the
7 PowerPoint, we can.

8 MR. TONDRO: Again, I understand that for the
9 purposes of the illustration in the PowerPoint, the
10 desire was to not reproduce the entire sheet, but to
11 produce a detail. I understand that makes a lot of
12 sense. It's just a concern to make sure that we're
13 not talking about apples and oranges, that's all.

14 MR. HAWKINS: That's right.

15 MR. GELFAND: I don't know how to project it.

16 CHAIRPERSON HILL: Okay. We can ask for
17 clarification later. Mr. Tondro, please continue.

18 MR. TONDRO: Yeah. And then one final
19 question for Mr. Gambrell. The question that I have
20 for you is you brought up a series of different cases
21 where this issue has come up before. You alluded to,
22 and maybe you can expand more on this is, how many of
23 those cases -- some of them, I will point out, are
24 drawings, so there's a similar question, at least for
25 clarification for the record, as Mr. Hawkins, what

1 were those drawings? Were they preliminary
2 submissions? Were they actual approved plans. But
3 also, which addresses they were for so we can
4 understand the context of what that may be for those
5 particular cases. But similarly, the question, those
6 other ones where you were -- I think you mentioned,
7 there were a couple enforcement actions you thought
8 were going on, just wanted to confirm that for the
9 record that these are not final determinations
10 necessarily. Some have been, some have not. Is
11 that --

12 MR. GAMBRELL: Yeah, a lot of questions there
13 so I'll go with memory on this one.

14 I think there were six examples I provided.
15 One of them, Case BZA 18980 actually went through the
16 BZA. That's on Argonne Place. There was one that is
17 on Ontario Road that I think it's 2464 Ontario Road
18 Northwest, and to my understanding the BZA will be
19 hearing that because DCRA did identify that the -- I
20 believe the developer did not build according to the
21 permits that were approved. So, that one is ending at
22 this point.

23 MR. TONDRO: And to be clear, when it's going
24 before the Board it's going before the Board as an
25 appeal of the Zoning Administrator's determination, or

1 rather the Zoning Administrator said, you can't do
2 this, you must go to the Board to ask for relief?

3 MR. GAMBRELL: Yeah, if it goes before the
4 Board. But it would go before the Board to seek
5 relief including for the building of a retaining wall,
6 not on the basis of the basement/cellar issue.

7 I believe there was another of the exhibits
8 that was, I think 711 Irving, but I'm not certain of
9 the address on that one. I think that was in process.
10 I'm not sure if that was permitted.

11 There was another one, 1835 --

12 MR. TONDRO: And just to ask a question about
13 that 711, that Irving, that one I believe was the one
14 with the nice water color with the planter in front.
15 Is that correct?

16 MR. GAMBRELL: Yes.

17 MR. TONDRO: I just wanted to be clear, that
18 one as far as you know that was not -- those are not
19 the final permitted set of approved plans.

20 MR. GAMBRELL: I believe that's correct.

21 MR. TONDRO: Thank you.

22 MR. GAMBRELL: The other one was 1835 Ontario
23 Place, and actually that was withdrawn because of
24 issues unrelated to the basement/cellar issue,
25 although that was one of the plans that was put

1 forward to the Zoning Administrator for purposes of
2 excluding the lower level from FAR.

3 I think I'm forgetting one of the six examples
4 in terms of their address, so I apologize.

5 CHAIRPERSON HILL: Okay. All right. Well, I
6 mean, I'm just watching the clock here just a little
7 bit because now I'm going to move on to the --

8 MR. TONDRO: Thank you.

9 CHAIRPERSON HILL: -- property owner in terms
10 of so, I got further clarification from Ms. Glazer, if
11 I understand again the process. So, again, now we're
12 going to go to cross -- I get a little bit lost
13 sometimes. So, there we go.

14 The ability, Mr. Collins, for you to go ahead
15 and cross, and then we're going to go back and hear
16 presentation. And then we're going to have a
17 presentation also. And then you'll have an
18 opportunity to cross the presentation. And then you
19 will have an -- the applicant will have an opportunity
20 to close. The two -- the building owner and DCRA will
21 have an opportunity to close and then the appellant
22 will have an opportunity to close. Correct?

23 Yes, thank you.

24 MS. GLAZER: I believe that was correct.

25 CHAIRPERSON HILL: Yes, thank you. So, Mr.

1 Collins, I'm just trying to let everybody know here,
2 and also whoever is in the audience again, this is
3 going very late today. So, we're going to take a
4 lunch break after this, by the way, so it's going to
5 be another like, you know, I can give you a little
6 better idea of what's going on, probably, after we're
7 done with the presentations and the crossing.

8 So, Mr. Collins, if you could go ahead?

9 MR. COLLINS: Chairman Hill, if I might --

10 MR. TONDRO: Just --

11 CHAIRPERSON HILL: Sorry. Mr. Tondro.

12 MR. TONDRO: Just one thing.

13 CHAIRPERSON HILL: Sure.

14 MR. TONDRO: Just in terms of that order that
15 you raised, I believe that the order of response --

16 CHAIRPERSON HILL: Ms. Glazer, if -- I just
17 want to make Ms. Glazer help me out here, as you were
18 -- go ahead.

19 MR. TONDRO: Thank you. I'm sorry, because
20 this was a change from the prior zoning regulations
21 that we've already dealt with it, but we're all
22 feeling our way through. But I believe that the
23 closing arguments are in the same order as what
24 happens for the presentation of the cases. In other
25 words, it's appellant, and then it's DCRA, and then

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1 it's the intervener/property owner.

2 MS. GLAZER: Yes.

3 CHAIRPERSON HILL: So, that's what I was
4 thinking original -- or, I thought the last person --

5 MS. GLAZER: I'm not sure what you said.

6 CHAIRPERSON HILL: Oh, that's okay.

7 MS. GLAZER: I was --

8 CHAIRPERSON HILL: The last -- I was not sure
9 what I said also, but the last person who gets to
10 speak is the property owner.

11 MS. GLAZER: I think it should be the
12 appellant. No, wait a minute.

13 MR. TONDRO: I think the section, the relevant
14 section is Y-507.1-G. So, the 507.1 is, "The order
15 for presenting evidence and arguments at the public
16 hearing on zoning appeal should be as follows. B is
17 the appellant's case, then the respective cases of the
18 parties, the admin of DCRA, then the interveners, the
19 rebuttal, and then finally the closing argument and
20 here I quote, in the order established in
21 subparagraphs B through E, which would be -- "

22 MS. GLAZER: The same order.

23 MR. TONDRO: "-- the same." So, appellant,
24 DCRA, and --

25 MS. GLAZER: Yes.

1 MR. TONDRO: Just want to be clear because
2 we're all feeling our way through this.

3 MS. GLAZER: Yes, I stand corrected, yes. You
4 are correct.

5 CHAIRPERSON HILL: And now that I think about
6 it, there was another person here, I think, from the
7 Office of the Attorney General that was telling me the
8 new order and that's why I was quoting that. But so,
9 all right.

10 So, now we know exactly the procedures that I
11 hope are actually new. Now, there's new ones over
12 there on the wall at the bin that I speak about at the
13 beginning of every day.

14 So, Mr. Collins, you want to go ahead and
15 start your cross?

16 MR. TURNBULL: I wonder, Mr. --

17 CHAIRPERSON HILL: Sure. Oh, I'm sorry, Mr.
18 Turnbull. You had a question?

19 MR. TURNBULL: I just didn't want to interrupt
20 Mr. Collins, but --

21 CHAIRPERSON HILL: Of course.

22 MR. TURNBULL: -- in the last conversation
23 between the appellant and Mr. Tondro, an issue came up
24 and I just want to clarify it.

25 In the March 21st letter, the determination

1 letter, there is a paragraph that talks about HPO,
2 Historic Preservation Office, and it says that, "No
3 building permit can be issued without HPO's approval."

4 I think that's in the last paragraph.

5 So, I would assume that HPO gave their
6 approval, then, on this? Windows or not windows, but
7 HPO signed off on the project?

8 MR. TONDRO: Yes, Commissioner Turnbull, it is
9 my understanding that for a property in an historic
10 district, for a permit for such property that even
11 though it's a permit issued by DCRA, it automatically
12 gets referred for review by the Historic Preservation
13 office.

14 MR. TURNBULL: Thank you.

15 MR. TONDRO: And then, only when they approve
16 it can it actually be issued. Yes. My only point
17 is --

18 MR. TURNBULL: Yeah, I just wanted to clarify
19 that.

20 MR. TONDRO: Thank you.

21 CHAIRPERSON HILL: Okay, great. Thank you.
22 Mr. Collins.

23 MR. COLLINS: Thank you. I just have a couple
24 questions of Mr. Gelfand. Mr. Gelfand, under your new
25 interpretation of the regulations, if the cellar is

1 occupied it becomes a basement and therefore it counts
2 in FAR. Is that -- am I saying that correct?

3 MR. GELFAND: That's what the regulations say,
4 yes.

5 MR. COLLINS: And so, what would be the effect
6 in this particular situation for this building?

7 MR. GELFAND: If the space is habitable it
8 must be counted as a basement, counted in gross floor
9 area, and that would affect the calculation.

10 MR. COLLINS: And how were the calculations
11 affected? Do you know?

12 MR. GELFAND: I don't have the calculations
13 off the top of my head.

14 MR. COLLINS: So, then it's possible that even
15 if this was a basement there would be no effect on the
16 zoning approval?

17 MR. GELFAND: I don't know. I don't know that
18 that's the case, no.

19 MR. COLLINS: What is -- do you know what
20 DCCA's position is in this appeal?

21 MR. GELFAND: The zoning regulations don't
22 allow for cellars to be habitable, and that's the
23 point we've made time and again.

24 MR. COLLINS: But if they are, they become
25 part of the FAR.

1 MR. GELFAND: That's right.

2 MR. COLLINS: Correct. Okay. And so, but you
3 don't know, and you don't know whether that means that
4 this building, regardless of whether the basement or
5 cellar, or whatever you call it, is habitable whether
6 there would be actually any violation at all.

7 MR. GELFAND: No, the building would be above
8 the allowable FAR.

9 MR. COLLINS: Would be above the allowable
10 FAR. Okay. And so, what would be the remedy if it's
11 above the allowable FAR?

12 MR. GELFAND: Well, if it weren't approved the
13 building would be designed to meet the FAR
14 requirements for the zoning district.

15 MR. COLLINS: And how would that happen?

16 MR. GELFAND: We would have to see a plan that
17 complies with the FAR.

18 MR. COLLINS: By either, what? Would it be
19 safe to say either eliminating the unit and the
20 cellar, or by reducing the bulk of the building above
21 grade?

22 MR. GELFAND: Be up to the developer and the
23 architect to come up with a complying plan.

24 MR. COLLINS: What would be your preference as
25 the neighbor?

1 MR. GELFAND: It's not up to me.

2 MR. COLLINS: You're the neighbor. You've
3 kind of raised this to DCCA. Do you have an interest
4 in this other than just trying to --

5 MR. GELFAND: Sure. I mean, I think we've
6 pointed out that --

7 MR. COLLINS: -- new interpretation?

8 MR. GELFAND: -- this transfers bulk, and
9 instead of the FAR regulating and controlling the
10 bulk, that it transfers it from the partially below-
11 grade level, to potentially the top and the back of
12 the building, which is what happened in this case.

13 MR. COLLINS: So, the remedy then, would be to
14 eliminate the top and the back of the building?

15 MR. GELFAND: That would be one possible way.

16 MR. COLLINS: Okay. And as the neighbor who
17 lives in the top floor, would that be to your benefit?

18 MR. GELFAND: I would prefer it, yes. But
19 it's my interest and DCC's interest that the zoning
20 regulations are adhered to.

21 MR. COLLINS: Okay. Thank you.

22 CHAIRPERSON HILL: Okay. You have any more
23 questions, Mr. Collins? All right.

24 MR. COLLINS: No, sir.

25 CHAIRPERSON HILL: So now, I guess I get to

1 turn to Mr. Tondro for your presentation. And then
2 the appellant will have an opportunity to cross. How
3 much time would you like, Mr. Tondro?

4 MR. TONDRO: I think I said 10 minutes at
5 the --

6 CHAIRPERSON HILL: Oh, I can't remember now.
7 We've gone past -- I remember which -- thank you, 10
8 minutes.

9 MR. TONDRO: Just say 10 minutes.

10 CHAIRPERSON HILL: Thank you.

11 MR. TONDRO: I'll try to leave it that.

12 CHAIRPERSON HILL: Thank you.

13 MR. TONDRO: Thank you. As I started to say
14 before, I had been thinking I would start this off by
15 saying that this is a relatively simple interpretive
16 issue. But as we know, great minds can not
17 necessarily always agree, or something similar.

18 CHAIRPERSON HILL: We appreciate the
19 compliment.

20 MR. TONDRO: The question here, I think, does
21 boil down however, to some potential ambiguities. I
22 think, let's be clear about this, in the zoning
23 regulations. And so, if it was as crystal clear as I
24 believe the appellants have presented, I don't think
25 we would be here today. I think this is a somewhat

1 complicated situation and the Zoning Administrator
2 faced it and was attempting to try to understand how
3 to deal with this.

4 So, it is DCRA's position that the Zoning
5 Administrator did not err and that the appellants have
6 not met their burden of proof to establish any errors
7 on the part of the Zoning Administrator.

8 So, I think the first issue that we're dealing
9 with, and really the crux of this behind all of this
10 is the basement cellar rule, which I'm sure many of
11 you, and I know not all of you have been on the Board
12 very long. Member White, congratulations on your
13 appointment. But having just arrived. But it has
14 been an issue that has been heard before the Board
15 multiple times. It was also something that was the
16 subject of some rewrites in the new zoning
17 regulations, precisely because this was such a
18 concern.

19 And the fact in the matter, where we start
20 with is then this very clear distinction that's laid
21 out in the definitions between a basement and a
22 cellar. And it's for the purposes, it just very
23 clearly states, that the four-foot line is the line,
24 four-foot above adjacent finished grade, is the line
25 that determines whether or not it's a basement or a

1 cellar. And what that means is, does it count towards
2 the gross floor area, GFA, or does it not count to
3 GFA.

4 And that was presumably established partially
5 as a recognition of many of these row houses that
6 existed that have part basements, the English
7 basements with apartments that are in there, and
8 trying to come up with some kind of way of saying,
9 well for a determination of height and FAR, so forth,
10 that this would be -- you'll each have a clean line of
11 four feet.

12 I will note, they do not say in the definition
13 of basement, habitable room. They do not say in the
14 definition of cellar, non-habitable room. Neither of
15 them. And so, I think we're charged, again, the
16 Zoning Administrator is charged with administering the
17 zoning regulations which very clearly define this
18 distinction between basement and cellar, and that is
19 what is carried forward in gross floor area.

20 In terms of the issue of the definition of
21 habitable room, that -- the appellants argue that
22 habitable room has no meaning except if it's this
23 tightly woven, interwoven, intertwined regulation or
24 provision that connects with basements or cellars.

25 Just, you know, I guess I would cite Occam's

1 Razor. You know, if it was that simple then I'm not
2 sure why the Zoning Commission would not, with all due
3 respect, would not have amended the definition of the
4 basement as I've quote, provided in my hearing
5 statement at page 5 to read, that portion of a story,
6 the ceiling which is less than four feet above the
7 adjacent finished grade, and this would be what I
8 would add, except that a habitable room otherwise
9 classified as a cellar shall be considered a basement.

10 But that was not what is in the zoning regulations.
11 The Zoning Commission did not decide to do that.

12 So, then the question becomes, for the Zoning
13 Administrator, how do you look at this issue of
14 habitable room, which is the defined separately. And
15 habitable room is used as I describe, and I think as
16 the appellants have raised, it's used in two different
17 ways. Right?

18 On the one hand, it's used as a way of
19 describing some kind of residential use, an apartment,
20 an inn, a tenement, a hotel. And that's just saying
21 that a constituent part of an apartment or so forth,
22 will be that there's a habitable room. Why? Because
23 these are all a type of residential use. So, they're
24 establishing that as opposed to a commercial type of
25 use that you have to have this kind of functioning in

1 there.

2 The separate -- so, that's one aspect of where
3 habitable room is used, and it's applied. The other
4 place where it's applied are in two different
5 provisions dealing with the SP and the C Zone
6 Districts. And this is on page 3 of my prehearing
7 statement. And I'm referring again to provision,
8 Sections 534, and 774. Those are both rear yards.
9 And in these cases, you're dealing with a situation in
10 these kind of transitional zones, the Board of Zoning
11 Adjustment is authorized to grant a special exception
12 from rear yard, required rear yard, except, hold on
13 BZA, you can't do that if there is a habitable room
14 within the slight line.

15 So, in other words, they're trying to limit
16 the BZA's authority. So, there is a very specific
17 place, and that would make some sense if you want a
18 rear yard that is required to be 20-feet deep, and now
19 the Board is going to hear reasons for why it should
20 be reduced to 10 feet, that one of the issues that
21 would be of concern is if there is a loss of privacy,
22 the people who are living in the building.

23 So, I would quote again, in page 3, this is
24 534.9, "In buildings that are not parallel to adjacent
25 buildings the angle of sight lines and the distance of

1 penetrations of sight lines into habitable rooms shall
2 be considered in determining distance between windows
3 and appropriate setbacks."

4 In other words, this is just a standard that
5 the Board has to consider. Remember, basically, some
6 privacy rules. And what is it from? From habitable
7 rooms. So, not from your corridors. If there's a
8 corridor right in the back of the house, that doesn't
9 apply to limit the Board's discretion to waive some of
10 the rear yard requirements. But it has to be a place,
11 a habitable room, someplace where people eat or sleep
12 or cook.

13 And so, it's DCRA's position, and the ZA's
14 position that these -- that that is the meaning of
15 habitable room. That habitable room was put into the
16 zoning regulations for those two areas. And most
17 specifically that issue of the rear yard. That was
18 where they were concerned about. Not for the density
19 calculation, because there's no reference to anything
20 in the density calculation. That's just not something
21 that is applied or connected with at all.

22 And I would point out too, if you look at the
23 definition of habitable room, that's in Section 199.1,
24 and that was amongst other places, in the record, my
25 attachment B to my prehearing statement, page 11,

1 right, is an undivided enclosed room used for living,
2 sleeping, or kitchen facilities. And then there's a
3 laundry list of things that are not included, attics,
4 cellars, corridors, hallways, laundries, serving room,
5 or storage pantries, bathrooms, or similar space, nor
6 mechanically ventilated interior kitchens that are
7 less than 100 square feet in area, nor kitchens in
8 commercial -- does the Zoning Administrator -- what
9 the appellants would have us believe is the Zoning
10 Administrator has to remember, oh, note to self,
11 whenever any of those things appear in a plan, I have
12 to remember those are automatically excluded from GFA.
13 Or they have to be included in GFA. Or how does this
14 apply. I don't believe that that was what the intent
15 of the zoning regulations, the way in which they're
16 written.

17 And so, I would call your attention to that
18 aspect. So, from the standpoint of the Zoning
19 Administrator, this was, he was faced with a choice.
20 Yes, there's a potential conflict, but he looked at it
21 and he said, but there is a logical reason for why
22 habitable room can be used. It's in those two rear
23 yard areas. It's not something that's clearly defined
24 in the basement/cellar definitions, which are very
25 clearly defined that the Zoning Commission wanted to

1 be included as a part of the density calculations.
2 They could do so, did not do so. And so, there is not
3 surplussage. It's being used. It's not that it's
4 just abandoned out there. But that was the best way
5 that he could understand how it would be used.

6 And then he referred, in addition, to other
7 regulations that are more relevant perhaps to the
8 issue of habitable space. In other words, can you
9 actually use that space as it were underground or
10 partly underground. And those, you can see -- I don't
11 think it's really worth much here, but you can read as
12 I hope you have, although I know it's a lot of
13 information in the record, but on page 7 I deal with
14 that, to deal with the fact that the other codes,
15 which obviously are outside the jurisdiction of both
16 the Zoning Administrator and the Board here. But just
17 his point was rather, these regulate it, it is
18 allowable under the housing code. It is allowable
19 under the construction codes. Therefore, that's the
20 way in which that is dealt with. It's not dealt with
21 -- not the purview of the zoning regulations to
22 determine where and when, how people should be -- what
23 space they should be using.

24 And again, I go back to the assertion of the
25 appellants is that they want to add something to the

1 definition of basement and cellar. They want to add
2 this provision in to change the definition. And I
3 think not only do they have the burden of proof in
4 general, but to say that they're going to interpret
5 the zoning regulations to add something in, I think is
6 a further step, one step too far.

7 So, I think that's where we rest on the main
8 issue there. In terms of the issue of the windows,
9 and the measurements that were done there, again, we
10 have a situation where the approved plans that were
11 provided show that there is a distance of three-feet,
12 11-inches. Between the top of the ceiling and the
13 adjacent finish grade. And again, one of the issues
14 that the Zoning Administrator has always had to deal
15 with is the choice in the zoning regulations to refer
16 to measuring point as starting as adjacent finish
17 grade, not existing grade. Not natural grade. Not
18 grade two years before the start of permit
19 construction. But adjacent finish grade.

20 What is that? Well, nominally it's what is
21 allowed for the applicant, the owner, to be able to go
22 and change the grade in their property. There are
23 regulations. For example, retaining walls that limit
24 that ability to do so, but that's under the retaining
25 wall regulations. But there's nothing else that says

1 they can't add grade as long as they meet all the
2 other requirements, DOEE, and so forth. Then that's
3 adjacent finish grade.

4 So, in other words, if somebody wants to come
5 in, an applicant, an owner of a property, and say, I
6 want to raise my grade, and yes, that will have the
7 effect that what was a four-foot space, or a four-
8 foot, three-foot space -- a three-inch space that's
9 therefore a basement, now it becomes a cellar. The
10 Zoning Administrator doesn't have the prerogative to
11 sit there say, no, you can't do that because that
12 meets the definition. There are lots of examples of
13 preexisting houses that were built before the zoning
14 regulations came in, that have precisely that
15 circumstance. And presumably the zoning regulations,
16 when they were adopted, took into consideration,
17 again, establishing this very absolute bright line
18 rule of the four feet.

19 So, that is what the approved plans show. If,
20 at the end of construction, right, when they come in
21 for final inspection or a C of O, at that point then
22 the Zoning Administrator has to send out and conduct
23 an inspection to determine if not -- if they meet
24 those approved plans, or they don't meet those
25 approved plans. If they meet those approved plans,

1 then they pass. If they don't, then the Zoning
2 Administrator has to determine, and it's an
3 enforcement action at that point, as to what he's
4 going to do.

5 Now, in this particular case, if there's an
6 issue let's say of an inch or two off, that it shows
7 it to be three-feet, 11-inches, and when he gets out
8 there that it's four-foot, two-inches, if the owner is
9 not otherwise prevented from adding grade in front of
10 the building to make it so that the actual measurement
11 is three-feet, 11-inches, that appears to be allowed
12 by the code. Again, because the only thing that the
13 regulations establish is this bright line, four-foot
14 rule between adjacent finished grade, and the ceiling.

15 And that, the Zoning Administrator sent out
16 inspectors twice to the property to determine that.

17 And I understand, we heard from Mr. Hawkins
18 that there's a concern about the historic windows.
19 Understand that. That's not an issue that the Zoning
20 Administrator rules on, nor with all due respect, does
21 the BZA. That's something that Historic Preservation
22 Review Board and Historic Preservation Office
23 administer.

24 So, this is, you know, the issue here for the
25 Zoning Administrator was, do the plans as they are

1 shown, do they meet the standards? They do. They
2 show three-feet, 11-inches. The Zoning Administrator
3 went out and confirmed that the distance from the
4 adjacent finished grade up to the ceiling is three-
5 feet, 11-inches.

6 Now, I will point out to you that there are
7 circumstances that the Board has heard this, and the
8 Board has, for example, in the case at 5333
9 Connecticut Avenue, which is BZA Appeal No. 18615,
10 where there was a question about an area-way being
11 excluded from the calculation of adjacent finished
12 grade, and I quote this on page 6 of my prehearing
13 statement, that the Board themselves stated in that
14 final order, the appellant's final claim of zoning
15 error regards DCRA's determination to exclude certain
16 portions of the lowest habitable level of the building
17 from a calculation of building density.

18 And then it goes on to say, area ways are
19 common and efficient method of maximizing light and
20 ventilation to dwelling units located partially
21 believe grade. It then went on to -- so, they were
22 looking at the area way as being an exception, just
23 like a window well can be an exception from adjacent
24 finished grade. That's precisely the issue that we're
25 dealing with here.

1 But again, the plans as shown, that were
2 approved, show three-feet, 11-inches. The ZA asserts
3 therefore, that there is no -- error that was made in
4 approving those plans, they complied, and then second
5 of all this issue of basement, cellar, and habitable
6 room, those are two different aspects of the code that
7 do not correlate, that do not interact to them.

8 And again, I will end just very briefly on
9 that by just pointing out again, there was the Court
10 of Appeals decision that was raised a while back.
11 I'll refer to page 6, the Kalorama Citizen's
12 Association versus the D.C. Board of Zoning
13 Adjustment, where your -- and that was then, BZA
14 Appeal No. 17109. That in both of those cases was a
15 situation where there was the attic, but the attic was
16 also deemed to be excludable from habitable space. In
17 other words, the same argument was made, but it was
18 made about the top of the building as opposed to the
19 bottom of the building under the same idea that attics
20 are excluded from gross floor area, or included from
21 gross floor area on the basis of the definitions; of
22 other definitions, not the habitable space.

23 And the Court of Appeals upheld the Board's
24 determination and the Board repeated that on remand
25 that, as I say, quote, and I'm quoting from the Court

1 of Appeals decision that's quoted in the appellant in
2 that case, simply put, "The effect of this regulation,
3 the attic regulation, the habitable space, the
4 definition of habitable room, that when the term
5 habitable room is used in the regulations those
6 regulations do not apply to an attic, for whatever
7 reason deemed appropriate."

8 In other words, there's a recognition by the
9 Court of Appeals that this asserted interweaving and
10 intertwining does not in fact exist; that they can
11 exist separately. And again, there is a reason for
12 why a habitable room has a place in the zoning
13 regulations, and most, that's about those rear yards
14 and I'll rest there. Thank you.

15 CHAIRPERSON HILL: Okay. Thank you. Would
16 the building owner like to present at this time? And
17 then I'm just trying to think, or is the Zoning
18 Administrator going to testify?

19 MR. LeGRANT: I think we'll stand on the
20 presentation that was made in filings, as well as Mr.
21 Tondro's statement.

22 CHAIRPERSON HILL: Okay. Then, I'm going to
23 let the building owner do a presentation, then I'm
24 going to let the appellant ask any questions that they
25 might have.

1 MR. COLLINS: All right. Thank you. I'm
2 Christopher Collins, Holland and Knight and --

3 CHAIRPERSON HILL: Mr. Collins, I'm going to
4 throw 10 minutes up on the clock for you, just so we
5 know where we are again, okay?

6 MR. COLLINS: Well, I have two witnesses.

7 CHAIRPERSON HILL: Oh, okay.

8 MR. COLLINS: And so, we'd respectfully
9 request 25 minutes.

10 CHAIRPERSON HILL: Okay.

11 MR. COLLINS: I'll be as quickly as --

12 CHAIRPERSON HILL: All right. Okay.

13 MR. COLLINS: As quick as we can. And as I'm
14 speaking, then Mr. Dettman can come up and start
15 loading his slides.

16 The issues in this case are actually simple
17 and straight forward. It's important --

18 CHAIRPERSON HILL: Thank you all for moving
19 over.

20 MR. COLLINS: It is important for the Board to
21 focus on the issues that are in this appeal. And I'll
22 be referring to Exhibit 27, which is our prehearing
23 statement.

24 The appellant's claim here that Section 199 of
25 ZR-58 defines a cellar as a non-habitable room where

1 the ceiling is less than four feet above adjacent
2 finished grade, and that the ceiling level of 1514 Q
3 has habitable rooms and is therefore not a cellar, but
4 instead it is a basement.

5 And then because it's a basement, it must be
6 included in FAR. And because it's included in FAR,
7 the building exceeds the permitted FAR. They are
8 simply wrong on a number of accounts. The Zoning
9 Administrator has confirmed that the space qualifies
10 as a cellar under the definition of cellar in the
11 zoning regulations. If you look to Section 199.1 of
12 ZR-58, that's the section where all the definitions
13 are. And that starts by saying, when used in this
14 title, the following terms and phrases shall have the
15 meanings ascribed.

16 So, when you look to the definition of cellar,
17 it does not prohibit habitable space. The definition
18 of habitable space is a separate definition for a
19 specific purpose, as Mr. Tondro alluded.

20 When you do a word search in ZR-58 on your
21 computer for the word cellar, you'll find that it
22 appears 40 times. So, when you find the word cellar
23 in the regulations, you, pursuant to 199.1, you go to
24 the definition section to find out what's the
25 definition of a cellar. When you do a word search in

1 ZR-58 on your computer for habitable room, in the
2 substance of the regulations, you'll find it only
3 twice. You'll find it in sections 534.9 and 774.4.
4 These are the special exception provisions that Mr.
5 Tondro alluded to for a rear yard in assessing the
6 distance of penetrations of sight lines into habitable
7 rooms for the purpose of a special exception for rear
8 yard waiver in the SP and the C zones. This term is
9 not used anywhere else in the substance of the zoning
10 regulations.

11 The appellants are looking at the regulations
12 backwards. They're looking at the definitions, and
13 then trying to apply them to the regulations. It's
14 the other way around. You look to the regulations,
15 and then when you see a term that you don't understand
16 what it means, you go to Section 199.1 which says,
17 "When used in this title the following terms and
18 phrases shall have the meanings ascribed."

19 So, when you look at it that way, it's clear
20 why there's been a consistent 58-year interpretation
21 of the regulations that allows, or does not prohibit
22 habitable rooms in cellars.

23 The definition of basement is clear, as is the
24 definition of cellar. The difference between the two
25 is based on the height of the ceiling, relative to

1 adjacent grade. It has nothing to do with
2 habitability. The Zoning Administrator, the Zoning
3 Commission, and this BZA have all found that dwellings
4 and other habitable spaces can be located in cellars.
5 And I cite you to Exhibit 27, our prehearing
6 statement, pages 8 through 11. I won't go through
7 them all in detail. But most recently, in Zoning
8 Commission Case No. 04-33G, which were the IZ
9 regulations, the Zoning Commission took final action
10 in January of this year, in changing Subtitle C,
11 Section 1003.9 to recognize that for purposes in
12 applying the IZ regulations, dwelling units in cellars
13 are included in that calculation.

14 If you look again in the Zoning Commission
15 public hearing on April 14th, 2016, which is also in
16 Exhibit 27, you'll see that in a little more detail.
17 The transcript, beginning at page 73, the transcript,
18 the Kalorama Citizen's Association raised this very
19 same issue. And on page 76 of the transcript the
20 witness says, "Allowing dwelling units in cellars is
21 in plain contravention of the definition of habitable
22 room in Section 199.1."

23 On page 96, Commissioner Turnbull questioned
24 the witness but did not discuss this issue with the
25 witness. Later on, in Exhibit 27H, on July 20th,

1 2016, the transcript of the Zoning Commission
2 decision, at page 51, the Zoning Commission adopted
3 the language, allowing the calculation of IZ units to
4 include cellars, and the result is this new subsection
5 C -- Subtitle C, Section 1003.9.

6 Exhibit 27K is another important decision by
7 this Board. The appeal in Case 18615, the appellant
8 included dwelling units in the cellar. At page 7 of
9 Exhibit 27K, at paragraphs 43 through 48, these
10 paragraphs are directly applicable to this case, where
11 the BZA recognized the measurement of the cellar
12 versus basement and included dwelling units in the
13 cellar. This Board could have determined that these
14 units were not allowed in cellar space. But you
15 upheld the Zoning Administrator's decision in that
16 case.

17 Exhibits 27I through 27R are just a litany of
18 other cases where this Board and the Zoning Commission
19 have approved projects that include dwelling units in
20 the cellar level. This has been a consistent
21 interpretation of the regulations based upon a clear
22 reading of the regulations.

23 At this point I would like to turn it over to
24 Mr. Dettman.

25 MR. DETTMAN: Good afternoon, Mr. Chairman and

1 members of the Board. For the record, Shane Dettman,
2 Director of Planning Services with the law firm of
3 Holland and Knight. A lot of what I was intending on
4 commenting on today has already been touched upon.
5 So, I'll be as brief as I possibly can.

6 But today, I want to focus my testimony on the
7 appellant's position that the lower level of this
8 project at 1514 Q Street is actually a basement rather
9 than a cellar. It's based upon --

10 CHAIRPERSON HILL: Mr. Dettman, I'm sorry to
11 interrupt you. Are these slides in the record? Where
12 are they?

13 MR. DETTMAN: Yes, they were uploaded.

14 CHAIRPERSON HILL: Seventy-eight?

15 MR. DETTMAN: They were uploaded last night.

16 CHAIRPERSON HILL: Okay.

17 MR. DETTMAN: There were -- there's a title
18 slide, there's a few images. It's not --

19 CHAIRPERSON HILL: Oh, I got it, I got it, I
20 got it. Thank you.

21 MR. DETTMAN: So, I'll focus my testimony on
22 what I believe to be the appellant's position being an
23 inconsistent reading of the plain language of the
24 zoning regulations, as well as inconsistent with long-
25 standing interpretations and applications of the

1 revised prehearing statement, the term cellar is
2 defined, despite the appellant's assertion that the
3 term Cellar is defined twice in the regulation, one as
4 a rule of measurement, and one as a rule of use. And
5 a statement that a cellar is specifically and
6 explicitly defined in the zoning regulations on the
7 basis of its habitability. A simple reading of the
8 regulations clearly shows that Cellar is defined only
9 once in the regulations and that definition is
10 unambiguous as to when a space is considered a cellar,
11 and is no way conditioned upon that space not being
12 able to be used as habitable rooms.

13 As is clearly established in the definitions
14 contained in Section 199 of ZR-58, the sole
15 determining factor of whether a lower level of a
16 building is a cellar or a basement is the four-foot
17 threshold that's referred to in each of the two
18 definitions that you had before you on the screen
19 here.

20 As can be seen, neither of these very clear
21 definitions include anything related to how a basement
22 and cellar must function, what they can and cannot be
23 used for, or whether they can or cannot contain living
24 rooms, bedrooms, or kitchens.

25 On page 4 of its revised prehearing statement,

1 the appellant states, quote, "There are clearly two
2 different definitions in DCMR 11 199 for partially
3 below-grade space. One being a basement and the other
4 being a cellar."

5 We can agree on that. However, we cannot
6 agree with the appellant's statement that quote, by
7 excluding an entire floor of habitable space from GFA
8 and FAR, by simply relabeling the space a cellar, the
9 ZA has rendered meaningless, the definitional
10 difference between a basement and a cellar in the
11 definitions of the regulations.

12 We can't agree with that because the
13 definitional difference between a basement and a
14 cellar is very clear, and it's stated on the screen
15 before you today. It's the clear definitions of a
16 basement and a cellar, and again it's the four-foot
17 threshold in relation to adjacent finished grade.

18 Thus, based on the clear results of the recent
19 measurements taken by DCRA, which I believe photos of
20 which in a report were submitted to the record, I
21 believe the ZA did not err in classifying the below-
22 grade space in the subject property as being a cellar.

23 The definition if a habitable room does not
24 modify the definition of a cellar. The appellant
25 argues that the reference to cellar is within the

1 definition of habitable room somehow modifies the
2 actual stated definition of the term, Cellar, and
3 somehow transforms what is clearly a cellar by
4 definition, into a basement that must be counted
5 toward FAR.

6 So, what is the purpose of the reference to
7 cellars in the definition of habitable room, and how
8 is it intended to applied? As explained in our
9 filings, there are only two places, and in his comment
10 by Mr. Collins, there are only two places in the
11 zoning regulations where you see the term, habitable
12 room, and that's in the special exception criteria for
13 rear yard relief in the old SP and the C-3 Zones.
14 Specifically, as shown on the slides here, in those
15 two sections the Board is required to consider, quote,
16 the distance of penetration of sight lines into
17 habitable rooms as a criterion that must be considered
18 for rear yard relief. Thus, as it relates to these
19 two sections of the regulations, the term habitable
20 rooms does not include Cellars, regardless of how a
21 cellar is used. And even if it contains undivided and
22 close space that is used for living, sleeping, or
23 kitchen facilities.

24 Stated another way, in order to determine the
25 meaning of habitable rooms in these two particular

1 sections of the zoning regulations, one would go back
2 and look at the definition of habitable room and find
3 that a cellar, defined specifically and solely as that
4 portion of a story, the ceiling of which is less than
5 four feet above adjacent finish grade, is not included
6 in the term, habitable room, and therefor need not be
7 included in the evaluation of sight lines, for request
8 for rear yard relief in the old SP and S-3 Zones.
9 That is the sole purpose of the reference to Cellars
10 in the definition of habitable room. The reference
11 does not mean that a cellar is prohibited from
12 containing habitable rooms, nor does it mean that if a
13 cellar contains habitable rooms it must be either
14 fully or partially designated as a basement and
15 counted towards FAR.

16 While completely separate definitions, this
17 does not mean that habitable room and cellar are not
18 related. In fact, as I've just described, the term
19 cellar actually informs how the term habitable room
20 shall be interpreted and applied throughout the
21 regulations, not the other way around.

22 As can be seen on the slide, this is similar
23 to how the term cellar informs how stories shall be
24 interpreted in those zoning regulations that have a
25 limitation on number of stories.

1 While by definition, a cellar is considered to
2 be, quote, a portion of a story, the definition of
3 story makes clear that for purposes of determining
4 maximum number of stories, the term story shall not
5 include cellars. This is also consistent with how the
6 term cellar informs how gross floor area is
7 calculated, where as a general rule cellars are
8 specifically not counted in gross floor area.

9 It is important to note, and Mr. Tondro
10 touched upon this, it's important to note that the way
11 in which I've just described how cellar relates to the
12 term habitable room, when the term is used in the
13 zoning regulations is exactly the way in which the
14 D.C. Court of Appeals addressed the issue related to
15 attics, which are also specifically excluded from the
16 definition of habitable room, in the Kalorama
17 Citizen's Association v. BZA case that was referenced
18 in the appellant's filing in Exhibit 41.

19 In that case the Court sided with the property
20 owner stating, and again this is critical, "We also
21 agree with Montrose," who was the property owner,
22 "that the fact that attics are explicitly excluded
23 from the definition of habitable room does not mean
24 that a so-called attic that is habitable is not
25 actually an attic within the meaning of the zoning

1 regulations. As Montrose aptly explains, simply put,
2 the effect of this regulation is that when the term
3 habitable room is used in the zoning regulations,
4 those regulations do not apply to an attic for
5 whatever reason deemed appropriate.

6 It's also noteworthy that in the same court
7 opinion the Court acknowledges that the definition of
8 a cellar is the portion of a story, the ceiling of
9 which is less than four feet above adjacent finish
10 grade. They make no reference to the two-part
11 definition that would also involve habitable room.

12 So, to frame this case in similar terms as the
13 D.C. Court did in the Kalorama case, the fact that
14 cellars are explicitly excluded from the definition of
15 habitable room does not mean that a so-called cellar
16 that is habitable is not actually a cellar within the
17 meaning of the zoning regulations. Simply put, when
18 the term habitable room is used in the zoning
19 regulations, those zoning regulations do not apply to
20 a cellar for whatever reason deemed appropriate.

21 We've talked about in our prehearing filings,
22 the numerous dwelling units that have been approved by
23 the ZA in the past that are technically located within
24 a cellar space. Mr. Collins touched upon the recent
25 action in 04-33G by the Zoning Commission that

1 codified a practice that was being taken -- carried
2 out by DCRA with regard to the CIZC and affordable
3 units, codifying essentially that residential dwelling
4 units, habitable rooms are permitted to be in the
5 cellar level of a building and counted towards an IZ
6 set aside requirement.

7 I wanted to touch upon that very quickly with
8 respect to what is the impact of upholding the
9 appellant's appeal? As Mr. Collins stated there are -
10 - and as stated in several letters articles that have
11 been submitted to the record, a decision to grant the
12 appeal would have significant impacts on existing and
13 future development in the District, including the
14 availability of lower priced market rate housing, and
15 the supply of affordable housing.

16 There was a Greater Greater Washington article
17 that was submitted into the record that talked about,
18 what is the difference between a market rate lower-
19 level unit located in a cellar or a basement, and a
20 unit that's located on the upper levels? They found
21 that that, based on a Redfin search, that price
22 difference is 10 percent. Those are market rate
23 units, but they are lower price per square foot units
24 that are available to people who are sort of searching
25 for a place to live and own at that price point.

1 CHAIRPERSON HILL: Thank you, Mr. Dettman.
2 So, I'm going to turn to the appellant now.

3 MR. COLLINS: Could I finish up our
4 presentation with the property owner?

5 CHAIRPERSON HILL: Sure. Of course.

6 MR. COLLINS: Mr. Casey, would you proceed
7 with your testimony, please?

8 MR. CASEY: Good day. I'm John Casey, the
9 property owner at 1514 Q Street Northwest. Inquiries
10 about my project began over one year ago, in the fall
11 of 2015 when the ANC reviewed the proposal and took
12 two actions. They voted to support my HPRB
13 application for the addition to the building, and they
14 requested that the Zoning Administrator conduct a site
15 visit to measure the ceiling height of the lowest
16 level relative to the adjacent grade to verify whether
17 it is a cellar or a basement.

18 Since that time, I have received numerous
19 inquiries from the immediate neighbors to the east,
20 the Gelfands, from the ANC, and from DCRA, and I have
21 responded and cooperated each time. I sent out a full
22 set of the project plans to the Gelfands and the ANC.

23 The Gelfands have contacted the police and
24 DCRA on numerous occasions to complain about
25 construction activity. Each time, either a police

1 officer or a DCRA inspector was sent out to my project
2 and no illegal construction or any violations of any
3 kind were found. This is countless times.

4 I don't want to clog up your files with the
5 correspondence documenting all this, but if you want
6 it, I can give it to you.

7 I'd also like to note that in this row of
8 homes in Q Street, I have developed 1516 Q Street, the
9 property that the Gelfands live in. 1506 Q Street,
10 1446 Q Street, along with the subject property, 1514 Q
11 Street. All of which conform the R-5-B zoning
12 regulations for cellar units.

13 The Gelfands purchased their home from me
14 where they currently live, which is the abutting
15 property to the subject property. On January 11th,
16 2016, I received the DCRA's illegal construction unit,
17 a set of questions that they received from the
18 Gelfands, and I responded back to the DCRA on every
19 question. Once again, no enforcement action was taken
20 by DCRA in response to my answers. Inspectors came
21 out and inspected the property countless times.

22 At the community's request a meeting was held
23 on January 22nd, 2016. The Zoning Administrator to
24 discuss the project. The Gelfands and the ANC
25 representatives met with Mr. LeGrant to discuss the

1 zoning matters. Then a site visit was held on
2 February 12th, 2016, so that DCRA could measure the
3 ceiling height of the lowest level relative to the
4 adjacent grade. There was about 20 people at the site
5 visit, including two members from the Zoning
6 Administrator's office sent at the request of Mr.
7 LeGrant, a DCRA inspector, the ANC, the mayor's
8 office, the councilmember's office, two members from
9 the Office of HPRB, the Gelfands, my architect, my
10 attorneys.

11 Measurements were taken and documented with
12 photographs. The proposed ceiling height was
13 documented to be less than four feet above the
14 adjacent grade. Mr. LeGrant then issued a five-page
15 letter on March 21st, 2016, confirming that the
16 ceiling height of the cellar complies with the zoning
17 regulations. Copies of that letter were sent out to
18 the community and the letter was posted on his
19 website.

20 After all of this was over, with no finding of
21 any violations, I proceeded with my project and heard
22 nothing more about the issue until I learned in
23 November of 2016, that the DuPont Citizen's
24 Association had filed an appeal of my building permit
25 in September, and that the ANC took this matter up in

1 early November. They voted at the time to take no
2 position on the application but rather to request an
3 abundance of clarification on the gross floor area
4 issue.

5 My attorneys filed a response to the BZA
6 appeal, and we have been preparing for this hearing
7 since that time.

8 DCRA came out to the site January 12th and
9 again inspected the ceiling height of the cellar,
10 relative to the adjacent grade. The only difference
11 from the original DCRA inspection was that this time
12 the ceiling of the lowest level had been installed and
13 is in place. There are photos of that inspection, the
14 inspector wrote a report to the Zoning Administrator.

15 That report is in your file and it confirms the
16 ceiling height is installed four feet -- less than
17 four feet above the adjacent grade, and there has been
18 no change in grade.

19 This whole thing has been a financial and
20 emotional drain on me, and I simply ask that you apply
21 a common-sense approach in your consideration of this
22 matter.

23 In closing, several key issues I have come to
24 question and are essential to this matter, so I want
25 to be clear. The ceiling height, as installed, is

1 less than four feet above the adjacent grade. This
2 qualifies as a cellar under the zoning regulations.
3 From the time that I acquired the property until now,
4 there has been no manipulation or change of grade.
5 The interior floor to ceiling height of a cellar level
6 is seven-feet, 10-inches, well above any of the
7 minimum ceiling height requirements in the code.

8 Despite the intense focus on my project by
9 DCRA at the request of the neighbors, DCRA has found
10 no reason to issue any citations or notices of
11 violation on my project. I have done everything I can
12 to make sure that the project complies with the zoning
13 regulations, and I have cooperated with the DCRA and
14 the ANC in every way and I would appreciate your
15 support. Thank you.

16 CHAIRPERSON HILL: All right, thank you, Mr.
17 Casey. Mr. Turnbull, you had a comment?

18 MR. TURNBULL: Well, yeah. I just wonder if
19 Mr. Dettman, on the presentation, if you could bring
20 up your slides again. Go to the 1958 regs part that
21 you had. Yes.

22 And what I want you to do is, you were
23 speaking very quickly, which we appreciate. Almost as
24 fast as Mr. Tondro, but not quite, but just go back.
25 I mean, one of the key elements that the appellant is

1 talking about is your top paragraph, the term
2 habitable room shall not include attics, cellars. And
3 I'm wondering if you could just go back over that,
4 paraphrase what you said earlier, for everyone.

5 MR. DETTMAN: In terms of what's the meaning
6 of the reference to cellars?

7 MR. TURNBULL: Yes.

8 MR. DETTMAN: Sure. As we stated that the
9 term habitable room, if you were to look through ZR-
10 58, in the substantive regulations, so outside of
11 Chapter 1. The term habitable room shows up twice.
12 That's in the special exception criteria for the old
13 special purpose, and the C-3 Zones. So, in the
14 criteria that the Board has to apply in reviewing
15 requests for rear yard relief in those zones, you
16 apply these criteria. And one of them is having to do
17 with an evaluation of sight lines into habitable
18 rooms.

19 And so, in applying those criteria, the Board
20 and users of the regulations would question, what's a
21 habitable room. And they would go back to the
22 definition, and they would see that the term habitable
23 room shall not include -- it's a lot of things, but
24 that it shall not include attic, cellars, corridors,
25 and hallways.

1 So, in evaluating a particular rear yard
2 relief, if there was a direct sight line into a space
3 that was maybe habitable, maybe not, maybe it's a
4 unit, maybe it's, you know, it has a washing machine
5 in it, but if there's a direct line of sight into a
6 space that meets the technical definition of a cellar,
7 being less than four feet above adjacent finished
8 grade, that would not be a factor in your evaluation
9 of sight lines.

10 MR. TURNBULL: So, you're saying if it's not
11 in those zones called out, habitable room is
12 acceptable. You said SP and C-3? You were referring
13 to those zones.

14 MR. DETTMAN: Here. So, here they are here.
15 In Section 534.9, in buildings that are not -- this is
16 a criteria for the rear yard relief. In buildings
17 that are not parallel to the adjacent buildings, the
18 angle of sight lines and the distance of penetration
19 of sight lines into habitable rooms shall be
20 considered in determining distances between windows
21 and appropriate setbacks. So, it's a consideration
22 the Board has to make in evaluating whether or not an
23 applicant for rear yard special exception relief can
24 be granted.

25 MR. TURNBULL: So the applicant's -- the

1 appellant's interpretation of the next slide you had,
2 basically is broad-based, saying -- they're looking at
3 it that you can't have a cellar anywhere. And you're
4 saying what the '58 regs do not really preclude that
5 from happening.

6 MR. DETTMAN: My understanding of the
7 applicant's position is that if you have a space that
8 meets the technical definition of a cellar, being less
9 than four feet above adjacent finished grade, that if
10 it has something, a space that meets the definition of
11 a habitable room, it no longer is a cellar.

12 MR. TURNBULL: It's a basement.

13 MR. DETTMAN: It has to be a basement.

14 MR. TURNBULL: Okay. Thank you.

15 MR. DETTMAN: Even though it meets the
16 technical definition of less than four feet above.

17 MR. TURNBULL: Four feet.

18 MR. DETTMAN: Yeah.

19 MR. TURNBULL: Okay.

20 CHAIRPERSON HILL: Okay. So, Mr. Gelfand, I'm
21 going to turn to you for any kind of cross that you
22 might to give or ask, and I guess they need some help
23 there.

24 MR. GELFAND: Okay. These initial questions
25 will be for Zoning Administrator LeGrant.

1 MR. TONDRO: If I can just, as a point of
2 reference, the Zoning Administrator was not a witness
3 and I therefore don't think he can be cross-examined.

4 CHAIRPERSON HILL: You can ask your questions
5 of Mr. Tondro.

6 MR. GELFAND: Sure.

7 CHAIRPERSON HILL: And if you need help, Mr.
8 Tondro, you can ask Mr. LeGrant.

9 MR. GELFAND: Okay. What is the FAR of the
10 proposed project?

11 MR. TONDRO: I do not happen to have that off-
12 hand, but I believe that it's included in the approved
13 plans. The approved plans were confirmed by a zoning
14 reviewer. One of the aspects that they would check
15 would be the gross floor area, and that then having
16 determined the plans meet that, then they approve
17 them.

18 MR. GELFAND: Is Zoning Administrator LeGrant
19 able to answer that question?

20 MR. TONDRO: I think at this point he's going
21 to rest on the record on what the approved plans were
22 approved for.

23 MR. GELFAND: Okay. So, he's not. Okay.

24 MR. TONDRO: To be absolutely clear in
25 response, the Zoning Administrator conducted a review

1 and found that the plans were consistent in meeting
2 the requirements of GFA and of FAR. Therefore, as a
3 result the issue is, are they below -- are they within
4 the allowable limits, and in this case, the Zoning
5 Administrator made that determination. Yes.

6 MR. GELFAND: Okay. What is the FAR of the
7 project if the lower level space was included?

8 MR. TONDRO: That is a hypothetical at this
9 point because that's not something that was analyzed
10 because the Zoning Administrator's staff based -- the
11 review by the Zoning Administrator's office, based on
12 the zoning determination letter, reviewed and
13 determined that the lower level was a cellar and
14 therefore not included in the GFA.

15 MR. GELFAND: Okay. You stated that the
16 zoning, in your testimony, the Zoning Administrator
17 measured the property and determined that the ceiling
18 height was less than three foot -- or less than four
19 feet as per the plans that he approved. Is that
20 correct?

21 MR. TONDRO: Yes, the Zoning Administrator is
22 charged with responding to a proposal by an owner to
23 development their property. In this particular case,
24 then he reviews the plans that were submitted to him.
25 If there are corrections needed, he will then hold

1 those for comments. But otherwise, what happens if
2 it, as in this case, they were approved, then they are
3 stamped as approved as compliant with the Zoning
4 Administrator.

5 MR. GELFAND: But you testified that the
6 Zoning Administrator performed the measurement,
7 reviewed the plans, confirmed that it was complying,
8 and then approved the plans. Is that correct?

9 MR. TONDRO: He confirmed that the plans that
10 were stamped as approved were compliant with the
11 plans, yes.

12 MR. GELFAND: With the --

13 MR. TONDRO: I'm sorry, with the -- pardon me.
14 Take this again. The Zoning Administrator reviewed
15 the plans that were submitted and on the basis of
16 those plans determined that they met in this
17 particular case, the requirements that classify the
18 lowest level as a cellar because they're very clearly
19 shown that the ceiling height of the lower level is
20 less than four feet above adjacent finished grade.

21 MR. GELFAND: And you testified to that. But
22 you also testified that the Zoning Administrator also
23 performed a measurement to measure the height, and
24 then also reviewed the plans, and then performed his
25 review, and then approved the plans.

1 MR. TONDRO: There are two, at least two
2 different inspections that went out and that reviewed
3 it. There was a filing in my -- as an exhibit to my
4 original filing. I included photos of the most recent
5 visit in January by an inspector, and also within that
6 statement, the inspector's name was Reuben Legaspi,
7 it's an e-mail, and stated that he confirmed that the
8 ceiling was less than four feet above adjacent
9 finished grade.

10 MR. GELFAND: And who is Reuben Legaspi?

11 MR. TONDRO: He is an inspector from DCRA, who
12 was sent out on behalf of the Zoning Administrator.

13 MR. GELFAND: Okay. And did anyone else from
14 the Zoning Administrator's office perform a physical
15 measurement?

16 MR. TONDRO: No, because it is the -- the
17 person who conducts those inspections, that is in this
18 case, it was Reuben Legaspi, that's who the Zoning
19 Administrator charges to go and measure.

20 MR. GELFAND: Okay. So, I think the record
21 shows it's incorrect that the Zoning Administrator
22 sent Rohan Reid from his office as a representative to
23 perform a physical measurement. I think that
24 measurement was alluded to on this testimony.

25 MR. TONDRO: I think we can -- the presence of

1 Mr. Reid and I believe Mr. Bolden. I'm not sure the
2 other representative off-hand who was there, was there
3 to review and provide any additional expertise in
4 interpreting the zoning regulations if there were
5 questions. But the actual inspection was done by
6 Reuben Legaspi. I will hasten to add, I want to
7 repeat this on the record, I'll make it very slow.
8 Commissioner Turnbull, apologize for speaking too
9 loudly or too quickly before, but this is all -- the
10 Zoning Administrator is part of DCRA. That is who is
11 actually here right now. I represent DCRA. And the
12 Zoning Administrator had two of his staff of the
13 office of the Zoning Administrator go out, in addition
14 to the DCRA inspector who acted as his agent.

15 So, therefore, I do believe it's correct that
16 the Zoning Administrator, through agents of his, went
17 and inspected the property and measured it.

18 CHAIRPERSON HILL: Mr. Gelfand, I understand
19 where you are in terms of --

20 MR. GELFAND: Okay.

21 CHAIRPERSON HILL: -- you believe there's a
22 difference of opinion in terms of the four feet.
23 So --

24 MR. GELFAND: Okay. Well, I'd like to ask the
25 Zoning Administrator, I mean, you wrote the zoning

1 determination letter. Did you review the
2 measurements --

3 CHAIRPERSON HILL: You again, all you can do
4 is ask Mr. Tondro the question.

5 MR. GELFAND: Okay. Did Mr. LeGrant --

6 MS. GLAZER: Mr. Chair.

7 CHAIRPERSON HILL: Sorry, one second. One
8 second. One second.

9 MS. GLAZER: I think if it pertains to the ZA
10 determination letter and the author of that letter is
11 present, that the appellant should be able to ask him
12 questions about it.

13 CHAIRPERSON HILL: Okay. All right. So, Ms.
14 Glazer has just entered into Mr. LeGrant. So.

15 MR. LeGRANT: Okay.

16 CHAIRPERSON HILL: Welcome, Mr. LeGrant.

17 MR. LeGRANT: Thank you.

18 MR. GELFAND: You issued the zoning
19 determination letter, you signed that letter. Is that
20 correct?

21 MR. LeGRANT: I did.

22 MR. GELFAND: Okay. Did you review two
23 measurements performed by Inspector Legaspi and Rohan
24 Reid from your office, which were done to measure the
25 property before issuing the zoning determination

1 letter?

2 MR. LeGRANT: Let's be clear a little bit
3 about the dates. From my office, the Office of Zoning
4 Administrator, my staff, including Mr. Rohan Reid and
5 Mr. Terete Balden (phonetic) on my behalf, went out to
6 the property on February 12th, 2016. Okay? That
7 information --

8 CHAIRPERSON HILL: Could you repeat that date
9 again for me, Mr. LeGrant?

10 MR. LeGRANT: February 12th, 2016.

11 CHAIRPERSON HILL: Thank you.

12 MR. LeGRANT: I used that information but I
13 relied on the plans that were before me to issue my
14 determination letter of March 21st, 2016.

15 Okay. After that, the inspection that was
16 referred to that was conducted by Reuben Legaspi of
17 the DCRA's Inspections and Compliance Administration,
18 was on January 12th, 2017. So, there's two different
19 inspections. The first one, prior to the issuance of
20 the determination letter, and then separately on
21 January 12th.

22 MR. GELFAND: Okay. I'm not sure if you
23 answered my question, was whether you reviewed those
24 two measurements before issuing your zoning
25 determination letter.

1 MR. LeGRANT: Well, this --

2 MR. GELFAND: It was a yes or no question.

3 MR. LeGRANT: Because the January 2016
4 inspection occurred prior to the issuance of the
5 determination letter, as I noted, I had that
6 information but relied on the plans. The
7 determination letter is about the plans that I
8 reviewed.

9 So, Mr. Legaspi's inspection had not occurred
10 yet. It was about a year out.

11 MR. GELFAND: I don't think that timeline is
12 correct. Mr. Tondro testified that you based your
13 determination letter based on both the plans and
14 inspections performed by DCRA staff, and Zoning
15 Administrator staff. Is that not true?

16 MR. LeGRANT: Well, let me clarify it then.
17 The dates were when Mr. Balden and Mr. Reid went out
18 and provided me information in 2016. So, if Mr.
19 Tondro misspoke about Mr. -- the timing of Mr.
20 Legaspi's inspection, let me correct that because that
21 didn't happen until last month.

22 MR. GELFAND: Okay. What day was your letter
23 issued?

24 MR. LeGRANT: March 21st, 2016.

25 MR. GELFAND: Okay. And in your zoning

1 determination letter you included this affidavit as an
2 exhibit, which references a measurement that was
3 performed by DCRA Inspector Legaspi on February 12th,
4 which occurred before the issuance of your zoning
5 determination letter. It was referenced in your
6 zoning determination letter. Are you saying that you
7 did not look at this measurement before issuing your
8 zoning determination letter?

9 MR. LeGRANT: Which page are you referring to?
10 I'm sorry, the page number?

11 MR. GELFAND: This is from an exhibit of your
12 zoning determination letter that you issued.

13 CHAIRPERSON HILL: Mr. Gelfand, I'm a little
14 confused with your line of questioning. What are you
15 trying to get at? And, who is it who signed this
16 affidavit?

17 MR. GELFAND: The Zoning Administrator erred
18 in issuing his determination.

19 MR. TONDRO: Can I -- I think if you look
20 closely that's --

21 MR. GELFAND: And the plans were wrong versus
22 the measurement --

23 MR. TONDRO: -- an affidavit --

24 CHAIRPERSON HILL: Wait, wait, wait, wait,
25 wait, wait, wait. Give me one second. Okay, you

1 answered my question. You answered my question.

2 Mr. Tondro?

3 MR. TONDRO: I believe the affidavit about
4 which he's questioning the Zoning Administrator was
5 actually the affidavit by the property owner, not by
6 the Zoning Administrator, A. B., I would just hasten
7 to add, appellant has made a big deal about standing
8 and timeliness that he's not appealing the
9 determination letter. I find it a bit rich at this
10 point from the folks on the determination letter, and
11 I believe that OAG clarified that the Zoning
12 Administrator, who had not heretofore testified, could
13 be cross-examined to the extent the extent that it was
14 about the determination letter. I just want to
15 clarify that.

16 CHAIRPERSON HILL: Okay. All right. So, I'll
17 go -- you asked a lot of questions about the four-foot
18 and so, I just want you to get your --

19 MR. GELFAND: It's relevant to the case.

20 CHAIRPERSON HILL: Yeah. How many times you
21 want to ask the same question?

22 MR. GELFAND: Well, he's avoiding the
23 question.

24 CHAIRPERSON HILL: He's not avoiding the
25 question. He's answering your question.

1 MR. GELFAND: I don't think he answered
2 whether he reviewed the measurement because he's
3 saying he reviewed the plans and the plans show a
4 three-foot, 11 measurement and the actual measurement
5 performed by DCRA does not show that, and it's
6 important, and it's relevant.

7 CHAIRPERSON HILL: Mr. Tondro, do you have a
8 response to that?

9 MR. TONDRO: I am not sure what precisely, to
10 be honest with you, the appellant is referring to.
11 Again, I think there's a confusion. The affidavit
12 he's trying to ask questions about was signed by the
13 property owner. The measurements, they were
14 submitted. You can see in, I believe it's Exhibit
15 27A, that was the property owner's submission that
16 provides all of the supporting documentation for the
17 determination letter that provided those measurements
18 there.

19 Again, to the extent the appellant is using
20 and trying to appeal the zoning determination letter,
21 I think timeliness should bar those arguments, unless
22 he is, instead, appealing the approved plans, in which
23 case that's a different issue arguably.

24 MR. GELFAND: We're discussing the cellar
25 classification.

1 Mr. Tondro, question. The slide on the screen
2 right now, the inset to the right is from exhibit from
3 the zoning determination letter showing a three-foot,
4 11 measurement and a ceiling height. It is the same
5 for the approved building permit.

6 On the left is a zoom in of the measurement
7 performed by DCRA with a red line added at the
8 approximate vertical distance as the ceiling height,
9 as shown on the plans in both the zoning determination
10 letter and the approved building permit. The tape
11 measure on the DCRA measurement shows a height there
12 at four-feet, five-inches. The plans approved by
13 Zoning Administrator LeGrant, for the zoning
14 determination letter and the building permits, show a
15 three-foot, 11 measurement.

16 How do you reconcile this difference and how
17 do you condone the Zoning Administrator's decision
18 given that the plans don't meet his own definition of
19 the four-foot -- less than four-foot requirement?

20 MR. TONDRO: I think relatively simply. I
21 think that the definition of basement or cellar is not
22 referred to the -- is reference to the ceiling height
23 and to the adjacent finished grade. In that photo you
24 can see that the ceiling height is measured at the top
25 of that beam, the two-by-four there, which is lower

1 than where the red line is.

2 There does appear to be a clerical error in
3 the plans, but that is not one that is material. The
4 issue there is it's showing that the measurement
5 occurs above the top of the windows, which corresponds
6 to the interior ceiling, not at the bottom of the
7 band, which is what you're asserting. But the fact of
8 the matter is that when the DCRA inspector went out,
9 he referred to determine if the property was compliant
10 or not, and he measured from the ceiling to the
11 adjacent finished grade and determined that that was
12 less than four feet, as you can see in the exhibit. I
13 believe it's B, of my most recent filing, or of the
14 hearing statement provided by Mr. Legaspi.

15 MR. GELFAND: You just raised a whole new
16 question. You said there was an error in the plans.
17 What is the error in the plans, because these are the
18 plans that were approved, with this ceiling height and
19 this dimension proving that there is a cellar?

20 MR. TONDRO: The potential error that --
21 again, I want to be very, very clear about this. The
22 issue is the definition of basement versus cellar
23 comes down to the issue of the relationship between
24 the ceiling, not the window. The issue is the ceiling
25 height to the adjacent finished grade.

1 MR. GELFAND: Right.

2 MR. TONDRO: And that has to be less than four
3 feet for it to be deemed a cellar. It's very clear
4 from the inspection that that's what happened.

5 The error that I'm talking about is a
6 scribner's error. It appears in the plans in that the
7 dotted line which shows where the ceiling height is,
8 is actually listed, shown not at the -- you can
9 forgive me, I'm just going to point in my hand.

10 CHAIRPERSON HILL: Sure. Go ahead, please.

11 MR. TONDRO: I believe that the issue --

12 CHAIRPERSON HILL: Mr. Tondro, you're going to
13 need a microphone because I've got to get you on the
14 record. Sorry.

15 MR. TONDRO: Thank you. Is it better over
16 here? Okay.

17 CHAIRPERSON HILL: Sure.

18 MR. TONDRO: Thank you, Commissioner Gambrell.

19 So, the red line, I believe that what we're talking
20 about here, first of all the two-by-four that I was
21 talking about right here, right here it goes all the
22 way through and you can see in the subsequent
23 photographs that it's tied to the ceiling height to
24 determine that that's the measurement from which you
25 calculate it. Here, what we have, I believe the

1 discrepancy that's being shown, is that the dotted
2 line to the ceiling is shown to be the underside of
3 the top of the window, the header of the window, as
4 opposed to being the actual -- of the window frame, as
5 opposed to being the top of the actual windows, which
6 is what was measured at site. But the issue -- I say
7 that's a scribner's error in the sense that there's no
8 change to the determination of what or not the
9 property complied, because the fact is that the
10 ceiling height, which is the reference point in the
11 zoning regulations, is at the same level as the top of
12 the actual window here, measured to the adjacent
13 finish grade is below four feet.

14 So, arguably there is a change that needs to
15 be done. That would be done by the Zoning
16 Administrator as prior to the final inspection to say,
17 this, you have to get that plan, just show the dotted
18 line down here if that could reflect the actual
19 circumstances. But there was no change in terms of
20 how that happens to the rest of the project or to the
21 site.

22 MR. GELFAND: Okay. Okay. I hope the Board
23 can recognize what is going on here in terms of being
24 requested to change the plans in order to then
25 retroactively comply with what was approved.

1 CHAIRPERSON HILL: Mr. Gelfand, we're
2 listening to everything, okay? So, you don't have to
3 worry about what the Board needs to do.

4 MR. GELFAND: Mr. Tondro, how do you reconcile
5 the prior decision made by Zoning Administrator Cruz
6 at 1736 Corcoran Street where he did not allow a
7 cellar to be both habitable and excluded from gross
8 floor area?

9 MR. TONDRO: I'm not sure. I do not know the
10 specifics of the case. This is the first time I
11 believe that it was brought up. I don't know what
12 were the issues that were raised at that time. This
13 is something that, what we're talking about and what
14 has been reflected here is what the Zoning
15 Administrator's policy has been for as long as the
16 Zoning Administrator has been in office in the
17 District.

18 And again, I would clarify that the basis for
19 the Zoning Administrator's determination was always
20 that habitable space, to get back to Commissioner
21 Turnbull's question of Mr. Dettman. Habitable space
22 was deemed to be a term that's applied to only those
23 two sections dealing with rear yards in the SP and the
24 C Zone. It does not deal with gross floor area, which
25 does not reference habitable space, or habitable

1 rooms, but only references basement or cellar, neither
2 which refer to habitable room.

3 MR. GELFAND: Okay. What is the definition of
4 an attic?

5 MR. TONDRO: I'm sorry. Give me one second.

6 CHAIRPERSON HILL: Mr. Gelfand, I'm just kind
7 of curious, how many more questions do you have?

8 MR. GELFAND: A few.

9 CHAIRPERSON HILL: Okay. How many is a few?

10 MR. GELFAND: I think two.

11 CHAIRPERSON HILL: Okay. I'm just trying to
12 get a sense of time. I mean, we have a bunch of other
13 cases as well and I need to get some more questions
14 over here answered from the Board, so I'm just trying
15 to figure out how many you have left.

16 MR. TONDRO: I can just provide an answer to
17 that.

18 CHAIRPERSON HILL: Please, go ahead. Please.

19 MR. TONDRO: I'm sorry.

20 CHAIRPERSON HILL: No.

21 MR. TONDRO: Attic is not a defined term in
22 the '58 regulations. It was therefore referred to
23 that in the D.C. Court of Appeals case, it was
24 referred to Webster's Dictionary.

25 Again, in contrast to basement or cellar,

1 which are defined in the zoning regulations, because
2 attic was not, therefore the BZA and the Court had to
3 go to Webster's Dictionary. But that's not apropos in
4 this case because we're dealing with defined terms
5 established by the Zoning Commission.

6 MR. GELFAND: So, attic is not defined. So,
7 are there two types of attics, like a basement and a
8 cellar?

9 MR. TONDRO: Depends on the purpose for which
10 you're discussing.

11 MR. GELFAND: Well, what are the two types of
12 attics? I mean, if attic isn't even defined, how are
13 there two types of attics if it's not defined?

14 MR. TONDRO: Because, if you look at the
15 definition of gross floor area, it says in the second
16 paragraph and I quote, the term gross floor area shall
17 include basements, elevator shafts, da, da, da, da,
18 attic space, whether or not a floor has actually been
19 laid, providing structural headroom of six-feet, six-
20 inches or more. That's included, otherwise it's not.
21 Therefore, there two different --

22 MR. GELFAND: There's only one attic. Not two
23 attics.

24 CHAIRPERSON HILL: All right, Mr. Gelfand, I'm
25 going to ask you to kind of stop the question here

1 because I don't know of the connection between the
2 attic and what, you know --

3 MR. GELFAND: They made a lot of statements
4 with trying to correlate a basement versus cellar
5 distinction to an attic.

6 CHAIRPERSON HILL: There's a lot of
7 information in the record and so, you have a few more
8 questions you said you had to ask, and so I'm going to
9 give you --

10 MR. GELFAND: My final question is related to
11 attics. Mr. Gambrell might have a question or two.

12 MR. TONDRO: Chairman Hood --

13 CHAIRPERSON HILL: Well, hold on. Go on.

14 MR. TONDRO: Provide a very quick response.

15 CHAIRPERSON HILL: Sure.

16 MR. TONDRO: There are effectively two
17 categories of attic for the calculation of gross floor
18 area. Those attics, which are under six-feet, six-
19 inches, and those attics which have more than six-
20 feet, six-inches. That is parallel to the distinction
21 between basement and cellar, which is four feet above
22 adjacent finished grade. Thank you.

23 CHAIRPERSON HILL: Okay. So, Mr. Gelfand, you
24 were the one who had presented, and so that's why you
25 were the one who was asking the questions. Now, I'm

1 going to ask Mr. Gambrell, if you have one or two
2 questions that's fine. Okay? So, go ahead, Mr.
3 Gambrell.

4 And then, the applicant is going to have an
5 opportunity to submit their closing. Okay?

6 MR. GAMBRELL: Just two questions. Mr.
7 Tondro, isn't it true that in the Montrose case
8 regarding the attic, Mr. Dettman, you're free to weigh
9 in, I believe, isn't it true that the Court concluded
10 that the only rational -- distinction in attics in
11 terms of being counted in density was the measurement
12 of six-feet, six-inches, and it had nothing to do with
13 habitability. Is that correct?

14 MR. TONDRO: What I believe that that case
15 dealt with was, yes, a calculation of it said that
16 habitable room -- the issue of habitable room does not
17 apply to the calculation of attic space and whether
18 it's included in gross floor area. Just as here, the
19 issue of basement versus cellar for determination of
20 gross floor area, does not affect it by habitable
21 room. And that's precisely what the Board itself, on
22 remand from the Court of Appeals said, and I quote,
23 and as noted by the Court of Appeals, the issue
24 habitability is not relevant to whether a space is or
25 is not an attic, and for purposes of gross floor area,

1 because that was the issue at hand.

2 CHAIRPERSON HILL: Mr. Gambrell, I'm just
3 going to make one comment because the Office of the
4 Attorney General just pointed out to me again that
5 it's one person makes the cross-examination. So, I
6 did say go ahead and have two questions. Do you have
7 one more question?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. Sure. Go ahead,
10 Brian.

11 MR. GELFAND: Yeah. Is the lowest level unit
12 in this project an affordable unit?

13 MR. TONDRO: I'm not aware to know one way or
14 the other. That's not an issue that's come before the
15 Zoning Administrator.

16 CHAIRPERSON HILL: Okay. All right. So, now
17 we're going to go ahead and give you an opportunity to
18 close. And then again, the process is that the DCRA
19 will have an opportunity to close and the building
20 owner will get the final word.

21 Before I do closings, there is a tremendous
22 amount of information in the record, and I don't have
23 any particular questions for anyone. Does the Board
24 have any questions that they would like to ask at this
25 point?

1 MR. TURNBULL: No, I just wanted to assure Mr.
2 Tondro that I was not being critical of the fact that
3 he was talking very fast. In fact, his allocution is
4 very very well, understanding what he has to cover. I
5 was just saying that there was a lot of material and
6 sometimes people miss things. So, I give you a pat on
7 the back for doing as well as you do. You're very,
8 very good.

9 And, Mr. Dettman too, you're included in
10 speaking fast.

11 CHAIRPERSON HILL: And I think Mr. Gelfand has
12 done a lovely job as well, actually.

13 MR. GELFAND: I'm excluded. I'm excluded --

14 CHAIRPERSON HILL: No, I'm letting you know, I
15 think --

16 MR. GELFAND: Like (simultaneous speech).

17 CHAIRPERSON HILL: -- you've been very very --

18 MR. TURNBULL: You've done an excellent job.

19 CHAIRPERSON HILL: -- eloquent and now that
20 we're all having a nice moment to breath, you know,
21 Mr. Turnbull, I hope never to be quoted back to me,
22 you know, as you were earlier today. So, all right.

23 MR. TURNBULL: Well, when you're on the Zoning
24 Commission you get it all the time.

25 CHAIRPERSON HILL: Yes, that will be a new day

1 for me.

2 So, please, Mr. Gelfand, if you would go ahead
3 and provide your closing for us?

4 MR. GELFAND: I will be very brief because I
5 think we have all made and repeated our points
6 multiple times.

7 But the final comment I would make is that
8 sometimes the words just mean what they say, and you
9 have to look at that. And any reasonable plain
10 English reading of the definition of habitable room
11 and exclusion of cellar, and apartments must consist
12 of habitable rooms, leads to the conclusions that
13 we've presented in this appeal. Thank you.

14 CHAIRPERSON HILL: Thank you. Mr. Tondro?

15 MR. TONDRO: I'll try to speak very quickly,
16 or at least --

17 CHAIRPERSON HILL: If you can speak as brief
18 as Mr. Gelfand --

19 MR. TONDRO: Sorry. Pardon me.

20 CHAIRPERSON HILL: -- you'll get another gold
21 star.

22 MR. TONDRO: It's my Yankee roots from
23 Connecticut.

24 The Zoning Administrator believes that the
25 appellant has not made -- has not established -- met

1 the burden of proof in this particular case to allege
2 an error that the Zoning Administrator made. The
3 Zoning Administrator responded to Mr. Gelfand's
4 queries and questions and challenges to the proposal
5 that were based specifically on this issue of the
6 habitable space, or habitable room issue and how that
7 calculates to basement/cellar.

8 The Zoning Administrator considered that. The
9 Zoning Administrator determined, based on consulting
10 the regulations, that habitable room had this entirely
11 separate distinct meaning from the density
12 regulations, and just to lay that out, I think Mr.
13 Dettman already did that very clearly. But just to
14 remind ourselves, the requirements are, that are
15 applicable here, are gross floor area, or sorry, FAR,
16 the floor area ratio. That was -- is established for
17 limits for the various different zones.

18 FAR, in turn, if you want to know how you
19 calculate FAR, you look to the definition of gross
20 floor area. Gross floor area refers to basements and
21 cellars. If basements are included, cellars are not.
22 There is no mention in the definition of gross floor
23 area of habitable room.

24 I think right there, that's the crux of the
25 situation. There's no reference in terms of that, how

1 it's actually applied. Basement and cellar again also
2 do not have any reference to the issue of habitable
3 room. And so, and again, in terms of the issue of law
4 of surpluses, surplussage, the Zoning Administrator
5 looked -- reviewed that aspect and said, does this
6 term, habitable room, have a meaning? Is it actually,
7 as it were, landed in some of the actual provisions.
8 The substance of the zoning regulations says yes, they
9 are. They're in the SP Zones and the C Zones for
10 dealing with the issues of rear yards.

11 And again, I think it makes sense that the
12 habitable room in this case, when you're looking about
13 the Board considering a request to reduce the size of
14 the rear yard that one of the things they should be
15 taking into consideration is if there's a sightline
16 into a habitable room. But they do say, but not a
17 habitable room that includes a cellar or an attic,
18 presumably because there's less privacy needs in terms
19 of a rear yard. So, there's a real rationale. It's
20 not just a word, habitable room or a term that's not
21 used. It has this very clear meaning, but it's a
22 totally separate one. Has nothing to do with the
23 determination of gross floor area, which is what is
24 the issue here at hand in terms of FAR.

25 I would also just point out that one of the

1 problems we have with -- or one of the potential
2 issues with the appellant's assertion, which is to
3 basically rewrite the zoning regulations to add in the
4 definition of habitable room into the basement cellar,
5 and into the gross floor area, you could have this
6 nonsensical approach or result where a basement that
7 does not -- that is clearly above four feet, that may
8 be, you know, six feet above adjacent finish grade,
9 has no habitable rooms. Oh, has no habitable rooms,
10 therefore it doesn't count towards gross floor area.

11 There's a dangerous slope that we start
12 getting to if we're starting to rely on these sort of
13 inferences, one to the other. So, there's a very
14 clear distinction that the Zoning Administrator saw in
15 the regulations, and that is on the basis of which he
16 made his determination.

17 Finally, just in terms of the issue of the
18 plans, again, the Zoning Administrator determined the
19 plans. I think you heard from Mr. Gelfand in
20 questioning myself or the Zoning Administrator,
21 pointing out that the plans, at least the elevations
22 were the same between the zoning determination letter
23 and the approved plans. There does seem to be, as he
24 pointed out, there does seem to be a clerical error or
25 a scribner's error in terms of the location of that

1 dotted line that occurs, that that dotted line is on
2 the under-side of the header, the brick header, and
3 it's not at the top of the actual windows. But again,
4 that's something that the Zoning Administrator would -
5 - could demand to be revised at the final -- in order
6 to get the final inspection approval.

7 More importantly, both of the visits,
8 including the most recent one, determined that again
9 the ceiling, which is the reference point of the
10 definition, the ceiling is less than four feet from
11 the adjacent finished grade.

12 So, again, the ZA believes that he did not
13 make an error, and I think again that the appellant
14 failed to meet the burden. I respectfully rest.
15 Thank you.

16 CHAIRPERSON HILL: Thank you. Mr. Collins?

17 MR. COLLINS: Thank you. Just a couple
18 points, and we will submit Mr. Dettman's testimony.

19 Exhibit 42 in the record, which is -- it's not
20 up on the screen, which will be up on the screen
21 shortly, is the inspection report from January 12th,
22 which does show the ceiling inside being less than
23 four feet above adjacent finish grade outside. I want
24 to call that to your attention.

25 Also, to Exhibit 70 and 71, Exhibit 70 is a

1 letter from Mary Pope, who is a neighbor who lives at
2 1512 Q Street, and in her letter she points out that
3 she's lived there for 32 years and the grade has not
4 changed.

5 CHAIRPERSON HILL: We saw those letters.

6 MR. COLLINS: Okay.

7 CHAIRPERSON HILL: I appreciate it though.

8 MR. COLLINS: And then Exhibit 71, Lamar and
9 Wallace, about the windows. So, that explains why the
10 windows may appear to be a different size, but in fact
11 they are approved and were installed with permits.

12 So, in closing, I just want to point out, the
13 impact of this decision in this case, of your decision
14 in this case, is not limited to just this one unit at
15 1514 Q. There will be city-wide housing implications.

16 And that's why you will see 25 letters in opposition
17 to this application -- this appeal. In the record.
18 Including letters from D.C. Housing Authority, D.C.
19 Housing Finance Agency, a letter from the Coalition
20 for Smarter Growth, an article from Greater Greater
21 Washington pointing out the fallacy of this
22 interpretation, and letters from a number of for-
23 profit and non-profit developers who are very
24 concerned about the changing of a 58-year policy of
25 interpreting the regulations to allow units in the

1 cellar. This Board has allowed units in the cellar.
2 The Zoning Commission has allowed units in the cellar.
3 The Zoning Administrator has allowed units in the
4 cellar, for as long as I can remember, and I've been
5 practicing for many, many years.

6 A decision to grant this appeal will render
7 nonconforming, hundreds, if not thousands of cellar-
8 level game rooms, rec rooms, TV rooms, dens, community
9 rooms, and other living spaces and cellar levels. It
10 will invalidate and overturn the Zoning Commission's
11 recent action on IZ units counting in cellar levels.
12 It will alter city-wide policy on delivery of
13 affordable housing. It will render nonconforming any
14 existing building with a cellar-level dwelling unit,
15 converting them to basements and including them in
16 FAR.

17 It would also automatically add a story to a
18 building in those zones where stories are counted in
19 building height.

20 It would reverse 58 years of interpretation by
21 the Zoning Commission, the BZA, and the Zoning
22 Administrator. Such policy decisions are not the
23 purview of this Board, I would respectfully submit.
24 If this is to be a policy, it really is something that
25 should be taken up by the Zoning Commission.

1 Case law from the Supreme Court of the United
2 States, which we cited in Exhibit 27, our prehearing
3 statement, pages 12 through 13, says that the literal
4 reading of a statute is not mandated if an absurd
5 result would follow. To change the consistent
6 interpretation of the zoning regulations after 58
7 years to a new interpretation that would be convenient
8 for the appellants, but would affect the delivery of
9 affordable housing city-wide is something that this
10 Board should not do. Thank you very much.

11 CHAIRPERSON HILL: Okay, great. So, well,
12 thank you all for being here. There was, and I'll ask
13 the Board if they have any other things that they'd
14 like to see. I mean, I was again most interested in
15 the findings of fact and conclusions of law with terms
16 to the timeliness and the standing issues.

17 If any of the parties would like to submit
18 findings of fact and conclusion of law for the merits
19 of the case, you are welcome to do so, otherwise I'm
20 going to close the record for anything else.

21 Does the Board have anything else they would
22 like to see from anyone before being able to take this
23 to a meeting case?

24 [No audible response.]

25 CHAIRPERSON HILL: Okay. Well, in that case,

1 Mr. Moy, I want to see -- I wonder maybe if, when
2 would be a good time to try to schedule this?

3 MR. MOY: Before I get to that, just for a
4 moment, sir.

5 CHAIRPERSON HILL: Sure.

6 MR. MOY: Were there other pieces of
7 information or filings that you wanted into the
8 record, other than what you've just mentioned? Okay.
9 All right.

10 CHAIRPERSON HILL: No.

11 MR. MOY: Just checking. So, if this is for
12 decision making, then I'm looking at March the 15th.
13 Mr. Turnbull will be here March 15th.

14 CHAIRPERSON HILL: Okay.

15 MR. MOY: So, if the parties can submit within
16 two weeks, that would put us at about -- well, not
17 more than about, Wednesday March 8th.

18 MR. TONDRO: Chairman Hill, can I just ask a
19 quick question? I think you had asked for me to
20 include BZA 19274 for Spring Valley. Should I just
21 include the reference to it in the conclusions of law,
22 findings of fact?

23 CHAIRPERSON HILL: No, if you can include it
24 that would be great. Please. Thank you.

25 MR. COLLINS: And you had asked, also asked me

1 to include some things too. I'm trying to find my
2 notes on that. There were things in the record
3 already, you said go ahead and submit them, that way
4 we have it all in one place.

5 CHAIRPERSON HILL: Yes, I can't remember now.

6 MR. COLLINS: Uh-huh, right. This timeliness,
7 standing, and under roof information you had asked me
8 to submit.

9 CHAIRPERSON HILL: Can you say that again for
10 the record?

11 MR. COLLINS: Resubmit issues about
12 timeliness, standing, and under roof.

13 CHAIRPERSON HILL: Yes.

14 MR. COLLINS: Okay, we will do that.

15 CHAIRPERSON HILL: Mr. Gambrell?

16 MR. GAMBRELL: Yes, just a clarification. May
17 the appellant submit any documentation on BZA 19243 as
18 well? Mr. Tondro just referenced that, the Spring
19 Valley case.

20 CHAIRPERSON HILL: Sure.

21 MR. GAMBRELL: Could that be part of the facts
22 and findings?

23 CHAIRPERSON HILL: Sure. You can do that if
24 you'd like. All right? Okay.

25 MS. GLAZER: I'm a little unclear, Mr. Chair.

1 CHAIRPERSON HILL: Sorry.

2 MS. GLAZER: So, are all the parties directed
3 to submit proposed findings and conclusions of law?
4 And include any of these points of information within
5 them?

6 CHAIRPERSON HILL: That would be a cleaner way
7 to do this, and so I would go ahead and ask the
8 appellant and the property owner and the DCRA to do
9 that.

10 MR. TONDRO: And just to be clear, so 19274,
11 any references or interpretation that was raised here
12 on the record by myself, that issue I will include in
13 the findings of fact, conclusions of law because it
14 was raised here on the record, but only to that
15 extent. I will not make any other arguments about the
16 case, or discuss that particular one. But I will
17 include it as an attachment, just because it's not
18 already in the record. Is that correct?

19 CHAIRPERSON HILL: Yes.

20 MR. TONDRO: Okay. And I just want to clarify
21 then, in terms of Mr. Gambrell's -- what I don't want
22 to end up happening is a situation where --

23 CHAIRPERSON HILL: Going back and forth.

24 MR. TONDRO: -- we go back and forth, we have
25 more briefs and more arguments going back and forth.

1 CHAIRPERSON HILL: Mr. Gambrell, what is it
2 that you wanted to submit concerning that particular
3 case? Did you want to hear what they had to say and
4 then you wanted to submit something? Because that is
5 not what my intent was.

6 MR. GAMBRELL: Not mine either. To the
7 point of actually reading the case and seeing if it's
8 conclusion reflects what was discussed in this room
9 today.

10 MR. TONDRO: And just to clarify from our
11 standpoint, the only thing I was saying was that the
12 issue at hand, the decision of the Zoning
13 Administrator that was appealed, was a determination
14 letter. I think it's a relatively simple yes or no,
15 and when one reads the case. I don't mean to --

16 CHAIRPERSON HILL: That's okay. What was the
17 appeal that you're -- tell me again.

18 MR. TONDRO: It was Appeal 19274. It's one of
19 the most recent ones that I argued here before the
20 Board dealing with the Spring Valley. It was ANC
21 Commissioner 3D, Tom Smith, I believe was the
22 representative. And it was a determination about
23 parking layout and how that interacted with the
24 requirement because it was an historic site, so it was
25 a determination letter on interpreting the

1 applicability --

2 CHAIRPERSON HILL: Okay. That's fine. So,
3 I'll look it up myself. You don't have to include it
4 now. And, Mr. Gambrell, you don't have to worry about
5 it. Okay? Okay.

6 All right. Any other questions?

7 [No audible response.]

8 CHAIRPERSON HILL: All right. So, we are
9 done. So, I know that everyone who has been here has
10 gotten a lot of information about this particular
11 appeal. And we have all been here a very long time
12 ourselves. We are going to get to everybody today,
13 but we are going to have to take a little bit of a
14 break.

15 All right. We're going to take a 15-minute
16 break. Okay?

17 [Off the record from 4:17 p.m. to 4:32 p.m.]

18 CHAIRPERSON HILL: All right. Good morning,
19 everyone. If we could just go ahead and get started
20 here, I'll reread my opening statement in a minute.

21 Mr. Moy, if you wouldn't mind calling our next
22 case?

23 MR. MOY: Yes, thank you, Mr. Chairman. I
24 believe, this is going to sound bad, but we're back at
25 the top of the order. So, that would be -- let me

1 double-check here. Yes. All right.

2 That would be Application No. 19429 of BNY
3 Development, Captioned and advertised for special
4 exception relief under Subtitle E, Section 5201, from
5 the lot occupancy requirements of Subtitle E, Section
6 504.1. This would construct a second-story addition
7 to an existing one-family dwelling, RF-3 Zone, 1533rd
8 Street Northwest, Square 822, Lot 803.

9 CHAIRPERSON HILL: Good afternoon. Have you
10 all been sworn in? Okay. If you could just give me
11 your name from right to left, please?

12 MR. SERNEY: Mark Serney, 1038 North Monroe
13 Street.

14 MR. GREEN: Donovan Green, 41 Q Street
15 Northwest.

16 CHAIRPERSON HILL: Okay. Now, are you guys
17 the owners, the -- who owns the property or --

18 MR. GREEN: I'm Donovan Green. I represent
19 BNY Development, the owner of the property.

20 CHAIRPERSON HILL: Okay.

21 MR. GREEN: And -- oh.

22 MR. SERNEY: I'm with MC Design, the
23 architect.

24 CHAIRPERSON HILL: Okay. Thank you. Thank
25 you. So, Mr. Green, I don't have a lot of questions

1 on this, actually, and I was a little bit interested,
2 I suppose about hearing about -- with more kind of to
3 the Office of Planning's report. But if at this
4 point, unless the Board has anything more specific
5 they'd like to hear upon, I'd just like kind of like a
6 pretty high-level overview presentation on the
7 project. And also, as to how the relief you're asking
8 for and how you're meeting the standard.

9 Then, I guess, kind of the talks with your
10 immediate neighbors. So, those are kind of my issues.
11 Anybody else has any other comments they'd like to
12 make?

13 MR. TURNBULL: Yeah, I think the owners, if
14 they talked to the neighbors, would be interesting to
15 hear.

16 CHAIRPERSON HILL: Okay. Okay. Great.

17 MR. HART: Just so --

18 CHAIRPERSON HILL: Sure.

19 MR. HART: One really minor question. Can you
20 just describe why you're building this taller than the
21 rest of the ones around them? It just, it seems an
22 oddity to me.

23 CHAIRPERSON HILL: Okay.

24 MR. HART: You can --

25 CHAIRPERSON HILL: So, another point during

1 your presentation. So, if you can hit on all those
2 points then that would be what we're most concerned
3 about. Okay?

4 MR. GREEN: Okay. Mr. Chairman, Members of
5 the Board, thank you.

6 In brief, we're seeking relief due to the
7 substandard lot size that we have, which is 1,339
8 square feet, and standard for the zone is 1,800 square
9 feet. The lot occupancy as it is, is 54 percent,
10 roughly, and we're looking to extend about 66 percent.

11 By and large, we're looking to add a rear
12 stairway, such that we'll have a second form of egress
13 for both of the proposed units. That stair we will
14 also add a form of egress to get to the roof as well.

15 With regards to communications with the
16 neighborhoods, we've shared the plans with the
17 neighbors. They've been in full support of not only
18 our plans, but the redevelopment of the property,
19 which has been vacant and blighted since it caught
20 fire, I believe, in 2008. We've also obtained full
21 support from the ANC, which we've presented in front
22 of -- at three different meetings.

23 MR. TURNBULL: Do you have any letters from
24 the neighbors?

25 MR. GREEN: I don't have a letter from the

1 neighbors. I have a letter from the ANC with
2 approval.

3 CHAIRPERSON HILL: I'm having issues with my
4 computer.

5 MR. HART: And the, the height issue?

6 MR. GREEN: Oh, sorry. The height of the
7 property is -- really goes back to the preexisting
8 structure, the original construction, which is another
9 reason why we are looking to add the stairs to the
10 back. We don't want to change any more of the façade
11 as it, you know, takes away from the fit and finish of
12 the overall neighborhood and block.

13 MR. HART: And so, the building was just
14 constructed larger than the rest of them?

15 MR. GREEN: Yeah. Yeah. That's the original
16 structure. Yeah.

17 CHAIRPERSON HILL: Okay. Does anyone have
18 anything else for the applicant right now, or else I'm
19 going to turn to the Office of Planning?

20 MR. TURNBULL: I just had one. The picture,
21 the front of the building that shows that it's higher,
22 are you not changing, then, anything in the front for
23 the most part?

24 MR. GREEN: With regards to the height, no.

25 MR. TURNBULL: So, the basic exterior of the

1 building at the front remains the same.

2 MR. GREEN: The basic exterior --

3 MR. TURNBULL: Other than you're probably
4 going to paint it or something.

5 MR. GREEN: We're going to paint it, and we're
6 adding a, like a bay area, which is -- it doesn't add
7 to the height in any way. It's just the front.

8 MR. TURNBULL: A bay? I don't think the
9 drawings show a bay.

10 MR. SERNEY: It's actually an egress well at
11 the cellar level.

12 MR. TURNBULL: Oh, okay. All right. That I
13 see. Okay.

14 CHAIRPERSON HILL: Does the Board have
15 anything else before I turn to the Office of Planning?

16 [No audible response.]

17 CHAIRPERSON HILL: Hello, Office of Planning.

18 MS. MYERS: Hello. For the record, Crystal
19 Myers for the Office of Planning. The Office of
20 Planning recommends approval of this project and
21 stands on the record of the staff report, but of
22 course is here for any questions.

23 CHAIRPERSON HILL: Does the Board have any
24 questions for the Office of Planning?

25 [No audible response.]

1 CHAIRPERSON HILL: Does the applicant have any
2 questions for the Office of Planning?

3 MR. GREEN: No.

4 CHAIRPERSON HILL: Okay. All right. I'm
5 going to turn to the audience. Is there anyone here
6 from the ANC to speak on this project?

7 [No audible response.]

8 CHAIRPERSON HILL: Is anyone here wishing to
9 speak in support of this project?

10 [No audible response.]

11 CHAIRPERSON HILL: Is anyone here wishing to
12 speak in opposition to this project?

13 [No audible response.]

14 CHAIRPERSON HILL: All right. With that I'd
15 turn back to the applicant. Do you have anything else
16 to add?

17 [No audible response.]

18 CHAIRPERSON HILL: All right. Once again,
19 does the Board have any other questions?

20 MR. TURNBULL: Just one. So, basically you've
21 got two units in this building?

22 MR. GREEN: Correct.

23 MR. TURNBULL: Okay. Thank you.

24 CHAIRPERSON HILL: Okay. Then, I'm going to
25 go ahead and close the record. Is the Board ready to

1 deliberate?

2 I, you know, again after reviewing the record
3 and particularly the report from the Office of
4 Planning, I am in support of this application. The
5 special exception. I think the criteria has been met.

6 I do think it's interesting project. I think the
7 project had been there, it sounds like, for a pretty
8 long time in terms of it being -- I mean, not a
9 blighted project but one that has been around for --
10 in need of moving forward on the property.

11 The ANC voted again, five, to zero, to one in
12 support, and so I would go ahead and unless anyone has
13 any other comments, make a motion.

14 So, I'd make a motion to approve Application
15 No. 19429 of BNY Development as read by the secretary.

16 MR. HART: Second.

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

19 [Vote taken.]

20 CHAIRPERSON HILL: There you go.
21 Congratulations. Congratulations, Ms. White, your
22 first case with us.

23 MS. WHITE: Yes.

24 CHAIRPERSON HILL: There you go. There you
25 go. I wish you would have been with us maybe on the

1 other cases. Maybe they would have happened a little
2 faster. You know? Maybe you're lucky. So, all
3 right. Thank you.

4 MR. MOY: Staff would record the vote --

5 CHAIRPERSON HILL: Oh, sorry. Summary order,
6 Mr. Moy. I apologize.

7 MR. MOY: No, that's fine. I haven't even
8 read the vote count yet.

9 The vote -- staff would record the vote as
10 four, to zero, to one. This is on your motion to
11 approve with the relief requested, Mr. Chairman.
12 These are plans shown at Exhibit 7 and 34. Thirty-
13 four is the most recent rendering.

14 Seconded the motion, Ms. White. Also in
15 support, Mr. Turnbull and Mr. Hart. We have a seat
16 vacant. Motion carries and you said summary order,
17 right?

18 CHAIRPERSON HILL: Yes, sir.

19 MR. MOY: Parties to the table to -- okay,
20 we're done. Sorry.

21 CHAIRPERSON HILL: Oh, sorry. Yeah, you're --
22 once you get yes, you want to leave as fast as
23 possible.

24 MR. MOY: Unless you want to stay.

25 Next would be application No. 19430 of S2 21st

1 Street Northeast, LLC, captioned and advertised for a
2 special exception relief under the penthouse
3 requirements, Subtitle C, Section 1501.1 D, and
4 1504.1, variances from the FAR requirements, subtitle
5 G, Section 402.1, and the height requirements of
6 Subtitle G, Section 403.1. This would replace a
7 service station with a 31-unit apartment building, MU-
8 4 Zone, 2101 Benning Road Northeast, Square 4516, Lots
9 159 and 160.

10 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
11 I'll let the applicant have a moment here?

12 All right. If you could just introduce
13 yourself, please, from my right to left?

14 MR. SULLIVAN: Good afternoon, Mr. Chairman
15 and Members of the Board. My name is Marty Sullivan
16 on behalf of the applicant.

17 MR. BUEHLER: Sean Buehler, Bennett Frank
18 McCarthy Architects.

19 MS. WILSON: Alex Wilson from Sullivan and
20 Barros on behalf of the application.

21 MR. L. SIMON: Hi. Lee Simon, S2 21st Street.

22 MR. P. SIMON: Phil Simon, S2 21st Street.

23 CHAIRPERSON HILL: Okay. So, Mr. Sullivan, I
24 assume you're presenting?

25 MR. SULLIVAN: Yes. Thank you, Mr. Chair.

1 I'd like to enter two pieces of information. First of
2 all, there was a clarification on the FAR. The
3 previous Form 135 had a FAR proposed of 3.092 and it's
4 actually 3.08, so it's a little bit less. So, I
5 wanted to submit copies of the Form 135 correcting
6 that.

7 And then I have revised plans, but nothing is
8 revised other than that we -- and the architect can
9 talk about this more if there's other changes, but
10 just made a notation for the bike storage area to
11 respond to DDOT's comments.

12 And I also have the PowerPoint copies, which I
13 would turn over as well.

14 CHAIRPERSON HILL: Okay, yeah. You can go
15 ahead and give those to Mr. Moy if you'd like.

16 [Pause.]

17 CHAIRPERSON HILL: Okay, Mr. Sullivan, before
18 you get started. So, Office of Planning -- well,
19 there's a lot of different things going on with this,
20 and I had hoped we were going to go a little bit more
21 smoothly after that last one. I was really looking
22 forward to it, but this looks like it's going to be
23 longer.

24 And so, you know, the Office of Planning is in
25 denial. You don't have anything from the ANC as far

1 as I can tell right now, unless I missed something.
2 Okay, well, it looks like I missed something then.
3 So, then that's one item that you can speak to as you
4 go through the presentation.

5 Office of Planning also is speaking of a
6 setback relief that might be required for the
7 penthouse, penthouse setback relief. Are you aware of
8 that?

9 MR. SULLIVAN: Yeah, on that, I think their
10 comments relate to a conversation that we had with
11 them, where we thought we may have needed setback
12 relief on the west side. We do not. We are asking
13 for relief on the east side, which was always part of
14 the application.

15 CHAIRPERSON HILL: Okay. All right. We will
16 get to that when, I guess, we get to the Office of
17 Planning. So, how much time you think you'd need?

18 MR. SULLIVAN: Fifteen, 20 minutes, tops.

19 CHAIRPERSON HILL: Okay. Let's go ahead and
20 do 15, see what happens.

21 MR. SULLIVAN: Okay. I can do that.

22 CHAIRPERSON HILL: Okay.

23 MR. SULLIVAN: Thank you very much, Mr. Chair
24 and members of the Board. The relief that's being
25 requested, proposed five-story rental apartment

1 building at 2101 Benning Street Northeast, is for FAR.

2 The maximum permitted FAR is 3.0. We'll be
3 requesting 3.08, which is an increase of 2.6 percent.

4 And asking for relief from the height requirement of
5 two-feet, 11-inches to go to 52-feet, 11-inches,
6 instead of 50 feet, and asking for setback relief on
7 the east side of the building for the penthouse level.

8 And, with that, I'll turn it over to the
9 architect to present the project. Thank you.

10 MR. BUEHLER: Thank you. I'll aim for brevity
11 here.

12 The first slide shows the proposed building.
13 As we mentioned, it's 31 units, including IZ units.
14 Currently the site has a tire shop. The building is
15 located at what I would describe as the forefront of
16 development on this stretch of Benning Road, which
17 comes up later in the conversation.

18 We're proposing a primarily brick building
19 with a massing that's meant to relate between the
20 scale of Benning Road and the row houses behind us
21 with a series of repeating bays, no vinyl siding, no
22 vinyl windows. We're excited about the building we're
23 proposing.

24 The site has a handful of noteworthy
25 conditions that will come up over the course of the

1 conversation. First and foremost, there is a 15-foot
2 BRL along 21st Street. The site has a trapezoid
3 shape, which makes it narrower at the rear along the
4 alley where parking is most likely to occur. The site
5 slopes eight feet down from the Benning Road end of
6 the site to the north, to the alley to the south. And
7 despite being in an MU-4 Zone that doesn't require
8 side setbacks, our immediately adjacent neighbor is a
9 Verizon utility building that does not, does not reach
10 the property line on their side of the property line.

11 Again, the front façade of the building, I'll
12 skip some of the overview stuff that we've already
13 mentioned. It's an art deco style building. The
14 penthouse does step away from both Benning Road and
15 21st Street, as well as the alley, which this drawing
16 demonstrates.

17 Again, to reiterate, the relief we're seeking,
18 we're asking for FAR relief, specifically at the
19 cellar level, which I'll describe in a moment. Height
20 relief, to the tune of 2-foot, 11, and also penthouse
21 setback relief specifically along the east side of our
22 property, adjacent to the Verizon property.

23 As I just mentioned, describing the site,
24 there are multiple conditions that drive these
25 requests. In and of themselves they're not

1 necessarily significant. But they tend to work
2 together to provide some difficulties for us. The
3 BRL, which is not specific to our lot, it does extend
4 down 21st Street, affects us a little greater than our
5 neighbors, because in our case it occurs along the
6 long side of our lot, while our immediate neighbors
7 are all rowhouse lots, and the 15-foot BRL is on their
8 narrow dimension. In our case, it represents a larger
9 portion of our total lot area.

10 The BRL also makes life a little difficult for
11 us because we're not allowed to provide parking in the
12 BRL, and so that basically relegates parking and other
13 utility infrastructure to the rear of the lot where
14 the alley is. Once again, the lot gets narrower at
15 the rear, which pinches that one location where those
16 things can happen. And because of the slope of the
17 lot, the alley is eight feet below the entry level of
18 the building along Benning Road.

19 Were we not to be providing parking at the
20 rear of the building, the topography back there would
21 be more beneficial to us in its existing state.

22 And then again, finally, the Verizon building
23 and their lot is so heavily under-developed, relative
24 to what we anticipate along Benning Road over the next
25 several years, that changes to calculations in terms

1 of how our cellar is or isn't counted, and also how
2 far our -- what setbacks are applicable to our
3 penthouse.

4 Speaking briefly about the height, the zoning
5 controls on the site are quite tidy in that with an IZ
6 bonus and FAR of 3 is achieved in a four-story
7 building at 75 percent lot occupancy. The BRL
8 effectively reduces our lot occupancy to 60 percent.
9 It's very difficult to produce a building that exceeds
10 60 percent, so we end up in a five-story building to
11 get to the far that we're seeking.

12 Five stories in a 50-foot height is a lot
13 harder to achieve than four, as I'm sure you can
14 imagine, producing floor to ceiling heights that are
15 below the typical units that we would see provided
16 throughout the city. Our goal would be a minimum of a
17 nine-foot ceiling, ideally closer to 10 in this
18 particular case. Without the relief we'd be at about
19 eight and a half feet where there are no duct work and
20 bulkheads, and closer to seven and a half feet where
21 there are.

22 So, the two-foot, 11 number that we're seeking
23 amounts to seven inches per floor, times five floors,
24 seven inches is one additional stair riser to give our
25 floor to ceiling heights a nine-foot ceiling, which we

1 believe is more consistent with the market.

2 The FAR relief we're seeking again, is related
3 almost entirely to the slope on the lot. The cellar
4 would be entirely off of the FAR calculation were it
5 not for the BRL on the side that's pushing the parking
6 to the rear of the lot. The alley is the lowest point
7 of the lot and it forces us to remove some grade
8 against the back of the building so that we have a
9 level parking space. This forces the rear wall of the
10 building to be greater than four feet from finish
11 grade to the first floor. And so, that amounts to
12 roughly .09 of FAR, and the relief we're seeking is
13 .08. So, it's safe to say that our FAR relief is
14 coming entirely from the need to dig out the hill at
15 the back of the lot to provide parking along the
16 alley.

17 And again, I would go back to the BRL and say,
18 if we could park along the side of the lot we wouldn't
19 have this issue. Or, if we didn't have a sloped lot
20 we'd have this issue. But those two issues together
21 become harder to overcome. And then finally if we
22 were an attached building, we would have a different
23 calculation for the cellar, and that would probably
24 also allow us to keep the cellar from counting against
25 our FAR. So, any one of those conditions by

1 themselves might be overcomeable, but the three of
2 them prove difficult for us.

3 In terms of the detriment, or we have reached
4 out to both the civic association, Friends of Kingman
5 Park, and they voted to support our project. We got a
6 unanimous vote of support from the ANC. A member of
7 the ANC was here earlier today to speak in favor of
8 the project, Bob Kumer (phonetic). I think he only
9 took two hours off from work, so he was about six
10 hours short of what he needed to make it to our time.

11 CHAIRPERSON HILL: What are you trying to say?

12 [Laughter.]

13 MR. BUEHLER: Nothing. OP is not supporting
14 the project but they did note in their report that
15 they don't believe the project is detrimental and DDOT
16 supports the project. Their primary comment was
17 related to bicycle parking and we have a bicycle
18 parking space in the basement. It hadn't been labeled
19 accordingly, and that's the primary change to the
20 drawings that Mr. Sullivan redistributed to you.

21 As we continue to development the building we
22 will be sure -- I haven't laid out all the bike spaces
23 in that room to demonstrate, but we fully understand
24 the requirement for 10 long-term spaces, and we will
25 be sure that the room makes those spaces, following

1 the planning requirements for bicycle space.

2 The final piece is the penthouse setback
3 relief. The setback relief we're seeking is
4 specifically on the side of the lot adjacent to the
5 Verizon building. Again, if the Verizon lot had been
6 development to the property line, as we have to
7 believe it will be, based on the way things are headed
8 on Benning Road, we wouldn't even need setback relief,
9 but because they're not, we're required to have a .5
10 to 1 setback on that side. It's our argument that
11 asking not to have that relief is not detrimental to
12 the neighbors. The other three sides of the lot, we
13 meet the relief required. The one side where we
14 don't, is basically an empty computer farm for
15 Verizon, and they're building is quite a far way off
16 the lot, so we're not really impacting their light or
17 air and we have to believe again, it's a temporary
18 condition until a building appears there.

19 I'd go on to note that the BRL that we've
20 talked about now, several times, that has pushed us to
21 a smaller building footprint relative to our total lot
22 area, has a cascading impact in terms of the size of
23 our penthouse. Even with the relief the penthouse is
24 not at the .4 FAR that caps the maximum allowable for
25 a penthouse. Obviously, the smaller our building is,

1 the smaller our penthouse can be so that the BRL
2 impacts this issue as well as the fact that we don't
3 have an attached neighbor.

4 And I think that's everything for me. Thank
5 you.

6 CHAIRPERSON HILL: Just real quick, how many
7 IZ units are you proposing?

8 MR. BUEHLER: I believe the requirement is 10
9 percent.

10 CHAIRPERSON HILL: Do you how many that comes
11 out to? I'm just curious.

12 You can turn on the microphone there and
13 just --

14 MR. L. SIMON: Yeah. I haven't done the
15 application because it depends on the penthouse,
16 because the penthouse has additional IZ requirements.
17 But 10 percent, so it would be a plus or minus three
18 units.

19 CHAIRPERSON HILL: And do you know the AMIs
20 that you'd be using for that, those units?

21 MR. L. SIMON: I believe it currently goes 50,
22 80, 50. But, whatever the rule is. And I understand
23 the rule may change, too. But right now, my
24 understanding is 10 percent, first one, 50, second 80,
25 third 50.

1 CHAIRPERSON HILL: Okay. All right. Mr.
2 Sullivan?

3 MR. SULLIVAN: Yes. On that point, I believe
4 this is going to be -- intended to be a rental
5 building. And so, effective in June the new IZ
6 regulations will provide 60 percent for rentals,
7 versus a higher number for condos.

8 CHAIRPERSON HILL: Okay. Did you have other
9 people that were presenting for you, Mr. Sullivan?

10 MR. SULLIVAN: No, that's all we have. I
11 would just like to point out that the conditions all
12 relate to the property, and there are several of them.
13 And they all work together. Effectively, what the
14 building restriction line and the shape of the
15 property and the topography do, especially for the
16 height --

17 CHAIRPERSON HILL: Yeah, I was curious again.
18 Like there was the three -- there were three, I
19 guess. Are there more than three?

20 MR. SULLIVAN: There's four, really. It's the
21 location next to our property that doesn't have a
22 building attached, even though we're in a district
23 with no side yard requirement. So, that affects it in
24 two ways. One is, if this building were to be
25 attached to any building at any point on that side, it

1 would not require penthouse setback relief. The other
2 way that it affects it is, if it is attached to a
3 building on that side, the FAR measurement is
4 different because the measurement is six feet from
5 grade to the first floor when calculating below grade
6 FAR, as opposed to four feet. And because we're not
7 attached to a building, although we expect we would be
8 some day, it's a four-foot measurement.

9 And so, that leads, going over FAR just at the
10 back wall. And the other condition that affects that
11 is the need to dig out for parking spaces in the back.

12 And that's the only place where they can be located.

13 Again, because of the BRL. And if we did not dig
14 those spaces out the topography would allow us to be
15 under the 3.0 FAR with the exact same building. And
16 that's just a 2.6 percent, which we are proposing as a
17 de minimis request, and de minimis being in the
18 context of the entire project, and the need for it,
19 and where that space is going. It's not just adding
20 additional space, it's additional FAR that we wouldn't
21 have to count if we could provide the parking along
22 21st Street, which we can't because of the BRL.

23 CHAIRPERSON HILL: Okay. And what's the by-
24 right? Have you guys looked at --

25 MR. SULLIVAN: I think it's 3.0 with IZ.

1 CHAIRPERSON HILL: No, I'm saying, so what is
2 it that you guys would have built by-right? Do you
3 know? Have you taken a look at it?

4 MR. L. SIMON: We'd build the same building
5 by-right. The .08 is just a matter of how much dirt
6 is behind the back of the building.

7 CHAIRPERSON HILL: Right. No, what I'm saying
8 is, you wouldn't be here if you could build it by-
9 right. So, what would you build if you didn't get
10 the --

11 MR. L. SIMON: Right. So, for instance, we
12 would build a 50 -- we'll build a 50-foot building
13 with 8-foot, six ceilings, which we think are a low
14 quality of life and claustrophobic, if we get the
15 relief for two-foot, 11, then the ceiling height
16 become nine-foot. In other words, you're not adding a
17 floor or taking away a floor. We're just creating
18 more ceiling height for the tenants. Same thing with
19 the rear of the building, the rear unit looking at the
20 parking, has windows. If we have to leave the dirt
21 there we couldn't provide the parking spots that we
22 need.

23 CHAIRPERSON HILL: Okay. Okay.

24 MR. HART: Just to be clear, you're asking for
25 a variance on the height. So, while you're not going

1 up an entire floor, you are looking for something that
2 is above what the actual zoning regulations allow.
3 So, there is a very specific thing that would be --
4 there are prongs, there are things that we have to
5 review and understand for this particular case. So, I
6 understand what you're saying, but just make sure that
7 that's -- there is a higher bar for projects that are
8 looking for variances to have to go over before we can
9 say yes, we think --

10 MR. L. SIMON: Right. I was just trying to
11 answer --

12 MR. HART: I understand. I was just -- I'm
13 making sure that you're also aware of that.

14 MR. SULLIVAN: And effectively, so, we're
15 being pushed because of the BRL. And it's not --
16 there's BRLs on lots of properties, so it's not
17 necessarily by itself unique, but what's unique about
18 this is the shape of the property. It's 100 feet of
19 BRL. And that takes our lot occupancy, which is
20 permitted to be 75 percent, with the IZ as a matter of
21 right, down to 60 percent effectively. So, we lose 20
22 percent of what we could have provided, and that 20
23 percent effectively makes up the floor, the 5th Floor.
24 At 75 percent lot occupancy, it would be a four-story
25 building with 10 and a half foot ceilings, and it

1 would only be 47 or 48 feet in height. So, and the
2 reason why it's two-foot, 11, you know, maybe it could
3 be less, but there has to be a stair riser, which the
4 architect can explain. And so, that leads to the two-
5 foot, 11.

6 CHAIRPERSON HILL: Okay. That's fine. And I
7 guess, right, what I was asking, if you did not get
8 the relief requested, you're saying you would build a
9 building with the same amount of floors but just seven
10 and a half foot ceilings? Or that was at least what
11 you'd take a look at.

12 MR. L. SIMON: [Speaking off microphone.]

13 CHAIRPERSON HILL: I see. Okay. All right.
14 Okay.

15 MR. L. SIMON: [Speaking off microphone.]

16 CHAIRPERSON HILL: Yeah, I know. That's why
17 you're here. Okay.

18 So, sorry. Yeah, go ahead.

19 MR. MOY: I don't think the recorder heard
20 your statement because your microphone wasn't on.
21 Could you repeat that for the transcript? Thank you.

22 MR. L. SIMON: Right. The ceiling heights
23 would be eight-foot, six, seven-foot, six at
24 bulkheads, versus nine feet. Nine feet being, I
25 think, a lot more reasonable.

1 CHAIRPERSON HILL: Okay. Does anyone have any
2 questions for the applicant now, before I turn to the
3 Office of Planning?

4 MR. TURNBULL: No, I don't have any questions.
5 I can't support the penthouse, that's all.

6 CHAIRPERSON HILL: Okay. All right. All
7 right, we're going to turn to the Office of Planning.

8 MS. THOMAS: Good evening.

9 CHAIRPERSON HILL: Good evening.

10 MS. THOMAS: Mr. Chair, members of the Board,
11 we -- OP is in support of redeveloping this lot, but
12 just not as proposed, for the mere fact that we think
13 that there is -- what the applicant is terming a
14 minimal amount of relief, we believe some adjustments
15 could be made that would make this go away. We rely
16 heavily on Subtitle B, Section 300.3, and I'll read
17 what it states from my report, that the potential
18 density of a lot does not create an entitlement that
19 supersedes the physical development standards, nor
20 shall potential density be given greater status when
21 considering a variance application.

22 We are not convinced that the need for height
23 and FAR is based on the BRL or the topography of the
24 lot. We think it's being driven by the need for a
25 fifth floor, because --

1 CHAIRPERSON HILL: Okay.

2 MS. THOMAS: And I'll leave it at that if you
3 want to ask any questions.

4 CHAIRPERSON HILL: Okay. Mr. Turnbull, did
5 you have -- or, Mr. Hart, or Ms. White?

6 MR. TURNBULL: You mean questions for OP?

7 CHAIRPERSON HILL: Yes, sorry. Questions for
8 OP.

9 MR. TURNBULL: No.

10 CHAIRPERSON HILL: Okay. Let's see. I do
11 have a question for the Office of Planning. When you
12 said that it could be tweaked at the beginning of your
13 statement, what could be tweaked to make which go
14 away? I didn't understand.

15 MS. THOMAS: Well, I think it's a function of
16 design and they could look at -- I'm not going to just
17 sit here and design a building for them, but they
18 could step back the 5th floor.

19 CHAIRPERSON HILL: Right.

20 MS. THOMAS: Reduce the FAR perhaps.

21 CHAIRPERSON HILL: Okay.

22 MS. THOMAS: And that can go away, but it
23 wouldn't address the height issue, but something -- we
24 think this is just stretching it a little bit.

25 CHAIRPERSON HILL: Okay. Okay. All right.

1 Does the applicant have any questions for the Office
2 of Planning?

3 MR. SULLIVAN: No, thank you.

4 CHAIRPERSON HILL: Okay. All right. Let's
5 see. Does the Board have any -- well, I'm going to
6 actually see if there's anybody here in the audience
7 first and then we can ask some questions of the
8 applicant.

9 Is there anyone here from the ANC wishing to
10 speak?

11 [No audible response.]

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

14 [No audible response.]

15 CHAIRPERSON HILL: Is there anyone here
16 wishing to speak in opposition to the application?

17 Sir, if you could please come forward?

18 Sir, did you get sworn in this morning? Okay.

19 And then also, did you fill out your witness cards
20 and -- okay, great. If you could just push the green
21 button there until you get a glowing green light, and
22 then just give us your name.

23 MR. WALTON: Got you. Okay. My name is
24 Frazer Walton, and I'm President of the Kingman Park
25 Civic Association, which is the neighborhood

1 association that's been there since 1934.

2 CHAIRPERSON HILL: Okay. All right, Mr.
3 Walton. And I'm sorry, you're testifying in
4 opposition, correct?

5 MR. WALTON: In opposition, that's correct.

6 CHAIRPERSON HILL: Okay. I thought the
7 Kingman Park -- I thought you all said that the
8 Kingman Park was --

9 MR. BUEHLER: There's a civic association
10 called the Friends of Kingman Park.

11 CHAIRPERSON HILL: Uh-huh. That's okay. And
12 then there's this gentleman's association. Okay.

13 MR. WALTON: Yes.

14 CHAIRPERSON HILL: All right. Okay. All
15 right. Well, sir, since you're representing
16 association I'm going to give you five minutes to
17 speak.

18 MR. WALTON: Thank you.

19 CHAIRPERSON HILL: Okay.

20 MR. WALTON: Yes, sir. Mr. Hill, the first
21 thing we want to thank you for allowing us to appear
22 here. We believe, number one, that the neighborhood
23 has not had sufficient notice. But with that said,
24 and where we are at now, we look at this project and
25 we know that there will be a number of problems.

1 But first, we'll say, we are happy to do away
2 with the tire place, so we congratulate you there. We
3 don't want that there, and it's been there a number of
4 years, and before that it was a filling station.

5 But at this point we want responsible
6 construction and we believe with our neighborhood it's
7 a historic neighborhood. Across the street is the
8 historic Langston Dwellings, and we believe the height
9 is just too high because it's complete -- number one,
10 it will deprive the homes of sunlight, fresh air, when
11 they're going up to this limit.

12 There's an eight-foot slope that's been
13 testified to, and because of that the picture, they've
14 honestly represented that there is a slope. So, the
15 picture really doesn't represent how it looks. It
16 goes downhill. So, you're going downhill.

17 And what we know, because we are experiencing
18 flooding, the homes are experiencing floodings down at
19 Oklahoma Avenue, D Street, 21st and D, which is at the
20 bottom of the hill, it's because of the number of
21 buildings that are being constructed along Bennings
22 Road that began with the car barn.

23 So, we are very concerned about water and
24 sewage, water runoff that will come from this project,
25 the parking problems that would be unbelievable

1 because it's a very densely populated area. It's very
2 hard to park in that area. The alley behind the
3 construction is -- I think it's a regular width alley.
4 Maybe 30-foot of alley, maybe a little more. But
5 it's a small alley and you're right behind the houses.
6 So, this project with 31 units is just overbearing to
7 the community. We don't need a 31-unit project
8 because you're going to have density. We're already
9 getting a tremendous amount of density in the
10 neighborhood. There's a construction of a 300
11 proposed, 300-unit building at 16th and Benning.
12 Another unit at 17th and Benning that looks like it
13 will have approximate 50, 60 or more units.

14 So, the rate of growth is so fast that we're
15 overtaxing these older homes that are there. They're
16 experiencing a lot of problems with water and sewage.
17 We're going to overtax the electrical grid. We're
18 down the street from the Car Barn that already
19 overtaxes the grid. We have blackouts, electrical
20 blackouts during the summer from overuse of air
21 conditioning, now with the Car Barn there. So, all of
22 these impacts are coming in on the neighborhood, and
23 we have lived there over 60 years. And in my case, 67
24 years. And we still have many people have been in
25 that neighborhood all of their lives. We know it

1 well, we know the impacts, and we have seen the
2 impacts.

3 And we are not trying to stop a project.
4 That's not what we're doing. But we agree with the
5 Office of Planning that this is moving too fast, and
6 that there needs to be appropriate adjustments made.
7 We don't need a five-story building, because when you
8 come into the neighborhood, that's the cornerstone.
9 21st Street is the entranceway to the neighborhood.
10 You are completely blocking off views. You're
11 blocking off light and air to the houses that sit
12 below. And we're getting a lot of complaints about
13 that.

14 And most of the neighbors, many of them are
15 new. And you heard testimony about the Friends of
16 King Park. They're new, so they don't really know the
17 impacts that we suffer in that neighborhood. You're
18 talking about newcomers to the neighborhood and of
19 course they want to see development. We want to see
20 it too, so we're on accord in that regard.

21 But we want to see it in a responsible way,
22 and a way in which preserves our neighborhood because
23 we've had to file and we have pending, an applicant
24 for a historic district because we're getting pop-ups,
25 pop-outs, and it's completely destroying the quality

1 of life in our neighborhood. And our ANC himself has
2 put a pop-up, so we kind of feel he should recuse
3 himself from discussing this case because he's built a
4 pop-up and a pop-out on his house, and he does not
5 support the traditional feeling of livability in the
6 neighborhood. This is a big problem we're having.

7 We had an election where the election ANC lost
8 by two points and with some write-ins. They came in
9 by -- he came in by 11 points, and it was over 998
10 votes. It was larger, the largest election for an ANC
11 we have had. So this is a big problem and we're
12 trying to preserve the quality of life in our
13 community. And we asked that this Board, and we know,
14 that's why I waited all day because I have great
15 confidence in this Board. You all have asked
16 questions over the years, the right questions, and we
17 know that you will do it in this case and we're not
18 trying to, again, impede the development or impede
19 business. But we think it should be done responsibly.
20 Thank you.

21 CHAIRPERSON HILL: Thank you, Mr. Walton. Did
22 you go to the ANC meeting when they were voting on it?

23 MR. WALTON: I wasn't even aware of the ANC
24 meeting.

25 CHAIRPERSON HILL: Okay.

1 MR. WALTON: We were told, as a matter of
2 fact, we just learned of the ANC meeting two or three
3 days ago. Mr. Coleman never notifies us of ANC
4 hearings or the agenda items. This has been a big
5 problem out there with us.

6 CHAIRPERSON HILL: Okay.

7 MR. WALTON: And that's why the election was
8 so contested and so close.

9 CHAIRPERSON HILL: Okay.

10 MR. WALTON: Because that's the constant
11 complaint of neighbors.

12 CHAIRPERSON HILL: Okay. All right. Does the
13 Board have any questions for the witness? No. All
14 right. Thank you, Mr. Walton. Thank you so much.

15 MR. WALTON: Thank you, sir.

16 CHAIRPERSON HILL: Does the Board have any
17 more questions of the applicant?

18 MR. HART: Yeah. Just, you brought up the --
19 your architect brought up the Buehler, Mr. Buehler?
20 Okay, I'm sorry. I wanted to make sure I had the
21 right name. Got a lot of names that come up.

22 You talk about the building restrictions
23 lines, and you said that this -- and, I don't know,
24 maybe it's Mr. Sullivan who brought it up. But this
25 site is different than others, or at least -- I

1 understood the -- I understand the aspect about it
2 being a, not a rectangular site. But do no other
3 properties along this stretch, or this area, have that
4 BRL?

5 MR. BUEHLER: If you can imagine a rowhouse
6 lot that, let's say, is 20 feet wide by 100 feet deep,
7 if the building restriction line is on the 20-foot
8 side, it's only taking away the short length of the
9 site, if that makes sense. But because our lot is
10 rotated as a corner lot the long dimension is the
11 dimension that has the building restriction line. So,
12 it affects us at a greater rate than taking a rowhouse
13 and just pushing it back 15 feet.

14 MR. HART: And so, was this not known when you
15 -- not you, when the applicant purchased the property?
16 I mean, this would have been a -- I mean, building
17 restrictions lines are not new in D.C. They're all
18 over. So --

19 MR. BUEHLER: Right.

20 MR. HART: I'm just trying to figure out why
21 this was a particular issue. Again, we're being asked
22 to look at this case as being a variance. Variances
23 have a higher bar, and there are things that you have
24 to understand about the, you know, building inside of
25 the District. You're asking us to not -- you're

1 asking us to look outside of what the zoning would
2 allow, and it's just, I'm just trying to figure out
3 kind of where all this stands.

4 MR. BUEHLER: Understood. I don't think we're
5 representing that it was a hidden condition. It's
6 more to say that when we combined the BRL, the slop of
7 the lot, the attached neighbor, or the lack of an
8 attached neighbor, all of those things together keep
9 pushing us in a direction that is making it difficult
10 to achieve the density that the zoning code affords
11 for that site.

12 And so, we'd be perfectly happy to do a four-
13 story building. It would be a much less expensive
14 building from a building code standpoint and so forth,
15 but effectively he BRL is taking -- it's not taking
16 away five percent of lot occupancy, it's going from 75
17 percent down to 60 percent, which is reducing our lot
18 occupancy by almost 20 percent.

19 And so, 20 percent is one of five. It's a
20 fifth floor. And --

21 MR. HART: Yeah. No, I fully understand that.
22 Again, what I'm getting to is that this is not a --
23 this is not a new condition. It's not like someone
24 said you bought the lot and then, oh well, we're going
25 to impose this restriction on you. This was known --

1 I say you, I'm just saying you as a group, as the
2 applicant. It just seems as though this is -- this
3 could be a smaller building. The zoning code allows
4 for a particular size, a particular envelope. And so,
5 you're being asked to fit within that envelope.

6 And you've come back and said, well, we really
7 can't do that. We have to have more than what is
8 allowed in that. And so, I'm trying to kind of
9 understand how that -- why it is not -- why you're not
10 able to get within the -- I mean, it's going to be a
11 four-story building. I understand that the applicant
12 -- that the owner said that that you know, that's not
13 -- that you're not able to do that. And I'm just not
14 exactly sure why. I mean, I know it's money, some of
15 this, but is that the only issue that's before you?

16 MR. BUEHLER: Well, first, again, and it's
17 semantics, but I'm not sure that the standard has
18 anything to do with when we found out about the
19 condition. It's more a matter of whether or not there
20 is a condition. And so, it is true that we knew the
21 BRL was there all along. And to say it's about money
22 is not entirely untrue. The reality is, the economics
23 of these sites and the ability to develop them is
24 based on not necessarily maximizing the density, but
25 coming as close to the density that the zoning code

1 allows. And it's our belief that the MU-4 Zone, when
2 they produced the numbers that, with an IZ bonus, give
3 you FAR of 3.0, a height limit of 50, and a lot
4 occupancy of 75 percent. They anticipated a four-
5 story building at 75 percent lot occupancy. We'd be
6 perfectly happy to build that building as we get our
7 way through the design process and meet the
8 requirements of parking, and DDOT, and storm water
9 management and so forth, we quickly find out that
10 we're going to be a lot shorter than we'd like to be.

11 And so, it is an economic issue for sure, but
12 again, I'm not representing that it was a hidden
13 condition. I'm more saying that while an MU-4 Zone
14 seems to suggest FAR of 3, that's what we're trying to
15 do.

16 MR. HART: And don't get me wrong, I'm not
17 saying that it was being held back. I'm just saying
18 that when you -- when the property was purchased,
19 these things were already a part of that discussion.
20 So, you've had to take all these things into account.

21 You know, as an architect you have to take the
22 limitations that are given to you, to be able to say,
23 this is what is in your estimation, able to be built
24 on this particular site. And that's all I was getting
25 to.

1 MR. BUEHLER: And that's a fair point. I will
2 say, on the height, that the two-foot, 11, in our
3 belief, it's a benefit to everybody in the community
4 to have dwelling units that are competitive with the
5 market. It generally doesn't bear out to be a good
6 thing to have below-market units. And so, we can do a
7 five-story building. We can make it work within the
8 height limit.

9 We think that the impact of having ceilings
10 below 9 feet might change who's interested in those
11 units, and that's -- it's a little self-serving to
12 say, we're here for the benefit of the community, but
13 we do think that there is a positive benefit that
14 outweighs the 2-foot, 11.

15 And I do appreciate the concern about light
16 and air. I will say that the only immediate
17 residential neighborhood adjacent to us, is to our
18 south. So, we're north of them, so that would be the
19 best place to be to minimize our impact on their
20 light, given that the sun is in the southern sky.

21 CHAIRPERSON HILL: Okay.

22 MR. TURNBULL: Mr. Chair.

23 CHAIRPERSON HILL: Sure, of course.

24 MR. TURNBULL: I've just got a couple
25 comments. I mean, I would agree with Mr. Hart. Plus,

1 you are already extending into the building
2 restriction line. I mean, so, it's a building
3 restriction line but you're going into it anyways.

4 MR. BUEHLER: We are projecting into the
5 building restriction line along the guidelines that
6 Office of Planning has set forth for public space
7 development. Much like we would have potentially
8 projected into public space if there were no building
9 restriction line.

10 MR. TURNBULL: Right. I mean, so, it may be a
11 limit but a lot of people have those limits. So, I
12 don't think it's a burden for you to design within
13 those limits. That's just my feeling. I would agree
14 with Mr. Hart. I think it's an acceptable -- it's a
15 parameter of the site that you bought. You have to
16 work with that.

17 CHAIRPERSON HILL: So, I mean, I suppose you
18 know, Mr. Sullivan, where it sounds like the Board is
19 at this point, I mean, I guess there are -- you had
20 mentioned that the BRL affects the applicant. Or, you
21 mentioned the BRL affects everyone, but it affects you
22 more, you know. And so, like one -- I will not be
23 able to vote on the positive in this given the
24 feedback that I received from the Office of Planning,
25 as well as listening to the confluence of factors that

1 you have put forth in terms of how you're meeting the
2 variance test. And, so, I mean, I don't see how
3 you're going to get there with me today. And so, if
4 you wanted to, if the applicant wanted to go back and
5 try to see if the Office of Planning could provide
6 further working with the Office of Planning in a way
7 that could possibly provide clarification, and perhaps
8 changing the design so that you can get buy-in from
9 the Office of Planning and still get some of what you
10 want. And in addition to that, provide some type of
11 filing that speaks to the BRL and how again you had
12 said that it affects everyone, but it affects you more
13 than everyone. So, that might be something that might
14 help your case.

15 But at this point, unless the Board has any
16 other thoughts, I don't see you succeeding at this
17 point. So, I don't know if again, you want to take
18 the opportunity to work with the Office of Planning
19 and provide us some more information, or you just want
20 us to move forward.

21 MR. SULLIVAN: No, sure. We'd be happy to do
22 that and work with the Office of Planning. I would
23 point out to the argument of what was known before in
24 this situation, the situation, the conditions with
25 this property are with the property. And if the test

1 was that you knew what all the conditions were, and
2 then you always need to build within that, then
3 variance relief would really never be justified,
4 because that's what almost every variance case is,
5 where you have some condition with the property that
6 makes it unnecessarily burdensome to do it. So,
7 that's where I would go a little further with
8 additional argument.

9 And of course, the test is, what's going to be
10 built as a matter of right would be a 50-foot high
11 building. The practical difficulty would be that the
12 ceiling heights would be lower so these tenants would
13 have a lower ceiling height than what other condo
14 buyers get.

15 CHAIRPERSON HILL: And I just have to
16 interrupt, or you would lose one floor, and you would
17 have higher ceilings.

18 MR. SULLIVAN: Right. And I don't think you
19 build a building that far under your FAR. I don't
20 think at any -- whatever price you paid for it,
21 that's --

22 CHAIRPERSON HILL: So, that's where again,
23 just for me, when I speak to whatever is built by-
24 right, if that's part of your argument, then I'd like
25 to see what the by-right option is and how that does

1 not work.

2 MR. SULLIVAN: Okay.

3 CHAIRPERSON HILL: Because that's what the
4 Office of Planning -- Office of Planning thinks you
5 can build something by-right, or with a little bit of
6 help. And you're asking for basically an extra floor.

7 MR. SULLIVAN: Sure. Well, you could always
8 build something by-right. You can always build
9 something by-right. But if you're building a 20
10 percent -- nobody builds 20 percent below their
11 permitted FAR, especially when they're doing
12 Inclusionary Zoning units. So.

13 CHAIRPERSON HILL: Okay.

14 MR. SULLIVAN: But, yeah, I understand. I
15 would like to ask, we can do it in rebuttal, just ask
16 the applicant to talk a little bit more about their
17 outreach because it was -- the witness testified about
18 that he didn't have notice about this.

19 CHAIRPERSON HILL: Sure, that's fine.

20 MR. SULLIVAN: So, I think it would be
21 important.

22 CHAIRPERSON HILL: Sure. Mr. Simon, Mr.
23 Simon.

24 MR. P. SIMON: Just going to real quickly go
25 through.

1 On the height issue, I understand what
2 everyone is saying. We can build the same building.
3 The tenants will have lower ceiling heights. Hurts
4 the interior of the building. Two feet over 50 foot,
5 you can't even notice that. So, that's one point.

6 On the penthouse, we lose penthouse square
7 footage because of the setback. It's an in-row.
8 They're eventually going to develop a lot next to us.
9 We lose penthouse square footage, we lose IZ square
10 footage, we provide less IZ to the community. I think
11 it's a detriment.

12 The FAR --

13 MR. TURNBULL: Well, let me just interrupt you
14 for a minute. I mean, the habitable space on the
15 penthouse is a bonus no matter what. That's a given.
16 Penthouse is space. The fact that you want to
17 maximize it by saying, no one is going to build there,
18 or someone is going to build there in so many years,
19 it could be 10 years before someone builds there. But
20 to say that you need that relief, I mean, I don't
21 think it makes the building look any better. It makes
22 the building look worse by building your penthouse all
23 the way up to that side wall like that, when it's wide
24 open.

25 So, be careful what you say about that

1 penthouse. I mean, you're getting a big penthouse up
2 there no matter what. By meeting the setback relief -
3 - by meeting the setbacks, you meet the zoning
4 regulations. We've gone out of our way to make sure
5 that buildings are doing the setback. And I'm dead
6 set. I'm not granting setback relief. You have got
7 to get that setback into shape. You've got to get
8 that penthouse working the way it should.

9 And I think Office of Planning has mentioned
10 the same thing.

11 MR. P. SIMON: Yeah, I appreciate your input.
12 Honestly.

13 As far as the FAR goes, we can build a
14 retaining wall up against the rear of the building.
15 It's going to be difficult. The lower units lose
16 light. I don't see that helping anybody. It really
17 just hurts everybody.

18 As far as the neighborhood outreach, we
19 reached out to the neighborhood, basically when we
20 purchased the property. We met with the recognized
21 civic association, Friends of Kingdom Park, at one of
22 their homes. We invited all the -- anyone who wanted
23 to talk to us, to talk. We handed out our cards, call
24 us. We live in D.C. We'll come meet with you. We'll
25 come talk with you. We e-mailed -- I'm sorry, I'm

1 missing his -- no. We e-mailed the group that's in
2 opposition of this.

3 CHAIRPERSON HILL: Mr. Walton. Sure.

4 MR. P. SIMON: On December 20th. My
5 understanding is they're not a recognized civic group.
6 That doesn't matter to us. We e-mailed them saying
7 hey, we want to come meet with you guys to discuss
8 this. They did not respond to us. So, I think we've
9 done extensive neighborhood outreach. And we don't
10 want to build in a neighborhood where the neighbors
11 don't like us, so that's how we do our projects.

12 A couple things that were brought up were
13 flooding. I mean, it's a pavement lot right now. I
14 mean, we're going to have green roofs and everything.
15 There's going to be less water runoff from the
16 building than there is now.

17 It's not an historic neighborhood, but I guess
18 that doesn't really matter in this conversation.

19 CHAIRPERSON HILL: Mr. Simon, do you have
20 anything else?

21 [No audible response.]

22 CHAIRPERSON HILL: Okay. So, Mr. Simon, I
23 mean, I appreciate and know, you're trying to be a
24 good developer here. You know, it sounds like there
25 is a property there that has the gas station on it

1 that, you know, will eventually become something. And
2 the fact that you all have to come here and get a
3 variance from us, it's just not an easy test to meet.
4 So, that's what we have to kind of go through. It's
5 not that we like the project better if it were this
6 way or if it was that way. It might benefit more
7 people this way or that way. It's just not something
8 that we're able to look at in that capacity. It's
9 really kind of like the standards that are set down as
10 to whether or not you can meet the variance.

11 And as far as again, the penthouse setback, I
12 mean, there's been a lot of discussion in terms of
13 what the Zoning Commission, as to how the penthouses
14 came around, and there's been a lot of discussion
15 about the setback in general with the penthouses. So,
16 that's why you're getting a lot of kind of discussion
17 with that. It's been like a long time coming for that
18 type of relief.

19 So again, I would just say, you know, trying
20 to work with the Office of Planning to get their
21 feedback in order to get to a point that you can get,
22 again, more input from the Office of Planning, and
23 hopefully get the buy-in from the Office of Planning.

24 But Mr. Sullivan, again, you know, submitting what we
25 had asked for from you, and then I supposed we'd do a

1 continued hearing again? Do you all want to hear from
2 the applicant? I guess I'd like to hear from the
3 applicant. For when? When Mr. Turnbull is back
4 again?

5 I know, Mr. Turnbull, everybody wants to see
6 you again now, apparently today.

7 MS. THOMAS: Mr. Chair.

8 CHAIRPERSON HILL: I'm sorry. Yes?

9 MS. THOMAS: Beg pardon. Just respectfully,
10 I'd just like to add one thing to clear up a
11 misconception about parking.

12 CHAIRPERSON HILL: Yes, please. Go ahead.

13 MS. THOMAS: At the site. With or without the
14 building restriction line parking could not have
15 occurred from Benning Road. DDOT would also not grant
16 the curb cut off of Benning Road, once there is an
17 alley. So, that elevation off of Benning Road will be
18 the side yard, and there would be no parking in a side
19 yard. So, with or without a building restriction
20 line, you couldn't have parking on the side. So, just
21 like to clear that up for the record.

22 CHAIRPERSON HILL: Okay. All right. Thank
23 you.

24 MR. SULLIVAN: Mr. Chairman, we would be happy
25 to withdraw the penthouse relief request and we'll

1 work on a redesign of that while we are -- we
2 appreciate the opportunity, though, to further pursue
3 and articulate our argument for the FAR and the height
4 relief.

5 CHAIRPERSON HILL: Okay. Okay. Great. So
6 then, again, work with the Office of Planning. If
7 you're going to change the design, let us see the
8 plans.

9 And then, is there anything else? Sure,
10 please. Go ahead, Ms. White.

11 MS. WHITE: I just wanted to echo the
12 recommendations that you just made for you to work
13 with the Office of Planning, consider making some
14 modifications to the project. It's obviously a very
15 attractive project. I'm looking at the rendering.
16 But I do think, though, you probably need to make some
17 adjustments.

18 And I would also encourage you to reach out to
19 your neighbors. There are people there that have been
20 there for over 50, 60 years. So, I sense a little bit
21 of tension there, but I think in the long run with the
22 modifications and just the regular communication, we
23 could really do some great things in that area.

24 CHAIRPERSON HILL: Okay. Thank you. Sure,
25 Mr. Simon.

1 MR. L. SIMON: It's kind of strange. This
2 neighborhood has two competing neighborhood
3 associations, both claim they're the official civic
4 association.

5 MS. WHITE: Uh-huh.

6 MR. L. SIMON: It's a very strange situation.
7 We reached out to both at the same time. I e-mailed
8 Mr. Walton personally on December 20th. Friends of
9 Kingman Park replied, we met with them twice, they all
10 came to the ANC, they wrote letters of support and put
11 them on the thing, ANC supported unanimously. Mr.
12 Walton didn't come to the ANC and he didn't respond.
13 So --

14 MS. WHITE: Uh-huh.

15 MR. L. SIMON: -- we'd love to work with him.

16 MS. WHITE: Yeah. Well, I don't know the
17 whole history behind the two different associations.
18 He may have a better idea of that. But my comment was
19 just simply to continue to try to reach out, to try to
20 make everything successful.

21 MR. SULLIVAN: Thank you.

22 CHAIRPERSON HILL: Okay, great. So, Mr. Moy,
23 when could we get filings from the applicant in order
24 to meet Mr. Turnbull's next hearing?

25 MR. MOY: Okay. If the assumption is -- if

1 the assumption is that Mr. Turnbull is going to
2 participate on this case, on March 15th, because I was
3 going to suggest maybe a later date, but I think it
4 may hinge also on whether or not the applicant -- how
5 much work they plan to do to revisit their project,
6 how long that would take because if we go on a
7 continued hearing on the 15th, then they would have to
8 submit their filings by at least a week before the
9 15th, which would be March 8th. If it's going to take
10 longer, then I would have to push the hearing date out
11 to maybe March 22nd.

12 CHAIRPERSON HILL: Mr. Moy, is that day really
13 getting loaded now?

14 MR. MOY: This would be the 10th case, plus
15 two decision cases. March 20 --

16 [Discussion off the record.]

17 MR. MOY: So, but March 22nd, actually, would
18 be better for you if you wanted to do that.

19 CHAIRPERSON HILL: Okay. Okay. You know, I'm
20 going to go push you guys to March 22nd, okay, because
21 I think there's a lot of things you're going to have
22 to do and talk to with the Office of Planning and try
23 to get to where, you know, you're going to -- if it's
24 a variance, you know, it's not an easy thing to --
25 standard to meet, obviously.

1 So, okay. So, then if we do the 22nd, then,
2 when would you need filings by?

3 MR. MOY: I would say, minimum a week before.
4 So, that would be March 15th. We could go March
5 17th, which would be a Friday, if they need that time.

6 CHAIRPERSON HILL: Mr. Sullivan?

7 MR. SULLIVAN: Yeah, that's enough time.
8 Thank you.

9 CHAIRPERSON HILL: Which one? You want the
10 15th or the 17th?

11 MR. SULLIVAN: 17th.

12 CHAIRPERSON HILL: Okay. Okay.

13 MR. MOY: Okay. So, filings, Friday, March
14 17th, continued hearing on the 22nd.

15 CHAIRPERSON HILL: All right, great. Thank
16 you, gentlemen.

17 [Pause.]

18 MR. MOY: The next case, if I could have
19 parties to the table, I see they stormed the table.
20 Application No. 19436 of CCA Randolph, L.P. and
21 Petworth Station, L.P., captioned and advertised for
22 relief, special exception relief under the parking
23 requirements of Subtitle C, Section 701.5, and 705,
24 variance from the density requirements, Subtitle E,
25 Section 201.4. This would add 13 units in three

1 existing apartment buildings, RF-1 Zone, 930 through
2 960 Randolph Street Northwest, Square 2905, Lot 812.

3 CHAIRPERSON HILL: Good afternoon. If you
4 could please introduce yourselves from my right to
5 left?

6 MR. TUMMONDS: Absolutely. Paul Tummonds with
7 Goulston and Storrs.

8 MS. ASKEW: And Pan Askew, WC Smith.

9 CHAIRPERSON HILL: Okay. And, Mr. Tummonds, I
10 guess you're representing the property owner, is that
11 -- oh, no. And so, who is representing the -- you're
12 VC Smith? I mean --

13 MR. TUMMONDS: Yeah. I'm sorry. Yes. So, WC
14 Smith is the contract purchaser.

15 CHAIRPERSON HILL: Okay.

16 MR. TUMMONDS: So, the applicant is the
17 Petworth Station, L.P. is the entity that WC Smith
18 will be purchasing, and CCA Randolph is the existing
19 owner.

20 CHAIRPERSON HILL: Okay. Okay. Great. Just
21 wanted to clearly understand.

22 All right. Then, I guess the Board can have
23 any other -- let's see, things they might be
24 interested in hearing about. I was kind of interested
25 in hearing about the DDOT condition, was one of the

1 things. The file seems pretty complete to me. I
2 would like to hear, I guess, kind of the high-level
3 presentation, I guess maybe if the Board has questions
4 as we go through that, then that might be you know,
5 we'll handle it that way as we kind of go along.

6 MR. TUMMONDS: Sure. Absolutely.

7 CHAIRPERSON HILL: And then, other than the
8 one issue that I just raised, does the Board have any
9 issues they'd like to point out to the applicant
10 during the -- before the presentation begins?

11 MR. HART: Yeah, just one issue. And really,
12 around a little bit more meat on the bone about the
13 underutilization issue, and kind of why that's
14 burdensome for you all.

15 MR. TUMMONDS: To the practical difficulty?

16 MR. HART: Yeah. Yeah.

17 MR. TUMMONDS: Sure.

18 MR. HART: Because I think that that's -- you
19 know, the variances, you heard it last case.

20 MR. TUMMONDS: Sure.

21 MR. HART: I'm not going to reiterate the, you
22 know, the high bar that that has, and I think that
23 that's one piece that we would like to have a little
24 bit more flesh on.

25 MR. TUMMONDS: Great. Absolutely.

1 MR. HART: Thank you.

2 MR. TURNBULL: And these are basement units,
3 not cellar units.

4 CHAIRPERSON HILL: Oh, Mr. Turnbull.

5 MR. TUMMONDS: Yes, yes, yes. Great. Well,
6 thank you very much. We believe we have a very simple
7 and straight-forward case to present to you this
8 afternoon. We're seeking the variance and special
9 exception relief in order to add 13 additional
10 apartment units in three existing apartment buildings
11 located at 930 and 960 Randolph Street. We're not
12 proposing to provide any parking, so therefore we will
13 need special exception relief for the parking for
14 those 13 additional units.

15 These buildings have been in existence for
16 approximately 80 years. They were built as apartment
17 buildings, and we are not proposing any exterior
18 modifications to the exterior of these buildings.

19 All of the current apartments are reserved for
20 households with incomes up to 60 percent AMI, and the
21 new units we are providing will similarly be limited
22 to 60 percent AMI units, and five of those units will
23 be units that satisfy ADA requirements.

24 With regards to, as we've noted, the Office of
25 Planning supports the application, DDOT supports the

1 application with a condition that we put temporary, or
2 as I say, short-term bike parking with three inverted
3 U-racks. We will agree to do that so that they will
4 happen in the front of the building. We think that
5 makes more sense, where people will want to do that as
6 at some points as they noted, there are bikes that are
7 locked to the railings going in. So, we'll provide a
8 better, more attractive opportunity there.

9 Before I go in and address Commissioner Hart's
10 comments about the practical difficulty standard, I
11 would note that ANC 4C adopted resolution support. We
12 have Juanita McKenzie, President of the Tenant's
13 Association. And some of her colleagues have also
14 been waiting all day. Basically they're -- I don't
15 believe that they want to present testimony, but they
16 are here in support of this application as well.

17 Getting into the meat, if you will, Mr. Hart,
18 of what is the practical difficulty standard. And, as
19 we know the Courts have said that practical difficulty
20 means that it would be unnecessarily burdensome to
21 satisfy, to meet the requirements.

22 Here we have, and I think this is where a case
23 where we have a little bit of a blending of the --
24 what is the extraordinary situation or condition.
25 Here you have a building that right now does not meet

1 the standard of 900 square feet for each individual
2 apartment unit. And not -- as we said, there are 78
3 units there now. If we were to apply that 900-square
4 foot analysis to this case, only 27 would be
5 permitted.

6 So, we have an existing situation where we are
7 grossly in excess of what that density requirement is.

8 We've noted that when this building was built,
9 approximate 80 plus years ago, they had much larger
10 space needs for boiler rooms, storage spaces, and also
11 the laundry.

12 With the modernization that's going to occur
13 to this non-conforming building, we just don't need
14 those large boiler rooms, laundry rooms, space
15 anymore. So, we think that by the practical
16 difficulty that we have of maintaining those large
17 spaces that aren't necessary, but then with putting in
18 new affordable units, UFAS units, the UFAS units, the
19 accessible units, we think we would be faced with --
20 it would be unnecessarily burdensome for us not to
21 utilize those large spaces that are not needed anymore
22 in this building.

23 The third prong of the test is that, you know,
24 granting these variances will not impair intent or
25 integrity, and won't have adverse, really adverse

1 impacts on the community, as we've said, this is an
2 existing apartment building of 78, 75 units, that's
3 been there for over 80 years. This is an only
4 internal reconfiguration of that building from the
5 outside. There was no visual impact, we don't think,
6 that the character of the community, the character of
7 the surrounding area, is really impacted by having a
8 88-unit apartment building, versus a 75-unit apartment
9 building.

10 With that, that concludes our presentation.
11 We're able to answer any more questions that you may
12 have.

13 CHAIRPERSON HILL: Okay. I was going to turn
14 to the Office of Planning, unless Mr. Turnbull has
15 something.

16 MR. TURNBULL: I just had a question. When
17 you're doing the mechanical upgrades, it's either
18 steam or hot water in the building, I'm assuming,
19 or --

20 MS. ASKEW: It's a split system right now
21 that's using gas right now, the gas boilers. But
22 we're going to be installing energy efficient HVACs
23 that will be individual within the units. Right now,
24 they don't have central air conditioning.

25 MR. TURNBULL: What is it?

1 MS. ASKEW: And they have a central boiler
2 system and a central hot water system in each
3 building, so there's three boiler rooms.

4 MR. TURNBULL: Okay.

5 MS. ASKEW: And what we'll do is within every
6 apartment there will be a closet that will have a hot
7 water heater and a HVAC system in one of the closets.

8 MR. TURNBULL: So, the new units could get air
9 conditioning, is that --

10 MS. ASKEW: Oh, yes. The new units will have
11 central air conditioning, yes.

12 MR. TURNBULL: Oh, okay. All right. Great.
13 Thank you.

14 MS. ASKEW: Yeah.

15 MR. HART: And just so I got this clear, so,
16 you won't have any central systems at all?

17 MS. ASKEW: Well, there will be central
18 systems that will control the temperature in the
19 hallways, and there will be a community room and a
20 rental office that will have heating and cooling. And
21 then each of the three buildings will each have a
22 laundry room, that instead of being 1,200 square feet,
23 will be closer to about 600 square feet per laundry
24 room, and that will have heating and cooling within
25 that as well.

1 MR. HART: And so, what that then means is
2 though, you've gotten much less space that you need
3 for all of that.

4 MS. ASKEW: Correct. Correct. There's three
5 boiler rooms and there's seven empty storage rooms.
6 So, right now if someone were to broke into a door,
7 they could be squatting there, and we want to populate
8 that with people living there and give people
9 opportunities to have more affordable housing.

10 MR. HART: Thank you.

11 CHAIRPERSON HILL: Okay. Well, I'm going to
12 turn to the Office of Planning. Office of Planning.

13 MR. MORDFIN: Good evening, I'm Steven
14 Mordfin.

15 CHAIRPERSON HILL: Yes, good evening.

16 MR. MORDFIN: Oh, good afternoon. The Office
17 of Planning continues to support this application and
18 is available for any questions. Thank you.

19 CHAIRPERSON HILL: Thank you. Does anyone
20 have any questions for Mr. Mordfin from the Office of
21 Planning?

22 [No audible response.]

23 CHAIRPERSON HILL: No? All right. Does the
24 applicant have any questions for the Office of
25 Planning?

1 MR. TUMMONDS: None.

2 CHAIRPERSON HILL: All right. Is there anyone
3 here from the ANC wishing to speak?

4 [No audible response.]

5 CHAIRPERSON HILL: Is there anyone here
6 wishing to speak in opposition to the application?

7 [No audible response.]

8 CHAIRPERSON HILL: Is there anyone here
9 wishing to speak in support of the application?
10 Please, come on forward. Just come give us your name.

11 Anyone who is here to speak in support, please
12 come forward.

13 Have you all been sworn in?

14 ALL: No.

15 CHAIRPERSON HILL: Okay. All right. Well,
16 we're going to swear you in. Okay? So, if you could
17 just stand first and then Mr. Moy is going to
18 administer the oath.

19 [Oath administered to the participants.]

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

21 CHAIRPERSON HILL: Okay, great. If you could
22 just tell me your name from right to left here,
23 please, for the record?

24 MS. McKENZIE: Juanita McKenzie, president of
25 the tenant association of 930, 940, 960 Randolph

1 Street.

2 MS. HERBERT: I'm Fay Herbert, and I'm a
3 member of the tenant association of 930, 940, 960
4 Randolph Street.

5 MS. LEWIS: I'm Cella Lewis, member of the
6 tenant association for 930, 940, 960 Randolph Street.

7 CHAIRPERSON HILL: Okay, great. Well, thank
8 you. Thank you all for coming out. You guys waited a
9 long time, so I wanted to make sure you came up to the
10 table. Is there anything you'd like to say in support
11 of the application? You are obviously in support of
12 the application.

13 MS. MCKENZIE: I want to say that I am, a
14 president of the tenant association, in full support,
15 you know, of WC Smith adding the additional units to
16 our apartment.

17 CHAIRPERSON HILL: Okay. Great.

18 MS. HERBERT: And I came also to say that I'm
19 in great support of them adding the units. Thank you.

20 CHAIRPERSON HILL: Thank you.

21 MS. LEWIS: Thank you. And I also say that I
22 am in support of this. It modernizes a very, very old
23 building with wonderful people in it, and so they can
24 feel like they're a part of the community and feel a
25 little bit more normal.

1 CHAIRPERSON HILL: Great. Well, thank you all
2 for coming down. Thank you very much for waiting as
3 long as you did. It's important for us to hear people
4 that are in -- you know, that are affected by the
5 projects that are going on, and like we really do
6 appreciate you all being here. So, thank you.

7 Okay. Does anyone have any questions or
8 comments for the witnesses? No? Okay, great. Thank
9 you all very much.

10 All right. So, no one else is coming forward.
11 Does the applicant have anything else they would like
12 to add?

13 MR. TUMMONDS: Nope.

14 CHAIRPERSON HILL: Okay. Nope. All right.
15 Okay, great. I'm going to close the hearing. Is the
16 Board ready to deliberate? Okay. Well, I, you know,
17 I am -- I was happy and convinced -- or not happy, but
18 I was convinced with reading the record from the
19 Office of Planning and the analysis the Office of
20 Planning has provided. I also am encouraged by the
21 outreach that the applicant has done in terms of the
22 unanimous vote of nine to zero of ANC 4C.

23 The condition that I believe the applicant has
24 agreed to is that the applicant shall install at least
25 one inverted U-rack at each of the three building

1 entrances on Randolph Street Northwest.

2 MR. TUMMONDS: That's correct. We agree to
3 that condition.

4 CHAIRPERSON HILL: Okay. So, that condition
5 is in place, then. And DDOT doesn't have any
6 objection other than that one condition. And I
7 obviously am very encouraged that, you know, there has
8 been the level of support within the community,
9 therefore this particular project, and once again
10 thank the people that have come here and waited as
11 long as they have to lend their support to this
12 project. Does anyone have anything else, unless I
13 make a motion?

14 MR. TURNBULL: Yeah. No, Mr. Chair, I think
15 they also have proposed a transportation management
16 plan in their package, and I think that's fine. I am
17 very pleased with this project. I think it's an
18 incredible project and I think it's well worth it, and
19 I'm totally in support of it.

20 MS. WHITE: I would like to echo your comments
21 as well. From what I can see from reading the record,
22 this is my first day at the hearing but very familiar
23 with affordable housing projects, and it seems like
24 you've met the standards here. You've got great
25 community support. I really take my hat off to those

1 young ladies back there that waited all day. That
2 tells me that they support it.

3 So, congratulations. It looks like it's going
4 to be a wonderful project.

5 MR. HART: Also, feel that you -- thank you
6 very much for coming and for spending the day with us.
7 And, I felt that you all have met the three prongs
8 for the variance test, as well as the meeting the
9 requirements for the special exception relief, and I
10 would be able to support this application.

11 CHAIRPERSON HILL: Okay. Then, I'm going to
12 go and -- this is the feel-good case. I wish you guys
13 could have been the last one, I've got to tell you.
14 Would have set --

15 MR. TUMMONDS: Or the first one.

16 CHAIRPERSON HILL: Well, that apparently
17 wasn't the -- that's definitely not what the situation
18 was there. But so, it brightened my day a little bit,
19 so I'm going to go ahead and make a motion to approve
20 Application No. 19436 as read by the secretary.

21 MR. HART: Seconded.

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

24 [Vote taken.]

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

1 MR. MOY: Staff would record the vote as four,
2 to zero, to one. This is on the motion of Chairman
3 Hill to approve the application for the relief
4 requested, along with the one condition as cited by
5 the Board. Seconding the motion, Vice Chairperson
6 Hart. Also in support, Ms. White, Mr. Turnbull, we
7 have a board seat vacant. Motion carries, sir.

8 CHAIRPERSON HILL: Thank you, Mr. Moy. Can we
9 get a summary order?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: Thank you. Thank you, all.

12 [Discussion off the record.]

13 MR. MOY: All right. Parties to the table.
14 And I see they are assembling. This is Application
15 No. 19437 of United Unions, Inc., captioned and
16 advertised for special exception relief under the
17 downtown use requirements, Subtitle I, Section 303.1B.
18 This would permit an eating and drinking
19 establishment on the ground floor of an existing
20 office building, D-2 Zone, 1715 New York Avenue
21 Northwest, Square 171, Lot 33.

22 CHAIRPERSON HILL: All right. Good evening.
23 Could I get you to introduce yourself, please, from my
24 right to left.

25 MR. GAON: Joe Gaon from the law firm of

 OLENDER REPORTING, INC.
1100 Connecticut Avenue, NW Suite 810 Washington, D.C. 20036
Washington: (202) 898-1108 / Baltimore: (410) 752-3376
Toll Free: (888) 445-3376

1 Holland and Knight, on behalf of the applicant.

2 CHAIRPERSON HILL: Is it Gaon? I'm sorry.

3 MR. GAON: Gaon.

4 CHAIRPERSON HILL: Gaon. That's --

5 MR. GAON: G-A-O-N.

6 CHAIRPERSON HILL: Thank you.

7 MR. HAMMOND: Jonathan Hammond, accountant
8 with United Unions.

9 MS. SCHMIDT: Gaye Schmidt, accountant with
10 United Unions.

11 MR. GEORGE: Robert George, building manager
12 and chief engineer of United Unions.

13 CHAIRPERSON HILL: Okay, great. Mr. Gaon, so,
14 I don't have a lot of questions about this
15 application, I'm happy to say. And so, you know,
16 unless the Board has any particular things they'd like
17 to hear from you in terms of your presentation, and I
18 don't want you to feel cheated in terms of if you want
19 to give a really long presentation.

20 MR. GAON: No.

21 CHAIRPERSON HILL: But still, just kind of
22 like touching on some of the items that you're asking
23 for, I think brevity would be the best way to go about
24 this at this moment. So, you can go ahead and take it
25 away.

1 MR. GAON: We're asking for special exception
2 approval for an eating and drinking establishment on
3 the ground floor. We're merely asking to reinstitute
4 a use that's been previously approved at the property.
5 Once in 1977, once in 2010. It's currently used as
6 an office building, that's why we're before you today.
7 And I believe what we've submitted to the record
8 shows that we meet the test for special exception
9 approval.

10 CHAIRPERSON HILL: Okay. Does the Board have
11 any questions of the applicant?

12 MR. TURNBULL: Is there any idea of what you
13 see might be going in there, like yogurt and juice
14 establishment?

15 MR. HAMMOND: So, we actually have a tenant
16 lease being negotiated currently. It's for Met Café,
17 who has several properties around D.C., also known as
18 SoHo, I believe, SoHo Market. So, the owner's name is
19 Des So, and he's done multiple projects within the
20 area, so just a standard cafeteria style.

21 MR. TURNBULL: Oh, okay.

22 MR. HAMMOND: Restaurant.

23 MR. TURNBULL: All right. Thank you.

24 MS. WHITE: No, I'm comfortable. It looks
25 like there are no objections from DDOT or ANC 2A, and

1 OP seems to support it as well. So, I feel
2 comfortable.

3 CHAIRPERSON HILL: Okay. Okay. So, I'm going
4 to turn to the Office of Planning, if you wouldn't
5 mind telling us about your opinion.

6 MR. GOLDEN: Good evening, Bryan Golden,
7 Office of Planning. We are continuing to recommend
8 approval and have no issues with the application.

9 CHAIRPERSON HILL: All right, Mr. Golden,
10 thank you. Does the Board have any questions for the
11 Office of Planning?

12 [No audible response.]

13 CHAIRPERSON HILL: Does the applicant have any
14 questions for the Office of Planning?

15 MR. GAON: No.

16 CHAIRPERSON HILL: I'm going to turn now to
17 the crowded audience here. Is there anyone here from
18 the ANC wishing to speak?

19 [No audible response.]

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

22 [No audible response.]

23 CHAIRPERSON HILL: Is there anyone here
24 wishing to speak in opposition to the application?

25 [No audible response.]

1 CHAIRPERSON HILL: All right, that being the
2 case, turn back to the applicant. Do you have
3 anything else to add?

4 MR. GAON: Nothing to add.

5 CHAIRPERSON HILL: Okay. Going to go ahead
6 and end the hearing. Is the Board ready to
7 deliberate?

8 MS. WHITE: Yes.

9 CHAIRPERSON HILL: Okay. I think again it was
10 pretty straight forward to me. After reviewing the
11 record and also the analysis of the Office of
12 Planning, the ANC 2A, as Ms. White had mentioned, was
13 in approval six, to zero, to zero, and I would go
14 ahead and make a motion to approve Application No.
15 19437 of United Unions as read by the secretary, and
16 ask for a second.

17 MS. WHITE: Second.

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 four,
23 to zero, to one. This is on your motion, sir,
24 Chairman Hill, to approve the application for the
25 relief requested. There was a tie for the seconding,

1 second.

2 MR. TURNBULL: I think we'll give it --

3 CHAIRPERSON HILL: I think it was Ms. White.
4 I think I heard Ms. White. She's the second.

5 MR. MOY: Okay. I'm good for that. Ms. White
6 seconding. Also in support, Mr. Turnbull, Vice Chair
7 Hart, seat vacant, motion carries.

8 CHAIRPERSON HILL: Thank you. Can we get a
9 summary order, Mr. Moy?

10 MR. MOY: Yes, sir.

11 MR. GAON: Thank you.

12 CHAIRPERSON HILL: Thank you. Mr. Moy, they
13 seem to have turned the lights out in the other room.
14 Are we getting like, you know --

15 MR. MOY: Okay. Next case application is
16 Application No. 19418 of 319 Varnum, LLC, captioned
17 and advertised for a special exception relief under
18 the RF use requirement, Subtitle U, Section 320.2.
19 This would convert an existing one-family dwelling
20 into a three-unit apartment house, R1 -- or rather,
21 RF-1 at 319 Varnum Street Northwest, Square 3310, Lot
22 47.

23 CHAIRPERSON HILL: All right, everyone. Good
24 evening. If you could please introduce yourselves
25 from my right to left.

1 MR. SULLIVAN: Okay, Mr. Chairman and members
2 of the Board, my name is Marty Sullivan on behalf of
3 the applicant.

4 MR. SHEER: Hi, I'm Robert Sheer, and I'm the
5 applicant and I did not get an opportunity to get
6 sworn in earlier.

7 CHAIRPERSON HILL: Okay. We'll do that in one
8 second. Thank you.

9 MR. ALI: Ramy Ali, the project architect from
10 RAM Design.

11 CHAIRPERSON HILL: And, Mr. Ali, you did get
12 sworn in already?

13 MR. ALI: Yes.

14 CHAIRPERSON HILL: Okay, Mr. Sheer, if you
15 wouldn't mind standing up, Mr. Moy will give you the
16 oath.

17 [Oath administered to the participants.]

18 [Discussion off the record.]

19 CHAIRPERSON HILL: Let's see. Mr. Sullivan,
20 are you here for the last case also?

21 MR. SULLIVAN: No, I am not.

22 CHAIRPERSON HILL: Oh, okay. Oh, I see.
23 Okay. I'm just a little confused. Little confused.

24 All right. So, congratulations, you are now
25 the latest I've ever been here. This is now the

1 latest I've ever been here.

2 MR. SULLIVAN: It's a good thing.

3 CHAIRPERSON HILL: I hope never for this
4 record to be broken. All right.

5 So, there are some -- I'm cutting right to the
6 chase, here, in terms of like there are some
7 conditions that ANC 4C had kind of mentioned, or not
8 kind of mentioned, and asked about, or had -- and some
9 of them again are construction. However, I'd like to
10 hear your thoughts on those.

11 The Office of Planning says that you could
12 possibly need a waiver for the rooftop architectural
13 element. However, they seem to be in denial of that
14 waiver. So, either A, you agree with it and we're
15 going to talk and see if they are in denial or not.
16 Still, do you agree that you need a waiver from the
17 rooftop elements?

18 MR. SULLIVAN: I believe that it is properly
19 before the Board to decide whether or not the proposed
20 plan is -- fits with the scale and character of the
21 block. But I don't think it's a rooftop architectural
22 element per se. But I think it's -- so, I don't think
23 we specifically need relief for that because we're not
24 changing anything. We're starting the addition behind
25 the architectural element.

1 CHAIRPERSON HILL: Okay. Is this self-
2 certified?

3 MR. SULLIVAN: Yes. Yes.

4 CHAIRPERSON HILL: Okay. So, all right. So,
5 we'll see how we go when we get to the Office of
6 Planning.

7 So, that, Mr. Sullivan, would be really the
8 ones that I'm most interested in hearing from you
9 about. And however, it is -- since you're the second
10 to last and it is -- there are a little bit of
11 questions, you can go ahead and have a relatively full
12 presentation because I think we're going to have to
13 hear more about it in order to get through this.

14 MR. SULLIVAN: Okay.

15 CHAIRPERSON HILL: So, if the Board has any
16 other specifics they'd like to hear from during the
17 presentation, can you let me know now? Or is that
18 good enough to start?

19 [Discussion off the record.]

20 MR. SULLIVAN: I do have a PowerPoint to hand
21 out.

22 CHAIRPERSON HILL: Sorry, I thought there was
23 -- oh, you have something to hand out?

24 MR. SULLIVAN: A PowerPoint, yeah.

25 CHAIRPERSON HILL: Oh, please. Yeah. Go

1 ahead.

2 MR. SULLIVAN: With what the architect is
3 going to present.

4 CHAIRPERSON HILL: Sure.

5 MR. SULLIVAN: And I will -- I'll hand it
6 right over. I don't need to introduce it. I'll hand
7 it over to Mr. Ali to present the project.

8 CHAIRPERSON HILL: Okay, great. Thank you,
9 Mr. Sullivan.

10 [Pause.]

11 CHAIRPERSON HILL: All right. We've got
12 everything we need, Mr. Sullivan, or whomever is going
13 to start. Please go ahead and start.

14 MR. ALI: Good evening, Chair and members of
15 the Board. I will give a brief description of the
16 project. Basically, as you know, it's like it's a
17 conversion of a single-family row dwelling into a
18 three-unit apartment building. We are proposing a
19 third-story partial addition, and a rear cellar, plus
20 three stories facing the public alley.

21 However, the rear addition is only 14-foot
22 wide, leaving a six-foot side yard towards one of the
23 adjoining neighbors. And the third-floor addition, I
24 called it partially earlier because we had to set back
25 a 10-foot radius away from the adjoining neighbor's

1 chimney. So, that's why we weren't able to take a
2 full advantage of that building footprint and the rear
3 addition that we're proposing.

4 What drove the size of the addition is given
5 that 300 block of Varnum Street, it's a lot of
6 families on that block. Actually, it's pretty much a
7 couple blocks down. You see a lot of families. None
8 of your younger couple or single professionals that
9 live in that neighborhood. So, we were targeting that
10 particular demographics, the family demographic for
11 our buyers. So, we were targeting something of a
12 program of having three bedrooms, two and a half bath
13 at least.

14 When we looked to the program to provide three
15 units for that particular three-bedroom, two and a
16 half bath, we came up with a lot of square footage
17 that generated a really big rear addition. So, we had
18 to shrink the program back and providing one of the
19 units to be a two-bedroom, two-bath, and the upper
20 units will be a three-bedroom, two and a half, to
21 three-bath, which would meet our goal, except for that
22 lower unit.

23 The units are basically, the cellar will be an
24 independent unit on its own, which is the smaller
25 unit, around 1,200 square feet, two bed, two bath.

1 And the existing first-floor, along with the rear
2 addition, will be the level-one for unit number 2,
3 which is the three-bedroom, three-bath. And partially
4 of that unit number 2 would be up on the second floor,
5 and vice versa, the third unit will be also situated
6 on the second floor, along with the third-floor
7 addition.

8 If you look at the floorplans, basically the
9 third-floor, you see what I was talking about earlier,
10 the deck that is right in the middle of that third
11 floor that I had to set back away 10 feet from the
12 adjoining neighbor.

13 As far as the exterior architecture --

14 CHAIRPERSON HILL: Mr. Ali, are you pointing
15 to anything on the slide presentation or are we just -
16 - I'm just trying to figure it out. Is there anything
17 in this presentation that you're actually referring us
18 to, or you're just now speaking of the project in
19 general?

20 MR. ALI: No, I'm just speaking of the project
21 over all.

22 CHAIRPERSON HILL: Okay.

23 MR. ALI: And I'm thinking that probably if
24 you have the floorplans you can just follow through
25 the floorplans.

1 CHAIRPERSON HILL: Okay.

2 MR. ALI: If you want I can -- I can display
3 the floorplans for you.

4 CHAIRPERSON HILL: Yeah, if you get to
5 whatever is on the slide presentation there that
6 you're referring to, that's helpful. Thank you.

7 MR. ALI: What we were looking at, for
8 example, on this slide is the top view of the
9 building. And you see the shape of the third floor,
10 what we have taking out this portion of the third
11 floor, the setback away, 10-foot in radius away from
12 the adjoining neighbor chimney.

13 And this is the rear addition, which is three
14 stories, and the cellar. And it sits back six feet
15 from the adjoining neighbor, creating a small side
16 yard where we have located the metal stair that only
17 goes up to the second floor. Doesn't go all the way
18 up to the top. It actually stops on the second floor.

19 As far as the front of the building, we
20 maintain the character of that, the roof lines, and we
21 set back the front of the building from -- we took it
22 from the ridgeline and that's when we started the
23 third-floor addition. So, that's why it's not flush
24 with the face of the existing exterior wall. We had
25 to set it back. This clarifies it, up on this -- in

1 the section will help you understand the setback. If
2 it's here. Let me just pull the section real quick.

3 [Pause.]

4 MR. ALI: This is a building section of the
5 project showing the five-foot setback facing Varnum
6 Street, setting it back away from the ridgeline, and
7 that's when our third-floor addition starts. And you
8 see there's this gap in the middle. That's where is
9 the roof portion that sets back away from the chimney.
10 And of course, the back part is the three-story plus
11 cellar rear addition.

12 Along the side of that addition we are
13 proposing green walls so that the adjoining neighbors
14 were not going to be looking at a continuous solid
15 wall from each side. And we're not proposing any
16 windows for privacy reasons, of course, but we wanted
17 to cover that side of the wall with a green wall, and
18 you see some of the photographs you see on Exhibit No.
19 9, just giving you like a design intent for more
20 clarity.

21 This slide --

22 CHAIRPERSON HILL: Mr. Ali, again just to
23 clarify, how far back are you guys going again?

24 MR. ALI: We're going back 20 feet from the
25 existing back wall. Twenty feet deep towards the

1 alley. And width, it's only a 14-foot wide addition.
2 It's not the full width of the building.

3 CHAIRPERSON HILL: Okay. And the Office of
4 Planning is not in support of the 20 feet? That's
5 correct. Okay. All right. So, I was mistaken
6 earlier. I thought they were -- I thought that was
7 the only thing they weren't in support of. Okay. Go
8 on.

9 MR. ALI: And, just touching back on that
10 particular point and what I explained earlier, what
11 drove the size of that addition was to meet a program
12 that will attract families to the project and not
13 single professionals or younger couple.

14 MR. HART: Mr. Ali.

15 MR. ALI: Twice the square footage --

16 MR. SULLIVAN: Sir, if I could interrupt? I
17 would like Mr. Sheer to talk a little about that.

18 MR. ALI: That would be us. Actually --

19 MR. SULLIVAN: The three-bedroom and our
20 interaction with the community on this particular
21 point, and on the size of the addition.

22 CHAIRPERSON HILL: Okay.

23 MR. SHEER: Thank you. Real briefly. So,
24 Sheer Partners has been in business for about 28 years
25 in real estate development, and we're very excited

1 about this project and committed to a quality
2 development that's a success and an asset to the
3 neighborhood.

4 We started quite a while ago, engaging with
5 the neighbors and had meetings at their house and as a
6 result of that, and a lot of correspondence with the
7 neighbors, we've made a lot of adjustments to the
8 plans. I think the big issue that came out of the
9 discussions we had with the neighbors is, they wanted
10 to maintain the integrity of the neighborhood. They
11 were also concerned about both units on either side of
12 us are rented out to social service program for
13 intellectually disabled. So, they wanted to make sure
14 that we were really in keeping with the character of
15 the overall neighborhood. And to them that meant
16 families, and not unrelated singles, and not people
17 renting out to unrelated.

18 So, we worked really hard. We scaled back the
19 project because originally it was deeper and that was
20 not compatible with their goals. So, we scaled the
21 project back but still retained the three bedrooms,
22 quality of the project which is what they eventually
23 liked and accepted and were supportive of.

24 As Rami said, we so far are unable to get that
25 third unit as three-bedroom because of the chimney

1 cutout, but we are, you know, hopeful that that could
2 possibly change. We've also made significant effort
3 to reach the neighboring, the immediately neighboring
4 owners who rent out to the social services group, and
5 finally got through to them after repeated attempts,
6 delivering letters to their house in another location
7 in Northwest.

8 And, so far they seem supportive of the
9 project as well, and what we're trying to do for the
10 neighborhood. So, I just wanted to share with you,
11 you know, the efforts that we've made and the
12 privileges we've had in meeting with, really a lot of
13 the neighbors at this point, and taking into
14 consideration, not just the three bedrooms and the
15 size, but a lot of other factors. They were concerned
16 about having a point of contact. I guess there's been
17 other developers where trash blew in the streets,
18 utility lines got cut. So, we have a dedicated
19 project manager that they've met, that went and
20 introduced themselves, introduced himself (sic) to
21 them, and so I think they feel confident and
22 comfortable in the project that we're undertaking.

23 MR. SULLIVAN: And originally, this was a --
24 it was a 30-foot addition in the back and we've been
25 working with the single-member district commissioner

1 and with the neighbors, and they said no, we want you
2 to stick to the 10-foot rule, and we don't want to
3 weight the 10-foot rule. But then we sat down and met
4 with the neighbors at the house right across the
5 street, and met with about five or six neighbors who
6 also came to speak at the ANC meeting as well.

7 And after they looked at the proposed 20-foot
8 addition, they were in favor of that. And then they
9 spoke in favor of that at the ANC meeting as well.

10 MR. ALI: I would like to point out as well,
11 that what encouraged us to go for the 30 feet at
12 first, or the 20 feet at first, of the depth of the
13 addition, is the orientation of the project. Since
14 the building faces south and we know that to meet the
15 special exception requirements, that we also have to
16 look at the air and light, and shade and shadow
17 studies which we have provided. And we shared that
18 with the neighbors, and we have explained on what days
19 or months of the year that there will be a very
20 minimal impact which is actually on their back yard
21 only, but none of -- no impact would be on the back
22 wall.

23 And we have presented the shade and shadow
24 study that you see up on the PowerPoint. We went
25 through all 12 months with them, to help them

1 understand the impact of the rear addition.

2 The areas that are highlighted in orange or
3 red is the month, in where is the impact happening in
4 between what times. Like you see in the middle, from
5 8:15 a.m. to 10:05 a.m., there will be an impact, and
6 that's in the back yard.

7 And I would like to pull up a photograph of
8 the back yard as it is today, and you see where the
9 impact of that shadow is actually in an area where the
10 topography of the site goes really steep, which is not
11 functional at this point, even for landscaping, but I
12 need to pull it up to better clarify that condition.

13 MR. SULLIVAN: It's the last page on that
14 PowerPoint.

15 MR. ALI: This is a photograph of the back
16 yard, and what I was explaining, that area of the
17 shadow impact is going to be in this particular area
18 and further down where it slopes down to the alley.

19 CHAIRPERSON HILL: We're still listening, Mr.
20 Ali. You can go ahead. You can keep going.

21 MR. ALI: That's pretty much it. What I
22 wanted to point out is the shade and shadows, the last
23 point that I wanted to clarify, and if there's any
24 questions, I'm ready to answer.

25 MR. SULLIVAN: Yeah, and I could follow up

1 with the request for the waiver of the 10-foot rule to
2 go to 20 feet is, in this case, we think it's
3 warranted for several reasons. One is, the property
4 does face south, so the additional impact from that 10
5 feet affects either -- it goes to the Northwest
6 primarily, which affects either the far back of the
7 lot where it slopes down, or on the alley. And we did
8 go over this with the neighbors.

9 The other issue is that the neighbors are in
10 support of this and they like the fact that we can
11 provide at least the two three-bedroom units of the
12 three, because of the additional. And they thought
13 that was a good trade-off, to have the additional
14 length provide family-sized units.

15 MR. ALI: I'm sorry, just one last comment.
16 And actually, this relates to the Office of Planning
17 report. It's regarding the front façade. In the
18 previous package the Office of Planning reviewed, I
19 did not have enough detail on the front elevation,
20 which kind of make it look kind of off from the
21 character.

22 But in this revised exhibit that you're
23 looking at, I added the brick exterior finish on that
24 third floor, and we carried some of the elements, like
25 the wood trim, along with the dentals that you see on

1 the existing roofline. We carried that along the top
2 of the third-floor addition to keep that façade
3 continuous in character. So --

4 MR. HART: Where -- I'm sorry. Where is this
5 image from?

6 MR. ALI: This is the cover -- this is the
7 front façade, the front elevation.

8 MR. HART: Where is the image on the exhibits
9 that we have?

10 MR. ALI: It is the cover page. However, the
11 cover page does not have the detail that I'm showing
12 on this revised cover -- I just added some detail,
13 like the pattern, on that third floor.

14 MR. SULLIVAN: It should be in Exhibit 36 of
15 the record, updated architectural plans.

16 MR. HART: And, which page of that?

17 MR. SULLIVAN: I'm opening it now.

18 MR. HART: I just didn't recall seeing it,
19 that's why I was like -- I'm like, okay.

20 MR. SULLIVAN: So, I'm not sure if that is --

21 MR. TURNBULL: I don't think it's in -- it's
22 not in the record.

23 MR. SULLIVAN: No. So, we would have to
24 submit that. It's with the PowerPoint.

25 MR. HART: The image that we see is fairly --

1 MR. ALI: Blank.

2 MR. HART: -- blank looking.

3 MR. ALI: There is no pattern and there's no
4 shades, yeah. So, I just wanted to add some pattern
5 to it so that they understand that we're also
6 finishing with brick to match the lower levels, and
7 the windows on top, they are actually double-hung
8 windows. But the reason they look only as part of a
9 square, because the rest of it is hidden behind the
10 existing roof. And the trim above, and the dentals
11 are pretty much a mimic of what's happening on the
12 existing roofline.

13 The other reason I did not put a gray shade to
14 it, because I didn't want it to make it look dominant,
15 because it sets back and not flush with the exterior
16 wall.

17 MR. HART: No, I understood that. I was just
18 trying to -- at first when I saw this, I actually
19 thought that the -- that that piece was much farther
20 back. I thought it was like 20 feet back. And then
21 when I actually looked at the -- I guess it was one of
22 the elevations, I understood that it --

23 MR. ALI: Section.

24 MR. HART: Well, I saw the elevation in it.

25 MR. ALI: Okay.

1 MR. HART: I understood it through the
2 elevation, where that piece was, because I guess
3 because of the deck, I guess, on the, I think it was
4 the east elevation, it actually -- it looks like there
5 are two different kind of pieces, one in front and one
6 in back. And then I realized that those pieces were
7 actually connected.

8 MR. ALI: Yes, correct.

9 MR. HART: And that it's all one, one --

10 MR. ALI: Floor.

11 MR. HART: Floor. Thank you. So, when I was
12 looking at this I was trying to figure out where this
13 image came from because I'm like, I don't remember
14 seeing this, this image. It's --

15 MR. ALI: No, you're right. I updated that
16 after I saw the OP report. So, it was, I think it was
17 right after we submitted.

18 MR. SULLIVAN: So, yeah, I'm sorry, I don't
19 think that it is in the record and we would need to
20 submit that.

21 MR. TURNBULL: And maybe not in black and
22 white. In color. Can you add a color to it so we can
23 tell what's going on?

24 MR. ALI: It will be the same -- I can print
25 annotation that it's going to be gray of the same

1 color below. But the reason I don't put a color, so
2 that it doesn't jump out.

3 MR. TURNBULL: Yeah. It's just that what I
4 think we've seen so far is as, I think Mr. Hart was
5 saying, this looks very light. It looks like it's
6 way, way back. So, it's hard to tell what it really
7 is.

8 MR. SULLIVAN: I think that's it for our
9 presentation, if the Board has any other questions.

10 CHAIRPERSON HILL: Okay. Does the Board have
11 any further questions for the applicant before I turn
12 to the Office of Planning?

13 [No audible response.]

14 CHAIRPERSON HILL: Okay. Office of Planning.

15 MS. VITALE: Good evening, Mr. Chair and
16 members of the Board. Elisa Vitale with the Office of
17 Planning. And as stated in our report, the Office of
18 Planning recommends approval of the requested special
19 exception relief for the conversion to a three-unit
20 apartment house. However, OP does not support the
21 requested waiver from the 10-foot addition provision.
22 And then OP also believes that a waiver of the
23 rooftop element provision may be necessary. Should
24 the Board agree that that is necessary, OP would not
25 support or recommend approval of such a waiver.

1 While the applicant is not proposing to remove
2 the dormer, we believe that given the fact that the
3 third-floor addition is only set back five feet from
4 the front façade, that it does effectively alter the
5 existing roof line, and creates a situation that is
6 not in keeping with the scale, pattern, and character
7 of the other houses in the square.

8 This concludes my report and I'm happy to
9 answer any questions that you might have. Thank you.

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

13 MR. TURNBULL: Thank you, Ms. Vitale, for your
14 report.

15 It looks like they're back about a foot from,
16 or a little bit over a foot from the edge. Are you
17 saying that ought to be back further?

18 MS. VITALE: Yes. I think OP believes that it
19 would improve the overall design if that third-floor
20 addition was set further back from the front façade,
21 so that it didn't kind of read as a full third-floor.

22 The applicant did not submit any kind of
23 sightline studies, so it's a bit difficult to
24 understand exactly how this might read, you know, from
25 the street or from across the street. But I think --

1 MR. TURNBULL: A perspective down the street
2 looking at the --

3 MS. VITALE: Correct.

4 MR. TURNBULL: Okay.

5 MS. VITALE: I think frequently these upper
6 floor additions, though, are more successful. Kind of
7 the more separation you have from the front façade and
8 the greater of the setback from that front façade.

9 MR. TURNBULL: Which I guess is -- the ANC
10 made a comment similar to that, talking about that the
11 roof line covers a third-floor addition in the manner
12 -- they're asking for an aesthetic solution consistent
13 with the existing rooflines of neighboring properties.
14 So, I guess they're sort of in the same synch with
15 what you're asking.

16 MS. VITALE: I believe that's correct. But if
17 there's an ANC representative here, they can certainly
18 speak to that.

19 MR. TURNBULL: Okay. Thank you.

20 CHAIRPERSON HILL: Okay. Does the applicant
21 have any questions for the -- well, actually hold on.
22 So, again, I have a question for the Office of
23 Planning.

24 So, again, you're not in support of the waiver
25 for the 20 feet, and then you -- and the reason again,

1 could you give me a little bit more reasoning as to
2 why you're not in support given the different
3 arguments that the applicant has given for why they
4 should be granted the waiver?

5 MS. VITALE: Certainly. You're correct, the
6 Office of Planning doesn't support the waiver of the
7 10-foot addition provision. I believe that you know,
8 in looking at the houses in the square and you know,
9 both a site visit and then looking at aerial imagery,
10 this is a block where the majority of the homes really
11 have retained either that kind of sleeping porch, or
12 you know, enclosed sleeping porch form, so that to
13 introduce a solid mass that extends, you know, 20 feet
14 beyond the rear wall really would introduce you know,
15 a volume that would not be in keeping with the scale,
16 pattern, or character of the square.

17 CHAIRPERSON HILL: Okay. Okay. Does the
18 Board have any further questions of the Office of
19 Planning?

20 [No audible response.]

21 CHAIRPERSON HILL: Does the applicant have any
22 questions of the Office of Planning?

23 MR. SULLIVAN: I do. Thank you. I want to
24 get clear, Ms. Vitale, on the OP's comment about
25 needing relief for architectural elements. You're

1 saying it is set back from the architectural element,
2 but it still is altering the architectural element.
3 So, are you saying if it's just set back further, then
4 it's not?

5 MS. VITALE: In looking at the criteria for a
6 conversion, one of the elements is that a rooftop
7 architectural element original to the house, such as a
8 turret, tower, or dormers shall not be removed or
9 significantly altered, including changing its shape or
10 increasing its height, elevation or size. I know in
11 the situation you are maintaining the dormer. But
12 because the third-floor addition is essentially -- I
13 mean, if you look at the section, it essentially is
14 intersecting that shed roof. It does begin to change
15 the shape and increase the height and elevation of the
16 roofline, which is a character defining feature of
17 these homes. These homes all have, you know, a shed
18 roof or -- not a shed roof, but you know, the sloped
19 roof with the dormer window in the center.

20 So, I do think by pushing that third-floor
21 addition so close to the front façade, you are
22 effectively changing the roofline of this house. And
23 so, that's why we believe that, you know, a waiver of
24 Subsection H would be necessary.

25 MR. SULLIVAN: And is there a point at which

1 it's not altering it? I mean, I know there's
2 nothing --

3 MS. VITALE: Like, as I mentioned, if there's
4 enough separation from the actual front façade and
5 roofline of the property, and then when that third-
6 floor addition begins, if there is sufficient
7 separation, then yes, you would not be altering that
8 roofline.

9 MR. SULLIVAN: Okay. The other question
10 relates to the waiver. Is there something -- because
11 the test for the waiver, I think, is similar to the
12 test for the addition in general, that it's not
13 substantially negatively impact -- or unduly impact
14 neighbors' light and air and privacy. Is there --
15 what's the difference between a 10-foot addition and a
16 20-foot addition in that sense? For this property
17 where the rear of the property isn't all that
18 attractive to begin with, and then the property slopes
19 down in the back as well.

20 MS. VITALE: Well, I mean, I do think just
21 even the shadow studies showed that the 20-foot
22 addition would impact, you know, the light available
23 to adjoining properties. And again, because the rear
24 façade of all the homes, at least even on this block
25 of the square, they are aligned. There aren't, you

1 know, additions introducing a three-story volume that
2 extends 20 feet back from the rear property line, does
3 impact. I think it has privacy implications. There's
4 now a rooftop deck. There is the stairwell that goes
5 to the first and second level. And, you know, this
6 creates a large blank wall. I understand that you're
7 introducing the green screen on the one side, but it
8 introduces a large blank wall you know, up against the
9 adjoining properties.

10 MR. SULLIVAN: And I have no further
11 questions.

12 CHAIRPERSON HILL: Yeah, just for me, Ms.
13 Vitale, the, again, the section -- I'm reading from
14 your report. "This section will not conflict with
15 Subtitle U 320.2(i)." And then it says again, "Any
16 addition shall not have a substantially adverse effect
17 to the use or enjoyment of any abutting or adjacent
18 dwelling or property in particular."

19 So, your comment is again that the 20 feet
20 will in fact do that, "The light and air available to
21 the neighbor's property shall be unduly effected. The
22 privacy and use of enjoyment and neighboring
23 properties shall be unduly compromised. The
24 conversion and any associated additions as viewed from
25 the street, alley, and other public way shall

1 substantially -- it is substantially visually
2 intruding upon the character, scale, and pattern of
3 houses along the subject street or alley."

4 So, that's what you're saying, correct?

5 MS. VITALE: That's correct.

6 CHAIRPERSON HILL: Okay, thank you. Does
7 anyone have any more questions for the applicant?

8 Mr. Ali?

9 MR. ALI: No, I just wanted to point out that
10 I know that we have the setback for the chimney,
11 taking at 10-foot diameter on the third-floor. But I
12 think we can work on setting back that third-floor
13 exterior wall further back, if that's what the Office
14 of Planning -- but I don't know how much room I have,
15 but it could be anywhere from like an additional five
16 to eight feet from where we are.

17 So, I mean, we can try to work with that.

18 CHAIRPERSON HILL: Okay.

19 MR. ALI: Push it further back.

20 CHAIRPERSON HILL: Okay. Okay.

21 MR. HART: I don't know if it may be helpful
22 to have a view from -- I mean, this is a completely
23 new rendering, but something along the road, sidewalk.

24 MR. ALI: Yeah, I mean --

25 MR. HART: Do you have anything that you've

1 already done?

2 MR. ALI: Well, usually when like, it's a
3 Historic Preservation project, historic area, we do
4 that site study because we tend not to have that
5 penthouse visible from the sidewalk. But in these
6 conditions, like these kind of projects, most of these
7 right of ways in the RF-1, R-4 Zone, you're looking at
8 70 to 90-foot right of way. You will always capture
9 that third-floor addition. You need to be setting
10 back 25 to 30 feet if you want, given the right of
11 way.

12 MR. HART: Yeah, I'm not sure if it's
13 necessarily a -- I mean, this is not the whole one-to-
14 one issue.

15 MR. ALI: Right.

16 MR. HART: I mean, I'm just, you know, I
17 really don't have a good sense of what it looks like,
18 and I think that would just be helpful, that's all. I
19 didn't know if you had already --

20 MR. ALI: No, because we have done it and --
21 but that's what we -- I need to understand more of the
22 Office of Planning, or the trying to not having to be
23 visible from the right of way, or that's why I think
24 Mr. Sullivan asked the question, how much --

25 MR. TURNBULL: No, I think what Ms. Vitale is

1 looking for is a perspective street view looking at
2 the three units, showing your unit with the third-
3 floor at the back. And I think what she wants to see
4 is that when you look at it, that that addition at the
5 back is sufficiently removed from that, falls from
6 that mansard, that it doesn't take away from the
7 overall character of the three units. I'm thinking.
8 Maybe I'm misinterpreting, but I think that's what
9 she's looking for.

10 MS. VITALE: I can respond. That's correct.
11 Because the mansard roofs with the dormers do read as
12 a continuous line, this isn't a block where there is a
13 variety of architectural styles. You really have this
14 uniform architectural style. So, to have that third-
15 floor element, you know, pop-up and be so visible, and
16 be so close to that mansard, that's where we felt like
17 it started to alter, alter the roofline and alter the
18 character.

19 CHAIRPERSON HILL: Okay. I mean, I think your
20 bigger problem is going to be the 20 feet, you know.
21 That's what I think. And so, I don't know, you know -
22 - I hate to say it, we're going to be back here again,
23 is because we're not going to be able to probably come
24 to a decision on this. Or, at least I can't get
25 behind the 20 feet right now.

1 I also, after having -- after having been here
2 for the amount of time that I've been here, which I've
3 come into a lot of this discussions about the pop-
4 backs and the pop-ups and I am a little surprised,
5 actually, that the ANC did agree to the 20 feet, that
6 was a huge point of discussion, with so many people.

7 And so, but the Office of Planning continues
8 to not be in support of that waiver. And so, at this
9 point they're not in support of what they think the
10 rooftop element needs to be adjusted, and maybe you
11 can work with Mr. Ali to get the Office of Planning to
12 sign off for that. But I think your bigger problem
13 again is the -- I don't know where the rest of the
14 Board is here, but really it's kind of the pop-back
15 that I'm having an issue with. And, I mean, I wish I
16 could just say, okay, that's great. But again, we've
17 gone through this so many times in terms of the 10
18 feet and the -- and so, you know, that is what the
19 Zoning Commission got to which is that, you know, you
20 could go 10 feet back from the existing property line,
21 and you guys are going 20 feet back.

22 So, I would again now request that you go back
23 and work with the Office of Planning to see if you can
24 somehow get them to -- I mean, it sounds like you're
25 going to be able to work something out to the point

1 where they can get behind the waiver for the rooftop
2 element. But I don't think -- I don't know how easy
3 it's going to be for you to get the 10 feet. And,
4 again, I don't know where the rest of the Board sits
5 on that, but now you have an extra vote. So, you can
6 see what -- does any Board -- Mr. Turnbull, Mr. Hart,
7 Ms. White, do you have any comments for the applicant
8 in terms of whether things you'd like to see or have
9 them work with before coming back to us?

10 MS. WHITE: My comment is that you know, I'm
11 in agreeing with what you just said, is that I think
12 they need to -- you need to work with the Office of
13 Planning on the height issue too, as well as the
14 additional third-floor that you're working on, because
15 if not I don't see how it gets -- the case moves
16 forward, unless they're in agreeing -- unless they
17 agree with both parts of the development of that
18 project.

19 CHAIRPERSON HILL: Mr. Hart, Mr. Turnbull?

20 MR. TURNBULL: No, I would concur with all the
21 comments so far.

22 CHAIRPERSON HILL: Okay. Mr. Sullivan?

23 MR. SULLIVAN: Yeah, that's a good point about
24 the waiver. And the way I see the waiver, and of
25 course, you know, I obviously defer to Commissioner

1 Turnbull who helped write that, is that the Zoning
2 Commission wanted to give the Board the ability to
3 approve good projects, despite the 10 foot, and in the
4 right situation.

5 And it's important to note that the ANCs were
6 so hot on that issue about the pop-backs, and yet they
7 would support this one at 20 feet. So, they felt very
8 strongly about the three-bedroom contingent and the
9 quality of the applicant.

10 And so, if not, my thinking is if you -- if
11 not this case, what case gets the waiver. It's
12 because it's facing the right direction. The
13 additional shadow is to the back and not really
14 impacting anybody. And the neighbors said, and we've
15 been engaged with them from the beginning, 10-foot
16 rule. Until they met us and met the applicant and saw
17 the project, and saw the plans, and got a chance to
18 meet with them. And then they were okay with this.

19 So, I think it's telling how good the project
20 is that it overcame that objection because they were,
21 their first, out of the gate, that was their
22 impression that we're going to stick by a 10-foot rule
23 all the time.

24 But there's a waiver there for a reason and it
25 can be granted in a situation that justifies it. So.

1 CHAIRPERSON HILL: No, I appreciate that. And
2 I guess I am -- I mean, for me, again, my thoughts are
3 as far as the waiver, it's like you know, if it were
4 an end unit. If it were something that this is still
5 -- it's not mid-block exactly, but it's like, you
6 know, three in, I think, right? And so, you know, it
7 is going to stick out. It is going to bump out, you
8 know, from the block. And so, you know, I don't know
9 -- and that might be something that if you, you know,
10 are still not able to get the Office of Planning to
11 agree with your argument, you could present more
12 information as to why exactly you know, it is a
13 situation where you know, the -- I mean, you can
14 continue the argument. Like, I think you said there
15 was, on either side, there was homes that had
16 residents in there that would be better off if there
17 were families there. I mean, that's kind of like the
18 connection that I got with the argument.

19 And so, I'm just trying to understand why the
20 ANC again, would as you said, think that this is the
21 type of -- because you're right, everybody else is 10
22 foot, 10 foot, 10 foot. Right? So, why is it that
23 the ANC is approving this one? You know?

24 And so, I don't know if anyone else has any
25 other comments about how to guide the applicant in

1 that area with regard to the 20 feet versus the 10
2 feet.

3 MR. TURNBULL: Well, I think you're going down
4 the right road. I think we need more evidence in the
5 record to say that, why the ANC supports this going --
6 this pop-back going beyond the 10-foot limit. I think
7 right now there's not much evidence in there that
8 really talks about that. So, whether it's the
9 neighbors or the ANC, I think we need more
10 information.

11 CHAIRPERSON HILL: So, you can try and find
12 more -- I mean, again, Mr. Sullivan, then everybody is
13 going to be here and be telling me, us, that you
14 approved this. You know, and this is why you approved
15 that. And they're going to be saying, you know, you
16 gave this waiver and you know, the ANC was signed off
17 on it, the neighbors were signed off on it, so if
18 that's all the criteria is, then that would be great.
19 But that's not what it is, right?

20 MR. SULLIVAN: Right.

21 CHAIRPERSON HILL: So, so okay. So then,
22 you're going to go back and provide the materials
23 requested by the Board. I suppose, I'm going to ask
24 for the 22nd again, Mr. Moy.

25 MR. MOY: Twenty-second. Let me double-check.

1 Twenty-second. That would be good for the Board.

2 CHAIRPERSON HILL: That's when you're here --
3 I mean, that's what happened the last time with you.
4 So, then the 17th, St. Patrick's Day is your filing
5 deadline. Mr. Turnbull pointed out that it was St.
6 Patrick's Day. I just wanted that on the record.

7 Oh, was it you? Oh, oh, Ms. White. I'm
8 sorry. She's got the Irish in us.

9 MR. MOY: March 17th is a Friday.

10 CHAIRPERSON HILL: Okay. I'd stay off the
11 roads that day.

12 Any other questions, Mr. -- oh, I didn't go to
13 the audience yet, but I'm going to because I'm going
14 to close the hearing to that.

15 So here, because this is good, because it's
16 the end of the night. So, is there anybody here from
17 the ANC?

18 [No audible response.]

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

21 [No audible response.]

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

24 [No audible response.]

25 CHAIRPERSON HILL: All right. Then, I'm going

1 to close the hearing except for the materials that
2 were asked for from the Board. Now, actually I'm
3 thinking, did we --

4 [Discussion off the record.]

5 CHAIRPERSON HILL: Does the Board want
6 continued hearing or meeting? Okay.

7 MR. MOY: Yeah, it was a continued hearing
8 last time.

9 CHAIRPERSON HILL: Okay. But that was -- it
10 was a different case.

11 MR. MOY: You can still hear it and then
12 decide it too, so.

13 CHAIRPERSON HILL: Well, we'll do a continued
14 hearing. We'll do a continued hearing. Just so I,
15 you know, give an opportunity to have some kind of
16 feedback with the applicant, since you guys waited so
17 long today.

18 MR. SULLIVAN: Yeah, and then the SMD may be
19 able to show up and testify as well too.

20 CHAIRPERSON HILL: Okay. Sure.

21 MR. SULLIVAN: Which would be good.

22 CHAIRPERSON HILL: I mean, it's a big -- for
23 me, I'm just being very clear to the applicant because
24 I don't want to waste your time and you know, when
25 you're reading the tea leaves, it is a difficult one

1 for me to get past because so many people, so many
2 people have been just on us about the 10-foot thing,
3 over and over again.

4 So, to get that waiver I have to be able to
5 go, okay, this is why you're getting that waiver. And
6 then the next time people are on me about the 10-foot
7 thing and they say, why did you get that waiver, I can
8 go, oh, well, this is why he got that waiver. Okay?

9 So, all right. So, anything else? Okay. All
10 right. Thank you all very much.

11 MR. SULLIVAN: Thank you.

12 [Pause.]

13 MR. MOY: All right, Mr. Chairman, we're, I
14 believe coming up on the last case application on the
15 docket for today, which is Application No. 19428 of
16 1937 2nd Street Northeast, LLC. This is a request for
17 a special exception under the rooftop element
18 requirements. Subtitle E, Section 206.2. This would
19 add an additional unit to an existing four-unit
20 apartment house, RF-1 Zone, 1937 2nd Street Northeast,
21 Square 3565, Lot 55.

22 CHAIRPERSON HILL: Okay. Just give me one
23 second, Mr. Moy.

24 [Pause.]

25 CHAIRPERSON HILL: Okay. Good evening. If

1 you could please introduce yourself.

2 MR. CROSS: Good evening. My name is Michael
3 Cross. I'm the architect responsible for application
4 No. 19428.

5 CHAIRPERSON HILL: Okay. Great. All right,
6 Mr. Cross. So, I just need, again, kind of like a
7 brief presentation and I'll let the Board chime in to
8 what specifically they might be interested in hearing
9 from. I mean, again, I like to hear a little bit
10 about what the relief is that you're asking, how you
11 meet the standard, and then I can see, you know, we
12 have read the record. I can see all the things that
13 are in the record.

14 There is some question, or I at least kind of
15 want to understand a little bit more about how the
16 roof structure is being changed as you kind of go
17 through it. I don't -- am I missing the ANC 5E
18 report? Did you get a report from the ANC?

19 MR. CROSS: Unfortunately, the ANC meeting was
20 last night.

21 CHAIRPERSON HILL: Okay.

22 MR. CROSS: Last time I checked, this
23 afternoon, it had not --

24 CHAIRPERSON HILL: Okay. So, you can tell us
25 about how that went, then.

1 MR. CROSS: Yes, sir.

2 CHAIRPERSON HILL: And so, please go right
3 ahead and start, unless the Board has anything
4 specific other than what I've mentioned for the
5 applicant to speak on.

6 [No audible response.]

7 CHAIRPERSON HILL: Okay. All right. Please,
8 Mr. Cross.

9 MR. CROSS: Yeah, fantastic. This project was
10 originally posted as a conversion, and then reposted
11 to only be filing relief for the rooftop element. The
12 rooftop element in this case is a -- is a mansard,
13 mansard style shingle roof, for the front face.

14 CHAIRPERSON HILL: Okay. Is that anywhere in
15 the record?

16 MR. CROSS: There should be a photo in the
17 record. I can pull up the exact photo from the record,
18 sorry.

19 CHAIRPERSON HILL: The color photo?

20 MR. CROSS: Yeah, this is a panorama from last
21 evening.

22 CHAIRPERSON HILL: Okay, great. Actually,
23 Commissioner Turnbull is very kind to pass out his
24 printout. Oh, here. I've got it right here. There
25 you go, Mr. Turnbull. All right. I've got the color

1 photo in front of me.

2 MR. CROSS: All right. So, it's in a row of
3 apartment buildings. These are all very large lots,
4 kind of a-typical for the RF-1 Zone in the Trinidad
5 area.

6 The entire row is almost exclusively apartment
7 houses. This represents half of that block on 2nd
8 Street Northeast. As you can see, the existing
9 typology is kind of your standard for unit D.C.
10 apartment house with a small kind of unadorned mansard
11 roof. I call these faux mansards as they really
12 typically go up to kind of a parapet on the inside and
13 don't even represent the actual roofline.

14 You can see on this block there are already
15 two that have been popped up, or an additional third
16 story has been added. That story was added with a
17 removal of that rooftop element, and then a recreation
18 of a similarly styled mansard and some introduction of
19 new dormers.

20 The proposal that we are -- we are here
21 presenting this evening, is the removal of that front
22 mansard, and then the addition of a third-story that
23 is actually set back from the front façade in a manner
24 more consistent with kind of the style that is typical
25 of a historic district where they're looking for a

1 roughly one-to-one ratio of a setback. This is
2 roughly one-to-one setback from the front façade in
3 order to minimize the visibility from the street.

4 As the record shows, we have been to the civic
5 association, the Eckington Civic Association, and
6 received support from them. And we went before ANC 5E
7 last night and also gained their support.
8 Unfortunately, it does not appear that it's in the
9 record at this time.

10 CHAIRPERSON HILL: When you, the Eckington
11 Civic Association it seems like -- did you go to
12 present there to them?

13 MR. CROSS: Yes, sir. I personally presented.

14 CHAIRPERSON HILL: Okay. And so, it seems
15 like it was a pretty narrow vote, seven in favor, six
16 opposed, six abstentions. Can you tell me a little
17 bit how that evening went and how the vote went down
18 and why you got so many people opposed?

19 MR. CROSS: Yeah. There seemed to be a mix of
20 those in opposition that were in opposition of the
21 project that the massing, and those opposed to the
22 removal, you know, that the modification of the façade
23 in any way.

24 I don't know what the makeup is, but those
25 were kind of the two general opinions. I think as

1 you're aware, the general massing is not material to
2 this case as that we're not directly seeking relief
3 for the massing. It is matter-of-right.

4 In fact, to speak to the size of these lots,
5 this is matter of right, 60 percent allowable. We're
6 only seeking 53 percent, and as you noted it's a large
7 addition. One of the benefits of this project to the
8 community as noted in other projects is we are
9 achieving family sized units with two-bedroom, two-
10 baths, one possible three-bedroom, two and a half bath
11 unit. So, all family size, which is a great
12 enlargement or improvement over the single -- or
13 single bedroom units that are there today.

14 CHAIRPERSON HILL: At the ANC meeting, what
15 was the vote?

16 MR. CROSS: I don't know if I -- I believe it
17 was unanimously approved. But --

18 CHAIRPERSON HILL: Did you present?

19 MR. CROSS: I did.

20 CHAIRPERSON HILL: Okay, you just don't
21 remember.

22 MR. CROSS: I don't remember the count. I
23 apologize.

24 CHAIRPERSON HILL: Okay. All right. Okay.
25 Keep going. Or is that it?

1 MR. CROSS: I believe that's all.

2 CHAIRPERSON HILL: Okay.

3 MR. CROSS: I'll answer any questions you
4 have.

5 CHAIRPERSON HILL: We're going to go to the
6 Office of Planning, but I mean, does the Board have
7 any questions for the applicant at this time?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. No? All right.
10 We're going to turn to the Office of Planning.

11 MS. MYERS: Hello, again, Crystal Myers for
12 the Office of Planning. The Office of Planning
13 recommends approval of this project and stands on the
14 record of the staff report.

15 CHAIRPERSON HILL: Does the Board have
16 questions of the Office of Planning?

17 MR. TURNBULL: Yes, Mr. Chair.

18 Ms. Myers, I'm just curious in your report,
19 when I look at the applicant's drawings, I look at
20 your report, I guess I'm not quite sure I understand.

21 It says, you say the regulation is 60 percent max for
22 lot occupancy, that the existing building has 30
23 percent, and that the proposed has 48 percent, yet if
24 I look at A202 of the architect's drawings, it looks
25 like it's almost 70 to 80 percent occupancy. Or it's

1 --

2 MS. MYERS: The applicant provided a burden of
3 proof zoning chart which has the numbers that I've
4 used for the table and based off --

5 MR. TURNBULL: You didn't do a takeoff
6 yourself, then, on -- to verify?

7 MS. MYERS: It's self-certified, and so we
8 usually go by the numbers.

9 MR. TURNBULL: Well, then --

10 MR. CROSS: If I may? The drawing that you're
11 -- or the perspective that you're looking at there has
12 been truncated, simply to show the structure, not the
13 entirety of the lot.

14 MR. TURNBULL: Well, you need to show us
15 something that's accurate. We need a full -- I mean,
16 I mean, I can't tell by looking at this. Okay. Well,
17 let me just ask Ms. Myers, the other thing is that on
18 the last case we had a situation of three units in a
19 row where we tried to keep the character similar.
20 Here, you're allowing the applicant to remove it and
21 to simply step back and add on. Is there a reason for
22 that?

23 MS. MYERS: The Office of Planning was only
24 focused on the rooftop element issue. The addition is
25 not -- was not part of our review because it is by-

1 right, and they are meeting the zoning requirements.

2 MR. TURNBULL: Okay. Thank you.

3 MR. CROSS: Sorry, the request was for an
4 accurate depiction of the property. There was a plat
5 that was submitted with this application that shows
6 the accurate depiction of the proposed building on the
7 site.

8 CHAIRPERSON HILL: Which exhibit are you in?

9 MR. CROSS: Exhibit 3. Thank you.

10 CHAIRPERSON HILL: Exhibit 3. Is that what
11 you said?

12 [Pause.]

13 CHAIRPERSON HILL: Mr. Turnbull, are you
14 comfortable with that?

15 MR. TURNBULL: Yeah. I'm comfortable with it.

16 CHAIRPERSON HILL: Okay. Does the Board have
17 any more questions for the Office of Planning?

18 [No audible response.]

19 CHAIRPERSON HILL: Okay. Does the -- I also
20 thought, I mean, it's interesting. I mean, I know
21 it's by-right and so that's what it -- we're arguing -
22 - or not arguing. The massing of the last proposal,
23 it just -- well, that's the whole thing about matter-
24 of-right. I mean, you can do things one place you
25 can't do somewhere else.

1 All right. So, I don't have any more
2 questions for the Office of Planning and the Board
3 doesn't have any more questions for the Office of
4 Planning. Does the Board have any questions at this
5 time for the applicant?

6 [No audible response.]

7 CHAIRPERSON HILL: No? Okay. Is the -- does
8 the applicant have any questions for the Office of
9 Planning?

10 MR. CROSS: I do not.

11 CHAIRPERSON HILL: Okay. Is there anyone here
12 from the ANC wishing to speak?

13 [No audible response.]

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

16 [No audible response.]

17 CHAIRPERSON HILL: Is there anyone here
18 wishing to speak in opposition to the application?

19 [No audible response.]

20 CHAIRPERSON HILL: Gosh, I'm just trying to
21 think. Ms. Glazer, I'm kind of curious, I guess, as
22 far as like the ANC. I don't have anything from the
23 ANC, or we don't have anything from the ANC, I should
24 say, other than the testimony now, of the applicant
25 that this had been approved by the ANC. What are your

1 thoughts on that?

2 MS. GLAZER: I guess it depends on what your
3 inclination is. The ANC's report, according to the
4 applicant, is a recommendation of support. I don't
5 know if the report would contain any issues and
6 concerns to give great weight to any proposed
7 conditions. You might want to see if a report can be
8 submitted.

9 CHAIRPERSON HILL: Okay. No, I was asking
10 your opinion. I'll ask the Board here in a second.
11 I'll ask the applicant. No, I appreciate that.

12 So, again, I don't have a report from the ANC.
13 You have told me that -- or you have provided
14 testimony to the Board that it was in fact passed.
15 You can see where I'm kind of at a loss to this in
16 that I again don't know if there were any conditions
17 from the ANC. And you are unable to tell me what the
18 actual vote was.

19 So, do you know, A., if there were any
20 conditions proposed by the ANC, or if it was just a
21 straight up and down vote? I'm asking that question.

22 MR. CROSS: I do not believe there were any
23 conditions, that I believe the motion was to support
24 the application as filed. And I believe it received
25 no opposition votes.

1 CHAIRPERSON HILL: Okay. So, did you speak
2 with anyone there as to when we might actually get
3 something into the record?

4 MR. CROSS: Unfortunately, I did not.

5 CHAIRPERSON HILL: Okay. I don't know what
6 the Board thinks, or I mean, I guess I'm -- Mr. Cross,
7 the fact that you used the word believe was one that
8 was already, you know -- I don't know, I kind of want
9 to keep the record open for anything that might get
10 submitted from the ANC before making a vote.

11 Does the Board have any thoughts on that?

12 MR. HART: I mean, I think that we -- I would
13 be in favor of waiting like, a week. If we get
14 anything within that time period then we can -- I
15 mean, the meeting was just last night, so it is maybe
16 a little difficult for them to get something in to us
17 in such a short turnaround.

18 I don't know if the applicant is okay with
19 that, but I think waiting a week would at least give,
20 I guess, some sufficient time to be able to get
21 something and see if there's any conditions that were
22 included that the applicant wasn't aware of and the
23 ANC decided that they wanted to, you know, include
24 with it. But, that's kind of where I am.

25 I mean I'm generally in support of where we're

1 going. I just needed to -- I'd like to have that
2 finality. If we don't get anything within that week
3 then we can vote on it next week. And we can use it
4 as -- keep it open for the ANC and I don't know, have
5 a meeting before next -- have --

6 MR. TURNBULL: Sounds like it's the 22nd
7 again.

8 MR. HART: -- it set as a meeting. No, not
9 the 22nd.

10 CHAIRPERSON HILL: I'm just looking for Mr.
11 Turnbull, right. He was going to say something.

12 Okay. So, the ANC, I mean, asking for the ANC
13 to turn something around in a week also is pretty
14 tight. Often times they don't get back to us that
15 quickly. That's what I'm trying to, to just think.
16 And I don't know what your actual timeline is in terms
17 of the project.

18 MR. CROSS: If I may?

19 CHAIRPERSON HILL: Please.

20 MR. CROSS: I understand the Board's position
21 and you know, king of despite my best interest, would
22 agree with you that it's probably best for us to
23 finalize pending the ANC report. I'm not sure if you
24 can have a conditional approval tonight, a motion for
25 a conditional approval pending, if that would make the

1 necessary follow-up meeting not required.

2 CHAIRPERSON HILL: That's okay. So, sorry, I
3 can't do a conditional.

4 MR. CROSS: Okay.

5 CHAIRPERSON HILL: Yeah. So, then I would go
6 ahead -- so I've asked for the -- I just want to make
7 sure what I've done thus far. So, I did ask for if
8 there was ANC, anyone here, and I asked if there was
9 anybody here to speak in support. I asked if there
10 was anyone here to speak in opposition.

11 I would like to wait until we hear from the
12 ANC, or at least give them an opportunity to weigh in,
13 given the meeting was last night. I suppose we could
14 do it in -- now, Mr. Moy, I'm actually going to ask
15 your opinion in terms of what seems, in your
16 experience, what has been kind of like the response
17 time of ANCs? I know that all ANCs are kind of
18 different and so like, you know, is a week possible?
19 Is two weeks better? I mean.

20 MR. MOY: What I can do, Mr. Chair is, which
21 I've done occasionally, I'll contact the ANC 5E
22 myself, personally, and to have them submit a letter
23 to the record. And I would think the applicant, if he
24 did so as well, that might be helpful. But I can
25 certainly put in a call tomorrow.

1 CHAIRPERSON HILL: Okay. So, Mr. Cross, if
2 you can submit something to the record stating what
3 you understand happened at the ANC meeting. And then,
4 Mr. Moy, if you could also reach out to the ANC and
5 see if they could submit something to us, then we
6 could vote -- we could have a -- put this on for the
7 meeting next week. And, Mr. Turnbull, you could
8 provide an absentee ballot, or you're welcome to come
9 in.

10 MR. TURNBULL: Okay.

11 CHAIRPERSON HILL: Okay? All right. So,
12 other than that I'm going to -- does the applicant
13 have anything else to add?

14 MR. CROSS: No, sir.

15 CHAIRPERSON HILL: Okay.

16 MR. CROSS: Thanks for doing it.

17 CHAIRPERSON HILL: So, then I was going to --
18 I'll close the hearing.

19 MS. GLAZER: Except for the submission of an
20 ANC report.

21 CHAIRPERSON HILL: Except for the submission
22 of an ANC report, and the submission from Mr. Cross
23 stating what statement, stating what he understands to
24 happened at the ANC.

25 MS. GLAZER: I think that's already on the

1 record.

2 CHAIRPERSON HILL: Okay. Okay.

3 MS. GLAZER: Unless he --

4 CHAIRPERSON HILL: Just go ahead and submit --
5 just go ahead and submit, submit something into IZIS,
6 okay, that --

7 MR. CROSS: Thank you.

8 CHAIRPERSON HILL: For the record. But thank
9 you. And thank you, Ms. Glazer.

10 All right. So, that's it, I guess. I know
11 there's one more thing to do but that's it for this
12 case. Okay?

13 So, you don't have to come in. You can watch
14 on TV. Okay? All right. So, thank you all very much
15 for that.

16 And, Mr. Moy, I know there's one more item
17 that needs to be dealt with, and let me grab that.

18 UNIDENTIFIED SPEAKER: [Speaking off
19 microphone.]

20 CHAIRPERSON HILL: It's set for a meeting next
21 week, yes. The date next week is the 1st, March 1st.

22 MR. MOY: March 1st.

23 CHAIRPERSON HILL: March 1st. Okay. So,
24 let's see. In accordance with Section 405(C) of the
25 Open Meetings Act, D.C. Official Code Section 2575(C),

1 I move that the Board of Zoning Adjustment hold closed
2 meetings on Monday, February 27th, March 6th, March
3 13th, March 20th, and March 27th. These meetings
4 start at 3:00 p.m. and are held for the purpose of
5 obtaining legal advice from our counsel in
6 deliberating upon, but not voting on the cases
7 scheduled to be publicly heard or decided by the Board
8 on the day -- no, well, actually, two days after each
9 of those closed meetings.

10 Those cases are identified on the Board's
11 public meeting and hearing agenda for March 1st, March
12 8th, March 15th, March 22nd, and March 29th. A closed
13 meeting for these purposes is permitted by Section
14 405(b)(4) and (b)(13) of the act. Is there a second.

15 Is there a second?

16 MR. HART: Seconded.

17 CHAIRPERSON HILL: The motion has been made
18 and seconded. Will the secretary please take a roll
19 call vote on the motion?

20 MR. MOY: When I call your name, if you could
21 reply or respond with a yes or a no?

22 [Roll call vote taken.]

23 MR. MOY: We have a board seat vacant. The
24 motion carries, sir.

25 CHAIRPERSON HILL: All right, Mr. Moy. Thank

1 you. The motion passes. All right.

2 Are we -- do we have anything else before the
3 Board today, Mr. Moy?

4 MR. MOY: Not from the staff, sir.

5 CHAIRPERSON HILL: Thank you. Then, it was a
6 pleasure being with all of you today. The meeting --
7 Ms. White, once again, welcome.

8 MS. WHITE: Thank you.

9 CHAIRPERSON HILL: I hope that this is a
10 outlier in terms of the time, but we welcome you and
11 look forward to many, many cases ahead.

12 MS. WHITE: Yes.

13 CHAIRPERSON HILL: We stand adjourned. Thank
14 you.

15 [Whereupon, at 7:03 p.m., the Public Hearing
16 was adjourned.]

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