

Zoning Public Hearing

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA  
2 Office of Zoning  
3 Board of Zoning Adjustment  
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7 PUBLIC MEETING  
8 9:30 a.m. to 1:33 p.m.  
9 Wednesday, March 8th, 2017  
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22 441 4th Street Northwest  
23 Jerrily R. Kress Memorial Room  
24 Second Floor Hearing Room, Suite 220 South  
25 Washington, D.C. 20001

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<p style="text-align: right;">Page 2</p> <p>1 Board Members:</p> <p>2 FREDERICK L. HILL, Chairperson</p> <p>3 CARLTON HART, Vice Chair</p> <p>4 LESYLEE WHITE, Board Member</p> <p>5 PETER MAY, Zoning Representative</p> <p>6 CLIFFORD MOY, Secretary</p> <p>7</p> <p>8</p> <p>9 Office of Attorney General:</p> <p>10 SHERRY GLAZER, Esquire</p> <p>11</p> <p>12 Office of Planning:</p> <p>13 ALISA VITALE</p> <p>14 CRYSTAL MYERS</p> <p>15 KAREN THOMAS</p> <p>16 BRYAN GOLDEN</p> <p>17 ANNE FOTHERGILL</p> <p>18 STEVEN MORFIN</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">C O N T E N T S</p> <p style="text-align: right;">PAGE</p> <p>2</p> <p>3 Introductory Remarks 4</p> <p>4 A.M. SESSION</p> <p>5 19431 11</p> <p>6 19432 14</p> <p>7 19433 19</p> <p>8 19398 77</p> <p>9 19427 29</p> <p>10 19416 63</p> <p>11</p> <p>12 P.M. SESSION</p> <p>13 19415 88</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 - - - - -</p> <p>3 CHAIRMAN HILL: Okay, good morning everyone.</p> <p>4 The hearing will please come to order. We're located in</p> <p>5 the Jerrily R. Kress Memorial hearing room at 441 4th</p> <p>6 Street Northwest. This is the March 8th, 2017 public</p> <p>7 hearing of the Zone Board Zoning Adjustment in the</p> <p>8 District of Columbia. My name is Fred Hill,</p> <p>9 chairperson. Joining me today is Carlton Hart, vice</p> <p>10 chair, Lesyllee White, board member, and representing</p> <p>11 the zoning commission is Peter May. Copies of today's</p> <p>12 hearing agenda are available to you and located in the</p> <p>13 wall bin near the door. Please be advised this</p> <p>14 proceedings is being recorded by a court reporter and is</p> <p>15 also webcast live.</p> <p>16 Accordingly, we must ask you it refrain from</p> <p>17 any obstructive noises or actions in the hearing room.</p> <p>18 When presenting information to the Board, please turn on</p> <p>19 and speak into the microphone, first stating your name</p> <p>20 and home address. When you're finished speaking, please</p> <p>21 turn off the microphone so your microphone is no longer</p> <p>22 picking up sound or background noise. All person</p> <p>23 planning to testify either in favor or in opposition</p> <p>24 must have raised your hand and been sworn in by the</p> <p>25 secretary. Also, each witness must fill out two witness</p>	<p style="text-align: right;">Page 5</p> <p>1 cards; these cards are located on the table near the</p> <p>2 door and on the witness table.</p> <p>3 Upon coming forward to speak the Board,</p> <p>4 please give both cards to the reporter sitting at the</p> <p>5 table to my right. If you wish to file written</p> <p>6 testimony or additional supporting documents today,</p> <p>7 please submit one original and 12 copies to the</p> <p>8 secretary for distribution. If you do not have the</p> <p>9 requisite number of copies, you can reproduce copies on</p> <p>10 an office printer in the Office of Zoning located across</p> <p>11 the hall. The order of procedures for special</p> <p>12 exceptions and variances, as well as appeals, is also</p> <p>13 located in the bin as you enter in through the door.</p> <p>14 The record shall be closed at the conclusion</p> <p>15 of each case except for any material specifically</p> <p>16 requested by the Board. The staff will specify at the</p> <p>17 end of the hearing exactly what is expected and the date</p> <p>18 when the persons must submit the evidence to the Office</p> <p>19 of Zoning. After the record is closed, no other</p> <p>20 information shall be accepted by the Board.</p> <p>21 The District of Columbia Administrative</p> <p>22 Procedures Act requires that the public hearing on each</p> <p>23 case be held open before the public pursuant to section</p> <p>24 405 (b) and 406 of that Act. The Board may, consistent</p> <p>25 with its rules and procedures and the Act, enter into a</p>

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<p style="text-align: right;">Page 6</p> <p>1 closed meeting on a case for purposes of seeking legal 2 counsel on a case pursuant to D.C. official code 3 2-575(b)(4) and/or deliberating on a case pursuant to 4 D.C. official code D 2-575(b)(13), but only after 5 providing the necessary public notice, and in the case 6 of an emergency closed meeting after taking a role call 7 vote. The decision of the Board in cases must be based 8 exclusively on the public record. To avoid any 9 appearance to the contrary, the Board request the 10 persons present not engage the members of the Board in 11 conversation.</p> <p>12 Please turn off all beepers and cell phones 13 at this time so as to not disrupt these proceedings.</p> <p>14 Preliminary matters are those which relate 15 to whether a case will and should be heard today, such 16 as request for postponement, continuance, or withdrawal, 17 or whether proper and adequate notice of the hearing has 18 been given. If you are not prepared to go forward with 19 the case today or if you believe the Board shall not 20 proceed, now is a time to raise such a matter.</p> <p>21 Mr. Secretary, do we have any preliminary 22 matters?</p> <p>23 SECRETARY MOY: Thank you, Mr. Chairman. 24 Good morning. And good morning to members of the Board. 25 I have few information for the record information for</p>	<p style="text-align: right;">Page 7</p> <p>1 cases of today's docket that will not be heard. First 2 case is application No. 19834 of SNR Foundation. This 3 is an application that was withdrawn by the Applicant. 4 Application No. 18464 of McKinley Battle has been 5 postponed, rescheduled to March 15th, 2017. Application 6 No. 19396 of Padam Hadal (phonetic) has been rescheduled 7 to March 22nd, 2017. And application No. 19446 of Max 8 Carasic (phonetic) has been rescheduled to April 5th, 9 2017.</p> <p>10 Also, two applications, 19440 of 311 P 11 Street, L.L.C., as well as 19439 of 311 P Street L.L.C., 12 at the Applicant's request to postpone and reschedule. 13 And staff is, with the Board's approval, rescheduling to 14 April 19th, 2017.</p> <p>15 And finally a case, an appeal case, that is 16 scheduled for March the 15th, which is next week, 2017, 17 there was a request from the Appellant to appeal No. 18 19374 DuPont Circle Citizens Association to postpone, 19 and staff would recommend March the 29th.</p> <p>20 And that's it from staff, Mr. Chairman. 21 CHAIRMAN HILL: All right. Thank you, 22 Mr. Secretary.</p> <p>23 If people who are here wishing to testify, 24 if you could please stand and take the oath that's going 25 to be administered by the Secretary Mr. Moy.</p>
<p style="text-align: right;">Page 8</p> <p>1 SECRETARY MOY: Good morning. 2 (Whereupon the participants are sworn in.) 3 CHAIRMAN HILL: All right. Good morning 4 everyone. We're actually going to follow the agenda 5 pretty closely that was in the bin as you kind of walk 6 in the hall. Obviously, there's been a few cases that 7 have dropped off. But the only thing I guess I'd like 8 to take out of order, Mr. Moy if we could, is the first 9 I guess there's a request for postponement from case No. 10 19493. So if we could call and do that one first; 11 otherwise, we're just going to follow the agenda.</p> <p>12 SECRETARY MOY: Thank you, Mr. Chairman. As 13 you stated, that will be No. 19413, which you'll find 14 copies of it, the L.L.C. Let me read the application as 15 caption, this was a request for variances from the 16 ladder area and lot width requirements, section 7.3.1, 17 side yard requirements section 307.2, which would permit 18 the subdivision of two lots and construct new one family 19 dwellings in R3 zone, Maple View Place for 238, zone 20 lots 976 and 977.</p> <p>21 In your case, Mr. Chairman, there's a 22 request for postponement under Exhibit 66.</p> <p>23 CHAIRMAN HILL: All right. Thank you, 24 Mr. Moy. 25 I have seen the request for postponement,</p>	<p style="text-align: right;">Page 9</p> <p>1 which was Exhibit 66. And the applicants requested more 2 time so they could work with the ZA on their 3 application, so I'm comfortable with the request for 4 postponement.</p> <p>5 Does the Board have any opinions against it? 6 (No response.) 7 Okay, then Mr. Moy, we're going to go ahead 8 and postpone. What date is good for that.</p> <p>9 SECRETARY MOY: Typically, it's been the 10 Board's procedure to reschedule to a date where our 11 participating zoning commissioner will be available. 12 And that next day will be April the 12th, 2017. But 13 COMMISSIONER MAY is with us here today, so I will defer 14 to COMMISSIONER MAY.</p> <p>15 COMMISSIONER MAY: Yeah. Did you ask the 16 Applicant about postponing to the 12th? 17 SECRETARY MOY: They were aware of that, 18 yes.</p> <p>19 COMMISSIONER MAY: And they would rather do 20 it sooner?</p> <p>21 SECRETARY MOY: That was my understanding. 22 COMMISSIONER MAY: And I think they 23 requested a postponement to the 22nd, just two weeks? 24 SECRETARY MOY: Yes, sir. 25 COMMISSIONER MAY: I cannot be here on the</p>

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<p style="text-align: right;">Page 10</p> <p>1 22nd. I may be able to be here on the 29th. But if --          2 I mean, another way we could look at this would be if we          3 -- if the hearing were continued I could review the          4 record of the hearing and then we could decide it on the          5 12th. But if there's any chance at all for me to          6 participate it would be on the morning of the 29th. But          7 I leave it up to you; if you want to hear ton the 22nd,          8 then we can take up decision making later.          9 CHAIRMAN HILL: We can just hear it on the          10 29th.          11 COMMISSIONER MAY: Is there room on the          12 29th?          13 SECRETARY MOY: Yes.          14 COMMISSIONER MAY: So I'll do my best to be          15 here. I can't make an absolute promise, but it's much          16 better than the 22nd.          17 SECRETARY MOY: If it would help,          18 COMMISSIONER MAY, for convenience to see the case          19 earlier in the day. That's what -- we've done it later          20 depending on Mr. May's schedule.          21 COMMISSIONER MAY: I think -- yeah, let's          22 play it by ear because I think I may have -- it may be          23 that I can't be here right at 9:30. That is where my          24 conflict is, early in the morning. But one way or the          25 other, we'll work it out. So the 29th.</p>	<p style="text-align: right;">Page 11</p> <p>1 SECRETARY MOY: We can call the case --          2 CHAIRMAN HILL: Which case are we talking          3 about again?          4 SECRETARY MOY: March 29th.          5 CHAIRMAN HILL: All right, thank you.          6 SECRETARY MOY: Okay. Mr. Chairman, so          7 we're back to the top of the batting order, which would          8 be application No. 19341 of Meghann Curtis and Michael          9 Fuchs. Caption advertised have a special exception          10 under subtitle E, section 5201 for the nonperforming          11 structure requirements in subtitle C, section 232.2, and          12 live docket requirements in title E, section 304.1,          13 which will construct a rear first-floor addition to an          14 existing one-family dwelling, RF-1 zone, 608 G Street          15 Southeast, grade 817.          16 CHAIRMAN HILL: Great. Thank you.          17 Good morning. If you could please introduce          18 yourself.          19 MS. FOWLER: Good morning. My name is          20 Jennifer Fowler, I'm the architect representing          21 homeowners.          22 CHAIRMAN HILL: Ms. Fowler, I don't know if          23 you watched the past couple weeks, but we've had long          24 hearings the last couple times; so I don't have a lot of          25 questions for you. I actually was reviewing the</p>
<p style="text-align: right;">Page 12</p> <p>1 records, and it seems very complete to me. And unless          2 the Board has any other questions in particular, I'm          3 just going to go right to the Office of Planning.          4 (No response.)          5 Okay, so may I ask the Office of Planning to          6 give us their comments.          7 MS. FOTHERGILL: Good morning. I'm Anne          8 Fothergill from the Office of Planning, and we rest on          9 the record in support of the special exception. I don't          10 have any questions. Thanks.          11 CHAIRMAN HILL: Thank you.          12 Does anyone have any questions for the          13 Office of Planning?          14 (No response.)          15 Does the Applicant have any questions for          16 the Office of Planning?          17 MS. FOWLER: No, thank you.          18 CHAIRMAN HILL: Is there anyone from the ANC          19 who would like to speak?          20 (No response.)          21 Is there anyone here would like to speak in          22 support of the application?          23 (No response.)          24 Is there anyone here who would like to speak          25 in opposition of the application?</p>	<p style="text-align: right;">Page 13</p> <p>1 (No response.)          2 All right. With that, Ms. Fowler, I would          3 turn back to you, if you have anything you'd like to          4 add?          5 MS. FOWLER: The only additional item I          6 have: I did receive a letter of support from the CHRS          7 Zoning Committee, and it was e-mailed to me last night.          8 So I don't know if it was on the record, but I just          9 wanted to mention they did support the project.          10 CHAIRMAN HILL: All right, it's in the          11 record. Great, thank you.          12 MS. FOWLER: Thank you.          13 CHAIRMAN HILL: Is the Board ready to          14 deliberate? Well, as I stated before, I didn't have any          15 particular questions or concerns after reviewing the          16 records. The Office of Planning's report I think is          17 very concise. Also, in addition to that, ANC 6D was in          18 approval, DDOT has no objections, as the letter stated          19 by the Applicant as well as three additional letters in          20 support. So I would go ahead and make a motion to          21 approve application 19431 as read by the secretary.          22 MS. WHITE: Seconded.          23 CHAIRMAN HILL: All those in favor? Aye.          24 All those opposed? The motion passes, Mr. Moy.          25 SECRETARY MOY: Staff would record the vote</p>

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1 as 4-0 to 1. This is on the motion applications for the  
 2 special exception will be reflected. The second was by  
 3 Ms. White, unless I have a correction; in support of the  
 4 motion being Mr. Peter May and Mr. Hart. The motion  
 5 carries forward.  
 6 CHAIRMAN HILL: Thank you, Mr. Moy. We  
 7 could do a summary order?  
 8 SECRETARY MOY: Yes, sir.  
 9 Applicants to the table to application No.  
 10 19432 of Michael and Justine Bello. This application,  
 11 Mr. Chairman, was amended with a revised certification  
 12 under Exhibit 42 for special exception on subtitle E,  
 13 section 1501, from the nonconforming structure  
 14 requirements of subtitle C, section 202.2, rooftop  
 15 architectural element requirements; subtitle E 202.1,  
 16 live occupancy requirements; subtitle E section 3.0.1  
 17 rear yard requirements; section 3.0.1 this will  
 18 construct a rear first-floor addition to an existing  
 19 family dwelling, RF-1337 16th Street Southwest, square  
 20 1074, lot 84.  
 21 CHAIRMAN HILL: Thank you, Mr. Moy.  
 22 If you could please introduce yourselves  
 23 from my right to left?  
 24 MS. BELLO: Justine bellow, one of the  
 25 homeowners.

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1 have anything they would like to add at this point  
 2 before I turn to the Office of Planning?  
 3 MS. FOWLER: I just wanted to commend  
 4 Justine Bello on her neighbor outreach. She went above  
 5 and beyond and got multiple letters of support from  
 6 neighbors adjacent on the abutting street; she did a  
 7 great job.  
 8 CHAIRMAN HILL: She made your job a little  
 9 easier.  
 10 MS. FOWLER: She did.  
 11 CHAIRMAN HILL: Ms. Bello, do you have  
 12 anything you'd like to add?  
 13 MS. BELLO: No, thank you.  
 14 CHAIRMAN HILL: With that, I'll turn to the  
 15 Office of Planning.  
 16 MS. MYERS: Good morning. Crystal Myers  
 17 with the Office of Planning. The Office of Planning  
 18 recommends approval and stands on the record with the  
 19 staff report.  
 20 CHAIRMAN HILL: Thanks, Ms. Myers.  
 21 Does the Board have any questions for the  
 22 Office of Planning?  
 23 (No response.)  
 24 Does the Applicants have any questions for  
 25 the Office of Planning?

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1 MS. FOWLER: And I'm Jennifer Fowler, the  
 2 architect.  
 3 CHAIRMAN HILL: All right. Ms. Fowler,  
 4 you're with us for the next one as. Well, is that  
 5 correct?  
 6 MS. FOWLER: (Nods head.)  
 7 CHAIRMAN HILL: I again, after reviewing the  
 8 record, don't have any particular questions for you.  
 9 Ms. Bello, your architect has done a very  
 10 good job with their application, so I don't have a lot  
 11 of questions. However, if you'd like to tell us  
 12 something about the case, you're more than welcome to.  
 13 Is there anything particular that they want  
 14 to hear from the Board?  
 15 COMMISSIONER MAY: Not something that I need  
 16 to hear, but something that the Board needs to hear,  
 17 which is that: Ms. Bellow is an employee at the  
 18 National Park Service and works with me but not for me.  
 19 And it's an unusual circumstance that anybody for the  
 20 park service comes before us, but I just thought I'd  
 21 make that disclosure just for the sake of the clarity of  
 22 the record.  
 23 CHAIRMAN HILL: Thank you. Thank you.  
 24 Thank you.  
 25 All right. So again, does the Applicant

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1 MS. FOWLER: No, thank you.  
 2 CHAIRMAN HILL: I'm going to go ahead and  
 3 turn to the audience. Is there anyone here with the  
 4 ANC?  
 5 (No response.)  
 6 Is there anyone here wishing to speak in  
 7 support of the application?  
 8 (No response.)  
 9 Is there anyone here wishing to speak in  
 10 opposition of the application?  
 11 (No response.)  
 12 With that then, I'd turn to the Applicant.  
 13 Do you have anything further you'd like to add?  
 14 MS. FOWLER: No, thank you.  
 15 CHAIRMAN HILL: I'm going to go ahead and  
 16 close the hearing. Is the Board ready to deliberate?  
 17 COMMISSIONER MAY, would you like to  
 18 deliberate?  
 19 COMMISSIONER MAY: No. I think -- I did get  
 20 some further advice from our legal counsel, I should  
 21 make it clear, related to my disclosure, that it would  
 22 not bias me in favor or against this particular  
 23 application.  
 24 CHAIRMAN HILL: No, thank you for providing  
 25 that clarity.

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<p style="text-align: right;">Page 18</p> <p>1 COMMISSIONER MAY: Also, make it clear: I  2 work with her and she doesn't work for me, Ms. Bello,  3 and I don't work for her either. Just so it's  4 completely clear.  5 CHAIRMAN HILL: The Board appreciates that,  6 you bringing it up; obviously, we don't know. I don't  7 have any concerns about your integrity during this case.  8 COMMISSIONER MAY: Why, thank you.  9 CHAIRMAN HILL: Thank you for clearing that  10 up.  11 So again, after reviewing the record and  12 being very comfortable with the analysis from the Office  13 of Planning, as well as again the support from the ANC  14 6B100, again additionally outreach that the neighbor has  15 gone through with regards to the nine letters she has  16 received, I would go ahead and make a motion to approve  17 the application No. 19432 as read by the secretary. The  18 motion has been made and seconded. All those in favor?  19 Aye. All those opposed? Motion passes, Mr. Moy.  20 SECRETARY MOY: The staff would record the  21 vote as 1-0 to 1. The second motion was Chair Hart,  22 also in support of Mr. Peter May and Ms. White, forward  23 seat vacant.  24 CHAIRMAN HILL: Thank you.  25 SECRETARY MOY: Waiving the requirements for</p>	<p style="text-align: right;">Page 19</p> <p>1 summary order or for order?  2 CHAIRMAN HILL: I'm sorry. Summary order,  3 please.  4 SECRETARY MOY: That'd be great.  5 CHAIRMAN HILL: I'm not clear whether I  6 asked for a summary order on the previous one or not?  7 SECRETARY MOY: You did.  8 CHAIRMAN HILL: Thank you.  9 SECRETARY MOY: All right. Next case is  10 19433 of Anita Puri and Robert Legg. Caption advertised  11 for special exception under title E, section 5201. And  12 from the lot occupancy requirements of subtitle E,  13 section 304.1 to construct a rear second-story addition  14 to an existing one-family dwelling RF-1 zone 1335  15 Massachusetts Avenue Southeast, square 1037 on lot 32.  16 CHAIRMAN HILL: Good morning again. If you  17 could please introduce yourselves from my right to left.  18 MR. LEGG: Rob Legg, one of the owners.  19 MS. PURI: Anita Puri, homeowner.  20 MS. FOWLER: And Jennifer Fowler, the  21 architect.  22 CHAIRMAN HILL: Okay, great.  23 Ms. Fowler, I was a little bit more  24 interested in this one, I suppose. I'm just kind of  25 curious if you could tell me a little bit more about the</p>
<p style="text-align: right;">Page 20</p> <p>1 project. And I again don't have a lot of particular  2 concerns, but I'm just a little curious, more curious if  3 you could just describe the project a little more.  4 Does the Board have any other particular  5 questions they'd like to hear from?  6 MS. WHITE: I had one question: I wondered  7 if there were any revised or new comments from the ANC?  8 Because I gather there'd been some recent revisions to  9 the original plan.  10 CHAIRMAN HILL: Okay.  11 And then also, COMMISSIONER MAY, do you  12 think you have any?  13 COMMISSIONER MAY: Yeah. I don't recall the  14 exact boundary of the historic district, but I was  15 assuming this was in the historic district and whether  16 HP reviewed it.  17 CHAIRMAN HILL: If you could just speak to  18 those points as you're going through the presentation.  19 MS. FOWLER: The project did go before the  20 ANC and was approved. We had a number of neighbor  21 letters, I believe it was six letters, and they didn't  22 have any concern, they approved it for historic concerns  23 as well as zoning. We went -- it was on the consent  24 agenda for historic last month, so we were not at the  25 hearing specifically because we didn't have concern</p>	<p style="text-align: right;">Page 21</p> <p>1 about visibility from the front; that's my  2 understanding. We did include a sight line study in the  3 application, in the plans, that shows the third floor is  4 not going to be visible. So we are presenting to the  5 HPRB on the 23rd just to kind of review the project with  6 them and address any concerns they may have.  7 So basically, the scope of the work is  8 starting at the top we have a small third floor  9 addition, it's not the full footprint the house, and  10 it's set back almost 14 feet from the front wall of the  11 house. It's going to be built right atop the ceiling  12 choice of the second floor, so we're going to minimize  13 the height with that by keeping the structure minimal.  14 And then it's only going to come up above the roof line  15 of the front, I believe it's three feet but under four  16 feet. So when you're looking at the front of the roof  17 -- and we actually have roof photos -- if you look at C6  18 of your plans, it's going to be approximately where just  19 in front of where the beams are located. And at that  20 point it'll be only under four feet tall. And the  21 reason is because the attic is very deep, it's about  22 five feet. So we're carving into that attic space to  23 create this space, this new third floor. We also have a  24 very tall parapet wall in the front and a turret as  25 well. And the house is pretty tall, so the visibility I</p>

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1 think is definitely going to be not a problem in this  
 2 case.  
 3 We have a roof deck coming off the back of  
 4 that room with solid parapet walls along the edges to be  
 5 able to maintain privacy as much as possible for them,  
 6 as well as their neighbors. Along the rear we have a --  
 7 we're basically taking an existing one-story structure,  
 8 it has a cellar beneath it, but it's the one story, all  
 9 but a sun room, with bay windows, fully constructed.  
 10 We're going to rebuild that with a second floor above  
 11 it. We are extending back a few feet beyond that  
 12 footprint, but keeping a deck on the first floor. So  
 13 we're not expanding the first floor but the second floor  
 14 will be expanded a little bit deeper above. And that's  
 15 what's triggering the zoning release, is the extension  
 16 of the second floor addition.  
 17 So if you look at sheet A4, for example, the  
 18 east elevation, you can see the brick dog leg, and then  
 19 you have the extension which is with the siding. That's  
 20 the part that's over the existing footprint. And then  
 21 there's the bay projection that's passed that, that's  
 22 got panel detail, that's the additional square footage  
 23 that we're asking for. Additionally, we have the deck  
 24 at the first floor coming out beyond that, that's  
 25 accounting for a couple other percentage points over the

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1 visible given the height. But if somebody had a  
 2 question at HPRB, make sure you cover all the points.  
 3 We wouldn't want to give you an approval here and then  
 4 you have a problem there.  
 5 MS. FOWLER: When you're up on the roof you  
 6 can see -- I was up there with the owner -- it's pretty  
 7 obvious it's not going to be visible. But you're right,  
 8 maybe a 3-D model that has sight line study or something  
 9 would be helpful.  
 10 COMMISSIONER MAY: I'm not trying to run up  
 11 your fee as the Applicants, but whatever you think is  
 12 necessary, I just want to make sure you get through  
 13 HPRB.  
 14 MS. FOWLER: Okay. Thank you.  
 15 CHAIRMAN HILL: All right. Does the Board  
 16 have any other questions?  
 17 (No response.)  
 18 Would the Applicant like to add anything?  
 19 MR. LEGG: No, thank you.  
 20 MS. FOWLER: No need to add.  
 21 CHAIRMAN HILL: With that, again turn to the  
 22 Office of Planning.  
 23 MS. VITALE: Good morning, Mr. Chair. I'm  
 24 Alisa Vitale with the Office of Planning.  
 25 And the Office of Planning will rest on the

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1 50 percent that we're asking for. And that deck,  
 2 because it's so high above the backyard, counts towards  
 3 our coverage.  
 4 CHAIRMAN HILL: Great.  
 5 Does the Board have any other questions? Go  
 6 ahead, COMMISSIONER MAY.  
 7 COMMISSIONER MAY: So you submitted the due  
 8 diagrams from across the street?  
 9 MS. FOWLER: Yes.  
 10 COMMISSIONER MAY: That's across Mass.  
 11 Right?  
 12 MS. FOWLER: (Nods head.)  
 13 COMMISSIONER MAY: Then there's this view  
 14 from A Street as well? Would that be further away?  
 15 MS. FOWLER: I really don't believe so.  
 16 It's not even taller than the front parapet. So if you  
 17 look at the sight line --  
 18 COMMISSIONER MAY: -- you have the roof  
 19 across the way?  
 20 MS. FOWLER: Yeah.  
 21 -- it would be physically impossible.  
 22 COMMISSIONER MAY: Just for the sake of your  
 23 smooth HPRB review, you may want to include the view  
 24 from A Street to demonstrate that. I mean, it was  
 25 pretty apparent to me without due diagrams it would be

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1 record in support of the application, and I'm happy to  
 2 answer any questions at this time. Thank you.  
 3 CHAIRMAN HILL: Okay, great.  
 4 Does anyone have any questions for the  
 5 Office of Planning?  
 6 (No response.)  
 7 Does the Applicant have any questions for  
 8 the Office of Planning?  
 9 MS. FOWLER: No, thank you.  
 10 CHAIRMAN HILL: Turn to the audience: Is  
 11 there anyone from the ANC wishing to speak?  
 12 (No response.)  
 13 Is there anyone here wishing to speak in  
 14 support of the application?  
 15 (No response.)  
 16 Is there anyone here wishing to speak in  
 17 opposition of the application?  
 18 (No response.)  
 19 With that, I turn back to the Applicant. Is  
 20 there anything you wish to add before I close the  
 21 hearing?  
 22 MS. FOWLER: Nothing more to add. Thank  
 23 you.  
 24 CHAIRMAN HILL: I would like to mention  
 25 also, Ms. Fowler, that again the application that you're

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<p style="text-align: right;">Page 26</p> <p>1 bringing forward to us are very concise and very easy  2 for us to kind of at least read through and evaluate.  3 And you are fortunate to have an architect  4 in this manner, whether her fee gets raised or not I  5 think you're getting a deal.  6 So with that on approved -- I don't know  7 what it's called, stamp of approval or something -- is  8 the Board ready to deliberate? Okay, I'll close the  9 hearing.  10 Again after reviewing the record and the  11 analysis of the Office of Planning, I was also just a  12 little bit more curious about hearing some of the  13 details in terms of the plans. But I would also be in  14 agreement with the analysis of the Office of Planning,  15 as well as the ANC 6B was again in unanimous approval.  16 They seem to be very busy, that ANC, for you as well; I  17 don't know if you went there that same day or not, so.  18 But they got unanimous approval, 10 to 0:0, also six  19 letters in support. I would go ahead and make a motion  20 to approve application No. 19433 as read by the  21 secretary.  22 COMMISSIONER MAY: I'd second it but I have  23 a comment.  24 CHAIRMAN HILL: Okay, please.  25 COMMISSIONER MAY: And these are all minor.</p>	<p style="text-align: right;">Page 27</p> <p>1 One is: First of all, the approval for addition in  2 historic district is a relatively rare thing, certainly  3 in that part of the city it has happened historically in  4 the past. I think coming up with something that works  5 with that very well is commendable in many ways.  6 Certainly, the architect deserves credit for that. I  7 assume that the Applicant also does, that your  8 aspirations for this were fairly modest; because  9 sometimes they're not. So I think it's commendable all  10 around. I will agree that ANC is busy, that's my ANC so  11 I know they're very busy. I don't go to the meetings  12 but I get reports about them.  13 And then the last thing is: If we do go  14 ahead and said approve this, I think everybody needs to  15 be very clear that this approval does not provide any  16 leverage with HPRB, they have independent decisionmaking  17 authority. Sometimes people try to argue HPRB approvals  18 mean something to us here, and in certain circumstances  19 they might. But going the other way: This is  20 relatively unusual, usually we don't get the first bite.  21 But I don't think we'll have any trouble there, we  22 shouldn't.  23 CHAIRMAN HILL: Thank you, COMMISSIONER MAY.  24 Again, the motion, approve application under  25 19433 as read from the secretary.</p>
<p style="text-align: right;">Page 28</p> <p>1 And, COMMISSIONER MAY, you were seconding.  2 Is that correct?  3 COMMISSIONER MAY: (Nods head.)  4 CHAIRMAN HILL: So the motion is made and  5 seconded. All those opposed? Motion is passed, Mr.  6 Moy.  7 SECRETARY MOY: Record vote as 4 to 0 to 1.  8 This is on the motion by Chairman Hill to approve the  9 application as requested relief by the Applicants.  10 Second motion is by Mr. Peter May; also in support, Ms.  11 White, and Vice Chair Hart. The motion carries.  12 CHAIRMAN HILL: Can we do a summary order,  13 please?  14 SECRETARY MOY: Yes, sir.  15 CHAIRMAN HILL: Thank you.  16 Thank you all very much.  17 SECRETARY MOY: The next application, if the  18 parties could come to the table, application No. 19398  19 of Jim Borbely. The caption advertisement is for  20 variances from the nonconforming structure requirements,  21 subtitle C, section 202.2, the lot occupancy  22 requirements of subtitle E, section 304.1, the rear area  23 requirements of subtitle E, section 306.1 which would  24 permit the construction of a one-story rear deck  25 addition to an existing one-family dwelling, RF-1 at</p>	<p style="text-align: right;">Page 29</p> <p>1 1922 1st Street Northeast, square 4342, lot 23.  2 CHAIRMAN HILL: Is the Applicant here?  3 Mr. Moy, this is a new one on me.  4 SECRETARY MOY: Well, typically the Board  5 can move forward with the next application, and we will  6 see -- the Board can recall this case.  7 CHAIRMAN HILL: Okay, let's put it at the  8 end and see what happens.  9 SECRETARY MOY: So we're at case application  10 No. 19427 of The Bird, caption advertised for a special  11 exception under the rear yard requirements of subtitle  12 G, section 405.2, variances for the nonconforming  13 structural requirements, subtitle C, section 202.2, FAR  14 requirements of subtitle G, section 202.2, to construct  15 a retractable awning over a terrace dining area for a  16 restaurant. MU-4, 1337 11th Street Northwest square  17 339, lot 33. This is one that has been advertised.  18 CHAIRMAN HILL: Great, thank you.  19 Would anyone like to come forward? Good  20 morning could you just please introduce yourself from my  21 right to left? You need to push the button there.  22 MR. WINER: I'm David Winer.  23 CHAIRMAN HILL: And Mr. Winer, you're the  24 property owner, the attorney, the Applicant? You're the  25 applicant?</p>



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1 MR. WINER: I'm the Applicant and the owner  
 2 of the business.  
 3 CHAIRMAN HILL: Okay, great.  
 4 MR. FANNING: Good morning, Chairman,  
 5 members of the Board. John Fanning, I'm the Chairman of  
 6 ANC 2F, and I'm also the commissioner, and I represent  
 7 this single member district that this case is being  
 8 heard in today.  
 9 CHAIRMAN HILL: Thank you, Mr. Commissioner.  
 10 It was Mr. Winer?  
 11 MR. WINER: Winer, yes.  
 12 CHAIRMAN HILL: Mr. Winer, we are need to  
 13 hear kind of a presentation as to how you're meeting the  
 14 criteria for the relief that's being requested. As you  
 15 know, the Office of Planning is in denial in terms of  
 16 the application, and to that the test is not being met  
 17 for the variance relief. I thought there was some  
 18 confusion, perhaps with the Office of Planning, as to  
 19 what kind of relief was that you might be seeking or  
 20 needing. And so I don't know whether you have worked  
 21 with the Office of Planning to get on the same page with  
 22 that. Do you know?  
 23 MR. WINER: Well, I mean, we have kind of  
 24 two arguments here: One being we feel we shouldn't even  
 25 be sitting here seeking a variance because we simply

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1 Commissioner fanning, I guess we did see  
 2 your report, you're obviously here to speak in support  
 3 of the application.  
 4 MR. FANNING: That's correct. We should  
 5 have a letter on file.  
 6 CHAIRMAN HILL: We do. We also have a  
 7 letter from the counsel member also that came in I think  
 8 yesterday in support.  
 9 But first I guess I'll go ahead and, as Ms.  
 10 Glazer pointed out, I'm going to make sure what the  
 11 Office of Planning, hear a little bit about the  
 12 questions that Ms. Glazer had also brought to the  
 13 Board's attention.  
 14 MS. MYERS: Hello. Crystal Myers for the  
 15 Office of Planning.  
 16 The Office of Planning's actually just  
 17 following what the zone administrator has decided for  
 18 the definition of the type of relief that is needed. As  
 19 you know, there were two referrals from the zoning  
 20 administrator, but the last one is the one we're  
 21 following. And it says they need variance relief, two  
 22 types of various relief, and the special exception. So  
 23 Office of Planning had requested that that Applicant  
 24 provide arguments showing that they are following or  
 25 that they were justified for a variance relief, and the

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1 feel as though it's not correct. But I'd like to put  
 2 that in front of you, and then another argument as well.  
 3 CHAIRMAN HILL: Okay. Well, it's your  
 4 presentation. So you can do whatever you'd like to do  
 5 with it. You can go ahead and again walk us through the  
 6 project, walk US through the relief that you're asking  
 7 for and how you meet the criteria for the standards of  
 8 that relief.  
 9 MR. WINER: I have handouts. Can I give  
 10 them to you?  
 11 CHAIRMAN HILL: Sure, you can give them to  
 12 us.  
 13 Ms. Glazer, you have a comment?  
 14 MS. GLAZER: Mr. Chair, perhaps OP could  
 15 explain whether OP believes the ZA referral represents  
 16 the necessary relief or not; it's unclear to me.  
 17 Because now we're having a third option: The Applicant  
 18 is saying perhaps it shouldn't be here, perhaps no  
 19 relief is required. The ZA sited particular types of  
 20 relief that was needed in OP's report, is a little  
 21 unclear to me in that respect.  
 22 CHAIRMAN HILL: Okay.  
 23 Mr. Winer, why don't you go ahead and hand  
 24 out your handouts to the secretary, and we can start  
 25 with that?

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1 arguments that were submitted -- actually, the  
 2 Applicant's representative had actually said that they  
 3 did not have arguments, any new arguments, to give, the  
 4 original arguments did not really fully address the  
 5 variance relief. And after working with the Applicant  
 6 and their representative, the ultimate decision was that  
 7 there was nothing new that could be provided because  
 8 there was disagreement on the whole issue of even  
 9 needing variance relief.  
 10 And the Office of Planning does not take a  
 11 stance on that; we refer to the zoning administrator.  
 12 And since the zoning administrator submitted a letter  
 13 saying there's no variance relief, the Office of  
 14 Planning is just working with that determination.  
 15 CHAIRMAN HILL: So I'm going to turn it back  
 16 to you, sir, in terms of: You can go ahead and present  
 17 your case and I guess -- you're saying you don't need to  
 18 be here, the zoning administrator thinks you do need to  
 19 be here. So, but you can go ahead and present your case  
 20 any way you like. I would like to hear what it is --  
 21 please go ahead and tell us what your opinion is, I  
 22 suppose, and also how you can meet the variance if  
 23 you're trying to meet the variance.  
 24 MR. WINER: Well, firstly, as I said, my  
 25 name'S David Winer. I'm a the principal of The Bird

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1 Restaurant at 1337 11th Street, and we are requesting a  
 2 permit to install a retractable awning on our rear roof  
 3 deck area, and that's why we're sitting before you. I'm  
 4 a D.C. resident for 21 years, we operate four other  
 5 local businesses in the area, in the neighborhood.  
 6 I'm here to explain to you -- excuse me, I'm  
 7 going to read some notes, I don't mean to come across as  
 8 a Teleprompter.  
 9 CHAIRMAN HILL: That's all right.  
 10 MR. WINER: Given the circumstances, there  
 11 are two strong reasons to grant approval for the awning  
 12 without having to consider the variance or the special  
 13 exception standards. First, we don't believe zoning  
 14 relief is required for an awning. Second, if you  
 15 determined today that the relief is necessary, we  
 16 believe that the fundamental fairness and equity  
 17 dictates that the zoning approval be granted because we  
 18 relied on the decision of the zoning office to approve  
 19 it and ordered our very expensive awning system, and  
 20 then the zoning administrator office changed their minds  
 21 twice on us.  
 22 I'll walk you through the reasons for both,  
 23 why zoning relief is not required: My first argument is  
 24 a technical one; sorry, I'm obviously not a zoning  
 25 attorney by any stretch. I did consult with a couple of

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1 the area under the awning cannot count toward GFA  
 2 because it does not meet the necessary components of the  
 3 measurement test. You can't measure the exterior face  
 4 of exterior walls of an awning because it doesn't have  
 5 exterior walls; it has posts, no walls, and they're not  
 6 the same.  
 7 Secondly, under the definition of GFA only  
 8 buildings count towards GFA, and the awning is not a  
 9 building, therefore it doesn't count towards GFA. The  
 10 building is designed as the structure is requiring  
 11 permanent placement on a ground that has one or more  
 12 floors and a roof supported by columns or walls. The  
 13 proposed awning on the roof of the first floor addition  
 14 is not permanent, it is retractable, it is not used  
 15 year-round, it will only be used a limited number of  
 16 days of the year. The area is temporarily covered by  
 17 the awning, is not permanent, and therefore not part of  
 18 the building, thus it cannot count towards GFA and rear  
 19 yard measurements.  
 20 The two other provisions of the zoning  
 21 regulation helps support my argument: First, looking at  
 22 the definition of the building area, which is really lot  
 23 occupancy, it specifically excludes areas covered by  
 24 awning. The zoning code says: "Building areas shall  
 25 not include building components or pertinences dedicated

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1 them, I discovered the task was a difficult one. And  
 2 unfortunately, zoning lawyers are very expensive, and  
 3 after spending \$38,000 on an awning and considerable  
 4 other legal consulting fees, permit runner fees, and  
 5 several thousand dollars it took to sit before you, my  
 6 resources are somewhat exhausted on this. Consequently,  
 7 I hope you'll bear with me as I make this technical  
 8 argument, and I've given you handouts that were also  
 9 submitted through the ISIC system last night that walk  
 10 you through it as well. First thing we believe is the  
 11 awning does not count towards the building's gross floor  
 12 area because the awning is temporary and does not have  
 13 walls. The zoning regulation defines gross floor area  
 14 as the sum gross of horizontal areas of the several  
 15 floors of all buildings on a lot measured from the  
 16 exterior faces, exterior walls, from the center line of  
 17 wall separating two buildings. The rules of measurement  
 18 subtitle B of the zoning regulation states the same  
 19 thing: GFA is measured from the exterior faces of  
 20 exterior walls and from the center line walls separating  
 21 the two buildings. Here the area covered by the  
 22 proposed awning does not have a permanent exterior wall  
 23 at the rear along the alley or on the side facing the  
 24 street. These are temporary panels on the sides to  
 25 protect against weather, that rollup, thus by definition

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1 to the environmental sustainability of the building,  
 2 cornices, and eaves, and similar ornamental or structural  
 3 features, awnings specifically serving a window, porch,  
 4 deck, or door, uncovered stairs, landings, and  
 5 wheelchair ramps that serve the main floor. Here the  
 6 awning will serve a deck, and thus is exempt from the  
 7 building area; it stands straight and it should also be  
 8 exempt from the GFA.  
 9 Second, the rationale is supported by the  
 10 new definition of meaningful connection between the  
 11 parts of a building in order for the parts to be a  
 12 single building for zoning purposes. A meaningful  
 13 connection must be fully above grade, enclosed, heated,  
 14 and artificially lit. If the connection does not have  
 15 at least these three components, it is not deemed a  
 16 sufficient building to connect two parts. Applying the  
 17 standard in the awning area, while it meets the first  
 18 prong of a test, the awning area is not fully enclosed,  
 19 is not fully heated, and is not artificially list,  
 20 consequently it could not qualify as a building  
 21 connection and similarly should not qualify as an area  
 22 comping towards GFA. And for this reason, the Board  
 23 should find that our temporary awning does not count  
 24 toward the gross floor area of the building.  
 25 Second, the rear yard compliance. The

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1 awning does not count towards the rear yard requirement  
 2 because it does not have any rear wall from which to  
 3 measure the rear yard. The property is located in the  
 4 MU-4 district and abuts a 10-foot alley. The MU-4  
 5 district, which where a lot abuts an alley for that  
 6 portion of the structure below, a 25-foot horizontal  
 7 plane, the rear yard is made from the center line of the  
 8 alley to the rear wall of the building. Mine does not  
 9 have a rear wall, so it does not have a rear yard, thus  
 10 no rear yard relief is necessary. These are my  
 11 technical arguments as to why we do not require zoning  
 12 relief for an awning permit.

13 CHAIRMAN HILL: Mr. Winer, I appreciate your  
 14 argument in which you're speaking of. What I'm trying  
 15 to understand: It seems that is the argument you need  
 16 to be giving to the ZA? Is that correct? Or that's the  
 17 argument that you had with the ZA?

18 MR. WINER: Correct.

19 CHAIRMAN HILL: So what we're here for -- we  
 20 don't give permits, we are here to approve variances and  
 21 to approve special exceptions. So I definitely want to  
 22 -- I guess I'm interested in -- well, I'll ask the Board  
 23 whether the questions they have for you in terms of --  
 24 so you are not prepared at this time to necessarily make  
 25 a case for the special exception of the variance, you

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1 wasn't necessary. The Board has also considered what I  
 2 think the Applicant's trying to say, sort of equitable  
 3 reliance in terms of as a ground for granting a permit  
 4 -- excuse me, for granting a variance. But we would  
 5 have to get the whole history of what happened between  
 6 the Applicant and the ZA.

7 CHAIRMAN HILL: Okay, okay.

8 COMMISSIONER MAY?

9 COMMISSIONER MAY: I don't want to venture  
 10 too far into deliberations. But I guess I can do this  
 11 as a question to the Applicant: So are there any walls  
 12 whatsoever surrounding the deck?

13 MR. WINER: There's a fence on the south  
 14 side. If you want to consider that a wall. It's not  
 15 technically a wall.

16 COMMISSIONER MAY: I appreciate the fact  
 17 that your opinion is it might not be a wall. Whereas,  
 18 it is technically a wall is not something I think you  
 19 can decide, it's something that the zoning administrator  
 20 would probably be deciding.

21 MR. WINER: May I? It isn't existent and  
 22 it's not part of this permit process.

23 COMMISSIONER MAY: I understand. But as  
 24 soon as you have that lawn combination with some kind of  
 25 roof over it, you've triggered the requirement -- it's

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1 just don't think you should be here for that.

2 MR. WINER: Well, the ultimate decision on  
 3 whether relief is needed rests with this Board.

4 CHAIRMAN HILL: If there is an argument for  
 5 the special exception of the variance to be proved.

6 MR. WINER: Or if relief is needed at all.  
 7 Right?

8 CHAIRMAN HILL: No, I don't think -- well,  
 9 now I'm going to look to Ms. Glazer as to whether relief  
 10 -- I mean, I have not thought that we were deciding  
 11 whether relief was necessarily needed.

12 MS. GLAZER: Usually if an application is  
 13 self-certified, you just review it as certified. In  
 14 this case the Applicant is making a different claim.  
 15 And I was originally confused because OP's report in  
 16 page 1 under the word "recommendation", first paragraph  
 17 states: "The applicant disagrees with the zoning  
 18 administrator on this determination." I wasn't sure  
 19 what was meant by that; from OP's testimony today it  
 20 appears that they either agreed or are deferring to the  
 21 ZA determination. I thought perhaps OP thought  
 22 differently if it was needed.

23 So this is a new issue that's being raised  
 24 right now from the Applicant's testimony and filings.  
 25 The Board has on occasion said that they believed relief

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1 the way I'm reading with the zoning administrator.

2 And the second thing is: Are you aware of  
 3 what happens when there is a roof over a porch or a  
 4 deck? Are you aware what that means in terms of lot  
 5 occupancy or rear yards or anything else?

6 MR. WINER: No.

7 COMMISSIONER MAY: That may well also be  
 8 part of what the zoning administrator's opinion is. You  
 9 cite the fact that there may be a temporary roof over it  
 10 but it's open at the sides. Being open at the sides  
 11 does not mean that you are not subject to lot occupancy  
 12 and we're yard requirements, because if you have a  
 13 two-story porch it is subject to lot occupancy  
 14 restrictions, or if there's a covering on it that has  
 15 opening, a trellis could get by if the trellis is spaced  
 16 at like two feet or something like that; I forget what  
 17 the rule is. You have to have two feet of air between  
 18 each horizontal element. These are things that wind up  
 19 pushing you into variance territory. So I appreciate  
 20 the arguments you're making, you're picking particular  
 21 words, some of those are variances in definition.  
 22 What's a deck? Is a deck a technical term as defined in  
 23 the zoning regulations? I'm not sure it is. Do you go  
 24 to the commonsense definition of it? Is it something  
 25 that's on posts that's over a rear yard or is it just a

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1 floor over a roof? I wouldn't necessarily rely on those  
 2 specific interpretations of individuals words within the  
 3 zoning regulations because the zoning regulation, it  
 4 really is a complete body and all of them are considered  
 5 again. And that's why we rely on the zoning  
 6 administrator, to give those interpretations when you're  
 7 talking about something that's a little bit different.  
 8 But when you were talking about an awning over a window,  
 9 that's the something that is very clearly exempt under  
 10 the zoning regulations. If you're talking about an  
 11 awning that was completely retractable and was not  
 12 suspended on posts and did not involve those siding  
 13 closures, maybe that would work, too, I don't know.  
 14 What you're proposing here seems like it is -- you've  
 15 got four walls and a roof, granted they could be peeled  
 16 back at certain times, but when it's enclosed it's  
 17 enclosed. Maybe it's a few days out the year that it's  
 18 actually fully enclosed, but it still is an enclosed  
 19 space.

20 I appreciate the arguments you're trying to  
 21 make, but I'm not sure necessarily, first of all, we  
 22 could overrule the zoning administrator and decide it  
 23 doesn't need relief, nor do I think you would prevail in  
 24 argument with that, based on those reasons, with the  
 25 zoning administrator, of variance relief.

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1 to make?

2 MS. GLAZER: I just want to say it's very  
 3 clear from the revised ZA referral letter that the ZA  
 4 considers this an addition to the structure, an  
 5 expansion. And that was the basis of the decision.  
 6 This letter's dated February 3rd. I'm assuming that  
 7 Mr. Winer could appeal that determination. But I think  
 8 that would be either try to make his case or appeal the  
 9 referral of determination.

10 CHAIRMAN HILL: So he can appeal the  
 11 referral?

12 MS. GLAZER: He has the right. I'm not  
 13 sure -- usually it's an appeal of the denial of a  
 14 permit, but this is a determination.

15 CHAIRMAN HILL: You had mentioned like an  
 16 equitable hardship in terms of the Board had granted --  
 17 this is not something I had seen -- that the Board had  
 18 granted variance relief due to equitable hardship, which  
 19 seems to be a bit of an argument that Mr. Winer is  
 20 making in terms of the ZA had --

21 MS. GLAZER: That would be reliance more.  
 22 Only if the ZA had indicated he didn't need relief and  
 23 then erred and then decided he did need relief. And I'm  
 24 not sure that's what the facts are here. I haven't  
 25 really reviewed the submission that the Applicant just

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1 CHAIRMAN HILL: So before I move back over  
 2 to you, Ms. Glazer, I was just curious of the Office of  
 3 Planning. Again, the comment was that: There was a  
 4 difference of opinion perhaps and/or are you just  
 5 deferring now to the zoning administrator?

6 MS. MYERS: Yes. I mean, the Office of  
 7 Planning either receives certified I guess applications,  
 8 or self-certified sorry, or the zoning administrator  
 9 provides a referral letter. In this case the zoning  
 10 administrator was the one that required the letter. And  
 11 we followed the determination in the letter. We did not  
 12 take a stance either way on this. The only thing I've  
 13 asked throughout the process was to get more information  
 14 about how the Applicant feels they are justifying the  
 15 different areas of relief, and that was the issue I had,  
 16 if I had any. But I know the Applicant has had  
 17 conversations with the zoning administrator, so my only  
 18 point was: What did the zoning administrator ultimately  
 19 decide? Which was the letter -- there were two versions  
 20 of the letter, the second version actually clarified  
 21 more and went from having two special exceptions and one  
 22 variance to two variances and one special exception. So  
 23 we followed what was requested in the letter.

24 CHAIRMAN HILL: Okay.  
 25 Ms. Glazer, you had a comment you're looking

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1 made. It seems it's more of an honest disagreement with  
 2 the assessment.

3 CHAIRMAN HILL: Okay.

4 Before I come back to the Applicant, then I  
 5 was going to ask the Commissioner here if you could just  
 6 kind of -- you've come down, so I'm curious do hear your  
 7 thoughts.

8 MR. FANNING: Well, it was a lot of  
 9 back-and-forth regarding this BZA case as it was now  
 10 referred to the Board. Our understanding was that he --  
 11 first of all, it's an existing structure, so this deck  
 12 was not just previously added on. It's been part of the  
 13 property since the property existed. And I think the  
 14 decision was based on the posts that would support the  
 15 awning. And that's why the decision was reached why the  
 16 zoning administrator. So the awning being a permanent  
 17 structure I think is not correct. Nobody would be  
 18 sitting out there in the winter. And when Mr. Winer  
 19 first started this process, at least from a Ms. Kathleen  
 20 Beeton (phonetic) from DCRA, if you review some of the  
 21 documentation, it looked like he was going to be granted  
 22 the permit to move forward. And then I guess after they  
 23 consulted -- after it went to the zoning administrator,  
 24 it was apparently a difference of opinion. Now, for the  
 25 record, this awning would not be visible from the north

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1 or the east. As you know, this isn't a historic  
 2 district.

3 CHAIRMAN HILL: Actually, Commissioner  
 4 Fanning, I have some more questions for you. I'm just  
 5 going to take a quick couple-minute break, if I could,  
 6 and I'll come right back.

7 MR. FANNING: Sure.  
 8 (Whereupon a short recess is taken.)

9 CHAIRMAN HILL: So let's see we're going to  
 10 get started back here again. I can see someone joined  
 11 us, which I will get introduced to in one second.

12 Commissioner Fanning, do you have something  
 13 you'd like to say?

14 MR. FANNING: Yeah. Just in my closing  
 15 remarks of the history of this corner: This was a  
 16 blighted property, a very dark corner if you will, and  
 17 Mr. Winer, who has been a partner in the community both  
 18 on committee issues and as a business owner, and for  
 19 years we tried to get the City to do stuff about the  
 20 graffiti on the building and the illegal activity that  
 21 was going on there. And we just feel that his financial  
 22 investment, improving the neighborhood and the property,  
 23 that this variance should be considered. Thank you.

24 CHAIRMAN HILL: Great, thank you,  
 25 Commissioner.

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1 it's rainy or something like that. It's not like we're  
 2 debating whether or not we can have service out there,  
 3 it's just this awning. And I have been part of this  
 4 back-and-forth and back-and-forth where it was okay and  
 5 then it wasn't okay and then it was okay. And I believe  
 6 it's poles that's been the stumbling block. Hew as  
 7 going to have some side windows and he has agreed to  
 8 take those out.

9 So it's just a question of awning. And I  
 10 think -- this is not my area of expertise -- but it's a  
 11 variance, and I think this is the kind of thing you  
 12 would absolutely give a variance to. It's improved the  
 13 City, it's improve the tax space of the City, it's  
 14 improved the neighborhood; it's a win/win/win/win all  
 15 the way around. This isn't someone who wants to do loud  
 16 music, no more single cigarettes, no more little glass  
 17 bottles that they're selling for God knows what. I  
 18 think this something that the Board should be supportive  
 19 of, and I know that Council Member Evens strongly  
 20 supports this as well. Thank you.

21 CHAIRMAN HILL: Great, thank you.  
 22 Do you have something else the,  
 23 Commissioner?

24 MR. FANNING: No, thank you.

25 CHAIRMAN HILL: So I guess, and I'll let the

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1 Could you please introduce yourself?

2 MR. CAMPBELL: I'm Sherry Campbell. I'm  
 3 constituents director for council member Jack Evans.  
 4 I'm also a neighbor of this property.

5 CHAIRMAN HILL: Ms. Campbell, were you  
 6 coming down to give testimony?

7 MS. CAMPBELL: Can I say a few words?

8 CHAIRMAN HILL: Sure, of course.

9 MS. CAMPBELL: I just wanted to say/add on  
 10 this part: It was a horribly blighted building that  
 11 very much frustrated the residents and our office,  
 12 because there was one little shop downstairs that had  
 13 the barred windows and everything else and sold single  
 14 cigarettes, so we couldn't get it zoned as a vacant  
 15 property or a blighted property. We couldn't get the  
 16 owners to sign documentation to let the City come in and  
 17 remove graffiti. It was just horrible, for years and  
 18 years it was like this. So finally the new owner came  
 19 in, took the building over, put a lot of money into it,  
 20 brought it up to code, and then Mr. Winer came in to  
 21 bring a restaurant, which was very much everybody was  
 22 happy with it.

23 And there's going to be tables and people  
 24 are going to dine out there, it's not going to change  
 25 the number of people that can dine other than days that

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1 Board continue to ask questions, Mr. Winer you obviously  
 2 have a lot of support here and you're very fortunate  
 3 that you have the support that you have in terms with  
 4 your Commissioner and your ANC here and also  
 5 constituents services. We're all trying to help you.  
 6 You seem like you're -- I am sure this isn't a good  
 7 process for you, but you're also here and we're trying  
 8 to figure out what we can do to help get to a decision I  
 9 suppose, is really what I'm struggling with.

10 Again, we are -- you come to us applying for  
 11 something in term of like the variances and special  
 12 exceptions, and then there are standards with which we  
 13 have the evaluate those variances and special exceptions  
 14 for, and then the Applicant comes and provides an  
 15 argument in order for us to evaluate that variance. And  
 16 so right now I don't have an argument from you for those  
 17 particular variances and special exceptions; I have an  
 18 argument that you don't need those special exceptions.  
 19 So we don't really give legal advice per se, but I'm  
 20 trying to figure out how we can get to a place where we  
 21 can at least evaluate something that you're trying to  
 22 get us to look at.

23 So I guess I was kind of curious again: As  
 24 the Office of the Attorney General, Ms. Glazer, was  
 25 mentioning earlier, was that there's a determination

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1 letter that you received from the zoning administrator  
 2 for the variance and special exception that you claim  
 3 you don't need. So one could appeal that letter --  
 4 there's a 60-day appeal process timeline -- one could  
 5 appeal that and then that would be an appeal that would  
 6 be coming back before us as an appeal through the  
 7 determination letter.

8 I suppose it seems as though another -- and  
 9 this is the first time I've really had a chance to  
 10 really look at the timeline that you've submitted in  
 11 terms of if there was any kind of a zoning history or an  
 12 equitable reliance argument in terms of the timeline as  
 13 to how, you know, you were clearly told -- I say  
 14 "clearly told" -- but clearly told you were going to get  
 15 this, and then you bought the awning, and you did it.  
 16 And again, whether or not that argument is strong  
 17 enough, I don't know, I'm just kind of speaking to a few  
 18 items, and I'll again let the Board and Ms. Glazer  
 19 mention anything that maybe I had kind of missed.

20 But again, coming back to a place where we  
 21 can evaluate something, I definitely think that we are  
 22 going to continue this case. And so if there is -- and  
 23 it seems as though the constituent services person from  
 24 Council Member Evans' office has helped so far. Have  
 25 you been working with the zoning administrator or

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1 to that point. Right now we don't have that information  
 2 to be able to do that. That is the hard part; the  
 3 Office of Planning has provided this justification,  
 4 their report, and that report is based on the  
 5 information that's been submitted to us. So it is a  
 6 very hard place for us to be right now in terms of  
 7 trying to evaluate the case, because we don't have that  
 8 background information or justification to be able to  
 9 say, "Okay, it makes sense and we can support that" or  
 10 "We don't think it makes sense and we are not able to  
 11 support it."

12 CHAIRMAN HILL: Mr. Winer?  
 13 MR. WINER: Well, I'd like to address  
 14 several things that have been put on the table: And I  
 15 said from the outset I actually had two arguments, one  
 16 in which I was hoping you would determine no relief was  
 17 required and we could just go and get our building  
 18 permit. If you're not willing to have that conversation  
 19 or consider that --

20 CHAIRMAN HILL: I just want to be clear:  
 21 It's not "willing" or not; we're just not able to. It's  
 22 the information is not there to have that kind of  
 23 conversation. And, again, as far as we think the awning  
 24 is great and should be there, I don't have a problem  
 25 with an awning; it's not that there is -- it's just not

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1 discussing back and forth? When you said "back and  
 2 forth" I didn't know who the back and forth was with.

3 MS. CAMPBELL: Yes, the zoning  
 4 administrator, with Mark Macville (phonetic) and  
 5 Katherine Humphry.

6 CHAIRMAN HILL: I would ask that the zoning  
 7 administrator work with you to see if there is something  
 8 that can provide more clarity as to what it is -- and  
 9 maybe you won't have any luck, but I don't know. Again,  
 10 these are not where I have specifics of where, and  
 11 COMMISSIONER MAY is in architect so he may be able to  
 12 help me out more, if a pole is here, if a pole is not  
 13 there, I don't know what is triggering the zoning  
 14 administrator's decision. But I would again encourage  
 15 you to go back to the zoning administrator.

16 So those are my comments in terms of  
 17 continuing to the point where, at the very least I  
 18 suppose, you would have to come back with an argument as  
 19 it why the variance and the special exception meet the  
 20 criteria with which we could then give an opinion.

21 Does the Board have any other comments?  
 22 MR. HART: Just one. Without having that  
 23 information, it is hard for us to then say, "Okay, we've  
 24 evaluated this and now we can approve or not approve  
 25 it", but we have to have that information to kind of get

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1 the way we're able to evaluate whether or not a variance  
 2 or a special exception can be approved.

3 MS. CAMPBELL: Mr. Chair, I think what the  
 4 Applicant is saying is he wants the Board to make a  
 5 legal finding, a determination, that the ZA's  
 6 determination was incorrect, and the Board already  
 7 stated that's not before the Board at this point. The  
 8 Board does evaluate appeals of ZA decisions, but there's  
 9 no appeal before the Board. And if the Applicant wants  
 10 to file an appeal, he can.

11 Also, I think that the Board is going to be  
 12 wise to ask OP to provide a supplemental report  
 13 evaluating the submissions that have been made today,  
 14 which really make the argument or purport to make the  
 15 argument of zoning history as a basis for the variance.

16 CHAIRMAN HILL: I'm comfortable asking the  
 17 office about that.

18 Okay, Mr. Winer?  
 19 MR. WINER: So just to address several of  
 20 these things: One is we have gone back and forth with  
 21 the zoning administrator and have met with them,  
 22 attorneys involved, and they don't want to move from  
 23 their position. And so they kept recommending  
 24 appearance here. Further, that recent February memo  
 25 that was sent was a correction from a previous memo

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1 because they had sent it out mistakenly in the first  
 2 place several months ago.

3 CHAIRMAN HILL: Which memo are you speaking  
 4 of?

5 MR. WINER: February 3rd, that had corrected  
 6 that earlier memo, the reason we're sitting here in the  
 7 first place.

8 CHAIRMAN HILL: Exhibit 40.

9 MR. WINER: I think they asked for two  
 10 variances and a special exceptions, one variance and two  
 11 special exceptions.

12 Also, we had many conversations with OP, and  
 13 OP was not really willing to back an economic argument.  
 14 And as I said when I sat down that I had tried asking  
 15 for relief or to determine there was no relief required,  
 16 but then also I sit before you with my argument of  
 17 detrimental reliance, which I haven't expressed yet.  
 18 And just to address COMMISSIONER MAY, I know he's an  
 19 architect, and a roof is a roof, but I've never felt a  
 20 vinyl awning is considered a roof. This is a deck; it's  
 21 preexisting, there's a particular occupancy for it. And  
 22 I don't know whether it's here or there, but I do have  
 23 an argument of detrimental reliance and would like to be  
 24 heard.

25 CHAIRMAN HILL: All right, Mr. Winer. I'm

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1 would suggest, working again with the people here you  
 2 are very fortunate to have supporting you. And I'm sure  
 3 you're obviously a wonderful member of the community,  
 4 otherwise you wouldn't have these people here. And so  
 5 they can further help you along to get us to a place  
 6 where we can come back and listen to everything in a  
 7 more concise manner and then give us an opportunity to  
 8 evaluate those two proposals. Okay?

9 MR. WINER: Do I have any other choice?

10 CHAIRMAN HILL: This is your best choice.

11 MR. WINER: I have spoken with OP regarding  
 12 the financial side of it, and they had indicated that a  
 13 financial argument was not going to be --

14 CHAIRMAN HILL: Well, this is the first time  
 15 seeing clearly the zoning history and how -- again, I'm  
 16 using the legal term -- but the equitable reliance to  
 17 how this variance should be granted. So those are the  
 18 two avenues again I would suggest. So I think if you  
 19 can kind of work with your council members' office, as  
 20 well as the ANC there, they can help you with the Office  
 21 of Planning as well. All right?

22 I'm sorry, Mr. Miller [sic], go ahead.

23 Sorry. Mr. Miller was here for fourteen hours last  
 24 week.

25 COMMISSIONER MAY: At least you're not

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1 trying to help us all out here, believe it or not. Your  
 2 argument for detrimental reliance, that reliance, the  
 3 zoning history, as well as how you might be able to tie  
 4 that into a financial argument, is something I would  
 5 want to hear from a supplemental report from the Office  
 6 of Planning about. So what I would really suggest,  
 7 rather than going into this now -- because I don't think  
 8 you're ready to present it in this fashion -- I think  
 9 you could work with the -- again, going back to the  
 10 zoning administrator might not do you any good  
 11 obviously. So again, you could appeal, work with the  
 12 Office of Planning, and they can help you. You're not a  
 13 zoning attorney I understand; zoning attorneys do cost  
 14 money but then they also provide a much more tighter  
 15 case with which we can sometimes evaluate -- it doesn't  
 16 necessarily mean you're going to win, obviously.

17 But I would go work with the Office of  
 18 Planning to again speak about whether or not to appeal  
 19 the zoning administrator's determination letter, that  
 20 would bring us back here for a different reason in terms  
 21 of it being an appeal. And then also work with the  
 22 Office of Planning in terms of your argument for the  
 23 zoning history and equitable reliance and the financial  
 24 aspects as to why this variance should then be granted.  
 25 So there's two avenues given to you. So that's what I

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1 calling me Mr. Moy, that's a common mistake. Moy and  
 2 May.

3 Actually I have a question for Ms. Campbell.  
 4 You stated that you believe the argument for a variance  
 5 has been made in some manner, or you said it deserves a  
 6 variance. Can you explain to me how you think it meets  
 7 the tests for a variance, or you're just speaking sort  
 8 of in terms of the overall value of the project? You  
 9 need to turn the mic on or be closer.

10 MS. CAMPBELL: Probably, being very honest  
 11 with you, probably more emotionally than anything else  
 12 just because of the fact that if somebody took this  
 13 project and brought it from nothing to this, and I've  
 14 been back and forth and I think I said Matthew Marque, I  
 15 meant Matt LeBrandt is who I meant. And they've gone  
 16 back and forth on yes and no, and as a matter of fact  
 17 they did come back recently and say, "Well, maybe this",  
 18 but they had encouraged Mr. Winer to come to you, all  
 19 along. He's here because that's what they told him to  
 20 do.

21 COMMISSIONER MAY: They don't really  
 22 evaluate the merits of the case when they do that.

23 MS. CAMPBELL: As far as I know it's  
 24 strictly the poles and the fact that it's not going to  
 25 be -- I guess the fact that it's not going to be up

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1 year-round, which it isn't, and the fact that the  
 2 seating won't be there year-round, and it is a removable  
 3 awning.  
 4 COMMISSIONER MAY: Those are all reasons it  
 5 might not need relief as opposed to meeting the variance  
 6 test. The first part of the variance test is: Is there  
 7 something exceptional about the property that creates an  
 8 undue hardship in developing the way the Applicant  
 9 proposes? That's something that is the hardest part of  
 10 the variance test, that you can, that is not being met  
 11 at least in what's in the record so far. It is frankly  
 12 a very hard thing to meet for a property like this,  
 13 where it is one of a row of several townhouses that are  
 14 exactly the same way. And maybe there's an argument  
 15 having to do with its commercial use; I don't know. But  
 16 again, none of that argument is made. If that is what  
 17 has to be done -- and it's not a financial feasibility  
 18 argument, that's a very hard thing to prove -- but it  
 19 has to do with the unique circumstances associated with  
 20 the use maybe; I don't know. So far there's nothing in  
 21 the record to demonstrate it meets the first prong of  
 22 the variance test.  
 23 MS. CAMPBELL: What about the fact that when  
 24 he decided to open this restaurant it was with the  
 25 understanding, and that does they go back to where they

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1 my detrimental reliance?  
 2 CHAIRMAN HILL: I just don't think you're  
 3 going to get there today. I'm just trying to help you,  
 4 which is if you come back after doing everything we did,  
 5 then you'll have a better shot. If I listen to it now  
 6 then I'm not going to listen to it again. I think it  
 7 takes away from your opportunity later.  
 8 COMMISSIONER MAY: I also think, though,  
 9 that we need -- the detrimental reliance argument was  
 10 not made in advance, and not part of what the Office of  
 11 Planning evaluated. I think we need to hear their  
 12 opinion on this, we need to hear the Office of Planning  
 13 to weigh in on whether there's sufficient basis there.  
 14 MR. WINER: Let me just reiterate that I did  
 15 present this to the Office of Planning and it was  
 16 rejected as a financial argument and they would not  
 17 support it.  
 18 That is correct. Right?  
 19 MR. MYERS: We saw a draft version of the  
 20 argument. It was submitted, if you'd like to it submit  
 21 it you're welcome to do so. But the draft version we  
 22 had some serious concerns over, myself as well as my  
 23 superiors all reviewed it, and what we saw we were not  
 24 comfortable with. But like I said, it was not  
 25 officially submitted into the record, so that's why it's

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1 said an awning would be okay, financially?  
 2 COMMISSIONER MAY: That's the zoning history  
 3 argument that the Chairman was referring to. So if that  
 4 argument could be made persuasively, then I think we'd  
 5 have more to discuss on the variance side of things.  
 6 And, again, there are a couple of avenues:  
 7 One is to try to pursue the variance approval in a more  
 8 thorough way and look at all of these issues associated  
 9 with the previous conversations with DCRA and so on; the  
 10 other is to just appeal the decision that it needs  
 11 relief in the first place. So those are the two avenues  
 12 that could be pursued.  
 13 CHAIRMAN HILL: And again, just the appeal  
 14 clock is 60 days from the determination letter, which is  
 15 February 3rd. So you're coming up on your 60 days. But  
 16 I was just thinking in Council Member Evans' office I  
 17 know there's people there that are zoning experts and  
 18 know more about the variance tests and the different  
 19 criteria with which we need to evaluate the variance or  
 20 the special exception. I'm sure that someone could help  
 21 the Applicant as well in that area.  
 22 So then I would go ahead -- does the Board  
 23 have any other thoughts?  
 24 (No response.)  
 25 MR. WINER: You're not interested in hearing

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1 not part of the evaluation.  
 2 CHAIRMAN HILL: So Mr. Winer, again, what I  
 3 would do is: I would go back, regroup, try to kind of  
 4 fine-tune your different arguments, different avenues  
 5 you think you want to pursue with the help of the people  
 6 that are here with you as well, who are obviously again  
 7 in support of you, and then reach back out to the Office  
 8 of Planning and see how you could possibly move forward.  
 9 COMMISSIONER MAY: I do have one more  
 10 question for Mr. Winer.  
 11 CHAIRMAN HILL: Sure.  
 12 COMMISSIONER MAY: One of things you showed  
 13 us in your history was the first item in your timeline I  
 14 think was on July 17th of 2016 you applied for the  
 15 awning permit, and then the next day you placed the  
 16 order. Was that the deposit that you made at that time  
 17 a nonrefundable deposit?  
 18 MR. WINER: No, it wasn't nonrefundable. It  
 19 was to get us in line for this Italian factory that goes  
 20 on holiday for the month of August, more than anything  
 21 else. It became nonrefundable on Labor Day when they  
 22 returned.  
 23 COMMISSIONER MAY: So it became  
 24 nonrefundable. I think that's part of the zoning  
 25 history that you have to be clear about. Because if you



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1 took certain steps in reliance information from DCRA,  
 2 then I think that helps build the argument that the  
 3 conditions of the property are causing this problem for  
 4 you. So I think that just needs to be clear when you  
 5 and come back to us.

6 CHAIRMAN HILL: Okay, great.  
 7 And, again, I know that you can tell we're  
 8 staying this -- we would like the Office of Planning to  
 9 help you out here as much as possible in getting his  
 10 arguments in a way that you can review.

11 MS. MYERS: (Nods head.)  
 12 CHAIRMAN HILL: When would be a good time --  
 13 it seems back when COMMISSIONER MAY is here. It may  
 14 take you a little while to get some of this information  
 15 back together. I think you said you're back on April  
 16 12th?

17 COMMISSIONER MAY: 12th.  
 18 CHAIRMAN HILL: So Mr. Winer, you think  
 19 you'll have an opportunity to chew on all this and get  
 20 back to us with information prior to April 12th so that  
 21 we can give you an evaluation?

22 MR. WINER: Yes.  
 23 CHAIRMAN HILL: COMMISSIONER MAY [sic] -- I  
 24 mean, Moy?  
 25 SECRETARY MOY: I'd be honored to be

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1 here is: As amended, special exception relief on the  
 2 rooftop architectural element requirements, subtitle E,  
 3 section 206.1(a), and the adjacent solar energy  
 4 operation requirements of subtitle E, section 206.1(c)  
 5 which would convert an existing one-family dwelling into  
 6 a flat RF-1 at 1214 Shepherd Street Northwest, square  
 7 2693, lot 23.

8 I believe Office of Planning has an  
 9 additional relief to be added, but I'll leave that to  
 10 the Board and the Applicant.

11 CHAIRMAN HILL: Great. Thank you, Mr. Moy.  
 12 Could you please introduce yourself from  
 13 right to left? Please, go ahead.

14 MS. DEDRICK: My name is Simone Dedrick.  
 15 I'm the resident at 1414 Shepherd Street Northwest,  
 16 adjacent to the 1412 property.

17 CHAIRMAN HILL: Great, thank you.  
 18 MR. HEISEY: Joel Heisey, architect for the  
 19 owner.

20 MR. EDWARDS: Rob Edwards, owner at 1412  
 21 Shepherd.

22 CHAIRMAN HILL: So Mr. Heisey, you're back  
 23 in front of us obviously again. And so if you can just  
 24 a tell the Board what has happened since the last time  
 25 you were here, let's start there.

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1 COMMISSIONER MAY.  
 2 If it's April 12th, the filing be submitted  
 3 by Wednesday, April 5th, and perhaps to OP supplemental,  
 4 if any. By that Friday, April 7th, unless OP needs more  
 5 time?

6 MS. MYERS: We can meet that date.  
 7 SECRETARY MOY: So continued hearing April  
 8 12th. And filings from the Applicant, the previous  
 9 Wednesday which would be April 5th. And OP supplemental  
 10 Friday, April 7th.

11 CHAIRMAN HILL: Mr. Winer, did you get all  
 12 that?

13 MR. WINER: Yes, sir.  
 14 CHAIRMAN HILL: I can tell you're  
 15 frustrated, and there's nothing for us to do right now.  
 16 You can disagree with me, but there's nothing for us to  
 17 do right now. We are doing our best to help you, okay,  
 18 all right.

19 Thanks, Mr. Moy.  
 20 Thank you all very much.  
 21 MR. WINER: Thank you.  
 22 SECRETARY MOY: The next case application is  
 23 No. 19416 of Robert Edwards. This is as amended. I  
 24 read this "as amended", and of course if the Applicant  
 25 can correct me on missing a few things. But what I have

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1 MR. HEISEY: Just to refresh: This was  
 2 originally submitted as a conversion to a three-unit  
 3 apartment building, and we were requesting variances for  
 4 lot size for the three units for an extension of the  
 5 building, and impact to the solar and the neighbors and  
 6 architectural features. The Board had issues with the  
 7 three-unit conversion, and then threw it back. And we  
 8 had further discussions with the neighbors and went  
 9 to/decided given the other alternatives that a two unit  
 10 with a third-floor addition was more acceptable to the  
 11 neighbor than the alternative that we could have done as  
 12 an as-right build-out. So what we've done is we've  
 13 resubmitted the plans as a two-unit plan with a  
 14 third-story addition. This third-story addition will  
 15 have an impact on the 1414 solar panels. The neighbor's  
 16 here and she is in agreement that it's an acceptable  
 17 amount of impact and agrees with the addition.

18 Since we're going to that, we're not  
 19 extending the building as far, we're keeping essentially  
 20 the same footprint, perhaps a rear foundation when we  
 21 get there. We're retaining the dog leg, we're not going  
 22 to build it out, and we'll do it as covered porches to  
 23 leave that area open as well, which the neighbor finds  
 24 more acceptable than the previous layout as well. By  
 25 doing this also, we meet all the other lot coverage, lot

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1 setbacks, and all those items; the only exception is  
 2 that we have neighbors who have solar panel. Like I  
 3 said, 1414 neighbor is agreeing with the limited impact;  
 4 the neighbor as 1410 is in verbal agreement but we  
 5 haven't gotten any written. But we also had done a  
 6 solar study which was added to the record last night --  
 7 I hope you have it -- which shows there was actually a  
 8 slight net gained because of some of the existing  
 9 structures on the roof that will be taken down. So it  
 10 actually is a net gain for the neighbor on 1410.  
 11 And then the only other thing is: Because  
 12 of the roof being elevated about an additional three  
 13 feet, to keep the proportions, we were requesting to  
 14 alter the size of the dormer so you don't just get a  
 15 huge, blank face of roof up there, and it would also  
 16 provide a means of egress from that room as well. So it  
 17 would retain the horizontal, the width dimensions of the  
 18 existing dormers, and would just kind of double the size  
 19 to be more in proportion with the additional roof  
 20 height.  
 21 CHAIRMAN HILL: Okay. And have those plans  
 22 been -- has the ANC looked at those my plans?  
 23 MR. HEISEY: We submitted on the same  
 24 neighbor history, and he was essentially in agreement  
 25 with, although we haven't had any formal feedback from

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1 CHAIRMAN HILL: Does the Board have any  
 2 questions for the Applicant?  
 3 MR. HART: No. I just wanted to say that it  
 4 was a decision you had to make to figure out about the  
 5 three versus two units. And I think the Board didn't  
 6 have a -- we didn't have issues with the conversion.  
 7 What we did have issues with was that: We didn't  
 8 necessarily agree that you've met the three-prong test  
 9 to be able to actually -- for the area variance. So  
 10 that was really the intention, just to be clear about  
 11 that. But I think that the new design shows that two  
 12 flats can work with this, and I appreciate the  
 13 re-looking at this. And that's it.  
 14 MR. HEISEY: I'd just like to say: It's  
 15 largely because our neighbor has agreed with this as a  
 16 two-unit, because of the impact. Without that  
 17 agreement, we wouldn't have been able to do this, that  
 18 is why the three-unit method is kind of a long way to  
 19 get to this. I appreciate it.  
 20 CHAIRMAN HILL: I appreciate you clarifying  
 21 for the Board.  
 22 Ms. White and COMMISSIONER MAY, you had some  
 23 comments.  
 24 MS. WHITE: No, I think Mr. Hart stole my  
 25 argument there regarding the information on the revision

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1 the ANC.  
 2 CHAIRMAN HILL: When you say he didn't have  
 3 any issues with them, do you have something in the  
 4 record that states that or you're just telling me that  
 5 right now?  
 6 MR. HEISEY: We don't have anything in the  
 7 record. Because there were no objections. They saw the  
 8 changes were essentially in line with what the previous  
 9 request was. It was -- because the two things are the  
 10 same -- the solar impact and the dormer changes. And  
 11 the ANC had endorsed those in the previous round as well  
 12 and the dormer changes are essentially the same as what  
 13 the previous submission was, and the solar impact they  
 14 were relying mostly on the neighbors' support. And like  
 15 I said, the one neighbor is in support, the other  
 16 neighbor we're not even impacting.  
 17 CHAIRMAN HILL: So you know what the FMD is  
 18 saying, and then you showed the revised plans and they  
 19 didn't have any issue?  
 20 MR. HEISEY: Correct.  
 21 MR. EDWARDS: Who's the FMD?  
 22 MR. HEISEY: It's Michael someone.  
 23 CHAIRMAN HILL: Did you get sworn in today?  
 24 MR. HEISEY: Yes.  
 25 MS. DEDRICK: Halprin. He's our ANC.

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1 of the plan to two units. And Mr. Hill also stole my  
 2 thunder, because I was also interested in getting some  
 3 updates on ANC feedback. So it sounds like you've got  
 4 some verbal feedback, but it's just not included in the  
 5 record yet.  
 6 CHAIRMAN HILL: Please, Commissioner.  
 7 COMMISSIONER MAY: I just have a question.  
 8 I looked at the study, which was uploaded last night,  
 9 but obviously have not had much time to study that study  
 10 very carefully. It's a little dense in the amount of  
 11 information and not necessarily easy to understand. But  
 12 you made the statement that essentially they'll be some  
 13 minimal additional solar coverage for 1410, which is the  
 14 other neighbor. Right? Ms. Dedrick, you're 1414?  
 15 MS. DEDRICK: (Nods head.)  
 16 COMMISSIONER MAY: And then as to what's  
 17 going to be -- I'm looking at the photos that you  
 18 previously submitted that indicated kind of where the  
 19 addition would be, and I'm wondering what is it that's  
 20 been removed that is going to actually improve the solar  
 21 exposure at 1410?  
 22 MR. HEISEY: There was a demo permit issued  
 23 and there was a chimney that had been removed. So that  
 24 was showing it after that chimney had been removed. We  
 25 did the photo study without creating a mockup of what

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1 that chimney originally was. So those photos show after  
 2 the chimney had already been demoed earlier. Then when  
 3 the solar study was done, they had created a kind of  
 4 cutout of the chimney and replaced it and used that.  
 5 COMMISSIONER MAY: So the chimney was more  
 6 or less in line with the other chimneys in that row?  
 7 MR. HEISEY: Correct.  
 8 COMMISSIONER MAY: I see in front of the  
 9 markup photo it looks like a cardboard chimney laying on  
 10 the ground, or laying on the roof there. That's helpful  
 11 to understand what that is.  
 12 And just to be clear: Even with the  
 13 additional foot or so of height, that's assumed in the  
 14 new solar study.  
 15 MR. HEISEY: Yes, it is. I mean, the height  
 16 of the addition, really, because the 1410 house sits  
 17 higher slightly, and then the solar panels are above  
 18 that, there's really only about a seven-inch --  
 19 MR. EDWARDS: Seven inches or so.  
 20 MR. HEISEY: -- seven inches between the top  
 21 of our roof and his panel. My drawing looks a little  
 22 awkward, but physically being onsite in that area turned  
 23 out to be a seven-inch differential in height. And then  
 24 it's not tied up against the property as well, it's  
 25 offset a little bit.

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1 Office of Planning.  
 2 I think that may be in reference to the one  
 3 condition that was stated in the supplemental report,  
 4 and that was about the neighbors being in agreement that  
 5 they're okay with whatever potential impacts this may  
 6 cause. And I think that's been pretty sufficiently  
 7 addressed now. So we are recommending approval.  
 8 CHAIRMAN HILL: Okay, great.  
 9 Does the Board have any questions of the  
 10 Office of Planning?  
 11 (No response.)  
 12 Does the Applicant have any questions for  
 13 the Office of Planning?  
 14 MR. HEISEY: No, sir.  
 15 CHAIRMAN HILL: Is anyone here from the ANC?  
 16 (No response.)  
 17 Is there anyone here wishing to speak in  
 18 support of the application?  
 19 (No response.)  
 20 Is there anyone here wishing to speak in  
 21 opposition of the application?  
 22 (No response.)  
 23 I'm going to turn back now. Just a quick  
 24 question: You've seen the conditions that the ANC had,  
 25 and I can't remember whether we went through all of them

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1 COMMISSIONER MAY: Thank you. That's  
 2 helpful.  
 3 CHAIRMAN HILL: All right. Ms. Dedrick, did  
 4 you have some things to add?  
 5 MS. DEDRICK: Yes. First, I'll give you  
 6 spelling correction for the ANC. His last name is  
 7 Halpern, H-A-L-P-E-R-N. And he's 4C04.  
 8 CHAIRMAN HILL: Thank you.  
 9 MS. DEDRICK: And I just want to confirm:  
 10 Did you receive my letter of support? I ended up  
 11 uploading it the day after.  
 12 CHAIRMAN HILL: We did, thank you.  
 13 MS. DEDRICK: So I'm still in agreement with  
 14 the modification. Mr. Edwards and I have worked  
 15 diligently in order to make this okay for everyone, so  
 16 I'm okay so far.  
 17 CHAIRMAN HILL: Well, thanks for coming  
 18 down. I am glad you were able to work together to get  
 19 to a part where -- it's always good to be a good  
 20 neighbor.  
 21 So I'm going to turn to the Office of  
 22 Planning. There was the secretary mentioned additional  
 23 relief that OP was --  
 24  
 25 MR. GOLDEN: Good morning. Bryan Golden,

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1 before in terms of -- and I'll read through them, okay,  
 2 again "keeping to the agreed-upon distance from the  
 3 common property lines as described in the plans."  
 4 MR. HEISEY: Yes. This is actually -- the  
 5 footprints actually shrunk a little bit from the three  
 6 units, yes.  
 7 CHAIRMAN HILL: "Shall be constructed in a  
 8 way as to have minimal impact on existing solar panels  
 9 on 1414 Shepherd Street Northwest", which you are in  
 10 agreement with and moved forward upon. "The Applicant  
 11 shall use permitable [sic] parking service for the  
 12 parking area instead of concrete."  
 13 MR. HEISEY: That's the same as before, yes.  
 14 CHAIRMAN HILL: I'm just going to read  
 15 through them. "The applicant shall install an absorber  
 16 to reduce noise pollution."  
 17 MR. HEISEY: Yes.  
 18 CHAIRMAN HILL: "The Applicant shall make  
 19 sure that any decking or roof treatments are not visible  
 20 from the street."  
 21 MR. HEISEY: From the front street, yes.  
 22 CHAIRMAN HILL: From the front street.  
 23 "The Applicant shall retain the porch on the  
 24 front of the residence consistent with the size and  
 25 character of the other porches on the block."

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1 MR HEISEY: Yes.

2 CHAIRMAN HILL: Those are all the conditions  
3 that they had.

4 Does the Board have any other comments or  
5 questions for the Applicant?

6 (No response.)

7 I'm going to go ahead and close the hearing.  
8 Sorry, please.

9 MR. HART: Mr. Chairman, are we expecting to  
10 get a letter from the SMD or the ANC? I just didn't  
11 know if they were --

12 MR. HEISEY: Yeah. I guess we hadn't really  
13 assumed that one was needed since they had agreed -- the  
14 two things we're asking for is the solar impact and the  
15 architectural features, and those were the same as the  
16 previous request they had supported. So we're really  
17 shrinking the project and retaining the two onsets that  
18 were identical.

19 MR. HART: I was just asking if they were --

20 MR. HEISEY: I don't think they will.

21 CHAIRMAN HILL: I'm comfortable with moving  
22 forward.

23 MR. HART: I didn't need one. I wasn't sure  
24 if they were actually -- or if you just had a  
25 conversation with them.

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1 COMMISSIONER MAY: I just wanted to clarify:  
2 Subject with the conditions as noted by OP?

3 CHAIRMAN HILL: Yes. I'm sorry if I didn't  
4 clarify that.

5 COMMISSIONER MAY: Right.

6 CHAIRMAN HILL: I DO make the motion  
7 including the conditions as I read -- I think they're  
8 the ANC, actually -- the ANC, from the condition of the  
9 ANC.

10 The motion has been seconded. All those in  
11 favor? Aye. All those opposed?

12 The motion passes, Mr. Moy.

13 SECRETARY MOY: Yes, staff would record the  
14 vote as 4 to 0 to 1. This is on the motion of Chairman  
15 Hill to approve the application for the relief  
16 requested, in addition to the conditions as he cited,  
17 which I believe are six. Vice-chair Hart seconding the  
18 motion, also in support Mr. Peter May and Ms. White,  
19 motion carries, sir.

20 CHAIRMAN HILL: Thank you. Can we do a  
21 summary order?

22 SECRETARY MOY: I believe so, yes.

23 CHAIRMAN HILL: I'm asking; it's not a  
24 question.

25 SECRETARY MOY: Yes.

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1 MR. HEISEY: The conversation was with  
2 Michael Woods that -- he didn't express anything -- that  
3 he was going to submit an additional comment.

4 CHAIRMAN HILL: Is the Board ready to  
5 deliberate? Would anyone like to begin the  
6 deliberations?

7 So again we're back again, and we were not  
8 -- or the Office of Planning was not in agreement with  
9 the original proposal. I'm very happy to see that the  
10 Applicant has gone back and was able to work with their  
11 neighbors, and also that the Office of Planning and  
12 their analysis is something that they could approve.  
13 I'm also happy to see again that the ANC voted to the  
14 original application as well which is a 7-0 to 2 with  
15 those conditions that were mentioned, and there was a  
16 petition in support with four signatures.

17 Does anyone have any comments before I make  
18 a motion?

19 (No response.)

20 Okay. Then I'm going to go ahead and make a  
21 motion to approve application 19416 as read by the  
22 secretary.

23 COMMISSIONER MAY: Seconded.

24 CHAIRMAN HILL: Motion has been seconded.  
25 All those in favor?

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1 CHAIRMAN HILL: And we're going to take a  
2 three-minute break real quick before our last case, and  
3 it'll be our last case.

4 MS. DEDRICK: Will I be receiving something  
5 in the mail as to the final decision?

6 CHAIRMAN HILL: Mr. Moy?

7 SECRETARY MOY: The Board, after today, will  
8 issue an order. In this case it'll be a summary order,  
9 which will be issued in a few days. Typically, it's  
10 addressed to all the parties in the application.

11 MS. DEDRICK: Okay, so it's just going to go  
12 to them, because I'm just --

13 SECRETARY MOY: -- giving testimony. If you  
14 like, if you leave me with an e-mail address, I can  
15 forward it to you.

16 MS. DEDRICK: My e-mail address is on the  
17 little card.

18 CHAIRMAN HILL: I won't read that out loud.

19 SECRETARY MOY: And I'll see that it's taken  
20 care of, all right.

21 CHAIRMAN HILL: And actually before we take  
22 a make, Mr. Moy, there was that one case that -- is  
23 19398 here?

24 MS. WILLIAMS: Here.

25 CHAIRMAN HILL: Then we are going to go with

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1 that and then we'll do our last case.  
 2 SECRETARY MOY: After your break. Right?  
 3 CHAIRMAN HILL: Actually, we won't take a  
 4 break.  
 5 Mr. Moy, let's do that one first and then  
 6 we'll take a break.  
 7 SECRETARY MOY: So that would be -- call the  
 8 case -- that would be I see the Applicant's 19398 of Jim  
 9 Borbely has captioned and advertised for variance relief  
 10 from the nonconforming structure requirements of ANC,  
 11 section 202.2, lot occupancy requirements, subtitle E,  
 12 section 304.1, rear yard requirements, subtitle E,  
 13 section 306.1. This would permit the constructing a  
 14 one-story rear deck addition to an existing one-family  
 15 dwelling, RF-1 zone, 1922 1st Street Northeast, square  
 16 3532, lot 23.  
 17 CHAIRMAN HILL: Okay, great. Thank you.  
 18 Hi. Could you just introduce yourself? You  
 19 need to push the microphone there? And before you do,  
 20 were you sworn in this morning?  
 21 MS. WILLIAMS: No.  
 22 Do I have to keep pushing it?  
 23 CHAIRMAN HILL: Did you get sworn in this  
 24 morning?  
 25 MS. WILLIAMS: No, I did not.

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1 And I see somebody just walked up. I  
 2 suppose you're together. Would you look to come  
 3 forward?  
 4 MR. BORBELY: Sure, the contractor.  
 5 CHAIRMAN HILL: You need to speak in the  
 6 microphone and introduce yourself. Did you fill out two  
 7 witness cards? Not yet probably, because you just came  
 8 walking in. First introduce yourself.  
 9 MR. BORBELY: Alex Borbely. I am the  
 10 contractor project manager for the deck in question.  
 11 CHAIRMAN HILL: So Mr. Borbely, I'm going to  
 12 need you to fill out two witness cards afterwards and  
 13 give to the transcriber over there. Unfortunately,  
 14 you're going to have to take the oath, which you just  
 15 missed again. You're going to have to stand up and  
 16 take the oath of office from Mr. Moy.  
 17 (Whereupon the witness is sworn in.)  
 18 CHAIRMAN HILL: So, Ms. Williams, just a  
 19 brief presentation again on the project, and again about  
 20 the first and second prong of the variance test.  
 21 MS. WILLIAMS: So for the variance test is  
 22 where I was to go to the urban forestry?  
 23 CHAIRMAN HILL: No, that was just the one  
 24 condition I think that was with the Office of Zoning. I  
 25 can let the Office of Zoning speak more clearly, I

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1 (Whereupon witness is sworn.)  
 2 CHAIRMAN HILL: Introduce yourself.  
 3 MS. WILLIAMS: I'm Bianca Williams and I  
 4 will be representing this case. And I truly apologize  
 5 for the tardiness, I was under the impression this was  
 6 an afternoon -- this is my first BZA having to go  
 7 through this process.  
 8 CHAIRMAN HILL: That's all right, Ms.  
 9 Williams. Are you the property owner?  
 10 MS. WILLIAMS: I am the architect.  
 11 CHAIRMAN HILL: Welcome.  
 12 MS WILLIAMS: Thank you.  
 13 CHAIRMAN HILL: Ms. Williams, I guess you  
 14 can go ahead and give us a brief overview of the  
 15 presentation. I don't have a lot of questions.  
 16 However, I guess some of the -- or one part of the  
 17 question was that: The Office of Planning is in  
 18 agreement with the argument in terms of how the variance  
 19 test should be met. In your burden of proof it wasn't  
 20 necessarily specified that the burden of proof as to  
 21 again you how met the first and the second prong of the  
 22 test, the Office of Planning has gone ahead and made an  
 23 argument for you. But I just wanted to hear if you knew  
 24 about that and your clarification on the burden of proof  
 25 is the first prong of the test.

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1 suppose, on the burden of proof in your argument; I do  
 2 think that it was fleshed out.  
 3 But why don't you go ahead and walk me  
 4 through the project a little bit?  
 5 MS. WILLIAMS: We're extending our rear deck  
 6 and it will be beyond our lot occupancy. And the reason  
 7 for this is because the subject area, the subject area  
 8 is practically not conditioned to the conditions that  
 9 are presented in our case, being that the property has  
 10 been -- because it was built -- we have -- sorry.  
 11 CHAIRMAN HILL: It's all right, take your  
 12 time.  
 13 MS. WILLIAMS: I'll just read from my --  
 14 CHAIRMAN HILL: -- your submission, going  
 15 ahead.  
 16 MS. WILLIAMS: "The overall practicality of  
 17 using the subject area has been capacitated by the  
 18 growth of a protected tree unpredictable to weather  
 19 patterns and lack of sunlight in the walkable lot area,  
 20 unsafe solar conditions and overbearing regulations. So  
 21 right now we're not able to -- sorry, I'm like really  
 22 kind of nervous right now.  
 23 CHAIRMAN HILL: It's all right, Ms.  
 24 Williams. Just go ahead and finish. Sorry, you can go  
 25 ahead and finish reading your statement.

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1 MR. BORBELY: Basically, the deck is going  
 2 to be a more-usable use of space for the clients as  
 3 hands on. With the kids, they don't really want to have  
 4 this uneven surface area where this protected tree has  
 5 grown into. So the decks also surrounding the property  
 6 extend significantly passed their space, which causes  
 7 basically no sunlight to get to their lot area. So  
 8 nothing really grows, they can't grow grass. And  
 9 basically if we had the ability to extend their deck  
 10 without infringing on the tree in any way, it's a  
 11 more-reasonable use of space.

12 CHAIRMAN HILL: Thank you very much, Ms.  
 13 Williams.

14 And it was Borbely?

15 MR. BORBELY: Yes.

16 CHAIRMAN HILL: Thank you.

17 I'm going to turn to the Office of Planning  
 18 unless the Board has any specific questions right now?  
 19 (No response.)

20 Okay. Can I hear the Office of Planning,  
 21 please?

22 MR. MORFIN: Good morning, I'm Steven Morfin  
 23 at the Office of Planning. We support this application  
 24 subject to the one condition that they contact urban  
 25 forestry concerning the protection of this tree in the

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1 MR. BORBELY: I've seen the tree. Urban  
 2 Forestry has seen it. D.C. has taken a picture of it  
 3 and the clients were made aware that they weren't  
 4 allowed to take it down.

5 COMMISSIONER MAY: Right.

6 One thing that concerns me is that: We're  
 7 essentially making our order conditional upon an action  
 8 of another administrative agency. And you certainly  
 9 have to comply with their requirements in terms of -- if  
 10 it's a tree that's large enough, that it's protected,  
 11 then I you have to comply with that, and that's  
 12 separate. But conditioning our order on whatever the  
 13 Urban Forestry Administration might require is a little  
 14 iffy. Certainly, you know, including within our  
 15 decision, our recommendation that they contact and work  
 16 with the Urban Forestry Administration to make sure that  
 17 --

18 MR. BORBELY: -- that the tree is protected.

19 COMMISSIONER MAY: Let me finish.

20 -- I think is reasonable thing, but actually  
 21 conditioning upon them following all of UFA's  
 22 recommendations I think is a little iffy.

23 CHAIRMAN HILL: So would you prefer -- I  
 24 don't know, the Office of Planning might be able to tell  
 25 me, or the Applicant, when we would get something from

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1 rear yard.

2 CHAIRMAN HILL: Thank you.

3 And Ms. Williams, you did mention the  
 4 comment about the Applicant shall comment the Urban  
 5 Forestry Administration in Exhibit A at DDOT concerning  
 6 recommendations for the protection of large deciduous  
 7 tree in the rear yard and implement any and all  
 8 recommendations that are made?

9 MS. WILLIAMS: Yes.

10 MR. BORBELY: Yes.

11 CHAIRMAN HILL: Does the Board have any  
 12 questions for the Office of Planning?

13 COMMISSIONER MAY: Yes. Just to clarify:  
 14 The Office of Zoning report was more specific for the  
 15 Board than the testimony in terms of contacting the  
 16 Urban Forestry Administration. So your insisting on  
 17 having the applicant comply with any conditions that  
 18 they might impose?

19 MR. MORFIN: That was -- because we hadn't  
 20 heard from Urban Forestry at the time the report. But  
 21 that was the intention, to make sure that the tree --

22 COMMISSIONER MAY: Yeah. Do we have any  
 23 feedback from the Urban Forestry Administration about  
 24 the health of the tree, what the recommendations might  
 25 be?

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1 UFA?

2 MR. MORFIN: I can't answer when we would  
 3 get anything. Or maybe --

4 COMMISSIONER MAY: And I'm not suggesting  
 5 that we wait in order to get that. I'm just thinking  
 6 whatever we put in as a condition, that it would be --  
 7 what I'm concerned about is if they -- Urban Forestry  
 8 Administration lists 12 things that the Applicant needs  
 9 to do, and then the Applicant needs to demonstrate to  
 10 the zoning administrator, when they go get their permit  
 11 finalized, that they've met all of those conditions.  
 12 And what if they haven't and there is some requirement  
 13 that they spend \$1,000 injecting nutrients into the  
 14 tree, any number of things that could come out of that?  
 15 I think stating that they should work with the Urban  
 16 Forestry Administration and take necessary steps to  
 17 preserve the tree is one thing, but to actually  
 18 condition it upon successfully meeting all of UFA's  
 19 conditions is a little too strong. That's all I'm  
 20 saying.

21 CHAIRMAN HILL: Okay.

22 So Ms. Glazer, how and when -- parse out the  
 23 condition.

24 MS. GLAZER: As Commissioner May just said,  
 25 I think it's somewhat analogous to when the Board says

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1 the Applicant shall work with DDOT and go through the  
 2 public space process. It could be a similar condition,  
 3 that the Applicant shall work with the Urban Forestry  
 4 Administration.  
 5 CHAIRMAN HILL: So that will be the  
 6 condition, then. I'm now also making that the  
 7 condition, but the Applicant will work the Urban  
 8 Forestry Administration to implement their  
 9 recommendations.  
 10 MR. BORBELY: Sounds good.  
 11 CHAIRMAN HILL: COMMISSIONER MAY, I'm trying  
 12 to help you out. And clarify that --  
 13 COMMISSIONER MAY: And I'm also trying to  
 14 make sure we retain our authority and not delegate  
 15 certain things of other agencies.  
 16 CHAIRMAN HILL: Okay, agreed.  
 17 Does the Board have any other comments for  
 18 the Office of Planning or the Applicant?  
 19 (No response.)  
 20 Is there anyone here from the ANC?  
 21 (No response.)  
 22 Is there anyone here wishing to speak in  
 23 support?  
 24 (No response.)  
 25 Is there anyone here wishing to speak in

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1 vote as 4:0 to 1 on the motion of Chairman Hill to  
 2 approve the application for the relief requested, as  
 3 well as any condition that the Applicant work with UFA  
 4 to implement any recommendations as directed by them.  
 5 Seconding the motion Ms. White; also in support  
 6 Mr. Peter May and Vice-Chair hart. Forward seat vacant.  
 7 Motion carries out.  
 8 CHAIRMAN HILL: Thank you. Summary order?  
 9 SECRETARY MOY: Yes, sir.  
 10 CHAIRMAN HILL: Thank you.  
 11 Now we'll take our three-minute break.  
 12 Thank you.  
 13 (Whereupon a short recess is taken.)  
 14 CHAIRMAN HILL: All right. Mr. Moy,  
 15 whenever you have an opportunity to call your last case.  
 16 SECRETARY MOY: Thank you, Mr. Chairman.  
 17 That would be -- I see the parties are  
 18 already at the table. This is application No. 19415 of  
 19 Verizon Wireless. And that's captioned and advertised  
 20 for special exception relief under the antenna towers  
 21 and monopole requirements of subtitle C, section 1313.9,  
 22 which would locate a temporary Cell on Wheels, or COW,  
 23 in the RF-1 at square 643E, lot 800.  
 24 The Board, as you'll recall, last heard this  
 25 on February the 8th, 2017. The Board requested

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1 opposition?  
 2 (No response.)  
 3 Does the Applicant have anything else they'd  
 4 like to add?  
 5 (No response.)  
 6 I'm going to go ahead and close the hearing.  
 7 Is the Board ready to deliberate?  
 8 MS. WHITE: Yes, I'm comfortable with the  
 9 information that I've reviewed in the record. It seems  
 10 as though the parties are making best efforts to take  
 11 the necessary steps to work with UFA. And the Office of  
 12 Planning has also reviewed the case as well and has  
 13 submitted their approval. It doesn't seem to be any  
 14 disapproval within the ANC or the Committee, so those  
 15 are my comments.  
 16 CHAIRMAN HILL: And I guess we would make  
 17 sure that one condition that we had clarified as in the  
 18 application, so I would go ahead and make a motion to  
 19 approve application No. 19318 with the condition as we  
 20 had clarified with UFA and was read by the secretary.  
 21 MS. WHITE: Seconded.  
 22 CHAIRMAN HILL: The motion has been made and  
 23 seconded. All those in favor? Aye. All those opposed?  
 24 Motion passes, Mr. Moy.  
 25 SECRETARY MOY: Yes. Staff would record the

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1 additional information for the record. Applicants have  
 2 filed, as well as the party in opposition, under  
 3 Exhibits 48 and 49 respectively.  
 4 Also, Mr. Chairman, I have in my hands a  
 5 one-page letter from ANC 6D signed by Andy Litsky  
 6 (phonetic), chair of ANC 6D, which was brought to my  
 7 attention this morning from the staff. Because  
 8 apparently it was filed, submitted, and ended up in our  
 9 undelivered inbox, and we didn't notice it until this  
 10 morning. So out of abundance of caution, the Board may  
 11 wish to waive the time requirements for this, where I'm  
 12 guessing it may have been submitted on time. But  
 13 anyway, I'll leave that to the Board, and I'll pass this  
 14 to the board members.  
 15 CHAIRMAN HILL: All right, Mr. Moy. I would  
 16 like to see the letter from the ANC commissioner, so I'm  
 17 going to waive the time requirements, unless the Board  
 18 has any opposition.  
 19 (No response.)  
 20 CHAIRMAN HILL: Let's go ahead and let this  
 21 into the record.  
 22 Okay, great. If you could just introduce  
 23 yourselves from my right to left, please?  
 24 MR. GIES: Hi Rudy Gies, counsel.  
 25 MR. FRIEDMAN: Brian Friedman.

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1 MR. EPTINS: I'm John Eptins with Goulston &  
 2 Storrs.  
 3 CHAIRMAN HILL: Just give me one second.  
 4 Last name again?  
 5 MR. EPTINS: Eptins.  
 6 MS. HOTTEL-COX: Megan Hottel-Cox also with  
 7 Goulston & Storrs.  
 8 MS. BOOL: Alex Bool with NBNC representing  
 9 Verizon Wireless.  
 10 MR. SHAPIRO: Jay Shapiro with NBNC  
 11 representing Verizon Wireless.  
 12 MR. STOVER: Brian Stover with Verizon  
 13 Wireless.  
 14 CHAIRMAN HILL: Ms. Hottel-Cox, as I recall,  
 15 you're going to go ahead and be presenting to us. There  
 16 was a lot of testimony that was taken the last time we  
 17 were here, and there was a lot of things we kind of went  
 18 back and asked of the Applicant. So what I'm going to  
 19 do is again just: We're going to have a full, continued  
 20 hearing here. So if you could go ahead and just kind of  
 21 give presentation as to what has happened the last time  
 22 the items that were submitted into record, and I'm going  
 23 to let the party in opposition again have an opportunity  
 24 to cross, and then we'll come back to you again. So if  
 25 you could just go ahead and start. I'm going to put a

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1 of where the COW is located now to go over why those  
 2 sites aren't viable for the temporary COW, and we'll go  
 3 through that in our presentation.  
 4 So just to reiterate: We are just here for  
 5 the temporary COW; we are asking for one-year approval  
 6 of the temporary site that was put up in place before  
 7 the inauguration while the Applicant can determine the  
 8 best way forward for the permanent site. So we did  
 9 submit some things into the record based on the  
 10 permanent site per some of the Board's comments, but  
 11 really our job is here asking for the temporary approval  
 12 so the Applicant can continue to work on the permanent  
 13 site.  
 14 With that, I'll turn it over to our  
 15 witnesses to go over some of the pieces in the  
 16 presentation.  
 17 MR. FRIEDMAN: At the risk of being  
 18 redundant, I just want to qualify that this map was  
 19 based on both temporary and permanent -- we only focused  
 20 on temporary. There's a time lapse that needs to be  
 21 considered originally; when we went in for this  
 22 temporary, we need to resolve an immediate issue. If we  
 23 had more time, there certainly are some ways of tweaking  
 24 this. But in essence, what we looked at, the most  
 25 probable locations: As you notice, starting around

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1 little bit of time on the clock just so I know, I'm  
 2 going to put 15 minutes up there.  
 3 MS. HOTTEL-COX: Before we get started, one  
 4 of our witnesses wasn't here this morning for the  
 5 swearing in, so if they could be sworn.  
 6 (Whereupon the witness is sworn.)  
 7 MS. HOTTEL-COX: Thank you.  
 8 So at the last hearing the Board asked us to  
 9 submit a number of pieces of information that really  
 10 boiled down to two issues: An explanation of the  
 11 coverage gap, we had testimony at the last hearing  
 12 regarding how if the COW was turned off that would  
 13 impact service in the area. And in Exhibit 48B we  
 14 uploaded the revised propagation maps. We felt these  
 15 propagation maps were a bit easier to read than the ones  
 16 initially submitted with our application. And in our  
 17 cover letter we did address what the coverage gap would  
 18 mean for service in this area, and we can go through  
 19 some of that in our presentation.  
 20 The Board also asked us to focus on the  
 21 other sites that were considered, and why those sites  
 22 were not viable for the temporary COW, and that was  
 23 included in Exhibit 48A of our post-hearing submission.  
 24 And I think you'll see that's a very detailed map  
 25 showing pretty much every property within the proximity

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1 where we talked about Capitol Park Plaza, we're losing  
 2 propagation. I believe the propagation map will show we  
 3 do have a deficit along the Capitol Plaza both north and  
 4 south. The residential areas, typically we'd stay away  
 5 from; we know there's some concern with that in the  
 6 community. Again, we ruled them out. Blind Whino, I  
 7 know there's been some question about whether we wanted  
 8 to go there; part of our opposition represents them. We  
 9 would have to seek variance along with a -- a setback  
 10 variance along with any other type of consideration for  
 11 it. The Community help does not allow enough height for  
 12 us.  
 13 Let's see, we're going -- again, Bethel  
 14 Pentecostal, if we're talking about a temporary, there's  
 15 no ground space that would be viable enough for it;  
 16 there would also be repeated by the existing skyline of  
 17 the other structures of the area. Again, going back to  
 18 the propagation maps. And where are we? Capitol Park  
 19 Plaza, this is too short -- sorry, this is back in the  
 20 shadow of the existing buildings. We looked at that  
 21 originally and it was not going to meet the coverage  
 22 along the South Capitol due to impediments of the  
 23 existing building. The Baptist church, there wasn't  
 24 ample ground space. There was I believe a playground in  
 25 the accommodating space; that would be a more



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1 accommodating place, and we would have to seek a  
 2 variance setback too.

3 The CO building, we took into consideration  
 4 of that. That's actually a Verizon property, but we ran  
 5 into the same problems because the propagations were  
 6 impeded being the beltway itself and also bleeds into  
 7 existing sites on the opposite side.

8 The Capitol Power Plant, the highways were  
 9 going to be an impediment: There was limited space  
 10 along the ground; anything closer we'd still need a  
 11 variance. And, again, the biggest concern was the RF  
 12 propagation on that one.

13 We looked at CSS Coal, we thought that may  
 14 be an ideal opportunity. They rejected it twice already  
 15 for us; we do work with them on occasion, but they  
 16 weren't committing to any type of impediments to their  
 17 property there.

18 And the community center, I believe also  
 19 formerly called the Cochran Property, or the junior high  
 20 school, that is a derelict property; we wouldn't be able  
 21 have setbacks if there were going to be any vantages of  
 22 it. We'd also have a propagation issue because we're  
 23 getting closer and closer to the Skyline Capitol to the  
 24 south of it for propagation.

25 We had talked to One Hill South, and maybe

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1 your supplemental?

2 MR. STOVER: Do we have the pictures on the  
 3 presentation?

4 MS. HOTTEL-COX: Mm-hmm.

5 So Alex, if you can get to the picture of  
 6 the light standards that are kind of examples of other  
 7 pieces and walk through those.

8 MS. BOOL: So as the Board requested, we  
 9 provided photo examples of some existing sites around  
 10 the city. And these again are in reference to the  
 11 permanent site and are in response to your guys'  
 12 questions about other similar sites in the city. So  
 13 this one is on a high school property in D.C., Dunbar  
 14 High School, and it's a light standard with an antenna  
 15 installation installed on the light standard.

16 MR. HART: What's the height of that one, do  
 17 you know?

18 MR. SHAPIRO: Probably 70 to 80. It's  
 19 probably that one.

20 MR. HART: Does that require zoning  
 21 approval?

22 MS. HOTTEL-COX: We were unable to locate  
 23 any kind of BZA approval, and we also reached out to the  
 24 Office of Planning and they were unaware of how that was  
 25 approved. We do have some other examples that were

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1 in the future that may be something to work with for  
 2 partial coverage, but again we're talking about a  
 3 temporary. The timeline, we had to be off the building  
 4 within 60 to 90 days, which is why we went ahead with an  
 5 undeveloped parcel, it was too far down the propagation,  
 6 we start bleeding into our sites to the south of that  
 7 location.

8 And I think I skipped over the RCP property,  
 9 but that's currently in development as a high-rise.

10 Are there any questions about any of those  
 11 sites?

12 MR. HART: The COW, that's no longer on the  
 13 table.

14 MR. STOVER: We had reached an agreement.  
 15 But again, for the permanent site that's up in the air  
 16 still; but for the temporary site, no.

17 MS. HOTTEL-COX: We're also happy to  
 18 address: The propagation maps, if the Board had any  
 19 additional questions on that or any of the other  
 20 exhibits in the record. We had submitted some exhibits  
 21 regarding existing antennas that are on parks or other  
 22 kind of similar properties, or had been requested. And  
 23 that is all in the record. So we are happy to speak to  
 24 that if the Board had any questions.

25 CHAIRMAN HILL: Okay. Does that complete

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1 approved through BZA.

2 COMMISSIONER MAY: Ms. Thomas?

3 MS. THOMAS: I did go back and try to find  
 4 some information on that. Prior to Dunbar going on the  
 5 light pole, and prior to their new building, they were  
 6 on the existing, the older building. And I think I saw  
 7 them as a COW, as a temporary structure when the road  
 8 was being constructed, the new roadway. So I think they  
 9 just transferred from the roof top to light pole, but it  
 10 didn't have the relief. Because it --

11 COMMISSIONER MAY: -- it was on the existing  
 12 high-rise high school?

13 MS. THOMAS: High school, yes.

14 COMMISSIONER MAY: It seems rather odd that  
 15 it would have gone through that way.

16 MS THOMAS: Yeah. But I think because the  
 17 pole was exceeding the height, that measured in the RF  
 18 zone.

19 COMMISSIONER MAY: And that's setback.  
 20 Right?

21 MS. THOMAS: Yes, it is.

22 COMMISSIONER MAY: And set back from all the  
 23 documents submitted?

24 MS. THOMAS: Yes.

25 COMMISSIONER MAY: I think ultimately, if

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1 there's a request for a permanent installation, I think  
 2 that's going to be a really pertinent example in  
 3 understanding how that was ultimately approved by DCRA;  
 4 it would be a very helpful thing.

5 MS. BOOL: So the next one that we have here  
 6 is at the tennis center, again in D.C. It's a light  
 7 standard with antennas that are sleeved. And it was  
 8 approved by the National Park Service.

9 COMMISSIONER MAY: So that's the only one  
 10 that I saw that was actually sleeved, so it looks like  
 11 it was a down-light fixture. How common is that? And  
 12 does that affect the operation at all?

13 MR. STOVER: It's not very common. And no,  
 14 it would not affect the installation, it's an  
 15 RF-friendly material. I think one could argue it adds  
 16 more mass to the structure and that becomes more  
 17 difficult socially. I think one would have an opinion  
 18 one would prefer that type of installation, and I think  
 19 we'd be willing to do that, if we were to come back at  
 20 this location for a permanent location, that's something  
 21 we'd be open to.

22 COMMISSIONER MAY: Clearly, I know it's a  
 23 park service site: We approved it, we authorized that  
 24 permit, I don't know, a few years ago.

25 MR. STOVER: 2004.

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1 standard monocle.

2 MR. HART: There are actually lights on that  
 3 one, at the mid.

4 MS. BOOL: There are. They're about midway  
 5 up on that one.

6 MR. HART: That's because that's where the  
 7 other lights -- the height of the other light poles?

8 MS. BOOL: (Nods head)

9 MR. HART: That would be the same level as  
 10 the rest of the lighting?

11 MR. STOVER: Yes, that'd be correct.

12 MS. BOOL: So the next slide we have here is  
 13 the revised propagation maps. Brian, you'd like to  
 14 speak to those?

15 MR. HART: Actually, one question before you  
 16 get to that. One of the discussions/one of the  
 17 questions we had was not only the Verizon but the  
 18 ability to kind of add on a module, I guess, on top of  
 19 that. All of these are just Verizon sites, there's no  
 20 additional carrier that's associated? Or do you know  
 21 that?

22 MR. STOVER: What I'll say is: Of the  
 23 examples that we've put up are single carrier sites --  
 24 I'm not even sure those are all Verizon Wireless sites,  
 25 they're just examples of wireless communication sites

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1 COMMISSIONER MAY: But there have been  
 2 subsequent approvals, because it's been known, we  
 3 reviewed it, I remember. We can only issue permits like  
 4 that for a limited period of time, so it has to be  
 5 reapproved, if you will. And I imagine that that kind  
 6 of masking on the actual antennas was a park  
 7 service-driven requirement. Because I know that we had  
 8 had to go through an EIS to get that one done  
 9 originally. I know some of the history of it, but it  
 10 predates me.

11 MS. BOOL: Another one that was mentioned  
 12 during the last hearing was the Theodore Roosevelt High  
 13 School. This one's a little bit different where it's an  
 14 existing structure with antennas flush-mounted to the  
 15 exterior. It was approved by the BZA; the order number  
 16 is there on the screen, it's 18420.

17 This one is at Lake Braddock High School,  
 18 which is a Fairfax County site. And, again, it's a  
 19 light standard, it's another example of what a potential  
 20 light standard monocle could look like.

21 This next one's at McCurdy Field in  
 22 Fredrick, in Maryland. Again, it's a light standard  
 23 monocle.

24 This particular example is from Tuscarora  
 25 High School, again in Fredrick, and it's a light

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1 collocated on light standards.

2 MR. HART: Thank you.

3 MS. WHITE: I had one question: What was  
 4 the year of the Teddy Roosevelt High School structure,  
 5 the BZA order? I can look it up, but was that within  
 6 the last few years?

7 MR. EPTINS: It was within the last five  
 8 years. I think it be have it in the record.

9 MS. WHITE: Thanks.

10 MR. EPTINS: But it did go through the BZA.

11 MS. HOTTEL-COX: Brian, did you want to  
 12 speak to the propagation maps?

13 MR. STOVER: Sure Brian Stover with Verizon.  
 14 So the Board has asked for a simplified  
 15 coverage maps, and we simply broke it down into two  
 16 colors: Blue being the existing surrounding sites that  
 17 provide service; and then the green being the services  
 18 provided by the COW. And it's shown in two different  
 19 frequencies. Verizon actually represents found  
 20 frequencies in this market. And just for your  
 21 information: The frequency levels transmit at different  
 22 rates or different distances. So what we're showing  
 23 here is the 700 megahertz propagation, which generally  
 24 goes further. All things being equal, the 700 megahertz  
 25 travels farther than the 21 megahertz.

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<p style="text-align: right;">Page 102</p> <p>1 So looking at the example on the board, the 2 top left shows existing service without the COW, and you 3 can see the white area in the middle surrounding the 4 area where the COW is located. And then to the right is 5 basically the before and after: The after would be the 6 green services provided by the COW, and -- as you can 7 see, I guess if I can borrow that microphone. So again, 8 just to refresh everybody's memory, this is a before and 9 after. The red circle indicates where the COW is 10 located, and then these yellow triangle-type symbols 11 represent the existing cell sites surrounding that area. 12 And so what's important is what we're trying 13 to make sure we do is make sure we cover this area. You 14 see a fair amount of blue but you also see a lot of 15 white. In those white areas we just have unreliable 16 signal. And the signal that's getting into this area 17 from the adjacent site really becomes noise, because 18 signal is getting there from all the different sites. 19 So your local device is trying to pick which ones that 20 are a better service provider for your phone. 21 As you can see here with the 700 megahertz 22 with this COW turned on, you see significant service 23 level from the COW itself, so green is predominant 24 service. You can see how the coverage matches up. 25 Basically what you're looking for is the two sites where</p>	<p style="text-align: right;">Page 103</p> <p>1 the coverage come together but not necessarily overlap. 2 And of course RF signal doesn't just stop at a line, it 3 keeps going and going. So as you get closer to the 4 adjacent sites that becomes interference or noise. So 5 you can see to the north, part of the reason we couldn't 6 use the Verizon CO property -- which obviously would be 7 easier for us in terms of leasing and so forth -- we're 8 already pushing up on the sites that are on the Rayburn 9 Building and Health and Human Services. So we're kind 10 of stuck between a rock and a hard place here: We can't 11 go north and we really can't go too far south either and 12 still cover the target area. 13 And the example below is exactly the same 14 situation with the 2,100 megahertz. You can see a lot 15 more white in the area of the COW, specifically south of 16 where the COW is located. And when we turn this light 17 on it fills in that gap in that target area. Still not 18 perfect. 19 MR. HART: This is just more of a curiosity, 20 if anything: Can you explain why does the coverage seem 21 to go down along streets? It's like they're kind of 22 linear pieces of it. Is it because where buildings are 23 in front of it? 24 MR. STOVER: It's actually designed. So 25 again, these triangles that are placed together here,</p>
<p style="text-align: right;">Page 104</p> <p>1 they're directional antennas. So it's not like an older 2 style omni-antenna where you had a fiberglass sticking 3 out of the air and it emitted frequency in all 4 directions. These are panel antennas that are basically 5 pointed down the streets or pointed in the direction 6 that we want to go. So you can see like this one: The 7 antenna's pointing northwest, southeast, and then 8 northeast; nothing pointed to the south because we don't 9 want it to hit the water of the Potomac and cross over 10 to Virginia and cause interference. The buildings do 11 act as barriers that prevent that signal from going too 12 far and creating interference. And while people are 13 still using these cellular phones in their offices and 14 houses and so forth, still traditionally streets -- 15 while you're driving, while you're mobile, where you're 16 looking for that extra coverage, or in your office or in 17 your home you might have Wi-Fi. So we're specifically 18 targeting the streets as our main focus. 19 CHAIRMAN HILL: Okay. Ms. Hottel-Cox, I 20 think we've had a lot of Q and A in here. You're 21 basically at 15 minutes or so. But I'm just going to 22 kind of try to move a little bit forward here in terms 23 of all of the information that was supplemented. 24 Before I give the party status an 25 opportunity to cross, I'm going to try to go through</p>	<p style="text-align: right;">Page 105</p> <p>1 everyone that's going to make comments, and then you'll 2 have an opportunity to ask questions at that time as 3 well. 4 So I'm going to actually turn to the Office 5 of Planning, if I could, and hear anything -- 6 COMMISSIONER MAY: I had unrelated 7 questions. 8 CHAIRMAN HILL: Sure. 9 COMMISSIONER MAY: So you completed your 10 presentation, so I just have a few things that were 11 based on what you and had submitted into the record 12 since we last heard the case. I only had one question, 13 which is: I think it came up in the hearing last time, 14 we were interested in knowing more about the placement 15 of antennas on roof tops given the fact that many of 16 these are apartment buildings and there are more and 17 more roof top uses of apartment buildings. Did you 18 provide a diagram of that? 19 MS. HOTTEL-COX: There wasn't a diagram, 20 just given that it's very unique to each site. But in 21 our cover letter we did kind of go through and explain 22 some of the difficulties in how that is specifically 23 subject for residential property. So that's the second 24 paragraph of page 2 in our cover letter. But given the 25 unique nature of the sites, there wasn't a specific</p>

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1 diagram that could really be provided.  
 2 COMMISSIONER MAY: Okay. I read through  
 3 this before, I didn't see anything that was particularly  
 4 satisfying.  
 5 MR. SHAPIRO: There's a couple rooftops  
 6 nearby, but there was one I think we referenced, it is a  
 7 public access one known as a green roof. My concern is  
 8 we do not need to qualify this as a temporary to put a  
 9 rooftop installation, it's a minimum of a year to design  
 10 it and put it in --  
 11 COMMISSIONER MAY: Yeah, I appreciate that.  
 12 I think it's more about understanding the total picture.  
 13 I mean, this isn't just temporary, but again  
 14 understanding what the future could hold for the  
 15 permanent, affects some of our thinking for the  
 16 temporary. I guess it's not essential at this moment,  
 17 but again looking at the future when you go to  
 18 permanent, if you come in saying that you can't do  
 19 anything with these very tall buildings that are nearby  
 20 because they're apartment buildings, their rooftop use,  
 21 if you could demonstrate why that doesn't work.  
 22 MR. STOVER: We're prepared to do that.  
 23 CHAIRMAN HILL: Before I move actually, does  
 24 any other members of the Board have questions for the  
 25 Applicant based upon their presentation?

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1 COMMISSIONER MAY: I'll tell you right now.  
 2 The tennis courts that are right there, and there's a  
 3 sidewalk immediately adjacent to that tennis court,  
 4 there's a shrub that's right there near the northeast  
 5 corner of the tennis courts along the sidewalk. It  
 6 wasn't a beautiful shrub, but it's bent over. Part of  
 7 it is going to die; maybe all of it is going to die,  
 8 it's hard to know.  
 9 MR. SHAPIRO: We'll take care of it.  
 10 COMMISSIONER MAY: It just sad, it looks  
 11 sad. There are -- there's certainly work -- I  
 12 understand you can't recede the grass there right now.  
 13 But you will be able to very soon.  
 14 MR. SHAPIRO: Absolutely.  
 15 COMMISSIONER MAY: Certainly, the whole  
 16 installation could have been cleaner. I mean, it was  
 17 hand dug, but there's a lot where it was dug. I mean,  
 18 there were a lot of things about it.  
 19 While I'm on the subject: The fence  
 20 enclosure is not what's on the plans. And in fact,  
 21 after the hearing it got worse: It expanded, it blocked  
 22 the sidewalk and it was blocking the sidewalk for  
 23 several days.  
 24 MR. SHAPIRO: Actually, our maintenance guys  
 25 found out and went back and moved it. I think it was

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1 (No response.)  
 2 Then, in that case, I will turn to the  
 3 Office of Planning.  
 4 MS. THOMAS: Good afternoon, Mr. Chairman,  
 5 members of the Board. Karen Thomas for the Office of  
 6 Planning.  
 7 And we did review the Applicant's latest  
 8 submission, and we continue to support the COW as a  
 9 temporary structure at this location subject to some  
 10 conditions that we noted in our report, including  
 11 maintenance of the site in its grassy areas; that was a  
 12 sort of contention at the last hearing. And we expect  
 13 that the Applicant would submit a maintenance plan in  
 14 that regard. Thank you.  
 15 MR. SHAPIRO: You were also concerned about  
 16 the rooftop. We confirm that that was hand dug, it  
 17 wasn't ditch-switch. You were concerned some of the  
 18 roof disturbance from the hand dug.  
 19 COMMISSIONER MAY: I appreciate that,  
 20 because I never witnessed the digging. Now, there is  
 21 still a shrub that was mowed over by a tree -- a car, a  
 22 truck, or something like that.  
 23 MR. SHAPIRO: If you could point us to that.  
 24 We're not sure which ones were -- but if you could point  
 25 us to that one, I'll certainly tell you about it.

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1 because of the wind or something.  
 2 COMMISSIONER MAY: I don't know. All I know  
 3 is it blocked the sidewalk for several days. I will  
 4 even go further to say that I got off my bike, I pushed  
 5 this thing back to the side of the sidewalk so that  
 6 people could pass and be on the sidewalk. And I came  
 7 back the next day and it was back over the whole  
 8 sidewalk again. So I don't know what your maintenance  
 9 guys are doing, but clearly they're concerned about  
 10 things other than people walking passed. And I think  
 11 that's one of the issues I have with this.  
 12 And, I mean, the whole containment area, the  
 13 fenced area, is bigger than what was on your plans. And  
 14 now maybe what was on your plans was not sufficient.  
 15 But it's bowing out toward the sidewalk and it seems to  
 16 be creeping toward it every day; and I see this every  
 17 day because I go by every day. And I'll put all of this  
 18 in the record for the benefit of my fellow Board Members  
 19 since it's not in evidence. But I cannot deny the fact  
 20 that I see it.  
 21 CHAIRMAN HILL: All right. From the Office  
 22 of Planning again, Ms. Thomas, there was again the  
 23 Office of Planning, again one of the conditions was  
 24 again one year beginning effective date of the order.  
 25 And then what I also thought was the collocation -- I

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<p style="text-align: right;">Page 110</p> <p>1 don't remember whether or not it was a condition or 2 not -- the Office of Planning was not in support of 3 collocation. 4 MS. THOMAS: Yes, we are not in support -- I 5 would not support collocation in this area. I think one 6 carrier would be sufficient for any structure that would 7 be within the reasonable height for that zone. More 8 carriers would require a much taller structure, which 9 would not be supported by OP. 10 CHAIRMAN HILL: Not cutting off the head, 11 but was there a height condition then, if you know? 12 MS. THOMAS: I don't have the regulations 13 exactly in front of me. But if I can recall, I think 14 the maximum height would be about 80 feet. And then you 15 couldn't go have an installation below 50 feet. So at 16 minimum, you just have -- 17 CHAIRMAN HILL: What I'm trying to get at: 18 No collocation would be good enough as a condition? 19 MS. THOMAS: Yes. 20 CHAIRMAN HILL: Does anyone have any 21 questions for the Office of Planning? 22 MR. HART: Just one clarification. 23 CHAIRMAN HILL: Sure. 24 MR. HART: No collocation both for temporary 25 and permanent, or are you just talking about the</p>	<p style="text-align: right;">Page 111</p> <p>1 temporary? 2 MS. THOMAS: For temporary, we would not 3 support collocation. 4 MR. HART: I just wanted to make sure you 5 were talking about that one. 6 CHAIRMAN HILL: Does anyone have any further 7 questions for the Office of Planning? 8 (No response.) 9 All right, I'm going to go through my whole 10 process before I get over here to the party status. So 11 again, is there anyone here from the ANC? 12 (No response.) 13 Is there anyone here wishing to speak in 14 support of the application? 15 (No response.) 16 Is there anyone here wishing to speak in 17 opposition of the application? 18 (No response.) 19 So then I would now turn to the people who 20 are in the party status in opposition. I guess what I'd 21 first like to do is provide you an opportunity to cross; 22 and then we're going to go ahead and give you an 23 opportunity to also have equal time in terms of 24 presenting based upon the new information that was given 25 to us from the last hearing. I'm going to go ahead and</p>
<p style="text-align: right;">Page 112</p> <p>1 put up five minutes in terms of cross examination, so 2 give you an opportunity again to ask questions of the 3 Applicant, as well as the Office of Planning. 4 MS. GLAZER: Mr. Chair, sorry to interrupt. 5 CHAIRMAN HILL: That's all right. 6 MS. GLAZER: Did you ask if the Applicant 7 wanted to cross examine the OP? 8 CHAIRMAN HILL: Yeah. I was just saying 9 right now at the same time they can ask questions of the 10 Applicants and the Office of Planning. 11 MS. GLAZER: I meant cross examination by 12 the Applicant. 13 CHAIRMAN HILL: Sorry, I didn't hear that. 14 You're correct. 15 Does the Applicant have any questions for 16 the Office of Planning? 17 MS. HOTTEL-COX: No questions for the Office 18 of Planning. But just to reiterate what we had said at 19 the previous hearing: We are happy to agree to the 20 condition of no collocation for the site, as well as we 21 did submit an updated maintenance plan addressing some 22 of the concerns in Exhibit 48C of the record. 23 CHAIRMAN HILL: Perfect. And then you're in 24 agreement with the one year? 25 MS. HOTTEL-COX: Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 CHAIRMAN HILL: So that being the case. 2 Again, Mr. Moy, thank you for putting five minutes on 3 the clock. And I would turn it over to the two members 4 in opposition. 5 MR. GEIS: Good afternoon, and thank you 6 Board for continuing this hearing and giving us an 7 opportunity to be involved. We did not have the ability 8 to see that ANC letter because it was not filed in the 9 docket and we didn't get a copy of it. 10 I don't know, did the Applicants get a copy 11 of it? 12 MS. HOTTEL-COX: We didn't receive a copy of 13 it. We just saw it in the record right before the 14 hearing this morning. 15 MR. GEIS: Because I checked this morning 16 and it wasn't in there. So we don't know what that 17 says. 18 CHAIRMAN HILL: Mr. Moy? 19 It is in the record actually. It's the last 20 one that in the record. But if Mr. Moy has one, you can 21 take a look at it. 22 MR. GIES: I looked at 8:30, it wasn't 23 there. Can I just taken one second? 24 CHAIRMAN HILL: Sure. 25 Mr. Moy, could you stop the clock for a</p>

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1 minute?

2 And again, Mr. Gies, just to be clear again:

3 So this is an opportunity for you to ask questions of

4 the Applicant and the Office of Planning. I was going

5 to give you 15 minutes as well to go ahead and present.

6 So just kind of be clear as to what I was going to do,

7 and then afterwards the Applicant will have an

8 opportunity to cross your presentation. So that's where

9 we are. Okay?

10 MR. GIES: Sure. Thank you.

11 So does the Applicant agree that the ANC's

12 objections remain based on the letter?

13 CHAIRMAN HILL: Who are you directing your

14 question to? Sorry.

15 MR. GEIS: Anyone from the team.

16 MR. STOVER: We read the letter, saw that

17 they're still in opposition.

18 MR. GEIS: Thank you.

19 And the letter, everybody read the letter,

20 basically states that they object to no use after the

21 90-day temporary expires.

22 Do you agree that there's at lease currently

23 in negotiations between the Capitol Skyline Hotel and

24 Verizon?

25 MR. STOVER: Yeah. I think we stated that

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1 COMMISSIONER MAY: Can I interrupt for a

2 second? Because I'm not sure the state of this

3 negotiation is actually relevant to our decisionmaking.

4 The fact that negotiations are going on is fine and

5 relevant. You can ask: Negotiations, do you think the

6 negotiations might be complete and not have the need for

7 the short-term sale, or something like that? But we

8 don't want to get into the question: How far are you on

9 the money? That's not really our concern, at least my

10 perspective.

11 MS. GLAZER: It's also well beyond the

12 scope.

13 CHAIRMAN HILL: Now, I apologize to you,

14 sir. I again was asking you to go ahead and ask your

15 question. I agree with my fellow Board Members. This

16 is what happened the last time during the cross

17 examinations I recall. I would venture to say that the

18 Board understands that you are in negotiations with the

19 Applicant. You're at a point where you're not in

20 agreement in terms of the Capitol location, and that was

21 vetted during the previous hearing.

22 So if those are the questions, then we don't

23 need to the hear that area of your questioning.

24 MR. GEIS: I apologize. I was just trying

25 to get information into the record, that the lease is

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1 earlier, that we're in discussions for a permanent

2 location possibly to be in Capitol Skyline.

3 MR. GEIS: Is that at least close to

4 completion?

5 MR. STOVER: Mr. Gies, my experience is that

6 until it's done it's never done. So the two issues, if

7 you want to talk about the two issues --

8 CHAIRMAN HILL: I don't want to get into --

9 I'd just rather have the questions answered, and all you

10 have to do is answer the question. Okay? So he's

11 asking a question, you're answering the question. The

12 question was again: Are the lease negotiations still

13 open? And you answered the question that they were.

14 Okay.

15 MR. GEIS: Excuse me, I don't want to get

16 into an area that you don't think is relevant.

17 CHAIRMAN HILL: It's okay, I'm not trying to

18 stop you from asking questions. I will let you know if

19 we get into an area that we think you don't need to be

20 in. So go ahead and ask the questions you want to ask.

21 MR. GIES: So isn't it true that the owner

22 of the Capitol Skyline Hotel has significantly come down

23 on the request for the granting the new lease to the

24 point that it's about the same as the rent that you're

25 currently paying or still paying.

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1 very close to finality.

2 CHAIRMAN HILL: It doesn't necessarily have

3 to do with this case at this time.

4 MR. GEIS: So I'll move on.

5 Verizon's equipment is still on the Capitol

6 Skyline Hotel. Correct?

7 MR. STOVER: Yes, there is still some

8 equipment there.

9 MR. GEIS: Verizon is still paying rent to

10 the Capitol Skyline Hotel?

11 MR. STOVER: That's correct.

12 MR. GEIS: So if you turn the equipment back

13 on on the Capitol Skyline Hotel, there will be no gap in

14 coverage whatsoever such that there's no need for a

15 temporary site in Grand Hall Recreation Center?

16 MR. STOVER: Well, so all I can say is:

17 Verizon Wireless approached the siting facilities -- we

18 looked for existing structures first. So a last resort:

19 To build a new structure. We had a site located on the

20 Capitol Skyline rooftop; our lease was terminated in

21 holdover status. It's not a secure site for us at this

22 point in time, and we need this temporary site for the

23 year that we've asked for while we see if we can find a

24 permanent location. And we would prefer to be on a

25 building rooftop or an existing structure --

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1 CHAIRMAN HILL: That's okay. I'm just  
 2 trying to clarify again is that: We, as a Board, are  
 3 not here to help facilitate a negotiation process  
 4 between Verizon and the Skyline Hotel.  
 5 MR. GEIS: I appreciate that. This was  
 6 going to whether there would be a gap in service.  
 7 CHAIRMAN HILL: If you can come to an  
 8 agreement and they can turn on the antenna, I believe  
 9 I'd understand there would be a gap in service.  
 10 MR. FRIEDMAN: They can keep their antenna  
 11 on. They haven't removed their antenna.  
 12 CHAIRMAN HILL: Again, you're back to the  
 13 other -- we have -- you guys have -- we're not part of  
 14 your negotiation process.  
 15 MR. FRIEDMAN: I'm not trying to make you  
 16 part of our negotiations, sir; let me just finish my  
 17 point, respectfully.  
 18 All I'm trying to say is that they tried to  
 19 say there was an emergency need to put a pole in the  
 20 park when there wasn't, where they could have stayed.  
 21 That's the points we were trying to get on the record:  
 22 They could have stayed where they were, all right.  
 23 CHAIRMAN HILL: You have 15 minutes to go  
 24 ahead and state your point.  
 25 MR. FRIEDMAN: I'm just trying to get the

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1 MR. STOVER: Yes, I'm familiar with that.  
 2 MR. GEIS: Our understanding is that  
 3 T-Mobile has a nine-panel antenna site on that building.  
 4 You're indicating that it's a residential building,  
 5 which didn't seem to be a problem for T-Mobile. Just  
 6 wondering why that building isn't good for Verizon to  
 7 replace the coverage in that area using a down-tilt for  
 8 your panel antennae [sic] and different techniques you  
 9 have from that standpoint to cover the coverage where  
 10 you have a coverage gap?  
 11 MR. STOVER: So each wireless carrier cites  
 12 locations that suite their network needs. Like I said  
 13 before, frequencies propagate at different physical  
 14 aspects. So T-Mobile operates at a different frequency  
 15 than Verizon operates at.  
 16 I'm familiar with this building; I have a  
 17 number of locations with this property owner elsewhere  
 18 in the City and Montgomery County. My engineer looked  
 19 at the building, and one of our New York coverage  
 20 objectives. I think the one thing we specifically  
 21 indicated was that the underpass to get under 395 --  
 22 sorry, I keep say "395" -- 695 at that point, we  
 23 wouldn't have achieved that objective by locating on  
 24 that building.  
 25 MR. GEIS: Thank you. Do you believe that

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1 question on the record.  
 2 CHAIRMAN HILL: What's your question?  
 3 MR. FRIEDMAN: My question on the record is:  
 4 The equipment that is sitting on Skyline today, does it  
 5 work? And he said yes. So the next question I wanted  
 6 to ask: Then why did you apply for emergency status to  
 7 have to be in a park? Because it wasn't an emergency  
 8 because you have a lease --  
 9 CHAIRMAN HILL: No, no, no.  
 10 He asked a question.  
 11 MR. STOVER: So, like I said before, the  
 12 status of our lease is that it's been terminated.  
 13 CHAIRMAN HILL: So the lease was terminated.  
 14 Your next question?  
 15 MR. GEIS: So I want to ask about the  
 16 Capitol Park Plaza Twin Apartments. You know that the  
 17 Capitol Park Plaza Twin Apartments, which is pretty much  
 18 adjacent to Reynold Recreation Center, is a zone site  
 19 currently that T-Mobile is using, and they're on the  
 20 rooftop of that building, it's a nine-story building.  
 21 You're aware of that. Correct?  
 22 MR. STOVER: Can we put the drawings up real  
 23 quick so I can see which building for sure?  
 24 MR. GEIS: Capitol Park Plaza Twin  
 25 Apartments.

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1 the Blind Whino and the Reynold School Center are in  
 2 fact still possibilities?  
 3 MR. STOVER: Are you suggesting for a  
 4 permanent location or for a temporary location?  
 5 MR. GEIS: For temporary or permanent.  
 6 MR. STOVER: Again, I think anything on the  
 7 other side of the athletic field precludes us from  
 8 reaching our main objective of South Capitol Street at  
 9 the underpass.  
 10 MR. GEIS: Okay. You agree that the  
 11 coverage at the Capitol Skyline Hotel was optimal for  
 12 servicing the area in question, this application?  
 13 MR. STOVER: It was a good site for us. We  
 14 didn't elect to leave; we were terminated.  
 15 MR. GIES: Well, that's not true.  
 16 CHAIRMAN HILL: I'm going to give you two  
 17 more questions. And also, do you have any questions for  
 18 the Office of Planning?  
 19 MR. FRIEDMAN: I do. Can I ask that  
 20 question, please?  
 21 CHAIRMAN HILL: Let me let Mr. Gies ask his  
 22 two questions, and then we'll move to the Office of  
 23 Planning.  
 24 MR. GEIS: I think it was Mr. Shapiro that  
 25 indicated it's about a year process to build a rooftop

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1 site.

2 MR. SHAPIRO: As it is officiated, yes.

3 MR. GEIS: But the monacle that you

4 constructed in Reynold Recreation Center took three

5 days. Correct?

6 MR. SHAPIRO: I believe it took more than

7 that, but that was a temp site. I know it took longer

8 than that, it was actually a couple weeks from start to

9 finish, but...

10 MR. GEIS: This may be my lack of

11 understanding of zoning rules, because I'm not a zoning

12 lawyer. But maybe this is a question for Ms. Thomas,

13 actually.

14 CHAIRMAN HILL: You're done with the

15 Applicant, then?

16 MR. GEIS: Yes.

17 CHAIRMAN HILL: Any questions for the Office

18 of Planning? Please, go ahead.

19 MR. GEIS: Ms. Thomas, hi.

20 MS. THOMAS: Hi.

21 MR. GEIS: Actually, I have two questions

22 for you. First is: Isn't it a requirement to get a

23 special exception of the type that Verizon is asking for

24 here, that the site must be available for collocation?

25 MS. THOMAS: I'm not sure what you're

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1 CHAIRMAN HILL: I think she's answering your

2 question pretty clearly.

3 MR. GEIS: Okay.

4 One other question: You had indicated in

5 your filing, the last filing, that the Office of

6 Planning would not support permanent location, permanent

7 location of the site.

8 MS. THOMAS: At this point we would not

9 support a permanent location.

10 MR. GEIS: Thank you.

11 CHAIRMAN HILL: Mr. Friedman?

12 MR. FRIEDMAN: Mr. Shapiro said that you

13 would need a zoning --

14 CHAIRMAN HILL: Sorry, you're asking a

15 question of the Office of Planning?

16 MR. FRIEDMAN: Yes, I am. Mr. Shapiro's

17 reply was that she needed no amenities to go to the

18 Blind Whino. You said there was some sort of setback

19 issue?

20 CHAIRMAN HILL: Your question is to Office

21 on Planning. I'm just trying to understand.

22 MR. FRIEDMAN: Yes, my question is to the

23 Office of Planning.

24 So Mr. Shapiro testified from the record --

25 because I have to have everything on the record for

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1 asking.

2 MR. GEIS: If you know. The zoning rules

3 require that, in order to approve a special exception

4 for this type of site, it must be made available for

5 collocation by the carriers.

6 MS. THOMAS: Yeah. In that respect, yes.

7 But we have the choice to say whether we believe that,

8 that that would not be suitable, whether a particular

9 site would not be suitable, whether we support that or

10 not.

11 MR. GEIS: And in this particular case, it

12 would be like a waiver of that, there'd be a waiver of

13 that requirement by the Board if this site was to be

14 approved because in one hand Verizon is saying, "Yes, we

15 will allow collocation", and on the other hand the

16 Office of Planning is saying, "We don't want

17 collocation."

18 MS. THOMAS: We did not submit that it's a

19 quagmire. I don't see the quagmire because there are

20 other things we would have to consider. For instance,

21 sight lines, that was one. The site itself may not be

22 able to take equipment cabinets along that walkway.

23 Those are some of the considerations.

24 MR. GEIS: Maybe I'm confused about the

25 zoning rules.

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1 appeal purposes. So for the record, they testified that

2 you can't go on the Blind Whino site because of setback

3 purposes.

4 CHAIRMAN HILL: You're asking -- there's no

5 application in front of the Office of Planning to have

6 that analysis done. So you're now asking the Applicant

7 whether or not they think that there needs to a special

8 relief for the Blind Whino site. Is that your question?

9 MR. FRIEDMAN: My question is: Do you think

10 that there needs be relief at the Blind Whino site?

11 CHAIRMAN HILL: All right.

12 Ms. Thomas?

13 MS. THOMAS: I wouldn't be able to say that

14 right now. I don't have the area requirements in front

15 of me. In terms of I don't know what the size of the

16 Rhino's property, I don't know -- the zoning

17 administrator would have to make that determination

18 whether a setback relief is required. I can't sit here

19 and say --

20 MR. FRIEDMAN: My next question is: Because

21 I've done some research on this, because I wanted it to

22 go to the Blind Whino -- but if they denoted the money

23 back to everybody, to the parks and everything for the

24 community: Would it be possible, without setbacks --

25 because this is what I was told by the Office of



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1 Planning when we went on the record -- that with a  
 2 penthouse you can put these towers on top of the  
 3 penthouse?  
 4 MS. THOMAS: You can put antennas on a  
 5 penthouse, yes. If that's the question, you can put  
 6 antennas on a penthouse.  
 7 CHAIRMAN HILL: I'm going to give you an  
 8 opportunity now to present, okay. They had 15 minutes,  
 9 so you guys can have 15 minutes. Are you guys going to  
 10 share the time? Or who's going to go first? How would  
 11 you like to do that?  
 12 MS. GLAZER: Mr. Chair, did the opposition  
 13 party cross-examine the Applicant yet?  
 14 CHAIRMAN HILL: No. They were going to  
 15 present now.  
 16 MR. GLAZER: Well, they should do cross  
 17 examination before they put on their case. I beg your  
 18 pardon, I got confused.  
 19 MR. GEIS: I appreciate it, I appreciate it.  
 20 I'm trying not to waste anyone's time. I really did get  
 21 to ask questions. I just wanted to ask the one question  
 22 about: How they came up with the fact that you needed  
 23 zoning relief at the Blind Whino? That's what I wanted  
 24 to direct the testimony.  
 25 CHAIRMAN HILL: I was just trying to figure

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1 COMMISSIONER MAY: There's a steeple.  
 2 There's really a penthouse up there?  
 3 MR. FRIEDMAN: Yes. It's not an 18 foot 6  
 4 penthouse like --  
 5 COMMISSIONER MAY: Where is it? What part  
 6 of the building is it on?  
 7 MR. FRIEDMAN: On the roof. Because we've  
 8 been studying the -- yes.  
 9 COMMISSIONER MAY: All penthouses are on  
 10 roofs. Where on the roof? I mean, is it in the  
 11 northwest corner? The northeast corner?  
 12 MR. FRIEDMAN: It's in the middle of the  
 13 building.  
 14 COMMISSIONER MAY: I mean, it's a very steep  
 15 -- I mean it's a former church. Right?  
 16 MR. FRIEDMAN: Agreed.  
 17 COMMISSIONER MAY: So it's above that  
 18 pitched roof?  
 19 MR. FRIEDMAN: It's within the pitched roof.  
 20 COMMISSIONER MAY: Within the pitched roof?  
 21 MR. FRIEDMAN: Yes. And then there's the  
 22 access to take you out to the roof.  
 23 COMMISSIONER MAY: Okay. That's what I'm  
 24 trying to understand. Because I'm not sure I would  
 25 call/describe it as a penthouse, so I was trying to

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1 out who you were asking the question of. So I'll give  
 2 you this opportunity now to ask this question, which  
 3 please go ahead and answer the question.  
 4 MS. BOOL: So we just did a very elementary  
 5 desktop scrub of that small area behind the Blind Whino  
 6 to determine whether or not we thought it was viable,  
 7 based on my interpretation of the ordinance and its  
 8 proximity to residential surrounding.  
 9 CHAIRMAN HILL: Okay.  
 10 MR. FRIEDMAN: Can I clarify the answer,  
 11 please?  
 12 So you studied whether a pole can be put in  
 13 the parking lot but not whether a pole can be put on top  
 14 of the penthouse of the building?  
 15 MS. HOTTEL-COX: Because this is solely  
 16 about the temporary site, the temporary site wouldn't be  
 17 able to be constructed to meet the needs on a rooftop,  
 18 it would have to be something like a COW.  
 19 COMMISSIONER MAY: Could I ask a question of  
 20 the opposition? You've talked about a penthouse on top  
 21 of the Blind Whino building?  
 22 MR. FRIEDMAN: Yes.  
 23 COMMISSIONER MAY: There's no penthouse on  
 24 top of the Blind Whino building.  
 25 MR. FRIEDMAN: Yes, there is.

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1 understand what you were considering a penthouse. How  
 2 far off the ground is that?  
 3 MR. FRIEDMAN: Since I'm under oath and I  
 4 don't know the answer, I can't answer that question. I  
 5 can do the --  
 6 COMMISSIONER MAY: Is it 80 feet?  
 7 MR. FRIEDMAN: Do I think that it's 80 feet?  
 8 COMMISSIONER MAY: Yeah.  
 9 MR. FRIEDMAN: I can't, I don't know. Just  
 10 because I'm under oath here, I respectfully don't want  
 11 to lie under oath.  
 12 COMMISSIONER MAY: I'm not asking you to lie  
 13 under oath, and it's okay to say "I don't know". So I'm  
 14 trying to understand what you are trying to get at, and  
 15 so your answers have helped me. Thank you.  
 16 CHAIRMAN HILL: All right. Gentlemen, you  
 17 have 15 minutes.  
 18 MR. GEIS: I don't think we need that long.  
 19 CHAIRMAN HILL: Just so I understand: Are  
 20 you splitting it up or are you taking the 15 minutes?  
 21 MR. FRIEDMAN: We want to get out of here as  
 22 fast as possible, okay. I need to go pick my son up  
 23 from school. So respectfully, I'll try to be as quick  
 24 as possible. Can I go now?  
 25 CHAIRMAN HILL: Yeah, sure.

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1 MR. FRIEDMAN: Thank you, Mr. Hill.  
 2 I know the ANC's continued to object, and my  
 3 community at Blind Whino is open to of the idea of  
 4 working together and figuring out a way to get through  
 5 variances and things like that so it doesn't have to be  
 6 in a public park. And also I have been asked and I've  
 7 been working very hard to get a lease done with Verizon  
 8 so they can stay at the site, and there's been a  
 9 tremendous amount of time and energy that has been put  
 10 in that process. And I want to put on the record that:  
 11 We have been able to get the owner to agree to do things  
 12 that Verizon has asked. Basically, everything that they  
 13 have asked we've come back and we've agreed, and we've  
 14 been waiting for Verizon to come back; and I just want  
 15 to get that on the record.  
 16 We've also been asked by Verizon to have the  
 17 equipment taken off the site, which we said, "No  
 18 problem, you can go and do that." And I bring that up  
 19 because at the last hearing on the record they were  
 20 saying we weren't allowing them to. And that is not --  
 21 it's partially correct and incorrect. We just wanted it  
 22 to be done in a way where the property wasn't going to  
 23 get damaged like the parking got damaged with the gras  
 24 and the bush getting rolled over, etcetera.  
 25 And I also want to point out that since they

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1 coming in and starting out with a temporary one-year  
 2 location in a public space and then pursuing the  
 3 permanent. We'll rest at that. Thank you.  
 4 CHAIRMAN HILL: Okay. Does the Board have  
 5 any question for the opposition?  
 6 MR. HART: Besides Blind Whino and the  
 7 Capitol Park Plaza site, which Verizon intended the last  
 8 one, the Capitol Park Plaza site, is just not the right  
 9 location for them, do you have another location that you  
 10 were -- and the Skyline -- are there any other locations  
 11 that you're -- Blind Whino and Skyline are the two  
 12 locations that you're --  
 13 MR. GIES: There's Reynold Recreation.  
 14 There's the Old Randal School, that's a very large site  
 15 that's directly adjacent to the park. The development  
 16 planning there, if Verizon could put permanency, build  
 17 their plans into the development plan and to put a new  
 18 -- I think it's a six- or seven-story building at that  
 19 site -- but there Randal School is going to remain, the  
 20 space on there, if they could plan there or attach  
 21 antennas somehow to the roof, for temporary or  
 22 permanent. And all those things are options to them.  
 23 They haven't gone and pursued any of those options  
 24 whatsoever.  
 25 There's another building just south of the

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1 can stay, they don't need temporary relief because they  
 2 can't turn it on within three days, as they testified  
 3 last time. And my biggest concern is the precedent that  
 4 we are setting where Verizon can say, "I need to take my  
 5 equipment off", so now it's an emergency, and, "I have  
 6 to put a pole in parks." And we want to work with  
 7 Verizon and we're not stopping them from removing their  
 8 equipment. I don't have anything else to say.  
 9 MR. GEIS: I would simply add, to close out  
 10 his points: We're literally a few terms away from a new  
 11 25-year lease for the Capitol Skyline Hotel that is  
 12 basically the same rent as it was under the last version  
 13 of the agreement. There's no need for even a temporary  
 14 approval of any kind to have this site, Reynold  
 15 Recreation Center, because if they sign the lease today  
 16 or tomorrow or the next day, they can cover that thing  
 17 right back up and once they're back in business and  
 18 their coverage is complete with optimal coverage over  
 19 the area, there's no hole, there's no gap, which is  
 20 another requirement.  
 21 So I guess we would ask that the Board deny  
 22 the temporary location of this site, Reynold Recreation  
 23 Center; it's not necessary, there's no gap in coverage.  
 24 They have other alternatives clearly, there's no need  
 25 for it. And it does create a bad precedent Verizon

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1 Capitol Skyline, at 1230 South Capitol Street, that we  
 2 analyzed: And it's a five-story building; it has two  
 3 carriers on it right now, their zoned, so it's a  
 4 collocation, pretty much collocation application for  
 5 them. They can probably provide significant coverage --  
 6 between this one and Capitol Park Plaza, they can  
 7 probably provide 100 percent coverage over the gap in  
 8 coverage that would be created by the shutdown of the  
 9 Capitol Skyline Hotel. So they definitely have other  
 10 options, they just haven't looked at them.  
 11 MR. HART: Thank you.  
 12 CHAIRMAN HILL: Commissioner May, Ms. White,  
 13 any questions?  
 14 MS. WHITE: Can you just kind of restate for  
 15 me again your specific opposition to the location that  
 16 they're proposing as a temporary site --  
 17 MR. FRIEDMAN: Sure, no problem.  
 18 MS. WHITE: -- as opposed to: There's some  
 19 other locations that you suggested, like this Randal  
 20 School and the Rhino [sic] site?  
 21 MR. FRIEDMAN: Sure. I think it's important  
 22 to appreciate -- and you can cut me off any time Mr.  
 23 Hill, Mr. Hart, or Mr. May, I don't want to upset you  
 24 guys, I was just trying to get it on the record.  
 25 Verizon doesn't need to leave where they're at right

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1 now, number 1. Okay? They have built a pole in a park  
 2 which is an eyesore, and I am very concerned about the  
 3 precedent that it is going to set that parks that I go  
 4 to are going to see further cellphone towers in it and  
 5 it's going to allow big companies like Verizon to say,  
 6 "I had to be here on an emergency because I couldn't be  
 7 where I am currently at." So I want to make sure that  
 8 that doesn't keep occurring, because I like to go to  
 9 parks, I don't want to see towers sitting in parks. So  
 10 (1) Things that become temporary, they can say it's an  
 11 emergency -- like they did -- to get this in there.  
 12 They based it on the inauguration, they flashed and  
 13 said, "We need to have this as an emergency so we can  
 14 serve the inauguration." That's how they got this, and  
 15 it was supposed to be 90 days. Now we're here giving  
 16 them another year. We're setting precedents; it's not  
 17 right.

18 I have other sites, Blind Whino, which I  
 19 represent, which is a nonprofit, which is saying: "Come  
 20 be on my site, let's work together, take the income that  
 21 you pay us in rent, we as a nonprofit will donate it  
 22 back to the community." Verizon has shown no effort/no  
 23 energy in trying to make that happen.

24 The other point is: Verizon is saying, "I  
 25 have to move my equipment that is on the building to

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1 MS. WHITE: Would you be more flexible if  
 2 there was a more-formalized maintenance program in place  
 3 or process in place where the visibility was reduced?  
 4 MR. FRIEDMAN: (1) If it is a true  
 5 emergency, that they first testified to get it in the  
 6 park, I want to make sure we have communication, okay.  
 7 That was a lie, that was disingenuous.  
 8 CHAIRMAN HILL: Let's not use the word  
 9 "lies". Let's not state things such as this, okay.  
 10 Just answer her question, please: If there was a  
 11 maintenance agreement, would you be more susceptible to  
 12 it?  
 13 MR. FRIEDMAN: No. Because when you're  
 14 playing baseball with your kids and you want to look up  
 15 at the Capitol, you shouldn't have to see through an  
 16 80-foot pole. That's not supposed to be in public parks  
 17 when it can be on private buildings.  
 18 MS. WHITE: Thank you.  
 19 MR. FRIEDMAN: Can I just finish my point?  
 20 CHAIRMAN HILL: No, no. You had an  
 21 opportunity to answer questions in a way that I don't  
 22 think was specific to the question being asked. And you  
 23 had an opportunity to present your case.  
 24 MR. FRIEDMAN: I apologize.  
 25 CHAIRMAN HILL: Now I'm curious, I do have a

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1 different equipment", but yet they have not gone and  
 2 then picked up that equipment. And I think there's a  
 3 reason for that.  
 4 MS. WHITE: But the case today is for  
 5 Verizon's request just for a temporary facility, that's  
 6 what we're hearing today. So there's some limitations  
 7 in terms of the types of sites that they could do on a  
 8 temporary basis.  
 9 MR. FRIEDMAN: "Temporary" started at 90  
 10 days and now "temporary" is a year. And my concern is  
 11 that we're going to have 90-day temporaries that turn  
 12 into one-year temporaries, so that means that for 555  
 13 days they're going to allow Verizon Wireless to be in a  
 14 park that's going to hurt the grass and hurt the brush,  
 15 and Mr. May's going to have the move the fence when  
 16 everything was fine with it sitting on our building,  
 17 okay. Everything was fine with it sitting on our  
 18 building. And we're saying, "Hey, you can go over to  
 19 our nonprofit and be there as well, so if you need to  
 20 have multiple towers."  
 21 So I just want to be clear: If we authorize  
 22 them to do this and we set the precedent, and suddenly  
 23 we have 30 parks that have 50 percent of them 15 poles  
 24 to get 550 days, because they got a year plus another 90  
 25 days, then that'd be ridiculous.

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1 question. So you represent Blind Whino. Correct?  
 2 MR. FRIEDMAN: Correct.  
 3 CHAIRMAN HILL: So that means you're paid by  
 4 Blind Whino?  
 5 MR. FRIEDMAN: No, it's a nonprofit.  
 6 CHAIRMAN HILL: So you're just a volunteer  
 7 is what you're telling me?  
 8 MR. FRIEDMAN: So the owner of the church is  
 9 Steve Tanner, who is my business partner.  
 10 CHAIRMAN HILL: So there's no financial  
 11 connection with you and Blind Whino?  
 12 MR. FRIEDMAN: No connection at all.  
 13 CHAIRMAN HILL: And Mr. Geis, you represent  
 14 Skyline Hotel?  
 15 MR. GEIS: Yes.  
 16 CHAIRMAN HILL: And you're paid by Skyline  
 17 Hotel?  
 18 MR. GEIS: Yes and no.  
 19 CHAIRMAN HILL: You're either paid by  
 20 Skyline or you're not paid by Skyline Hotel?  
 21 MR. GEIS: Yes, I'm compensated by Skyline  
 22 Hotel, yes.  
 23 CHAIRMAN HILL: I'm just curious.  
 24 MR. FRIEDMAN: He hasn't received  
 25 compensation is what he's saying.

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1 MR. GEIS: I didn't say that.  
 2 CHAIRMAN HILL: Does anyone have anymore  
 3 questions for the opposition?  
 4 (No response.)  
 5 So the opposition has an opportunity now TO  
 6 -- the Applicant, sorry, thank you. The Applicant has  
 7 an opportunity to rebut any of the statements and also  
 8 provide some kind of a closing. I'm going to put five  
 9 minutes on the clock for you as well, because that's  
 10 what we started with with the cross. Mr. Moy, if you  
 11 would?  
 12 What is being clarified to me again is: You  
 13 have the opportunity to cross. I wasn't think about  
 14 rebuttal right away, so I do apologize for that. You  
 15 have an opportunity to cross. So I'm going to put five  
 16 minutes on the clock for you to cross examine.  
 17 MS. HOTTEL-COX: We don't have any cross  
 18 examination questions. We're happy to go ahead and  
 19 conclude with the final couple of comments.  
 20 CHAIRMAN HILL: Okay.  
 21 MR. STOVER: I guess that includes a  
 22 rebuttal, though?  
 23 COMMISSIONER MAY: Yes, please.  
 24 CHAIRMAN HILL: Go ahead and provide your  
 25 rebuttal and closing, thank you.

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1 have any final questions for the Applicant?  
 2 (No response.)  
 3 Okay. I'm going to go ahead and close the  
 4 hearing. And is the Board ready to deliberate? Mr.  
 5 May, would you like to start?  
 6 COMMISSIONER MAY: Very much so.  
 7 Okay, so this has been a very interesting  
 8 case, and many interesting statements, some of it  
 9 actually related to zoning, some of them don't. First  
 10 of all, I think the Applicant needs to understand that  
 11 the fact that the original installation of the temporary  
 12 facility was not done very well and the maintenance  
 13 that's occurred since then has not been very good -- and  
 14 again, this is due to my personal knowledge, what I've  
 15 shared, what I witnessed -- it shouldn't happen that way  
 16 again.  
 17 The second thing is that: The opposition I  
 18 don't believe has made a very strong case as to why the  
 19 temporary installation of this cell tower at Randal  
 20 [sic] Field should not be done. And in fact, I think  
 21 the Applicant should be very glad that they came out to  
 22 testify in opposition because in many of the statements  
 23 that the opposition made kind of undercut their own  
 24 case. I mean, the fact that you didn't make a deal with  
 25 them to locate a temporary facility on the grounds of

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1 MR. STOVER: I thought it would be  
 2 appropriate to clear up a couple things: Both Mr. Geis  
 3 and Mr. Friedman represent Capitol Skyline Hotel.  
 4 That's who we're negotiating with, both parties. I do  
 5 believe that the statement that Verizon didn't need this  
 6 as an emergency is not factual: Our lease was  
 7 terminated, electric was threatening to shut off on  
 8 numerous occasions. We were desperate to find somewhere  
 9 immediately to prevent loss of wireless service. So  
 10 that was factual.  
 11 I think actually that's to only two points I  
 12 wanted to bring up in terms of rebuttal.  
 13 MS. HOTTEL-COX: Just a couple of final  
 14 comments: They did mention the 1230 South Capitol site.  
 15 I would note that that is so far south that that isn't  
 16 even depicted on the map. And so Verizon did look at  
 17 that and it wouldn't we able to serve the propagation  
 18 needs. And given the fact that this was, the COW was  
 19 initially put up subject to the 90-day approval from  
 20 DCRA, we are rapidly approaching the end of that 90  
 21 days. And so it is a necessary temporary approval from  
 22 the Board to be able to prevent that gap in coverage.  
 23 So with that, we don't have any further comments. If  
 24 the Board has any final questions?  
 25 CHAIRMAN HILL: All right. Does the Board

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1 the Blind Whino, it's not an argument, an affective  
 2 argument demonstrating why we should not grant the  
 3 one-year Cell On Wheels location. I said, it completely  
 4 undercuts -- not completely, but it does undercut the  
 5 opposition.  
 6 Let me also say, first of all, that I don't  
 7 believe that we should be locating cellular facilities  
 8 in parks if it's at all avoidable. Sometimes it can't  
 9 avoided: We have some in some of the parks that we  
 10 patrol. And it is important to provide that coverage,  
 11 particularly in urban locations. And so there are going  
 12 to be circumstances where there's just no other way to  
 13 do it, so it has to be done, and I can accept that.  
 14 It's very difficult for me to understand how in the long  
 15 run a location like this is going to make sense. So I  
 16 think it is a very, very high bar to clear if you were  
 17 to come back eventually for a more permanent  
 18 installation.  
 19 I do appreciate seeing what you've done in  
 20 terms of permanent installations, and I recognize that a  
 21 lot could be done to sort of disguise it, but it's still  
 22 not great. There a lot of things along South Capitol  
 23 Street that are not pleasant to look at, but that's not  
 24 something that we want to continue and there's a  
 25 concerted effort on the part of the City and on the part

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1 of the park service and on the part of the -- as we  
 2 participate in these public processes -- on the part of  
 3 the National Capitol Zoning Commission, especially to  
 4 clean up that view from South Capitol, that very  
 5 important gateway. Maybe even the freeway will go away  
 6 at some point, in which case you wouldn't have to worry  
 7 about getting coverage.  
 8 (Laughter.)  
 9 COMMISSIONER MAY: I think unfortunately  
 10 much of the discussion has been about a business  
 11 negotiation, and frankly this is not the forum for doing  
 12 that, and I don't really care to see the Board Zoning  
 13 Adjustment to become the place where this process winds  
 14 up being used as leverage in negotiations. When I first  
 15 read the case, it seemed pretty clear to me that Verizon  
 16 wasn't doing enough to make the deal they needed to make  
 17 to stay in the current location or to find some other  
 18 location. But as we've heard all of the testimony, it  
 19 is pretty clear to me that there weren't a whole lot of  
 20 options for Verizon, and I do believe there's been due  
 21 diligence on Verizon's part. And I think that's  
 22 appropriate: Verizon is a very big player in the  
 23 country and it's not in Verizon's best interest that  
 24 they may sort of a pennywise strategy in this sort of a  
 25 circumstance at the expense of the broader community

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1 hopeful with the negotiations, if in fact as the  
 2 opposition states that the negotiations are close to a  
 3 conclusion, if that's correct, then I imagine that  
 4 Verizon will need less than 12 months and will vacate  
 5 the site. Because there's no reason to have a COW if  
 6 you can turn on the other site more quickly. So I would  
 7 be in support. And again, I'm much more concerned with  
 8 the long term.  
 9 I also do appreciate what the ANC's position  
 10 is on this, and I think they're standing up for all the  
 11 right things. But again, I think in the short term it's  
 12 okay to go ahead with this and that we should be careful  
 13 of what happens in the long term. Thank you.  
 14 MR. HART: I'd like to second what  
 15 Commissioner May just described, because I think that  
 16 the -- I could support the application. I believe that  
 17 the Applicant has demonstrated and the Office of  
 18 Planning has provided more than sufficient information  
 19 in its report about how the Applicant meets -- and there  
 20 are quite a number of criteria that you'd have to meet.  
 21 And I would also mention that OP did not  
 22 support the collocation of other structures; and I think  
 23 that's a very important piece, collocation of other  
 24 carriers at this location. And I think that that should  
 25 be probably a condition that we put on the application

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1 benefits and the broader acceptance by the community of  
 2 some of the less-pleasant stuff that comes with the  
 3 technology that we all rely upon. So I think we have to  
 4 believe that Verizon is trying to do what it can to  
 5 incorporate the technology in a way that is as minimally  
 6 impactful [sic] or possible of being mitigated, and I do  
 7 believe that.  
 8 So at this point, I'm ready to support a  
 9 one-year term. I do hope that Verizon is able to  
 10 negotiate a permanent location to return to the Capitol  
 11 Skyline Hotel, or some other permanent location, and  
 12 doesn't have to come back here for a permanent tower as  
 13 part of Randal Field. And I think that has become  
 14 pretty clear through the course of these discussions  
 15 there are significant hurdles if that's what it comes  
 16 down to: If you have to come back here for that, it's  
 17 going to be a very high bar, and we're going to have to  
 18 go through a lot of these things again, hopefully not  
 19 through -- we won't have multiple competitors with tall  
 20 buildings coming here to argue their case. "Well, it's  
 21 not appropriate to put in the ball field because it  
 22 should be on the top of my building", or, "No, it should  
 23 be on top of my building." I mean, that's not what this  
 24 is about.  
 25 So I'm okay with granting relief. I'm

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1 if we choose to approve the application. But I do think  
 2 that the OP report does step through very succinctly the  
 3 way in which the Applicant has actually met all of the  
 4 criteria in subtitle C, subsection 1313.5 and .6 and  
 5 .11.  
 6 And so I would be in support of it. I will  
 7 say that the opposition did provide I think Verizon -- I  
 8 guess the good part of it is you're at least letting  
 9 them know that there is an alternative, and the  
 10 alternative being at Capitol Skyline Hotel. It seems  
 11 like there's a strong desire for that lease to be  
 12 figured out, and I would encourage you all to do that.  
 13 I agree with Commissioner May in that I also am -- I was  
 14 very reluctant to say "okay" not only to a temporary  
 15 antenna at a park, but also along South Capitol Street,  
 16 which is a very important street for the City and the  
 17 view, and the just the impact seemed like it didn't make  
 18 a lot of sense for a permanent location. That's not  
 19 what's before us right now: It's just a temporary site,  
 20 and I think you all have provided a sufficient amount of  
 21 information for us to understand why this site would be  
 22 an okay site for a temporary location. And I think that  
 23 I could support that or I would be able to support the  
 24 application as filed, with the condition that it only be  
 25 used for one -- it's not at a collocation on the

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1 antenna.

2 MS. WHITE: I'll make a few comments. I'm

3 relatively new to the Board, but I stayed up late last

4 night reading the record. So it's a very interesting

5 case. I've read the record and I'm ready to

6 participate. Thank you, Mr. Hill.

7 Like my colleagues, I'm not terribly

8 comfortable with having an antenna in a rec area where

9 kids are playing; it makes me feel very uncomfortable.

10 But I will say: I believe the criteria, at least for a

11 temporary facility, has been met in this instance. I'm

12 probably reluctant to do it on a permanent basis at this

13 particular site. But I would hope that, as you look

14 towards a more permanent location, that you utilize

15 engineers that are able to think a little bit more

16 outside the box so we don't have rec centers as the

17 standard location for these types of COW's.

18 But all in all, on a temporary basis, I am

19 comfortable with supporting it, especially with OP's

20 support. I would like to also suggest, with respect to

21 wrapping into future plans, maintenance plans, more

22 formal maintenance plans, improving visibility so it's

23 not as a big of an eyesore in communities, especially in

24 areas that are very popular as far as transition in and

25 out of the City -- and again, the ANC did not support

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1 the record as 48C.

2 CHAIRMAN HILL: And Mr. May, I think is that

3 acceptable?

4 COMMISSIONER MAY: I don't want to prolong

5 this. I would like to have seen something a little bit

6 more stringent, but in terms of how the ground is

7 restored, but I'll go along.

8 CHAIRMAN HILL: Then I'm going to leave it

9 out on the record for now.

10 The one year, that's --

11 COMMISSIONER MAY: What do you mean "leave

12 it on the record"?

13 CHAIRMAN HILL: Sorry. Meaning I'm not

14 going to ask for anything additional.

15 COMMISSIONER MAY: Got it.

16 CHAIRMAN HILL: The term is going to be for

17 one year beginning on the effective date of the order.

18 COMMISSIONER MAY: Mr. Chairman?

19 CHAIRMAN HILL: Yes.

20 COMMISSIONER MAY: So the order may take

21 awhile to get done, Ms. Glazer pointed out. And so I'm

22 -- because this is a contested case, it'll take

23 weeks/months? So I'm thinking since it was originally a

24 90-day approval, I'm actually more inclined to do one

25 year from the expiration of the 90 days.

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1 it -- normally I would definitely give, and I do give

2 it, great weight. But on a temporary basis, I think I

3 am comfortable with supporting it at this time.

4 CHAIRMAN HILL: Okay, thank you.

5 I don't have anything additional to add from

6 my colleague's statement. I'm also in agreement with

7 the comments that were made. I do think that again, as

8 far as a temporary location -- and the Applicant can see

9 just how high a hurdle it would be in terms of getting

10 something that's more of a permanent nature, and all of

11 the development that's going on in the area in terms of

12 like the rooftops that were mentioned before -- again,

13 as a Board, coming here and the opposition tending to

14 stay focused upon again what was -- whether different

15 sites -- we seem to be getting into more of a

16 negotiation in terms of what was going on between two

17 private entities as opposed to a Board, as a Board,

18 speaking on zoning issues.

19 So the points that I did want to talk to the

20 Applicant about was, I guess: You were again going to

21 submit a maintenance site plan to us for the COW

22 location? And then I'm seeing you're nodding, so you'll

23 submit a maintenance plan to us or is that already in

24 the record?

25 MS. HOTTEL-COX: We did submit. That's in

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1 Is that something we could do?

2 I don't know when that -- when does the

3 90-day expire?

4 MS. HOTTEL-COX: I believe it expires next

5 Wednesday.

6 COMMISSIONER MAY: So 90 days from next

7 Wednesday or 90 days from today?

8 MS. HOTTEL-COX: Do you mean one year?

9 Sorry, to clarify.

10 COMMISSIONER MAY: Sorry, one year from

11 today or one year from the expiration of the 90 days?

12 As opposed to one year --

13 CHAIRMAN HILL: We're trying to fix the gap

14 in coverage.

15 MS. GLAZER: The only thing I can suggest

16 would be that -- I can't guarantee anything -- but

17 perhaps the Applicant would want to submit a proposed

18 order. That might speed it up somewhat, but it'd still

19 take quite awhile to review it.

20 COMMISSIONER MAY: Couldn't we set the

21 effective date as today or next Wednesday or whatever it

22 is?

23 MS. GLAZER: Yeah, I don't see any problem

24 with that.

25 CHAIRMAN HILL: Thank you, Commissioner.

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1 You said when is the 90 days up for you?  
 2 MS. HOTTEL-COX: I believe we can say it is  
 3 March 15th.  
 4 CHAIRMAN HILL: So the order will be for one  
 5 day [sic] from March 15th?  
 6 COMMISSIONER MAY: One year.  
 7 (Laughter.)  
 8 CHAIRMAN HILL: Sorry. One year from March  
 9 15th.  
 10 MS. HOTTEL-COX: Or said another way, it can  
 11 be until March 15th, 2018?  
 12 CHAIRMAN HILL: Yes, sorry, March 15th,  
 13 2018.  
 14 And then again one condition was that  
 15 there's not going to be collocation. Okay? So no  
 16 collocation.  
 17 MS. HOTTEL-COX: (Nods head.)  
 18 CHAIRMAN HILL: So with those conditions,  
 19 I'm going to go ahead and make a motion to approve  
 20 application No. 19415 as read by the secretary.  
 21 MR. HART: Second.  
 22 CHAIRMAN HILL: Motion is made and seconded.  
 23 All those in favor? Aye. All those opposed? Motion  
 24 passed, Mr. Moy.  
 25 SECRETARY MOY: Staff would record the vote

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1 as 4 to 0 to 1. This is on the motion of Chairman Hill  
 2 to approve the application for the relief requested.  
 3 This is for the term of one year, which will expire  
 4 March 15th, 2018. Correct?  
 5 MS. GLAZER: Yes.  
 6 SECRETARY MOY: And also there would be no  
 7 collocation. Those are the conditions. Seconding the  
 8 motion is Vice Chair Hart, also in support Mr. Peter May  
 9 and Ms. White. Forward seat vacant. Motion carries.  
 10 CHAIRMAN HILL: I guess we'll do a full  
 11 order on this.  
 12 SECRETARY MOY: Absolutely.  
 13 COMMISSIONER MAY: Do we want to leave the  
 14 record open for them to submit the draft order, because  
 15 that would help expedite?  
 16 MS. HOTTEL-COX: We're happy to submit a  
 17 draft order.  
 18 CHAIRMAN HILL: Thank you.  
 19 Thank you all, thank you.  
 20 Mr. Moy, do we have anything left as a  
 21 Board?  
 22 SECRETARY MOY: I believe there is not any  
 23 other matters before the Board, sir.  
 24 CHAIRMAN HILL: Then we stand adjourned.  
 25 (Whereupon the hearing is concluded at 1:33 p.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC  
 2  
 3 I, ALEXANDRIA MARTIN KAN, the officer before whom  
 4 the foregoing hearing was taken, do hereby certify  
 5 that the foregoing transcript is a true and correct  
 6 record of the testimony given and colloquy; that the  
 7 said testimony and colloquy was taken by me  
 8 stenographically and thereafter reduced to typewriting  
 9 under my direction; and that I am neither counsel for,  
 10 related to, nor employed by any of the parties to this  
 11 case and have no interest, financial or otherwise, in  
 12 its outcome.  
 13  
 14 IN WITNESS WHEREOF, I have hereunto set my hand  
 15 and affixed my notarial seal this 19th day of March,  
 16 2017.  
 17 My commission expires: September 30, 2020.  
 18  
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 24 \_\_\_\_\_  
 25 Alexandria Kaan

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