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

BOARD OF ZONING ADJUSTMENT PUBLIC HEARING

9:39 a.m. to 12:41 p.m.
Wednesday, March 15, 2017

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

1 Board Members:

2 FREDERICK HILL, Chairperson

3 CARLTON HART, Vice Chairperson

4 LESYLLEE WHITE, Board Member

5 MICHAEL TURNBULL, Zoning Commission

6 CLIFFORD MOY, BZA Secretary

7

8 Office of Attorney General

9 MARY NAGELHOUT, Esq.

10

11 Office of Planning

12 STEVE COCHRAN

13 ELISA VITALE

14 KAREN THOMAS

15 MATT JESICK

16 ANNE FOTHERGILL

17 BRYAN GOLDEN

18 CRYSTAL MYERS

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1 PROCEEDINGS

2 CHAIRPERSON HILL: The hearing will please
3 come to order. We're located in the Jerrily R. Kress
4 Memorial Hearing Room at 441 4th Street Northwest.
5 This is the March 15th public hearing of the Board of
6 Zoning Adjustment of the District of Columbia.

7 My name is Fred Hill Chairperson. Joining me
8 today is Carlton Hart, Vice Chairperson, Lesyllee
9 White, Board Member, and representing the Zoning
10 Commission is Michael Turnbull.

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

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

17 When presenting information to the Board,
18 please turn on and speak into the microphone, first
19 stating your name and home address. When you're
20 finished speaking, turn your microphone off so that
21 microphone is no longer picking up sound or background
22 noise. All persons planning to testify either in
23 favor or in opposition must have raised their hand and
24 been sworn in by the secretary.

25 Also, each witness must fill out two witness

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

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

12 The order of procedures for special
13 exceptions, variances, and appeals, are also located
14 on a table there as you walk in to the room. The
15 record shall be closed at the conclusion of each case,
16 except for any materials specifically requested by the
17 Board. The Board and the staff will specify at the
18 end of the hearing, exactly what is expected and the
19 date when the persons must submit the evidence to the
20 Office of Zoning.

21 After the record is closed, no other
22 information shall be accepted by the Board. The
23 District of Columbia Administrative Procedures Act
24 requires that public hearing on each case be held in
25 the open before the public, pursuant to Section 405(b)

1 and Section 406 of that act.

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

11 The decision of the Board in our cases must be
12 based exclusively on the public record. To avoid any
13 appearance to the contrary, the Board requests that
14 persons present not engage in conversations with
15 members of the Board.

16 Please turn off all beepers and cell phones at
17 this time, so as to not disrupt these proceedings.
18 Preliminary matters are those which relate to whether
19 a case will or should be heard today, such as request
20 for a postponement, continuance or withdrawal, or
21 whether proper and adequate notice of the hearing has
22 been given. If you're not prepared to go forward with
23 the case today, or if you believe that the Board
24 should not proceed, now is the time to raise such a
25 matter.

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

3 MR. MOY: Thank you, Mr. Chairman. Good
4 morning, and good morning to members of the Board. I
5 do have some announcements, briefly, as to the cases
6 on the docket for today, or rather, not on the docket
7 for today.

8 First is two cases that have been rescheduled
9 from today's docket, 19400 of Alabama Avenue, LLC.,
10 rescheduled from today to May 17th, 2017. The
11 modification of significance that was scheduled for
12 the meeting session portion, that's 16334 A of Bright
13 Beginnings, Inc., has been rescheduled from today to
14 May 31st, 2017.

15 Other cases, which I'd like to take advantage
16 of today, which are not scheduled for today,
17 Application No. 19424 of Young Soo Kim has been
18 postponed and rescheduled from March 29th, 2017, to
19 April 19th, 2017, as well as Case No. 19460 of Thomas
20 and Whitney Paxson, rescheduled from March 29th, 2017
21 to April 26th, 2017.

22 I'd also like to have on the record, that two
23 appeals have been with a party's consent, rescheduled
24 to April 5th, 2017, and they are Appeal Nos. 19410 of
25 ANC 6C, as well as 19412 of ANC 6A. And finally, two

1 cases for decision making that was scheduled for March
2 22nd, 2017, has been rescheduled to April 5th, 2017.
3 These are Application Nos. 19450 of DCGS, and 19452 of
4 DCGS. And that's it for me, Mr. Chairman.

5 CHAIRPERSON HILL: All right, great. Thank
6 you, Mr. Moy.

7 Everyone here who is wishing to speak before
8 us, if you could stand and please take the oath of
9 office administered by -- the oath of office. The
10 oath, administered by the secretary. Thank you.

11 MR. MOY: Good morning.

12 [Oath administered to the participants.]

13 CHAIRPERSON HILL: All right. Good morning,
14 everyone. We are going to follow the order of the
15 agendas as you see them, for the public meeting and
16 the hearing, except for one case. And that is the
17 case that 19355, application of Stacy Selenfriend and
18 Christopher Pharr. That's going to currently be our
19 last case of the day. I know there might be some
20 issues with that as I've heard, and if there is so,
21 just let the secretary know at a break, when we take a
22 break. But that's currently the plan.

23 And so, then after that we would just follow
24 the order as you see it listed on the agenda there.
25 So, Mr. Secretary, you can call our first meeting case

1 whenever you get a chance.

2 MR. MOY: Yes. Thank you, sir. That would be
3 Application No. 19442 of Matthew Manders. This is an
4 application that is on the Board's expedited review
5 calendar as captioned and advertised for special
6 exception relief under Subtitle D, Section 5201, from
7 the side yard requirements of Subtitle D, Section
8 307.1. This would add a deck to a rear -- to the rear
9 of an existing one-family dwelling, R-1-B Zone, 5120,
10 Fulton Street Northwest, Square 14-19, Lot 824.

11 CHAIRPERSON HILL: Okay, great. Thank you.
12 Is the Board ready to deliberate?

13 [No audible response.]

14 CHAIRPERSON HILL: All right. Great. I,
15 after reviewing the record, and in particular the
16 report by the Office of Planning, and also the ANC and
17 DDOT, I don't really have a lot to speak to about this
18 in terms of what's in the record. I did see that the
19 applicant agreed to the conditions that the Office of
20 Planning recommended, and I'm just going to read them
21 in here again.

22 Maintenance of existing vegetation screen to
23 screen the view of the deck from the public alley,
24 maintenance of the existing vegetative screening of
25 bamboo between 5120 and 5122 Fulton Street, planting

1 of a new row of bamboo contained at the ground level
2 by metal at the property line to screen the views
3 between 5120 Fulton Street, and the adjacent property
4 at 5116 Fulton Street, installation of planters along
5 the property decked railings to provide additional
6 screening for the adjacent properties, and planting of
7 a new row of bamboo contained at the ground level by
8 metal at the street-facing edge of the deck to the
9 screened views from Fulton Street.

10 So, that is what the applicant had agreed to.

11 I see that the Office of Planning is here, however I
12 don't have any questions for the Office of Planning,
13 unless the Board has any.

14 MR. TURNBULL: No, I just wanted to welcome
15 Mr. Cochran back. He's been on hiatus for a while.

16 MR. COCHRAN: Thank you.

17 CHAIRPERSON HILL: Yes, Mr. Cochran, welcome
18 back. All right. So, that being the case, I'm going
19 to go ahead and make a motion to approve Application
20 No. 19442 of Matthew Manders.

21 MR. HART: Seconded.

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

24 [Vote taken.]

25 CHAIRPERSON HILL: Motion passes, Mr. Moy.

1 MR. MOY: Staff would record the vote as four,
2 to zero, to one. This is on the motion of Chairman
3 Hill to approve the application as requested, the
4 relief as requested. Seconded the motion, Vice Chair
5 Hart. Also in support, Mr. Turnbull and Ms. White.
6 We have a board seat vacant. Motion carries.

7 CHAIRPERSON HILL: Thank you, Mr. Moy.
8 Summary order.

9 MR. MOY: Yes, sir. All right. Moving to the
10 top of the order in the hearing session, I believe is
11 Application No. 19434 of Nathaniel Robb and Patricia
12 Kelby-Robb. And I'm going to read, Mr. Chair, what
13 has been advertised and publicly noticed, because I
14 believe it's been amended to -- but anyways.

15 Special exception under Subtitle E, Section
16 5201 from the lot occupancy requirements of Subtitle
17 E, Section 304.1, rear yard requirements of Subtitle
18 E, Section 306.1, special exception from the RF use
19 requirements, Subtitle U, Section 320.2, again a
20 variance from the maximum number of dwelling units of
21 Subtitle E, Section 302, to construct a rear yard
22 addition and convert a flat to an apartment house in
23 the RF-1 Zone, 1361 Oak Street Northwest, Square 2835,
24 Lot 73.

25 Mr. Chair, members of the Board, there is late

1 filing which is in your case records, a copy of a
2 document from the Zoning Administrator, the ZA
3 Memorandum as to the relief that's needed for this
4 application which is only for the ZA requesting what's
5 needed, required on the special exception to the lot
6 occupancy and the rear yard requirements.

7 CHAIRPERSON HILL: Okay, great. Thank you.
8 Is the applicant here?

9 Oh, if you could please come forward? Good
10 morning. If you could just please, introduce
11 yourselves from just your -- going this direction
12 would be fine, and just push the green button there.
13 And give us your address as well, if you wouldn't
14 mind.

15 MS. KELBY-ROBB: Okay. I'm Patricia Kelby-
16 Robb. Oh, we are currently residing at 17001 Summers
17 Lane in Baden, Maryland.

18 CHAIRPERSON HILL: Okay.

19 MS. KELBY-ROBB: The property address is 1361
20 Oak Street Northwest, Washington, D.C.

21 CHAIRPERSON HILL: Okay. Thank you. Sir, if
22 you could introduce yourself?

23 MR. ROBB: My name is Nathaniel Robb.

24 CHAIRPERSON HILL: Okay. Thank you.

25 MS. LOVE-WADE: Good morning. I'm Dotti Love-

1 Wade. I'm Vice Chair of ANC 1A.

2 CHAIRPERSON HILL: Welcome, Commissioner Wade.

3 MS. LOVE-WADE: Thank you.

4 CHAIRPERSON HILL: Okay. So, I guess, Ms.
5 Kelby-Robb, will you be telling us a little bit about
6 the project? Is that correct?

7 MS. KELBY-ROBB: Yes.

8 CHAIRPERSON HILL: Okay. So, I've gone ahead
9 and you know, we've reviewed the record in terms of
10 all of the work you've done also in working through
11 with the Office of Planning, and also the ANC, and can
12 see again that there is, you know, they were in
13 support, the ANC, obviously from 11 to zero to zero,
14 and we can have an opportunity to hear from the
15 Commissioner as well.

16 I just wanted to clarify a couple of things,
17 and then if you could just kind of walk me through the
18 project and the relief you're asking for. But, you
19 did withdraw the application for the third unit,
20 correct?

21 MS. KELBY-ROBB: Yes. Yes, we did.

22 CHAIRPERSON HILL: Okay.

23 MS. KELBY-ROBB: Uh-huh.

24 CHAIRPERSON HILL: Okay. Then, in that case,
25 again, if you could just go ahead and walk me through

1 the project and the relief you're asking for?

2 MS. KELBY-ROBB: Okay. Our house was burned
3 down, down to the ground, and two adjoining houses
4 caught fire. So, that left us with the responsibility
5 of trying to rebuild.

6 It was my husband's family home and our
7 grandchildren's legacy. My husband's family owned the
8 property for 70 or more years, and so we definitely
9 wanted to rebuild.

10 We knew we were in our senior stage of life
11 and we could not afford just one house, so when we
12 submitted our plans, we submitted for two units so
13 that we could have some rental income to help us with
14 our retirement. And so, we rebuilt the house.

15 When we rebuilt, the relief we are seeking
16 today is that there are two doors, and we thought we
17 had an egress landing for the back, and so it was
18 considered a deck, even though it's very small, just
19 enough room to open the door and to walk downstairs.
20 So, we ended up with two doors and then the stairs.

21 So, we're asking that we can maintain the
22 doors, the deck, and the stairs that's coming down to
23 the ground level.

24 CHAIRPERSON HILL: Okay, great. Does the
25 Board have any questions from the applicant? Or for

1 the applicant, I should say.

2 MR. HART: In all of these -- thank you for
3 that explanation.

4 MS. KELBY-ROBB: Okay.

5 MR. HART: And, all of this is actually
6 existing now. It's been constructed.

7 MS. KELBY-ROBB: Yes, it has.

8 MR. HART: And so, you're looking for us to
9 provide the approval for this special exception
10 relief.

11 MS. KELBY-ROBB: Yes. Yes, we are.

12 MR. HART: Thank you.

13 MR. TURNBULL: So, the question about a third
14 unit was just a mistake at the time, entering that in?

15 MS. KELBY-ROBB: It was a mistake. DCRA had
16 put that in the letter to us, and it was a mistake.
17 Yes, it was their error.

18 MR. TURNBULL: Okay. Thank you.

19 MS. KELBY-ROBB: So, they removed it.

20 CHAIRPERSON HILL: Okay. I'm going to go
21 ahead and turn to the Office of Planning.

22 MS. VITALE: Good morning, Mr. Chair and
23 members of the Board, Elisa Vitale with the Office of
24 Planning. And OP will rest on the record in support
25 of this special exception relief for lot occupancy and

1 rear yard to permit the existing deck and stairs at
2 the rear of the property. This concludes my report
3 and I'm happy to answer any questions that you might
4 have. Thank you.

5 CHAIRPERSON HILL: Great. All right, does
6 anyone have any questions for the Office of Planning?
7 Okay. Does the applicant have any questions for the
8 Office of Planning?

9 MS. KELBY-ROBB: No, thank you.

10 CHAIRPERSON HILL: Okay. All right, with that
11 then, I'm going to turn to the ANC and obviously, I
12 can see a commissioner here. So, Commissioner Love-
13 Wade, did you have some comments that you'd like to
14 add? Obviously, they presented before you and were
15 approved unanimously.

16 MS. LOVE-WADE: Yes. Well, the reason I came
17 down here specifically today has been removed from the
18 application, which was the third unit we --

19 CHAIRPERSON HILL: Oh, Commissioner Love-Wade,
20 I don't know if your microphone is on. Is it on
21 there?

22 MS. LOVE-WADE: Oh, I'm sorry.

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

24 MS. LOVE-WADE: Yes. The reason that I came
25 down here this morning has actually been removed

1 because the DCRA removed the third unit from their
2 determination, which was never what they had wanted
3 anyhow. So, we did vote to support the additional
4 deck, and the size of the additional deck.

5 CHAIRPERSON HILL: Okay. Okay, great. Well,
6 thanks for coming down. It's always, you know, a
7 pleasure to see commissioners down here.

8 All right. So, I'm going to turn to the
9 audience there. Is there anyone here wishing to speak
10 in support of the application?

11 [No audible response.]

12 CHAIRPERSON HILL: Is there anyone here
13 wishing to speak in opposition to the application?

14 All right. Okay. Sir, you can please come
15 forward. And you can just give the witness cards
16 there to the transcriber. Thank you.

17 Yeah, sure. Just go ahead. Did you get sworn
18 in this morning?

19 MR. LAVERY: Yes, I did.

20 CHAIRPERSON HILL: Okay. Great. You just
21 want to push the microphone there, the button, so it's
22 a green glowing dot. And then, I'm going to go ahead
23 and give you three minutes on the clock.

24 MR. LAVERY: Okay. My name is James Lavery.
25 I live currently at 1362 Otis Place Northwest. So, I

1 back on to the property, which has been discussed at
2 Oak Street.

3 There are, if you look in your exhibit list,
4 online I think five letters of opposition to the
5 extension. Most of which relate to the perceived
6 belief that there's going to be three units. Can we
7 have that definite statement that there will only be
8 two units, because a lot of the residents, it's a very
9 close knit community and a lot of people remember what
10 the property was like before the fire, and also the
11 caliber of the tenants that resided there, and that's
12 maybe something that has not been discussed.

13 So, if it's going to be a family home, we
14 applaud this. If it's, as in the past, has been let
15 out to undesirables, then we would very much be
16 against this.

17 CHAIRPERSON HILL: Okay.

18 MR. LAVERY: That's something that I'd like to
19 state on behalf of many residents who have written
20 letters of opposition to this.

21 CHAIRPERSON HILL: Okay.

22 MR. LAVERY: And that has not been mentioned.

23 CHAIRPERSON HILL: Okay. Well, we did have
24 the -- we did read all of the letters in opposition
25 and I know that the Board had some thoughts or, you

1 know, we can vet those even more now in terms of like
2 whether or not there was going to be a third unit. I
3 mean, the third unit has been withdrawn, and the
4 Office of Planning would have been against a third
5 unit. There's not enough square footage for the third
6 unit, so either the neighborhood concern as to whether
7 or not there would be a third unit, I think, it's not
8 possible.

9 So, whether or not they, the applicant, were
10 to come forward later, requesting for a third unit,
11 that would be something that it would be a different
12 application, and at this point, I don't see how there
13 would be any possibility of doing that. But so --
14 but, I did read the letters, and I do appreciate kind
15 of the tone in which you're approaching your testimony
16 today because you know, here at the Board, I don't
17 necessarily like to try to figure out who is, or who
18 isn't a desirable and, you know, kind of tenant. But
19 I do understand and do appreciate your commentary and
20 the letters that were in opposition.

21 MR. LAVERY: Some of those letters were
22 authored by people who have been in the neighborhood
23 for 20, 30 plus years, and were impacted directly by
24 loud partying, drug taking, and worse, at the
25 residence.

1 CHAIRPERSON HILL: Sure. No, I understand. I
2 understand.

3 MR. LAVERY: So, I understand when it comes
4 down to proof and comes down to --

5 CHAIRPERSON HILL: Right. Right.

6 MR. LAVERY: -- a lot of this is anecdotal and
7 hearsay, but is very real to the residents of this
8 close knit community.

9 CHAIRPERSON HILL: I understand that. I
10 understand that.

11 And so, I guess I'm just trying to address the
12 one issue there, that that has now been taken off the
13 table, and I can't give you a definitive answer as to
14 what might happen in the future. However, from the
15 Office of Planning's report it seems, you know, and
16 I've been here long enough now to know in terms of
17 like a square footage issue, as to whether or not
18 there would be a third unit allowed. So, I think the
19 residents, you know, they would have an uphill climb
20 if they were ever to get anything.

21 But they're only here for this particular
22 special exception, but I do appreciate your testimony.

23 Does the Board have any questions for the
24 witness?

25 MR. HART: Not any questions.

1 CHAIRPERSON HILL: Comments?

2 MR. HART: More just a comment. Thank you,
3 Mr. Laberty (sic), Lavery?

4 MR. LAVERY: Lavery.

5 MR. HART: Lavery?

6 MR. LAVERY: Yes.

7 MR. HART: Thank you for coming in as well as
8 the applicant. I know you kind of felt you had to be
9 here anyway. But I think it's helpful for you all as
10 the owners to understand that your neighbors have
11 issues with some of the things that have been
12 happening at the property. And it's helpful for you
13 to kind of, to be able to understand and see that, and
14 hopefully be able to address that. It's not something
15 that our commission can -- our Board can really decide
16 on. That's a private property that you're going to be
17 in control of.

18 So, you hear this information and I would just
19 probably suggest that you take that to heart because
20 they're coming, giving their time, and their words
21 about some of the concerns that they have and as a
22 neighbor you -- I mean, you're going to be living
23 there. You'll be seeing them all the time, so it's
24 something that you should be understanding and being
25 able to hopefully address.

1 But, I do appreciate the coming down for that.

2 CHAIRPERSON HILL: Mr. Hart, did you have
3 something, you said you were looking at --

4 MR. TURNBULL: I just wanted to --

5 CHAIRPERSON HILL: Turnbull. Sorry, Turnbull.

6 MR. TURNBULL: I just want to carry on with
7 this about, you're in the RF-1 Zone. And the RF zone
8 basically only allows for two units, and I think Ms.
9 Vitale can also comment on that from the Office of
10 Planning. I mean, there are special -- there are
11 circumstances where something might be allowed, but
12 for the most part, two units are only allowed and
13 maybe Ms. Vitale can weigh in on that.

14 MS. VITALE: Certainly. The RF-1 Zone permits
15 two units as a matter of right, and to do more than
16 two units it would require 900 square feet of land
17 area for every additional unit. So, you would need a
18 2,700-square foot lot to have three dwelling units in
19 the RF-1 Zone on one property.

20 If you don't meet that square foot minimum,
21 then it would be a variance, which is a high bar and
22 generally, you know, kind of a difficult area of
23 relief for an applicant to achieve.

24 MR. TURNBULL: At which case the ANC would
25 obviously be weighing in. And I think you already

1 know the stance of the ANC, that they are against
2 having three units in this area.

3 MS. LOVE-WADE: Yes, we did vote against three
4 units, but it was never the applicant's intent --

5 MR. TURNBULL: Intent.

6 MS. LOVE-WADE: -- for three units.

7 MR. TURNBULL: Right.

8 MS. LOVE-WADE: That was a determination made
9 by DCRA, which basically muddied the water.

10 MR. TURNBULL: Right.

11 MS. LOVE-WADE: So, it created this whole
12 scenario. And I understand the concerns of the
13 neighbors, but I didn't address it because it is now a
14 moot issue because this body is not addressing a third
15 unit today. And also, they are only requesting now,
16 the deck, which is what I'm addressing now.

17 And they have indicated that they intend to
18 occupy the building and also their family will be
19 occupying the building. So, I don't think they'll
20 have the same issues as when it was an absentee
21 landlord rental unit.

22 CHAIRPERSON HILL: Ms. White, you had a
23 comment?

24 MS. WHITE: I just wanted to echo the comments
25 of my fellow board members. I mean, it appears that

1 you have, the Robbs have been in the neighborhood for
2 a very long time, but I also appreciate the testimony
3 of the witness as well. And I think it's also helpful
4 to have ANC, but I think between the three of you
5 there should be continued discussion, attendance at
6 ANC meetings, community association meetings, to make
7 sure that there's -- everyone is kind of living in a
8 very positive manner.

9 But, I'm comfortable that this, at this point,
10 is a two-unit type of structure.

11 CHAIRPERSON HILL: Mr. Lavery, I'm going to
12 let you say something here, but we've been very civil
13 and good today, and so you seem like you wanted to say
14 something.

15 MR. LAVERY: I would like to welcome the Robbs
16 back to the community as non-absentee landlords, and I
17 hope that that is their intent.

18 And also, I'd just like to add one thing.
19 During construction, there was a lot of disruption to
20 the neighborhood with the construction work. I hope
21 that has minimized with any new construction work and
22 entry egress to our facility, or lot was impacted. My
23 neighbor has two young children and on a number of
24 occasions was not able to get out because of trucks
25 and construction work. I hope that is kept at a

1 minimum. Just like to add that to the --

2 CHAIRPERSON HILL: Okay. All right. Well,
3 that again is more of kind of a construction issue,
4 but now that is hopefully all done, and obviously,
5 it's better to have a nice new home there with nice --

6 MR. LAVERY: With a family living there.

7 CHAIRPERSON HILL: With nice family living
8 there, you know. And I think, you know, and so --
9 but, anyway, but thank you so much for your testimony.

10 MR. LAVERY: All right. I won't talk about it
11 anymore (simultaneous speech).

12 CHAIRPERSON HILL: And thank you for coming
13 down, and thank you for also welcoming people into
14 your neighborhood.

15 MR. LAVERY: Yes.

16 CHAIRPERSON HILL: We appreciate that.

17 MR. LAVERY: Thank you.

18 CHAIRPERSON HILL: So, all right. With that
19 then, I'm going to -- does the applicant have anything
20 else they'd like to add?

21 MR. ROBB: No, I don't.

22 CHAIRPERSON HILL: Okay. All right. Then,
23 I'm going to go ahead and close the record. Is the
24 Board ready to deliberate? All right.

25 So, again, based upon the testimony we've had

1 and thanking the neighbors as well as the Commissioner
2 for coming down to clarify, I mean, it being again a
3 special exception, and the Office of Planning's report
4 I think was thorough in terms of their analysis, I
5 would go ahead and move to make a motion to approve
6 Application No. 19434 of Nathaniel Robb and Patricia
7 Kelby-Robb, as read by the secretary.

8 MS. WHITE: Second.

9 CHAIRPERSON HILL: The motion has been made
10 and seconded.

11 [Vote taken.]

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

13 MR. MOY: Staff would record the vote as four,
14 to zero, to one. This is on the motion of Chairman
15 Hill to approve the amended application, or rather the
16 application for the amended relief. Special exception
17 from the lot occupancy and rear yard requirements.

18 Seconded the motion, Ms. White. Also in
19 support, Vice Chair Hart, and Mr. Michael Turnbull.
20 We have a board seat vacant. Motion carries, sir.

21 CHAIRPERSON HILL: Great. Thank you. Mr.
22 Lavery, where are you from?

23 MR. LAVERY: I'm from Belfast, Northern
24 Ireland.

25 CHAIRPERSON HILL: Oh, all right. Well, when

1 you said -- you stopped from lory for a second, I
2 thought that was kind of an interesting catch.

3 MR. LAVERY: I give it away sometimes.

4 CHAIRPERSON HILL: There you go. Mr. Moy,
5 could we get a summary order?

6 MR. MOY: Yes, sir.

7 CHAIRPERSON HILL: All right. Thank you.
8 Thank you all very much.

9 MS. KELBY-ROBB: Thank you.

10 MR. ROBB: Thank you.

11 MR. MOY: All right. If we could have the
12 applicant to the table to Application No. 19438 of
13 Alice Bellis, captioned and advertised for a special
14 exception relief under Subtitle E, Section 5201. This
15 is from the lot occupancy requirements of Subtitle E,
16 Section 304.1, which would construct a two-story rear
17 addition to an existing flat in the RF-1 Zone, 1415
18 Potomac Avenue Southeast, Square 1065 N.E., Lot 21.

19 CHAIRPERSON HILL: Okay. Good morning. Could
20 you please introduce yourselves from my right to left?

21 MR. BOYETTE: Joseph Boyette. I reside at
22 1317 D Street Northeast.

23 CHAIRPERSON HILL: Could you spell your last
24 name for me?

25 MR. BOYETTE: B-O-Y-E-T-T-E.

1 CHAIRPERSON HILL: Boyette. Okay, great.
2 Thank you.

3 MS. BELLIS: And I'm Alice Bellis. I'm at
4 1415 Potomac Avenue Southeast.

5 CHAIRPERSON HILL: Okay. Great. Well, I
6 don't really have a lot of questions actually. I
7 guess the Board can, if they have questions or would
8 like to hear something in particular from the
9 applicant.

10 I guess, you know, if you just want to kind of
11 give me a brief high level understanding of the
12 project and what it is you're trying to do. Again,
13 we've read everything in the record in terms of --
14 including the analysis of the Office of Planning as
15 well as the approval of ANC 6B. I mean, you got an
16 unanimous vote from them after your presentation
17 there.

18 Is there anything in particular the Board
19 would like to hear from the applicant?

20 MR. TURNBULL: I just had, I mean, it's --
21 what you're asking for, the relief, is fairly small.
22 It's -- but the only one question I had is on that
23 ground floor, there's an office, looks like, on the
24 back of the plans.

25 MS. BELLIS: Right. A space that could be

1 used either for an office or storage. You know,
2 whatever.

3 MR. TURNBULL: But you're not asking for a use
4 variance to add a specific office.

5 MS. BELLIS: No. No.

6 MR. TURNBULL: It's just an office for --

7 MS. BELLIS: It would be personal office,
8 not --

9 MR. TURNBULL: Not a rental office space.

10 MS. BELLIS: Correct. Correct.

11 MR. TURNBULL: Okay. All right.

12 MR. BOYETTE: The three things, when we
13 designed this project, the three things, the competing
14 issues, were having relatives come to visit. Alice
15 works from home and needs an office; currently works
16 out of her bedroom, which they need the bedroom for
17 when people come to visit. And then the third thing
18 is aging in place.

19 MR. TURNBULL: Okay.

20 MR. BOYETTE: So, we took all three of those
21 things into account when we developed the design.
22 And, the first-floor office is part of the program
23 that we really need to kind of work all that together.

24 MR. TURNBULL: Okay. Okay. I saw it and you
25 weren't looking -- I didn't see any -- I saw it. It

1 said office. And I'm like is this rental or is this -
2 - it's for the in-house use. Okay. All right. Thank
3 you.

4 CHAIRPERSON HILL: Does anyone else have any
5 comments for the applicant? Okay.

6 I see, also, that you got a letter of support.

7 I'm sorry, we'll get to the audience in a
8 moment. This is just for the application. But, thank
9 you.

10 So, I can see also that you have some support,
11 a letter of support from the Capitol Hill Restoration
12 Society.

13 So, I'm going to go ahead and then turn to the
14 Office of Planning.

15 MS. THOMAS: Good morning, Mr. Chair and
16 members of the Board. Karen Thomas for the Office of
17 Planning.

18 We will rest on the record of our report,
19 except I'd just like to correct one thing, one error
20 in my report. On page 2, with respect to the height,
21 it's supposed to be -- it's the same height, which is
22 27.2 feet and not 29. And it's not 35 feet. They're
23 not going up to 35 feet. They still have maintaining
24 the same height. So, that was my error.

25 CHAIRPERSON HILL: Okay. Thank you. And the

1 applicant is clear on those? Okay. All right. Okay.

2 Does the Board have any questions for the
3 Office of Planning?

4 MR. HART: Just a question about the existing
5 nonconformity. Can you just explain that a little
6 further?

7 MS. THOMAS: Well, the way we read it is that
8 with respect to 5201.1, where they say minimum lot
9 dimensions, we take that to mean, because of the size
10 of the lot is around 1,400 square feet and a RF-1 lot
11 size is supposed to be 1,800 minimum lot size. So, we
12 just call that out, out of an abundance of caution.

13 MS. WHITE: I just had one question, just to
14 confirm that the property itself was not being used
15 for apartment use.

16 MS. THOMAS: No. No, it isn't.

17 MS. WHITE: Okay.

18 CHAIRPERSON HILL: Okay. Does the Board have
19 anything else for the Office of Planning? Okay. All
20 right. Then, does the applicant have anything they'd
21 like to ask of the Office of Planning?

22 MR. BOYETTE: No.

23 CHAIRPERSON HILL: All right. So, I'm going
24 to turn to the audience. Is there anyone here from
25 the ANC wishing to speak? Anyone here from the ANC?

1 [No audible response.]

2 CHAIRPERSON HILL: Anyone here wishing to
3 speak in support of the application?

4 [No audible response.]

5 CHAIRPERSON HILL: Anyone here wishing to
6 speak in opposition to the application? You can just
7 come on forward.

8 Ma'am, did you fill out your witness cards?
9 Okay, great. And, did you get sworn in earlier this
10 morning?

11 [No audible response.]

12 CHAIRPERSON HILL: Okay, great. If you could
13 just push the button there so the green light comes
14 on, and if you could just introduce yourself and give
15 me your home address there?

16 MS. RICHARDSON: My name is Stephanie
17 Richardson. I reside or am responsible for the
18 property at 1417 Potomac Avenue Southeast.

19 CHAIRPERSON HILL: All right, great, Ms.
20 Richardson. So, Ms. Richardson, I'm going to give you
21 three minutes and it's just there on the clock there,
22 on either side there so you know your own time. Okay?

23 Please, go ahead and start whenever you'd
24 like.

25 MS. RICHARDSON: [Speaking off microphone.]

1 CHAIRPERSON HILL: You need to push the button
2 again. Sorry. Just keep it on.

3 MS. RICHARDSON: I am undeclared at this time.
4 I would need additional time to make a decision
5 whether or not I would approve. And if I approved, I
6 would want, of course, some contingencies in that
7 approval. But at this time, I would have to say I'm
8 undeclared.

9 CHAIRPERSON HILL: Okay. So, what are some of
10 your concerns?

11 MS. RICHARDSON: Primarily I'm concerned with
12 the age of the structures and with what I think I'm
13 understanding what wants to be done to the address
14 where the construction will be going on. How will
15 that affect my property?

16 I'm greatly concerned with the age of the
17 properties. And there has been construction and it
18 was not 100 percent correct. It has -- I can see a
19 difference. There was construction in a neighboring
20 house and I can see a difference in my property. So,
21 I am very much concerned with that; the age and
22 accidents.

23 CHAIRPERSON HILL: Okay. Are you the
24 immediate neighbor to the property? You just have to
25 keep it on. It just -- you don't have to turn it --

1 MS. RICHARDSON: Yes, I am.

2 CHAIRPERSON HILL: Okay, great. In terms of
3 like the construction and such, with the applicant, I
4 mean, is there any kind of precautions or I mean,
5 you're taking for the neighbors or anything? I mean,
6 there's -- I didn't see any concerns off the top of my
7 head. I'm just curious.

8 MR. BOYETTE: Well, DCRA requires that we
9 notify the neighbors, whenever we do work on a party
10 wall. All of the construction would be on Alice
11 Bellis's property, up to the property line. The
12 foundation would be on Alice's property. No work
13 would be done to anything on the other side of that
14 property line. But we do ask -- DCRA does request
15 that we ask permission to enter that property in the
16 event, say, construction debris were to cross over, so
17 that it can be cleaned up or just to finish the side
18 of the party wall on --

19 CHAIRPERSON HILL: Okay. Okay. And again,
20 your intent is to be a good neighbor, obviously,
21 during construction.

22 MR. BOYETTE: Yeah. I, as the architect,
23 we're a full-service architect. We visit every week.
24 We hold the contractor responsible not only to
25 benefit our client, but to benefit the neighbors and

1 the neighborhood. We have a plan for -- we develop a
2 plan for removing debris from the site in such a way
3 as to not block, permanently block the alley. Stuff
4 would be taken out on a daily basis.

5 CHAIRPERSON HILL: Okay. Okay. Okay.

6 MR. BOYETTE: And such.

7 CHAIRPERSON HILL: Does the Board have any
8 questions for the witness?

9 MR. HART: Your concerns are around the
10 construction itself, not necessarily what is being --
11 the construction process, so that it doesn't impact
12 your property as opposed to the actual extension that
13 is being proposed. Is that correct?

14 MS. RICHARDSON: And with the potential for
15 accidents. Now, what would be Ms. Bellis's
16 responsibility, what would be my responsibility.

17 MR. HART: Accidents as they pertain to the
18 construction.

19 MS. RICHARDSON: Construction, yes.

20 MR. HART: Okay. So, this is not --

21 MS. RICHARDSON: Only to the construction.

22 MR. HART: Okay.

23 CHAIRPERSON HILL: Okay? All right. Okay.
24 So, Ms. Richardson, so again, as I -- the construction
25 issues are not necessarily issues that we as the Board

1 have under our purview. I do think that as far as the
2 process goes, there was I guess, you know, the ANC
3 meeting that took place in terms of the approval that
4 the neighborhood has given for this work to be done.
5 I understand your concerns and wanting to make sure
6 that your property is taken care of.

7 I'm kind of assumed, you know, assured from
8 the applicant here that you're going to do what you
9 need to do to make sure that both neighbors, you know,
10 are taken care of during the construction phase. And
11 so, that's what I have to make comment upon, now that,
12 you know, Ms. Richardson has come out here and down
13 here and kind of pointed that out. Now you even know
14 to be even more aware of that, you know, moving
15 forward if this were to be approved. Okay.

16 Thank you, Ms. Richardson. Does -- oh, I'm
17 sorry.

18 MR. HART: Yeah. Just a question. This is
19 Ms. Bellis. I see that there was a letter from the
20 neighbor to your, I don't know if that's --

21 MS. BELLIS: Yeah. The other side.

22 MR. HART: 13, the other side. Can you just
23 talk a little bit about -- it seems like you've
24 reached out to the folks that are around. You've gone
25 to the ANC. So, there has been -- you've done work to

1 try to make sure people were aware of this and that
2 you were aware of any concerns that they had. Can you
3 talk a little bit about the -- well, you have one
4 neighbor that has supported, you have another neighbor
5 that is -- adjoining neighbor that is just unsure.
6 Can you talk a little but about the process, to reach
7 out to --

8 MS. BELLIS: I reached out to both adjoining
9 neighbors. The neighbor on the other side, you know,
10 had some concerns about light, which we talked about
11 and ultimately that neighbor decided that the light
12 issues were so minor as to not be a concern. And so,
13 that neighbor supported the case.

14 And Ms. Richardson and I did talk about her
15 concerns, but clearly she's still concerned and which
16 is why she's here today. So, that's basically where
17 things are.

18 MR. HART: Thank you. Thank you.

19 CHAIRPERSON HILL: Okay. Does the Board have
20 any more questions for the applicant?

21 [No audible response.]

22 CHAIRPERSON HILL: All right. Does the
23 applicant have anything they'd like to say in
24 conclusion? You don't need to.

25 MS. BELLIS: I don't think so.

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

4 [No audible response.]

5 CHAIRPERSON HILL: All right. So, again, as I
6 had said earlier, after reading through the record and
7 based on the analysis, that I perceive the Office of
8 Planning has done a good job in terms of the grant --
9 providing analysis for this special exception, and
10 that the ANC has approved this in terms of the project
11 moving forward. I mean, I see -- I can get behind
12 this special exception and see why it meets the
13 criteria.

14 I am glad that this forum actually provides an
15 opportunity for the neighbors to come down and just
16 further clarify their concerns, and I feel assured,
17 again, that during the construction the architect is
18 going to do what he says he's going to do, and work
19 with the construction company to make sure there isn't
20 any debris or any kind of damage that would take place
21 to the neighbors.

22 Does the Board have any other comments?

23 MS. WHITE: No. I just echo what you just
24 said, Chairman Hill. You know, I'm comfortable with
25 the OP's recommendation as well as the ANC. But

1 obviously, you know, we have neighbors that are --
2 have somewhat of a difference of opinion in terms of
3 being on board with the project. I would just
4 encourage the neighbors to continue to have
5 conversations. Obviously, if there was damage, you
6 know, you could seek relief. So, I would encourage,
7 you, as well as the architect, as well as Ms. Bellis,
8 to continue to have dialog with respect to the
9 construction that's going to take place to make sure
10 that everyone is able to live in harmony.

11 But, I appreciate you coming down and sharing
12 your thoughts. But after the hearing is over, you're
13 going to have to continue to have dialog through the
14 construction phase. And so, I'm hopeful that that
15 will occur.

16 CHAIRPERSON HILL: Commissioner Turnbull.

17 MR. TURNBULL: Thank you, Mr. Chair. I think,
18 just basically looking at the zoning issues the de
19 minimis relief that their requesting for lot
20 occupancy, you can go to 70 percent and they're at
21 69.2, so I think that's, from my standpoint is,
22 they're fine with that. And I would agree with Ms.
23 White that the continuing dialog, I think, between
24 neighbors is going to be essential to going forward
25 with this.

1 But other than that, I'm in support of this.

2 CHAIRPERSON HILL: Okay. All right. Then,
3 I'm going to make a motion to approve Application No.
4 19438 of Alice Bellis, as read by the secretary.

5 MR. HART: Second.

6 CHAIRPERSON HILL: Motion has been made and
7 seconded.

8 [Vote taken.]

9 CHAIRPERSON HILL: The motion passes.

10 MR. MOY: Staff would record the vote as four,
11 to zero, to one. This is on the motion of Chairman
12 Hill to approve the application for the relief
13 requested. Seconding the motion, Vice Chair Hart.
14 Also in support, Mr. Turnbull, Ms. White, board seat
15 vacant. Motion carries, sir.

16 CHAIRPERSON HILL: Great. Thank you. Summary
17 order.

18 MR. MOY: Yes, sir.

19 CHAIRPERSON HILL: Thank you. All right.
20 Thank you all very much. Thank you.

21 MR. MOY: Okay. If I could have applicants to
22 the table to Application No. 19444 of Daniel A. Vega.
23 Vega. V-E-G-A. Captioned and advertised for a
24 special exception relief under Subtitle D, Section
25 5201. This is from the lot occupancy requirements of

1 Subtitle E, Section 304. This would construct a rear
2 deck addition to an existing one-family dwelling, R-3
3 Zone, 2335 3rd Street Northeast, Square 3558, Lot 49.

4 CHAIRPERSON HILL: All right. This seems to
5 be build-a-deck day. Good morning. Could you
6 introduce yourself, please?

7 MR. VEGA: Yes. Good morning. My name is Dan
8 Vega. Address 2335 3rd Street Northeast. That's my
9 private residence.

10 CHAIRPERSON HILL: Great. Thank you, Mr.
11 Vega.

12 So, Mr. Vega, I don't have a lot of questions
13 again for this particular application, after reviewing
14 the record. I do -- if you want to just go over at a
15 high-level kind of what you're trying to do and the
16 relief you're requesting and why you meet the
17 standard. Also, I did have a question, I suppose,
18 about -- I still don't have a report from ANC 5E.
19 However, I have a letter, and so you can kind of talk
20 about that a little bit. Okay?

21 And other than that, does the Board have any
22 other particular things they'd like to hear from the
23 applicant?

24 [No audible response.]

25 CHAIRPERSON HILL: Okay. All right. Then,

1 you can go ahead and start. I'm going to go ahead
2 and, I'm just going to put five minutes up there just
3 so you know where you are. Okay?

4 MR. VEGA: Okay. Thank you.

5 CHAIRPERSON HILL: Thank you.

6 MR. VEGA: And thanks for hearing my case. As
7 I said, this is my primary residence. I'm a first-
8 time homeowner.

9 I was seeking to build a deck. Most of the
10 houses along my row in this R-3 Zone seem to have
11 them, so I looked into the prospect of building one.
12 I spoke to DCRA and found that my lot occupancy
13 requirements, being 60 percent, didn't allow it in its
14 current state. So, I looked at -- you know, I looked
15 at a plat of my property. I found that it is a fairly
16 thin lot. In fact, from the 1920s, they were smaller
17 than what the R-3 requirement would be now.

18 So, if it were a little bit wider then this
19 would have been a matter of right case. But, as it
20 turns out, I would require relief to increase from 60
21 percent to 70 percent in order to build this deck. It
22 is of the same size and construction as the ones
23 around my neighborhood. My next-door neighbors on
24 both sides support it. I usually -- I mean, I spent
25 time on their deck as well. But, anyway.

1 I did speak with my ANC. She came over and
2 asked about the project. I told her a quick
3 background, and she said that she would support the
4 project. I didn't follow up with her after she gave
5 me a letter of support. I'm not sure what her
6 obligations were as far as writing a report itself.
7 But she hand-delivered a letter of support which I
8 then uploaded into the IZIS system. So.

9 CHAIRPERSON HILL: So, you didn't actually
10 present in front of the ANC? You just spoke to -- and
11 that's the SMD in your -- that's your SMD.

12 MR. VEGA: That's correct.

13 CHAIRPERSON HILL: Okay.

14 MR. VEGA: I was out of town for work at the
15 time, but I spoke to the ANC representative and asked
16 her to present it on my behalf.

17 CHAIRPERSON HILL: Okay.

18 MR. VEGA: And gave her my contact information
19 in case people in the neighborhood needed follow-up.

20 CHAIRPERSON HILL: Okay. And that's Nancy
21 Jones?

22 MR. VEGA: That's right.

23 CHAIRPERSON HILL: Okay. All right. Does the
24 Board have any other questions for the applicant?

25 MR. HART: Just wanted to actually commend you

1 on a very thorough -- a very thorough application.
2 Very few applicants have as much information as you
3 provided, so it's very much appreciated. Thank you.

4 CHAIRPERSON HILL: Okay. Let's see. Okay.
5 So, I'm going to turn to the Office of Planning.

6 MR. MORDFIN: Good morning. I'm Stephen
7 Mordfin and the Office of Planning continues to
8 support this application and is available for
9 questions.

10 CHAIRPERSON HILL: Okay. Great. Thank you.
11 Does anyone have any questions for the Office of
12 Planning?

13 [No audible response.]

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

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. I'm going to turn to
18 the audience. Is there anyone here from the ANC?

19 [No audible response.]

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

22 [No audible response.]

23 CHAIRPERSON HILL: Is there anyone here
24 wishing to speak in opposition to the application?

25 [No audible response.]

1 CHAIRPERSON HILL: All right. Then, with that
2 I would turn back to the applicant. Mr. Vega, do you
3 have anything else you'd like to add?

4 MR. VEGA: No, chairman. Thank you.

5 CHAIRPERSON HILL: Okay. I'm glad to hear
6 that you're -- I guess, then, you'll be able to host
7 your neighbors on your deck?

8 MR. VEGA: Yes.

9 CHAIRPERSON HILL: Okay. All right.

10 MR. VEGA: I have a lot of time to make up
11 for, though.

12 CHAIRPERSON HILL: Yeah, apparently. All
13 right. So, does the Board have any other questions
14 for the applicant?

15 All right. Then, I'm going to close the
16 hearing. Is the Board ready to deliberate?

17 Okay. I'm going to go ahead and just start
18 the deliberation, which is to say that I don't really
19 have a lot of questions again. I thought the
20 applicant, as Mr. Hart had mentioned, the applicant
21 had done a very thorough job for -- and that's great,
22 because that's very helpful to us. The record is what
23 we use to review these cases prior to the day and the
24 more thorough and prepared the applicant is, the
25 easier it can be for either approval or denial.

1 So, again, the Office of Planning has provided
2 a good analysis. I am in agreement with their
3 analysis. I'm also comfortable with the letter from
4 the ANC SMD, and also DDOT does not have any
5 objection.

6 So, unless anyone else has anything to add,
7 I'm going to go ahead and make a motion to approve
8 Application No. 19444 of Daniel Vega as advertised.
9 As read by the secretary.

10 MR. HART: Seconded.

11 CHAIRPERSON HILL: Motion has been made and
12 seconded.

13 [Vote taken.]

14 CHAIRPERSON HILL: All right. The motion
15 passes, Mr. Moy.

16 MR. MOY: Staff would record the vote as four,
17 to zero, to one. This is on the motion of Chairman
18 Hill to approve the application for the relief
19 requested.

20 Seconded the motion, Vice Chair Hart. Also in
21 support, Mr. Michael Turnbull, Ms. Lesyllee White, and
22 we have a board seat vacant. Motion carries, sir.

23 CHAIRPERSON HILL: Okay. Summary order.

24 MR. MOY: Thank you, sir.

25 CHAIRPERSON HILL: All right. As I mentioned

1 earlier, we kind of were reorganizing things in the
2 day. So, before whoever is coming up next, we're
3 going to reorganize things again, to help a schedule,
4 which is something that we're not -- we normally don't
5 do. But we'll do it in this case.

6 So, the first case that we were going to put
7 at the end of the day, I'm going to go ahead and do it
8 now. If Mr. Moy, you could announce that case?

9 MR. MOY: Yes, indeed. Thank you, Mr.
10 Chairman. That would be Application No. 19355 of
11 Stacey Selenfried, or Selenfriend, and Christopher
12 Pharr, captioned and advertised for variances from the
13 nonconforming structure requirements under Subtitle C,
14 Section 202.2, lot occupancy requirements of Subtitle
15 E, Section 304.1, rear yard requirements, Subtitle E,
16 Section 306.1, to permit the location of multiple
17 decks over an existing rear attached garage, RF-1
18 Zone, 609th Street Northeast, Square 913, Lot 800.
19 And I believe, Mr. Chairman, there is a request for
20 party status under Exhibit 33.

21 CHAIRPERSON HILL: Okay. Yeah, is the party
22 status applicant here? Okay, if you would please come
23 forward?

24 All right. Let's see. First, let's go
25 through and introduce ourselves. If you wouldn't mind

1 just going from right to left?

2 MR. KARAMBELAS: Nicholas G. Karambelas
3 representing the applicants.

4 CHAIRPERSON HILL: Could you spell that last
5 name for me, please?

6 MR. KARAMBELAS: Yes. K-A-R-A-M-B-E-L-A-S.

7 CHAIRPERSON HILL: Okay. Great. Thank you.
8 Sir?

9 MR. PHARR: Christopher Pharr, 609th Street
10 Northeast.

11 CHAIRPERSON HILL: All right.

12 MS. LYNCH: Jamie Lynch, 812 F Street
13 Northeast, and I'm the only owner-occupied shared
14 party line with the applicant.

15 CHAIRPERSON HILL: Okay. Great. So, the
16 preliminary matter here is going to address party
17 status. And I don't know where, if the Board has
18 anything additional to add after I say what I'm going
19 to say. But I've read through the application for
20 party status, and Ms. Lynch, I think that, you know,
21 you've made the case in my opinion, for party status.
22 In particular, because you share an adjoining
23 property line. So, my motion would be to go ahead and
24 grant party status unless the Board has any other
25 comments.

1 MR. TURNBULL: Mr. Chair, I would concur with
2 you on that.

3 CHAIRPERSON HILL: Okay. Great. All right.
4 So, then Ms. Lynch, you'll be afforded party status in
5 this case. And so, we're going to go ahead and the
6 order would be again, we're going to go and hear from
7 the applicant. Then you will have an opportunity to
8 cross-examine that applicant. And then we're going to
9 go to the different city groups, meaning OP, DDOT, et
10 cetera. The applicant, you will also have an
11 opportunity to ask questions of those people.

12 Then, you'll have an opportunity to present
13 and then also the applicant will have an opportunity
14 to cross. And so, that's just basically the process.

15 So, I'm going to turn to you guys first, Mr.
16 Karambelas.

17 MR. KARAMBELAS: Yes.

18 CHAIRPERSON HILL: Karambelas. And then, and
19 you kind of, you know where you are, I suppose. I
20 mean, we've all read the record. We understand the
21 situation. We understand that the decks were already
22 there, and how you kind of got to this point.

23 I still want to hear it. I mean, you were
24 going to be the last of the day because it's really a
25 full presentation. I mean, it's going to take us a

1 while to kind of work through this.

2 So, and as you do know, the Office of Planning
3 is in denial of the application or opposes. And then
4 it seems like you've worked out kind of some -- I
5 mean, there's a lot of different issues here that I'd
6 like to hear about. So, unless there's anything in
7 particular the Board wants to point out right now, I'm
8 just going to let the applicant go ahead and make
9 their presentation. Okay.

10 So, I'm going to put 15 minutes on the clock,
11 just to kind of start you out. And then again,
12 whatever you get, the cross-examiner -- the cross-
13 examiner. The party status person also gets the same
14 amount of time, so just to let you know.

15 Okay. So, please, go ahead.

16 MR. KARAMBELAS: Just to sum up, Mr. Chairman,
17 this is a, as you said, this presents unusual facts.
18 The applicant purchased the lot, obviously, in 2013,
19 at a foreclosure, found out a couple of years later
20 when they were trying to get permits for interior
21 renovations, that the decks had not been properly
22 permitted and so no -- and a variance had not been
23 granted.

24 So, really, what we're looking at here is a
25 somewhat unique situation because we're looking for

1 the variance post-facto. And this is the only way
2 that the applicant, as we're told, can perform its
3 interior renovations, by getting first of all the
4 variance and the permits necessary. Secondly, it
5 would just, without the variance it would just
6 continue an already nonconforming situation in the
7 neighborhood. We can't see how that's possibly in
8 anyone's interest.

9 What I'd like to do, Mr. Chairman, if I could
10 go through some questions with the applicant, and
11 maybe have the applicant have a chance to respond?

12 CHAIRPERSON HILL: Sure. However you like,
13 because I do want to point out again, you know, what
14 we're mostly trying to focus in on is the first and
15 second prong of the variance test, as to how you meet
16 those standards for relief. And that's where I think
17 your focus should be.

18 And then the third prong, which is again, kind
19 of like how it affects the area, the defining area,
20 that's something that probably is going to bring more
21 into play, the party in opposition.

22 MR. KARAMBELAS: Okay. Well, why don't I just
23 go directly to the three prongs then?

24 CHAIRPERSON HILL: Sure.

25 MR. KARAMBELAS: It's the existing decks

1 themselves that present an exceptional condition. The
2 -- it's unusual for an owner to acquire property that
3 already had an existing nonconforming structure on it.
4 Also, combined with that was buying the property out
5 of foreclosure where Wells Fargo, which was the
6 foreclosing, the party, from whom the client bought,
7 there were no representations made to the effect that
8 these decks were nonconforming. The decks had existed
9 there for, well, at that -- 10 years now, longer. But
10 the previous owner had built the decks without
11 permits.

12 So, I think the first prong is satisfied
13 simply by the existence of the decks themselves that
14 cause the exceptional situation.

15 As far as the peculiar exceptional practical
16 difficulties, again, either these decks remain as
17 nonconforming structures or they need to be removed.
18 I mean, there are no other options here and obviously
19 the second is not an option.

20 There are also huge costs involved to the
21 applicant for having to perform anything of that
22 nature. And, they'll be denied without the proper
23 variance, they'll be denied the full use of their
24 property. For a whole host, and even insurance
25 reasons, they can't maintain on there, a condition

1 that is nonperforming.

2 As I said, the other problem is the applicant
3 is unable to perform even interior renovations.
4 That's what the Office of Zoning has said. Even
5 though they have no connection with the deck. And I
6 should also add, that the applicant is not seeking to
7 build anything. They're only seeking to remedy a
8 situation that has existed for now, going on 12 years,
9 and in which they had no part in creating.

10 As to the no substantial detrimental good, I
11 think it's a little -- the prong is somewhat difficult
12 to apply, again because the property was existing and
13 you know, whatever complaints that the neighborhood
14 had, I think would have been heard long before now.

15 So, but in any event, the applicant has agreed
16 to the two conditions put forward by the ANC in
17 support of the application. And, well, I say two
18 conditions because that's what's in the letter of
19 support. But if you look at them, there are actually
20 five conditions which the applicant has already
21 committed to seek.

22 And just to mention the five, they will cease
23 using the deck by 10:00 p.m. And in the case of the
24 upper deck, by 11:00 p.m. If they need to have
25 exceptions to those times, they will discuss it with

1 their next-door neighbor, and will reasonably
2 accommodate.

3 The applicant and future owners will discuss,
4 on a mutually agreed basis, whether these
5 accommodations may be no longer necessary. And,
6 obviously, they would make any future owner aware of
7 this.

8 I think two of -- at least one big basis of
9 the opposition is the placement of the HVAC system.
10 And the applicant has committed to, within 30 days of
11 your approval, to move the HVAC unit, it's currently
12 housed on the second-floor deck, to the roof. And
13 then this unit will be moved, you know, as soon as
14 it's feasible once they get the necessary permits to
15 move the HVAC.

16 And then, there's a 1.5 ton HVAC unit on the
17 deck, which they've been told is too old to move right
18 now. And they will move the unit to the roof when
19 it's replaced at the end of its useful life, which is
20 either the time of the useful life, or 10 years,
21 whichever is sooner.

22 And, I'd entertain any questions from the
23 Board.

24 CHAIRPERSON HILL: Does the Board have any
25 questions right now?

1 MR. TURNBULL: You made a big point about, you
2 can't remove them. Did you talk about modifying them
3 to an extent to alleviate the 100 percent lot
4 occupancy?

5 MR. KARAMBELAS: Again, from what we're
6 looking at, there isn't a feasible way to modify them
7 without removing them, because of the way they're
8 constructed.

9 MR. PHARR: And I think the other point is
10 that even modifying them or removing them, we'd still
11 be at 100 percent lot occupancy because of the garage.

12 MR. TURNBULL: Well, at 100 percent lot
13 occupancy, you're really impacting your neighbors.
14 You talk about -- you made a big point about how they
15 can't get the full use of their property; of your
16 property. But they can't get the full use of their
17 property because you're impacting their light and air
18 with this deck.

19 MR. KARAMBELAS: Right. And that's -- and the
20 noise issue, they're taking care of with the moving of
21 the HVAC.

22 MR. TURNBULL: Well, it's not just -- it's the
23 privacy issue. You're overlooking their property.
24 You've built right up to this -- this deck is right up
25 to the property line.

1 MR. KARAMBELAS: Right. And it --

2 MR. TURNBULL: You can look right over and --

3 MR. PHARR: Which is why we agreed to the
4 curfew items that --

5 MR. TURNBULL: Well, curfew, see.

6 MR. PHARR: -- Mr. Karambelas went through.

7 MR. TURNBULL: I mean, up until 10:00 you can
8 still look over and impact their use. I mean, this is
9 a significant impact on the zoning regulations. I
10 mean, the whole point is that this is an illegal
11 structure which should never have been built, and
12 still is causing a detriment to the neighborhood.

13 I mean, Mr. Chair, that's --

14 CHAIRPERSON HILL: Okay.

15 MR. HART: Yeah, and Mr. Chair.

16 CHAIRPERSON HILL: Sorry, go on.

17 MR. HART: No, I'd also concur with
18 Commissioner Turnbull. It's -- I understand that this
19 is something that you bought into, and that is
20 unfortunate that that happened. That doesn't negate
21 the fact that this is something that has -- I mean,
22 the variance test is a very high bar, for any
23 variance. And it's necessary because the zoning
24 regulations, they set forth what are the requirements
25 for -- and kind of allow some addition, I guess, to

1 various things, lot occupancy, side yard, rear yard,
2 those sorts of things, within a degree of a kind of
3 acceptable use.

4 Outside of that you have to kind of say, this
5 is a very exceptional situation that -- or such a
6 varying from the actual zoning regulations that it is
7 -- and there are things that are happening at this
8 particular site that don't really happen at any site,
9 that we should be allowed to be able to do this.

10 Foreclosures are not exceptional to your
11 particular lot. Foreclosures happen, you know,
12 unfortunately they happen all across the city and in
13 other communities.

14 And whether or not the bank had done that, I
15 mean, we're not in the -- we have no way of being able
16 to say that that actually they you know, didn't -- I
17 don't know if they knew that, or not knew that. Be
18 that as it may, what we have to figure out is, should
19 we allow this use to continue, because that's what the
20 variance is.

21 And once the variance -- once this issue is
22 done, regardless if it is for to allow the variance or
23 to approve the variance, or not, then you're -- the
24 issue with you being able to do the interior
25 renovation will be decided, because then you could

1 actually do the interior renovation after this case is
2 over, for or against. Because the issue will no
3 longer be a concern for DCRA having these -- they will
4 either have the approval from BZA, or not have the
5 approval from BZA. And then you'd be able to move
6 forward with the interior renovation.

7 So, it's hard for me to kind of see this in
8 the light that you're portraying. But, and I'm still
9 listening and trying to grapple with it and
10 understanding the difficulty, difficult position that
11 you're in.

12 MR. KARAMBELAS: Well, as we've said in the
13 record, the applicant has gone through various
14 solutions, including looking to see if a historic
15 designation was available because as I understood in a
16 meeting with the opposers, after discussion really
17 came down to well, what happens in the future with
18 these decks if the approval -- the approval is
19 granted. Then anybody can enclose the decks, can even
20 go further to eliminate the light and air and privacy.

21 So, that gave rise to, well, how can we handle
22 that issue when the ANC's suggestion was to see if we
23 could get historical designation so that that couldn't
24 happen. Well, that wasn't feasible from their point
25 of view.

1 We've gone through discussions with the ANC
2 about how -- what other way to deal with this, and
3 this is what we came up with. And I don't think that
4 the district would be in a position to say, just tear
5 it down. And we don't see a way to modify it.

6 CHAIRPERSON HILL: Okay. So, I've got a
7 couple questions then. Ms. White, if you also have
8 some questions. And then the party status will have
9 an opportunity to ask some questions.

10 Again, what we are here tasked with is whether
11 or not this meets the test in terms of it being
12 approved. And I understand the situation you're in.
13 I'm just -- we're just trying to -- we, as well as I'm
14 sure I think in the Office of Planning's report, they
15 are sympathetic. We are sympathetic. Like, they were
16 built illegally. You know, they're not supposed to be
17 there, right?

18 And so, I had a couple of questions with that
19 regard. So, the number that I think was posted in
20 there was like 160,000 to take the decks down. I
21 don't know whether you remember that number or not.
22 Where did you come up with that number? How did you
23 get it?

24 MR. KARAMBELAS: That was a rough estimate
25 that we had a technical expert just look at it and try

1 and get an estimate. And it was a very rough one.

2 CHAIRPERSON HILL: In other words, it was just
3 kind of a guess from somebody? Okay.

4 MR. KARAMBELAS: Yeah, it was -- yeah.

5 CHAIRPERSON HILL: Okay.

6 MR. KARAMBELAS: But they figured in their
7 demolition permits, you know --

8 CHAIRPERSON HILL: Okay. I understand.

9 MR. KARAMBELAS: Right.

10 CHAIRPERSON HILL: And so, as of now, and I
11 was just curious, is there a -- has DCRA imposed any
12 kind of a penalty now for the decks?

13 MR. KARAMBELAS: No.

14 CHAIRPERSON HILL: Not a financial penalty at
15 this point. And then, the HVAC units, there was one,
16 just for again, one can be moved easily, and one was
17 on the top, on the top deck or something, and then it
18 couldn't be moved until it was -- it had -- its life
19 had exceeded whatever. Right?

20 MR. PHARR: Right. So, there are two units on
21 the -- both on the lower deck. The first one is new
22 enough to be moved. The smaller one is, its age
23 prevents it from being moved without having to be
24 replaced.

25 CHAIRPERSON HILL: Okay. And, were you --

1 have you been there for 10 years?

2 MR. PHARR: No, we've been there since 2013.

3 CHAIRPERSON HILL: Okay. And the decks were
4 done, 10, 11, 12 years ago, something like that.

5 MR. PHARR: That's our understanding.

6 CHAIRPERSON HILL: You don't know.

7 MR. PHARR: Yes.

8 CHAIRPERSON HILL: Okay. All right. All
9 right. Let's see. Does anyone else have any
10 questions for the applicant right now?

11 MS. WHITE: No, right -- not right now, but I
12 mean, I guess the main thing is just trying to get
13 beyond or to get information to justify granting a
14 variance, which is obviously a very high test. So,
15 I'm trying to understand the exceptional
16 circumstances. But, I also want to hear from OP in
17 terms of what their opinions were with respect to what
18 some of the issues were.

19 CHAIRPERSON HILL: Okay. Great. And I'll go
20 ahead and turn to the Office of Planning again in a
21 minute. But so, Ms. Lynch, you will have an
22 opportunity now to ask questions based upon the
23 information that was provided by the applicant. I
24 know that we have read your submission and know where
25 you are in terms of your opposition to the deck. And

1 then again, you'll have an opportunity to present as
2 well, and then we'll have some questions for you. But
3 do you have any questions for them right now?

4 MS. LYNCH: Sure. The only question I have
5 is, have you sought recourse with the seller?

6 MR. PHARR: No, we have not.

7 MS. LYNCH: Okay. That's it.

8 CHAIRPERSON HILL: Okay. All right, great.
9 All right, thanks. That made my life easier right
10 now.

11 So, going to go ahead and turn to the Office
12 of Planning, because we have some questions for you,
13 Office of Planning.

14 MR. JESICK: Thank you, Mr. Chair and members
15 of the Board. My name is Matt Jesick. As you
16 mentioned, we are very sympathetic with the applicant
17 who obviously bought the property without knowing the
18 situation.

19 We do feel that there is an exceptional
20 situation on the property. Where we felt the variance
21 test failed was in the detriment to the public good
22 and the harm to the zoning regulations. We sometimes
23 do see decks, you know, that create high lot
24 occupancies on small lots. But I'd say rarely, or
25 never have we seen one that kind of butts right up

1 against the windows, almost, of the adjacent property.

2 So, we felt that this case would, or does
3 create an impact to the neighbor that would go beyond
4 what the zoning regulations intend, and would go
5 against the intent of the zone plan to allow
6 significant light and air to adjacent properties. So,
7 that's why we unfortunately had to recommend denial of
8 the application. Thank you.

9 MS. WHITE: Can you explain a little bit more
10 what you mean by interferes with light and air? Just
11 kind of paint the picture for me a little bit better.

12 MR. JESICK: Yeah, again. I can't recall in,
13 you know, my numerous years, a deck that has been
14 built so close to the windows of an adjacent property
15 like that, so it would create, you know, a significant
16 level of shadow and impacts as the Board mentioned, to
17 privacy. So, those are the types of issues that we
18 were looking at when we reviewed it.

19 MS. WHITE: Thank you.

20 CHAIRPERSON HILL: So, anybody still have
21 questions for the Office of Planning.

22 MR. TURNBULL: No, I don't have any questions.
23 I think Mr. Jesick has -- I think the report has been
24 very clear as to the Office of Planning's status on
25 this, and their review of the case. And I really

1 concur with the -- I think he's correct. I think the
2 first prong is something that you could maybe stretch
3 and say they might -- they have an exceptional
4 condition. But I think the second and third prongs is
5 -- I would agree with them on that.

6 CHAIRPERSON HILL: Okay. So, I did have a
7 question and this is just for future knowledge on my
8 part. So, the first prong, again, you're in agreement
9 with the argument in terms of that the deck is
10 existing, that's the exceptional condition? I mean,
11 just, can you walk me through how the Office of
12 Planning thinks that the first prong is being met?

13 MR. JESICK: Sure. Yes, certainly again there
14 are these existing decks which the owner did not know
15 were built illegally. So, they purchased the property
16 without that knowledge. So, we felt that was an
17 exceptional condition for the owner that would result
18 in a practical difficulty given, you know, it would
19 incur costs to remove them, whatever that number is.
20 And it also interferes with their ability to get
21 interior renovation permits.

22 So, those are impacts to the owner. So, we
23 felt that the first part of the test was met, an
24 exceptional condition leading to a practical
25 difficulty. But again, those second and third parts

1 we felt were lacking.

2 CHAIRPERSON HILL: And part of that also, it
3 was -- it is the financial hardship taken into that at
4 that point, or that was somewhat that you thought
5 about, or --

6 MR. JESICK: Well, yes. We felt that, you
7 know, incurring that cost would be a difficulty for
8 the applicant. We didn't do any sort of financial
9 analysis.

10 CHAIRPERSON HILL: Okay.

11 MR. JESICK: So to speak.

12 CHAIRPERSON HILL: Okay. Does anyone have any
13 other questions for the Board?

14 MR. TURNBULL: No, and I think --

15 CHAIRPERSON HILL: Or for Office of Planning?

16 MR. TURNBULL: I just had -- but still it's,
17 although you could make an argument for that first
18 prong, it still does not relieve the owner from
19 knowing what they're getting into. I mean, if the
20 seller was not totally honest with them, yes, you
21 could say -- but to me, I mean, you could make a case
22 for it. But I'm still a little suspect that buying a
23 property that is so egregious didn't raise some flags
24 in the beginning. Maybe they don't realize that, but
25 I mean, I can agree with you on that, but I think it's

1 still a construct that you've got to create in your
2 mind and go through the iterations of how you get
3 there.

4 But, I could at least make a case that they
5 may have met that first prong on that. But, it's
6 still, to me, it's still a construct that you have to
7 do to go through and say well, they bought it so it's
8 a practical -- you know, it's a problem.

9 But, thank you, Mr. Jesick, for your report.

10 CHAIRPERSON HILL: Okay. Great. And, Mr.
11 Jesick, I haven't seen you in a while and so I also
12 still wouldn't want to play poker against you because
13 I have no idea what you're going to say.

14 All right. Let's see. Anyone else? Okay.
15 Does the applicant have any questions for the Office
16 of Planning?

17 MR. KARAMBELAS: Just the only question I had
18 was, I just, in your -- on your second page 4, you
19 recommend two conditions. You say a visual screening
20 as well as an oral screening, and moving the HVAC
21 equipment. Would that satisfy, would that change
22 anything in your one, two, three?

23 MR. JESICK: Well, I think the way I'd answer
24 that is that just on the facts of the case we felt
25 that the variance test was not met. But you know, it

1 is a judgment call and if the Board reaches a
2 different judgment we recommended that they consider
3 conditions such as visual screening or moving the HVAC
4 as the ANC suggested. So, it wouldn't take away from
5 our analysis as it stands. But if the Board reaches a
6 different conclusion, they could look at conditions
7 such as those.

8 MR. KARAMBELAS: Thank you.

9 CHAIRPERSON HILL: Okay. Does the party in
10 opposition have any questions for the Office of
11 Planning?

12 MS. LYNCH: Yes. Just, I wanted to ask, are
13 there examples that you're aware of, of 100 lot
14 occupancy within ANC 6A or throughout the city,
15 including a three-story structure, or is this
16 precedent setting?

17 MR. JESICK: I can't answer that one way or
18 the other. I'm not sure.

19 MS. LYNCH: Okay. Okay, that's it.

20 CHAIRPERSON HILL: Okay, great. All right.
21 Then, I'm going to see if there is anyone here from
22 the ANC. Is there anyone here wishing to speak in
23 support? Is there anyone else wishing to speak in
24 opposition?

25 Oh, okay. All right. Please, come up.

1 Hello. So, if you could just state your name and
2 address. And did you get sworn in this morning?

3 MR. FENGLER: Yes, sir, I did.

4 CHAIRPERSON HILL: Okay. Great.

5 MR. FENGLER: My name is Joseph Fengler. I
6 live at 301 Tingey Street Southeast, down by the Navy
7 Yard, but I own the property directly across the
8 street from the applicant at 815 F Street Northeast.
9 So, Ms. Lynch is direct across from me, and the
10 applicant is also direct across from me. I'm within
11 the 200-foot radius.

12 CHAIRPERSON HILL: Okay. So, Mr. Fengler, if
13 you want to go ahead, I'm going to put three minutes
14 on the clock for you to make your statement.

15 MR. FENGLER: Thank you. Mr. Chairman and
16 Commissioners, my testimony will only be on the three-
17 part test and how I see it. And clearly, the
18 exceptional situation is deemed exceptional because
19 the applicant bought the property and they point to
20 Wells Fargo as not informing them, and to the fact
21 that it could cost them money to remove it.

22 I'm not sure that meets the full test of an
23 exceptional situation, but I think the other two
24 prongs of the test are not met.

25 The substantial detriment to the public good,

1 essentially what they're saying is, time invalidates a
2 bad decision. The fact that the property is -- the
3 decks have been there for 10 years, means that they've
4 been there for 10 years and that should be okay. And
5 you know, the code really, in the DCMR Section 2004.1
6 really talks to how nonconforming structures are to be
7 taken care of. And if you have a nonconforming
8 structure, over time, if 50 percent of it falls out of
9 -- you know, 50 percent of it is no longer usable, or
10 no longer appropriate, or structure worthy, then it
11 comes down. And then what happens is that you return
12 that property to the code's position.

13 So, I mean, my point is, just because the deck
14 was built illegally 10 years ago, and there were
15 complaints 10 years ago. Many neighbors called DCRA
16 and asked for them to come out and inspect it, and
17 unfortunately at that time, you know, 12, 13 years
18 ago, they just didn't have the manpower to do it and
19 it was to a frustration of a lot of us that live
20 there.

21 So, when I look at the second prong, I just
22 don't understand how there would be no detriment to
23 the public good. To the extent that it's built right
24 to the line, it's three stories high. It is -- not
25 only would it impact Ms. Lynch, but any house across

1 the street on 815 on the south side, they would be --
2 their top windows look right -- you know, it's
3 approximate 60 feet away from their deck, so if there
4 is something going on, it's going to impact more than
5 just Ms. Lynch. It's going to impact the four or five
6 houses on the other side of F Street.

7 The third substantial prong is no substantial
8 harm to the zoning regulations. And really, here, I
9 don't think the applicant or the ANC really addressed
10 this. The applicant has said to their response of the
11 zoning, this is two sentences, "The primary purpose of
12 the zoning regulations is to set forth standards for
13 buildings and structures which support livable
14 neighbors. Well, I would agree with that. That makes
15 sense to me.

16 The only other sentence they have to this
17 third prong in their application is, the purpose is
18 not served by allowing a nonconforming structure to
19 exist, which will be the result if the variance is not
20 granted. Here is where I kind of disagree of why that
21 would invalidate the harm, or no substantial harm to
22 the zoning regulations. I mean, I think the zoning
23 code allows this. The structure would remain and once
24 the structure reaches the point of deterioration, they
25 would come out and they would have to remove it.

1 That's why you have a historic district, when they
2 change the code, you have nonconforming mechanisms
3 available to you. I think, the zoning code has enough
4 structure there to account for this.

5 I do think it is unfortunate that they bought
6 the house without knowing this condition. But those
7 are my responses to the three prongs. Thank you, Mr.
8 Chairman.

9 CHAIRPERSON HILL: Thank you. And thank you
10 for keeping to three minutes. I appreciate it.

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

13 MR. HART: Just one.

14 CHAIRPERSON HILL: Sure.

15 MR. HART: How long have you lived in the --
16 how long have you had the property in the --

17 MR. FENGLER: I bought the property in 2001
18 and then I moved to Lincoln Park in 2009, and then
19 recently to the Navy Yard.

20 MR. HART: Yeah, I was --

21 MR. FENGLER: So, I was there during -- I was
22 there during the build, which is even more frustrating
23 and somewhat embarrassing. I was the ANC commissioner
24 and I could not get DCMA to come out and do anything
25 about it at the time. So, we were kind of -- then,

1 after it was built they were like, well, it's built.
2 I'm like, great. So, that's kind of what I thought,
3 okay, it's built and despite all of our calls and
4 whatnot, it didn't elicit a change. So, I have a
5 problem with making it permanent. I get that it was
6 built. I understand that they bought it and they
7 didn't know, but making that a permanent feature of
8 that property, which is a huge corner property, it
9 wraps around 9th and F Street, 100 percent lot
10 occupancy for her to evermore. I fear if you could
11 enclose it.

12 So, I mean, I guess that's more than your
13 question was, so I apologize.

14 MR. HART: No, I appreciate it and this is
15 kind of -- this is, again, why we have people to
16 testify about particular cases because we understand
17 while we have letters and documents that we can read,
18 hearing this helps to understand and get a fuller
19 picture of what's kind of transpired over time. And I
20 was just trying to understand if you had actually been
21 here.

22 MR. FENGLER: Yes.

23 MR. HART: If you were -- this was first-hand
24 knowledge or if you were hearing from someone else
25 that said oh, well, when this first went in, and then

1 -- but you've answered that and said that you were
2 actually there.

3 MR. FENGLER: When the previous tenants were
4 there they did have parties and it did keep us up
5 because it literally were -- or the bedroom was
6 literally across the street.

7 MR. HART: Yes, but you are also not speaking
8 of the current occupants. You are speaking of --

9 MR. FENGLER: That is correct, past.

10 MR. HART: -- of the --

11 MR. FENGLER: Correct.

12 MR. HART: In the past.

13 MR. FENGLER: That is absolutely correct. I
14 have not lived there since they bought the property.

15 MR. HART: Thank you.

16 MR. TURNBULL: I would just concur with -- I
17 want to thank you for coming down and after 13 years
18 or whatever it's been, 17 years, it's good to hear
19 someone who was back in the neighborhood at the time
20 that it was actually built. So, thank you for coming
21 down.

22 MR. FENGLER: Thank you.

23 CHAIRPERSON HILL: Yeah, I had a couple
24 questions. Right. So, you were the 10 years ago when
25 it was built. You were the SMD?

1 MR. FENGLER: Yes, 6A-02 at the time. Yes,
2 sir.

3 CHAIRPERSON HILL: Okay. And what --

4 MR. FENGLER: I also was Chair of ANC 6A for
5 eight years, so even it was just very frustrating at
6 the time.

7 CHAIRPERSON HILL: And when was it built,
8 again?

9 MR. FENGLER: In my recollection it got put up
10 in 2004/2005. It was a multistage process.

11 CHAIRPERSON HILL: Okay.

12 MR. FENGLER: It never came up overnight in
13 one big structure. It looked like first it was over
14 the garage, and then it just kind of morphed into a
15 bigger and bigger structure over time.

16 CHAIRPERSON HILL: Okay. All right. Let's
17 see. Does the applicant have any questions for the
18 witness?

19 MR. KARAMBELAS: The only question that --

20 CHAIRPERSON HILL: I think you need to turn
21 your microphone on.

22 MR. KARAMBELAS: The only question is, if I
23 understand correctly, the solution that the witness
24 has is to let the deck just deteriorate over time and
25 then come back and get -- you know, seek the proper

1 permission. Am I correct?

2 MR. FENGLER: Well, and I'm not a zoning code
3 expert. That would be the zoning code, and maybe it
4 would be something for Office of Planning to address.

5 But when I read the zoning code it talks about a
6 nonconforming structure, and that a nonconforming
7 structure is allowed unless 50 percent of its
8 structural integrity comes into place. And at that
9 time the zoning code would indicate that it must come
10 down. So, to the extent that the applicant could
11 maintain it and never fall below 50 percent, but it
12 would not become a permanent structure as that
13 building, and that's what --

14 CHAIRPERSON HILL: Okay. I understand.

15 MR. FENGLER: Yeah, that's what --

16 CHAIRPERSON HILL: I understand. I
17 understand.

18 MR. FENGLER: That's my reading.

19 CHAIRPERSON HILL: I got you. I got you.

20 MR. FENGLER: I'm not an expert.

21 CHAIRPERSON HILL: I got you. You have any
22 other questions?

23 MR. KARAMBELAS: No.

24 CHAIRPERSON HILL: Okay. Do you have any
25 questions for your support?

1 MS. LYNCH: Actually, just one question or
2 clarification regarding the historic designation of
3 the opposite side of the street.

4 MR. FENGLER: Right. So, F Street is the
5 final border of the historic, Capitol Hill Historic
6 District. So, the south side is in the historic
7 district, but the north side of the street is not in
8 the historic district. So, their property is just
9 across the street from the historic district. So,
10 that you know, to me it's -- that house is a very
11 unique --

12 CHAIRPERSON HILL: Okay. That's all right. I
13 understand. I understand.

14 MR. FENGLER: Yes.

15 CHAIRPERSON HILL: I got it. Okay. All
16 right. Okay. Thank you.

17 So, I'm going to go ahead and let the
18 applicant present now, and -- sorry, the party status.
19 Parties in opposition present now. And, I'm going to
20 go ahead and again put 15 minutes on the clock for you
21 as well. Again, and I do appreciate, like, this is a
22 situation where, you know, where we're trying to get
23 to a decision based upon something that probably
24 nobody ever wants to be in anyway, right? I mean,
25 they bought the property in this manner. I guess I'm

1 prefacing that just to say that, you know, and I don't
2 -- we're just going to calmly discuss the things here
3 that are before us, but I appreciate, or would like to
4 mention that before you present. But go ahead, Ms.
5 Lynch. I'm going to put 15 minutes on the clock, all
6 right?

7 MS. LYNCH: Thank you very much.

8 CHAIRPERSON HILL: Thank you.

9 MS. LYNCH: And I just want to clarify. Mr.
10 Moy, do you happen to have the slides that I emailed
11 you regarding the pictures? And I've brought copies
12 as well, in the event that it's helpful.

13 CHAIRPERSON HILL: And actually, before you
14 present, we are going to take just a quick three-
15 minute break. Okay?

16 MS. LYNCH: Yes.

17 CHAIRPERSON HILL: So, we're just all just
18 going to take a quick three-minute break. Thank you.

19 [Recess from 11:12 a.m. to 11:17 a.m.]

20 CHAIRPERSON HILL: Okay. Let's settle back
21 in, please. All right, Ms. Lynch, I think we were
22 about to turn to you. And, Mr. Moy, put 15 minutes on
23 the clock, and we have your slides in front of us.
24 So, whenever you're ready.

25 MS. LYNCH: Okay. Perfect. Thank you very

1 much. First and foremost, thank you to you, Mr.
2 Chairman, and to the Board members. Particularly from
3 moving this up as well and accommodating us. I really
4 appreciate it.

5 As I stated, my name is Jamie Lynch and I am
6 the only owner occupied shared property line with the
7 applicant. The pictures before you should hopefully
8 provide a pretty good depiction. I'll walk through
9 those in just a minute. But, as you've already
10 received in the record, I have submitted two letters
11 of opposition for this case, and I remain resolute in
12 that opposition for the following reasons.

13 One, this is a private matter which should be
14 resolved with the seller, and not apply the burden to
15 the neighbors and the community. I purchased my
16 property five years ago, so I -- five years ago
17 tomorrow. And, so I predated the applicants. And
18 when the house had been repossessed by the bank I
19 contacted DCRA to find out if indeed, as the neighbors
20 had suggested, the decks were illegal, and I was told
21 yes. And even though the bank had pulled the permits
22 and was doing renovations, nothing was ever done to
23 remove the illegal decks at the time. And when the
24 neighbors moved in to the current applicants, I
25 informed him of that, but at which point there's

1 with the applicants. The concern is with the property
2 and the address itself. So, regardless, whatever
3 determination is made goes in perpetuity with the
4 address. And so, as previous residents of that
5 property, I wasn't there at the time when they did
6 have parties. That's my concern, of course, within
7 five feet of my bedroom windows.

8 None of us, as neighbors, object to them being
9 able to pursue work on the interior of their house.
10 We obviously object to the exterior decks. And me in
11 particular because of the impact to my property.

12 There's a complete lack of privacy, which
13 you'll see on the very first picture. The first page,
14 the third picture is a view from one of my bedroom
15 windows, where you can see from the decks, directly
16 into the bedroom itself. And for that reason, for
17 lack of any screening or otherwise, I have to keep my
18 shades drawn at all times subject to whomever may be
19 out there enjoying the use of their decks at my
20 expense.

21 There's impact to natural light, of course, so
22 with a four-story structure on the side of their house
23 next to a three-story house, my house is three-
24 stories, and then of course I do have concerns and
25 reservations about any further development if a

1 variance is granted.

2 My fourth objection -- so, objections from
3 four F Street neighbors, so we're all the ones that
4 have direct line of sight of these decks, at the back
5 of the applicant's property, which directly overlooks
6 our street. The applicants have no letters of support
7 from any F Street neighbors. Also, due to objections
8 from the Office of Planning and DDOT, also found the
9 curb to be nonconforming, all of which suggests,
10 there's no public benefit, or benefit to the city.
11 Instead, it applies the burden to the neighbors for
12 something for which we gain no benefit. And for which
13 it certainly doesn't meet part two or three of the
14 test as described.

15 So, to walk through the pictures really
16 quickly. So, for the first page, of course it just
17 shows the distance between the properties, and the
18 views from my house, overlooking the neighbor's
19 property, the applicants. The second page describes
20 the 100 percent lot occupancy and the standoff, all of
21 which is located on my side of the property line, for
22 which clearly it casts significant shade on my
23 property, let alone the noise that could occur from
24 those decks being adjacent to my windows.

25 And then the third page is the current

1 location of the HVAC systems, which is directly
2 adjacent to within five feet of my windows on the side
3 of my property.

4 So, with that, I would ask that the
5 Commissioners please consider denying this application
6 for a variance. However, I would strongly suggest to
7 the benefits of the applicant that they be able to
8 proceed with their interior work and permits be
9 granted. So, that's all I have. Thank you.

10 CHAIRPERSON HILL: Okay, great. Thank you.
11 Does the Board have any questions for the party in
12 opposition?

13 MR. HART: Thank you very much for coming
14 down. I mean, I understand that you have a -- because
15 you are a next-door neighbor you have a very strong
16 opinion about this.

17 And, you have, since you've been there, the
18 applicant has purchased the house. Since you've lived
19 at this location --

20 MS. LYNCH: Yes.

21 MR. HART: -- the applicant has purchased the
22 house, and you were not there when you -- when the
23 partying, or whatever that is that was described
24 earlier by the other person in opposition. So, you're
25 not saying that it's necessarily the applicant that

1 has had any events or whatever, partying or stuff
2 that's going on. This is really -- that predates this
3 applicant.

4 MS. LYNCH: Correct. So, the decks were
5 erected before I purchased my property. The one thing
6 that was uncertain for timing, which I think has since
7 been described, the HVAC systems did change. The
8 timing of the location, the HVAC systems directly
9 opposite my bedroom windows, was a more recent
10 occurrence, and the applicant has suggested that that
11 must have been done by the seller.

12 So, I was unaware of that, but it definitely
13 became a lot louder, just based on the HVAC systems.
14 Not necessarily even just the increased use of decks.

15 MR. HART: So, you're saying that they were --
16 that the HVAC systems were moved or upgraded in the
17 times that you've been there?

18 MS. LYNCH: It's unclear to me. It became
19 louder. So, and the applicants have suggested that
20 that was -- that's how they purchased the property.

21 So, it was unclear to me based on the timing
22 because I don't think the HVAC systems were being used
23 in the fall of when they purchased the property. So,
24 when they were being used, and it became a lot louder
25 on my bedrooms, the suggestion was through this

1 process, that it was actually the seller that moved a
2 five ton HVAC system next to my bedroom windows. And
3 that's only one of many noises that can occur.

4 MR. HART: Understand. Thank you.

5 MR. TURNBULL: I would just concur with the
6 Vice Chair. I want to thank you for coming down and I
7 thank you for your presentation. I thank you for the
8 short summary of -- I think you did a very well job of
9 presenting someone who's next to this. So, thank you
10 very much.

11 MS. LYNCH: Thank you. Thank you.

12 CHAIRPERSON HILL: The only question I had,
13 and it seems as though you know, we're going to decide
14 this, you know, today or very soon. But when you
15 bought it then, the decks were there.

16 MS. LYNCH: Yes.

17 CHAIRPERSON HILL: And so, just out of
18 curiosity, like, what did you think? You just thought
19 you would be able to live with it or --

20 MS. LYNCH: So, when I purchased the property,
21 it was a hot market, so it's not like one has an
22 option to choose. Like I said, after further
23 discussion with the neighbors, recognizing that there
24 was some intimation that the decks were illegal, I did
25 contact DCRA.

1 CHAIRPERSON HILL: Got it.

2 MS. LYNCH: And so, at that time when it was
3 repossessed. So, as not to adversely impact an
4 individual it was either DCRA or BZA and was actually
5 confirmed and told that they were in fact illegal.
6 So, my hope was not to adversely impact a neighborhood
7 as much as necessarily the bank, to be able to have to
8 take those down because they had pulled permits.

9 CHAIRPERSON HILL: Sure.

10 MS. LYNCH: For the house. And somehow it
11 still proceeded.

12 CHAIRPERSON HILL: Sure. Okay. Okay. Great.
13 Anyone else?

14 [No audible response.]

15 CHAIRPERSON HILL: Okay. So, I'm going to let
16 the applicant ask questions now of the party in
17 opposition. And again, stressing that we're just
18 going to be civil about any kind of questions that we
19 have. Ask a nice calm question, get a nice calm
20 answer. Okay? So, please, go ahead.

21 MR. KARAMBELAS: May I confer for half a
22 minute with my client?

23 CHAIRPERSON HILL: Sure. You might want to
24 turn off your microphones.

25 [Pause.]

1 MR. KARAMBELAS: Yes, the applicant has some
2 questions.

3 CHAIRPERSON HILL: Okay.

4 MR. PHARR: Yeah. I just wanted to clarify a
5 couple things. So, just to be clear, have there ever
6 been any complaints to us about, since we've owned the
7 property, about loud parties, HVAC noise, or
8 interruption of light and air in relation to the
9 decks?

10 MS. LYNCH: So, as you recall when you moved
11 in I did advise you that I had contacted the city and
12 the city advised that the decks were illegal, which
13 you disputed.

14 Additionally, throughout this process I've
15 made it known. Unfortunately, you guys have not been
16 very approachable to be able to have civilized
17 discussions with. So --

18 CHAIRPERSON HILL: Oh, come on now. Again,
19 now just --

20 MS. LYNCH: Sorry.

21 CHAIRPERSON HILL: No, that's okay. I mean,
22 he just asked a quick question about whether there was
23 noise and parties and the HVAC.

24 MS. LYNCH: Right.

25 CHAIRPERSON HILL: Whether you had made

1 complaints about those. That was the question.

2 MS. LYNCH: So, throughout this process, yes.

3 I mean, so, throughout this process.

4 MR. PHARR: Prior to the application being
5 filed, were there ever any complaints about those
6 things?

7 MS. LYNCH: No. However, that being said, my
8 concern is about the address and not necessarily the
9 applicants.

10 CHAIRPERSON HILL: Okay.

11 MR. PHARR: I just wanted to clarify that.
12 So, as the chairman asked, these decks were in place
13 when you bought your house initially. So, one could
14 argue, and I guess I'm asking for your acknowledgement
15 that one could argue that you could have assessed the
16 inconvenience of those decks on your ability to enjoy
17 the property at that time.

18 So, again, minus the calls that you made to
19 DCRA, after you bought the property, what was your
20 sort of thinking about how you would enjoy your
21 property with those decks being in place at the time
22 you bought the house?

23 MS. LYNCH: No comment.

24 MR. PHARR: Okay. And given the fact that
25 they would --

1 CHAIRPERSON HILL: Wait, wait, wait. I'm
2 sorry, I'm sorry. I hadn't heard no comment before so
3 that's why I'm just --

4 MS. LYNCH: Okay.

5 CHAIRPERSON HILL: Just, okay. And it was a
6 question that I had asked, so he's just asking, when
7 you bought them --

8 MS. LYNCH: Yeah.

9 CHAIRPERSON HILL: -- you thought that you
10 were just going to enjoy the room the way it was with
11 the decks being there?

12 MS. LYNCH: I did purchase the house the way
13 it was.

14 CHAIRPERSON HILL: Right. Okay.

15 MS. LYNCH: Correct. Yes.

16 CHAIRPERSON HILL: All right. Okay. Go
17 ahead, Mr. Pharr.

18 MR. PHARR: Okay. You did state during your
19 presentation that there was no ability to access the
20 decks from -- well, without being on your property
21 because of the 100 percent lot occupancy, but are you
22 aware that there's an entrance to those decks from our
23 property on both the second and the third floor of the
24 house?

25 MS. LYNCH: I am aware on the second floor. I

1 can't see the third floor.

2 MR. PHARR: Okay. And you also stated during
3 your presentation that you felt that this was a remedy
4 that we should be seeking from Wells Fargo, who is the
5 seller of the house. Would you expect that even if we
6 were to sue Wells Fargo and win that Wells Fargo would
7 be able to get the administrative hold removed from
8 the house, from DCRA?

9 MS. LYNCH: That's a private matter, so I
10 would have no expectations of what Wells Fargo does,
11 versus you guys as the applicants.

12 MR. PHARR: Okay.

13 MS. LYNCH: But, I would expect similarly if
14 my property had issues, interior or exterior, I would
15 have to remediate that with the seller of my property.

16 MR. PHARR: Okay. I think that's all the
17 questions I have.

18 CHAIRPERSON HILL: Okay. All right. All
19 right. Does anyone -- okay, so, we did that. All
20 right. Does the Board have any more questions for
21 anybody? Okay.

22 All right. So, then you will have an
23 opportunity now, as the applicant, for any kind of
24 rebuttal in terms of that you'd like to make now, as
25 well as closing statements.

1 So, I'm going to go ahead and put five minutes
2 up just for anything either one of you would like to
3 add in terms of rebuttal and closing. Okay?

4 MR. KARAMBELAS: Just, you know, Board Member
5 Turnbull spoke about the noise, the light. To some
6 extent that becomes a subjective determination and I
7 think what should weigh very much in your decision is
8 the fact that there hasn't been an awful lot of
9 activity on the part of the neighbors, either before
10 my client bought or after. I mean, calls to DCRA and
11 just, you know, leaving it there, there were other
12 options if it was that extreme. Thank you.

13 MR. PHARR: And I'd also like to say that,
14 just to clarify, we you know, and as you all know, we
15 are just doing what we've been told that we have to do
16 to sort of make things right with the city to remedy
17 somebody else's mistake. So, we were you know, told
18 that the administrative hold was put on the house for
19 something that we had no part in. We're pursuing the
20 permits because that's what we were told needed to be
21 done by the District. Getting the variance, because
22 that's what we've been told that we needed to do by
23 the District.

24 So, I understand the neighbor's opposition. I
25 understand where they're coming from. I think one,

1 just to rebut a couple of things. In terms of the
2 variance being there in perpetuity and allowing us or
3 any future owner to do whatever they want with the
4 property, according to the feedback that we got from
5 the EDZ committee of the ANC, any variance that would
6 be granted would only be applicable to the decks. It
7 wouldn't give us, necessarily, permission to create,
8 you know, tear them down and put an addition on the
9 house or anything like that. That would need to
10 basically go through this process all over again.

11 So, I think I do understand that concern, but
12 it seems like that concern was addressed during this
13 process. And again, just to circle back on this idea
14 that you know, we should be able to just go after
15 Wells Fargo for a remedy, that does not solve the
16 problem that we have, which is, yes, we in an extreme
17 circumstance, might be able to sue them and win. But
18 that doesn't get the administrative hold taken off my
19 house. It just makes us feel a little bit better.

20 So, with those things in place, you know,
21 we're here doing what the city has asked us to do, and
22 so I understand that you know, there's a test here
23 that you're trying to see whether we meet. But we've
24 also -- I just want you all to sort of understand and
25 reiterate that we've been put in this position by

1 someone else. And so, we're just trying to do a trade
2 both for us and for the neighborhood.

3 In terms of this idea that there is no good
4 that can come from granting the variance, in my eyes,
5 the good that would come from it would be that we'd be
6 able to go through with the permit process for the
7 deck. The deck could then be inspected. The deck
8 could then you know, make sure for us and for the
9 neighborhood that the deck is safe and properly
10 inspected and up to code.

11 So, I think that would be one area of good, of
12 public good that could come from granting the variance
13 and letting us continue forward with the permit
14 process.

15 CHAIRPERSON HILL: Okay, great. Thank you.
16 All right. Does the Board have anything finally
17 before I close the hearing? Okay.

18 I'm going to close the hearing. So, is the
19 Board ready to deliberate?

20 [No audible response.]

21 CHAIRPERSON HILL: Okay. Mr. Turnbull, you
22 want to start? Does anybody want to start? I'm happy
23 to also start, but I'm going to take a second here.

24 MR. TURNBULL: Thank you, Mr. Chair. Well, I
25 sympathize with the applicant in this situation. I

1 think -- I mean, I think it's unfortunate that either
2 they weren't aware or they didn't have the knowledge
3 or the foresight to investigate at the time, when they
4 bought the house, as to the suitability of the
5 construction and the legality of everything that they
6 saw. But I mean, that is what it is, and that's what
7 we talked about in meeting the first prong of the
8 test. And I guess you could make a case for that.

9 My concern is meeting the second and third
10 prongs. And I would -- right now I would totally
11 agree with the Office of Planning. I think that in a
12 way it's an egregious impact on the zoning
13 regulations, and I think that the 100 percent lot
14 occupancy is very significant and I think that the
15 extent to -- that it impacts the neighbors and the
16 neighborhood, and it's -- it's not really, it's
17 subjective. It can be measured. I mean, you can --
18 this is something that the next-door neighbor, Ms.
19 Lynch, is feeling now. And I think it's -- although
20 she may not have had any complaints right now,
21 directly about the owner, that's not to say that it
22 cannot happen in the future because of the way it is
23 built, the fact that it butts up and it's slap dab
24 right next to her property.

25 So, I think, you know, you worry about the

1 shadows, the light and air on her property, the noise
2 from these units. It was overbuilt. It was wrong and
3 the applicant is stuck with it, that's sure. But, to
4 simply bless it and say, well, do what's right for us
5 and for the neighborhood, I don't think it is right
6 for the neighborhood. It may be right for the
7 applicant, but I don't think it's right for the
8 neighborhood to be stuck with us, with the BZA,
9 blessing something that's as egregious as this.

10 I think that -- and if you go back to Mr.
11 Fengler, when he said you know, like 10 years ago or
12 more that the neighbors called up DCRA and they didn't
13 get a response, they didn't get anybody out, and I
14 think that that happens. I mean, they've always been
15 light on manpower, they couldn't get out to do things.
16 So, I don't know how many times you have to call
17 before somebody goes out and looks at it, but
18 obviously, nothing happened.

19 But that being said, that does not relieve the
20 fact that this is still an issue with the existing
21 decks. And so, right now I'm not -- I don't think
22 they've met the second and third prong. I just can't
23 go with that. So, I would be voting to not approve
24 this.

25 MS. WHITE: I mean, I also sympathize with the

1 owner in terms of purchasing the property with those
2 existing decks. It is a nonconforming structure, but
3 I also think it's an illegal structure. So, that's
4 one thing that makes it very challenging to kind of
5 overcome in terms of looking at it seriously from a
6 variance perspective.

7 But in terms of the second and third prong, I
8 think you also have a problem there as well in terms
9 of me feeling comfortable with the facts of the case
10 supporting the variance request that you've asked for.

11 I think Ms. Lynch's testimony and information
12 was helpful in terms of helping me to kind of
13 visualize actually what was -- what's happening. And
14 then I can sympathize with what some of the issues are
15 with respect to those decks being so close to her
16 house, impeding the light and the privacy.

17 So, for me, also it is a significant challenge
18 for me to be able to vote in support of a variance.
19 So, I concur with Mr. Turnbull's comments.

20 MR. HART: I think my fellow board members
21 have stated the concerns that I have also with this
22 project and I think they've noted how this is a
23 difficult position, I think, for the applicant to be
24 in and I am not sure -- well, I do know how to -- how
25 I can vote on the project because we have three tests

1 that have to be met in order for us to be able to
2 approve any variance. Again, this is a very high bar.

3 I mean, it is what it is.

4 What you are asking to do is to be able to
5 have the Board say that it's okay to be able to allow
6 something that is not allowed under the zoning -- in
7 the zoning regulations. And, the tests that are there
8 are to make sure that if there is some situation that
9 is just -- that is not foreseen by the zoning
10 regulations, that there can be some remedy for that.
11 And while this is something that's really not -- that
12 wasn't anticipated, or at least wasn't directly
13 anticipated, it seems as though we don't have much of
14 a recourse beyond either saying yes to this or saying
15 no to this.

16 And right now, again, I think that the --
17 there is a way to -- there is a way to say that the
18 first prong, or the first test is -- can be -- that
19 you've met the first test. The other tests that we
20 have are just very difficult to get over without
21 saying that this is actually not meeting those tests.

22 And I, therefore, don't think that I could support
23 the application either.

24 CHAIRPERSON HILL: Okay. So, I guess the --
25 unfortunately, again, the common word here is going to

1 be sympathetic to the owner. I mean, I know that I
2 can be very sympathetic to someone who has purchased
3 something and then later finds out that something is
4 illegal. Again, I think that the -- what we're
5 charged to do in terms of looking at the three prongs
6 and for a variance test, which is again, a much higher
7 burden than a special exception, I don't think that
8 that test has been made; that that case has been made
9 for the standard.

10 Even with the Office of Planning even kind of
11 going forward, I'm kind of curious to see where this
12 falls in different areas, like if something has
13 already been built, that that's an exceptional
14 condition. If the second and third prong were met,
15 you know, we'll see it kind of in the future on a
16 case-by-case basis.

17 I think that the -- hopefully the applicant,
18 because this is obviously going not the applicant's
19 way, could do something with the way the purchaser --
20 you know, it was sold in this capacity to them, and
21 they purchased it in this capacity. I think that
22 again, as my colleague had mentioned, that it's not
23 really even a -- it's not really a nonconformity. I
24 mean, they're illegal. The decks are illegal decks.

25 And so, the fact that they are there, you

1 know, is disappointing to begin with. I mean, I'm
2 sorry to hear that, you know, 10 years ago, when the
3 SMD couldn't get anybody to come out when this was
4 being built. I would like to just kind of point out,
5 even though it's not really -- it might help the
6 neighbors moving forward, I mean, the neighbors are
7 going to have to live with each other and next to each
8 other. I know and understand that the party status,
9 Ms. Lynch, came in and had bought the property the way
10 it was with those decks. However, I just want to
11 clarify definitely for me, and that you know, the
12 testimony from the party status person would have had
13 no impact on, you know -- meaning, these decks I think
14 clearly were illegal, don't meet the prongs of the
15 test for me.

16 So, the fact that the party status person came
17 in and provided further clarity of something that is
18 very clear within photographs that, you know, I don't
19 -- I'm kind of pointing that out that the neighbors
20 are going to have to continue to live together, or
21 move, or live near each other.

22 So, the Board have any other comments?

23 [No audible response.]

24 CHAIRPERSON HILL: Then, I'm going to go ahead
25 and make a motion to deny Application No. 19355 as

1 read by the secretary.

2 MS. WHITE: Second.

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

5 [Vote taken.]

6 CHAIRPERSON HILL: Motion passes, Mr. Moy.

7 MR. MOY: Yes, Mr. Chairman. Staff would
8 record the vote as four, to zero, to one. This is on
9 your motion, sir, Chairman Hill, to deny the
10 application for the relief being requested. Seconded
11 the motion, Ms. White. Also in support of the motion,
12 Vice Chair Hart, and Mr. Turnbull. Board seat vacant.
13 Motion carries, sir.

14 CHAIRPERSON HILL: All right. Thank you. And
15 so, we do a full order again?

16 MR. MOY: Yes. Yes, sir.

17 CHAIRPERSON HILL: Thank you. Thank you all
18 very much.

19 Yeah, we're going to take another three-minute
20 break here before we start with the rest of our cases.
21 Thank you.

22 [Recess from 11:46 a.m. to 11:53 a.m.]

23 CHAIRPERSON HILL: All right, everyone. Let's
24 get settled back in if we can. And, Mr. Moy, if you'd
25 call our next case when you have the opportunity. And

1 then we're going to just push on through.

2 MR. MOY: Yes, sir. Thank you. If I can have
3 parties to the table to Application No. 19445 of 1827
4 Wiltberger, LLC, captioned and advertised for a
5 special exception under rear yard requirements,
6 Subtitle K, Section 805.1. This would permit the
7 conversion of an addition to an existing historic
8 building in a mixed-use retail, office, and
9 residential building, in the R-2 Zone, 1825 Wiltberger
10 Street Northwest, Square 441, Lots 849 and 853.

11 CHAIRPERSON HILL: All right, great. Good
12 morning. If you could please introduce yourselves
13 from my right to left?

14 MR. KADLECECK: Good morning, Cary Kadlecek
15 from Goulston and Storrs on behalf of the applicant.

16 MR. PICHON: Sean Pichon with PGN Architects.

17 CHAIRPERSON HILL: All right, great. Thank
18 you. Mr. Kadlecek, so I don't have a lot of
19 questions. I mean, I would like to hear just kind of
20 a high-level presentation and ask the Board if there
21 is any specifics that they would want to hear about.

22 Really, what I was also most interested was
23 kind of how the ANC went and now I literally have a
24 report in front of me right now. So, you can tell me
25 a little bit more about it as I kind of go through it.

1 But other than that, does the Board have
2 anything specific they'd like to hear from during the
3 presentation?

4 Okay. Then, I'm going to go ahead and I'm not
5 even going put the clock on because I don't think
6 you're going to take a lot of time. But please, if
7 you could, just kind of go through again the relief
8 being requested and how the standard is being met?

9 MR. KADLECECK: Sure. Just really briefly,
10 just to update the Board in case they hadn't seen it.

11 The building, when we applied for this relief, had
12 not yet been designated as an individual landmark.
13 Subsequent to that, the case went to the HPRB. The
14 building was designated as an individual landmark, and
15 at the same time they reviewed the project for concept
16 review.

17 They granted both the landmark application and
18 the concept review. So, it has been fully vetted by
19 HPRB at this point.

20 The relief is really the result of adapting to
21 the historic building. And I'll let Mr. Pichon
22 explain that a little bit further. But as you note on
23 the record, there's support from the Office of
24 Planning and I see that you now have the ANC report.
25 We also had a positive interaction with them as well.

1 So, with that, I'll let Mr. Pichon give you a high-
2 level review of the project.

3 CHAIRPERSON HILL: All right. Great. Thank
4 you.

5 MR. PICHON: Good morning, Board. Thank you
6 again. Once again, my name is Sean Pichon, Principal
7 at PGN Architects. I'm going to run through this
8 pretty quickly. The relief we were requesting is rear
9 yard relief. To the back of the building the property
10 sits along Wiltberger Street, 1827. It faces
11 Wiltberger Street. There is, bordered by three alley
12 ways, public alley ways. The property, the current
13 warehouse, occupies 100 percent of the lot. And to
14 the rear of the property are the rear yards of the
15 properties along 6th Street.

16 There is approximately 60 to 80 plus feet of
17 space between our rear building lot line and the
18 closest neighbor's rear property.

19 And the site is in the Arts-2 Overlay Zone,
20 the zoning relief you'll see here, and how the
21 diagrammatic floorplans lay out on the ground floor
22 and second floor. We're occupying 100 percent of the
23 lot. On the third floor, we do begin to set back with
24 approximate a seven-and-a-half-foot setback along a
25 portion of the rear. And then the penthouse again,

1 sets back an additional 10 feet and 19 feet at
2 different parts of the rear yard setback.

3 Those are the additional floors, the third
4 floor and the fourth floor, and then the penthouse is
5 the last story of the building.

6 This is -- I'm going to run through these
7 quickly to get to the existing building.

8 CHAIRPERSON HILL: Can you go back one slide?

9 MR. PICHON: Sorry.

10 CHAIRPERSON HILL: That's all right. What's
11 that of? That's the rendering?

12 MR. PICHON: These are perspectives of the
13 Wiltberger Street facades, showing the existing
14 warehouse structure. The new addition that's being
15 added to the building, and then the existing buildings
16 along the street.

17 CHAIRPERSON HILL: Okay. That's great. I was
18 just curious. Thanks.

19 MR. TURNBULL: How wide is the street?

20 MR. KADLECECK: Wiltberger is 30 feet wide.

21 MR. TURNBULL: It is 30 feet. Okay.

22 MR. KADLECECK: Yeah.

23 MR. PICHON: This represents the current
24 Wiltberger façade, which we're going to be rehabbing
25 as part of historic renovation and landmark. And then

1 to the rear you can see the extent of the two-story
2 warehouse as it abuts the alley lot line. And again,
3 this is the façade as it goes along that stretch.

4 What we're going to be proposing on the ground
5 floor is retail to the front facing Wiltberger,
6 multiple entrances, one for office, one for
7 residential, and then the others for retail along the
8 rear of the property. We'll be introducing and
9 cutting into the existing building, some parking
10 spaces and a loading area.

11 On the second floor, this is existing floor,
12 contains the 100 percent lot occupancy.

13 On the third floor, this is where the addition
14 begins. As part of our historic review and approvals
15 with the ANC, there was a pressure or a sensitivity
16 given to Wiltberger Street, due to its narrowness.
17 And to the townhouses at the south end of the site.
18 So, you'll see greater setbacks along Wiltberger, and
19 to the south of the site as opposed to the rear yard.

20 On the rear yard, it is determined that there
21 was more air and light opportunities to the rear, to
22 where the real impact of the addition would have been
23 to the Wiltberger and to the south. So, the mass of
24 the building, through the design process was held to
25 the north and to the rear of the property.

1 And then, this is our penthouse level with the
2 -- all the zoning required setbacks from the edges of
3 the building below. These are quick images of the
4 elevations as we go around the building. This is the
5 south alleyway.

6 CHAIRPERSON HILL: Can you -- I was curious
7 about -- was there an IZ requirements for the
8 penthouse?

9 MR. KADLECECK: There is a, there's a payment
10 required for use of the penthouse as occupiable space,
11 yes.

12 CHAIRPERSON HILL: Can you tell me how that
13 works again?

14 MR. KADLECECK: Basically, the way it works is
15 there's a formula. It's based on the value of the
16 land and I don't remember the formula off the top of
17 my head. But it's basically a formula that is based
18 on the value of the land and the amount of occupiable
19 space, and then there's a payment that's required to
20 an affordable housing trust fund.

21 CHAIRPERSON HILL: And do you know how much
22 the payment was for that property?

23 MR. KADLECECK: I don't recall what it was. I
24 know we've calculated it, but I don't recall.

25 CHAIRPERSON HILL: Okay. Okay. Thank you.

1 Just curious. Thank you.

2 MR. PICHON: To the south façade, facing the
3 south alley, and then this is our rear yard, rear
4 façade, with the garages along the bottom, you'll
5 notice the change in material indicates where there is
6 the addition is being brought up and over top of the
7 existing historic structure. And then the north
8 alleyway where the majority of the mass is being held
9 against the north alley.

10 This section shows the setbacks that are along
11 the alley side. You'll see the basically seven-and-a-
12 half-foot setback beginning at the second floor. For
13 the majority of that façade there is a portion of it
14 that is along the alley itself and that façade carries
15 straight up. And then the penthouse being set back
16 the required one-to-one at the top.

17 And that concludes our presentation.

18 CHAIRPERSON HILL: Okay, great. Let's see.
19 Does the Board have any questions of the applicant?

20 MR. HART: Just one question, Mr. Chairman.

21 CHAIRPERSON HILL: Sure.

22 MR. HART: And it's a kind of a, just a basic
23 question. In reading the applicant's statement, you
24 referred to Old City Development Group, but this is
25 coming in as Wiltberger. I just want to make sure

1 that that's the same organization.

2 MR. KADLECECK: Yeah, Old City is the
3 developer. Wiltberger, LLC is the owner of the
4 property. They're actually in a joint venture.

5 MR. HART: Thank you. Actually, one more
6 question. The historic landmark, that's a local
7 designation as opposed to a, like the federal --

8 MR. PICHON: Yes, it's on the National
9 Register. Or is -- I believe so.

10 MR. KADLECECK: Well, it's --

11 MR. PICHON: I'll have to check.

12 MR. KADLECECK: There's the D.C. listing, and
13 then there's the national register. I know it's on
14 the D.C. listing. I don't know if it was nominated to
15 the national register, but my understanding is that
16 almost always the local landmarks get nominated to the
17 national register as well, general. But I don't know
18 if that happened in this case.

19 MR. HART: Yeah, I just was more -- it was
20 more of a curiosity because I understood that you were
21 saying that this was going to HPRB and that you were
22 looking for the historic landmark designation, and it
23 just wasn't clear as to if it was local designation
24 or --

25 MR. KADLECECK: Yeah, it's definitely a D.C.

1 landmark. I can't say whether it's a national
2 landmark.

3 MR. HART: Okay. Thank you.

4 CHAIRPERSON HILL: Commissioner Turnbull?

5 MR. TURNBULL: Thanks, Mr. Chair. I really
6 have no issues with the project. I think it's a great
7 preservation project. I always like to see things
8 that are being saved.

9 The only issue I would have had would be on
10 the penthouse setbacks, but it looks like you're
11 meeting all of those. So, I think it's a good project
12 so.

13 CHAIRPERSON HILL: Okay. Ms. White, you have
14 any questions for the applicant?

15 MS. WHITE: No, I've been following along with
16 your presentation. It's also a very impressive
17 project. Very familiar with that area, so and I see
18 what's there now and I think if you're able to get
19 this done that it will be a benefit to the area. So,
20 that is an art zone, correct?

21 MR. KADLECECK: Yes, it is, an art zone.

22 MS. WHITE: Yeah. And part of the, I guess
23 some of the -- how are you connecting the building to
24 the whole idea of it being an art zone?

25 MR. KADLECECK: Well, the ground floor

1 requirements that normally apply in the Art Zone,
2 certain uses are required in some cases. It doesn't
3 apply here because it's not on one of the designated
4 streets. But one of the things that the applicant is
5 exploring is because it has more non-residential
6 density than is normally allowed as a matter of right,
7 they'll either transfer combined development rights
8 that would have been generated by arts use in another
9 property, or they will commit to certain uses that
10 will generate that bonus density themselves. So,
11 that's one of the ways that they're satisfying the
12 intent of what the art zone was established for.

13 MS. WHITE: Uh-huh. Okay. Thank you.

14 MR. HART: And one other question. Are you
15 looking at -- this was a baker, I guess, at some
16 point. Is there any sort of interpretation or
17 interpretive elements that you're looking to do?

18 MR. PICHON: Well, as part of the design,
19 we're bringing back not the original sign, but the
20 building will be named after the original bakery, and
21 that signage will be put out onto the façade of the
22 existing structure.

23 MR. HART: Thank you.

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

1 MS. FOTHERGILL: Good afternoon. I'm Anne
2 Fothergill with the Office of Planning and we rest on
3 the record in support of the rear yard relief. And
4 I'm happy to take any questions.

5 CHAIRPERSON HILL: Okay, great. Thank you.
6 Does the Board have any questions for the Office of
7 Planning?

8 All right. Does the applicant have any
9 questions for the Office of Planning?

10 MR. KADLECECK: No, thank you.

11 CHAIRPERSON HILL: Okay. I'm going to turn to
12 the audience here. Is there anyone here from the ANC
13 wishing to speak? Oh, please, come forward.

14 MR. BROWN: Good afternoon.

15 CHAIRPERSON HILL: Good afternoon. If you
16 could just introduce yourself and give us your
17 address, please?

18 MR. BROWN: Okay. Anthony Brown, Commissioner
19 for ANC 6E-02.

20 CHAIRPERSON HILL: Hello, Commissioner.
21 Welcome.

22 MR. BROWN: Yes. We've been involved with
23 this project along with this group and they have
24 basically done a phenomenal job in developing this
25 property. They've gotten it through the Historic

1 Preservation and got it on the list, and everything
2 has just been flying very smoothly.

3 We had a few concerns from some of the
4 neighbors based on the density of the building and the
5 height of the building, but I think we have come to a
6 resolution and I think everybody is happy.

7 We have some people that think that they have
8 a matter of right to the air, but I think we've all
9 come to an understanding and we are on the same page
10 as far as this development is concerned. They've done
11 a wonderful job and we're pleased to support it.

12 CHAIRPERSON HILL: Okay, great. Well, Mr.
13 Commissioner, thanks for coming down. And also, yeah,
14 it's, as we here know on the Board, it is -- people
15 think they have right to a lot of different things.

16 MR. BROWN: Uh-huh. Uh-huh.

17 CHAIRPERSON HILL: And so, definitely at the
18 ANC level we understand that even more people have a
19 lot of opinions about their neighbor. As they should.
20 But, thanks for coming down and it helps us better
21 understand what's going on in your community.

22 MR. BROWN: Thank you.

23 CHAIRPERSON HILL: Does anyone have any
24 questions for the commissioner?

25 MS. WHITE: Do you know what the estimated

1 start date is for the project? Maybe that shouldn't
2 be addressed to you, necessarily, but do you have a
3 sense of the timeframe for when you're going to start
4 the project?

5 MR. PICHON: Yes, we are anticipating
6 beginning construction over the summer. And
7 completing the project by the fall of next year.

8 MS. WHITE: Thank you.

9 CHAIRPERSON HILL: Okay. Sir, yeah, please,
10 Mr. Turnbull.

11 MR. TURNBULL: I just had one. I just wonder,
12 the one thing Commissioner Brown, on Item 7 in the ANC
13 report, concerned about potential threats to
14 pedestrian safety.

15 MR. BROWN: Oh, okay.

16 MR. TURNBULL: Posed by significant narrow
17 sidewalk. The Commission has talked about expanding
18 the width of the sidewalk. Where are we on that?

19 MR. BROWN: We have also made a recommendation
20 to DDOT on the sidewalk in front of the building.
21 They're relatively narrow sidewalks.

22 MR. TURNBULL: Uh-huh.

23 MR. BROWN: And with the use of people having
24 wheelchairs and other apparatuses to enter the
25 building, we basically put forth our concern that we

1 thought it might need to be widened in front of that
2 building, just to have access for handicap.

3 MR. TURNBULL: Is the applicant doing -- are
4 you doing anything with the sidewalk or --

5 MR. KADLECECK: Not at this time. DDOT's
6 report did mention they thought the width of the
7 sidewalk was sufficient, and we haven't had any
8 further discussions with them.

9 MR. TURNBULL: Okay. All right. Thank you.

10 CHAIRPERSON HILL: Okay. Anyone else have any
11 comments for the Commissioner? All right, great.
12 Thank you, Mr. Commissioner.

13 All right. Is there anyone here wishing to
14 speak in support of the application? Do you have any
15 questions or comments for the Commissioner?

16 MR. KADLECECK: I don't, thank you.

17 CHAIRPERSON HILL: Okay. Anyone here wishing
18 to speak in opposition? All right. Okay, then I'm
19 going to go ahead and -- does anyone have any more
20 questions for anybody?

21 [No audible response.]

22 CHAIRPERSON HILL: All right. We'll go ahead
23 and close the hearing. Is the Board ready to
24 deliberate? Okay.

25 I also am satisfied with the analysis of the

1 Office of Planning. I think that there is -- I think
2 it satisfies what is being requested by the applicant.

3 Also, I was glad to see that the ANC has -- they've
4 been working with the ANC and voting in support of
5 this application, and DDOT didn't have any concerns or
6 issues.

7 So, unless the Board has any other comments,
8 I'm going to go ahead and make a motion.

9 [No audible response.]

10 CHAIRPERSON HILL: All right. So, I'd make
11 motion to approve Application No. 19445 of 1827
12 Wiltberger, LLC.

13 MS. WHITE: Second.

14 CHAIRPERSON HILL: Sorry, as read by the
15 secretary. Motion has been made and seconded.

16 [Vote taken.]

17 CHAIRPERSON HILL: Motion passes, Mr. Moy.

18 MR. MOY: Staff would record the vote as four,
19 to zero, to one. This is on the motion of Chairman
20 Hill to approve the application for the relief
21 requested. Seconding the motion, Ms. White. Also in
22 support, Vice Chair Hart and Mr. Michael Turnbull. We
23 have a seat vacant. Motion carries, sir.

24 CHAIRPERSON HILL: Can we get a summary order,
25 Mr. Moy?

1 MR. MOY: Yes, sir.

2 CHAIRPERSON HILL: Okay, great. All right.
3 Thank you all very much. Thanks for coming down, Mr.
4 Commissioner.

5 MR. BROWN: Thank you.

6 MR. MOY: All right. The next application if
7 I can have parties to the table, Application No. 19448
8 of MR H Street Capital, LLC, and MR 617 H Street 2,
9 the number 2, Capital, LLC.

10 This is request for variances from the loading
11 requirements of Subtitle C, Section 901.1, and the
12 rear yard requirements of Subtitle I, Section 205.1.
13 This would construct a new mixed use office and retail
14 building in the D-5-R Zone, 613 through 617 H Street
15 Northwest, Square 453, Lots 48, 804, and 805.

16 CHAIRPERSON HILL: Okay, great. Good
17 afternoon. If you could just introduce yourselves,
18 please, from my right to left?

19 MS. BLOOMFIELD: Good afternoon, Jessica
20 Bloomfield from the law firm of Holland and Knight.

21 MR. SALPINI: Kirk Salpini, Monument Realty.
22 We're the applicant.

23 MS. SHIKER: Christine Shiker from the law
24 firm of Holland and Knight, representing the
25 applicant.

1 MS. MILANOVICH: Good morning, Jami Milanovich
2 with Wells and Associates, the transportation
3 consultant for the project.

4 MR. SAFF: And Steve Saff with Davis Carter
5 Scott.

6 CHAIRPERSON HILL: All right, great. Ms.
7 Shiker, you're presenting today?

8 MS. SHIKER: Yes.

9 CHAIRPERSON HILL: Okay. All right. So, I
10 don't have a lot of questions myself, actually. I
11 mean, I see that you guys have done a lot of work
12 already in terms of working with the Office of
13 Planning, working with the ANC, which is my ANC,
14 actually. And then also there are, you know, some
15 letters in support.

16 I guess first, one question I have is just the
17 name. You know, MR H Street Capital, LLC and MR 617,
18 I mean, why? Is there the two there? Is that --

19 MS. SHIKER: I would ask Kirk to explain that,
20 but they're single-purpose entities that own the lots
21 and --

22 CHAIRPERSON HILL: Okay.

23 MR. SALPINI: Right. Each entity purchased or
24 has under contract to purchase, the individual lots.

25 CHAIRPERSON HILL: Okay.

1 MR. SALPINI: That comprise the site.

2 CHAIRPERSON HILL: I just got a little
3 confused there. Okay.

4 So, then after that, I guess, you know,
5 there's not a lot -- specific, I would like, you know,
6 a pretty concise presentation from you in terms of the
7 relief being requested and the standard with which
8 you're meeting that relief, the request.

9 Does the Board have any other specifics they
10 want the applicant to focus in on? No?

11 MR. TURNBULL: No, the only -- I guess the
12 only -- of course I'm always looking at the setbacks
13 for the penthouse, but it looks like you have all the
14 drawings that show you've met the requirements all the
15 way along.

16 So, other than that, I have no other comments.

17 CHAIRPERSON HILL: Okay. So, you can comment
18 on the penthouse, as Commissioner Turnbull just
19 mentioned. And just for my own, I'm going to go ahead
20 and put five minutes up there, just to see where I am
21 and then please go ahead. Start whenever you like.

22 MS. SHIKER: Okay. I'll give an introduction
23 and then we can follow up with any other questions
24 that you have. The project is for the three lots that
25 were read along H Street, 613 to 617 H Street, and a

1 portion of the closed public alley.

2 The property is currently improved with a
3 single building. If you could -- you can see it.
4 It's the red building next to Tony Chang's building.
5 And in consultation and work with the D.C.
6 Preservation League, that building will be maintained
7 and incorporated into the development. It does have
8 some architectural significance, but it is not within
9 a historic district and it's not a historic landmark,
10 but the project does incorporate that building which
11 really leads to many of the practical difficulties
12 associated with our two areas of relief.

13 One is a variance from the loading
14 requirements, and the other is a variance from the
15 rear yard requirement. And we, as I said, the
16 existing building has led to the practical difficulty,
17 along with the very small nature of the lot, which is
18 an interior lot. It abuts up to the 30-foot alley and
19 alley easement in the rear.

20 I could walk through. I think it's been
21 pretty well documented, the practical difficulties and
22 the challenges in the building, and I think what's
23 most important is that the rear yard does meet the
24 other existing buildings along the alley and it
25 maintains the alley line. And that the loading is

1 sufficient for what is needed for the building. We
2 are providing one loading berth. DDOT has no
3 objection to that, and in fact they had some concerns
4 on the tracking diagrams which we've resolved and we
5 put in our letter on March 13th about that. And the
6 Office of Planning has -- is prepared to testify, from
7 what we understand, that DDOT has taken back any
8 conditions that they put on their support before. We
9 also have Jami here to talk about that.

10 And we have strong support from the ANC, who
11 is very excited to see this development go forward.
12 To Board Member Turnbull's question, we have met all
13 the penthouse setbacks under the zoning regulations
14 and in fact have gone through a detailed review of
15 that with the Zoning Administrator, and he has
16 confirmed that as well.

17 With that, I think I'd turn it over to answer
18 any specific questions that you have, since the record
19 is detailed.

20 CHAIRPERSON HILL: Again, the conditions that
21 DDOT had set forth, if you want to speak to those,
22 you're saying now that DDOT has pulled all their
23 conditions?

24 MS. SHIKER: Well, DDOT didn't have any
25 objection or issue with the reduction in the number of

1 loading facilities that we were providing, which is
2 what our relief was. They were concerned with how the
3 truck turning movement came out of the loading berth
4 that was provided.

5 Now, I will point out, the loading berth that
6 is provided fully complied with all the zoning
7 regulations, was required to be taken off the alley by
8 two separate provisions in the zoning regulations, and
9 in fact exits on to a 30-foot alley, which is the
10 largest size alley in the District of Columbia. So,
11 it was an ideal condition. But we were able to
12 slightly tweak those turning movements to address
13 their concern about potentially hitting another
14 building or having to make too many turning movements.
15 And I would ask Ms. Milanovich to go and talk to
16 that.

17 CHAIRPERSON HILL: Okay. And where is that in
18 the record?

19 MS. SHIKER: It's in the DDOT report. I can
20 tell you exactly.

21 CHAIRPERSON HILL: Meaning that they now don't
22 -- because I thought here it says, adjust the design
23 of the delivery berth to facilitate easier truck
24 movement, and install a system of protection for the
25 building across the way, such as bollards, to protect

1 against trucks striking the building.

2 MS. SHIKER: That is correct. And those were
3 the two issues that we wanted to resolve with them.

4 CHAIRPERSON HILL: Okay. And it has been
5 resolved.

6 MS. SHIKER: That is correct.

7 CHAIRPERSON HILL: And I'm asking where on the
8 record it states that they're resolved?

9 MS. SHIKER: They have asked the Office of
10 Planning to testify to it today.

11 CHAIRPERSON HILL: Okay. Okay. So, they will
12 hopefully resolve it.

13 MS. SHIKER: I believe that OP --

14 CHAIRPERSON HILL: Okay.

15 MS. SHIKER: -- will make a statement on my
16 behalf.

17 CHAIRPERSON HILL: Okay.

18 MS. MILANOVICH: I'm happy to show you the
19 adjustments we made. We've had several conversations
20 with DDOT since they issued their report, and we
21 essentially just shifted the loading berth within the
22 allotted area, which allows the trucks to make the
23 egress maneuver a little bit more easily than we
24 originally anticipated, and that was sufficient to
25 satisfy DDOT.

1 CHAIRPERSON HILL: Okay. So, again, all of
2 their other -- there's a few other conditions that
3 they seem to have had, and so, that's what I'm trying
4 to understand, if all the other conditions are also
5 now no longer -- they don't have those as well?

6 MS. MILANOVICH: Right. So, they had --

7 CHAIRPERSON HILL: And I'll just read -- I
8 mean, the applicant shall implement a loading
9 management plan including the following elements of
10 the plan.

11 MS. MILANOVICH: Which we had already proposed
12 to do. That's nothing new. We had already agreed to
13 that.

14 CHAIRPERSON HILL: Okay. Okay. The 9:00 to
15 5:00, 9:00 a.m. to 5:00 p.m., deliveries from office
16 and retail tenants requiring the loading dock,
17 encourage vendors to use trucks less than 30 feet in
18 length, all those, right? And the dock manager to
19 disseminate truck route maps and notify drivers of
20 access and egress restrictions.

21 MS. MILANOVICH: Yes, that's all in our
22 original loading management plan.

23 CHAIRPERSON HILL: Okay. All right. Does the
24 Board have questions? I mean, DDOT was basically the
25 issue that I wanted to also continue to focus on.

1 But, does the Board have any questions of the
2 applicant at this time?

3 Okay. All right, great. Then, I'm going to
4 turn to the Office of Planning.

5 MR. GOLDEN: Good afternoon, Bryan Golden,
6 Office of Planning.

7 The Office of Planning is recommending
8 approval of these variances, and I have spoken with
9 the DDOT reviewer for the project and they are
10 satisfied that the conditions noted in their report
11 have now been met, specifically the revised turning
12 movements and revised expanded loading berth.

13 CHAIRPERSON HILL: And the other conditions
14 are in their management plan already.

15 MR. GOLDEN: Yes.

16 CHAIRPERSON HILL: Okay. All right. Does
17 anyone have any questions for the Office of Planning?

18 Applicant have any questions for the Office of
19 Planning?

20 MS. SHIKER: We do not.

21 CHAIRPERSON HILL: Okay. I'm going to turn to
22 the audience. Is there anyone here from the ANC?

23 [No audible response.]

24 CHAIRPERSON HILL: Is there anyone here
25 wishing to speak in support?

1 [No audible response.]

2 CHAIRPERSON HILL: Is there anyone here
3 wishing to speak in opposition?

4 [No audible response.]

5 CHAIRPERSON HILL: All right, going to turn
6 back to the applicant. Do you have anything further
7 you'd like to add?

8 MS. SHIKER: No, we believe that the record is
9 full, that we've met the burden of proof and we'd ask
10 the Board to consider approval of the application.

11 CHAIRPERSON HILL: Okay.

12 MS. SHIKER: Thank you.

13 CHAIRPERSON HILL: Any final questions for the
14 applicant from the Board? Okay, I'm going to go ahead
15 and close the hearing. Is the Board ready to
16 deliberate?

17 All right, I will start. Again, at the very
18 beginning when I spoke of that the Office of Planning
19 -- and I thought that their analysis has been pretty
20 thorough as to why they are recommending approval.
21 So, I feel comfortable with the analysis, again
22 provided by the Office of Planning, also that ANC 2C,
23 after reviewing the application were in unanimous
24 support, as well as there was two letters of support
25 for the record.

1 I also am glad to hear that my ANC is also
2 looking forward to this site being developed, and I do
3 -- am happy that that building can remain there in the
4 way that it is. So, I would, unless the Board has
5 anything else, I was going to make a motion.

6 MR. TURNBULL: Yeah, I would agree with you,
7 Mr. Chair. I would just -- I think that preserving
8 the one small building, I think that is significant, I
9 think. And I think it's one of those things that in a
10 development where you're in the downtown and trying to
11 retain the historic aspects of the street front, is to
12 be commended. So, I would commend the applicant on
13 that.

14 CHAIRPERSON HILL: Okay, great. All right.
15 Then, I'll go ahead and make a motion to approve
16 Application No. 19448 of MR H Capital, LLC and MR 617
17 H Street 2 Capital, LLC as read by the secretary.

18 MR. HART: Second.

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

21 [Vote taken.]

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

23 MR. MOY: Staff, excuse me, staff would record
24 the vote as four, to zero, to one. This is on your
25 motion, Mr. Chairman, Chairman Hill, to approve the

1 application for the relief requested. Seconded the
2 motion, Vice Chair Hart. Also in support, Mr.
3 Turnbull and Ms. White. Board seat vacant, motion
4 carries.

5 CHAIRPERSON HILL: Thank you, Mr. Moy. Can we
6 get a summary order?

7 MR. MOY: Yes, sir.

8 CHAIRPERSON HILL: Okay. Thank you all very
9 much.

10 MR. MOY: Okay. If we can have the applicant
11 to the table to Application No. 19449 of Joseph
12 Haughton and Melinda Merinsky? This is a request --
13 this is a special exception request under Subtitle E,
14 Section 5201, from the lot occupancy requirements,
15 Subtitle E, Section 304.1, rear yard requirements,
16 Subtitle E, 306.1. This would construct a rear two-
17 story plus basement addition to an existing one-family
18 dwelling, RF-1 Zone, 716 Fairmont Street Northwest,
19 Square 2884, Lot 130.

20 CHAIRPERSON HILL: All right. Great. Good
21 afternoon. If you could just introduce yourselves,
22 please, from my right to left?

23 MR. HAUGHTON: Good afternoon.

24 CHAIRPERSON HILL: Just push the button there.

25 MR. HAUGHTON: Good afternoon. I'm Master

1 Sergeant Joe Haughton. The address is 716 Fairmont
2 Street.

3 MS. MERINSKY: Melinda Merinsky, 716 Fairmont
4 Street Northwest.

5 MR. SIEBER: Derrick Sieber, contractor.
6 Owner of Precision Contracting Solutions.

7 CHAIRPERSON HILL: Okay, great. All right.
8 Well, Mater Sergeant, thank you for your service.

9 MR. HAUGHTON: Thank you.

10 CHAIRPERSON HILL: The uniform doesn't hurt
11 you, so that's good.

12 Let's see. So, I don't have a lot of
13 questions, actually. I would like to hear, I suppose,
14 a little bit about the project and whoever is going to
15 present, you have the computer. So, whoever it is
16 there. And tell us a little bit about, you know, what
17 you're trying to do.

18 And then we can see if the Board has any
19 questions. So, yeah, I'm just going to start with
20 that. I don't think, is there anything in particular
21 the Board would like to hear from? Or we can just go
22 through and see what happens. Okay?

23 So, I'm going to just put five minutes up on
24 the clock, just so I kind of know how we are. And so,
25 but please, go ahead.

1 MR. HAUGHTON: Oh, thank you for your time
2 today. We're hoping to do an addition on the back of
3 our house. We do have a unique lot. The four lots on
4 the end of our block, we are quite shorter than the
5 rest of the block by 20 feet. Also, with topography,
6 we are on the top of a hill, so all of the buildings
7 on the row are 50 feet back from the front with 25
8 stairs. So, there really isn't an option to do any
9 building, plus we really enjoy the green space in the
10 front.

11 So, what we're hoping to do is a parking
12 space, or a garage in the back with an enclosed porch
13 above it, and living space above that. And we have
14 gained support from our next-door neighbors, and I
15 believe their written support is in the report, and we
16 have gained support from the ANC as well.

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

19 [No audible response.]

20 CHAIRPERSON HILL: We'll see if any questions
21 kind of arise as we move forward. I'm going to turn
22 to the Office of Planning.

23 MS. MYERS: Good afternoon, Crystal Myers for
24 the Office of Planning. The Office of Planning is
25 recommending approval and we stand on the record of

1 the staff report.

2 CHAIRPERSON HILL: All right, great. Thank
3 you. Does the Board have any questions of the Office
4 of Planning?

5 [No audible response.]

6 CHAIRPERSON HILL: Does the applicant have any
7 questions of the Office of Planning?

8 MR. HAUGHTON: No.

9 CHAIRPERSON HILL: All right. Then, with that
10 I'm going to turn to the audience. Is anyone here
11 from the ANC wishing to speak?

12 [No audible response.]

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

15 Is there anyone here wishing to speak in
16 opposition to the application?

17 [No audible response.]

18 CHAIRPERSON HILL: All right. Is there
19 anything else you'd like to add?

20 MR. HAUGHTON: No.

21 CHAIRPERSON HILL: All right. Things are
22 moving well for you. So, let's see. I'm going to go
23 ahead and close the hearing, then, unless the Board
24 has any final questions.

25 MR. TURNBULL: We have two letters from your

1 neighbors on either side and they have no issues.
2 You've gone through all the -- they're not worried
3 about their light and air or anything and --

4 MR. HAUGHTON: Correct.

5 MR. TURNBULL: Okay.

6 CHAIRPERSON HILL: Okay, great. All right.
7 So, with that I'm going to go ahead and close the
8 hearing. Is the Board ready to deliberate?

9 Okay. Well, again, after reviewing the
10 record, I'm comfortable with the analysis that was
11 provided by the Office of Planning. I'm very glad to
12 see that the applicant was able to work with the ANC
13 to get their unanimous approval. Twelve people is a
14 big ANC. And so, I would go ahead and make a motion,
15 unless the Board has any thoughts?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. All right. I'm
18 going to make a motion, then to approve Application
19 19449 of Joseph Haughton and Melina Merinsky as read
20 by the secretary.

21 MR. TURNBULL: Seconded.

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

24 [Vote taken.]

25 CHAIRPERSON HILL: All right, the motion

1 passes, Mr. Moy.

2 MR. MOY: Staff would record the vote as four,
3 to zero, to one. This is on the motion of Chairman
4 Hill to approve the application for the relief
5 requested. Seconding the motion, Mr. Michael
6 Turnbull. Also in support, Ms. White, Vice
7 Chairperson Hart. Board seat vacant. Motion carries,
8 sir.

9 CHAIRPERSON HILL: Great. Can we do a summary
10 order?

11 MR. MOY: Yes, sir.

12 CHAIRPERSON HILL: Great. Okay.
13 Congratulations to you all.

14 MR. HAUGHTON: Thank you so much.

15 CHAIRPERSON HILL: Take care. Thank you.
16 Thank you.

17 MR. MOY: Okay, I believe, if I can have
18 parties to the table to Application No. 18464A of
19 McKinley Battle, captioned and advertised as amended,
20 variances from the lot occupancy requirements of
21 Subtitle E, Section 304.1, nonconforming structure
22 requirements, Subtitle C, Section 202.2, and a special
23 exception from the daytime care use requirements,
24 Subtitle U, Section 203.1(g). This would construct a
25 rear addition and expand an existing child development

1 center to 40 children and 10 staff in the RF-1 Zone.
2 This is at 4124 3rd Street Northwest, Square 3312, Lot
3 61.

4 CHAIRPERSON HILL: All right, great. Thank
5 you, Mr. Moy. If you could please introduce
6 yourselves from my right to left?

7 MR. SULLIVAN: Good morning, Mr. chairman and
8 members of the Board. My name is Marty Sullivan with
9 the law firm of Sullivan and Barros on behalf of the
10 applicant.

11 MS. BATTLE: Good afternoon. My name is
12 Ernesta Battle, 3010 13th Street Northwest.

13 MS. WILSON: Good afternoon. My name is
14 Alexandra Wilson from the law firm of Sullivan and
15 Barros on behalf of the applicant.

16 CHAIRPERSON HILL: Okay, Ms. Battle, were you
17 sworn in this morning?

18 MS. BATTLE: Yes, I was.

19 CHAIRPERSON HILL: Okay, great. All right.
20 Mr. Sullivan, are you going to be presenting for us?

21 MR. SULLIVAN: Actually, Ms. Wilson will be.

22 CHAIRPERSON HILL: Okay, great. All right,
23 Ms. Wilson.

24 So, I guess if you could just kind of go
25 through at a high level, again, kind of the relief

1 that's being requested. I mean, I did have some
2 questions in terms of the conditions that were in the
3 previous order, and I'm going to kind of go over those
4 and clarify those at some point. But if you want to
5 kind of go through, again, your presentation with
6 relief that's being requested, and why or how the
7 standard is being met. And then we can see if the
8 Board has any other specifics as we go through that.

9 I'm going to go ahead and put five minutes on
10 the clock, Mr. Moy, just so I know where we are. Does
11 the Board have anything specific they'd like to hear
12 from the applicant before moving forward? Okay. All
13 right. So, Ms. Wilson, whenever you'd like.

14 MS. WILSON: Great. Thank you. So, Dr.
15 Battle operates 2 New Heights, an existing childhood
16 development center in the basement and first floor of
17 the building. 2 New Heights is requesting special
18 exception relief pursuant to Subtitle U, 203.1(g) in
19 order to increase student enrollment from 24 to 40,
20 and staff from 6 to 10.

21 They're also requesting variance relief from
22 lot occupancy and from the prohibition against
23 enlarging nonconforming structures in order to
24 construct a small, 120-square foot addition at the
25 rear of the property which would accommodate the

1 increase in enrollment.

2 We believe the application meets the special
3 exception criteria and the variance test. We are in a
4 unique situation due to the mixed-use nature of the
5 building, where the Zoning Administrator had
6 determined that because the development center takes
7 up more square footage than the residential use, we
8 are limited to 40 percent lot occupancy.

9 If this building could all be devoted to the
10 childhood development center use, there would be
11 enough room to accommodate the children. And then, if
12 we increase the residential use so that there would be
13 more residential space than childhood development
14 center space, we could build up to 60 percent by right
15 and accommodate the children that way. We would still
16 need special exception relief in either scenario,
17 which we easily meet, but we would not need variance
18 relief.

19 So, because of this unique situation where we
20 are a childhood development center but cannot utilize
21 our second floor for that purpose because of the
22 residential use, and then can't expand past 40 percent
23 because we are technically not a residential building,
24 it creates a unique situation which would result in a
25 practical difficulty for Dr. Battle, as she would not

1 be able to accommodate -- as she is not able to
2 accommodate the increased number of children due to
3 building code limitations.

4 We believe the relief requested is minimal as
5 the addition is only 120 square feet, but it would
6 allow 16 new students and possibly 16 families to
7 benefit from the quality childcare provided by Dr.
8 Battle and the staff at 2 New Heights.

9 We have unanimous ANC support and are amenable
10 to the conditions of approval from the Office of
11 Planning. And we're available to answer any other
12 questions. Thank you.

13 CHAIRPERSON HILL: Okay. So, just to be
14 clear, the applicant is comfortable with the previous
15 conditions that are now being modified, but the
16 maximum number of children shall be 40, the maximum
17 number of staff shall be 10, no more than eight
18 children shall be permitted within the outdoor play
19 area at any one time. Hours of operation shall be
20 from 7:00 a.m. to 6:00 p.m. Monday through Friday. A
21 screen refuse storage area shall be identified and
22 located within the rear yard.

23 MS. WILSON: Yes.

24 CHAIRPERSON HILL: All those conditions are
25 good with the applicant. Okay. All right.

1 Does the Board have any questions of the
2 applicant?

3 I am actually -- so, you've got one -- you
4 said it was unanimous, the vote with the ANC? I
5 thought there was a one no vote. I'm just -- that's
6 at least what I thought the record had.

7 MS. WILSON: I apologize.

8 CHAIRPERSON HILL: That's okay.

9 MS. WILSON: I thought there was unanimous,
10 but --

11 CHAIRPERSON HILL: Was there a no?

12 [Discussion off the record.]

13 CHAIRPERSON HILL: Okay. I'm going to turn to
14 the Office of Planning.

15 MR. TURNBULL: It looks like there's one
16 abstention.

17 CHAIRPERSON HILL: Oh.

18 MR. TURNBULL: I think there was eight, to
19 zero, to one. There was one abstention.

20 CHAIRPERSON HILL: Oh, okay.

21 MR. TURNBULL: There's one abstention.

22 CHAIRPERSON HILL: All right. Sorry. But you
23 weren't at the ANC meeting?

24 MS. WILSON: I was. I thought they voted
25 unanimously.

1 CHAIRPERSON HILL: I was just curious. I was
2 just curious what the abstention was.

3 MR. HART: It looks like there may be two
4 actual reports from the ANC.

5 MS. WILSON: Yes.

6 MR. HART: There's one report that's dated
7 March 8th that's Exhibit No. 47. And then there's
8 another report that's dated February 8th. So, it
9 looks like there were --

10 MR. SULLIVAN: One was on the special
11 exception and one was when we went back for the
12 variance. So, and I don't recall, but maybe one
13 commissioner did abstain. I don't know why. I don't
14 think there was any discussion.

15 MR. HART: The special exception one was
16 February 8th. So, that was the eight, to zero, to one
17 with one abstention, and then the next one I guess,
18 was for the variance, which was the -- and this is
19 date, March 8th. It's for supporting the variances.
20 That was seven, to zero, to zero.

21 CHAIRPERSON HILL: Okay. All right, thank
22 you, Mr. Hart, for providing that clarification to me.
23 I was a little confused.

24 All right. So, I'm going to turn to the
25 Office of Planning.

1 MR. MORDFIN: Good afternoon. I'm Steven
2 Mordfin and the Office of Planning supports this
3 application and stands on the record.

4 CHAIRPERSON HILL: Does the Board have any
5 questions for the Office of Planning? Does the
6 applicant have any questions for the Office of
7 Planning? Okay. I'm going to turn to the audience.

8 Is there anyone here from the ANC wishing to
9 speak?

10 [No audible response.]

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

13 [No audible response.]

14 CHAIRPERSON HILL: Is there anyone here
15 wishing to speak in opposition to the application?

16 [No audible response.]

17 CHAIRPERSON HILL: All right. Would the
18 applicant like to say anything in conclusion?

19 MS. WILSON: No, we would like to rest on the
20 record. Thank you.

21 CHAIRPERSON HILL: Okay. Does the Board have
22 any final questions? All right, then I'm going to
23 close the record. Is the Board ready to deliberate?
24 Would someone else like to deliberate?

25 MR. TURNBULL: Well, Mr. Chair, I think the

1 applicant has met everything that I would be concerned
2 about. I think the vote of the ANC, I think an
3 abstention from my part doesn't bother me. A no vote
4 does, but an abstention doesn't really concern me.
5 So, and I think that they're looking that they're
6 willing to continue on with the conditions as stated
7 by OP. I'm fine with approving this.

8 MS. WHITE: I'll add a couple of comments. It
9 appears from the comments from the ANC that there, you
10 know, there is a serious need for the type of
11 childhood center that you're trying to do, Dr. Battle.
12 So, I commend you for moving forward with this. I'm
13 also comfortable with the fact that the Office of
14 Planning, the ANC, and DDOT are comfortable in that
15 you've agreed to carry on the conditions from the
16 previous order. So, I'm in support of this particular
17 request.

18 CHAIRPERSON HILL: Dr. Battle, I also would
19 say that the letters that you received were very, you
20 know -- there was one in particular that I remember
21 that was a very kind letter in terms of the work
22 you're doing there. So, you know, congratulations on
23 that and I hope you continue to be successful there.

24 MR. HART: And with that hearing from the
25 board members, I also am in support of this

1 application and would like to make a motion that the
2 Commission -- excuse me, Commission. That the Board
3 approve Application No. 18464A with the conditions
4 that you've agreed to, that the Office of Planning has
5 stated in their report, and make a motion to approve
6 this application.

7 MS. WHITE: Second.

8 MR. TURNBULL: Second.

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

11 [Vote taken.]

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

13 MS. WHITE: I'm curious, what are the ages of
14 the children?

15 CHAIRPERSON HILL: You have to push the button
16 there.

17 MS. BATTLE: Six weeks through four years old.

18 MS. WHITE: Oh, my gosh, great. Okay. Lot of
19 activity.

20 MS. BATTLE: Lots.

21 MR. MOY: Well, with that, Mr. Chairman, staff
22 would record the vote as four, to zero, to one. This
23 is on the motion of Vice Chair Hart to approve the
24 application for the relief requested, along with the
25 five conditions as the Board cited. Seconding the

1 motion, Ms. White. Also in support, Mr. Michael
2 Turnbull and Chairman Hill. Board seat vacant. And I
3 believe the motion carries, sir.

4 CHAIRPERSON HILL: Thank you. Summary order.

5 MR. MOY: Yes, sir.

6 CHAIRPERSON HILL: Thank you. Thank you, all.

7 All right, Mr. Moy, do we have anything else
8 coming from the Board today?

9 MR. MOY: No, sir. Not from me today.

10 CHAIRPERSON HILL: All right, great. Then
11 we're adjourned.

12 [Whereupon, at 12:41 p.m, the Public Hearing
13 was adjourned.]

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