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

PUBLIC MEETING AND HEARING OF THE
BOARD OF ZONING ADJUSTMENT

9:38 a.m. to 7:06 p.m.
Wednesday, March 22, 2017

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

OLENDER REPORTING, INC.
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1 Board Members:

2 FREDERICK HILL, Chairperson

3 CARLTON HART, Vice Chairperson

4 LESYLLEE WHITE, Board Member

5 ANTHONY HOOD, Zoning Commission

6 CLIFFORD MOY, BZA Secretary

7

8 Office of Attorney General

9 SHERRY GLAZER

10

11 Office of Planning

12 ANNE FOTHERGILL

13 ELISA VITALE

14 MATTHEW JESICK

15 MAXINE BROWN-ROBERTS

16 BRYAN GOLDEN

17 KAREN THOMAS

18

19

20

21

22

23

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

2 CHAIRPERSON HILL: All right. Good morning,
3 everyone. We're going to get started. The hearing
4 will please come to order.

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

9 My name is Fred Hill, Chairperson. Joining me
10 today is Carlton Hart, Vice Chairperson, Lesyllee
11 White, Board Member, and representing the Zoning
12 Commission is Anthony Hood.

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

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

19 When presenting information to the Board,
20 please turn on and speak into the microphone, first
21 stating your name and home address. When you're
22 finished speaking, please turn off your microphone so
23 that your microphone is no longer picking up sound or
24 background noise.

25 All persons planning to testify either in

1 favor or in opposition must have raised their hand and
2 been sworn in by the secretary. Also, each witness
3 must fill out two witness cards. These cards are
4 located on the table near the door, and on the witness
5 table.

6 Upon coming forward to speak to the Board,
7 please give both cards to the reporter sitting at the
8 table to my right. If you wish to file written
9 testimony or additional supporting documents today,
10 please submit one original and 12 copies to the
11 secretary for distribution. If you do not have the
12 requisite number of copies, you can reproduce copies
13 on an office printer in the Office of Zoning located
14 across the hall.

15 The order of procedures for special exceptions
16 and variances and appeals are also located in the bin
17 over to my left as you walk in the door.

18 The record shall be closed at the conclusion
19 of each case, except for any material specifically
20 requested by the Board. The Board and the staff will
21 specify at the end of the hearing exactly what is
22 expected, and the date when the persons must submit
23 the evidence to the Office of Zoning.

24 After the record is closed, no other
25 information shall be accepted by the Board. The

1 District of Columbia Administrative Procedures Act
2 requires that the public hearing on each case be held
3 in the open before the public, pursuant to Section
4 405(b) and 406 of that act. The Board may, consistent
5 with its rules of procedures and the act, enter into a
6 closed meeting on a case for purposes of seeking legal
7 counsel on a case pursuant to D.C. Official Code
8 Section 2-575(b)(4), and/or deliberating on a case
9 pursuant to D.C. Official Code Section 2-575(b)(13),
10 but only after providing the necessary public notice,
11 and in the case of an emergency closed meeting after
12 taking roll call vote.

13 The decision of the Board in cases must be
14 based exclusively on the public record. To avoid any
15 appearance to the contrary the Board requests that
16 persons present not engage the members of the Board in
17 conversation.

18 Please turn off all beepers and cell phones at
19 this time so not as to disrupt the proceedings.

20 Preliminary matters are those which relate to
21 whether a case will or should be heard today, such as
22 request for a postponement, continuance, or
23 withdrawal, or whether proper and adequate notice of
24 the hearing has been given. If you're not prepared to
25 go forward with the case today, or if you believe that

1 the Board should not proceed, now is the time to raise
2 such a matter.

3 Mr. Secretary, do we have any preliminary
4 matters?

5 MR. MOY: Good morning, Mr. Chairman, Members
6 of the Board. I do, very briefly, regarding cases on
7 or off the docket for today's hearing. First,
8 Application No. 19430 of S2 21st Street -- or rather,
9 21st Street Northeast, or N.E., LLC, has been
10 withdrawn by the applicant, and that's under Exhibit
11 50 in the case record. This was submitted into the
12 record by the applicant on March 17th, 2017.

13 Also, as I've noticed previously, Application
14 No. 19455 of WACAP, W-A-C-A-P LLC, was rescheduled to
15 April the 12th. And two case applications, 19450 and
16 19452 of D.C. DGS, this is a decision making action on
17 the Board's part, has been -- or was rescheduled to
18 April 5, April 5th.

19 With that, I believe that's it for me, Mr.
20 Chairman.

21 CHAIRPERSON HILL: Okay, great. So, anyone
22 who is here wishing to testify, if you would please
23 stand and take the oath administered by the secretary?

24 MR. MOY: Good morning.

25 [Oath administered to the participants.]

1 CHAIRPERSON HILL: All right. Good morning,
2 everyone. So, just to let everyone how we're going to
3 work through today's docket, we are going to follow
4 the agenda for the most part that's in the bin as you
5 were walking in. We're going to first do the public
6 meeting agenda, and then we are going to follow the
7 agenda for the hearing case, with one exception. I
8 think that we are going to -- the appeal is going to
9 take probably the most time for us today, and so we're
10 going to move that to the end of the day, and that's
11 the appeal of 19441. And so, probably, if you're here
12 for that, that will probably happen -- we might take a
13 lunch break. We'll see how that goes. It depends on
14 how the docket goes, but you're going to be at the end
15 of the docket.

16 So, that being the case, Mr. Moy, if you could
17 call our first meeting case?

18 MR. MOY: Thank you, Mr. Chairman, with
19 pleasure. We have two case applications for decision,
20 in the decision meeting. The first one is an
21 application that's on the expedited review calendar.
22 That is Application No. 19399 of Benjamin Gunden.
23 This is a request for a special exception under
24 Subtitle D, Section 5201 from the side yard setback
25 requirements of Subtitle D, Section 307.5, and that

1 citation is based on the ZA referral memorandum as to
2 the appropriate relief. This would add a two-story
3 rear addition to an existing one-family dwelling, R-1-
4 B Zone at 1335 Gallatin Street Northwest, Square 2805,
5 Lot 18.

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

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. After again
10 reviewing all of the record I didn't really have a lot
11 of issues with it. The thing that I kind of didn't
12 feel originally terribly comfortable with was just
13 that since the expedited review cases that we get, I
14 mean, I wish that everything is kind of like checked
15 off. Like, we didn't have an actual ANC report. But
16 the ANC had had the required time of notice, and the
17 Office of Planning was in approval, and I understood
18 their analysis and could get behind their analysis of
19 the special exception.

20 So, you know, that being the case --

21 [Pause.]

22 CHAIRPERSON HILL: Well, the secretary has
23 just given me more information. I wish, Mr. Moy, you
24 followed me around all day.

25 So, the ANC report did come in yesterday, I

1 guess, and they are in support now so I don't really
2 have any -- we didn't really have a lot of issues, but
3 now I have less issues with it.

4 So, that being the case, unless the Board has
5 any comments, I'm going to make a motion. I'm going
6 to make a motion to go ahead and approve Application
7 No. 19399 of Benjamin Guden (sic) as announced by the
8 secretary.

9 MS. WHITE: Second.

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

12 [Vote taken.]

13 CHAIRPERSON HILL: Motion passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as four,
15 to zero, to one. This is on your motion, Mr.
16 Chairman, Chairman Hill. Seconding the motion, Ms.
17 White. Also in support, Mr. Hood and Vice Chair Hart.
18 We have a board seat vacant. The motion carries.

19 CHAIRPERSON HILL: I think we can do a summary
20 order.

21 MR. MOY: Yes, sir.

22 CHAIRPERSON HILL: Thank you.

23 MR. MOY: The next and last case application
24 for a decision is Application No. 19417 of A3
25 Development, LLC. Mr. Chairman, as a reminder, this

1 application has been amended. This is now for special
2 exception under RF Use requirements of Subtitle U,
3 Section 32 -- or rather, 320.2 and a waiver of the
4 condition under Subtitle U, 320.2(e), that limits the
5 rear addition to not more than 10 feet past the
6 farthest rear wall of an adjacent property.

7 This could convert an existing flat into a
8 three-unit apartment house in an RF-1 Zone, 1219 Park
9 Road Northwest, Square 2839, Lot 22.

10 I guess I might add, Mr. Chair, the applicant
11 -- this was amended because the applicant had
12 withdrawn variance relief from the height and stories,
13 and also from altering the existing dormer as shown on
14 revised plans under Exhibit 45A.

15 CHAIRPERSON HILL: Okay, great. Thank you,
16 Mr. Moy. Is the Board ready to deliberate?

17 [No audible response.]

18 CHAIRPERSON HILL: Okay. So, again, a lot of
19 changes have happened. Or some changes, I guess, have
20 happened since the hearing and the Office of Planning
21 is in support of some things, but I think is still in
22 denial of the waiver for the 10-foot exception. I
23 didn't think the Office of Planning was going to be up
24 with us here, but the Office of Planning is up with us
25 here, and could you clarify with me, is that still the

1 case?

2 MS. FOTHERGILL: Good morning. For the
3 record, I'm Anne Fothergill with the Office of
4 Planning.

5 And yeah, just to clarify, since the hearing
6 the applicant withdrew the variance relief for height
7 and stories which was really important to the Office
8 of Planning. We didn't find that that met the
9 variance test and we really pushed hard on that. So,
10 now it's a special exception for the conversion to
11 three units. They have the 900-square feet per unit,
12 and they need the waiver for the rear addition.

13 And for this specific case, it's as you know,
14 it's complicated. They had permits issued in error.
15 They did work with the neighbors. They have the
16 neighbors' support. And the ANC in support, and the
17 ANC specifically wants the larger units. They have a
18 case made by the structural engineer about why it
19 would be very complicated to step it back, which is
20 what OP was pushing hard. The applicant references a
21 lot of back and forth between us and them, and we have
22 pushed hard and they really have made a case for why
23 they can't step it back.

24 And so, with all these factors at this point,
25 I think the Office of Planning does not oppose the

1 waiver, and I'm happy to take any questions.

2 CHAIRPERSON HILL: Does anyone have any
3 questions for Ms. Fothergill?

4 MR. HOOD: Ms. Fothergill, Mr. Chairman. Ms.
5 Fothergill, was the record supplemented with your
6 statement? And if it is, I'm having problems opening
7 it.

8 MS. FOTHERGILL: We did not provide a
9 supplemental report. I don't believe that the Board
10 requested one and requested specific things from the
11 applicant.

12 MR. HOOD: What I would suggest, just be a
13 one-pager.

14 MS. FOTHERGILL: Sure.

15 MR. HOOD: Because what happens on down the
16 line when people look back at this case, they'll say
17 that the BZA didn't do certain things and we want to
18 make sure that it's specifically straight in the
19 record. It doesn't need to be a full report, but just
20 a one-page amendment to what you just spoke about.

21 MS. FOTHERGILL: Sure.

22 MR. HOOD: It could be a paragraph. Is that
23 okay, Mr. Chairman?

24 CHAIRPERSON HILL: I think that's a wonderful
25 idea. Thank you, Chairman Hood.

1 MS. FOTHERGILL: I can submit that to the
2 record today.

3 CHAIRPERSON HILL: Thank you, Ms. Fothergill.
4 And thanks for coming this morning.

5 MS. FOTHERGILL: Thanks.

6 CHAIRPERSON HILL: That was very helpful.
7 That was well said, and now I don't have to say
8 anything else because of the same reasoning that I was
9 going to get to had you not come here.

10 So, does the Board have any -- I'm sorry, does
11 the Board have any questions for the Office of
12 Planning? No, I think I already asked that. All
13 right.

14 Then, if that's the case then I'm going to go
15 ahead and make a motion to approve Application No.
16 19417 of A3 Development as read by the secretary.

17 MR. HOOD: I'll second.

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

20 [Vote taken.]

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

22 MR. MOY: Staff would record the vote as four,
23 to zero, to one. This is on the motion of Chairman
24 Hill to approve the application for the relief
25 requested. Seconded the motion -- no, seconded the

1 motion, Mr. Hood. And of course, the Board is
2 allowing into the record a supplemental from the
3 Office of Planning. Also in support of the motion,
4 Vice Chair Hart, Ms. White, board seat vacant. The
5 motion carries.

6 CHAIRPERSON HILL: Thank you. Can we do a
7 summary order?

8 MR. MOY: Yes, sir.

9 CHAIRPERSON HILL: Thank you.

10 [Pause.]

11 MR. MOY: Okay. So, back to the top of the
12 order. So, if the Board can have parties to the table
13 to Case Application No. 19418, this is of 319 Varnum,
14 LLC.

15 This application was captioned and advertised
16 for a special exception relief under RF Use
17 requirements of Subtitle U, Section 320.2. This would
18 convert an existing one-family dwelling into a three-
19 unit apartment house, RF-1 Zone, located at 319 Varnum
20 Street Northwest, Square 3310, Lot 47. And I believe
21 revised plans are noted under Exhibit 36.

22 And participating is Chairman Hill, Vice Chair
23 Hart, Ms. White, and Mr. Hood.

24 CHAIRPERSON HILL: Okay, great. Thank you.

25 Good morning. If you could just please

1 introduce yourselves from my right to left?

2 MR. GOODMAN: Good morning. ANC Commissioner,
3 Single-Member District 4C-10, Jonah Goodman.

4 MR. SULLIVAN: Good morning, Mr. Chair and
5 members of the Board, Marty Sullivan from Sullivan and
6 Barros on behalf of the applicant.

7 MR. ALI: Ramy Ali from Ram Design, the
8 project architect.

9 MR. HOOD: Mr. Chairman, can I just add that I
10 have reviewed the record previously? My colleague had
11 sat previously for what you all heard, thus far. I
12 have reviewed that and I'm ready to participate,
13 continue the further hearing.

14 CHAIRPERSON HILL: Thank you. Thank you.
15 Commissioner Goodman, did you get sworn in?

16 MR. GOODMAN: Did not, no. Sorry.

17 CHAIRPERSON HILL: Okay. That's all right.
18 If you wouldn't mind, Mr. Moy, just swearing in the
19 Commissioner?

20 MR. MOY: Not at all.

21 CHAIRPERSON HILL: And anyone else that just
22 might have shown up. Are we still -- has everybody --
23 -- if anybody hasn't -- if anyone missed being sworn in
24 and they have some testimony to give, please stand.

25 Okay, you're -- oh, great. There you go.

1 There's a few people. Thank you.

2 MR. MOY: Or even if you think you're going to
3 testify, can catch you all at one time.

4 [Oath administered to the participants.]

5 CHAIRPERSON HILL: All right, great. So, Mr.
6 Sullivan, I guess, you know, if you could just start
7 by telling us what's happened since the last time you
8 were here and go through that and then the Board can
9 ask any questions they have.

10 MR. SULLIVAN: Sure. Thank you, Mr. Chairman.

11 As you may remember, the concerns expressed by the
12 Board and the Office of Planning, when we were here
13 previously, was the request for a waiver from the 10-
14 foot rule. And that the -- and a concern about the
15 distance of the setback of the third-story from the
16 front of the building. And the applicant has adjusted
17 both of those. We're no longer requesting a waiver of
18 the 10-foot rule, so rather than a 20-foot addition,
19 it's a 10-foot addition. And they have moved back the
20 third-story addition another five feet from the front.

21 And we went back to the ANC with that revised
22 proposal and got another vote of support. And I
23 believe that satisfied the Office of Planning's
24 concerns too. And so, we're here to answer any
25 questions and present those plans if you have

1 questions specifically about that.

2 CHAIRPERSON HILL: Okay, great. Thank you,
3 Mr. Sullivan. Does the Board have any questions for
4 the applicant?

5 [No audible response.]

6 CHAIRPERSON HILL: All right. I'm going to
7 turn to the Office of Planning.

8 MS. VITALE: Good morning, Mr. Chair, Members
9 of the Board, Elisa Vitale with the Office of
10 Planning. The applicant has shifted the third-floor
11 addition back from the mansard roof and we believe
12 that provides sufficient separation. The applicant
13 has also eliminated the need for the waiver for the
14 rear addition. It now does not exceed the 10-foot
15 limit.

16 As indicated in the applicant's supplemental
17 filing that was filed this past Friday, a chimney
18 agreement has not been reached with the adjoining
19 property owner. So, OP would recommend that provision
20 of that chimney agreement be a condition should the
21 Board decide to approve the requested relief. That
22 concludes my report, and I'm happy to answer any
23 questions. Thank you.

24 CHAIRPERSON HILL: Thank you, Ms. Vitale.
25 Does the Board have any questions for the Office of

1 Planning?

2 [No audible response.]

3 CHAIRPERSON HILL: Okay. Mr. Sullivan, so
4 you're fine with the condition in terms of the chimney
5 agreement?

6 MR. SULLIVAN: Yes.

7 CHAIRPERSON HILL: Okay. And then there was a
8 couple of conditions that the ANC had, I thought, that
9 -- and as I thought was indicated, you all were in
10 agreement with the conditions from the ANC?

11 MR. SULLIVAN: Yes.

12 CHAIRPERSON HILL: Okay. And, the -- just for
13 my clarification, I suppose, and if the Board has any
14 questions as well, but the dumpster that they were
15 speaking of for the first condition, is that just a
16 construction dumpster, or is that -- is that dumpster
17 just for construction?

18 MR. SULLIVAN: Yes, that's my understanding.
19 Yeah, it's just a construction --

20 CHAIRPERSON HILL: Okay.

21 MR. SULLIVAN: -- dumpster, yeah.

22 CHAIRPERSON HILL: All right.

23 MR. SULLIVAN: There wouldn't be one
24 otherwise, yeah.

25 CHAIRPERSON HILL: Okay. All right. Then,

1 I'm going to see, and I don't recall if I did this at
2 the last hearing so I'm going to do it here again, but
3 is there anyone here from -- oh, the ANC. Very good.

4 So, Commissioner, do you have anything that
5 you'd like to add?

6 MR. GOODMAN: I just have a general question
7 if you're open to that.

8 CHAIRPERSON HILL: Sure, of course.

9 MR. GOODMAN: So, my apologies for missing the
10 last meeting. We were -- the ANC had supported it so
11 we thought there wasn't need to be here, but the BZA
12 had some questions back about why the ANC was
13 supporting it, because of the rear extension went
14 beyond --

15 CHAIRPERSON HILL: Okay.

16 MR. GOODMAN: -- what was allowed.

17 CHAIRPERSON HILL: Okay.

18 MR. GOODMAN: So, the ANC is just looking for
19 some clarity, if it's possible, within an RF-1 Zone
20 by-right, one to two units can go back about 60
21 percent lot occupancy. And in this neighborhood,
22 that's a 30-foot extension. Under the special
23 exception for three units it's limited to 10.

24 And so, we had approved something beyond 10
25 for three units because the neighbors didn't want a

1 30-foot extension with that rear, right? And so, then
2 BZA, or and OP had raised some concerns about that
3 being beyond what was allowed. The ANC is looking to
4 see if there's any clarity BZA can provide about what
5 would be acceptable to go beyond the 10-foot extension
6 in a three-unit special exception to meet the
7 neighbors' desire to not have a larger unit? Is there
8 conditions that you can direct us to ask for
9 applicants in the future?

10 CHAIRPERSON HILL: Okay. I'm actually going
11 to send you to the Office of Planning, to Ms. Vitale,
12 for -- could you -- are you understanding the question
13 or do you want -- could you clarify that again,
14 Commissioner?

15 MS. VITALE: Yeah, I'm not, I'm not sure I
16 follow your question.

17 MR. GOODMAN: Sure. So, with the special
18 exception of three units, it's a maximum rear addition
19 of 10 feet past the adjoining property. If they go
20 by-right, they can go up to 60 percent lot occupancy,
21 which in this case would be nearly a 30-foot rear
22 addition. And so, the question that we're just
23 raising was the ANC had compromised with them to go, I
24 think, 17 feet with a three-unit exception. But that
25 was objected to by OP and then tabled by BZA.

1 And so, ANC is looking for some clarification.
2 Is there something that we can bring to you in the
3 future that would meet your needs so that this could
4 be supported if the neighborhood wants this?

5 MS. VITALE: I'm still not sure I'm following
6 you. The 10-foot limit to a rear addition is based on
7 adjoining property owners, so each property would be
8 unique and would be evaluated, you know, as an
9 individual case.

10 And then they're not one or the other. Any
11 property would be limited to that maximum lot
12 occupancy as well.

13 MR. GOODMAN: Sure. So, maybe for a
14 clarification, we often hear cases that if applicants
15 can't get the desired need that they can go down to
16 two-units and go back much further to get the square
17 footage they need. So, they often come to us with a,
18 you can have A or you can have B. A is a 60 percent
19 max occupancy, which is much larger than --

20 MS. VITALE: They're not -- it's not one or
21 the other. They're --

22 CHAIRPERSON HILL: Commissioner Goodman.

23 MS. VITALE: They're linked.

24 CHAIRPERSON HILL: I'm just going to
25 interrupt. I kind of understand what you're asking,

1 and actually for clarification I think maybe if you
2 can just have this offline with the Office of Planning
3 and Ms. Vitale will be able to clarify a little bit
4 better, your question.

5 But, you are in support of this currently as
6 it stands?

7 MR. GOODMAN: Yes.

8 CHAIRPERSON HILL: Okay. All right. And the
9 conditions that you have gone -- that the ANC had, the
10 applicant has now once again agreed to, correct?

11 MR. SULLIVAN: Yes.

12 CHAIRPERSON HILL: Right. Okay. So, and I
13 kind of understand the question you're getting to, and
14 it is kind of a discussion, so that's why I'm just
15 kind of -- I think you'd be better off just speaking
16 directly with Ms. Vitale right after this.

17 Did you have a comment?

18 MR. HART: Just one, one point of
19 clarification. Mr. Sullivan said that the first
20 condition was about just construction, the
21 construction dumpster. And I just want to make sure
22 that that's what -- that was his understanding, since
23 you're here, might as well ask that.

24 MR. GOODMAN: Yes, that's correct.

25 MR. HART: Okay. Thank you.

1 CHAIRPERSON HILL: Okay, great. All right.
2 Does anyone have any questions for the Commissioner?
3 All right.

4 Does the applicant have any questions for the
5 question?

6 MR. SULLIVAN: No, thank you.

7 CHAIRPERSON HILL: Okay. Then I'm going to go
8 ahead and ask if there is anyone else here wishing to
9 speak in support of the application?

10 Is there anyone here wishing to speak in
11 opposition?

12 [No audible response.]

13 CHAIRPERSON HILL: All right. Would the
14 applicant like to add anything else?

15 MR. SULLIVAN: No, thank you.

16 CHAIRPERSON HILL: All right. Then, I'm going
17 to go ahead and close the hearing. Commissioner,
18 thanks for coming down. I mean, I really hope you get
19 a little bit more clarity out of it because I do,
20 again, kind of understand and I might even reach out
21 to Ms. Vitale afterwards to make sure that I even kind
22 of somewhat understand what your question is.

23 So, just for my own clarity again, or the
24 Board's clarity again, the applicant is pro-offering
25 the condition to agree with the Office of Planning in

1 terms of coming up with an agreement for the chimney,
2 correct?

3 MR. SULLIVAN: That's correct.

4 CHAIRPERSON HILL: Okay. So, that being one
5 of the conditions pro-offered by the applicant, I'm
6 going to go ahead and make a motion to approve
7 Application No. 19418 of 391 Varnum as announced by
8 the secretary, and ask for a second.

9 MS. WHITE: Second.

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

12 [Vote taken.]

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

15 MR. MOY: Staff would record the vote as four,
16 to zero, to one. This is on the motion of Chairman
17 Hill to approve the application for the relief
18 requested. Seconding the motion, Ms. White. Also in
19 support, Mr. Hood, Vice Chair Hart, and board seat
20 vacant. Motion carries, sir.

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

23 MR. MOY: Yes, sir.

24 CHAIRPERSON HILL: And I did want to also
25 thank the applicant for working so hard with the

1 Office of Planning. And I also meant the previous
2 application as well. I think I see the attorney here
3 for the previous application. Thank you very much for
4 working with the Office of Planning to get us to a
5 point where we can all agree. Thank you.

6 MR. MOY: Okay. If the Board can have parties
7 to the table to Application No. 19453 of Edward Hickey
8 III, as captioned and advertised for special exception
9 relief under Subtitle F, Section 5201. This is from
10 the lot occupancy requirements of Subtitle F, Section
11 304.1, variances from the court requirements, Subtitle
12 F, 202.1, and FAR requirements, Subtitle F, Section
13 302.1. This would add two units to an existing
14 apartment building, RA-2 Zone, 1457 Girard, G-I-R-A-R-
15 D Street Northwest, Square 2668, Lot 37.

16 And I believe the revised plans are under
17 Exhibit 71, Tab B.

18 CHAIRPERSON HILL: All right. Good morning.
19 If you could just please introduce yourselves from my
20 right to left?

21 MR. HICKEY: My name is Edward Hickey, and I
22 am the building owner and I live there with my wife
23 and two children.

24 MR. SCHNECK: Good morning, Ron Schneck,
25 Square 134 Architects, architect for the project.

1 MS. MAZO: Yes, good morning. Samantha Mazo
2 with the law firm of Griffin, Murphy, Moldenhauer, and
3 Wiggins, and we are the legal counsel for the
4 applicant.

5 CHAIRPERSON HILL: You need to push the little
6 button there.

7 MS. STEINBACH: Can you hear me?

8 CHAIRPERSON HILL: Yeah.

9 MS. STEINBACH: Okay. Good morning. I'm
10 Shirley Steinbach. We submitted a letter in
11 opposition yesterday.

12 CHAIRPERSON HILL: Okay.

13 MS. STEINBACH: I'm a resident at 1449 Girard
14 Street. I don't know if I should be up here or wait
15 to talk until the end.

16 CHAIRPERSON HILL: That's all right. It will
17 be at the end, so you can sit there if you'd like.
18 That's all right.

19 MS. STEINBACH: Thank you, Chairman.

20 CHAIRPERSON HILL: All right, Ms. Mazo. So,
21 I'm going to go ahead and I don't really have a lot of
22 specific questions. I haven't really had a chance to
23 review fully, the letter in opposition. But I guess
24 we'll hear about that as well.

25 But basically, I want to hear a little bit

1 about the project and again how the standard is being
2 met and the relief you're requesting. So, go ahead
3 and just for my own reasoning, I'll put 10 minutes on
4 the clock, Mr. Moy, just so I know the time on things.
5 Okay?

6 MS. MAZO: All right. Thanks. Thanks very
7 much.

8 Before we begin, I am going to just ask --
9 excuse me, Mr. Hickey, to speak for a few minutes just
10 about his community outreach efforts and about his
11 efforts in designing the project.

12 CHAIRPERSON HILL: Okay. Great.

13 MR. HICKEY: Yeah, good morning. I live at
14 1457 Girard Street. I actually purchased this back in
15 2008. It's a beautiful building. It was designed by
16 C. L. Harding. It was actually built by his father,
17 T. A. Harding. It's one of three turreted structures
18 on Girard Street.

19 Back when I bought it I was a single guy and
20 over the years things have changed. I now have two
21 children. They're both enrolled in -- well, one of
22 them is enrolled in a local school, the other one is
23 in daycare. We're very happy with D.C. and our
24 community. And as part of that we, we're kind of
25 feeling, okay, you know, how do I kind of accommodate

1 just like to say that I am -- I've been trying to work
2 with everybody in the community, and I was made aware
3 of the letters of opposition yesterday, and I, you
4 know, I'm not really sure --

5 CHAIRPERSON HILL: That's okay. We'll get to
6 the opposition. Okay.

7 MR. HICKEY: Okay.

8 MS. MAZO: Okay. Thanks. And then we'll turn
9 to Ron Schneck. But just very briefly, I do want to
10 indicate that for the Board there are 27 letters of
11 support for the project in the record. Also, we have
12 unanimous ANC support, which is in the record at
13 Exhibit 39. We also have Office of Planning support,
14 and we also have DDOT's support. So, with that I will
15 ask Mr. Schneck to kind of very briefly provide an
16 overview of the structure and the project, and to
17 focus on the practical difficulties associated with
18 the requirement.

19 As Mr. Moy indicated, we are here seeking
20 variance relief from a de minimis variance relief from
21 the floor area ratio requirement of 0.4. It's
22 approximately 104 feet of variance relief that we're
23 requesting. Furthermore, we're seeking variance
24 relief also from the court width and the court area
25 for the interior court as Mr. Hickey stated, and as

1 Mr. Schneck will review, in order to accommodate the
2 neighbors, the adjacent neighbors' request and to
3 ensure that there can be appropriate light and air
4 provided to the adjacent neighbors. The building is
5 designed with an interior court, and it is the
6 necessity to connect the existing structure, to the
7 rear structure, through the interior court, that does
8 indeed necessitate the relief.

9 The other relief that we're requesting is a
10 special exception from lot occupancy. Again, that's
11 only two percent and were it not for the other relief
12 we could have obtained that relief directly from the
13 Zoning Administrator as a minor flexibility.

14 So, with that I will turn it over to Mr.
15 Schneck.

16 CHAIRPERSON HILL: Okay. Mr. Moy, you didn't
17 start my clock. If you can start my clock, thanks.
18 Okay. Thank you. Sorry.

19 MR. SCHNECK: Again, good morning. Ron
20 Schneck, Square 134. I'll go to --

21 CHAIRPERSON HILL: Just hit the highlights if
22 you wouldn't mind because --

23 MR. SCHNECK: Okay. I'll just do that. Fine.

24 CHAIRPERSON HILL: -- really, I want to go to
25 the Office of Planning and then hear from the

1 opposition, and so --

2 MR. SCHNECK: Fine, fine. So, sort of real
3 quick, this is the existing context and we're
4 obviously pointing to 1457 Girard. This is a unique
5 project, a unique building in comparison to its
6 neighbors and that it has a square turret as opposed
7 to a round turret, and you can see that here.

8 The next slide, this is a not you know,
9 uncommon to what's going on recently. There are a lot
10 of developments occurring and have occurred around
11 this property. As you can see, to the east, there are
12 three buildings that are to the height limit, plus a
13 penthouse, and then also to the west, the same thing.
14 Really sort of changing the streetscape and our goal
15 here was to maintain as much of that existing
16 streetscape as possible, and I'll talk about that in a
17 little bit further.

18 This is just a picture of the rear of 1457,
19 and then to the right of the project is 1459, and
20 that's a historic house, and it's the David White
21 house. And that's the one to the right. The one to
22 the left is a single-family home that has not yet been
23 developed. And then further to the west or to the
24 right is, I believe, it's a nine-unit apartment
25 building and you can see they have a few technically

1 at-risk windows.

2 So, real quick, sort of to run down the
3 basics. It's in addition to an existing five-unit
4 apartment building, so we're adding two units. We're
5 maintaining the existing façade. We're proposing a
6 mezzanine on the front section, but this mezzanine is
7 set back significantly from the front of the building.

8 We're joining -- we're taking -- we're sort of
9 aesthetically we're trying to keep the front portion
10 of the building as an existing building, and then
11 adding the sort of additional units to the rear of the
12 building, thus making the court, which we believe you
13 know, addresses a lot of the neighbor's concerns as
14 well as provides, you know, a really nice building in
15 terms of getting light and air to all the units.

16 And as was mentioned, per zoning we're
17 required to connect at the first floor, and that's the
18 relief of court that we're looking at.

19 So, the section or -- oh, the site plan.
20 Okay. Couple things on the site plan. I'll sort of
21 start from left to right. As you can see to the left
22 there is the existing turret. And then you can see
23 that we are sort of from the front of the turret,
24 we're about at -- how far? We're about 24, 23 feet
25 back from the front of the turret is the mezzanine,

1 essentially, which is up to the 50-foot height limit
2 but it is not including anything above that. So,
3 we're essentially one story less than some of the
4 other development that have occurred sort of on the
5 same street. And again, then there is the Court, and
6 then there is the rear addition off the back.

7 Floorplans, real quick, the sort of connection
8 front to back is occurring at the cellar level,
9 obviously. We're trying to make the first floor is
10 sort of the more of the connection between the two
11 different buildings and so the cellar contains that.

12 First floor, here you can see in the middle of
13 the slide is essentially the common space court that
14 will have, you know, all of the residents will have
15 access to it, and it's an enclosed connection between
16 the two masses.

17 Second floor, pretty much the same thing.

18 Third floor. And then again you can see here
19 sort of the mezzanine floor, which is again, towards
20 the front of the -- towards the front of the property
21 and however it is set back significantly from the
22 turret.

23 Okay, quickly. Sorry. So, this shows a
24 section through a building, and what this illustrates,
25 for us at least very well, is that we're very limited

1 here with the footprint. Obviously getting sort of
2 circulation through this building is a little bit
3 problematic, and because our width is so narrow we're
4 having to do sort of straight run stairs, and we're
5 really limited in terms of our footprint and how far
6 we can go and how much we can minimize the footprint
7 because the circulation, as you can see, in sort of
8 any one of these conditions, the stairs, get to a
9 landing and you know, we're sort of running out of
10 space.

11 Oh, actually, could you just go to the 3D? I
12 just want to show -- just because what I think this
13 shows is particularly the slide on the right, I think
14 just illustrates that, you know, we are the same
15 height with the mezzanine as 1461 to the west, and
16 then we are less in height from the neighbors to the
17 east, and you can see that particularly on the slide
18 to the right.

19 And then --

20 MS. MAZO: I'm sorry. Mr. Schneck, could you
21 also just speak very quickly to the view of the
22 mezzanine from the street that can be seen on --

23 MR. HOOD: Mr. Chairman, can I ask, you know
24 to help me out?

25 MR. SCHNECK: Yes.

1 MR. HOOD: My orientation. I do have an
2 orientation merit badge. But sometimes if you use the
3 pointer, the pointer on the computer to help me when
4 you're talking about west and east, and I do know east
5 and west, but --

6 MR. SCHNECK: Sorry.

7 MR. HOOD: -- that helps me out a little bit.

8 MR. SCHNECK: Got you.

9 MR. HOOD: My colleagues, they don't need
10 that, but I need that.

11 MR. SCHNECK: Understood. Apologies.

12 Twenty-one is the next slide.

13 MR. HOOD: Would you repeat what you said
14 earlier about what somebody else had to the west and
15 what somebody had to the east?

16 MR. SCHNECK: Yes. Back one slide.

17 MR. HOOD: Even though we don't go on --

18 MR. SCHNECK: That's fine.

19 MR. HOOD: -- other cases.

20 MR. SCHNECK: So, the slide to the right, this
21 is the front of 1457 Girard.

22 CHAIRPERSON HILL: I think you need to speak a
23 little more clearly into the microphone.

24 MR. SCHNECK: Right.

25 CHAIRPERSON HILL: Sorry.

1 MR. SCHNECK: I'm sorry. This image to the
2 right, this is our project right here, and we are
3 proposing a mezzanine basically, up to 50 feet. And
4 as you can see 1461 is an existing building that is
5 essentially the same height. However, this is, as
6 well as the building further to the east, these two
7 are up essentially an additional story because they're
8 providing a mezzanine.

9 And again, just sort of, you know, this is not
10 a historic district but we're trying to be sensitive
11 to the context by you know, creating massing that we
12 believe is sort of, you know, deferential to the
13 existing facades.

14 MS. MAZO: I'm sorry. And, Mr. Schneck, can
15 you just use this slide to talk about the setback of
16 the mezzanine from the front as well as the setbacks
17 and the siting of the front patio?

18 MR. SCHNECK: Absolutely. So, from the, just
19 in terms of dimensions, this is the mezzanine. We are
20 set back. That's 18 feet, and from the mezzanine to
21 the front of the turret is 23 feet. And then within
22 that space we do have a deck as well, out towards the
23 front. Again, not visible from the street. What will
24 be visible, slightly, as you can see in the next
25 slide, is a little bit of the mezzanine as you get

1 further back. So, maybe we want to go to that.

2 So, as you can see here, you know, we're set
3 significantly back to maintain sort of the integrity
4 of the existing façade.

5 Okay. Sun studies. So, the way these are set
6 up is that we have sort of an existing meaning without
7 the proposed addition, and then we have the --
8 obviously, the proposed addition. And the way we did
9 these sun studies that the -- you know, this is north,
10 so all of the shadow that is cast on, you know, this
11 entire block, or this entire portion of the block, you
12 know, is cast into the alley.

13 And so, what we did here is in the shadows
14 that are sort of highlighted in blue are the shadows
15 that we're creating versus the ones that would be
16 there, that are there now, without the addition. And
17 as you can see, you know, there are -- we're not
18 creating a whole lot of shadow that impacts the
19 neighbors. It just basically provides additional
20 shadows into the alley, and this is a very wide alley
21 so it doesn't even, you know, get to the buildings
22 across the alley.

23 MS. MAZO: And, Mr. Schneck, can you be clear
24 that these shadow studies do not show additional
25 shadow be cast on either 1861 or on 1449 as a result

1 of our project?

2 MR. SCHNECK: So, that's correct. So, 1461 is
3 essentially one building -- two buildings over, and
4 then 1455 is also two buildings over. So, we're not
5 casting -- the only light that -- the only shadow that
6 we are casting is a little bit more to the neighbor,
7 to the historic David White House, which we
8 specifically sort of worked through with them about
9 what shadows and how much light and air we're allowing
10 to get through, and then the neighbor to the right
11 obviously is in support of the project.

12 Do you have any questions about the sun
13 studies, because sometimes they get --

14 MR. HART: No, only that --

15 MR. SCHNECK: Okay.

16 MR. HART: -- I think that the shadows are not
17 necessarily on the houses, but they are on the
18 property -- on the back of the properties of the
19 properties that are adjacent to, and actually a couple
20 of houses on either side.

21 So, it does show that there is some impact.
22 It's just not a --

23 MR. SCHNECK: It's not to, like to block a
24 window for example.

25 MR. HART: Yes. Yeah.

1 MR. SCHNECK: Correct. That is correct.

2 MS. MAZO: Can you, Mr. Schneck, now just talk
3 very briefly through these plans that we have prepared
4 in following the record, indicating the practical
5 difficulties associated with satisfying or, sorry,
6 practical difficulties that result directly from the
7 exceptional conditions on the site that would apply to
8 the project if the variance relief and the court
9 relief is not provided or is not approved by this
10 Board?

11 MR. SCHNECK: Sure. What this first slide
12 shows is basically what this red rectangle shows, is
13 what is essentially would have been a by-right
14 expansion or addition to the existing property. But
15 again, our intent here was to take this additional
16 square footage, move it toward the back to create the
17 light court in the middle. And again, in consultation
18 with the David White House, we're actually, you know,
19 by doing this, we're providing more light and air to
20 their backyard than they would have otherwise.

21 CHAIRPERSON HILL: Okay.

22 MR. SCHNECK: And so, the next two slides,
23 this is a very tight -- you know, this is a very tight
24 floorplan. And what this is showing is, you know,
25 there are -- we are as tight as we can be and again it

1 has a lot to do with the circulation, but you know,
2 there's not extra space that we can reduce. And,
3 again, this is sort of to address the additional FAR
4 concern. The FAR again, if you go up one floor, is --
5 the relief that we're asking for is exactly what we
6 had to do in terms of connecting it. And, you know,
7 what we're showing here is that you know, if we had to
8 move the stair even a foot, you know, we come into
9 real problems with sort of space planning and trying
10 to get the floorplans to work because it's just such a
11 tight site.

12 MS. MAZO: So, in particular in regards to the
13 landing and with the run of the stairs. Is that
14 correct?

15 MR. SCHNECK: Correct. So, I mean, here for
16 example, I mean, we're as tight as we can be with the
17 landings, the stairs obviously to code, and you know,
18 clearance, head heights and things like that, or
19 bathrooms.

20 MS. MAZO: Mr. Schneck, can I just ask you two
21 questions? First of all, can you just state for the
22 record the exceptional conditions that apply to our
23 property for the Board to understand?

24 MR. SCHNECK: I think one of the exceptional
25 conditions is our adjacency to the David White House,

1 and that it's, you know, definitely a unique building.
2 That is one condition. Another condition is the
3 narrowness of the lot. We have a very narrow lot, a
4 very long lot. Oh, and the fact that there's a
5 turreted building that we're trying to maintain.

6 CHAIRPERSON HILL: Okay.

7 MS. MAZO: I'm sorry, one more just follow-up.

8 CHAIRPERSON HILL: Sure. Go on. Sure.

9 MS. MAZO: And, Mr. Schneck, can you state for
10 the record that under the parking requirements under
11 ZR-16, the current parking requirements, that only one
12 parking space is required for the project and that two
13 parking spaces are being provided?

14 MR. SCHNECK: That is correct. Per the
15 current zoning, we're only required one parking space,
16 and we're providing two.

17 CHAIRPERSON HILL: Okay.

18 MR. HART: Can you --

19 CHAIRPERSON HILL: Go on, please. Sure.

20 MR. HART: Mr. Chairman. Can you talk a
21 little bit about the materiality of the proposed
22 addition that you're adding? It looked -- and looked
23 like you're putting EIFS on the siding on the rear
24 addition, and it's an unfortunate choice for --

25 MR. SCHNECK: So, we're sort of not there yet

1 in terms of the final design. You know, we tend to
2 you know, for the rear -- what we would try to do for
3 the front of the project, like I said, we're going to
4 try to, you know, maintain the front façade, do any
5 talk pointing as necessary, and then for the rear of
6 the project we're showing an EIFS material just sort
7 of as a generic placeholder. We'll probably -- we
8 have some options.

9 Probably not brick. I mean, I think the idea
10 is that you know, this is a contemporary addition and
11 contemporary materials. But, we haven't necessarily
12 decided that yet.

13 CHAIRPERSON HILL: Okay. Sorry.

14 MR. HART: Can you talk about the types of
15 options that you're considering, if it's not brick?

16 MR. SCHNECK: Yes. So, it would be sort of
17 probably some type of Hardy material or EIFS something
18 that has -- again, I think it would be expressive of
19 sort of a more modern material, the back of the -- you
20 know, we'll have windows that are you know, probably
21 not double-hung windows, but casements. Some sort of
22 contemporary functionality. And then in relationship
23 to that, some type of Hardy skin, whether it's Hardy
24 panel, combination Hardy siding, something like that.

25 MR. HART: And are you looking at the other

1 buildings, or at least the rears of other buildings
2 along the alley? I mean, I know this is not a huge
3 thing --

4 MR. SCHNECK: No. No, no, no, I --

5 MR. HART: It's more because I'm looking at
6 the alley image on slide 48, and it's kind of showing
7 some of the buildings that are around there. Most of
8 them are, it looks like they're either brick or, I
9 don't know what that new construction that's --

10 MR. SCHNECK: They're all Hardy siding. It's
11 either --

12 MR. HART: It's hard to tell.

13 MR. SCHNECK: Yeah, it's either -- I mean,
14 it's either faux brick or Hardy siding on the back of
15 the buildings. They go as most inexpensively as
16 possible. We obviously would try to do something more
17 akin to, you know, a Hardy panel or something that is
18 not just Hardy siding. But most of the buildings in
19 the back are siding, but we wouldn't go that route.

20 MR. HART: I was just asking only because you
21 are next to this historic building so --

22 MR. SCHNECK: Uh-huh. Absolutely.

23 MR. HART: -- it just is --

24 MR. SCHNECK: Yeah, no. Absolutely. Yeah.

25 MR. HART: The context, that's all.

1 MR. SCHNECK: Yeah, I mean, EIFS sometimes --
2 I mean, I know that historic doesn't typically like
3 EIFS, sometimes I think EIFS can have the look of sort
4 of an old stuccoed wall. And so sometimes we do use
5 that in historic neighborhoods just to sort of be sort
6 of reminiscent of sort of an old stucco material,
7 but --

8 MR. HART: Yeah, it's just the -- I don't
9 know, the durability of EIFS is --

10 MR. SCHNECK: Uh-huh. Absolutely.

11 MR. HART: -- is somewhat of a question.

12 MR. SCHNECK: Yeah. No, I understand that.

13 MR. HART: And, given that you all are before
14 us for a variance, that's also why, you know, there
15 are things that -- I'm not saying that we would
16 necessarily say that you have to do a certain
17 material, I'm just saying that it's, you know, we're --
18 - you're asking us to --

19 MR. SCHNECK: Sure.

20 MR. HART: -- look beyond what the actual
21 regulations say and how to kind of deal with that.
22 So, I'm asking this to try to understand where your --

23 MR. SCHNECK: Sure.

24 MR. HART: -- thinking is with it.

25 MR. SCHNECK: I mean, don't misunderstand. I

1 would love to use brick. Brick is a definitely more
2 expensive material on the back, and you know, there's
3 a budget to be concerned with. I mean, obviously if
4 that would be a stipulation I think we could -- we
5 would agree to that.

6 Again, the brick would be, you know, done in
7 such a manner that's a bit more contemporary but
8 absolutely.

9 MR. HART: Thank you.

10 MR. HOOD: Mr. Chairman, while that may not --
11 materials may not be in front of the Board now, we're
12 trying to work to change that. I'm just telling you.

13 MR. SCHNECK: Sure.

14 MR. HOOD: I'm one of the ones who's pushing
15 that.

16 MR. SCHNECK: Yeah, I understand.

17 MR. HOOD: But I do want to ask about the
18 rails. I saw on your renderings, were those rails?
19 Can you go back to your drawing? I don't believe it
20 can be seen, but I wanted to show the -- it looked
21 like there were rails up front.

22 Yeah, now that's on the -- is that the --
23 that's on the front of the home. Will I be able to
24 see that from the street?

25 MR. SCHNECK: So, probably from once you get

1 across the street on the other side of Girard.

2 MR. HOOD: Other side. Okay.

3 MR. SCHNECK: You could potentially start to
4 see it.

5 MR. HOOD: Okay. And that probably will --
6 the extent of what I'll see those raise there, right?
7 I mean, on the rendering to the right?

8 MR. SCHNECK: Correct. I mean, the rendering
9 to the right is fairly far back. I mean, it's at the
10 other side of the street, even outside of public
11 space.

12 MR. HOOD: So, is your testimony, I would
13 really have to really be looking up hard to see those
14 rails?

15 MR. SCHNECK: I think so, yes. Absolutely.

16 MR. HOOD: I'm hoping that's the case.

17 MR. SCHNECK: Yeah. Yeah, yeah, yeah,
18 absolutely.

19 MR. HOOD: Okay. All right. I had another
20 question.

21 MR. SCHNECK: Correct, yeah. The rails are
22 set back, so 18 feet. So, the rails would be set back
23 essentially 10, 10, elevenish feet from the front.
24 So, I mean, it's well beyond one to one. So, if you
25 were to do a sightline diagram, you wouldn't see it.

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1 Again, this is just from --

2 MR. HOOD: And it goes back to Board Member
3 Hart's question. I would hope that whatever materials
4 you use, that it's tasteful.

5 MR. SCHNECK: Absolutely.

6 MR. HOOD: Because one of the things that gets
7 neighbors and communities upset, is when we do
8 something that's just totally outrageous. And then we
9 get blamed for everything. So, we would hope that you
10 would use some taste and you're experienced. It
11 sounds like you're very -- you were very thoughtful
12 through the project. It sounds like you all have put
13 a lot of time into it.

14 MR. SCHNECK: Absolutely.

15 MR. HOOD: When I look at the support. I do
16 know we have some opposition, but we'll see how it
17 goes. Thanks.

18 MR. SCHNECK: Okay.

19 MR. HOOD: Let me ask you, what is the parking
20 situation around there? Do you have RPP? Well, I
21 don't like talking about RPP, but do you have RPP?

22 MR. SCHNECK: We have RPP, yeah.

23 MR. HOOD: Okay.

24 MR. SCHNECK: But yeah, so I have two parking
25 spaces right now, and we're in the garage. I mean,

1 they're tight parking spaces, but we're going by
2 taking off the garage we're providing code compliant
3 parking spaces in the rear, two spaces. And then, I
4 mean, we do still have RPP.

5 MR. HOOD: Okay. And does it go to 10:00, or
6 is it 8:30?

7 MR. SCHNECK: Oh, God, I --

8 MR. HOOD: That's okay. That's okay.

9 MR. SCHNECK: Yeah, I don't know specifically.

10 MR. HOOD: All right.

11 MR. SCHNECK: But it's I think at least 9:00.

12 MR. HOOD: Okay. Thank you. Thank you, Mr.
13 Chairman.

14 CHAIRPERSON HILL: Okay. I'm going to turn to
15 the Office of Planning but I do have one quick
16 question. David White, that's the house that's next
17 door. What did David White do?

18 MR. SCHNECK: Yeah, he was a geologist.
19 There's a slide that shows --

20 CHAIRPERSON HILL: I saw -- yeah, I saw that
21 one but it didn't say what he did.

22 MR. SCHNECK: Yeah, he's a significant person,
23 I believe, for the petroleum. And I mean, that's why
24 the house received the designation. It's both a D.C.
25 historic site, and a National --

1 CHAIRPERSON HILL: Okay.

2 MR. SCHNECK: -- Landmark.

3 CHAIRPERSON HILL: I was just curious. You
4 might want to go over that one a little bit more for
5 your dinner guests, like, because you don't seem to
6 know very well. He was like, oil or something.

7 MR. SCHNECK: Yeah.

8 CHAIRPERSON HILL: All right. I'm going to
9 turn to the Office of Planning.

10 MR. JESICK: Thank you, Mr. Chairman and
11 members of the Board. The Office of Planning is
12 recommending approval of the application. We did feel
13 that there were practical -- excuse me, exceptional
14 conditions resulting in practical difficulty when it
15 came to the variance for FAR, as well as the court
16 dimensions. Regarding the lot occupancy, special
17 exception, we felt that the two percent difference
18 from matter of right to the requested lot occupancy
19 did not have a significant change in impact to the
20 adjacent neighbors over what a matter of right project
21 would entail.

22 So, I'd be happy to take any questions. But
23 again, Office of Planning recommends approval of the
24 application. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Jesick, just if

1 you could walk me through a little bit. I mean, we've
2 obviously all read your report and reviewed it and I
3 thought it was a very concise report. But could you
4 kind of walk me through a little bit kind of your
5 thought process as to how the exceptional situation
6 leading to the practical difficulty was achieved in
7 your mind?

8 MR. JESICK: Certainly. The first thing we
9 looked at was, you know, no one wants to build on the
10 front of this historic home. We don't want to lose
11 that historic façade. So, therefore, a lot of the
12 building mass goes towards the back of the building.
13 When they do that we looked at, what would the impacts
14 to the neighbors be?

15 The neighbors requested that the building mass
16 be pushed further back. Okay, once you do that, you
17 have to connect the two portions of the building with
18 that hallway, and that's where the extra FAR comes
19 from, the 90 or 100 square feet, whatever it is.
20 Without that connection you don't even need a FAR
21 variance. So, we felt that that small difference did
22 not create an impact to the neighbors. In fact, the
23 neighbors requested that to enhance the light and air
24 to the back of their properties. So, that's why we
25 were okay in this particular instance with an FAR --

1 small FAR variance.

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

4 All right. Does the applicant have any
5 questions for the Office of Planning?

6 MS. MAZO: Yeah, one very brief question. Mr.
7 Jesick, on behalf of the Office of Planning, can you
8 confirm that the number of parking spaces that are
9 required by the zoning regulations on the site that
10 only one parking space is provided?

11 MR. JESICK: Yes, it's one -- I believe it's
12 one parking space for every three units above four
13 units. So, with seven, that would equal one.

14 MS. MAZO: And can you also, just for the
15 record, state that no parking relief is required for
16 this project?

17 MR. JESICK: No parking relief was requested,
18 we don't believe parking relief is required, so I'll
19 leave it at that.

20 MS. MAZO: I'm sorry, one other just point for
21 the record. Can you also just clarify for the record
22 that the height that's being proposed is permitted as
23 a matter of right in the zone?

24 MR. JESICK: Yes. Fifty feet is the matter of
25 right limit in this zone.

1 CHAIRPERSON HILL: Okay. Great. Sure, of
2 course.

3 MR. HOOD: I want to ask Ms. Mazo, I know
4 you're trying to prove the parking issue. So, are you
5 trying to say to me, if you're convincing me, I
6 understand what the regulations say. So, if this is
7 going to cause a potential parking problem, or
8 continue to expound on the parking problem in the
9 community, are you saying because the code says
10 something that I'm not supposed to look at? I just
11 trying to figure out, we understand the parking
12 rationale. I'm just trying to figure out why you're
13 trying to drill that home.

14 MS. MAZO: Oh, no, because my understanding is
15 that there is a misunderstanding in the community as
16 to the required number of parking spaces, and there
17 was a concern that was raised by one of the adjacent
18 neighbors that the project was not providing the
19 required amount of parking that they should have been
20 providing for parking spaces. But I wanted Mr. Jesick
21 to clarify that for the zoning -- that pursuant to the
22 zoning regulations that the project does not require
23 to seek any parking relief.

24 MR. HOOD: Okay. Because when you live it,
25 you don't look at the code. The code is -- those

1 people who are talking about it are realists. They
2 know that they have a parking issue. So, I understand
3 your point, I was just trying to figure out why we
4 were drilling so hard on that. I know what the code
5 says, but I know also probably what the neighbors are
6 experiencing. So, we have to balance that. Okay.
7 Thank you.

8 MS. MAZO: Right. But also, I mean -- sorry,
9 Chairman Hood. One, also one point being that there's
10 no parking relief being sought here. Just for the
11 record.

12 MR. HOOD: All right.

13 CHAIRPERSON HILL: Okay. Let's see. So, is
14 there anyone here wishing to speak in -- is there
15 anyone here from the ANC? All right. Is there anyone
16 here wishing to speak in support of the application?
17 All right. Please, come forward.

18 If you could just state your name and address,
19 please, when you get a chance. Just push the little
20 button until the light lights up there. And then, I'm
21 going to go ahead and put three minutes on the clock
22 for you. The clock right there, the top -- or over
23 there as well if you --

24 MR. KALALA: Okay.

25 CHAIRPERSON HILL: Okay.

1 MR. KALALA: All right. My name is Ahmad
2 Kalala. And I own 1459 Girard Street, which is, you
3 know, neighbors with him, just adjacent to your left,
4 I think. The David White House.

5 CHAIRPERSON HILL: Oh.

6 MR. KALALA: Yeah. And I've owned the house
7 for -- since 2002. And actually, the house had been
8 ruined but there was a fire in the house, so it has
9 been ruined. So, I actually was one of the first
10 people to do a major renovation on that street. And
11 one of the things that I try to do when I did the
12 renovation was to maintain the façade, the front
13 façade. But unfortunately, all the construction that
14 has been going on lately, you know, they've been
15 completely changing the way it looks at your screen,
16 on the slides.

17 So, when he told me he was getting ready to do
18 the renovations at his place, I wanted to make sure
19 that I was involved in that. And there were a number
20 of designs that we went through and I think the one
21 that he currently has, the one that he currently have
22 right now, I think is the best one. Instead of him
23 going up, yeah. And actually, altering. There are
24 only three houses, I think, it's 1459, his, and 1455
25 that have almost have the original kind of, you know,

1 fronts from the time that I moved in, in 2000.

2 So, I'm definitely in support of what he's
3 trying to do right now. And it doesn't -- I don't see
4 anything that would make me think otherwise. But I
5 think, was it -- Mr. Hart, when you ask the question
6 about the materials in the back, that was my only
7 concern with him and I think we're going to work
8 through that, because I was concerned about if he was
9 going to try to use sidings as well.

10 So, the materials that he's going to use to do
11 the renovation was a concern to me. And we talked
12 about it and I'll work with him on that. Yeah.

13 MR. HICKEY: Thank you.

14 MR. KALALA: Yeah.

15 CHAIRPERSON HILL: All right. Does the Board
16 have any questions for the witness? Mr. Kalala, you
17 live in the David White House? How do you say it?
18 How do you say your last name?

19 MR. KALALA: Kalala. Kalala.

20 CHAIRPERSON HILL: Kalala.

21 MR. KALALA: Kalala.

22 CHAIRPERSON HILL: You live in the David White
23 House?

24 MR. KALALA: No, not right now.

25 CHAIRPERSON HILL: You don't live there now?

1 MR. KALALA: No, not only right now.

2 CHAIRPERSON HILL: But you own the David White
3 House?

4 MR. KALALA: I own the David White House.
5 Yeah, I used to live there but then I was on
6 assignment outside of the country, so I just got back.

7 CHAIRPERSON HILL: Do you know what David
8 White did?

9 MR. KALALA: He was a geologist, but it's --
10 he was a geologist. I know that he was just a -- he
11 was --

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

14 MR. KALALA: He was a geologist. He was a
15 geologist.

16 CHAIRPERSON HILL: Okay. Great.

17 MR. KALALA: Yeah, soon to become the Ahmad
18 Kalala House, though.

19 CHAIRPERSON HILL: Yeah, apparently. Yeah,
20 all right. Okay. All right. All right, thank you.

21 Okay. So, is anyone else here in support? Is
22 anyone here in opposition? All right.

23 And could you -- could you state your name
24 again for us?

25 MS. STEINBACH: Yes, absolutely. My name is

1 Shirley Steinbach.

2 CHAIRPERSON HILL: Okay. Ms. Steinbach. I'm
3 sorry.

4 MS. STEINBACH: Yeah. And I'm here on behalf
5 of myself and the association that manages the four-
6 unit condo building in which I live.

7 CHAIRPERSON HILL: Okay.

8 MS. STEINBACH: As well as the other three
9 residents in that condo building, and that condo
10 building is at 1449 Girard Street Northeast.

11 CHAIRPERSON HILL: 1449. Okay. And, Ms.
12 Steinbach, since you're representing an association,
13 I'm going to give you five minutes, actually.

14 MS. STEINBACH: Okay.

15 CHAIRPERSON HILL: To speak. And I think we
16 kind of know about some of the issues because of your
17 letter to opposition. So, go ahead and take your time
18 and --

19 MS. STEINBACH: Yes.

20 CHAIRPERSON HILL: -- tell us what you have to
21 say.

22 MS. STEINBACH: Thank you. We're in opposed
23 for three reasons. First, we think that the project
24 will adversely affect the neighboring properties in
25 terms of parking. There is a parking shortage because

1 a lot of the buildings on our block have been
2 redeveloped, and we're concerned that this particular
3 project is going to go from having one family living
4 there, to seven families living there, with only two
5 parking spots in the back.

6 In addition to having all these redeveloped
7 multi-unit buildings on our block, we also have the
8 Columbia Heights Community Center there, so that
9 attracts a lot of parking, or vehicles, as well as
10 like a nursery school.

11 So, there's a parking shortage on our block,
12 and we're concerned that going to seven units with
13 families living there is going to really adversely
14 affect the parking situation.

15 The second reason why we're opposed to it is
16 because we're not sure that it qualifies for an area
17 variance. We're not zoning experts, but in reading
18 the application we understand that it seeks an area
19 variance based on the fact that the lot is in
20 exceptional shape. And that lot is very similar in
21 shape to the other lots on our block, if you look at
22 the zoning map. And is also a typical narrow lot size
23 that's very common in the city, so we're not sure that
24 it's exceptional.

25 Also, we understand that the application is

1 asking for a variance because of practical difficulty,
2 but we think if the project was limited to five units
3 there would be no practical difficulty, and the only
4 difficulty is because they're seeking to eke out as
5 many units as they can from this lot. So, we're not
6 sure that it qualifies for an are variance.

7 And the final reason why we're opposed to it
8 is that we questioned some of the representations in
9 the application, and we're not zoning experts, and
10 we're not sure if the applicant is seeking to get
11 certain zoning benefits based on these
12 representations. But we wanted to point out that
13 we're not sure if what they say is actually the truth
14 on the ground.

15 So, the first representation that we question
16 is that the property is currently used as a five-unit
17 apartment building. If you look at the photos it just
18 looks like a single-family home, and if you look at
19 the number of windows, especially in the rear, it
20 doesn't seem to support five units. And then my
21 understanding from someone who looked into it, is that
22 the tax records say that the property currently only
23 has three bathrooms. So, if that is the case, we're
24 not sure how it can be currently a five-unit apartment
25 building. It seems like they're trying to represent

1 that it's a five-unit apartment building, to say that
2 they're just going from five units to seven units.
3 But from what it looks like to us, it's just going
4 from a single-family residence to a seven-unit
5 apartment building. And again, I think that that's
6 really going to affect the parking situation.

7 Also, we understand that the project is -- or
8 the application is representing that it's merely
9 joining a single-story garage in the back with the
10 primary structure, and we're not sure if they're
11 trying to get some sort of benefit by just saying
12 we're merely merging these two structures together.
13 But if they are, then we question that as well,
14 because if you look at the plans it looks like other
15 than the façade of the building, they're going to
16 completely demolish everything and build this big
17 structure that goes all the way farther back at the
18 rear of the lot than any other structure.

19 And so, for those three reasons, we oppose the
20 application.

21 CHAIRPERSON HILL: Okay. I just have a couple
22 questions. So, where exactly are you guys again? Are
23 you that apartment building?

24 MS. STEINBACH: We are four down.

25 CHAIRPERSON HILL: If you can -- thank you,

1 you can just show me with the pointer that would be
2 great. If you could -- the gray one?

3 MS. STEINBACH: No, not the gray one. The one
4 next to it. It's all stucco and it's like a peach
5 color.

6 CHAIRPERSON HILL: The one to the right of the
7 gray one.

8 MS. STEINBACH: Yes.

9 CHAIRPERSON HILL: Okay. All right. And
10 then, did anybody from you or your association go to
11 the ANC meeting?

12 MS. STEINBACH: No.

13 CHAIRPERSON HILL: Okay.

14 MS. STEINBACH: I was personally not aware of
15 it.

16 CHAIRPERSON HILL: Okay. Do you know if
17 anybody from your association was aware of it?

18 MS. STEINBACH: I don't know that anyone was
19 aware of it, and I don't think anyone attended.

20 CHAIRPERSON HILL: Okay.

21 MS. STEINBACH: To my knowledge.

22 CHAIRPERSON HILL: Okay. And I know you're
23 not a zoning expert, and believe me, I've been here
24 long enough to know that it takes a long time to
25 become a zoning expert, but you -- have you taken a

1 look or understand the Office of Planning's report?
2 Have you looked at that in the files?

3 MS. STEINBACH: No, sir.

4 CHAIRPERSON HILL: Okay. All right. Because
5 that's how they have gotten to the -- meaning the
6 Office of Planning, has come to the realization that
7 this is something that they could approve for the
8 reasons stated in their report. I'm just kind of
9 pointing that out. But I do understand kind of like
10 your parking concerns.

11 Okay. Does the Board have any other questions
12 right now?

13 MR. HOOD: Yes, I do want to say, the Chairman
14 is exactly right. Not that you have to go, but I
15 think -- and I've worked with, and I've watched this
16 ANC for years. When it comes to zoning issues this
17 ANC was one of the leads when they -- I hate using the
18 word now, pop-ups. This ANC, under Chairman Bass and
19 others, were one of the leads of coming to the Zoning
20 Commission to make sure that it's right.

21 So, for me to get a comfort level, and I
22 understand the parking issue, but for me to get a
23 comfort level that I see the ANC's support in this,
24 knowing Chairman Bass and his passion about making
25 sure the character of neighborhoods stay the same, and

1 I understand that. So, I think it would have been
2 good for somebody to go and hear that discussion
3 because this is one of the ANCs that really know
4 zoning.

5 MS. STEINBACH: Uh-huh.

6 MR. HOOD: And I will say that, you know,
7 because I've watched them over the years and
8 Commissioner Bass is, I have to give it to him, he's
9 on his game when it comes to zoning. So, I do
10 understand your concern, but I think the Chairman's
11 point is exactly good, if you all could sometime go to
12 those meetings and then they can hear your concerns
13 and they can kind of work it out. So, the parking
14 issue, as Ms. Mazack (sic) has already drilled that
15 home to us, and that's what I was trying to figure
16 out, I know you all have parking problems. But the
17 code says one thing and that's what we're bound to go
18 by, the regulations.

19 So, anyway, that's enough said. Thank you.

20 CHAIRPERSON HILL: Okay. Does the Board have
21 any other questions of the witness?

22 MS. WHITE: No, no questions.

23 CHAIRPERSON HILL: Okay. I don't think the
24 applicant needs -- have any questions of the witness?
25 Does the applicant have any questions of the witness?

1 MS. MAZO: No questions.

2 CHAIRPERSON HILL: Okay. All right. All
3 right. Let's see. So, all right, let me -- okay.
4 So, there's no one else here. Does the Board have any
5 questions of the applicant anymore?

6 MR. HART: Yeah, just a little clarification.
7 The court that is between the two structures, that
8 has walls all the way around it. One is a hallway,
9 and then there is a wall on the eastern side of the --
10 of that court as well. I mean, it's totally enclosed.

11 MR. SCHNECK: The connection between is only
12 at the first level. So, there's a connection at the
13 cellar level.

14 MR. HART: Yeah.

15 MR. SCHNECK: Which is sort of across the full
16 width of the property.

17 MR. HART: Yeah.

18 MR. SCHNECK: And then at the first floor
19 there's basically a connecting corridor. And then
20 there is the court space. And then once you get to
21 two floors, two and three, it's open air and there is
22 nothing on either side. It allows light and air
23 through.

24 MR. HART: Yeah, but there is a connection on
25 the ground level.

1 MR. SCHNECK: That is --

2 MR. HART: On four sides. I'm sorry. There
3 is a -- there are walls on four sides around the
4 court.

5 MR. SCHNECK: There are walls on --

6 MR. HART: On the first flight.

7 MR. SCHNECK: Walls on two sides. On the
8 front and the back it's actually open on the sides.

9 Yeah, the first level there is, but then as
10 you go up --

11 MR. HART: Yeah, yeah, those are open. What I
12 was just trying to understand is, I'm looking at the
13 drawings on slide 12, and I was just trying to
14 understand what I was seeing, making sure that that is
15 -- because that's a double line on the eastern side of
16 the court. The bottom part of that court. So, that
17 is a wall that's there.

18 But when you go up to the second and third
19 level, then there's no -- there are no walls on that
20 side.

21 MR. SCHNECK: That is correct. And yeah, it's
22 shown in the plan.

23 MR. HART: And then there's a skylight in that
24 as well? Is that what I'm also seeing in the court?

25 MR. SCHNECK: That is correct. We have a

1 skylight off to the side of the court to allow light
2 into -- then we have a den in the middle of the cellar
3 floor, then the skylight allows light into that
4 den/bedroom. So, that dashed rectangle is a skylight
5 to the cellar.

6 MR. HART: And what goes on in the court
7 again? I'm sorry, the reason I'm asking, I'm just
8 more curious as to how practical this is as an actual
9 use for somebody that is -- because if you have
10 somebody that is in the -- laying in the bed, they're
11 not going to want to look up and see folks.

12 MR. SCHNECK: So, we do a lot of courtyard
13 buildings. Especially, you know, in a lot of this
14 type of development, it's hard to get outdoor space.
15 And, we find that courtyards, you know, we can -- we
16 do frosted glass over the skylight so it just brings
17 light in. You can't see someone lying in their bed.
18 And it just, it provides an opportunity for someone to
19 go hang outside and get some fresh air for a little
20 bit. And it also brings, you know, when you have a
21 long building you're very challenged with getting
22 light, in, you know, deep within the building. And
23 so, the court actually does a wonderful job of
24 providing for that.

25 MR. HART: Thank you.

1 MR. SCHNECK: You're welcome.

2 MR. HOOD: Mr. Chairman, can I ask another
3 question?

4 CHAIRPERSON HILL: Of course.

5 MR. HOOD: Is this a five-unit, or is this a
6 single-family home? What's going on in here?

7 MR. SCHNECK: It's a five-unit, and I also
8 sent Shirley a copy of the C of O. The building was a
9 single-family home when it was built in 1902. In
10 1959, it was converted to a rooming house. In 1962,
11 it was converted to a five-unit apartment house. And
12 I mean, I get that I'm not to the level of the new
13 construction around me. You know, somebody that just
14 went in there and kind of chopped up everything, they
15 weren't a professional. They just did what they
16 could. And it's kind of been that way for all
17 subsequent owners, myself included.

18 When I bought back then I just went in and
19 tried to fix up existing. It's not a single-family
20 home, so I'm not sure what that comment is in
21 reference to.

22 MR. HOOD: So, you have people in there now?

23 MR. SCHNECK: No, so --

24 MR. HOOD: No, it's just you now, right?

25 MR. SCHNECK: Yeah. Right.

1 MR. HOOD: But it's -- the make-up of it is
2 five units.

3 MR. SCHNECK: Right.

4 MR. HOOD: Right.

5 MR. SCHNECK: The make-up of it is five units,
6 the confusion is that when I originally was proceeding
7 with this back in May, thinking that I could get
8 everything in accordance with the regulations and by-
9 right, I notified all tenants of the building that I
10 had intended to do the construction project. And
11 people just started leaving because they didn't want
12 to be associated with the construction debris. There
13 is, you know, just a lot of noise and things. So,
14 everybody left. My last tenants left in November, so
15 I -- it's just me now.

16 MR. HOOD: Okay. And this actually is really
17 relevant, but I think it goes to the point, do you own
18 a car?

19 MR. SCHNECK: I do own a car, yeah.

20 MR. HOOD: Okay. Well, most people --

21 MR. SCHNECK: And I park -- I park on the
22 street every day, and I understand the parking
23 situation issue.

24 MR. HOOD: Right. Right.

25 MR. SCHNECK: But I literally have been there

1 nine years. I can always find a spot on the street.
2 I don't always -- you know, you get home at certain
3 peak times like when there's rush hour and Harvard
4 Street has to empty that side for traffic, that's
5 really hard to find parking then. But most of the
6 time you know, you can find parking no problem.

7 MR. HOOD: And Ward 1 has resident parking
8 only on certain sides of the street.

9 MR. SCHNECK: Correct. Yeah. On this side of
10 the street it's resident only.

11 MR. HOOD: Residents only. So, that's some
12 relief the city has put in place. The other question
13 that I'm asking, people who may come in and reside,
14 you're probably going to have some people who people
15 have told me to come down here a lot, they don't own
16 cars. I'm hearing that argument all the time.

17 MR. SCHNECK: Right.

18 MR. HOOD: So, that may be some relief within
19 itself. So, I'm just trying to figure out how we can
20 work some things out as neighbors so you all can have
21 continue the good neighbor policy, because I hear a
22 lot of times that people in their own cars, which I
23 find hard to believe, I own cars. I have to have a
24 car, so that's just where I am. But I'm hearing that
25 the new millennials, they don't have cars. I'm

1 hearing that a lot down here.

2 MR. SCHNECK: Yeah, I mean again, nine years
3 ago when I had started renting out the building
4 everybody had cars, and it was an issue. But now
5 people don't want the added expense. It's one less
6 bill a month to pay, so they've been you know, doing
7 bikes a lot. So, you know, again, I still have a car
8 but most of the folks --

9 MR. HOOD: Okay.

10 MR. SCHNECK: -- I have rented to, haven't.

11 MR. HOOD: The Chairman is looking at me like,
12 where are you going with this? I'm just making a
13 point. Okay. Thank you.

14 MS. MAZO: Just two points for the record for
15 -- to address Mr. Hood's comments. First of all, the
16 certificate of occupancy for the building is in the
17 record at Exhibit 8B, and it indicates that the
18 certificate of occupancy is for a five-unit apartment
19 building with two required parking spaces, so there is
20 a certificate of occupancy for an apartment house.

21 The other thing I wanted to raise, and we --
22 and it was cited to in our initial application, but we
23 created a -- my colleague created a lovely graphic,
24 but there is -- the area is indicated to have
25 excellent transit as Chairman Hood indicated that

1 under walk score it's an 85 transit score that it's
2 within .2 miles from the Metro, that it's within .1
3 miles of many, many bus lines, and so the area is very
4 well served by transit and so, in addition to the fact
5 that we're providing more than the required parking
6 spaces, we are certainly of the opinion that there
7 will be no impact, no substantial -- substantially
8 negative impact on the public good due to the FAR or
9 the court area, or court lot width variances requested
10 in regards to parking.

11 MR. HOOD: Ms. Mazack (sic), I didn't really
12 make the case about the walking score. I just want to
13 correct the record. So, I want to make sure that
14 that's clear. I'm not trying to -- his case. I'm
15 just trying to figure out how we can work this out
16 with -- even though I've probably pushed the limit
17 within the authority of the BZA. So, I don't want you
18 to say that Anthony Hood said. I'm not making his
19 case for him.

20 MS. MAZO: No, I'm sorry. I appreciate that,
21 but I just did want the Board to be aware that there
22 is, you know, quite a bit of transit in the area and
23 that the parking concern is -- well, the perception is
24 probably valid -- not valid. While the perception is
25 probably there, it's not relevant to the issues before

1 the Board, and as determined by DDOT.

2 CHAIRPERSON HILL: Okay. The -- all right.
3 Does the Board have any other questions? Okay. All
4 right. I'm going to close the hearing.

5 Is the Board ready to deliberate?

6 [No audible response.]

7 CHAIRPERSON HILL: Okay. I was going to say
8 that -- and I am interested now in hearing what my
9 board members have to say. I mean, as far as, again,
10 the parking, I mean, I do think that I'm sure that as
11 the opposition is stated, I'm sure parking is a
12 difficult thing in the neighborhood there. And I
13 think that it is -- it would be a good neighborly
14 thing to do, obviously, for the applicant to try to
15 work with their tenants if this does work forward, to
16 you know, encourage, encourage not to have a car. I
17 mean, I don't know if that's, you know, how that is,
18 just to try to help out the neighborhood.

19 I think that the Office of Planning has made a
20 very good report in terms of how the applicant has
21 reached the relief or the standard for the relief
22 being granted and I do appreciate the report from the
23 Office of Planning. I also am very encouraged that
24 the ANC had a unanimous vote for this application.
25 And, as Mr. Chairman Hood has mentioned, that that

1 particular ANC, I guess, is actually very active and
2 aware of this and what this building might do. I'm
3 also encouraged that there is in fact, even though the
4 applicant -- and I think that the applicant's attorney
5 is doing a good job in doing what they're supposed to
6 do. But, you know, driving home the fact that they're
7 providing more parking spaces than is necessarily
8 needed, I don't again, for a practicality standpoint,
9 now whether that's going to help the neighborhood.
10 But I do think that the case has been made to approve
11 this application.

12 So, I would be in approval of it. Does the
13 Board have any other comments?

14 MS. WHITE: My comment would be that I'm
15 pretty much on board with what you said. Obviously, I
16 live in the city so I'm very sensitive to parking
17 issues, but it is a good thing that you have two
18 parking spaces in the back. So, I would encourage you
19 to use those as much as possible when the street
20 starts to get very busy.

21 Very impressed with the building, as well as
22 the David White building as well. I'm very
23 comfortable that you're preserving the look and the
24 feel of that neighborhood. So, those are my comments.
25 I think with the support of ANC, as well as Office of

1 Planning, I think they've met the test here.

2 CHAIRPERSON HILL: Chairman Hood, do you have
3 anything to add?

4 MR. HOOD: I don't have any more to add. I
5 think Ms. Mazack (sic) has really drilled it home, the
6 code, to me. But I also am a realist. I know what
7 you're dealing with up there because I'm in that area
8 and I can't -- I don't come sometimes because I can't
9 find a parking space.

10 So, I would just say, continue as the Chairman
11 has mentioned, to try to work with the -- work with --
12 I asked you to work with the community and you all
13 work it out because these things do work out. They
14 work out. But at some point, in time it will find a
15 way to work itself out. I believe that. And I
16 believe that a lot of people who may come to your
17 establishment, or come to reside, may not have cars.
18 That's what I've been hearing a lot down here for the
19 past two years. May not have cars. And a lot of
20 people tell me they don't have cars.

21 So, Mr. Chairman, I think the facts and the
22 merits of this case warrants approval and I will be
23 voting in support of it.

24 CHAIRPERSON HILL: All right.

25 MR. HART: Yeah, Mr. Chairman, thank you. I

1 on first look at the drawings and not actually looking
2 at the case, because sometimes I'll actually go
3 through and just, what is my kind of reaction to the
4 proposal itself, and then start looking at and
5 reviewing the rest of the case. I was a little bit
6 hesitant because of the size and scope of what it was
7 being proposed, because it is a -- it's a different
8 type of construction.

9 Looking at the -- or reading through the
10 information that you supplied regarding how you meet
11 the three-prongs of the variance test for both the FAR
12 and for the court, I think that you have actually
13 proved that you meet those prongs for both of those
14 variances.

15 And, also added in the information about the -
16 - actually, those are the ones that you are really
17 trying to get. I think that you -- that I could
18 support the application. I am still a little bit on
19 the fence, I guess, about the materiality, and I would
20 encourage you to work with your next-door neighbor,
21 Mr. Kalala. And to try to understand what can work in
22 that instance because I think that that's, you know,
23 it is a historic resource for a reason and being able
24 to make sure you kind of meet with that and understand
25 that you work within that context is -- would be

1 helpful.

2 So, with that very long discussion, I would
3 like to propose that we -- that the Board approve Case
4 No. 19453. I would move, make a motion to approve it.

5 MR. HOOD: Second.

6 CHAIRPERSON HILL: Okay, the motion has been
7 made and seconded.

8 [Vote taken.]

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

10 MS. MAZO: Summary order, Chairman Hill.

11 MR. MOY: Staff would record the vote as four,
12 to zero, to one. This is on the motion of Vice Chair
13 Hart to approve the application for the relief
14 requested. Seconded the motion, Mr. Hood. Also in
15 support, Ms. White and Chairman Hill. We have a board
16 seat vacant. I'd like to also add, with that motion,
17 with regards to the plans. Earlier I mentioned -- I
18 only cited Exhibit 71, Tab B, but for clarification
19 for the record, it's sheet number A, as in Alpha,
20 1001, which is the revised cellar and first-floor
21 level plan. The other remaining sheets are under
22 Exhibit A, Tab C.

23 So, again, the motion carries, sir.

24 CHAIRPERSON HILL: Okay, thanks. And, Ms.
25 Mazo, if you just give me a break like, just let the

1 vote happen first, get all the way through, okay,
2 because then you never know, right? Maybe we'll just
3 do a full order now, right? You know. So, we're
4 going to do a summary order, but I thank you very much
5 for doing your job for your client. So, again, all
6 right. Thank you.

7 We're going to take a quick break. Thank you.

8 [Off the record from 11:05 a.m. to 11:14 a.m.]

9 CHAIRPERSON HILL: All right, Mr. Moy, you can
10 go ahead and call the next case. But just before you
11 do, I just kind of overheard a question. I mean, we
12 are going to probably break for lunch before the
13 appeal. And so, if you're here for the appeal, I'm
14 going to say, I can't be sure. Like, we'll probably
15 be here for another -- I'm going to guess the appeal
16 won't be any earlier than 12:00, 12:15, something like
17 that. So, but I can't be sure. It's kind of, you're
18 on your own. I'm just letting you know that we're
19 going to do the appeal after lunch, so. Okay? All
20 right.

21 Mr. Moy, if you could call the next case when
22 you get a chance?

23 MR. MOY: Yes, sir. Thank you, Mr. Chairman.

24 I see that the parties are at the table. Not to
25 disappoint them, this would be case Application No.

1 19454 of Kathleen Kern. This application has been
2 amended and is now before the Board for a special
3 exception relief under Subtitle F, Section 5201, from
4 the nonconforming structure requirements of Subtitle
5 C, Section 202.2, lot occupancy requirements, Subtitle
6 F, Section 304.1. This would renovate and expand an
7 existing two-story, one-family dwelling into a three-
8 story, one-family dwelling, RA-2 Zone, 2212 12th
9 Street, or rather, 12th Place Northwest, Square 271,
10 Lot 127.

11 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
12 If you could please introduce yourselves from my
13 right to left?

14 MR. LOUSLE: Richard Lousle, project
15 architect, Kube Architecture.

16 MS. KERN: Kathleen Kern, owner/occupant of
17 2112 12th Place.

18 MR. DOUGHERTY: Matthew Dougherty. I'm with
19 Kube Architecture.

20 CHAIRPERSON HILL: Okay. So, who's going to
21 be presenting to us today?

22 MS. KERN: I'll talk to it a little bit and
23 then I'll hand it over to the architects.

24 CHAIRPERSON HILL: Okay. All right. So,
25 before I -- before you start, just kind of want to

1 point out a couple of things I guess for you for your
2 presentation.

3 Again, kind of hearing a little bit about the
4 project and how you meet the criteria for the special
5 exception, I mean, the Office of Planning is currently
6 opposed to the application, and I'll have a chance to
7 kind of speak to them as well. Or the Board will, I
8 should say.

9 And they were, again, asking for more
10 information concerning how the light and air was going
11 to affect the neighbors. In particular, I guess,
12 2214. So, you might want to kind of start with there
13 as well, or make sure you highlight that area. I'm
14 going to go ahead and just put 10 minutes on the clock
15 just so I know kind of where we are as we're trying to
16 move through our docket today.

17 And so, then after that, go ahead and turn it
18 over to you. All right.

19 MS. KERN: Okay. That's 10 minutes for all of
20 us, or 10 minutes for each?

21 CHAIRPERSON HILL: It's 10 minutes for all of
22 you.

23 MS. KERN: Okay. So, I'll be real quick about
24 it. Again, I'm the owner/occupant. The idea is to
25 extend the dogleg to the full width of the property

1 and add a third-floor addition in accordance with the
2 Historic Preservation rules for setback and height,
3 and of course comply with the FAR limits.

4 I have to apologize that I was just made aware
5 of the issue with regard to the light and other --

6 CHAIRPERSON HILL: The Office of Planning.
7 Okay. All right.

8 MS. KERN: Okay. Right. Yesterday.

9 CHAIRPERSON HILL: Okay.

10 MS. KERN: So, it's unfortunate.

11 CHAIRPERSON HILL: Okay.

12 MS. KERN: So, we haven't been able to --

13 CHAIRPERSON HILL: All right.

14 MS. KERN: -- to do anything about that.

15 CHAIRPERSON HILL: Okay. Well, we'll hear
16 more from the Office of Planning and then address
17 their concerns. But okay, so is that the end,
18 basically for that and then you can turn it over to
19 the architects, then, I guess, to tell a little bit
20 more about the project before we turn to the Office of
21 Planning?

22 MR. LOUSLE: Right. And Office of Planning
23 seems to be our major issue right now because we had
24 approval from ANC Design Committee by unanimous votes.
25 We have -- Kathleen has gotten approval from the

1 neighbor to the south.

2 MS. KERN: Right.

3 MR. LOUSLE: Yes.

4 MS. KERN: 2210 and the one straight in front
5 of me, and I believe that's 2213.

6 MR. LOUSLE: So, we, like Kathleen said, we
7 just found out yesterday by phone call to my
8 colleague, Matt, that the Office of Planning was not
9 approving this because of the dogleg window that
10 exists in the neighbor's property.

11 So, we would be prepared to do a sun study or
12 a shadow study, if that's what they're asking for. It
13 wasn't quite clear what we needed to do.

14 CHAIRPERSON HILL: Okay. Okay.

15 MR. LOUSLE: The addition is a floor, third-
16 floor is set back from the street. We did a flag
17 study, so it's set back approximate 18 feet, I
18 believe.

19 MS. KERN: Fourteen.

20 MR. LOUSLE: Fourteen feet.

21 MS. KERN: Fourteen and a half.

22 MR. LOUSLE: So, it would not be visible from
23 public space.

24 CHAIRPERSON HILL: Okay. Okay. I am going to
25 turn to the Office of Planning, actually, because that

1 seems like the best way to go at this point. But
2 before I do that, does the Board have any questions
3 before I turn to the Office of Planning?

4 [No audible response.]

5 CHAIRPERSON HILL: Okay. Good morning, Office
6 of Planning.

7 MS. BROWN-ROBERTS: Good morning, Mr. Chairman
8 and members of the BZA. For the record, I'm Maxine
9 Brown-Roberts from the Office of Planning.

10 I just want to say, before I go into the
11 analysis, that I did speak to the architect's
12 representative concerning my concern about the light
13 to the adjacent property. I know I spoke to them more
14 than once about it.

15 Secondly, I did send him a copy of my report
16 when I filed it with the BZA, so at least one
17 representative had the information and had my
18 concerns. Okay?

19 Again, the relief that they're asking for is
20 for the lot occupancy, to go from the 60 percent
21 permitted, up to 62.8 percent, and -- I'm sorry. This
22 -- up to 69.8 percent, where 70 percent is allowed by
23 special exception.

24 In Section 5201, that outlines all the
25 conditions that the applicant has to meet. One of

1 them concerns the light and air, and that is the only
2 area where we have the concern. There is an addition
3 in addition -- there is an addition, a third-floor
4 addition. Also, the filling in of the court area,
5 which increases the lot occupancy. And from the
6 pictures that we've seen, the adjacent neighbor has a
7 window within his court area that we believe will have
8 some problems with light and air.

9 I did ask the applicant that if that is
10 addressed, then I'd be able to support the
11 application.

12 In addition to that, I asked them to speak to
13 the adjacent neighbor concerning that because I think
14 he submitted a very strong letter of being not in
15 support. And so, that is the issue that concerns me
16 as well as the adjacent neighbor. And I'm available
17 for questions.

18 CHAIRPERSON HILL: Okay, great. Thank you.
19 And, Ms. Brown-Roberts, I know that you've been
20 serving here for a long time, working here for a long
21 time. I'm sure you've been thorough with the way that
22 you tried to reach the applicant, and I'm sorry that
23 you all seem to have missed each other in terms of the
24 information that she would have needed to have gotten
25 to the point where she possibly -- Ms. Brown-Roberts,

1 and also does a fantastic job with her job, I might
2 say. And so, I think you are going to have to provide
3 further information to her in terms of the light and
4 air, as it is particularly I guess, addressed to two -
5 - let me just look at the address here again. Was it
6 -- yeah, 2214, Ms. Roberts, is that the --

7 MS. BROWN-ROBERTS: Yes, 2214 14th -- 12th
8 Place.

9 CHAIRPERSON HILL: Okay.

10 MS. KERN: Chairman, may I interrupt you?

11 CHAIRPERSON HILL: Just one second.

12 MS. KERN: Okay.

13 CHAIRPERSON HILL: That's all right. So, does
14 the Board have any questions of the Office of
15 Planning?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. I do just again.
18 So, the further clarification that you were asking for
19 from the applicant was what again?

20 MS. BROWN-ROBERTS: To demonstrate that the
21 light and air of the adjacent neighborhood would not
22 be substantially impacted by the addition, and also
23 the filling in of the court.

24 CHAIRPERSON HILL: And that would be like, so
25 as the applicant had mentioned, like a sun study would

1 be helpful for that or --

2 MS. BROWN-ROBERTS: Whatever way --

3 CHAIRPERSON HILL: Okay.

4 MS. BROWN-ROBERTS: -- they can do it.

5 CHAIRPERSON HILL: Okay.

6 MS. BROWN-ROBERTS: And they did not -- I
7 haven't found anything in the record that address the
8 letter that came from the neighbor. I don't know if
9 they have had, I just haven't seen it.

10 CHAIRPERSON HILL: Sure, okay. All right.
11 So, I can turn to you. One second. I mean, so just
12 before you comment, again where we are, I think we're
13 probably going to have to come back here. Like,
14 you're going to have to work with the Office of
15 Planning in order to -- because at this point, you're
16 just going to get denied.

17 And so, you know, the light and air issue is
18 how we do address -- you know, it's something that's
19 obviously quite important, particularly to the
20 neighbor there, I guess at 2214. And so, you'll have
21 to kind of overcome that hurdle in terms of satisfying
22 that the Office of Planning does not think -- or
23 should -- does think that this should be approved, and
24 that the light and air is not going to be an issue,
25 right?

1 So now, you had a comment, Ms. Kerns?

2 MS. KERN: Yes, I did. I actually did speak
3 to the owner of 2214. I had tried since October to
4 get in touch with them, and finally had to send a
5 registered, certified letter to his location in
6 Columbia Heights, and he did call me back, and we had
7 about a 20-minute discussion about the project and I
8 had sent him plans, and we went through the project.
9 His concern mainly to me was, during the construction,
10 damage to his property, so forth. So, we worked it
11 out, let him know that I'd be in constant contact with
12 him. If he had any problems all he had to do was call
13 me. And he let me know nothing of his concern with
14 regard to the issue.

15 In fact, the property is actually vacant.
16 2214 has never been occupied since I've owned my
17 property in 2015, September of 2015. And I think it
18 was prior to then.

19 CHAIRPERSON HILL: Okay. That's all right. I
20 mean, it's not always --

21 MS. KERN: I know -- I'm not --

22 CHAIRPERSON HILL: It's not always going to be
23 vacant, so, you know.

24 MS. KERN: Right. I'm not saying that we're
25 not going to do what you ask us to do.

1 CHAIRPERSON HILL: Sure.

2 MS. KERN: It's just that I haven't been given
3 the opportunity to do it.

4 CHAIRPERSON HILL: You haven't been given the
5 opportunity to do it? Pardon? Go ahead.

6 MS. BROWN-ROBERTS: I'm sorry. In Exhibit,
7 I'm not sure what the number is, but actually, it's
8 2212 12th, 12th Place.

9 CHAIRPERSON HILL: No, I'm sorry. The --

10 MS. KERN: That's my address.

11 CHAIRPERSON HILL: -- applicant's address
12 is --

13 MS. BROWN-ROBERTS: Oh, okay.

14 CHAIRPERSON HILL: -- 2212. I'm speaking
15 that --

16 MS. BROWN-ROBERTS: Okay. 2214. You're
17 correct.

18 CHAIRPERSON HILL: 2214. Okay. That's all
19 right.

20 So, well, I guess go ahead and try to reach
21 back out. So, submit something to the record, okay,
22 for the 2214. And you know, you have -- and I
23 understand you're not an attorney or a zoning
24 attorney. But I mean, you have had the opportunity to
25 go through the process. I mean, you have gone to the

1 ANC. You do have to work with the Office of Planning.
2 There has been opportunity or time to address some of
3 these issues.

4 So again, what I would recommend is again
5 working with the Office of Planning to see how you can
6 get their, you know, how they get on board with this
7 and not be concerned with their issues. They just
8 don't have enough information at this point to go
9 ahead and give you an analysis.

10 So, does the Board have any questions from the
11 applicant or for the applicant, because I think we're
12 going to continue this.

13 All right. I'm going to go ahead and I guess
14 I'll ask if there's people here. Mr. Lousle?

15 MR. LOUSLE: I just want to speak with --

16 CHAIRPERSON HILL: Ms. Brown-Roberts.

17 MR. LOUSLE: Afterwards, to see where this
18 information was sent because I think we got a phone
19 call yesterday at the office.

20 CHAIRPERSON HILL: Okay. I mean that --

21 MR. LOUSLE: So, I'm sure that's --

22 CHAIRPERSON HILL: That's fine. I mean, I
23 mean, Ms. Brown-Roberts is really good at her job and
24 she's very nice, and so whatever the confusion was,
25 it's fine. But I mean, you've got to --

1 MR. LOUSLE: I just want to make sure it
2 doesn't happen again.

3 CHAIRPERSON HILL: Sure. Sure. That's fine,
4 yeah. Then you can -- no, that's great. Then you can
5 -- whoever is going to be in trouble on your side,
6 that's fine. I'm sure she'll be happy to tell you.

7 So, is there anyone here wishing to speak in
8 support of -- is there anyone here from the ANC? Is
9 there anyone here wishing to speak in support of the
10 application?

11 [No audible response.]

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

14 [No audible response.]

15 CHAIRPERSON HILL: Okay. So, you guys know
16 what you need to do now, correct, moving forward?

17 Mr. Moy, when can we reschedule this? Do you
18 want to do it for when Mr. Hood is back here again, or
19 Chairman Hood is back here again?

20 MR. HOOD: I don't necessarily have to be
21 here, Mr. Chairman, because I don't think you all got
22 into the merits, really.

23 CHAIRPERSON HILL: That's fine, if Chairman
24 Hood doesn't want to come back that's okay. I
25 understand. I understand. That's all right.

1 MR. MOY: All right. This is a continued
2 hearing, sir, you said?

3 CHAIRPERSON HILL: Yes, sir.

4 MR. MOY: So, if that's the case, because
5 actually --

6 CHAIRPERSON HILL: When does Chairman Hood
7 come back? Just curious.

8 MR. MOY: Actually, April 5th, but April 5th
9 is a -- it's kind of a --

10 CHAIRPERSON HILL: It is a very, very heavy
11 day.

12 MR. MOY: It would be difficult.

13 CHAIRPERSON HILL: Okay.

14 MR. MOY: I would recommend not putting this
15 on that day, unless you want to.

16 CHAIRPERSON HILL: We can't do it April 5th.

17 MR. MOY: So, I'm not sure how long it would
18 take the Board to work with OP and to prepare a sun
19 study, study. But I would suspect at least two weeks,
20 right? Or less? Do you want less than two weeks?

21 CHAIRPERSON HILL: Well, April 5th is not that
22 -- April 5th is two weeks away. So, the next thing
23 you could be here is, it's the week after -- I need a
24 calendar right in front of me.

25 MR. MOY: It would be the 12th. I would make

1 it the 12th.

2 CHAIRPERSON HILL: The 12th. Okay.

3 MR. MOY: April 12th.

4 CHAIRPERSON HILL: So, April 12th.

5 MR. MOY: April 12th works.

6 CHAIRPERSON HILL: That will give enough time
7 for Ms. Brown-Roberts? Okay. All right. So, April
8 12th.

9 MR. MOY: April 12th, and then if the
10 applicant can make their filing into the record, let's
11 say a week prior. Let's say, I'm going to make it
12 Tuesday, April 4th. Is that good for the applicant,
13 Tuesday, April 4th, make your filing?

14 CHAIRPERSON HILL: And then that will give the
15 Office of Planning enough time.

16 Oh, I'm sorry, a supplemental report.

17 MS. BROWN-ROBERTS: When do we have to have --

18 CHAIRPERSON HILL: So, April --

19 MS. BROWN-ROBERTS: April 4th?

20 CHAIRPERSON HILL: April 4th is when you're
21 going to get --

22 MR. MOY: Because what we could do is have the
23 applicant submit sooner, earlier, to allow OP time to
24 review the materials, then --

25 CHAIRPERSON HILL: How much time do you need,

1 Office of Planning, if we do it on the 12th?

2 MS. BROWN-ROBERTS: On the Friday prior to the
3 12th.

4 MR. MOY: That would be April 7th?

5 MS. BROWN-ROBERTS: Yes.

6 MR. MOY: Okay.

7 [Discussion off the record.]

8 CHAIRPERSON HILL: So, we'll get the Office of
9 Planning's report on the 7th.

10 MS. BROWN-ROBERTS: Yes.

11 CHAIRPERSON HILL: Okay. And that means that
12 you'll get your information on the 12th. I'm sorry.
13 When is the applicant submitting, Mr. Moy?

14 MR. MOY: Tuesday, April 4th.

15 CHAIRPERSON HILL: Okay. So that will give
16 you enough time?

17 MS. BROWN-ROBERTS: Yes. Yes. That will give
18 me --

19 CHAIRPERSON HILL: Okay.

20 MS. BROWN-ROBERTS: -- enough time.

21 CHAIRPERSON HILL: All right. Okay, great.
22 All right. We'll see you all back here at that time.
23 Okay? Thank you.

24 [Pause.]

25 MR. MOY: Mr. Chairman, the next case

1 application is 19457 of Realty Associates Fund, the
2 11XI, I guess, or X1, LP, captioned and advertised for
3 a special exception relief under the penthouse
4 requirements, Subtitle C, Section 1504.1. This would
5 renovate and expand an existing penthouse in the D-6
6 Zone. Address is 1411 K Street Northwest, Square 217,
7 Lot 807. And, just to remind the Board, the ANC 2F
8 did make a filing yesterday in support.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr.
10 Moy, really, you can just follow me around all day and
11 tell me about things that I don't know, because I was
12 -- I did not know that the ANC report had arrived.
13 All right. So, if you could please just introduce
14 yourself from my right to left.

15 MS. RODDY: Hi. My name is Christine Roddy
16 with Goulston and Storrs.

17 MS. HOTTEL-COX: Megan Hottel-Cox, also with
18 Goulston and Storrs.

19 MR. DIZ: Joaquin Diz, from MGMA, the
20 architects.

21 MR. D'AGOSTINO: Jim D'Agostino, MRP Realty.

22 CHAIRPERSON HILL: Okay. So, who's going to
23 present today?

24 MS. HOTTEL-COX: I'll be starting, and then
25 we'll turn it over to the project architect and the

1 applicant to walk through some of it.

2 CHAIRPERSON HILL: Okay. Okay. Great. Thank
3 you. So, the questions that I really had in terms of
4 like the presentation was, I guess there was some
5 question from the Office of Planning in terms of the
6 second proposed rooftop egress stairway. And so,
7 that's something that I guess if you could address.

8 And then I did have questions about the ANC,
9 but now that the report is here, maybe you could tell
10 me just a little bit about the ANC meeting.

11 But other than that, does the Board have any
12 particular things they'd like to hear from the
13 applicant?

14 [No audible response.]

15 CHAIRPERSON HILL: Okay. Then, Mr. Moy, if
16 you could just go ahead and put 10 minutes on the
17 clock for me, just so I know where we are? And then,
18 I'm going to go ahead and let you start.

19 MS. HOTTEL-COX: Good morning. My name again
20 is Mega Hottel-Cox, and I'm an attorney with Goulston
21 and Storrs representing the property owner. With me
22 is my colleague, Christine Roddy, Joaquin Diz, with
23 MGMA, the project architect, and Jim D'Agostino, the
24 applicant.

25 We are here this morning requesting special

1 exception relief to add an addition to an existing
2 mechanical penthouse and convert it to a habitable
3 penthouse at 1411 K Street Northwest. The subject of
4 this application is an existing 14-story building,
5 office building along K Street Northwest, with a
6 public alley at the rear of the property.

7 The penthouse project provides an opportunity
8 to create amenity space for existing office tenants at
9 the building, and we're seeking special exception
10 relief from both the uniform habitable penthouse
11 height requirement, and the rear one-to-one setback
12 requirement for the penthouse addition.

13 The existing penthouse space is above the 20-
14 foot height limit allowed in the D-6 Zone District.
15 The existing penthouse space at this height will be
16 maintained to keep the elevator access to the roof,
17 but the addition will be at a much lower height,
18 reducing the overall profile of the penthouse, but
19 necessitating the relief for the unevenable -- the
20 uneven habitable penthouse height.

21 Additionally, based on the building code, the
22 habitable penthouse must have two means of stair
23 egress. The penthouse has one means of stairwell
24 egress that is compliant with the setback
25 requirements. However, the only viable option to

1 provide a second means of egress is to bring the
2 building's existing rear stairwell up to the penthouse
3 structure. This existing stairwell is located at the
4 rear of the building which necessitates the rear
5 setback relief.

6 It is worth noting that the building
7 incorporates a step-down approach from the top floors
8 so that the penthouse, while not set back on that one-
9 to-one basis from the immediate roof wall, is set back
10 more than the required one-to-one ratio from the lower
11 level walls.

12 Before I turn this over to our witnesses, I am
13 happy to report that we are here today with the
14 support of the Office of Planning and the District
15 Department of Transportation. Additionally, the ANC
16 submitted a resolution into the record showing
17 unanimous support for the project and the requested
18 relief.

19 We've presented to both the ANC Community
20 Development Committee, and had unanimous support from
21 the committee there, and then they referred the case
22 to the overall ANC and we received unanimous support
23 from them.

24 So, we have two witnesses today, Mr.
25 D'Agostino with the applicant, and Joaquin Diz, who we

1 are offering as an expert in architecture. His resume
2 was submitted with our prehearing statement into the
3 record.

4 So, with that, I'll turn it over to Mr.
5 D'Agostino to talk through kind of the purpose behind
6 the penthouse project briefly, and then Mr. Diz can
7 walk through the plans and specifically focus on that
8 question from the Office of Planning.

9 MR. D'AGOSTINO: Thank you, Mr. Chairman.
10 Board members. What we are trying to do here is just
11 create a rooftop amenity for the tenants to utilize.
12 What we're seeing is the trend in real estate right
13 now. People are reducing the amount of square footage
14 that they're utilizing and renting in the suites
15 themselves. And we're looking for a lot more common
16 areas and the ability to utilize amenity spaces within
17 the building. Some small conferencing areas, small
18 informal meeting areas. And that's what we're hoping
19 to provide here in this rooftop area.

20 It's an existing building built in 1957, I
21 believe. It's been an office building since its
22 inception. It's currently occupied as an office
23 building and we plan on maintaining it as an office
24 building. And we think this could be a really great
25 amenity for our tenants.

1 MR. DIZ: Good morning. Good morning. I'll
2 just jump into the project and I'll go very briefly
3 through the project and I'll address the stair
4 question.

5 The penthouse today holds -- about a quarter
6 of the space holds the shaft for the elevator, and a
7 mezzanine space where the motors for the elevators
8 exist. The rest of it has the controls for the
9 elevator, but it's a large space. It just has those
10 old controls from the original building.

11 The penthouse is -- consists of two levels.
12 One volume is 20 feet above the roof. The other one
13 is 10-foot 10. We are not going to change those
14 heights, and we are just trying to occupy the large
15 volume by modernizing the elevators and removing the
16 current controls that are in that space, so that space
17 becomes available for an amenity on the roof.

18 And then from that space we would go out into
19 the -- a rooftop terrace, and we would also be adding
20 a small conference room that as Mr. D'Agostino pointed
21 out, is an amenity that is greatly appreciated in
22 these buildings today.

23 The plan consistent -- consists of that small
24 volume towards the front, and we are then continuing
25 the roof at the level of the lowest volume of the

1 penthouse. And we basically have to add that
2 extension to reach the required bathrooms for that
3 level, and to reach the second means of egress. That
4 second means of egress is stacked over the existing
5 stair, so I believe you have the plan which would be
6 the last drawing. That one shows -- that one shows
7 where the stair is stacked, and that is part of the
8 core of the building. Currently the 14th floor is
9 occupied, so there are tenants there. And since these
10 cores, these stairs have to be raided, the
11 continuation of that stair is the only logical
12 location is to continue that stair up as a second
13 means of egress from the roof.

14 MS. HOTTEL-COX: And just to clarify, Mr. Diz,
15 there are no other stairwells, besides the two that
16 could be taken up to the penthouse besides the two
17 that are being taken up to the penthouse. Is that
18 correct?

19 MR. DIZ: That's correct. There's one that
20 currently goes up to the top and the other one that we
21 would carry one floor up.

22 MS. HOTTEL-COX: And it wouldn't be possible
23 to construct a new stairwell because that would be
24 within existing tenant office space, and that would
25 have to somehow connect through that building code

1 proof area to the existing stairwell anyway.

2 MR. DIZ: Right. If we were to bring up a
3 stair we would have to then connect to the existing
4 vertical stair going down, and we would have to have a
5 fire rated connection, which would break up the tenant
6 space on that 14th floor.

7 MS. HOTTEL-COX: That concludes our
8 presentation, but we're happy to answer any questions
9 from the Board.

10 CHAIRPERSON HILL: Okay, thank you. And for
11 the record, I had mentioned -- I had wanted to mention
12 this at the beginning, but I did review the resume of
13 Mr. Diz and he was not in our book, I guess, of
14 experts. So, unless the Board has any objection I
15 would include him now as an expert witness. Okay.
16 Congratulations.

17 All right. I'm going to -- does the Board
18 have any questions right now for the applicant?

19 MR. HOOD: Yeah, I do. I'm trying to make
20 sure I can understand the one-to-one setback.

21 CHAIRPERSON HILL: Oh, for the penthouse?

22 MR. HOOD: Yeah.

23 CHAIRPERSON HILL: One-to-one setback?

24 MR. HOOD: Yeah, why we're not meeting it. I
25 think I got it, but why are we not meeting the one-to-

1 one setback? If you could use the arrow for me?

2 CHAIRPERSON HILL: Yeah, if you use your
3 cursor there on -- or there's a laser pointer over
4 here as well, which either would work for you.

5 MR. DIZ: Okay. And just go one more slide.
6 Okay, where's the laser?

7 CHAIRPERSON HILL: There's a laser pointer
8 right up here. Mr. Moy is holding it for you.

9 MR. DIZ: Okay. So, this is the existing
10 penthouse right here. We're not changing that height.
11 That remains as it is. This is the area that we are
12 occupying, we will be occupying. The setback --

13 MS. HOTTEL-COX: No, he's talking about the
14 rear setback.

15 MR. DIZ: Oh, you're referring to the rear
16 setback? The stair -- sorry. Okay. The stair --

17 MR. HOOD: The amenity space.

18 MR. DIZ: The amenity space --

19 MR. HOOD: Yeah.

20 MR. DIZ: -- is up here at the front.

21 MR. HOOD: Okay. Yeah, well, let's talk about
22 the amenity space first and then we can go to the
23 rear.

24 MR. DIZ: Okay. So, this existing volume is
25 20-feet tall, 20-feet, eight-inches. And that, the

1 one-to-one hits that corner right there. That's the
2 existing condition. We are not changing the height of
3 that. We are leaving the height as-is. Okay?

4 MR. HOOD: Let's go back to the other setback.
5 So, you're not -- you're requesting relief on both
6 sides, correct?

7 MS. HOTTEL-COX: No, we're only requesting
8 relief at the rear of the building. The rear of the
9 building is not set back on a one-to-one basis from
10 the roof wall, because it needs to capture that
11 existing stairwell as Mr. Diz testified to capture
12 this building code required second-means of egress.
13 So, it is set back on a one-to-one basis from the
14 lower level building wall, because the building
15 incorporates a stepdown approach. But at the top
16 level it's not set back on a one-to-one basis.

17 MR. HOOD: Okay. All right. Let me --

18 MR. DIZ: I can clarify that a little further.

19 MR. HOOD: Yeah, help me.

20 MR. DIZ: Yeah.

21 MR. HOOD: So, I can make sure.

22 MR. DIZ: The building steps down right here,
23 then there's another step. So, the property line is
24 where that line is right there. Our stair is right
25 here. This is the entrance to the stair. Currently

1 what exists there is that little bump out, which is
2 where the slab above the stair -- if I go -- if you'll
3 allow me to go to the page -- bear with me a second.
4 Oh, sorry.

5 MR. HART: Can you hit control-L at the same
6 time? It will make it larger.

7 MR. DIZ: Currently, this is the stair, the
8 existing stair that goes up to the 14th Floor. It
9 doesn't go up to the roof. This is the only stair
10 that goes up to the roof. So, what we're doing is
11 extending this stair up, which you can see in the
12 section right there. That's a little bump out that
13 exists on the roof on that view that we had from the
14 side. So, we're just carrying this up.

15 What happens is that on the floor above, the
16 stair will be in line with this exterior wall. It's
17 not the property line because this steps back, and
18 then further down it steps back a little further.

19 MR. HOOD: So, the stair is preventing you
20 from meeting that one-to-one setback.

21 MR. DIZ: Correct.

22 MR. HOOD: Okay.

23 MR. DIZ: But we don't find any other logical
24 place to put it since the best way to get a stair, a
25 fire rated stair, is to continue the stair shaft up to

1 the roof, and we do need two means of egress from the
2 roof.

3 MR. HOOD: And to meet that setback you have
4 to do some -- a whole lot of other stuff. Okay. I
5 got it. I've heard that. Okay.

6 MR. DIZ: All this space right here is tenant
7 space. So, if we wanted to take a stair up, we would
8 have to come into a tenant space. But then we would
9 have to have a corridor that runs from this stair, all
10 the way up to there, which would have to be rated a
11 corridor, an enclosed corridor space to connect --

12 MR. HOOD: Okay.

13 MR. DIZ: -- that stair over to the other.

14 MR. HOOD: Okay. I think I got this one.
15 Okay. Thank you.

16 CHAIRPERSON HILL: And, Chairman Hood, also I
17 appreciate that, actually because like I know that the
18 Zoning Commission, whenever there is a penthouse thing
19 that's going on here, the one-to-one setback is the
20 topic that is constantly discussed. And it's
21 difficult to get any of you guys to like understand,
22 appreciate, or believe that there is --

23 MR. HOOD: Understand.

24 CHAIRPERSON HILL: No, I think believe is
25 actually the right word that I'm thinking of, that

1 this is necessary. So, it seems like, you know, you
2 all are lucky.

3 So, does anyone have any more questions of the
4 applicant at this point?

5 [No audible response.]

6 CHAIRPERSON HILL: All right. So, I'm going
7 to turn to the Office of Planning.

8 MR. GOLDEN: Good morning, Mr. Chair, members
9 of the Board. Bryan Golden with the Office of
10 Planning.

11 After hearing the applicant's testimony, we're
12 satisfied that they've demonstrated the condition that
13 was outlined in our report, and continuing to
14 recommend approval.

15 CHAIRPERSON HILL: Go ahead, Ms. White.

16 MS. WHITE: No, that was going to be my
17 question because I did read that there was some
18 hesitancy in OP's report. So, I was hoping that there
19 was going to be that connection after you gave your
20 testimony with OP, so thank you.

21 CHAIRPERSON HILL: Does anyone have any
22 questions for the Office of Planning?

23 [No audible response.]

24 CHAIRPERSON HILL: Does the applicant have any
25 questions for the Office of Planning?

1 MS. HOTTEL-COX: No.

2 CHAIRPERSON HILL: All right. Is there anyone
3 here wishing -- is there anyone here from the ANC? Is
4 there anyone here wishing to speak in support of the
5 application? Is there anyone here wishing to speak in
6 opposition to the application?

7 [No audible response.]

8 CHAIRPERSON HILL: All right. Is there
9 anything else the applicant would like to provide in
10 conclusion?

11 MS. HOTTEL-COX: No, thank you.

12 CHAIRPERSON HILL: All right. Then I'm going
13 to go ahead and close the hearing. Is the Board ready
14 to deliberate?

15 Well, I'm comfortable with the Office of
16 Planning and now that they are -- have received the
17 information that they feel satisfied to be able to
18 approve in terms of the second egress stairway. I'm
19 also very happy, as I mentioned before, that the
20 Commission is, there is a member of the Zoning
21 Commission here to again clarify the penthouse relief,
22 and also it seems what -- I don't know yet, I haven't
23 heard from Chairman Hood, but that in this case the
24 one-to-one setback could be -- is justified.

25 I also am glad to see that we do have a letter

1 from ANC 2F, which also Chairman Fanning has sent, and
2 I do think that ANC 2F actually is a well-run ANC.
3 And so, I feel comfortable with their support.

4 And so, I would be in approval of the
5 application. Does the Board have any comments before
6 a motion is made?

7 MR. HOOD: Mr. Chairman, I would agree with
8 your comments and I think if I do this wrong, I'm sure
9 my colleagues will hit me over the head. But one of
10 the things we did as we've always stated, we put those
11 regulations in place we like to -- we don't like to
12 put something in place and then turn around and waive
13 it the very next week.

14 But I think in this case, as Ms. Roddy knows,
15 in another case, the stairwell, I think, is the issue,
16 and I think you can't get around this already
17 existing, and any calls or a lot of other -- it might
18 be doable, but it's not -- I don't understand how to
19 get it done. So, as I said earlier, I'm sure if I do
20 this wrong my colleagues will hit me over the head but
21 I think this warrants the relief on the one-to-one
22 setback because of the existing stairwell.

23 CHAIRPERSON HILL: All right. And then with
24 that I'd go ahead and make a motion to approve
25 Application No. 19457 as read by the secretary.

1 MR. HART: Seconded.

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

4 [Vote taken.]

5 CHAIRPERSON HILL: Motion passes, Mr. Moy.

6 MR. MOY: Staff would record the vote as four,
7 to zero, to one, this is on the motion of Chairman
8 Hill to approve the application for the relief
9 requested. Seconded the motion is Vice Chair Hart.
10 Also in support, Mr. Hood, Ms. White, board seat
11 vacant. Motion carries.

12 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
13 Can we get a summary order?

14 MR. MOY: Thank you.

15 CHAIRPERSON HILL: Thank you all very much.

16 [Discussion off the record.]

17 MR. MOY: The next case application, if the
18 Board can have parties to the table, is Application
19 No. 19458. This is of 3G 1G 1352 Randolph Street
20 Northwest, LLC, as captioned and advertised for a
21 special exception relief under the RF use requirements
22 of Subtitle U, Section 320.2. This would expand an
23 existing one-family dwelling into an apartment house.
24 This is a RF-1 Zone at 1352 Randolph Street
25 Northwest, Square 2825, Lot 112.

1 CHAIRPERSON HILL: All right. Great. Thank
2 you, Mr. Moy.

3 If you could please introduce yourself from my
4 right to left?

5 MS. TORRES: Good morning. I'm Hilda Torres.

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

8 MS. TORRES: Hilda.

9 CHAIRPERSON HILL: Hilda?

10 MS. TORRES: Hilda Torres.

11 CHAIRPERSON HILL: Torres.

12 MS. TORRES: I live at 1321 Randolph Street.

13 CHAIRPERSON HILL: All right.

14 MS. BOYKIN-PAYNE: Good morning. My name is
15 Lillie Boykin-Payne. I live at 1328 Randolph Street.

16 CHAIRPERSON HILL: All right. Thank you.

17 MR. SULLIVAN: And good morning, Mr. Chairman
18 and members of the Board. My name is Marty Sullivan
19 with Sullivan and Barros on behalf of the applicant.

20 MR. ALI: Ramy Ali with Ram Design, the
21 project architect.

22 CHAIRPERSON HILL: All right. Now so, Ms.
23 Torres and Ms. Boykin, I assume you're here in
24 opposition. Is that correct?

25 MS. TORRES: Yes.

1 MS. BOYKIN-PAYNE: Yes.

2 CHAIRPERSON HILL: Okay. Then, you'll have an
3 opportunity at the end. We're going to go through
4 their presentation there, but you're welcome to just
5 sit there.

6 All right. So, Mr. Sullivan, I guess -- well,
7 first am I correct, Mr. Moy, was there a motion to
8 waive filing requirements for updating the plans? Or
9 a time? I forget.

10 MR. MOY: Supplemental information is due 14
11 days prior to the hearing. So, if it came in less
12 than that then there would be a waiver of the time
13 requirements.

14 CHAIRPERSON HILL: Okay. Well, I mean, since
15 the -- as I recall, the changes were being made to
16 appease somebody. So, I would be comfortable if the
17 Board is all right, to waive the requirements.

18 So, Mr. Sullivan again, the -- I guess when
19 you're going through your presentation if you could --
20 I don't see, unless it's going to come in, in the next
21 few minutes, I haven't seen the ANC report yet. So, I
22 don't know if there is one. If you can explain
23 exactly what the situation is with the ANC? As you're
24 going through the project as well as how in fact you
25 do meet the requirements for granting, and I'll go

1 ahead and start with that. You can see that there are
2 some people here speaking in opposition. But we can
3 get to what their issues are as well as we kind of
4 work through this. And if it's all right, Mr.
5 Sullivan, I'll go ahead and put 10 minutes up on the
6 clock for you just so I know where we are.

7 MR. SULLIVAN: Okay. Thank you, Mr. Chairman.
8 I just received the ANC resolution --

9 CHAIRPERSON HILL: Okay.

10 MR. SULLIVAN: -- this morning, and they e-
11 mailed it here too, but I just had it printed
12 because --

13 CHAIRPERSON HILL: Okay.

14 MR. SULLIVAN: -- it came in 20 minutes ago.

15 CHAIRPERSON HILL: Okay. If you can pass it
16 out to the secretary?

17 [Pause.]

18 And you'll add that to the record. It's, I'm
19 sorry, it's in the record.

20 MR. SULLIVAN: I believe they did e-mail it to
21 Mr. Moy. The Chair did. And the reason why this was
22 held up was he was, the ANC wanted the applicant to
23 come to an agreement with a neighbor regarding future
24 solar panels, and they did. And I wasn't aware that
25 he was waiting for that agreement and the agreement

1 was executed a few days ago, and so we gave him a copy
2 of the agreement and he gave us the resolution. So,
3 that's the reason why we're just getting it today.

4 CHAIRPERSON HILL: Okay. All right. So, go
5 ahead again. And as I mentioned I'm going -- Mr. Moy,
6 if you'd just start the clock again? I'm sorry.
7 We're going to go ahead and give you 10 minutes there
8 and just -- and work us through the presentation.

9 MR. SULLIVAN: Okay. I'll hand it over to the
10 architect, Mr. Ali.

11 MR. ALI: The project on 1352 Randolph is an
12 existing single-family dwelling that we are converting
13 to a three-unit apartment building by proposing a
14 third-floor addition over the existing building
15 footprint. This way we're keeping the back elevations
16 all aligned with adjoining neighbors, and the third-
17 floor addition will be sitting back 10 feet from the
18 front exterior wall to keep all the rooflines, all the
19 architectural elements on the front to be intact, and
20 rethemed, and to put into new condition.

21 The front façade, the third-floor front façade
22 will of course match the existing materials that we
23 have which is basically brick. Windows I'll be using
24 are going to be matching double-hung windows as well
25 and capped by a wood cornice on top of that third-

1 floor addition.

2 As far as the back, the existing condition
3 have vinyl siding that we will be replacing with new,
4 and extending all the way up to the third floor.
5 We're also proposing a private roof-top deck for the
6 unit number 3 that's accessed from the third floor up
7 to that roof deck. And that roof deck will be off 20
8 percent of the building footprint and set back from
9 the exterior walls as well.

10 As far as the lot occupancy, we are way
11 beyond. We are at 47 percent, leaving us with a very
12 big back yard, which is making us easily achieve the
13 35 percent or more. The pervious surface parking and
14 trash will be accessed from the public rear alley as
15 it is today. And we have a fire control room that is
16 accessed from the front yard, down to an area way at
17 cellar level.

18 We met with the community and the neighbors,
19 and of course we went through the ANC presentations.
20 We did have a couple of concerns that the neighbors
21 had that we satisfied in full, and I can quickly
22 summarize those concerns such as having to provide
23 certain type of fences. Each adjoining neighbor had a
24 certain preference. One of them had a -- wanted us to
25 maintain a six-foot high fence, the other wanted us to

1 keep a low fence. Other conditions that they required
2 us to comply with is the rear concrete steps in the
3 back. We maintained that existing stair. The
4 existing metal stairs getting to the first floor we're
5 also -- we're maintaining that portion of the existing
6 conditions.

7 And one last item is the item that Mr.
8 Sullivan just brought up, was the future solar panels
9 that the neighboring property is hoping to install in
10 the near future. And that was in negotiation with my
11 client that just got resolved two days ago, which was
12 holding that support letter from the ANC, which I
13 think that all is resolved by now. And that concludes
14 my presentation.

15 CHAIRPERSON HILL: All right, great. Does the
16 Board have some questions for the applicant? All
17 right. Please go ahead. Please.

18 MR. HART: Just a minor question. And, just
19 looking at the drawings themselves, this drawing shows
20 the width of the building is 18 feet.

21 MR. ALI: Correct.

22 MR. HART: From property line to property
23 line. And there was another drawing that shows, if
24 you go back a couple of drawings, a third floorplan
25 that shows 18-5. Can you just describe what that,

1 what I'm kind of looking at?

2 MR. ALI: I'm sorry, which drawing shows 18-5?

3 MR. HART: The third-floor plan. And I'm
4 assuming that it's just a -- it's just a typo, but I
5 just want to make sure that I kind of understand.

6 MR. ALI: No, I think this actually -- because
7 it's the 18-foot is center line to center line. I
8 think that dimension extends to the width of the party
9 wall. So, that's why that five-inch difference. So,
10 that dimension is incorrect. It needs to show as 18
11 feet center line to center line, and not include the
12 full width of the party wall.

13 MR. HART: So, which one is correct?

14 MR. ALI: The 18 feet.

15 MR. HART: Eighteen feet is.

16 MR. ALI: Yes.

17 MR. HART: Okay. That's fine. I'm fine. I'm
18 sorry. Thank you.

19 CHAIRPERSON HILL: That's all right. Please.
20 So, if I can hear from -- or if we could hear from
21 the Office of Planning, please?

22 MS. THOMAS: Good morning, Mr. Chair. Karen
23 Thomas for the Office of Planning.

24 We are in support of this request for
25 conversion of the single-family dwelling into three-

1 unit apartment, having satisfied the requirements of
2 section, of Section 320 under Subtitle E-U. We're
3 satisfied that the applicant acknowledged our request
4 to shift the addition further back from the front to
5 respect the architecture of the roof, the existing
6 architecture. And the applicant acknowledged that and
7 set the addition 10 feet back as requested.

8 So, with that, we are in support of this
9 application and rest on the record.

10 CHAIRPERSON HILL: All right. Thank you, Ms.
11 Thomas. I do -- I mean, I have your report in front
12 of me here and I do appreciate in detail, how you came
13 to your conclusions. Since there are people here that
14 are going to be speaking in opposition, just for them
15 and for me again, could you kind of clarify your
16 thought process as to how they're achieving the
17 criteria?

18 MS. THOMAS: Sure. Going -- well, going
19 through the test, the -- first of all, the applicant
20 did not -- we requested -- we were satisfied as well
21 that the applicant did not extend the addition beyond
22 the existing footprint. We looked at the fact that
23 they satisfied -- the lot size satisfies the 900-
24 square foot minimum that it would -- that is part of
25 the requirement. The addition didn't extend beyond

1 the rear wall, as I said.

2 And at the time, we did not know about any
3 solar panels or any type of roof structure issues with
4 any abutting neighbors, but the applicant has made
5 that clear, that that will be satisfied, and they have
6 come to some agreement. So, we will support that.

7 And we believe that it met all the provisions
8 of the requirement under Subtitle U.

9 CHAIRPERSON HILL: Okay. All right. Great.
10 Thank you. Does the Board have any questions for the
11 Office of Planning?

12 [No audible response.]

13 CHAIRPERSON HILL: Does the applicant have any
14 questions for the Office of Planning?

15 MR. SULLIVAN: No, we do not.

16 CHAIRPERSON HILL: Okay. All right. So, I'm
17 going to see, is there anyone here from the ANC
18 wishing to speak? Is there anyone here wishing to
19 speak in support of the application? Is there anyone
20 else wishing to speak in opposition to the
21 application?

22 [No audible response.]

23 CHAIRPERSON HILL: Okay. All right. So, Ms.
24 Torres. So, I'm going to go ahead and give you three
25 minutes to speak, and you can go ahead and give your

1 testimony in terms of your opposition to the
2 application. If you just want to go ahead and push
3 the green button there, and you can tell -- give us
4 your testimony.

5 MS. TORRES: Oh, good morning. All I just
6 want to say is my issue is for parking. We have a lot
7 of trouble with the parking every time we're coming
8 home. So, if they're building some -- we have a more
9 buildings in the corner right there by 13 Street, and
10 then we have one for 14 and 13. We have enough
11 building already.

12 Plus, it's a lot of business around the corner
13 and everywhere, so we don't find a space to park.
14 It's hard for us when we come to work -- from work,
15 and then we're looking for a space to park. We got to
16 go around almost an hour to looking for it, for an
17 hour. And then when we have this new building, how we
18 going to do it? That's my point. Especially parking.

19 CHAIRPERSON HILL: Okay.

20 MS. TORRES: Thank you.

21 CHAIRPERSON HILL: Thank you, Ms. Torres. Ms.
22 Broker? Boykin. Boykin?

23 MS. BOYKIN-PAYNE: Boykin.

24 CHAIRPERSON HILL: Boykin, thank you.

25 MS. BOYKIN-PAYNE: [Speaking off microphone.]

1 CHAIRPERSON HILL: No, Ms. Boykin, just go
2 ahead, just lean forward and just push your microphone
3 there. And I'm also going to put three minutes on the
4 clock for you as well.

5 MS. BOYKIN-PAYNE: I'm one of the few people
6 who live on Randolph Street who was raised on Randolph
7 Street. I am 71 years old. Marlene Coffey, my next-
8 door neighbor, is 99. And we have elderly people on
9 the block. We have children on the block. I have my
10 oldest great-grandson, who is six years old.

11 If they take up, bring more people in there,
12 they're going to bring more pets in there. And we
13 have dog -- enough dog poop all over everywhere. They
14 even come up in the front yard and do it in the yard
15 next to the steps. Owners don't clean up behind the
16 dogs.

17 It's the traffic, the buildings. We already
18 have apartment buildings. They just put a new pop-up
19 on the alley. We don't need another one in the middle
20 of the block.

21 I'm against them changing the zoning law and
22 putting a pop-up in the middle of the block. If they
23 bring a construction -- they start construction, they
24 bring those dumpsters in, and that takes up anywhere
25 from three to four parking spaces. The people they

1 put in there, how many cars or more cars are they
2 going to build along with the restaurant, people from
3 there bringing their cars on the street and park.

4 If I'm not in the house by 5:30 and parked, I
5 don't get a parking space unless it's two blocks away.

6 Walking with a six-year old at 7:00 at night is not
7 good. And I am definitely against it. Thank you.

8 CHAIRPERSON HILL: Thank you, Ms. Boykin. Ms.
9 Boykin, where do you live on the road again, now?

10 MS. BOYKIN-PAYNE: 1328.

11 CHAIRPERSON HILL: And how is that in relation
12 to the proposal?

13 MS. BOYKIN-PAYNE: It's on the same side of
14 the street.

15 CHAIRPERSON HILL: Do you know how far over it
16 -- how many units over it is?

17 MS. BOYKIN-PAYNE: It's, I think about eight
18 blocks -- eight houses.

19 CHAIRPERSON HILL: Eight houses. Okay. I'm
20 just trying to get a relationship here.

21 And then, Ms. Torres, also, where are you
22 located? Where do you live in --

23 MS. TORRES: 1321.

24 CHAIRPERSON HILL: Okay. And how close is
25 that to the proposed property?

1 MS. TORRES: It's like six, six houses.

2 CHAIRPERSON HILL: Six houses. Okay. Okay.
3 All right. So, does the Board have any questions for
4 the witnesses?

5 MS. WHITE: I just wanted to comment. I
6 obviously can really sympathize with your comments
7 about the parking, you know. I have parking issues as
8 well. But one question I had is whether or not the --
9 you have residential parking restrictions on your
10 street, and does that help at all?

11 MS. BOYKIN-PAYNE: No, because of the
12 restaurants, with those, the restaurants really don't
13 open up until 5:00 in the evening. They have meters
14 up there, but they don't have a lot of parking spaces,
15 so the parking spills over into Randolph Street.

16 CHAIRPERSON HILL: Okay.

17 MS. WHITE: Thank you.

18 CHAIRPERSON HILL: Yes, sir. Of course, Mr.
19 Hood.

20 MR. HOOD: Can I just make a suggestion? This
21 won't be but a minute. I don't know what all the
22 ramifications are, but for seniors in this city they
23 have where, in front of your home you can -- that
24 space can be designated just for you. I'm not sure
25 exactly how that works. I know some seniors that I've

1 helped, that I have actually helped in Ward 5, in
2 front of their home from like a post to post, that
3 spot will be reserved -- I don't know what the
4 regulations are on it, but I would ask that you
5 probably check into that because you're walking with a
6 six-year old. You don't need to be walking around all
7 night.

8 So, if you look and see what that says, check
9 into that, and if you have any problems I would
10 encourage you to call your councilmember's office and
11 his constituent service person may be able to help you
12 with that. Okay? That's just my recommendation.
13 It's not within our jurisdiction, but that will help
14 you out with being able to park in front of your home.
15 All right?

16 MS. BOYKIN-PAYNE: Thank you.

17 CHAIRPERSON HILL: Okay. Thank you, Chairman
18 Hood.

19 The applicant, so now -- and how many units is
20 this again, for me, just to --

21 MR. SULLIVAN: Three.

22 CHAIRPERSON HILL: Three units. Right. And
23 these are just going to be for sale? At this point,
24 do you know?

25 MR. ALI: Yes.

1 CHAIRPERSON HILL: Okay. All right. Well, I
2 mean, I don't know where we are and we'll see where we
3 get to this, but if you could put something in your
4 offerings, or try to put something in your public
5 offerings to, you know, hopefully encourage, if anyone
6 has pets, to curb their -- you know, to make sure they
7 pick up after them would be something to kind of
8 clarify in your offerings.

9 The conditions that -- actually, I do have a
10 real quick question for the two witnesses. Did either
11 one of you happen to get a chance to go to the ANC
12 meeting?

13 MS. BOYKIN-PAYNE: They don't even send -- I
14 don't know when the ANC meetings are because we don't
15 get any notice.

16 CHAIRPERSON HILL: Okay.

17 MS. BOYKIN-PAYNE: The only notice that I got
18 was in the mail about this meeting.

19 CHAIRPERSON HILL: Okay. All right. And I'm
20 sorry, Ms. Boykin, that you didn't go to the ANC
21 meeting, but they do have it -- I guess, I don't know
22 when your ANC meets, but they meet on the same day
23 every month, at the same time and place. I mean, that
24 won't necessary help you for your discussion for this
25 project because your ANC has already now approved this

1 project. And so, but I just make note of that for
2 future references for you because I know the ANC --
3 you know, I go to my ANC meeting every month and they
4 want to hear from the residents there and hear kind of
5 their thoughts.

6 Mr. Sullivan, the conditions, there's -- I
7 mean, again, we just got this, and you just presented
8 it to us, just now. I mean, have you looked through
9 these are you -- some of them are -- I don't even know
10 if necessarily we can address some of them here now.
11 I mean, I'm trying to see how we would incorporate
12 these. Have you had a chance to review them?

13 MR. SULLIVAN: We have, and actually I think
14 they were discussed even prior to the ANC meeting.
15 There was a lot of work done with the ANC and with the
16 neighbors. So, I believe that these conditions were
17 fully developed with the cooperation of the applicant
18 and the ANC together. So, yes. We're okay with all
19 of these.

20 CHAIRPERSON HILL: Okay. So, you're -- give
21 me one second.

22 [Pause.]

23 CHAIRPERSON HILL: So, Mr. Sullivan, I'm just
24 going to walk through these real quick and make sure
25 you're comfortable with all of them, because some of

1 them I don't know if I'm comfortable with.

2 So, repairing and extending the chimney
3 projection located at 1354 Randolph at the expense of
4 1352 Randolph Street project.

5 MR. SULLIVAN: Yes.

6 CHAIRPERSON HILL: Okay. The tree located in
7 the back yard causing landscape damage to 1354
8 Randolph to be trimmed and cut back at areas to
9 permanently prevent future damage if found at the
10 premises of 1352 Randolph. Such work to be performed
11 at the expense of 1352 Randolph project.

12 MR. ALI: Correct.

13 CHAIRPERSON HILL: Okay. So, yes is good.
14 We'll just go with yes. Thank you.

15 1354 Randolph retaining wall located at the
16 garage portion along the property line to be repaired
17 or replaced at the expense of 1352 Randolph Street
18 project.

19 MR. ALI: Yes.

20 CHAIRPERSON HILL: The general contractor
21 contact performing the work on 1352 Randolph to become
22 immediately available to Mr. and Mrs. Palmer, once
23 selected.

24 MR. ALI: Yes.

25 CHAIRPERSON HILL: The majority of the third-

1 floor addition will be screened by the existing added
2 ceiling height of the second floor in addition to the
3 existing sloped clay shingled roof, leaving
4 approximately three inches, plus or minus, projection
5 -- feet, sorry. Three feet, plus or minus, projection
6 beyond the existing roof line. However, setback --
7 however, setting it back by five feet from the
8 exterior wall takes the third-floor addition
9 completely out of site when viewed from sidewalk or
10 front yard of 1352 Randolph.

11 MR. ALI: I can clarify that.

12 CHAIRPERSON HILL: Okay.

13 MR. ALI: That was a discussion that was
14 happening back and forth with the neighbors when the
15 third-floor addition was only at five feet setback
16 from the exterior wall. So, that's where that comment
17 is coming from.

18 CHAIRPERSON HILL: Okay. That's all right.
19 So, you resolved that issue. All right. So, I'm not
20 going to put that as a condition, because I've got
21 one, two, three, four conditions. All right.

22 The soil of the -- so, Mr. Moy, if you're
23 following that I've got those first four are now
24 conditions.

25 MS. GLAZER: Mr. Chair.

1 CHAIRPERSON HILL: Yes.

2 MS. GLAZER: I'm going to interject briefly
3 here. I was trying to communicate that I think that
4 some of those conditions are very much beyond the
5 purview of the Board, and the language, there are
6 problems with the language. I would recommend that
7 the Board consider, if they want to reference an
8 agreement between the applicant and the ANC, that
9 would be fine. The Board has done that. But it would
10 not be a Board imposed condition.

11 CHAIRPERSON HILL: All right. So --

12 MS. GLAZER: Some of them are just not
13 appropriate for the Board to impose.

14 CHAIRPERSON HILL: I appreciate that. So,
15 again then, the first four conditions, or not
16 conditions, but the first four items that I mentioned
17 we are going to reference that. Okay?

18 MR. ALI: Correct. Yes.

19 CHAIRPERSON HILL: All right. This next one
20 that I'm going to reference, the soil of the existing
21 -- the soil of the existing shared footing will not be
22 to serve no underpinning of the existing foundation
23 will be required or conducted.

24 MR. ALI: Yes.

25 CHAIRPERSON HILL: The setback will not exceed

1 five feet.

2 MR. ALI: It's actually 10 feet.

3 MR. HART: I think the problem is, we're not
4 really sure what that means, exactly. It says
5 setback --

6 MR. SULLIVAN: Well, that was the purpose of
7 the revision and the need to ask for relief to file a
8 late filing because in response to the Office of
9 Planning. This was approved by the ANC at the five
10 feet with this condition, and then following that it
11 went back another five feet. Following comments, both
12 comments on 319, with -- had the same architect and
13 counsel on this case as well.

14 MR. HART: No, I think that the question is,
15 they said that the setback would not exceed five feet,
16 so that means that if you go to 10 feet, that that
17 would not be something that would be --

18 MR. SULLIVAN: Yeah, I think they got that
19 wrong.

20 MR. HART: Well, I'm just --

21 MR. SULLIVAN: Yeah.

22 MR. HART: That's why I was trying to figure
23 out if it was from the front --

24 MR. SULLIVAN: I know, that -- yeah, that
25 doesn't --

1 MR. HART: Front of the building. Or they're
2 saying that it needs to be less than -- anything less
3 than five feet they wouldn't be --

4 MR. ALI: I think it was phrased wrong. So, I
5 think what they meant is --

6 MR. SULLIVAN: It must have been, yeah.
7 Right.

8 MR. HART: I know. The problem is that we
9 don't have them here, so we can -- we're only guessing
10 and I don't want to necessarily guess to that. So.

11 CHAIRPERSON HILL: Okay. So, I mean, I also
12 am now uncomfortable. I don't know what it is they're
13 necessarily you know, agreeing to. If, Ms. Glazer.

14 MS. GLAZER: I'm just going to say again that
15 I do not think it's appropriate for the Board to
16 impose most of these items as conditions. The
17 language alone, it's vague, and it's not enforceable.
18 And if the Board doesn't know what something means,
19 you certainly can't impose it as a condition.

20 MR. HOOD: I think, Ms. Glazer, your comments
21 are well taken. I think all we have to do is just
22 point to it. We don't need to go through all of these
23 conditions. Just say that there is agreement. But I
24 would suggest that you all get this clarified for the
25 record, and maybe they can resubmit something to us,

1 even though all we're doing is -- in our order, is
2 just pointing to it and said there is agreement.

3 MS. GLAZER: Correct, to reference. These are
4 not to be --

5 MR. HOOD: Because the last one on here --

6 MS. GLAZER: -- conditions of this order.

7 MR. HOOD: Right. But the last one on here is
8 definitely an issue. I don't know how you -- I'd like
9 to know how you all resolved that because the last one
10 is just, it's, we've had the same issue and we
11 discounted it. But I'd like to see how you all
12 resolve that last one.

13 CHAIRPERSON HILL: Well, before you answer
14 that question again, that again right, the last one
15 was I didn't think that it was something that we could
16 resolve, you know, and so -- but I'm still in
17 agreement here with the advice that's been given by
18 the Office of the Attorney General, which is that
19 we're just pointing or referencing what has been in
20 agreement with the applicant and the ANC. And the
21 applicant is agreeing to that. So, I'm comfortable
22 with that.

23 MR. HOOD: And I think, though, that Board
24 Member's Hart question about the five feet, all -- I
25 think the ANC letter says we are pointing to it, needs

1 to be rectified. That's all I'm saying because
2 regardless of whether we make it a condition or not,
3 and obviously as we've already been counseled, I think
4 though, if anybody ever looks back at this record,
5 then there's going to be an issue about the five --
6 the setback will not exceed five feet.

7 So, I think you need to go back to the ANC, my
8 opinion, and correct some of that, because we're going
9 to be pointing to it in our order, just letting them
10 know that you all have an agreement.

11 MR. SULLIVAN: Okay.

12 MR. HOOD: And if anybody ever files anything
13 on that, that's what they're going to look at, and
14 they're going to look at it shouldn't be, the setback
15 will not exceed five feet.

16 I don't know, Board Member Hart, is that kind
17 of where you were?

18 MR. HART: Yeah, it just was -- it was just
19 very -- it is unclear and that doesn't help --

20 MR. SULLIVAN: Right.

21 MR. HART: -- the case, because it sounds like
22 the ANC is actually against something that is more
23 than five feet, and this is actually more than five
24 feet,
25 so --

1 MR. SULLIVAN: Right.

2 MR. HART: -- you know, how do we then use the
3 ANC report to be able to --

4 MR. SULLIVAN: Right.

5 MR. HART: -- say that they support this
6 application, or they only support it if it actually
7 goes no more than, you know --

8 MR. SULLIVAN: Right.

9 MR. HART: -- no more than five feet. So, I
10 think that there are some --

11 MR. SULLIVAN: Okay.

12 MR. HART: -- just concerns that --

13 MR. SULLIVAN: Okay.

14 MR. HART: Concerns on clarity. It's not
15 necessarily concerns on the project itself.

16 MR. SULLIVAN: Right.

17 CHAIRPERSON HILL: Okay, so what I -- just
18 okay, I've got to stop you now, so just for a second,
19 Mr. Sullivan. Like, I'm now confused enough that I'm
20 not going to be able to move forward anyway, in terms
21 of making a decision at this moment. I mean, I think
22 that if you could just get a clarifying, a further
23 clarifying letter, from the ANC that has language that
24 is not confusing, then we can point to that, point to
25 that in a meeting case. So, that's what I'd like to

1 see.

2 And so, and does the Board have any other
3 questions about that issue? Although, I can see Ms.
4 Glazer wants to say something, and that's fine, but I
5 hope it's going to help me.

6 MS. GLAZER: Well, I hope it will help you.

7 CHAIRPERSON HILL: Okay.

8 MS. GLAZER: My suggestion, I think that
9 that's a good recommendation, but my suggestion would
10 be perhaps the applicant could draft something for the
11 ANC's signature that would actually be in agreement
12 that could be referenced.

13 MR. SULLIVAN: I mean, I don't know if we have
14 to go back to the ANC for that or not. I mean, it
15 does -- they did authorize the single-member district
16 commissioner or any member of the executive committee
17 to communicate the resolution and to represent the ANC
18 before the BZA. So, maybe they could do that?

19 We know what they meant by the setback because
20 we've had additional discussions with them. But I
21 understand. So, I think they would do a follow up
22 letter, no problem.

23 CHAIRPERSON HILL: Okay. That's fine.

24 MR. SULLIVAN: Yeah. Okay.

25 CHAIRPERSON HILL: I mean, Mr. Sullivan, just

1 I mean, this last one, the setback will not exceed
2 five feet, it's confusing enough that --

3 MR. SULLIVAN: Understood.

4 CHAIRPERSON HILL: -- you know. So, if you
5 can go ahead and do that and provide that? So, I'll
6 close the record other than for that. Okay? And --
7 sure, go ahead.

8 [Pause.]

9 CHAIRPERSON HILL: And, so yeah. So, then if
10 we can get that from you, Mr. Sullivan. When do you
11 think we might be able to get that from you?

12 MR. SULLIVAN: Well, it would be up to the
13 Chair of ANC 4C, but I'm sure he would be very
14 responsive.

15 CHAIRPERSON HILL: That's clear. I mean --

16 MR. SULLIVAN: He has been.

17 CHAIRPERSON HILL: -- and just to let you
18 know, like, we just got this also, right? So, there's
19 only so much I can do as well.

20 MR. SULLIVAN: Right.

21 CHAIRPERSON HILL: Because I know that our
22 schedule now, moving forward, we just had to
23 reschedule something for the 12th. So, this won't
24 even be on the meeting case until the 12th.

25 MR. SULLIVAN: Okay.

1 CHAIRPERSON HILL: Okay, at the earliest,
2 right? So, Mr. Moy then --

3 MR. SULLIVAN: I would expect to have it this
4 week.

5 CHAIRPERSON HILL: Okay. Okay.

6 MR. SULLIVAN: Yeah. If you could set some
7 dates for me?

8 MR. MOY: Okay. This is for a decision
9 meeting, Mr. Chairman, which is what I just heard.

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: So, I think given the magnitude of
12 the case load for the Board, I would set it for any
13 hearing date after -- on or after April 12th.

14 So, in other words, we can do April 12th or
15 April 19th.

16 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
17 know enough about the project in terms of like whether
18 that week is going to affect you guys that much?

19 MR. SULLIVAN: The sooner the better is all I
20 know. And I mean, yes. I mean, it's --

21 CHAIRPERSON HILL: Okay. All right. That's
22 okay.

23 MR. SULLIVAN: -- (simultaneous speech) so --

24 CHAIRPERSON HILL: So, we'll go with the 12th.
25 We'll go with the 12th. Okay.

1 So, then when do we need -- when do we need
2 the information from the applicant, Mr. Moy?

3 MR. MOY: Well, I think I heard the applicant
4 say that he could provide this within the week. But
5 with April 12th, let's give as much lead time as we
6 can if it's -- if we're talking about a confirmation
7 or clarification letter from the ANC. So, let's say
8 April 5.

9 CHAIRPERSON HILL: Okay.

10 MR. MOY: As the deadline.

11 CHAIRPERSON HILL: Okay. Mr. Sullivan.

12 MR. SULLIVAN: That's great. I just want to
13 clarify, it's mainly the five-foot setback issue is
14 the major thing that needs --

15 CHAIRPERSON HILL: I would do --

16 MR. SULLIVAN: -- clarifying.

17 CHAIRPERSON HILL: I would do as suggested by
18 the Office of the Attorney General, go ahead and draft
19 language that the ANC could sign off on, and so that's
20 what I would like to see in the record.

21 MR. SULLIVAN: Okay.

22 CHAIRPERSON HILL: Okay? So, I mean, we get
23 something from the ANC approving this language, and
24 then I could point to it and then we -- okay?

25 MR. SULLIVAN: Okay.

1 CHAIRPERSON HILL: All right. So, and this is
2 already in the record, I think, correct? Is what you
3 were saying?

4 MR. SULLIVAN: Yeah.

5 CHAIRPERSON HILL: It's already been
6 submitted.

7 MR. SULLIVAN: Yes.

8 CHAIRPERSON HILL: To the record. So, this
9 lady's -- the people who are in opposition here, this
10 is in the record now if you wanted to go ahead and
11 take a look at that. So, all right. Okay.

12 MS. BOYKIN-PAYNE: Excuse me, could I ask a
13 question?

14 CHAIRPERSON HILL: Wait. What -- okay, sure.

15 MS. BOYKIN-PAYNE: Does this mean that you're
16 going to change the residential zoning on Randolph
17 Street and anybody can come in there and buy a
18 property and put a pop-up?

19 CHAIRPERSON HILL: I don't know what we're
20 going to do yet. I mean, again, I'm still waiting to
21 get to where we're deliberating as a Board. We do
22 everything just as a case-by-case basis in terms of
23 whether or not relief has been -- the criteria has
24 been met for the relief to be granted, so no. The
25 answer is no. Okay?

1 All right. So, then that's the end with us.
2 Anybody have any other question before we let the
3 applicant go?

4 [No audible response.]

5 CHAIRPERSON HILL: All right. All right.
6 Okay. Thank you, gentlemen. Thank you, ladies.

7 MR. MOY: All right, I believe the next case
8 application is Application No. 19425 of William Gowin,
9 advertised and captioned for special exception relief
10 under the rooftop upper floor addition requirements
11 under Subtitle E, Section 206.1A. This would add a
12 third-floor with roof deck to an existing flat, RF-1
13 Zone, 30 Quincey Place Northeast, Square 3521, Lot 57.

14 And yes, this is an amended application
15 because there was a withdrawal from the previous
16 request under the height requirements.

17 CHAIRPERSON HILL: We seem to have lost
18 Chairman Hood. So, oh, he's back.

19 Okay. If you could please -- do you need a
20 plug or something? Are you okay? All right.

21 If you could please introduce yourself from my
22 right to left?

23 MS. GARDNER: Linsey Gardner. I live at 30
24 Quincey Place Northeast.

25 MR. GOWIN: William Gowin, owner of 30 Quincey

1 Place Northeast.

2 CHAIRPERSON HILL: Okay. So, we asked for a
3 bunch of things and I guess maybe you can just tell me
4 what happened since the last time?

5 MR. GOWIN: Last time you asked for some
6 pictures of the other pop-ups on the block for the e-
7 mail from one of the opposing neighbors, and for the
8 renderings of what it would actually look like for the
9 two options, and to showing the fix of the roof deck
10 setback requirements.

11 CHAIRPERSON HILL: So, there was the issue
12 with the railing. Did that get resolved?

13 MR. GOWIN: I believe so.

14 CHAIRPERSON HILL: Okay. You believe so.
15 Right. So, turn to the Office of Planning.

16 MR. GOWIN: I mean, we did the same design
17 that multiple other ones you guys have approved, so.

18 CHAIRPERSON HILL: Okay. All right. Is --
19 does the Board have any questions for the applicant?

20 [No audible response.]

21 CHAIRPERSON HILL: I was trying to figure out
22 what's -- all right. Let's see. So, I'm going to go
23 ahead and turn to the Office of Planning again, and if
24 you could just give me your thoughts, please?

25 MS. FOTHERGILL: Good afternoon. For the

1 record, I'm Anne Fothergill with the Office of
2 Planning. As the applicant mentioned, since the
3 hearing they submitted revised plans and they're
4 showing a parapet wall for the roof deck, and it is
5 the applicant's architect's understanding that this
6 complies with the regulations and does not require any
7 zoning relief for setbacks.

8 CHAIRPERSON HILL: Okay. So, you're
9 continuing to be in support. Is that what you said?

10 MS. FOTHERGILL: We reviewed the application
11 and the review criteria, and on balance we supported
12 the waiver. But we do -- you know, there has been a
13 lot of discussion about the turret and we do recognize
14 that that's a significant architectural element of
15 this house.

16 CHAIRPERSON HILL: But you do approve the
17 plans?

18 MS. FOTHERGILL: On balance, and reviewing the
19 criteria we supported the application, yes.

20 CHAIRPERSON HILL: Okay. Thank you. So, all
21 right. Does anybody have any questions for the Office
22 of Planning? All right.

23 Does the Board have any -- well, I already
24 asked this question. All right. Going to go out
25 here. Is there anyone here from the ANC? Again, we

1 did this last time. We're going to do it again. Is
2 there anyone here from the ANC? Is there anyone here
3 wishing to speak in support of the application? Is
4 there anyone here wishing to speak in opposition of
5 the application?

6 [No audible response.]

7 CHAIRPERSON HILL: All right. We did all that
8 the last time, so -- you would like to speak in -- you
9 can speak in opposition if you'd like.

10 MS. GARDNER: Wasn't our hearing closed?

11 CHAIRPERSON HILL: I don't -- did we close it?

12 MR. GOWIN: You did.

13 MS. GARDNER: Yeah, there was --

14 CHAIRPERSON HILL: Well, hold on one second,
15 then. I'm sorry. Just one second. I'm sorry.

16 Mr. Moy, did we close the hearing?

17 MR. MOY: I believe, according to the notes,
18 Mr. Chairman, the Board requested the supplemental
19 information which is bulleted in your case folders.

20 CHAIRPERSON HILL: Okay.

21 MR. MOY: But I don't recall -- typically, the
22 Board will close the record except for the following.

23 But I think probably out of an abundance of caution
24 you may want to allow --

25 MS. GLAZER: Mr. Chair.

1 CHAIRPERSON HILL: Yes.

2 MS. GLAZER: According to my notes, the record
3 was closed except for the additional information that
4 was requested and the revised plans.

5 CHAIRPERSON HILL: Okay. All right, Ms.
6 Glazer. Then I apologize. I'm sorry, I didn't
7 realize the record had already been closed.

8 All right. Okay. So, is the Board ready --
9 oh, sorry. Does the Board have any further questions
10 of the applicant?

11 MR. HOOD: I'm a little concerned about --
12 okay. We closed the record. Did we leave it open for
13 -- the young lady who came in, is she a party? Was
14 she a party? I can't remember. We didn't have any
15 parties in this case.

16 MS. GLAZER: No, there were no parties in
17 opposition. There were witnesses from the
18 Preservation League who testified in opposition as
19 persons in opposition.

20 MR. HOOD: Okay. Okay. And that was -- okay.
21 All right.

22 CHAIRPERSON HILL: So, you're good?

23 MR. HOOD: Yeah, I --

24 CHAIRPERSON HILL: [Speaking off microphone.]

25 MR. HOOD: Well, one of the things that I'm --

1 I know this is not a zoning hearing, but one of the
2 things that I'm reluctant as, I'm going to use Mr.
3 Moy's great words, abundance of caution. While, is it
4 recorded that we closed it? If not, if we have
5 different information then we let people respond to
6 the information. I don't know, that's my concern.
7 Did people respond to the information?

8 MS. GLAZER: The Board can decide to reopen
9 the record if there's a cause to do that, but the
10 Board did close it.

11 MR. HOOD: So, yeah, this is where I am. If
12 she wants to comment on the -- and I understand, you
13 know, everybody saying it was closed and want to get
14 it through. But no, we have to -- I believe we have
15 to operate in abundance of caution because things are
16 also appealed. And I do know for prime example that
17 what the court -- some of the courts look at.

18 So, I would suggest that -- my recommendation
19 is if it's new information we've gotten, that we will
20 allow the witness who is going to comment on new
21 information. If not, if it's nothing new that she's
22 going to comment on, then we don't need to hear from
23 her. But if it's something new then I would suggest
24 that we do that.

25 CHAIRPERSON HILL: Okay. Excuse me, ma'am.

1 Could you come forward again?

2 MR. HOOD: I know emotions are all into these
3 projects. Believe me, I've been here long enough to
4 know that. But I think we need to proceed with
5 caution. That's where I am.

6 CHAIRPERSON HILL: Okay. So, again, as
7 Chairman Hood just mentioned again, out of an
8 abundance of caution and you are here to speak, so
9 could you please state your name and tell me your
10 address, please?

11 MS. McDANIEL: Good afternoon. My name is
12 Betsy McDaniel. I live in Ward 5 and on 1st Street in
13 Bloomingdale.

14 CHAIRPERSON HILL: Okay, Ms. McDaniel, just
15 before -- I have a question. Were you here for the
16 previous hearing?

17 MS. McDANIEL: No, I submitted written
18 testimony but I was unable to attend that day.

19 CHAIRPERSON HILL: Okay. I see. All right.
20 Then, I'm going to go ahead and put three minutes on
21 the clock for you, okay? And we're going to go ahead
22 and hear the testimony that you have to give.

23 MS. McDANIEL: Okay. Well, I submitted
24 written testimony and I haven't reviewed it. But I
25 have great concerns that after working for basically

1 two years to institute the 1411 regulations that this
2 would -- this project would receive support. The
3 block that the house is located on is really one of
4 the most beautiful blocks in the Eckington
5 neighborhood, and it's really one of the most
6 pristine. There have been a lot of pop-ups in the
7 neighborhood, and all of them were pretty much before
8 the 1411 regulations.

9 The new information I wanted to address was a
10 house that they've cited that's being built right now.

11 And I honestly think I asked someone at OP and I
12 asked the neighborhood to check with Zoning, I am not
13 sure that the current project on their block is
14 allowed. They've altered the mansard roof and I don't
15 think that's allowed under 1411, so that it could be a
16 project that is not properly permitted.

17 But the -- I think the OP -- I'm sorry, the
18 D.C. Preservation League report was excellent. So was
19 Sally Burk's reports, showing that, you know, that's
20 seven intact, pristine row houses with turrets. And
21 to put -- to alter the roofline, in the midblock, I
22 think really goes against the guidelines from the new
23 regulations.

24 And that's probably about it. I hope you read
25 my testimony. And the neighbors who live on that

1 block. And I think, I think an example that I would
2 like to point out, since I have the time, is that BZA
3 should be very careful, I think, in requiring that
4 elevations be shown with the project with the abutting
5 neighboring properties. I think Ms. Rebecca Miller
6 presenting a drawing that superimposed the project
7 onto the -- a picture of the row, so that you could
8 see that it is definitely altering the roofline. And
9 that you can see, despite some pictures in the
10 reports, that you can see the roof from across the
11 street. If you're standing under the house itself,
12 you can't really see the roof. But you can see it
13 from either side of the street, when you're down a
14 little bit.

15 I took, one of the pictures in my testimony
16 was from the end of the block, and you can definitely
17 see the turrets, those seven turrets in a row.

18 So, thank you very much for allowing me to add
19 my testimony.

20 CHAIRPERSON HILL: Thank you.

21 MR. HOOD: Mr. Chairman, as a result of that
22 can I ask Ms. Fothergill a question?

23 CHAIRPERSON HILL: Sure, of course. Please
24 do.

25 MR. HOOD: Ms. Fothergill, previously, in the

1 further case it goes to exactly what Ms. McDaniels
2 just mentioned, the Office of Planning's
3 recommendation was to try to preserve that frontage on
4 one of the cases we had previously. I don't want to
5 go to a specific one. Why is it different here?

6 MS. FOTHERGILL: So, as I stated in the last
7 hearing, our initial reaction in seeing the
8 application was to talk to the applicant and encourage
9 them to retain the turret and start their addition
10 behind it, as in the other application that you're
11 referring to, the other case. And the applicant made
12 a strong case for the need for the space combined with
13 strong neighborhood support and a compatible design
14 that was based on other designs of other historic
15 buildings in the area, and the combination of those
16 factors and going through the review criteria we
17 supported the application.

18 But you are correct that in general the goal
19 at the Office of Planning, when we first review an
20 application, is to push the third-story, if that's
21 what they're constructing, back.

22 MR. HOOD: So, you said because of the strong
23 ANC, I guess 5E's support, I think it's 5E. One of
24 them. And the case that the applicant made, that's
25 what swayed the Office of --

1 MS. FOTHERGILL: For this specific
2 application, yes.

3 MR. HOOD: Okay. I don't know if I buy that,
4 Ms. Fothergill. But, you know, I think you're a great
5 person. You work hard, you do a great job. But I
6 don't think I buy that. Okay. I mean, I don't buy --
7 I'm just trying to figure out what's the difference,
8 what happened in Ward 2 as opposed to what's going on
9 here. I just, you know, and I understand Ward 2
10 probably could have made a strong case too, and I
11 think that's open for interpretation. That's just
12 where I am.

13 But anyway, that's why I'm just one vote.

14 CHAIRPERSON HILL: All right. So, let's see.
15 No, I'm sorry, where do you live in relationship to
16 the property again?

17 MS. McDANIEL: I'm several blocks away.

18 CHAIRPERSON HILL: Okay.

19 MS. McDANIEL: But it's the same, same ANC.

20 CHAIRPERSON HILL: Same ANC. Okay. Did you
21 happen to go to the ANC meeting for this particular
22 project?

23 MS. McDANIEL: I don't remember. I think I
24 did, but I don't remember.

25 CHAIRPERSON HILL: Okay.

1 MS. McDANIEL: They've started recording them.

2 CHAIRPERSON HILL: Okay.

3 MS. McDANIEL: Making videos. So sometimes I
4 just watch them. But as I have stated before, our
5 ANC, you know, has a tendency to not do a lot of due
6 diligence. They have in their bylaws that they have
7 to review the civic association report, any vote. So,
8 they pretty much rely on whatever the appropriate
9 civic association --

10 CHAIRPERSON HILL: Okay.

11 MS. McDANIEL: That's how they vote.

12 CHAIRPERSON HILL: Okay.

13 MS. McDANIEL: They pretty much mirror the
14 civic association report. So, I don't know if they
15 did a lot of discussion of it or just --

16 CHAIRPERSON HILL: Okay.

17 MS. McDANIEL: I don't remember.

18 CHAIRPERSON HILL: I was just curious if you
19 were there at that particular meeting and had voiced
20 your opinion on it. So, but that's okay. I was just
21 curious.

22 Does anyone have any further questions for the
23 witness?

24 [No audible response.]

25 CHAIRPERSON HILL: Okay. All right. Thank

1 you very much.

2 All right. Okay. So, does the applicant have
3 anything further they'd like to add?

4 MR. GOWIN: Essentially, yes. So, one, there
5 is only two neighbors opposing. We have had ECA
6 support of 20 plus were there. We've had 25 neighbors
7 actually in the neighborhood supporting us. Mostly
8 from -- 25 from within the 200 feet that have
9 supported this.

10 And the issue, essentially is, everyone keeps
11 on saying that you'll be able to see it. Well, a by-
12 right pop-up, you'd be able to see also. So, I
13 believe the argument doesn't hold weight. So, it's
14 going to affect the block no matter what and you don't
15 get to have an opinion if I do it by-right.

16 So, I've tried to pick a design that was
17 credibly historic. You could, you know, see on just
18 about any neighborhood. And that was really the goal,
19 is that it would look like it was done original. And
20 there is -- and the original -- in the original
21 evidence submitted to the Office of Planning, we
22 showed that there has been -- you know, there's other
23 houses that were original that aren't uniform, right?
24 You might have seven in a row, and then you suddenly
25 have one that's three stories. So, that's pretty

1 common, and the goal is that it actually looks like
2 it's original which is what -- if you look at the two
3 last ones that are submitted from us, I believe 61 was
4 the architect -- revised architectural plans. They
5 will show you what the renderings would look like.

6 CHAIRPERSON HILL: Okay. All right. So,
7 finally again, does the Board have any questions for
8 the applicant?

9 I did have one question, actually. So, when
10 in your previous testimony I think you had spoken
11 about how it's not a historic district and that the
12 neighborhood had decided not to vote for it to be
13 historic district. Can you tell me about when that
14 happened, or were you around for that or --

15 MR. GOWIN: One, I've been in the neighborhood
16 since 2011. In May of 2016, I believe, we've -- the
17 Eckington voted overwhelmingly to not go historic. Or
18 not to pursue historic designation.

19 CHAIRPERSON HILL: Okay. Okay. Chairman
20 Hood.

21 MR. HOOD: I was debating on this because I
22 think it's more on how we look at things, and I just
23 think that I'd like to see stuff predictable across
24 the board. But I think when I looked at the ANC, and
25 actually, Ms. McDaniel, when she mentioned to me that

1 the ANC worked with the civic association in
2 collaborating and I don't know how they work together,
3 but I do know that that actually is a good thing, when
4 the ANC -- being a former civic association president
5 myself, I always collaborated with the ANCs, and we
6 worked together on projects.

7 While this is not a popularity contest, it's
8 more of I think -- I get the historic folks' concept
9 on preserving the front, frontage, and I understand
10 all that. But I think that going back to Ms.
11 Fothergill, while I kind of disagree with the Office
12 of Planning, I will probably be in line of voting for
13 this because of the merits that's here.

14 The Office of Planning's report actually is
15 very good. I just was trying to figure out the
16 difference between the case that we had previously and
17 this one; this person just open to interpretation. In
18 some kind of way we need to be a little more
19 predictable. And I need to figure all the nuances out
20 and it will eventually work out, but it won't work out
21 for this case. I'm actually going to -- if the Board
22 votes in support, I'll be voting in support of it
23 because of the merits that are in front of me.

24 So -- no. Oh, that's what you asked me, a
25 question?

1 CHAIRPERSON HILL: [Speaking off microphone.]

2 MR. HOOD: Oh, I though you asked me for my
3 opinion.

4 CHAIRPERSON HILL: [Speaking off microphone.]

5 MS. GARDNER: Can I actually say something
6 about the ANC meeting?

7 CHAIRPERSON HILL: Okay. Wait one second.
8 That's okay. That's okay. I think you're okay.

9 MR. HOOD: I thought you asked me for my
10 opinion. Okay.

11 CHAIRPERSON HILL: That's okay. I asked if
12 you had any more questions for the applicant. But I
13 didn't interrupt you because I'm going to hear stuff
14 anyway.

15 But, so does anyone have any more questions
16 for the applicant?

17 You'd like to make a comment? Go ahead.

18 MS. GARDNER: Just about the ANC meeting where
19 we discussed this and we presented it. We actually
20 did have quite a long discussion with the ANC. Ms.
21 McDaniel was there, and joined in that conversation.
22 And at that same meeting they actually voted against a
23 project that the ECA had voted to support. So, the
24 idea that they always vote the way the ECA votes is
25 just not -- I mean, we've seen it happen. So, I just

1 wanted to like, put that out there.

2 CHAIRPERSON HILL: Okay. All right.

3 MS. GARDNER: We had a long conversation with
4 the ANC.

5 CHAIRPERSON HILL: Okay. All right.

6 MR. HOOD: Let me just clarify something. I
7 wasn't talking about how people vote. I want to make
8 sure it's clear. See, the record has to be clear, Mr.
9 Chairman. What I was talking about, collaboration.
10 They don't always -- the ANC, when I did it, they
11 didn't always agree with our position and that's just
12 what it's all about in the city. That's why we all
13 have input, and so.

14 CHAIRPERSON HILL: Oh, that's why we're having
15 discussion out in front of everybody, you know. So,
16 because, yeah. All right.

17 So, does anyone have -- all right, I keep
18 asking the same question. Does anyone have any
19 further questions for the applicant?

20 [No audible response.]

21 CHAIRPERSON HILL: All right. So, the
22 applicant has done -- and anything else to add? Okay.
23 I think I know where you guys are, so I don't know.
24 But please, I don't want to stop you. I mean,
25 you've --

1 MR. GOWIN: I guess more to Chairman Hood. I
2 agree, I think, that it's very subjective. And
3 actually one of the pop-ups down the street they are
4 changing the mansard, which by my understanding should
5 be illegal, and is you know, changing the
6 architectural element.

7 But I think it should be a case-by-case basis
8 and if you're doing something that largely, you know,
9 you can show 20 other historic houses will look like
10 this, right, that should be allowed to build versus
11 something that's going to look ultra-modern and it's
12 going change the roofline. Right? Like, that's my
13 point is that this is going to change the roofline of
14 the neighborhood no matter what, and the by-right, or
15 you can hopefully have it look historic and look nice.
16 That's all.

17 CHAIRPERSON HILL: Okay. Thank you. All
18 right. I'm going to close the hearing. All right.
19 The Board is -- is the Board ready to deliberate?

20 Okay. So, I heard a lot of Chairman Hood's --
21 and there's just the three of us, right? Is that
22 correct?

23 MR. HOOD: [Speaking off microphone.]

24 CHAIRPERSON HILL: Right. Exactly. Because
25 Board Member White was not present for this hearing.

1 So, I guess I was again -- and I can tell you
2 where I -- I was actually quite -- I shouldn't say
3 quite torn, but I was thinking about this. This took
4 a lot of thought process in terms of for me because
5 you know, really what the issue was is it was the
6 removal of the turret. And that was -- it wasn't so
7 much that there was going to be something there, as
8 the by-right had been shown. But the turret was going
9 to be removed.

10 And it was that the ANC, you know, they did
11 have an opportunity to also work with the civic
12 association to get to a point where they were able to
13 approve this and agree that the standard has been met
14 for this project.

15 I thought that the Office of Planning -- and
16 it is interesting because again, sometimes the Office
17 of Planning, Chairman Hood would not necessarily agree
18 with the applicant in this that the criteria had been
19 met. But I do think that the Office of Planning also
20 has done a good job about, you know, how and why in
21 this particular case, they were able to approve. And
22 I also would be agreeing with the analysis from the
23 Office of Planning.

24 I guess the final thing that for me was where
25 I could get on board with this, and for the applicant,

1 you're going to need all three so you'll see what
2 happens over here to the right. But is that -- was
3 again the fact that the community did not vote to --
4 or pursue historic preservation. And so, that was
5 kind of where you know, I mean, also it's the
6 community deciding, you know, in that area, what they
7 wanted to do in terms of like the ANC, the Office of
8 Planning, and the community aspect.

9 So, I would be, again, in favor of this and
10 look to Mr. Hart to hear if he has anything to add.

11 MR. HART: Actually, I don't, surprisingly. I
12 think that you've made the case. So, and not you, but
13 the Office of Planning made the case, the applicant
14 has made their case, and I would be in support of the
15 application as it has been filed. And we'd like to
16 make a motion.

17 Would like to make a motion to approve Case
18 19425 for approval.

19 CHAIRPERSON HILL: Seconded. Motion made and
20 seconded.

21 [Vote taken.]

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

23 MR. MOY: Staff would record the vote as
24 three, to zero to two. This is on the motion of Vice
25 Chair Hart. Seconded the motion, Chairman Hill. Also

1 in support, Mr. Hood, Ms. White not participating. We
2 have a board seat vacant. I'll also note for the
3 record, Mr. Chairman, that the revised plan under
4 Exhibit 61 goes to the new sheet titled Exterior
5 Elevation, which is Sheet No. A, 06-03. And the other
6 remaining plans are under Exhibit 35. The motion
7 carries.

8 CHAIRPERSON HILL: Thank you. Summary order.
9 Thank you. Thank you, all.

10 MR. MOY: The next case application should be
11 Application No. 19396 of Hatem Hatem. I think that's
12 how it's pronounced. This is amended for a special
13 exception relief under the RF use requirements,
14 Subtitle U, Section 320.2, which would construct a
15 three-story rear addition to an existing three-unit
16 apartment house, RF-3 Zone, 417 4th Street Southeast,
17 Square 793, Lot 828.

18 The Board last heard this case was -- well
19 maybe not. But it was rescheduled from January 11th.

20 [Pause.]

21 CHAIRPERSON HILL: All right. Just again for
22 the members in the audience, we're going to take lunch
23 after this, and so just to let you all know. So, if
24 you could please introduce yourselves from my right to
25 left?

1 MR. HATEM: Hatem Hatem, I'm the property
2 owner.

3 MR. SULLIVAN: Good afternoon. My name is
4 Marty Sullivan on behalf of the applicant.

5 MS. WILSON: Alex Wilson from Sullivan and
6 Barros on behalf of the applicant.

7 MR. HOFFLAND: Erik Hoffland, Principal of
8 Hoffland Architects, architects for the project.

9 CHAIRPERSON HILL: All right, great. So, Mr.
10 Sullivan, I see that you've handed out some slides
11 here. Or is -- are you going to be doing the
12 presentation today?

13 MR. SULLIVAN: If the Board would be so
14 inclined.

15 CHAIRPERSON HILL: Yeah, no, I was just --
16 yeah, right. Yeah.

17 MR. SULLIVAN: Yes, that was our plan. Yeah.

18 CHAIRPERSON HILL: I was just trying to check
19 who it was. Right. So, okay. The real -- or one of
20 the questions that I'd like to hear more specifically,
21 I guess, during your presentation and the Board can
22 kind point that out is, I guess there was like -- you
23 kind of had backup plans in there. And so that, I
24 don't know whether -- how that's going to get worked
25 out. So, I would hope that at this point you don't

1 need me to work that out. But, we'll see how that
2 goes. So, that's one aspect.

3 Then, other than that, if again you could give
4 me -- give the Board the presentation in terms of what
5 you're trying to do, and the reasoning behind how you
6 meet the standard, other than that I don't know a lot.
7 Does the Board have any particular specifics?

8 So, Mr. Moy, if you could put 10 minutes up
9 there just so I know kind of where we are? And I
10 appreciate that. And, Mr. Sullivan, I'll turn it over
11 to you.

12 MR. SULLIVAN: Thank you, Mr. Chairman. And
13 I'll address the backup plans at the end of this, but
14 it was basically a chimney if we can get a chimney
15 agreement or need a cutout or not. And so, we would -
16 - didn't want to waste the time of everybody and the
17 Board if we could get both approved at one time if
18 possible.

19 So, an overview. The property is an existing
20 three-story, three-unit residential building. We're
21 not proposing an increase in the number of units, but
22 because it was previously converted it is required to
23 obtain special exception relief for any expansion of
24 the structure.

25 The ANC 6B has voted unanimously to support

1 the application. This has been approved in concept by
2 HPRB, and the Office of Planning is in support as
3 well. And the ANC commissioners visited the site and
4 they were very involved with this case.

5 The surrounding area, the property is noted
6 here. It's 417 4th Street. And you get a sense of
7 the surrounding heights and stories from this diagram,
8 just to give you some perspective.

9 The building -- the larger orange or red
10 building on the lower left is a school. And the
11 addition is -- I'll go through the existing
12 conditions. Three-unit building. It's surrounded by
13 structures of varying heights. The building to its
14 right, as you face it, is a little taller. That's a
15 six-unit apartment building.

16 The building to the left is of similar height,
17 and that building has previously had an addition to go
18 to 60 percent lot occupancy.

19 In the rear of the building you'll see here,
20 that's the subject property is the building with the
21 white, and with the deck on the second floor. And the
22 building to the south is there on the right, and you
23 see that that was an addition that was done in the
24 last few years, to that building. So, this proposed
25 addition will go to the rear line of that building

1 next door.

2 The proposal is to renovate and expand the
3 existing building. There are -- well, there were some
4 façade alterations and I know the Office of Planning
5 mentioned that maybe we would need a modification or a
6 waiver of the architectural element condition. But
7 this is all approved by HPRB, and in fact the
8 architect can talk about the changes made to the front
9 of the building was one of the things that was really
10 favored about this project with the ANC and with HPRB.

11 The height is only increasing by 10 inches.
12 The lot occupancy will still be under the permitted
13 lot occupancy of 60 percent. It will be 56 percent
14 lot occupancy. It will be 31 feet in height, so it
15 will be four feet lower than the maximum permitted
16 height.

17 Regarding the 10-foot rule, it does not go
18 past the furthest rear wall of the adjacent
19 properties. It matches it with a setback for a
20 balcony on the third floor. There was an original
21 plan that went further and we revised that to be in
22 line with the building next door, and also to comply
23 with comments from HPRB and to gain their approval.

24 So, the special exception requirements,
25 briefly, the height limit is 35 feet. We're at 31.

1 There's only three units and they were existing units,
2 so there's no inclusionary zoning. It is an existing
3 residential building. It was established as three
4 units and even though there's not -- the lot isn't
5 2,700 square feet, it's been determined by the Office
6 of Planning and by this Board in a recent case that
7 variance relief is not needed to approve existing
8 units.

9 It obviously meets the 10-foot rule because it
10 matches the furthest rear wall of the adjacent
11 properties.

12 The chimney, there is a chimney that may or
13 may not be operable, and that is within 10 feet that
14 we think would need raised slightly. And so, we think
15 that would have to be a condition of any approval.
16 And we've submitted as our preferred plan, is that
17 assuming we can do that. And if we can't do that,
18 that would be the backup plan, which would provide a
19 cutout of 10 feet around the chimney.

20 There's no solar panels on neighboring roofs.

21 CHAIRPERSON HILL: Mr. Sullivan, can I just
22 interrupt you right now?

23 MR. SULLIVAN: Yes.

24 CHAIRPERSON HILL: So, where are you with that
25 agreement?

1 MR. HATEM: Again, we don't have agreement at
2 this point in time.

3 CHAIRPERSON HILL: Okay, so --

4 MR. HATEM: So, we're going to work it out.
5 Sorry, I cut you off.

6 CHAIRPERSON HILL: That's all right. That's
7 okay. So, you're going to try to work it out, is what
8 you're saying.

9 MR. HATEM: Yes.

10 CHAIRPERSON HILL: Right? So, when do you
11 think you'll know one way or another whether you're
12 going to be able to work it out?

13 MR. HATEM: We need to engage our neighbor
14 more -- in more details about this, about this
15 chimney. I cannot really have an answer for you right
16 now. It probably maybe take us a few weeks.

17 CHAIRPERSON HILL: Okay, because I don't know
18 how the rest of the Board is, so I'm just going to cut
19 right to the chase. Like, approving two sets of plans
20 is not something that we've done before. And so, I
21 don't know -- I can understand you saying you're going
22 to do the cutout and then you don't need the approval
23 of the neighbor with the chimney, or you're going to
24 hold out and get it, and then those are the plans.
25 So, you can continue on. We're going to come back to

1 this question. But just my question to you really
2 quickly was, where are you with the agreement, and you
3 say you don't have one right now. So, okay. You can
4 keep on going. Thanks.

5 MR. SULLIVAN: Thank you. And then Section
6 320.2(i), one, which gets to the heart of the special
7 exception criteria is the light and air test, and
8 we've provided shadow studies. And again, the
9 building is four percent lower than its maximum
10 permitted lot occupancy. So, for instance, if we went
11 back to two units we wouldn't be here and we could go
12 to 60 percent lot occupancy and 35 feet in height.

13 But our proposed is to go to 56 percent and
14 with a slight setback on the third floor in the rear
15 as well, and only 31 feet in height.

16 So, and if anything, we think the privacy
17 situation is certainly no worse off than it is now.
18 Possibly a little better with this addition.

19 Regarding the character of the addition as
20 seen from the street, this is approved by HPRB. And
21 again, they were very favorable to the changes made to
22 the front of the building, and found that overall the
23 addition was compatible with the surrounding
24 neighborhood, as they are required to do when they
25 issue a concept approval.

1 So, the shadow studies themselves -- I want to
2 get to the first page of the -- overall, overall they
3 showed no impact in the summer months, and they show
4 some impact at certain times in the other seasons.
5 And we can go through them specifically if you want,
6 and go over that. But they're in there, they're in
7 the record, and they're in the PowerPoint.

8 So, regarding the two options, we would pick
9 one. There's two in the record and if the Board is
10 not comfortable approving an alternative, we would
11 pick one and then it would be on us to obtain a minor
12 modification if necessary down the road.

13 So, if that's -- if we could have time to --
14 we could talk about that if the Board would like us
15 to, to do that. But that's it for our presentation,
16 if you have any questions.

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

19 [No audible response.]

20 CHAIRPERSON HILL: Okay. You don't have a
21 slide that shows the cutout or the not cutout, do you?

22 MR. SULLIVAN: On the last page -- it may be
23 better to point you to -- I'll look in the record and
24 see, because it's in the record, but I don't know
25 exactly which plan it is right now.

1 CHAIRPERSON HILL: Okay. That's all right.
2 Okay. I'm going to turn to the Office of Planning.

3 MR. JESICK: Thank you, Mr. Chairman and
4 members of the Board. The Office of Planning reviewed
5 this application against the criteria of Subtitle U,
6 Section 320. 320.2. And we felt that the application
7 met the various criteria, and therefore we are
8 recommending approval. Thank you.

9 CHAIRPERSON HILL: Thank you. Does the board
10 have any questions for the Office of Planning?

11 [No audible response.]

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

15 MR. SULLIVAN: No, we do not. Thank you.

16 CHAIRPERSON HILL: All right. Great. Is
17 there anyone here from the ANC wishing to speak? Is
18 there anyone here wishing to speak in support of the
19 application? Is there anyone here wishing to speak in
20 opposition to the application?

21 If you'd come forward, sir. Good afternoon.

22 MR. CONLON: Good afternoon.

23 CHAIRPERSON HILL: If you could just state
24 your name, please, and your address?

25 MR. CONLON: Yeah. My name is Jerome Conlon.

1 I am the owner/occupant of the house, residence to
2 the south, 419 4th Street Southeast.

3 CHAIRPERSON HILL: And are you right next
4 door?

5 MR. CONLON: I'm right next door, right.

6 CHAIRPERSON HILL: To the south? Is that what
7 you said?

8 MR. CONLON: To the south, right.

9 CHAIRPERSON HILL: Okay, great. I'm going to
10 go ahead and put three minutes on the clock there for
11 your testimony.

12 MR. CONLON: Okay.

13 CHAIRPERSON HILL: If you can just go ahead
14 and start whenever you'd like.

15 MR. CONLON: Okay. I've lived on the block
16 for 45 years, since 1972. So, I've seen a lot come
17 and go over the years.

18 My question, I have two issues. First is a
19 question regarding chimneys, which involve the two
20 chimneys on the front of my residence, which beginning
21 with the letter that I sent in December to the DCHPRB,
22 I questioned whether or not those chimneys would need
23 to be raised vis-à-vis the roofline of the 417.

24 417 roofline has since changed a couple of
25 times, and I would like an answer from the applicant

1 as to whether or not there is any impact on those two
2 chimneys at the front of my residence. They simply --
3 this issue has never been addressed.

4 My second issue concerns density in the
5 neighborhood. The neighborhood has evolved over time.
6 It is now very, very attractive to people. There is
7 a lot of development going on in very well planned, I
8 would say, in certain corridors of the neighborhood,
9 such as on Pennsylvania Avenue, where a number of
10 developments such as the former Hines Junior High
11 School site has been -- is being developed into high-
12 density dwellings with an abundance of off-street
13 parking built in.

14 The 400 block of 4th Street, contrary to this,
15 is a block that has no alley. It has no possibility
16 of off-street parking, and none of the houses on our
17 side of the street have any off-street parking. All
18 of the existing apartment buildings and residences
19 that have been converted to apartments over the
20 decades, all feature very small one and two bedroom
21 units, which tend to limit the number of occupants who
22 actually live in these units, and the number of cars
23 parking on the street.

24 There is an exception to that which is two
25 rental houses on the east side of the 400 block, which

1 in the 45 years that I have lived on the block, have
2 basically served as dormitories for people who work
3 with the congress for the most part. And there is an
4 abundance of cars associated with each one of these
5 houses.

6 Now, the conversion that the applicant is
7 requesting, will turn what is basically still a -- the
8 footprint of an original residential rowhouse, small
9 residential rowhouse, which was originally built in --
10 with mine at the same time before the Civil War, into
11 a two-apartment building.

12 So, whereas you have three small units, two
13 one-bedroom and one two-bedroom, you're now going to
14 have two three-bedroom and one two-bedroom units,
15 which in effect is going to add the equivalent given
16 the relative small size of most of the houses on the
17 block, which are small by -- it's not East Capital
18 Street, in other words. These are smaller houses on
19 this block. It will add the equivalent of two
20 additional houses in this -- by creating this. It
21 will be about six more bedrooms.

22 So, the question then becomes, how do we, and
23 I use that we, how do we prevent this from becoming
24 another dormitory, like the houses across the street
25 where you have multiple people, sometimes two cars to

1 the bedroom is the situation over across the street,
2 where you have just a lot of people sharing a house.
3 And that basically is what I'd like to say. And
4 thanks for listening.

5 CHAIRPERSON HILL: Okay, great. Thank you,
6 sir. You had a question about the chimneys, I guess.
7 So, the chimneys that are on your roof, right? And
8 is that the --

9 MR. CONLON: There are four chimneys on my
10 roof.

11 CHAIRPERSON HILL: Okay. And those are the
12 chimneys that the applicant was trying to get to an
13 agreement with, or at least one of them?

14 MR. CONLON: No. No, the ones in the rear are
15 the ones that the applicant was trying to get the
16 agreement with. I mean, we talked a lot about that.
17 It's the chimneys on the front, and I have not been
18 able to get any kind of determination as to whether --

19 CHAIRPERSON HILL: Okay. That's okay. That's
20 okay. I'm just trying to get you an answer.

21 MR. CONLON: Okay.

22 CHAIRPERSON HILL: So, I don't know if the
23 Office of Planning here has any thoughts on the
24 chimneys in the front.

25 MR. JESICK: Thank you, Mr. Chairman. I can

1 direct the Board to -- I'm looking at Exhibit 40,
2 Sheet A200, which is I believe the last full set of
3 plans that were submitted to the record.

4 CHAIRPERSON HILL: Okay.

5 MR. JESICK: And the proposed front elevation
6 on Sheet A200 seems to indicate that the existing
7 chimneys on the neighbor's house would extend well
8 above the proposed roofline on the subject property.

9 CHAIRPERSON HILL: Okay. So, you're
10 comfortable that those chimneys are not going to be
11 affected is what --

12 MR. JESICK: It doesn't appear that they would
13 be --

14 CHAIRPERSON HILL: Okay.

15 MR. JESICK: -- impacted.

16 CHAIRPERSON HILL: So, that's your answer on
17 that one, just to let you --

18 MR. CONLON: Well, I really want the answer
19 from Mr. Hoffland, though.

20 CHAIRPERSON HILL: No, well, they're the
21 expert. The Office of Planning.

22 MR. CONLON: No, no, no, no, I understand
23 that.

24 CHAIRPERSON HILL: That's okay.

25 MR. CONLON: But before we start construction

1 of anything I want an answer on that from him.

2 CHAIRPERSON HILL: It's the same answer.

3 MR. CONLON: Okay. Okay, if it's --

4 CHAIRPERSON HILL: I mean, you're going to get
5 the same answer. Those are the plans that you have
6 there, correct?

7 No, I'm just trying to get that one question
8 resolved for you because I also am curious of it
9 because -- so then, still the back chimneys are the
10 ones that you guys don't have an agreement to that the
11 Office of Planning is concerned about. And then the
12 Office of Planning, my question back to you then again
13 is, you are in approval of -- you're not concerned
14 with those chimneys being affected if they do the
15 cutout?

16 MR. JESICK: Yes, if they do the cutout it
17 would be well set back from the existing chimney.

18 CHAIRPERSON HILL: Can you show me the cutout
19 again? You seemed like you had a slide there a second
20 ago.

21 MR. SULLIVAN: Well, Erik, do you want to talk
22 about this?

23 CHAIRPERSON HILL: Can you point? Can you
24 point at it with your cursor or --

25 MR. SULLIVAN: And Exhibit 47 has what we call

1 the backup plans that would have the chimney cutout,
2 assuming no chimney agreement. So, Exhibit 40 is
3 alternative 1, if you will.

4 CHAIRPERSON HILL: I'm just waiting for it to
5 come up.

6 MR. SULLIVAN: And 47 is two. And this is
7 showing the chimney.

8 Now, the only chimney we're concerned about is
9 the one in the back because the others we believe will
10 have safe clearance under the building code. And so,
11 the chimney you see there in front of you --

12 CHAIRPERSON HILL: Do you have the pointer
13 there by any chance, Mr. Moy? If you can grab the
14 pointer from Mr. Moy?

15 MR. HOFFLAND: So, this is the chimney right
16 here, that's in question.

17 CHAIRPERSON HILL: Okay.

18 MR. HOFFLAND: And our addition will go to the
19 same rear setback as this building here, right at this
20 edge.

21 CHAIRPERSON HILL: Uh-huh.

22 MR. HOFFLAND: So, if we go to this plan, that
23 chimney is about right here.

24 CHAIRPERSON HILL: Uh-huh.

25 MR. HOFFLAND: This is our property, this is

1 the neighboring property. So, the chimney is about
2 right here.

3 So, in this case --

4 CHAIRPERSON HILL: Where is the cutout?

5 MR. HOFFLAND: This is the -- so this is the
6 cutout.

7 CHAIRPERSON HILL: Okay.

8 MR. HOFFLAND: So here, the chimney is here.
9 This would basically cut out a 10-foot perimeter
10 around the chimney which is about right here.

11 CHAIRPERSON HILL: Okay. All right. Okay.
12 So, that would make that chimney -- you wouldn't have
13 to adjust the height of that chimney. And if you
14 could come to an agreement then you wouldn't need to
15 have the cutout.

16 MR. HOFFLAND: Correct. And right now, if I
17 go back to the photo, there's a roof deck here. If we
18 cut it out then we would have a roof deck adjacent to
19 the neighbor's roof deck. If we don't do the cutout,
20 there's just a blank wall there without, you know, any
21 possibility for occupants of our building to look into
22 or view --

23 CHAIRPERSON HILL: Okay. But that, again,
24 would be whether or not you got into an agreement with
25 your neighbor.

1 MR. HOFFLAND: Correct.

2 CHAIRPERSON HILL: Okay. All right. Okay.
3 Does the Board have any questions of the witness?

4 MR. HART: So, this would impact the top floor
5 by removing a bedroom? Or what is that? Talk about
6 that.

7 MR. HOFFLAND: That would be essentially
8 correct. It would -- the way the interior
9 configuration would go, we would take out one bedroom
10 in order to accommodate that cutout.

11 MR. HART: And as you are -- and the chairman
12 noted that we're not really -- it is a very -- it's
13 difficult for us -- it's not something that we want to
14 have as two different plans that we're approving. I
15 mean, we want to look at it -- a set of plans and say,
16 these are the things that we have an assurance or the
17 applicant is going to be moving forward with. If
18 there are any changes to that then they can come back
19 to us and, you know, and we can approve those plans.

20 So, where are we with that? Or where are we
21 with -- because I think we're coming to that decision
22 as to where you want to -- which plans you want to
23 move forward with.

24 MR. SULLIVAN: Can I ask for a minute?

25 CHAIRPERSON HILL: Sure. Go ahead.

1 MR. SULLIVAN: With my client? Thank you.

2 [Pause.]

3 CHAIRPERSON HILL: I guess while you're
4 discussing I will ask a question, Mr. Conlon. Mr.
5 Conlon, did you go to the ANC meeting that was about
6 this project?

7 MR. CONLON: I went to ANC committee meetings,
8 went to the full ANC meetings, both in terms of
9 planning and zoning.

10 CHAIRPERSON HILL: And you expressed your
11 objection to this proposal at those meetings?

12 MR. CONLON: Yes.

13 CHAIRPERSON HILL: And they did approve them,
14 so what was the justification that they gave during
15 the discussion?

16 MR. CONLON: The planning and zoning
17 committee, at that meeting, which was the earliest
18 one, that was December 7th last year, the ANC
19 committee made it clear to myself and to other
20 neighbors that were present, that the neighborhood had
21 evolved and that we needed to understand that greater
22 density was the wave of the future, and that basically
23 we were living in some past world that no longer
24 existed.

25 CHAIRPERSON HILL: Okay. All right. Thank

1 you.

2 MR. HOOD: That was real courteous.

3 MR. CONLON: Yeah.

4 MR. HOOD: Do you go to ANC meetings --

5 MR. CONLON: ANC 6B.

6 MR. HOOD: 6B?

7 MR. CONLON: Yeah.

8 CHAIRPERSON HILL: Mr. Sullivan, have you come
9 back with a discussion, or decision?

10 MR. SULLIVAN: We have and, do you want to
11 tell them?

12 MR. HATEM: I just want to say something here.
13 You know, Jerry has been opposed to this project on a
14 conceptual basis. I think --

15 CHAIRPERSON HILL: Just before you get farther
16 along, I just want to let you know that again, you've
17 got two sets of plans real quick here.

18 MR. HATEM: Yep.

19 CHAIRPERSON HILL: So, whether or not -- I
20 mean, we're not going to facilitate a discussion here
21 with your neighbor. So, but go ahead and you can make
22 your statement or your comment.

23 MR. HATEM: Yeah, yeah. Only what I'm saying
24 is, we think we have enough. There is enough down the
25 road on the discussion with that we can still discuss

1 more with Mr. -- with Jerry on the chimney matter, and
2 we think there is enough elements that would make him
3 maybe come around and, you know, agree to an extension
4 of the chimney.

5 But if we have to pick something, we're going
6 to pick something. If you want to approve only one
7 set of plans --

8 CHAIRPERSON HILL: We can only approve one set
9 of plans.

10 MR. HATEM: Then we're going to take the
11 carved out session -- the carved out --

12 CHAIRPERSON HILL: Okay. So, it sounds like,
13 and this is where I'm not clear enough, that there
14 might be a benefit to your neighbor in terms of doing
15 the chimney extension in terms of privacy or something
16 like this, correct?

17 MR. HATEM: Exactly. That's what I'm saying.

18 CHAIRPERSON HILL: Okay. So, then you would
19 be coming back to us for a minor modification if this
20 were to move through and you were able to get an
21 agreement with your neighbor. Otherwise, the plans
22 that you're submitting now are the plans that are in
23 47.

24 MR. SULLIVAN: Forty-seven.

25 CHAIRPERSON HILL: Okay.

1 MR. HART: Mr. Chairman.

2 CHAIRPERSON HILL: Sure.

3 MR. HART: Does that mean that we have to -- I
4 mean, these are called backup plans. I mean, is there
5 something that we have to do to strike the older
6 plans, or at least -- or just indicate that the plans
7 that we are actually accepting are these?

8 MS. GLAZER: If you want me to answer, I think
9 it's acceptable to just move to approve, if you are so
10 inclined, whatever plans are being proposed.

11 MR. MOY: We could also indicate it by the
12 exhibit number, because that's what would be -- as
13 plans as shown on Exhibit No. so-and-so.

14 CHAIRPERSON HILL: Okay. So, does the Board
15 have any more questions for, again, the witness? Does
16 the Board have any more questions for the applicant?
17 All right. I'm going to close the hearing. Is the
18 Board ready to deliberate?

19 MR. HART: Mr. Chairman, I think that the
20 applicant has provided sufficient information
21 regarding the relief requested. I think that the
22 Office of Planning has provided their report
23 describing their recommendation to us, which is to
24 approve this application as well. I understand that
25 the next-door neighbor has some concerns and I think

1 that that -- the concerns around the front chimney,
2 I'm hopeful that you've gotten some resolution around
3 the front chimney. And maybe you all can reach an
4 agreement on the back chimney.

5 But I don't -- the parking concerns, it's a
6 neighborhood concern. And it sounds like, and we've,
7 I think heard quite a few of these concerns from
8 neighbors that have kind of been there for quite a
9 number of years, and understanding that you know, as
10 the city is growing and changing that parking is
11 becoming a -- not becoming, it is a real, a real issue
12 in the various neighborhoods in D.C. So,
13 unfortunately it sounds like you're one of many
14 neighborhoods that is having the same issue.

15 I do think that the applicant has shown, you
16 know, using -- that they are -- met the requirements
17 for the relief that they are requesting, and would be
18 supportive of that application, and would like to make
19 a motion to approve case application number 19396 for
20 -- thank you. And these are -- the plans that we are
21 approving would be Exhibit No. 47, and these show the
22 little breakout area, or the little notched area, and
23 would like to make that motion.

24 CHAIRPERSON HILL: I second.

25 The motion has been made and seconded.

1 [Vote taken.]

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

3 MR. MOY: Staff would record the vote as four,
4 to zero, to one. This is on the motion of Vice Chair
5 Hart to approve the plans as for the relief requested
6 under Subtitle U, Section 320.2, A through M. This is
7 the RF use requirements as the maker of the motion
8 stated, this would be plans, approved plans as shown
9 on Exhibit 47. Also in support, Mr. Hood, Ms. White,
10 have a board seat vacant. The motion carries, sir.

11 CHAIRPERSON HILL: Thank you. Can we do a
12 summary order?

13 MR. MOY: Yes, sir.

14 CHAIRPERSON HILL: Okay. And so, we're going
15 to take a lunch break, and I suspect that we'll get
16 started again -- I'm going to say we're going to get
17 started at 1:50. Okay? So, let's try to come back in
18 half an hour. All right? Thank you.

19 [Off the record from 1:22 p.m. to 2:06 p.m.]

20 A F T E R N O O N S E S S I O N

21 CHAIRPERSON HILL: All right, Mr. Moy, are we
22 ready?

23 MR. MOY: Yes, sir. All right. So, the Board
24 is convening its afternoon session. So, the appeal or
25 application before the Board is No. 19441 of

1 Richardson Place Neighborhood Association, captioned
2 and advertised for -- this is an appeal from the
3 decisions made on September 27th, 2016, and October
4 20th, 2016, by the Zoning Administrator at Department
5 of Consumer and Regulatory Affairs, issuing building
6 permits No. B, B as in Bravo, 1611469, and B1611470,
7 to permit the construction of two adjacent flats, R-4
8 District at premises 410 and 412, Richardson Place
9 Northwest, Square 507, Lots 101, and Lot 102.

10 Suffice for me to say, Mr. Chair, there are
11 multiple motions before the Board for preliminary
12 matter.

13 CHAIRPERSON HILL: Okay, great. Thank you,
14 Mr. Moy. So, welcome, everybody to -- you guys have
15 the Board's undivided attention as you're the only
16 thing left on the day. And so, what I'd like to do is
17 if we can go through and introduce ourselves. And as
18 you're introducing yourself, again, identify yourself
19 as to what party you're representing, and then that
20 will be the first issue.

21 So, let's do that first. If you could do it
22 from my right to left?

23 MR. TONDRO: Yes, good afternoon. My name is
24 Maximilian Tondro, here on behalf of DCRA and the
25 Zoning Administrator. And I would also like to note

1 that the Zoning Administrator still needs to be sworn
2 in.

3 CHAIRPERSON HILL: Okay, great. Let's do
4 that. Mr. Moy, if you wouldn't mind, please swearing
5 in the Zoning Administrator?

6 MR. FREEMAN: I think all the witnesses might
7 need to be sworn.

8 CHAIRPERSON HILL: And anyone else who might
9 have missed the swearing in earlier today. Thank you.
10 [Oath administered to the participants.]

11 CHAIRPERSON HILL: Okay, great. I always love
12 that. That shows -- tells us who's late.

13 So, if you could please go ahead next, sir,
14 and introduce yourself?

15 MR. LeGRANT: Yes. Matthew LeGrant, Zoning
16 Administrator, DCRA.

17 MR. FREEMAN: Good afternoon, Kyrus Freeman,
18 Holland and Knight, land use counsel for the owner,
19 OTD 410 through 412 Richardson Place, LLC.

20 MR. DETTMAN: Good afternoon. Shane Dettman,
21 Director of Planning Services with the law firm,
22 Holland and Knight.

23 MR. WILSON: Good afternoon, James Wilson.
24 I'm with the Richardson Place Neighborhood
25 Association. We're the appellant.

1 MR. SEIGEL: Steve Seigel. I am also a member
2 of Richardson Place Neighborhood Association.

3 CHAIRPERSON HILL: Okay. Is there anyone here
4 from the ANC?

5 Okay. Why don't you go ahead and sit over
6 right there if you wouldn't mind? Actually, I'm
7 sorry, you have to speak into the microphone.

8 MS. McCLELLAND: We passed another resolution
9 on this matter last night so I have copies. Should I
10 distribute them now?

11 CHAIRPERSON HILL: Okay, first could you
12 introduce yourself for me?

13 MS. McCLELLAND: Sorry, yes.

14 CHAIRPERSON HILL: That's all right.

15 MS. McCLELLAND: I'm Katherine McClelland. I
16 am Commissioner for ANC 5E-06. I also was just sworn
17 in in January, so I am new and still figuring this
18 out, but --

19 CHAIRPERSON HILL: Oh, so, congratulations.

20 MS. McCLELLAND: Thank you.

21 CHAIRPERSON HILL: Commissioner, you said you
22 have more -- you have some things to supply to us?

23 MS. McCLELLAND: Yes. We passed another
24 resolution last night so I'll just bring this up.

25 CHAIRPERSON HILL: Okay. And also, if you

1 could share that with the other parties as well. I
2 don't know if you have enough copies for everyone?

3 MS. McCLELLAND: I have 10.

4 CHAIRPERSON HILL: Okay.

5 MS. McCLELLAND: I can --

6 CHAIRPERSON HILL: Okay. All right.

7 MS. McCLELLAND: Actually, I have 11.

8 CHAIRPERSON HILL: Okay. Let's see. Mr. Moy
9 -- Mr. Moy can help you.

10 [Pause.]

11 CHAIRPERSON HILL: Okay. So, you're a party
12 here now, since you're with the ANC. And so, I just
13 wanted you to step forward so you'd have the ability
14 to also cross-examine when the appropriate time comes.

15

16 There is the issue with a request. I mean, I
17 wouldn't say necessarily a motion, but a request for
18 untimely filing from DCRA. And I didn't particularly
19 have an issue with that request.

20 Does the Board have any questions? And I'll
21 also ask the applicant whether they will have any
22 issues with them. No? Okay. The property owner does
23 not have any issues? All right.

24 So, then unless the Board has any problem I'm
25 going to go ahead and accept the filing.

1 Then also, DCRA had made a request to
2 substitute the C of O to replace the permits in the
3 appeal, and I was -- it seemed as though the appellant
4 was in -- did not have an issue with that. Was in
5 agreement?

6 MR. WILSON: We had been intending to either
7 appeal the certificate of occupancy, or alternatively
8 at least, incorporate it. But before we could do that
9 we filed a FOIA request to obtain the application for
10 the certificate of occupancy on February 6th, and we
11 are still waiting on the response to our FOIA request.

12 But given what's happened, we are happy as long as
13 this hearing would be for both the building permit and
14 the certificate of occupancy.

15 CHAIRPERSON HILL: Okay. So, the wording that
16 was used, and I also was more inclined to not
17 substitute, but include the C of O. Is that all right
18 with DCRA?

19 MR. TONDRO: I mean, at some point this is
20 sort of splitting hairs. I understand. I think from
21 our standpoint, as we said, first of all I think
22 there's a serious timeliness issue. I think it's
23 largely beside the point because the fact is that the
24 appellants can appeal the certificate of occupancy,
25 but the building permit was actually a revision to an

1 earlier permit that was issued in one case back in
2 2010, and another case back in 2011. And I just worry
3 about establishing a precedent that they can use a
4 subsequent revision. It doesn't seem to be -- there's
5 no allegations that that revision was a substantive
6 revision of that earlier permit that had long since
7 cured, as it were, for its -- for the timing issue.

8 And, so that's one aspect. The other issue is
9 that what they're really appealing, as they repeatedly
10 state, is the use and how it is being used, which
11 would be the certificate of occupancy. I don't think
12 there's any question. The appellants can indicate
13 otherwise, but that if it was being used in the way
14 that they would like it to be used as a -- as they
15 would determine a flat to be, that they have no
16 problem and they wouldn't be challenging it.

17 So, the issue is really the use that they
18 believe the proposed used does not correspond to the
19 use that's authorized in the certificate of occupancy,
20 as opposed to the building permit, which does not
21 allow a use. The building permit allows the building
22 based on a use.

23 CHAIRPERSON HILL: I understand. I
24 understand. Okay. So, I -- and if the Board has any
25 other thoughts, I'm more inclined to include it in the

1 application as well as the permits. I don't want to
2 substitute. So, that's what I'm inclined to do. Does
3 the Board have any thoughts about that?

4 MS. WHITE: That makes the most sense for me
5 too.

6 CHAIRPERSON HILL: Okay. Okay. So, I'm going
7 to include them, but we're also going to keep the
8 permits in there in terms of the discussion.

9 MR. TONDRO: Okay. And just to be clear then,
10 the Board then has to face the potential that they're
11 going to revoke a building permit for a building which
12 I think otherwise would be totally usable. The
13 question is, how is it used? In other words, the
14 building permit authorized flat, I think the core of
15 the discussion here is whether or not the proposed use
16 is a flat.

17 CHAIRPERSON HILL: It's okay, Mr. Tondro. I'm
18 just -- I appreciate what you had to say. So, Ms.
19 Glazer, do you have something to add?

20 MS. GLAZER: Not really to add. I think it's
21 appropriate to include it as opposed to substitute.
22 It's cleaner and we don't need to get into the merits
23 at this point.

24 CHAIRPERSON HILL: Okay.

25 MS. GLAZER: To make that decision.

1 CHAIRPERSON HILL: Okay. I'm just trying to
2 move forward. So, that's where we are with that. So,
3 we're going to include that as well as the permits.
4 Okay?

5 Then I guess, that brings us now to the
6 timeliness issue, of which we're going to have a mini
7 hearing in terms of whether or not the motion to
8 dismiss due to DCRA, you know, the timeliness issue.

9 So, what I think will probably happen
10 afterwards is we're going to hold the -- depending
11 upon how the Board feels, in my thought is probably
12 we're going to hold the decision in abeyance and have
13 the hearing. However, we can see how that works after
14 we hear the arguments. But I'm just kind of giving
15 the people here in the audience my thoughts. Or the
16 parties, I should say.

17 So, we're going to go ahead and start with
18 DCRA in terms of the timeliness issue. Then the
19 owner. And then the appellant. And then the ANC.
20 And everyone will have an opportunity to cross.

21 I don't know, I'm just trying to get a little
22 bit of time. Mr. Tondro, do you know how much time
23 you'd like on the clock for your portion?

24 MR. TONDRO: No, I -- let's say two minutes at
25 most. I think it's a pretty simple statement.

1 CHAIRPERSON HILL: Okay. All right. So, all
2 right. Talk a little slower than that just so I can
3 kind of process, okay? I'm just letting you know,
4 like, I don't think I can process in two minutes. I'm
5 going to give you five minutes. Okay? All right.
6 So, because it is a lot of information. But I do
7 appreciate and understand, and I know you think you're
8 right. And so -- and I don't -- I'm just saying, I
9 understand. So, please, take your time to walk us all
10 through this. But thank you very much.

11 MR. TONDRO: Sure.

12 MR. FREEMAN: Mr. Chairman, if I might?

13 CHAIRPERSON HILL: Sure.

14 MR. FREEMAN: And I don't mean to -- we have a
15 timeline that may help Mr. Tondro as he's talking
16 about dates. So, we're happy to put that up if it
17 will help you.

18 CHAIRPERSON HILL: And that been submitted in
19 the record? Okay.

20 MR. TONDRO: And I would point out too, that
21 in this particular case the motion for timeliness on
22 this basis was issued by the -- was submitted by the
23 owner first. We effectively joined it.

24 CHAIRPERSON HILL: Oh, I'm sorry. I thought
25 you made the motion.

1 MR. TONDRO: [Simultaneous speech.]

2 CHAIRPERSON HILL: I thought that you had made
3 the motion, so that's fine. I'll have the owner go
4 first, if that's all right. And then DCRA. I thought
5 DCRA had made the motion.

6 Give me one second, all right, Mr. Freeman?

7 [Pause.]

8 CHAIRPERSON HILL: Is that in your PowerPoint
9 presentation?

10 MR. WILSON: I'd like to object to this being
11 put in the record.

12 CHAIRPERSON HILL: All right. Just one
13 second.

14 [Pause.]

15 CHAIRPERSON HILL: All right, Mr. Wilson, I'm
16 sorry. You were having an objection to this being
17 added into the record?

18 MR. WILSON: Well, it's untimely. If it was
19 submitted into the record last night it wasn't served
20 on me and I don't believe it's well beyond the cutoff
21 for submitting things into the record. I haven't had
22 an opportunity to even review it until this moment.

23 MR. FREEMAN: Two things. We just took an ANC
24 resolution late. Number two, he hasn't pointed to a
25 rule that said -- I mean, it's his testimony. It's

1 not new evidence. It's his testimony.

2 MR. WILSON: It may be his testimony, but as
3 part of the record it then becomes beyond then just
4 what he's going to say, right? I mean, I haven't been
5 able to review any of this. There's more than
6 testimony. There's --

7 MR. FREEMAN: Presentation.

8 MR. WILSON: There are plans and drawings.

9 CHAIRPERSON HILL: Okay. So, this is his
10 testimony, so it's a PowerPoint presentation for his
11 testimony, so we are going to allow it. And so, but I
12 do appreciate your ability to be heard, and please,
13 you know, we're going to -- we're going to be here a
14 while. So, but I -- and I do want to do this in a way
15 that is smooth, respectful, and I please, you know, do
16 appreciate you making the comments that you have about
17 things.

18 MS. GLAZER: Mr. Chair.

19 CHAIRPERSON HILL: Yes.

20 MS. GLAZER: Perhaps if the appellants wish to
21 have a few minutes afterwards to review it, they
22 could, to prepare for cross.

23 MR. FREEMAN: Well, we're talking about
24 timeliness.

25 MS. GLAZER: Well, I don't know if there's

1 going to be -- I don't know if there's going to be
2 witnesses or just argument.

3 CHAIRPERSON HILL: Okay. All right. We'll
4 see how this goes, but Ms. Glazer, thank you so much.
5 And the applicant will have an opportunity to cross,
6 so that's what -- and it is a lot of information. So,
7 again, take more than two minutes. Okay. All right.

8 So, again, your argument for -- to dismiss as
9 untimely?

10 MR. FREEMAN: Yes, sir. So, while we get the
11 sections up from the regulations, our position is that
12 the appeal should be dismissed as untimely pursuant to
13 Subtitle Y, Section 302.2, and Section 302.5 of ZR-16.
14 Since it was not filed within 60 days from the date
15 that the applicant should have notice, should have had
16 notice of the issue for which they're complaining of,
17 which was the issuance of the building permits that
18 permitted use of the property as a flat.

19 Their whole case is challenged in effect, that
20 the property is approved to be used as a flat. What
21 we have on the screen, and you have a copy of that,
22 are the two applicable zoning regulations. And just
23 to go slow and make sure we're all on the same page.

24 First part, Section 302.2 says that, "A zoning
25 appeal shall be filed within 60 days from the date the

1 If you look at their declarations, all of
2 these points are from their declarations, and in our
3 submission we actually cite where they say it. They
4 say that in July of 2014, Mr. Richardson -- I'm sorry,
5 Mr. Wilson purchased his home, which is directly
6 across the street from the site, and saw that an empty
7 foundation in a dugout basement.

8 So, as early as 2014, he saw that construction
9 on those permits for use as a flat had commenced,
10 according to his own testimony.

11 In April of 2016, according to their
12 declaration, Mr. Bible said he noticed one or two
13 permits posted on the windows of the first floor of
14 the property. So, at that point the building was
15 built. And he will say he couldn't see what the
16 permits said, but the permits were there, and he says
17 in his declaration that he saw the permits. So,
18 there's nothing to preclude him from getting a copy of
19 those permits.

20 Then, when our client, OTD, purchased the
21 property, again, that was in April of 2016, at which
22 point the buildings again were already under roof,
23 which is another time period for which an appeal has
24 to be filed.

25 In May of 2016, again, according to their own

1 declaration, Mr. Wilson had a meeting with Mr. Stuart.

2 And Mr. Stuart stated that he intended to complete
3 construction of the flats. In May, again, of 2016,
4 there is e-mail correspondence which the appellants
5 filed, in which Mr. Stuart says again, they have no
6 intent to change the use or use the properties as
7 anything other than a flat. Again, that's 2016.

8 In July of 2016, according to them, they saw
9 that supervision began in earnest and that contractors
10 began installing the façade and refurbishing the
11 interior. So, they're seeing work occur in July of
12 2016.

13 Next slide. Then we got new permits in
14 September of 2016, and October of 2016, that allowed,
15 if you read the permits, completion of the
16 construction of the uses as flats. So, those weren't
17 new permits. It wasn't for a new structure. It
18 wasn't for a change of use. It was for completion of
19 the already started flats.

20 And then in December of 2016 they filed their
21 appeal, which was way past when the initial permits
22 were initially approved. It's six years past the
23 initial permits -- six years since the permit for 412,
24 and three years since the initial permit for 410.

25 So, in our view, based on their own

1 declarations they have far surpassed the 60-day period
2 for which they should have had notice for filing of
3 the appeal.

4 I'll stop there. I'm happy to answer any
5 questions.

6 If I could add one more point? I'm sorry. In
7 going through my notes.

8 So, they will say they did not know that the
9 use was going to be changed until October of 2016. I
10 think that's what they'll say.

11 Our position is, the use has never been
12 changed. The initial permits said flat, the revised
13 permits said flat, the C of O says flat, everything in
14 our documentation, and if we get to the merits,
15 everything will demonstrate that it has always been
16 intended to be used for and will be used as a flat,
17 and nothing has changed in order to suggest that a
18 change somehow should allow this appeal to move
19 forward.

20 That concludes my statement.

21 CHAIRPERSON HILL: Okay, thank you. So, Mr.
22 Wilson, and by the way, I -- are you going to be
23 speaking for the appellant, primarily?

24 MR. WILSON: Yes.

25 CHAIRPERSON HILL: Okay. Great. So, you'll

1 have an opportunity to cross the testimony now. And
2 if you could just, kind of keep the questions to the
3 testimony that's been given because again, you'll have
4 an opportunity to give your testimony as well. So, do
5 you have questions for -- to the testimony, to the
6 testimony that's been given? Do you have any cross-
7 examination?

8 MR. WILSON: I do not.

9 CHAIRPERSON HILL: Okay.

10 MS. GLAZER: Mr. Chair.

11 CHAIRPERSON HILL: I'm sorry.

12 MS. GLAZER: That really wasn't testimony.

13 CHAIRPERSON HILL: Okay.

14 MS. GLAZER: But, the appellant can respond in
15 their presentation and attempt to refute anything that
16 was said of course.

17 CHAIRPERSON HILL: Okay.

18 MR. WILSON: As I understand it, right. It's
19 only witnesses that are going to be crossed, but those
20 who are offering testimony shouldn't, I believe. Am I
21 wrong? I'm sorry.

22 MS. GLAZER: Well, I think Mr. Freeman --

23 MR. WILSON: I'm not an attorney, so.

24 MS. GLAZER: -- is here as an attorney,
25 representing his client. But no witness has testified

1 as of yet.

2 CHAIRPERSON HILL: I'm also not an attorney.

3 MR. WILSON: Okay.

4 CHAIRPERSON HILL: So, but he is -- so as Ms.
5 Glazer had pointed out, because I had thought there
6 was cross during this, so you will have an opportunity
7 to provide your own testimony to this motion that's
8 been made. So now, I'm going to turn it over to Mr.
9 Tondro to hear what DCRA has to say in -- on the issue
10 of timeliness.

11 MR. TONDRO: Yes. Good afternoon, Chairman
12 Hill, members of the Board.

13 I'm going to try and keep this as short and
14 simple as possible. I believe that the prior
15 representations or the statement made by the owner's
16 attorney covers everything, including the timeline
17 there. I think this is an issue that is clearly out
18 of time.

19 The building permits were issued multiple
20 years before, not 70 days, not 80 days, not even close
21 to it. There's a situation where clearly the
22 appellant had notice of the fact that there was
23 ongoing construction or the potential construction
24 going on. That should have been enough to provoke him
25 to go and contact DCRA. Instead, you know, his

1 statement was that what caused the change for him
2 caused him to oppose the project, was the proposed
3 use. Again, it goes back to what I was saying in the
4 very beginning that my concern is both the timeliness
5 grounds, but also just that this really is an issue
6 about the certificate of occupancy and about the
7 proposed use.

8 So, I think everything that's been entered,
9 that's been made by Mr. Freeman, the owner's
10 representative, I concur with. This is an issue where
11 the timeliness is just simply beyond doubt. The two
12 different permits were issued both for -- I can read
13 one, for example, B1214832 for 410 Richardson Place.
14 That was issued on April the 22nd, 2013. And the
15 scope of work was a new 54-foot by 26.5-foot, three-
16 story flat, row dwelling, and one required nine by 19
17 space, going on and on. But it was a flat.
18 Everything since, all the permits since, have been
19 extensions.

20 Or in the case of the most recent permit, the
21 one they appealed, was that it was an interior layout
22 minor revision. There's been nothing that's been
23 stated by the appellants, who have the burden of
24 proof, to show that somehow there was a major change,
25 that revision was something which went from a four-

1 story building to a 20-story building, or had any
2 other impact. Again, the crux of their issues are
3 instead, on use. So, I'll leave it with that. Thank
4 you.

5 CHAIRPERSON HILL: Okay. And I neglected to
6 ask, does the Board -- and the Board, please, feel
7 free to ask any questions at any time in terms of
8 this, so I won't pause to ask if the Board has any
9 questions.

10 So, Mr. Wilson, actually, I'm going to let the
11 ANC go next because I'm going to let you go last, if
12 that's all right. Do you have anything to present to
13 us concerning timeliness?

14 MS. McCLELLAND: Concerning timeliness, no.

15 CHAIRPERSON HILL: Okay. All right. Mr.
16 Wilson?

17 MR. WILSON: Certainly. First, neither the
18 DCRA -- actually, let me stop and say, I'm not an
19 attorney. I'm going to do my best job here. And I've
20 prepared my remarks for that reason.

21 First, neither the DCRA nor Oaktree argues
22 that our appeal is untimely if it includes a
23 certificate of occupancy. The certificates were
24 issued in early February 2017, and we are still within
25 the 60-day window.

1 Second, Oaktree may argue that if our
2 challenge of the C of O falls within a 60-day window
3 we are still untimely because we failed the challenge
4 -- we failed to challenge the permits issued in 2011
5 and 2010, within 60 days. But our appeal would have
6 been impossible to file them because not only did
7 Oaktree not own the properties, but Common, it's
8 tenant, did not exist.

9 It was only when we learned of Oaktree's plan
10 to use the facility as a quote, "co-living space," of
11 essentially a dorm for adults, that we could
12 reasonably argue that Oaktree had failed to indicate
13 on its applications the quote, "Use that most
14 accurately describes the intended use," which is what
15 the BZA determined in the appeal of Eugene A.
16 Thompson.

17 We only learned that information October 30th,
18 2016, and our appeal followed less than 30 days from
19 that. Importantly, neither DCRA, nor Oaktree dispute
20 the argument on this point, i.e., that we lacked a
21 notice of their intent to use the buildings as co-
22 living spaces until later October 2016. Nor do they
23 argue that our appeal would prejudice them. Our
24 appeal thus fits squarely within the Board's
25 prerogative to excuse otherwise untimely appeals for

1 quote, exceptional circumstances that are outside of
2 the appellant's control and could not have been
3 reasonably anticipated that subsequently impaired the
4 appellant's ability to file an appeal to the board.

5 Oaktree argues that the use hasn't changed;
6 that it simply built two-family flats. But that
7 presupposes the merits of the question in front of the
8 Board. We argue that the buildings aren't flats. So,
9 to the extent that their timeliness depends upon
10 whether or not they are flats, it requires that you
11 address the merits of the question before you.

12 The Board has, moreover, permitted appeals in
13 precisely this posture, in *Logan Circle Community*
14 *Association*, for instance, where the Board heard a
15 challenge to developer's permit where the only basis
16 for their appeal was that they had misrepresented the
17 intended use on his permit applications.

18 If that challenge could proceed, so must ours.

19 I'll give you an example. Imagine if someone
20 purchased a piece of property, did nothing with it
21 after -- waited 61 days until after its building
22 permits were issued, for an apartment. And they have
23 building -- they have an apartment house permit. And
24 within 61 days they then put out advertisements that
25 say, we are opening D.C.'s newest micro-hotel on this

1 block. That would not be appealable, period. And by
2 Oaktree's reading of the first reading, from there on
3 out they would have -- that no concerned neighbors
4 would have any opportunity to weigh in on the
5 development.

6 Indeed, in the case here, the lots sat fallow
7 for years with no activity on them until very
8 recently. So, I think beyond all of that, in another
9 D.C. BZA decision, this is the appeal of *Geraldine*
10 *Rebach and Jeffrey Schonberger*, the BZA allowed the
11 exceptional circumstances to proceed specifically
12 because construction had ground to a halt on a piece
13 of property, which is precisely what had happened
14 here. And only did they -- so, as you may understand,
15 the buildings were put up, a small amount of work was
16 done on them, and then they sat empty for I believe
17 almost two years until Common and Oaktree purchased
18 those buildings. Thus, the permits that they applied
19 for to complete them, should be timely.

20 CHAIRPERSON HILL: Okay. Does the Board have
21 any questions? Okay, I've got a quick question.

22 So again, the date that your -- it was the
23 October date when you realized what you thought the
24 use was going to be, was not what you thought the use
25 was going to be. And what's the date again? That's

1 the October 20th? No.

2 MR. WILSON: It was October 31st, I believe.

3 CHAIRPERSON HILL: Yeah, that's right, October
4 31st.

5 [Pause.]

6 MR. HOOD: Mr. Chairman, while we're waiting.
7 Now what was the October 31st date again?

8 MR. WILSON: On October 31st they
9 representative from Oaktree met with us and indicated
10 that they had signed up to use the buildings with a
11 company called, Common, which is effectively a dorm
12 for adults, and intended to use the properties as
13 something other than a two-family flat, based on all
14 of the evidence we've put into the record.

15 MR. HOOD: Okay. Thank you.

16 [Pause.]

17 CHAIRPERSON HILL: Okay. Mr. Freeman, so do
18 you have anything to rebut in terms of the information
19 that's been put forth?

20 MR. FREEMAN: I do.

21 CHAIRPERSON HILL: Okay.

22 MR. FREEMAN: If we could go back to the
23 regulations? Just as a procedural matter, we often
24 hear and see in the writing from the appellants that
25 neither DCRA or OTD dispute -- actually, we tend to

1 dispute and disagree with most of the things they say
2 we don't dispute. So, that's as a general matter, not
3 correct.

4 Secondly, when you look at Mr. Wilson said
5 it's the C of O that they're appealing. When you look
6 at Section 302.5 it clearly states, a zoning appeal
7 may only be taken from the first writing that reflects
8 the administrative decision complained of, which the
9 appellant had notice. No subsequent document,
10 including a building permit or C of O, may be appealed
11 unless the document modifies or reverses the original
12 decision or reflects a new decision.

13 My point is, the original building permit said
14 a flat, the revised building permit said a flat, and
15 the C of O said a flat. So, nothing has changed or
16 reflects a new determination. So, the C of Os cannot
17 be appealed at this point because they do not reflect
18 a change from the initial permit.

19 With respect to the hypothetical, in that we
20 have a permit and someone has an apartment building
21 and then they go and operate it as a hotel, our point
22 is, if that happens, that is a violation of that C of
23 O, which is an enforcement action, which would be
24 timely at that point. We haven't had a violation of
25 our C of O. They submitted evidence, what they call

1 evidence, articles that suggest that we're not going
2 to operate in accordance with the C of O, but there's
3 no evidence that we have or will violate the C of O.
4 So, their hypothetical actually proves our point.

5 Our point is, there's no basis for an appeal
6 hearing today, because there's no violation or
7 misrepresentation that they can demonstrate, that we
8 will not act in accordance with our approved C of O or
9 building permit.

10 With respect to -- and I can get into all of
11 the cases they cite, with respect to the *Logan* case,
12 for example, they say that's an example in which the
13 Board allowed an appeal to move forward based on a
14 change of use. There was no timeliness argument in
15 the *Logan* case. That case had nothing to do with
16 timeliness.

17 With respect to the other case they cited, the
18 *Robach* case, I believe, that appeal moved forward
19 because the owner said on one day that they weren't
20 going to do something, they changed their mind and did
21 something else. And the Board said, okay, well since
22 you changed your mind there was a change of facts,
23 that's why we allowed the appeal to move forward.

24 In this case, there is no change of facts. So
25 that case is not applicable and does not represent

1 what you might have heard it represents.

2 MR. HART: Can you describe what the -- Mr.
3 Tondro described that there was some sort of
4 modification that was kind of -- that was --

5 MR. FREEMAN: Sure.

6 MR. HART: That kind of happened in this
7 timeline. And what I'm trying to understand is, does
8 that itself create a -- that modification, because you
9 know, the wording that you just read from 302.5,
10 Subtitle Y, it does describe about the document being
11 modified or reversed in an original decision. So,
12 describe how that --

13 MR. FREEMAN: Sure.

14 MR. HART: -- is not applicable in this case.

15 MR. FREEMAN: So, the original permit was a
16 flat. And that owner, prior to Oaktree purchasing it,
17 their design had a three-unit -- so a flat is defined
18 as a two-family dwelling. So, the original owner had
19 unit 1 that occupied about three floors, and unit 2
20 that occupied one floor. So, it was still a flat, the
21 configuration of the space was just different.

22 Our revised permit changed the space such that
23 we now have, unit 1 is on two floors, and unit -- or
24 Unit A is on two floors and Unit B is on two floors.
25 So, it was just a reconfiguration of the space, but

1 not a change of the approved use.

2 So, if you look at the permit you'll see --
3 and it's in the record. If you look at the original
4 permits you will see that it says, and I'm reading
5 from the 2011. It says, "Build a three-story plus --"

6 MR. HART: What is the exhibit you were
7 talking about?

8 MR. FREEMAN: It's our prehearing statement.
9 I'll get the exact reference for you.

10 MR. HART: Is it 32E?

11 MR. FREEMAN: Let me get the exact reference
12 for you. So, it's 32A.

13 MR. HART: A.

14 MR. FREEMAN: Original building permit for 412
15 Richardson. It says, "Build a three-story plus cellar
16 flat."

17 And then when you look at Exhibit 32B, which
18 is the original permit for 410 Richardson, it says,
19 "New 54-foot by 26-foot flat." So, each of those
20 original permits describe the use as a flat.

21 If you look at our revised permit for 412,
22 which is 32C, you'll see the description of work,
23 "Completion of an existing two-family flat." So,
24 there is no change of use. Again, if you look at
25 Exhibit 32D, which is the revised building permit for

1 410, it says, "Completion of an existing two-family
2 flat." So, it has always been a flat. And the work
3 that was done is finishes, changing -- so, nothing of
4 substance that changed the use.

5 MR. HART: So, I guess what I'm trying to get
6 to is, they don't really talk about use changing in
7 this, in Subtitle Y, 302.5. They just say that there
8 is -- unless the document modifies or reverses the
9 original decision. So, the very bottom.

10 MR. FREEMAN: Right.

11 MR. HART: So, what I'm trying to get to is,
12 there are different building permits that are -- that
13 you've provided.

14 MR. FREEMAN: Right.

15 MR. HART: There are different building
16 permits, so that there is something that was from the
17 first building permit is not in the second building
18 permit. So, what I'm trying to understand is what is
19 it that you are -- there is a need for a new building
20 permit.

21 MR. FREEMAN: Again, so it's, they changed the
22 configuration in the original building permit, the
23 first unit was on three levels, and the second unit
24 was on one building -- was on the lower level. Our
25 new permit, and this is our position, our new permit

1 was intended, frankly, to make it more compliant with
2 the zoning regulations jus to be 100 percent frank
3 because your initial building permit, the upper unit
4 had eight bedrooms and the lower -- the lower unit had
5 three-bedroom. Our new permit had six and six. So,
6 still a total of 12 bedrooms, but just a
7 reconfiguration of the space.

8 Second reason is to change the name, because
9 at that point, OTD, on the second permit, had owned
10 the property. So, that was the other need for the new
11 permit, to get the current owner's name changed.

12 So, the original decision at issue in this
13 case was that it was a flat. That was the original
14 decision. And that decision has -- which is what
15 they're challenging today, whether it's really a flat,
16 that decision was made back in 2011 and 2013.

17 MR. HART: Thank you.

18 CHAIRPERSON HILL: Well, and just to be clear,
19 what I also thought, and Ms. Glazer, if you can help
20 me again, is now also, it's not only is it a flat or
21 not, but the certificate of occupancy, correct?

22 MR. FREEMAN: The certificate of occupancy
23 says flat.

24 CHAIRPERSON HILL: Right. So, then -- well,
25 okay. All right.

1 MR. FREEMAN: And if you read this regulation
2 it says, building permit or certificate of occupancy.

3 CHAIRPERSON HILL: Okay. All right. Does,
4 Mr. Wilson, you seemed like you had a comment.

5 MR. WILSON: If I may? A point of
6 clarification, there was actually a building permit
7 issued in April for the name change that was an
8 extension, I think, of the original building permit.
9 And then the permits in question today actually were a
10 change in the permit where they actually had the
11 permit to change the space.

12 Another, a point that I want to point out is
13 that --

14 MR. FREEMAN: That's not true. If I could --
15 if you read the permit, it refers back to the original
16 permit.

17 MR. WILSON: You changed your name with
18 (simultaneous speech).

19 MR. FREEMAN: The original -- it refers back
20 to the original permit.

21 MR. WILSON: So, the second --

22 CHAIRPERSON HILL: Okay, okay, okay.

23 MR. FREEMAN: If you read the permit, you can
24 see that.

25 CHAIRPERSON HILL: I heard you.

1 MR. WILSON: So, the second point, and I think
2 this is the most important one, is that the degree of
3 arbitrars that this -- by their interpretation of how
4 this is supposed to work, every person intending to
5 push the limits of the zoning code or completely move
6 past them and violate those, would merely secure a
7 building permit, wait 61 days, which would effectively
8 completely eliminate any affected neighbor's ability
9 to in any way, shape, or form, weigh in on this
10 building permit's issuance because he's claiming that
11 by only allowing the first reading of the permit to be
12 appealable, builders could merely wait, and wait, and
13 wait, and then there's a difference between the
14 intended use they have internally, and the use that
15 they've put on their permit.

16 If they have an intended use internally that
17 is different than the use they've put on their permit
18 --

19 CHAIRPERSON HILL: Okay, Mr. Wilson, I'll let
20 you get to your -- we'll see if we get, again, to the
21 merits of the case. But again, I understand your
22 comment in terms of the timeliness.

23 So, Mr. Tondro, do you have any rebuttal in
24 terms of the testimony?

25 MR. TONDRO: Yes, I do. Thank you. First of

1 all just to remind all of us that I think what's
2 appropriate to remember is that we're dealing with
3 property rights here, and property rights are the
4 appellants, that they are concerned about how that
5 impacts them, the property rights of the owner. And
6 when the ZA goes and considers an application, he is
7 considering what is able to be built based on that
8 application. I'm responding particularly to the
9 appellant's assertion which I think unfortunately
10 we'll hear again and again, that the sole reason that
11 developers exist is in order to bend the rules, or
12 exceed the rules, or so forth.

13 I think we have to keep in mind here that
14 we're dealing with a situation where everybody who
15 owns a piece of property has a right to develop that.
16 They have to develop it within the rules for
17 building, and use it within the rules for the use.
18 But I think that that's worthwhile for us all to
19 consider.

20 Specifically, I also want to, in terms of I
21 want to address particularly the concern by appellant
22 as to how the process is supposed to work. And I
23 would call your attention to the zoning regulations,
24 referring back to the 1958 regulations under which the
25 permits were issued. And to distinguish between

1 3202.1, which is building permits, I'm going to read
2 for that, read to you, which is, "A building permit
3 shall not be issued for the proposed erection,
4 construction, conversion, or alteration of any
5 structure unless the plans of and for the erection
6 construction conversion or alteration fully conform to
7 the provisions of this title."

8 The words that's missing there is, use. Okay?

9 Use is brought in, in terms of the fact that if you
10 have a situation where you are building some -- the
11 layout, the interior layout is obviously not going to
12 meet one of the allowable uses in the zone. So, for
13 example, in this case if you were going to be a
14 situation where you're going to have a 20-story
15 building and you're only allowed four, that clearly
16 violates that.

17 If you're in a situation where the use where
18 you're allowed to have no more than one, one or two
19 families, and it's very clear that you have five or
20 six separate units based on the layout, then that's
21 something that would be dealt with by the building
22 permit.

23 Otherwise, you have to turn to 3202 -- 3203.1,
24 which is certificates of occupancy, and that states
25 that no person shall use any structure or land, or

1 part of any structure or land for any purpose until a
2 C of O, or certificate of occupancy, has been issued
3 to that person.

4 So, we're dealing with, I think, a distinction
5 here between a building permit and a certificate of
6 occupancy. And this particular case there is, and the
7 Board has -- the Zoning Commission has had
8 longstanding, on the -- as part of the zoning
9 regulations, this standing, this timeliness issue of
10 60 days. That is a period that is a reasonable amount
11 of time after the issuance of a building permit, for
12 parties that might be aggrieved by that decision to go
13 and appeal it.

14 After that time, apart from exceptional
15 circumstances as provided in the zoning regulations,
16 then that allows the person who is exercising their
17 property rights and has followed the rules and
18 obtained the permit, to build according to that. That
19 does not necessarily mean that the use is allowed.
20 There will be a use associated with it, but what gives
21 the authorization for that use is the certificate of
22 occupancy. That certificate of occupancy comes at the
23 end of the building permit process. Okay?

24 So, in this particular case the building
25 permits all said, flat. There is no change, as we've

1 heard from Mr. Freeman. The layout that most recent
2 permits that happened, the revision was changing the
3 interior layout but did not change it in a way to
4 create -- pardon me, an additional unit or units, or
5 anything else. It's the same, it's just the interior
6 configuration that changes. But the same basic
7 principles of two units, which is the flat, remain.

8 We get to the C of O. The C of O is also for
9 a flat.

10 Now, we're dealing, after that, there's a
11 third stage, okay, which provides for an appeal. That
12 is an issue of enforcement. So, when the Zoning
13 Administrator issues first of all, the building
14 permit, the building permit -- when the Zoning
15 Administrator approves the building permit, the
16 building permit is an authorization to build according
17 to the approved plans.

18 Once that's done, then there's a C of O.
19 That's, again, a confirmation of the fact that the use
20 of the structure is allowable under the zoning
21 regulations. Again, in both cases it was a flat, and
22 a flat both, which is clearly I think, undisputedly, a
23 permissible use in the R-4 Zone.

24 When we're coming now to the question of
25 enforceability. What happens when somebody says, I've

1 got my C of O, I'm going to -- I got a C of O for an
2 apartment house, to use appellant's example. And I'm
3 going to turn it into a micro-hotel. Well, that
4 becomes an enforcement issue. Why? Because they are
5 not authorized to operate a hotel. They're authorized
6 to operate only the apartment building. The C of O
7 gives them that authority and only that authority.

8 So, what would happen in that situation is the
9 neighbors or the ZA would find out about the fact that
10 this was -- there was a violation, and would go and
11 take enforcement action. And the ZA has, recently in
12 the last couple months, we've taken at least three.
13 We've revoked at least three different certificates of
14 occupancy for situations where people were operating
15 on one hand, they were operating a fast-food
16 restaurant but trying to say that it was a prepared
17 food shop.

18 There was another one where they had a three-
19 unit building and they were trying to sneak a fourth
20 unit into the basement. And in both of those cases it
21 was a situation where the ZA revoked the certificate
22 of occupancy and forced them to decide either to come
23 into compliance by providing evidence of how it is
24 that they would comply, or to go to the Board and seek
25 relief to be able to get that authorization to operate

1 in that particular zone.

2 And so, the appellant's assertion here that
3 somehow the timeliness argument is going to leave them
4 completely stranded without any rights to enforce the
5 zoning regulations is, I think not at all true. The
6 issue is really the way in which one appeals.

7 And the reason for that is a simple one. The
8 Zoning Administrator is charged, he only has the
9 authority to consider an application that is made to
10 him. Until we end up in a -- until the zoning
11 administrator has examples of how it is that the
12 property is actually used, not how it may be used in
13 other properties in other districts, in other
14 jurisdictions in New York City, in California, not how
15 it was used three years ago, but how this particular
16 property in the District was used under this
17 certificate of occupancy. Only at that time can the
18 ZA be in a situation where he can say, no, you are not
19 authorized to use that for that purpose. Thank you.

20 CHAIRPERSON HILL: Okay. You have some
21 questions?

22 MR. HART: Yeah, Mr. Tondro, again with the
23 question about modifies. So, I understand what you're
24 saying with regard to the C of O and that being tied -
25 - the use aspect being tied to the C of O, and that

1 the construction -- the authorization for construction
2 or building is connected to the building permit.

3 What I'm trying to get to is, there was -- and
4 I understand that there is -- that there was a change
5 in the floor configurations in one permit, and then a
6 building permit, and the change of the name in another
7 building permit, regardless of that -- not regardless,
8 but there were some timing issues with that as well.

9 The name change I'm not too concerned about,
10 but the floor configuration piece, can you talk a
11 little bit about that just to understand, do you see
12 that as being a modification, or how do you view that?

13 MR. TONDRO: I think again it depends on the
14 context of what we're looking at right here. If it's
15 a situation where there is a profound change, so for
16 example, as has happened, you have a two-story
17 building and then there's a change of owner and the
18 new owner says, oh wait, wait, I want to go actually
19 four stories because I can do that. Well, that's a
20 substantial change. Clearly then that involves a
21 review process that will affect the neighbors and
22 you're in a situation where there should be an
23 opportunity to appeal that.

24 In this particular case, it's all in the
25 interior and there is no -- so, in other words,

1 limitation. How it affects the neighbors is
2 diminished in the sense of the development, the
3 envelope has not changed. But the interior layout
4 also did not change the use, right? The proposed use.
5 The use that is declared in the permit application
6 for which the permit was authorized, which is as a
7 flat. It changed the configurations in between.

8 I would posit that that's not a significant
9 enough modification to justify reopening a brand new -
10 - reopening the permit to appeal on that basis alone.

11 MR. HART: So, what would -- and I really
12 don't want to get into speculation, so I was going to
13 ask, what would you consider to be a modification that
14 would be -- I mean, beyond what you -- the one
15 modification you talked about is, you know, growing in
16 -- going from two to four, two to four stories, they'd
17 have to come back here. I mean, you know, if they
18 wanted to -- if they were looking to do something that
19 was out -- they might have to come back here.

20 MR. TONDRO: Right.

21 MR. HART: If because, depending on the
22 height. I understood that as well.

23 What I'm trying to get to is, how do you get
24 to the threshold of modification or not? And that's
25 what I'm trying to, you know, parse out. It's helpful

1 for me to understand it, to then understand when the
2 last decision was made. And then be able to kind of
3 count -- to be able to count the 60 days from that
4 point. Or maybe, I'm still kind of putting this in --
5 running this through my head to understand how you how
6 I should be really seeing this.

7 MR. TONDRO: Yes, so I meant to say, thank you
8 for catching that. I meant to talk -- I was talking
9 only about matter of right projects. So, assuming
10 that you are in a situation where you have a maximum
11 four-story limit, but that the original proposal is to
12 do a two-story for whatever reason, and then the new
13 owner, or maybe the same owner decides in the -- once
14 the application is submitted, no, actually I want to
15 change, I want go up four stories. Why will that
16 might be a situation where the rents have changed, the
17 market analysis has changed, the neighbors become hot.
18 It could also be a situation where it could be a
19 decision about popping the back of the building in a
20 way that would change that envelope. Why am I focused
21 on the envelope first? I think because the envelope
22 is the one where it's most clearly going to affect the
23 neighbors and where, if there's going to be appeal on
24 the basis of a change, right, that there -- there have
25 to be, for an appeal, an allegation that there's a

1 violation.

2 The decision for the original envelope is for
3 the original envelope. I think that one is time
4 barred, let's just say, if it's more than 60 days. If
5 you're expanding the envelop by popping up or popping
6 back, well then what's changed is, is that pop-up or
7 pop-back? I would posit that I don't think that the -
8 - in the case of the pop-back that the front of the
9 building, let's say, should be reopened. That was
10 always there, that was the original approval. You had
11 your time, your chance, your bite of the apple.

12 Now the issue is, however, that new revision
13 should be subject to the potential appeal rights just
14 as any other new permit would come in. And I think
15 one way of thinking about it would be that the
16 applicant, permit applicant often times, they can
17 choose to either have a revision to a building permit,
18 or they can choose for a new building permit. It ends
19 up often times at a low-level staff position. The
20 expediter who happens to be choosing one or the other.

21 And so, you end up in a situation where if it was --
22 if you were going to view it through the lens, if this
23 is a brand new building permit, what would be
24 appealable? You would be appealing that extension up
25 or back. You wouldn't be appealing that original part

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1 that was already approved that already had the
2 approval. Unless that changes. It's on that part
3 that changes that would be subject to the challenge.

4 Similarly, once you're going inside and you're
5 looking at the interior, what would rise to the level
6 of a change for me would be a situation where there
7 was shown to be two units, and then now you're showing
8 four units. How might that be shown? Well, that's
9 shown through an egress. You're going to have a
10 different building code analysis, you're going to have
11 not only bathrooms and so forth, but hallways and
12 totally separate units. You're going to have four
13 kitchens now instead of two kitchens. Those kinds of
14 -- that is a fundamental change, and again, it would
15 only be triggered if there was then -- if that change
16 was something that led to an alleged violation of the
17 zoning regulations.

18 So, you're allowed a flat, and now you're
19 doing it as a four-unit, that's not allowed except if
20 you get a special exception, then that would be the
21 alleged violation. So, I think only when it rises to
22 that level.

23 MR. HART: Thank you.

24 MR. TONDRO: Because again, the original
25 decision is not changed.

1 CHAIRPERSON HILL: Ms. McClellan, you had --
2 was it McClellan? You had a question.

3 MS. McCLELLAND: Yeah. Sorry. So, I'm not
4 sure when I should -- are we still only on timeliness,
5 because I wanted --

6 CHAIRPERSON HILL: Yeah, we're still only on
7 timeliness.

8 MS. McCLELLAND: Okay. Because I just had
9 some questions about the previous comments and how
10 they affected the community and how the envelope
11 changing and all of that.

12 CHAIRPERSON HILL: It's okay.

13 MS. McCLELLAND: But, should I wait later?

14 CHAIRPERSON HILL: It's just the timeliness.
15 Yeah.

16 MS. McCLELLAND: Okay. Okay.

17 CHAIRPERSON HILL: Just, I think we are going
18 to get there.

19 MS. McCLELLAND: Okay.

20 CHAIRPERSON HILL: So, we'll get there. So --

21 MS. McCLELLAND: Thank you.

22 CHAIRPERSON HILL: Mr. Wilson.

23 MR. WILSON: I'd like to make a few just brief
24 points in response. Is that allowable, or no? You
25 tell me.

1 CHAIRPERSON HILL: Yeah, sure.

2 MR. WILSON: Great. This theory would allow
3 Common to claim reliance on the certificate of
4 occupancy to unfairly allow them to later raise
5 estoppel or Laches claims as defenses. But more
6 importantly it deprives neighbors of their rights in
7 any way, shape, or form, to bring an enforcement
8 action because 302.1 says specifically that for the
9 purpose of the subsection a discretionary decision not
10 to bring an enforcement action for a violation of the
11 zoning regulations shall not be deemed refusal. And
12 if it's not refusal, then it's no longer appealable.

13 The theory that's been put forward here
14 deprives all neighbors of all rights of their ability
15 to appeal these things. If a developer chooses to
16 wait 61 days before they actually commence or indicate
17 that they're doing something different than what their
18 building permit indicates.

19 They would -- the neighborhood --

20 CHAIRPERSON HILL: Okay, okay. I heard you.
21 I heard you. I heard you. I heard you. Okay. All
22 right.

23 MR. TONDRO: So if I can just respond?

24 CHAIRPERSON HILL: Sure, Mr. Tondro.

25 MR. TONDRO: Estoppel and Laches are equitable

1 defenses. They require the clean hands. I think in
2 this case if the owner was to sit there and say that I
3 had obtained a permit or obtained a C of O on the
4 basis of certain statements and that was the reason
5 why it was granted and now I'm going to change those
6 facts, I don't think that they would be able to have
7 an estoppel or Laches claim on the basis that there
8 would be unclean hands.

9 CHAIRPERSON HILL: Okay. Does the Board have
10 any questions with anyone concerning timeliness?

11 [No audible response.]

12 CHAIRPERSON HILL: Okay. I'm actually going
13 to take three minutes real quick before -- I'm going
14 to hold the timeliness issue in abeyance and we're
15 going to go through the hearing and get to the merits.
16 And so, I need three minutes real quick, and then I
17 will come back so don't -- just literally it's going
18 to be three minutes.

19 [Off the record from 3:04 p.m. to 3:09 p.m.]

20 CHAIRPERSON HILL: All right. We are coming
21 back here. So, we're going to hold the issue of
22 timeliness in abeyance, and go ahead and hear the
23 merits of the case. And so, and I would appreciate
24 the Office of the Attorney General helping out if I'm
25 not following the correct order, because the new regs

1 kind of, they're basically the same in terms of the
2 order, but I do get a little bit confused sometimes,
3 which is to say now, the appellant, we're going to
4 give you time to present your case. Then, DCRA and
5 the property owner, and the ANC would have an
6 opportunity to cross.

7 And then we'll do the same thing with DCRA.
8 We'll do the same thing with the property owner, and
9 we'll do the same thing with the ANC.

10 MS. GLAZER: Mr. Chair.

11 CHAIRPERSON HILL: Yes.

12 MS. GLAZER: Sorry to interrupt.

13 CHAIRPERSON HILL: That's all right.

14 MS. GLAZER: But since you asked.

15 CHAIRPERSON HILL: Yes.

16 MS. GLAZER: It's the appellant and then under
17 507.1(c), the owner goes after the appellant.

18 CHAIRPERSON HILL: Okay.

19 MS. GLAZER: And under D, it's the
20 administrative official, DCRA.

21 CHAIRPERSON HILL: Okay.

22 MS. GLAZER: And, I'm sorry, the ANC is after
23 the owner.

24 CHAIRPERSON HILL: Okay. All right.

25 MR. HOOD: Look, can I ask --

1 CHAIRPERSON HILL: Sure.

2 MR. HOOD: -- a clarifying question? Ms.
3 Glazer, if the owner's counsel represented them, they
4 can also be crossed, correct? If he's going to
5 provide the testimony.

6 MS. GLAZER: Well, I imagine the owner is
7 going to put a witness on, but you can ask him.

8 MR. HOOD: You have a witness? Okay. Because
9 we want to make sure that we --

10 MS. GLAZER: So, it would be the witness would
11 be cross-examined.

12 MR. HOOD: We'll make sure that any testimony
13 can be crossed.

14 CHAIRPERSON HILL: You get to cross the
15 witness. Everybody gets to cross the witness. So, we
16 won't cross you.

17 MS. GLAZER: Well, if the appellant --

18 MR. HOOD: It doesn't cross you.

19 MS. GLAZER: -- puts on a witness then that
20 witness should be crossed.

21 CHAIRPERSON HILL: Believe it or not, I agree
22 with Mr. Freeman. We're going to figure it out here a
23 little bit. But, so okay. So, I appreciate that. I
24 appreciate that. All right. So, again, we're going
25 to do our best to hear everything. We're going to

1 listen to everyone. I just would again request that
2 when there is cross-examination going on, we try to
3 stick to what has been presented in terms of cross and
4 not trying to retry or resubmit information. And then
5 also try to do all this in a very calm way. I keep
6 clarifying that because sometimes it doesn't get very
7 calm.

8 So, and then afterwards there will be rebuttal
9 by the appellant, and then we're going to have closing
10 arguments, and then we will get to go home. So,
11 because I don't think we're going to deliberate today.

12 So, all right. So, I'm going to go ahead and
13 start with you, Mr. Wilson. And just again, in an
14 effort to kind of get an idea of time, do you know how
15 much time you might need for your portion?

16 MR. WILSON: I believe this takes about eight
17 minutes. Is that too long?

18 CHAIRPERSON HILL: No, that's great. Okay.
19 All right. Then go ahead and, again, please.
20 Whenever you'd like. We'll put 10 minutes on the
21 clock because that's a little too precise for Mr. Moy,
22 but --

23 MR. WILSON: At a real estate conference last
24 summer Common's founder and CEO openly acknowledged
25 that Common knowingly flouts occupancy laws, and that

1 they've used such a violation as a calculated risk.
2 Regarding the New York City's Three Unrelated
3 Individuals Rule, which is a reference to the city's
4 definition of a family, Brad Hardgrave said the
5 following. I'm quoting him here. "You mentioned the
6 three unrelated individuals rule. Our viewpoint on
7 that, you know, in some cases we do have more than
8 that. In some cases, we do not. An identical rule
9 was struck down by the New York State Supreme Court in
10 1989. It has been unenforced since then."

11 As a side note, it has not been unenforced
12 since then. It was enforced recently. Back to the
13 quote.

14 "So, there's certain ways you can look at this
15 stuff. It's really about the risk you're willing to
16 take and the risks you're not willing to take.
17 Anything around the safety of our members, anything
18 around illegal or unpermitted construction, obviously
19 we do not do. But yeah, there are obviously some
20 regulatory challenged." That's the end of his quote.

21

22 In other words, Common understands the law and
23 is willing to risk breaking the law. In this appeal,
24 Common asks the Board to trust it when it promises not
25 to break the law. We find those promises ring hollow.

1 The Board has a clear evidentiary role here,
2 which is to determine whether in light of the evidence
3 we submitted in December 2016, Common was in fact
4 intending to operate flats. The Zoning
5 Administrator's obligation here is to, quote, "Ensure
6 both that the use of the property corresponds with the
7 permit or certificate of occupancy issued on the
8 property," and quote, "that the use described in the
9 certificate of occupancy more closely fits the actual
10 use than -- rather than any other use in the zoning
11 regulations." Unquote.

12 That is the appeal of -- or the matter of
13 *Eugene Thompson*.

14 And in making that determination, the
15 government must look beyond the structure of the
16 property. And when presented with evidence casting
17 doubt on the owner's assurances, make a determination
18 for the facts itself. The Zoning Administrator has
19 failed to do that here.

20 In our appeal, we put in the record, manifold
21 evidence demonstrating that the intended use of the
22 Richardson Place building fails to meet the criteria
23 for a two-family flat. All of them are statements
24 that come directly from Common itself in advertising
25 the public statements of its CEO, its blog posts, and

1 its own lease agreement. Although we've discussed
2 them in detail in our briefs, I want to highlight a
3 few of them.

4 First, Common knowingly flouts occupancy
5 rules. I know that I opened with this, but it's worth
6 reiterating that Common's CEO acknowledges that its
7 company breaks occupancy rules that are enforced in
8 New York. Common has given nothing but a bald
9 assurance that they will, quote, obey the law here.

10 Second, Common's relationships to its tenants
11 is governed by two documents. Common argues that its
12 six-member units are single-family because they are
13 all on the same lease. But it failed to acknowledge
14 in its filings that the lease is only one half of the
15 relevant legal document. The other is the membership
16 agreement that Common signs with each individual
17 member.

18 And as the lease's merger clause makes clear,
19 if you breach your individual membership agreement
20 with Common, you breach the lease.

21 Third, the duration of the lease is pegged to
22 each individual member. Common claims that all six
23 tenants will be one, on one lease with a fixed term.
24 But that's impossible given that Common advertises
25 both six and 12-month leases for each individual

1 member, and it's clear that not all members will pick
2 the same lease, or start or leave on the same dates.

3 Fourth, the rent is pegged to each individual
4 member. Common says the rent is governed by the
5 lease. But this is impossible according to Common's
6 stated business model of giving individual members
7 discounts on their own rents, rates, based on the
8 length of stay. The amount you pay is not determined
9 by your lease, but by your own individual agreement
10 with Common.

11 Fifth, there is no joint and severed liability
12 for rent. Common swears that the tenants are quote,
13 jointly and separately liable for rent. But the lease
14 states explicitly that, quote, "Common will not seek
15 to hold an individual tenant liable for more than
16 their allocatable portion of the monthly rent for any
17 month or portion of a month in which the tenant has
18 legal occupancy of the premises."

19 Sixth, there is no power to pick roommates.
20 Common's lease states that quote, "Common may at its
21 sole option, select another tenant to fill any of the
22 open tenant contract slots in the lease agreement."
23 This is corroborated by public articles confirming
24 that common members do not pick their own roommates,
25 that rather that residents are placed wherever there

1 is an opening.

2 Seventh, Common gives its members access to
3 all common community spaces. Community advertises
4 that its members have quote, access to the community
5 spaces at each common house, meaning that a member can
6 quote, move throughout the homes and visit other suits
7 for movie marathons, happy hours, or other casual pop-
8 up events.

9 Eight, Common gives its members no power to
10 evict roommates. The lease contains no provision
11 permitting tenants to choose for themselves to evict
12 one of their own roommates.

13 Ninth, Common reserves the right to evict and
14 resolve disputes. Relatedly, Common takes
15 responsibility for resolving inter-tenant disputes.
16 Common's CEO, Brad Hargraves explains quote, "Common's
17 homes are governed by our membership agreement and
18 code of conduct." Unquote. This means that if quote,
19 "Someone in the suite complains, the rules enable us
20 to access the situation and help manage the conflict
21 as necessary." Unquote.

22 Tenth, Common can evict one member without
23 affecting the entire tenancy. Given that the lease
24 states that a breach of the membership agreement and
25 code of conduct, which is between Common and each

1 individual member, counts as a grounds for breach of
2 the lease, Common can almost assuredly evict a single
3 person without affecting the six-person tenancy. This
4 is unlike other leases for group homes where a breach
5 of the lease by one roommate is grounds for evicting
6 the entire group of people who live in the group home.

7 Eleventh, Common decides whether a significant
8 other is a resident. Common has the quote, sole
9 discretion to determine whether a person may allow his
10 or her boyfriend or girlfriend to spend the night, and
11 for how long. It's lease states, quote, "Tenants is
12 permitted overnight guests, so long as the maximum
13 number of residents is no more than six unrelated
14 individuals. The determination of whether an
15 individual is a resident is the sole discretion of the
16 landlord."

17 Twelfth, Common offers flexible moves. Going
18 to the transitory nature of this arrangement, and
19 illustrating the lease's duration is irrelevant,
20 Common permits its members to quote, move to any other
21 Common home with just 24 hours' notice. This also
22 means that Common allows individuals to vacate the
23 premises without imposing any financial or legal
24 burdens on the roommates left behind.

25 Finally, thirteenth, Common believes its

1 leases are irrelevant. Common's own CEO has indicated
2 his belief that Common is, quote, "Disintermediating
3 the lease." Which he defines as meaning that each of
4 its members may, quote, "Sign one membership agreement
5 with us, and they can live wherever they want."

6 Taking all of these facts together, it is
7 clear that the use Oaktree contemplates cannot be
8 considered a single-family without depriving the term
9 of all meaning. As the Board has itself held, quote,
10 "We interpret the definition of a family of non-
11 related persons, to mean six people --" excuse me,
12 "Six persons who live together as a housekeeping unit
13 for the mutual benefit of all parties on a more or
14 less continuing basis." Which comes from Rock Creek
15 East.

16 But it is clear that Common's own words, that
17 the persons here are not living for the mutual
18 benefit. Nor are they considered a unit. Instead
19 they are living in these spaces out of convenience and
20 under overarching rules that prevent them from being
21 considered a self-governing, self-determining family
22 unit.

23 What Oaktree intends to operate is an
24 assemblage of 24 private bedrooms and bathrooms as a
25 single professional dorm. The Board has found that

1 the zoning regulations, quote, "Require that an
2 applicant seek a certificate of occupancy for the use
3 that most accurately describes the use of the
4 premises." Unquote.

5 Here, it is clear that Oaktree and Common do
6 not intend to operate a two-family flat, and that the
7 most accurate category is that of a rooming house.
8 Such a use may be permissible in an R-4 Zone, but not
9 at a 60 percent lot coverage, which is permitted for
10 only flats and rowhomes. Thank you.

11 CHAIRPERSON HILL: Okay. Does the Board have
12 any questions to the applicant right now?

13 MS. WHITE: I just have one. The information
14 that you read, is that also in the record?

15 MR. WILSON: Yes. Yes, all of that is in the
16 record.

17 MS. WHITE: Okay. Thank you.

18 CHAIRPERSON HILL: All right, Mr. Freeman, do
19 you have any questions?

20 MR. FREEMAN: I do. A couple. A couple
21 questions.

22 MR. WILSON: I'm representing RPNA. I'm not a
23 witness. I don't believe I'd be eligible to testify.
24 As a witness I shouldn't be crossed, right? I mean,
25 I'm going based on what I read.

1 CHAIRPERSON HILL: Ms. Glazer.

2 MS. GLAZER: Well, it's up to the Board, but
3 it seems to me that this was --

4 MR. FREEMAN: Kind of like testimony to me.

5 MS. GLAZER: -- more testimony than argument.

6 MR. TONDRO: Certainly a lot of assertions I
7 would --

8 CHAIRPERSON HILL: Okay. Everybody's going to
9 give me their opinion.

10 MR. HOOD: Yeah. Well, I'm going to give you
11 mine. He can be crossed.

12 CHAIRPERSON HILL: Right. Okay. All right.
13 Okay. All right. That's all right.

14 So, we're going to -- I want everybody to get
15 an opportunity. I want this to get fleshed out.

16 Okay? So, I'd like to hear your answers also. When
17 your turn comes and there's time for questions for
18 you, I'd like to hear those as well.

19 Mr. Tondro, for you as well. All right?
20 Okay?

21 MR. FREEMAN: I'm happy to answer any
22 questions.

23 CHAIRPERSON HILL: All right. So, please, Mr.
24 Wilson, just answer Mr. Freeman's questions and we'll
25 just kind of move on from here, okay?

1 MR. WILSON: All right.

2 CHAIRPERSON HILL: Thank you.

3 MR. FREEMAN: Mr. Wilson, you started with a
4 citation from a YouTube video, and you followed a lot
5 of articles about how Common operates in New York and
6 California. Have you submitted anything about how
7 Common will operate in D.C.?

8 Do any of those articles relate to how Common
9 will operate in D.C.?

10 MR. WILSON: None of them indicate how Common
11 will operate in D.C. They do indicate Common's
12 weighing of the risks of being enforced upon, with the
13 risk of being able to exceed it.

14 MR. FREEMAN: That's not my question.

15 CHAIRPERSON HILL: Your question was whether
16 or not he presented anything of how Common plans to
17 operate in D.C.

18 MR. FREEMAN: Correct.

19 CHAIRPERSON HILL: And your answer was no.

20 MR. FREEMAN: Correct.

21 MR. WILSON: Oh.

22 CHAIRPERSON HILL: Okay.

23 MR. WILSON: If that's the question, he was
24 referencing the YouTube video quote.

25 MR. FREEMAN: My question was --

1 CHAIRPERSON HILL: That's okay. That's okay.
2 That's okay.

3 MR. FREEMAN: -- of all the articles in the
4 record --

5 CHAIRPERSON HILL: Yes.

6 MR. FREEMAN: -- do any of them reference how
7 Common will operate in D.C.?

8 MR. WILSON: There are an incredible number of
9 articles in the record, including their own lease,
10 statements from their website that have all been put
11 into the record that indicate how they intend to
12 operate.

13 CHAIRPERSON HILL: In D.C.?

14 MR. WILSON: In D.C. The majority of the
15 points that I went through in my opening --

16 MR. FREEMAN: Can you cite --

17 CHAIRPERSON HILL: Hold on, hold on, hold on.

18 MR. FREEMAN: -- an article --

19 CHAIRPERSON HILL: Hold on. I'm just asking,
20 I'm just trying to clarify.

21 MR. WILSON: The points that I cited in my
22 testimony come directly from an analysis of their own
23 lease. They were the ones who put into the record.

24 Moreover --

25 CHAIRPERSON HILL: Hold on. Hold on. Hold

1 on, Mr. Wilson. I'm trying to get through this one
2 question.

3 MR. FREEMAN: I'm just trying to ask one
4 question.

5 CHAIRPERSON HILL: Right. Right.

6 MR. FREEMAN: So, you just said -- could you
7 point to an article in the record that describes how
8 they will operate in D.C.?

9 MR. WILSON: An article --

10 MR. FREEMAN: That you filed that describes
11 how they will operate in D.C.?

12 MR. WILSON: If you're saying specifically an
13 article, for instance, not a disclosure on their own
14 website, no, because they've only had a handful of
15 articles that have been written. But there is
16 numerous citations --

17 CHAIRPERSON HILL: That's okay. That's all
18 right. He's just answering a very simple question you
19 answered and --

20 MR. WILSON: Okay.

21 CHAIRPERSON HILL: -- I appreciate it. Okay.

22 MR. FREEMAN: So, you went through 13 comments
23 about Common's lease. Can you point to any section in
24 the zoning regulations that describe or say Common's
25 lease, or anyone's lease has to address those 13

1 points that you went through? Where is that in the
2 zoning regulations?

3 MR. WILSON: In the zoning regulations there
4 is a restriction on the use associated with a two-
5 family flat that requires that it be operated as a
6 single -- a group of six unrelated individuals
7 operating as a single housekeeping unit. And as our
8 filings have indicated, we do not believe that
9 Common's operations in any way, shape, or form,
10 resemble anything close to a single housekeeping unit
11 that as the Board has determined, operates for the
12 mutual benefit of each other for a period of time.

13 MR. FREEMAN: How many people live there now?

14 MR. WILSON: I don't know.

15 MR. FREEMAN: Zero. So, would you be
16 surprised to know that zero people live there now?

17 MR. WILSON: I have no idea. I don't really -
18 -

19 MR. FREEMAN: So, you don't know how many
20 people live there now?

21 MR. WILSON: I don't.

22 MR. FREEMAN: Okay. You reference Common's
23 postings on their website as evidence. Is that
24 correct? So, should we rely on what's on the
25 internet, or should we not rely on what's on the

1 internet?

2 MR. WILSON: I think we should rely what's on
3 the internet.

4 MR. FREEMAN: Great. Let's look at your
5 Exhibit 34B, which was attached to your submission.

6 MR. WILSON: I don't have it in front of me.
7 I'm sorry.

8 MR. FREEMAN: All right. Well, it's the
9 landing page of the website. And you just said we
10 should rely on what's on the internet. It says,
11 "Common Richardson consists of two flats, each with --
12 "

13 CHAIRPERSON HILL: Mr. Freeman, I'm sorry,
14 where -- I actually am on 34B and I see Craigslist ad.

15 MR. FREEMAN: 34A.

16 CHAIRPERSON HILL: Oh, 34A. Okay.

17 MR. FREEMAN: This is attached to their
18 submission, and it's from Common's website.

19 MR. WILSON: Uh-huh.

20 MR. FREEMAN: And I quote, "Common Richardson
21 consists of two flats, each with two units, with a
22 maximum of six members in each unit." So, if you said
23 we should rely on their website, why should we not
24 rely on this?

25 MR. WILSON: Common has changed that

1 subsequent to the filing of our appeal. Originally it
2 said that you were opening a 24-unit building in the -
3 - sorry, that Common was opening a 24-unit building in
4 the District of Columbia, which we've put into the
5 record.

6 So, if that was incorrect and the most recent
7 information says we will comply with the law, why
8 should we not rely on it?

9 MR. WILSON: At this point it seems that
10 you're a moving target. You've indicated -- Common
11 indicated what it intended to operate. We looked at
12 their lease. It's clear what they intended to
13 operate. We appealed what they intended to operate.
14 If they're a moving target, they still contain
15 numerous provisions on their website that are not --
16 that have not been changed that we cited as
17 indications that they don't operate as a single
18 housekeeping unit.

19 MR. FREEMAN: Do any of -- could you point to
20 any of those regulations, or comments, that apply to
21 the D.C. property?

22 MR. WILSON: Do you want me to go through my
23 list?

24 MR. FREEMAN: I would like for you to point
25 out anything on their website that says all of those

1 factors, move-in/move-out, 24 people, point to me
2 where that applies to the D.C. property.

3 MR. WILSON: I don't have their website in
4 front of me. I mean, the website that we submitted
5 into the record that was a description of the unit,
6 indicated that they would have 24 units that were
7 offered.

8 MR. FREEMAN: Where is that at in the record?

9 MR. WILSON: It's in the record. I'm sorry.
10 I don't have all of our exhibits. It's there. It's
11 in our opening brief as well.

12 CHAIRPERSON HILL: Okay. All right. That's
13 okay.

14 MR. FREEMAN: Have you read Common's
15 affidavit?

16 MR. WILSON: I have.

17 MR. FREEMAN: Does their affidavit say there
18 will be no more than six residents per unit?

19 MR. WILSON: It does.

20 MR. FREEMAN: Should we agree or disagree with
21 that?

22 MR. WILSON: I think that we can agree that
23 that's what it says. I think we'll probably disagree
24 on whether or not we trust that Common will abide by
25 that, given that they've indicated that they don't in

1 New York City.

2 MR. FREEMAN: Have they said they won't comply
3 with that in D.C.?

4 MR. WILSON: No.

5 MR. FREEMAN: Okay. You stated earlier that
6 if this appeal is untimely you have no rights to
7 challenge the occupancy in the future. Are you aware
8 that if someone violates their certificate of
9 occupancy, the DCRA actually enforces compliance with
10 building codes and C of Os?

11 MR. WILSON: Precisely and 32. -- 302.6, I
12 believe it is, I cited it during the timeliness
13 portion of the hearing, says that DCRA's discretionary
14 refusal to enforce it is not deemed a, quote,
15 "refusal." Which means that it is no longer
16 appealable by the neighbors that are affected by the
17 development.

18 MR. FREEMAN: Well, that's -- have they
19 decided to not enforce the C of O?

20 MR. WILSON: I have no idea.

21 MR. FREEMAN: Have you filed any challenges
22 saying that they've had more than six people in their
23 units?

24 MR. WILSON: We haven't.

25 MR. FREEMAN: Okay. So, they haven't decided

1 to not enforce the C of O.

2 CHAIRPERSON HILL: I'm sorry, I'm just -- Mr.
3 Freeman, I'm trying to follow along also with you.

4 MR. FREEMAN: That's the point.

5 CHAIRPERSON HILL: He didn't know how many
6 people were in the building a minute ago.

7 MR. FREEMAN: Right. So, that's the point.
8 All of this is based on a hypothetical about how they
9 might operate.

10 CHAIRPERSON HILL: Okay.

11 MR. FREEMAN: And there is no evidence, they
12 have no evidence that indicates as of today, it's
13 operated in violation of the law.

14 CHAIRPERSON HILL: Okay. And that's -- so,
15 you're continuing to ask your questions. That's what
16 you're -- okay, I understand what you're trying to get
17 to.

18 MR. FREEMAN: That's actually all I have in
19 terms of questions.

20 CHAIRPERSON HILL: Mr. Hood, do you got
21 something to add? Please.

22 MR. HOOD: I was getting ready to ask Mr.
23 Freeman a question since he seems to be responding
24 quite a bit.

25 Typically, a track record of any organization

1 usually follows them. So, what -- I'm not following
2 that because what you represent and what the appellant
3 is saying what they represented, is usually what goes
4 on. So, why would they make a change from state to
5 state?

6 MR. FREEMAN: Right.

7 MR. HOOD: I mean, from state to city, to
8 Washington, D.C.? I don't understand that whole
9 argument.

10 MR. FREEMAN: Sure. We represent Costco.
11 Costco operates in the District of Columbia. If
12 you've been --

13 MR. HOOD: Let me -- I like Costco. Don't
14 mention Costco.

15 MR. FREEMAN: Well --

16 MR. HOOD: I know all about Costco.

17 MR. FREEMAN: You may have been in a Costco in
18 the District.

19 MR. HOOD: Yes, I have.

20 MR. FREEMAN: They do not sell alcohol on
21 Sundays. Why? Because D.C. doesn't allow you to sell
22 --

23 MR. HOOD: Which Costco?

24 MR. FREEMAN: -- in D.C.

25 MR. HOOD: Which Costco are you talking about?

1 So, you're like him. He don't know who live across
2 the street and you don't know what Costco doing. So,
3 let's move on.

4 MR. FREEMAN: Here's my point.

5 MR. HOOD: Don't go there because they do sell
6 it.

7 MR. FREEMAN: My point, here's my point,
8 here's my point. Companies that operate in multiple
9 states comply with the laws with the states they are
10 located in. That's my point.

11 So, he has not submit -- the appellant has not
12 submitted any evidence that says or suggests that
13 Common will not comply with D.C. law.

14 MR. HOOD: Okay, I got you.

15 MR. FREEMAN: And --

16 MR. HOOD: That's where you're going. I got
17 you. You don't have to say no more, but Costco sells
18 alcohol on Sundays.

19 CHAIRPERSON HILL: Okay. All right. Thank
20 you, Chairman Hood. Thank you.

21 MR. FREEMAN: Maybe I'm mixing them up with
22 Virginia, because here's my point. Where they're not
23 allowed to do it, they don't do it.

24 CHAIRPERSON HILL: Right. Okay. All right.
25 Mr. Freeman, you got more questions?

1 [No audible response.]

2 CHAIRPERSON HILL: Okay. Mr. Tondro, do you
3 have questions?

4 MR. TONDRO: Yes, I just have a couple. I'm
5 going to try to not go over the same ground. Pardon
6 me if I do.

7 CHAIRPERSON HILL: That's all right,
8 apparently, you can go to Costco, if you like, on
9 Sunday and get some alcohol.

10 MR. TONDRO: I believe in Mr. Freeman's
11 defense, I'm going to go out on a limb on this one,
12 but I think Maryland is the one that doesn't allow
13 alcohol on Sundays and the District does. But I could
14 be wrong.

15 MR. HOOD: Well, on the weekend you all do a
16 side study and learn about who sells alcohol and who
17 doesn't.

18 CHAIRPERSON HILL: That's all right. I --

19 MR. TONDRO: You can see, I purchased the
20 alcohol --

21 CHAIRPERSON HILL: I appreciate this little
22 breather that we took, so that's -- I do. So, all
23 right, Mr. Tondro. Back again.

24 MR. TONDRO: Yes. Thank you. If I can just
25 ask of appellant, can you confirm again, I think

1 Chairman Hood already mentioned this, but where
2 exactly you live in relationship to the two buildings
3 that are being appealed.

4 MR. WILSON: I live across the street, but I'm
5 here to represent roughly a dozen homes that are
6 within the 200-foot zone.

7 MR. TONDRO: That's fine. I just wanted to
8 establish, where was your located precisely. And,
9 have you been -- and you live there, right? It's not
10 just you own. You actually live there? You reside
11 there?

12 MR. WILSON: Yes.

13 MR. TONDRO: Okay. And you've not been on
14 vacation over the last month or so, in particular I
15 would peg it to the issuance of the certificate of
16 occupancy during that time period. Have you been
17 resident there?

18 MR. WILSON: I mean, on and off. I think I
19 took a weekend trip.

20 MR. TONDRO: A weekend trip. So, we're
21 talking about, what, roughly how many weeks since the
22 C of Os were issued? We're talking about six weeks.
23 So, you've taken one weekend trip, maybe two, but for
24 the vast majority of the time, 80 percent of the time,
25 you've been residing there?

1 Okay. And, during that entire time, I assume
2 that the windows on the front are the ones that face
3 directly on to the two properties. Is that right?
4 The façade of -- in other words, if you leave the -- I
5 apologize I'm not clear. When you leave your building
6 --

7 MR. WILSON: Yes.

8 MR. TONDRO: -- their front door, that the
9 first thing you see is their building. Is that
10 correct?

11 MR. WILSON: Correct.

12 MR. TONDRO: Right. Okay. And, have you at
13 all in the time period since the certificate of
14 occupancy been issued, seen anybody enter or exit or
15 any other indications that it's been in use by
16 residents?

17 MR. WILSON: Determining use is difficult.
18 There's obviously a difference between the fact that
19 there's construction individuals going out, house
20 cleaners, so on and so forth, versus someone occupying
21 it. I have not seen anyone who is, you know, carrying
22 a purse, walking in like they're going home.

23 MR. TONDRO: Okay. And let alone somebody who
24 has been repeatedly doing so. Right? I mean, the
25 same construction managers or whatever worker. But I

1 think we can all agree, probably we know what a
2 construction worker --

3 MR. WILSON: I just don't pay close enough
4 attention to know who's going in and out of this
5 property. I'm not looking at their face --

6 CHAIRPERSON HILL: Mr. Tondro, I'm just -- so,
7 you're asking, it's not being occupied right now? Is
8 that --

9 MR. TONDRO: Right. I just want to clarify
10 that we're not talking about a situation where we're
11 eight, 10 blocks away or that we're an absentee
12 landlord. We don't know what it is that's going on.
13 I think it's pretty clear that it's not been occupied.

14 CHAIRPERSON HILL: Okay.

15 MR. TONDRO: I just wanted to establish if
16 there was -- I think --

17 CHAIRPERSON HILL: I'm just trying to
18 understand. That's all right.

19 MR. TONDRO: Right. Mr. Freeman has made a
20 representation, I believe, that it is not occupied.

21 CHAIRPERSON HILL: Okay.

22 MR. TONDRO: I just wanted to ascertain that
23 that's not being challenged.

24 CHAIRPERSON HILL: Okay. And when, again, was
25 the certificate of occupancy issued?

1 MR. TONDRO: Yeah, there are two different
2 certificates of occupancy, one for 410 Richardson
3 Place was issued on February the 13th. For 412
4 Richardson, there was a different certificate of
5 occupancy which was issued on the 2nd of February.
6 So, a month ago, and six weeks ago, roughly. Give or
7 take a week.

8 CHAIRPERSON HILL: Okay. Okay, sorry. Go on.
9 That's fine.

10 MR. TONDRO: I just want to move on from there
11 just to ask you a question. Particularly, you raised
12 -- you cite a lot of court cases and I commend you on
13 your legal research because it was a very interesting
14 reading and I found it thought provoking.

15 But, can you point out to me if any of those
16 cases are directly relevant in a legal matter? In
17 other words, were they issued by the Court of Appeals
18 of the District of Columbia?

19 MR. WILSON: No.

20 MR. TONDRO: Okay. So, in --

21 MR. WILSON: Well, let me back up. We cited a
22 number of cases inside the District of Columbia. I'm
23 assuming that you're going to the cases outside the
24 jurisdiction speaking to the definition of single
25 housekeeping unit?

1 MR. TONDRO: Yes. Let's -- we can --

2 MR. WILSON: Okay. I just assumed that's what
3 you were getting at.

4 MR. TONDRO: No, that's a -- it's a fair
5 point. I appreciate that. I just want to clarify
6 what we're doing; what we're discussing.

7 So, in terms of the issues or the definition
8 of single housekeeping unit, I note also for example,
9 in your brief that you refer to the Guadalupe
10 Municipal Code which defines what a single
11 housekeeping unit is. Don't mean to be pedantic, but
12 that's not the relevant code that's at issue here,
13 right?

14 MR. WILSON: Certainly not.

15 MR. TONDRO: And the zoning regulations of the
16 District of Columbia are the ones that are at issue
17 here.

18 MR. WILSON: True.

19 MR. TONDRO: Right? And --

20 MR. WILSON: We looked beyond the scope of the
21 District of Columbia to create -- to at least show
22 some greater clarity of how courts have interpreted
23 this. But we've also included --

24 MR. TONDRO: In fact, but the question here
25 was about the municipal code, right? So, there's

1 actually a regulation that was issued. I just want to
2 -- are you aware that is of September the 6th, after -
3 - last year, after about a seven or eight-year period,
4 please correct me, Chairman Hood if I'm wrong about
5 that time period, that there was the new zoning
6 regulations were adopted.

7 MR. WILSON: Right.

8 MR. TONDRO: And the Zoning Commission in
9 adopting those regulations did not see fit to change
10 or add anything more along the lines of what was
11 provided in the Guadalupe Municipal Code. Is that
12 correct?

13 MR. WILSON: In searching the BZA cases
14 associated with all of this there has --

15 MR. TONDRO: I'm talking about the Zoning
16 Commission and the zoning regulations.

17 MR. WILSON: I'm going to try to give you the
18 best answer I can.

19 MR. TONDRO: Right. And, but I'm -- the
20 zoning regulations --

21 MR. WILSON: Right.

22 MR. TONDRO: -- which were passed by the
23 Zoning Commission. The Zoning Commission just went
24 under -- they just revisited, reexamined that whole
25 time period that they revisited not just a portion of

1 the code, but the entire code. They reissued it as of
2 September 6th. Are you aware of that?

3 MR. WILSON: Yes.

4 MR. TONDRO: So, when they had the opportunity
5 to revisit the entire code, they chose to leave the
6 provisions that were in, as in. They did not take
7 what you might have suggested that they should have
8 done, the opportunity to amend that definition. Is
9 that correct?

10 MR. WILSON: That is correct, but I will at
11 least note that there has not been a substantive case
12 challenging the definition of single housekeeping unit
13 in the way that we have. Like, I don't think that
14 there was a need or a great want. We've searched high
15 and low in BZA cases looking for clarity on this.

16 MR. TONDRO: I understand where you're going
17 and that may be what we're talking about right here,
18 right now, but my point is there is no guidance that's
19 provided in any regulation of the District of Columbia
20 as to how you should define a single housekeeping
21 unit.

22 MR. WILSON: None beyond what I've -- what
23 we've all been talking about.

24 MR. TONDRO: Right. Which is the definition
25 in the zoning regulations. Okay, thank you.

1 So, can you just go over then, and point out
2 to me, and I think to the Board it would be helpful,
3 what particular cases. If we exclude those which were
4 not other jurisdictions in this particular -- not of
5 the District of Columbia, but -- so, we exclude all
6 the ones from New Jersey, from New York, from
7 Pennsylvania, from wherever, we're focused just on the
8 District of Columbia. Can you show me what cases
9 you're discussing, other than timeliness? The
10 timeliness issue, I think we moved on. What ones
11 you're asserting for the purpose of the merits?

12 MR. WILSON: Oh, the merits? Well, I think
13 the one that speaks most closely to the question we're
14 currently having is *Rock Creek East*, BZA 10876, where
15 the Board held that we interpret the definition of a
16 family of non-related persons to mean six persons who
17 live together in a housekeeping unit for the mutual
18 benefit of all parties on a more or less continuing
19 basis.

20 MR. FREEMAN: Is that cited in there?

21 MR. WILSON: And so, beyond that, there is no
22 doubt -- I mean, if you're looking for all -- are you
23 looking for all of the authorities that we are citing?
24 It's going to take me a while to --

25 MR. FREEMAN: Is that cited in your pleadings?

1 I'm sorry.

2 CHAIRPERSON HILL: Oh, and that's all right.
3 Just give me a second.

4 MR. FREEMAN: That's not in their pleadings.

5 MR. TONDRO: This is precisely the question
6 that I was going to raise too. So, what I'm trying to
7 do, Chairman Hill, if I'm anticipating what your
8 question is, I'm trying -- I think that there is a
9 really -- this issue is of the first impression, I
10 believe, more or less in --

11 CHAIRPERSON HILL: Okay. That's okay. Mr.
12 Tondro, I'm just going to cut you off just for a
13 second because I just want to ask the questions here.
14 You're going to get a chance to present. And so,
15 like, it's just taking -- specifically the questions
16 that you're asking about like whether or not the cases
17 have been cited, I think you're making your point as
18 to which cases are from the District of Columbia,
19 which cases are from other jurisdictions. I mean, we
20 have looked at other jurisdictions before, just in
21 terms of what they've done, I suppose.

22 So, but I understand your points thus far in
23 terms of your questions. But, other than that I'm
24 going to give you an opportunity to have your time to
25 present.

1 MR. TONDRO: I hear you. I'm not trying to be
2 pedantic. Yes, I wanted to deal with precisely the
3 issue of whether they are binding on the District.

4 CHAIRPERSON HILL: Right.

5 MR. TONDRO: I think we can agree that they're
6 not.

7 CHAIRPERSON HILL: Only District things are.

8 MR. TONDRO: Only District things are.

9 MS. GLAZER: That's not [Speaking off
10 microphone.] to ask a witness, a question about a
11 legal conclusion. I think the Board should move on.

12 MR. TONDRO: Yes, I --

13 CHAIRPERSON HILL: Okay.

14 MR. TONDRO: Thank you, Attorney Glazer. That
15 was -- I was trying to explain to Chairman Hill, the
16 intent of my questioning.

17 What I would like to ask is one final
18 question, which is, in terms of the representations
19 that you cited the quotations from Mr. Hargraves, and
20 what is the limit on number of people who can occupy a
21 building in New York State, or what he was talking
22 about in that particular area? Was it the same as
23 what it is in D.C.?

24 MR. WILSON: No, I believe it was three is the
25 rule that they have.

1 MR. TONDRO: And in Connecticut, I think you
2 cited a case where it was -- do you remember what the
3 number of people were allowed in that particular town?

4 MR. WILSON: It is --

5 MR. TONDRO: I think it was in Milford. I
6 can't --

7 MR. WILSON: I don't have it. I don't have it
8 in front of me.

9 MR. TONDRO: Okay. I think it was four. But
10 we can leave it at that. Thank you. Thank you,
11 Chairman Hill.

12 CHAIRPERSON HILL: All right. Thank you, Mr.
13 Tondro.

14 All right. So, does the ANC have any
15 questions for the -- you also get to ask your
16 questions now if you have any questions. Yes.

17 MS. McCLELLAND: I'll just save all my
18 questions for when I talk.

19 CHAIRPERSON HILL: Okay.

20 MS. McCLELLAND: Because I'm not really sure
21 when I'm supposed to speak. So.

22 CHAIRPERSON HILL: No, that's great.

23 MS. McCLELLAND: Okay.

24 CHAIRPERSON HILL: That's great. So, now
25 we're going to turn to the building owner for your

1 opportunity to present. It was -- they told me the
2 new order is the building owner. Is that correct, for
3 the -- no?

4 MS. GLAZER: [Speaking off microphone.]

5 CHAIRPERSON HILL: I'm sorry. I'm sorry. I
6 thought DCRA was going to go next, and I thought,
7 Sherry you had pointed out -- Ms. Glazer, that the
8 building, the property owner was going next.

9 MS. GLAZER: Yes.

10 CHAIRPERSON HILL: All right.

11 MR. FREEMAN: I think it's -- I'm happy to go
12 but I think it's DCRA.

13 MR. TONDRO: Or, is it the ANC?

14 MR. FREEMAN: Well, I'm looking at 507.1.

15 MS. GLAZER: It's the appellant and then the
16 owner, the ANC, and then DCRA.

17 CHAIRPERSON HILL: So, that's what I was going
18 to go with since we're following the regulation here.

19 The four --

20 MR. FREEMAN: It's, you've got to go down to
21 subpart E.

22 MR. TONDRO: Yeah, actually I think it's C, so
23 the C is -- so 501.1(c), says, "The respective case of
24 the parties or interveners in support of the appeal."

25 And then there's that order, owner, affected ANC, and

1 any other party. So, I believe then it comes to DCRA.
2 Then it comes to those who are in opposition which I
3 think would be the owner too.

4 MS. GLAZER: I stand corrected.

5 CHAIRPERSON HILL: All right. So, I actually
6 was right. So, we are going to go with you, Mr.
7 Tondro, and then the property owner, and then the ANC.

8 MR. TONDRO: Actually, I think it's the ANC
9 because they are in support of the appeal.

10 MS. McCLELLAND: Yeah, I checked the wrong box
11 on my card, because this is my first time and I'm
12 still learning.

13 CHAIRPERSON HILL: Okay.

14 MS. McCLELLAND: I'm in support of the
15 neighbors.

16 CHAIRPERSON HILL: Right. Right. So, they're
17 in opposition. I'm sorry. They're in support of the
18 appeal.

19 MR. TONDRO: We may need that alcohol from
20 Costco.

21 [Laughter.]

22 [Pause.]

23 CHAIRPERSON HILL: Sherry, could you read that
24 again for me?

25 MS. GLAZER: Yes. It's the appellant under

1 507.1(b), then the respective cases of parties in
2 support, which here the only other party in support is
3 the ANC.

4 CHAIRPERSON HILL: All right.

5 MS. GLAZER: So, the ANC would be next. Then,
6 we go to 507.1(e), as in Edward, and it's the
7 respective cases of parties in opposition to the
8 appeal in the following order. So, first is the owner
9 and any other party.

10 MR. TONDRO: I think we're --

11 MS. GLAZER: Wait a minute. Something --

12 MR. TONDRO: I think DCRA is actually D.

13 MS. GLAZER: D.

14 MR. TONDRO: So, I believe what happens is the
15 ANC, because they support the appeal. Then it's DCRA,
16 and then it's the owner because they oppose the
17 appeal.

18 MS. GLAZER: Okay. So, DCRA has its own
19 category before --

20 MR. TONDRO: We're honored.

21 MS. GLAZER: Yes.

22 CHAIRPERSON HILL: Okay. All right. Again,
23 the new regulations. I'm going to blame it on the new
24 regulations.

25 So, the ANC has the opportunity next, please.

1 And I'm going to do the same thing in terms of 10
2 minutes, which is how long we put on there and if it
3 goes a little bit later, it might go a little bit
4 later because we want to hear everything from
5 everybody, particularly the DCRA and the property
6 owner, as well as the ANC. So, please, go ahead
7 whenever you'd like, Commissioner.

8 MS. McCLELLAND: Okay. Thank you. So, I'd
9 just like to address a couple of issues that were
10 included in the statement that the owner's side
11 presented, I believe last week. So, the first is that
12 the ANC resolution does not state any particular
13 issues or concerns as related to the standards against
14 which the appeal is judged, and that should be given -
15 - and that should not be given great weight since
16 there is no discussion of the merits of the appeal.
17 So, because of that we had an ANC meeting last night
18 and then that is why we passed another resolution to
19 be a little bit more specific in the reasons that we
20 are supporting this.

21 And so, would it be appropriate for me to read
22 this because it wasn't in the record earlier? Or what
23 is the -- yes? Okay. Should I do all of the whereas,
24 or just get to the point for the following reasons?

25 CHAIRPERSON HILL: You can just get to the

1 point of following reasons.

2 MS. McCLELLAND: Okay. Thank you. So, the
3 ANC serves to protect the interests of the community
4 members who are its constituents, and defends its
5 ability to represent those interests when community
6 input is essential.

7 Understanding that developers may seek to
8 avoid such input by pursuing, as a matter of right,
9 development for uses that are not clearly and
10 unambiguously allowed by the zoning code, we support
11 RNPN's appeal to ensure that developments are given a
12 public hearing so that our community inputs may be
13 included.

14 We further acknowledge the risk that this
15 development may pave the way for future attempts to
16 loophole the zoning code in such a way that avoids
17 critical laws, such as low-income housing laws that
18 ensure affordable housing for all residents of the
19 District of Columbia.

20 We further recognize that the community
21 concerns expressed before the BZA and the first
22 iteration of this project specifically, that the
23 project's density is out of conformity with both the
24 neighborhood and the purposes of an R-4 Zone, have not
25 been mitigated by the 410, 412 Oaktree development,

1 and we urge the BZA to deny their permit so that these
2 concerns may be appropriately mitigated by the
3 development. Developer.

4 We are composed of 10 sitting commissioners,
5 nine of which were in attendance, and the resolution
6 was passed by a vote of nine to zero and zero in
7 abstention.

8 So, another issue that they cited was that
9 they have evidence of an e-mail submitted as a
10 supplement to Exhibit 2-S-2 of the appellant's motion
11 to supplement, saying that OTD was never given notice
12 of the Bates Area Civic Association meeting, and that
13 notice was only provided to people who oppose the
14 project, such as Mr. Wilson, Mr. Seigel, and
15 Commissioner McClelland. And as shown in this e-mail
16 correspondence, which I never saw a copy of, and the
17 attached civic association agenda, the only presented
18 -- or the only party that was presented was the
19 appellant. Thus, OTD did not have an opportunity to
20 present its case in front of the civic association.

21 That is factually incorrect. The Bates Area
22 Civic Association has been --

23 MR. HART: I'm sorry. I'm sorry. Which
24 exhibit are you referring to?

25 MS. McCLELLAND: I'm just referring to the --

1 I'm quoting the first part that I read is their
2 statement. I'm just responding to some of the things
3 that they submitted for their statement.

4 MR. HART: Okay.

5 MS. McCLELLAND: The 81-page document. This
6 is all because they said that the ANC should not be
7 given great weight, so I am responding to the reasons
8 why they're saying that we should not be given great
9 weight as a way to say that I believe that we should
10 be given great -- oh, page 19 in their statements.
11 Thank you.

12 MR. HART: Yeah, it's just there have been a
13 lot of different statements.

14 MS. McCLELLAND: Yeah.

15 MR. HART: So, I'm trying to make sure we're
16 following --

17 MS. McCLELLAND: Yes.

18 MR. HART: -- along with this.

19 MS. McCLELLAND: Thank you. So --

20 MR. HART: And I think this is the Exhibit 34,
21 you're talking about, which is DCRA's and the owner's
22 prehearing statement. That's the one you're speaking
23 of?

24 MS. McCLELLAND: I can tell you the document.
25 I was -- yeah. It's the owner's prehearing

1 statement.

2 MR. HART: Yeah.

3 MS. McCLELLAND: That was -- yes. So, are we
4 all on the same page now?

5 MR. HART: Yeah, I think I'm in the right --
6 oh no, maybe not. Sorry. There is a lot of --

7 MS. McCLELLAND: There's a lot of paperwork.
8 I understand, this is very complicated. Especially
9 for me because I don't -- I'm a new ANC commissioner.
10

11 CHAIRPERSON HILL: Yeah, I think it's Exhibit
12 32, page 19.

13 MR. HART: Thank you.

14 MS. McCLELLAND: Well, I actually, I am just
15 saying that -- so, I was quoting from their statement
16 where it says as evidenced by the e-mails submitted as
17 Supplemental Exhibit S-2 of the appellant's motion to
18 supplement.

19 My comment is just that the Bates Area Civic
20 Association has been in contact with Oaktree
21 development and has been asking them to present to the
22 community association since 2016. And that Oaktree
23 actually did present its case in January of 2017, to
24 the Bates Area Civic Association. So, the owner is
25 saying that they did not have the chance to present

1 their case when in reality in January, they did in
2 fact present their case, as did the appellants.

3 And so, either the attorney is purposely
4 providing incorrect information, or Oaktree is not
5 providing full information to their attorneys. I'm
6 not sure which one, but that also raises concerns for
7 us regarding the other information that's either been
8 provided as factually incorrect.

9 And I'll just say that I have personally
10 informed Oaktree development of the dates and times of
11 the Bates Area Civic Association early as 2016, in the
12 case that I was asking them over a month to come and
13 present. And in the January meeting we decided to
14 take a vote on this matter in the February meeting.
15 So, they were aware of this, again.

16 They also, in their prehearing statement,
17 asked -- or said that I should be recusing myself
18 because I am a member of the Richardson Place Civic
19 Association. I'm also a member of the Bates Area
20 Civic Association. I was elected in November of 2016
21 because my constituents are well aware of my standing,
22 and my support of the neighbors regarding their views
23 on the Richardson Place property, I am extremely
24 involved in my community, which is why I'm a member of
25 many civic associations. I also attend the

1 Bloomingdale Civic Association, but I would not think
2 that that would make me unable to place -- or to vote
3 on these things.

4 So, I would say that this does not present a
5 conflict of interest on the project, but instead shows
6 that I am adequately representing the interests of my
7 constituents.

8 And then one other factually incorrect item
9 was that they said that Mr. Wilcox drafted the
10 resolution that was voted on at the Bates Area Civic
11 Association meeting, which again is not the resolution
12 that the ANC ever voted on, but just to clarify, Kyle
13 Thomas who is the president of the Bates Area Civic
14 Association drafted the resolution. He then passed it
15 on to the Bates Area Civic Association Board members,
16 and we all reviewed it prior to the meeting that was
17 voted on the neighborhood association.

18 I'm saying all of this because there has been
19 quite a bit of community input on to the side of why
20 the neighbors and the community supports this, and
21 it's unfortunately misrepresented in the statements
22 that the owners provided.

23 I'd just like to say a couple other things
24 that in D.C. we have a housing crisis for low-income
25 residents of the District. And these concerns are

1 especially felt in Ward 5, and are taken with great
2 concern by ANC 5E. By allowing developments like this
3 to move forward, the District will be providing a
4 benefit to developers and higher income, short-term
5 visitors to the District of Columbia, while providing
6 no benefit to tax paying, low-income residents who are
7 feeling the greatest effect of rising rental rates and
8 developments that are out of their reach.

9 I'm also concerned that the development is
10 following the letter of the law, but not the intent.
11 And by I, I am saying the "I" of my ANC. So, Oaktree
12 is arguing that they have met the letter of the law,
13 but there are many questions about whether this
14 project meets the intent of the law.

15 In practice, the way the building will be used
16 will be similar to an apartment building or a group
17 house where there are D.C. laws and regulations and
18 requirements such as affordable laws, accessibility
19 and fire escapes that are not under the requirements
20 of a family flat.

21 Additionally, by following this approach, the
22 developer has bypassed any community input which would
23 be traditionally required for developments of this
24 size and scope. While I support innovative approaches
25 for housing solutions in the District of Columbia, and

1 could see our ANC approving a project similar to this
2 concept, without the protections for D.C. residents we
3 do not believe that this project should move forward,
4 and that by moving forward our ANC believes a
5 dangerous precedent will be set for developments of
6 this type; one that will likely negatively impact D.C.
7 residents in need of affordable housing options and
8 will provide developers the opportunity to avoid any
9 input by community members or their local ANCs.

10 I also just have two things to comment on. On
11 what the DCRA said and then what the owners have said.

12 DCRA was talking about -- or he was indicating
13 that only the inside of the building was changing, and
14 so it would not be affecting the community. However,
15 the change of use within the building was changing and
16 the use was changing completely from one owner to
17 another. So, one owner had an intended use of it.
18 Once the property changed hands there was another
19 completely different intended use.

20 But again, the neighbors had no chance to
21 provide any -- or had no recourse to address this
22 change. If the outside of the building is changing it
23 was likely because there was changing capacity. So,
24 he was giving an example where they'd be bumping back
25 or bumping up, when in reality the revision that took

1 place within the house was changing the capacity of
2 how many people would be living there and where in the
3 house they would be living.

4 So, they have added things like an egress.
5 However, no special exceptions were sought. The
6 changes basically created the ability to create four
7 six-person group houses in the area of two addresses.
8 On a street that currently houses only 10, 12-foot
9 wide rowhouses, so if you can imagine, an extremely
10 small street. And meaning, going forward there will
11 be twice as many people living on a single street.
12 So, again, these are my neighbors' concerns. This is
13 the concerns of the people that I'm representing.

14 And to the owner's point that companies follow
15 the law in the states where they're operating, I would
16 just say following that logic, if companies don't
17 follow the law in states that they're operating in,
18 then it would seem that they would also do the same in
19 states that they're moving to and not operating in.

20 And I would just say, a perfect example of
21 this is Common has not operated in the District of
22 Columbia, but a way to show how they view the laws,
23 especially on those of snow removal, have been shown
24 within the month where they did not remove any snow,
25 even within, not just the eight-hour window, but the

1 24 to 48-hour window after the snow was there. So, I
2 know that's a small example, but if we are looking for
3 ways to show how they view the D.C. laws and are going
4 to uphold them, then that was a perfect example and
5 one that negatively impacted their neighbors already.

6 CHAIRPERSON HILL: Okay. Thank you very much
7 for your testimony. Does the Board have questions
8 now, or we're just going to kind of move through? Are
9 you all right moving through? Okay.

10 Mr. Freeman, do you have some questions?

11 MR. FREEMAN: I have a couple questions, but
12 I'm also trying to -- the Commissioner made a couple
13 assertions about statements that we said that weren't
14 accurate. I just want to --

15 CHAIRPERSON HILL: You're trying to find them?

16 MR. FREEMAN: -- show you in the record where
17 we base those statements on because we try to make
18 sure we're making accurate statements.

19 But if you look at Exhibit 27 of your
20 record --

21 MS. McCLELLAND: And unfortunately, I never --
22 I actually, they were the ones that sent me their
23 prestatements.

24 MR. FREEMAN: Well, I'm --

25 MS. McCLELLAND: Records. And so, I wasn't

1 sure where those were.

2 MR. FREEMAN: -- going to point to what they
3 filed. I'm not pointing to what I filed. I'm
4 pointing to what they filed.

5 CHAIRPERSON HILL: Who is they?

6 MR. FREEMAN: RPNA.

7 CHAIRPERSON HILL: Okay.

8 MR. FREEMAN: So, that's where we based our
9 statements off of. If you look at Exhibit 27, there -
10 - and I'm trying to find an exact page number for you.
11 They have exhibits attached to that. They have
12 something called Supplemental Exhibit 2S-2. Exhibit
13 27.

14 MR. HART: Page 14?

15 MR. FREEMAN: Is that -- I'm trying -- and if
16 you look at the e-mail header --

17 CHAIRPERSON HILL: Is your microphone on
18 there, sir?

19 MR. FREEMAN: If you look at the e-mail header
20 at the top of that e-mail, you will see no one from
21 OTD is on that e-mail chain. So, when I say OTD was
22 not invited to or had notice of this meeting, I'm
23 basing that solely on the e-mail chain that's in their
24 exhibit.

25 MS. McCLELLAND: They probably wouldn't have

1 had access to those e-mails unless your -- unless
2 someone --

3 MR. FREEMAN: I'm just explaining to you what
4 we based our statement on.

5 MS. McCLELLAND: Yeah. Well, unless your
6 client provided --

7 MR. FREEMAN: Secondly --

8 MS. McCLELLAND: -- those because they were e-
9 mails between me and Kyle Thomas, who is the President
10 of the Bates Area Civic Association, and Peter. I'm
11 sorry.

12 MR. FREEMAN: That's not really the question.

13 CHAIRPERSON HILL: Mr. Freeman, I just want to
14 understand. So, your question is that --

15 MR. FREEMAN: Is not a question.

16 CHAIRPERSON HILL: -- you weren't invited to
17 that meeting? Is that --

18 MR. FREEMAN: It's not even a question.

19 CHAIRPERSON HILL: Okay. All right.

20 MR. FREEMAN: I think the Commissioner
21 asserted --

22 CHAIRPERSON HILL: Okay.

23 MR. FREEMAN: -- that what we said wasn't
24 true.

25 CHAIRPERSON HILL: Okay.

1 MR. FREEMAN: I'm just pointing to where in
2 the record we base that statement on.

3 CHAIRPERSON HILL: Okay.

4 MR. FREEMAN: I'm not trying to --

5 CHAIRPERSON HILL: Okay.

6 MR. FREEMAN: I'm just trying to help
7 explain --

8 CHAIRPERSON HILL: Okay.

9 MR. FREEMAN: -- where we got those statements
10 from.

11 The second statement was --

12 CHAIRPERSON HILL: Yeah, you don't want to
13 make enemies with the ANC in general. Right.

14 MR. FREEMAN: Absolutely not. I do a lot
15 of --

16 CHAIRPERSON HILL: This is your only client,
17 probably.

18 MR. FREEMAN: Right. I do a lot of work with
19 the --

20 CHAIRPERSON HILL: Yeah. Right. Okay.

21 MR. FREEMAN: I just wanted --

22 CHAIRPERSON HILL: You're not saying the ANC
23 should not be given great weight.

24 MR. FREEMAN: No.

25 CHAIRPERSON HILL: Right. Okay.

1 MR. FREEMAN: I'm being clear that what we
2 said in our submission was based on evidence in the
3 record.

4 CHAIRPERSON HILL: Okay.

5 MR. FREEMAN: There was a question about
6 whether that was the case. So, I'm just pointing to
7 you where in the record we make that -- get that
8 information from.

9 CHAIRPERSON HILL: Okay.

10 MR. FREEMAN: So, it's on the -- it's not on
11 the screen. So, that's the first part. It's not on
12 that screen.

13 The second part is where we say the resolution
14 was prepared by RPNA. If you look further down in
15 that agenda.

16 CHAIRPERSON HILL: That same exhibit?

17 MR. FREEMAN: If you look at Item No. 3, the
18 last line says, "Resolution language provided by RPNA
19 below." So, that's what we based our statements on.

20 MS. McCLELLAND: Okay. Well, again, this was
21 I think that --

22 MR. FREEMAN: Just to be clear.

23 CHAIRPERSON HILL: Okay.

24 MS. McCLELLAND: -- President Thomas did not
25 realize that this e-mail saying what was going to be

1 taking place at the February meeting was going to be
2 so exact, so he used the words presented by them,
3 because he meant they were presenting the resolution
4 that President Kyle, or Kyle Thomas, had helped draft,
5 and that the Bates Area Civic Association had weighed
6 in on.

7 Again, I would have assumed that your client
8 would have told you that he was coming to the January
9 meeting and presenting there. And also, that we had
10 been in touch with him since 2016.

11 MR. FREEMAN: All we were saying is that based
12 on what they submitted, we were not invited and that
13 the resolution was drafted by them. That was the only
14 point.

15 MS. McCLELLAND: Uh-huh.

16 MR. FREEMAN: Now, question. In the
17 resolution it says, the ANC understands that the
18 developers may seek to avoid such input by pursuing
19 matter-of-right development. What is the ANC's view
20 as to how we don't comply with the zoning regulations?

21 MS. McCLELLAND: That's a hard question. So,
22 we have had the view -- can you just clarify what you
23 mean by that? Sorry.

24 MR. FREEMAN: What have we done wrong?

25 MS. McCLELLAND: So, we believe -- most of

1 what the ANC is concerned on is the intended use of
2 the property and that its intended use is, again,
3 trying to follow possibly the letter of the law but
4 not the intent of the law. And so, that in our view
5 they are 24 -- it's a 24-unit apartment building and
6 that is not what the permits were granted for.

7 MR. FREEMAN: So, you say try to follow the
8 letter -- follow the letter of the law but not the
9 intent. So, I'm not clear. Are you saying we are
10 following the letter of the law?

11 MS. McCLELLAND: So, we -- I would not say
12 that based on the resolutions we said anything
13 specifically about that. We just provided resolutions
14 supporting their appeal. And regarding whether or not
15 you're following the law, I don't think that we took a
16 specific stance on that.

17 MR. FREEMAN: So, I know you're new.

18 MS. McCLELLAND: Yeah, thank you.

19 MR. FREEMAN: So, I'm not trying to be
20 difficult. So --

21 MS. McCLELLAND: I'm not even sure that I
22 answered.

23 MR. FREEMAN: So, I'll leave -- so, the answer
24 is you haven't identified what laws we violated that
25 meet the burden that the ANC has to demonstrate? Do

1 you have a -- what -- I'm trying to understand, what
2 have we not done. Right.

3 MS. McCLELLAND: So, I think that the ANC felt
4 that when the intended use of the building changed,
5 then there should have been some kind of special
6 exception sought, and that is where the community
7 input would have come in, and that is where some of
8 these concerns of the community would have been
9 addressed. And because those changes and the special
10 exceptions were not sought, Oaktree Development, the
11 representation has never come.

12 I think a perfect example, actually, you just
13 said that you were at the ANC meeting last night for a
14 special exception to case. And again, these are
15 places where if there is changes to the use of
16 buildings, especially ones like this, the ANC views
17 that community input is relevant and important. And
18 so, we did not have a chance to provide any input on
19 this case and so our great weight would be that we are
20 hoping that there would be a review of the permits and
21 a review of the intended use of the property.

22 MR. FREEMAN: What, if I might, your
23 resolution says that this may pave the way for future
24 attempts to loophole the zoning code in such was as to
25 avoid critical laws. Are you suggesting that this

1 applicant is avoiding critical laws?

2 MS. McCLELLAND: Critical laws like L-A-W-S.
3 Is that what you're saying?

4 MR. FREEMAN: Yes.

5 MS. McCLELLAND: Yes. So, the critical laws
6 like I know that -- I don't know how familiar you are
7 with ANC 5E, but one of the things that our ANC cares
8 the most about is low-income housing, and the density
9 of low-income housing and new developments. And they
10 view a project like this as similar to a new
11 development, yet there's no recourse for adding in
12 provisions for low-income housing. There's no
13 recourse for adding in things like safety for -- or
14 handicapped entrances, or fire escapes, because
15 they're trying to work within a two-family flat, when
16 in reality there are going to be 24-units that are
17 rented out, which is similar again, in our view, to an
18 apartment building.

19 And so, any time that something like that is
20 happening, usually they would come before the ANC,
21 come before the community association, to get
22 community input. But then also to ensure that the
23 District of Columbia residents have -- or the laws
24 that are in place to protect residents such as low-
25 income housing or safety concerns are addressed.

1 MR. FREEMAN: So, one last question and then
2 this is it. So, you say 24-unit. Have you looked at
3 the plans for this project?

4 MS. McCLELLAND: Yes, I have looked at the
5 plans and based on the plans --

6 MR. FREEMAN: What are the 24 units?

7 MS. McCLELLAND: The 24 individual leases on
8 the property makes it similar to 24-unit apartment
9 building.

10 CHAIRPERSON HILL: Mr. Freeman, just I'm
11 running into a time constraint here pretty soon.

12 MR. FREEMAN: Sure.

13 CHAIRPERSON HILL: So, I just want to make
14 sure that everyone gets a fair shot of time.

15 MR. FREEMAN: Sure. Sorry.

16 CHAIRPERSON HILL: That's okay. And so, do
17 you want to ask one more question?

18 MR. FREEMAN: One more question.

19 CHAIRPERSON HILL: Okay.

20 MR. FREEMAN: You just said 24 leases. Are
21 you aware there are only four leases?

22 MS. McCLELLAND: Okay, sorry. Twenty-four
23 individual people that by the way that Common has
24 described, there will be 24 individuals. There may be
25 joint leases. But, the way that it was described on

1 the website and the way that we've come to understand
2 it, there are 24 individual people applying to live in
3 one single location. And they are not coming in
4 jointly, similar to how a group house would. They are
5 not coming in jointly as a family would. They are all
6 individually applying and then will be placed together
7 as a family unit.

8 CHAIRPERSON HILL: All right. I'm going to
9 have to just interrupt you real quick. No, the reason
10 why is like, there might be, again, a time constraint
11 and I want to get through testimony real quick here.
12 And so, to make sure that everyone who is up here,
13 somebody might have to leave. And I appreciate you
14 didn't know this until just now. So, but I'd like the
15 building owner to go ahead and give their testimony.

16 MR. FREEMAN: Sure.

17 CHAIRPERSON HILL: Then I'm going to let DCRA
18 to give the testimony. No crossing yet. We'll go
19 back and cross because I want the testimony to be
20 heard by everyone that's up here.

21 So, if you could please go ahead and give your
22 testimony, Mr. Freeman?

23 MR. HOOD: Mr. Chairman, let me just say.

24 CHAIRPERSON HILL: Yes.

25 MR. HOOD: I do have an urgent issue on my job

1 that I just was texted. But I will read the --
2 whatever I miss, I will watch on video or something,
3 and I'll read the record. So.

4 CHAIRPERSON HILL: Okay. All right. Okay.
5 Well, then you'll have some nice TV time then later on
6 if that's -- so, if you do get stuck. I thought it
7 was the building owner, but I'm just going to go to --

8 MR. TONDRO: It is to us. I'm just a little
9 concerned procedurally incase this is appealed, that
10 the process of not going through a cross-examination,
11 especially if Chairman Hood will be reading the record
12 regardless, I'm not sure why we shouldn't be going
13 forward with cross to finish that and then move on. I
14 just have a couple questions. I'll try to leave that
15 --

16 MR. HOOD: I would say, Mr. Tondro --

17 CHAIRPERSON HILL: I agree. I agree. I
18 agree. I agree.

19 MR. HOOD: -- (simultaneous speech). I will
20 read it, normal course.

21 CHAIRPERSON HILL: Normal course. I was just
22 trying to get all the live blood and oxygen in the
23 room, but I appreciate that, Mr. Tondro.

24 MR. TONDRO: And, I appreciate that. And I
25 appreciate also, Chairman Hood, your willingness to

1 spend the time outside of the meetings, which are
2 already going on too long, I'm sure.

3 So, I guess I just have -- I'm going to try
4 and keep this as simple as possible, the questions.

5 You had raised this issue --

6 MS. McCLELLAND: Yes.

7 MR. TONDRO: Yes. No, I understand. And I'm
8 not -- right.

9 You had raised -- let me just deal with the
10 issue of apartments first. Are you familiar with the
11 definition of apartment in the code?

12 MS. McCLELLAND: I am not, but if you could --

13 MR. TONDRO: Okay. That's fine.

14 MS. McCLELLAND: Yeah.

15 MR. TONDRO: Yeah, no. So, I'll just read
16 that for you if I can.

17 MS. McCLELLAND: Thank you, yeah.

18 MR. TONDRO: And tell me if I speak too
19 quickly. I'm a Yankee from Connecticut. So, I
20 apologize.

21 MS. McCLELLAND: I work on that too, so don't
22 worry.

23 MR. TONDRO: Okay. So, I'm just reading
24 again, this is the 1958 definition of apartment. One
25 or more habitable rooms with kitchen and bathroom

1 facilities exclusively for the use of and under the
2 control of the occupants of those rooms. Obviously,
3 my emphasis was on, exclusively for the use. So,
4 given that, can you tell me how many kitchens there
5 are in this -- in the two different buildings?

6 MS. McCLELLAND: Yes. First, can I say that I
7 was not using the term apartment based on that
8 definition because I was not aware of the definition
9 before that. But when I was referring to an
10 apartment, I was referring to a commercial building
11 with people with 24 individual leases. And so, if
12 that is the definition that you want to go on, then I
13 would have used a different word than apartment.

14 MR. TONDRO: Okay. And I just want to make
15 clear that we're dealing with the zoning regulations
16 and this is in the zoning regulations, and that's what
17 the appeal is about, right? So --

18 MS. McCLELLAND: Okay. So, yes. I am aware
19 that there are four kitchens that will be shared by
20 the four units, but that again, I guess I would have
21 changed everything that I had said if I knew that I
22 was going to have to use only the definitions that are
23 based on the zoning definitions.

24 MR. TONDRO: Right. Okay. Thank you. And so
25 therefore, from that as you're saying, you said four

1 units at most, even if they were all considered
2 apartments. Am I correct in understanding you saying
3 there would be -- when you said four units, you meant
4 four apartments under this definition, based on those
5 four kitchens?

6 MS. McCLELLAND: Yes.

7 MR. TONDRO: Okay. Trying not to be leading.
8 I'm sorry.

9 MS. McCLELLAND: Yeah.

10 MR. TONDRO: Thank you. Question, you had
11 talked about earlier, I think it's mostly about
12 timeliness, but I just want to clarify, you had talked
13 about an increase in capacity. And I'm trying to
14 understand as if you can just unpack what that means
15 because we've heard testimony, I think it's both in
16 the record and otherwise, that it was a flat, and a
17 flat. And a flat is a two-family dwelling to two-
18 dwelling building.

19 MS. McCLELLAND: Yeah, I believe that you
20 mentioned that there was going to be -- or the reason
21 that there was a change in the permits was because
22 there was some changes inside the building, right?
23 And that there was changes from how there were
24 bedrooms in the basement and some of the bedrooms
25 moved upstairs, and those were the types of changes.

1 And so, that is what I meant by the changing
2 in capacity of the building. There were changes in
3 the structure of how the people were going to be
4 living in the building.

5 MR. TONDRO: Right. But, and capacity usually
6 means a number, right? Just so that we're all --

7 MS. McCLELLAND: Yeah, sorry. Again --

8 MR. TONDRO: -- we're all clear.

9 MS. McCLELLAND: -- I think that I was using a
10 different definition in my head than you're probably
11 used to as a DCRA official. I do totally different
12 things than this in my regular life, so I --

13 MR. TONDRO: That's fine.

14 MS. McCLELLAND: Yes.

15 MR. TONDRO: I totally understand. I just
16 wanted to clarify. I think it was Mr. Freeman who
17 provided that evidence, but he showed that originally
18 in one case, at least, there was eight bedrooms and
19 three bedrooms, and then it switched to six and six.
20 So, there was a difference of 11 bedrooms to 12
21 bedrooms total --

22 MS. McCLELLAND: Yeah.

23 MR. TONDRO: -- between two units in one
24 building.

25 MS. McCLELLAND: So, if that's the case, then,

1 if it did change from eight bedrooms to three
2 bedrooms, then --

3 MR. TONDRO: Eight above and three down below.

4 MS. McCLELLAND: Or eight, eight above and
5 three down below. Yes. So, they changed it to six
6 and six, which then fit nicely into the definition of
7 a family, where that changed -- because they changed
8 that, it changed everything for how they could apply
9 for people to live in the building if it had been
10 eight units. Then it would have been larger than a
11 family, correct?

12 MR. TONDRO: Not eight units. There were
13 eight rooms --

14 MS. McCLELLAND: Eight bedrooms.

15 MR. TONDRO: -- that could have been bedrooms.

16 MS. McCLELLAND: Yes. So, if there were
17 eight --

18 MR. TONDRO: And three --

19 MS. McCLELLAND: Again, I guess just going on
20 that logic, if there were eight rooms that could have
21 been bedrooms, then the way that Common is using the
22 property would not have worked because those eight
23 bedrooms would serve as a larger unit than a family
24 unit. So, then it wouldn't work under the flat
25 definition. So, you guys changed it so that there

1 could be six bedrooms and six bedrooms, and --

2 MR. TONDRO: Should I clarify --

3 MS. McCLELLAND: You didn't. You didn't
4 change it.

5 MR. TONDRO: Thank you. DCRA didn't do
6 anything, right.

7 MS. McCLELLAND: You approved the change so
8 that it could be six bedrooms and six bedrooms, which
9 then again, now conveniently fits under the definition
10 of a family. There was no special exceptions sought
11 for that, so the community was not able to do anything
12 about the fact that now, under regulations, the family
13 flats, the six-unit family flats are technically to
14 the letter of the law. But again, the intended
15 purpose changed.

16 MR. TONDRO: But again, just to clarify, six
17 occupants per unit, only two units per building.

18 MS. McCLELLAND: Yes.

19 MR. TONDRO: Right.

20 MS. McCLELLAND: Versus eight, which would not
21 have fit under the definition of a flat for a family.

22 MR. TONDRO: There's a total number -- I
23 should say, first of all, what was -- those were a
24 total number of rooms up above and I believe Mr.
25 Freeman can respond, but I believe that that was a

1 statement about the fact that there was no real change
2 in capacity.

3 But I can -- let me sort of short-circuit that
4 one, I think, and get to sort of a different way of
5 looking at it.

6 Under the definition of family, what's the
7 maximum number of people that can live in a single
8 apartment?

9 MS. McCLELLAND: Six, I believe. It's six
10 unrelated.

11 MR. TONDRO: How about if -- unrelated. So,
12 if we're dealing -- how about a religious community?
13 Do you know how many can live?

14 MS. McCLELLAND: Again, no. I --

15 MR. TONDRO: I'm sorry. I don't mean to be --

16 MS. McCLELLAND: No, no, I mean --

17 MR. TONDRO: -- (simultaneous speech). There
18 are 15.

19 MS. McCLELLAND: -- yes, I --

20 MR. TONDRO: I have to make sure we're clear
21 because I think there is --

22 MS. McCLELLAND: It can be 15. So, if -- so,
23 was that the intended use before, that there was going
24 to be a religious community with --

25 MR. TONDRO: No.

1 MS. McCLELLAND: -- up to 15 people living
2 there?

3 MR. TONDRO: No. At this point I'm asking the
4 questions, but that's a fair question.

5 MS. McCLELLAND: Well, I'm just asking a
6 question to clarify your question.

7 MR. TONDRO: I want to be clear that you
8 understand what is the maximum. The question I was
9 asking is, what is the maximum that's permitted under
10 law to live in a particular unit? What's the maximum
11 number of people? Do you know, under the definition?

12 MS. McCLELLAND: Didn't you just say six? I
13 don't know the definitions. Again, I would like to
14 clarify for the record --

15 CHAIRPERSON HILL: No, okay. All right.

16 MS. McCLELLAND: -- this is not -- I don't
17 know these things --

18 MR. TONDRO: Let me just -- I'm sorry, if I
19 could just --

20 MS. McCLELLAND: -- so it would be helpful if
21 you --

22 CHAIRPERSON HILL: Just, we're --

23 MR. TONDRO: If I could just --

24 CHAIRPERSON HILL: I'm getting so confused of
25 whether we're doing testimony or we're presenting or

1 you know what I mean? So --

2 MR. TONDRO: The question, if I can just read
3 the definition --

4 CHAIRPERSON HILL: Please.

5 MR. TONDRO: -- of family and ask her --

6 CHAIRPERSON HILL: Please, Mr. Tondro.

7 MR. TONDRO: -- if she understands what --
8 okay. Because this is about her testimony and the
9 testimony as to what was going on and representing
10 what the ANC --

11 MS. McCLELLAND: I actually did not testify to
12 anything about the definition of a family. So, if
13 that's a question that you're asking me about --

14 MR. TONDRO: Testimony she provided --

15 MS. McCLELLAND: -- that was not part of my
16 testimony.

17 MR. TONDRO: The testimony she provided was on
18 behalf of the ANC in reviewing this case, and I
19 believe that if it's clear that she does not
20 understand or did not use the definitions under the
21 zoning regulations in coming to that determination by
22 the ANC, that that casts some questions about how much
23 weight, as it were, one can be given.

24 As the ANC, it's great weight, but if the ANC
25 is not understanding the rules under which they're

1 evaluated (sic) the permit and certificate of --

2 CHAIRPERSON HILL: What's your question, Mr.
3 Tondro?

4 MS. McCLELLAND: Yeah.

5 MR. TONDRO: The question, sorry, is just are
6 you aware under the definition of family that yes, six
7 unrelated are allowed, but that for married or a
8 family, including adoption or marriage, is there an
9 actual limit on the number of people who can be in a
10 single-family unit?

11 MS. McCLELLAND: So, is there --

12 CHAIRPERSON HILL: Do you know the answer, Mr.
13 Tondro?

14 MS. McCLELLAND: Yeah.

15 MR. TONDRO: Yes.

16 CHAIRPERSON HILL: And what's the number?

17 MR. TONDRO: One or more. There is no limit.

18 CHAIRPERSON HILL: Okay, there is no limit.

19 MS. McCLELLAND: But you have the definition
20 in front of you. So, it doesn't --

21 MR. TONDRO: Well, I can read it. I'm sorry.
22 I didn't want to be over the --

23 MS. McCLELLAND: So, okay, I would like to --

24 MR. TONDRO: -- (simultaneous speech) in
25 reading it.

1 MS. McCLELLAND: -- respond to that, even if
2 there is no limit, if you do have -- Common has said
3 that they intend to have all of the rooms filled and
4 that they will be at full capacity. If there is a
5 married couple living in one of the six bedrooms, then
6 that will mean that they are over the limit for the
7 six people in --

8 MR. TONDRO: That's not --

9 MS. McCLELLAND: -- there. Again --

10 MR. TONDRO: -- relevant here.

11 CHAIRPERSON HILL: Okay. That's okay. Hold
12 on. Hold on.

13 MR. TONDRO: Again, if I can --

14 CHAIRPERSON HILL: I'm completely losing
15 control here.

16 MS. McCLELLAND: I am also completely unclear
17 on why --

18 CHAIRPERSON HILL: So, so, no hold on.

19 MS. McCLELLAND: -- I'm getting quizzed on the
20 definition --

21 CHAIRPERSON HILL: That's okay. That's okay.
22 That's okay.

23 MS. McCLELLAND: -- of a family when that was
24 not part of my testimony.

25 CHAIRPERSON HILL: He was --

1 MS. McCLELLAND: And I believe Ms. Glazer
2 agrees that I should not be quizzed on that.

3 CHAIRPERSON HILL: Now, wait a minute. So,
4 Ms. Glazer, do you have something to add? Is that --
5 no? You're okay? All right. Okay.

6 MS. GLAZER: [Speaking off microphone.]

7 CHAIRPERSON HILL: So, Mr. Tondro, just ask
8 your question again. Just try -- you're asking
9 whether the ANC knows the definition that they're
10 using.

11 MR. TONDRO: Yes.

12 CHAIRPERSON HILL: Okay.

13 MR. TONDRO: So, let me back it up that
14 simple.

15 CHAIRPERSON HILL: Okay.

16 MR. TONDRO: Yes. What --

17 MS. McCLELLAND: But we aren't using the -- we
18 didn't use family in our -- I did not use the
19 definition of family in my testimony. So, I am just
20 confused why I am even getting this question.

21 MR. TONDRO: I'm asking a question because you
22 asserted -- there was an assertion made in your
23 testimony, I believe. I can stand corrected that this
24 was going to be a 24-unit, or 24 apartments that were
25 going to be provided. And I cited first the

1 definition of apartments under the zoning regulations.

2 I think we can agree there are not going to be 24.

3 And the question I'm trying to understand, you're
4 talking about capacity, and that there was a change.

5 And I'm just trying to point out, how is there a
6 change in capacity?

7 MS. McCLELLAND: As I mentioned before, this
8 is my first hearing, so I did not realize that the
9 technical language that I needed to be using when
10 presenting was going to be called under the
11 definitions for every single piece of zoning. I would
12 have changed my testimony, and if you would like, and
13 if I could have a few minutes --

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

15 MS. McCLELLAND: -- I will redo it all.

16 CHAIRPERSON HILL: That's okay. We're fine.
17 I'm clear as to what's going on. I think the Board
18 understands what's going on. I'm just trying to move
19 through Mr. Tondro's questions so we can get to your
20 presentation.

21 Do you have any more questions?

22 MR. TONDRO: I have one more question.

23 CHAIRPERSON HILL: Okay, please give it.

24 MR. TONDRO: I'm sorry. You talked about
25 affordable housing and that this was an issue which

1 you felt would be a problem for affordable housing,
2 this permit. Can you just elaborate on what you mean
3 by that? How is it precisely that this, if permitted,
4 if the appeal was not granted, that this would cause a
5 problem with affordable housing?

6 MS. McCLELLAND: So, in most new developments
7 there are requirements for the percentage of -- and
8 now I'm trying to be very specific with my words, so
9 please excuse me if this takes me longer to answer
10 than it would normally. The percentage of the people
11 that are able to rent in an apartment building do have
12 to fit under low-income guidelines for -- and again,
13 I'm not saying this, if there was --

14 CHAIRPERSON HILL: That's okay. I understand
15 what you're saying.

16 MS. McCLELLAND: Yes.

17 CHAIRPERSON HILL: I understand what you're
18 saying.

19 MS. McCLELLAND: And because they are applying
20 for just a family flat, there are no requirements for
21 low-income housing density within this. So, this is
22 beneficial only to people that are able to afford it.
23 There is no provision in here, unless they are going
24 to, I mean, change how they're doing this, for low-
25 income individuals or families to apply to live in

1 these if they're --

2 CHAIRPERSON HILL: Okay. Give me one second.

3 Okay. Okay.

4 MR. WILSON: I have three cross questions. It
5 will take 30 seconds.

6 CHAIRPERSON HILL: So, the ANC. Okay. Hold
7 on one second. Okay. Okay. All right. Hold on one
8 second. Hold on one second.

9 MR. WILSON: Is it your understanding that
10 all --

11 CHAIRPERSON HILL: No, could you give me one
12 second?

13 MR. WILSON: Oh, sorry.

14 CHAIRPERSON HILL: That's all right.

15 [Pause.]

16 CHAIRPERSON HILL: All right, Mr. Wilson.

17 MR. WILSON: Oaktree's homes are existing
18 within the BACA area, right?

19 MS. McCLELLAND: Yes.

20 MR. WILSON: And they would be eligible to be
21 members?

22 MS. McCLELLAND: Yes.

23 MR. WILSON: Are they members?

24 MS. McCLELLAND: No.

25 MR. WILSON: If they were members would they

1 have received notice that the meeting was occurring
2 and what was being discussed?

3 MS. McCLELLAND: Yes. And they did receive
4 notice of the

5 MR. WILSON: Did you indicate to them that
6 we'd be voting on the proposed resolution of the
7 following meeting?

8 MS. McCLELLAND: Yes, we told everyone that
9 was at the January meeting that we would be voting on
10 this issue at the February meeting because it was
11 taking quite a bit of time and we wanted to move on
12 and --

13 MR. WILSON: So, you think that Oaktree had
14 notice that there was going to be a vote in February,
15 that they didn't show up to?

16 MS. McCLELLAND: Yes, that is correct, and
17 they would have been given the -- we actually asked at
18 the February meeting if anyone there was there from
19 Oaktree to speak to their case before we voted, and
20 they were not there.

21 They have not attempted to come to that
22 meeting.

23 CHAIRPERSON HILL: Okay. Okay. That's all
24 right. I'm just --

25 MR. WILSON: I've got two more questions.

1 When Oaktree made a presentation at the ANC, did we
2 get into the details and technical details of the
3 case, about why they were legal regarding the
4 occupancy related to the definition of family?

5 MS. McCLELLAND: I don't remember.

6 CHAIRPERSON HILL: I think the answer was, I
7 don't remember. That's okay.

8 MR. WILSON: I'm done. Thanks.

9 CHAIRPERSON HILL: All right. Okay. All
10 right. So, Mr. Freeman, we're going to turn to you
11 now, okay, to -- I keep going. Okay, Mr. Tondro,
12 we're going to go to you next, okay, to present. And
13 I guess, Mr. Freeman, you'll get to go last.

14 MR. TONDRO: And if I can, I think if we can
15 request a short break? I apologize.

16 CHAIRPERSON HILL: Oh, sure. No, that's okay.
17 Let's take a quick break. I'll take a five-minute
18 break.

19 MR. TONDRO: Thank you.

20 [Off the record from 4:23 p.m. to 4:33 p.m.]

21 CHAIRPERSON HILL: All right, thank you all
22 for coming back here. I lost -- there's Sherry. All
23 right. Yes sir, you had a comment?

24 MR. FREEMAN: Our one witness for this
25 afternoon as Mr. Dettman. We have other people here,

1 some of whom have to go. Are you comfortable with
2 just hearing from Mr. Dettman, or do you have
3 questions that you'd like to pose to anyone else?

4 CHAIRPERSON HILL: Who is leaving?

5 MR. FREEMAN: The representative from Common
6 is leaving.

7 CHAIRPERSON HILL: Okay. Uh-huh.

8 MR. FREEMAN: We may lose Mr. Brown, but
9 definitely our representative. He came down from New
10 York and --

11 CHAIRPERSON HILL: Okay.

12 MR. FREEMAN: -- he's got to --

13 CHAIRPERSON HILL: All right. So, we do have
14 questions. And so, I guess if it's all right then,
15 we'll go with DCRA. Actually, I'll go with you first
16 then. Okay? If you could do your presentation first
17 because I'd like to hear from your witnesses, and if
18 you want to bring them up or anything, or if we have
19 any questions for them --

20 MR. FREEMAN: We just have one witness, but
21 people here are available to answer questions.

22 CHAIRPERSON HILL: Right, but if they're going
23 to leave, then --

24 MR. FREEMAN: Yeah.

25 CHAIRPERSON HILL: Right. Okay.

1 MR. FREEMAN: We don't have any testimony
2 prepared for them.

3 CHAIRPERSON HILL: Okay. Okay. All right.
4 So, I'd like you to go next then.

5 MR. FREEMAN: Sure.

6 CHAIRPERSON HILL: Is that all right? Okay.

7 MR. FREEMAN: Mr. Dettman.

8 CHAIRPERSON HILL: Okay.

9 MR. DETTMAN: Good afternoon, Mr. Chairman and
10 members of the Board. For the record, Shane Dettman,
11 Director of Planning Services with the law firm of
12 Holland and Knight.

13 I think often times, as you know Mr. Chairman,
14 and you know, appeals can get really complicated when
15 you're looking at timelines and lots of facts and lots
16 of pleadings, I think for this particular case though,
17 that it can really be boiled down into three simple,
18 critical questions. They are up on the screen here.

19 410 and 412 Richardson Place, two separate
20 buildings, is each building constructed as a flat, and
21 will each building be used as a flat?

22 So, we look at the definition of a building.
23 I'm not going read it for you verbatim. It's sitting
24 there on the screen for you to look at and I'm sure
25 you're very familiar with what it is. But I'll just

1 look at the critical component of what determines
2 whether or not a structure is a single building or
3 separate buildings for purposes of zoning. And it's
4 the underlying section when it says, "When separated
5 from the ground up, or from the lowest floor up, each
6 portion shall be deemed a separate building." Again,
7 under the zoning regulations.

8 Taking a very quick look at the plans that are
9 in the record, this is looking at 410, clearly the
10 cellar level and the first floor, there is no
11 communication between 410 and 412. No physical
12 connection to move in between 410 and 412. They're
13 also on two separate lots, record lots.

14 Again, 410, it's the second floor and the
15 third floor. There is no communication in the plans.
16 You can't get from 410 to 412 through the party wall.

17 Looking at 412, same thing, no communication
18 shown on the plans. Cellar level, first floor, second
19 floor, third floor, no communication. These two
20 separate buildings are separated from the ground up in
21 their entirety. They are two separate buildings under
22 zoning.

23 Not only that, the buildings are going to have
24 separate addresses, entrances, utility meters,
25 electrical panels, HVAC unit systems, means of egress,

1 building permits and certificates of occupancy.

2 In addition, each of 410 and 412 will have
3 their own separate locked entrances to the residents
4 of 410 have no access to 412, and vice-versa. Having
5 common as the property manager of both of these
6 buildings and both of these properties does not change
7 any of the facts that they are two separate buildings
8 under the zoning regulations.

9 So, now that we've established that they're
10 two buildings, are they both flats? A flat is a two-
11 family dwelling. Said differently, it's a dwelling
12 used exclusively as a residence for two families
13 living independently of each other. A two-family
14 dwelling is a flat.

15 So, we know that they're two different
16 buildings. We have two dwellings. So, do they have
17 two separate units? Looking at 410, here is a blow-up
18 of the foyer area. Again, the locked foyer are that
19 the residents of 410 will only have access to. It's
20 clear that off of the common foyer area there are two
21 entrances; two locked units. Unit A and Unit B.

22 Looking at Unit A, you walk into Unit A and
23 there's only six bedrooms that are accessed by passing
24 through or by certain rooms and common housekeeping
25 facilities.

1 Unit B, upstairs, second floor, third floor,
2 same thing. Six bedrooms that are accessed by walking
3 through or by certain rooms or housekeeping facilities
4 in common.

5 412, same thing. Common foyer area, two
6 locked entrances, Unit A and B. The residents of A
7 only have access to A. The residents of B only have
8 access to B. And then again, six bedrooms in each of
9 the two units, six bedrooms in each of the units are
10 only accessed by passing through and by certain rooms
11 and housekeeping facilities that are used in common.

12 So, we have two buildings. Each building has
13 two dwelling units. By definition, they're flats.

14 So, moving on to whether or not each of the
15 units meets the -- the residents of each units will
16 meet the definition of a family. To do that I'll take
17 a look at the three critical components of the
18 definition, whether there's going to be six unrelated
19 persons in each unit, whether or not they're going to
20 be living together as a single housekeeping unit, and
21 whether or not they're going to use certain rooms and
22 housekeeping facilities in common. Those are the
23 three critical components in order to determine
24 whether or not the residents that will eventually live
25 in each of the four units meet the definition of a

1 family.

2 As to the first component, pursuant to the
3 affidavit of common living in Exhibit 32-H1 of the
4 record, it's very clear, and under the terms of the
5 lease, it's very clear that each of the four units in
6 the two separate flats, will have no more than six
7 residents. Each individual unit will have one lease,
8 not 24 leases. One lease that will govern the unit,
9 signed by the six residents of the unit. Maximum
10 occupancy of six residents. The six residents of each
11 unit. No more than six residents.

12 Will the residents in each unit meet the
13 definition of a family? Not a blood-related family,
14 but a six unrelated persons living as a single
15 housekeeping unit.

16 As already been mentioned, and previously in
17 the proceeding, is that the appellant has introduced a
18 lot of cases outside of the jurisdiction of the
19 District of Columbia that address the issue or that
20 interpret under their respective zoning ordinances,
21 what it means to be a single housekeeping unit.
22 Again, it's outside the District of Columbia. They
23 are nonbinding on the Board. They are nonbinding on
24 the D.C. Court of Appeals. But to the extent that
25 they actually do provide any guidance on whether the

1 residents within each of the two units, within 410 and
2 412, will be living as a single housekeeping unit, we
3 believe they actually weigh against this appeal rather
4 than in favor.

5 In one of the appellant's filings they cite
6 from Rathkopf's, the Law of Zoning and Planning. And
7 it says, in the past -- and as shown in all of the
8 cases that have been introduced into the record by the
9 appellant.

10 "In the past courts have interpreted the
11 phrase, 'single housekeeping unit' in a rather elastic
12 way, generally ruling that any living arrangement
13 which makes use of unified housekeeping facilities
14 satisfies such an ordinance."

15 This is just a list of five of the cases that
16 were introduced early on by the appellant. I'm not
17 going to summarize them in detail or anything like
18 that. But what I think is very interesting is that
19 each of them, on different basis, different living
20 arrangements, whether it be unrelated individuals,
21 whether it be a foster home, whether it be disabled
22 children being taken care of by a homeowner, in each
23 of these situations it was determined in those
24 different jurisdictions that those living arrangements
25 were single housekeeping units.

1 Just to touch upon a couple of them. In
2 *Armstrong v. Baltimore*, the Maryland Court of Appeals
3 concluded four unrelated individuals living in a
4 dwelling unit was a single housekeeping unit where
5 each bedroom was rented by a separate lease. We'll
6 have a single lease here governing all six bedrooms.

7 It gave the tenant sole use of their bedroom
8 and the shared occupancy of the bedrooms, kitchen --
9 the common facilities. In part because each resident
10 was responsible for the pro rata share of damages to
11 the common units.

12 In this case, the residents within each of the
13 units in 410 or 412 will be governed by, again, a
14 single lease that will make them jointly and severally
15 responsible for the rent, damages to common area, and
16 jointly responsible for utilities. So, to the extent
17 that that case provides any guidance, under this
18 situation we would be a single housekeeping unit.

19 Looking to the definition of Webster's for
20 housekeeping. In the zoning regulations, as you know
21 it says, "Words not defined in this section, that is
22 under the 1958 regulations, Section 199, not defined
23 in this section shall have the meanings given by
24 Webster's Unabridged Dictionary.

25 Under housekeeping there are three

1 definitions. The first one, "The management of a
2 house and home affairs." I believe, based on this
3 definition of housekeeping, the residents within each
4 of the units on these properties will be living as a
5 single unit that's responsible for the management of
6 the unit and for the management of unit affairs.

7 Furthermore, single housekeeping unit,
8 residents within each of the separate units in 410 and
9 412 will live independent of one another. Here are
10 some examples. The lease will govern each of the
11 family's relationship and operation of a single-
12 housekeeping unit. Single lease, they'll choose their
13 own bedrooms, they'll be jointly and severally liable
14 for the rent, jointly responsible for utilities such
15 as gas, electricity, and internet, which is rolled
16 into the rent, responsible for the conduct of other
17 tenants such as loud and objectionable noises, sights,
18 odors. They'll be responsible for daily maintenance
19 and upkeep of their respective units, such as
20 cleaning, trash disposal, ordinary repairs and
21 responsible for protecting the unit from theft or
22 robbery.

23 Third, are they going to be using certain
24 rooms and housekeeping facilities in common? Going
25 back to the plans, it's clear that they will be. The

1 residents that will reside in the six bedrooms in a
2 particular unit will have common access to a kitchen,
3 dining room, study, balconies, washer and dryer, HVAC.
4 There will certainly be certain rooms utilized in
5 common, same with housekeeping facilities.

6 We've talked about commons and OTDs,
7 stipulations that they will absolutely abide by, every
8 single regulation that is applicable to a flat in this
9 zone. And they make that certification on their
10 application for a C of O that they've signed. It's
11 also on the -- that language is on the C of O that's
12 issued for 410 and 412.

13 Just very quickly, because there's been a lot
14 of discussion about what -- if it's not a flat, what
15 is it? It's certainly not an apartment house. By
16 definition, an apartment house is a building or a part
17 of a building in which there are three or more
18 apartments or three or more apartments and one or more
19 bachelor apartments.

20 410 and 412 are two separate buildings, as
21 we've determined, each containing only two dwelling
22 units. Thus, the building is a flat by definition.
23 It cannot be an apartment house.

24 There's been discussion about whether or not
25 it's a tenement house. A tenement house, a building

1 or a part of a building containing three or more
2 tenements or any building or part of a building
3 containing any combination of three or more tenements.

4 A tenement, one or more habitable rooms in an
5 apartment house. We do not have three or more units.

6 We cannot be an apartment house, we cannot be a
7 tenement house.

8 The appellant ended their discussion, or their
9 presentation with a claim that it's not a flat, it's
10 actually more akin to a rooming house. Rooming house,
11 a building or a part thereof that provides sleeping
12 accommodations for three or more persons who are not
13 members of the immediate family of the resident
14 operator. There will be no resident operator or
15 manager on site for these two particular flats. And
16 not under the exclusive control of the occupants.

17 I would introduce to the Board, a case that's
18 actually BZA application 17793. That's BZA Case
19 17793. It was a case where it was in Georgetown and a
20 property owner, it was a rowhouse that actually had a
21 single-family dwelling in the basement and it had a
22 rooming house in the upper floors. On the C of O it
23 showed a single-family unit and a rooming house.

24 And what they wanted to do, they were asking
25 the Board, it was an R-3 Zone, so couldn't have a flat

1 by matter of right. So, what they wanted to do was
2 they wanted to convert the rooming house to a single-
3 family dwelling so that there was a total of two
4 dwellings. So, they were asking for the conversion of
5 the property to a flat. And in that order the Board
6 actually draws the distinction between what it is to
7 be a single-family dwelling, and a rooming house. And
8 it says, the only differences are that a one-family
9 dwelling is comprised of a single-dwelling unit, all
10 of the rooms of which are occupied and controlled by
11 the family who rents or owns it.

12 In this situation, the six unrelated residents
13 who will live in each of the four units in the two
14 flats, they will occupy and control every single room
15 that's inside that unit. So, again, all of the rooms
16 of which are occupied and controlled by the family who
17 rents or owns.

18 They say that in contrast a rooming house
19 consists of separate rooming units, each of which is
20 under the control of its particular occupant who pays
21 the accommodations on a short-term basis. These are
22 not separate rooming units. There are four dwelling
23 units, each containing six bedrooms.

24 Just as a parting note, I wanted to just
25 address the statement that the appellant made when it

1 introduced Appeal No. 10876. This is the *Rock Creek*
2 *East* case, and I'm trying to flip to the statement
3 that is made by the Board in defining what it feels is
4 a housekeeping unit.

5 It says, "We interpret the definition of a
6 family of nonrelated persons to mean six persons who
7 live together as a housekeeping unit for the mutual
8 benefit of all parties on a more or less continuing
9 basis."

10 They're going to have a lease that goes six to
11 12 months. It's a continuing basis. It's whether or
12 not they're living in mutual benefit of each other.
13 And I would suggest, I would state that they absolutely
14 are. The ANC is correct, the City has an affordable
15 housing crisis. And the Board will recall that there
16 is another appeal that it just heard, talking about
17 that there's a need for not only IZ type affordable,
18 but there's also a need for lower price per square
19 foot market rate housing.

20 Common is going to be providing affordable
21 market rate housing. This is an opportunity for a
22 resident who is unable to pay the 2,500, \$3,000 per
23 month for a very small studio or one-bedroom, very
24 cramped unit. This is an opportunity for them to live
25 in a larger sized unit, six bedrooms, co-existing with

1 six other unrelated individuals that are living in
2 mutual benefit of one another.

3 For mutual benefit for purposes of affordable
4 housing, for purposes of sharing common facilities,
5 for purposes of eating together, cooking for each
6 other, living together. I would suggest that that BZA
7 definition is perfectly applicable here and we are
8 absolutely consistent with it.

9 CHAIRPERSON HILL: All right. Thank you.
10 Does the Board have questions of the property owner at
11 this point? Okay.

12 MR. HART: Thank you, Mr. Dettman, for that.
13 One question that I had was, and I think you answered.
14 I appreciate the kind of walking through this. It's
15 very helpful to hear it. Is there a -- I don't know
16 how to -- I don't know what else you would call it.
17 I've heard it called co-housing or something similar
18 to that. Is there anything in the 1958 or the 19 --
19 excuse me, 2016 zoning regs that discuss co-housing?

20 MR. DETTMAN: No.

21 MR. HART: Or something that to that affect?

22 MR. DETTMAN: No.

23 MR. HART: And you know what I mean by co-
24 housing?

25 MR. DETTMAN: Like, a co-living kind of thing?

1 MR. HART: It's, you have a -- you have
2 basically what is being described, what I understand
3 is being described here, which is an apartment -- you
4 have some common areas, and then you have areas that
5 are for that separate individuals to kind of live
6 together.

7 MR. DETTMAN: I think to the extent that it's
8 addressed in the zoning regulations, it's addressed in
9 the definition of family. And I think it's, in terms
10 of the manner in which each of these four units is
11 going to be managed under this single lease is no
12 different than you know, a property, a flat being
13 owned by yourself that's being rented out to six
14 unrelated persons who are living as a single
15 housekeeping unit. There is no difference.

16 MR. HART: And, do you have a definition for a
17 rooming unit?

18 MR. DETTMAN: Someone has it. One or more
19 habitable rooms forming a single habitable unit used
20 or intended to be used for living or sleeping
21 purposes, but not for the preparation or eating of
22 meals. Thank you.

23 MR. HART: Okay. Thank you.

24 CHAIRPERSON HILL: Before I turn to you. So,
25 who are we going to lose in a little bit, maybe? Mr.

1 Freeman, you said we might lose some people from --
2 who came?

3 MR. FREEMAN: Yeah, the person is Common, our
4 representative from Common.

5 CHAIRPERSON HILL: All right. So, the Common
6 representative, and then I might lose somebody else?
7 Okay, I just might lose the Common representative.

8 And when do you know that you're -- that our
9 potential witness might be trying to leave?

10 MR. FREEMAN: Soon. He's got to get out of
11 here in the next 10 minutes, five to 10 minutes.

12 CHAIRPERSON HILL: Okay. All right. So, I'm
13 going to try -- well, the reason why I'm hesitant is
14 because then there's other questions that other people
15 are going to have to ask and I don't know specifically
16 if I need to address these to the Common -- your
17 Common representative or not. So, I will just go
18 ahead and turn to -- because I have some questions for
19 you, and I'll just go ahead and turn to the -- unless,
20 does the Board have other questions specifically for
21 the Common representative?

22 MR. FREEMAN: Do you want to just ask him his
23 -- the question.

24 MR. JAWITZ: [Speaking off microphone.]

25 CHAIRPERSON HILL: Okay. Please. Please.

1 Please. Sir, sir, sir, I'm sorry. You can come on up
2 and step to the microphone.

3 MR. JAWITZ: [Speaking off microphone.]

4 CHAIRPERSON HILL: Okay. I'm trying to see
5 right now, I'm trying to see right now if there are
6 any questions. And does the board have any questions
7 -- and, sir, just before you mention your name, to let
8 you know, then they're also going to have an
9 opportunity to ask questions. So, your five minutes
10 is what I'm trying to accommodate, and that's where I
11 don't think you're going to make it if I start asking
12 you questions.

13 MR. JAWITZ: [Speaking off microphone.]

14 CHAIRPERSON HILL: Okay, all right. Your
15 microphone is not on. Please introduce yourself.

16 MR. JAWITZ: My name is Simon Jawitz, J-A-W-I-
17 T-Z.

18 CHAIRPERSON HILL: Okay.

19 MR. JAWITZ: I am the CFO, Head of Real
20 Estate, and board member of Common.

21 CHAIRPERSON HILL: Okay. All right, Mr. --
22 say the last name again.

23 MR. JAWITZ: My last name? Jawitz, J-A-W-I-T-
24 Z.

25 CHAIRPERSON HILL: Jawitz. All right, Mr.

1 Jawitz. And you were sworn in earlier?

2 MR. JAWITZ: I was.

3 CHAIRPERSON HILL: All right. So, Mr. Jawitz,
4 I guess, you know, and I'm trying to do this quickly
5 for you, okay? So, we -- first of all, I am
6 interested by your business model, okay? I think it's
7 an interesting business model. I think that probably
8 people here think it's an interesting business model.

9 The specific questions that I have, I guess,
10 for you, and we've read the record, I've read a lot of
11 the stuff in the record, is that how many communities
12 is your company currently in with this model?

13 MR. JAWITZ: When you say communities, you
14 mean cities?

15 CHAIRPERSON HILL: Yeah, cities.

16 MR. JAWITZ: Oh, oh. So, we're currently in
17 New York where we have -- I think we just opened up
18 our ninth property in Brooklyn. We have two
19 properties currently open in San Francisco, and we
20 will be opening in Chicago and Oakland, you know,
21 before the summer, but that's currently where we are.

22 CHAIRPERSON HILL: Okay. And when you -- and
23 this is the model, basically, that you use in each
24 city. And at least what I've seen thus far.

25 MR. JAWITZ: It varies from city to city.

1 CHAIRPERSON HILL: Okay. And, when you --
2 when your company is looking for places for the
3 operation, what kind of zoning do you look at, or is
4 there a particular type of zoning that you look at?

5 MR. JAWITZ: Well, I mean, it has to be
6 residential. Okay? And beyond that, it just, it
7 really depends. I mean, in New York where we confine
8 ourselves to, you know, areas that allow multifamily
9 residential buildings. D.C. is very different. I
10 mean, in D.C. quite frankly, we're operating in two
11 existing SROs. Does that mean something to you?
12 Single room occupancy, you know, and we have to have a
13 different model there.

14 Here, you know, we've been in conversations
15 with our friends at, you know -- with Peter, since the
16 beginning to make sure.

17 CHAIRPERSON HILL: I'm sorry. Who is Peter
18 that you're referring to?

19 MR. JAWITZ: Oh, I'm sorry. Peter Stuart
20 from --

21 MR. FREEMAN: OTD, Oaktree owner.

22 MR. JAWITZ: Oaktree. Oaktree, yeah.

23 CHAIRPERSON HILL: Okay. All right.

24 MR. JAWITZ: To make sure that what we do is
25 in compliance with local law.

1 CHAIRPERSON HILL: Okay.

2 MR. JAWITZ: And I would just add one thing,
3 if I may say something. We're probably different than
4 most, if not every real estate owner or developer that
5 comes before you, because -- and the reason I say that
6 is because we don't really even consider ourselves in
7 the real estate business. All right. The real estate
8 obviously is an important part of what we're doing.
9 But we're trying to build a brand. All right? And
10 we're trying to build a brand for our tenants, our
11 members, that stands for something. Okay?

12 And so, we actually hold ourselves to a higher
13 standard of compliance everywhere we go. So, in New
14 York City for example, you know, you can find any day
15 of the week, you can find owners and operators that
16 take buildings and they put illegal bedrooms in. The
17 bedrooms are not to code. We abide by the letter and
18 the spirit to the extent that we can figure out what
19 it is, because again, we're trying to build a brand.
20 And if we get a reputation as a company that doesn't
21 abide by the law, has a negative impact on neighbors
22 in our communities, we're basically out of business.

23 And I know there was a -- it's not directly
24 relevant here, but it was brought up earlier about
25 affordable housing and the like. Now, you know, in

1 New York City, in Brooklyn, I don't know how familiar
2 you are with Brooklyn, but you know, we opened up our
3 first properties in Crown Heights, right? Which you
4 know, is very, very different from the kind of
5 situation we have here. And one of the things we're
6 very concerned about is making sure that we're part of
7 the solution to a housing problem, and we're not
8 exasperating it. Right?

9 So, we don't, forever, take on a building
10 where there were current occupants. You know, we will
11 never be part of putting anybody, you know, out of
12 their apartment. We get opportunities all the time
13 from owners, you know, take my building, we'll get it
14 out, we'll redo it. No, we don't do that. Okay?

15 CHAIRPERSON HILL: Okay, Mr. Jawitz. I'm just
16 going to stop you. That's all right.

17 MR. JAWITZ: Okay.

18 CHAIRPERSON HILL: Again, and this is why I
19 was interested in speaking to you before you leave.

20 MR. JAWITZ: Yes.

21 CHAIRPERSON HILL: Because again, I think it's
22 an interesting concept. What is before us right now
23 is a little new.

24 MR. JAWITZ: Yes, it is now.

25 CHAIRPERSON HILL: For us, is trying to figure

1 out, due to this appeal --

2 MR. JAWITZ: Yes.

3 CHAIRPERSON HILL: -- whether or not this is
4 the right place for your operation. And again, from
5 what I've seen, if I were a younger person, you know,
6 there would be definitely something to think about,
7 right? So --

8 MR. JAWITZ: That's why we have up to --

9 CHAIRPERSON HILL: Or maybe when I --

10 MR. JAWITZ: -- (simultaneous speech) 20,000
11 applications.

12 CHAIRPERSON HILL: Or maybe if I'm an older
13 person. That's a lot, for this site?

14 MR. JAWITZ: No, no, not for this site. For
15 what we have open in New York.

16 CHAIRPERSON HILL: Okay. All right.

17 MR. JAWITZ: We have 200 bedrooms, we have
18 20,000 --

19 CHAIRPERSON HILL: Okay. Okay.

20 MR. JAWITZ: -- applications.

21 CHAIRPERSON HILL: Okay. So, I've gotten my
22 question answered. Is there anybody here who has any
23 questions for Mr. Jawitz?

24 MR. JAWITZ: Yes.

25 MS. WHITE: Just one question, Mr. Jawitz.

1 MR. JAWITZ: Sure.

2 MS. WHITE: Why did you select that particular
3 location? What went into your thought process and how
4 that fit into your business model? Maybe you're not
5 familiar with the neighborhood as much, but --

6 MR. JAWITZ: Well, I'm vague -- to be
7 perfectly honest, actually that site was actually
8 found and identified by my youngest son, who also
9 works at the company and was actually the first
10 employee of the company, who at the time this site was
11 identified, was actually head of real estate
12 acquisitions.

13 I can tell you, generally speaking, what are
14 the factors that go into our site selection, okay?
15 One is transportation. Okay? Public transportation.
16 Very few, if any -- I don't believe actually, any
17 member we have anywhere at the moment, owns a car.
18 Okay? And there's been a lot of -- you may or may not
19 be familiar, there's been a lot of discussion back and
20 forth here about cars and car density on the street,
21 and I totally get it. Right? But our members
22 typically don't own cars.

23 So, we can only go someplace, typically we
24 want to be at least 10, no more than 10-minute walk
25 from public transportation.

1 Two, we're obviously concerned about, you
2 know, being near retail corridor, right? So, people
3 have access to shopping and the like. And three, it
4 comes down to the layout of the particular property.
5 And you know, it has to be -- we generally look for
6 units that higher bedroom counts, not always. But
7 generally, we do. But it has to make sense in the
8 connection of the building and all of that.

9 So, those are the factors that went involved.

10 MS. WHITE: Thank you.

11 CHAIRPERSON HILL: Okay. Okay. I'm going to
12 let the Commissioner ask a question, if you have any
13 questions. We're going to go really fast, okay?

14 MR. JAWITZ: Yes. Sure.

15 CHAIRPERSON HILL: And then, and then, and
16 then also Mr. Wilson.

17 MR. JAWITZ: Go ahead.

18 CHAIRPERSON HILL: So, Commissioner, do you
19 have any questions?

20 MS. McCLELLAND: The first is just on the
21 building of the brand. I know you said that the
22 community that you're coming into is very important
23 and the brand that you're having there is important as
24 well. So, again, one of the first things after the
25 property was done was it snowed and there was no snow

1 removal. And so why --

2 MR. JAWITZ: You know, to be honest with you,
3 I don't have an answer for that. I apologize for it.

4 We had the same problem, actually, in a building in
5 Brooklyn that's fully occupied and things got screwed
6 up. I mean, we're a young --

7 CHAIRPERSON HILL: Okay. That's okay. So,
8 you --

9 MR. JAWITZ: We're a young company. We don't
10 get --

11 CHAIRPERSON HILL: All right.

12 MR. JAWITZ: We don't always get it right. I
13 apologize.

14 MS. McCLELLAND: So, just the other thing,
15 when you were saying the three criteria for why you
16 selected the location, you didn't mention at all the
17 impact on the community that you're in, for selecting
18 the -- and it seems like as you're considering a
19 building a brand, not considering the impact of the
20 community on where your new location is going to be is
21 somewhat frustrating and thinking about if you are
22 really a community focused building because again,
23 this is --

24 CHAIRPERSON HILL: I'm sorry, Commissioner,
25 what's your question, just real quick?

1 MS. McCLELLAND: So, I guess my question was,
2 do you actually -- is that a concern? What have you
3 done for community input on choosing the location?

4 MR. FREEMAN: If I could jump in here? Common
5 is not the owner of the property.

6 CHAIRPERSON HILL: Okay.

7 MR. FREEMAN: So, the question about community
8 input on use, he didn't testify about community --

9 CHAIRPERSON HILL: Okay. I agree with you. I
10 was trying to ask the question, I suppose, or ask the
11 Commissioner to ask questions as it pertains to, I
12 guess kind of the zoning issues. But I was just
13 trying to quickly go through this. But that's all
14 right. Your question was -- your question was that
15 Common -- you thought that Common would have more --
16 I'm trying to figure out what the question is.

17 MS. McCLELLAND: Yeah. Yes.

18 CHAIRPERSON HILL: You would want them to have
19 more community input and they're not.

20 MS. McCLELLAND: Yeah.

21 CHAIRPERSON HILL: So, your question is --

22 MS. McCLELLAND: I guess, I'm sorry, I --

23 CHAIRPERSON HILL: -- do they want to have
24 more community input?

25 MS. McCLELLAND: Yeah. Sorry. I guess it was

1 -- I can just take my questions back.

2 CHAIRPERSON HILL: Okay. That's all right.
3 I'm just trying to get to the question.

4 MS. McCLELLAND: No, it's --

5 CHAIRPERSON HILL: Okay.

6 MS. McCLELLAND: It's okay.

7 CHAIRPERSON HILL: All right. Thank you. Mr.
8 Wilson?

9 MR. WILSON: I have some questions that I'd
10 like to offer to Mr. Jawitz on direct, but then
11 there's a broader set of questions I think that can
12 wait until he needs to leave. Does that work?

13 CHAIRPERSON HILL: Yeah, sure.

14 MR. WILSON: As long as Kyrus is willing to
15 answer the rest of them. Or I mean --

16 CHAIRPERSON HILL: If you have questions
17 specifically for this person, because he's going to
18 have leave, I would suggest answering -- asking those
19 questions again as precisely as possible. And I'm
20 trying to follow along as well so that I understand
21 the questions being asked as it's pertaining to the
22 issues concerning the appeal.

23 MR. WILSON: So, in your affidavit you stated
24 that you will comply with all the laws of the District
25 of Columbia, correct?

1 MR. JAWITZ: Yes.

2 MR. WILSON: And you're aware that the
3 certificate of occupancy limits you to having six
4 unrelated individuals in a unit?

5 MR. JAWITZ: Obviously, I do.

6 MR. WILSON: Does Common currently comply with
7 all of the applicable laws in New York for its New
8 York homes?

9 MR. JAWITZ: We do, absolutely.

10 MR. WILSON: And does that include New York's
11 limit on occupancy to a maximum of three?

12 MR. JAWITZ: It's -- we comply with all laws
13 in New York City. I spent many, many months when we
14 first started our business, I'm a former -- I used to
15 be an attorney. I thought better of it afterwards.
16 But I used to be an attorney and so when I first
17 joined the company one of the first things I did, and
18 I spent months on this, was making sure that
19 everything we did was compliant with all of the codes
20 and requirements of New York City. We hired three
21 sets of attorneys. We engaged --

22 CHAIRPERSON HILL: Okay. That's all right.
23 Mr. Wilson, so I understand what your --

24 MR. JAWITZ: The answer is yes, we are totally
25 in compliance.

1 CHAIRPERSON HILL: I understand what you're
2 trying to get to. You're going to get the track
3 record here. Okay. So, that was the --

4 MR. JAWITZ: Yeah, our track record is perfect
5 in this regard.

6 CHAIRPERSON HILL: That's --

7 MR. WILSON: So, you know, your president, I
8 probably don't need to reread it.

9 MR. JAWITZ: No, you don't, because it's taken
10 out of context and doesn't mean what you're suggesting
11 that it means.

12 MR. WILSON: Okay. It's submitted into the
13 record.

14 MR. JAWITZ: That's fine.

15 CHAIRPERSON HILL: Okay. All right. Okay.
16 Does the --

17 MS. McCLELLAND: Actually I do have -- sorry,
18 I have one question. For just regarding rent, because
19 we are saying that it's a single -- would that be a
20 question for you or for Oaktree?

21 MR. JAWITZ: What's the question?

22 MS. McCLELLAND: Well, so, if they -- if
23 everyone is jointly responsible for rent and a single
24 member moves out, does that mean the rent of the other
25 individuals rises? Or how does -- for, since it is

1 just one lease that all six members are on.

2 MR. FREEMAN: First, there's nothing in the
3 zoning regulations that talk to how rent has to be
4 allocated. But --

5 CHAIRPERSON HILL: That's okay. I mean, I've
6 read all the record. We have read all of the record,
7 and I understand what the answer is, actually. But
8 you can answer the question just real quick. If one
9 person moves out, does the rent go up for any of the
10 other people in the unit? I know the answer.

11 MR. JAWITZ: It might. Under single -- so,
12 what happens when someone moves out of a unit,
13 typically, okay, is that we find someone else to move
14 in. Okay? And when that additional person moves in,
15 all four, six, three, depending upon how many people
16 are in the unit, they reexecute the lease. Okay?

17 If for any reason the existing tenants refuse
18 to execute a new lease, right, putting everyone on it,
19 yes, they would be jointly and severally liable for
20 all of the rent and we would have the right to collect
21 six, six -- all the rent.

22 CHAIRPERSON HILL: The rent would go up.

23 MR. JAWITZ: Yes.

24 CHAIRPERSON HILL: If the members on the lease
25 decided not to accept whoever is passed over.

1 MR. JAWITZ: Yeah, say they wanted to live as
2 five instead of six.

3 CHAIRPERSON HILL: Six, okay. That's when the
4 rent --

5 MR. JAWITZ: They raise the rent, sure.

6 CHAIRPERSON HILL: -- go up. Okay. All
7 right. Okay. All right.

8 Mr. Freeman, do you have any questions?

9 MR. FREEMAN: I don't have any questions.

10 CHAIRPERSON HILL: Okay. Mr. Tondro.

11 MR. TONDRO: Yes, pardon me. I just have one
12 question.

13 MR. JAWITZ: For me?

14 MR. TONDRO: Yes, for you.

15 MR. JAWITZ: Oh, okay.

16 MR. TONDRO: I'm sorry. Can you tell us, you
17 just indicated that you're fully compliant. Have you
18 been the subject of any enforcement action in any of
19 the jurisdictions in which you operate?

20 MR. JAWITZ: I'm not exactly sure I understand
21 the term enforcement action, but I will tell you a
22 story.

23 So, we opened our first building in Crown
24 Heights, Brooklyn in October. Move-in day was a
25 Sunday. On Monday one of the -- we don't know who

1 exactly, we assume it's one of the local residents,
2 filed a complaint against us with the New York City
3 Department of -- Department of Buildings, New York
4 City, alleging that we were operating an illegal SRO,
5 single room occupancy, essentially a boarding house or
6 something like that.

7 So, it took less than 24 hours for someone to
8 file a complaint. We had two inspections from the
9 Department of Buildings. They both find that we were
10 totally in compliant and dismissed the claims.

11 And other than sort of the typical thing you
12 get in New York City which is, you know, you get fined
13 almost every week for a piece of litter on the street
14 or something like that, no, we've not been the subject
15 of any enforcement actions whatsoever.

16 CHAIRPERSON HILL: Thank you.

17 MR. JAWITZ: Does that answer your question?

18 CHAIRPERSON HILL: Okay. All right.

19 MR. TONDRO: That was exactly my question,
20 yes. Thank you.

21 CHAIRPERSON HILL: Okay. Thank you. Board
22 have any more questions for this witness? Okay, all
23 right. Thank you, sir.

24 All right. So, we're going to have an
25 opportunity now -- did you already -- no, you didn't

1 cross. Okay, thanks. An opportunity to cross Mr.
2 Freeman. And so, we're going to go with the ANC
3 first, and then Mr. Wilson. Mr. Dettman, Mr. --

4 MR. FREEMAN: You're crossing Mr. Dettman,
5 right?

6 CHAIRPERSON HILL: Sorry, Mr. Dettman. Sorry.
7 And so, there you go. Okay.

8 MS. McCLELLAND: My only question is, you were
9 talking a lot about access within the buildings. How
10 do you currently access 412? Is it correct that you
11 have to use the property of 410 in order to access
12 412?

13 MR. DETTMAN: There is a walkway in front of
14 410 that leads to the entrance to 410 and 412.

15 MS. McCLELLAND: Which is not public space.
16 It's the property of 410.

17 MR. DETTMAN: It is on the property of 410.

18 MS. McCLELLAND: So, you can only access --

19 MR. DETTMAN: So --

20 MS. McCLELLAND: Yeah, that's my only
21 question.

22 CHAIRPERSON HILL: So now I'm clarifying. So,
23 do you need to go through one of the properties to get
24 to the other property. That's what the question was,
25 correct?

1 MR. DETTMAN: Correct. Oaktree owns both
2 properties.

3 CHAIRPERSON HILL: Okay.

4 MR. DETTMAN: And there is a walkway or a
5 porch, maybe a couple stairs, that leads to the
6 entrance to 410, which they own, and 412, which they
7 own.

8 CHAIRPERSON HILL: Okay. So, when you go to
9 410, do you go to 410 through an entrance to 410? You
10 go to 410 through an entrance to 412?

11 MR. DETTMAN: It's outside. So, picture
12 yourself standing on a porch, and you're looking at
13 two doors. Both locked. If you're a resident of 410,
14 you go through that door. If you're a resident of 412
15 you go through that door.

16 CHAIRPERSON HILL: Okay. Okay.

17 MR. DETTMAN: And then once you go through
18 those doors then there's two units.

19 CHAIRPERSON HILL: Okay. Hold on, but that's
20 not the question, I think. But --

21 MS. McCLELLAND: Yeah. So, my question was
22 just, so you do have to step on to the property of 410
23 in order to access the property of 412?

24 MR. DETTMAN: Yes.

25 CHAIRPERSON HILL: Okay. Okay. Is that it?

1 MR. WILSON: Do the buildings have a shared
2 entranceway?

3 MR. DETTMAN: No.

4 MR. WILSON: Do they have a shared platform
5 upon which you have to get into both doors?

6 MR. DETTMAN: The walkway --

7 CHAIRPERSON HILL: Is your microphone pushed
8 on? I don't know. And if it is, maybe come a
9 little --

10 MR. WILSON: I guess it is.

11 CHAIRPERSON HILL: Oh, okay.

12 MR. WILSON: The light is on, I'm just not
13 real loud.

14 CHAIRPERSON HILL: Okay, yeah. There you go.

15 MR. WILSON: Is there a steel structure above
16 that walkway?

17 MR. DETTMAN: My understanding is, there is.

18 MR. WILSON: Okay. Second of all, on the
19 first floor is there a cement pad that connects the
20 two doors on the first-floor entrance of the two
21 different buildings?

22 MR. DETTMAN: If it's the platform that you
23 previously referred to, or the porch or walkway that I
24 referred to, then yes.

25 MR. WILSON: No, I'm talking about on the

1 first floor. The porch that's covered by a steel
2 structure is on the second floor. On the first floor,
3 in the cellar level.

4 MR. FREEMAN: Mr. Dettman didn't talk about
5 any entries, any --

6 MR. WILSON: He certainly did.

7 MR. FREEMAN: -- canopies, any --

8 MR. WILSON: He said that it didn't have a
9 meaningful connection.

10 CHAIRPERSON HILL: He --

11 MR. FREEMAN: Well, what --

12 CHAIRPERSON HILL: I understand what the
13 questions are.

14 MR. FREEMAN: Sure.

15 CHAIRPERSON HILL: And originally, he was
16 showing how they weren't connected. Nothing is any
17 kind of connection. So, I'm just also trying to
18 follow along, whether there is any kind of shared
19 connection.

20 MR. FREEMAN: Why don't Mr. Dettman describe
21 whether or not there's a connection?

22 CHAIRPERSON HILL: He's --

23 MR. WILSON: I think it's my cross, right?

24 CHAIRPERSON HILL: Yeah, he's answering the
25 question. Just let him answer the question. You can

1 ask the question again and then he can say yes or no.

2 If you don't have -- if you don't know the answer in
3 front of you maybe you can pull the drawings up.

4 MR. WILSON: Right. On the cellar floor there
5 is a concrete platform that has entranceways to both
6 buildings, correct?

7 MR. DETTMAN: Where?

8 MR. WILSON: On the cellar level.

9 MR. DETTMAN: In the front or the back?

10 MR. WILSON: In the front.

11 MR. DETTMAN: No.

12 MR. WILSON: Would you please refer to the
13 plans? They're right here.

14 CHAIRPERSON HILL: Where are the plans in the
15 exhibit? Or the ones that you just passed over to --

16 MR. WILSON: Oh, it's in his presentation.

17 CHAIRPERSON HILL: Okay. All right. It's in
18 your presentation. Mr. Dettman, do you know which
19 number your presentation is in, which exhibit?

20 MS. WHITE: Towards the end, right? Thirty-
21 five?

22 MR. SIEGAL: It's on deck one, two -- the eight
23 deck. Eight slide.

24 MS. WHITE: Thank you.

25 MR. DETTMAN: Yeah, it's the eighth slide.

1 CHAIRPERSON HILL: I think, it's in the slide
2 presentation.

3 MR. DETTMAN: Here, I'll bring you --

4 CHAIRPERSON HILL: That's okay. That's okay.
5 That's all right.

6 MR. WILSON: Okay, I'm ready for the question.

7 CHAIRPERSON HILL: Let me see where -- hold
8 on. I'm not ready for the question.

9 MR. WILSON: Is there a communication between
10 the two buildings on the cellar level? Let me pull up
11 the plan.

12 CHAIRPERSON HILL: Are you on 410 or 412, or
13 where in the -- okay.

14 MR. WILSON: Both of them demonstrated.

15 CHAIRPERSON HILL: Okay.

16 [Discussion off the record.]

17 CHAIRPERSON HILL: Hold on one second. Hold
18 on one -- you need the microphone first of all, Mr.
19 Wilson. You can walk up without the microphone.
20 Then, there's a microphone over here, because you need
21 to be on the record. No, that's all right, there's a
22 microphone right here.

23 And then -- but now there's nothing -- there's
24 no slide, so it doesn't help you any. But --

25 MR. WILSON: So, right. Go back one, because

1 this is not the cellar, right?

2 MR. DETTMAN: That is the first and cellar
3 level.

4 MR. WILSON: Then what -- I mean, I know that
5 there's a door --

6 CHAIRPERSON HILL: Mr. Wilson, it's all right.
7 We'll try to -- we're trying to work with you and
8 figure out where this plan is, this communication
9 between the two buildings that you're speaking of.

10 MR. DETTMAN: I think you need to look at 412,
11 I think. I think that's what you're looking for. You
12 can tell me if I'm wrong.

13 CHAIRPERSON HILL: So, Mr. Wilson, which --
14 where -- state again where you think the buildings are
15 connected or how they are sharing some -- you can just
16 use the microphone there that's in your hand.

17 MR. WILSON: This is the entrance to the
18 cellar, and there's a door that enters 410. And
19 there's a doorway here that enters 412, correct?

20 MR. DETTMAN: To the right of where you're
21 pointing?

22 MR. WILSON: Door here, door here.

23 MR. DETTMAN: Yes.

24 MR. WILSON: Okay. And is there a metal
25 structure above that?

1 MR. DETTMAN: There is a metal structure that
2 is over the entrance -- the two doors, one leading to
3 410 and 412.

4 MR. WILSON: So, there's actually two
5 different connections between these buildings,
6 correct? One on the cellar level, and one on the
7 first-floor level.

8 MR. DETTMAN: Is --

9 MR. FREEMAN: Mr. Chairman, if I might?
10 That's outside. It's not inside, it's outside. So,
11 for it to be a connection it has to be an interior
12 connection.

13 MR. WILSON: No, it has to be a covered
14 connection, and the Board has determined over and over
15 again that covered connections constitute two
16 buildings, or constitute a single building.

17 MR. FREEMAN: And it's, if it's --

18 CHAIRPERSON HILL: I have the Zoning
19 Administrator here.

20 MR. FREEMAN: Yeah.

21 CHAIRPERSON HILL: So, can you tell me if the
22 line of logic that Mr. Wilson is following is
23 accurate?

24 MR. LeGRANT: Well, I believe he's suggesting
25 that there's a meaningful connection. And as my

1 counsel reminds me, the term meaningful connection is
2 not in the zoning regulations. What is in the zoning
3 regulations under the definition of building is the
4 existence of communication between separate portions
5 of a structure below the main floor shall not be
6 considered -- construed as making the structure one
7 building.

8 The main floor is -- I believe what has been
9 pointed out is that the cellar level, which is below
10 the main floor.

11 MR. WILSON: Is there a connection that is
12 covered on the first-floor of the buildings?

13 MR. DETTMAN: As Mr. LeGrant said, the
14 connection that you were just describing on the screen
15 there, is below the first floor. That cannot be a
16 meaningful connection.

17 MR. WILSON: Okay. Is there a connection on
18 the first floor?

19 CHAIRPERSON HILL: Okay. Hold on, hold on.

20 MR. DETTMAN: If I may answer?

21 CHAIRPERSON HILL: Yeah.

22 MR. DETTMAN: My understanding is that there
23 is then, there the porch that I referred to it, or the
24 platform, that you can look at two doors, 410 and 412,
25 that off the same platform, porch, whatever you want

1 to call it, if you live in 410 you go through that
2 door and that door.

3 My understanding is, there is a metal
4 structure above that platform or porch that by design,
5 and the Zoning Administrator was there and he
6 obviously saw it, by design would not constitute a
7 meaningful connection under the cases or the past
8 precedent that the Board has said that such a
9 connection, like a trellis structure --

10 CHAIRPERSON HILL: Okay. Okay.

11 MR. DETTMAN: -- could (simultaneous speech).

12 CHAIRPERSON HILL: Okay. Okay. Okay. Mr.
13 Wilson, I'm following, and I think I got your question
14 answered. So, another question?

15 MR. WILSON: So, let's go on. Is the building
16 built on the same foundation?

17 MR. DETTMAN: I don't know.

18 MR. WILSON: Okay. Each unit has a lock,
19 correct?

20 MR. DETTMAN: Yes.

21 MR. WILSON: Each unit has a lock? Each unit.
22 You claim two units in two buildings.

23 MR. DETTMAN: Yeah.

24 MR. WILSON: Each unit has a lock, correct?

25 MR. DETTMAN: A lock. So, I'm standing at the

1 entrance to Unit A, there's a lock on the door.

2 MR. WILSON: And each lock, each building has
3 a lock, correct?

4 MR. DETTMAN: Each entrance to 410 and 412.

5 MR. WILSON: And that's a keyless lock, right?
6 Oh, sorry. I'm sorry. I totally messed up.

7 MR. DETTMAN: Okay. I'm standing on the porch
8 and I want to go into the foyer for 410.

9 MR. WILSON: Uh-huh.

10 MR. DETTMAN: There's a door.

11 MR. WILSON: Right.

12 MR. DETTMAN: There's a lock.

13 MR. WILSON: And it's keyless, right?

14 MR. DETTMAN: There's a lock.

15 MR. WILSON: It has a key code. Is that
16 right?

17 CHAIRPERSON HILL: It's a key code lock.
18 Okay, fine. It's a key code lock.

19 MR. WILSON: So, anyone who has the code can
20 get into that unit, right?

21 MR. DETTMAN: Yes. The same way if anyone has
22 a key to my apartment, can get into my apartment if I
23 give it to them.

24 CHAIRPERSON HILL: That's okay. We're just
25 asking you questions.

1 MR. WILSON: Can you look at the lease on page
2 19?

3 CHAIRPERSON HILL: The lease on page 19.
4 Where are we again?

5 MR. WILSON: Page 19 of the lease. It's in
6 their prehearing -- it's point number 26. I think
7 it's Exhibit C. I'm guessing. It immediately follows
8 their affidavit.

9 CHAIRPERSON HILL: Okay, wait. We have to
10 find this.

11 MR. FREEMAN: So, I'm going to -- Mr. Dettman
12 is not an attorney, so if he's going to ask him a
13 legal question about a lease, I'm going to object to
14 the question.

15 CHAIRPERSON HILL: I don't know what the
16 question is yet. So, but wait a minute. Just give me
17 a second. Where's the -- we're all just going to get
18 our -- we're going to try to get our questions
19 answered. And then we have a bunch of questions, so
20 this is going to go -- and we haven't even gotten to
21 DCRA yet. I'm a little but surprised as to how -- but
22 it is complicated. I mean, it's a complicated
23 discussion.

24 And so, the lease you're speaking of is in
25 which exhibit, Mr. Wilson?

1 MR. WILSON: I'm getting to it right here. It
2 is Exhibit HA of the owner's prehearing statement.
3 I'm sorry.

4 CHAIRPERSON HILL: Do you have a number there?

5 MR. WILSON: I will try to get it. I don't
6 think they --

7 CHAIRPERSON HILL: So, okay. So, so, I'm just
8 going to follow along here with you. What is your
9 question concerning the lease?

10 MR. WILSON: My question, I'm going to read
11 out what it says, "All promises made by the landlord
12 in this lease agreement. There are no others except
13 for the membership agreement between the landlord and
14 each tenant. A default by a tenant as a member under
15 the membership agreement shall be default under the
16 lease agreement."

17 CHAIRPERSON HILL: Okay. So, what's your
18 question?

19 MR. WILSON: Does that mean that if someone
20 violates an agreement between Common and the
21 individual that it then violates the lease?

22 MR. DETTMAN: I don't know.

23 MR. WILSON: Is there someone over there who
24 can answer this?

25 MR. DETTMAN: No.

1 CHAIRPERSON HILL: Okay.

2 MR. WILSON: I mean, if --

3 CHAIRPERSON HILL: Okay, that's okay. That's
4 all right. Okay.

5 MR. WILSON: So, on lease -- on page 22 of the
6 lease. Paragraph 2. Tenant is permitted --

7 CHAIRPERSON HILL: Okay, and again, I just
8 want to clarify, the reason why you're asking the
9 questions is again, you're trying to show that there
10 is a -- that these aren't single -- you know, these
11 aren't flats. Right? Okay.

12 MR. WILSON: Right.

13 CHAIRPERSON HILL: So, this is the point of
14 the lease and the membership agreement and the whole
15 business model that again, Common has.

16 MR. WILSON: The membership agreement is a
17 black box and we're trying to figure out that. I
18 mean, they haven't submitted it. We know the
19 membership agreement is part of the lease. They
20 haven't submitted the membership agreement into the
21 record.

22 MR. FREEMAN: So, if there's not in the record
23 and no testimony about it, I'm not quite sure what the
24 questions are.

25 MR. WILSON: I'm asking you questions about

1 the lease.

2 CHAIRPERSON HILL: Okay. I'm curious about
3 the lease my -- I'm curious about the setup. Right?
4 So, the faster we get to his answer, I suppose, the
5 better anyway. So --

6 MR. WILSON: I don't have that many more
7 questions for --

8 CHAIRPERSON HILL: Okay. All right. So, but
9 your question was, about the lease, if somebody
10 violates it then they violate the lease with Common.

11 MR. WILSON: If they violate the master
12 agreement.

13 CHAIRPERSON HILL: Uh-huh.

14 MR. WILSON: Sorry. The member agreement --

15 CHAIRPERSON HILL: If an individual --

16 MR. WILSON: If an individual violates the
17 membership agreement between the individual and
18 Common, independent of the lease terms, the merger
19 clause seems to suggest that that is also a violation
20 of the lease.

21 CHAIRPERSON HILL: If you don't know, then you
22 don't know.

23 MR. FREEMAN: I don't know.

24 CHAIRPERSON HILL: Okay.

25 MR. FREEMAN: Nor is there anything in the

1 zoning regulations that discusses that.

2 CHAIRPERSON HILL: Okay.

3 MR. WILSON: Okay. So, page 22, point 2,
4 under the rules and regulations of the lease it says,
5 tenants are permitted overnight guests so long as the
6 maximum number of residents is at no more than six
7 unrelated individuals. The determination as to
8 whether an individual is a resident is the sole
9 discretion of the landlord.

10 So, am I correct in thinking that only Common
11 is capable of making a determination of who
12 constitutes a resident?

13 MR. DETTMAN: I don't know, based on that
14 language. All I know is that there can be a maximum
15 of six unrelated individuals residing at the premises.

16 MR. WILSON: Okay. So, Common is free to make
17 representations in a sworn affidavit. Is that
18 correct?

19 MR. DETTMAN: Repeat the question?

20 MR. WILSON: Common is free to make
21 representations in a sworn affidavit.

22 CHAIRPERSON HILL: Mr. Wilson, I am just -- I
23 am --

24 MR. WILSON: Okay, I'll keep going.

25 CHAIRPERSON HILL: No, no, that's okay. I

1 mean, what I'm trying to get is, again, the cross-
2 examination is pertinent to the testimony that was
3 given, and a lot of the things that you're kind of
4 mentioning are things that are in your record already,
5 in terms of your argument. And I think that there --
6 it's a well-founded argument. It's an interesting
7 argument, and I think we as a board are going to have
8 to discuss all the ramifications of it.

9 The whole point of the cross is so that
10 specifically what was spoken about and what was
11 testified to, you get an opportunity to ask questions
12 about that. And I'm not a lawyer either.

13 MR. WILSON: Right.

14 CHAIRPERSON HILL: But that's just, you know -
15 - and although the lawyers got insulted earlier by
16 their client, which I thought was pretty interesting,
17 you know, that you know, just stick with that line.

18 MR. WILSON: I totally agree.

19 CHAIRPERSON HILL: Okay?

20 MR. WILSON: Although, he did walk through --

21 CHAIRPERSON HILL: So, do you have any more
22 questions about the testimony that was given by Mr.
23 Dettman?

24 MR. WILSON: So, the questions that I'm asking
25 are absolutely relevant to his description of the

1 relationship. He listed six bullet points of how
2 Common's membership resembles a single-family
3 housekeeping unit.

4 CHAIRPERSON HILL: Okay. Okay.

5 MR. WILSON: And I'm trying to get at the
6 point that there are things that he has not disclaimed
7 that are in the record, such as the fact that they're
8 not actually jointly and severally liable; that the
9 lease specifically contains provision making them not
10 jointly and severally liable for rent.

11 CHAIRPERSON HILL: Okay. Okay.

12 MR. WILSON: So, I mean, so that's where I'm
13 trying to go with this.

14 CHAIRPERSON HILL: Okay.

15 MR. WILSON: I think it's absolutely on point
16 with what he testified to. But I'll get more to the
17 point.

18 MR. FREEMAN: Mr. Jawitz testified to the
19 joint and several liable question when you asked.

20 CHAIRPERSON HILL: Okay. It's okay. Don't
21 get frustrated.

22 MR. WILSON: No, it's fine.

23 CHAIRPERSON HILL: Just try to, again, hone in
24 on the question that you're trying to ask.

25 MR. WILSON: So, both Mr. Jawitz and Common

1 have said that they will abide by the laws of the
2 District of Columbia. Does the building at 410 and
3 412 Richardson have fire escapes?

4 MR. DETTMAN: It's, there's been a C of O
5 issued. I'm confident that it has the required means
6 of egress.

7 MR. WILSON: That didn't answer the question.

8 CHAIRPERSON HILL: The answer is no. I mean,
9 I'm also -- I even know that there's nothing there,
10 and the reason why again is because of the C of O is
11 for the two flats.

12 MR. WILSON: Got it.

13 CHAIRPERSON HILL: Not for an apartment house,
14 not for a rooming house, not for a tenement house.

15 MR. WILSON: Does the building comply with the
16 FHA's requirements for handicapped accessibility?

17 MR. DETTMAN: I don't know.

18 MR. WILSON: Does it have inclusive units for
19 affordable rent under the city's Inclusionary Zoning
20 requirements?

21 MR. DETTMAN: The properties are not subject
22 to Inclusionary Zoning. There's only two units per
23 property.

24 MR. WILSON: All right. I'm fine, then.
25 Thanks.

1 CHAIRPERSON HILL: Okay. All right. I'll let
2 you -- Commissioner, just to let you know like, we
3 don't kind of go back and forth and back and forth,
4 okay? And so, and I realize that you know, I'm just
5 kind of pointing out, just try to get them all out at
6 the same time. And then, so please, go ahead and ask
7 your question.

8 MS. McCLELLAND: Okay. Sorry. One other
9 thing that came up in your testimony was that you were
10 trying to create affordable housing for tenants.
11 Just, what is the median income of the tenants that
12 are going to be residing in your unit?

13 MR. DETTMAN: I don't know. That could change
14 based on who's living there. I don't know.

15 MS. McCLELLAND: Okay. And do you know the
16 median, the AMI of the ANC that it's currently in?

17 MR. DETTMAN: Do I know the AMI of the
18 residents that live within the ANC?

19 MS. McCLELLAND: Yeah.

20 MR. DETTMAN: No.

21 MS. McCLELLAND: No. Okay.

22 CHAIRPERSON HILL: Okay. All right. Thank
23 you. Okay.

24 MR. TONDRO: Can -- I'm sorry, just --

25 CHAIRPERSON HILL: Sure.

1 MR. TONDRO: Do I have an opportunity to cross
2 Mr. Dettman too?

3 CHAIRPERSON HILL: I don't know. I'm not --
4 sure, yeah. Go ahead.

5 MR. TONDRO: Thank you. I apologize. I'll
6 try to keep it as quick as possible.

7 Mr. Dettman, just in terms of the issues of
8 emergency egress and FHA accessibility in your
9 experience, is there anything in the zoning
10 regulations that governs the -- or that requires
11 emergency egress or governs it, or deals with FHA
12 accessibility?

13 MR. DETTMAN: No.

14 MR. TONDRO: Thank you. Do you know what --

15 CHAIRPERSON HILL: Can you repeat that
16 question again? I'm sorry.

17 MR. TONDRO: I'm sorry. I was speaking too
18 fast.

19 CHAIRPERSON HILL: That's okay.

20 MR. TONDRO: I apologize.

21 CHAIRPERSON HILL: That's all right.

22 MR. TONDRO: The question was, whether there
23 is any requirement in the zoning regulations that
24 governs emergency egress that establish requirements
25 for emergency egress, or that establish requirements

1 for FHA accessibility?

2 CHAIRPERSON HILL: What was -- say that again?

3 MR. DETTMAN: There's nothing in the zoning
4 regulations that pertain to required means of egress
5 and FHA.

6 CHAIRPERSON HILL: In this particular case.

7 MR. DETTMAN: The zoning regulations have to
8 do with zoning regulations.

9 CHAIRPERSON HILL: Oh, okay. All right.

10 MR. TONDRO: And then the only other -- the
11 follow up question to that was, are you aware of what
12 regulations there are that govern that?

13 MR. DETTMAN: Means of egress? I suspect
14 that's the building code. FHA. I'm not familiar with
15 that.

16 MR. TONDRO: And does the Board of zoning
17 adjustment have jurisdiction over the construction
18 codes, or the building code?

19 MR. DETTMAN: No.

20 MR. TONDRO: Thank you. Quick question in
21 terms of this metal structure. Can you clarify
22 exactly, is this a covering that's a roof? Is it open
23 somehow to the sky? How is it that -- do you have any
24 experience, have you seen it? Can you provide more
25 details to what it looks like?

1 MR. DETTMAN: My understanding, it's a metal
2 structure that is open to the sky to a certain degree.
3 It is not a solid covering in which you could stand
4 under and not get rained on.

5 MR. TONDRO: Okay. Thank you. So, is it fair
6 to say that it's more of a decorative element than
7 not? Is it more of a decorative element than a
8 structural element?

9 MR. DETTMAN: Yes.

10 MR. TONDRO: Can you also clarify, this issue
11 of meaningful connections, can you clarify how that is
12 used? Is that used in a situation where you have two
13 different lots or no?

14 MR. DETTMAN: A meaningful connection is used
15 when you have multiple structures on a single record
16 lot where, you know, they're -- you're trying to
17 establish a meaningful connection that would make them
18 one building for purposes of zoning. Under this
19 situation we have two separate buildings because
20 they're separated from the ground up on two separate
21 lots, which is required under the zoning regulations.

22 MR. TONDRO: And then my final question, thank
23 you, is there anything -- are you aware of any
24 provision or requirement of the zoning regulations
25 that requires direct access to the street and right of

1 way as opposed to providing access over an easement
2 over a private property?

3 MR. DETTMAN: I am not aware of anything like
4 that.

5 MR. TONDRO: Thank you.

6 CHAIRPERSON HILL: Okay. So, Mr. Tondro,
7 you're going to have an opportunity to present. And
8 I'm actually -- we've all been here together now a
9 long time. So, I do think that it is -- it's not
10 really clear-cut. I don't think it is. I mean, this
11 has gone on for a long time. You come here quite
12 often. Mr. LeGrant is the Zoning Administrator, he
13 comes here quite often. I hope that your presentation
14 really does help clarify the situation in a way that
15 we can then ask more questions of you. I've been
16 waiting for you. Okay? All right?

17 So, thank you so much. Please begin. I'm
18 going to put 10 minutes on the clock for you. Okay?

19 MR. TONDRO: Okay. Thank you, Chairman Hill.
20 I appreciate that. I'm going to try to limit my
21 presentation just to be reasonable, although I do
22 understand your query, and I appreciate the fact that
23 you're looking forward to hearing from DCRA.

24 I think first of all, I just want to sort of
25 touch through many of the points. I think many of

1 them have already been dealt with very effectively by
2 Mr. Dettman, so I don't want to bore the Board by
3 repeating them. At least not in depth.

4 But first of all, I just want to remind us
5 that we're in a situation where the appellant has the
6 burden of proof as I stated in my brief, and so that's
7 under Subtitle X, Section 102.1. So, I want to make
8 sure that we're aware of that, we keep that in mind,
9 because DCRA does not believe that the appellants have
10 met their burden of proof in this situation.

11 Just going to touch on a couple issues. First
12 of all, this issue of two separate lots. This is a
13 situation where contrary to what the appellants are
14 asserting, that this has to be seen as one common
15 project. These are two separate lots of record, two
16 separate buildings, the buildings are completely
17 separate, they're separate building permits, they're
18 separate certificates of occupancy. There is no
19 provision under the zoning regulations that all
20 anticipates, nor under the building regulations that
21 I'm aware of, that anticipates the idea that somehow
22 one can automatically reach across a property line and
23 say that this is part of that same process.

24 That's just not something that I'm aware of,
25 nor have I seen any citation to an aspect of the

1 zoning regulations that deals with that. I think we
2 just heard in my cross of -- the questions that Mr.
3 Dettman answered, that it's a situation where there is
4 no requirement in the zoning regulations for there to
5 be a direct street or right of way access. It is
6 permissible, governed by the building code, I should
7 point out, not the zoning regulations, to have access
8 across another property as in this particular case.
9 But that again is under the auspices of the Office of
10 Administrative Hearings, any appeals, because that is
11 a construction code issue that deals with that.

12 So, I think that's one of the first things
13 that we need to deal with. In terms of this issue of
14 the meaningful connection, I think with all due
15 respect, I think that's a little bit of a red herring
16 right here for precisely reasons that Mr. Dettman
17 answered, which is that meaningful connection is used
18 and has come up in the context of what it takes to
19 have multiple structures. At what point does a
20 multiple structure -- what's the minimum kind of
21 connection between two separate structures that would
22 run on the same lot, on the same record lot, to make
23 them deemed for zoning purposes, to be the same
24 building? Okay? So, that's not something that we're
25 talking about here.

1 Here, the assertion is made that somehow there
2 is a connection that's going to cross a property line
3 between a building on one property and a building on
4 another property. And that's never been an issue
5 before the Board or the Zoning Commission that I'm
6 aware of in terms of that use of the term, meaningful
7 connection.

8 Meaningful connection has the obverse. It's
9 about the proof, usually, by an applicant who wants to
10 state that carriage house that is in the back that
11 should be treated as part of my principle residence
12 because I have a meaningful connection. So, they're
13 effectively part of the same building on a single lot
14 of record. And that's because there is a requirement
15 that there only be, at least in most residential
16 zones, there only be a single principle building on a
17 lot of record.

18 So, that doesn't describe the issue that we
19 are here, that we have here before us. I think that
20 sort of gest away from the fundamental issues here.

21 That's the first part I wanted to -- the first
22 issue I wanted to just touch on. Second -- and I
23 think Mr. Dettman has dealt with, again, the fact that
24 apart from that, as you can see from the plans,
25 there's no meaningful connections at anywhere above

1 the main floor, which is what I think Mr. LeGrant
2 answered in the definition of the building, definition
3 of building in Section 199.1, which establishes that
4 anything from the -- that the only time that a
5 connection is important is from the main floor and up.
6 So, not the cellar.

7 Second of all, the -- I want to move, then, on
8 to this issue and I don't want to beat a dead horse,
9 but I think it's a very important one here. We've
10 heard a lot about the lease. We've heard a lot about
11 what Common said or didn't say, and what the quotes
12 were. There was articles that were submitted into the
13 record that's from a newspaper reporter reporting in a
14 totally different context. We're not sure exactly
15 what and how that was about. That's not something
16 that the Zoning Administrator really can rely on in
17 determining what the use is. He has before him, an
18 application. He has to rely on what was submitted to
19 him in the application, and then at that point make a
20 ruling.

21 With the proviso, however, that there is this
22 enforcement provision afterwards. That's something
23 that the Zoning Administrator takes very seriously.
24 As I've said, there have been just I think in the last
25 month or so, that we've had at least three different

1 revocations that have occurred on that basis. And in
2 all those situations was where the applicant came in,
3 made an assertion, made an application, and on that
4 basis the Zoning Administrator could not say -- the
5 Zoning Administrator is someone who doesn't have the
6 authority to reach into somebody's mind and say, hmm,
7 I think you're going to get through a loophole and
8 play games with this. The Zoning Administrator can't
9 do that. The Zoning Administrator has to act on what
10 there is in the record that's provided to him in the
11 application.

12 So, it's a situation where I believe this
13 really, a lot of what is going on is -- and framed
14 here by the appellant, is about hypotheticals. Well,
15 they say they're going to do it here. They say
16 they're going to do it here. They've done this here.
17 But that's not what is at issue here. What is at
18 issue here is they have asserted that they are going
19 to comply with the zoning regulations, they are going
20 to comply with the definition of family, and they are
21 going to provide, make sure there is no more than six
22 unrelateds that are in each individual unit. That
23 complies with the zoning regulations.

24 Now, the next -- and so, the issue here then,
25 is one I think, where the C of O, I think on the face

1 of it, was accurately granted. Whether -- and we have
2 to wait until we can actually see how they actually
3 operate. At that point, we can go on whether or not
4 there is a situation -- we have facts on the ground
5 that the Zoning Administrator can respond to in terms
6 of understand whether or not this does actually
7 violate the definitions of the zoning regulations.
8 And that, again, is something that the Zoning
9 Administrator takes seriously.

10 I cannot speak for the Board. I wouldn't
11 presume to do so. But I have a hard time believing
12 that if there was an enforcement action was requested
13 of the Zoning Administrator, the Zoning Administrator
14 said no, I'm not going to do that, provided that is a
15 final decision in writing to a neighbor, that somehow
16 -- and then that neighbor were to appeal it to the
17 Board, that the Board would say oh yes, there is that
18 provision in 302.6 that says that the refusal to do
19 enforcement, you can't consider it, so that's
20 effectively unappealable. I don't think that that's
21 what was meant. I don't think that that is what's
22 going to happen here. It's certainly not the way that
23 the Zoning Administrator understands his role, which
24 is to enforce the zoning regulations.

25 So, I just, I think it's a very important

1 distinction here that we have between on the one hand,
2 the consideration of application on its face value.
3 And on the other hand, what we have when we're dealing
4 with enforcement.

5 And I would bring up, for an example, the case
6 I don't think anybody here were present or sat on it,
7 but with the Stadium Club, where there was an issue
8 there as to whether or not it was a sexually oriented
9 business establishment. And that particular case
10 there was a record, because they had already been open
11 and they sought a new C of O. And it was that second
12 C of O that already had a track record as to what they
13 were doing. That was why the Zoning Administrator was
14 charged with looking at how they had actually operated
15 as opposed to how they asserted on their application.

16 So, there's a distinction there between what
17 is to be reviewed at the time of application, what is
18 to be reviewed once it's actually up and running.

19 But apart from all that, what this really
20 boils down to is, I think it is simple, and yet it's
21 not simple. This fundamentally comes down to an issue
22 of what is the definition of family, and does the
23 proposed use here of having six unrelateds, does that
24 meet the definition of family? And I think at this
25 point it would be helpful just to remind ourselves of

1 the definition of family. We've probably had it at
2 infinitum, but just to be clear, under Section 109.1
3 of the 1958 regulations, I'm referring to Attachment A
4 in my brief, my prehearing statement. It says,
5 "Family --" on the last page, page 8. "Family is one
6 or more persons related by blood, marriage, or
7 adoption, or not more than six persons who are not so
8 related, including foster children, living together as
9 a single housekeeping unit, using certain rooms and
10 housekeeping facilities in common. Provided that the
11 term family shall include a religious community having
12 not more than 15 members."

13 Now, that is the definition of family that is
14 in the zoning regulations. As I indicated earlier,
15 the Zoning Commission took its job very seriously in
16 revising the -- in rewriting the zoning regulations,
17 and did not change that definition. That definition
18 has been around for a very long time. I will point
19 out that in the Zoning Commission order back in 1990,
20 in Zoning Commission Order 90-15, which was about the
21 definition for which was -- I'm sorry, which is Case
22 No. 90-15, Zoning Commission Order No. 725, this was
23 about the Fair Housing Act, and how in order to bring
24 the regulations of the District, the zoning
25 regulations, which at that time distinguished,

1 discriminated against group homes, by establishing a
2 lower amount of people who could live together in a
3 group home, than could live if they were not in a
4 group home under the definition of family.

5 And, it's in that page 3 there's reference, it
6 states, and again --

7 CHAIRPERSON HILL: Mr. Tondro, can I interrupt
8 you just one second? I'm just curious of something.
9 I am going to have questions of the Zoning
10 Administrator, and I just realized though, like you
11 are providing testimony. I mean, this is -- so, all
12 of the things that you're speaking about are not
13 things that the -- is the Zoning Administrator going
14 to testify so that the people here that have put the
15 application forward will have an opportunity to ask
16 questions of the Zoning Administrator?

17 MR. LeGRANT: My counsel will be asking me
18 some questions.

19 CHAIRPERSON HILL: Okay. All right.

20 MR. LeGRANT: Yes.

21 MR. TONDRO: Yes, and he'll be available for
22 questions as well.

23 CHAIRPERSON HILL: Okay. Thank you.

24 MR. TONDRO: Sure.

25 CHAIRPERSON HILL: I didn't mean to interrupt.

1 I just wanted to clarify that at the end, what was
2 going to happen, so.

3 MR. TONDRO: And fair enough. No. Yes, this
4 -- but I believe this is not so much testimony as
5 argument, but --

6 CHAIRPERSON HILL: Okay.

7 MR. TONDRO: -- I leave that up to OAG to
8 determine, to advise you.

9 So, as they're saying in Case No. 90-15,
10 Zoning Commission Order No. 725, which deals with the
11 CBRFs, on page 3 the Zoning Commission states, and
12 this is in regards, to paint the picture, this is in
13 regards to the fact that at that time we had the same
14 definition of family, which is six unrelateds, but
15 CBRFs, Community Based Residential Facilities, those
16 which include are basically group homes for lack of a
17 better -- the nickname as it were, that we all are
18 more familiar with, those had a lower cap. They had
19 only four in certain zones.

20 And so, this was a violation of the Fair
21 Housing Act, and as a result the Zoning Commission was
22 considering how do we make that -- make those amends.

23 So, they were dealing directly with the definition of
24 family, which include the six unrelateds.

25 And what they said in that was, on page 3, and

1 I quote, "By definition, up to six unrelated persons
2 constitute a family for zoning purposes." Period.

3 Okay?

4 And this is in that context. And as a result
5 of that Zoning Commission order, the Zoning Commission
6 amended the regulations to make it clear that a CBRF
7 had to abide by the same number, which is the six. No
8 longer could they be distinguished because that would
9 be a discrimination against group homes. They had to
10 also abide by where a zone allowed one family up to
11 six members that were unrelated, then that had to be
12 applied also to a CBRF.

13 This has additional importance, I believe,
14 because it was precisely one of the constituent groups
15 of a CBRF at that time is what's called -- what was
16 called then, a personal care home, which again, I
17 believe was a place, a convalescent home, as it were.

18 And that was the issue that was at -- that was
19 raised, that was challenged and the appeal that was
20 cited by appellants, and that's the Rock Creek East
21 Neighborhood, I believe, which is the BZA 10876. They
22 were challenging, at that time, which is in 1971, 19
23 years earlier, they did overrule the Zoning
24 Administrator for determining that only six -- that up
25 to six unrelateds were part of a -- met the definition

1 of family. But that's because they were looking at a
2 personal care home, which was this group home, which
3 at that time they were not considering as being
4 absolutely equal. In fact, they talk -- all right?
5 So that's I think, a distinction here that we
6 shouldn't look to that case, really as directly on
7 point.

8 Having said that, Mr. Dettman raised, and I
9 agree with him, that even if you were to take what was
10 said in that one of 10876, which establishes that it's
11 a mutual benefit for the six people living together,
12 that still this -- the application that was submitted
13 to the Zoning Administrator met that.

14 So, that then comes to the next level of the
15 issue of the definition of family, which to the issue
16 of single housekeeping unit, right? So, there's six
17 unrelateds can live by itself, right? That's clear,
18 the number. Again, as I think I stated earlier, or
19 didn't state but was brought up in the cross-
20 examination of the ANC commissioner, under the
21 definition of family, there is no cap on how many
22 people can live together in a family, as long as
23 they're related by blood, adoption, or marriage. The
24 only cap there would be would be under the building
25 code or under the housing code. Otherwise you could

1 have 150 people and it would still be the same family
2 if under that definition, provided they were related
3 by blood, by marriage, or by adoption. Okay?

4 So, just for just to keep in mind, you know,
5 what the purpose of the regulation was. It does
6 establish, however, this definition of -- this cap of
7 six unrelated people. If you're not related, what
8 constitutes a family? Equivalent is up to six,
9 provided you share a single housekeeping facilities in
10 common.

11 And as I showed or I filed in my prehearing
12 statement as Mr. Dettman raised in his presentation,
13 the definition of Webster's, which is the definition
14 we have to turn to, precisely because in the zoning
15 regulations there is no definition of single
16 housekeeping unit, establishes, and I turn to page
17 four of my prehearing statement, again, that it's the
18 management of a house and home affairs. All right?
19 This is a much broader. It's not just cleaning, it's
20 a broader sense of what are we sharing.

21 And the longstanding understanding by the --
22 or practice of the Zoning Administrator and the Zoning
23 Administrator will testify to this so he can be cross-
24 examined on this specific issue, but is that that
25 means there is a kitchen. And that, as its role in

1 the zoning regulations itself, that a kitchen or
2 cooking facilities are the key issue that pulls
3 together a unit. If you're sharing that, then you are
4 in a situation where you are a single housekeeping
5 unit.

6 Now, there were other indicia as well, and
7 again, I brought those up in my prehearing statement.

8 Mr. Dettman brought them up. We have a situation
9 where you have common areas. You have a common TV
10 room, you have shared washer/dryer facilities in the
11 unit. You have the shared thermostat, so you can't
12 have one bedroom be at a, you know, glacially cold and
13 the other one super hot depending on what people want.
14 You have access to all these different common areas,
15 and there is the right of exclusion from the overall,
16 all units.

17 So that washer/dryer is limited to the people
18 who have access to that unit. Right? So, those six
19 people living in that unit, they can control who
20 enters and who does not. To the extent that they
21 don't give out the code to somebody else, but that's
22 no different than any of us providing a key to a
23 friend and the key gets lost or whatever. There's
24 always that ability for people to come in, in theory,
25 but again, this is a single housekeeping unit that the

1 way in which it functions, it shares a stove. It
2 shares a refrigerator. They share a half bath. They
3 have to work out, who's going to do the dishes. They
4 have to work out who's going to allocate space in the
5 refrigerator. They have to work out when people are
6 going to be able to watch TV and when people are not
7 going to be able to watch TV. Who's going to use
8 their Xbox, who's going to be able to have a party.
9 All those kinds of issues are going to have to be
10 sorted out by themselves. This is not like an SRO, a
11 single residency occupancy, as referred to by Mr.
12 Jawitz, or a rooming house, where you have a situation
13 where everyone has their own little room, they retreat
14 into that little room, and they really don't have any
15 relationship with each other whatsoever.

16 Here, you have access, unlike a rooming house,
17 where you don't have access to a kitchen, or here you
18 have access to a kitchen, and that is what's shared.

19 Again, want to then just go back and I think
20 Mr. Dettman already dealt with this, but we're dealing
21 with a situation where the appellants have asserted
22 that there is a -- that this shouldn't be considered a
23 flat; that it should be just sort of -- and they
24 propose a series of willy-nilly alternatives that it
25 should be apartment house, but that requires three

1 units. I don't -- there are no -- there's no way
2 there could be three units. There's only two units on
3 each individual lot here. As I stated before, these
4 have to be treated as two separate buildings and two
5 separate C of Os, therefore, it's only two, for the
6 same reason it fails as a tenement house, because a
7 tenement house also requires that there be a minimum
8 of three units or three apartments.

9 And again, as I said, in terms of a rooming
10 house, it's an issue about the exclusive control.
11 That's one of the issues I think that the New York
12 City regulations were probably looking at as well, for
13 in terms of this issue of access of the doors, the
14 internal bedroom doors, whether or not the bedroom
15 doors have a lock or not. In this case, they do not.
16 The similar requirement appears to be the case up in
17 New York City.

18 But, the purpose of that, again is that it
19 allows for a sharing of the various different
20 properties, that --

21 CHAIRPERSON HILL: Mr. Tondro, I'm going to
22 just interrupt up you for -- I mean, I don't think the
23 clock started on time and I think you've been like 15,
24 20 minutes.

25 MR. TONDRO: Okay. I'm going to stop.

1 CHAIRPERSON HILL: And again --

2 MR. TONDRO: I apologize.

3 CHAIRPERSON HILL: You don't have to
4 apologize. I'm just trying to understand what I, my
5 responsibility is again in terms of having the
6 appellant have an opportunity to ask questions and so,
7 you know, again, whether it was argument, whether it
8 was testimony, whether it was facts, you know, I mean,
9 the -- you are going to have an opportunity to cross
10 and the only person you're going to have an
11 opportunity to cross right now is the Zoning
12 Administrator. And so, you can go ahead and ask your
13 questions so that the Zoning Administrator can answer
14 them so that the opportunity for the applicant and the
15 ANC to ask some questions will be there.

16 MR. TONDRO: Thank you. I would just point
17 out, as long as this issue has been raised up, that
18 both the appellant and the ANC have not been
19 represented by counsel and have therefore not -- the
20 same question, whoever is the person presenting their
21 case is the one who is cross-examined. But I'll leave
22 that --

23 CHAIRPERSON HILL: So, that means you will
24 take cross-examine.

25 MR. TONDRO: I will be happy to take cross-

1 examination --

2 CHAIRPERSON HILL: Okay. Great.

3 MR. TONDRO: -- of myself. Absolutely.

4 CHAIRPERSON HILL: Okay, great. All right,
5 that's --

6 MR. TONDRO: As to what I've said.

7 MS. GLAZER: Mr. Chair.

8 CHAIRPERSON HILL: Hold on one second.

9 MS. GLAZER: Mr. Chair.

10 CHAIRPERSON HILL: Ms. Sherry. Ms. Glazer.

11 MS. GLAZER: It's not a question of -- DCRA
12 has a counsel. The appellant does not have a counsel.
13 The party for the appellant has a representative and
14 is serving as the witness and the representative
15 because they're pro se. So, it's a different
16 situation.

17 I would suggest the Board's role is to make
18 findings of fact and that cannot be done unless there
19 is testimony from the Zoning Administrator.

20 CHAIRPERSON HILL: All right. So, we'll go
21 back to -- following the Zoning Administrator we'll
22 figure out how the questions are going to go. I just
23 wanted to point that out, so please, go ahead and move
24 forward, Mr. Tondro.

25 MR. TONDRO: Yes. I would disagree by, if I

1 can respectfully, by the fact that we're talking about
2 an appeal of a decision by the Zoning Administrator.
3 So, if the Zoning Administrator was not able to be
4 here, what would stand would be what is on the record.

5 But having said that, nonetheless, I am going
6 to present the Zoning Administrator --

7 CHAIRPERSON HILL: I'm fine. Again, I just
8 wanted to make clear the way that I was going to move
9 forward.

10 MR. TONDRO: I understand.

11 CHAIRPERSON HILL: And the way that I was
12 going to move forward would get -- everyone was going
13 to have an opportunity to ask their questions, as we
14 are as well. And so, that's all I wanted to clarify.

15 MR. TONDRO: Absolutely.

16 CHAIRPERSON HILL: But I do thank you. Mr.
17 LeGrant.

18 MR. TONDRO: If I can --

19 CHAIRPERSON HILL: Sorry, go ahead, Mr.
20 Tondro.

21 MR. TONDRO: I'm sorry. I'm going to try and
22 leave fairly open-ended questions for Mr. LeGrant so
23 that he can respond, and then obviously, there will be
24 cross or questions by the Board as well as across.

25 I guess the first question, Mr. LeGrant, can

1 you answer, is the issue of a single housekeeping
2 unit. How have you enforced that? How have you
3 interpreted that over your time? And how have you
4 interpreted -- how have you understood that it's been
5 interpreted prior to that time?

6 MR. LeGRANT: Thank you, thank you, Mr.
7 Tondro. So, it comes out at two stages. At the
8 building permit stage, because the use is not yet been
9 occupying the space, it's the physical arrangement in
10 the plans as presented to us.

11 So, I will say that your specific question is
12 single housekeeping unit has to do with the function
13 of the individuals in that space. So, that's mostly a
14 use question.

15 But at the building permit stage we look at,
16 oh, in that unit are the facilities to allow a single
17 housekeeping unit? And it centers, as you noted, what
18 is the kitchen count? What is the kitchen that people
19 can conduct housekeeping have interpreted that in
20 order to do housekeeping you have to have, consistent
21 with the definition, a related definition of dwelling,
22 you have to have cooking facilities.

23 So, what we do is we look at, is there a
24 kitchen that has a stove that permits the cooking
25 facility in that unit? That's at the building permit

1 stage.

2 MR. TONDRO: And can you think of another
3 circumstance where the presence of a kitchen, or
4 particularly the stove is important for determining
5 use requirements?

6 MR. LeGRANT: Well, the -- as I noted, it's
7 related to -- a dwelling unit has to have facilities
8 for sleeping, bathing, and cooking. So, that is
9 integral to that -- the building to use that as a
10 dwelling unit, and the individuals, whoever -- it's a
11 person of a family of related persons, or up to six
12 unrelated persons who share that single kitchen
13 facility.

14 MR. TONDRO: And I guess I was thinking in the
15 context where you have a, say a three-unit building,
16 three residential apartments, and you have an
17 allegation by a neighbor, let's say on the first,
18 second, and third floors and a neighbor alleges that
19 there's an actual fourth unit in the basement, the --
20 how is it that you deal -- determine whether or not
21 there is a separate unit?

22 MR. LeGRANT: Okay. So, the criteria is two
23 or three major aspects is, does that lower level have
24 an interior connection? Is there a way to get down to
25 that basement level so it's in fact part of that unit

1 above? Does that unit have a separate exit that can -
2 - people can use, either directly to the outside or to
3 a, through a shared foyer or hallway, allows them to
4 operate independently? And then does it have all the
5 facilities necessary for a dwelling unit? A room for
6 sleeping, a bathroom, a full bath that has a bathing
7 facility of a shower or tub, and a kitchen. And we
8 use the benchmark, as long as I've been at DCRA, is
9 the presence of a stove; a stove that's indicated on
10 the plans that either at the plan stage, or if it's an
11 enforcement case if we go out and find, oh, they've
12 established a stove and they've made all the --
13 they've created all the aspects that can have those
14 people operating independently from the unit above.

15 MR. TONDRO: And so, that presence of a
16 separate stove would be key to determining whether or
17 not it's a separate unit?

18 MR. LeGRANT: It would be.

19 MR. TONDRO: Thank you. And while we're at
20 it, Mr. LeGrant, can you state for the record how long
21 you have been a zoning administrator?

22 MR. LeGRANT: About 10 and a half years.

23 MR. TONDRO: And that is in the District,
24 correct?

25 MR. LeGRANT: Correct.

1 MR. TONDRO: And prior to that, what was your
2 experience?

3 MR. LeGRANT: Well, my employment experience
4 included working for the City of Alexandria for a year
5 as a planner, and then working the City of Berkley,
6 California for 15 years. Three of those as the zoning
7 officer, which is the equivalent position to Zoning
8 Administrator in large part.

9 MR. TONDRO: And prior to that you have a
10 degree in planning, is it?

11 MR. LeGRANT: Yes, I do. I have a Master's
12 degree in Urban Planning from University of California
13 at Berkley, and I have a Bachelor's of Science in City
14 and Regional Planning from California Polytechnic
15 State University at San Luis Obispo, California.

16 MR. TONDRO: Thank you. Can I ask a couple
17 other questions, this time now going more towards the
18 issue of the separate building? I believe Mr. Dettman
19 already answered, but just to be absolutely crystal
20 clear, as the Zoning Administrator are you aware of
21 any provisions in the zoning regulations that require
22 direct access from a unit to the public right of way?

23 MR. LeGRANT: No.

24 MR. TONDRO: Okay. So, it's possible to have,
25 under the zoning regulations, there's no prohibition

1 that establishes the ability to go from one building,
2 across the property, to exit and enter that building
3 only by means of access over a separate lot?

4 MR. LeGRANT: Not in the zoning regulations.

5 MR. TONDRO: And can you provide, or can you
6 explicate this term, meaningful connection, or
7 elaborate on it in terms of how it's used for separate
8 buildings and separate lots, how that plays out?

9 MR. LeGRANT: So, as I think we've noted
10 previously, what's critical is, there are limitations
11 in the zoning regulations about the number of -- in
12 some districts as to the maximum number of principle
13 buildings on a given record lot. So, the question
14 comes up, is if you have a structure that has a main
15 mass of building and then a connection to let's say
16 another portion of the structure, is that deemed one
17 building or not?

18 So, this is something that comes up quite
19 often, and I know that the Commission, I'll get to it
20 in a moment, dealt with it in the updated zoning
21 regulations as to whether, oh is that, quote/unquote,
22 "Connection" between separate parts of two structures
23 constitute one building or not, because it's integral
24 to the zoning, the regulation of number of principle
25 buildings on that given lot.

1 Given that the -- I already testified the
2 definition, it's a means of communication at the at or
3 above the level of the main floor, and that
4 communication has been further construed to be
5 something that has to be covered and to allow people
6 to pass between separate portions of that structure.

7 And then I'll note, in 2016 Regulations, that
8 -- the description of a connection was changed to be
9 more restrictive.

10 MR. TONDRO: But again, it always requires a
11 solid roof up above, or a solid roof covering?

12 MR. LeGRANT: It's either a solid roof or as
13 my office under ZR-58, was a cross-members of space,
14 you know, at least 24 inches on center or closer.

15 MR. TONDRO: And from the time you have made
16 your site visit, or I should say when your office
17 reviews the plans that came through for the
18 certificate of occupancy --

19 MR. LeGRANT: Yes.

20 MR. TONDRO: -- would the issue, therefore, of
21 the meaningful connection arise in relation to this
22 application?

23 MR. LeGRANT: No.

24 MR. TONDRO: And why not?

25 MR. LeGRANT: Because there were two separate

1 lots.

2 MR. TONDRO: And therefore it wouldn't be
3 considered. Is that right?

4 MR. LeGRANT: That's correct.

5 MR. TONDRO: Okay. Thank you. Can you, just
6 switching subjects again, to this issue of enforcement
7 versus application, can you explain to the Board how
8 it is that your office deals with an application when
9 it comes in as opposed to how your office deals with
10 an enforcement action?

11 MR. LeGRANT: Right. So, when an application
12 comes in as you've noted, we must rely on the
13 representations of an applicant, and their statements
14 in both the building permit application form as well
15 as a certificate of occupancy application form that
16 the person is attesting that they are bound and
17 providing true and factual representations.

18 Based on that, then at the building permit
19 stage, we would look at what is depicted and we
20 obviously go through an analysis to consider if it's
21 information that's clear and is in compliance with the
22 applicable regulations.

23 Once we -- if we are to get to the point that
24 those representations meet the standards, either of a
25 matter of right project, or if it's governed under a

1 BZA order from this body, or a Zoning Commission order
2 for a PUD or campus plan or the like, then we have to
3 conclude that the building permit is in compliance
4 with the applicable rules.

5 Once a certificate of occupancy is issued, if
6 it comes to our attention either through complaint or
7 inspection, that it's deviating from those plans
8 either physically, there's something that's physically
9 that is different from what was represented, or if
10 it's being used, then it's a matter of enforcement.

11 CHAIRPERSON HILL: Okay. Mr. Tondro, I'm just
12 going to -- there's a bunch of questions that I think
13 we have and I'm just trying to make a little bit of
14 use of time. Is there any final question you have for
15 the Zoning Administrator?

16 MR. TONDRO: No key -- I guess I would just
17 ask that, have you -- do you recall any recent
18 enforcement actions that you've taken that are similar
19 to -- that would address the hypothetical that was
20 raised by the appellants about the micro-hotel, about
21 the change of use after receiving a C of O?

22 MR. LeGRANT: Not for a micro-hotel, not for
23 the use that's before us, but as you've noted, there's
24 been other uses, a fast food restaurant and other
25 things that we had taken enforcement action, including

1 revocation of C of Os.

2 MR. TONDRO: Thank you.

3 CHAIRPERSON HILL: Okay. Okay, great.

4 MR. TONDRO: With that I rest. Thank you.

5 CHAIRPERSON HILL: Thanks. The Board has some
6 questions. I have a couple of -- I have some things
7 I'm trying to get clear upon.

8 We started the day, again, a long time ago,
9 and there is the certificate -- I'm sorry, there is
10 the permits, okay. Then there is the certificate of
11 occupancy. Then there seems to be an enforcement
12 component, perhaps. I mean, I'm just kind of going
13 along here in line in terms of how one could get to --
14 and as I mentioned before, I find this a little bit
15 more complicated than perhaps you do. And so, that's
16 why I'm trying to understand it better.

17 So, the enforcement -- again, if there was no
18 error in the permits, because they're two flats and
19 everyone thinks they're two flats, and there's still
20 again, being called two flats, then the certificate of
21 occupancy was issued for two flats, and then the
22 enforcement component, when you, Mr. Tondro, are
23 saying, or the Zoning Administrator is saying that
24 there could then be an enforceable issue, I'm just
25 trying to understand what that enforceable issue is in

1 your mind.

2 You're saying, if it got above the six people
3 living there, that's it. Like, and so again, the
4 family, like it's the six people that is the
5 enforcement component?

6 MR. TONDRO: Right. So, it would be that.
7 Let's say another one is a requirement that they stay
8 for at least a month. So, let's say it turns out that
9 in fact the owner is actually intending to operate it
10 as an Air B&B, right, and therefore there are going to
11 be lots of people coming through, but they're staying
12 for two or three days and there's a pattern that's
13 shown that we can determine, then that would be the
14 kind of issue where we would seek enforcement action
15 because the use is not consistent with what is
16 allowed, which is a flat.

17 CHAIRPERSON HILL: So, the enforcement issue,
18 though again -- so, six people. Let's say that
19 there's 10 people staying there. I mean, I'm just
20 trying to understand again the -- where it is that if
21 there's 10 people staying there all the time, is that
22 an issue, then that's an enforceable issue?

23 MR. TONDRO: Yes. Yes, that is precisely what
24 it is, but I'll leave it to the Zoning Administrator
25 to respond.

1 CHAIRPERSON HILL: And how would one -- but
2 how would one actually go about tracking that,
3 determining that.

4 MR. LeGRANT: Okay. I'll take a stab at that.

5 CHAIRPERSON HILL: Okay.

6 MR. LeGRANT: So, it's been some time since we
7 had an enforcement case about a complaint, and I think
8 about a single-family home being used as a rooming
9 house, for example. So, on the basis of a verified
10 complaint, we have one of our investigators from the
11 regulatory, RAS, Regulatory Inspections Division, go
12 out and look at the situation, including interviewing
13 the people that reside there, to find out what is the
14 nature of their occupancy, you know, the number of
15 people that are there, the lease arrangements that
16 they have and what is the extent of the organization
17 of their living situation to see if it's truly a
18 shared situation or not.

19 And, my recollection of -- this is probably
20 about seven or eight years, we had people, our
21 investigators go out in cases where we found that was
22 somebody not in compliance with the zoning
23 regulations. We were empowered to take enforcement
24 action.

25 CHAIRPERSON HILL: Okay. Right. So again,

1 then, someone will have to come out and do a survey --
2 interview the people as to whether or not there are
3 more than six people living there.

4 MR. LeGRANT: Well, my investigators go out
5 and they're not naive. They will go out and they will
6 hey, what are the number of people here. Let's walk
7 through the dwelling, count beds, figure -- you know,
8 ask what is the relationship, how are they there, what
9 is their lease arrangement.

10 MR. TONDRO: And things like, in the
11 experience I've had as well, issues of like how many
12 toothbrushes.

13 CHAIRPERSON HILL: Okay. And then, then the
14 certificate of occupancy would be pulled, or that
15 would be --

16 MR. TONDRO: If it --

17 CHAIRPERSON HILL: -- if it were found to be
18 enforceable.

19 MR. TONDRO: If it's found to be in violation
20 we can revoke the certificate of occupancy.

21 CHAIRPERSON HILL: Okay. Okay. And I keep
22 mentioning this because again, I'm finding a little --
23 and I want my board members to ask a bunch of
24 questions, and you know, I just, I want to let you
25 know, I mean, we see you guys regularly, I respect

1 what you all do, and I'm asking this because I'm
2 literally trying to find more clarity.

3 MR. LeGRANT: Absolutely.

4 CHAIRPERSON HILL: I want to understand, this
5 is a new one that I haven't seen before, right? And
6 the people that are here in the community, it also is
7 a little bit outside of what they, in their mind, have
8 -- and I must say, in my mind, would have initially
9 thought of as a two-family flat, or you know, a flat,
10 right?

11 And so, I know what a group house is. I lived
12 in one, you know, all the different things that Mr.
13 Tondro brought up about shared television and
14 dishwashing and all of that, you know, I understand
15 that. So, I mention all that because again, I'm still
16 trying to struggle with the logic in terms of again,
17 it's an appeal. The air, in terms of on your part,
18 for whether or not you know, what you had in front of
19 you at the time that you issued the permits; the time
20 that you issued the certificate of occupancy, and now
21 what happens at the enforcement level. So, that's
22 what I'm trying to get to.

23 Would the Board please have some questions?

24 MR. HART: Yeah, thank you, Mr. Chairman. Mr.
25 LeGrant, one of the questions that I was just curious

1 about was, one about just the idea of co-housing. It
2 seems like, is there a -- do you think that the zoning
3 currently is currently developed or created in a way
4 that can correctly address this particular type of
5 housing? I mean, was this a -- was this decision, was
6 it one that was a fairly easy decision. Yeah, sure,
7 that can fit inside of this type of use? Or was this
8 a decision that was, you kind of kicked around a bit?
9 You know? I mean, is this something that, do you
10 feel that it fairly easily fits into one of the uses,
11 or -- not uses, but one of the definitions, or is this
12 something that is somewhat outside of that?

13 And, you know, it's just trying to understand
14 where you're thinking on this.

15 MR. LeGRANT: Well, I'll answer the question
16 two ways; two parts. One, for the application at hand
17 that was before us, my office I believe correctly, to
18 determine it was a flat use of dwellings of two
19 dwellings in each building. And then at the C of O
20 stage that the representation to us that they were
21 going to be used as a flat.

22 I think one of the things that gives pause to
23 perhaps the appellant and others, is the fact that
24 each bedroom has a bathroom. And I think for some
25 people that's suggestive of something that is

1 different than a dwelling unit.

2 I will note that I've turned -- I'll call
3 mega-mansions, right, McMansions, that every bedroom
4 has a bathroom, okay? I've been in those -- they're
5 very large, right? Four thousand, 5,000 square feet
6 houses with four, five, six bedrooms and six
7 bathrooms.

8 So, this application in terms of the building
9 permit did not give me pause because of what we've
10 talked about in terms of is there a single dwelling
11 unit with a kitchen? Okay. And that was the
12 representation.

13 Does the zoning regulations need to speak to
14 co-living, co-housing more specifically? That's not
15 my role as Zoning Administrator. I will leave it to
16 the Office of Planning and the Commission. If they
17 asked my opinion I would heartily encourage them to
18 look at this, because it looks like it's a model that
19 is being proposed to give greater clarity to me. I
20 think the code gave me clarity for this situation, but
21 there's other situations that would be, I think
22 helpful because ultimately, I would like the
23 Commission to tell me, the community, and the
24 development community, what are the standards for the
25 different development models.

1 CHAIRPERSON HILL: And we just lost
2 Commissioner Hood, who is the Chairman of the Zoning
3 Commission, although he is going to be watching later.

4 MR. LeGRANT: Yes.

5 CHAIRPERSON HILL: And so that, Chairman Hood,
6 was directed to you.

7 So, please, continue.

8 MR. HART: Yeah, just one other question. And
9 I appreciate the answer. I mean, I understand that
10 you're -- I was not trying to put you on the spot with
11 that question. It was more just --

12 MR. LeGRANT: No problem.

13 MR. HART: -- trying to understand kind of you
14 know, is this something that needs to change in terms
15 of the zoning regulations to be able to address
16 something that may be coming to D.C. more frequently.

17 I mean, you know, to kind of -- as an aside, the
18 whole Uber issue, folks had to kind of deal with that
19 issue as well, and kind of address how that, you know,
20 maybe different or not. I'm not saying that is, that
21 this is a one-to-one representation of that, but it's
22 just, it sounds like a newer model for, you know, for
23 some sort of the housing that's here in D.C.

24 And actually, Mr. -- the Chairman actually
25 gave me, he had the question about how do you kind of

1 determine -- how does one -- how does the action --
2 how would an enforcement action be submitted to you
3 all if -- I mean, the residents would have to feel
4 like there are more people there than there actually
5 are there. They don't really have a way of --

6 MR. LeGRANT: Correct.

7 MR. HART: -- kind of figuring that out. I
8 mean, you know, it's like how do you get to a --

9 MR. LeGRANT: Okay.

10 MR. HART: Wow, there are 20 people there as
11 opposed to -- or there are 30 people there as opposed
12 to 24.

13 MR. LeGRANT: All right. Right. So, it's
14 always a challenge for enforcement. Neighbors do not
15 have the access to a building. But I can tell you,
16 and on many, many enforcement cases that my office
17 deals with is residents, ANC commissioners, council
18 members and their aides, will come to us and say, hey,
19 there is a problem here. It could be an explicit
20 problem like they built an extra story on top of this
21 building that didn't -- wasn't in the approved plans.
22 And that's pretty straight forward.

23 But within the use of a building, what is
24 going on? We suspect because we see lots of people
25 coming and going, we see there's a lot of noise or

1 something that suggests it could suggest a zoning
2 issue. We will look at that. We will have an
3 investigator go out, and we also, you know, look at
4 the information that was presented to us. We will
5 reach out to the owner, or the, like a certificate of
6 occupancy holder, and say hey, there is a concern.
7 And then that can start an enforcement case if it
8 results in an issue.

9 We also, during that enforcement case, they
10 interview the residents to see what arrangements they
11 may have.

12 MR. HART: Thank you.

13 MR. LeGRANT: I guess one other thing real
14 quick is, we can go out, we can count mail boxes. You
15 know, there's lots of clues, right, or physical
16 manifestations and things. You know, if somebody
17 says, hey, there must be 10 people living there
18 because there's 10 cars parked in the street and they
19 all come and go to that, and -- to that entrance to
20 that building. Okay, well, we can interview the
21 residents and see hey, what's the situation here? Do
22 you live here? You know, is that your car, and so
23 forth.

24 MR. HART: So, I'm sorry, so that question
25 would really get to whether or not someone was

1 actually living there, but you may have people that
2 are, I don't know, I mean, you know, the girlfriends
3 and whatever, boyfriends that are coming over to
4 visit. I mean, how do you deal with, you know --

5 MR. LeGRANT: Well, the regulation is very
6 clear.

7 MR. HART: Or do you even look at that, you
8 know, that issue?

9 MR. LeGRANT: Well, let me be clear. We are
10 sensitive to people's privacy. We're not going to --
11 the regulation talks about the number of residents. I
12 can have guests in my home, okay? A resident of a
13 building, whether it's this facility or elsewhere, can
14 have guests in their home. The key phrase is, are
15 there residents that are living together that are --
16 so, if we go there and if an investigator goes out and
17 says, hey, how many people are here? Well, there's,
18 you know, there's -- oh, I see six people here. Well,
19 there's five residents and this is the overnight guest
20 tonight. And how long do they stay? And so we could
21 drill down into that.

22 But we have to be respectful of people's
23 privacy and rights to have a guest over, not a
24 resident.

25 MR. HART: Thank you.

1 CHAIRPERSON HILL: Ms. White.

2 MS. WHITE: Might be the same question that
3 you were asking, but I'm just trying to get a better
4 handle on this because obviously, this is a new idea
5 that's floating around the country now. It's very new
6 to D.C. I don't think there exists an actual model
7 that's in place right now that fits what you're trying
8 to do with the Common corporation.

9 But given the configuration of those two
10 flats, those two-family flats, at what level or what
11 number would we exceed the number of people that could
12 actually be in that house?

13 MR. LeGRANT: All right.

14 MS. WHITE: In those two, those two addresses.

15 MR. LeGRANT: Right. Well, so it's --

16 MS. WHITE: And I'm having a little tough time
17 with that because --

18 MR. LeGRANT: Okay. Okay.

19 MS. WHITE: Yeah.

20 MR. LeGRANT: I appreciate that. There's, as
21 kind of a built this -- you have to start with one of
22 the units. Okay? Let's say 410 Richardson A.

23 MS. WHITE: Uh-huh.

24 MR. LeGRANT: There's six bedrooms.

25 MS. WHITE: Right.

1 MR. LeGRANT: It's limited to six unrelated
2 persons.

3 MS. WHITE: Uh-huh.

4 MR. LeGRANT: So, that's one unit. Okay?

5 MS. WHITE: Uh-huh.

6 MR. LeGRANT: There happens to be, because
7 this is a flat there's two dwelling units.

8 MS. WHITE: Right.

9 MR. LeGRANT: Each one has six bedrooms.

10 MS. WHITE: Right.

11 MR. LeGRANT: Limited, and so that's the six.
12 And one -- and so now total property, 410 Richardson,
13 there will be 10, one in --

14 MS. WHITE: Right.

15 MR. LeGRANT: Six in one dwelling unit.

16 MS. WHITE: Uh-huh.

17 MR. LeGRANT: Six in the other dwelling unit.

18 And then you mirror that with 412, so the total would
19 be 24.

20 MS. WHITE: Uh-huh.

21 MR. LeGRANT: Residents in aggregate.

22 MS. WHITE: Right. So, any concerns about the
23 density associated with having that many people in
24 those two property addresses? Or how is that
25 addressed, or is that just outside of the zoning

1 authorities?

2 MR. LeGRANT: Well, it's, because the zoning
3 regulations are per property --

4 MS. WHITE: Uh-huh.

5 MR. LeGRANT: -- and per unit, you know, we
6 have the flat, which is two units, on the criteria
7 that could be within one unit.

8 MS. WHITE: Uh-huh.

9 MR. LeGRANT: Then, if this developer had
10 purchased and developed 10 of those, would that be an
11 issue? It's not an issue that my office can say
12 that's right or wrong, it's does it meet the zoning
13 regulations or not.

14 MS. WHITE: Right. And I think that's why
15 we're getting a lot of ANCs expressing come concern,
16 because of the level of density that it creates. Not
17 to say that it's not a good idea, but that's the only
18 question I had, Mr. Chairman.

19 MR. TONDRO: Is it possible for me just to
20 respond just briefly?

21 CHAIRPERSON HILL: Sure.

22 MR. TONDRO: Again, I would just reinforce
23 that the regulation we're dealing with is a definition
24 of family.

25 MS. WHITE: Right.

1 MR. TONDRO: That the reason we have that
2 definition is under zoning regulations, which is about
3 public safety, basically. That's why it goes back to
4 the authorization under the police powers of the
5 state.

6 MS. WHITE: Uh-huh.

7 MR. TONDRO: And therefore there has to be
8 something about some way in which it affects, as it
9 were, the public safety. And that is then by an
10 occupancy cap in some sense.

11 But what has happened is that has always meant
12 to be one family. Again, that family is one that
13 could be 20 people, could be 100 people, could be 500
14 people provided they're all related by blood,
15 marriage, or adoption.

16 So, density really -- the number of folks that
17 are in here or in here, isn't really relevant, I
18 think, to this issue, except for the fact that what
19 happens is that where you're dealing with unrelateds,
20 then there's a limit to six as that's been a
21 reasonable -- it's determined over case law that
22 that's the reasonable amount for people who, again,
23 non-traditional, or different that that's a reasonable
24 -- the courts have held that that's a reasonable limit
25 to impose as opposed to a family and not be

1 discriminated against that.

2 MS. WHITE: Uh-huh. Thank you.

3 CHAIRPERSON HILL: Okay. I only got one more
4 question for Mr. LeGrant. So, when you all made your
5 decision for the certificate of occupancy, had you
6 already -- what information was available to you in
7 terms of like the whole Common business model?

8 MR. LeGRANT: Well, my understanding is the
9 application that was presented to us included the C of
10 O application, as well as supporting materials. The
11 key criteria is, is the -- did the construction follow
12 the approved building permit plans? Part of the
13 process, just to let you know and you may know, is the
14 building permit that was previously issued, the
15 construct, they have to have inspections. Inspector
16 has to do a final inspection that says it was built to
17 plan. So, that means that those plans were adhered
18 to. Then the representation in the C of O is of the
19 use, compliance with the plans, and if we find that
20 that's the case then we -- I don't think we have basis
21 to deny a C of O.

22 CHAIRPERSON HILL: When you say representation
23 to the use, so --

24 MR. LeGRANT: Yeah, I'm sorry.

25 CHAIRPERSON HILL: I'm just trying to --

1 MR. LeGRANT: It was granted not to the owner,
2 to the OTD for 410, 412 Richardson Place.

3 CHAIRPERSON HILL: Okay. So, there was again
4 the -- so, the --

5 MR. LeGRANT: That's the owner.

6 CHAIRPERSON HILL: The business model concept
7 was not part of the analysis for that certificate of
8 occupancy?

9 MR. LeGRANT: I would agree, yes.

10 CHAIRPERSON HILL: Okay. All right.

11 MR. LeGRANT: It was not.

12 CHAIRPERSON HILL: So --

13 MR. TONDRO: Chairman Hill --

14 CHAIRPERSON HILL: Sure. Sure.

15 MR. TONDRO: -- if I can just point out too,
16 both C of Os were issued to the owner.

17 MR. LeGRANT: Yes, I'm sorry.

18 MR. TONDRO: Right? And so, as Common is not
19 the owner, Common is the owner's property manager.
20 So, I think we should also be aware if I can suggest
21 that in this particular case they came forward and
22 presented, at least publicly, the fact that they were
23 -- and this gets to the issue of enforceability, that
24 was raised now at this stage. But it could have been
25 that the owner would come forward and say, I just want

1 to have two flats, without providing any information
2 about the business, about what was going on.

3 And then after the C of O was granted, if
4 there was no appeal, then go and lease it out or work
5 with Common at that point to come in. This gets back
6 to this issue of enforceability. How do you
7 understand when that happens? And again, at that
8 point it would be an issue of enforcement because we'd
9 have to go out and see, not the hypothetical, but what
10 is actually happening at this time.

11 CHAIRPERSON HILL: And I appreciate that. I
12 appreciate the clarity that OTC is the owner of the
13 property. And my question, I suppose was again, in
14 terms of the analysis for the certificate of
15 occupancy, it's again the plans.

16 So, you're looking at the plans for whether or
17 not it conforms with what the permit was for the two
18 flats.

19 MR. LeGRANT: Yes.

20 CHAIRPERSON HILL: Yes. Okay. So, does the
21 Board have any more questions for the Zoning
22 Administrator?

23 All right. So, I'm going to turn to the
24 appellant and the ANC, but I'm going to -- in fact,
25 now I guess also the business, the property owner will

1 have an opportunity to ask questions as well. We've
2 asked a lot of questions, and I think we've asked a
3 lot of good questions. And so, you know, if you have
4 some questions for the Zoning Administrator, if you
5 could please make them pretty precise and again, I
6 continue to think of things as we go through this
7 particular exercise with this particular case, which
8 is that it's, I feel -- I understand why everyone is
9 here. Okay? And, you know, the DCRA and Zoning
10 Administrator they are, you know, this is their
11 profession, they're here to make sure they get it
12 right as well.

13 And so, so with that, Commissioner, if you
14 want to ask a couple of questions of the Zoning
15 Administrator?

16 MS. McCLELLAND: Yeah. And, I'm trying to
17 think of my questions as the questions that I know
18 that residents will be asking me as a commissioner to
19 answer. So, the first one follows around determining
20 just the -- who does the burden of proof fall under?
21 Or who does the burden fall on to for requesting that
22 there -- or complaining, I guess bringing forward
23 complaints about enforcement of six or more people
24 living in there. Especially, in a situation like this
25 where there will be at least 24 people living there.

1 And so, are there going to need to be -- is it
2 that they will need to complain about the specific
3 410A or 410B, 412A, 412B, or I guess could you talk a
4 little bit more about that because I'm just a little
5 confused about who -- if it's the resident's
6 responsibility to be complaining about that, or
7 bringing these complaints forward.

8 CHAIRPERSON HILL: Yeah. Do you understand?

9 MR. LeGRANT: Well, I guess the question is,
10 I'll summarize it. What's the burden of proof for
11 filing a complaint.

12 MS. McCLELLAND: Uh-huh.

13 MR. LeGRANT: Okay. People can file
14 complaints. Normally when there's a complaint filed
15 they'll have some reason and present some argument or
16 evidence. If it's purely speculative, hey, I think
17 there's 10 people living in there. Why do you think
18 so? Well, you know, if they assert, because we, you
19 know, have noticed lots of number people going in
20 there, there's a whole bunch of cars parked in the
21 street, then I think that's cause for us to send an
22 investigator out to look at it.

23 CHAIRPERSON HILL: So, Commissioner, if I
24 understand the answer, it's on you.

25 MS. McCLELLAND: It's on us.

1 CHAIRPERSON HILL: Yeah. Yeah.

2 MS. McCLELLAND: So, okay.

3 CHAIRPERSON HILL: Okay? And so, and I am
4 curious as well. So, then is the complaint for -- so
5 the question was, is the complaint for each particular
6 unit, or how -- it could be each particular -- it's
7 for a particular unit, if you thought that there was
8 more than six people in one particular unit you would
9 file a complaint about one particular unit.

10 MR. LeGRANT: Yes.

11 CHAIRPERSON HILL: Okay. Next question.

12 MS. McCLELLAND: Okay. Yeah, so then, just
13 the metal structure came up in some of the questions
14 before, that's in front of the house. And so is --
15 and it was that DCRA and the Zoning Commissioner
16 viewed that metal structure and the house is
17 decorative in nature? Is that correct?

18 MR. LeGRANT: I believe that the owner's
19 representative testified to that, in that regard.

20 MS. McCLELLAND: Okay. So, then the
21 definition of decorative is meaning that it would not
22 affect the use of the property if it did not exist.
23 Is that correct? It's just decorative in nature?

24 MR. LeGRANT: The zoning regulations don't use
25 the term decorative in any of this context, I would

1 say.

2 MS. McCLELLAND: Okay. So, I guess that was
3 just something that DCRA had asked the owners before,
4 is if it was just decorative.

5 So, then is there a requirement in the zoning
6 code that there be an entrance to a property?

7 MR. LeGRANT: No. The zoning regulations
8 don't speak to that. The building code regulations
9 speak to that.

10 MS. McCLELLAND: Okay. So, then the metal
11 structure, if it was not there, it would -- I'm just
12 asking because I'm not clear if the residents of 412
13 would be able to access without this metal structure
14 that is on the property of 410.

15 But, if -- I guess the other question was that
16 you were talking about that more restrictive changes
17 happened in 2016 for the meaningful connections.

18 MR. LeGRANT: I'm sorry. You repeat that?

19 MS. McCLELLAND: You were saying that more
20 restrictive changes happened in 2016 for the
21 meaningful connections.

22 MR. LeGRANT: Sure. That's correct.

23 MS. McCLELLAND: What were those? And then
24 the 24 inches of cross-space, or closer. Can you
25 just --

1 MR. LeGRANT: Okay.

2 MS. McCLELLAND: -- clarify that?

3 MR. LeGRANT: So, as to what constitutes a
4 roof under ZR-58, my office's interpretation is if you
5 had a overhead trellis with cross-members, either a
6 lattice or horizontal members, on 24 inches or closer,
7 that would constitute the same as a roof.

8 MS. McCLELLAND: Uh-huh.

9 MR. LeGRANT: A roof for zoning purposes. And
10 then your first part of the question was, how did ZR -
11 - how did the zoning regulations under 2016 change
12 that, which to be clear, is not applicable here
13 because this was permitted under ZR-58, is that that
14 has to be solid roof, closed on the sides, and
15 conditioned space. So, it has to be like a,
16 basically, an enclosed corridor. That's in ZR-16.

17 MS. McCLELLAND: Okay. That is it and I
18 promise I won't come back and ask more questions this
19 time.

20 CHAIRPERSON HILL: Okay. Mr. Wilson.

21 MR. WILSON: Yes.

22 CHAIRPERSON HILL: Same little spiel for you
23 ahead of time, okay?

24 MR. WILSON: Yep.

25 CHAIRPERSON HILL: Thanks.

1 MR. WILSON: So, a meaningful connection is a
2 roof, and a roof is anything with more than 24 -- or
3 studs that are more than 24 inches on center? Or
4 clarify that. I mean, I just want to make sure that
5 we're all clear what we're talking about.

6 MR. LeGRANT: A meaningful connection, as I
7 testified, which is irrelevant as to whether two
8 portions of a structure on one lot are in fact one
9 building, includes under ZR-58, my office's
10 longstanding interpretation that on overhead trellis
11 with a space of 24 inches of cross-members, 24 inches
12 on center or closer, constitute the same as a roof so
13 as to be a meaningful connection.

14 MR. WILSON: Can I bring the plans to you? Is
15 that okay? It's an exhibit in their response.

16 CHAIRPERSON HILL: What are you trying to --
17 what are you trying to ask?

18 MR. WILSON: Well, the trellis is, the studs
19 are 10 inches on center. Or, sorry, the beams are 10
20 inches on center.

21 CHAIRPERSON HILL: And what's your question
22 again? I'm sorry.

23 MR. WILSON: Doesn't that constitute a
24 meaningful connection as to the roof?

25 CHAIRPERSON HILL: And the answer is no,

1 correct?

2 MR. LeGRANT: The answer is no. It's not
3 relevant here because it's, as to as whether --

4 CHAIRPERSON HILL: Mr. Wilson, I know what
5 you're -- I mean, we're following the logic and
6 honestly, I think you're doing a great job. So --

7 MR. WILSON: All right.

8 CHAIRPERSON HILL: But that one, he's not
9 going to change the answer in that particular case.
10 And I also don't think it helps your case.

11 MR. WILSON: Would you agree that
12 nonstructural facts are relevant to determining use?

13 MR. LeGRANT: Say that again.

14 MR. WILSON: Do you agree that nonstructural
15 facts are relevant in determining use?

16 MR. LeGRANT: They could be.

17 MR. WILSON: And doesn't the code include an
18 analysis of how the property is quote, "Offered for
19 occupancy in determining use?"

20 MR. LeGRANT: Offered for occupancy? If you
21 could cite a provision. I'm not --

22 MR. WILSON: It's 199.2(f). Uses defined as
23 intended, arranged, or designed to be used, occupied,
24 or offered for occupancy.

25 MR. HART: Are you talking about the building

1 code?

2 MR. WILSON: 11 DCMR 1199.2(f).

3 MR. LeGRANT: I'm getting the language in
4 front of me.

5 MR. FREEMAN: I'm sorry, could you repeat -- I
6 was distracted. Could you repeat the question? I'm
7 not --

8 MR. WILSON: Doesn't the code include --

9 MR. LeGRANT: Okay, so I'll --

10 MR. WILSON: -- in this definition of use of
11 how it's been offered for occupancy?

12 MR. LeGRANT: So, just to read the full
13 definition in ZR-58 under 199.2(f), the word -- thank
14 you for blowing it up. The word, occupied -- the
15 words, occupied and use shall be considered as though
16 followed by the words, or intended, arranged, or
17 designed to be used or occupied, offered for
18 occupancy. So, that's my answer.

19 MR. WILSON: Is it right to say that there's a
20 structural difference between, say, a regular
21 bookstore and a sexually explicit bookstore? Would
22 you be able to look at the plans and tell the
23 difference?

24 MR. LeGRANT: I don't think that's relevant to
25 this case.

1 MR. WILSON: I think it goes to the fact that
2 -- doesn't that go to the fact of how it's offered for
3 occupancy, how it's doing business, how it's
4 advertised?

5 MR. LeGRANT: Okay. That would not be
6 evaluated at the building permit stage. That would be
7 evaluated at the certificate of occupancy stage.

8 MR. WILSON: So, it would be evaluated as its
9 intended use?

10 MR. LeGRANT: Depends on the representation
11 that is brought before the office.

12 MR. WILSON: Is there anything in the zoning
13 code that prohibits the Zoning Administrator from
14 asking a property owner about its intended use?

15 MR. LeGRANT: No.

16 MR. WILSON: If we wait for the enforcement,
17 and the DCRA refuses to take action, are you
18 representing that we do have a right to appeal,
19 despite what the code says not being a refusal?

20 MR. LeGRANT: As my counsel noted, if there
21 was a case in which an enforcement complaint, that a
22 complaint was lodged with my office over a use, that
23 my office, after investigating said we were not going
24 to take an enforcement action, I don't believe it
25 precludes the ability of appellant to bring it before

1 this body.

2 MR. WILSON: So, I want to read a part of your
3 testimony, or your argument here. So, you said, "In
4 this case the owner's property manager had submitted a
5 sworn affidavit stating that each family unit will
6 have a property -- " sorry, "each family unit will
7 have a maximum occupancy, six residents per family
8 unit, as well as providing a form of lease which has a
9 provision establishing the six-resident maximum
10 occupancy. Thus, there is no evidence on which the ZA
11 could deny the C of Os."

12 Did you have a copy of the affidavit when you
13 issued the occupancy permit?

14 MR. LeGRANT: The owner's affidavit?

15 MR. WILSON: You said that you based the
16 occupancy permit on the owner's affidavit, but the
17 affidavit seems to have arrived after you've issued
18 the occupancy permit.

19 MR. LeGRANT: One moment.

20 [Pause.]

21 MR. LeGRANT: I believe at the time the
22 conversation was with the applicant and they were
23 going to provide that information to us.

24 MR. WILSON: So, that's not accurate, that you
25 did not have the affidavit in order to grant the -- or

1 deny the C of Os?

2 MR. LeGRANT: To deny the C of Os?

3 MR. WILSON: It says, "Thus, there is no
4 evidence on which the ZA could deny the C of O's,"
5 because you had already had -- you wrote that you had
6 an affidavit that didn't exist when you issued them.
7 In this case, the owner's property manager has
8 submitted a sworn affidavit stating that each family
9 unit will have a maximum occupancy.

10 MR. LeGRANT: I'm going to look at this
11 section here.

12 [Pause.]

13 MR. HART: And what are you referring to,
14 specifically?

15 MR. WILSON: Sorry. This is in their page 4
16 of their reply. Or of the DCRA's brief. Page 4, at
17 the bottom.

18 [Pause.]

19 MR. WILSON: I think you understand the point.
20 I'm just trying to figure out if you've actually
21 reviewed the affidavit when you deny it.

22 MR. LeGRANT: The application -- the affidavit
23 was submitted after the fact.

24 MR. WILSON: Okay. In your testimony, and
25 this is my last one, you spent a lot of time with the

1 definition of family, but you didn't spend a lot of
2 time discussing the definitions of the words family or
3 unit, but rather kind of focusing on housekeeping.
4 Doesn't it make sense that these should all be
5 construed together? Or are they irrelevant?

6 MR. LeGRANT: I don't understand the question.
7 You said that --

8 MR. WILSON: Doesn't the word, unit, imply
9 important meaning into the overall definition of what
10 constitutes a family of unrelated individuals?

11 MR. LeGRANT: Well, as I testified that at the
12 building permit stage, we have to look at the plans of
13 the represented physical arrangement. And so, we
14 don't have a identified what those individuals be.
15 And then it's at a representation at the C of O stage,
16 what are you going to occupy this as? We're going to
17 use it as a flat, which means they have to occupy it
18 with the family.

19 Later, as we've said, if it deviates from
20 that, it's an enforcement matter.

21 MR. WILSON: Okay. I'm done. Thanks.

22 CHAIRPERSON HILL: Okay. Does the building
23 owner have any questions for the ZA?

24 MR. FREEMAN: No, sir.

25 CHAIRPERSON HILL: Okay. All right. I

1 actually am going to -- I'm going to take a three-
2 minute break, just before we do rebuttal. So, we're
3 going to do rebuttal, you'll get to close, then -- and
4 somebody feel free to tell me if I'm wrong, but this
5 is the way I'm planning on doing this. And then DCRA
6 is going to get to close and the building owner gets
7 the last word during the closing.

8 So, you'll get a chance for rebuttal and
9 closing, closing, closing, and then -- and if the
10 Board has any other questions. So, we're really just
11 taking a quick three-minute break here just to
12 stretch. Thanks.

13 [Off the record from 6:39 p.m. to 6:44 p.m.]

14 CHAIRPERSON HILL: Let's get settled back in
15 here. Are we waiting for Mr. Freeman or -- that's all
16 right.

17 All right. There we go. All right, Mr.
18 Wilson, I'm going to go -- do you know, like, is five
19 minutes okay for --

20 MR. WILSON: About three.

21 CHAIRPERSON HILL: Okay, that's fine, for a
22 rebuttal. And then, you're getting rebuttal and
23 closing. Okay? And then -- all right.

24 MR. WILSON: Yeah. All together.

25 CHAIRPERSON HILL: Okay. So, please, go

1 ahead.

2 MR. WILSON: Sure. First, I want to thank our
3 neighbors for coming this afternoon, evening, tonight.

4 CHAIRPERSON HILL: Day.

5 MR. WILSON: Day. I want to make a single
6 point in closing. If how Common intends to use its
7 property is not compliant with the definition of
8 family, then what Common intends to do is not
9 permissible here. Regardless of whether this is one
10 building or two, a rooming house or not, if its use is
11 not a single-family use, it cannot exist in this
12 structure.

13 We put large amounts of evidence into the
14 record, showing how Common operates. We've showed how
15 its business model does not fit within the meaning of
16 the term family. And we showed that Common is willing
17 to break the law, past is prolog, and the Board should
18 take -- should not take it at its word.

19 Common had an opportunity to disclaim the
20 representations, its own representations, but it did
21 not disclaim a single one prior to the public
22 presentation in its affidavit submitted here.

23 We note that we are unable to tell you what's
24 in Common's membership agreement because they chose
25 not to include it in the record. This is not --

1 sorry, this is not a civil case and we don't have
2 access to tools such as discovery, but I believe the
3 interference -- the inferences that we have drawn from
4 it, from what is said in this lease, is sufficient to
5 show that the units that Common runs are not self-
6 governing family units.

7 We believe that the evidence is sufficient to
8 show that we've carried out the burden to show that
9 Common does not comply with the zoning code's
10 definition of flat, and that our appeal should be
11 granted. Thank you.

12 CHAIRPERSON HILL: Thank you, Mr. Wilson. All
13 right. And for a non-attorney, did a lovely job.

14 MR. WILSON: Thank you.

15 CHAIRPERSON HILL: So, let's see. Go ahead
16 with the ANC, please. If you'd also like to add
17 anything for closing.

18 MS. McCLELLAND: Can I pass?

19 CHAIRPERSON HILL: You can pass.

20 MS. McCLELLAND: Oh, thank you.

21 CHAIRPERSON HILL: You can pass. Mr. Tondro.

22 MR. TONDRO: Yes. Thank you, Chairman Hill,
23 members of the Board.

24 Just a, I'll try to summarize this as briefly
25 as possible since we've already been over all of this.

1 In terms of the issue of enforcement, one thing I
2 would call to the Board's attention is that the
3 authorization to create the zoning regulations is in
4 the D.C. Official Code, and that one is in Title 6.
5 And in Title 6-641.07(g)(1), I'll give that again,
6 Title 6-641.07(g)(1), which deals with the authority
7 of the Board of Zoning Adjustment, it's -- and I'll
8 read from G.

9 "Upon appeals, the Board of Zoning Adjustment
10 shall have the following powers. One, to hear and
11 decide appeals where it is alleged by the appellant
12 that there is an error in any order, requirement,
13 decision, determination, or refusal made by the
14 Inspector of Buildings, or the Mayor of the District
15 of Columbia, or any other administrative officer or
16 body in the carrying out or enforcement of any
17 regulation adopted pursuant to this sub-chapter."

18 I think that should address the fact that the
19 Board has the authority to determine whether or not if
20 the Zoning Administrator hypothetically refused to
21 enforce an action, that the Board would have the
22 authority under that which trumps the zoning
23 regulations, to consider an enforcement action.

24 That, again, that goes back to this general
25 issue in terms of enforcement versus what is before

1 them; what is before the Zoning Administrator when he
2 is making his determination.

3 I will point out as well, in terms of that,
4 the question was raised, in terms of the issue of the
5 affidavit. The affidavit was provided as a
6 memorialization of prior conversations with the owner,
7 at which the owner testified, or stated that they were
8 going to be in compliance, and this was boiled down
9 and memorialized --

10 CHAIRPERSON HILL: I'm sorry, Mr. Tondro. I
11 lost you for one second. I stepped away. Could you
12 repeat that last section for me?

13 MR. TONDRO: I'm sorry. Yes.

14 CHAIRPERSON HILL: No, no, I'm sorry. I
15 didn't hear you.

16 MR. TONDRO: Sure, this is then -- so, I'm
17 sorry. I was dealing with the issue of enforcement.
18 Now, I'm going to what the Zoning Administrator
19 determines, on what basis he issues, right? So, that
20 prior stage before enforcement, the issuing of the C
21 of O, and the question was raised about the affidavit,
22 that the affidavit was issued, it was executed on
23 March the 13th. That was the same day as the second C
24 of O, but the first C of O was issued prior to that on
25 the 2nd of February.

1 And the response is that the affidavit was a
2 memorialization of what had gone on in previous
3 conversations between the Zoning Administrator and the
4 owner in response to the appeal that was raised,
5 additional evidence that was provided. And therefore,
6 this was a -- it doesn't respond only to that. The
7 affidavit deals with a bunch of different issues.
8 That was one of them, the issue of the six unrelateds
9 that was raised.

10 And I'll just call your attention to the BZA
11 Appeal No. 15588, which is of the Brookland Civic
12 Association Advisory Neighborhood Commission. Again,
13 Appeal No. 15588 of January the 8th, 1992. That was
14 the decision date.

15 And just on page 18 in the conclusions of law,
16 the Board said, it was an analogous situation,
17 finally, and I'm quoting, "The Board must determine
18 whether the Zoning Administrator properly accepted
19 affidavits of evidence of the use. The Board notes
20 that the zoning regulations do not make reference to
21 the type of evidence that the Zoning Administrator
22 should require in making decisions about land use.
23 Absence such guidance from the zoning regulations the
24 Board is of the opinion that the Zoning Administrator
25 has the discretion to accept whatever evidence he

1 And finally, then, there's the issue of
2 family. And I agree in some ways with -- well, not so
3 much. I agree with the board members who have
4 expressed a concern that we're entering into a new
5 phase, that this is somehow a little bit different,
6 that it's not simple. I think, as I said before, I
7 think it's both simple and not simple.

8 It's simple in the sense that what this
9 revolves around is a definition of family. Family is
10 six or less, or fewer unrelated folks. That's what
11 we're talking about.

12 Now, let's be clear, if the owner came in with
13 a C of O and had not made an arrangement with Common,
14 or Common disappears, the owner has the right to find
15 two different groups of six people, one for each of
16 those units, Unit A and Unit B in each of the
17 buildings, and those people can occupy that. I don't
18 think that's the fundamental question we're dealing
19 with. That's the easy part, I think.

20 The hard part is whether or not the sort of
21 the lease arrangement with Common, whether that is the
22 same as let's say a situation where I get together, I
23 find five of my friends, or we all agree we're going
24 to live together, we get a lease, and we're living
25 together in that circumstance. I think where you have

1 that situation where there's six people coming
2 together and they have a lease with a landlord, that's
3 clearly then a flat, or that meets a single family,
4 and therefore each unit can be like that without any
5 problems.

6 The problem I think here, which is new, is
7 this issue of how much of the -- of that -- how much
8 disintermediation, to use that term that was talked
9 about before, can be -- can intervene in order to
10 separate? How much of the shared housekeeping can be
11 outsourced? We understand shared housekeeping 40
12 years ago would have included a lot of the washing by
13 hand and so forth. Now a days, often times you have a
14 situation where you outsource that. We don't have a
15 problem with that, with the idea that you have a
16 cleaner coming in to clean.

17 But so, it's a question really of saying how
18 do we define that now. At what level is the
19 arrangement between Common, what level of those
20 services that the individual residents outsource to
21 Common? What is that, that at which point it triggers
22 into something else, where we may not even be sure
23 what else that is. But we're not necessarily -- but
24 what does it go into that?

25 And I think the answer is that we can't

1 determine at this time that this is not something --
2 this is why it goes to an issue of enforceability.
3 It's an issue that comes after the fact when you have
4 facts on the ground. All that we have to go on right
5 now are assertions, they're newspaper articles. Some
6 may be pro, they may be against, they may be accurate,
7 they may not be accurate, they're about -- they talk
8 about different -- they have different points of view,
9 talking about the business model, talking about things
10 like that.

11 It's hard for the Zoning Administrator to make
12 a determination on the property rights of an
13 individual and to sit there and to say that no, you
14 can't do this because I can see into your mind, I know
15 precisely what it is you intend to do. This is a
16 situation, I think, where they have met the basic
17 case.

18 Again, the basic standard, again I'm showing
19 you the -- referring back to that BZA Appeal No.
20 15588. The Zoning Administrator is given ample
21 latitude. That is what he has done in this particular
22 case, precisely because if there is an issue it would
23 be dealt with at the enforcement stage. Thank you,
24 and I rest.

25 CHAIRPERSON HILL: Thank you. I did have a --

1 something I would like from DCRA. I don't think we're
2 going to deliberate. Are we deliberating today?

3 So, we're going to have to go back and kind of
4 think about -- the one thing that I would like to see
5 from the Zoning Administrator if you could, kind of
6 provide something to us that further clarifies the
7 information that the Zoning Administrator had when
8 determining the certificate of occupancy. That would
9 be nice; very helpful.

10 And again, I understand that's the certificate
11 of occupancy for OTA. OTA? OTD. Okay. All right.

12 Does anyone else have anything they want from
13 DCRA?

14 [No audible response.]

15 CHAIRPERSON HILL: Okay. Then, Mr. Freeman, I
16 assume you're going to go last?

17 MR. FREEMAN: I am, thank you.

18 CHAIRPERSON HILL: Okay.

19 MR. FREEMAN: And it's been a long day, much
20 longer for you all. So, I appreciate everyone's time.

21 I know this matters to folks. It matters to us, it
22 matters to the people living there. But at the end of
23 the day, unfortunately for the appellants, I don't
24 think they've met their burden.

25 You haven't heard anything here today from

1 them that proves that there will be more than six
2 people living there, that they will not operate as a
3 single housekeeping unit, or that they will not use
4 certain rooms and housekeeping facilities in common.

5 And that is really the crux of what the Board
6 is looking at today. There's been a lot of discussion
7 on Common and how they operate, and what they do and
8 what they don't do. Common is not the owner. OTD is
9 the owner of this property. OTD has said they will
10 comply and operate in accordance with the law as
11 evidenced on their building permit, as evidenced on
12 the certificate of occupancy, and they will do that.
13 They will ensure that that happens.

14 All of the evidence that you've heard today is
15 based on news articles from places outside of D.C. I
16 would suggest to you, Shane and I were debating
17 whether I should use the term, "fake news," given
18 where we are. I would suggest to you that fake news
19 is not dispositive of how the property in the District
20 of Columbia will be operated.

21 And they're asking you to do a big lift. This
22 building was built in 2016. They're asking you to
23 say, not only are the building permits invalid, and
24 the C of O invalid, the result of that means it has to
25 be vacant and/or demolished, based on fake news. Not

1 on evidence that it has actually been or will be
2 operated in violation of any D.C. zoning regulation.

3 Spent a lot of time on trellis, and whether
4 that makes it a single building. We're not positing
5 that this trellis was added in order to make it a
6 single building. If the trellis is an issue, we'll
7 take it off. I mean, we don't need the trellis
8 because it serves no building code or zoning purpose.
9 That's a red herring. It's not, as Mr. Maximilian
10 said, it's not really relevant here because we're not
11 arguing that that trellis creates a formal
12 communication between the two.

13 If you look at what's in the record, you look
14 at the signed C of O applications, you look at the
15 language on the C of Os, you look at the averments in
16 our pleadings, you look at the affidavit of Common, to
17 the extent it's relevant or not, all of that suggests
18 we intend to comply with the law. They have not
19 submitted anything indicating that we will not comply
20 with D.C. laws or regulations.

21 Instead, based on hypotheticals, what might
22 happen in the future, they're asking you to again, to
23 take an extreme, extreme step of revoking the C of O
24 and the building permit, preemptively, based on no
25 evidence.

1 Again, this isn't about Common, but if you
2 were to say, you know what, we don't like how Common
3 operates, we think how they operate is illegal, and as
4 a result of that we're going to revoke the C of Os,
5 we'd say okay, well, then Common won't operate it.
6 We'll do it ourselves. We can self-manage it. So, my
7 point is the fact that Common is involved doesn't
8 change the use from a flat. A flat that whether it's
9 Common, whether it's Kyrus, whether it's Shane,
10 whether it's Peter, operating it, leasing out those
11 units to six unrelated people acting as a single
12 housekeeping unit, using certain rooms and facilities
13 in common. That is the test. Not who the property
14 manager is, how they operate, what their business
15 model is.

16 And I say that respectfully. I know there's a
17 lot of questions, comments, and interest in their
18 business model, but that is not the test or the
19 question that's before you, BZA. The question is
20 whether the plans and the C of O comply with the
21 zoning regulations. That concludes my statement.
22 Thank you.

23 CHAIRPERSON HILL: All right, great. Thank
24 you. Let's see. So, does the Board have anything
25 else? All right.

1 So, Mr. Moy, I did ask something from DCRA,
2 and then I guess we can go ahead and put this on for a
3 decision. I think Mr. Hood was back again on the
4 12th. Is that what I remember?

5 MR. MOY: Mr. Hood is back on April 5th.

6 CHAIRPERSON HILL: April 5th. And April 5th
7 is a really big day. When is he back after April 5th?

8 MR. MOY: It would be May 10th, which is
9 pretty far away.

10 CHAIRPERSON HILL: I wonder if he'll -- we had
11 just scheduled a bunch of stuff for the 12th, right?
12 Do you know if -- do you know -- I guess, I don't know
13 if Mr. Hood will come back here for the 12th, maybe,
14 just for the decision in the morning, perhaps?

15 MR. MOY: Well, he has done that in the past.
16 I mean, I could confer with him tomorrow.

17 CHAIRPERSON HILL: Okay.

18 MR. MOY: If you want to set this up
19 tentatively then I'll know for sure tomorrow.

20 CHAIRPERSON HILL: Mr. Freeman?

21 MR. FREEMAN: I actually have conflicts on the
22 5th. I'm actually traveling on the 12th, so.

23 CHAIRPERSON HILL: That's okay. The 5th --
24 I'm only responding because the 5th is a very busy
25 day. So --

1 MR. FREEMAN: And on the 12th I have an
2 appointment. So, if it had to get to May, I'd like to
3 get a date certain today.

4 CHAIRPERSON HILL: Okay.

5 MR. FREEMAN: So, if it had to get to May I'd
6 like it to be a time that I know I could be here,
7 please.

8 CHAIRPERSON HILL: Okay. Well, you're helping
9 me, so that's fine. If Mr. Moy is saying that it's
10 going to be May 10th? May 10th? May 10th. So, Mr.
11 Tondro, if I could get -- well what I asked for, I
12 don't know what is a convenient time for you so we
13 could put down a date. Or, Mr. Moy, if you can --
14 giving us enough time to look at whatever it is before
15 May 10th, as a deadline for DCRA.

16 MR. TONDRO: Just for the record, I believe,
17 and I apologize, I missed part of that. The Zoning
18 Administrator will not be able to be here on May the
19 10th. I'm not sure that his presence is required, but
20 I just want to alert you.

21 CHAIRPERSON HILL: Will you have access to a
22 computer?

23 MR. LeGRANT: I'm going to be in New York City
24 at a conference.

25 CHAIRPERSON HILL: Are you going to visit our

1 friend that had to go run up there to New York City?

2 MR. LeGRANT: I might. I might have to, yes.

3 CHAIRPERSON HILL: Yeah. Oh, okay. I was
4 going to joke you'd watch it on the web but --

5 MR. TONDRO: Don't ask where -- don't ask
6 where he's staying or the circumstances.

7 CHAIRPERSON HILL: No, no, no, no, no, no, no.
8 That's quite all right.

9 So, what date, Mr. Moy, that maybe we can get
10 some information back from DCRA?

11 MR. MOY: For clarity, is this for a decision?

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: Okay. So, yeah, so May 10th.

14 CHAIRPERSON HILL: A May 10th decision. And
15 I'm sorry, there was some information that I wanted
16 back from DCRA.

17 MR. MOY: Yeah, which --

18 CHAIRPERSON HILL: Giving us enough time to
19 look at it, and I don't have a calendar in front of me
20 so if you could --

21 MR. MOY: No, I do, I do, I do, I do.

22 CHAIRPERSON HILL: -- give me a date for --

23 MR. MOY: I do. Okay. Let's see, if that's -
24 - I don't know if there's anything else, but May 10th.
25 Give Board sufficient time. Since it's that far out.

1 CHAIRPERSON HILL: Is like the 5th fine? May
2 5th?

3 MR. MOY: I was going to say, maybe Monday,
4 May 1st.

5 CHAIRPERSON HILL: Okay.

6 MR. MOY: If there's ample time for --

7 CHAIRPERSON HILL: May 1st.

8 MR. MOY: -- all the parties, because you'll
9 have all of April.

10 CHAIRPERSON HILL: Okay. May 1st. All right,
11 great.

12 MR. FREEMAN: The responses? When you said
13 enough time.

14 MR. MOY: Oh, well, I --

15 CHAIRPERSON HILL: No, no, no, no, I just want
16 -- the record is closed except for what I wanted from
17 DCRA, unless the Board has other things. I just want
18 to know what information the Zoning Administrator had
19 when he was reviewing the certificate of occupancy.
20 Okay. So, May 1st. Okay.

21 Well, thank you all very much. And you have a
22 question?

23 MR. FREEMAN: Question. Are you looking for
24 proposed orders or are you --

25 MR. MOY: It's findings of fact, conclusions

1 of law.

2 CHAIRPERSON HILL: If anyone wants to submit
3 findings of fact and conclusions of law, you're
4 welcome to.

5 MS. GLAZER: Just want to point out, Mr.
6 Chair, if you do require that you have to take into
7 consideration when the transcript would be available.
8 That was an issue recently on an appeal.

9 MR. FREEMAN: If you want it, we'll do it. If
10 not --

11 CHAIRPERSON HILL: I don't need any more
12 information. I've got a lot of information. But,
13 that's why I just got confused for a second. I
14 thought you were actually helping me, but I don't
15 think so. So, okay. So, I'm back to the beginning.

16 So, please get that information by the 1st of
17 May, and then we're going to go ahead and do decision
18 making on the 10th. Okay?

19 MR. FREEMAN: So, the record is closed, only
20 for what they're going to submit. Okay.

21 CHAIRPERSON HILL: Exactly. Any other
22 questions from anybody?

23 [No audible response.]

24 CHAIRPERSON HILL: Okay. All right. Well,
25 thank you all very much.

1 MS. McCLELLAND: Thank you.

2 CHAIRPERSON HILL: So, in accordance with
3 Section 405(C) of the Open Meetings, D.C. Official
4 Code Section 2575(C), I move that the Board of Zoning
5 Adjustment hold a closed meeting on Tuesday, March
6 28th, 2017, from 9:00 a.m. to 12:30 p.m. for the
7 purpose of conducting internal training as permitted
8 by Section 405(b)(12) of the Act. Is there a second?

9 MR. HART: Second.

10 CHAIRPERSON HILL: Motion has been made and
11 seconded. Will the secretary please take a roll call
12 vote in the motion:

13 [Roll call vote taken.]

14 MR. MOY: When I call the board members by
15 name if you could reply with a yes or a no?

16 Ms. White?

17 MS. WHITE: Yes.

18 MR. MOY: Chairman Hill.

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: Vice Chair Hart.

21 MR. HART: Yes.

22 MR. MOY: There's no other members
23 participating today. Motion carries, sir.

24 CHAIRPERSON HILL: Thank you, Mr. Moy. As it
25 appears the motion has passed I request that the

1 Office of Zoning provide notice of this closed meeting
2 in accordance with the act.

3 UNIDENTIFIED SPEAKER: [Speaking off
4 microphone.]

5 CHAIRPERSON HILL: March 28th.

6 UNIDENTIFIED SPEAKER: March 28th.

7 CHAIRPERSON HILL: Mr. Moy, do we have any
8 other things coming before the Board?

9 MR. MOY: No.

10 CHAIRPERSON HILL: All right. Then we stand
11 adjourned. Thank you.

12 [Whereupon, at 7:06 p.m., the Public Meeting
13 and Hearing were adjourned.]

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