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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

9:37 a.m. to 2:15 p.m.
Wednesday, May 3, 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.
1100 Connecticut Avenue, NW Suite 810 Washington, D.C. 20036
Washington: (202) 898-1108 / Baltimore: (410) 752-3376
Toll Free: (888) 445-3376

1 Board Members:

2 CARLTON HART, Vice Chairperson

3 LESYLLEE WHITE, Board Member

4 MICHAEL TURNBULL, Zoning Commission

5 CLIFFORD MOY, BZA Secretary

6

7 Office of Planning

8 MATTHEW JESICK

9 KAREN THOMAS

10 ANNE FOTHERGILL

11 CYRSTAL MYERS

12 BRYAN GOLDEN

13

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

2 MR. HART: Good morning, ladies and gentlemen.

3 We are located in the Jerrily R. Kress Memorial
4 Hearing Room at 441 4th Street Northwest. This is the
5 May 3rd, 2017 public hearing of the Board of Zoning
6 Adjustment of the District of Columbia

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

11 Copies of today's hearing agenda are available
12 to you and are located in the wall bin near the door
13 to my left. Please be advised that this proceeding is
14 being recorded by a court reporter, and also is
15 webcast live. Accordingly, we must ask you to refrain
16 from any disruptive noises or actions in the hearing
17 room.

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

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

1 been sworn in by the secretary. Also, each witness
2 must fill out two witness cards. These cards are
3 located in the table near the door, and on the witness
4 tables.

5 Upon coming forward to speak to the Board,
6 please give both cards to the reporter sitting at the
7 table to my right.

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

15 The record shall be closed at the -- excuse
16 me. The order of procedure for special exceptions,
17 variances, and appeals are also located in the bin as
18 you enter the room to my left.

19 The record shall be closed at the conclusion
20 of each case, except for any materials specifically
21 requested by the Board. The Board and staff will
22 specify at the end of the hearing exactly what is
23 expected, and the date when the persons must submit
24 the evidence to the Office of Zoning. After the
25 record is closed, no other information shall be

1 accepted by the Board.

2 The District of Columbia Administrative
3 Procedure Act requires that the public hearing on each
4 case be held in the open before the public. Pursuant
5 to Subtitle 405B and 406 of that act, the Board may,
6 consistent with its rules and procedures, and the act,
7 enter into a closed meeting on a case for purposes for
8 seeking legal counsel on a case, pursuant to D.C.
9 Official Code, Subsection 2575(b)(4), and/or
10 deliberating on a case pursuant to D.C. Official Code
11 Subsection 2575(b)(13), but only after providing the
12 necessary public notice. And in the case of an
13 emergency closed meeting, after taking a roll call
14 vote.

15 The decision of the Board in cases must be
16 based exclusively on the public record. To avoid any
17 appearance on the contrary, the Board requests that
18 persons present not engage the members of the Board in
19 conversation. Please turn off all beepers and cell
20 phones at this time so as not to disrupt these
21 proceedings.

22 Preliminary matters are those which relate to
23 whether a case will or should be heard today, such as
24 request for postponement. Excuse me, postponement,
25 continuance, or withdrawal, or whether proper and

1 adequate notice of the hearing has been given.

2 If you are not prepared to go forward with the
3 case today, or you believe that the Board should not
4 proceed, now is the time to raise such a matter.

5 Mr. Secretary, do you have any preliminary
6 matters?

7 MR. MOY: Good morning, Mr. Chairman and
8 members of the Board. Very quickly, and this is in
9 reference for today's docket, and something else too,
10 but Application No. 19486, this is of 1500 17th
11 Street, LLC, has been postponed and rescheduled to
12 June 21st, 2017. Two other cases that are not on
13 today's docket but have been rescheduled, the first is
14 Application No. 19507, this is of 1005 First, LLC,
15 rescheduled from June 14th, 2017 to June 21st, 2017,
16 and finally Appeal 19485. This is of Chainbridge Road
17 Preservation Committee has been rescheduled from May
18 17th, 2017, to June 14th, 2017.

19 And that's it for me, Mr. Chair.

20 MR. HART: Thank you, Mr. Secretary.

21 And all individuals wishing to testify today,
22 please rise to take the oath. Mr. Secretary, can you
23 administer the oath?

24 MR. MOY: Good morning.

25 [Oath administered to the participants.]

1 MR. MOY: Thank you. You may consider
2 yourselves under oath.

3 MR. HART: Thank you, Mr. Secretary.
4 Can you please call the first case?

5 MR. MOY: Yes, sir. With pleasure. That
6 would be -- well, there are two applications on the
7 expedite review calendar. The first is Application
8 No. 19470 of Susan Gibbs Hall as advertised and
9 captioned for special exception relief under Subtitle
10 D, Section 5201. This is from the front yard setback
11 requirements of Subtitle D 305.1, which would
12 construct a two-story addition to the front of an
13 existing one-family dwelling, R-2 Zone at premises
14 5821 3rd Street Northeast, Square 3713 N, Lot 22.

15 MR. HART: Thank you, Mr. Secretary. Is the
16 Board ready to deliberate?

17 MS. WHITE: Yes.

18 MR. HART: Would a board member want to start?
19 No? That's fine.

20 MR. TURNBULL: Well, we hate to deprive you of
21 that honor.

22 No, Mr. Chair, I think there isn't anything in
23 here that I have any objection to. I don't think it's
24 the successful front. It's not quite as compatible as
25 I would have liked, but I really have no objection to

1 it.

2 MR. HART: Thank you.

3 MS. WHITE: My comments are similar. The
4 applicant is making a request to increase living space
5 on the first floor with a larger living room, and
6 second floor is going to increase a bedroom and an
7 additional bedroom.

8 Office of Planning is recommending approval of
9 this special exception. There appears to be a strong
10 community support. I believe there's at least 12
11 statements from neighbors including a neighbor who
12 lives in the adjacent property. The ANC is in support
13 and ANC 4B.

14 There are three recommended conditions, I
15 believe, with this particular application that's come
16 from the ANC. So, assuming that the applicant agrees
17 with those conditions I don't see any matter that I
18 have issue with.

19 MR. HART: Thank you. Yeah, I actually would
20 agree in terms of reading the OP report. I also feel
21 that I could support the application. The project is
22 fairly straight forward as you both have noted, and
23 the application -- the applicable part of the zoning
24 code that the applicant needs relief from is Subtitle
25 D 305.1, regarding specifically the front yard

1 setback. The applicant needs to use the criteria in
2 52 -- excuse me, 5201 regarding special exception
3 regulations, and I feel that the OP report does
4 provide the appropriate analysis demonstrating how the
5 applicant would be able to meet this criteria.

6 And, therefore, I would like to make a motion
7 that we approve Application 19470 as read by the
8 secretary for this case.

9 MS. WHITE: Second.

10 MR. HART: And hearing motion and seconded,
11 all in favor?

12 [Vote taken.]

13 MR. HART: Mr. Secretary?

14 MR. MOY: Staff would record the vote as
15 three, to zero, to two. This is on your motion,
16 Chairman Hart, to approve the application for the
17 relief requested. These are as shown on approved
18 plans under Exhibit 6. Seconding the motion, Ms.
19 White. Also in support, Mr. Turnbull. We have a
20 board member not present with us today, and we have a
21 board seat vacant. The motion carries.

22 MR. HART: Thank you. A summary order?

23 MR. MOY: Thank you. The second case
24 application is Application No. 19471 of William and
25 Kate Fralin as captioned and advertised for a special

1 exception under Subtitle D, Section 5201. This is
2 from the front setback requirements of Subtitle D,
3 Section 305.1. This would construct a front porch
4 addition to an existing one-family dwelling R-1-B
5 Zone, premises 3816 49th Street Northwest, Square
6 1476, Lot 33.

7 MR. HART: Thank you, Mr. Secretary. I'll
8 start the deliberation. Regarding the project, I've
9 read the OP report, and I could support the report.
10 Again, as with the other case, I think this project is
11 fairly straight forward, a proposal to add an open
12 porch on the existing dwelling in an R-1-B Zone, the
13 applicable part of the zoning code that the applicant
14 needs relief from is Subtitle D 305.1, and this is
15 with regard to specifically the front yard setback.

16 And, I understand that the ANC has recommended
17 approval with the condition about the porch being
18 enclosed. Or actually, requiring the porch to be
19 open. And I think that looking over the plans, the
20 porch is clearly an open structure, and understanding
21 that I don't think we need to actually add in any
22 other information regarding that, I think it's fairly
23 straight forward.

24 If the applicant would -- or this owner or
25 future owner of the building would need to -- would

1 want to enclose the space, they would need to come
2 back to the Board of Zoning Adjustment for approval
3 for that. So, I don't really think that we need to
4 condition that -- you know, any condition about
5 requiring this to be open because it is already open.

6 I don't know if anyone else has any other
7 comments on this case.

8 MR. TURNBULL: Yeah. I think, I mean, it's
9 basically replacing an existing porch. Or a smaller
10 porch. But I guess the only thing that we could do in
11 the order is, when we say porch addition, simply say
12 an open porch. And so, that would just clarify what
13 kind of a porch it is and make it clear.

14 MR. HART: Yeah, agreed. I think that's a
15 good -- something good to add into the order.

16 MS. WHITE: I would agree with that, that we
17 do include language indicating that it's an unenclosed
18 porch. And with that, I could support the
19 application.

20 MR. HART: And, I don't think we have any
21 other comments that folks would like to make. I would
22 therefore make a motion to approve Application 19471
23 and as read by the secretary for this case.

24 MR. TURNBULL: Second.

25 MR. HART: Hearing a motion and second, all in

1 favor.

2 [Vote taken.]

3 MR. MOY: Staff would record the vote as
4 three, to zero, to two. This is on the motion of
5 Chairman Hart. Seconding the motion, Mr. Turnbull.
6 Also in support, Ms. White. We have a board member
7 not present, a seat vacant. The motion carries.

8 MR. TURNBULL: Summary order.

9 MR. MOY: Yes, sir. And I guess I should add
10 that these would be as shown on plans under Exhibit
11 9C.

12 Okay. Application No. 18977A, of Weaver
13 Prospect, LLC. This, Mr. Chair, is a request for a
14 time extension of BZA Order No. 18977, approving
15 relief pursuant to the zoning regulations of 1958
16 under Title 11, DCMR, Section 3103.2 for a variance
17 for the off-street parking requirements under 2201,
18 allowing the construction of a two-story commercial
19 retail center in the C-2-A District. This is at
20 premises 3220 Prospect Street Northwest, Square 1207,
21 Lots 104, 838, and 839.

22 I think I'll just leave it for that. The
23 request for the two-year time extension is, in your
24 case folders under Exhibit 1.

25 MR. HART: Thank you, Mr. Secretary. For this

1 case I have read the record and could support the OP
2 report which I think correctly analyzes this project
3 and I feel that we should be granting the time
4 extension under the Zoning Code, Subtitle Y, 705
5 allows for a time extension for a BZA order for good
6 cause after filing a written request prior to the
7 order expiring.

8 I think that the applicant has met the
9 requirements in the Subtitle Y 705, particularly
10 because the extension request was -- there were, I
11 guess, three different pieces of criteria. The first
12 is that they've served the request to the ANC and OP.
13 They did that within a 30 -- allowing 30 days for the
14 ANC and OP to respond. There has been no substantial
15 change in any of the material facts, which is the
16 second criteria.

17 And then the third is that the good clause --
18 good cause aspect of this is because they're looking
19 for the time extension because they have an inability
20 to obtain sufficient project financing due to economic
21 and market conditions, which are beyond the
22 applicant's control. So, I feel that the applicant
23 has provided sufficient information for us to be able
24 to give the -- allow the time extension. Any other
25 comment on that?

1 MS. WHITE: No, I would agree with your
2 comments that they did meet the criteria under
3 Subtitle Y, Section 705, Section A and B, as well as
4 C, which includes some of the constraints and issues
5 that they're having with obtaining construction
6 financing from banks, and finding appropriate tenants
7 for the space.

8 So, I'd have no problem with supporting this
9 application for a time extension.

10 MR. TURNBULL: I would concur with both of
11 you. I think that the key, or one of the key items is
12 that the lenders that they're working with are asking
13 that they have a 65 percent prelease signup, and I
14 think that they're finding that hard to accomplish.
15 So, I would agree with your -- with the two of you.

16 MR. HART: Thank you. And with that, I think
17 we could -- I'll make a motion to approve the
18 Application No. 18977A of Weaver Prospect, LLC, and
19 this is -- as the secretary has read earlier.

20 MS. WHITE: Second.

21 [Vote taken.]

22 MR. HART: Mr. Secretary.

23 MR. MOY: Staff would record the vote as
24 three, to zero, to two. This is on the motion of
25 Chairman Hart to approve the request for a time

1 extension for two years. Seconding the motion, Ms.
2 White. Also in support, Mr. Turnbull. Again, a board
3 member not present, board seat vacant, motion carries.

4 MR. HART: A summary order.

5 MR. MOY: Yes, sir.

6 MR. HART: So, I think we can start with the
7 public hearing at this time.

8 MR. MOY: Yes. The Board's hearing session.
9 First application is No. 19476 of D.C. International
10 School as captioned and advertised for a special
11 exception relief under Subtitle C, Section 1504.1 from
12 the single enclosure requirements of Subtitle C,
13 Section 1500.6. This would screen the rooftop
14 mechanical equipment in multiple enclosures on an
15 addition to an existing building in the R -- or
16 rather, in the WR-7 Zone at premises 6900 Georgia
17 Avenue Northwest, Parcel 0319, Lot 801.

18 MR. HART: Yeah, you may come up. I was
19 hoping there was somebody coming to the table.

20 Welcome. Can you please state your names?

21 MS. DYDAK: My name is Kate Dydak. I work for
22 Brailsford & Dunlavey on behalf of D.C. International
23 School. And my home address is 914 16th Street South,
24 Arlington, Virginia.

25 MR. HART: Thank you.

1 MS. NEERIEMER: I'm Ann Neeriemer with Perkins
2 Eastman D.C., the architects for D.C. International
3 School at Delano Hall. Property address is 6900
4 Georgia Avenue Northwest.

5 MR. HART: And can you say your last name, or
6 spell your last name? Just press it once and it will
7 stay on.

8 MS. NEERIEMER: There we go. It's Neeriemer,
9 N-E-E-R-I-E-M-E-R.

10 MR. HART: Okay. Thank you. Thank you for
11 the -- got the new drawings I guess you've submitted
12 to us.

13 So, what we'll do is to have you give a
14 presentation. How much time do you think you'd need
15 for a presentation?

16 MS. NEERIEMER: I think we could probably go
17 through it in about 10 minutes.

18 MR. HART: Mr. Secretary, could we have 10
19 minutes on our clock, just to keep track of time.
20 It's helpful for us to do that.

21 And, that's fine, and you may begin at any
22 point.

23 MS. NEERIEMER: Okay. Basically, what I will
24 do is go through the images and documents provided in
25 the application. I think you all are familiar with

1 where we are on the Walter Reed Campus.

2 The upper view here is the existing footprint
3 of the building, and then the proposed site plan. So,
4 the piece that we're talking about is this rooftop
5 right here on our new addition.

6 MR. HART: Can you hit control L? It will
7 make the image larger.

8 MS. NEERIEMER: Sure.

9 MR. HART: Thank you.

10 MS. NEERIEMER: Just some views of that
11 existing property. Here is the roof plan for our
12 addition. Aspen Street would be at the bottom of the
13 view here. So, this larger rectangle, you can see my
14 mouse, right?

15 MR. HART: Yeah.

16 MS. NEERIEMER: Is the roof over the
17 gymnasium, and then it has a series of skylights along
18 the side. This roof is slightly higher than the
19 adjacent roof, which is this longer rectangle. And
20 this lower flat roof is where our mechanical units are
21 housed. These two units to the north side do feed
22 into the existing building, which has a gabled roof as
23 you saw in the previous views. So, we tried to be as
24 close as we could with staying within our sort of
25 structural ability on the rooftop.

1 And then this lower unit here services the
2 gymnasium and the addition itself. So, what we are
3 proposing is outlined in blue here is one roof screen
4 for this unit at the lower end. And then a separate
5 screen around the upper two units, just as a single
6 screen that comes around here.

7 And I think the further reasoning for this
8 will be evident when we get to the perspective views.

9 But basically, we felt like this provided less stuff
10 for the neighbors to look at, which I think is
11 ultimately the goal of the zoning state, or section
12 that we're talking about.

13 So, this is the view from Aspen Street. We
14 have dashed in here, this future building that the
15 developer has proposed. We don't actually know for
16 sure the height of that building, but this is the
17 proposed location for it.

18 So, at the end of the day we're not sure how
19 much any of this is visible. But for the foreseeable
20 future for the next probably eight years, this will be
21 seen. So, as you can see, required by strict reading
22 of the zoning regulations, the roof screen would
23 extend this whole distance. Our proposal is to
24 shorten that so that you see a single roof screen
25 here. And the other one is actually hidden by our

1 parapet on the south side.

2 MR. HART: Which exhibit is this? Do you
3 know?

4 MS. NEERIEMER: This is Exhibit E. This was
5 the, I believe the name of the --

6 MR. HART: Got you.

7 MS. NEERIEMER: -- file was -- oh, well, you
8 have the paper copy I guess, right?

9 MR. HART: Yeah, I just, I was -- I thought I
10 had seen this and I couldn't recall which -- sorry.
11 We've got a lot of cases to look at sometimes and it's
12 hard to --

13 MS. NEERIEMER: Yeah, I'm sure.

14 MR. HART: -- recall all of the -- where the
15 exhibits are for each of these.

16 MR. TURNBULL: Is that in the whole set of
17 drawings that we got?

18 MS. NEERIEMER: Yes, it is. Yes, this is part
19 of our original application.

20 MR. TURNBULL: You're not asking for any
21 setback relief are you, meeting the setbacks?

22 MS. NEERIEMER: We are.

23 MR. TURNBULL: Okay.

24 MS. NEERIEMER: And those drawings are also in
25 your original package. The additional 11 X 17 sheet

1 that I just submitted, there was a discrepancy of
2 three quarters of an inch of the setback that OP asked
3 us to correct. And so, that's what that is.

4 MR. TURNBULL: Three quarters of an inch?

5 MS. NEERIEMER: Yes.

6 MR. TURNBULL: They're good. They really,
7 they follow those things.

8 MS. NEERIEMER: They're sticklers.

9 So, the other thing that I just submitted to
10 you is essentially a view opposing the one that we're
11 seeing here. So, looking from the opposite side on
12 Aspen Street. And let me just open that on the
13 screen.

14 MR. HART: So, one of these is closer to 16th
15 Street, and one of them is kind of looking towards
16 16th Street, at your -- the one that you were just
17 showing was, you were kind of standing -- the viewer
18 was standing closer to 16th Street and looking at your
19 building.

20 MS. NEERIEMER: Correct.

21 MR. HART: Okay.

22 MS. NEERIEMER: Looking towards the --

23 MR. HART: The west side of the --

24 MS. NEERIEMER: Towards the west, yes.

25 MR. HART: Or they were looking towards the --

1 MS. NEERIEMER: Looking -- facing east.

2 MR. HART: They were looking east. Yeah,
3 facing -- yes.

4 MS. NEERIEMER: Looking at the western side of
5 the building, yes.

6 MR. HART: Yes.

7 MS. NEERIEMER: So, some additional views
8 here, and I wonder if I can -- can I zoom in on this?
9 Not really.

10 So, this is looking from the actual property
11 within the playing field. This is the piece of the
12 roof screen that you see there. There's very little.

13 One thing we wanted to address was that the
14 original zoning reviewer had made a comment about a
15 rooftop duct that we have, and this is where it sort
16 of runs, from this unit into the gabled roof here.
17 And if you can see that little spec of yellow, that's
18 how much you see of it. It is below four feet, so it
19 actually is within the zoning requirements there.

20 MR. HART: And can you also talk a bit about,
21 I think the OP report also had a -- and I'm sorry if
22 you're going to talk about this later, but needing
23 relief from Subtitle C, 1500 -- 1500.9, which is
24 penthouse wall height.

25 MS. NEERIEMER: The height. Correct. Let me

1 go back to the other document here. So, if I -- we
2 look at the roof plan here, our screen, you'll see, is
3 wrapping three sides of the unit, and the third unit
4 is enclosed by the parapet of this higher roof of the
5 gym. That parapet wall height is slightly lower than
6 the screen height. The screen is meeting the zoning
7 regulations in terms of being as high, or I think is
8 actually a little bit higher than the unit by a couple
9 of inches, and still within that setback.

10 However, on the eastern side, it's right up
11 against this parapet wall, and they're not exactly the
12 same height. We're just using the building itself to
13 screen it, which is why I provided the additional view
14 which we also provided to OP, so the paper with the
15 two color views that was just passed out shows you how
16 that's not visible, basically, when you're looking
17 from the other side of the street. So, it's not
18 visible either standing on Aspen looking directly
19 north at the building, nor is it visible standing on
20 the east side of the building and looking towards the
21 west.

22 MR. HART: Thank you for that. It's helpful
23 to understand that.

24 Are you saying that you don't think that you'd
25 need the other relief? Is that what you're -- because

1 of different heights?

2 MS. NEERIEMER: No, I think we -- I guess we
3 do need the relief. I think we -- it didn't come up
4 in our original zoning review, and so that's why we
5 hadn't included it.

6 MR. HART: Okay. And I'll talk to OP about
7 that later, but I just wanted to actually get that
8 from you as well.

9 Regarding the HPRB comment, they -- in their
10 report, they -- and I'm sorry, I don't have the
11 exhibit in front of me. The exhibit number. Thought
12 I'd be able to find it but I can't recall where that
13 is. Maybe it's the OP report that actually had it in
14 there.

15 They describe that -- it was in there. In the
16 OP report, Exhibit 37, last page, I guess page 4, that
17 the HPRB and the Historic Preservation office staff
18 they had this discussion about the preference that the
19 screen walls be broken down into different segments in
20 order to reduce their massing and visibility. Are you
21 considering any of that, or is that kind of -- is this
22 what you have?

23 MS. NEERIEMER: This is the breakdown. So,
24 that's what we're -- but it doesn't meet the zoning
25 regulations, so that's what we're seeking relief for.

1 MR. HART: So, you were trying to -- you were
2 using their comments to -- and you developed this?

3 MS. NEERIEMER: Right. Exactly. So, they
4 would prefer to see this lower view because it's just
5 less roof screen rather than this long one by the
6 historic standard. So.

7 MR. HART: Okay. I'm sorry, I know you can --
8 you're probably wanting to finish.

9 MS. NEERIEMER: Oh, no. I mean, actually I'm
10 just here to answer your questions, so I think you
11 know, you guys have seen all of this. This is
12 actually the last page, so just the view within the
13 property and what you see there. And as you can see,
14 the other screen is not visible and the height
15 difference is not visible from any point on the site,
16 or on the street adjacent. So.

17 MR. HART: Okay.

18 MS. NEERIEMER: And that's the last page, so.

19 MR. HART: Thank you. Thank you very much.
20 Any other questions for the applicant?

21 With that, I think we'll hear from the Office
22 of Planning.

23 MR. JESICK: Thank you, Mr. Chairman and
24 members of the Board. My name is Matt Jesick. The
25 Office of Planning totally supports the application

1 and recommends approval. We just wanted to be sure
2 that all the plans were internally consistent, and
3 that's why we recommended the additional plans be
4 submitted. Thank you.

5 MR. HART: And with regard to the additional
6 relief?

7 MR. JESICK: Yes, we -- I don't know that
8 we've ever seen a situation like this before where
9 there's a screen wall on one side and a parapet wall
10 on the other side. It's essentially functioning as a
11 screen wall. So, just to be on the safe side we
12 recommended that that additional relief be granted.
13 Again, we don't have an issue with it, but just wanted
14 to cover all our basis.

15 MR. HART: And does the applicant have -- you
16 think that that's okay to include it, to amend what
17 you're asking for for relief.

18 MS. NEERIEMER: Yes, and I thank you for
19 pointing it out. I think we just didn't recognize
20 that we were out of the compliance there, and so I
21 appreciate OP pointing that out and, yeah, we'd like
22 to add that just as he said, to be on the safe side.

23 MR. HART: Thank you. Any questions for the
24 Office of Planning?

25 [No audible response.]

1 MR. HART: Okay. Now we'll see if there are
2 any members of the audience that -- from the ANC that
3 are in support of the application? Are there any
4 other folks that are in support of the application
5 that would like to come forward? Anyone in
6 opposition?

7 [No audible response.]

8 MR. HART: Very quiet. So, I think that we
9 can -- I think that you've provided quite a bit of
10 information for us and helpful to understand the
11 different views. I actually did find the images, I
12 was looking under architectural plans and I realized
13 that it was Exhibit 6 under the maps and color photos
14 that it would come under.

15 MR. TURNBULL: Architects are tricky that way.

16 MR. HART: Let's see, I was looking to see if
17 there were any other questions that I had. Yeah, I
18 don't think that there are any other questions that I
19 have at this point for the applicant.

20 And I'll open it up to the other board members
21 if they have any other questions at this time.

22 MR. TURNBULL: Thank you, Mr. Chair. I think,
23 no, the only question that I had and Ms., I'm going to
24 screw this up, Neeriemer. Neeriemer?

25 MS. NEERIEMER: Neeriemer.

1 MR. TURNBULL: Neeriemer. I was close. All
2 right, and I think she, when I asked about the
3 setbacks, I think that was the only issue and I think
4 OP had raised that, and I think she answered that so
5 I'm satisfied with that.

6 And, the OP -- we have, I should say, the ANC
7 report at Exhibit 41, and they were in support by a
8 vote of nine to zero, so I have no objections to going
9 forward with this.

10 MR. HART: Yeah, we actually have two ANC
11 reports.

12 MR. TURNBULL: Two. That's right. We did.
13 Two.

14 MR. HART: ANC 4A and ANC 4B.

15 MR. TURNBULL: You're right.

16 MR. HART: But neither of them had -- they
17 both were very supporting.

18 MR. TURNBULL: I guess I was looking at 4B.
19 Yeah.

20 MR. HART: Yes.

21 MS. WHITE: No, I think with the additional
22 clarification that you provided, you've answered my
23 questions regarding the setback and the height. And
24 frankly, you know, the visibility issue from Aspen
25 Street. I'm very familiar with that area and I know,

1 you know, that project is a larger part of a Walter
2 Reed project that's in its very, very infant stages
3 with OP's weigh in on the project, as well as the
4 submissions that we received from ANC 4A and 4B. I
5 think 4A, I think, covers on the east side, maybe for
6 the other ANC, covers the area north of Walter Reed if
7 I'm not mistaken. But they appear to be in support.
8 There doesn't appear to be any opposition that's been
9 filed on the record.

10 So, I'm comfortable with the feedback that
11 we've gotten from the applicant.

12 MR. TURNBULL: Yeah, Mr. Chair, I'm looking at
13 it. 4A voted seven zero to approve.

14 MR. HART: Thank you for that clarification.
15 And I'll also note that there is a letter of support
16 from the Shepherd Park Citizen's Association. They're
17 also in support of this and wanted to make sure that
18 that was on the record as well.

19 So, it doesn't seem like there is anyone here
20 to testify. Does the applicant want to say anything
21 in closing?

22 MS. NEERIEMER: Thank you for your time.

23 MR. HART: Thank you very much for coming in.
24 And, I think we'll close the record, making sure that
25 there are no other additional information from the

1 board members. No? We will close the record for the
2 case.

3 And is the Board ready to deliberate?

4 [No audible response.]

5 MR. HART: You know, after reviewing the
6 record, in particular the Office of Planning report, I
7 would be able to support this application. The Office
8 of Planning report included analysis that described
9 how the project would -- how the relief should be
10 granted. And I would also note that both the ANC 4A
11 and ANC 4B reports voted unanimously to approve the --
12 voted unanimously for the BZA to approve the
13 application, and I would make a motion to approve
14 Application 19476 as read by the secretary. Second?

15 MS. WHITE: Second.

16 [Vote taken.]

17 MR. HART: Mr. Secretary?

18 MR. MOY: Yes, sir. Staff would record the
19 vote as three, to zero, to two. This is on the motion
20 of Chairman Hart to approve the application for the
21 request, or the relief requested. In addition, the
22 added relief under Section -- or rather, Subtitle C,
23 Section 1500.9. Mr. Chair, staff would ask that the
24 applicant submit a revised self-certification before
25 we issue an order.

1 So, seconded the motion would be Ms. White.
2 Also in support, Mr. Turnbull. Board member not
3 present, board seat vacant. Motion carries three, to
4 zero, to two.

5 MR. HART: Summary order.

6 MR. MOY: Yes. Thank you.

7 MR. HART: Thank you very much.

8 MR. TURNBULL: Mr. Secretary, the revised
9 certification just would include the revised relief
10 requested.

11 MR. MOY: Yes.

12 MR. TURNBULL: Okay.

13 MR. MOY: The next case application before the
14 Board is No. 19483 of Uproar Lounge and Restaurant,
15 captioned and advertised for a special exception
16 relief under the penthouse use requirements, Subtitle
17 C, Section 1500.3(c). This would expand a penthouse
18 bar and restaurant use in the PDR-3 Zone. Premises,
19 639 and 641 Florida Avenue Northwest, Square 3078,
20 Lots 19 and 807.

21 Parties can come to the table.

22 MR. HART: Good morning. Can you please
23 introduce yourselves?

24 MR. DUPONT: My name is Steven Dupont. I'm
25 the architect for the project.

1 MR. HART: Thanks.

2 MS. TROUNG: My name is Tammy Troung. I'm the
3 CEO of Uproar Lounge.

4 MR. GRANDIS: Good morning. I'm Edward
5 Grandis --

6 MR. HART: Is your mic on?

7 MR. GRANDIS: Yes, it's -- is this better?

8 MR. HART: Can you bring it closer, because --
9 it's on now.

10 MR. GRANDIS: Okay. Good morning. I'm Edward
11 Grandis, I'm the attorney for the applicant.

12 MR. HART: Good morning. And what we'll do is
13 to have a brief presentation. I'm not sure who's
14 giving. Thank you. You'll be giving the -- Mr.
15 Dupont, you'll be giving the presentation this
16 morning. About how much time would you need for the
17 application? Or for your presentation?

18 MR. DUPONT: I think about five or six
19 minutes.

20 MR. HART: Okay, and Mr. Secretary, could we
21 have that on the clock, please? We'll go from there.
22 You may proceed.

23 MR. DUPONT: Oh, good morning. Thank you very
24 much, members of the Board. I'm speaking in support
25 of BZA Case 19483, the address of the project is 639,

1 641 Florida Avenue Northwest, Square 3078, Lots 0019
2 and 0807. The ANC is 1B-01, and the zoning is PDR-3,
3 which used to be the commercial industrial zone.

4 These two lots are narrow. They're about 15-
5 feet wide, contain very old two-story row structures
6 which had been abandoned for many years. They had
7 been stabilized and added to at the rear and are now
8 basically three-story structures.

9 The third floors are semi-enclosed at the
10 north, which is away from the street, with open
11 terraces facing Florida Avenue.

12 The buildings back up to a combined alley and
13 parking lot that is itself open to a large parking lot
14 at Howard University Hospital which occupies what used
15 to be the home field of the Washington Senators.

16 639 Florida is fully occupied by a restaurant
17 called, Uproar. The third floor has a bar and is
18 served by the two egress stairways. There is some
19 mechanical equipment on the roof above, at the north
20 end. The covered space is open to a terrace on the
21 south end. 641 has been unoccupied until very
22 recently when a spa has taken over the ground floor.
23 The second and third floors are still unoccupied.

24 The third floor of 641 is built out in the
25 same way as 639, except that there is only one

1 stairway and it is not an enclosed fire stair. Uproar
2 currently operates a small open terrace area less than
3 600 square feet on its third-floor. The building to
4 the west is owned by the same party. Uproar would
5 like to be able to use the third floor of 641 as a
6 natural expansion of their existing bar and terrace at
7 639.

8 This requires breaching the party wall at the
9 third floor between the semi-enclosed portions of the
10 two buildings, and also the parapet between the two
11 terrace areas. A covenant and easement and a code
12 modification have already been secured to permit
13 crossing of the property line.

14 Zoning requirement is the relevant language of
15 Section 1500.3(c), which reads, "A penthouse may house
16 mechanical equipment or any use permitted within the
17 zone except as follows. C, a night club, bar,
18 cocktail lounge, or restaurant use shall only be
19 permitted as a special exception if approved by the
20 Board of Zoning Adjustment under Subtitle X, Chapter
21 9."

22 An analysis follows. "A night club, bar,
23 cocktail lounge, or restaurant use in a penthouse, A.,
24 will be in harmony with the general purpose and intent
25 of the zoning regulations and zoning maps."

1 I offer two additional excerpts from the DCZR-
2 16. Section 200.3 from Subtitle J, "The PDR-3 Zone is
3 intended to permit high-density commercial and PDR
4 activities employing a large workforce and requiring
5 some heavy machinery under controls that minimize any
6 adverse impacts on adjacent more restrictive zones."

7 And 801, matter-of-right uses, PDR, Subtitle
8 U, 81.1(h), eating and drinking establishments are
9 permitted as a matter-of-right.

10 This zone is a PDR-3 Zone, which is a light
11 industry zone. The portion of the zone that the
12 subject property occupies is a small pocket of the PDR
13 constrained by an art's district to the west, an MU-4
14 District to the east, and on the north by the large
15 parking area and buildings of the Howard University
16 Hospital.

17 There is also an R-1 Zone to the northeast,
18 but it is not actually abutting. It's across an
19 intersection.

20 There's no longer any industrial activity in
21 this PDR that I am aware of. Eating and drinking
22 establishments are permitted as a matter of right and
23 there are numerous such occupancies neighboring and
24 across the street.

25 The proposed use is entirely typical of the

1 sorts of activities that surround it. B., will not
2 tend to affect adversely the use of neighboring
3 property in accordance with the zoning regulations and
4 zoning maps.

5 As described, to the south is the somewhat
6 raucous and heavily trafficked Florida Avenue.
7 Properties abutting on both sides to this proposed are
8 owned by the same party, and are occupied by a variety
9 of tenants, restaurants, spas, even a vendor of exotic
10 oils.

11 Across Florida Avenue, the retailers play
12 music on to the sidewalk. There are several small
13 shops, a pizzeria, et cetera. Florida Avenue is an
14 important and heavily trafficked auto artery.

15 The R-1 Zone to the east is separated from
16 this PDR Zone by an alley, a parking lot and the
17 intersection at Border (phonetic) and U Streets.
18 Uproar is not noisy. There's no activity that will
19 occur on this terrace that will be even noticed by an
20 abutter or neighbor.

21 And I'm going to add just now that the
22 enclosure over the bar area also offers protection to
23 those areas to the north and northeast.

24 Subtitle C, subject in specific cases to the
25 special conditions specified in this title. Although

1 pending any special exceptions that might be imposed,
2 the proposed special exception perfectly meets the
3 requirements of Chapter 9 of Subtitle X. The ANC
4 report and the many supporting letters are in the
5 file.

6 Building to the west at 645, contains an
7 eating establishment on the second and third floors.
8 637 to the east, is owned by the same party that owns
9 639, 641, 645, and 647. The two bookend buildings of
10 the block are owned by different parties and are both
11 commercial. And on the west end there is an outdoor
12 café at the corner of Florida and 7th.

13 The restaurant use is a by-right use in the
14 PDR-3 Zone. The existing restaurant at 639, Uproar,
15 fits comfortably into the block and is actually a
16 comparatively restrained occupant for this block. The
17 current third-floor use is very discreet. We think
18 the relief requested to expand the third-floor bar and
19 terrace will be entirely unnoticed by the community
20 and in no way a detriment.

21 We therefore ask your support and thank you
22 for your consideration of this application.

23 MR. HART: Thank you. Do the Board members
24 have any questions of the applicants?

25 MS. WHITE: I don't know if you want me to --

1 yeah. I had a question about the request. I didn't
2 see an ANC report in the record. I mean, I see
3 something that says that it was brought before the
4 ANC, but I didn't see any formal comments.

5 MR. DUPONT: I don't think we have either.

6 MR. GRANDIS: May I? Is there a -- we ask if
7 someone from the ANC is present today, because perhaps
8 they will share that if they're here.

9 MR. HART: Yeah, we actually will have someone
10 from the --

11 MR. GRANDIS: Okay. So --

12 MR. HART: -- ANC. We will ask someone from
13 the ANC, if someone is here from the ANC, at a
14 later --

15 MR. GRANDIS: Yeah. Right.

16 MR. HART: In a few minutes. So.

17 MR. GRANDIS: At this point what we have is,
18 there was a meeting of what's called the Zoning
19 Preservation and Development Committee of the ANC on
20 March 20th. And you attended that.

21 MS. TROUNG: Yes.

22 MR. GRANDIS: And it was a matter on their
23 agenda, and the owner is here to let you know what
24 occurred. But we have are draft notes of the minutes
25 of the ANC meeting which was held on April 6th. And

1 at that hearing, at that meeting, public meeting,
2 there was a discussion to accept the recommendation of
3 the Zoning Committee, that did approve.

4 And there were some questions about -- there
5 were some questions about occupancy.

6 [Discussion off the record.]

7 MR. GRANDIS: Fire. And that Tammy of course
8 cannot get the fire resolution until after the BZA.
9 And so, there -- from as far as we know, is that the
10 Committee made a recommendation to the full ANC, but
11 we don't know more than that.

12 MS. WHITE: Okay. I think it would be helpful
13 to have some type of written record from them at some
14 point for this particular case.

15 And then, you know, just reading through the
16 entire record, I did notice maybe one comment from a
17 resident in Exhibit 31, that had some pretty specific
18 complaints about the noise levels from the -- from
19 Uproar.

20 So, I don't know if that individual is here or
21 anybody else is here, but I'll save that for later.
22 But you may want to take a look at that letter.

23 But in the letter she's essentially saying
24 that there is significant noise coming from the
25 property and she's located at, let's see. I'm just

1 trying to pull it up here.

2 MR. TURNBULL: Oh, I've got 621 U Street.

3 MR. HART: Yes.

4 MS. WHITE: Yeah. Yeah.

5 MR. GRANDIS: I have that letter in front of
6 me.

7 MS. WHITE: Right.

8 MR. GRANDIS: What we can say is that there
9 are numerous entertainment spots, not just bars, but
10 there are pizza shops, or other things where noise is
11 being generated.

12 The owner can attest to that there has been --
13 the DCRA has come over with noise meters, not just to
14 their location but to others, and she can attest that
15 they've always been told that the noise readings
16 emanating from their facility have been within legal
17 limits. Is that correct?

18 MS. TROUNG: Yes, that is correct. I am
19 butted up to the right of my side, which is a night
20 club, and they have a retractable roof that it is
21 pretty loud. So, in a lot of ways I think it hinders
22 on my case.

23 But, as far as operation, we're very low-key
24 noise. We comply. We constantly have ABRA and D.C.
25 come together because of the complaint. But we have

1 always had no problem, they've said, you're fine.

2 MR. GRANDIS: We can also attest that I went
3 to ABRA and spoke to them about, have there been any
4 violations from this licensee since they've opened.
5 And ABRA has told us that there have been no
6 violations since this applicant has occupied 639.

7 MS. WHITE: Okay. Thank you.

8 MR. TURNBULL: I'm sorry.

9 MR. HART: Yeah. No, please.

10 MR. TURNBULL: It's one of the things she
11 mentioned, and I'm not sure whether -- I don't know,
12 it's a little confusing. She makes reference to the
13 Brixton Restaurant at 9th and U. Is that a mistake?
14 Is it 7th and U?

15 MS. TROUNG: That is like one block up.

16 MR. TURNBULL: No, so I'm --

17 MR. HART: Two blocks up.

18 MS. TROUNG: Two blocks up, actually.

19 MR. TURNBULL: She can hear conversations from
20 the rooftop lounge at Brixton Restaurant at 9th and U.

21 MR. GRANDIS: Yes. She's not making reference
22 to this particular facility, and that's why I'm saying
23 we were concerned about the information in her letter.

24 Of course, if any neighbor has a concern they
25 should reach out to the owner or to the manager on

1 duty. And we welcome that. But the letter that she
2 stated seemed to be more of a general nuisance
3 complaint of that neighborhood as opposed to this
4 specific location.

5 MR. TURNBULL: So, the only other question
6 that I had is, I'm assuming that for the existing bar
7 that's up on the one building.

8 MR. GRANDIS: 639.

9 MR. TURNBULL: That you already had a special
10 exception to get that.

11 MR. DUPONT: It's been open for several years.
12 It wasn't required before the zoning change in
13 September.

14 MR. TURNBULL: It wasn't required. Oh, I'll
15 check with OP on that.

16 MR. DUPONT: But the restaurant has been open
17 for a number of years.

18 MR. TURNBULL: Yeah. No, I know that it's
19 been open. I just was wondering if --

20 MR. DUPONT: Right.

21 MR. GRANDIS: They do have a license for
22 what's called a summer garden in that location from
23 ABRA.

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

25 MR. DUPONT: It's not a facility which is

1 equipped with loud speakers and has the room for a
2 band or anything of that nature. This is not what
3 goes on up there.

4 MR. TURNBULL: So, there's no entertainment.
5 It's primarily just eating and drinking and --

6 MR. DUPONT: Yes.

7 MR. TURNBULL: And conversation.

8 MR. DUPONT: Hanging out after, at sunset.

9 MR. GRANDIS: There's no dancing. It's purely
10 when the weather is nice. You know, part of it has an
11 over --

12 MR. TURNBULL: And you're going to hold to
13 that, then?

14 MR. GRANDIS: Yes.

15 MR. DUPONT: Yes.

16 MR. TURNBULL: Okay.

17 MR. DUPONT: That's the intention.

18 MR. HART: Any other questions for the
19 applicant?

20 MS. WHITE: Just one. Is there music on the
21 top floor?

22 MS. TROUNG: There is --

23 MS. WHITE: Will there be loud music on the
24 top floor, essentially.

25 MS. TROUNG: Oh, no, not loud music. We play

1 what is just soft music that it's like a jukebox that
2 people can pick and choose to hear their favorite
3 song. But it's like a program, a software program.

4 MR. TURNBULL: Well, wouldn't there be
5 speakers for that?

6 MS. TROUNG: No, we have it in the back where
7 it's enclosed because of the south -- the north side.

8 MR. TURNBULL: Oh, okay.

9 MS. TROUNG: That's about it. It's covered.

10 MR. TURNBULL: It's covered, yeah.

11 MS. TROUNG: To protect the noise all around.

12 MR. TURNBULL: I got you. Okay. All right.
13 Thank you.

14 MR. GRANDIS: The third-floor addition, when
15 it was built, on the north side, the back side towards
16 the Howard parking lot, is covered. And that's in the
17 testimony. It's only how many feet in front, about 30
18 feet --

19 MR. DUPONT: The buildings are about 80 or 90
20 feet long as I recall, and the back third is covered
21 by the top and has a CMU enclosure at the back and on
22 the sides.

23 You can see it in the photographs and I don't
24 -- you don't have great big speakers or anything like
25 that up there. And actually, it wouldn't be a very

1 appropriate place for doing that kind of thing.

2 That's not what it's used for.

3 But the back wall and the rooflet over top are
4 protection against noise projection to the north and
5 to the northeast, which is where that letter came
6 from.

7 MS. WHITE: All right.

8 MR. HART: And so you'd get rid of a portion
9 of the wall that separates these two. However long
10 that -- do you have a drawing that shows where that
11 is?

12 MR. DUPONT: It was submitted previously, yes.
13 It's just an opening for the bar to run through,
14 across both buildings, but still support that roof
15 enclosure over top.

16 MR. HART: And so the -- with the --

17 MR. DUPONT: It's like a big 13-foot wide door
18 and the bar runs through it, and it's standing room in
19 front of the bar runs through. But the roof enclosure
20 would be unchanged and the back wall would be
21 unchanged.

22 MR. HART: Give me a second.

23 MR. DUPONT: There's a picture of each
24 building. Actually --

25 MR. GRANDIS: Steve.

1 MR. DUPONT: Yeah. Oh, there is a -- we do
2 have a drawing.

3 MR. GRANDIS: You submitted it, didn't you?
4 Yeah.

5 MR. DUPONT: Yes, it was submitted.

6 MR. GRANDIS: Yes.

7 MR. DUPONT: Should I bring it up?

8 MR. TURNBULL: Yeah, it's Floorplan 2. I'm
9 looking at Floorplan 2. Yeah, we're looking at --
10 yeah.

11 MR. GRANDIS: Okay.

12 MR. DUPONT: But the roof and the back wall
13 are undisturbed.

14 MR. HART: And there currently is a covering
15 that we see in the photographs that you've provided to
16 us?

17 MR. DUPONT: The second photograph is 639, the
18 last photograph is 641.

19 MR. HART: And, can you describe what's
20 happening in -- I looked also at these images and the
21 photograph that you just handed to us, the third page
22 shows a -- I'm not sure what that is on the --

23 MR. DUPONT: This one?

24 MR. HART: No. No, it should be -- the fourth
25 page. Excuse me. I'm sorry.

1 MR. DUPONT: This one.

2 MR. HART: I'm looking at the façade. Yes.
3 On the left-hand side, the gray building, that is 641?

4 MR. DUPONT: That's a glass railing.

5 MR. HART: That's a -- it's a glass railing?
6 How tall is that?

7 MR. DUPONT: The cornice is at floor level of
8 the roof terrace. So, it's about four and a half feet
9 high.

10 MR. HART: Okay. It just looks really -- I
11 don't know, doesn't that look very close? Close to
12 the edge, because there's -- the part that's next to
13 it on your building is much lower, so it's hard to
14 kind of gauge the --

15 MR. DUPONT: It's made higher just to cut back
16 on noise and cups falling off and things of that
17 nature.

18 MR. TURNBULL: You're talking about whether
19 there ought to be a setback?

20 MR. HART: Yeah, I was wondering if there was
21 the need for a setback for that. It looks like it may
22 be on the Uproar building. But 641, I'm not exactly
23 sure. So.

24 MR. DUPONT: They're actually aligned with
25 each other. It's just the one on Uproar is older, and

1 it's not as high. The cross-rail in the middle of the
2 one at 641 is about the same height as the Uproar
3 railing.

4 MR. TURNBULL: I think that will be a question
5 for OP. I mean, I guess what's strange is that the
6 height for this area is a lot. This is really only
7 the third floor.

8 MR. DUPONT: Yeah.

9 MR. TURNBULL: They can go up to 95 feet. So,
10 although it's a roof, it's technically also a floor.
11 I mean, it's kind of a interpretive thing, but my
12 feeling is they probably don't need to set it back.
13 And I can ask Mr. Jesick on that, but it's
14 interpretation that I think that he could give us,
15 maybe.

16 MR. DUPONT: We were caught by surprise by the
17 same problem.

18 MR. TURNBULL: Yeah, so I think it's an
19 interpretation, we'll need to look at that. I'd have
20 to pull up the regs myself and actually look at how to
21 do that.

22 MR. HART: Yeah, and I understand that they're
23 looking for kind of -- this is more of a use thing
24 that they're looking for as opposed to a setback, but
25 you're right.

1 MR. TURNBULL: Right.

2 MR. HART: I think we should ask the Office of
3 Planning on that when we get there, and I think that
4 might be very soon.

5 MR. DUPONT: That's fine.

6 MR. HART: Any other questions for the
7 applicant? So, I think we will move to the Office of
8 Planning. Mr. Jesick.

9 MR. JESICK: Thank you, again, Mr. Chairman
10 and members of the Board. My name is Matt Jesick.
11 I'm filling in today for Ms. Brandice Elliott, who is
12 away this week.

13 The Office of Planning can rest on the record
14 in support of the application. We felt that the
15 applicant met the special exception criteria for a
16 rooftop restaurant use.

17 In regard to your questions, I know Ms.
18 Elliott made clear to the applicant that this relief
19 was only for the use. We were not reviewing any
20 structures on the building. I believe that that
21 railing probably predates the most recent requirements
22 for railing setbacks. That's my guess. That's you
23 know, my best guess as to how it got there.

24 But I'm happy to try and answer any other
25 questions you might have.

1 MR. HART: And so, if they make any -- if
2 there were -- I mean, I'm thinking about them as they
3 are making changes to the building, that that might
4 come up at some point, that they may want to do that.

5 So, you're just saying, if they make the changes then
6 that might come into play, but because this is
7 existing it would not have to?

8 MR. JESICK: Well, we're not presupposing what
9 DCRA might say about it when they go for a permit, but
10 they didn't ask for that relief.

11 I think it would be okay, since it's
12 preexisting. That would be my guess, but you know,
13 they will need to check with the Zoning
14 Administrator's office to be sure that they don't need
15 any relief.

16 MR. TURNBULL: The only other question was,
17 the existing bar on that roof, predating, so they
18 didn't get a special exception before, it wasn't
19 necessary?

20 MR. JESICK: I believe that rule came into
21 effect with the new penthouse rules --

22 MR. TURNBULL: Okay.

23 MR. JESICK: -- a year or two ago.

24 MR. DUPONT: September 6th.

25 MR. JESICK: I don't believe it was part of

1 ZR-16.

2 MR. TURNBULL: Okay.

3 MR. JESICK: I think it was the '58 --

4 MR. TURNBULL: Previous?

5 MR. JESICK: Right.

6 MR. TURNBULL: So, but if they expand the
7 existing one, do they need relief?

8 MR. JESICK: Apparently the ZA has found that
9 this would be a rooftop use --

10 MR. TURNBULL: Okay.

11 MR. JESICK: -- rather than a third-floor use.

12 MR. TURNBULL: Right.

13 MR. JESICK: And therefore, it would require
14 special exception relief from the Board.

15 MR. TURNBULL: But I mean, the one that's
16 existing on the other building, that looks like, from
17 the floorplans, it looks like it's being connected
18 internally under the covered area, so I'm just
19 wondering whether it would then extend into -- does
20 that affect that, I guess is --

21 MR. JESICK: If that's considered a third
22 floor, I think it would be a matter of right use.

23 MR. TURNBULL: Okay.

24 MR. JESICK: Expanding on to the rooftop, that
25 would be a special exception.

1 MR. TURNBULL: Yeah, I'm not opposed to the
2 use. I'm just questioning whether or not they also
3 needed additional special exception to cover the other
4 one.

5 MR. JESICK: I don't believe so.

6 MR. TURNBULL: As they do -- okay.

7 MR. HART: Does the applicant have any
8 questions for the Office of Planning?

9 MR. GRANDIS: No, we thank them for the
10 report.

11 MR. DUPONT: Very much.

12 MR. GRANDIS: Yeah, we thank them for that.

13 MR. HART: Any other questions from the Board,
14 for the Office of Planning?

15 I will see from the audience if anyone from
16 ANC 1B is present. I know we had the discussion a
17 little earlier. I wanted to see if there was somebody
18 here, because I actually would like to kind of
19 understand if they had any concerns or you know, what
20 the vote was. And I think you can provide some
21 information because you've -- Ms. Chung, is it?

22 MS. TROUNG: Troung.

23 MR. HART: Troung. Oh, excuse me.

24 MS. TROUNG: So, after that meeting I met with
25 Ms. Anita Norman, which is the assigned commissioner

1 for 1B, and invited her to come to show what was the
2 proposed. And one of the things they wanted to know
3 was security plans, safety, and our hours of
4 operation. I've shown her my liquor license and with
5 compliance. And it met her satisfaction and she said
6 she approved and she had no qualms, and she would
7 forward a letter, but I never heard anything from
8 that, so.

9 MR. HART: And was that the -- because you
10 spoke of two meetings. Was that after the March 20th
11 meeting that was the subcommittee, or was that a --

12 MS. TROUNG: That was after, yeah.

13 MR. HART: That was after that?

14 MS. TROUNG: That was after April.

15 MR. HART: That was after the April --

16 MS. TROUNG: After that final --

17 MR. HART: -- the full ANC meeting?

18 MS. TROUNG: Yes.

19 MR. HART: Okay. Thank you. And do you
20 recall what the vote was for on your case, on your
21 application?

22 MS. TROUNG: It was approved, but they needed
23 to verify more questions from BZA with fire and
24 occupancy, I believe. And they wanted to try to see,
25 to postpone it for a month and --

1 MR. TURNBULL: So, Uproar is in the one
2 building.

3 MS. TROUNG: Yes.

4 MR. TURNBULL: And in the other building is --

5 MR. DUPONT: Uproar is in, totally occupies
6 639.

7 MR. TURNBULL: And --

8 MR. DUPONT: 641 is the most recent
9 acquisition of this owner.

10 MR. TURNBULL: Looks like --

11 MR. DUPONT: It was empty. It now has a
12 tenant on the first floor.

13 MR. TURNBULL: Oh, I see.

14 MR. DUPONT: And the second floor and the
15 third floor are still vacant.

16 MR. TURNBULL: So, but basically Uproar is
17 then just going to occupy both floors on the roof
18 of -- okay, I've got it. I was --

19 MR. DUPONT: It's just expanding across the
20 roof.

21 MR. TURNBULL: Yeah.

22 MR. DUPONT: Across the property line.

23 MR. TURNBULL: At first I was concerned that
24 it was two separate restaurants or something, that
25 it --

1 MR. DUPONT: No. And in fact, the entire
2 service area will be served by the two egress fire
3 stairs that are in 639. They meet the egress
4 requirements by the building code.

5 MR. TURNBULL: Okay.

6 MR. DUPONT: And fire protection will be
7 provided by the requirements of DCRA. In fact,
8 they've already been basically approved.

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

10 MR. HART: Okay. Any other questions for the
11 applicant?

12 Hearing none, is there anyone here to testify
13 in support of the application? Anyone here to testify
14 in opposition to the application? Okay.

15 Does the applicant have any other final words
16 in closing?

17 MR. GRANDIS: Yes. Yes. We'd like to thank
18 you all for allowing us to have this presentation
19 today. We also want to thank Office of Planning for
20 their report.

21 Our concern is that there be no, really,
22 delay. This hearing was delayed a week and that may
23 not be a long time for the Commission, but this
24 applicant has been working many months and spending a
25 lot of dollars in working with DCRA on many, many

1 matters to get the right permits done. And they can't
2 move forward with DCRA without the decision of the
3 BZA.

4 And we do -- having been a former ANC
5 commissioner, we are interested in what the ANC says,
6 but we believe that the fact that the ANC was noticed
7 and did not timely file, it would be a hardship on my
8 client if we had the delay waiting to just have
9 confirmation of what we're saying that did occur. And
10 if they did have concerns, they could have filed a
11 report or they could have come here today.

12 And therefore, we believe that based on the
13 testimony, based on the record that's been submitted
14 and the agency's reports, we'd like to ask for a
15 waiver of Section 3125.5 that the order of the Board
16 be accompanied by findings of facts and conclusions of
17 law. We believe that the waiver will not prejudice
18 the rights of any party and is appropriate in this
19 case.

20 We ask that the Board find that the applicant
21 has met its burden to show that the restaurant bar use
22 and the penthouse meets the special exception criteria
23 as set forth in the code. And we really would like to
24 have a decision today if that's possible. Thank you
25 very much.

1 MR. HART: Thank you. Can you hold on just a
2 sec? Sorry, I needed to get a little clarification on
3 the last thing that you spoke of, the waiver, and I
4 understand that now.

5 So, I think that we have gotten the
6 information. I understand that the ANC report has not
7 been filed at this moment. Does the Board -- well, I
8 was going to ask if the Board has any comment on that.
9 But before I get there, I think we can be able to
10 close the record for the case, and would open the case
11 up for deliberation by the Board if you have any
12 thoughts at this time.

13 MR. TURNBULL: Mr. Chair, the applicant has
14 stated under oath that the ANC is in support. So, I -
15 - that is a burden on them, if it isn't, and it comes
16 to fore that it isn't. But so, I guess I'm ready to
17 go forward.

18 MS. WHITE: I'm essentially in support, but I
19 would like to see something in writing from the ANC,
20 because it appears that there might be some specific
21 conditions associated with them being on board with
22 the project. So, if we could give them an opportunity
23 to submit their letter, that would be my preference in
24 order to fully support the request.

25 MR. HART: Yeah, and hearing that, I

1 understand that I guess the difficulty -- not
2 difficulty. The question that arises in my mind is
3 really, if there are conditions, if we are looking to
4 have a deliberation at this point, and to be able to
5 give a -- make a determination, make a decision on
6 this case, then the conditions would be coming after
7 we get that. So, it just seems as though that would
8 be a difficult position to be in if we would get that
9 at that point.

10 The ANC has had an opportunity to be able to
11 discuss this. They have actually met on this case.
12 It sounds like, according to the applicants, actually
13 with the subcommittee and with their full committee,
14 over now it looks like a -- actually, almost a month
15 ago, and we really haven't gotten anything from them.
16 So, I'm not sure. If the ANC meeting was you know,
17 earlier this week or last week, I think that I might
18 be willing to give a little bit more time. But it
19 seems as though the month has passed, so.

20 MR. TURNBULL: Well, I mean, the only thing,
21 to give them an extra week that if the applicant can
22 contact the ANC and Mr. Boyd could also make -- and
23 give them a week, and we could take it up at the
24 meeting next Wednesday.

25 MR. HART: Yeah. And what we would -- what

1 the Board, the Zoning Commissioner is saying to the --
2 or Commissioner is saying to my left is, that we would
3 have a -- right now we have a public hearing, that we
4 would have this as a public meeting, so it would only
5 be deliberation of the Board. And that we would kind
6 of give a last chance to the ANC to be able to file
7 their report. If we do not receive a report, then we
8 would be going forward regardless, but to kind of give
9 them one last chance to be able to do that.

10 The board members up at the dais have made
11 that suggestion and I can go along with it. I think
12 that there has been considerable time, but I think out
13 of just caution, because we don't know what conditions
14 that they may want to add to the order, it's helpful
15 for us to actually see that, and I think that we could
16 -- I'm currently am also in support of the
17 application. So, I think we're leaning towards that
18 direction, so that would be the finality next
19 Wednesday for your case.

20 But again, it's really trying to get more
21 information so that we're not finding out some
22 information from the ANC that they would like to have
23 whatever conditions added to the order itself.

24 MR. TURNBULL: Yeah, I would agree. I think
25 for the most part I have no objections to the relief

1 that's requested. And if the ANC said, well, they
2 want to see in the order, something that says
3 specifically, no amplified sound on -- in that they
4 want that in the order, you know, they might -- I
5 don't know what they're going to come up with. But
6 it's just -- and if the applicant could at least
7 contact them and just say it's critical for them to
8 get it in to us.

9 MR. HART: And that it is a meeting that we're
10 having, you know, that the BZA is having and that this
11 is kind of their last chance to do that, that would
12 give them a little bit more, maybe incentive to submit
13 something to us.

14 But I agree with Commissioner Turnbull that it
15 is helpful for us to have that for that reason.

16 MR. GRANDIS: Right. As I said, they did have
17 notes that they call a draft of that meeting, and they
18 probably wait, as other agencies wait until their next
19 meeting to vote on their minutes, which hasn't
20 occurred yet. So, we can submit their notes, and we
21 can -- we will reach out to the Commissioner, who is
22 the SMD Commissioner, and let them know that you all
23 are requesting that they make some submittal by --
24 what date do they need to make it by to be able to be
25 dealt with next Wednesday. When do they have to have

1 something in?

2 MR. MOY: Typically, that's up to you, Mr.
3 Chairman, since the meeting would be next Wednesday,
4 and you can go up to Tuesday.

5 MR. HART: Yeah, and I think we would give
6 them to Tuesday to be able to do that.

7 MR. GRANDIS: Okay. We'd like to be able to
8 tell them that, yes.

9 MR. HART: That's the 9th. I should know that
10 date.

11 MR. TURNBULL: That's correct.

12 MR. HART: So, I think that we would be giving
13 them the 9th, until the 9th, to be able to provide
14 something. And, I'm not sure when -- do you know when
15 the ANC's next meeting is?

16 MR. GRANDIS: The last one was April 6th, so
17 I'm -- we'll check it out, so it's probably within the
18 next week or so.

19 MR. HART: Any other further questions or
20 comments?

21 MS. WHITE: No, I think my comments were
22 clear. Didn't mean to cause an uproar. No pun
23 intended. But just on the side of caution, just the
24 legal side of me just likes to see things in writing
25 as opposed to statements. So, if they are interested,

1 then we should see something by Monday, or Tuesday.

2 MR. HART: So, it sounds like Mr. Secretary,
3 we will be having the public meeting for this case
4 next -- scheduled for next --

5 MR. MOY: Next Wednesday, May 10th.

6 MR. HART: May 10th. Any other comments,
7 folks?

8 MR. DUPONT: Should we anticipate attending
9 that?

10 MR. HART: I don't -- it's not necessary for
11 you to do that. It is something we actually had a
12 public meeting earlier today and it's typically a
13 deliberation that the Board has. We're really looking
14 for this. We've had -- you've heard some of our
15 deliberation already, and I don't suspect that to be
16 markedly different. We'll see what the ANC actually
17 submits to us, if they do submit to us.

18 MR. DUPONT: But it's an open meeting?

19 MR. HART: Oh, yes. Oh, most definitely.

20 MR. DUPONT: Okay.

21 MR. HART: It's an open meeting. It's just,
22 it's literally just prior -- the public meeting starts
23 at 9:30. That last until all those cases are off that
24 agenda, and then we do the public hearing, which is
25 what you are a part of right now, so --

1 MR. DUPONT: I understand. We were here for
2 that.

3 MR. HART: Yes.

4 MR. DUPONT: Okay.

5 MR. HART: So, you heard our kind of
6 deliberation and we tried to move through those
7 fairly, you know, succinctly, provided the information
8 that we've received.

9 MR. DUPONT: Thank you.

10 MR. HART: Thank you, all.

11 MR. GRANDIS: Thank you very much.

12 MR. HART: We'll take a five-minute break.

13 [Off the record from 10:59 a.m. to 11:05 a.m.]

14 MR. HART: Okay. The next case that we have
15 is 19479, application of Douglas and Diane Menorca.

16 MR. MOY: Yes, if parties can come to the
17 table in that case application, and while you do that
18 I'll read what's been captioned and advertised for the
19 record.

20 19479, Application. This is a request for
21 special exceptions from the parking requirements of
22 Subtitle C Section 704; penthouse setback
23 requirements, Subtitle C, Section 1502; height
24 requirements, Subtitle E, Section 5102; pervious
25 surface requirements, Subtitle E, Section 5107; rear

1 yard requirements, Subtitle E, Section 5104; Side yard
2 requirements; Subtitle E, Section 5015, and rear
3 addition extending more than 10 feet past the rear
4 wall of an adjacent building requirements of Subtitle
5 E, Section 205.4; and variances from the nonconforming
6 structure requirements of Subtitle C, Section 202.2;
7 and the lot are, lot width requirements, Subtitle E,
8 Section 201.

9 This would construct a one-story rear addition
10 to an existing one-family row dwelling, RF-3 Zone, at
11 premises 1 Library Court Southeast, Square 788, Lot
12 826. And I believe I've captured everything, but of
13 course if I didn't the applicant will correct me.

14 Thank you, Mr. Chair.

15 MR. HART: Thank you, Mr. Secretary. And,
16 could you please state your name?

17 I'm sorry, you need to hit -- there's a
18 button. It should say, "push."

19 MS. HARDWICK: Yup.

20 MR. HART: There you go.

21 MS. HARDWICK: My name is Gay Hardwick, and
22 I'm the architect on the project, working for Diane
23 and Doug Menorca.

24 MR. HART: Welcome.

25 MS. HARDWICK: Thank you.

1 MR. HART: And if you could kind of step us
2 through the project, and well, just step us through
3 the project and about how long would you think you
4 needed for the presentation?

5 MS. HARDWICK: Five minutes, at most.

6 MR. HART: That's fine.

7 MS. HARDWICK: I think it's basically every
8 single zoning relief there, except for one. So, the
9 project is -- the house is in an interior alley on
10 Capitol Hill. It's named alleys, Library Court,
11 doesn't front a street, and it is semi-detached.

12 So, given all of those conditions, I can just
13 walk you through them, but you just read through it.
14 I need my cheat sheet, there's so many.

15 The first one is -- and we went back and forth
16 with Planning about whether this was a variance or
17 special exception request. Right now, it has a tax
18 lot number, and in order -- I know when we get to DCRA
19 to permitting, we'll need a record lot number.

20 In order to get a record lot number it doesn't
21 conform to the requirements for a record lot, so we're
22 asking relief from those requirements because it's an
23 existing condition. I think zoning and I both thought
24 it would be better to err on the side of safety and
25 ask for a variance relief rather than special

1 exception.

2 The second -- well, so that lot, nonconforming
3 lot, also includes a nonconforming structure on it.

4 The next one is side-yard setback, five feet
5 is required. Right now, there is zero side yard and
6 the proposed condition would be zero.

7 This might be a good time to point out that
8 the lot is teeny-tiny. It's, I think, just over 500
9 square feet. There is less -- I think it's about 11
10 feet and a few inches for -- is open space at the rear
11 of the house. So, any addition they put back there,
12 they'd lose all their open space. But more
13 importantly, I think they actually, if they made a
14 smaller addition they'd create more nonconforming
15 components of -- I mean, courts have been removed, but
16 having, you know, a five-foot open space at the rear
17 of the house is going to cause problems for
18 maintenance and not usable space when space is such a
19 -- comes at such a premium in that area.

20 I'm bringing that up now because that was one
21 of the ANC's comments, or CHRS's comments.

22 The next one is a -- so, that's a rear yard
23 setback, five feet is required, and we'd like to
24 extend it all the way back to the rear lot line.

25 Pervious surface, 10 percent is required. We

1 thought of putting on a green roof. The reason we
2 decided not to do that is it would increase the depth
3 of the roof, which would add to the height of the
4 building. And in order to, you know, you're on an
5 interior courtyard, we decided that it was probably
6 more important to keep the height of the addition down
7 so that it does not block the light and air of their
8 neighbor. Right now, there's no pervious surface
9 anyway. It's paved over in the back yard, so we
10 wouldn't be increasing a nonconforming condition.

11 Okay. The penthouse requirement, having three
12 feet, the railing set back three feet from the edge,
13 from the property line, that would give us a seven-
14 foot wide deck, which sort of defeats the purpose of
15 having a deck on top of the one-story addition. So,
16 we'd like to put those railings out on the property
17 line.

18 And then the new zoning regulation about
19 extending past the neighbor's house more than 10 feet.
20 We would be 11 feet and some change past the
21 neighbor's addition.

22 Currently, the house is one-bedroom, one
23 bathroom. They bought it when they were young and
24 single. They now have a child and they love their
25 home and they'd like to stay in it. And, by adding

1 this one-story addition on the first floor, it allows
2 them to not only add space at the rear of the house,
3 but also add an interior staircase to dig out the
4 basement, which is what they're planning on doing.
5 So, most of that one-story addition is actually
6 housing the staircase down to the cellar. And that's
7 it.

8 MR. HART: Thank you. I appreciate that step-
9 through a lot of relief that is included in this
10 application. Before we go a little further I wanted
11 to kind of first deal with a waiver that the Office of
12 Planning has submitted for the report being less than
13 10 days prior to the BZA public hearing on this case.
14 And I wanted to just make sure this was on the
15 record. In my view, and I'll hear any concerns from
16 the other board members, because OP submitted the
17 report nine days before this public hearing, it was
18 not 10 days, but they did provide us time to be able
19 to review it. Unless anyone else, any of the other
20 board members have any other concerns, I think that we
21 should waive this rule for OP to be able to submit the
22 report and so that we could review the report for this
23 case.

24 Any comments on that?

25 MR. TURNBULL: I would concur.

1 MS. WHITE: Yeah.

2 MR. HART: Thank you. So, we will be
3 accepting the OP report on this case, and this is also
4 prior to OP giving the report. So, I thought it might
5 be helpful for us to hear that before you proceeded.

6 Are there any questions, now getting back to
7 the case at hand, any other questions -- any questions
8 for the applicant at this time?

9 MR. TURNBULL: Well, you've got a lot of
10 relief requested.

11 MS. HARDWICK: I know.

12 MR. TURNBULL: Going to Exhibit 41, which is
13 the Restoration Society's letter, I guess one thing,
14 there's no provision for trash and when asked about it
15 the Committee was told that it would be stored inside
16 the house.

17 MS. HARDWICK: So, it's a tricky situation
18 right now. Everybody puts their trash cans in the
19 alley and I know that's a hot button issue for CHRS.
20 We have asked Diane and Doug to store the trashcans in
21 the house. The trash comes twice a week. It would go
22 out on, you know, trash days, be picked up, and they
23 can bring the trash cans inside. It's not going to be
24 those big hulking ones. To be completely, you know,
25 open about this, realistically, none of those houses

1 have any place to put their trash cans, and they sit
2 in the alley.

3 So, we can do our best to get them inside and
4 make a habit of that. I don't know how to enforce
5 that and make that, you know, promise that that is
6 always going to be done.

7 MR. TURNBULL: Yeah, I guess one of -- and I
8 don't think they're here, but their letter talks
9 about, they're concerned about waiving the pervious
10 surface and the rear yard requirements, and they don't
11 expound upon what five feet of pervious surface will
12 give.

13 MS. HARDWICK: I know. So, when I met with
14 them, we talked about pervious surface, and they also
15 were interested in having a green -- oh, I know what
16 it was. They were interested in having a green roof
17 on the one-story addition, and I explained why we
18 weren't doing that. And they agreed that that made
19 sense.

20 But then they --

21 MR. TURNBULL: Because it's wood framing. So,
22 I mean --

23 MS. HARDWICK: Well, it's not built yet so we
24 could increase --

25 MR. TURNBULL: Oh, I see.

1 MS. HARDWICK: -- increase the depth of the
2 structural members to make it pervious, but they
3 agreed, they didn't want to do that. So, then they
4 asked us to replace the main roof that is existing,
5 that was just put on two years ago for an extra, you
6 know, what are roofs now? That's going to be an extra
7 30,000, 20,000, to get a new roof up there. Not even
8 including the --

9 MR. TURNBULL: Well, a new roof would -- you
10 mean a new framing and everything.

11 MS. HARDWICK: Yeah. And so, we said that was
12 financially unfeasible.

13 MR. TURNBULL: It's a flat roof.

14 MS. HARDWICK: It's a, you know, it's a half
15 inch per --

16 MR. TURNBULL: Membering.

17 MS. HARDWICK: -- foot, typical rowhouse, you
18 know --

19 MR. TURNBULL: Right.

20 MS. HARDWICK: -- basically flat roof. It
21 definitely would not support -- we'd have to -- it
22 would not support a green roof weight. You have to
23 use --

24 MR. TURNBULL: That's their only -- they're
25 not concerned about any of the other relief.

1 MS. HARDWICK: No.

2 MR. TURNBULL: They're just looking for the
3 five-foot rear yard. But you would not be able to get
4 to the rear yard. I mean, or I guess you could have a
5 door out to the five-foot rear yard. Or --

6 MS. HARDWICK: Yeah, and to me having a five-
7 foot -- what it would become, a closed court, even
8 though that's not a zoning issue anymore, I believe
9 that's a fire issue. There is a huge rear wall, brick
10 wall. If a fire exploded out from the main house into
11 the closed court, the only place to go is -- it's like
12 a tunnel effect. So, I wouldn't professionally
13 recommend my clients, on purpose, create such a small
14 enclosed court at the rear of their house for trash
15 cans.

16 MR. TURNBULL: The two principle neighbors, I
17 guess, at the side and at the back --

18 MS. HARDWICK: Uh-huh.

19 MR. TURNBULL: Now, we have several letters in
20 the file. Do we have letters from both of them or --

21 MS. HARDWICK: We don't. We have not been --
22 we have talked to them about it. We've sent them,
23 they have talked on, via e-mail. We cannot get them
24 to send back anything written. The number 2 Library
25 Court right next to them --

1 MR. TURNBULL: Right.

2 MS. HARDWICK: -- that is not owner occupied.
3 And I think they're in Boston. Diane has been
4 contacting them constantly. She says she supports it.
5 But she has not gotten anything back in writing.

6 The one behind us, they won't even see the
7 addition. They have been contacted, but again, I
8 think he travels a lot. There's something going on
9 with him as well that they have not responded and
10 provided an actual letter.

11 MR. TURNBULL: But there's nothing in
12 opposition from them either.

13 MS. HARDWICK: Correct. No, my understanding
14 is they both support it, but we have nothing in
15 writing from them.

16 MR. TURNBULL: Okay. Thank you.

17 MR. HART: Ms. Hardwick, can you describe --
18 we have the ANC 6B report in our exhibits. I'm not
19 sure what exhibit that is. Exhibit No. 32 and 33.

20 It was a little strange that the 6B report,
21 which is kind of the -- is kind of a letter, and they
22 just describe what the actual vote was, and then say
23 that there's, you know, an attachment which is the
24 actual report. The report itself doesn't talk about
25 the variances, it just talks about the special

1 exception. So, did they --

2 MS. HARDWICK: And they didn't even get all
3 those right.

4 MR. HART: Yeah. And so, I didn't know if it
5 was just an omission, or were they really trying not
6 to have the variances in there?

7 MS. HARDWICK: No.

8 MR. HART: And I wanted to kind of hear from
9 you what -- I'm assuming you went to the meeting.

10 MS. HARDWICK: Yes.

11 MR. HART: Or at the meeting, what they
12 discussed, and how that went.

13 MS. HARDWICK: They went through everything
14 we've gone through this morning and had their support
15 behind it.

16 MR. HART: So, this is really just an
17 omission, just -- an omission by error.

18 MS. HARDWICK: Yes. I think it's hard to keep
19 track of all the relief we were requesting.

20 MR. HART: Thank you for that clarification
21 because I was kind of scratching my head as to that.

22 MS. HARDWICK: I saw it too. I was --

23 MR. HART: Any other questions for the
24 applicant? Okay. I think we'll go to the Office of
25 Planning for their report. That's now been waived and

1 in our --

2 MS. THOMAS: Thank you.

3 MR. HART: In with all the other documents.

4 MS. THOMAS: Yes, good afternoon, Mr. Chair,
5 members of the Board. Karen Thomas for the Office of
6 Planning and we are thankful that you accepted this
7 report a day later. Not to make any excuses but we
8 had some -- we needed a little extra time to sort of
9 remove all the threads and entanglements and the
10 amount of relief that was being requested.

11 So, basically, we came to the conclusion that
12 the relief was necessary because you had a situation
13 where the lot is nonconforming due to its location and
14 size, within the Capitol Interest Overlay. So, you
15 had all those issues going on.

16 And in order for them to get a permit they
17 would have to bring the lot into conformance. So, at
18 least this was the time and place to do it. So, going
19 forward at any time, if they ever needed a permit, it
20 could be as a matter of right. I mean, to do simple
21 renovations for their home.

22 So, to break that up we had to look at it as
23 an area variance, which we tussled with that a bit.
24 But we erred on the side of caution and reviewed it as
25 an area variance, because as a nonconforming

1 structure. It also needed relief for special
2 exception relief under the Capitol Interest Zone, with
3 respect to the side yard, rear yard, and pervious
4 surface. Those are some of the requirements there.
5 And just for the addition, you could look at it in
6 terms of just a deck railing and the addition to --
7 the relief to permit the addition that would go 11
8 foot back instead of the 10-foot, which is part of the
9 new text amendment which was recently adopted.

10 So, to err on the side of caution, we included
11 that as well.

12 So, based on that, it was easier to look at
13 the application, and we concurred with the applicant
14 that we believe that the relief, the application met
15 the standards and the criteria for the relief that was
16 requested, and we'll stand on the record of our
17 report. Thank you.

18 MR. HART: Thank you. Any questions from the
19 other board members for the Office of Planning?

20 Any questions from the applicant?

21 [No audible response.]

22 MR. HART: I think I was -- I thought I had a
23 question for the Office of Planning. And I think it
24 was around -- I want to say it was around the zoning -
25 - the new zoning that was --

1 MS. THOMAS: Yes.

2 MR. HART: That zoning has been --

3 MS. THOMAS: That rule has been adopted.

4 MR. HART: That was adopted.

5 MS. THOMAS: And the order was issued on
6 4/28/2017.

7 MR. HART: Okay. So, that is already --

8 MS. THOMAS: It's, yes, and it --

9 MR. HART: It's in effect now.

10 MS. THOMAS: It's in effect.

11 MR. HART: Okay. Thank you. And I was trying
12 to think where that -- what the language was, but --

13 MS. HARDWICK: We can -- if it would be
14 possible to have the Board reference the -- I didn't,
15 when I wrote this up, I didn't know what the zoning
16 number would be that I needed to reference. But now
17 there is an actual zoning number attached to that
18 rule. Can we --

19 MS. THOMAS: Yes.

20 MS. HARDWICK: -- put that in as the official
21 reference?

22 MR. HART: Yeah, and I think that we would
23 have to be able to -- we would have to have that as --
24 because that's going to be a little hard not to do
25 that. I think it's the -- is this the rear addition

1 one? No? Yes?

2 MS. HARDWICK: Yeah.

3 MR. HART: This is for the rear addition.

4 MS. THOMAS: Yes. And that will be under E,
5 Section 205.4, and 205.5 in this case. 205.5. And I
6 can read it if you'd like, for the record.

7 MR. HART: That would be fine, thanks.

8 MS. THOMAS: Okay. 205.5 says, "A rear wall
9 of an attached or semi-detached building may be
10 constructed to extend farther than 10 feet beyond the
11 farthest rear wall of any principle residential
12 building on an adjoining property if approved as a
13 special exception pursuant to Subtitle X, Chapter 9,
14 and as evaluated against the criteria of Subtitle E,
15 Sections 5201.3 and through 5201.6," which is in the
16 report.

17 MR. HART: Thank you. And that was -- and I
18 have a piece of this that was -- if the construction
19 was filed before -- is that language in there as well?

20 MS. THOMAS: If they --

21 MR. HART: Before July --

22 MS. THOMAS: July, yes.

23 MR. HART: July 1st of 2017?

24 MS. THOMAS: I can read the part in the order
25 which says that.

1 MR. HART: As long as we know the section. I
2 don't want to put you on the spot for that, but it is
3 E, Subtitle E, Section 205.4 and 205.5 are the
4 sections that you're talking about.

5 MS. THOMAS: Yes. Yes.

6 MR. HART: Thank you.

7 MS. THOMAS: I can read the part of the order
8 that -- not specific language, but within the order
9 itself it says that, "Building permit applications
10 received prior to July 1, 2017 OP indicated that it
11 would not object to vesting building permit
12 applications against the application of the 10-foot
13 limitation."

14 And the Zoning Administrator also had no
15 objections to such vesting.

16 MR. HART: Thank you.

17 MS. HARDWICK: I might have this wrong, but I
18 have been told by DCRA that that was not accepted and
19 the rule went into effect with no grace period.
20 That --

21 MS. THOMAS: Okay. All right.

22 MS. HARDWICK: -- that's effective as of the
23 day it was adopted.

24 MS. THOMAS: So, yes. Maybe, I'm just reading
25 what I have on the order, issued on the order.

1 MR. HART: The actual language itself is -- I
2 was trying to get so we would kind of understand where
3 we were with all of it. But the actual language is --
4 there is a citation for it, and that's Subtitle E,
5 Section 205.4 and 205.5.

6 MS. HARDWICK: Got it. And that's on the --

7 MR. HART: That's the language. We typically
8 don't read the actual language itself, only because
9 it's, you know, it would be fairly cumbersome to do
10 that for each one of them, but this was fairly new and
11 so I think that we know what the citation is. I think
12 that that would be -- that's sufficient to be able to
13 know what it is that we're moving forward with. So,
14 because, I didn't want to go -- kind of get back and
15 forth on what was --

16 MS. HARDWICK: Okay.

17 MR. HART: -- in or not in the language. It
18 is what it is.

19 So, moving forward, do they have -- is the ANC
20 here? ANC, I'm trying to think what that one is. 6B?

21 No? Okay. Excuse me.

22 MS. THOMAS: Mr. Chair. Excuse me, I'd just
23 like to correct one thing in OP's report under the
24 Office of Planning's recommendation in C. Item C,
25 where we said a one-to-one setback required, six feet

1 required, and zero feet would be proposed. Here, we
2 have three feet and it should be zero, because it
3 would not meet the requirement. I think that's an
4 error.

5 MR. HART: Which --

6 MS. THOMAS: Page -- our recommendation, on
7 page 1.

8 MR. HART: Oh, got you.

9 MS. THOMAS: Yeah.

10 MR. HART: I'm looking in the --

11 MS. THOMAS: Yeah.

12 MR. HART: -- in the details. Yes.

13 MS. HARDWICK: And I think only three feet
14 would be required, not six feet.

15 MS. THOMAS: Not six feet. Yes. Uh-huh.

16 MR. HART: So, it would be three feet
17 required, zero feet proposed.

18 MS. THOMAS: Proposed, yes. Uh-huh.

19 MR. HART: But you still would be in approval
20 of that?

21 MS. THOMAS: Yes, because our report reflects
22 that. I think this was just an error.

23 MR. HART: Thank you. So, moving to -- if
24 there are any -- anyone from the public, is there
25 anyone from the public that is wising to speak in

1 support of this application? Anyone wishing to speak
2 in opposition?

3 Hearing none. I'll ask the applicant if you
4 have any other closing remarks that you'd like to
5 give?

6 MS. HARDWICK: No, that's okay.

7 MR. HART: I think that at this point I'll be
8 able to close the record.

9 MR. TURNBULL: I just had one -- we do have --
10 your address is 1 Library Court?

11 MS. HARDWICK: Uh-huh.

12 MR. TURNBULL: We have a letter from 3 Library
13 Court. Where is that?

14 MS. HARDWICK: That's one over. So, there's
15 three houses in a row. 3 Library Court, if you look
16 on the vicinity map, it's the one that --

17 MR. TURNBULL: So, it's across the alley?
18 It's not next to, it's --

19 MS. HARDWICK: Right. It's not --

20 MR. TURNBULL: What would be next? 2
21 Library --

22 MS. HARDWICK: Two.

23 MR. TURNBULL: Two. So, three is across.
24 Okay.

25 MS. HARDWICK: Uh-huh.

1 MR. TURNBULL: Thank you.

2 MR. HART: Yeah, at this point I'll close the
3 record, Mr. Secretary. And, would the Board like to
4 start deliberations? Any comments that you'd like to
5 provide at this time?

6 MS. WHITE: There is a pretty extensive list
7 of items of relief that you've provided here. But I
8 think based on the architectural plans that you've
9 submitted in the discussion, the testimony from today,
10 and especially OP's report and clarification on some
11 of the aspects of the project, I don't have any
12 opposition at this point to communicate.

13 MR. HART: And I would be in support of this.
14 I think that I would -- taking the Office of
15 Planning's report and I know it was fairly detailed so
16 I appreciate that, Ms. Thomas. I know that they can
17 be a little bit easier, a little bit harder, depending
18 on the relief that's being requested, and I commend
19 you for kind of working with the applicant in this
20 case to really kind of drill down and make sure that
21 you got all the pieces that were necessary.

22 Regarding the variance relief for lot width,
23 lot area, and nonconforming structure, I find the
24 applicant has, through the information provided in the
25 Office of Planning report, correctly stated that this

1 project can meet the three prongs for the variance.
2 It is an exceptional situation that does provide a
3 practical difficulty. The existing lot itself, and
4 structure that's on the lot, is much smaller than
5 what's, you know, that you have in the rest of the
6 part of the city. And I feel that that is an
7 exceptional situation.

8 I also feel that the part -- the prong that
9 deals with no substantial detriment to the public
10 good, I think that the OP report that states that
11 permitting this would -- allowing this would continue
12 the preservation and maintenance of a contributing
13 structure in a historic district.

14 And then finally, no substantial harm to the
15 zoning regulations. I don't feel that there would be
16 a substantial harm to the regulations, and really,
17 this is making sure that this is a recorded lot, or a
18 lot of record, I think is helpful in that it would
19 also satisfy Subtitle C 301.1, which states that a
20 record lot existing prior to the effective date of
21 this title that does not conform with the lot
22 dimension and lot area requirements of the zone in
23 which it is located, may be considered a conforming
24 lot for the purposes of permit -- building permits and
25 uses, provided any building or structure there on

1 shall meet the development standards of the relevant
2 zone, and provide the nonconformity shall not be
3 increased. And I just think that these three prongs
4 are met.

5 With regard to the special exceptions for
6 building on an alley lot, rear yard, side yard,
7 pervious surface and penthouse guardrail setbacks, and
8 a rear addition, I think I've gotten all of them. I
9 also find that I could support the Office of Planning
10 recommendation. The rear addition would be in harmony
11 with the general purpose and intent of the zoning
12 regulations, because this existing lot and building do
13 not allow a side or rear yard. There really is just
14 no space to do that.

15 And, the pervious surface, understanding the
16 information that you provided, which you'd have to do
17 fairly extraordinary measures on the existing building
18 to be able to provide the -- a green roof.

19 Regarding the capital interest zone, which is
20 of course the overlay zone in the zoning regs, the OP
21 report also notes that the project is consistent with
22 the special exception criteria as well, and I would be
23 in agreement with that.

24 And the Architect of the Capitol's report, I
25 appreciate that information as well. The relief to

1 the penthouse requirement is also addressed in the OP
2 report. The OP report mentions that the applicant
3 provides a concurrence with the -- for the proposal
4 from -- I'm sorry. That the -- you all are in
5 agreement with the Office of Planning report and what
6 it states regarding that. And finally, I would point
7 out the Office of Planning is supporting the
8 applicant's relief from Subtitle E, 205.4, and 205.5
9 for the addition of a building or accessory structure
10 that is over 10 feet and I think that all of these
11 things that I could support as well, I'd like to hear
12 from the other board members if they'd like to add
13 anything else.

14 MR. TURNBULL: Oh, thank you, Mr. Chair. I
15 would agree with the comments that you both have made.
16 I guess -- you know, I always get a little but
17 suspect when I see so many requests for relief on
18 something like this. I worry about setting precedence
19 on a lot of different areas. But this is such a
20 unique property. I think it's something that merits a
21 little closer look, and I think the -- I guess in the
22 Capitol Hill -- you know, I guess I would have liked
23 to have seen some letters from property owners on
24 either the back and the front. I know sometimes it's
25 not always easy to do, but it's nice to hear from

1 them.

2 But as the architect has stated, it sounds
3 like they are in support, but maybe they just don't
4 want to totally go on the record for some reason.

5 The Capitol Hill Restoration Society, I mean,
6 I always respect Mr. Peterson. He's been before us
7 many times. And obviously since the -- we're
8 neighbors to them, I'm not a very -- we have a very
9 good -- as the Architect of the Capitol has a very
10 good relationship with the Capitol Hill Restoration
11 Society.

12 But I guess I am just troubled by -- I don't
13 know a pervious surface only five feet wide in such a
14 confined little space. What that pervious surface
15 really does to the whole community as a whole, or how
16 that would really help in any way for the need for
17 pervious surface. I think it's probably more of a
18 burden than anything else, and I think the five-yard
19 setback to accommodate five yards of pervious surface
20 just doesn't seem practical. It just seems more of a
21 constraint than anything else.

22 So, although usually I am supportive of a lot
23 of the things that they say, in this particular case I
24 find it maybe a little impractical. I'm very -- I
25 always get concerned about the penthouse relief, and I

1 like to see the setback for railings and everything
2 else. But again, in this particular unique
3 circumstance, I think it merits again, a closer look
4 at, and I'm willing to -- I think with everything
5 considered and the aspect -- and the peculiarities
6 that relate to this property as a whole, I'm willing
7 to approve of all the relief requested and go forward.

8 MS. WHITE: I concur with both your comments,
9 Mr. Turnbull and Mr. Hart. I think the standards were
10 met for both the variance relief and special
11 exception. You know, as you know, you know, the BZA
12 is required to consider, you know, whether a proposed
13 development is compatible with the present and
14 proposed development of a neighborhood. And I think
15 because of the unique nature of this project, and the
16 support that you've got from both OP and ANC, that it
17 appears that you've met the prongs for a variance and
18 also met the tests under the special exception
19 requirement.

20 So, I will just add those final thoughts to
21 supplement the terrific comments that we've gotten
22 from my colleagues to my left.

23 MR. HART: So, hearing that, I would make a
24 motion to approve Application 19479 as read by the
25 secretary. May I hear a second?

1 MR. TURNBULL: Second.

2 [Vote taken.]

3 MR. HART: Mr. Secretary?

4 MR. MOY: Staff would record the vote as
5 three, to zero, to two. This is on the motion of
6 Chairman Hart to approve the application for the
7 relief requested. Seconding the motion, Mr. Turnbull.
8 Also in support, Ms. White. Have a board member not
9 present today, board seat vacant, motion carries.

10 MR. HART: A summary order. Thank you very
11 much.

12 MS. HARDWICK: Thank you.

13 MR. MOY: All right. The next -- if I can
14 have parties to the table to Application No. 19481 of
15 Stephen Dalzell. I think I pronounced that correctly.
16 Captioned and advertised for a special exception
17 under Subtitle E, Section 5201, lot occupancy
18 requirements of Subtitle E, Section 304. This would
19 remove and replace a shed addition and adjacent
20 pergola on an existing one-family dwelling, RF-1 Zone,
21 at premises 1241 Independence Avenue Southeast, Square
22 1014, Lot 147.

23 MR. HART: Thank you, Mr. Secretary. Welcome.
24 Please, introduce yourselves.

25 MR. OSSOLINSKI: I'm Matthew Ossolinski, I'm

1 the architect for the project.

2 MR. HART: That's Zolinski?

3 MR. OSSOLINSKI: Ossolinski.

4 MR. HART: Ossolinski.

5 MR. DALZELL: Stephen Dalzell, property owner.

6 MR. HART: And it's Dalzell?

7 MR. DALZELL: Dalzell.

8 MR. HART: Thank you. Want to make sure.

9 It's hard sometimes, you get a lot of names and want
10 to understand how to pronounce them correctly.

11 So, Mr. Ossolinski, you're going to be the
12 person presenting the --

13 MR. OSSOLINSKI: Yes.

14 MR. HART: -- the case before us. And please,
15 at your earliest convenience.

16 MR. OSSOLINSKI: Sure. It's a pretty simple,
17 I think, noncontroversial project. We are removing an
18 existing mechanical shed, or utility shed. Mechanical
19 in that it has hot water heater and furnace. We're
20 removing that and removing an adjacent pergola and
21 replacing it with a slightly smaller mechanical shed
22 for the same use, and a nonpergola-like structure,
23 falling outside the zoning definition of a pergola.

24 The existing lot occupancy is slightly over
25 the threshold of 70 percent. The result of the

1 project will be slightly under 70 percent lot
2 occupancy.

3 MR. HART: I'm sorry. I'm writing down as
4 you're talking.

5 MR. OSSOLINSKI: I'm sorry?

6 MR. HART: I'm writing down as you're talking.

7 MR. OSSOLINSKI: I think that we have all
8 favorable reports from OP, ANC, CHRS. We have support
9 letters from the adjacent neighbors.

10 MR. HART: And the Office of Planning, they'll
11 kind of speak to this in a minute, but they've
12 actually -- I want to say this is the -- they have
13 additional relief of Subtitle C, 202.2, regarding
14 enlargement of nonconforming structure? Are you aware
15 of their report?

16 MR. OSSOLINSKI: No, I've read the OP report
17 and I may have missed that.

18 MR. HART: And we'll get to that when we --
19 but I just wanted to make sure that that was -- I
20 wanted to make sure that you were aware of that, so
21 you will be.

22 But, when we get to the Office of Planning we
23 can discuss a little further, but --

24 MR. OSSOLINSKI: Okay.

25 MR. HART: Any questions from the other board

1 members? I think we can -- thank you for the
2 presentation. I think we can move to the Office of
3 Planning report.

4 MR. OSSOLINSKI: Sure.

5 MS. FOTHERGILL: Good morning. I'm Anne
6 Fothergill with the Office of Planning. And we rest
7 on the record in support of the application. We had
8 advised the applicant that they should talk to DCRA to
9 find out if they needed relief from Subtitle C,
10 Section 202.2, which is an addition to a nonconforming
11 structure, which is often applicable in a case like
12 this.

13 And so, we had sent them an e-mail and we
14 noted that in the report.

15 MR. OSSOLINSKI: We did talk to Office of
16 Planning. My understanding was that they said that no
17 further action was necessary. And I think I informed
18 -- I sent an e-mail regarding that. I just didn't
19 recall that it was the enlargement of a nonconforming
20 -- of a nonconforming structure, because we were
21 reducing the nonconforming structure. And that's when
22 they said, you don't have -- this doesn't apply.

23 MS. FOTHERGILL: That was DCRA who said that?

24 MR. OSSOLINSKI: That was Office of Planning.
25 Oh, that was Zoning. That was Zoning. I'm sorry.

1 The Zoning Administrator's office. And it was
2 confirmed later by the Zoning Administrator himself
3 through the technician who I spoke with.

4 MS. FOTHERGILL: Then that sounds great.

5 MR. HART: And, just to kind of put this to
6 bed, do you have the e-mail that, the traffic, the
7 back and forth about this particular issue? Just to
8 see if you could submit it for the record so that we
9 could at least know that that was --

10 MR. OSSOLINSKI: I can find that and I can
11 forward that to you. I can't recall if it was -- the
12 confirmation, I know, came via a telephone call.

13 MR. HART: Okay. Okay. It's helpful for us
14 to hear it so that may suffice for us. So --

15 MR. OSSOLINSKI: Right.

16 MR. HART: -- anyhow. Does the Board have any
17 questions for the Office of Planning?

18 MS. WHITE: No, I'm good.

19 MR. HART: Okay. Do you have any other
20 questions for the Office of Planning?

21 MR. OSSOLINSKI: No.

22 MR. HART: Now that that issue has been
23 addressed, is anyone here from the ANC? ANC 6B? No?

24 And, is anyone here that is -- that wants to
25 speak in support of this application? Anyone here to

1 speak in opposition to the application?

2 Hearing none. Do you have any closing remarks
3 that you'd like to provide?

4 MR. OSSOLINSKI: Well, given the situation, I
5 don't know if this is appropriate, but we would like a
6 bench decision if possible. We'd like to start
7 construction.

8 MR. TURNBULL: I don't know, you're really
9 pushing it.

10 MR. HART: Thank you very much. At this point
11 I think I could close the record, Mr. Secretary. And
12 for the other board members, are you ready to
13 deliberate? With gusto.

14 Commissioner Turnbull.

15 MR. TURNBULL: I think this is probably one of
16 the easiest things we've had all day. I really don't
17 think there's anything here. I mean, actually, the
18 nonconformity goes down for lot occupancy. I mean,
19 it's still going to be nonconforming, but I have no
20 issues with this and I think we could easily grant the
21 special exception on this.

22 MS. WHITE: And I concur with Mr. Turnbull.
23 This is a fairly simple request, and you've met the
24 standards under the special exception relief that
25 you've asked for. So, I'm in support of it as well.

1 MR. HART: With that I will make a motion to
2 approve -- actually, I'm in support of it as well,
3 just so -- in case you were wondering. I make a
4 motion to approve Application 19481, the application
5 of Stephen Dolzell. Do I hear a second?

6 MS. WHITE: Second.

7 [Vote taken.]

8 MR. HART: Motion carries.

9 MR. MOY: Staff would record the vote as
10 three, to zero, to two. This is on the motion of
11 Chairman Hart to approve the application for the
12 relief requested. Seconding the motion, Ms. White.
13 Also in support, Mr. Turnbull. We have a board member
14 not present, and a board seat vacant. Motion carries.

15 MR. HART: A summary order?

16 MR. MOY: Yes, thank you.

17 MR. HART: Thank you.

18 MR. OSSOLINSKI: Thank you.

19 MR. DALZELL: Thank you.

20 [Pause.]

21 MR. HART: Mr. Secretary, the next case.

22 MR. MOY: Yes, thank you. That would be, if I
23 could have parties to the table to Application No.
24 19484 of Charles and Allison Cleveland, advertised and
25 captioned for special exception relief under Subtitle

1 D, Section 5201; rear yard requirements of Subtitle D,
2 Section 306.1; side yard requirements, Subtitle D,
3 Section 307.5; pervious surface requirements, Subtitle
4 D, Section 308.1. This would construct a rear
5 addition to connect an existing one-family detached
6 dwelling to a rear garage structure, R-1-B Zone, 4604
7 Albemarle Street Northwest, Square 1550. Thank you.
8 Square 1550, Lot 815.

9 MR. HART: Welcome. Can you please state your
10 name and address for the record, and there's a little
11 button on the microphone in front of you. Just push
12 it once and the little green light will come on.

13 MR. TABOR: Good afternoon. My name is John
14 Tabor and I'm the authorized agent and the builder for
15 General and Mrs. Cleveland.

16 MR. HART: Thank you.

17 MS. CLEVELAND: I'm Allison Cleveland. I live
18 at 4604 Albemarle Street Northwest.

19 MR. HART: And Mr. Tabor, I'm assuming you'll
20 be giving our presentation.

21 MR. TABOR: Yes.

22 MR. HART: You can begin at any time.

23 MR. TABOR: Okay. We applied for a permit for
24 this project in the fall of 2015, when we discovered
25 that the owners had an 800 lot. So, we've gone

1 through the subdivision of that lot and we now have a
2 lot number 21 for that.

3 We passed the structural aspect of the permit
4 and go stopped in zoning again. And what this is,
5 it's a screened breezeway between the rear of the
6 house and the garage. It is not visible from the
7 front, barely visible from the alley, and just it's
8 mainly for the residents to enjoy sitting out in the
9 back in a bug-free environment and to be able to pass
10 from the garage to the house without being affected by
11 the weather.

12 We're asking for relief for Section D 306.1
13 that states a rear setback would be 25 feet. The rear
14 setback of the garage is currently seven and a half
15 feet, and this would not change by attaching the
16 breezeway to the garage.

17 We're also asking for relief for D 307.5,
18 which states that the width of the side yard shall be
19 a minimum of five feet. The screened breezeway will
20 be built five feet away from the side property line,
21 so we will maintain that five-foot side setback.

22 Now, the garage itself is currently three feet
23 from the property line. So, that will not change.
24 And we're asking -- well, we were asked to provide
25 relief for D 308.1, that states that there will be a

1 minimum of 50 percent pervious surface on the lot.
2 And right now, by my calculations, we have 53 percent
3 of pervious surface. And the pervious surface will
4 not change with what we're building, whatsoever.

5 And, that's pretty much it. I would like to
6 ask your consideration for this and to approve this.
7 Thank you.

8 MR. HART: Thank you. I'll ask any of the
9 board members if they have any questions of the
10 applicant.

11 MR. TURNBULL: No. I guess, I mean, this
12 seems fairly straightforward. I mean, it's basically
13 filling in an area that's already built. It has --
14 it's a patio, for the most part.

15 MR. TABOR: Yes, sir.

16 MR. TURNBULL: I guess I'll have to ask the
17 Office of Planning. I guess I'm confused by their
18 report. The Office of Planning states that the
19 existing rear yard is 25 feet, but it's really only
20 seven and a half feet. It's the back of the garage.
21 It is what it is.

22 But anyway, but I'll get to the Office of
23 Planning.

24 And the other thing is that the Office of
25 Planning says that the existing side yard is five

1 feet, but it's really three feet, which is existing
2 because the garage is there. So, you still need
3 relief from it because it's existing. I mean, you're
4 not changing anything.

5 MR. TABOR: Right.

6 MR. TURNBULL: So, it's already there. So,
7 basically the relief you're requesting is basically
8 already for something that's nonconforming and it's
9 there. So, I mean, the work you're doing on the patio
10 really doesn't make it an enclosed breezeway. It
11 really doesn't change what's significantly there. So,
12 I think from my standpoint, it's -- I have no issues
13 with your project so far.

14 MR. TABOR: Thank you.

15 MS. WHITE: Were there any comments from the
16 ANC at all regarding the project? Or was it just
17 verbal, or was it actually presented to ANC, was it
18 three?

19 MR. TABOR: Yes. Ann Wallace talked with
20 General Cleveland yesterday.

21 MS. WHITE: Uh-huh.

22 MR. TABOR: And, she called him to say that
23 she had not received any information from us, and then
24 when she looked back she found my e-mails that I had
25 sent her, and he explained the purpose and scope of

1 the work, and she verbally gave her approval for this.

2 MS. WHITE: Okay. Thank you.

3 MR. HART: Thank you. I think we're going to
4 move to the Office of Planning report.

5 MS. MYERS: Good afternoon. Or almost good
6 afternoon. Crystal Myers for the Office of Planning.

7 I should just express that we are recommending
8 approval, but let me just explain that the garage is
9 considered an accessory -- or, yeah. An accessory to
10 the main house currently. And so, that's why the rear
11 yard and the side yard are currently considered the
12 rear yard, 25 feet, and the existing side yard five
13 feet, because it's just taken from the house itself,
14 not from the garage.

15 But now, with the breezeway, if it were to be
16 built, that would include the garage as part of the
17 whole structure now. And so, the rear yard and side
18 yard measurements would be taken from what is the
19 garage, pretty much. Which is existing, which is one
20 of the reasons why we are -- we recommend approval.
21 We think it conforms with the zoning regulations
22 because it's an existing condition. But as it stands
23 now, the garage is an accessory, so therefore it's not
24 -- those measurements are not counted today.

25 But otherwise, we stand on the record of the

1 staff report.

2 MR. TURNBULL: Oh, I stand corrected. I
3 thought you would still include the actual dimensions
4 of what's left as a yard, but thank you.

5 MR. HART: Any other questions for the --

6 MR. TURNBULL: I guess the point still is,
7 nothing is really changing.

8 MS. MYERS: No, nothing is really changing.

9 MR. HART: Any other questions for the Office
10 of Planning?

11 [No audible response.]

12 MR. HART: Does the applicant have any
13 questions for the Office of Planning?

14 MR. TABOR: No, sir.

15 MR. HART: Excuse me. I'll ask if the ANC --
16 anyone from the ANC is present.

17 [No audible response.]

18 MR. HART: Okay. We'll move to the public,
19 the general public. Is anyone here in support of the
20 application? Is anyone here in opposition to the
21 application?

22 [No audible response.]

23 MR. HART: Okay. I'll give the applicant --
24 do you have any other comments that you'd like to make
25 regarding your application?

1 MR. TABOR: No, sir. I'd like to thank you
2 for your time and your support.

3 MR. HART: Thank you very much for coming out.
4 I think I'll be able to close the application --
5 excuse me, close the record at this point, and bring
6 it back to the Board. The Board ready to deliberate,
7 as much deliberation as we can do, I guess?

8 I will start the deliberation. I mean, I felt
9 that this was fairly straight forward application. I
10 appreciate the Office of Planning's report and I agree
11 with their recommendation to approve this application
12 regarding the relief for the rear and side yard
13 setbacks.

14 I felt that the applicant has provided
15 sufficient information for us to understand and to
16 meet the criteria that are in the applicable sections
17 of the zoning code, and I'd ben in support of the
18 application, and I'd like to hear any other comments
19 from any other board members -- either of the board
20 members, if you have any.

21 MR. TURNBULL: I have no comments to which
22 you've added. I would support this.

23 MS. WHITE: I concur.

24 MR. HART: And with that, I will -- excuse me,
25 make a motion to approve Application 19484. Do I hear

1 a second?

2 MR. TURNBULL: Second.

3 [Vote taken.]

4 MR. MOY: Staff would record the vote as
5 three, to zero, to two. This is on the motion of
6 Chairman Hart to approve the application for the
7 relief that's requested. Seconding the motion, Mr.
8 Turnbull. Also in support, Ms. White. We have a
9 member not present, seat vacant. Motion carries.

10 MR. HART: Thank you, Mr. Secretary. Could we
11 get a summary motion, please?

12 MR. MOY: Yes, sir.

13 MR. HART: A summary order. Excuse me. Thank
14 you.

15 MR. MOY: I got it.

16 MR. HART: And thank you all very much.

17 MR. TABOR: Thank you.

18 MR. MOY: All right. If I can have parties to
19 the table to Case Application No. 19472. This is of
20 Behnam, I hope I pronounced that correctly, Farahpour.
21 I tried. Captioned and advertised for special
22 exception under the height requirements under Subtitle
23 E, Section 5203.3. This would permit the construction
24 of a third-story addition to convert an existing one-
25 family dwelling into a flat. This is an RF-1 Zone at

1 premises 723 Gerrard Street Northwest, Square 2886,
2 Lot 214.

3 MR. HART: Thank you, Mr. Secretary. Good
4 afternoon. Could you please state your name and
5 address for the record?

6 MR. SULLIVAN: Good afternoon, Mr. Chairman
7 and members of the Board. My name is Marty Sullivan
8 from Sullivan and Barros on behalf of the applicant.

9 MR. FARAHPOUR: And good afternoon, Chairman
10 and also members of the Board. I'm Behnam Farahpour,
11 and I'm the owner and the architect of the project.

12 MS. WILSON: Good afternoon. My name is Alex
13 Wilson from Sullivan and Barros on behalf of the
14 applicant.

15 MR. HART: And, Mr. Sullivan, are you going to
16 present the case, or is Mr. Farahpour?

17 MR. SULLIVAN: I will introduce the case and
18 Mr. Farahpour will take us through the project.

19 MR. HART: Thank you.

20 MR. SULLIVAN: Ten minutes, I would assume.
21 Or, at the most.

22 MR. HART: Thank you. Ten minutes, Mr.
23 Secretary. We're going to keep it to that.

24 MR. SULLIVAN: I can do that. Thank you, Mr.
25 Chairman and members of the Board. Good afternoon.

1 Mr. Farahpour is the architect on the project
2 and he's also the owner, so he designed this
3 particular project and I'll turn it over to him
4 shortly to discuss the project. The specific relief
5 being requested is special exception relief from the
6 restrictions against altering a building's rooftop
7 architectural elements. And this relief is available
8 via Subtitle E, Section 5203.3.

9 The interesting thing about this provision is
10 that the special exception is written in sort of a
11 loop where the criteria for approval of the special
12 exception is identical to the provision from which
13 we're asking relief. So, we're in the position of
14 also asking for a waiver, in addition to a special
15 exception. But it's all for the same relief.

16 And the Board has handled a -- they've heard
17 and approved a handful of these cases so far, under
18 this, so we've had a roadmap to how we could satisfy
19 the special exception criteria, and we believe we have
20 done that. So, with that, I'll turn it over to Mr.
21 Farahpour.

22 MR. FARAHPOUR: The property that I purchased
23 was back in 2014, March of 2014, and it was in pretty
24 bad shape when I purchased it. The houses right
25 across the street from the property, more

1 specifically, Gerrard 726 all the way to 732, have
2 been raised one floor, to the third floor. So that's
3 what my ambition was, to just raise the floor when I
4 purchased it. And I understand after purchasing the
5 property, a year later, the regulations had changed
6 from R-4 to RF-1. So, this kind of the permitting and
7 the BZA process I didn't think -- I wasn't in
8 anticipation of this, of a year-long process in order
9 to do a renovation and add a third floor.

10 And just to explain a little bit about the
11 process, we have gone through the ANC and the Office
12 of Planning and we have accommodated all their
13 concerns and issues that they might have with the
14 façade and the changes, and the third floor. And we
15 have presented to ANC and OP, and they have seen the
16 changes and they have approved it afterwards.

17 And we also have the approval of the adjacent
18 neighbors as well. And if there are any questions,
19 specific questions, I'll be more than happy to answer
20 them.

21 MR. HART: Can you just kind of step through
22 the changes to the aspect that we're kind of focused
23 on, the roof?

24 MR. FARAHPOUR: Basically what you see behind
25 me, the mansard roof and the two dormers have been

1 added to the new façade, basically. And that goes
2 with the rest of the architectural typology of the
3 neighborhood, and that side of the street. So, that's
4 what -- that's the changes that --

5 MR. HART: And so the existing roof actually
6 is less of a pitch?

7 MR. FARAHPOUR: No, it was the same amount of
8 pitch. It's just shorter.

9 MR. HART: It's just --

10 MR. FARAHPOUR: So, I'm actually making it
11 longer so it would house another floor, basically.
12 So, I'm -- you're using the same pitch, but like
13 putting it for another floor.

14 So, it will be parallel with the one next to
15 it, because it's a semi-detached house. So --

16 MR. HART: And you have a roof --

17 MR. FARAHPOUR: Deck above it.

18 MR. HART: -- deck above it on that --

19 MR. FARAHPOUR: Yes.

20 MR. HART: -- as well.

21 MR. FARAHPOUR: Yeah.

22 MR. HART: I'm assuming the stairs are where?

23 MR. FARAHPOUR: Are from the inside,
24 basically. There's a roof hatch that opens up and --

25 MR. HART: To be able to access the roof

1 itself?

2 MR. FARAHPOUR: Yes.

3 MR. HART: Any questions from the other board
4 members?

5 MR. TURNBULL: Thank you, Mr. Chair. Thank
6 you for your presentation. I guess the biggest
7 question right now is the -- and I think even OP had
8 raised the proposed roof deck, the railing, and the --
9 meeting the setback requirements.

10 MR. FARAHPOUR: Yes, we have seen that and I'm
11 ready to accept it and give revised drawings. I even
12 have it available today, so if you would like to take
13 a look at it?

14 MR. TURNBULL: Yeah, I think we would need to
15 see that.

16 MR. HART: You said you have the drawings
17 today?

18 MR. FARAHPOUR: Yes, I have drawings today
19 to --

20 MR. SULLIVAN: And this wasn't self-certified,
21 so DCRA has seen this and they didn't raise that
22 issue, but we agree, we think they would. So, he's
23 provided a plan to comply with the railing setback.

24 MS. WHITE: Does that also incorporate some of
25 the ANC conditions too, or no?

1 MR. SULLIVAN: So, the ANC conditions related
2 to the porch, and that's why -- the revised plans
3 reflect the ANC's comments. And in fact, they voted
4 on the resolution with the condition, but they had the
5 revised plans that night and saw them and they were
6 okay with that. And thought that those plans complied
7 with their condition.

8 MS. WHITE: Good. Good.

9 MR. FARAHPOUR: Just to explain that there are
10 setbacks from the front, side, and the back, and then
11 on the property adjacent would be a parapet wall. So,
12 it would address all the concerns of the OP for the
13 railing.

14 MR. HART: And you said DCRA has seen these
15 drawings?

16 MR. FARAHPOUR: Yes, they have. This was --
17 these, no, they haven't. These are just what I
18 prepared today based on what OP's -- but previously
19 DCRA had seen them and they hadn't raised such an
20 issue, so.

21 MR. HART: And I don't know if -- okay. I was
22 thinking if OP had actually seen it because they were
23 actually the ones that raised the issue. Have you
24 submitted them to OP? You're basically -- this is the
25 first time you've kind of --

1 MR. FARAHPOUR: Yes. Yes.

2 MR. SULLIVAN: We just did these yesterday.

3 MR. FARAHPOUR: Yes, we just did these, yes.
4 Just to be provided.

5 MR. HART: Does the Board have any other
6 questions for the applicant?

7 MR. TURNBULL: But you're showing no setback
8 from the side?

9 MR. FARAHPOUR: Which side are we talking
10 about? The side that's --

11 MR. TURNBULL: The rowhouse. I mean, you've
12 got a smaller rowhouse to your left?

13 MR. FARAHPOUR: Correct. Which is a semi-
14 detached. It's like one unit. They are like mirrors
15 of each other, basically.

16 MR. TURNBULL: But it's semi-detached?

17 MR. FARAHPOUR: Yes, it's semi-detached.

18 MR. TURNBULL: It's not attached to your
19 house?

20 MR. FARAHPOUR: No. It's detached from the
21 left side. It's not attached on the right side,
22 right? There's a walkway on the right side.

23 MR. SULLIVAN: It is attached, but that's
24 going to be a parapet wall, which will suffice as the
25 railing. So, there's not a setback requirement for a

1 parapet wall. The same as there is for the railing.

2 MR. TURNBULL: And how high will the parapet
3 be?

4 MR. FARAHPOUR: Up to four feet, basically.
5 The same as the rail. So, it would stand within
6 the --

7 MR. TURNBULL: Okay. I'll have to get OP's
8 input on whether that meets the regulations or not.
9 And what's on the right side of your house?

10 MR. FARAHPOUR: That's an open space. It's
11 basically a walkway to the back yard on both
12 properties. So, it's a --

13 MR. TURNBULL: I guess it's hard to -- I've
14 only got the one drawing here and I'm trying to look
15 at a -- would have been good to get a section. I'm
16 trying to look at your other drawings.

17 MR. HART: And actually, in your architectural
18 plans, Exhibit 8, you have elevations and I'm looking
19 at the very last page of that. It's Drawing A0015.
20 You have an existing elevation and then the proposed
21 elevation in that does the back drop-off -- are you
22 regarding the back of the house to --

23 MR. FARAHPOUR: Yes, I'm excavating it to give
24 that back yard to the unit downstairs. Yes, I'm
25 regarding.

1 MR. HART: To give access to them for --

2 MR. FARAHPOUR: Yes, I do have access to it.

3 MR. HART: I mean, I'm sorry, to provide
4 access for the basement unit.

5 MR. FARAHPOUR: No, per ANC request. All the
6 access would be the front the front. It would be a
7 secondary access which already exists.

8 MR. HART: Okay. I was just trying to figure
9 out why the difference in the grading for --

10 MR. FARAHPOUR: Yes. That's yeah --

11 MR. HART: Between that one and the other.
12 And the exterior is going to be all brick on the
13 building?

14 MR. FARAHPOUR: Yes. We're not changing any
15 of the façade.

16 MR. HART: The east façade as well?

17 MR. FARAHPOUR: Yes. They're all staying.
18 It's remaining the same.

19 MR. HART: Any other questions for the --

20 MR. TURNBULL: I'm trying to -- on the roof
21 plan, it says proposed -- on number 3, on the roof
22 plan itself, to the right there's a cross-hatched
23 area, and I'm trying to look at the elevation to see
24 how that lines up. What am I looking at on the roof
25 plan here?

1 MR. FARAHPOUR: You're looking at the roof
2 deck, and then basically pitched parapet that comes
3 for the third floor, and the dormers. And you see
4 the, basically, the bay window that's coming out,
5 which is part of the original plan of the -- on the
6 right side. Does that clarify it or --

7 MR. TURNBULL: My problem is, I'm looking at
8 that elevation; that tiny elevation there. And I'm
9 trying to make out where that end of that wall is in
10 relationship to your floorplan.

11 MR. FARAHPOUR: That's basically this piece
12 that's sticking out. That's thing that's -- bay
13 window that's not -- that's not a window, but --

14 MR. TURNBULL: So, the sort of light area on
15 the elevation is the bay.

16 MR. FARAHPOUR: It's a back, in the back,
17 right. It's not in the front.

18 MR. TURNBULL: And then there is a higher part
19 that's above that bay that looks like it's white. And
20 you're saying -- okay, maybe -- so actually, I wish
21 you had provided a section. It would have made it so
22 much simpler.

23 So, that's going to go back. You're moving
24 that back there. Okay. Yeah, I guess my only
25 question is on the other side, the left-hand side,

1 looking at the elevation with this high wall that's
2 overlooking this smaller -- and I thought there was
3 something in the regs that talked about when there was
4 a structure that's taller than the structure next to
5 it. And I'll have to check with OP on the regulations
6 on how that reads. I don't have them in front of me.
7 I'm just concerned about a setback.

8 Four feet, parapet wall seems like it's acting
9 like a guardrail, beyond more than what would be
10 necessarily needed as a parapet. So, I'm a little bit
11 confused as to what's the actual use of that and how
12 you interpret that. But, thank you.

13 MR. HART: If there are no other questions, I
14 think we'll go to the Office of Planning for their
15 report.

16 MR. GOLDEN: Good afternoon, Bryan Golden with
17 the Office of Planning.

18 So, this is the first I'm seeing of the newest
19 version that shows the roof setbacks. It's my
20 understanding that there would still need to be a
21 setback from the top of the pitched roof, so it can't
22 go straight up from the top of the roofline there.

23 MR. TURNBULL: Not on the party wall side?
24 The left side, as we're --

25 MR. GOLDEN: So, this would be on the -- I'm

1 referring to the right side.

2 MR. TURNBULL: On the right side.

3 MR. GOLDEN: On the left side, I'll have to
4 check. There is the regulation about it being equal
5 to or greater height, and I can check on that one.

6 MR. TURNBULL: Yeah, that's my only concern
7 that the new regs, and I'm trying to remember, even
8 though it took us eight years to do it and I'm still
9 confused by -- I didn't have them in front of me to
10 look at that, but I wish you could review that.

11 MR. SULLIVAN: Commissioner Turnbull, I can
12 talk on that if you'd like. My understanding is that
13 there is a setback requirement regardless, in this
14 zone for one and two-unit buildings if it's adjacent
15 to a building that is of a lower or equal permitted
16 height. Which this would be, of course.

17 What my understanding is with parapets is that
18 parapets are now used to replace railings in cases
19 where you can't provide a setback. And so, the
20 parapet is permitted on the edge of the building to a
21 certain height, and if a railing is proposed instead
22 of the parapet, then that needs to be set back the
23 one-to-one. But we believe that we need a one-to-one
24 setback on all four sides.

25 But not if there's a parapet. Setback for the

1 railing. Yeah.

2 MR. TURNBULL: I guess I would like the Office
3 of Planning to weigh in on that. I would like to have
4 them go back and look at it.

5 MR. HART: And I think it would be actually
6 helpful of have --

7 MR. TURNBULL: Some better sections. I would
8 like to see -- I appreciate the revised plan, but I'd
9 like to maybe see the revised section showing what
10 you're proposing to do.

11 MR. HART: And included in that would be the
12 dimensions showing that you know, where the setbacks -
13 - showing what those dimensions are so that we have a
14 clear understanding of what those are.

15 I do appreciate you kind of anticipating this,
16 and it's very helpful to have the drawing that you
17 provided. So, but it is helpful to kind of have that
18 so that, you know, the Office of Planning has and we
19 have, the ability to kind of look at it and say, okay,
20 I get it, that we feel, you know, meets what we think
21 is the -- are the regulations.

22 And I think you could do it in this case. I
23 had a question, myself, on where the pitched roof side
24 of it was, whether or not that was appropriate or
25 allowed under the regulations. So, anyhow, that's

1 what it is. I don't know if the Office of Planning
2 wants to -- Mr. Golden, if you want to --

3 MR. GOLDEN: Sure.

4 MR. HART: -- speak a little bit.

5 MR. GOLDEN: So, we can certainly go back and
6 look at that requirement. But, I also just would
7 reiterate that they have only requested the relief for
8 the rooftop addition, and so the only -- that point
9 was brought up to the applicant regarding the
10 setbacks.

11 But the only relief that was requested was for
12 the architectural elements, and that we were in
13 approval, we did recommend approval of. But we can go
14 back and look at the parapet.

15 MR. HART: Yeah, I'm thinking about that. I
16 appreciate kind of the reminder that you all are --
17 what you all are before us, really is with regard to
18 the changing that, the roof aspect of it. You would
19 have to go to DCRA and DCRA may be the one to tell you
20 that you have to come back for more relief. But
21 that's not what was really originally before us.

22 Any other questions for the --

23 MR. TURNBULL: No, I guess I would just say
24 that the rooftop, if you're adding on, and you have a
25 significant railing added to the rooftop, adding on, I

1 think that then becomes an issue that BZA has to look
2 at. I think it's a concern.

3 MR. HART: Yes. I think the issue that I was
4 trying to kind of get to was the -- this is self-
5 certified application, and that was not part of
6 what --

7 MR. SULLIVAN: Exactly, no. That's the thing,
8 it's not.

9 MR. HART: Okay. So --

10 MR. SULLIVAN: And so, we don't know, but when
11 I looked at it too, I think I agree with the Office of
12 Planning for a railing. There needs to be a setback.

13 And we have no desire or intention to ask for setback
14 relief, so we're going to figure out a way to comply.

15 But obviously, I'd like to avoid having to ask for a
16 modification later too, so we can submit whatever the
17 Board -- and I can get some clarification on -- and
18 work with the Office of Planning on articulating
19 exactly what complies in presenting a plan that does
20 that.

21 MR. HART: Appreciated. You know, the --
22 questions?

23 I'll move to the ANC if anyone from the ANC is
24 here. No one from ANC 1B is here?

25 Now, to -- I just wanted to conduct the other

1 part of the hearing. Anyone that is in support of the
2 application? Anyone in opposition to the application?

3 Okay. I think, does the applicant want to --

4 MR. TURNBULL: We had one letter in
5 opposition, I believe. I don't know if they're
6 neighbors or --

7 MR. SULLIVAN: There's neighbors a couple
8 doors down. We do have letters of support from --

9 MR. TURNBULL: Right.

10 MR. SULLIVAN: -- the two adjacent neighbors.

11 MR. TURNBULL: Yeah, we saw that.

12 MR. HART: Thank you, Commissioner Turnbull.
13 That was helpful information. Yeah, we're not going
14 to close the record yet because you all have to
15 provide some additional information for us. But I
16 wanted to be able to kind of get through the various
17 aspects of the proceedings before -- I think what
18 we'll probably need to do is to look for a date in the
19 future to -- do the members of the Board want to go
20 for a meeting or a continued hearing?

21 Yeah, I think we're going to do a continued
22 hearing. And at that point if we feel that we've
23 gotten the information we can always have a decision
24 at that point as well. Mr. Secretary, do we have a
25 date? I'm not sure how long the applicant needs for

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1 providing information or --

2 MR. SULLIVAN: No time.

3 MR. HART: Two?

4 MR. SULLIVAN: As soon as possible would be
5 great.

6 MR. MOY: Okay. Well, Mr. Chair, just in
7 terms of filings, is it the Board's desire to have all
8 the filings on the same date, or would you prefer the
9 Office of Planning to have a little bit more time to
10 review what's submitted into the record?

11 MR. HART: I'll ask the Office of Planning.
12 Do you require -- could you provide the information on
13 the same date, or would you --

14 MR. GOLDEN: Yeah, I think I can do that.

15 MR. HART: Okay.

16 MR. MOY: Okay, well, that simplifies it. I
17 have two dates, Mr. Chair. Mr. Turnbull is due to
18 return -- we'll, I'm not going to say this, but in
19 June. But if we want to hold this in May then --

20 MR. TURNBULL: I can make myself available.

21 MR. MOY: Okay. And of course, as the Board
22 typically does, we'll tee this as the first case of
23 the day.

24 So, if -- well, the hearing next Wednesday the
25 10th, I don't know if that's too soon because it would

1 require a filing by --

2 MR. HART: Friday?

3 MR. MOY: -- Friday. Would that be possible?

4 MR. FARAHPOUR: Yes, that's possible.

5 MR. MOY: And for OP, if you can't respond by
6 Friday, then maybe Monday? I'll leave that up to the
7 Board.

8 MR. HART: And I think this is fairly straight
9 -- I mean, it's not a lot of complexity to it. So, I
10 think that that timing is fine.

11 MR. MOY: Okay.

12 MR. FARAHPOUR: So, a section would be
13 satisfactory, a section of where the parapet wall is
14 and the railings are going, sir?

15 MR. TURNBULL: Yeah. And then the elevation.

16 MR. FARAHPOUR: Setbacks.

17 MR. TURNBULL: Yeah, the elevation showing
18 where they are. That would be great.

19 MR. HART: Yeah, and that is -- the drawings
20 would have to be --

21 MR. FARAHPOUR: Again, I apologize for just
22 having the plans. I could have had like, you know,
23 sections.

24 MR. TURNBULL: No, I know. That's fine.
25 That's understandable.

1 MR. HART: Yeah, and I just want to make sure
2 that it's not just a section because it's -- as long
3 as we have the drawings it would be all --

4 MR. FARAHPOUR: No, everything will be
5 updated --

6 MR. HART: -- they're all consistent.

7 MR. FARAHPOUR: -- and it will be clear.
8 Yeah.

9 MR. HART: Yeah.

10 MR. MOY: Okay. So, this would be a continued
11 hearing on May 10th, which is next Wednesday. The
12 applicant, OP to file by, what did we say? Friday,
13 which is May 5th. Oh, Cinco de Mayo. All right. So,
14 we'll celebrate as well.

15 MR. FARAHPOUR: Thank you for your time.

16 MR. HART: I think that's it. Thank you very
17 much.

18 We're going to take a five-minute break before
19 we get to the last case. And we should be back here
20 at, let's say 12:40.

21 [Off the record from 12:33 p.m. to 1:04 p.m.]

22 MR. HART: Okay. Mr. Secretary, I think we
23 can call the final case that we have before us.

24 MR. MOY: Yes, sir. Thank you. That would be
25 Appeal No. 19477. This is of Kingman Park Civic

1 Association. This is the appeal of the decision made
2 on February 6th, 2017 by the Zoning Administrator,
3 Department of Consumer and Regulatory Affairs, to
4 issue Building Permit No. B1613608, to permit the
5 construction of a third-floor addition and rear three-
6 story addition to convert an existing one-family
7 dwelling into a flat in the RF-1 District at premises
8 429 20th Street Northeast, Square 4550, Lot 89.

9 MR. HART: Thank you, Mr. Secretary. And
10 could all the parties please come to the table here?

11 [Pause.]

12 MR. HART: So, we do have a -- in this case we
13 have a preliminary matter to discuss, and I'd like to
14 actually start with that, which is the DCRA motion to
15 dismiss the case. Excuse me, the appeal. And, the
16 way that we'll proceed here, we'll have one person
17 speaking for the DCRA, and I'm not sure who is going
18 to be the person speaking for the appellant. There's
19 going to be -- if we could start with the motion and
20 really what we're looking for is 10 minutes per side
21 to -- starting with DCRA to describe or discuss why
22 you feel that the appeal should be dismissed. And
23 then the applicant, or the appellant can describe why
24 they think that there should -- well, that it should -
25 - that the appeal should move forward.

1 And if we can start with -- and I'm trying to
2 think if we should go through the entire table to see
3 who we're speaking to.

4 What I'd like to do is actually have DCRA and
5 then the person speaking for the appellant, just to
6 introduce yourselves, and then we'll get to everybody
7 else once we get through this part of it.

8 MR. TONDRO: If I may, Mr. Vice Chair? Also,
9 I want to call attention to the fact that the owner
10 and the owner's architect are also present, so I
11 believe they're granted party status if they choose.
12 They're sitting behind me and to the next of the
13 Zoning Administrator. And also point out that at
14 least the Zoning Administrator has not yet been sworn
15 in. And finally, to apologize to the Board for being
16 late. I literally just ran out of an OAH hearing, so
17 I apologize. It extended longer. Thank you for your
18 patience.

19 MR. HART: Yes, and I would apologize for
20 folks. We were -- we wanted to make sure that DCRA
21 was here for this, so the delay that we had, we were
22 going to have a shorter one but we wanted to make sure
23 that you were here with us.

24 So, Mr. Secretary, could we first have the
25 swearing in for everyone that has not been sworn in

1 already? Please stand if you're being sworn in, and
2 raise your hand.

3 [Oath administered to the participants.]

4 MR. HART: So first, we'll start with DCRA.

5 MR. TONDRO: This is Maximilian Tondro on
6 behalf of DCRA.

7 MR. HART: And again, we'll give you 10
8 minutes for this.

9 MR. TONDRO: Did you want to have all of our
10 introductions first, or just to go straight to the
11 whatever?

12 MR. HART: Yeah, we can do introductions for
13 DCRA and then the appellant for right now.

14 MR. TONDRO: Okay.

15 MR. LeGRANT: Yes. Matthew LeGrant. I'm the
16 Zoning Administrator, DCRA.

17 MS. SARAF: This is Anu Saraf, the owner of
18 429 20th Street Land Trust.

19 MR. HART: Yes, sir.

20 MR. POWELL: My name is Joseph Powell, and I
21 live 426 21st Street Northeast, in back of the 429.

22 MR. WALTON: Good afternoon. Frazer Walton on
23 behalf of the Kingland Park Civic Association, the
24 appellant in this case, and the opponent.

25 MR. HART: Can you say your name again for the

1 record?

2 MR. WALTON: Sure. Frazer, F-R-A-Z-E-R, last
3 name Walton, W-A-L-T-O-N.

4 MR. HART: Thank you.

5 MR. WALTON: Sure.

6 MS. JOHNSON: Yes. My name is Joan Johnson,
7 and I live next door at 427 20th Street, which is next
8 door to 429 20th Street.

9 MR. MURRAY: My name is Charles L. Murray Jr.,
10 and I'm a concerned community.

11 MR. BOBO: My name is Dennis -- my name is
12 Dennis Bobo, B-O-B-O. I live at 2407 36th Street
13 Southeast, Washington, D.C.

14 MS. RAGLIN: My name is Veronica Raglin. I'm
15 the Chair of the Kingland Park Civic Association
16 Executive Board.

17 MS. HUNNICUT: My name is Gwen Hunnicut. I
18 live at 42 --

19 MR. HART: Is the mic on? It should be the --

20 MS. HUNNICUT: Oh.

21 MR. HART: There you go.

22 MS. HUNNICUT: My name is Gwen Hunnicut. I
23 live two doors down from 429, 433 20th Street.

24 MS. FADOJUTIMI: My name is Lenora Fadojutimi.
25 I'm here in support and I oppose.

1 MR. HART: And could you pronounce your last
2 name again? I'm sorry.

3 MS. FADOJUTIMI: F-A-D-O-J-U-T-I-M-I.
4 Fadojutimi.

5 MR. HART: Fadojutimi. Thank you very much.
6 And we have the owners, since we've gone
7 through the -- are you all -- would you like to
8 introduce yourselves as well?

9 MR. PRICE: K.C. Price, Principal at KC/DC
10 Studios.

11 MR. BLOON: Dave Bloon, also with KC/DC
12 Studios.

13 MR. HART: Thank you. So, Mr. Tondro, we'll
14 give you 10 minutes to provide your -- to give your
15 presentation, and we'll give Mr. Frazer -- excuse me,
16 Mr. Walton, 10 minutes as well. You may proceed at
17 your leisure.

18 MR. TONDRO: Thank you, Mr. Vice Chair. Good
19 afternoon, Mr. Vice Chair, members of the Board.
20 Again, thank you for your patience for the prior
21 delay.

22 I've briefed this. I think I've tried to be
23 as succinct as possible in the brief, but I will go
24 through that again for the record.

25 My response, having read the very filings made

1 by appellant in this case, which I've listed on pages
2 2 and 3 of my brief, those are the ones that I was
3 able to find, being as generous as possible in
4 identifying the various different claims. I believe
5 that there's -- I've submitted two motions in that, in
6 my filing.

7 One is a motion to dismiss for failure to
8 state a claim under the zoning regulations. And then
9 a second one is to deal with a motion to dismiss for a
10 lack of jurisdiction.

11 Just perhaps for the sake of simplicity, I'm
12 going to go in reverse order and deal with the lack of
13 jurisdiction first, just because that may get, I
14 think, hopefully rid of a whole bunch of issues that I
15 think are outside the jurisdiction of the Board.

16 As I provided in my brief, the Board's
17 jurisdiction is very clearly limited to appeals of the
18 zoning regulations, or particularly the
19 interpretations, the decisions made by the Zoning
20 Administrator in administering the zoning
21 regulations. And the Board does not have the
22 jurisdiction to hear appeals of alleged violations of,
23 and in this case I'll go through the building code,
24 the licensing laws and regulations of corporate
25 registration requirements of environmental laws or

1 regulations. All of which have been alleged in this
2 filing.

3 I want to -- I'm very careful. I don't want
4 to appear callous in this situation because I take the
5 appellant's concerns very seriously and I don't -- I'm
6 not a -- it doesn't bring me any joy to be in a
7 situation where we say, this is not the correct form.

8 These are not the place for these issues to be
9 addressed. But it is a very important one. It has a
10 function. The Board has a particular role. There is
11 the Office of Administrative Hearings which I believe
12 is a proper venue for any of these other allegations.

13 Nonetheless, if the Board deems it necessary
14 to go on to the merits, we believe that -- DCRA
15 believes that all those other issues, to the extent
16 that there is a claim that we can find cognizable,
17 that we can actually understand, we believe those have
18 been addressed, whether it's the business entity or
19 the corporate registration, or the building code
20 issues. So, I want to be clear that we do not believe
21 we have done our investigations, and from what we
22 understand of those claims made under those other
23 statutes and regulations that are outside the purview
24 of the Board. Nonetheless, based on what we've
25 understood, those issues have all been addressed. The

1 allegations, we believe, are without merit.

2 So, that's that first motion to dismiss for
3 lack of jurisdiction. And I guess probably the
4 easiest way to deal with that is if you look at page 2
5 to 3 of my appeal, you'll see the listing with a
6 response, with a, sorry, reference to where it was in
7 the appellant's prehearing statements that they allege
8 these issues. So, I'm quoting from the top of page 3,
9 and again, I'm sorry, this is Exhibit No. 24 for the
10 record. The alleged violations of laws and
11 regulations that in their prehearing statement there
12 was of the basic business license. I believe they're
13 not required to have one until there's a general
14 contractor, until they're actually doing construction
15 work and they can hire a general contractor. The
16 owner has said that they're going to be doing that.

17 That they failed to register as a foreign
18 domestic business entity. They don't need to as long
19 as they're not doing business. There's particular
20 code sections that provides for exemptions from having
21 to register until and when one does that work.

22 And that they failed to provide neighbor
23 notification. We have received evidence to the fact
24 that they have provided that neighborhood notification
25 under the building code.

1 But again, I want to be clear, all of these
2 things, I believe, lie outside of the purview of the
3 Board. I just want to reassure the Board that we have
4 done our due diligence.

5 Second, following that in the supplemental
6 attachment there were some other alleged violations.
7 These, unfortunately, are ones which I think are so
8 broad we couldn't understand what a particular
9 violation, so, of environmental laws. That's under
10 the purview of DOEE.

11 Building construction laws, that is under the
12 purview of the DCRA, but under any review of that is
13 the Office of Administrative Hearings.

14 And finally, the Historic Preservation Act,
15 again, the Office of Administrative Hearings or HRPB.
16 But either way, not the Board.

17 So, I believe those issues are really outside
18 the Board's jurisdiction and arguably might be the
19 easiest for the Board to dismiss. And that's why I've
20 dealt with them first in this presentation.

21 Second of all, however, I want to move to,
22 then the remaining claims. And those remaining claims
23 you can see on the top of page 2 of my filing, which
24 as I understand, there are four. That the new floor
25 would prevent the quiet and peaceful enjoyment of

1 neighboring homes, that it's a non-conforming use,
2 that it's a construction that would destroy the
3 current single-family water and sewer system, and they
4 would destroy existing fire and life safety materials.

5 It's not clear, as you can see in my filing,
6 that it's not clear what provisions of the code are
7 being referred to. There's a reference to D.C. Code
8 Title 11. But that's -- I'm assuming that actually
9 should refer to the Municipal Regulations, which is
10 the zoning code would be Title 11.

11 But even so, getting to Sections 200 and 201,
12 which are the only ones it referred to, I can't locate
13 a specific section there that would apply in this
14 context to those articulated claims. And so, you
15 know, there's potentially there's confusion going back
16 to the 58 code regulations, but even then I don't
17 think it applies. And more importantly, the 1958
18 regulations are not the -- this permit was approved
19 under the 2016 regulations.

20 If they had wanted to do the -- if they had
21 meant to refer to the 2016 regulations, then they
22 would be missing a subtitle. Just supposing it was
23 Subtitle E, since that's what governs the RF zones
24 that is applicable to the property, E 200 and E 201
25 govern general and density provisions, and they don't

1 seem to apply to the particular case, to the
2 particular allegations made here, nor is there
3 anything that we can respond to, to determine that
4 there was an actual violation.

5 And so, I also want to state that the Zoning
6 Administrator, upon receiving notice of this appeal,
7 followed its normal procedures, which is to get,
8 obtain the plans and the permits, the approved plans
9 and the permit, the file, reviewed it, had another
10 zoning technician review it, then he reviewed it
11 himself personally, went out and conducted a site
12 visits as well, and has not found any violations that
13 he is aware of, of the zoning regulations. His
14 approval stands.

15 I just want to make sure that for the record,
16 and again he can testify to that, that DCRA has done
17 its due diligence to the best that it's possible to
18 try to respond to appellant's claims.

19 So, again, just in brief summary, we're moving
20 then to dismiss for lack of jurisdiction for all the
21 various claims which do not sound in the zoning
22 regulations, and then for a motion to dismiss for
23 failure to state a claim under the zoning regulations,
24 because those claims that we can't locate them to a
25 particular section to which we could respond to show

1 that the plans, as approved, do comply with the zoning
2 regulations.

3 Having said that, the Zoning Administrator did
4 his best efforts, due diligence, in order to review
5 and confirm that there had not been an inadvertent
6 error in the initial approval. And I'll rest it
7 there. Thank you.

8 MR. HART: Thank you, Mr. Tondro.

9 Next, you have a minute and so to go. Thank
10 you.

11 Next, we'll go to Mr. Walton, who is speaking
12 for the appellant. And in this case, we're just
13 focusing on the DCRA's motion to dismiss. The
14 application -- excuse me, the appeal and they've
15 focused on two particular pieces. If you could kind
16 of respond to those pieces.

17 The first is lack of jurisdiction for the BZA.
18 And it seems like what they're saying is that there -
19 - that the BZA focuses on the zoning regulations and
20 only the zoning regulations, and that the aspects that
21 you've brought up in your case, in your appeal, have
22 to do with the building code, the corporate laws and
23 regulations and environmental codes which are actually
24 heard by a different body. And the Office of the
25 Administrative Hearing would be the body that they

1 would be looking at. Or that would be looking at
2 these issues.

3 The second part of it is a failure to state a
4 claim. So, in this case it is the appellant's
5 responsibility to be able to provide information about
6 what has been -- what is the violation of the zoning
7 regulations. And if you could speak to both the
8 jurisdiction part and the, what part of the zoning
9 regulations have in your mind, or in your
10 organization's mind, been violated for this particular
11 -- the case that you -- the permit that you are
12 describing. And we'll give you 10 minutes for that.
13 Thank you.

14 MR. WALTON: Yes, sir. Thank you very much.
15 Thank you, members of the Board for enabling us to
16 appear before you today. I will try first to speak to
17 the two areas that you have mentioned, the
18 jurisdictional question, as well as the statement
19 stating a claim that they have alleged that we have
20 failed to state.

21 With respect to jurisdiction, I would
22 respectfully state that the -- and first of all as a
23 caveat, we are neighborhood residents. We're not
24 experts in the area of zoning. We're citizens from
25 the neighborhood. But just applying a common sense

1 standard, and not as experts, it's clear that this is
2 fully within the jurisdiction of the zoning board.

3 And we make that statement because if you look
4 at D.C. Code 6-641.01, it says Zoning Commission
5 regulation, districts or zones are created to promote
6 the health, safety, morals, convenience, order,
7 prosperity, and it goes on, or general welfare of the
8 District of Columbia.

9 We are --

10 MR. HART: What is that you're reading from?
11 I'm sorry.

12 MR. WALTON: Yes. I'm sorry, D.C. Code 6-
13 641.01.

14 And it gives the authority of the Zoning
15 Commission, and it speaks to jurisdictional issues and
16 why it was created. And it speaks to promoting the
17 health, safety, and welfare. And we are speaking from
18 a general standpoint because we have not had the
19 opportunity to receive proper notice, so we have not
20 obtained experts in this regard. And we can show that
21 we have not received proper notice of the alleged
22 permits that were issued.

23 But notwithstanding, you have clear
24 jurisdiction because we are alleging that our health,
25 safety, and welfare is being endangered through the

1 use of the zoning regulations to justify the
2 construction of a third-floor frontage and pop-back,
3 if I may, construction.

4 With respects to jurisdiction, you clearly
5 have jurisdiction. We got to, again, D.C. Code 6-
6 641.07(g), small g in parenthesis, small 1 in
7 parenthesis, which provides that you have the
8 authority to hear decide appeals, where it is alleged
9 by the appellant that there is an error in any order,
10 requirement, or decision. I'm sure you're familiar
11 with it, so I apologize. I know, you're the experts,
12 you know this, and you know the regulation.

13 But you would be deciding an alleged error.
14 We are alleging an error on the part of the City. And
15 we make that representation because our health, again,
16 and safety is being endangered. We have not had a
17 proper opportunity procedurally to address this
18 question.

19 So, the District, with all due respect to
20 counsel, is putting the cart before the horse. They
21 want to prevent us from coming in, speaking before
22 your jurisdiction. And I would state again, that
23 every one of these appellants here, and all of us are
24 from the community, have come in because we respect
25 this Board. This is one of the few boards that we do

1 respect, along with the D.C. Historic Preservation
2 Board. We know your work. We know the kind of things
3 that you do.

4 And we are all here because we believe that if
5 you look at the issues in the District of Columbia,
6 you look at the loss of single-family housing stock,
7 which we believe is directly tied to the zoning
8 regulations, then we believe that the health and
9 safety and general welfare of the community has to be
10 addressed in this regard. There are too many
11 complaints about the same subject.

12 We all feel strongly. We would rather come
13 before you in a semi-judicial process to address these
14 issues because we are ready and willing to go to the
15 streets with it because it's getting unbearable. We
16 are senior citizens. This is a violation of the D.C.
17 Human Rights Act. We are people who have invested
18 millions of dollars in this community and we're having
19 people come from out of state. We're the tax payers.
20 We're the residents. They're coming from everywhere,
21 they are abusing us, they are creating trauma in our
22 lives.

23 So, we are representing to you that it is
24 within your jurisdiction when we talk about the health
25 and safety of senior citizens, their welfare. We have

1 Ms. Hunnicut, who is a senior. We have Ms. Joan
2 Johnson who we are representing. These are people who
3 being closed in, shut off from sunlight and air. And
4 we brought a picture for you to take a look at what
5 they're trying to do. It's a safety issue. The crime
6 is increasing in our neighborhood because of it.
7 These pop-ups are coming everywhere. And it's a very
8 serious problem and we know that the zoning board has
9 the jurisdiction to deal with our health and safety.
10 It cannot be limited to just 15 feet here, and 10 feet
11 there. It's got to go to the overall picture, your
12 overall authority to represent us within this city.

13 And with respects to a statement of facts, we
14 have alleged a general statement of facts. We can
15 attempt to allege more. We have begun to talk to
16 experts. But we have not had the opportunity to
17 because we received notice and we have that. Counsel
18 has represented that notice was given. No, notice as
19 not given.

20 The statute requires that notice be given 30
21 days in advance of the permit being issued. We were
22 notified over a month after the permit was issued.
23 So, really, we have had no opportunity to defend this.
24 And we didn't want to put out money, time, and energy
25 for a permit that has already been issued prior to our

1 consideration.

2 So, with that, that's where we stand. And if
3 anyone else would like to speak, I'll reserve my time
4 for them.

5 Yes, Ms. Hunnicut.

6 MR. HART: Well, actually --

7 MR. WALTON: Oh, I'm sorry. Yes.

8 MR. HART: We --

9 MR. WALTON: Okay.

10 MR. HART: -- just have one person that is --

11 MR. WALTON: I see.

12 MR. HART: For right now.

13 MR. WALTON: I'm sorry.

14 MR. HART: There is a procedural thing that we
15 need to kind of --

16 MR. WALTON: Yes.

17 MR. HART: -- just get through. And that is
18 there is a motion that the DCRA has made, and I'm not
19 trying to stifle --

20 MR. WALTON: Sure.

21 MR. HART: -- the communication. It is -- the
22 way in which we operate is to first kind of get
23 through this aspect of it and understand if there are
24 -- if the Board feels that there is a merit in the
25 DCRA motion. Then the appeal wouldn't move any

1 further. It would kind of stop at this point.

2 But it is helpful for us understand what it is
3 that -- the aspects that you're bringing forward with
4 respect to the jurisdiction issue and the failure to
5 state a claim that DCRA has put forward as being the
6 issues that are in the regulations that tell them that
7 if an appeal can move forward, there are certain steps
8 that you have to go through.

9 And so, they're raising this to make sure that
10 you understand it and that the Board understands that
11 there are things that we -- that we are not able to be
12 able to address. Our purview is limited.

13 MR. WALTON: And I oppose that, Mr. Hart. I
14 think Ms. Hunnicut was going to jurisdiction and
15 purview.

16 MR. HART: Okay.

17 MR. WALTON: She's not speaking to the merits
18 of this case. She's speaking strictly to why you have
19 authority to hear this and hear this matter.

20 MR. HART: And I'll allow that. I just didn't
21 want to make sure that it wasn't --

22 MR. WALTON: Yes, sir.

23 MR. HART: You know, I'm trying to get equal
24 time for both. And actually, speaking of which, Mr.
25 Secretary, can you give four minutes, because we've

1 talked some of your time away.

2 MR. WALTON: I'm sorry. Yes.

3 MR. HART: No, no, it's not your problem. I
4 just want to make sure you will have enough time to be
5 able to describe it.

6 Ms. Hunnicut, thank you.

7 MS. HUNNICUT: Yes. My name is Gwen Hunnicut.
8 I live at 433 20th Street Northeast. And I'm
9 objecting to this permit for two reasons. One is,
10 pop-ups are going to destroy the historic
11 characteristics of our neighborhood. The second thing
12 is, I'm concerned. I live two doors down. I'm
13 concerned that the drilling is going to cause
14 structural damage to my property. The third reason
15 is, having a pop-up, when we have heavy snow and rain
16 that where is that rain and water going to go? It's
17 going to bounce off of 429, onto 433, and in two to
18 five years the zoning board will have nothing to do
19 with it, but that extra water and snow is coming on my
20 house and is going to eventually cause structural
21 damage. That's what I'm concerned about.

22 Plus, when you had this hearing in February,
23 September 5th, 2016, I was instructed to send any
24 letters about opposition to Mr. -- I have a letter
25 here attached. I sent it to Mr. Price-Carver

1 (phonetic), along with the petition so that you could
2 know that at least at that time somebody on 20th
3 Street was opposing this permit.

4 But when I looked online, I saw nothing of my
5 letter or the petition. Since that time, I have
6 acquired a total of 18 signatures from residents on
7 20th Street opposing this permit. And I think that --
8 I think it would be -- and the residents of 20th
9 Street, that you do oppose this permit.

10 Now, one other thing I would like to say,
11 there's no report from the ANC. I spoke with my ANC
12 representative Monday, and he said -- I gave him a
13 copy of the letter that had his name on it. He said
14 he never received it, and that in order for the ANC to
15 make a position for or against what this permit, they
16 need seven days in order for the ANC to meet.

17 So, I would respectfully ask that before you
18 make a -- your final decision, that you give the ANC
19 time to read the letter and submit a report. That's
20 it.

21 MR. HART: Thank you.

22 MR. WALTON: Yes, sir. Thank you.

23 MR. HART: Is that the end of her
24 presentation?

25 MR. WALTON: That's basically it, yes. That's

1 basically the representations that we have. As far as
2 jurisdiction, we certainly again, without being
3 redundant, believe that the jurisdiction goes to our
4 health, safety, and welfare. That's within your
5 purview. We don't have a specific violation as to
6 being 15 feet beyond, or short, because we were not
7 notified in accordance with the law. And that's
8 within our brief. I won't repeat it, but I think it's
9 right three in our brief at 3307.2.

10 And the District has unclean hands. We will
11 say that on the record. All due respect. They have
12 unclean hands in that they are protecting someone who
13 hasn't given notice, hasn't registered with a master
14 business license. I heard counsel say that a master
15 business license is not required. We believe it is.
16 I heard him say that they're not required to be
17 incorporated as a corporation, foreign corporation
18 doing business. Well, all of this is putting the cart
19 before the horse.

20 I don't know who -- we have no information as
21 to who applied for this license. When they sent
22 notice to Ms. Johnson, they sent it under the 429 20th
23 Street Land Trust. That's who title is listed to on
24 the corporate -- on the Department of Tax and Revenue
25 property owner records. They are not incorporated.

1 They are not listed in the city. Again, all of these
2 are questions that we believe would come before your
3 jurisdiction because we cannot legally and
4 intelligently discuss zoning violations if we don't
5 know who the parties are, we don't know who the owners
6 are, we don't know who's applied for the license.
7 None of this information to the moment we're sitting
8 here, we have no idea who has applied for this
9 license. Thank you.

10 MR. HART: Thank you, Mr. Walton. Some of
11 this I'm trying to kind of pull some of this stuff
12 apart. Yeah, and I understand that you're saying that
13 the neighborhood didn't receive proper notice of the
14 permits. I think, I do recall that there was some
15 information that is in the record about kind of some
16 of the timing about when the notice had gone out.

17 But, part of this has been -- is difficult in
18 that some of the things that you're bringing up are
19 definitely not in the purview of our board. We can't
20 deal with this, you know, whether or not this entity
21 is a corporation or not. That's definitely not
22 something that the BZA would opine upon.

23 The environment codes, even the building
24 codes, they're not things that our board has a purview
25 over. We have a purview over how projects are --

1 whether or not they are within what the zoning
2 regulations say is allowed. And I'm just having a
3 hard time -- I understand that there is a general
4 sense, and you've raised the health and safety and
5 welfare, that is in, I'm pretty sure it's probably the
6 preamble of, or the beginning part of the zoning
7 codes. But there's not a particular -- there's not a
8 specific aspect of that, that we can go back to and
9 say, okay well, this is the issue and this is how
10 we're -- this is how -- this is the violation that the
11 appellant, that you the appellant are saying.

12 You may not like it, but not liking it and
13 actually being a violation are kind of two different
14 things. And so, that's the hard part, I think, that
15 we're kind of -- we would have to grapple with.

16 MR. WALTON: Can I add one other thing?

17 MR. HART: Sure.

18 MR. WALTON: I do believe I don't have it. I
19 don't believe I have it right in my hand, but I do
20 believe the regulations also speak to safety and
21 welfare. That's within your -- you indicated, Mr.
22 Hart, that it goes to the preamble of the zoning
23 regulations. But specifically, the zoning regulations
24 do speak to safety, and it speaks to welfare when
25 these regulations are being carried out. So, we

1 certainly believe it is within your purview to address
2 those issues.

3 MR. HART: Well, those are general ideas. And
4 what we have to look at the specificity. They are not
5 specific. The general health, safety, and welfare are
6 general ideas. They're not, you know, narrowed down
7 concerns. And I understand what you're saying. I'm
8 just -- there isn't anything that we can kind of say,
9 well, they didn't meet this. We have to have some way
10 of being able to -- some criteria by which to gauge
11 that. And right now, I'm just saying that we don't.
12 I'm not looking for a back and forth with it, I'm just
13 saying that that's my read on it at this point.

14 MR. WALTON: I'm only saying that because we
15 can't give you a specific if you don't tell us in
16 advance, before the permit is issued. We should have
17 the right, like in any case, to obtain experts before
18 these permits are issued, to go to DCRA and point out
19 the deficiencies. If we don't know about them, then
20 the general welfare is affected. The safety is
21 affected, because if we believe just as Ms. Hunnicut,
22 and if everyone else were to testify, they would tell
23 you the same concerns that they have. We can't
24 address if surreptitiously the owner is not going to
25 send us notice until after they have obtained the

1 permit. That should be of major concern to zoning.
2 It would certainly be of major concern to a court of
3 law. And that's how we feel. It's a serious issue.
4 A very serious issue that should not be taken lightly
5 because you are a strong board and you would set the
6 standard. That's a standard of proof.

7 Have you afforded, if these people are
8 alleging violations, have you given them the
9 opportunity to show why? We can't do that if you're
10 putting the cart before the horse. And I can't
11 believe that the District of Columbia, we pay their
12 salaries, that they're not pulling out these very
13 things themselves. That's all we're saying, counsel.
14 And I apologize to you, but it's a very serious issue
15 for all of us. These are our lives at risk. We live
16 there.

17 MR. HART: And we are taking it very serious.
18 I understand and I've read through the record for
19 this case. So, I do appreciate that.

20 And I didn't know if the other board members
21 had questions or comments that they'd like to make at
22 this point?

23 MR. TURNBULL: Mr. Chair, thank you. I just
24 had one. I think Ms. Hunnicut mentioned something
25 about a hearing on February. I don't think --

1 MS. HUNNICUT: No, I thought this said
2 something -- oh, I don't have the letter in front of
3 me. I read it, the letter that you sent to Bob
4 Comber, the ANC, it had a section in there that you
5 did, you approved a permit for --

6 MR. TURNBULL: We don't approve permits.

7 MS. HUNNICUT: Well, something February 28th,
8 I took it to mean that --

9 MR. TURNBULL: I don't know if this case came
10 before the BZA.

11 MR. WALTON: If I could help you out, Mr.
12 Turnbull. I'm sorry. I think Ms. Hunnicut means the
13 DCRA. It was not you.

14 MR. TURNBULL: Oh, okay.

15 MR. WALTON: Yes, sir.

16 MR. TURNBULL: Yeah. Yeah, because normally
17 anything that comes before us gets a number.

18 MS. HUNNICUT: Oh, okay. I'm sorry.

19 MR. TURNBULL: And usually an applicant is
20 coming before us to get relief from some number or
21 some aspect of the zoning regulations that they can't
22 quite meet. And on that case, notice goes out to 200
23 footers, it gets published, and then we have a
24 hearing. And they talk about it, neighbors come in
25 and talk about it, and we either say yea or nay, or

1 something happens and they go forward, or they don't.

2 I believe this case is probably what is
3 normally called a matter of right. In other words,
4 they went in to DCRA to get a building permit based
5 upon meeting all of the zoning regulations, that there
6 was nothing that they felt that it was in conflict
7 with the zoning regulations that they were doing.

8 So, and then maybe they can respond, but I
9 think it was a matter of right project. And then, so
10 a building permit was issued. So, we don't know
11 anything about it.

12 MS. HUNNICUT: That was my mistake.

13 MR. TURNBULL: It never comes before us.

14 MR. HART: Yeah, and some of this is -- and I
15 understand that you all are residents that live here
16 and you're not swimming in the world of zoning and I
17 know that it can be complex for anybody. And the DCRA
18 are the ones that actually, you know, give the permits
19 for the building permits. They're the ones that
20 actually provided that. I'm glad that Commission
21 Turnbull made that clarification.

22 MS. HUNNICUT: Okay.

23 MR. HART: Because it is important. And the
24 BZA, we will hear cases, cases where there is -- the
25 cases come before us because there is the owner of the

1 property or the person that's representing the owner
2 will come before us and say, I have looked at your
3 zoning regulations, and I don't meet those zoning
4 regulations, but the zoning regulations give me a
5 special whatever. I need a special approval from BZA,
6 and they'll come before us and present their case.

7 In this case, this particular project was a
8 matter-of-right project which literally means that
9 they are within the actual zoning regulations and the
10 Zoning Administrator has seen that and said, sure, you
11 meet the zoning regulations and we will be able to --
12 and I'm simplifying it by the way. We will be able to
13 permit a permit.

14 MS. HUNNICUT: I read it this week.

15 MR. HART: Yeah, so, and like I said, I
16 understand all of that.

17 Before we go a little further, and I'm -- Mr.
18 Tondro, I appreciate you letting us know that the
19 owner is here. I would like to give the owner 10
20 minutes, just as I've given everyone else, because
21 they are also a party in this appeal, to be able to
22 give you some time, 10 minutes to be able to present a
23 case that you have as well. And I don't have your
24 name, I'm sorry.

25 MS. SARAF: My name is Anu Saraf, A-N-U.

1 MR. HART: Thank you.

2 MS. SARAF: Yes, so this project, our basic
3 intent was, this is a matter-of-right project. My
4 understanding is everybody in the District of Columbia
5 has the right to build two units from their rowhomes.
6 I have that right and any other homeowner, rowhome
7 owner, has that right.

8 So, with that we proceeded. We do care about
9 this neighborhood, which is the Kingman Civic --
10 Kingman Association, a lot. We really appreciate the
11 park at the back of the property, and that is why the
12 building design was built with our architect, which is
13 completely terraced. So, we have a great response to
14 the park.

15 And we could have, you know, built a lot more.
16 We could have gone four stories, or we could have
17 built completely built this out. But that was not our
18 intent. We really respect this neighborhood. We are
19 willing to work with the residents, and give a nice
20 property in your neighborhood which you all can enjoy,
21 look at, and has a very terraced response at the back,
22 to the park.

23 That's all I have to say.

24 MR. HART: Thank you. Ms. White, do you have
25 any --

1 MS. WHITE: Well, one question I just wanted
2 to ask Mr. Frazer.

3 MR. WALTON: Yes, ma'am.

4 MR. HART: Mr. Walton.

5 MS. WHITE: Sorry. Frazer Walton, right?

6 MR. WALTON: That's fine.

7 MS. WHITE: Yes. Can you just sort of state
8 for me again, I'm just trying to understand your
9 claim. Are you alleging a specific violation of a
10 zoning regulation? And if so, what is it?

11 MR. WALTON: Yes. Thank you, Ms. White. Yes,
12 we are.

13 We are alleging specifically that this is a
14 safety violation, what they're doing. They are
15 closing Mrs. Johnson in, and I would like for you to
16 hear from her. She is a single female, a senior
17 citizen, who has rights. And we don't mean to
18 infringe on the rights of any property owner. Every
19 property owner has the right to improve their
20 property. We respect that. We've been living there
21 for 60 plus years, all of us.

22 But we don't respect the fact that someone
23 comes in feeling that they can endanger our health and
24 safety. We're getting more and more -- every one of
25 us can speak to it. More and more criminal elements

1 coming in because they are moving into these
2 apartments in and out, daily. And I shouldn't say --

3 MR. HART: Well, actually, actually, let's --

4 MR. WALTON: But, yes --

5 MR. HART: No, I mean, the whole criminal
6 aspect of it, I just don't think that that's --
7 there's no connectivity there.

8 MR. WALTON: Well, there is, counsel, because
9 there's a safety issue involved.

10 MR. HART: Hold on. But what I'm saying is --

11 MR. WALTON: Yes, okay. Sorry.

12 MR. HART: -- you are making a claim that new
13 people are bringing in criminals, and I just don't
14 think that that's something that we can -- hold on.

15 MR. WALTON: I understand.

16 MR. HART: I just don't think that that's
17 something that, one, is part of what we are able to
18 opine on.

19 MR. WALTON: Yes.

20 MR. HART: And so, if you could not actually
21 make that connection?

22 MR. WALTON: All right.

23 MR. HART: If there are building things that
24 we're -- if there are construction aspects of this --

25 MR. WALTON: Yes.

1 MR. HART: -- then I think we can hear that.
2 But this --

3 MR. WALTON: Well, let me say, Mr. Hart, and I
4 got you. I really do understand what you're saying.
5 I have worked for the police department, I have worked
6 for the federal government, I have been a federal
7 official in the past. So, I'm 67, will be 68 real
8 soon. I understand from your perspective, but I'm a
9 born and raised Washingtonian. I came up in this
10 city, D.C. public schools, like most of the people
11 sitting here. I know what I'm talking about, trust
12 me.

13 Construction and zoning definitely relates to
14 crime and safety and welfare. You cannot separate
15 those things. That's why we have zoning laws, because
16 you're there protecting us. And you do a great job.
17 I know your record. But I'm just saying that this is
18 very important to us because we have to live there.
19 And unless we're given the opportunity to gain our
20 experts, to address these specific issues, because you
21 recognize I'm not an expert, but I know enough about
22 zoning in the common sense, from a common-sense
23 standpoint, to know that every day these people -- you
24 should hear from some of them. You shouldn't just
25 hear from me. I apologize to you. I shouldn't be

1 doing all the talking because they have an opinion
2 too.

3 But I can tell you that it's within your
4 jurisdiction. All of us know that, and most of these
5 people here have quite a bit of experience and
6 education.

7 So, I just want to say, to address your
8 statement, Ms. White, give us the chance to tell you
9 why. Don't let these people just come in. Mr.
10 Turnbull, we know his experience, I know his
11 experience. He understands fully what I'm talking
12 about. I don't mean to put words in his mouth, but I
13 do know that without us having the opportunity to
14 address why, to bring an expert in, to bring an
15 engineer in, we'll put our money out.

16 But if you don't give us a chance to do it, we
17 can't do it. Thank you

18 MR. HART: Part of why I'm hesitating is to
19 decide what is the kind of, the prudent way forward.
20 Right now, I am having a hard time with understanding
21 the role that BZA has, that the Board has with your
22 appeal. Or at least the aspects that you've
23 delineated.

24 I understand that there are health, safety,
25 and welfare aspects that you would like to present.

1 What we were trying to -- what we have to do, and the
2 reason that DCRA has brought forward their motion was
3 really because they were trying to address some of the
4 concerns that you -- or at least understand some of
5 the concerns that you had, and I just, I have a hard
6 time thinking that these are things that the BZA
7 actually has the purview over.

8 And so, getting over that hurdle is a big one
9 because then we can kind of get to what are the nuts
10 and bolts of the actual case?

11 MR. WALTON: Well, can I ask you one last
12 thing, then, to -- maybe this will clarify it. And I
13 don't mean to cause you problems. But if you look at
14 the two acts, the 1958 Zoning statute, which we
15 previously came under as you know, and then you look
16 at the 2016, we, and I know you may not agree with
17 this, but we see these new constructions as
18 nonconforming uses. If you really apply -- our homes
19 were built 70, 80 years ago. And that '58 statute
20 would apply to these houses, not the 2016, because
21 you're adding these pop-ups that are aluminum siding,
22 that as Ms. Hunnicut said, is causing damage to these
23 long-time brick homes. You're going under the
24 structures. They are putting underpinnings.

25 All of this is because we can -- every one of

1 us sitting here can tell you that it's not a home in
2 the neighborhood where they've done this that it
3 hasn't been damage to the home. That's why you see
4 all these people here. They're not going to guarantee
5 it. They haven't even listed an insurance or bonding
6 company that would protect people's homes.

7 All of these are general welfare issues that
8 need to be threshed out. All these are safety issues
9 that should be threshed out. And we believe that the
10 constitutionality of the 2016 statute is at risk here
11 because it's not protecting us.

12 So, there's one other issue, and that's the
13 constitutional issue that we feel is very serious,
14 that should be looked at as well.

15 MR. HART: Well, there is -- I can definitely
16 tell you that the BZA is not going to look at a
17 constitutional issue. I mean, that's just well beyond
18 our purview.

19 MR. WALTON: Right.

20 MR. HART: So, that is not something that
21 we're going to address at all.

22 MR. WALTON: Okay.

23 MR. HART: And I don't know how my other board
24 members feel or if they have an opinion at this time,
25 but I don't know, maybe I'll open it up to see if they

1 have any questions or comments at this time about the
2 motion to dismiss.

3 MR. TURNBULL: Mr. Chair, I am sympathetic to
4 all these concerns. And the only issue is, I think a
5 lot of these, as you said, we cannot really weigh in.
6 I think several other bodies were mentioned that do
7 have authority over some of this jurisdiction issues.
8 We cannot get involved with the business license.
9 That's not a zoning issue that we can deal with, or
10 foreign or domestic business entity. Again, we don't
11 get involved in that.

12 The neighborhood notification, since this
13 wasn't a BZA case that went on, I mean, I guess once
14 it gets to the permit, I mean that's DCRA's response.
15 I mean, you get into that issue. I mean, it's not
16 us.

17 Environmental issues, again, we really don't -
18 - DOEE, I mean, that's another whole separate body
19 that deals with environment law and the aspects of
20 that.

21 Building construction, DCRA again. Then, as
22 Mr. Tondro said, there is a body within their agency
23 that would deal with aspects that you could go up the
24 ladder to address that.

25 And Historic Preservation, well that's HPRB.

1 That's not the Board of Zoning Adjustment.

2 So, although we're very sympathetic to all
3 your concerns, there's things that we get into that --
4 and none of these things really are for us. Even
5 health safety and -- yes, that is an aspect of what we
6 get into, but those are cases of health, safety, and
7 welfare that deal with zoning issues that are in the
8 zoning regulations that we can address.

9 So, some of these things may be safety, but
10 it's a broader issue than zoning. And I think there
11 are other entities that you could go to that would
12 address your concerns.

13 MR. WALTON: Well, Mr. Turnbull, in light of
14 what you said, we wrote to -- although we were never
15 notified, we asked about the permits. And I know this
16 may not be within your jurisdiction. I understand
17 that. We wrote to the DCRA, both Ms. Johnson and
18 myself on behalf of the civic association and the
19 other neighbors. They never responded to us expect to
20 say, you will be given notice. We submitted that to
21 you. You will be given notice prior to the issuance
22 of the permit.

23 So, we waited on that just as -- that's what
24 Ms. Hunnicut is referring to. We waited on that
25 information, we never received it.

1 One of the most important aspects from a legal
2 standpoint here today is that DCRA has never given
3 notice of appeal rights to anyone. They've never
4 responded to anyone. So, if the Board is suggesting
5 that there be a transfer or a removal jurisdiction,
6 just as you would do in a court of law, remove it to
7 another agency, we understand that and we're willing
8 to accept that.

9 But we are concerned about out time frames
10 because the only place we knew to come to was the
11 Board of Zoning and appeals. We received no form of a
12 notice as to where -- no response from the District.
13 Nothing, no information to the adjoining property
14 owner as to what her rights were.

15 So, if the District is willing, if they want
16 to agree to transfer this to another board that they
17 say we should be before, then we would be willing to
18 agree with them that we should do that.

19 MS. WHITE: I'm very sympathetic, you know, to
20 the words that you're saying. Obviously, you know,
21 you've been in the neighborhood a very long time.
22 DCRA has indicated that they also respect that issue
23 as well. But you know, as an attorney, as a board
24 member, you have to kind of look at those, the law the
25 strict rules and regulations that sort of set

1 parameters for what we can and cannot do.

2 You know, what Mr. Turnbull was saying that
3 there are some serious jurisdictional constraints in
4 terms of what the BZA can and cannot do, we cannot get
5 involved in constitutional issues and construction
6 code issues, business license requirements, or issues
7 with respect to D.C. Historic Preservation Act.

8 But one of the things I asked you, I was
9 trying to get a sense of whether or not you were able
10 to clearly allege a specific violation of the zoning
11 regulation, and I wasn't able to pin you down on that,
12 that would give some guidance in terms of what we
13 could get involved with.

14 But with what you're currently presenting to
15 us, I don't see sufficient jurisdiction for the BZA to
16 get involved in this type of matter.

17 MR. WALTON: Well, the only thing I asked you,
18 Ms. White, and you just said that you were a
19 counselor, and I think that lawyers, one of the first
20 things that they understand is due process. It's any
21 process, it's due.

22 MS. WHITE: Uh-huh.

23 MR. WALTON: And if we are not being given due
24 process, if you're telling me, the three of you, that
25 you don't look at whether or not someone is notified

1 when it affects your jurisdiction, then I understand,
2 we do have a problem because we would have to be given
3 some sort of notice so that we could -- if you say
4 that has to be specificity, because we've certainly
5 did the best job we could do without notice. We know
6 what we're talking about when it comes to health and
7 safety.

8 If you want the specificity, then you have to
9 have the notice first. And we haven't had the notice,
10 and our opportunity to be heard. That's very serious.

11 It's a serious issue and I think until that happens,
12 you shouldn't deny jurisdiction because you haven't
13 given us the opportunity to receive due process, both
14 substantively and procedurally. You're denying that
15 to us.

16 MR. HART: Well, if this was a case where you
17 said that the building was too tall, and you said it
18 was too tall because it was the you know, the height
19 that the owner wanted to build to was 40 feet, and the
20 actual allowable height in that zone is 38 feet, then
21 we have jurisdiction.

22 MR. WALTON: Well, Mr. Hart, if that's the
23 case, don't we have the right to receive the plans?
24 See, again, we received the plans --

25 MR. HART: What I'm saying -- go ahead.

1 MR. WALTON: -- after that. We have alleged
2 that. But without getting an expert in, if we aren't
3 given the plans prior to that time, if the permit is
4 issued and then we're given the plans, there's a
5 problem because we haven't had -- that's my point. We
6 haven't had a chance to bring in an expert to say,
7 hey, this is not right, or this is not wrong. You're
8 putting the cart, and I don't mean you in that
9 respect.

10 MR. HART: I understand.

11 MR. WALTON: But the cart is going before the
12 horse. We have to -- it should be continued to give
13 us that opportunity, and then if we can't allege
14 meritous (sic) violations, I understand you're saying
15 we haven't established jurisdiction. But until that
16 time, it shouldn't happen. It shouldn't be -- you
17 can't make that fundamental -- in all due respect, you
18 can't make that fundamental claim that we haven't
19 established jurisdiction, because we haven't --

20 MR. HART: Well, but that's -- the process
21 that we have is for you to be able to -- and I don't
22 know if it's someone that's in your organization, if
23 you have to go out and get counsel, or if there's some
24 other way in which you can get that information. But
25 that is what the DCRA is saying is that the

1 information that is -- that deals with the zoning
2 regulations, the violation of that, of the zoning
3 regulations, is not described in the information that
4 you've provided. And that you've had some opportunity
5 to be able to allege that there was a violation,
6 because that's what the appeal is. That's what it is
7 supposed to be.

8 But if you then don't describe what that
9 violation is, then it becomes, well, I don't know
10 where to go from here. And we haven't gotten from you
11 what that violation is. So, it is impossible for us
12 to then be able to say, well, this is how you know --
13 yes, we agree. We think that you're right. This is a
14 violation. We don't know that.

15 MR. WALTON: You know, if things -- if you
16 don't get notice and you don't get the opportunity to
17 present your case with plans, with construction,
18 normally things are remanded because you find out that
19 the individual never received the plans, never
20 received schematics or drawings. So, they have a
21 right at due process to say, I'm going to go get my
22 person. If they're saying, in the general sense,
23 we're saying in the general sense, they're violations.
24 But we had no way of determining that prior to the
25 permit being issued. That's all we're saying. I

1 think you understand what I'm saying, but I understand
2 what you're saying.

3 So, it looks like the zoning regulations are
4 missing something because when that occurs, it doesn't
5 speak to what happens when the --

6 MR. HART: Well, you're actually -- we're
7 getting some things confused.

8 MR. WALTON: Okay.

9 MR. HART: We have building codes --

10 MR. WALTON: Yes.

11 MR. HART: -- that deal with, you know, how
12 buildings should be constructed. We have zoning
13 regulation which deal with how districts, how zoning
14 districts, what the rules are for those particular
15 zoning districts.

16 MR. WALTON: Okay.

17 MR. HART: And the rules lay out, this is the
18 mass, bulk, height, setbacks, lot occupancy, all that
19 stuff is included in the zoning regulations.

20 MR. WALTON: Right.

21 MR. HART: The process that you're talking
22 about is about when projects, when a homeowner,
23 landowner, property owner, goes to the first intake of
24 that information is to the DCRA. And so --

25 MR. WALTON: I understand you. I'm just

1 saying --

2 MR. HART: Hold on, hold on, hold on.

3 MR. WALTON: Okay.

4 MR. HART: So, it goes first to DCRA. And
5 then a decision is made. Is there an issue? Is there
6 some -- not violation. Is there some relief that's
7 needed for that particular project, or is it a project
8 that is a matter-of-right? And if it's a matter-of-
9 right, then it doesn't come to the BZA at all.

10 MR. WALTON: Right.

11 MR. HART: So, I just think that there are, in
12 my estimation, that you -- while you have concerns
13 about the project that is -- that the owner has, that
14 in my estimation you should be going to the Office of
15 Administrative Hearing. Is that the correct name for
16 it? To be able to kind of talk about what that, you
17 know, if there are some specific things that have to
18 deal with the building code, I don't think the
19 corporate laws or anything go within that. But the
20 building codes that you can deal with those issues at
21 that location.

22 I mean, I don't think that necessarily we need
23 to continue having a back and forth conversation about
24 it.

25 MR. WALTON: Well, we have filed before. In

1 light of the motion that was filed, we did cross-file
2 with the Office of Administrative Appeals. But we're
3 saying is, there are time limits. We came to the
4 District of Columbia Government. We are citizens. We
5 pay people's jobs, and we feel that we should receive
6 some type of notice as to where you're going when we
7 as general citizens.

8 So, we have filed there. If counsel is
9 telling me that he's willing to litigate over there,
10 waive time limits on whatever, because the next
11 defense will be, we're out of time. We don't believe
12 we're out of time.

13 And I respect what you're saying, Mr. Hart,
14 because I -- and I truly, I truly do. So, if that's
15 what they're saying, if they feel that we should be
16 over there and they're willing to waive those time
17 limits, we'll go there, and we'll litigate these
18 issues because they are important to us. We're being
19 denied our rights and our opportunities to protest
20 what we believe are violations.

21 So, with that, I won't say any more. I
22 guarantee you that.

23 MR. HART: Well, I do appreciate you coming
24 out today and I mean, I think it's very helpful to
25 hear this and for you all to hear kind of what it is

1 that we do, to give you a better understanding of all
2 of the process. I don't know, Mr. Tondro, if you'd
3 like to give any, I don't know, have any comments to
4 what Mr. Walton just noted.

5 MR. TONDRO: Yes, thank you. I guess just two
6 points. Pardon me. I think one is that I believe
7 there is confusion because of the overlapping process
8 that goes through one agency, which is DCRA, one
9 permit issuance process, but that is governed by two
10 separate -- at least two separate regulations. So,
11 you have the building code with one hand, and then you
12 have the zoning regulations on the other hand.

13 What I will point out is that Section 3307,
14 that you refer to, that is under the building code.
15 And that also is a very limited notice that's only
16 triggered in certain circumstances for certain -- for
17 adjacent property owners. So, in other words, it's
18 not notice that's provided to the overall
19 neighborhood. It's only to adjacent neighbors, and
20 only if the plans that are proposed are going to have
21 structural implications to those adjacent properties.

22 So, it's a very limited notice. I believe
23 instead what we're dealing with in terms of appeals to
24 the Board, is of the Zoning Administrator's decision
25 that can precede the issuance of a building permit.

1 But generally, it's the building permit. The building
2 permit is deemed, in almost all cases, to be public
3 notice. It's constructive notice because it's issued,
4 it's on record.

5 If, however, there is a savings clause in the
6 zoning regulations that if for some reason an
7 appellant can say, I wasn't made aware, I only knew
8 about it at this particular time, then they can come
9 to the Board and say that they should waive the 60-day
10 period after the building permit is actually issued.

11 So, I just want to -- I think it's important
12 to clarify it to the extent that it's a situation
13 where the District isn't on notice -- doesn't have a
14 duty to provide notice in general, under the zoning
15 regulations. What happens is there's a -- beyond the
16 issuance of the building permit. And then at that
17 point that starts a 60-day clock for an appeal.

18 So, that's the zoning regulations that's a
19 separate -- if you're dealing with the building code,
20 then that proceeds under its own. That's a much
21 shorter time period. It's 10 business days as I
22 recall, for the Office of Administrative Hearing.

23 And this is sort of response to the second
24 issue, which is your question about the, effectively
25 removing to a different jurisdiction. I have not been

1 assigned that OAH appeal, so I can't bind the agency.

2 What I can say is I think that you have provided, on
3 record, clear examples of your intent to appeal this
4 issue, and so, I would believe that that would stand
5 in and of its own right when you go to Office of
6 Administrative Hearings.

7 Again, I can't bind the agency. I'm just not
8 in that position. But I believe, and that would be
9 the appropriate form to challenge the issues of the
10 notice required under 3307.

11 MR. WALTON: Thank you.

12 MR. HART: And finally, Mr. Walton, I will
13 also note that these proceedings that we're going
14 through right now, all of this is being -- we have a
15 court reporter. We have -- this is actually also
16 being webcast.

17 MR. WALTON: Yes.

18 MR. HART: We will have a transcript of this.
19 So, the comments, while they may seem to be just
20 comments that Mr. Tondro is saying, they're actually
21 in the actual transcript that we are going forward.
22 So, this information are things that you can bring to
23 the Office of Administrative Hearing to be able to
24 say, okay, this is the process that I thought I should
25 be going through. I have been, you know, made aware

1 of this other process. I am, you know, need a waiver
2 to whatever the process is to get into the Office of
3 Administrative Hearing and kind of move forward with
4 that.

5 I'm just kind of giving you some further
6 information about that.

7 MR. WALTON: Thank you, Mr. Hart.

8 MR. HART: And with that, I guess I should
9 make a motion on the -- sorry, make a motion on DCRA's
10 motion. And, I think that the motion to dismiss, I
11 would actually approve the motion to dismiss the
12 appeal, because I think for all the reasons that we've
13 stated, that there is a lack of jurisdiction for BZA,
14 and then the failure to state a claim for the BZA to
15 be able to use.

16 And with that, I'd like a second.

17 MR. TURNBULL: Second.

18 [Vote taken.]

19 MR. HART: The motion carries.

20 MR. MOY: Staff would record the vote as
21 three, to zero, to two. This is on the motion of
22 Chairman Hart. Seconding the motion is Mr. Turnbull.
23 In support of the motion, Ms. White. Board member
24 not present today, and board seat vacant. The motion
25 carries.

1 MR. HART: Thank you, Mr. Secretary. Ms.
2 White would like to make a comment.

3 MS. WHITE: My only comment is that, you know,
4 I know this is a very emotional issue. You know, but
5 obviously, we have to look at the strict parameters of
6 the law.

7 But on a more personal note, you know, I would
8 encourage the parties to communicate. You know, these
9 guys have been in the community a very long time and
10 have a wealth of knowledge that, you know, that they
11 can convey. And hopefully can begin working with each
12 other to maybe informally address some of the issues
13 and the concerns that they've communicated, because
14 obviously, they do have some concerns. But it's our
15 hope that you're able to work out some of these issues
16 going forward, regardless of the outcome of the legal
17 cases.

18 MR. WALTON: Thank you, Ms. White. Thank you,
19 Mr. Hart. Thank you, Mr. Turnbull.

20 MR. HART: Thank you. Thank you for all --

21 MR. WALTON: We appreciate your time.

22 MR. HART: -- of you coming out.

23 MR. TURNBULL: I would also say that there is
24 nothing precluding Ms. Johnson from talking to the
25 owner and making sure that there's an agreement as to

1 construction and whatever. But that's a separate
2 issue.

3 MR. WALTON: Thank you. I appreciate that.

4 MR. HART: Thank you.

5 MR. WALTON: We'll keep fighting.

6 MR. HART: Thank you.

7 MR. WALTON: Thank you.

8 MR. HART: And, Mr. Secretary, with that I
9 think we are -- any other matters?

10 MR. MOY: Not from the staff.

11 MR. HART: We are adjourned.

12 [Whereupon, at 2:15 p.m., the public hearing
13 and meeting were adjourned.]

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