

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JULY 14, 2015

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:  
LLOYD JORDAN, Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:  
PETER MAY, Zoning Commission Member

OFFICE OF ZONING STAFF PRESENT:  
CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:  
LAWRENCE FERRIS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:  
BRANDICE ELLIOTT  
STEPHEN GYOR  
MATT JESICK

The transcript constitutes the minutes from the Public Meeting held on July 14, 2015.

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

(9:48 a.m.)

CHAIRPERSON JORDAN: Mr. Moy, I want to, if you'd please have the applicant on -- we're going to move into our hearing cases. If you would have the applicant in 19040, 19041 and 19042 to come forward please.

MR. MOY: Okay. The applicant to three applications on the docket, Application Number 19040, 19041 and 19042. These are applications of District Properties.com, Inc. for variance relief at Properties 6002 Clay Street, Northeast, 4926 Foote Street, Northeast and the other address is 4275 6th Street, Southeast.

CHAIRPERSON JORDAN: So the applicant can take a seat please. All right. All right. And please introduce yourself. Did you give your witness cards to the court reporter?

MR. SECK: No, I just joined this meeting.

CHAIRPERSON JORDAN: Did you get sworn in this morning? Okay. Let's be sure to say your name clearly so the court reporter can have it, but you're going to need to do the cards as soon as we're finished with this. All right. So what is your name?

MR. SECK: My name is --

CHAIRPERSON JORDAN: Just make sure to push the bright

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green -- yes, make sure it's glowing. Okay. All right. Go ahead.

MR. SECK: Yes, good morning. My name is Saidina Oumar Seck.

CHAIRPERSON JORDAN: Okay. All right. Let me tell you why we've called this up. These three cases are not ready for us to render an opinion on. They do not follow the regulatory requirements to be before the Board and for us to make a decision in these cases.

We require these properties to be posted --

MR. SECK: Yes.

CHAIRPERSON JORDAN: -- well in advance, 14 days, well in advance of this hearing. You posted these things on July 9th, which would have been -- is that Friday or Thursday?

MR. SECK: Maybe it was on a Saturday.

CHAIRPERSON JORDAN: Oh, that's even worse.

MR. SECK: Yes.

CHAIRPERSON JORDAN: Okay. And so it would be my preference that we would move this off the docket, give another date. You need to re-post this property so it's timely posted. Are the posters still there?

MR. SECK: Yes.

CHAIRPERSON JORDAN: All right. And reschedule. We've also had some requests on, at least on 1940 and 1941 from

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the ANC to request these things to be postponed. But my biggest issue here is that you have to post these properties.

MR. SECK: Right.

CHAIRPERSON JORDAN: And it's just what's required. And it's important in the neighborhood for the neighbors to know what's going on in their neighborhood and block to give them fair opportunity to voice their concern one way or the other. And you've taken that away from them by not following the regulations.

MR. SECK: You're right, Chairman.

CHAIRPERSON JORDAN: And I don't know what outreach you've done to the ANCs and to all the neighbors. You need to do outreach. We believe in that strongly at the Board.

MR. SECK: Yes.

CHAIRPERSON JORDAN: And unless the Board has any other issues with that, I would, you know, move this to another date. Mr. Moy?

MEMBER MAY: If I may.

MR. MOY: I added them.

MEMBER MAY: I don't have any issues with the need to postpone. I do think that posting these properties is vitally important and it wasn't done with adequate time.

I do have one suggestion. When you, you know, when we do actually hear the case, I mean, this looks like essentially

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the same house being built on three different properties, which is fine.

But if you're going to do that, you might want to tweak the design just a little bit. In particular, I mean, there are a lot of things I could say, but the one thing I have to say is a window on the back wall so you can look out from the kitchen into the rear yard. I mean, that's just like basic thing. Doesn't have anything to do with your zoning approval, this is just my friendly advice, so.

MR. SECK: Well, taken too.

MEMBER MAY: Okay. Thank you.

CHAIRPERSON JORDAN: Let me do something. I'm going to first find out, to be fair, I guess it gets kind of hairy if we move this to another date, right? We might have some people who want to testify. We might want to have them come forward with us to take new testimony in regards.

MEMBER MAY: Do you want to testify today?

CHAIRPERSON JORDAN: No, I was going to say he could come back. Yes, okay. Let's --

MEMBER MAY: Make him come back.

CHAIRPERSON JORDAN: Yes. Okay. Let's get a date, please, Mr. Moy, ---O-Y. While I look for the date and -- it's very important that you work with the neighbors and talk to the neighbors and see if you can get them to consent or support

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your application.

MR. SECK: Yes.

CHAIRPERSON JORDAN: But you can't drive past the neighborhood. You just cannot drive past the neighborhood.

MR. SECK: Right.

CHAIRPERSON JORDAN: It just doesn't happen that way.

MR. SECK: Mr. Chairman, I wanted to say something about reaching out to the neighbors. I have --

CHAIRPERSON JORDAN: I saw the letter that you submitted this morning --

MR. SECK: Okay.

CHAIRPERSON JORDAN: -- which is still out of time. But still, it's just you have to be fair to the neighbors.

MR. SECK: Right.

MR. MOY: Mr. Chairman?

CHAIRPERSON JORDAN: Yes.

MR. MOY: Okay. I was conversing with Peter May since I believe he'll be participating on these applications. So the earliest on the docket would be September the 29th, sir.

CHAIRPERSON JORDAN: Okay. That's fine with me. Okay. So September 29th, and you need to be sure to re-file an affidavit of posting and make sure these things remain posted. And so you need to get new placards and put it up, et cetera. So September 29th?

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MR. MOY: 29th, sir.

CHAIRPERSON JORDAN: Okay. Real good.

MR. MOY: Okay. Thank you.

CHAIRPERSON JORDAN: Very good. Ma'am, is there something I can help you with?

PARTICIPANT: You call 19041?

CHAIRPERSON JORDAN: Yes, but the case has been continued to September 29th.

PARTICIPANT: For everything?

CHAIRPERSON JORDAN: Yes.

PARTICIPANT: Oh, thank you.

CHAIRPERSON JORDAN: Yes. And with the requirement that the property gets re-posted and the applicant to make contact with the neighborhood and have discussions. Thank you. That's all right. Okay. Let's do 36, Mr. Moy.

MR. MOY: Thank you, sir. To the table the applicant to Application Number 19036. This is an application of Jeanette Corley. Mr. Chairman, this is a request as advertised public notice, variance from the use requirements under 201.1K. And I believe that this application has been amended to a special exception relief under 202.10 for an accessory apartment.

CHAIRPERSON JORDAN: Okay. Good morning.

MS. CORLEY: Good morning.

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CHAIRPERSON JORDAN: Let's make sure your microphone's on. You should have a bright, glowing green light.

MS. CORLEY: Yes.

CHAIRPERSON JORDAN: Okay. Please identify yourselves.

MS. CORLEY: My name is Jeanette Corley. I'm the homeowner.

MS. BRUNSON: And I'm Lynette Brunson, the designer.

CHAIRPERSON JORDAN: Okay. And you did give your witness cards to the court reporter? All right. This is a matter that I think the file, in my opinion the file has enough information to support the requested relief.

The Office of Planning, the ANC and the Department of Transportation supports this and you have letters from at least five neighbors. At this point I don't think there's any, unless the Board has questions or something they need to hear from you, I think we can proceed on without you necessarily doing a presentation, unless you want to do that. But otherwise we can kind of proceed on.

Does the Board have any questions or anything they need to hear from this applicant on this? Anyone? So with your permission we'll move on.

MS. CORLEY: Okay. Thank you so much.

CHAIRPERSON JORDAN: And we will go to Office of

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Planning and see if there's anything in addition that planning would like to add. Good morning.

MS. ELLIOTT: Good morning, Mr. Chairman and members of the Board. For the record, I'm Brandice Elliott. Office of Planning is recommending approval of the request for a special exception. And we'll stand on the record, but I'm happy to answer any questions you have.

CHAIRPERSON JORDAN: Okay. Board, any questions of Office of Planning?

MEMBER MAY: Yes, I'm just a little curious about the interpretation that this is a special exception since it doesn't meet the conditions for a special exception. Doesn't that kick into variance territory?

MS. ELLIOTT: So specifically, which requirement of the --

MEMBER MAY: The requirement that it be a single family dwelling and those sorts of things. I mean --

MS. ELLIOTT: Yes.

MEMBER MAY: -- there's a statement there about having to waive things. This is not a usual thing here at BZA, so I'm just curious about --

MS. ELLIOTT: Okay.

MEMBER MAY: -- that.

MS. ELLIOTT: Well, the provision for an accessory

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apartment does permit a waiver from two of the requirements that are required of accessory apartments. So in this case, the applicant is waiving the lot size and the fact that the dwelling is attached, so.

MEMBER MAY: How many requirements are there altogether? Is it they get to waive two out of three, two out of four, two out of five?

MS. ELLIOTT: There's a fairly lengthy list here.

MEMBER MAY: Yes, I see.

MS. ELLIOTT: Eight or nine items.

MEMBER MAY: Okay. Thanks.

MS. ELLIOTT: Yes.

CHAIRPERSON JORDAN: All right. Any additional questions on this? All right. Does the applicant have any questions they'd like to ask Office of Planning? Okay. Is anyone here from the Department of Transportation on this case? We do have a letter from the Department of Transportation with no objection to the requested relief.

Is there anyone here from ANC 5E on this case, ANC 5E? We do have a letter of support from ANC 5E, which we will give great weight to, in support of the application.

Is there anyone here wishing to speak in support of the application, anyone in support? Anyone in opposition? Anyone in opposition? Then let's close the record based upon

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what we already have deduced here in the filing and here today.

Is the Board ready to deliberate on this case?

MEMBER MAY: Yes.

CHAIRPERSON JORDAN: I would move that we grant the relief in 19036.

MEMBER HINKLE: Second.

CHAIRPERSON JORDAN: Motion made and second. Additional discussion? All those in favor of the motion, aye?

MEMBER MAY: Aye.

CHAIRPERSON JORDAN: Those opposed, nay. The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as three to zero. This on a motion of Chairman Jordan to approve the application for the relief requested. Seconding the motion, Mr. Hinkle. Also in support Mr. Peter May. We have no other Board members present today. Motion carries three to zero, sir.

CHAIRPERSON JORDAN: A summary order, please.

MR. MOY: Thank you.

CHAIRPERSON JORDAN: Thank you very much for your time. Let's see what I have on 19001. All right. Let's just do the, I guess, the first case then. Yes, let's do the first case, the 38, please, Mr. Moy.

MR. MOY: Yes, thank you, sir. That would be Application Number 19038 of Murillo Malnati Group, LLC. Mr.

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Chairman, this application is requested and captioned for a variance from all street parking requirements under 2101.1 at property 3831 Georgia Avenue, Northwest.

CHAIRPERSON JORDAN: Got it. Thank you. Okay. Come on then. We've got two chairs. Somebody take some seats. We got chairs. Let's move around. Let's do something.

MR. MURILLO: I was really set on that chair.

CHAIRPERSON JORDAN: I can tell, but not on our docket. Okay. Let's go through introductions. Starting from left, let's go right. Okay.

MS. MARCA: Jennifer Marca with Bonstra, Haresign Architects.

MR. BONSTRA: Bill Bonstra, Bonstra, Haresign.

MR. GEORGE: Osborne George, transportation consultant.

MR. MALNATI: Don Malnati, MMG Development.

MR. MURILLO: Julio Murillo, Murillo Malnati Group.

MS. BLOOMFIELD: Jessica Bloomfield, Holland and Knight.

MR. COLLINS: Chris Collins, Holland and Knight.

CHAIRPERSON JORDAN: Make sure your microphone is on, please.

MR. JONES: Timothy A. Jones, ANC 4C-08.

MR. ASSAAD: Christian Assaad, homeowner and resident.

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CHAIRPERSON JORDAN: No. Are you testifying a case in chief or are you just speaking in support or against? We'll get to you. Okay. You'll be called specially, but everybody else has to be either a party in the case, as the ANC's a party to the case or the applicant or if we had a party status. But we don't have any party status request as filed, do we?

MR. MOY: No.

CHAIRPERSON JORDAN: No. All right. A couple of things, there's a motion to waive time requirements of the applicant to, I think, was there an amendment or something to the TDM?

MS. BLOOMFIELD: Yes, we submitted what we believe is our final TDM measures based on response to the community and DDOT.

CHAIRPERSON JORDAN: Okay.

MR. MOY: That should be under Exhibit 46, Mr. Chairman.

CHAIRPERSON JORDAN: No, I'm okay with that. I just --

MR. MOY: Very good, just checking.

CHAIRPERSON JORDAN: So we'll accept that. All right. I think we understand this project and what you're doing. I think there is some questions and things certainly that I have and other Board members. I don't think we need a full presentation unless the Board wants to hear a full presentation of this project, any issues that.

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So I guess because there's relief from parking and I read the transportation study, I have some questions and concerns off the bat about the parking. I did not see in the transportation study what is projected for the number of tenants for this building that would have a parking need.

MS. BLOOMFIELD: I would turn that over to our expert, Osborne George.

CHAIRPERSON JORDAN: Just make sure your microphone is on, please.

MR. GEORGE: Can you repeat the question?

CHAIRPERSON JORDAN: Based upon your calculations, and I don't know what calculations you did, I didn't see it in the transportation report, what are you projecting are the number of people who will be tenants in this building who would have cars?

MR. GEORGE: We are thinking, based on the information provided by the applicant, that virtually no persons would drive cars.

CHAIRPERSON JORDAN: See that's, okay. Let's back up.

MR. GEORGE: Yes.

CHAIRPERSON JORDAN: Parking's very serious in this neighborhood. Did we qualify you as an expert? Did we do that? Are you already in the book as an expert?

MR. MOY: Yes, he is, sir.

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CHAIRPERSON JORDAN: All right. You can't shoot from the hip and give an opinion like that, not to me.

MR. GEORGE: Yes.

CHAIRPERSON JORDAN: There's nothing in the transportation report that talks about what's projected, guesstimated, because there are really such serious guesstimations at this point, of the number of people who are going to be in that building who would have it.

We understand the applicant's contention that nobody's going to park because we get that from almost everybody --

MR. GEORGE: Yes.

CHAIRPERSON JORDAN: -- to some extent. However, the transportation expert will do the analysis not based upon the representation of the applicant, but based upon their recent research and the climate of other properties, the estimations, the traffic studies that has been generated over a period of time, et cetera, and give us a, based upon that with some reasonable degree of certainty, what the expert opinion would be.

And so I just kind of to take exception to what your response was --

MR. GEORGE: Okay.

CHAIRPERSON JORDAN: -- in all honesty.

MR. GEORGE: Okay. That --

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CHAIRPERSON JORDAN: So it gives me pause --

MR. GEORGE: Yes.

CHAIRPERSON JORDAN: -- at this point to accept anything further because I don't think the foundation for that is there.

MR. GEORGE: Yes.

MR. MURILLO: Maybe I can clarify. Now, I think the question is more of a marketing question.

CHAIRPERSON JORDAN: The question is more we have used I guess a loose science based upon a researching aspect --

MR. MURILLO: Okay.

CHAIRPERSON JORDAN: -- of it --

MR. MURILLO: It's true.

CHAIRPERSON JORDAN: -- of what similar situated properties, how what they are in relation to the transportation loads around the property and et cetera. And the marketing's included --

MR. MURILLO: Sure.

CHAIRPERSON JORDAN: -- who you're marketing for and who you're trying to --

MR. MURILLO: Right.

CHAIRPERSON JORDAN: But those things are --

MR. MURILLO: I don't mean the marketing of the units.

CHAIRPERSON JORDAN: I'm still talking.

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MR. MURILLO: I'm sorry.

CHAIRPERSON JORDAN: You know, we can't. The court reporter has a problem with that.

MR. MURILLO: I understand.

CHAIRPERSON JORDAN: Okay. So that was my question. Does anyone at the table have that kind of research in front of us that --

MR. MURILLO: I do.

CHAIRPERSON JORDAN: -- you can present to the Board? Okay.

MR. MURILLO: Okay. I think maybe the question may have been misunderstood. We hired Mr. Osborne George to analyze the existing conditions, parking situation, availability, that sort of thing.

He did not address the issue of product design, number of units, basically, the marketing strategy for the design of the building.

So maybe I can explain how we approached it and that might answer the question. First we looked at demographics, the shifting demographics, the behavior of people moving into the city, moving into metrocentric locations, their use of public transportation vis-a-vis the ownership of a vehicle.

And we looked at unit sizes as a component to that analysis. And so when we designed the space we felt that not

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only was it impossible to provide the required parking due to the site conditions, but we don't want to develop a property that isn't attractive to potential renters either.

And so we, obviously, address the issue as looking at it from the same angle that you're talking about. One is a real life example of absorption for parking and the type of units that observe parking.

So we looked back at our most recent projects and in every single case except one, it was a project that we did in Georgetown that we exempted the parking altogether through a BZA process. And that project is now live and it's evidence that what we exempted.

The parking was difficult to provide to begin with, so it wouldn't have been physically possible to provide parking even if we had built, it would have been very difficult to access the parking.

So we didn't provide parking. And in those units, nobody that's living there has requested parking or owns a vehicle. Despite that, we did provide an offer, the availability of off site parking to anybody who might want that, in nearby parking lots.

So with the exception of that, all the other cases, one of which is in Logan Park, another one in Woodley Park, two in Woodley Park, one in Dupont Circle and one on the 8th Street

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corridor and lastly, one in Kalorama.

In every one of those cases we provided the parking that's required by the zoning code. And in every single case we had surplus parking. We just didn't have enough people to absorb the parking.

So to give you some examples, this is what we drew from sixteen unit building. We provided 11 parking spaces, we had three parking spaces left over.

At another unit where we had 39 units, we provided 24 spaces, two were left over. At a nine unit building we built in Woodley Park, two spaces were provided, we had trouble renting those parking spaces. We ended up having to rent them to people that don't live in the building and at a very discounted price because it's near the Metro.

At another property that we built in Dupont we did not provide any parking due to the fact that it was an historic building and there was no way to provide parking.

We retained a unit there which we felt needed to have a parking space in order to rent it. I sought out and obtained parking for that space in order to market the unit. Two of my last tenants did not want parking. They don't have cars.

And so in light of the analysis that did of recent city dwellers, existing city dwellers as well as our experience in the last six or seven projects to come up with what we thought

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was a reasonable number of parking spaces that might be absorbed in a 20 unit building.

We can plan two physically on site and I figure we probably may have demand for another two out of the 20, maybe three. But there's no way to completely ascertain that given that this is a fairly recent new development location. And the building is one block away from the Metro and we're providing alternative methods of transportation in our TDM plan.

So unless we go back into the past once we go forward, there's no way to project that, other than some extrapolation like I just did.

And so I don't have a study that determines that or projects that other than what we think is our marketing study that determines the design of the building.

CHAIRPERSON JORDAN: I have no problems with granting parking relief when we're presented with the evidence that supports parking relief.

But to do so, and certainly counsel knows, and others, we generally drill down on parking. I think the transportation study is lacking in just the very basic question. It's a very basic question. I understand what your response has been as we sit here.

I don't know how, you know, it's kind of anecdotal in

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regards to what you're projecting, but I don't know the what's the coefficient ratio based upon the number of people and others. And we do have some of that kind of data that's out there.

I'm not saying that I'm opposing this, but I need to be the one to get comfortable with it. You also made a statement and I just don't think what you said gets me there. You might have the other Board members, but you're going to need three votes to get there today.

The other side of it, I saw it in the application, I saw it in the record and I saw in the Office of Planning's report that you, and you just said it again here today, that the tenants could have the opportunity to park in another surrounding facilities? You're going to give them the opportunity. What does that mean?

Does that mean that the applicant's going to pay for the tenant or lock down for the tenant some parking spaces in this? Because I think Office of Planning said something in their report in that regard if I'm not mistaken.

MR. MURILLO: We researched the nearby parking garages that have available parking spaces for rent. There's at least four that we've identified over the last year. Prices range anywhere from \$65 to \$150 per parking space.

The fact that there's availability and there has been

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availability tells me that there's not enough absorption of parking at any price for these units, which reflects sort of what we have understood from our analysis.

But the other thing that I should add, when we designed the units we decided that instead of making larger units, which more likely would attract the type of tenant who would need their own transportation, we designed more affordable units making them smaller, making them efficient and thereby what we feel is the affordability factor.

You could say that all of our units if not, I'd say, most of the units, 80 percent, will meet the 80 percent AMI criteria in the IZ code. So we feel that the market is very close to the IZ.

The building is essentially an affordable unit building. Therefore, we feel that owning a car, and I think this is what Mr. George was alluding to, is somewhat cost prohibitive if you live in our building.

Because we feel that to own a car, it's at least a \$10,000 a year expense between the vehicle, parking, maintenance, insurance, et cetera. It adds a substantial cost to the cost of living.

And so by making our units 14 to \$1,600 monthly rent units, we feel that the type of tenants that will be living in those units will likely not own cars. That's what we

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believe.

If we were to build smaller rental units, but larger, we think we would, in fact, be attracting the type of tenants that would require their own vehicle.

And so obviously, we are the ones taking the risk in doing the project. We don't want to get it wrong. And therefore, we think that what we designed is a reflection of the market, not something that we're pushing on to the neighborhood.

MR. COLLINS: Mr. Chair, may I address certain zoning issues regarding that question?

CHAIRPERSON JORDAN: Yes, please.

MR. COLLINS: First of all Mr. George's report on Pages 11 and 12 does talk about the recent trends for the demand for cars based on the demographic of people, younger people moving in, the type of people that would be attracted to these smaller units on the avenue within close proximity to Metro and other amenities in the area.

CHAIRPERSON JORDAN: So to let you know, Mr. Collins, my question was what did we project as to the number of people projected in this building, based upon all that --

MR. COLLINS: Right.

CHAIRPERSON JORDAN: -- to get me. That's kind of what I'm asking.

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MR. COLLINS: Okay. Well, then let's look to the city's policies going forward. The new zoning regulations have not yet been adopted as final. They have been published as proposed rulemaking.

Those new regulations would require in this building three parking spaces and not ten. They would require three. It's on the new schedule for parking is one for each four units, I'm sorry, one for each three units above four units. Twenty units, you subtract the first four, that's 16.

CHAIRPERSON JORDAN: Yes.

MR. COLLINS: You divide that by three and that's five units. Then you are entitled, in the regulations, if a project's within a half mile of Metro, you're entitled to 50 percent reduction in parking.

So that would be 2.5 spaces which equals three spaces. We're providing two spaces on site. So --

CHAIRPERSON JORDAN: Yes, but let me, I appreciate that conversation, but that's not before us. Those regulations are not before us.

MR. COLLINS: No.

CHAIRPERSON JORDAN: We have to deal with, as you know

--

MR. COLLINS: Yes.

CHAIRPERSON JORDAN: -- better than I, that we have to

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deal with the regulations as we sit in --

MR. COLLINS: I understand.

CHAIRPERSON JORDAN: -- here today.

MR. COLLINS: My only point was that by the time this project is delivered --

CHAIRPERSON JORDAN: You're talking about more impact or something.

MR. COLLINS: -- the zoning requirement will be three spaces. And the table for parking doesn't take into consideration the size of the units. If you had 20, 1,000 square foot units I think it's safe to say that your parking demand would be much greater than if you had 20 four to 500 square foot units.

As you increase the number of bedrooms, you get someone who can afford a larger unit. They might have a car. The chance as Mr. Murillo explained, with the size of the units, it's unlikely that people have a car.

We talk about, and just bear with me, inclusionary zoning. This project will have three inclusionary zoning units that are required by that.

But the fact is given the size of the units, the price point of the units, about 80 percent of these units will meet the dollar figures for IZ.

So these are affordable units for people who are

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typically a younger demographic, the type of people moving in who are searching out these locations, these areas in the city, near Metro, near supermarkets, in town locations on the avenue.

We understand that in the neighborhoods it's a different issue. And parking is a big issue and we respect the concerns of the community about parking, we really do.

And that's why we are going to be doing everything that we possibly can to restrict the ability of the tenants of this building to get RPP stickers.

We know that it is not in discussions with DDOT. And in their report they reflect that the fact is that this is not on an area that allows RPP. And in order to get it people would have to petition on this block of Georgia Avenue to get it.

And DDOT said we're unlikely to grant it. And they also mention that there's some issues about enforceability of that. And we understand that. And that is why we are taking the approach in our own leases to restrict the ability to do that.

So we are doing everything possible to do that. We think that the type of person who is going to be living in this building on the avenue here within a block of Metro, with 20 bike spaces in the garage where only seven are required, with ample alternative modes of transportation, is not going to have a car.

Now, we can't tell you exactly how many that is. I think

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Mr. Murillo did the best to determine that. We have talked to three or four other garages. One was able to give us a letter, and which is in the record, that there's parking available.

But the other three, and Mr. Malnati has had that conversation, the other three have indicated that there is parking available or there will be parking available by the time this is delivered.

CHAIRPERSON JORDAN: All this started over in a very simple question. It was just very simple question. It was just like this, what do you project from the number of tenants, how many of those will have cars that you project upon a rational basis.

That was what it was. And I was asking because it was absent from the report. It's still absent from here at this table. It was absent from the report.

I hear all the argument. We had a whole bunch of closings. I'm just trying to get the information to support that.

MR. MURILLO: Mr. Malnati mentioned four.

CHAIRPERSON JORDAN: Anyway, I don't want to hold up the conversation. I'm going to come back to this for certainly for other members because we're not at the point of deliberating and having our discussion. I'm just trying to

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get the information necessary for me to make the decision.

Anybody else have questions so far on this or whatever?

MEMBER MAY: If I could just confirm. I thought I heard an answer to your question that there might be demand for three spaces, maybe four beyond the two that are there that are provided. So out of 20, five or six, did I hear that correctly? Okay.

MR. MURILLO: And to be honest with you we're trying to -- you didn't like the first answer which was we don't expect any. We do have two parking spaces for 20 units.

I honestly would not build a building where the tenants don't want to live there because they can't park. So the answer to the question is most likely we won't have any beyond the two that we have, but there is a chance, we can't control this, that some people might.

And based on our recent analysis and our recent projects I expect there might be two or three more.

MEMBER MAY: Two or three more. I said --

MR. MURILLO: Yes --

MEMBER MAY: -- three or four.

CHAIRPERSON JORDAN: Two --

MEMBER MAY: Okay.

CHAIRPERSON JORDAN: -- or three, what's the --

MEMBER MAY: Two or three more than the two that they

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have, so four or five spaces demand in total is what they're projecting --

MR. MURILLO: It's a change in --

MEMBER MAY: -- at least that they are --

MR. MURILLO: -- that's part of why this is difficult to project. And I'm sure you're just --

CHAIRPERSON JORDAN: Basically on this dialogue, we've got to try to walk our way down to try to get a number. I'm not really comfortable with the number, but when we review these cases, we review these cases well in advance and we spend a lot of time to do it.

So that information would have been extremely helpful even back-ending in it as you have here, up front, to get us there. That's why I just asked a question. It was a simple question that everybody kind of pulled back and started doing like this on.

MR. MALNATI: Chairman Jordan, excuse me.

CHAIRPERSON JORDAN: I was speaking.

MR. MALNATI: I went to a Department of Transportation presentation about, you know, the parking and about the changing demographics, et cetera. And --

CHAIRPERSON JORDAN: Really, I didn't kind of recognize --

MR. MALNATI: -- the --

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CHAIRPERSON JORDAN: -- you because I was still talking

--

MR. MALNATI: I'm sorry.

CHAIRPERSON JORDAN: -- at the point.

MR. MALNATI: I'm sorry.

CHAIRPERSON JORDAN: You know, maybe I --

MR. MALNATI: We shouldn't need --

CHAIRPERSON JORDAN: -- was discourteous when I was talking and then you wanted to talk and I should've stopped, I don't know. So because I'm just trying to get the information to back up the support what you need to move forward.

I'm not saying anything against you in any way, but I didn't see what we normally see to get there because it gives the Board comfort. The Board's always on the, you know, trying to weigh this whole thing regarding parking. And parking is a serious issue in the district.

So I'm not saying I'm against what you're doing, but I needed that information. And so, go ahead. You wanted something to say and I cut you off.

MR. MALNATI: I just wanted to say that the research that I had understood was that in recent period of time and I don't remember exactly what the period was that roughly 80 percent of the new people moving into Washington D.C. did not

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have vehicles.

So if you kind of extrapolated that to 20 units, then you'd get whatever that, 16 wouldn't have it, four would. So it's in that number. So I just wanted to let you know that that was the research --

MR. MURILLO: I think it was --

MR. MALNATI: -- that I'm aware of.

MR. MURILLO: I think that that particular study referenced 88 percent of new dwellings are car-less. And it was a period a year prior which is information which is probably a year-and-a-half old.

CHAIRPERSON JORDAN: But see how simple it was to even give some rational basis of the number?

MR. MURILLO: I don't think you liked the answer, which is zero. We gave the answer, then everybody laughed. And we are providing two.

CHAIRPERSON JORDAN: Even though everybody comes in here and says it's going to be zero, we at least know that we have the ability to make a decision of what the realm of possibilities are.

MR. MURILLO: Can I ask you what you think it might be?

CHAIRPERSON JORDAN: No, it's not my job. It's your case to prove.

MR. MURILLO: Right. But you have the --

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CHAIRPERSON JORDAN: No, it's your case to prove.

MR. MURILLO: Certainly.

CHAIRPERSON JORDAN: And I think that, well, okay, we can deal with that because I do have a vote here. The other question, based upon your study, did you include properties that are coming in line on availability of parking in this area?

MR. GEORGE: We considered, yes, Mr. Chair, along Georgia Avenue there are couple other developments that from the city's records are likely to be developed.

We're aware that they went through the BZA approval, some of them quite recently and that their issues were addressed. So we could not, in any type of microscopic way, revisit their analysis or their requirement for parking.

What we did was looked at the situation today and looked at what the impact is likely to be particularly with respect to the change of use of the property from commercial to residential.

And that was a significant part of our focus. In addition to looking at overall parking availability, it could go times when the demand would apply to this area.

CHAIRPERSON JORDAN: And so these are going to be apartments and not condominiums? Because I thought I saw something that was talking about condominiums at some point.

MR. MALNATI: This is rental building or apartments.

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CHAIRPERSON JORDAN: Maybe it must have been a DDOT report talked about something. Somebody's report --

MR. MALNATI: I think someone --

CHAIRPERSON JORDAN: -- had condominiums in it.

MR. MALNATI: -- made that, yes, that comment.

MR. COLLINS: I'm sorry, the DDOT report put in conditions. If it was a condo, this and if it was rental, that. That's where the word condo I think you probably saw.

CHAIRPERSON JORDAN: Yes. Anyone else, any other questions or want to drill down on the design, anything?

MEMBER MAY: Yes, I have just a few questions. How far is this from the DCUSA project? You know that project?

CHAIRPERSON JORDAN: DCUSA.

MR. MURILLO: In Columbia Heights?

MEMBER MAY: Isn't it -- that's further away. It's much further way. This is --

MR. MURILLO: It's got to be ten blocks at least.

MEMBER MAY: Okay. Just curious.

MR. MURILLO: Yes.

MEMBER MAY: And the site is not RPB eligible right now, correct?

MR. MURILLO: That's my understanding, yes.

MEMBER MAY: Okay. Can you talk to the difficulty of including more than two parking spaces on the site, just in

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terms of the nature of the site, the narrowness of the site.

MR. BONSTRA: Yes. This is very unique site. It's very modest in size. And the dimensions vary from about 35 feet along Georgia Avenue to 24 feet along the 15-foot alley.

There are extreme topography, four to five feet between the low on Georgia Avenue and the alley. To have a proper garage in a building like this, you would need 60 feet for a drive lane and parking. And even if it were a single loaded situation it would not work.

MEMBER MAY: Mr. Bonstra, when you say 60 feet, do you mean 60 feet in width?

MR. BONSTRA: In width, yes. We have neighborhood-serving retail along Georgia Avenue and because it's a corner property we have challenges with curb cuts, which we can't have. We are actually closing an existing curb cut and loading the parking from the alley which is the preferred method of parking.

We have bicycle parking in the basement for 20 spaces. And we're providing two spaces, one of them is required to be handicapped and that does take a little more area, but the building code requires that to be handicapped.

CHAIRPERSON JORDAN: So is the two spaces reserved for tenants or for employees or what's it going to be?

MR. BONSTRA: There's no requirement for the retail.

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The retail at 3,000 square feet plus 300 would require a space, but we're below that. So these are just for residential.

MEMBER MAY: So on your plan the space adjacent to the handicapped space, the eight-foot wide paved area is partially within public space?

MR. BONSTRA: Yes, that's correct. We believe that we would have to receive a waiver for that in order for it to be a fully conforming handicapped --

MEMBER MAY: Right.

MR. BONSTRA: -- space. So --

MEMBER MAY: Just for that extra foot or so.

MR. BONSTRA: -- we have done that in the past --

MEMBER MAY: Yes.

MR. BONSTRA: -- and we have been successful.

MEMBER MAY: Can that space be entirely within the public space, that eight-foot apron or whatever it is, whatever you call it?

MR. BONSTRA: Only if we would get a reduction in the width of the space. But the spaces we're shown are nine-by-19 which are zoning.

MEMBER MAY: Right, zoning compliant. But theoretically you could go down to --

CHAIRPERSON JORDAN: Eight --

MEMBER MAY: If you get to eight-six, can you get three

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spaces across there or eight-six, eight-six and nine?

MR. BONSTRA: It would need to be 20 -- it's about --

MEMBER MAY: 24.

MR. BONSTRA: -- 24 feet.

MEMBER MAY: So it has to be eight feet, yes, which is really tight.

MR. BONSTRA: It would have to be eight, you know.

MEMBER MAY: What's a compact space?

MR. BONSTRA: Eight-by-16.

MEMBER MAY: Eight-by-16 --

MR. BONSTRA: But that's only --

MEMBER MAY: -- yes.

MR. BONSTRA: -- over a certain amount.

MEMBER MAY: Right. I understand. I understand it wouldn't be zoning compliant.

MR. BONSTRA: Yes.

MEMBER MAY: Okay. And, you know, I imagine you might be if you had a curb cut roughly in the area where the existing curb cut is, that you could actually pull into the site and split left and right. But that would eat up most of the retail space or a large chunk of the retail space.

MR. BONSTRA: That's correct. It is very challenging, too, with the topography. And the neighborhood did express

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delight that we were, in fact, maintaining the grass area --

MEMBER MAY: Yes.

MR. BONSTRA: -- there, which would be consistent with the R-4 zone to the east, so that that was seen as a positive.

And I think --

MEMBER MAY: Right.

MR. BONSTRA: -- we feel the same way.

MEMBER MAY: Okay.

MR. COLLINS: There's another point there, Mr. May, on your last line of questioning. And that is with regard to that existing curb cut, DDOT has taken the position, their policy is that when you redevelop a site, your right to any curb cuts go away. And so we do not have the right to maintain that curb cut.

MEMBER MAY: Right.

MR. COLLINS: They also, their policy is that when you have alley access that you, their policy is to take your parking from the alley and not from a curb cut.

MEMBER MAY: Yes, I understand their hierarchy of preference for parking spaces. What I'm trying to do is get onto the record the difficulties of trying to increase even marginally how much parking you have on this site.

MR. COLLINS: I was trying to do the same.

MEMBER MAY: Perfect.

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MR. COLLINS: Thank you.

MEMBER MAY: Thank you.

CHAIRPERSON JORDAN: All right. Other questions. What's the AMI? What AMI are you targeting here?

MR. MURILLO: Like I said before 80 percent or so of the units would meet the 80 percent AMI which is half of the required. I'm not sure if I'm clear on that.

The IZ requires 50 percent of the units meet a 50 percent AMI and 50 percent of the units meet an 80 percent AMI. Aside from the three IZ units most of our units would meet the 80 percent AMI.

CHAIRPERSON JORDAN: Okay. All right. Any other questions from the Board or anything else they need to hear from this applicant? Okay. Let me ask them now that we come through with planning. Is there anything else you think you need to present to us now or --

MR. MOY: I'm sorry, Mr. Chair.

MR. COLLINS: I didn't hear you.

CHAIRPERSON JORDAN: I said, Ms. Bloomfield, Mr. Collins, anything else you believe you need to present to us that you want to present to us at this point?

MR. COLLINS: The only point we wanted to make that hasn't been addressed already is that the -- well, actually several. The project is consistent with the purposes of the

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Georgia Avenue overlay, which is to promote residential above retail.

And that's also found in the Georgia Avenue plat with Metro Station Area Corridor Plan and the Great Streets Framework for 7th Street. The existing parking situation is something that should be waived as to what's the proposed parking situation.

It's not a blank slate right now. It's a funeral home that is active that has services weekly, sometimes evening services. Mr. George has looked into that and would be able to address that in more detail if you'd like. And I think those are just the two points that I wanted to raise.

CHAIRPERSON JORDAN: Board, any additional questions? Board, anything from the applicant? Applicant anything else before we go into Office of Planning? Okay. Let's move to the Office of Planning then.

MR. GYOR: Good morning, Mr. Chairman and members of the Board. Stephen Gyor with the Office of Planning. We support the relief and including with the TDM enhancements as suggested by DDOT.

And to clarify, we also encouraged the applicant to secure an offsite parking at a offsite location for a specific term if possible. I know that there's some, you know, difficulty in estimating the number of spaces, but it seems

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to be three, so if possible that we would support that.

CHAIRPERSON JORDAN: What do you mean by that they should secure offsite parking spaces?

MR. GYOR: Well, I've seen other cases where the applicant has negotiated, you know, a term for a specific number of spaces for, you know, at a offsite location. And those are sort of reserved spaces for that applicant's development. Perhaps that possible here.

The applicant did provide an exhibit from another building, the Three Tree building, I think it is, or the Three Tree Flats building which has some available spaces.

CHAIRPERSON JORDAN: And can you do this, I think there are three spaces, to Griffin, is it Three Tree and Park Place, is that what they were?

MR. GYOR: Correct, the Griffin and Park Place Apartments for --

CHAIRPERSON JORDAN: Based upon --

MR. GYOR: -- the others.

CHAIRPERSON JORDAN: And I don't know if you have it, based upon the use needs of those properties, is there sufficient parking spaces to meet the needs of those properties and then have an additional space?

MR. GYOR: I think that's unclear. The Three Tree seems to have available spaces. I'm not sure about the others.

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But I'd have to confirm the -- oh, I'd have to ask the applicant about that. But I'm not entirely sure that they have available spaces, so.

MR. MALNATI: Mr. Chairman, I did do research on that. I could --

CHAIRPERSON JORDAN: Okay. So give it to me. You've got the Griffin, right, was one of them?

MR. MALNATI: Yes, the Griffin and Park Place are actually, they're like sister projects and so they all park together.

CHAIRPERSON JORDAN: So it's just one parking --

MR. MALNATI: It's one, sort of, grand, you know. There is parking in the Griffin, but there is more parking in Park Place. And they wanted to allow enough to service both of those buildings. So they want to --

CHAIRPERSON JORDAN: So what's the available parking? The --

MR. MALNATI: So the available parking there --

CHAIRPERSON JORDAN: -- possible parking -- excuse me, let me go back. What's the existing parking? You don't have to say what's available in these.

MR. MALNATI: There are 180 spaces in the Park Place building. There are, I don't remember the spaces in the Griffin. I'm sorry. But they don't rent out spaces in the

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Griffin. They just keep those for Griffin tenants.

CHAIRPERSON JORDAN: Yes.

MR. MALNATI: And they built additional parking in Park Place to allow for overflow if they needed it. And they have not needed it so far as I understand.

CHAIRPERSON JORDAN: Do you know --

MR. MALNATI: And --

CHAIRPERSON JORDAN: -- offhand how many spaces in Park Place is actually used?

MR. MALNATI: The last time we checked there were 49 spaces available. And they wouldn't, you know, they don't want to rent them all out, obviously, because, you know, they want to keep some for -- but there were substantial amount that were --

CHAIRPERSON JORDAN: What --

MR. MALNATI: -- available.

CHAIRPERSON JORDAN: Thank you. And what about the tree, is it Three Tree, is it?

MR. MALNATI: Three Tree, they would have given me six spaces immediately. They were very happy to get the idea that somebody might be interested in that many spaces.

So, and they were not specific with me, but I got the idea that there about 15 spaces that were vacant and they would allow as many as six to go at once. They still wanted to keep

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some in reserve for the residents.

CHAIRPERSON JORDAN: Okay. Does that help you any, Mr. Gyor, in regards to --

MR. GYOR: Yes.

CHAIRPERSON JORDAN: -- the record?

MR. GYOR: Thank you.

MR. MURILLO: I have a question, if I may. With --

CHAIRPERSON JORDAN: To OP?

MR. MURILLO: Yes.

CHAIRPERSON JORDAN: Okay.

MR. MURILLO: You mentioned securing parking spaces and that's a bit of a nebulous concept because as you know it's a changing market.

In general, we can say that there are X number of spaces available. It's impossible to secure a parking space two years down in the future. They won't do it.

So in order to truly secure it, we would have to --

CHAIRPERSON JORDAN: Let me, if I may? Can you get to your question of asking our Office of Planning --

MR. MURILLO: Yes.

CHAIRPERSON JORDAN: -- a question?

MR. MURILLO: The question is what do you mean by securing?

MR. GYOR: I've seen another case recently where an

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applicant negotiated, for example, two year term lease for a space.

MR. MURILLO: During construction?

MR. GYOR: Yes. Well, the building was already constructed.

MR. MURILLO: That's the difference. That's my point. That there's a difference between a building that's already constructed and then securing space at that point, versus securing a space now for a building that will be finished two years from now.

MR. GYOR: I see.

MR. MURILLO: All right. Okay.

CHAIRPERSON JORDAN: Board, any other questions of Office of Planning? Does the applicant have any additional questions of Office of Planning?

MR. COLLINS: No, sir. Thank you.

CHAIRPERSON JORDAN: All right. Department of Transportation?

MR. BOOKER: Good morning. This is Louis Booker representing the Department of Transportation. I think the only additional comment I have is that we support the supplemental TDM measures that the applicant is requesting to provide.

So if they're going to expand the TDM measures from five

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years to ten years, and we're going to, since it is an apartment building, we're retract our condition regarding the condo units. But we still want the TDM measures to apply to each unit during turnover for ten years.

CHAIRPERSON JORDAN: Okay. And I didn't see anything from the applicant on that, so is the applicant -- so the applicant is agreeing to the \$50 Metro smart card and complimentary bike share membership and annual car share subscription and \$50 MetroCard for each unit for the first ten years? That's what you're saying.

MR. BOOKER: Yes.

CHAIRPERSON JORDAN: Is that what the applicant is --

MR. BOOKER: That's correct.

CHAIRPERSON JORDAN: Okay. All right. It kind of helps.

MR. MURILLO: Because it's an either or situation, correct? That's the way the TDM program described.

CHAIRPERSON JORDAN: I have and, I've got one or. Okay. \$50 fees, yes, I think -- Yes, I think so.

MR. MURILLO: I'm looking at Page 6, the end of the first full paragraph --

CHAIRPERSON JORDAN: Yes.

MR. MURILLO: -- the last sentence about rental apartments.

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CHAIRPERSON JORDAN: Well, except if you look at this, well, Page 6 of DDOT.

MR. MURILLO: Yes, I'm looking at the DDOT book.

CHAIRPERSON JORDAN: Well, we can straighten it out here. But I think it might be written wrong in DDOT's end, but we can straighten it out here, making sure --

MR. MURILLO: Well, they --

CHAIRPERSON JORDAN: -- they go forward.

MR. MURILLO: They're here, they could --

MS. BLOOMFIELD: He agreed to it.

CHAIRPERSON JORDAN: Let me pull up DDOT's report and in one second.

MR. MURILLO: Okay.

CHAIRPERSON JORDAN: Okay, there's DDOT. Okay. You said Page 6 of DDOT?

MR. MURILLO: Yes, sir. The end of the first full paragraph, "For rental apartments provide complimentary annual bike share, complimentary annual car share membership subscription or \$50 Metro smart card for the tenants in each unit for the first ten years."

MR. BOOKER: And I would like to add we want that to be at the tenants discretion.

CHAIRPERSON JORDAN: Yes, that's what the or. Okay. We can clean it up. I mean, I just want to make sure we're

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--

MR. MURILLO: Okay.

CHAIRPERSON JORDAN: Okay. I believe we're on the same page with that. If not, we make sure it's worded that way if we certainly approve this.

Board, any questions of the Department of Transportation? Let me ask a question from DDOT. Have you done in the projections what you think that might be the number of tenants in this building that might have a car need?

MR. BOOKER: No, we haven't. However, we are undergoing a citywide survey, a parking utilization survey to actually understand the parking --

CHAIRPERSON JORDAN: Right. It was.

MR. BOOKER: -- utilization rate of different types of residential dwellings. And we've already completed some analysis and done some --

CHAIRPERSON JORDAN: Yes.

MR. BOOKER: -- field work, so.

CHAIRPERSON JORDAN: And we previously have reported that so far the analysis showing that we've kind of missed our mark collectively as a district in what our projections are actually missing the mark and that there is more parking demand than what we thought in some of the other cases.

And so that's something we discussed previously. And

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I'm glad you're doing the study, certainly, give us some basis. Any other questions? Oh, yes. I'm with you. I'm with you. Any other questions from DDOT Board? Applicant, any questions of DDOT?

MR. COLLINS: No, sir. Thank you.

CHAIRPERSON JORDAN: Okay. So then is there any -- I'm sorry. There is someone here from ANC 4C, is that correct?

MR. JONES: Yes, that is correct.

CHAIRPERSON JORDAN: Thank you. Anything you would like to say? We don't have a letter from ANC 4C, do we? No.

MEMBER MAY: Yes, we do.

CHAIRPERSON JORDAN: It's submitted, yes?

MR. MOY: It is submitted, yes.

CHAIRPERSON JORDAN: Okay. We did get it? Okay. Go ahead, please. Anything you want to say? Is it in support or where are we?

MR. JONES: The ANC 4C Commission is in opposition to the project. The vote was six opposed with three abstaining.

CHAIRPERSON JORDAN: Okay. And I must have missed the report in some kind of way. What is the basis?

MR. JONES: Exhibit 51.

CHAIRPERSON JORDAN: Exhibit 51. Let me pull that up a second.

MR. MURILLO: Can we get a copy of that report?

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CHAIRPERSON JORDAN: When was it filed?

MR. MURILLO: It was not in the record as of this morning.

CHAIRPERSON JORDAN: I see it's in our ZDOC still, but, yes, that's why. I must have missed it because I looked at this over the weekend and I -- does it meet great weight? Anybody look at it already. Does it? I can't remember. Voted in opposition.

MEMBER MAY: Well, part of it is the vote.

CHAIRPERSON JORDAN: It did. It has it there.

MEMBER MAY: Yes.

CHAIRPERSON JORDAN: I'm looking at it quickly.

MEMBER MAY: It's on the cover sheet.

CHAIRPERSON JORDAN: And there's a lot of reasons here. Okay. If you can, while you're here, can you just tell us because some of us have not had the opportunity digest the report.

MR. JONES: Okay. I think I'll have to take a -- first we signed is that it was the DDOT and testimony by a commissioner who's discussing whether this encompasses the Park Place unit.

He asserted that the residents parking on the street because the prohibitive cause of paying for parking. So in what I've heard this morning is a lot of testimony based on

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future tenants and I could take into consideration the fact that real estate is heterogeneous and you can't compare apples and pineapples, you've got to play apples and apples.

CHAIRPERSON JORDAN: And when I'm looking at the reports, kind of going to some of the questions I asked this morning, I had not seen your report --

MR. JONES: Okay.

CHAIRPERSON JORDAN: -- or your request. Because you're saying you need some empirical data to support what the allegations are --

MR. JONES: Right.

CHAIRPERSON JORDAN: -- empirical evidence. And that most of it was supposition.

MR. JONES: Yes.

CHAIRPERSON JORDAN: And you wanted to know more definitively what do they have that supports this surplus parking around the neighborhood.

MR. JONES: Right.

CHAIRPERSON JORDAN: We already talked about this morning that we, like I said, independently did not see this report, but the same concern is raised by the ANC.

MR. JONES: Okay.

CHAIRPERSON JORDAN: Anything else you want to say?

MR. JONES: Okay. And also and then you talked it about

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providing adequate space. And upon construction this building will add a split unit. It's a minimum four stories above the two story townhouses to the north and east which will deprive them of adequate light and air.

And as well as this would be a distant land use which will put pressure on land values and will be affect the ability of seniors who remain in the neighborhood, which is something to address in the comprehensive plan. Yes, let me see, employ and affirming. Let me see. I'm going through this.

And by granting the variance would deprive the Ward 4 has a large senior population which has cut parking close to home as a covenant is a highly desired aspect of the living in that neighborhood.

And any parking on the streets, you could tell by the numbers of residents and learn just a bit by residents just how bad the parking situation is in the neighborhood. And adding more would not alleviate it, it would just add to the problem.

And so of that aspects, I mean, putting more residents in the community would increase consumption demand for goods and services within the community which aren't currently available and which would lead to basis to go outside the community for those goods and services which would further not be indigenous so that it hinders a development of the

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community.

CHAIRPERSON JORDAN: Okay. I'm just catching up with your report. Anything else you want to say to the Board?

MR. JONES: Okay. Let me see. Let me see.

CHAIRPERSON JORDAN: One thing, the only thing that's in front of the Board at this point is the relief from parking.

MR. JONES: Okay.

CHAIRPERSON JORDAN: But go ahead, continue for --

MR. JONES: Okay. I just think I had it in the -- okay. Oh, and also I think I left this in the report, the Sam DeBaudry (phonetic) from DeBaudry felt that the applicants DTM plan weren't sufficiently robust enough to discourage your vehicle use. That's contained in other reports.

And I think I stated that the report does not factor in the fact that Ward 4 has a high seniors population who are all dependent and less likely to walk any distance which would lessen the walkability index.

CHAIRPERSON JORDAN: You said would lessen the walk index?

MR. JONES: Yes, the seniors are adverse to walking, so I mean because you don't have a popular walk.

CHAIRPERSON JORDAN: It's not a senior's building.

MR. JONES: What?

CHAIRPERSON JORDAN: This is not a senior's building.

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MR. JONES: No, but the point I'm making is this is a ward that has a larger senior population who's dependent on the automobile and less likely to use other modes of -- that makes their parking spaces more coveted that are closer to home.

CHAIRPERSON JORDAN: Oh. So you're saying why they're opposed to because they're --

MR. JONES: Right. Right.

CHAIRPERSON JORDAN: Without more information the data from the applicant, as your letter is saying, you couldn't support it because you have no evidence of their projections, nor empirical data that their projections are going to be correct.

MR. JONES: Right.

CHAIRPERSON JORDAN: And you're saying that because there are a lot of seniors there, they have greater -- there's probably more vehicles in the area and --

MR. JONES: Right.

CHAIRPERSON JORDAN: -- so therefore parking spaces are at a premium.

MR. JONES: And especially during the day when they conduct most of their business. I think the parking report said about there being high RP uses during early in the morning, I mean in the A.M. period of the day. And at the late P.M.

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most seniors are in and aren't going back out unless for special events or occasions.

CHAIRPERSON JORDAN: If I'm not mistaken, I think the applicant had, I think, at best, the maximization in the greatest period of time I think was 86 percent utilization of parking. Isn't that correct? Okay. It's in that report. I don't know if you've seen that.

MR. JONES: Yes, I saw the report. That's our major problem.

CHAIRPERSON JORDAN: So it seems like there's at least --

MR. JONES: But that's the time --

CHAIRPERSON JORDAN: -- there's slightly on the utilization.

MR. JONES: I mean, they're not going out, so I mean, so quite naturally, I mean, that would be subject to be if seniors aren't venturing out, there would be nice utilization during that period of time.

CHAIRPERSON JORDAN: Anything else?

MR. JONES: Okay. I thought I said that, that, that and that. And also I think I made clear --

CHAIRPERSON JORDAN: Go ahead, please. I'm sorry.

MR. JONES: And that by the ward being that section of Ward 4C becomes in the Georgia Avenue Petworth Metro Station

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it allows residents more distance from the Metro Station that are in 4C to park with the RPP closer to the station and taking away existing parking spaces from residents. At 4C area, they are in close proximity to the parking to the Metro Station, so that causes --

CHAIRPERSON JORDAN: You're right, they're going to make a provision so that the tenants cannot have RPP.

MR. JONES: But that goes back to you're talking about present tense. Their thing says that's future tense. I think that was in my opening comments. We have to deal with what exists today.

CHAIRPERSON JORDAN: Okay.

MR. JONES: And the parking problem, this exists today.

CHAIRPERSON JORDAN: Yes.

MR. JONES: And them not being able to provide parking would not ameliorate the problem that exists today.

CHAIRPERSON JORDAN: Okay. All right. Board any questions of the ANC commissioner? Does the applicant have questions of ANC?

MR. MURILLO: No, sir.

CHAIRPERSON JORDAN: We appreciate you coming and talking to us. It's important if ANC shows up and talks to us and gives us their concern because we can have this dialogue.

MR. JONES: Okay.

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CHAIRPERSON JORDAN: Is anyone here wishing to speak in support? Anyone here wishing to speak in support? Anyone here wishing to speak in opposition? Yes.

Could we free up some spaces here? I don't think we're going to need the architectural kind of aspect. We might come back and forth, but, so these witness can have a seat at the table please. And while we're getting situated let's take a five minute break.

(Whereupon, the above-entitled matter went off the record at 10:54 a.m. and resumed at 10:59 a.m.)

CHAIRPERSON JORDAN: Two people in opposition please come to the table. And let's make sure you have bright glowing green lights. And I need you to introduce yourselves, please. Let's make sure. There it is. My fault. Go ahead, yes.

MR. GOLDWEIN: I'm Marc Goldwein, resident of 812 Randolph Street, down the street from the property.

MR. ASSAAD: My name is Christian Assaad. I'm a homeowner and resident of 829 Randolph Street, Northwest.

CHAIRPERSON JORDAN: Okay. You turned in your witness cards to the court reporter? And you both were here to be sworn in, correct?

MR. ASSAAD: Yes.

CHAIRPERSON JORDAN: Okay. All right. So you each have three minutes apiece to address the Board.

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MR. ASSAAD: Good morning, Mr. Chairman and members of the Board. My property is directly across the street from the north side of this proposed development. And generally, I'm not opposed to this development, but I do take particular issue with the request for a parking variance that the applicant has requested.

And my general problem with it is that parking is already tight on Randolph Street. It is very difficult to find a parking space at any time of day.

And often myself or my wife, we have to park one or two blocks away. And just in mention that my wife is a nurse. She works long hours. Sometimes she leaves the house at midnight, sometimes she comes home at 3:00 a.m. And I'm particularly not comfortable with her having to park one or two blocks away from our house in a neighborhood walking home through that.

Generally, I'd also like to say that parking, as much as you try to mitigate the issues that come from it, it is still an issue in the neighborhood and the community.

And I find it particularly troubling as a resident that nobody here at this table is able to give a straight answer based on data about how many parking spaces or how many vehicles they expect the residents of this project to have.

You know, Mr. Chairman, you've heard that until you're shooting from the hip. I might even say that that's an

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accident on discharging the holster because the gentleman to my left, he was saying things like in a recent period of time, roughly 80 percent. He was referring to a presentation that he attended a while ago.

And I would like to see some concrete data to know exactly how many parking spaces -- or excuse me, how many automobiles they expect the residents of this project to have.

Furthermore, I'd like to speak about the transportation demand management measures. I'm all in support of having a transit screen. I'm in support of the bicycle parking.

However, I do think that the \$50 SmarTrip annual provision, I think that's kind of laughable in the Districts. \$50 for people that commute to downtown, that's about two weeks of commuting. Out of 52 weeks in a year, I don't think that that's particularly sufficient.

And just one final thing in regards to the residential parking permit restrictions that they intend to place in the leases of their tenants.

First of all, I don't believe that it's any incentive of the building management to enforce those provisions in the lease. Furthermore, I'm not aware of an enforcement mechanism that the ANC, that the BZA, that DDOT has in order to enforce these provision.

And I'd also like to say that one of the buildings on

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the 3800 block of Georgia Avenue, that's the Griffin Apartments, which is zoned as a commercial building, theoretically, they should not be able to have residential parking permits.

I tried to do some research and I wasn't able to find an answer to this, but for some reason on DDOT's websites residents of that building have been, for whatever reason, allowed to apply for residential parking permits.

They must have petitioned DDOT and got an exception somewhere, somehow. I don't know the answer, but I think that that's also a possibility that could happen here.

So thank you, Board members, thank you, Chairman. I expressed my opposition to this.

CHAIRPERSON JORDAN: Yes. It's the million dollar question we've asked as a Board and the Zoning Commission. We've had numerous dialogs with the Department of Transportation, DMV, as to who's the enforcer, how is it being enforced, et cetera.

So it's a million dollar question and I think they're working their way through the enforcement provisions. Board, any questions of this witness? Mr. May?

MEMBER MAY: Yes, you say you live across Randolph from the project?

MR. ASSAAD: Yes, sir.

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MEMBER MAY: So is that a private home or an apartment  
or --

MR. ASSAAD: That's a private, single family home.

MEMBER MAY: Okay. And do you have parking?

MR. ASSAAD: I do not have a parking space to my own.

MEMBER MAY: Do you have space for parking?

MR. ASSAAD: Could you be more specific, sir?

MEMBER MAY: Do you have a rear yard accessible from an  
alley or something like that to --

MR. ASSAAD: No, sir.

MEMBER MAY: Okay. Thanks.

CHAIRPERSON JORDAN: Any other questions? Applicant,  
any questions of this witness?

MR. COLLINS: No, sir.

CHAIRPERSON JORDAN: Would the ANC commissioner like to  
ask a question? I'm sorry. I missed your name again. Give  
me your name.

MR. JONES: Timothy Jones.

CHAIRPERSON JORDAN: Jones? Okay.

MR. JONES: Yes.

CHAIRPERSON JORDAN: Commissioner Jones, do you have  
any questions you'd like to ask this witness?

MR. JONES: No, I would not because it is just basically  
supports the contingency that have been made by the ANC as a

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whole in his opposition to the project.

CHAIRPERSON JORDAN: I got it. Our next witness please, three minutes.

MR. GOLDWEIN: Thank you very much for giving me time to speak today. I'd like to quickly give a neighborhood perspective on this project.

You already heard the ANC overwhelmingly voted in opposition of this project. And the reason is that folks in the neighborhood are opposed to it, parking is already really tight.

This isn't a situation of, sort of, the downtown area where everybody uses the Metro. Even though we're close to Metro, we're kind of in sort of northern D.C. area and a lot more folks drive.

I know there was a traffic study that was performed. I would say if you look at the study closely and kind of isolate to the Zone A, the area that's closest to the funeral home, even that study found that at peak area there's only two permanent parking sites.

And I would suggest that checking twice on a Sunday and a Friday doesn't give you a good picture. I know that when we look for parking, often none is available.

You have on the record something like 24 letters in opposition to this from local neighbors along with an

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additional letter of opposition from, I understand, the 600 block of Randolph Street.

These are all of the neighbors that live closest to the area that would be most impacted. And I want to underline that point because you also have a map. And it's not completed for the additional applicants.

But it looks at the original seven that were in favor of this. Most were not particularly close to the area. They were two/three blocks, one was even a mile away.

I did look at the additional letters in opposition. I didn't enter them in the map, but it was a similar pattern. There were a few that were close, but many were far away.

With due respect, when you kind of stand at the corner with a clipboard and ask people walking by to sign something, that's the result you get. The opposition, though, is actually folks that live in the area that struggle everyday to find parking.

And given the number of condos that are already currently getting filled, every neighbor I've talked to as well as myself and the ANC and my neighbor to my left, all agree that there is not enough parking to allow this kind of variance, to allow only two parking spots for a 20-unit building. So, thank you.

CHAIRPERSON JORDAN: Board, questions of this witness?

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The applicant, any questions of this witness?

MR. COLLINS: No, sir.

CHAIRPERSON JORDAN: Commissioner --

MR. COLLINS: Actually, I do have a question.

CHAIRPERSON JORDAN: When we say the applicant, one person is speaking for the total applicant and so I'm going to go back and allow you to go ahead and ask your question Mr. Collins. If he wants to --

MR. COLLINS: Okay. I just wanted to ask the question about the current use versus the perceived future use. The funeral home, you're aware of their services. In the evenings, sometimes they have all night wakes. They have an 85 seat chapel on-site.

So I think the perception that there's limited parking on this site is probably fairly real today --

CHAIRPERSON JORDAN: Would you ask the question, please?

MR. COLLINS: The question is are you aware of that discrepancy?

MR. GOLDWEIN: The congestion of parking happens when there's processions happening and when there's not processions happening. So it doesn't seem to me to be connected just to the funeral processions. It's a broad issue we observe every day and every week.

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MR. COLLINS: Thank you.

CHAIRPERSON JORDAN: All right. Commissioner Jones, a question of this witness?

MR. JONES: No, but I'd like to make a comment.

CHAIRPERSON JORDAN: No, can't do comments. You can just do question.

MR. JONES: Okay. Do you feel that in having RPP allows residents from the other parts of the ward to use that part of the ward as a parking lot?

MR. GOLDWEIN: Sorry, can you repeat the question?

MR. JONES: I said do you feel that 4C having RPP that residents from more distant part of 4C use that portion of 4C as a parking lot?

MR. GOLDWEIN: It's hard to tell where all the parking is coming from, but certainly we see people parking in the neighborhood that are not close neighbors currently.

CHAIRPERSON JORDAN: All right. Thank you. Anyone else in opposition? Then let's turn back to the applicant for any rebuttal.

MR. COLLINS: Thank you, Mr. Chairman. I just would like to make a few points. The report from Mr. George does show, on Page 8 of 13, the results of his surveys to show the use of the RPP space, the availability of RPP spaces during the times when they would be most used.

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CHAIRPERSON JORDAN: And it's still, so like max at whatever time was 86 percent?

MR. COLLINS: 86 --

CHAIRPERSON JORDAN: Was that --

MR. COLLINS: -- right, for an average of 74. But notwithstanding that, Mr. Chairman, we understand the concerns of the community and we're not here to attack the community or doubt the community.

They have concerns and they're real concerns of the community. So our point is that we are going to do everything that we can to restrict the ability of the tenants in this building to get RPP stickers.

There was some discussion about another building that has the right to have RPP stickers when they're on the DDOT list. This block is not on the DDOT list.

We've confirmed that with DDOT. It's not on the list. They've said in their report if they were asked to put it on the list, they would likely not do it.

The enforceability of this restriction, we are proposing to put it in the leases for the building. It will become, with your approval, a condition of this approval. It'll be --

CHAIRPERSON JORDAN: How will you know if they received RPP?

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MR. COLLINS: How would we know if they receive it? Probably we would ask. There are ways that we can do that. We can ask them when they sign the lease to authorize the building management to check with DDOT every six months to get lists of people whenever, however, frequent as necessary that would waive their -- or they authorize the building management to do that, to make inquiries with DDOT.

And so if we find out, then they would take appropriate action. This is a serious concern and we take it seriously. And that's one of the most important parts of our case, that we're serious about restricting the ability of our tenants to get RPP. And so we would do that and that's been done.

We've seen it in other cases where the tenants have signed over in the lease. The lease has a provision that allows the building management to check with DDOT on that.

And so we certainly would not make any effort to apply for it. As a matter of fact, we would, and it's not a zoning issue, but we would commit to use a Georgia Avenue address for the permits and the building.

And a commercial zone, you know, it's we wouldn't be piggy-backing on the side street address to say, well, we have RPP because we are on Randolph Street. That's not what we're going to do.

So we're committed to doing this. And if providing free

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parking for residents in the building elsewhere, that only encourages car ownership.

We would do what we can to make sure that they have the ability to rent parking spaces elsewhere and certainly they could pay whatever the market bears, but that's part of what's done in the city.

People, if they own a car, they've got to pay for the car and that means insurance and gas and repairs and parking. And so that's what we're willing to do in restricting ability and that pretty much --

CHAIRPERSON JORDAN: So is the applicant willing to contract for two spaces in one of the adjacent parking lots?

MR. MURILLO: Yes.

CHAIRPERSON JORDAN: So you have two and if you get two you would have four and arguably you would be pretty close to the severe guesstimation that four people in this building or three or four people in this building might be parking, right?

What about the Smart cards? It was a discussion about Smart cards and I think it's reasonable when you're talking about \$50 it's not a lot. But I know some properties we do \$50, some properties we do \$100 and so it kind of depends on the basis of that property. Where would you be on increasing that?

MR. MURILLO: I'm sorry. Are you asking if --

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CHAIRPERSON JORDAN: Yes.

MR. MURILLO: -- we would increase the --

CHAIRPERSON JORDAN: Could you --

MR. MURILLO: -- 50 --

CHAIRPERSON JORDAN: -- you know --

MR. MURILLO: -- to 100?

CHAIRPERSON JORDAN: Could you agree to put the 100 on  
a --

MR. MURILLO: Yes.

CHAIRPERSON JORDAN: -- Smart card? Okay. Any other  
membership, okay. All right. Anything else in rebuttal from  
-- and so then let's go through these so we're on the same page  
with possible -- and I'm just throwing out some particular  
options. Any questions on rebuttal please?

MEMBER MAY: Yes. So did I hear you say that, I mean,  
you're not going to look to make any changes to the building  
that would allow it to be in the RPP roles. So I assume that  
you're willing to condition the approval on the fact that the  
address will be on Georgia Avenue now and forever.

MR. COLLINS: Well, when we do that if the Board  
believes that that's a zoning issue. My only concern was I  
don't know if it's a zoning issue, but that's what we will do.  
And if you put it in the order that's what we will do.

MEMBER MAY: Well, we're only going to put in the order

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what you're willing to do.

MR. COLLINS: We will not challenge that. That's our intention anyway.

MEMBER MAY: Right. Okay.

CHAIRPERSON JORDAN: And you agreed to a covenant on the property anyway so to restrict it during the time of this use.

MR. COLLINS: I'm sorry, covenant?

CHAIRPERSON JORDAN: Yes, record the covenant of the property for the time of this use. Because even if you did flip it, I believe if you did flip the address, I think the lot and square would still be effective by what's in the covenant --

MR. COLLINS: And, I'm sorry, the --

CHAIRPERSON JORDAN: -- from the time of this use.

MR. COLLINS: As --

CHAIRPERSON JORDAN: We found that many times we record on the property your agreement that this property will not be RPP eligible during the time of this use.

MR. COLLINS: It would be in the BZA order and that's in here.

MR. MURILLO: During the time of the use you're in ten years, is --

CHAIRPERSON JORDAN: The time of the use, I mean, is --

MR. MURILLO: For as long as the building is there in

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purpose --

CHAIRPERSON JORDAN: As apartment building and this use. Right.

MR. MURILLO: I'll defer to you, Chris. What --

MR. COLLINS: Yes, we hadn't talked about a covenant, but if that's our intention.

CHAIRPERSON JORDAN: Yes, I knew it was missing here, but we regularly do it.

MR. MURILLO: Is this a common occurrence?

CHAIRPERSON JORDAN: Yes, we regularly --

MR. MURILLO: We don't have necessarily a problem with it, no. I mean, that's our intent anyway.

CHAIRPERSON JORDAN: Okay.

MEMBER MAY: I had one other question and this actually doesn't relate to rebuttal. It's something I forgot to ask before. But do you know what the future holds for the adjacent site on Georgia Avenue? Because right now, is it just vacant now or is there a building there?

MR. MURILLO: It's a vacant lot designed to be a, I think, an apartment building if I'm not mistaken.

MEMBER MAY: Okay. Of approximate height?

MR. MURILLO: Let me defer to the architect. Hold on a second.

MEMBER MAY: Yes, what I'm concerned about is the

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visibility of the penthouse structure. Because right now it's on the party line and it's something that, you know, if the --

MR. MURILLO: I'll let Bill Bonstra respond.

MR. BONSTRA: Thank you.

MR. COLLINS: Mr. Bonstra is the architect for that project next door.

MEMBER MAY: Oh, then hopefully he knows.

MR. BONSTRA: Yes, I'm here today to talk all about that project and --

MR. MURILLO: You're taking everything today.

MR. BONSTRA: -- any questions. We are close on permits and that will be starting construction within the month or so --

MEMBER MAY: Yes.

MR. BONSTRA: -- certainly by the end of the summer. It's the same height as this building. And the penthouse runs from side to side, adjacent to the penthouse here, so.

MR. MURILLO: So, right.

MR. BONSTRA: The penthouse on this building wall allowed to be on the property line, flush to height, would be screened --

MEMBER MAY: That's --

MR. BONSTRA: -- by that --

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MEMBER MAY: -- all I wanted to confirm.

MR. BONSTRA: -- if that's what your question is.

MEMBER MAY: If for some reason that building next door was going to be lower, then your penthouse on the property line would be visible from across the street.

MR. BONSTRA: And if you look on the rendering, that building is accurately located on the --

MEMBER MAY: Okay.

MR. BONSTRA: -- three dimensional drawing, so --

MEMBER MAY: Okay.

MR. BONSTRA: -- it will be cohesive.

MEMBER MAY: Right. I did see that there was another designed building there, but I just assumed it was speculation. All right. Thank you.

MR. BONSTRA: Thank you.

CHAIRPERSON JORDAN: Okay. Board, any additional questions? I don't know if we need a closing, Ms. Bloomfield or Mr. Collins, whoever's going to do it. If you think you need to do a closing, then, you know, take a couple of minutes to do a closing.

MR. COLLINS: I think we've done that through our rebuttal and answers and there's nothing else to add. Thank you so much.

CHAIRPERSON JORDAN: So we'll close the record on this

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case. Is the Board ready to deliberate?

MEMBER MAY: Sure.

CHAIRPERSON JORDAN: Okay. All right. So we'll do deliberation. This is one that gives me some great concerns in regards to anytime we touch parking, it certainly raises an issue.

My initial question on this property was trying to get some basis to understand the use of potential use of parking out of these tenant because it just was absent from the transportation report.

We went through a lot of gyrations here. I can't say it was empirical, but certainly at least an anecdotal kind of conversations as about what the projected parking usage from the tenants would be. And we're somewhere like three or four. It kind of bounced around.

I think there might be some basis to claim that could be legitimate. And certainly if we take in light of what the ZRR is going to require, although it's not the law of the land, so we might be within that realm.

Additionally, and I guess the other part about it without knowing the ANC had the same concerns and certainly these other witnesses had the same concerns about what is the empirical data supporting the projected transportation usage and is it real or not.

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In conjunction with the Department of Transportation also knowing that we've come in here before. The evidence shows we've come in here before with these projections and we've been missing them. Potentially, as the study goes so far, we've potentially been missing that mark.

Now, people have come here and sat at this table and say that there's going to be zero parking that we found out that it's not in the realm.

But I think in light of the mitigation that the applicant is willing to do which would be the transit screen, which I'd jump up and down.

I may never jump up and down about the transit screen because you just hit PDA here in this Smartphone and you pop up and find out what Metros and things are going anyway.

But that they'll increase the MetroCard and adding ten years to this whole provision about the bike membership and/or car share and/or the \$100 MetroCard for ten years certainly helps, to me, to mitigate any issues.

That they're going to have the 20 bicycle racks there and that they're going to put in the leases that it's a violation actionable by eviction, by removal in the tenant's lease if they have a car and that the tenants must give a waiver or right to release to the applicant needs to be in this lease for the applicant to be able to check at least every six months

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with the proper authorities to verify who receive RPP.

In condition with that that the owner would record a covenant to run with the land that this property during the time as it's use as an apartment building should not be eligible for RPP.

And that the applicant has agreed to secure two offsite parking spaces for its tenants. And that the applicant is going to work with tenants to schedule no more than two move ins or out on in a single day that might have me over the top to support this.

The issue raised by the ANC, as I've said, I've kind of noted here that there's some mitigations to that. I think that the aspect raised by the ANC as legitimate is the same questions that I had. But I believe the mitigations would negate that.

And there was no, again, on the other side there was no empirical data from the ANC or others saying that what we discussed here, what's been offered, more anecdotal, is not believable. But I think the mitigations help that. It takes the, you know, it's not like tie go to the runner, but the mitigation helps even it up.

So that's my thought on this. Any other questions?

MEMBER MAY: Mr. Chairman, you know, I think this is a case where it's pretty clear that there are substantial physical difficulties with the site that make providing

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parking that would otherwise be required by the current zoning regulations probably impossible.

Now, the question is so clearly that threshold is clear. There's a reason for relief. The issue is how to mitigate it. Well, one way to mitigate it would be to have fewer unit counts.

That would get your number of spaces down, but it wouldn't necessarily reduce the number of cars. It would encourage things like, you know, unrelated people sharing apartments and having multiple cars. And so you could very well wind up with more cars in that sort of a situation. So I don't think that's a reasonable mitigation.

So what the applicant has done instead with, is I think, present a strong program for transportation demand management and even today in the course of the hearing, it's gotten stronger.

And they've also adopted significant steps to prevent the use of residential parking by the people who live in this building. I understand there are enforcement issues with parking.

And I know that in the current state of things there's not a guarantee that something won't slip through the system or that there won't be some attempts to park in the neighborhood that would cause problems for the neighbors.

And the enforcement of the RPP system is not always very

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clear, but we've had discussions with DDOT and DMV and DPW, all of whom have a role in parking.

We, the Zoning Commission and I think the BZA was involved in that discussion during our training sessions. And I think we made it pretty clear that that situation needs to change. And I believe that we've gotten reports back at this point from DDOT that there's progress on this front and that in the future there will be a more ready system for monitoring RPP participation and for removing individual buildings from the RPP roles.

That doesn't really even need to be the case here because the building is not currently eligible for RPP and we'll have a comment on the building saying it will not be in the future. So if anybody does manage to slip in I think that's going to be in a rare circumstance if it's possible at all.

I also do think that there are issues with parking enforcement that could mitigate the current circumstance for the neighborhood having to do with the way parking permits are issued by ward.

I mean, this is a common problem across the city. It's a problem in my neighborhood where people will, from distant parts of my ward, will drive and park in my block.

It happens all over the place. It all depends on what you live near and where people want to go. And I think there

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is discussion, but I don't think resolution yet on how to resolve that. But I know that's a problem that DDOT seeks to resolve and certainly city council's spoken to that as well.

So I think that, you know, the future is brighter for the neighborhood in terms of parking and I don't think that this building will have an impact and I'm fully in support of granting the relief that's requested.

CHAIRPERSON JORDAN: Okay.

MEMBER HINKLE: Yes, thank you, Mr. Chair. I don't have much to add. I think I'm in agreement with both of you.

CHAIRPERSON JORDAN: Okay. So I would move that we grant the relief requested with the transportation demand measures as we discussed in my narrative in deliberations which included all those things. That would be my motion.

MEMBER MAY: Second.

CHAIRPERSON JORDAN: Motion being seconded. Additional discussion? All those in favor of the motion, aye.

MEMBER HINKLE: Aye.

CHAIRPERSON JORDAN: Those opposed, nay. Motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as three to zero. This on the motion of Chairman Jordan to approve the application for the relief requested as well as proposed by the TDM measures. Second the motion, Mr. Peter May. In

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support Mr. Hinkle. Two members not present. Motion carries, sir. Full --

CHAIRPERSON JORDAN: Has to be a -- oh, yes. Full order, yes. It's got to be a full order. All right. Thank you, all. Appreciate everybody coming down.

MR. MURILLO: Thank you.

CHAIRPERSON JORDAN: I hope you know these things are not easy for anyone, but at least we put some provisions that offsets they were only required to have certain amount of parking spaces and now they have some things that they have to put in place. Thank you. Thank you, Commissioner Jones --

MEMBER MAY: Thank you --

CHAIRPERSON JORDAN: -- appreciate it.

MEMBER MAY: -- Mr. Jones.

CHAIRPERSON JORDAN: Yes. Okay, Mr. Moy. On these days when we've got these MAs and MOs, I get a little cross, so forgive me. Where are we, on 19011? Is that where we are?

MR. MOY: Yes, we could be, sir. Yes, definitely.

CHAIRPERSON JORDAN: We could be.

MR. MOY: Yes. Before I call the application, Mr. Chair, I just want to note for the record that the three cases earlier where the Board continued the, that's the District Properties --

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CHAIRPERSON JORDAN: Yes.

MR. MOY: -- continued to September 29th. That it's my error that actually it should be a week later where Peter May would be sitting with the Board.

So that would be officially, October the 6th. That would be the following week. And that's Applications 19040, 41 and 42. And the staff would note that on the BZA calendar as well as contacting the applicant --

CHAIRPERSON JORDAN: Okay.

MR. MOY: -- if that's good with the Chair?

CHAIRPERSON JORDAN: Yes, it's fine with me.

MR. MOY: So to the table then the applicant to Application Number 19011. This is the application of Gabriel, LLC. This is property requesting relief as advertised for special exception, requesting special exception under 353 at 129 Varnum Street, Northwest.

CHAIRPERSON JORDAN: All right. Thank you. All right. Did we get an ANC report on this, subsequently? Let's see.

MR. MOY: No, sir.

CHAIRPERSON JORDAN: Okay. Okay. So we didn't get one. Okay. All right. Would you please introduce yourselves?

MR. SULLIVAN: Thank you, Mr. Chairman and members of

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the Board. My name is Marty Sullivan with the law firm of Sullivan and Barros, here on behalf of the applicant.

CHAIRPERSON JORDAN: Thank you.

MR. LEE: Good morning. My name is Daniel Lee, Gabriel, LLC.

MS. HORN: Good morning, Jennifer Horn, Jennifer Horn Landscape Architecture.

MR. HARESIGN: Good morning. David Haresign, Bonstra, Haresign Architects.

MR. GELLMAN: Good morning. Eric Gellman, Bonstra, Haresign Architects.

CHAIRPERSON JORDAN: Okay. So did we revise a request for relief in this case? Are we still looking for a relief in 353 and 2115 and 2117?

MR. SULLIVAN: That's correct. We amended or requested leave to amend for the variance relief for three parking spaces to shave six inches off of three parking spaces and a foot off of the aisle width to allow for the trash enclosure.

CHAIRPERSON JORDAN: Right. Right. So it's kind of --

MR. SULLIVAN: And we re-posted after we did that. I have an affidavit here to turn in on July 1st.

CHAIRPERSON JORDAN: So you posted on July 1st and it

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ran?

MR. SULLIVAN: Well, we originally posted for the original hearing date and then we re-posted with the variance relief on July 1st.

CHAIRPERSON JORDAN: And did you present with the ANC?

MR. SULLIVAN: We did present to the ANC and they actually voted on a resolution in support and they voted no. And then they didn't do the flip. So they failed to adopt a resolution in support --

CHAIRPERSON JORDAN: No, I want to be clear of what you're saying to me.

MR. SULLIVAN: Sure.

CHAIRPERSON JORDAN: They first voted in support.

MR. SULLIVAN: No. I'm sorry. They introduced a resolution to support, but failed.

CHAIRPERSON JORDAN: Okay.

MR. SULLIVAN: And then they took no further action.

CHAIRPERSON JORDAN: Okay. So we're back at square zero.

MR. SULLIVAN: It's precarious.

CHAIRPERSON JORDAN: So it's no decision by the ANC?

MR. SULLIVAN: Correct. Technically, yes.

CHAIRPERSON JORDAN: Okay. Well, I guess we're going to get to that. So it was a resolution to support it, but it

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didn't pass.

MR. SULLIVAN: It didn't pass. Yes, and we're not disputing --

CHAIRPERSON JORDAN: So there --

MR. SULLIVAN: -- that.

CHAIRPERSON JORDAN: -- is no --

MR. SULLIVAN: But there was --

CHAIRPERSON JORDAN: There is recommendation --

MR. SULLIVAN: Right.

CHAIRPERSON JORDAN: -- from ANC that I know of yet?

MR. SULLIVAN: Right.

CHAIRPERSON JORDAN: I guess we --

MR. SULLIVAN: I haven't seen --

CHAIRPERSON JORDAN: We'll get to --

MR. SULLIVAN: -- in the record.

CHAIRPERSON JORDAN: Okay. All right. So right now -- okay, got it. Because I have nothing in the file, but we'll get to this as we step through here. This is a seven unit building, correct?

MR. SULLIVAN: We revised for six units. And the --

CHAIRPERSON JORDAN: Oh, six.

MR. SULLIVAN: -- architect can go into that in response to comments from the Office of Planning and the neighborhood.

CHAIRPERSON JORDAN: And so the only relief you're

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really looking at is you're going to meet all your required parking spaces, correct?

MR. SULLIVAN: We'll meet all the parking and --

CHAIRPERSON JORDAN: Just --

MR. SULLIVAN: -- all the other --

CHAIRPERSON JORDAN: -- trying to shave off some of the -- I think, probably a half-a-foot on the required size of it.

MR. SULLIVAN: That's correct.

CHAIRPERSON JORDAN: And then to reduce the drive aisles, correct?

MR. HARESIGN: Yes, that we are asking for relief on three of the six parking spaces in order to be able to get an adequate trash enclosure, partly in response to some of the neighborhood comments.

CHAIRPERSON JORDAN: Yes. So you're meeting all your parking requirements. That's what I want to put on the record. Yes. Yes. You're just trying to do some shaving and it really is not going to have any impact on the community of the parking relief you're seeking only, you know, people might bump the car doors if they're not careful, right? But that's about it. Okay.

It's a little different than what we had before us. Here, you're going to do all your legal required parking. I don't think we need a full presentation from the applicant,

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at least I don't think so.

Something else the Board wants to drill in and the applicant wants to say? It doesn't look like the Board has any additional questions.

I think it's almost a minimus kind of relief that you're asking for because you're doing all the required stuff you're supposed to do, just from a nine foot parking space to a 8.5 parking space. And in the drive aisles, people just can't speed around going up and down into the garage portion.

With that, Mr. Sullivan, you have the opportunity to present something that you believe you might want to present to us or we can proceed on.

MR. SULLIVAN: I think I just would like to highlight that the 353 review, as you know, probably relies on the Office of Planning's critical review more than any other case.

And in that respect, we had initially had a report that did not recommend approval and then we worked with the Office of Planning. And we'd be happy to go over -- the architect would go over those changes, which we think were significant if the Board would like to hear them or then, we could just respond to questions if there's any particular questions.

CHAIRPERSON JORDAN: I believe we're aware of that.  
And then --

MR. SULLIVAN: Okay.

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CHAIRPERSON JORDAN: -- we review these cases at great length before, you know, before we come here today. We might have some questions about what we need to sure up as we try to do in these cases.

But I understand how you, you know, you dealt with the entrance to the building and pushed the building back to the building line and all that stuff. So we're good on that unless somebody else needs to hear it. So then let's turn to Mr. Jesick again, in the Office of Planning.

MR. JESICK: Thank you, Mr. Chairman and members of the Board. The Office of Planning, as the applicant noted, had some concerns initially with the first design.

We're very pleased with the revisions that were made. They're substantive revisions that we feel made the project much better and more compatible with the neighborhood.

So we're now recommending approval of the special exception pursuant to Section 353 and the new requested variances to the parking requirements. But I'd be happy to take any questions. Thank you.

CHAIRPERSON JORDAN: Do you think this building in-and-of-itself changes the character of the neighborhood?

MR. JESICK: No. I would say that in the R-5A zone that allows apartments, this neighborhood has apartments in it already. This particular street is mostly single family.

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But we feel that given what the zoning allows, given the design of the building and the changes that have been made, they would be compatible with the urban design of the neighborhood.

CHAIRPERSON JORDAN: Board, any other questions of Office of Planning? Does the applicant have any questions of Office of Planning?

MR. SULLIVAN: No. Thank you.

CHAIRPERSON JORDAN: All right. Let's turn now to the Department of Transportation. Anyone here from the Department of Transportation on this case?

Department of Transportation does not raise any objections to the relief requested. All right. Anyone here from ANC -- which ANC is this? Anyone here from the effect ANC 4C? Is it ANC 4C? Anyone here from ANC 4C? And we do not have a letter from ANC, correct? I wanted to make sure that's fine.

MR. MOY: Yes.

CHAIRPERSON JORDAN: I've got this.

MEMBER MAY: I should ask the senior, I was --

CHAIRPERSON JORDAN: Reading.

MEMBER MAY: -- thinking about DDOT, no. Mr. Jesick, in your latest report, you referenced, you know, provided there was no objection from DDOT regarding the relief for the drive

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aisle and the space width, have you confirmed with them? Do you know whether they have any concerns about that?

MR. JESICK: I have not confirmed with them.

MEMBER MAY: Okay. All right. Thank you.

CHAIRPERSON JORDAN: Okay. If there's anyone wishing to speak in support of this application? Anyone wishing to speak in support of this application?

I take it from some earlier mumbling that we have some people who want to speak in opposition to this. Anyone wishing to speak in opposition? Very good.

Each one of you have three minutes, so why don't you guys just kind of shift down a little bit and we'll take as many as we can. Yes, you've got to move chairs, not keep the chairs. You're going to move a chair down, right?

What do we do? You've got a free chair there, okay. So we move a spot here. All right. So let's do four people at a time at the table please -- three, I'm sorry, three at the table. Yes, be sure to give your witness cards. Thank you for doing that. Okay. Please identify yourself.

MS. MASON: Judy Mason.

MR. HUTCHINSON: Akili Hutchinson.

CHAIRPERSON JORDAN: Make sure your microphone is on please.

MR. FENDERSON: George Fenderson.

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CHAIRPERSON JORDAN: Fenderson.

MR. HUTCHINSON: Oh, yes. Akili Hutchinson.

MR. FENDERSON: George Fenderson.

CHAIRPERSON JORDAN: Thank you. Ms. Mason, would you start. You have three minutes to address the Board of any of your concerns.

MS. MASON: Okay. Good morning. I am a native Washingtonian who has lived at my current address for 30 years. I'm here to represent the 100 and 200 blocks of Varnum Street, the unit block of Rock Creek Church Road and the 42 and 4300 blocks of 2nd Street. All are in northwest and are part of the Petworth neighborhood.

These are the areas that will be affected by plans to build what is being referred to as a six unit apartment house at 129 Varnum Street.

I have a petition available for your review and consideration opposing and objecting to the proposed apartment house. It has been signed by 76 neighbors who will be impacted by the construction and presence of the structure being proposed.

The proposed application will allow a massive structure to be built on this lot. The structure of the apartment house will interfere with the sight line of many and the scale is out of proportion with other homes on that block and as well

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as the surrounding homes.

We are opposed to this project for the following reasons. It is out of scale with the homes in the existing and adjacent neighborhoods. It would increase competition for parking, which is already a problem.

It would crowd and impede the traffic flow. We believe the report submitted by the Department of Transportation got it all wrong. It does not reflect the current conditions and dangers that currently exist. We have been given priority for a comprehensive traffic study.

To add a structure such as this prior to the changes that may result will simply compound an existing problem. It will block the views and sunlight that many of us currently enjoy.

In addition, there are several other apartment buildings, two churches, a school and several businesses within a four block radius. This applicant failed to mention in the applicant's statement that was posted on the interactive zoning information system March 30th.

In that statement the applicant mentions that we are a R-5A zone, which we understand. They mention the 52 unit apartment community on Webster Street which is made up of Apartment Buildings 124, 126, 128 and 130 Webster Street.

They fail to mention 129 Webster Street, 131 Webster Street and 133 Webster Street. There's also 4211 2nd Street,

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4214 2nd Street and 219 Upshur Street. This is a total of ten apartment buildings already in a four block radius.

CHAIRPERSON JORDAN: I'm sorry, you're already like 40-something seconds over. So can you kind of --

MS. MASON: Okay.

CHAIRPERSON JORDAN: -- wind down?

MS. MASON: Quickly?

CHAIRPERSON JORDAN: Yes, please.

MS. MASON: There are two churches and there's a school. The applicant mentioned several times in this statement that this new apartment house would not tend to adversely affect the use of neighboring properties and that it does not pose a burden to streets. We disagree.

Why would we welcome another apartment building in this four block radius and do city officials care? That's it.

CHAIRPERSON JORDAN: Thank you. Board, any questions of this witness? Mr. May?

MEMBER MAY: Yes, I'm just curious about your statement that it's going to block sunlight. Can you explain what you mean by that because it doesn't look like it's a lot taller than anything else that's in the neighborhood.

MS. MASON: For several of the neighbors, I'm speaking on behalf of some. They may come up to address their concerns, but this is me talking to my neighbors who feel that their site

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lines would be --

MEMBER MAY: So site lines has to do --

MS. MASON: Site lines --

MEMBER MAY: -- view as opposed --

MS. MASON: Site lines --

MEMBER MAY: -- actual sun.

MS. MASON: -- and sun. They do believe that it will.

I don't live on that street. I live around the corner. I'm within 200 feet of their unit.

MEMBER MAY: Okay. Thank you.

CHAIRPERSON JORDAN: Let me ask you. Have you seen the revised plans?

MS. MASON: I've seen the revised plans.

CHAIRPERSON JORDAN: I want to make sure there were size plans. The other thing in regards to what this Board can do. They're not here asking for permission to necessarily put the building up. They're asking us to allow them not to have parking spaces nine feet in width, make them a half-a-foot shorter.

If they go back and come up with another way of doing something, they might be able to have nine feet parking spaces and they're really not going to be in front of this Board.

They're not asking us to approve the height of the building. They're not asking us to approve the density of the

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building or any other measures or the rear yard or any of that stuff. Because evidently most of these things are matter of right, if I understand.

So I just want to make sure you're aware of where this Board has limited review and it's in regards to the impact of us shaping in these parking spaces from a nine foot parking space to a -- and this is also in R-5A.

So this is before us as a special exception as opposed to being in front of us for a variance. I'm going to do something a little bit out of whack. Can you respond to the witnesses statement regarding the light and air?

MR. SULLIVAN: Sure. The R5-A zone, of course, permits all types of residential development provided that they conform with the area requirements including height.

And R-5A may be the most restrictive zone there is in as far as the structure itself because as opposed to an R-1 zone which has the same lot occupancy, and we're well under the lot occupancy. We're at 29 percent instead of the permitted 40 percent.

And for height we're under 32 feet and that is a function of the narrow lot because your side yard width is tied into your height. So at 32 feet you're subject to eight foot side yards. But it goes up after that.

So if you went to the 40 foot in height, you'd have nine

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or ten foot side yards, which we can't do because of the narrow lot. So in the most restrictive district there is, we think it's a very modest proposal from the structure standpoint because of the height. Because it's more than eight feet lower than the max.

The lot occupancy is 25 percent lower than the max. The side yards are more than eight feet. So we think the density and the mass of this thing is very limited.

CHAIRPERSON JORDAN: What about light and air?

MR. SULLIVAN: Well, the light and air, obviously, doesn't impact anybody. It could impact the neighbor, but only to the extent if we did a single family home here, you could do it 40 feet as a matter of right and you wouldn't need the 353 review.

CHAIRPERSON JORDAN: So --

MR. SULLIVAN: So --

CHAIRPERSON JORDAN: -- as a --

MR. SULLIVAN: -- you get --

CHAIRPERSON JORDAN: -- matter of right you could get --

MR. SULLIVAN: -- actually you get eight feet more of light and air than you would with a matter of right building.

CHAIRPERSON JORDAN: You put the same property here if it was a single family.

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MR. SULLIVAN: Or you could go higher.

CHAIRPERSON JORDAN: Yes.

MR. SULLIVAN: Yes. Actually because you wouldn't have the restrictions of the review. So, I mean, and you could have wider side yards and go higher.

CHAIRPERSON JORDAN: Yes, I just wanted that to be on the record so we understand where we are. Thank you, Ms. Mason. Let's go to Mr., is it Fenderson?

MR. FENDERSON: Yes, that's Fenderson.

CHAIRPERSON JORDAN: Please, Mr. Fenderson. You have three minutes, please.

MR. FENDERSON: Thank you, Mr. Chairman and the members of the committee. My name is George Fenderson and I'm here today to testify against the waiver of building 126, an apartment house of six units.

Number one, granting this waiver would adversely affect an already overburdened critically parking problem that we are having in the community.

Number two, it would impede the flow of traffic in our community which is badly overburdened now. It is so overburdened that we have petitioned the Department of Transportation to conduct an in-depth comprehensive study of the parking and the flow of traffic in the community.

Thirdly, this is single member home neighborhood and to

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add a six unit apartment house in this block would greatly destroy the character of this community and it would change the quality of life for each of us that reside here.

Let me point out again, this is a peaceful community and those that reside here have been here in excess of two, three and four decades and I'm here to oppose it. Thank you.

CHAIRPERSON JORDAN: Thank you. I really appreciate you coming down. You know, this is R-5A district which allows for different type housing whether it's single family, whether it's apartments. I don't know if you're aware of that.

You made a statement that this is going to impede the flow of traffic. How does that happen?

MR. FENDERSON: Simple reason by addition. I don't know whether you've made a study. Even though you have six units, I don't know how many automobiles would be in each unit, number one.

Number two is right now, currently, because of the number of apartments that's already there because of the churches that's there. And there are grocery stores. All of this come to impact our community.

Right now, we're asking the DOT to conduct that study in order to see where we can pick up additional parking places.

CHAIRPERSON JORDAN: Okay.

MR. FENDERSON: If they come, we're fighting for

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parking spaces now. And to bring in another six unit which we know that will add additional parking in our community, we'll fight for those spaces.

CHAIRPERSON JORDAN: Well, I think they're going to provide more than what they're required to do in parking. Are you?

MR. SULLIVAN: Just what is required.

CHAIRPERSON JORDAN: What is required.

MR. SULLIVAN: Yes.

CHAIRPERSON JORDAN: So, like I said, we're very limited with our scope of what we can do here today because a lot of this is they didn't have to come here except for just trying to shave off a half-a-foot from the parking space, inside the building parking space so.

And I understand the frustration with everybody over parking. But they're not asking for us to allow them any relief from parking itself, so.

Our next witness. I'm sorry, any other question of Mr. Fenderson? Applicant, questions of Mr. Fenderson?

MR. SULLIVAN: No, thank you, Mr. Chairman.

CHAIRPERSON JORDAN: Mr. Hutchinson, is it?

MR. HUTCHINSON: Yes.

CHAIRPERSON JORDAN: Yes.

MR. HUTCHINSON: Akili Hutchinson. I'm here and

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homeowner from 127 Varnum, which we are the neighbors. We live right next to the structure.

You've already stressed your limitations, but there is a direct effect that currently going on in the process in this, you know, this development project. I know that everybody's a entrepreneur and wants to make money, but it does have a direct affect on us.

One, I have a major concern about the entry point. The entry point is on the side of the house. It's underneath our master bedroom, right on the side of our bathroom, which is -- they changed it?

MR. FENDERSON: With just few things.

MR. HUTCHINSON: Okay. Two, is, you know, during this process it's just I feel like there's just been a lack of in consideration to we have to live. We live there while this is going on.

There's been a asbestos removal without any update, with no notification, which I thought was just extremely huge. There is issue with sunlight. And it's not a structural issue, it's just that I have a commitment and concern, I have a obligation to the community by maintaining my front yard. You know, my front yard looks a mess, it affects my neighbor.

CHAIRPERSON JORDAN: Right.

MR. HUTCHINSON: That yard is horrible. There's weed

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trees that are actually blocking the sunlight. So somewhat before the structures even went up there's weed trees that are tall enough to block the sunlight in the entry points to the side of the house.

I'm concerned in that we have those type of things already before we even break ground, so what else are we going to have to endure during this whole process.

Again, we live there. Somebody said that there was a change of entry point, but that was major concern. You know, while we're in our bedroom with the window open, we've got to listen to six units coming in and out of the house all day.

CHAIRPERSON JORDAN: Yes.

MR. HUTCHINSON: And again, like I said, the windows down, we know that there's a generator right on our bedroom as asbestos removal going on without any update. Nobody gave us any forewarning. Hey, we're going to be removing asbestos. And we've got our windows wide open.

You know, I believe it has a direct impact on our opportunity to resell. We have an interest in maintaining the integrity of the community. And if we did decide to sell, we would sell to a single family occupant.

But this somewhat corners us with our opportunities because we only become marketable to other developers because nobody wants to buy a house next to a six unit apartment

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building. That has an impact. I mean, I firmly believe that we're paying for that, you know. And --

CHAIRPERSON JORDAN: Okay. Board, any questions of this witness? Yes.

MEMBER MAY: No. I do want to clarify, I mean, I think there's still an entrance on the side of the building for five of the six units, right? There's only one unit that's going to be entered from the front.

MR. SULLIVAN: That's correct. There were seven units to be entered on the side and now it's down to five on the side and one in the front. And it's on the west side. I believe Mr. Hutchinson's --

MEMBER MAY: Right.

MR. SULLIVAN: -- on the east side.

MEMBER MAY: But you're on the west or the east?

MR. HUTCHINSON: On the east.

MEMBER MAY: Mr. Hutchinson, you're on the east side?

MR. HUTCHINSON: Yes.

MEMBER MAY: Okay. All right. So it's on the opposite side. All right.

CHAIRPERSON JORDAN: Yes.

MEMBER MAY: Then why did he say that?

CHAIRPERSON JORDAN: Yes. All right. The applicant, any questions of this witness?

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MR. SULLIVAN: No, thank you.

MR. FENDERSON: I have a question for him. May I ask?

CHAIRPERSON JORDAN: You just cannot. I'm sorry.

MR. FENDERSON: Oh, excuse me.

CHAIRPERSON JORDAN: You can't do it. That's okay.

MR. FENDERSON: Could I make it through you?

CHAIRPERSON JORDAN: You want to hold me up a sign?

MR. FENDERSON: No, go ahead.

CHAIRPERSON JORDAN: I have to be consistent to what we're doing. All right. So I have no additional questions. All right. Thank you three. We appreciate you coming down. Next? Anybody else in opposition?

MS. MASON: I was hoping that we would get to ask some

--

CHAIRPERSON JORDAN: You --

MS. MASON: -- questions. We don't?

CHAIRPERSON JORDAN: -- certainly don't.

MR. FENDERSON: We can't rebuttal?

CHAIRPERSON JORDAN: No, you can't.

MR. HUTCHINSON: Thank you.

CHAIRPERSON JORDAN: Thank you for coming. I understand the frustration. Again, here's the issue that we have a very, very, very, very limited scope on this.

Had they came and asked us about all of trying to get

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relief for all other kind of things then we would have more power authority to do some blocking or do something.

But on this particular property we're bound to say what's the effect of them not having nine feet wide parking spaces inside the building as opposed to what they're asking us to allow them to do 8.5 feet. You see? They're inside the building. So that's the issue.

Let's change the group of people, please. I'm sorry, I know you want to. You're chomping at the bits.

MR. FENDERSON: Thank you.

CHAIRPERSON JORDAN: But if we do that, then in all the cases coming we would have to do the same. I guess, is it still morning? Good afternoon or almost good afternoon now. Please introduce yourselves.

MS. LOCKWOOD: My name is Patricia Lockwood.

MS. LUCAS: My name is Evelyn Lucas.

MR. ABERCROMBIE: My name is Jim Abercrombie.

CHAIRPERSON JORDAN: Abercrombie. You don't have any relation to that Fitch group, no? Again, thank you for coming. You have three minutes to talk to us, Ms. Lockwood.

MS. LOCKWOOD: Okay. Thank you, Mr. Chairman and Board members. It seems like, well, I'm opposed to it, but it seems like it's not making any difference.

But I see on the paper that it's an apartment building

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and we were told they were condominiums, which makes a big difference as far as I'm concerned. Because they say with condominiums, they would own the places and apartments they don't. We had a lot of questions about that.

Okay. We already have parking from the other apartments that, you know, impact on us. And several of the units are four bedrooms units, which means we don't know how many people will there or how many cars, concerned about that.

As a neighbor I wasn't notified, you know, about it. You know, I thought we were supposed to be notified about it in the first place, you know, to agree to it, you know, or have questions. But that wasn't done.

CHAIRPERSON JORDAN: Nobody came through and knocked on your door or sent out little flyers --

MS. LOCKWOOD: No.

CHAIRPERSON JORDAN: -- no community meetings or anything?

MS. LOCKWOOD: No.

CHAIRPERSON JORDAN: Okay. Well, they're not necessarily required to do it, but we certainly request them to do those kinds of things. Did you attend the ANC meeting?

MS. LOCKWOOD: Yes.

CHAIRPERSON JORDAN: Okay.

MS. LOCKWOOD: And that's why we signed the petitions.

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But I understand from what you are saying that you can't do anything about that, so I'll just have to say that I'm opposed to it and leave it at that.

CHAIRPERSON JORDAN: Yes, our arms are pretty locked on this. So at the ANC meeting, the ANC meeting didn't vote one or the other, support or not support.

MS. LOCKWOOD: They didn't support it.

CHAIRPERSON JORDAN: But they --

MS. LOCKWOOD: I don't know why they didn't --

CHAIRPERSON JORDAN: -- didn't vote --

MS. LOCKWOOD: -- send a letter.

CHAIRPERSON JORDAN: Did they vote to say they did not support or they just did not pass it?

MS. LOCKWOOD: They did not support.

MS. LUCAS: They did not support.

CHAIRPERSON JORDAN: So someone made a motion saying we vote that we do not support this and it passed?

MS. LOCKWOOD: Yes.

CHAIRPERSON JORDAN: Okay.

MS. LOCKWOOD: Thank you.

CHAIRPERSON JORDAN: Board, any questions? The applicant any questions?

MR. SULLIVAN: No, thank you, Mr. Chairman.

CHAIRPERSON JORDAN: Okay. Ms. Lucas, please.

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MS. LUCAS: Yes. I don't have too many questions, but I would like to know since they're going to be condos, whether or not they're going to put any bylaws or any kind of covenant on the people who live there in order for them not to get residential parking, extra parking.

That's my main concern because we do have a few handicap people that live in the neighborhood that it would impede on their parking in front of their home.

They would have to carry their groceries far away because right now we can't always park in front of our house. We have to go around the corner and park. And I for one am handicapped, so I am very concerned about the residential parking.

CHAIRPERSON JORDAN: Okay. They're meeting all their parking requirements in the building as I said. We just got a very limited scope here.

MS. LUCAS: Yes --

CHAIRPERSON JORDAN: And I don't think it's going to be condo units, it going to apartments, right?

MR. SULLIVAN: No, Mr. Chairman, it will be condos. It's actually intended to be condominiums. I, of course, refer to them as an apartment house because that's the zoning term for it.

I should probably start calling it a condominium

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apartment house. But they've always been intended to be condominiums. I used the zoning definition for it.

MS. LUCAS: Well, excuse me, that was one of the reasons why I was concerned about having residential parking or if they did a covenant or a bylaw or something like that.

CHAIRPERSON JORDAN: Well, again, they're not asking for relief from the required number of parking spaces.

MS. LUCAS: I understand that.

CHAIRPERSON JORDAN: If they were supposed to have six and they were only going to have three or two then we could do that. We have to justify anything that we do in the record, what kind of remedies or mitigations that we put in place.

Here, the issue is whether it's the fact that the parking space is going to be 8.5 feet wide instead of nine. What's that impact going to be on the community? Okay. So let's just turn to our next witness, please.

MR. ABERCROMBIE: Thank you, Mr. Chairman. My name is Jim Abercrombie. I was at the ANC meeting when this poll was put forth. And it was denied by the ANC six, two, two. It was six against, two abstained and two vote for.

So they came back with a revision on this which initially it was going to be seven units and now it's six. And, yes, they have reduced the size of it, but still it would cause an impact on parking.

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I stay in the 200 block. There's 41 houses in that block now and all but three in there have at least one car more. There's a handicap person in that block also, so when the bus come down, it's difficult for them to find a parking space sometimes to pick up the handicap person and move on.

On Sundays, yesterday, was a huge problem with parking. And who's to say if these are condominiums that they're not going to be more than one car in a family in that apartment building. And visitors coming in, that would greatly impact also. So, yes, with the apartments that's there now, the church and the residential homes, there's going to be a huge impact on parking in that facility.

CHAIRPERSON JORDAN: Can you tell me what impact, because I might be missing it and I just need to awaken it, what impact on the community will the fact that their parking spaces inside the building is only going to be 8.5 feet as opposed to nine, will it have on the community?

MR. ABERCROMBIE: The size of the parking spaces may not have that affect on the people in the neighborhood. But, yes, it would be a lot of banged cars up.

And so if you're getting your door banged up all the time, you're not going to keep parking there. You're going to go elsewhere to find a parking space.

CHAIRPERSON JORDAN: That's a good one.

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MR. ABERCROMBIE: And that's where they're going to go back out on the street.

CHAIRPERSON JORDAN: That's a good one. That was really quick. I hadn't even considered that, but I don't know, that's a -- okay. All right. Any other questions of this witness? The applicant any questions of this witness?

MR. SULLIVAN: No, thank you.

CHAIRPERSON JORDAN: We thank you all. I understand your frustrations, but on this one we're really, really limited. You saw how we were in some of these other ones, but this is really, really limited on what we can do.

And some of these neighborhoods are changing like blink your eye they're changing, which at some point this stuff, in my opinion, is going to ground up. And everybody's not happy with it.

But certain things are being done within the law, as the law exists as we sit here today. And some people are walking it straight and narrow. Here's one which they're meeting the requirements of law for the most part. So thank you. I really appreciate you coming.

MS. LUCAS: You're welcome.

CHAIRPERSON JORDAN: All right. Any other persons wishing to testify in opposition? Okay. Rebuttal?

MR. SULLIVAN: Just to clear the record. It was

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probably my fault on the asbestos removal. The owner told me to contact them and I contacted the ANC rep and I didn't have Mr. Hutchinson's contact info. And I contacted Mr. Fenderson about that. But we wanted to give them some warning and I'm sorry that we didn't do that.

We did have two community meetings in homes, one, two doors down and then in Mr. Fenderson's house two weeks ago after we had made the change in the request for the variance relief.

We understand the concerns and we've tried to react to them. One of the concerns was the entrance on the side and having a front entrance to make it look like it's more a part of the community. And so we did do that, and also reducing it to six units and scaling the building back.

So also I promised Mr. Fenderson that we would let the Board know that we would be okay with some sort of RPP thing. If, in fact, they put it into place, it would be contingent. But I understand the Board may not want to do that since we're not asking for that relief --

CHAIRPERSON JORDAN: Well, I think --

MR. SULLIVAN: -- but --

CHAIRPERSON JORDAN: -- Mr. Abercrombie might have given us a basis to do some mitigation. He said he thinks the spaces are going to be small enough that they might force somebody to park on the street. I don't know.

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MR. SULLIVAN: Well, I think we could submit something from a traffic consultant that say that six inches isn't going to make that -- if you're going to hit a door at 8.6, I think you'll hit it at nine feet.

CHAIRPERSON JORDAN: I'm real concerned about the report about the ANC. We don't have it before us. We have representation from counsel that there was no vote from the ANC one way or the other.

MR. SULLIVAN: No, there --

CHAIRPERSON JORDAN: And I'm understanding --

MR. SULLIVAN: I'm sorry.

CHAIRPERSON JORDAN: -- from others who may have been in the meeting that there had been a vote of the ANC.

MR. SULLIVAN: There was a vote.

CHAIRPERSON JORDAN: And --

MR. SULLIVAN: But the resolution introduced was to support for some reason. I didn't understand it myself. And then that failed. And typically I would've expected them to say, okay, now we're going to introduce a different resolution to oppose. But they didn't, so they stopped there.

CHAIRPERSON JORDAN: Yes. Well, I really think we have to negate that because we don't have the representation of the ANC here, so we really can't consider. But it just gives me pause.

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MR. SULLIVAN: But we're not arguing it. The vote was, obviously, there were more ANC commissioners opposed to it if you take their vote against the resolution to support, I know. But I understand it has the same effect.

CHAIRPERSON JORDAN: Okay. Board, any other questions? Anything on this that we want? Yes.

MEMBER MAY: So, I wasn't going to go there, but since you brought it up or you responded to the asbestos concern. I assume that the asbestos removal was done in accordance with all the appropriate codes and regulations and that there was monitoring and that there was no detection of any leakage of asbestos in the process of removing it. Is that correct?

MR. SULLIVAN: Correct.

MEMBER MAY: Okay. Thank you.

CHAIRPERSON JORDAN: Okay. All right. Thank you. All right. I'm sorry, Mr. Fenderson, you just cannot. If you had been, what we call a party, if you had a party status and made a party status request, we probably would have granted that. Then you could have asked questions and you could have put on a presentation.

I understand that zoning laws are not easy for a lot of people to follow and especially people who don't do this every day. And it's even people who do it every day still have some issues, so.

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And I appreciate you coming down, but there's certain things that we have to do. So with that we would close the hearing based upon this record unless the Board needs something else. Yes, go ahead? Yes, okay. Do you have some other questions, anybody? Yes. Well, you want to do a closing?

MR. SULLIVAN: No. Thank you, Mr. Chairman.

CHAIRPERSON JORDAN: I kind of thought your rebuttal was your closing, right? So we will close this hearing. Is the Board ready to deliberate on this case? Okay. Anybody, please.

MEMBER MAY: Sure. I'll go ahead. So the essential review before us on this case is quite limited as the Chairman had said several times.

And I think that the, you know, the standard in 353 has to do with the appropriateness, how well this particular development fits in within the context.

I mean, apartment buildings are allowed by special exception in R-5A. What that means is that the underlying use is permitted. It's just a question of whether there are inappropriate, adverse impacts associated with the development.

And I don't see that in this circumstance. I think that the Office of Planning has done a good job working with the applicant with their designer to make changes to the building

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to fit better with the context.

I think on the street it will not look particularly different from the row houses. It will have more occupants in it. It very easily could have been, you know, a part of a row development that would have gotten a similar level of density.

If you'd had, you know, you could build something that would be taller on two lots and have substantial density on this. So I think, you know, the overall density is not out of line with the neighborhood either.

The parking, I think, has been addressed. The reason why the spaces got a little bit narrower has to do with making improvements for how trash is handled.

I think that's a small refinement for the benefit of the development, but I think it's also for the benefit of the neighbors to have the trash closer to the alley.

So I think that all in all the relief that's required is minimal in the special exception to allow them. The apartment house is appropriate.

I will say that I don't really love the penthouse, they way it's been reconfigured. I didn't love it even in the beginning. I don't love it as it's evolved, but it's permitted in the current regulations.

If the proposed rulemaking for penthouses actually

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becomes final, the penthouse structure that's allowed here would not be allowed as I recall. But as I said, we're acting on the existing regulations, not the proposed penthouse regulations.

You know, it is unfortunate that we do not have a clear ANC report, but it is also apparent that the applicant made a presentation and that the ANC had the opportunity to take a position on it and somehow has not done so in a manner that allows us to give great weight.

I mean, basically, what we're hearing is what others are reporting about what happened at that meeting. And that's not really sufficient to be able to grant great weight for or against the proposal.

So I'm prepared to move forward with this and --

CHAIRPERSON JORDAN: So is that --

MEMBER MAY: -- go ahead and --

CHAIRPERSON JORDAN: -- your motion?

MEMBER MAY: -- grant approval. Yes, I would move that we approve the case, BZA Number 19011, for a special exception from the new residential development requirements under 353 and for relief related to lane width and parking space size.

MEMBER HINKLE: I'll second.

CHAIRPERSON JORDAN: Motion made and second. Additional discussion? All those in favor aye.

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(Chorus of ayes)

CHAIRPERSON JORDAN: Those opposed nay. Motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as three to zero. This on the motion of Mr. Peter May to approve the amended relief as he has cited. Second the motion, Mr. Hinkle. Also in support, Chairman Jordan. We have two members not present. Motion carries three to zero, sir.

CHAIRPERSON JORDAN: All right. Thank you. Summary please.

MR. MOY: Yes, sir.

CHAIRPERSON JORDAN: Very good. Thank you all. And certainly thank the community for coming. I think somebody's got to do a better job explaining this process. But, yes, thank you.

Oh, 18984, is that remaining?

MR. MOY: Yes, sir. To the table, applicants to Application Number 18984. This is the application of Kateh Zahraie. This is property located at 1546 New Jersey Avenue, Northwest.

I believe the current amended relief is variances from lot area, lot occupancy. And they've added 2001.3 and special exception for the roof structure setbacks under 400.7, I believe.

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CHAIRPERSON JORDAN: All right. Today's the 14th. Okay. So can you please identify yourselves? Make sure your microphone's on, please?

MS. ZAHRAIE: Oh, it's on now. Good morning. My name is Kateh Zahraie.

CHAIRPERSON JORDAN: Zahraie?

MS. ZAHRAIE: Zahraie.

CHAIRPERSON JORDAN: Yes.

MS. ZAHRAIE: Yes. And I'm here in regards to the Application 18984.

CHAIRPERSON JORDAN: Yes, just so --

MS. ZAHRAIE: 1540 --

CHAIRPERSON JORDAN: Introduce yourself, please.

MS. ZAHRAIE: Oh, Your Honor, I have my son who was supposed to be here had emergency last night, unfortunately appendicitis and could not attend.

CHAIRPERSON JORDAN: And your son is what in regards to this project?

MS. ZAHRAIE: Naveed Zahraie who has prepared --

CHAIRPERSON JORDAN: Is he the applicant?

MS. ZAHRAIE: Well, no, I am the applicant, but he has prepared with me and worked on the application. So I just wanted to --

CHAIRPERSON JORDAN: Okay.

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MS. ZAHRAIE: -- mention that.

CHAIRPERSON JORDAN: And you are, sir?

MR. RUBENS: My name is Frederick Rubens and I am here on behalf of the applicant.

CHAIRPERSON JORDAN: Okay. And what do you do for the applicant?

MR. RUBENS: I prepared the statement and I'm also co-owner in the building.

CHAIRPERSON JORDAN: Okay. All right. This thing has been in front of us before and we kicked it back for what reason? What did we do? Didn't we? I thought we did.

MS. ZAHRAIE: Well, you asked for some extra --

MR. RUBENS: Yes, for exhibits.

MS. ZAHRAIE: -- exhibits that we have submitted for ten --

MR. RUBENS: Yes, it was basically, I think you made three main points which was extra evidence of structural damage to the property, alternative views as on the property and their financial feasibility studies --

CHAIRPERSON JORDAN: Right.

MR. RUBENS: -- and then further outreach to the neighbors.

CHAIRPERSON JORDAN: Right.

MR. RUBENS: So we have in this additional statement,

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we have --

CHAIRPERSON JORDAN: Right. Your supplement didn't provide any proposed construction costs. I think the only thing you did was talk about some brick masonry and provided the contract for that. There's a construction cost document from your construction folks?

MR. RUBENS: Yes, there is in the pre-hearing statement that we have submitted, our construction cost estimate.

CHAIRPERSON JORDAN: And who is that from?

MR. RUBENS: This is from Superior Home Services.

CHAIRPERSON JORDAN: Okay. Give me the page and where that is and I'll just pull it up and make a list of --

MR. RUBENS: This is Exhibit C in the pre-hearing statement. And it accompanies with a letter of Mr. Steinkoler, who is the company director.

CHAIRPERSON JORDAN: All right. One second, let me get to that. While I'm looking up, Board, please ask any other questions that you may have.

MEMBER MAY: So then in reading the structural report there's reference to a retaining wall in the, I think, in the front yard. Did I get that right?

MR. RUBENS: That's correct, yes.

MEMBER MAY: Where is that? I'm looking at the photographs and I'm not seeing retaining walls.

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MR. RUBENS: It's just I think he's talking about the facade, the front wall.

MEMBER MAY: The front wall of the building?

MR. RUBENS: Yes.

MEMBER MAY: That's not a retaining wall. Okay.

CHAIRPERSON JORDAN: What's the exhibit number? Oh, I looked in there before, I think.

MEMBER MAY: Oh, maybe it's abutting the neighbor's property? Yes.

MS. ZAHRAIE: Is this the one?

MEMBER MAY: Well, we'll see if there's a retaining wall abutting the property immediately to the south. Would that be it?

MR. RUBENS: Which --

MS. ZAHRAIE: Actually, the one is on the south and one is on the side and one in the front. There were two fire on this. This house has never been, apparently, maintained in the past. There were two fires and water damage and also structural --

MEMBER MAY: I'm just trying to find the retaining wall that's referenced in the report. And I'm --

MR. RUBENS: Are you referring to that?

MEMBER MAY: It was in your last very large submission, the 67 pages. I can't tell you what page it was on.

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MR. RUBENS: It must be in the statement of our structural engineer, right, in the structural engineering --

MEMBER MAY: Yes, I guess that makes sense.

MS. ZAHRAIE: Is this this one?

MR. RUBENS: I've seen this before?

MS. ZAHRAIE: Settlement --

MR. RUBENS: Yes, I'm not sure which is the retaining wall.

MS. ZAHRAIE: Are you talking about the settlement --

MEMBER MAY: Maybe I can find --

MS. ZAHRAIE: -- the western bearing wall? Is this the one you're referring to, sir?

MEMBER MAY: Tell me the page number of that?

MS. ZAHRAIE: I don't see a page number. Is this the one?

MEMBER MAY: No. It's not a photo. All right. Well, I'll see if I can find it. Maybe I'm confusing it with something else. I thought it was in the very first report which was the, you know, where you tried to show the evidence of the --

MS. ZAHRAIE: Okay.

MEMBER MAY: -- structural --

MS. ZAHRAIE: So which wall --

MEMBER MAY: -- problems.

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MS. ZAHRAIE: -- is that?

MEMBER MAY: It doesn't show a picture here. Okay. So

--

MS. ZAHRAIE: I mean, besides that, the house, I mean as I mentioned before, has never been really taken care of. And you can see from the non-structural and it's not by the code and it's really falling apart. And it's not even environmentally friendly at all. It has a lot of issues.

MEMBER MAY: Yes, I understand the house is not in good shape. I guess I'm not finding the reference that I thought I'd seen to a retaining wall somewhere. But if I see it I'll ask the question again.

MS. ZAHRAIE: Yes.

CHAIRPERSON JORDAN: Any other questions? Is there a state of return or investment on this property is eight percent, is what you're proposing for these --

MR. RUBENS: That's correct, yes.

CHAIRPERSON JORDAN: -- 43 units?

MR. RUBENS: Yes, eight percent, 43 units.

MS. ZAHRAIE: Yes. We are really not --

CHAIRPERSON JORDAN: Does that include the management fee or outside the management fee? And who's managing your property?

MR. RUBENS: Management of the construction?

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CHAIRPERSON JORDAN: No, management fee.

MS. ZAHRAIE: Management --

MR. RUBENS: Management --

MS. ZAHRAIE: -- fee.

MR. RUBENS: -- fee in --

CHAIRPERSON JORDAN: And operating cost.

MR. RUBENS: Rentals. Are you talking during the construction --

CHAIRPERSON JORDAN: I'm talking about your financials have a five percent management fee.

MR. RUBENS: Yes. That's for rentals, sir.

CHAIRPERSON JORDAN: So it's for rentals, yes. But who's --

MR. RUBENS: Yes.

CHAIRPERSON JORDAN: -- going to manage?

MR. RUBENS: We are --

CHAIRPERSON JORDAN: So is the five percent management fee included in your --

MS. ZAHRAIE: Yes.

MR. RUBENS: Yes, sir.

CHAIRPERSON JORDAN: -- term of investment, yes.

MR. RUBENS: For the rental option, yes, absolutely.

MS. ZAHRAIE: Yes.

MR. RUBENS: So we have proposed a rental option and a

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financial feasibility study with that. And then we have --

CHAIRPERSON JORDAN: Who's doing the management of the property?

MR. RUBENS: Who's doing the management of the apartments?

CHAIRPERSON JORDAN: Yes.

MR. RUBENS: We have not assigned anybody for that yet.

CHAIRPERSON JORDAN: You don't self-manage, you're going to contract that out?

MR. RUBENS: If we rent out the building, most likely, yes.

CHAIRPERSON JORDAN: Most likely yes, what?

MR. RUBENS: We will have somebody taking --

CHAIRPERSON JORDAN: Outside.

MR. RUBENS: -- care.

CHAIRPERSON JORDAN: So are you --

MR. RUBENS: Yes.

CHAIRPERSON JORDAN: Do you manage your own property or somebody else does it?

MR. RUBENS: We will have somebody --

MS. ZAHRAIE: Somebody --

MR. RUBENS: -- manage the property.

MS. ZAHRAIE: We will have somebody to do it for us.

CHAIRPERSON JORDAN: Okay. All right Any other

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questions, Board? All right. I think with we already went through the whole shebang on this, did we not? Yes.

Any other thing that the Board needs to hear? I thought was did that, didn't we? Yes. Yes. Okay. OP, we have a question for you.

MEMBER MAY: So the last report we have from you was prior to the last hearing, I think. And then we have this new information, the 67 --

CHAIRPERSON JORDAN: Oh, got you.

MEMBER MAY: -- page submission. And I'm just wondering since we don't have a new report from you if you have whether what was submitted has changed your recommendation or your statement that you cannot support this at this time or however you phrase it?

CHAIRPERSON JORDAN: They got you that supplement, didn't you?

MR. JESICK: Yes. We issued a supplement prior to the 67 page --

CHAIRPERSON JORDAN: That's --

MR. JESICK: -- latest --

CHAIRPERSON JORDAN: -- prior? Okay.

MR. JESICK: It was prior to the 67 page most recent --

CHAIRPERSON JORDAN: Yes. Yes.

MR. JESICK: -- submission at Exhibit 43.

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CHAIRPERSON JORDAN: Oh okay.

MR. JESICK: Right. We felt that the applicant had a very strong, let's call it a story. And we're trying to have them make it into a case. We wanted them to present the appropriate information to make their case.

I'm not sure that it's in the 67 pages. What we had asked for in our initial report was evidence that the purchase price was equivalent to other fixer upper row houses in the neighborhood. And I think there's some data on that.

And then also that the purchase price was based on a pro forma that included, you know, a standard contingency for expected repairs or a contingency for normal unexpected repairs.

And that what they are trying to demonstrate, I think, is that the repairs needed for this building go beyond even what normal construction contingencies could anticipate. I don't know if I explained that clearly or not, but --

CHAIRPERSON JORDAN: Yes. I don't know the contract.

MEMBER MAY: So, I mean, in this point you don't feel confident that they've woven this together in the right narrative to make their case?

MR. JESICK: I don't feel that they've addressed the issues completely as raised in the initial OP report.

CHAIRPERSON JORDAN: Board, any other questions from

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anyone? Okay. Are we ready to close this? Additional information needed or anything? Okay. Then we'll close the hearing.

MR. RUBENS: Excuse me.

CHAIRPERSON JORDAN: Yes.

MR. RUBENS: Could I react to the submission from OP?

CHAIRPERSON JORDAN: Yes, go ahead.

MR. RUBENS: Because we bought this building like anybody else buys a building in the city. It goes through normal channels. It goes through real estate. These list prices are made public. People conveyed on these properties in various ways.

This is the way we bought the property. We have here submitted a list of MLS. An MLS list where it clearly states all kind of properties that have to be bought in an as is condition that are complete fixer uppers.

None of these properties have sold for below the list price that they were listed on on Redfin, just as ours is the case. So just to defend the argument that we did not necessarily pay way too much for this building or out of the ordinary.

Now, then on top of this comes the fact that the purchase price of the building, which is causing, I guess, what was called a self-imposed practical difficulty, is only really

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applicable in use variances.

And in our supplement statement, we have listed four cases, even appeals court cases where it basically states that even with prior knowledge, which we didn't have, that this might not work out financially in an area variant situation.

This argument is not a bar to our case, basically. So my question to OP is if it's your main argument is that we paid too much for the building, but this argument doesn't really stand up in area variance case. And you feel like the rest of our application has a good story because for fact is that we really need it then I find that --

CHAIRPERSON JORDAN: Just so we can cut through all of that.

MR. RUBENS: Okay.

CHAIRPERSON JORDAN: That's not what he's saying. He's not requiring you to show undue hardship. He's simply saying that your issue here is that you need these number of units based upon the financial aspect of it. And he's saying the financial aspect is included in the amount that you purchased the property. That's all he's talking about.

Okay. All right. Is there anything else, Board, anyone?

MS. ZAHRAIE: I also have --

CHAIRPERSON JORDAN: Okay. Do you want to close it?

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Yes, we went through this whole thing and we came back and said we needed some other stuff. Yes, go ahead. I'll give you the opportunity.

MS. ZAHRAIE: Yes. The other thing that you asked us last meeting was to get support of the neighbors which we did. I personally went to the neighbors and so did Mr. Frederick.

And we talked to them personally and we got their support. And really, we didn't see any opposition to that. And we are really not asking much. We are going by the limitations and the only we are asking is to go from two unit to three, which our neighbors to the right and left have already done that.

CHAIRPERSON JORDAN: All right. Okay. Then, let's close this hearing and what we've already gotten. Is the Board ready to deliberate and then what are your thoughts on this case, anyone?

I think you thought we drilled this thing pretty much. I mean Office of Planning is not in support, but I think that the documentation submitted shows that this was not bought really out of line and that the building's in really, really bad condition.

So, and I think that because of the bad condition of this building it provides a practical difficulty for them to be able to get this building done with the amount of renovations that

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has to happen and the finances on it. But I'm just open to it. Other Board member's thoughts?

MEMBER MAY: Mr. Chair, you know, I really do not like being in a position of having to decide a case based on financial information having to do with the feasibility of developing the project.

I just don't believe that that sort of information is a good way to try to judge the appropriateness of zoning relief. And I think that it's too easy for that information to be, I guess, biased, for lack of a better word.

So I really try to base my understanding of the case on the original requirements for granting zoning relief. And in this circumstance, you know, the exceptional circumstance, the practical difficulty extends from the condition of the building.

And honestly, what I see in the condition of the building is not that out of the ordinary. I've seen many projects come before the BZA.

I've worked on projects where there are buildings that are in worse shape than this and where they really are quite literally on the verge of falling down. And I don't see that here. I don't see that in the testimony from the structural engineers.

Yes, there are serious problems that need to be fixed.

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But if they were so bad that the building's on the verge of falling down, I would think that we would have evidence in the record that they've had to go out there and do emergency repairs to keep the building from falling down.

You know, it's fairly typical. I mean, there's deprivation of mortar, there's some settlement in the foundations. All of these are problems that are commonly fixed in home renovations and small building renovations around Washington.

So I'm just not persuaded by that. I mean, I'm very sympathetic. I understand that, you know, the way that the applicant is seeing the case, it's difficult to turn this project around and make a reasonable profit.

You know, I understand that desire, but the ability to make a profit isn't really what zoning relief is about. It's really about whether you have a reasonable opportunity to make use of the property that you've purchased or that you own.

And I, you know, I don't know what the right solution is for this house, but I'm simply not convinced that a conversion to three units is the only way that this can be done.

CHAIRPERSON JORDAN: Well, and I'm not disagreeing with you because I am having a hard time with it also, however, I just want to make it clear and you're saying it doesn't get passed for you the first point of the test.

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And I guess I was talking about the second point because we are, as required by the cases and the court of appeals, consider that they have a right to make a reasonable profit from the property and that the financial aspect of it can affect the practical difficulty.

But I hear what you're saying. They're not even getting passed step one from being an exceptional situation or condition of this property because we have a lot of buildings like this. And I can understand that too. Mr. Hinkle?

MEMBER HINKLE: Yes, thank you. I tend to agree. I'm struggling with the exceptional condition on this property --

CHAIRPERSON JORDAN: Yes.

MEMBER HINKLE: -- as well. As you mentioned, we do have similar structures across the city --

CHAIRPERSON JORDAN: Yes.

MEMBER HINKLE: -- many of them in the same condition. So that's my difficulty as well --

CHAIRPERSON JORDAN: Yes.

MEMBER HINKLE: -- with this case.

CHAIRPERSON JORDAN: Yes. I think if we can get past one, we might be able to get to two. But there's, as Mr. May said, this building is not falling down tomorrow and then that there's a lot of buildings in this condition, especially if you speculate you buy buildings like that.

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And when you do, you do so to some extent with your eyes wide open. So is there a motion one way or the other, anybody, wants to make?

MR. RUBENS: Mr. Chairman, can I --

CHAIRPERSON JORDAN: No, I'm sorry. So I get a feeling the Board is not -- don't believe in step one and I can agree with that. So I would agree with you. Let's move that we deny the requested relief. Okay. Second?

MEMBER MAY: Yes, I'll second it.

CHAIRPERSON JORDAN: Motion made and second. I think this is a difficult case. Any further discussion? All those in favor of the motion aye.

(Chorus of ayes)

CHAIRPERSON JORDAN: Those opposed nay. The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as three to zero. This on the motion of Chairman Jordan to deny the application for the amended relief requested. Second the motion, Mr. Peter May. Also in support Mr. Hinkle.

We have a Board member who participated, not present today, not voting and motions carries three to zero, sir.

CHAIRPERSON JORDAN: All right. Thank you. Summary. Now, I can't -- we shouldn't do a summary.

MR. MOY: That be a full.

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CHAIRPERSON JORDAN: Fuller. All right. Is there any other business, Mr. Moy? Thank you very much.

MR. MOY: Not from the staff, sir.

CHAIRPERSON JORDAN: Okay. Then, any reason why we should not adjourn? I think -- so we're adjourned. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:35 p.m.)

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