

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 17, 2012

+ + + + +

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 9:37 a.m., Lloyd Jordan, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
RASHIDA MACMURRAY, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
KAREN THOMAS
MATT JESICK
ARTHUR JACKSON
PAUL GOLDSTEIN

The transcript constitutes the
minutes from the Public Hearing held on April
17, 2012.

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

9:37 a.m.

CHAIRPERSON JORDAN: Will the hearing please come to order.

Good morning, ladies and gentlemen.

We are located in the Jerrily R. Kress Memorial Hearing Room, at 441 4th Street, N.W. Today's date is April 17, 2012, for a public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Lloyd Jordan, Chairperson. Joining me today to my left is Vice Chair Nicole Sorg. To my right, Board Member Rashida MacMurray. To her right is Jeffrey Hinkle, Board Member, and to the left of the Vice Chairperson is Michael Turnbull, representative of the Zoning Commission.

Please be advised that this proceeding is being recorded by a court reporter, and is also webcast live. Accordingly, we must ask that you refrain from any disruptive noises or actions in the hearing

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1 room.

2 The Board's hearing procedures and
3 how we will process applications can be found
4 on the table in the back, by the back door.
5 And so, let's begin today's hearing agenda.

6 All individuals wishing to testify
7 today please raise and take the oath. Mr.
8 Secretary, would you please administer the oath?

9 (Whereupon, witnesses sworn.)

10 CHAIRPERSON JORDAN: Thank you, Mr.
11 Secretary.

12 If you will call our first case on
13 our agenda, please.

14 SECRETARY MOY: Good morning, Mr.
15 Chairman and Members of the Board.

16 The first of three cases before the
17 Board in its morning session, first being
18 Application No. 18337. This is the application
19 of Casey Torgusson and Jason Cornelius, pursuant
20 to 11 DCMR 3104.1, for a special exception to
21 allow a rear addition to an existing one-family
22 row dwelling under Section 223, not meeting the

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1 lot occupancy section 403 requirements in the
2 R-4 District. This is at premises 122 Rhode
3 Island Avenue, N.W., property located in Square
4 3109, Lot 35.

5 VICE CHAIRPERSON SORG: You need to
6 be on the mic, sir.

7 CHAIRPERSON JORDAN: Yes, you have
8 to push the little button. There, yes.

9 And, before you begin, would you
10 state your name, both of your names?

11 VICE CHAIRPERSON SORG: It's sort
12 of a tap, and then it goes bright green, and
13 then you are good.

14 CHAIRPERSON JORDAN: It's green.
15 Well, pull it a little closer to your mouth,
16 maybe that will help. The mic should move some
17 for you.

18 All right, and would you state your
19 name, please?

20 MR. CORNELIUS: Jason Cornelius.

21 CHAIRPERSON JORDAN: And, your
22 name?

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1 MR. TORGUSSON: Casey Torgusson.

2 CHAIRPERSON JORDAN: Jorgusson?

3 MR. TORGUSSON: Torgusson.

4 CHAIRPERSON JORDAN: I think the
5 record in this matter is pretty clear, and I'm
6 going to check with the Board and see if there's
7 any issues that they may have seen, any
8 additional information that they may need.

9 VICE CHAIRPERSON SORG: Mr.
10 Chairman, I think, do we need to ask the
11 applicant to amend their application?

12 CHAIRPERSON JORDAN: No, we don't
13 necessarily need to do that.

14 VICE CHAIRPERSON SORG: Oh, okay.

15 CHAIRPERSON JORDAN: We can do it
16 on our own to add the additional relief that's
17 necessary.

18 VICE CHAIRPERSON SORG: Okay.

19 CHAIRPERSON JORDAN: The Board does
20 not believe there's any questions that the Board
21 has, since the application is pretty clear and
22 that the record is pretty full.

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1 You have the right to continue if
2 you want to put a hearing on, or we can go ahead
3 and just make a decision based upon what's
4 already been submitted.

5 MR. TORGUSSON: Okay.

6 CHAIRPERSON JORDAN: And,
7 generally, if we have some questions and things
8 are looking rocky, we would have you do a
9 presentation.

10 MR. TORGUSSON: Right, yes.

11 CHAIRPERSON JORDAN: But, you have
12 a right to provide any additional evidence if
13 you want.

14 MR. CORNELIUS: Well, I think that,
15 you know, we've presented all of our facts,
16 and, you know, we hope that you find in favor
17 for us. We really enjoy our residency at 122,
18 and we hope we can make this house a little more
19 liveable for us.

20 CHAIRPERSON JORDAN: What the Vice
21 Chair was mentioning, and we can simply -- we
22 can have you do it orally, but the Board has

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1 the power in a relief to grant the relief that's
2 necessary for this to be completely done, is
3 that you would also, based upon our relief, would
4 need relief from Section 401, in that this
5 property is only 1,280 square feet, and the
6 minimum is 1,800 in the particular zone.

7 MR. CORNELIUS: Correct.

8 CHAIRPERSON JORDAN: So, I guess we
9 accept -- so you want us to amend that for you,
10 you are asking the Board to amend that for you,
11 are you not?

12 MR. CORNELIUS: Yes, thank you.

13 CHAIRPERSON JORDAN: So, we accept
14 that.

15 Based upon the record, it's my
16 thought that the applicant has satisfied the
17 burden of proving the elements that are
18 necessary for relief established under 3104.1
19 for special exception under 401 and 402.

20 No parties appear at this public
21 hearing in opposition to this application, I
22 don't believe. Anybody here in opposition?

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1 I didn't see any.

2 Accordingly, a decision of the Board
3 to grant this application would not be adverse,
4 I don't believe, to any party. There's nothing
5 in the record that indicates that anyone had
6 any opposition. We have letters of support from
7 both the Office of Planning and the ANC, which
8 both will be given great weight since they meet
9 the requirements of that.

10 The record indicates that there's
11 no substantially adverse effect upon the
12 surrounding properties. There's no impact on
13 the light and air. There's no visual intrusion
14 upon the character of the property. The
15 graphical representations as submitted by the
16 applicant fairly, in my estimation, show the
17 relationship of what the addition would be.
18 The lot occupancy does not violate the
19 requirements that it -- by the percentage
20 required by the Regulations, and I would
21 conclude that the requested relief can be
22 granted as being in harmony with the general

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1 purpose and the intent of the Zoning Regulations
2 and map, and that the Board further concludes
3 that granting this relief will not tend to
4 adversely affect the surrounding neighborhood.

5 And also, I would believe that this
6 application, since there's no opposition, would
7 be prime and ripe for waiver of Section -- waiver
8 of the requirements at 3125, so that we can do
9 this in a summary order, without providing
10 findings of facts and conclusions of law, and
11 I would so move that.

12 VICE CHAIRPERSON SORG: I would
13 second that motion.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded that we approve the application,
16 with the additional relief of Section 401.

17 Ready for the question?

18 All those in favor signify by saying
19 aye?

20 (Ayes.)

21 CHAIRPERSON JORDAN: Those
22 opposed, nay?

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1 Motion carries. Mr. Secretary?

2 MR. MARINA: Yes, sir. Staff would
3 record the vote as 5:0:0. This is on the motion
4 of Chairman Jordan to approve the application
5 for special exception relief under Section 223,
6 not meeting the lot occupancy requirements under
7 Section 403, as well as not meeting the lot area
8 requirements under 401.1. Seconding the motion
9 Vice Chair Sorg. Also in support of the motion
10 Mr. Turnbull, Ms. MacMurray, and Mr. Hinkle.

11 So again, the final vote is 5:0:0.

12 MR. CORNELIUS: Thank you.

13 SECRETARY MOY: Thank you.

14 The next application before the
15 Board is Application No. 18335. This is the
16 application of the Washington Ethical Society,
17 pursuant to 11 DCMR 3104.1, for a special
18 exception to allow a child development center,
19 40 children, 14 staff, under Section 205, in
20 the R-1-A District at premises 7750 16th Street,
21 N.W., property located at Square 2745F, F as
22 in fox trot, Lot 81.

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1 MS. PARCELLI: Good morning.

2 CHAIRPERSON JORDAN: Good morning.

3 Would you please introduce yourself for us,
4 please?

5 MS. PARCELLI: Yes. I'm Christine
6 Parcelli. I'm the Administrator at Washington
7 Ethical Society.

8 MR. TOMER: And, I'm Jonathan
9 Tomer. I'm a Member of the Board of Trustees
10 of the Washington Ethical Society.

11 CHAIRPERSON JORDAN: Is it Domer?

12 MR. TOMER: Tomer, T-O-M-E-R.

13 CHAIRPERSON JORDAN: Again, I
14 believe this is another file that's pretty full.

15 Do the Board Members need any other additional
16 information from them?

17 I just have one question that,
18 actually, goes to the Office of Planning. Who
19 is the Office of Planning on this file?

20 SECRETARY MOY: My understanding is
21 Steven Cochran, unless Stephen Mordfin would
22 like to stand in for him.

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1 CHAIRPERSON JORDAN: And, let me
2 ask, while we are having Planning come up. For
3 the record, to the applicant, is the applicant
4 going to stand by the neighborhood agreement
5 that's already been signed and executed, and
6 has been placed before?

7 MS. PARCELLI: Yes, absolutely.

8 CHAIRPERSON JORDAN: In this
9 particular matter, OP -- there's been a request
10 by the ANC, and then by the applicant, that there
11 is no -- that we maximize a time limit for
12 extension for the approval of this child center.

13 OP has recommended eight years. Are you
14 familiar with maybe why OP is asking for eight
15 years?

16 OP STAFF MORDPHIN: In this case,
17 I think this is a -- because it's usually for
18 a continuation, usually we recommend additional
19 years when there are issues related to the
20 operation. So, we want to make sure that the
21 community feels like they have a way to come
22 back to the Board, because things weren't --

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1 aren't perfect, you know.

2 Sometimes if an operator has proved
3 himself to be exemplary, we don't recommend a
4 time period, because, you know, they work well
5 with the community.

6 So, it just gives them an out for
7 -- in case any of the changes that are proposed
8 really don't work out as we foresee it.

9 CHAIRPERSON JORDAN: Does anyone on
10 the Board have any issues with that, accepting
11 the OP's recommendation for eight years?

12 MEMBER HINKLE: Yes, I just had a
13 question. Is eight years kind of a standard
14 set, or is there a set number of years that OP
15 typically recommends? I'm just not quite sure
16 where the eight years came from.

17 OP STAFF MORDPHIN: We don't have
18 a set number of years. Sometimes it depends
19 on the amount of the change that's proposed,
20 and sometimes if there is some friction with
21 the community we might recommend something less.

22 So, we look at each one on a

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1 case-by-case basis, to determine what would be
2 an appropriate amount of time.

3 MEMBER HINKLE: Great, thank you.

4 VICE CHAIRPERSON SORG: I think to
5 follow up, just to comment on Mr. Hinkle's
6 question, I think this is the first request for
7 the continuation, subsequent to the special
8 exception which was made in 2009. Is that
9 correct?

10 MS. PARCELLI: 2008.

11 VICE CHAIRPERSON SORG: Or, 2008.

12 And so, this is the first time that
13 this applicant is back before the Board to
14 continue.

15 So, I think the precedent that this
16 Board, to my recollection, has set is, you know,
17 when we've seen these similar applications of
18 a five-year term, and so, personally, you know,
19 I personally would be in favor of a five-year
20 term.

21 MS. PARCELLI: We did have zoning
22 prior to 2008. We went through a renovation,

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1 so there was a lapse in that. We have a long
2 history of being zoned for child care.

3 VICE CHAIRPERSON SORG: No, I mean,
4 so how long have you -- just remind me, I know
5 it's in our file -- how long have you been
6 operating in this location?

7 MS. PARCELLI: I don't have the date
8 for a child care center, but we had a high school
9 there for many years, and child care, oh, I'm
10 going to say going back at least ten years or
11 more.

12 VICE CHAIRPERSON SORG: Okay.

13 MS. PARCELLI: We've been there for
14 42 years, and we've always had a school of some
15 sort.

16 The zoning lapsed when we were doing
17 the renovation, and could not have it at that
18 time.

19 VICE CHAIRPERSON SORG: Oh, okay,
20 so then if it was just for a renovation, then
21 I'm fine with the eight-year term.

22 ZC MEMBER TURNBULL: Mr. Chair, I

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1 see a Certificate of Occupancy that goes back
2 to '93.

3 CHAIRPERSON JORDAN: Yes, it's been
4 a while, yes.

5 ZC MEMBER TURNBULL: Yes.

6 CHAIRPERSON JORDAN: Very good.

7 MEMBER HINKLE: And, Mr. Chair, I
8 just wanted to add, I think we have a full record
9 of support for this project, and I certainly
10 would be in support of eight years.

11 CHAIRPERSON JORDAN: Yes. In
12 fact, I think the initial term had some
13 limitations, and, subsequently, because of, I
14 guess, the way you were operating, the ANC is
15 asking for the max as much as we can give you.
16 So, we accept that.

17 And again, we believe that the
18 record is pretty full in this matter. So,
19 unless you want to present something, you don't
20 have to, let me then ask, is there anyone in
21 the audience in opposition to this application
22 for special exception?

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1 Seeing none, I think we are probably
2 fine again for this to move forward, based upon
3 the record. The applicant has satisfied the
4 burden of providing the elements that are
5 necessary to establish a special exception under
6 Section 205, as requested.

7 No parties appearing at this hearing
8 appear to be in opposition to this application,
9 and, accordingly, this matter would not be --
10 would be ripe for a summary order by the Board,
11 and, therefore, waiving the provisions of
12 3125.3.

13 The application clearly shows that
14 the property meets all the applicable codes and
15 licensing requirements, that there's no
16 objectable traffic and unsafe conditions for
17 picking up or dropping off persons, that there's
18 sufficient off-street parking spaces to meet
19 the needs of the teachers and other employees
20 and visitors. There's no objectable playground
21 areas, both on the premises or off the premises,
22 that will impact nearby neighborhoods causing

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1 noise, or other activity, or visual intrusion.

2 There's no other centers, based upon this
3 record, that's within 1,000 feet, as has not
4 been noted. And, the application in the file
5 indicates the application has been sent to all
6 the applicable agencies as required.

7 The file also contains support from
8 the Office of the State Superintendent of
9 Education, as required, and the ANC has voted
10 properly to support this application, which
11 great weight would be given to what the ANCs
12 request, as well as great weight being given
13 to the Office of Planning, who set forth
14 conditions which they've discussed with the
15 applicant, and that the Board would adopt in
16 this order the conditions as set forth in the
17 OP report.

18 With that, I would move the approval
19 of this application.

20 ZC MEMBER TURNBULL: Second.

21 CHAIRPERSON JORDAN: Motion made
22 and seconded that the application be approved,

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1 with the conditions as stated in the OP_ report.

2 Any questions?

3 All those in favor signify by saying
4 aye.

5 (Ayes.)

6 CHAIRPERSON JORDAN: Those opposed
7 nay?

8 The motion carries.

9 SECRETARY MOY: Mr. Chairman,
10 before I give the final vote for the record,
11 what was the motion in terms of the term limit,
12 number of years?

13 CHAIRPERSON JORDAN: The eight
14 years, we took the recommendations of OP in this
15 matter.

16 SECRETARY MOY: Very good, that's
17 for my edification.

18 So, the staff would record the vote
19 as 5:0:0, this on the motion of Chairman Jordan
20 to approve the application for special exception
21 relief under Section 205, with conditions as
22 stated in the Office of Planning report, and

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1 this is for a period of an eight-year term.

2 Seconding the motion Mr. Turnbull.

3 Also in support of the motion, Ms. Vice Chair
4 Sorg, Ms. MacMurray, and Mr. Hinkle.

5 Again, the final vote 5:0:0, summary
6 order.

7 CHAIRPERSON JORDAN: Thank you, Mr.
8 Secretary.

9 SECRETARY MOY: Thank you, sir.

10 The third and final application
11 before the Board in its morning session is
12 Application No. 18336. This is the application
13 of Grace Evangelical Lutheran Church. This is
14 in care of Amazing Life Games Preschool,
15 pursuant to 11 DCMR 3104.1 for a special
16 exception to allow a child development center.
17 This is for 35 children and five staff, under
18 Section 205, in the R-1-B District, at premises
19 4300 16th Street, N.W., property located at
20 Square 2646, Lot 807.

21 Mr. Chairman, just for the record
22 for the Board, in the case filing there appears

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1 to not be an affidavit of posting, number one.

2 And, number two, I think the applicant has not
3 taken the oath for the morning.

4 CHAIRPERSON JORDAN: Okay. Well,
5 let's first take the oath, if we may.

6 (Whereupon, witness sworn.)

7 MS. MISTRETT: Thank you.

8 CHAIRPERSON JORDAN: And, we also
9 don't have an ANC letter, other than the
10 Commissioner.

11 Are there letters in support in this
12 file?

13 Let me ask the applicant. Has --
14 excuse me, what's your name, please?

15 MS. MISTRETT: My name is Marcie
16 Mistrett. I apologize for being late.

17 CHAIRPERSON JORDAN: Would you say
18 your name again?

19 MS. MISTRETT: Marcie Mistrett.
20 I'm the Director of the preschool. Do you want
21 me to spell?

22 CHAIRPERSON JORDAN: No, I'm good,

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1 thank you.

2 MS. MISTRETT: Okay.

3 CHAIRPERSON JORDAN: Was the notice
4 posted regarding this application?

5 MS. MISTRETT: The notice was
6 posted, and I have an email. I've been in
7 correspondence with Gale Black, and I have an
8 email from her saying she would write a letter
9 of support, but she didn't get it to me by today.

10 CHAIRPERSON JORDAN: Gale Black is?

11 MS. MISTRETT: Is the ANC
12 Commissioner. She's 4A08.

13 CHAIRPERSON JORDAN: We have a
14 letter from an ANC Commissioner.

15 MS. MISTRETT: Okay.

16 CHAIRPERSON JORDAN: But, I don't
17 know if it was submitted for review.

18 She indicates that it has been
19 submitted to the ANC, but they said that it was
20 not necessary, because it was a no brainer for
21 them, or something. They weren't going to take
22 an action on it.

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1 However, I need to know, this was
2 properly posted on the property, the notice for
3 this relief that you are requesting.

4 MS. MISTRETT: I did not know I had
5 to do that. I did go knock on neighbors' doors
6 and let them know it was coming, that zoning
7 was coming. I talked to -- there's only two
8 neighbors that buttress the school. I did not
9 know that I needed to post an affidavit on the
10 school door.

11 VICE CHAIRPERSON SORG: So, the
12 thing is, you know, we have Zoning requirements
13 which, unfortunately, you didn't know and
14 weren't able -- didn't fulfill for posting.

15 MS. MISTRETT: Okay.

16 VICE CHAIRPERSON SORG: And, you
17 would have received instructions to, you know,
18 pick up posters from this office that you would
19 put on your property, at a minimum of, I think,
20 14 days before the hearing, so that the public
21 could be knowledgeable about the request that
22 you are making.

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1 Additionally, there are other ways
2 that the public is notified about these
3 hearings, mailings that go out from our office,
4 the Office of Zoning, to people in the radius
5 of 200 feet.

6 MS. MISTRETT: Right.

7 VICE CHAIRPERSON SORG: That would
8 have happened. Also, a presentation and being
9 on the agenda at the ANC, is another way that
10 -- because they post their meetings and their
11 agendas -- another way that the public can get
12 involved.

13 Unfortunately, you kind of missed
14 on the two things that, of the three
15 requirements, that help us know that the public
16 has been duly informed of the request that's
17 being made.

18 MS. MISTRETT: Okay. I did request
19 from the ANC to get on their hearing, but they
20 didn't -- I requested that when I submitted,
21 but they said they have had some issues, and
22 they are getting backed up, and that because

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1 there was no complaints against us, that we
2 weren't going to be able to have it.

3 So, I mean, I'm happy to come back.

4 CHAIRPERSON JORDAN: Let's do that.

5 Mr. Moy, let's move this to another date, and
6 please be sure to post, and then file the
7 affidavit with the office that it was posted.

8 MS. MISTRETT: Okay, where --

9 VICE CHAIRPERSON SORG: If you go
10 to the front, they will be able to give you
11 instructions on everything that you need to do
12 to make sure that, you know, you are fulfilling
13 the requirements correctly.

14 MS. MISTRETT: Okay.

15 VICE CHAIRPERSON SORG: And, with
16 regard to the ANC, just as a note, it's the
17 responsibility of the applicant to, you know,
18 try to work with and encourage the ANC. And,
19 in my opinion, in this case they gave you some
20 wrong information, because it is always helpful,
21 and we always look for ANC reports in our cases
22 for support.

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1 And so, it would be up to you, if
2 you wanted to, within this time between now and
3 when the Chairman will set your next -- your
4 hearing after fulfilling the post-hearing
5 requirements, that it is important to note, it's
6 a good idea to try and encourage. Obviously,
7 you can't force the ANC to do anything, but we
8 like to see that something has been presented
9 and so forth.

10 MS. MISTRETT: Okay.

11 CHAIRPERSON JORDAN: Yes, if you
12 can send them a letter, then we would have it
13 for our files additionally.

14 MS. MISTRETT: Okay.

15 CHAIRPERSON JORDAN: Send a letter,
16 then we would have it.

17 Yes?

18 OP STAFF JACKSON: Arthur Jackson,
19 Office of Planning. Just a point of
20 clarification.

21 What day was the ANC meeting? Is
22 it the second day of the month, or second

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1 Wednesday?

2 MS. MISTRETT: It was last
3 Thursday, I think.

4 OP STAFF JACKSON: So, it was the
5 fourth Thursday of the month? Would that have
6 been the fourth Thursday?

7 MS. MISTRETT: That would have been
8 the second.

9 OP STAFF JACKSON: Oh, this month.

10 SECRETARY MOY: Yes.

11 OP STAFF JACKSON: Oh, okay, second
12 Thursday. So, in that case, the schedule would
13 need to be such that she can go to the next
14 meeting, which would be the second Thursday of
15 next month.

16 MS. MISTRETT: Correct.

17 OP STAFF JACKSON: Okay. I just
18 wanted to mention that.

19 MS. MISTRETT: As long as I can get
20 on the hearing, as long as I can be scheduled
21 then.

22 OP STAFF JACKSON: You are just

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1 requesting to get on the agenda.

2 MS. MISTRETT: Okay.

3 OP STAFF JACKSON: But, and if you
4 can't, if they don't let you on the agenda, then
5 the issue is addressed. But, we don't want to
6 schedule -- I'm sure the Board doesn't want to
7 schedule a hearing before you had an opportunity
8 to go before the ANC.

9 MS. MISTRETT: Yes.

10 SECRETARY MOY: Mr. Chairman, on
11 the schedule then, we have a public meeting on
12 the 15th, so I would suggest either rescheduling
13 for the afternoon of May 22nd, or, whoa, then
14 we jump into June 5th.

15 CHAIRPERSON JORDAN: May 22nd.

16 MS. MISTRETT: What day is the 22nd?

17 CHAIRPERSON JORDAN: It's always a
18 Tuesday.

19 MS. MISTRETT: Okay.

20 CHAIRPERSON JORDAN: And so, I
21 would today, tomorrow, be sure to get that
22 information out to the ANC. And also, you have

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1 the Commissioner that already wrote a letter
2 in support, to ask her to see if she can move
3 to get on the agenda.

4 MS. MISTRETT: Yes.

5 CHAIRPERSON JORDAN: Okay.

6 MS. MISTRETT: So, I just need that,
7 and then to go to Zoning and figure out the
8 requirements for the --

9 CHAIRPERSON JORDAN: Right across
10 the hall, just ask them.

11 MS. MISTRETT: Okay. And, you said
12 in the afternoon, because I didn't --

13 CHAIRPERSON JORDAN: Afternoon on
14 the 22nd, I believe is the date.

15 MS. MISTRETT: And, what time is
16 that?

17 CHAIRPERSON JORDAN: Our afternoon
18 docket starts at 1:00.

19 MS. MISTRETT: 1:00, thank you.

20 ZC MEMBER TURNBULL: This case
21 should go fairly easily.

22 CHAIRPERSON JORDAN: Yes.

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1 ZC MEMBER TURNBULL: But, we just
2 need some back-up information for the file.

3 MS. MISTRETT: That's fine. It's
4 the first time I've done this, so I appreciate
5 your patience.

6 CHAIRPERSON JORDAN: Before you
7 leave, I just want you to answer one question.
8 There's just a little bit of a question.

9 You are only asking for 35 children
10 and five staff people. You are not asking for
11 70, because you have the day care and then you
12 have the after school.

13 MS. MISTRETT: Yes. I, actually,
14 it's the same students.

15 CHAIRPERSON JORDAN: So, it's the
16 same 35.

17 MS. MISTRETT: Yes.

18 CHAIRPERSON JORDAN: Okay. That
19 sets our record straight.

20 MS. MISTRETT: Yes.

21 CHAIRPERSON JORDAN: Thank you so
22 much.

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1 MS. MISTRETT: And, we only have
2 four children in after care right now, so that's
3 just kind of a if we grow thing.

4 CHAIRPERSON JORDAN: Okay, thank
5 you.

6 MS. MISTRETT: Thank you.

7 CHAIRPERSON JORDAN: We'll stand in
8 recess until this afternoon at 1:00.

9 (Whereupon, the hearing was
10 recessed at 10:04 a.m., to reconvene at 1:00
11 p.m., this same day.)
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:10 p.m.

CHAIRPERSON JORDAN: Will the hearing please come to order.

Good afternoon, ladies and gentlemen. We are located in the Jerry R. Kress Memorial Hearing Room at 441 4th Street, N.W.

Today's date is April 17, 2012. We are here for the public hearing on the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. Joining me today is Vice Chairman Nicole Sorg to my left. To the right of me is Rashida MacMurray, Board Member. To her right is Jeffrey Hinkle, Board Member. And, to the left of the Vice Chairperson is Michael Turnbull, representing the Zoning Commission.

Please be advised that this

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1 proceeding is being recorded by a court
2 reporter, and is also being webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noise or actions in the hearing
5 room.

6 The Board's hearing procedures, and
7 how we will process applications, can be found
8 on the table by the back door.

9 We will now begin this afternoon's
10 docket, and I don't see the Secretary, but let's
11 come back -- oh, as a preliminary matter, I want
12 to ask if the parties on the Roane-Worsley LLC
13 matter, Case No. 18324, is here? Oh, there he
14 is.

15 Anyone on the last case, 18324, the
16 Roane-Worsley LLC matter. Okay, we'll visit
17 that one more time, Mr. Secretary, after we
18 finish the docket.

19 So, all individuals wishing to
20 testify today, would you please stand and take
21 the oath, and the Secretary will administer the
22 oath.

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1 (Whereupon, witnesses sworn.)

2 SECRETARY MOY: You may consider
3 yourselves under oath.

4 CHAIRPERSON JORDAN: Thank you.

5 If we have any preliminary matters,
6 we'll handle them with the case.

7 SECRETARY MOY: Yes, sir. yes,
8 sir.

9 CHAIRPERSON JORDAN: If you will
10 call the first case.

11 SECRETARY MOY: Good afternoon, Mr.
12 Chairman, Members of the Board. The first
13 application before the BZA is Application No.
14 18338. This is the application of Petit
15 Scholars Early Learning Center, pursuant to 11
16 DCMR 3104.1. This is for a special exception
17 for a reduction in the number of required
18 off-street parking spaces under Subsection
19 2001.1, serving a child development center, 35
20 children and seven staff, under Subsection
21 2108.1, in the C-1 District, at premises 2940
22 12th Street, N.E. Property located at Square

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1 3875, Lot 90.

2 CHAIRPERSON JORDAN: Will the
3 parties please come to the table, please, and
4 turn the microphone on and identify yourself.

5 MS. HAM: I am LaShada Ham. I am
6 the owner of Petit Scholars Early Learning
7 Center.

8 CHAIRPERSON JORDAN: Your last name
9 again?

10 MS. HAM: H-A-M.

11 CHAIRPERSON JORDAN: Okay.

12 You have to turn the microphone on.

13 Push the little button. You'll see a button
14 and the light will come on. Do you see a green
15 light? Okay, now you can begin.

16 No, you still need to -- the green
17 light is on? Your button is on. Just tap it.

18 Just tap it, don't push it hard, just tap it.

19 MS. JEFFERSON: There.

20 CHAIRPERSON JORDAN: Okay, good.

21 MS. JEFFERSON: My name is Rebecca
22 Jefferson, and I own the property up to this

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1 LLC, next door to the business that they are
2 supposed to have zoned.

3 CHAIRPERSON JORDAN: The property
4 next door. Are you here as a witness, are you
5 here for support, or in opposition?

6 MS. JEFFERSON: I'm kind of both,
7 because I have a concern, because I have -- I
8 was supposed to be opening a child care next
9 door to her, because this was to open on my
10 property, but she was afforded to get the other
11 one.

12 But, my question is, if she will be
13 granted what she's requesting, what will happen
14 then when I open mine?

15 CHAIRPERSON JORDAN: Well, it's not
16 -- that issue is not before us to address, and
17 we can't give that type of advice.

18 And, I'm trying to understand. You
19 are saying that --

20 MS. JEFFERSON: What effect does it
21 make, my question.

22 CHAIRPERSON JORDAN: Well, I think

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1 the Regulations are real clear in regards to
2 another child care center within a certain
3 distance of feet, but I cannot provide you that
4 type of advice or discussion with you
5 proactively like that.

6 So, it's my understanding from what
7 you said, is that you are going to -- it's your
8 intent to open up another child care center.

9 MS. JEFFERSON: That was before she
10 came in, but --

11 CHAIRPERSON JORDAN: That would be
12 within a 1,000 feet of this child care center,
13 is that what I'm understanding?

14 MS. JEFFERSON: It's next door.

15 CHAIRPERSON JORDAN: Next door is
16 within 1,000 feet.

17 MS. JEFFERSON: I suppose so.

18 CHAIRPERSON JORDAN: Yes. Okay.

19 But, that's not before us, and we
20 can't rule on that. It doesn't mean that one
21 way or the other that you will get it, or not
22 get it. It would have to stand on its own

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1 merits.

2 Do you follow me? Do you understand
3 what I mean?

4 MS. JEFFERSON: Maybe, kind of.

5 CHAIRPERSON JORDAN: Okay. So --

6 MS. JEFFERSON: Okay. My question
7 is like this. Because this is a business area,
8 and I would like her to have her own, too, but
9 what will happen because we don't have parking
10 space on that area, so, therefore, how the
11 client, you know, depart without parking on my
12 -- in front of my building.

13 See, I have a full unit there. I've
14 been there since 2004, and it's an apartment.

15 CHAIRPERSON JORDAN: Let me say
16 this. I can't tell you how to handle your
17 matter. I can't do that. You are going to have
18 to apply, and go through the process, and then
19 at that time, as you go through the process you
20 will understand. Or, if you hire an architect
21 or lawyer or somebody, or you can do it yourself,
22 but we can't advise you on how to process your

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1 application.

2 MS. JEFFERSON: The zoning, that's
3 why we are here, the effect of the business in
4 that area when someone open a business. So,
5 that's why I came here, before you make your
6 decision, letting you know what is, you know,
7 going to be a problem there later. You know
8 what I'm saying?

9 CHAIRPERSON JORDAN: Okay. Give
10 me a second.

11 Let's do this. I'm going to adjust
12 the order of how we normally take testimony and
13 questions, and you will have three minutes to
14 voice to the Board your issues and concern about
15 this application, and this application only.

16 MS. JEFFERSON: All right.

17 CHAIRPERSON JORDAN: Okay? So, if
18 you will proceed, you have three minutes to tell
19 us what you want to tell us.

20 MS. JEFFERSON: Okay. I am
21 concerned when this business be open, how is
22 going to be the effect on the other businesses

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1 next to the proposed child care that be opening
2 in that area. And, what will going to be happen
3 on our client also.

4 So, are we going to be fighting with
5 the parking? But, I think also in Kennett
6 Street, that they have a child care next to each
7 other, so my concern is, would they be okay,
8 because you guys familiar with this area than
9 I, you know, you'd be the pro on this matter,
10 so I'm bringing my concern.

11 So, for her to be able to open a
12 business there, which is good for the community
13 actually, only my concern is when I open mine,
14 then how is that going to effect.

15 That's all.

16 CHAIRPERSON JORDAN: Does anyone
17 have a question or anything you want to say to
18 the person? I'm going to consider it in kind
19 of in opposition?

20 Well, one thing that's required
21 prior to processing the application is that the
22 office -- Department of Transportation has to

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1 do an evaluation of the area, and make a
2 determination, a recommendation to this Board
3 on how to proceed. If traffic is going to be
4 a problem, if parking is going to be a problem,
5 it is for the Department of Transportation to
6 make a recommendation, to do an observation and
7 analysis, and then report back to this Board.

8 So, one was done in this case, and
9 if you do apply one would be done in your case.

10 Okay? They are the body that really makes that
11 determination, and then this body gives -- will
12 review the report and determine whether or not
13 the information there is sufficient to determine
14 that there's going to be an adverse impact to
15 the area regarding vehicles parking, and traffic
16 congestion, and all of that.

17 Do you understand?

18 MS. JEFFERSON: So, any business
19 that would be open in that area, in that
20 vicinity, should be apply, I have to approach
21 Transportation when I open a business over
22 there?

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1 CHAIRPERSON JORDAN: It depends on
2 what business you open, how it is zoned over
3 there, whether or not a Certificate of Occupancy
4 is already available to you or not, all of that.

5 MS. JEFFERSON: Because I check 941
6 a long time ago, when we purchase the property,
7 it's zoned for any business, restaurant, child
8 care, anything on that matter.

9 VICE CHAIRPERSON SORG: Perhaps I
10 can jump in to help clarify.

11 So, different businesses have
12 different parking requirements. Some have
13 none. Some have more. And, it's also based
14 on the specific facts about your property.

15 And so, if you decide what kind of
16 business you were to start, then you would go
17 to the relevant agencies to find out what
18 potential parking requirement there would be.

19 But, I think as the Chair mentioned,
20 we are here to talk about Petit Scholars, which
21 is a business that will be operating as a matter
22 of right, and all we are here to talk about today

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1 is one parking space.

2 And so, I feel that I've heard what
3 your concerns are with regard to the case that's
4 at hand today.

5 If you have questions about your own
6 business, there's many people in this building
7 and so forth, you know, in this office, who can
8 help point you in the right direction, outside
9 of the hearing that we are having right now I
10 think.

11 That would just be my comment.

12 CHAIRPERSON JORDAN: Anyone else?

13 All right, thank you, that's -- what
14 Vice Chairperson Sorg provided you with is
15 probably the best advice, for you to talk to
16 people and find out how to go about it.

17 This hearing is in regards to a
18 special exception, in regards to the number of
19 parking spaces that are required.

20 And, we have your testimony in
21 regards to what you believe is the issue,
22 something that we will weigh in our discussion.

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1 MS. JEFFERSON: Yes. I'm
2 concerning that, because she's requesting so
3 much space, so much parking, is that -- I mean,
4 am I correct on that? She's here to request
5 --

6 CHAIRPERSON JORDAN: Have you read
7 her application, and what the request is?

8 MS. JEFFERSON: No. I only, you
9 know, I was sick, and then when I got this one
10 I call you guys and the hearing is today.

11 CHAIRPERSON JORDAN: What is being
12 requested is that the Regulations will require
13 this child care center to have one parking space,
14 and she's requesting this Board to give a special
15 exception to that rule, to that regulation, to
16 not be required to have any parking space. So,
17 it goes from one to zero, is what she's
18 requesting.

19 MS. JEFFERSON: Okay.

20 CHAIRPERSON JORDAN: Okay?

21 MS. JEFFERSON: And, I thought --
22 okay.

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1 CHAIRPERSON JORDAN: Okay.

2 MS. JEFFERSON: I got it.

3 CHAIRPERSON JORDAN: We are with
4 you. Good, thank you.

5 Okay. Turning now, let's -- and I
6 took this out of order, because we believe that
7 the record is pretty full in this case. Anyone
8 have any issues?

9 And that, all the evaluations have
10 been properly done. So, to the applicant, we
11 don't, necessarily, believe that you need to
12 provide any testimony, but you can if you want
13 to, because it's your right to do so.

14 But, we would be in a posture and
15 position, I believe everyone has read the
16 record, and everyone believes they have enough
17 information to move forward with this, everyone?

18 Okay.

19 In that case, based upon the record,
20 I believe the applicant has satisfied the burden
21 of proof and the elements necessary for a special
22 exception of 2108, that this case is one which

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1 the requirements provide that -- and upon
2 examination -- that the applicant and the
3 property location is one that has been analyzed,
4 that the maximum number of people expected at
5 this facility won't have an adverse impact on
6 the neighborhood and parking, that the
7 Department of Transportation report says
8 there's no negative traffic implications in
9 regards to the reduction from one to zero in
10 regards to parking space, and that there's
11 significant alternative parking in the area,
12 and that there is sufficient public
13 transportation in close proximity to the
14 facility.

15 The Office of Planning has
16 recommended that this application be granted,
17 which will receive great weight.

18 The record -- so this decision will
19 be based on everything in the record,
20 particularly, that there is the Department of
21 Transportation's recommendation and evaluation
22 that there is no implications by granting this.

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1 And so, I would so move that the
2 applicant's request be granted.

3 MEMBER MacMURRAY: Mr. Chairman, I
4 second your motion.

5 CHAIRPERSON JORDAN: Motion made
6 and seconded to approve the application.

7 Any questions?

8 ZC MEMBER TURNBULL: Mr. Chair, I
9 don't have any questions, I just wanted to add
10 a comment that Department of Transportation has
11 also weighed in, and they concur that there would
12 be minimal, or no impact, by allowing this
13 special exception. In fact, they cite several
14 areas with plenty of off-street parking, and
15 they note that the funeral home has even offered
16 space in their lot for staff parking.

17 So, I just wanted to bring that up
18 for the record.

19 CHAIRPERSON JORDAN: Good. I
20 thought I said that. Let's make sure that is
21 also part of the findings on this case, that
22 the Department of Transportation's report was

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1 very significant in that regard, and the Office
2 of Planning. Okay.

3 All those in favor of the motion
4 signify by saying aye.

5 (Ayes.)

6 CHAIRPERSON JORDAN: Those opposed
7 nay?

8 The motion carries.

9 MS. HAM: Thank you.

10 SECRETARY MOY: Staff would, for
11 the record, record the vote as 5:0:0. This is
12 on Chairman Jordan's motion to approve the
13 application for special exception relief under
14 2108.1. Seconding the motion Ms. MacMurray.
15 Also in support of the motion, Mr. Turnbull,
16 Ms. Sorg and Mr. Hinkle. So again, the final
17 vote is 5:0:0 to approve with a summary order.

18 MS. HAM: Thank you.

19 CHAIRPERSON JORDAN: Thank you.

20 SECRETARY MOY: The next
21 application before the Board for this
22 afternoon's session is Application No. 18333.

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1 This is the application of Grant Parker, or
2 Barker, rather, pursuant to 11 DCMR 3103.2.
3 This is for a variance from the minimum lot area
4 requirements under Subsection 401.3, to allow
5 the conversion of an existing three-unit
6 apartment house to a four-unit apartment house.

7 This is in R-4 District, at Premises 821
8 Randolph Street, N.W., property located in
9 Square 3027, Lot 85.

10 CHAIRPERSON JORDAN: Will the
11 parties come to the table, please?

12 And, when did we get the ANC report
13 in, just now?

14 SECRETARY MOY: It was personally
15 delivered about a half hour ago, sir.

16 CHAIRPERSON JORDAN: Okay. Well,
17 let's take that as a preliminary matter.

18 We just received the ANC-4C report
19 and recommendation, which has come in to us less
20 than the required time period. And so, we would
21 have to waive the requirements for receipt of
22 this application.

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1 Does anyone have a feel for it, one
2 way or the other?

3 VICE CHAIRPERSON SORG: Mr.
4 Chairman, I think this is an important piece
5 of information, and I don't think that we would
6 be prejudiced by accepting it, personally.

7 CHAIRPERSON JORDAN: Anyone else?

8 So, we would, by consent, accept
9 this. Well, excuse me, let me go to the
10 opposition. Do you have any opposition to our
11 acceptance of this document?

12 MR. BARKER: No, that's fine.

13 CHAIRPERSON JORDAN: So, we'll do
14 it by consent all the way across the Board by
15 accepting and waiving the seven-day requirement
16 and accept this as part of the record.

17 Okay, let's proceed. Would you
18 identify -- who is the applicant?

19 MR. BARKER: I am.

20 CHAIRPERSON JORDAN: Would you
21 identify yourself, please?

22 MR. BARKER: My name is Grant

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1 Barker. I'm the applicant.

2 CHAIRPERSON JORDAN: Grant Barker?

3 MR. BARKER: Barker, with a B.

4 CHAIRPERSON JORDAN: Okay. Others
5 at the table?

6 MR. JONES: Yes, I'm Timothy A.
7 Jones, ANC Advisory Neighborhood Commissioner
8 for the Single Member District 4C08.

9 MR. CRUICKSHANK: I'm Neil
10 Cruickshank. I'm the architect representing
11 Mr. Grant.

12 CHAIRPERSON JORDAN: Cruick --

13 MR. CRUICKSHANK: Cruickshank,
14 with a C.

15 CHAIRPERSON JORDAN: Yes?

16 MS. STREET: I am Lolita Street.
17 I live across the street from Mr. Barker, and
18 I just had some concerns about the application.

19 CHAIRPERSON JORDAN: Okay, thank
20 you.

21 I don't believe that we have a letter
22 from the applicant regarding you, Mr.

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1 Cruickshank, regarding representation. I
2 don't believe there's one in the file.

3 MR. CRUICKSHANK: There probably is
4 not.

5 CHAIRPERSON JORDAN: Okay. Then
6 we need to have the applicant to acknowledge
7 that you are his representative.

8 MR. BARKER: Mr. Cruickshank is my
9 representative.

10 CHAIRPERSON JORDAN: And, we would
11 -- and then, subsequently, we need to get a
12 letter, Mr. Secretary, or can we just accept
13 it on the record.

14 SECRETARY MOY: We've done it both
15 ways. I mean --

16 CHAIRPERSON JORDAN: Okay, we'll
17 accept it on the record. I just want to make
18 sure he wasn't stepping on any toes, because
19 it seemed like it was perfunctory. Okay, good.

20 And, I'm going to assume, are you
21 for or against the application?

22 MS. STREET: I guess I'm opposed,

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1 but I wanted to voice some concerns, based on
2 it.

3 CHAIRPERSON JORDAN: Okay. All
4 right. So, let's -- and we have the ANC letter.
5 You are representing the ANC in regards to the
6 matter?

7 MR. JONES: That is correct.

8 CHAIRPERSON JORDAN: Got you.
9 Thank you, appreciate it.

10 Let's proceed with the statement
11 from the applicant, for the applicant's case,
12 please.

13 MR. CRUICKSHANK: Essentially, the
14 applicant has a three-unit apartment. When he
15 first purchased the apartment, the basement unit
16 has a residential piece at the rear of it, and
17 at the front of the apartment there was an area
18 that was used as an office.

19 I think, and he can clarify this,
20 but I think he mistakenly thought that he had
21 four units in the apartment when he bought it.

22 However, when he came to me to ask me to do

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1 the conversion, and I did the zoning check, I
2 realized that the area was not enough to do the
3 conversion to meet codes.

4 I explained this to him, and he asked
5 us to go ahead and apply for BZA approval on
6 his behalf.

7 Once we got into the case, what we
8 were able to present for Mr. Barker is four
9 units, as laid out by the drawings that we
10 submitted. However, in his situation, because
11 of the size of the lot, we were also able to
12 provide four off-site parking spaces, which went
13 over well at the ANC meeting that I attended.

14 However, apparently, it wasn't enough to get
15 their support.

16 Currently, there is a unit on the
17 first -- on each floor, first floor, second
18 floor, and the basement unit is the unit that
19 we are trying to divide into two units.

20 We have gone ahead and applied for
21 a building permit, which we received, to
22 renovate the vacant area of the basement unit.

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1 However, it is not separated at this time.
2 If the Board grants us the separation, then what
3 we would need to do is go back and apply for
4 a conversion, and get a separate meter and
5 separate utilities for that space.

6 That's, basically, the point where
7 we are, hoping to get your support.

8 CHAIRPERSON JORDAN: Okay. Is
9 there anything else you want to present to the
10 Board? We already have everything that you
11 filed, we have.

12 MR. CRUICKSHANK: Yes, I think you
13 have these drawings that I have in front of me.

14 CHAIRPERSON JORDAN: Yes, we have
15 everything that you have submitted. Is there
16 anything else that you want to submit with this
17 file?

18 MR. CRUICKSHANK: No.

19 CHAIRPERSON JORDAN: And, what is
20 your back -- what do you do, are you the
21 contractor or what is your background?
22 Architect. And, when did you become involved

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1 in this project?

2 MR. CRUICKSHANK: About six months,
3 plus or minus, about six months ago, when he
4 approached to do the conversion, when he
5 approached our office to do the conversion.

6 CHAIRPERSON JORDAN: Mr. Barker,
7 when did you -- when did you purchase this
8 property?

9 MR. BARKER: In June of last year,
10 2011.

11 CHAIRPERSON JORDAN: June, 2011?

12 MR. BARKER: Yes.

13 CHAIRPERSON JORDAN: And, Mr. -- is
14 it Cruickshank?

15 MR. CRUICKSHANK: Cruickshank.

16 CHAIRPERSON JORDAN: Cruickshank.

17 And, you've been involved since
18 November or so? Okay.

19 Any other questions for the
20 applicant?

21 Mr. Turnbull, please?

22 ZC MEMBER TURNBULL: Yes. I guess

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1 one question for both, for either one of you,
2 is that you are looking for a variance from
3 401.3, but in your testimony you haven't
4 addressed any of the issues regarding the
5 variance, and which I think, if you've read the
6 Office of Planning report, basically, there's
7 nothing specifically unique about your
8 property. But, you haven't really addressed
9 any, other than the fact that you bought the
10 property under an assumption that you could do
11 something with it.

12 But, I haven't heard anything yet
13 that would sway me to say how you are meeting
14 the variance, or what is specific or unique about
15 your property that would make this Board want
16 to grant you a variance.

17 MR. CRUICKSHANK: Well, just
18 speaking from the concerns that we got from the
19 neighborhood, was the concern of parking, and
20 to explain that there's a lot of difficulty
21 parking on the street.

22 In this particular case, we wouldn't

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1 be adding to that, in fact, we would be able
2 to provide off-street parking for the residents
3 of the apartment house.

4 The lot is a regularly-shaped lot.

5 I mean, it's just too small to meet a four-unit
6 requirement, and there aren't any other concerns
7 except that it is too small.

8 VICE CHAIRPERSON SORG: I'll just
9 kind of keep on the same line as Mr. Turnbull
10 started with.

11 Just by your answer, your answer to
12 Mr. Turnbull's question has to do with parking,
13 and that you wouldn't be, you know, adding to
14 any, you know, issues of parking in the
15 neighborhood, given that you've got two legal
16 spots or four tandem spots, depending on how
17 you look at it.

18 With regard to the parking, I think
19 this is perfectly fine, but that's not really
20 the problem here. Okay. The problem that we
21 have to address is that issues in terms of
22 parking go towards the second prong of the

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1 three-prong variance test. Okay?

2 So, the deal with the variance test
3 is that you have to get over the first prong
4 to say there's something unique about this
5 property, whether it's with the sloping, or it's
6 really narrow, or it's extra big, or something,
7 or a component of things that could have to do
8 with, you know, anything from something having
9 to do with the topography, something having to
10 do with the state of the existing building,
11 something having a little bit from that, a little
12 bit from finances, a little bit from whatever,
13 to get over that leads you to have a difficulty
14 in using the property as per the zoning
15 regulations.

16 Then we get to talk about parking
17 and more people living there and things like
18 that. But, I agree with Mr. Turnbull, I don't
19 see a lot here, and, you know, I am personally
20 understanding of getting into a property in this
21 way, and not knowing -- thinking you can do
22 something, thinking, you know, and then finding

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1 out that you can't. But, that's,
2 unfortunately, not something that we as a Board
3 can do something about.

4 So, I mean, for me, I really would
5 need to hear from the applicant, and any other
6 comments he might have, about the first prong,
7 which is, what is the exceptional situation of
8 this property, among many different types of
9 possible, you know, exceptional situations that
10 result in the practical difficulty of you using
11 this as what is currently an allowed three-unit
12 building. You've got to connect those, before
13 we can consider parking, before we can consider
14 anything else.

15 MR. BARKER: Okay, sure.

16 I guess the practical difficulty
17 would be in having a three-bedroom basement
18 apartment, none of which there are in D.C.

19 VICE CHAIRPERSON SORG: Okay. If
20 you --

21 CHAIRPERSON JORDAN: Well, let --

22 MR. BARKER: Or, at least, not that

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1 have been sold in the last two years.

2 CHAIRPERSON JORDAN: -- yes, but
3 the first question was, what was unique about
4 the property? I think that's the first
5 question.

6 MR. BARKER: I guess the unique
7 thing is that it currently has a three-bedroom
8 basement apartment.

9 I mean, the deal with the lot area,
10 I mean, if there's ever been any exception to
11 lot area it has to do with the fact that the
12 lot is too small, right? And, that's what we
13 are asking for an exception for.

14 So, unless there's never any --
15 unless there's never been like a lot area
16 exception granted, because you just don't have
17 the lot size if you don't have the lot size.
18 You just don't have it. There's nothing you
19 can do about it.

20 VICE CHAIRPERSON SORG: Certainly.

21 MR. BARKER: But, my problem isn't
22 that it's oddly shaped, I can't park there.

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1 It's just that there's not enough of it.

2 So, maybe that's just the end of it
3 right there. I mean, I don't know.

4 VICE CHAIRPERSON SORG: It is not
5 the case that a substandard size lot has never
6 gotten an exception for increased density.
7 That's not the case.

8 And, your statement that the
9 property is now configured with this
10 three-bedroom unit in the basement is with some
11 reasoning -- it's potentially an exceptional
12 situation, but I don't -- we don't have any
13 evidence, aside from your statement, that says
14 that.

15 For example, people who make these
16 same requests give us, you know, a lot of
17 financial information, a lot of research about
18 what's available on the real estate market
19 locally, a lot of information about what other
20 kinds of properties are in the area, a lot of
21 information about that. And, you know, a lot
22 of research about, perhaps, you know, past cases

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1 and things like that.

2 So, the record here, aside from your
3 statement that this is unique and it will be
4 hard for me to sell it, it's not -- you know,
5 there's no evidence.

6 MR. BARKER: Sure. If you'd like,
7 I can prepare more evidence and maybe present
8 it.

9 CHAIRPERSON JORDAN: Well, let me
10 say this, and we've been given a lot of leeway.

11 When we come here, we should be ready
12 to go and present the things that's necessary.

13 I think the Vice Chairperson has
14 been really very lenient in trying to give you
15 some grounds to grow into it, and we can't do
16 it by statement by statement, is that good
17 enough? We can't do it that way, and that's
18 not the way that it goes.

19 And, from what I see in the record,
20 and haven't seen to the contrary, you already
21 have a compliant use. You already have a use
22 that is compliant within the Zoning Regs.

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1 MR. BARKER: Exactly.

2 CHAIRPERSON JORDAN: So, you are
3 not being forbidden from using the property
4 within a compliant zoning use, for one.

5 And so, we can't do it that way.
6 We cannot continue to go statement by statement,
7 and trying to see if you are reaching it.

8 We asked for you to present your
9 case. The evidence that you presented in this
10 record, and it's not to shoot a shotgun and then
11 hope that one of them is going to hit. Okay?

12 So, that's why you've been asked the
13 question, and I think we've been trying to help
14 you move this thing along, and I don't think
15 we are getting there.

16 MR. BARKER: I'm sorry. I still
17 feel like people, normal people, should be able
18 to work through the system without the aid of
19 a lawyer.

20 And, you are right, I have been
21 stumbling through this process. I have
22 received a lot of help.

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1 CHAIRPERSON JORDAN: Did you meet
2 with the Office of Planning, and they talked
3 you through the process?

4 MR. BARKER: I did. I did, Karen
5 was very helpful.

6 But, yes, I mean, I've never done
7 this before, so I don't -- I mean, I don't want
8 to waste you guys time. I mean, obviously, I
9 mean, the ANC voted no. I mean, I need to go
10 back to them, I think first, and get their yes
11 vote, and then I'd like to come back.

12 The Office of Planning, I think, is
13 always going to say no on this. We don't have
14 to go on if you don't want to.

15 VICE CHAIRPERSON SORG: I just want
16 to make a comment. This is your time, okay,
17 to present your case as you want to.

18 But, I think you are hearing a little
19 bit of the way the wind is blowing, which is
20 that there's not really a lot of information
21 here, and, certainly, you see that there's some
22 opposition.

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1 If you, and I don't want to, you
2 know, take the role which is the Chair's
3 position, but, you know, to -- we understand
4 that regular people come here and they are not
5 lawyers. They may not have gone through this
6 process before. And, people do it in different
7 ways, and it takes starts and stops, and things
8 like that. We understand that.

9 And, you know, I personally think
10 that it may be not a bad idea for you to be able
11 to gather more evidence, think more about what
12 could be convincing, you know, look at other
13 cases, whatever it is that you think will be
14 necessary.

15 But, I don't want you to think that
16 this Board is not sensitive to, you know, regular
17 people and how you go through this.

18 CHAIRPERSON JORDAN: Let's do this.
19 I'm willing to continue this application and
20 hearing to another date and time, if it's okay
21 with the Board, if the Board Members are good
22 with that.

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1 Mr. Turnbull?

2 ZC MEMBER TURNBULL: Yes, I'm
3 amenable to that.

4 CHAIRPERSON JORDAN: Ms. Sorg, I
5 think you indicated, and everyone else.

6 And so, we will grant you that, and
7 allow you to spend some more time with Planning,
8 and see if you can get there. You may not be
9 able to get there, we don't know.

10 MR. BARKER: Right, but at least I
11 can give you some more stuff, more of what you
12 are looking for.

13 CHAIRPERSON JORDAN: And, is there
14 a potential date and time?

15 SECRETARY MOY: Yes, sir, Mr.
16 Chairman. The Board's next hearing is two weeks
17 from today, which would be May 1st. The hearing
18 after that would be May 8th. So, either of those
19 two dates in the afternoon there's a space.

20 CHAIRPERSON JORDAN: But, I also
21 want to be fair to the party in opposition and
22 the ANC, particularly. We have the ANC letter,

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1 and I don't know what the availability would
2 be for coming back, or if you want to leave
3 something on the record now you can do that,
4 if you like.

5 MS. STREET: I would like to just
6 put it on the record now.

7 CHAIRPERSON JORDAN: Yes, because
8 I wouldn't want you to --

9 MS. STREET: Thank you.

10 I live at 814 Randolph Street. I
11 live between two houses that are, whether they
12 are legal or not legal rental properties I'm
13 not sure, but each individual rents out each
14 room in the property on short-term leases.

15 And, I understand that this is a
16 house that's been converted into an apartment.

17 And, there are, you know, legally he can have
18 three tenants there.

19 To add to the other side of the
20 street, which I live on, which has six town
21 homes, three of which are rental properties,
22 I'm one of two homeowners that actually live

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1 in their homes.

2 The concern for me is, I don't know
3 how he's vetting these people. I don't know,
4 you know, there's a lot of houses that are
5 turning into rental properties, and it's taking
6 away from the actual community that I moved to.

7 And, I don't know, you know, as a single woman
8 living by herself, and I don't know who my
9 neighbors are.

10 And, to add to that, by turning a
11 structure that's been the way it is for, you
12 know, years, and years, and years, to, actually,
13 add to capacity there is a problem and concern
14 for me. In addition to the parking and other
15 things that come with it, tenants historically,
16 from the houses that are around me, the
17 homeowners aren't maintaining the properties.

18 They, basically, get them to maximum capacity
19 and then they move it. They don't maintain the
20 property.

21 So, it's a problem that can add on
22 to -- other things can happen that aren't being

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1 discussed here, but, you know, my concern is
2 the capacity the houses were built for, and now
3 we are converting them to be more people, and
4 how are you vetting them, and how long are they
5 intending to be there, and this is taking away
6 from the community.

7 CHAIRPERSON JORDAN: Thank you.
8 We appreciate your comment. We will put that
9 as part of the record.

10 Mr. Jones, did you want to -- you
11 know, you say you are willing, if you have the
12 opportunity to come back, are you going to leave
13 the comment on the record? We do have the ANC
14 letter, but you are here so I certainly want
15 to give deference to you, if there's anything
16 you want to add to the record.

17 MR. JONES: Well, the only thing
18 that I could, basically, add to the record is
19 contained in the letter. If you proffer to do
20 something, then do it, which is stated in the
21 letter.

22 CHAIRPERSON JORDAN: All right,

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1 great. So, thank you, appreciate that, and
2 appreciate you both, all of you, for coming down
3 today.

4 I'm sorry, Mr. Secretary, the date
5 that this will be continued to?

6 SECRETARY MOY: In two weeks we have
7 the afternoon of May 1st, or the following week
8 the afternoon for May 8th. That's the Board's
9 choice, or if you feel --

10 MR. BARKER: I think it would be
11 good to after the next ANC meeting.

12 CHAIRPERSON JORDAN: I think we can
13 put this one some time in June.

14 SECRETARY MOY: Oh, we are talking
15 June?

16 CHAIRPERSON JORDAN: Yes.

17 SECRETARY MOY: Oh, that's right,
18 I'm sorry. I'm sorry for that.

19 So, we could be looking at -- we have
20 four cases in the morning of June 5th. This
21 could be the 5th case, Mr. Chairman, or following
22 that the next opportunity would be June 19th.

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1 CHAIRPERSON JORDAN: Okay, June
2 19th.

3 MR. BARKER: June 19th?

4 VICE CHAIRPERSON SORG: I just want
5 to ask the Chairman one quick question before
6 we leave.

7 Mr. Barker, are you planning on
8 living in this property?

9 MR. BARKER: Yes.

10 VICE CHAIRPERSON SORG: Okay.

11 MR. BARKER: I have an FHA loan, and
12 I'm required to live in it for, like, at least
13 two years anyway.

14 CHAIRPERSON JORDAN: Three.

15 MR. BARKER: Three years.

16 CHAIRPERSON JORDAN: Three years
17 FHA.

18 So, this matter will be continued
19 to -- is it June 19th?

20 SECRETARY MOY: June 19th.

21 ZC MEMBER TURNBULL: Mr. Chair, I'd
22 just like to add one thing, which the Vice Chair

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1 was getting to, the variance test is a very
2 rigorous test. I mean, and I'm sure you've gone
3 through it with Ms. Toppas from OP.

4 But, it has to be clearly evident
5 from that first prong, and as you go through
6 the others, it has to be clear to the Board that
7 there's something special about this property
8 that would move us to grant this.

9 MR. BARKER: Okay.

10 ZC MEMBER TURNBULL: It can be a
11 tough test.

12 MR. CRUICKSHANK: Does that
13 automatically get us another hearing with the
14 ANC, or how will that work?

15 ZC MEMBER TURNBULL: You would have
16 to arrange that I think would be the answer.

17 MR. BARKER: Yes, we have to talk
18 to the ANC to do that.

19 MS. STREET: Can I also say
20 something?

21 CHAIRPERSON JORDAN: Yes, go ahead.

22 MS. STREET: I think that's the

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1 problem that I have, is that once the three years
2 are up then -- I mean, I'm a homeowner, so once
3 the three years are up that's when the problems
4 -- you know, in the past these apartments are
5 not being maintained. And so, that's my
6 concern, especially, if you are now adding
7 capacity. That is a single-family home that's
8 been converted.

9 CHAIRPERSON JORDAN: Thanks. We
10 have your comments on the record, appreciate
11 it.

12 MR. BARKER: Thank you.

13 CHAIRPERSON JORDAN: Okay. We're
14 (Whereupon, comments off mic.)

15 CHAIRPERSON JORDAN: Okay. We're
16 now calling Case 18324, the Roane-Woesley LLC
17 matter. We've called this, I guess, for the
18 third time. There's no one appearing to be
19 here.

20 Additionally, this case was on the
21 docket previously for, I think it was, April
22 3rd, was that correct? April 3rd, and no one

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1 appeared at that particular point.

2 We then, subsequently, Mr.
3 Secretary, we sent notice to the applicant?

4 SECRETARY MOY: Better than that,
5 Mr. Chairman, in my role as Secretary I,
6 actually, spoke with the applicant, with the
7 owner. So, he is well aware of the Board's
8 concern from that last hearing date, and I
9 impressed on him to appear before the BZA at
10 the scheduled hearing date of today, Tuesday,
11 April the 17th.

12 CHAIRPERSON JORDAN: Hearing that,
13 and this matter has been before us twice without
14 having an representation, anyone appearing on
15 it, and as required under the regs, we did
16 additional follow-up and notice that they needed
17 to appear at this hearing before we would,
18 potentially, dismiss their case.

19 I think this is more than ripe for
20 dismissal for failure to move it along. And,
21 the Secretary, actually, talked to this
22 gentleman, made an affirmative act of calling

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1 him again today to make sure he was going to
2 come, and he said he was coming. However, he's
3 not here.

4 Any feel for that, anyone?

5 VICE CHAIRPERSON SORG: Mr.
6 Chairman, I would agree. This is the second
7 time that we have called it, and no one appears
8 to be available to continue to prosecute the
9 case.

10 CHAIRPERSON JORDAN: With that, I
11 would move that we dismiss this application,
12 for failure to prosecute, after being duly
13 noted.

14 VICE CHAIRPERSON SORG: I would
15 second that.

16 CHAIRPERSON JORDAN: Motion made
17 and seconded to dismiss this particular
18 application, No. 18324, for failure to prosecute
19 after receiving due notice of showing up.

20 Any questions?

21 Seeing none, all those in favor
22 signify by saying aye.

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1 (Ayes.)

2 CHAIRPERSON JORDAN: Those opposed
3 nay.

4 We have just one other order of
5 business. I'm just trying to -- Mr. Secretary,
6 are we clear?

7 As Chairperson of the Board of
8 Zoning Adjustment for the District of Columbia,
9 and in accordance with Section 407 of the
10 District of Columbia Administrative Procedural
11 Act, I move that the Board of Zoning Adjustment
12 hold a closed meeting on April 24th at 1:30 p.m.,
13 for the purpose of conducting internal training
14 pursuant to D.C. Official Code Section 2-575,
15 Subsection B12.

16 Is there a second?

17 VICE CHAIRPERSON SORG: Second.

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

20 Would the Secretary please take a
21 roll call vote on the motion before us now that
22 has been seconded?

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1 SECRETARY MOY: Yes, sir. When I
2 call a vote, if the Members can respond by yes
3 or no, yeah or nay.

4 CHAIRPERSON JORDAN: Let me -- can
5 I --

6 SECRETARY MOY: Yes, please.

7 CHAIRPERSON JORDAN: -- let me say
8 it's a telephone conference meeting.

9 SECRETARY MOY: Very good.

10 Mr. Turnbull?

11 ZC MEMBER TURNBULL: Yes.

12 SECRETARY MOY: Vice Chair Sorg?

13 VICE CHAIRPERSON SORG: Aye.

14 SECRETARY MOY: Chairman Jordan?

15 CHAIRPERSON JORDAN: Yes.

16 SECRETARY MOY: Ms. MacMurray?

17 MEMBER MacMURRAY: Yes.

18 SECRETARY MOY: Mr. Hinkle?

19 MEMBER HINKLE: Yes.

20 SECRETARY MOY: The vote is 5:0:0,
21 the roll call vote motion carries, Mr. Chairman.

22 CHAIRPERSON JORDAN: Thank you.

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1 And, seeing that motion is passed,
2 I hereby give notice that the Board of Zoning
3 Adjustment will hold a telephone conference
4 closed meeting on April 24th at 1:30 p.m., to
5 conduct initial training.

6 Notice will also be posted in the
7 Office of Zoning, Electronic Reading Room,
8 placed on the Office of Zoning's electronic
9 calendar on its website, and published in the
10 District of Columbia Register in as timely a
11 manner as practical.

12 Is there any other business to come
13 before the Board today?

14 Seeing none, then we stand
15 adjourned.

16 (Whereupon, the above-entitled
17 matter was concluded at 1:59 p.m.)
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