

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment  
441 4th Street, N.W.  
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING  
April 5, 2011  
Start: 9:51am - End: 3:13pm

Second Floor Hearing Room, Suite 220 South  
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson  
Nicole Sorg - Vice Chairperson  
Jeffery L. Hinkle - NCPC  
Michael G. Turnbull - Architect  
Greg Selfridge - Zoning Commission  
Clifford Moy - Secretary  
Beverley Bailey - Office of Zoning  
Mary Nagelhout - Office of the Attorney General  
John Nyarku - Office of Zoning

C o n t e n t s

1. Chairperson's Introduction . . . . .3  
2. Application 18166 . . . . . 4  
3. Application 18169 . . . . . 15  
4. Application 18162. . . . .32

A.M. SESSION

1. Application 18177. . . . . 60  
2. Application 18178 . . . . . 77  
3. Application 18179 . . . . . 88

P.M. Session

1. Appeal 18181 . . . . .103

Conclusion of Meeting . . . . . 183

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

2 CHAIRPERSON MOLDENHAUER: This meeting  
3 will please come to order good morning ladies and  
4 gentleman. This is the April 5, 2011, Public  
5 Meeting of the Board of Zoning Adjustments for  
6 the District of Columbia. My name is Meredith  
7 Moldenhauer, Chairperson, joining me today to my  
8 right is Jeffrey Hinkle, Representative of the  
9 National Capital Planning Commission, to my left  
10 is the Vice Chairperson Nicole Sorg, Mayoral  
11 Appointee, to her left is Michael Turnbull,  
12 Zoning Commissioner. Copies of today's meeting  
13 agenda are available to you and are located to my  
14 left in the wall bin near the door. We do not  
15 take any public testimony at our meeting unless  
16 the Board asks someone to come forward. Please  
17 be advised this proceeding is being recorded by a  
18 court reporter and is also being webcast live,  
19 accordingly we must ask you to refrain from any  
20 disturbing noises or actions in the hearing room.  
21 Please turn off all cell phones and beepers at  
22 this time as to not disturb these proceedings.

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

3 SECRETARY MOY: We do have one case which  
4 is a carry over but Staff would suggest the Board  
5 address that when I call the case.

6 CHAIRPERSON MOLDENHAUER: Very well then  
7 we'll call the first case on the agenda.

8 **Appeal No. 18152**

9 MR. MOY: Good morning Madam Chairperson,  
10 Members of the Board, the first of the five cases  
11 for decision this morning begins with Appeal No.  
12 18152, this is of the Advisory Neighborhood  
13 Commission 1D, pursuant to 11 DCMR 3100 and 3101  
14 from August 17, 2010, decision by the Department  
15 of Consumer and Regulatory Affairs to grant a  
16 building permit along with renovation and  
17 expansion of the existing Mt. Pleasant Library in  
18 the R-5-D District at premises 3160 16<sup>th</sup> Street,  
19 N.W. the property is in (Square 2595, Lot 830).  
20 At it's public decision meeting on March 1, 2011,  
21 the Board voted on two separate motions, they  
22 failed for the lack of a concurring majority

1 vote, pursuant to Section 3125.2 therefore the  
2 Board tabled it's decision to April 5<sup>th</sup>, and  
3 requested that Mr. Hinkle review the record and  
4 participate on this decision. Other than that  
5 the Board is to act on the merits of the ANC 1-  
6 D's appeal of the decision of DCRA to issue a  
7 building permit, that completes the Staff's  
8 briefing Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Thank you very  
10 much Mr. Moy and as you indicated this case we  
11 previously were unable to come to a final  
12 deliberation in some of these more challenging,  
13 more contested cases it obviously shows that  
14 Board Members have a differing opinions or  
15 analysis, I think what I'm going to do is I'll  
16 turn to Mr. Hinkle as the new member who has  
17 recently read the record to kind of allow you to  
18 start of the deliberation by indicating kind of  
19 your views on the case and then what we'll do is  
20 we'll open it up for further deliberation and see  
21 if we can't maybe reach a decision today.

22 MR. HINKLE: Sure thank you Madam Chair,

1 you know there were four issues before the Board,  
2 there was issues related to the court, issues  
3 related to parking, issues related to loading, as  
4 well as issues related to the rear yard and I  
5 think the Board had some discussions related to  
6 the court and the parking and the loading in the  
7 last deliberations and I agree with the Board's  
8 determinations on those three issues, so I  
9 focused on my analysis on the rear yard issue and  
10 I did look at the testimony and all the exhibits  
11 that were provided and I think it comes down to  
12 the mere issue of the definition of a rear lot  
13 line and how the Zoning Administrator applied  
14 that definition. So in my analysis I again  
15 looked at all the exhibits and the one that  
16 really struck out at me was the March 26, 2009  
17 letter which is from the Zoning Administrator to  
18 Kinley Bray and this is "Exhibit E" in DCRA's  
19 prehearing statement and within that letter you  
20 know the ZA walks us through his process or his  
21 determination related to the rear lot line, he  
22 notes that the property is a corner lot, he knows

1 the Applicant can chose the front of the building  
2 and that the Applicant had chosen that the front  
3 of the building is Lamont Street, he talks about  
4 how the lot is actually irregularly shaped and  
5 then comes to the conclusion that because of this  
6 the proposed rear lot line is really the opposite  
7 of Lamont Street frontage and you know I have  
8 some issues with how that conclusion was  
9 determined, so then putting aside that letter for  
10 now I looked back at the testimony and some of  
11 the testimony that was in the hearing just  
12 trying to figure out how the Zoning Administrator  
13 had come to the conclusion that what has been  
14 identified as the rear lot line, is the rear lot  
15 line. So in the testimony and I'm looking at  
16 page 245 of the transcript Mr. LeGrant whose the  
17 Zoning Administrator talks about the letter,  
18 talks that he made the finding that the rear lot  
19 line was the line opposite the front and of  
20 course the front lot line has been established as  
21 Lamont Street, but if you go to page 247 of the  
22 transcript Mr. LeGrant also says that you could

1 probably conclude analysis to go the other way  
2 but if you look at the opposite situation where  
3 16<sup>th</sup> Street has a line that is parallel then if  
4 you switch the frontages to Lamont my  
5 determination was well then you would also switch  
6 that line would be the rear as well. So I'm  
7 reading into this that if you chose 16<sup>th</sup> Street as  
8 the front lot line you would go directly opposite  
9 and for me that would result in determining that  
10 what has historically been the rear lot line  
11 would remain the rear lot line, so as Mr. LeGrant  
12 is saying is you switch when you switch the  
13 frontage on Lamont Street you would look at the  
14 opposite side and to me just when I look at the  
15 plot I see that what had been considered the rear  
16 lot line would also be now the rear lot line. If  
17 you go straight back from Lamont Street you hit  
18 what has historically been the rear lot line. So  
19 I'm really struggling with how the determination  
20 had been made, that, I guess the southern  
21 property line is now the rear lot line and, as I  
22 dug further through the exhibits and just try to

1 figure out how this determination was made I was  
2 struck by an exhibit that I found in the  
3 Appellant's prehearing statement, which is the  
4 Appellant's "Exhibit 36" and this is a copy of a  
5 webpage from the D.C. Public Library's website  
6 and it talks about the background on the Mt.  
7 Pleasant Library renovation and it talks about  
8 what the renovation is and what it consists of  
9 and if you look down and you continue down and  
10 read towards the bottom there's a paragraph that  
11 I find somewhat striking and I'll read it to you;  
12 it says the architects then study the capacity of  
13 the current building footprint to accommodate the  
14 new library program because the library program  
15 calls for approximately 20,000 gross square feet,  
16 the architects begin looking at ways to add to  
17 the building's footprint, then it says and this  
18 is key; the architects designed a multi-story  
19 addition to the right side of the building on  
20 Lamont Street and an expansion in the rear of the  
21 building, so this I found interesting because the  
22 library itself that the rear of the building is

1 where the rear of the building has historically  
2 been and they're noting that Lamont Street is the  
3 right side of the building. So you have this  
4 determination already made before the Zoning  
5 Administrator even looked at this issue, that  
6 what has been historically the back of the  
7 building is where this addition will be made.  
8 Then I just went a little bit further and in the  
9 same package of exhibits from the Appellant, this  
10 is "Exhibit 44" there's a rear elevation of the  
11 proposed structure and this rear elevation as  
12 noted on this exhibit is the elevation that faces  
13 what has historically been the rear lot line. So  
14 what I found really is that there's some exhibits  
15 here that show a process where the addition has  
16 always been considered to be in the rear in the  
17 building and then at some point there was a  
18 determination by the Zoning Administrator that  
19 that is not the rear lot line, that there's  
20 another property line that is the rear lot line.  
21 So I'm struggling with that issue and perhaps  
22 I'll turn it over to my other Board Members to

1 discuss but those were the things that you know  
2 kind of lend me to think that perhaps there was  
3 an error by the Zoning Administrator in terms of  
4 determining what the rear lot line is.

5 CHAIRPERSON MOLDENHAUER: Thank you Mr.  
6 Hinkle I think you did an excellent job of  
7 catching up and looking through the record and  
8 really coming to a conclusion or coming to bring  
9 up some good points for all of us to consider.  
10 I'll open up the Board for any deliberation, any  
11 comments.

12 MR. TURNBULL: Yeah Madam Chair I would  
13 just like to continue on from my comments from  
14 the last meeting and I'm in total agreement with  
15 Mr. Hinkle as I was the last time my position has  
16 not changed and I think as Mr. Hinkle, I think  
17 the testimony that he's referring to with Mr.  
18 LeGrant talking about how he determined if it was  
19 either 16<sup>th</sup> Street or Lamont I think I had  
20 initially raised the question to him before he  
21 answered and I was, I think a little bit  
22 surprised at the time that he answered

1 differently for both elevations which to me is  
2 inconsistent, I think the citizens of the  
3 District of Columbia need consistency in Zoning  
4 interpretations by the Zoning Administrator so I  
5 think for him to decide one way that you could go  
6 straight back that the opposite side is the rear  
7 and then to go to the other side of the building  
8 which again it's a symmetrical building around a  
9 central access and say well no on this one we can  
10 veer off only 30 degrees I don't have to go  
11 straight back, I think that's inconsistent, I  
12 think that shows something in the, it just  
13 doesn't compute that I see a manipulation of the  
14 Zoning Regs for almost a predetermined outcome  
15 and I think that is totally unfair and totally  
16 uncalled for, I think what he should have done in  
17 a situation like this was to advise the library  
18 to go for a special exception or a variances  
19 before the BZA and not do an interpretation which  
20 I think, which his interpretation was a wide  
21 latitude of interpretation on a very narrow scope  
22 and I think he should have said you really need

1 more relief than I can give you, and he says that  
2 my interpretation is something that is going to  
3 be contested by the, we have two ANC's that are  
4 agreeing with Mr. Hinkle that from the common  
5 definition of a rear yard and what has been there  
6 for over 50 years and I think we need to give  
7 that great weight, I think that the Zoning  
8 Administrator really did a disservice to the  
9 Zoning Regulations by saying that if I'm at the  
10 frontage of one building and in determining what  
11 is opposite and suddenly saying I'm not going  
12 straight back if I turn around but I'm going to  
13 go off at 30 degrees I can do that. I think what  
14 we're, if we deny this appeal and allow the  
15 Zoning Administrators decision to stand I think  
16 this is a travesty and a canard to the Zoning  
17 Regs and to the District of Columbia, I think we  
18 are making a defacto non-conforming property that  
19 is something that the citizens, we need a fair  
20 and consistent interpretation and the means did  
21 not justify the ends in this case. We need  
22 common interpretations, common understanding of

1 language and what has been, it looks as if, I'm  
2 going back to this rendering, this image that was  
3 generated it's on the library's website by the  
4 architects and it shows, and I forget what  
5 exhibit it was a part of, it's been in our file,  
6 but it's on the library website and it shows the  
7 rear of the building what I'm considering and  
8 what the ANC's are considering the rear of the  
9 building and in either case Lamont to go straight  
10 back you end up at a building that is definitely  
11 in the rear of the building which lines up with  
12 the rear of the buildings of that whole street.  
13 I think there has to be a common understanding, I  
14 think the citizens of the District of Columbia  
15 have to go before, when a ZA makes a decision he  
16 has to be consistent with not only the Zoning  
17 Regs but the common understanding of what people  
18 assume is a side yard and a rear yard, I just  
19 can't understand how he would allow this to be  
20 considered a side yard, it goes against any kind  
21 of logic, and again he should have advised the  
22 library to go for special exception or variances

1 before this Board so it could be vetted in the  
2 public and talked about in a larger form rather  
3 than just his interpretation on such a narrow  
4 scope issue. I think it's an esoteric  
5 interpretation, I think it's something that if  
6 you had three Zoning Administrators there I doubt  
7 if you would get the same interpretation from  
8 this, I think it's a very personal interpretation  
9 and I think that it was a interpretation to work  
10 to another government agency's benefit without  
11 fully vetting the consequences of what it stood  
12 for. I think the Zoning Regs are compromised I  
13 think the Zoning Regulations are definitely  
14 compromised by the way how he's interpreted this.  
15 I think we should vote to uphold the appeal by  
16 the ANC as I said earlier this is a travesty and  
17 a canard it's a total false story that we cannot  
18 have sitting out there as a reference. I'm just  
19 looking at this other case with Burke School  
20 where the front of the building was determined as  
21 Connecticut and the rear of the building is  
22 straight back I think you could make a case in

1 this particular lot that's a little bit different  
2 but the rear yard was determined to be straight  
3 back, 180 degrees turning around from the front  
4 of the building I have more faith that is more  
5 consistent than this with the common knowledge,  
6 with the common understanding of what a rear yard  
7 is. So I would agree with Mr. Hinkle's analysis  
8 100% and just say from the Zoning standpoint this  
9 stinks.

10 CHAIRPERSON MOLDENHAUER: Well thank you  
11 very much Mr. Turnbull, I think that while I see  
12 your frustration with the fact that it's  
13 challenging for citizens to potentially look at  
14 this project and say what do I personally think  
15 would be a rear yard versus what's been being  
16 determined by the Zoning Administrator. I do  
17 think that some of the points Mr. Hinkle brought  
18 up actually, the fact that Mr. LeGrant in his  
19 testimony I think it was page 26 of his testimony  
20 indicated that he could have gone either way, and  
21 I think that because he said he could have gone  
22 either way, that to me goes directly to the ZA's

1 discretion and historically the Board defers to  
2 the ZA for interpretation and application of the  
3 Zoning Regs so long as it's a reasonable and  
4 consistent with the Zoning Regulations and in my  
5 opinion I think that because he said I could have  
6 chosen either the existing rear yard or the  
7 proposed rear yard based on the way the Zoning  
8 Regs are written he is then deemed reasonable  
9 because he has identified that I could have  
10 identified either one but based on, I think it's  
11 clear here the desires of the Applicant, the  
12 institutional desires to expand the building and  
13 that they chose one that provided them the  
14 ability to expand to the one side yard and I  
15 think that in giving deference to the ZA we have  
16 to determine was his decision reasonable and  
17 consistent and I think that in my view because he  
18 did say I could have gone one way or another and  
19 he outlined the fact that he looked at the Zoning  
20 Regulations, he looked at the definition, he  
21 looked at the opposite property line when the  
22 specific street was identified as Lamont Street

1 being identified as the front, I think that in of  
2 itself illustrates that he was being reasonable.  
3 Now whether Mr. Hinkle or whether Mr. Turnbull  
4 whether you both agree with his decision  
5 obviously is the question here, not everyone is  
6 going to agree with how potentially he makes his  
7 decisions but that being said without having to  
8 agree with him we can I think still find the fact  
9 that he had a reasonable analysis, he provided us  
10 with that he evaluated it on and that when he  
11 came to his conclusion that conclusion did not  
12 provide a inconsistency with the Zoning Regs. I  
13 understand your argument Mr. Turnbull that it  
14 creates maybe some confusion for citizens but I  
15 think that what the ZA was saying what he said in  
16 his testimony is that, he was looking did it  
17 create any non-conformities and he said no, thus  
18 in his opinion and I agree with that, I give him,  
19 I favor that perspective that then it did not  
20 create any inconsistencies with the Zoning Regs  
21 and so it was consistent and then then had the  
22 opportunity, the discretion to select that. That

1 being said lets see if there's any additional  
2 comments and maybe some responses.

3 MS. SORG: Thank you Madam Chair, while I  
4 understand as you said and I respect the opinions  
5 that are shared by Mr. Hinkle and Mr. Turnbull  
6 and I agree that this decision can be seen as not  
7 historical and not even intuitive necessarily. I  
8 still come down with the chair on her points and  
9 one thing I want I won't go over all the issues  
10 again but one of the things that I did want to  
11 mention is, you know, in this case it's clear  
12 that the Zoning Regulations are largely silent on  
13 the issue that's really before us in it's  
14 specificity additionally you know the Webster's  
15 Dictionary that we go to, you know when that  
16 happens I think it hasn't lent complete clarity  
17 to the issue so I feel uncomfortable with making  
18 a decision that the Zoning Administrator should  
19 have taken into account issues that aren't in the  
20 Zoning Regulations because to me it feels like  
21 adding language when there isn't language there  
22 and so while I think it could be reasonable to

1 take into account the historical or intuitive  
2 rear yard I don't think that the Zoning  
3 Regulations require such a thing, and as the  
4 Chair said this is, as is often the case, a  
5 question of did the Zoning Administrator practice  
6 a reasonable amount of discretion and I think  
7 that in this case he did especially given that,  
8 you know there aren't standards or criteria that  
9 would have pushed him in another way. Also I  
10 think I would just reiterate the point also that  
11 the Zoning Administrator doesn't act in a vacuum  
12 and I think I really agree with the Chair's point  
13 that he had an application in front of him in  
14 this case as he always does, looked at the  
15 desires of the Applicant and saw that their  
16 application didn't create any non-conformities  
17 and so I think that reasonably also played into  
18 his decision, so that's all I'll say.

19 CHAIRPERSON MOLDENHAUER: Any responses?

20 MR. TURNBULL: Yeah Madam Chair I would  
21 like to say that from my estimation and my  
22 looking at this the Zoning Administrator did not

1 have the option, that's where he erred in the  
2 option of choosing a rear yard, there's nothing in  
3 the Zoning Regs that says this is the front yard  
4 and I can tell you where the rear yard is,  
5 there's nothing that says he can do that, and I  
6 believe that his choice of this particular yard  
7 flies in the face of any logic or any other  
8 decisions especially this Burke School that was  
9 done before, he has to go by the common  
10 understanding of the language of opposite side,  
11 and I don't think you could even be looking at  
12 this photo determine that that is the opposite  
13 side, it's clearly a side yard, it's not 90  
14 percent, it's not turning around and looking  
15 straight back. I don't think he has that option  
16 to be able to just go and say oh this is going to  
17 be the rear yard, no let me see let's pick that  
18 one. I really, that's where the error is, I  
19 think again what he should have done is said you  
20 need relief I can't give it to you, you need to  
21 go before the BZA for a special exception or a  
22 variance. I think reasonable discretion I don't

1 think this was reasonable discretion at all. I  
2 beg to disagree with your interpretation of that  
3 but I think this was just a gross misapplication  
4 of the Zoning Regulations.

5 MR. HINKLE: Yeah Madam Chair I continue  
6 to agree with Mr. Turnbull on this, I do question  
7 whether the Zoning Administrator did have the  
8 discretion to take one lot line or the other as a  
9 rear lot line. Again in his testimony we heard  
10 that well if you've chose the front line which  
11 can be done then the rear lot line is the  
12 opposite lot line and I continue to look at the  
13 platt and I continue to think well how can you  
14 pick something besides what has been historically  
15 the rear lot line, and if you do make some  
16 justifications and I haven't heard those  
17 justifications as to why, all I heard was that  
18 well I have some discretion and thus I'm picking  
19 this. And as Mr. Turnbull stated I think there's  
20 a expectation by the public that there should be  
21 some reason for a decision and I don't see it  
22 here.

1 MS. SORG: Thank you Madam Chair I just  
2 want to add one more thing. There's something  
3 about this word opposite that I think is  
4 difficult for me in this case because we're  
5 talking about a five sided property there isn't  
6 an opposite from the chosen front of the  
7 property, so there's the front, there's two lot  
8 lines that connect to it or are adjacent to it  
9 and then there's two others, so the Zoning  
10 Administrator under the Regulations gets to chose  
11 the front based on some circumstances or  
12 limitations, and I think that what he was left  
13 with in this case were two lot lines that were  
14 facing so.

15 CHAIRPERSON MOLDENHAUER: I think you  
16 make good point that opposite is not defined then  
17 when we got to Webster's, Webster's does not  
18 define opposite as being directly behind I think  
19 as some of our other colleagues are trying to  
20 impose that requirement and I think that Mr.  
21 LeGrant also indicated that he specifically did  
22 not historically take into consideration

1 historical rear yard when he made this decision  
2 and I think that's something that he has  
3 articulated in the case record but I think what  
4 we should do is I think we can kind of go around  
5 this for a long period of time, it looks like we  
6 may have another deadlock, why don't we at least  
7 procedurally go through the voting process and  
8 then what we'll have to do from what I'm hearing  
9 is most likely set this for another date for when  
10 we have our fifth Board Member having been  
11 finally appointed and confirmed by the council.  
12 So just for procedural reasons I'll submit a  
13 motion to deny the appeal 18152 is there a  
14 second?

15 MS. SORG: Second.

16 CHAIRPERSON MOLDENHAUER: Motion's been  
17 made and seconded, all those in favor say aye,  
18 aye.

19 MS. SORG: Aye.

20 CHAIRPERSON MOLDENHAUER: All those  
21 opposed?

22 MR. TURNBULL AND MR. HINKLE: Aye.

1           CHAIRPERSON MOLDENHAUER: Motion fails,  
2 is there another motion?

3           MR. TURNBULL: Madam Chair I would like  
4 to move that we approve the appeal of ANC 1D of  
5 BZA case No. 18152, and ask for a second.

6           CHAIRPERSON MOLDENHAUER: Motion's been  
7 made is there a second?

8           MR. HINKLE: Second.

9           CHAIRPERSON MOLDENHAUER: Motion has been  
10 made and seconded, all those in favor say aye.

11          MR. HINKLE: Aye.

12          CHAIRPERSON MOLDENHAUER: All those  
13 opposed, oppose.

14          MS. SORG: Oppose.

15          CHAIRPERSON MOLDENHAUER: Motion would  
16 fail then again Mr. Moy I believe I guess then  
17 you can recap.

18          MR. MOY: Yes as a summary recap, the  
19 Staff would record both motions on the vote count  
20 of 2 to 2 to 1, so both motions fail for lack of  
21 a incurring majority vote.

22          CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy and thank you Mr. Turnbull for  
2 coming this morning and being a part of the  
3 discussion. I think we can read the next case on  
4 the agenda. Oh I'm sorry we need to set this for  
5 a date, that would be helpful, sorry, why don't  
6 we set this for a date in June to confirm that we  
7 are actually going to have, why don't we set this  
8 for a decision date for June 7, 2011.

9 MR. MOY: Very good that would be  
10 appropriate Madam Chair, June 7<sup>th</sup>.

11 CHAIRPERSON MOLDENHAUER: Thank you Mr.  
12 Moy we can read the next case on the agenda.

13 **Appeal No. 18151**

14 MR. MOY: Yes that would be Appeal No.  
15 18151 of Van Ness South Tenants Association  
16 pursuant to 11 DCMR 3100 and 3101 from an August  
17 13, 2010 decision by the Director of the  
18 Department of Consumer and Regulatory Affairs to  
19 grant of issue building permit No. B10091015  
20 allowing the renovation of an existing apartment  
21 building for dormitory use for the University of  
22 the District of Columbia students in the R-5-D

1 District at premises 3003 Van Ness Street, N.W.,  
2 property located in (Square 2049, Lot 806). On  
3 March 15, 2011, the Board completed public  
4 testimony, closed the record and scheduled it's  
5 decision on April 5<sup>th</sup>, the Board allowed filings  
6 from the Appellant, written statements as well as  
7 responses to the Appellant's filing. There are  
8 two filings in your case folders Madam Chair, the  
9 first from the Appellant, post hearing document  
10 dated March 28, 2011, identified as "Exhibit 36",  
11 the Appellee made their filing, their document  
12 dated March 31, 2011, "Exhibit No. 37". The  
13 Board is to act on the merits of the appeal of  
14 the decision of the Director of the Department of  
15 Consumer and Regulatory affairs to grant the  
16 building permit, that completes the Staff's  
17 briefing Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Okay we'll get  
19 started on the deliberation on this case, what we  
20 have before us is we have an appeal of a building  
21 permit in regards to 21 units that were renovated  
22 by having walls installed in them to create a two

1 bedroom versus a one bedroom and the Van Ness  
2 South Tenant Association is the Appellant and  
3 they brought this, and they've argued these  
4 should no longer be considered apartments in  
5 regards to the use, but rather that the use  
6 changed and that these apartments were converted  
7 from apartment to either a dormitory or a rooming  
8 house based on the fact that these were leased to  
9 UDC and that UDC was using them for student  
10 housing and that the students did not have the  
11 exclusive use or control of the room. What I'm  
12 going to do is kind of go through the analysis  
13 and I'm just going to talk through how I see the  
14 case and then I'll open up the floor to  
15 additional deliberation. I have obviously I  
16 think I have a lot of empathy for the Appellants  
17 here in regards to the situation that they're in  
18 however that cannot obviously go into my decision  
19 I think I need to look at the Regs and look at  
20 the facts that are before us. That being said,  
21 you know I think some of the strong cases that  
22 they made I'm going to kind of walk through that

1 in regards to their post hearing statement and  
2 some of the statements that they've made during  
3 the hearing. The first one is that an apartment  
4 building by definition under the Zoning Regs is,  
5 the wording is exclusively for the use of and  
6 under the control of the occupants of those  
7 rooms. The Appellant argues that because of the  
8 occupancy agreement and the fact that the  
9 occupancy agreement provides certain phraseology  
10 such as the occupancy shall be a privilege and a  
11 right and they have additional rules and  
12 regulations but I don't find that to be actually  
13 persuasive in my opinion, I think that there are  
14 a lot of different types of limitations that can  
15 be put on units maybe in a sublease and maybe  
16 it's some sort of similar employment rental a  
17 corporate furnished rental agreement where you're  
18 going to maybe limit the type of use or limit the  
19 rules and regulations on a unit but that's not  
20 going to change the zoning use of that apartment  
21 from apartment to something else. I think we  
22 have to look that no matter what those students

1 still had while maybe not as much control and  
2 exclusive use as somebody else in the building of  
3 their unit, they still while in that unit were  
4 able to have control over their individual space  
5 and apartment, their refrigerator, their kitchen  
6 which I think comes into play when talking about  
7 rooming houses. So that being said I don't look  
8 to the occupancy agreement as strongly as the  
9 Appellant was trying to argue in their post  
10 hearing statement and during the hearing as well.

11 Then they go into definition of rooming house  
12 and a rooming unit. When I look at the  
13 definition of a rooming unit under 199.1 its  
14 identified as one or more habitable rooms forming  
15 a single habitable unit used or intended to be  
16 used for living or sleeping purposes but not for  
17 preparation or eating of meals. I think here the  
18 preparation of eating meals, you hear, no matter  
19 what this is still considered a second apartment,  
20 it's not where there is a joint or shared  
21 kitchen, there is one within that unit but that's  
22 not in for a house. I think there are other

1 cases where we have determined that there are  
2 both apartments and rooming houses, I think that  
3 you could have a rooming house and apartment in  
4 the same building I just don't think this is the  
5 case here before us. I think that based on the  
6 definition it doesn't coincide with the  
7 definition and with the fact that I'm also not as  
8 persuaded by the fact that in regards to the fact  
9 that in the Section R-4 you know it identifies a  
10 rooming house and a boarding house and it  
11 provides specific provisions that's the only  
12 section which talks about rooming and boarding  
13 houses and to the fact that again identifying  
14 cooking facilities are not provided in any  
15 individual unit. I think that it's while yes  
16 they're not using the term rooming unit but  
17 they're also providing the same general  
18 terminology and requirements that a cooking  
19 facility shall not be provided within that unit  
20 and I think here we have a situation where we do  
21 have an apartment and they have a kitchen and so  
22 thus it does not fall within the definition of

1 either a rooming unit or a rooming house and I  
2 think that to me that's fairly clear in regards  
3 to just looking at the definition. Going further  
4 I think you know one of the comments that was  
5 made by one of the witnesses of the Appellant was  
6 if it looks like a duck, quacks like a duck then  
7 it must be a duck and I think that's kind of one  
8 of the major issues in this case. I think that  
9 you have a group of students and their living in  
10 a building and it seems fairly unconscionable  
11 that other residents have to kind of be dealing  
12 with student life and things to that effect when  
13 we heard on examination of the other witness  
14 about the fact that it used to be used for  
15 professional use, however unfortunately that the  
16 character and nature of the use of an apartment  
17 building doesn't go into specific issues in  
18 regards to Zoning Regulations, living in the  
19 city, living in a lot of different areas of the  
20 city there's a building on Massachusetts Avenue  
21 where a friend of my lived and she said that they  
22 went up there in the summer time and it was like

1 a fraternity party on the roof deck and she just  
2 wanted to read her book and have some quiet time  
3 and there was a whole bunch of post college  
4 students living there, that's a different  
5 atmosphere that's obviously going to be creating  
6 a different environment, there's a whole bunch of  
7 different types of buildings throughout the city  
8 and unfortunately it seems as though this  
9 building's character and nature is changing,  
10 unfortunately the BZA and I don't think it's our  
11 position to jump in and stop that, it's not  
12 something that we can really do based on our  
13 evaluation and I don't think it has to do with  
14 the specific zoning use, I just think it's a  
15 change in potentially that area where obviously  
16 it's due to specific leasing in this situation,  
17 but I think it's obviously a difficult situation  
18 for those people who have been living there for  
19 so long and have gotten used to a very  
20 comfortable living environment but at the same  
21 time I don't think it has to do with the fact  
22 that this is an error by the ZA in regards to the

1 building permit that was issued. I think that  
2 the building permit was issued correctly, that  
3 the sub-lease or an occupancy agreement is not  
4 going to effect the fact that additional walls  
5 were installed, that the type of occupants are  
6 different from those that were currently existing  
7 in the building. Based on that I'll open up the  
8 floor to any additional deliberation.

9 MS. SORG: Thank you Madam Chair, I  
10 appreciate your analysis and I pretty much agree  
11 with you, I mean, I also would say I feel for the  
12 tenants in this building, I mean in this city in  
13 these boards and these contacts whenever it comes  
14 to college students everything is contentious and  
15 you know I might be pissed to if I moved into a  
16 place and things changed I mean it's not a great  
17 situation and we've all been in that situation  
18 but unfortunately I agree with you that the  
19 question before us sort of disallows us from  
20 including that empathy into our analysis. I  
21 agree with your analysis regarding the question  
22 of whether or not this is the use of these units

1 has changed from apartment to either a dormitory  
2 or a rooming house, it seems to be that the  
3 requirements for function, duration of stay,  
4 cooking facilities and then what became the  
5 essential question here, the use and control  
6 remain to me under the definition of apartment  
7 and I think looking at as you said the occupancy  
8 agreement versus a lease that while perhaps less  
9 so curtails or limits residents to behaviors as  
10 well as subleases sometimes. That being said I  
11 also think that, even leaving aside the question  
12 of the use, I don't think because the question  
13 before us here is was the building permit which  
14 was issued for construction of 21 interior walls  
15 issued rightly I don't think that regardless of  
16 those issues of use, I don't think the  
17 construction of those walls changed the use. So  
18 even from that standpoint like I said leaving  
19 aside the question of whether the use had been  
20 changed or not, I don't believe it was the  
21 building permit that would have led to that  
22 change of condition so I agree with you on this

1 one, thank you.

2 CHAIRPERSON MOLDENHAUER: Any further  
3 deliberation?

4 MR. HINKLE: Thank you Madam Chair I'll  
5 just echo your comments as well as Ms. Sorg's  
6 comments that I also don't believe that the  
7 construction of the walls necessarily changed the  
8 use of the building and I don't think there was  
9 an error in the building permit but I do want to  
10 express my empathy for the tenants I know as you  
11 said the character and nature is changing this  
12 building from what we heard and that could be  
13 something hard and you do look towards any relief  
14 that you can get from that, and unfortunately I  
15 don't think that what's before us is the relief  
16 that they're seeking, that's all I have to say.

17 MR. SELFRIDGE: I don't have much to add  
18 Madam Chair except I don't believe the Appellant  
19 has met their burden to prove that it's not an  
20 apartment and that's all.

21 CHAIRPERSON MOLDENHAUER: Well I think  
22 then what we'll do is I'll submit a motion a

1 motion to deny the Appeal No. 18151 Van Ness  
2 South Tenants Association, the motion has been  
3 made is there a second?

4 MR. HINKLE: Second.

5 CHAIRPERSON MOLDENHAUER: Motions been  
6 made and seconded all those in favor say aye,  
7 aye.

8 CHORUS: Aye.

9 MR. MOY: Staff would record the vote as  
10 4 to 0 to 1, this on the motion of Ms.  
11 Moldenhauer Chairperson to deny the appeal,  
12 second the motion is Mr. Hinkle, also in support  
13 of the motion is Ms. Sorg and Mr. Selfridge, no  
14 other Board Members participating. So again the  
15 final vote is 4 to 0 to 1 to deny.

16 CHAIRPERSON MOLDENHAUER: Thank you very  
17 much Mr. Moy we can then go on to the next case  
18 for the morning decisions.

19 **Application No. 18182**

20 MR. MOY: Yes indeed thank you, that  
21 would be Application No. 18182 of Lincoln  
22 Westmoreland Housing, pursuant to 11 DCMR 3103.2

1 and 3104.1 for a variance from the height  
2 requirements under subsection 770.1 and 2604.2, a  
3 variance from the floor area ratio requirements  
4 under (Subsection 771.2) a variance from the rear  
5 yard requirements under (Subsection 774.1) a  
6 variance from the parking requirements under  
7 (Subsection 2101.1) a variance from the loading  
8 requirements under (Subsection 2201.1) and a  
9 special exception from the roof structure  
10 requirements under (Subsection 411.5) to allow  
11 the construction of a new apartment building in  
12 the ARTS/C-2-B District at premises 1718 through  
13 1734 7<sup>th</sup> Street, N.W., the property is located in  
14 (Square 419, Lot 846, and 847). On March 15<sup>th</sup> of  
15 this year the Board completed public testimony,  
16 closed the record and scheduled it's decision on  
17 April 5<sup>th</sup>, the Board did not request any  
18 supplemental information as the record was full,  
19 and the Board is to act on the merits of the  
20 multiple variance relief and the special  
21 exception relief, that concludes the Staff's  
22 briefing Madam Chair.

1           CHAIRPERSON MOLDENHAUER: Thank you very  
2 much Mr. Moy. I'm just going to get us started  
3 on this case, we have four different types of  
4 variances as Mr. Moy indicated and then we have  
5 the additional special exceptions for the roof  
6 structure. With this case I think that  
7 especially with all the multiple variances I'm  
8 just going to kind of address them cumulatively  
9 rather than trying to go through them  
10 individually in regards to the standard. I  
11 think that the exceptional circumstance here for  
12 this property is definitely the WAMTA easement, I  
13 think that some of my concerns initially in  
14 hearing this case was you know whether or not the  
15 WAMTA easement in and of itself was creating some  
16 of the undue hardship here, or some of the  
17 hardship here, or whether it was the desire of  
18 the Applicant for the design, but I think that in  
19 this case and based on a question I had asked the  
20 Applicant specifically we can apply the Board is  
21 permitted to apply a more flexible standard in  
22 determining the prongs of the variance test under

1 the National Black Child Development Center in  
2 Monaco so long as the design constitutes an  
3 institutional necessity which here it does, the  
4 Applicant indicated that obviously that there  
5 intention of the Board his only intention is to  
6 try to create affordable housing and they would  
7 not do this project if they could not create  
8 affordable housing and then the second prong of  
9 which is the how the features result in the need  
10 for the variance and I think that those features  
11 in regards to promoting the institutional and the  
12 non-profit purpose of the Applicant definitely  
13 specifically go towards their desires and their  
14 design criteria along with obviously the WAMTA  
15 easement which does impose an exceptional  
16 limitation on their ability to build and their  
17 ability to provide parking and in their ability  
18 when their trying to look at dividing the two  
19 property, one property into two separate  
20 properties, two separate lots, lot one and lot  
21 two. That being said, the relief for off street  
22 parking from 20 parking spaces to 14 parking

1 spaces I think that the exceptional factor also  
2 provides specific reasonableness in regards to  
3 granting that, considering that the buildings  
4 going to be almost on top of a Metro stop  
5 providing a high level of ease and transportation  
6 to it's residents that are local with the Green  
7 Line Metro right there, there's also testimony in  
8 the record information regarding other bus stops  
9 and smart trip options and smart bike options  
10 that are now very highly used in the city. The  
11 additional relief for reducing the number of  
12 loading berths providing only one loading berth,  
13 I think that here obviously I think there's a  
14 need to kind of feel more for the flexibility in  
15 the standard we heard testimony about the fact  
16 that there may not be as much of a need for  
17 loading and there's obviously going to be only  
18 one berth of 20 feet for the new development and  
19 obviously that's smaller than a standard  
20 requirement however I don't think that's going to  
21 create any challenging situations or have any  
22 negative imposition on the zoning plan or the

1 Zoning Regulations. That being said the next  
2 issue was the height requirement permitting the  
3 height of the new building to 79 feet where a 65  
4 foot maximum is permitted and I think that goes  
5 specifically to the programmatic needs and the  
6 non-profit purpose or rather the low income  
7 housing purpose of the Applicant and that  
8 obviously they decided on the record that they  
9 could not move forward with this project that  
10 they couldn't have more units given the fact the  
11 limitations that they have already by the WAMTA  
12 easement. That being said I think that they  
13 satisfy that standard and then the last is to  
14 provide no rear yard on the new lot and I think  
15 that with the limitations that they already have  
16 I don't see that, that would have any adverse  
17 effect on neighboring properties to the new  
18 building and that there would be no imposition or  
19 negative impact on the Zoning Plan. The special  
20 exception requirement for the roof structure I  
21 think that the obviously special exception  
22 standard is not as of an ardjous standard as the

1 Zoning Standards are, and I think that to create  
2 a penthouse which does not have a uniform height  
3 pursuant to 411.5 is something that you know,  
4 we've seen other cases and I think is a  
5 reasonable request here in order to provide the  
6 sufficient height to get to the roof top. The  
7 additional relief for then the existing building  
8 because of the change of the lot it's obviously  
9 then creating two lots it's going to then impact  
10 the existing building and create a smaller  
11 footprint for the existing lot having far relief  
12 required for the existing lot, lot 847 and I  
13 think that based on all of the things that are  
14 already articulated and kind of incorporating the  
15 Office of Planning's report I think that the  
16 Applicant has satisfied those standards in  
17 addition to the Office of Parking we had  
18 testimony from their traffic expert in regards to  
19 their current use of parking and the future use  
20 and I think there's sufficient evidence in the  
21 record to show that their current parking is not  
22 maximized and so having a reduction in that I

1 don't think is going to create any negative  
2 impact to neighbors or to the Zoning Plan as  
3 well. That being said we have in our records a  
4 report from the ANC our "Exhibit No. 24" the ANC  
5 voted unanimously to support this application and  
6 with that will receive great weight. I think  
7 that the rationale that they present is very  
8 strong, they obviously also reference the fact  
9 that this is an all affordable housing  
10 development which is some of the reason why we're  
11 applying a more flexible standard here and that  
12 there is the restrictions, identified in Section  
13 3 of the WAMTA easement along with other points  
14 that will be given great weight. With that being  
15 said I'm in favor of this application even though  
16 there's a lot of relief that's being needed I  
17 think that it all ties together and that they  
18 satisfy the standards. I'll open up the floor to  
19 any additional deliberation.

20 MR. HINKLE: Madam Chair I just wanted  
21 to state my support for this application as well  
22 I think you were pretty thorough in your analysis

1 and I don't have any disagreement with that, I  
2 just wanted to know its in our record but the  
3 WAMTA easement is actually occupying 43% of the  
4 new lot and I think that's a considerable  
5 exceptional condition for the property and that's  
6 why I think that the relief that's being  
7 requested is appropriate. I just also wanted to  
8 say that I think this is a really positive  
9 project for the neighborhood having a lot of  
10 affordable housing and it's retail and it's  
11 adjacent to the Metro Station so I just wanted to  
12 say that its great to see projects like this.

13 MR. SELFRIDGE: Thank you Madam Chair  
14 yeah I too am in support of this application, you  
15 know you first look at it there's a lot of relief  
16 required but you break it down and I think that  
17 the Applicant has addressed the questions  
18 regarding you know for the additional FAR it's  
19 really as a result of the subdivision, the  
20 building is in place. The parking they've shown  
21 that there was sufficient parking based on their  
22 experience so I'll trust that they know what they

1 need and don't need as they've been in operating  
2 a building on that site and also on the loading  
3 they've got a parking lot, the existing parking  
4 lot as an overflow so those are the areas that I  
5 focused on that I was concerned about and I think  
6 that they did a good job addressing those issues.

7           CHAIRPERSON MOLDENHAUER: Well thank you  
8 if there's no additional deliberation then I'll  
9 submit a motion, a motion to approve Application  
10 No. 18182, pursuant to 11 DCMR 3103.2 and 3104.1  
11 for variance from the height requirement under  
12 (Subsection 770.1, 2604.2) a variance with a  
13 floor area ratio requirement under (Subsection  
14 771.2) a variance in the rear yard requirement  
15 under (Subsection 774.1) a variance from the  
16 parking requirement under (Subsection 2001.1), a  
17 variance from the loading requirement under  
18 (Subsection 2002.1) and a special exception from  
19 the roof structure requirements under (Subsection  
20 411.5) to allow construction of a new apartment  
21 building at the premises 1718 and 1734 7<sup>th</sup> Street,  
22 N.W., a motion has been made is there a second?

1 MR. HINKLE: Second.

2 CHAIRPERSON MOLDENHAUER: A motion has  
3 been made and seconded, all those in favor say  
4 aye, aye.

5 CHORUS: Aye.

6 MR. MOY: Staff would record the vote as  
7 3 to 0 to 2, this on the motion of the  
8 chairperson Ms. Moldenhauer to approve the  
9 application for the multiple variance relief and  
10 the special exception relief as she stated.  
11 Seconded the motion Mr. Hinkle, also in support  
12 of the motion Mr. Selfridge, Ms. Sorg, not  
13 participating, no other Board Members  
14 participating, so again the final vote to approve  
15 3 to 0 to 2.

16 CHAIRPERSON MOLDENHAUER: Thank you with  
17 no opposition on that case the Board I think  
18 would request that we waive our requirements and  
19 have a separate order issued.

20 MR. MOY: Thank you Madam Chair.

21 **Application No. 18183**

22 MR. MOY: The next application for

1 decision and Board Action is Application No.  
2 18183 of 1515 14<sup>th</sup> Street, pursuant to 11 DCMR  
3 3103.2 and 3104.1 for a variance on the open  
4 court with requirements under (Subsection 776.1)  
5 a variance from the roof structure height  
6 requirements under (Subsection 1902.1, sub-A) a  
7 variance from the off street parking requirements  
8 under (Subsection 2101.1) a special exception  
9 from the roof structure requirements under  
10 Section 411 and a special exception from the rear  
11 yard requirements under (Subsection 774.2). This  
12 is to allow an addition to and renovation of an  
13 existing building for retail service arts and  
14 office use in the ARTS/C-3-A District at premises  
15 1513 through 1521 14<sup>th</sup> Street, N.W., property is  
16 located in (Square 241, Lot 129). As the Board  
17 will recall on the 15<sup>th</sup> of March 2011, the Board  
18 completed public testimony, closed the record and  
19 scheduled it's decision on April 5<sup>th</sup>. The Board  
20 requested additional information from the  
21 Applicant to supplement the record. The  
22 Applicant filed it's post hearing document dated

1 March 24, 2011, and that document is identified  
2 in your case folders as "Exhibit 41" other than  
3 that the Board is to act on the merits of the  
4 multiple variance and special exception relief.

5 CHAIRPERSON MOLDENHAUER: Thank you very  
6 much Mr. Moy. We have this case before us and I  
7 think that there was a preliminary request by the  
8 Applicant to incorporate the prior order and case  
9 information into this record, I think we'll do  
10 that just procedurally for the record. That  
11 being said we have two different types of  
12 variances before us and three different types of  
13 special exceptions before us. What I'm going to  
14 is I'm just going to quickly indicate that I see  
15 no issue with the two variance requirements, the  
16 open court and the off street parking, I think  
17 that we have a lot of information in our record  
18 regarding the different perspectives from the  
19 residents from the community, from the ANC and  
20 from the Applicant, the open court is such a  
21 small issue I think the degree of relief  
22 definitely then applying to the standard of the

1 variance is satisfied in that regard so I'll  
2 incorporate the Office of Planning's information  
3 in that or analysis. Then the second issue is  
4 the off street parking, here they're obviously  
5 going from 101 parking requirements to 0 but it's  
6 0 because they're providing a lifted garage  
7 system which does not qualify for parking in the  
8 District and there is sufficient information in  
9 the record showing that due to some ground water  
10 issues along with other restrictions that there  
11 would not be the ability to dig down in this  
12 project and do underground parking. In addition  
13 to that we heard testimony that the neighborhood  
14 was conflicted and had different views in regards  
15 to, some residents were very supportive of having  
16 no parking at all considering the fact that there  
17 was a lot of traffic issues in the neighborhood  
18 and that the Applicant was very much in support  
19 in trying to create a project where individuals  
20 would be commuting or walking or living creating  
21 a livable location where you could access the  
22 office building very easily through some of the

1 local public transportation options and I think  
2 that in the city that something that we're moving  
3 towards and I think that they satisfy the parking  
4 standards and that there's going to really be no  
5 significant impact on the community in that  
6 regard. Then going to the question of the roof  
7 structure and roof height and rear yard, I think  
8 that was kind of more of the issues that we heard  
9 a lot of the concerns about, we heard a lot of  
10 concerns from about three different neighbors on  
11 Kingmen Place that testified before us, we heard  
12 a testimony from Bill Repault from the Matrix  
13 Condominium regarding the roof structure and a  
14 height issue. I think those are the standards  
15 that I'm going to focus on a little bit more just  
16 because I think that's where we had some higher  
17 concerns from the neighbors and from in regards  
18 to looking at those standards. Before I go on to  
19 those do any Board Members have any additional  
20 deliberation on the two variances or want to  
21 provide any additional comments on those two  
22 issues?

1           MR. SELFRIDGE: I would Madam Chair thank  
2 you, I had a couple of points, I think one is  
3 that some of the submissions we received and it's  
4 throughout the presentation call it 1525 14<sup>th</sup>, I  
5 don't know if we can get some clarification,  
6 because I look on the OP report and its 1513 to  
7 1521, so maybe I'm just confused if we could get  
8 some clarification on that.

9           CHAIRPERSON MOLDENHAUER: What we can do  
10 is call the Applicant up and ask if there's some  
11 clarification that we have, from the Applicants  
12 initial submission they actually "Exhibit No. 25"  
13 yeah they reference 1513 to 1521 then on their  
14 recent post hearing submission they reference  
15 1525 so we'll open up the meeting and ask council  
16 to provide some clarification.

17           MR. FREEMAN: Good morning Members of the  
18 Board my name is Kyrus Freeman I'm an attorney  
19 with the Law Firm of Holland and Knight here on  
20 behalf of the Applicant, just to clarify 1515 14<sup>th</sup>  
21 Street LLC is actually the name of the owner,  
22 1513 through 1521 14<sup>th</sup> Street, N.W. is the actual

1 address carried with the Office of Tax and  
2 Revenue, ultimately if the project is approve and  
3 it would move forward the owners want to change  
4 the address to 1515 14<sup>th</sup> Street.

5 MR. SELFRIDGE: It's called 1525 on the  
6 plan.

7 MR. FREEMAN: I'm sorry if approved it's  
8 going to become 1525 14<sup>th</sup> Street, sorry for the  
9 confusion.

10 MS. NAGELHOUT: Can I ask the question  
11 who is the Applicant then?

12 CHAIRPERSON MOLDENHAUER: 1515 14<sup>th</sup>  
13 Street, LLC.

14 MS. NAGLEHOUT: Okay, and the address is  
15 going to change to 1525 eventually, okay.

16 CHAIRPERSON MOLDENHAUER: Any other  
17 questions Mr. Selfridge?

18 MR. SELFRIDGE: Yeah we don't have a DDOT  
19 report and I just wonder why that is, it was  
20 reference that there was some discussions and  
21 DDOT never submitted anything and I know that I'd  
22 be curious to hear what they had to say

1 regarding the parking going from 101 to 12 spaces  
2 so I want to know if it's possible to have that  
3 if they weighed in, did they decide not too?

4 MR. FREEMAN: We met with DDOT, they were  
5 supportive of the parking relief, the only thing  
6 they asked if I remember correctly is that we had  
7 some additional parking spaces which we did do on  
8 the plans, bicycle parking spaces which we did on  
9 the plans and I'm pretty sure the Office of  
10 Planning confirmed during their testimony that  
11 DDOT confirmed that they were okay with the  
12 project as well. But we met with them multiple  
13 times.

14 MR. SELFRIDGE: They didn't want to weigh  
15 in in a letter?

16 MR. FREEMAN: They decided not to.

17 CHAIRMAN MOLDENHAUER: Mr. Selfridge DDOT  
18 doesn't always there's a lot of times where we  
19 ask them to and they still don't provide specific  
20 input. In here we do have it on page 6 of our  
21 Office of Planning Report a reference from OP to  
22 DDOT and as well kind of a preliminary statement

1 to the Applicant on page 8 that DDOT put no  
2 official submission, OP had not received any  
3 official submission from DDOT.

4 MR. SELFRIDGE: I guess just to follow up  
5 on that page 5 and page 6 it says that OP will  
6 continue to work with DDOT to determine whether  
7 proposed mitigation strategies found in the  
8 recently submitted traffic study are appropriate  
9 given substantial parking relief requested. It  
10 would be nice to have something a little bit  
11 firmer from DDOT on that just to get them on the  
12 record, it's a little vague.

13 MR. FREEMAN: From the date of OP's  
14 report we met with DDOT and we agreed to increase  
15 the bike racks provide the video screen and  
16 provide the next bus information on the building  
17 and the loading, the transportation management  
18 plan and the loading management plan which we  
19 submitted at the record or our hearing. So those  
20 are the additional things we did since.

21 MR. SELFRIDGE: That was in response to  
22 DDOT's comments?

1 MR. FREEMAN: Yes.

2 MR. SELFRIDGE: Okay, that's fine Madam  
3 Chair I think it would be nice in the future for  
4 something where we have such a major reduction of  
5 parking to get DDOT on the record in terms of,  
6 you know their support or what they think is  
7 necessary for mitigation, but I think that that  
8 satisfies me.

9 CHAIRPERSON MOLDENHAUER: If you feel the  
10 need we can always postpone the decision and have  
11 a request to DDOT specifically.

12 MR. SELFRIDGE: Why don't we keep moving  
13 forward and see where this shakes out at the end.

14 CHAIRPERSON MOLDENHAUER: Then are there  
15 any other comments from Board Members on at least  
16 those initial to the court, is there any  
17 discussion from Board Members on the Court relief  
18 that's being requested?

19 MR. HINKLE: No Madam Chair as you  
20 mentioned the court relief is relatively minor  
21 and I'm comfortable with that. In regards to the  
22 off street parking, we did hear during the

1 hearing that it was really an intent by the owner  
2 to have this as a, I guess a pedestrian oriented  
3 development and having lived in the neighborhood  
4 for a number of years I can attest that this  
5 neighborhood is very pedestrian and parking is  
6 difficult and finding spaces is difficult but I  
7 was comfortable with that testimony and that  
8 discussion that the requested relief for parking  
9 is appropriate, thank you.

10 CHAIRPERSON MOLDENHAUER: So then next we  
11 go to the height of the roof structure and the  
12 relief that's needed in regards to we have some  
13 additional submissions that we received from the  
14 Applicant trying to show any impact that that  
15 would have or the lack of the impact it would  
16 have on the neighboring property, so I think we  
17 need to evaluate this we did have an individual  
18 in support of the entire application from the  
19 ARTS District Confederation to encourage this  
20 project in general and so in looking at the  
21 elevator shaft and the screening and the elevator  
22 overrun I think that, one thing that I'm just

1 having in general some trouble with a lot of  
2 these cases, its that everyone is putting  
3 rooftops on buildings and so everyone's now, roof  
4 decks, instead of roof tops, roof decks and that  
5 you know while, and I think this maybe something  
6 that maybe addressed in the rewrite but while  
7 obviously that's a nice amenity it's not an  
8 absolute and I think that it's then creating a  
9 lot of relief that's needed and the question is,  
10 you know, we have to evaluate that and here  
11 obviously we're evaluating on a special exception  
12 standard which is a lower standard but at the  
13 same time I think it's something to me that has  
14 to come into play, this is an office building  
15 it's not something that's absolutely necessary  
16 and when you're looking at a special exception  
17 standard you do look to impact on the  
18 neighborhood and I think we did have some  
19 concerns for neighboring properties but the  
20 question is in balancing that out especially  
21 under Section A of 1902.1 will this create an  
22 adverse effect on the neighboring property and in

1 looking at the new diagram provided by the  
2 Applicant in regards to potentially the vista, I  
3 think the color document that we received this  
4 morning versus the black and white one maybe that  
5 we received via email over the weekend I think  
6 helps kind of clarify to me that it's not going  
7 to adversely effect, while it may effect and I  
8 think that there's not question that it is going  
9 to potentially effect the views from the  
10 neighboring property, I don't know if it's really  
11 going to create a significantly adverse effect as  
12 required under the special exception standard  
13 here. That being said I think I would probably  
14 be in favor of granting that relief but what I'll  
15 do is I'll open this up and we can discuss this  
16 prior to getting to the rear yard issue. Any  
17 deliberation from any additional Board Members on  
18 that issue?

19 MR. SELFRIDGE: Thank you Madam Chair,  
20 this is also an issue that troubled me a little  
21 bit. It seems like it's very difficult to get  
22 this drawing and this document, I'm not sure that

1 we couldn't have approached it a different way, I  
2 was struck by the fact that the Matrix  
3 Condominium seemed to have a reasonable proposal  
4 to withdraw their concerns and for some reason we  
5 couldn't get there so this is helpful I wish you  
6 would have had this in the original hearing  
7 because I think that this is relevant and there's  
8 no reason to have not had it, it could have been  
9 discussed a little bit more we could have asked  
10 Mr. Repault about it but it was just a very  
11 sercuitus route to get there. I'm not sure that  
12 there shouldn't be some sort of resolution  
13 between the Applicant and the Matrix Condominium  
14 Owners Association, I don't think a lot of effort  
15 was put into it and I guess that's where I'm  
16 having a little bit of trouble here, I think they  
17 acted, they being the Matrix Condominium acted in  
18 good faith engaged a developer, had what seemed  
19 to me be reasonable solution that they would  
20 access to the deck once a year, they probably  
21 wouldn't even use it, we all want to be close to  
22 our own house, I think the idea of saying that

1 we'll accommodate you would have gone a long way  
2 to making this issue go away, and I guess I'm  
3 just, I remain a little bit frustrated that we  
4 couldn't get there so I think that's my feeling  
5 on this piece.

6           CHAIRPERSON MOLDENHAUER: Any additional  
7 deliberation from Board Members? I echo your  
8 concern, I mean I think that it is upsetting when  
9 you hear especially as we heard during testimony  
10 about an owner who's working with the  
11 neighborhood trying to be part of the  
12 neighborhood and then you see something where  
13 there's a lack of discussion in regards to that  
14 issue and I think that it would have also been  
15 helpful that we had some of these diagrams that  
16 have a little bit more of an indepth discussion  
17 at the hearing. We had some diagrams that were  
18 presented I think in rebuttal that were helpful  
19 but they weren't from the rise platform so we  
20 then need obviously to ask for additional  
21 information but I think that at the end of the  
22 day applying the standard, I think that the

1 Applicant satisfies that standard. Going then to  
2 the next requirement is the minimum rear yard  
3 standard and the relief that's being sought here  
4 and I think that they have a really good diagram  
5 where they show the rear yard relief that's being  
6 required on Page 11 of the architectural drawings  
7 and we have to determine whether or not this  
8 relief is going to be granted and we have under  
9 Section 774.2 they articulated lots of different  
10 standards and satisfaction. One of the things is  
11 in determining the distance between the window  
12 and the building facing each other and the angle  
13 of sight line and the distance penetrating the  
14 sight line into the habitable rooms shall be  
15 sufficient to provide adequate light and privacy  
16 to rooms. In addition to that there are concerns  
17 about protecting the privacy of building  
18 occupants and I think that going to both of those  
19 issues there were concerns raised by neighboring  
20 property owners in regards to the privacy, the  
21 fact that there is going to be an issue with  
22 those additional space. The question is how much

1 additional space is really going, I think it's 3  
2 feet 52 inches of relief, is that correct? The  
3 rear yard is about 3 feet 5 inches deficient from  
4 the ground level on the through the fifth floor,  
5 from the ground level to the fifth floor. So I  
6 think that minor relief that's being sought the  
7 question is that really, if we said no you can't  
8 have this relief is that relief really going to  
9 change potentially the sight line or the privacy  
10 concerns of the neighboring property owners and I  
11 think that one of the things that the Applicant's  
12 architect was illustrating when he provided us a  
13 line of sight diagram was that was not going to  
14 change any issue that the line of sight from that  
15 rear property line into the potential neighboring  
16 properties is going to have the exact same degree  
17 of privacy or impact on the rear of the property  
18 building on Kingmen Place. If we were to deny  
19 this relief in attempt to try to mitigate the  
20 concerns of the neighboring property owners are  
21 we really remitigating anything, and I think the  
22 answer then is potentially no. I think that's an

1 unfortunate circumstance where I'm typically not  
2 persuaded at all by oh this is what we could have  
3 done by matter of right, there's really no  
4 difference here I typically don't like that type  
5 of argument but I think that here the remedy is,  
6 there is no remedy even if we were to deny the  
7 relief because the condition would be the same no  
8 matter what. So that being said I think that I  
9 would support the rear yard relief as well  
10 especially, even considering some of the concerns  
11 with the neighboring property owners and the  
12 garage access and that relief on the lower level  
13 I think that the Applicant has taken sufficient  
14 steps to insure that the off street parking is  
15 not going to provide any significant impact and  
16 that the, while we have a lot of areas in the  
17 city where we have very small alley ways and it  
18 does, it will obviously increase the traffic I  
19 think that it's going to not be as significant in  
20 regards where it's concerned in that regard. We  
21 also have the ANC vote of support in this case  
22 where they unanimously supported this

1 application. HPRB granted conceptual approval of  
2 this application and I think it's already  
3 indicating Office of Planning is in support of  
4 this Application for all relief. I'll open up  
5 the floor for any additional deliberation for  
6 Board Members.

7 MR. SELFRIDGE: Thank you Madam Chair  
8 this is what I think regarding the rear yard the  
9 Applicant's post hearing submission was very  
10 helpful it shows that if you were to actually do  
11 the rear yard by matter of right you would end up  
12 putting dumpsters in the alley which I think is  
13 not a desirable condition it would impact the car  
14 elevator and I think that in this case certainly  
15 they've made the case for the special exception  
16 for the rear yard, but it does bring up another  
17 issue for me, we received "Exhibit No. 40" and  
18 this is a technical memorandum from Grove Slade  
19 regarding the loading in the back, its dated  
20 March 14<sup>th</sup>. I guess it's introduced some  
21 ambiguity in the loading issue, to quote from the  
22 letter; it says that based on discussions with

1 DDOT it's our understanding that DPW has  
2 concerns associated with the loading activity in  
3 the alley potentially conflicting with the DPW  
4 trash trucks that travel through the alley three  
5 times a week. In order to address the issue the  
6 Applicant is prepared to utilize the area in  
7 front of the proposed development on 14<sup>th</sup> Street  
8 as an on street loading area. In the event the  
9 alternative loading area is implemented it's  
10 recommended that area be signed as an area only  
11 for short term loading and commercial vehicles  
12 and goes on to talk about the conditions that  
13 would exist if they went to an onstreet loading.  
14 It also talks about how the Applicant as part of  
15 their loading document management play which also  
16 I guess came out of the discussion with DDOT that  
17 they feel like they could work around DPW and  
18 make the concessions and I frankly believe that's  
19 probably true. But this it just introduces  
20 ambiguity in terms of what DDOT wants to do with  
21 the loading on what their recommendation is to  
22 some degree. So I guess I just come back to the

1 issue about whether it would be appropriate to  
2 get DDOT on the record on this and on the parking  
3 just so we can be clear on what their  
4 recommendations are. So I don't know if anybody  
5 else has any thoughts on that, I'm happy to let  
6 the Applicant respond but it's whatever you think  
7 is appropriate.

8 CHAIRPERSON MOLDENHAUER: I mean I do  
9 think you bring out a good point in regards to  
10 that the Applicant has kind of provided a second  
11 alternative in their additional submission but  
12 that alternative has not been discussed, there's  
13 obviously a lot of impact of loading things on  
14 the street that effect neighboring properties I  
15 think that that's while at the same time it does  
16 potentially alleviate some of the concerns in the  
17 alley way, it would create new issues if that was  
18 really the recommendation or potentially the  
19 future plan. I think that's something we would  
20 want to consider in depth prior to making the  
21 decision. One thing we can do is we can hold off  
22 on making a decision today and leave the record

1 open and ask DDOT for a report on the parking and  
2 on the loading issue.

3 MR. HINKLE: Madam Chair I think that  
4 would be a good approach, we did hear that Mr.  
5 Selfridge has some interest in hearing from DDOT  
6 regarding the parking and he makes a good point  
7 in terms of the supplemental information on the  
8 loading. So I think receiving a report from DDOT  
9 on those two issues would be helpful.

10 CHAIRPERSON MOLDENHAUER: Okay then, why  
11 don't we do that and we can also leave the record  
12 open for the Applicant in following a report from  
13 DDOT if they want to provide any additional  
14 clarification on their behalf we'll leave the  
15 record open for them to do that as well. But  
16 that being said Mr. Moy I think what we'll do is  
17 we'll put his case on deliberation for maybe a  
18 May date and give DDOT enough time to respond to  
19 us since the only other decision that we have is  
20 for next week and I don't think DDOT would be  
21 able to respond quickly enough to that request  
22 and get everything in, in time. I see the

1 Applicant asking yes please.

2 MR. FREEMAN: Just a quick point or  
3 response to the question about the loading. When  
4 we met with DDOT they raised a concern and they  
5 ultimately decided they did not want to have  
6 loading on 14<sup>th</sup> Street which is why we during our  
7 hearing we talked about having the loading in  
8 it's current location and keeping it where it is.

9 The reason that loading management plan the on  
10 street option was mentioned as an alternative and  
11 that DDOT in the Grove Slade memorandum marked as  
12 "Exhibit 40" is because at that point they were  
13 still trying to figure out whether they wanted to  
14 add it in the front or the back but DDOT said  
15 consistent with DDOT's longstanding or current  
16 interpretation they want loading of the car from  
17 the alley which is where we're proposing it now,  
18 to the extent that Madam Chair you're going to  
19 leave the record open we would actually request  
20 to be put on next week, we had our hearing we met  
21 with DDOT they had the opportunity to submit, we  
22 will follow up with them to see if they want to

1 submit but that would be two months from the day  
2 of our hearing given that we filed our  
3 application in January or February that's a very  
4 long time for a decision.

5 CHAIRPERSON MOLDENHAUER: I understand  
6 that in regards to the timing but right now,  
7 we're not moving to a different scheduling where  
8 we're only having decisions once a month so it's  
9 going to effect change and certain types of  
10 flexibility but we do have the decision  
11 potentiall scheduled for next week, we could do  
12 that if you thing that potentially DDOT could get  
13 back with us or Mr. Selfridge do you feel  
14 satisfied by the Applicants representations  
15 currently.

16 MR. SELFRIDGE: I'd like to see a DDOT  
17 report but I certainly don't want to delay  
18 anything unnecessarily if Mr. Freeman thinks he  
19 can have the information we need next week then  
20 I'm all for moving it forward I don't think this  
21 is an exercise in delay it's just getting the  
22 information to flush out some of those positions

1 I think would be helpful.

2 CHAIRPERSON MOLDENHAEUR: Then why don't  
3 we schedule this for decision for next week and  
4 what we'll do is we'll look to the Applicant and  
5 Mr. Freeman as the Applicant's council to  
6 strongly encourage DDOT to get us something  
7 either in writing even if its an email  
8 correspondence to the Office of Zoning just kind  
9 of providing a summary of information and not a  
10 full report. I think something would just be  
11 better than nothing and correct me if I'm wrong I  
12 don't mean to speak for you Mr.Selfridge.

13 MR. SELFRIDGE: I think that's right I  
14 have all the confidence in the world that Mr.  
15 Freeman can get DDOT to produce it, so in that  
16 respect if they can hold off for a week and get  
17 that I think I'd feel more comfortable. I just  
18 want to make a couple of follow up comments  
19 before we move on from this. You know regarding  
20 the parking I think this is a real positive  
21 project but my office is in a C-2-A District and  
22 I know that there's spill over I don't care how

1 much you talk about people taking the metro,  
2 taking the buses, ultimately people they have  
3 children they need to pick up, somebody gets  
4 sick, they have a second job, soccer practice,  
5 people end up driving. I don't fully believe  
6 that there will be no spill over impact on this  
7 project. I'm not sure that's enough for me to  
8 not want to move it forward because it has so  
9 many positive components to it but that's really  
10 the reason I want to get DDOT on the record to  
11 have them tell us what they think the impact is  
12 going to be, because I know that there will be  
13 people who park on the street, that's just the  
14 way it happens it happens on every neighborhood  
15 in the city and inspite of the Applicant's best  
16 efforts I don't think you can control however  
17 many tenants are going to be in this building so  
18 I would like to have that. Not that Mr. Freeman  
19 doesn't have a busy week coming up but it would  
20 be interesting if they could get the Matrix  
21 Condominium to get a little more comfortable with  
22 where we are on the roof, I don't know if that's

1 possible at this point, but you know if you've  
2 got a week to kill and it's possible to reach out  
3 to them and see if there's a way to get them to  
4 come along I'd feel a little bit better about it,  
5 so to the degree that's possible I would just  
6 make those requests.

7           CHAIRPERSON MOLDENHAUER: Thank you very  
8 much I think that those are some very positive  
9 recommendations. That being said is there any  
10 additional comments, then we'll put this on  
11 decision for next week for April 12<sup>th</sup>.

12 **Appeal No. 17109**

13           CHAIRPERSON MOLDENHAUER: Mr. Moy I  
14 think we're ready for the next case on the  
15 morning decision calendar.

16           MR. MOY: Yes Madam Chair thank you, this  
17 should be the last decision case for the public  
18 meeting for this morning and that is the Board  
19 Action on the proposed order to the remand of  
20 Appeal No. 17109 of Kalorama Citizens Association  
21 pursuant to Section 10 Sub-D of the District of  
22 Columbia Administrators Procedures Act DC

1 official code Section 1-509 Sub-D. The original  
2 appeal was filed by KCA to 11 DCMR 3100 and 3112  
3 from the administrative decision to David Clarke,  
4 Director Department of Consumer and Regulatory  
5 Affairs, from the issuance for building permit  
6 Nos. B455571 and B455876 dated October 6, 2003  
7 and October 16, 2003 respectively, to Montrose  
8 LLC to adjust the building height to 70 feet and  
9 to revise penthouse roof structure plans to  
10 construct a five story apartment in the R-5-D  
11 District, on remand the only issue to be decided  
12 was the Appellant's allegation that the permits  
13 authorized the construction of a building in  
14 violation of the floor area ratio requirements of  
15 the Zoning Regulations because DCRA failed to  
16 include the top story when calculating FAR.  
17 Subject property is located at 1819 Belmont Road,  
18 N.W. (Square 2551, Lot 45). As the Board will  
19 recall on March 29, 2011, the Board rescheduled  
20 it's decision to April 5<sup>th</sup>, the only other item  
21 for the Board to address are the two preliminary  
22 matters from March 29<sup>th</sup> date, the first is the

1 Appellee's written exceptions and arguments dated  
2 February 3, 2011, "Exhibit No. 104" it was  
3 untimely because the deadline was February 4, so  
4 it was one day late. The second preliminary  
5 matter is the Appellant's reply to the Appellee's  
6 response "Exhibit No. 106" and I marked it as  
7 preliminary matter because the Board did not  
8 request reply filings to responses, that would  
9 complete the Staff's briefing Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you very  
11 much Mr. Moy and has indicated we do have those  
12 preliminary matters in regards to the late filing  
13 of the initial response, or the initial  
14 submission from the Applicant in regards to  
15 exceptions and I think that even though we had a  
16 very strict adherence to timing I think that due  
17 to the complexity of this case I see that, and  
18 the fact that all the other parties did have an  
19 opportunity did have an opportunity to reply to  
20 it I think we should admit that into the record  
21 and I know that we've already reviewed that in  
22 addition obviously the Districts reply has been

1 reviewed then the reply to the Appellant, reply  
2 of the Appellant to the DC's response again  
3 typically it's not something that we allow a  
4 reply especially without having a request for the  
5 Board to accept something where the record has  
6 been closed however due to the complexity of this  
7 case I think that we'll waive our requirements  
8 and allow that submission into the record so that  
9 we have the ability to review that and to weigh  
10 ad reference that as part of our decision and  
11 deliberation. That being said we are here today  
12 in deliberation on the exceptions to the proposed  
13 border on remand and the Appellant has provided  
14 their concerns and statements in regards to those  
15 exceptions and identified some specific areas  
16 where they challenge the exceptions that have  
17 been made in the proposed order. Just  
18 generically what I will say I think we will  
19 provide some clarification today but I think in  
20 general I personally I don't know about other  
21 Board Members am not that persuaded by the points  
22 that are made in the requested exception and

1 proposed orders. I think that the Appellant is  
2 really attempting to ask us to almost have a  
3 motion for reconsideration in these exceptions  
4 rather than simply trying to clarify the points  
5 that are made and the factual issues in the  
6 proposed orders and in that regard I'm not  
7 persuaded but what I will do is I think we should  
8 walk through these issues, I think that first  
9 there is the concern or the statement regarding  
10 the attic and the factual issue of is the ceiling  
11 proposed or would it eventually has that been  
12 built in regards to as built versus proposed  
13 plans and I think that (inaudible) this issue is  
14 that the BZA and the prior decision and the  
15 current decision on remand basis its  
16 determination on the plans not on as built and so  
17 I think that to conflate the issues and to try to  
18 muddy the water by getting into potential issues  
19 in that regard and while there may have been  
20 references to that the decision on our behalf was  
21 made based on the plans and based on inferences  
22 that we took from those plans that are in our

1 record and so when we're reviewing something  
2 we're not looking at what is built, we're rather  
3 looking at what was approved by DCRA at the time  
4 in relationship to the plans what they show and  
5 maybe what they don't show. So that being said  
6 that addresses that issue in my opinion I'll go  
7 on to the next issue in regards to the question  
8 of whether collar stays secure the roof rafters  
9 and whether or not that the findings of fact in  
10 that regard are specifically in regards to the  
11 findings of fact 7 and 8 and how that has been  
12 defined in regards to the term roof framing. I  
13 think that the Appellant is and as mentioned in  
14 DCRA's response I think is kind of conflate  
15 issues which are, one not really before us but  
16 two in regards to the issue do the roof ties have  
17 to be structural and thus if they are  
18 specifically supporting or, sorry if they are not  
19 specifically bracing the building against racking  
20 I think the question is I don't think we need to  
21 go there in this case I think that's not a  
22 necessary determination in regards to determining

1 whether it's within the roof framing, I think the  
2 issue of structural whether the roof ties are  
3 structural or not I think that in this case  
4 obviously prior decisions have been made but I  
5 think that in general that's not something that's  
6 within the definition specifically it's not  
7 within Webster's definition and I don't think  
8 that its required that we have to specify that  
9 issue here in order to make this determination.  
10 That being said I will turn to the other Board  
11 Members to address these issues as they deem  
12 appropriate.

13 MS. SORG: Thank you Madam Chair I agree  
14 with your assertions on sort of both of these  
15 points. With regard to the first issue that the  
16 Appellant brings up relating to findings and  
17 facts numbers 6 and 9, I agree with you that  
18 we're looking at the plans and not what was  
19 actually built or any as built. I also agree  
20 with an assertion that DCRA makes in relation to  
21 the question of the finished ceiling which is  
22 that it's placement whether its there or not

1 doesn't actually change the classification for  
2 this (inaudible). With regard to the proposed  
3 exceptions to findings and facts number 7 and 8  
4 you know the only thing I would add is that it  
5 seems like if the Appellant is questioning the  
6 definition that the proposed order relies on for  
7 collarizing roof framing because those things  
8 are specifically laid out as there definition in  
9 the record, I don't see it's necessary that those  
10 things have functions structurally within roof  
11 (inaudible) that are accepted, you know in the  
12 building industry and have those definitions stay  
13 with them and I think that's the way in which  
14 they've been used in the order, so that's all I  
15 have to add to that, thank you.

16 MR. HINKLE: I'm in agreement with the  
17 discussion so far Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Then one last  
19 element just to make sure we address all of the  
20 exceptions that were identified by the Appellant,  
21 the last issue where the Appellant challenges the  
22 Board's conclusion that the sixth floor is a

1 Garrett and thus qualifies as an attic and is not  
2 based on findings and facts supported by  
3 substantial evidence in the record as a whole.  
4 In this regard I'm not persuaded by the  
5 Appellant's argument, I think that the Board has  
6 reasonable information to rely upon that they  
7 have sufficient evidence and that has been stated  
8 in the order and that the Board has in regards to  
9 all the exceptions outlined has based it's  
10 decision on it's expertise and based on it's  
11 reasonable review of the record and the  
12 regulations with regulations (inaudible) based on  
13 their interpretation and inferences of the  
14 Webster's Dictionary and have come to what we  
15 believe to be fair and accurate determination.  
16 That being said are there any additional  
17 evaluations from Board Members? Seeing no  
18 additional deliberations then on the issue of the  
19 exceptions to the proposed order on remand what  
20 I'll do is I'll submit a motion and if there's  
21 any comments, I guess a motion to deny any of the  
22 exceptions and modify the order as OAG deems

1 appropriate based on deliberation.

2 MS. NAGELHOUT: Yeah I guess modify the  
3 order as the Board has deemed.

4 CHAIRPERSON MOLDENHAUER: Based on the  
5 discussion if there's any additional  
6 modifications I think the Board submits a motion  
7 to modify those that are consistent with the  
8 prior existing proposed order. A motion while  
9 maybe not clear has been made, a motion has been  
10 made is there is a second?

11 MS. SORG: Second.

12 CHAIRPERSON MOLDENHAUER: A motion has  
13 been made and seconded, all those in favor say  
14 aye, aye.

15 CHORUS: Aye.

16 MR. MOY: Before Staff gives the final  
17 vote Madam Chair there is an absentee ballot from  
18 another participant on this case who is Conrad  
19 Schlater and his absentee ballot vote is to  
20 approve or rather to deny the exceptions and  
21 modification of the order as the Board may  
22 impose, so that would give a final vote of 4 to 0

1 to 1, this on the motion of Ms. Moldenhauer the  
2 Chairperson, second the motion Ms. Sort, also in  
3 support of the motion Mr. Hinkle and of course  
4 the absentee vote of Mr. Schlater, so again it's  
5 4 to 0 to 1, no other Board Members  
6 participating.

7           CHAIRPERSON MOLDENHAUER: Mr. Moy I  
8 believe that concludes our morning public meeting  
9 and so this hearing will please come to order.  
10 Good morning ladies and gentleman, this is the  
11 April 5, 2011, Public Hearing of the Board of  
12 Zoning Adjustments for the District of Columbia,  
13 my name is Meredith Moldenhauer, Chairperson,  
14 joining me today to my right is Jeffrey Hinkle,  
15 Representative of the National Capital Planning  
16 Commission, to my left is the Vice Chairperson  
17 Nicole Sorg, Mayoral Appointee and to her left is  
18 Greg Selfridge, Representative of the Zoning  
19 Commission. Copies of today's meeting agenda are  
20 available to you and are located to my left in  
21 the wall bin near the door. Please be advised  
22 this proceeding is being recorded by a court

1 reporter and is also being webcast live.  
2 Accordingly we must ask you to refrain from any  
3 disturbing noises or actions in the hearing room.  
4 When presenting information to the Board, please  
5 turn-on and speak into your microphone first  
6 stating your name and home address. When you are  
7 finished speaking please turn-off your microphone  
8 so that your microphone is no longer picking up  
9 sounds or background noise. All persons planning  
10 to testify either in support or in opposition are  
11 to fill out two witness cards these cards are  
12 located to my left on the table near the door and  
13 are also on witness tables. Upon coming forward  
14 to speak to the Board please give both cards to  
15 the court reporter sitting to my right. The order  
16 of procedures for special exceptions and  
17 variances are as follows: 1. Statement of the  
18 Applicant and Applicant's Witnesses. 2. Parties  
19 and persons in support. 3. Parties and persons in  
20 opposition. 4. Government Reports including  
21 Office of Planning and Department of  
22 Transportation. 5. Reports from the ANC. 6.

1 Rebuttal and closing statements of the Applicant.  
2 Pursuant to Section 3117.4 and 3117.5 the  
3 following time constraints will be maintained,  
4 the Applicant/Appellant persons and parties  
5 except an ANC in support including their  
6 witnesses will be given 60 minutes collectively.  
7 The Appellees persons and parties except an ANC  
8 in opposition including witnesses will be given  
9 60 minutes collectively. Individuals will be  
10 given 3 minutes and associations or organizations  
11 will be given 5. These time restrictions do not  
12 include cross examinations or questions from the  
13 Board. Cross examination of witnesses is  
14 permitted by a party or an Applicant in the ANC  
15 within which the property is located is  
16 automatically a party to a special exception or  
17 variance case. Nothing prohibits the Board from  
18 placing reasonable restrictions on cross  
19 examination including time limitations or  
20 limitation on the scope of cross examination.  
21 The record will be closed at the conclusion of  
22 each case except for any materials specifically

1 requested by the Board. The Board and the Staff  
2 will specify at the end of each hearing exactly  
3 what is expected and the date when the material  
4 must submitted to the Office of Zoning. After the  
5 record is closed no other information will be  
6 accepted by the Board. The Sunshine Act requires  
7 that a public hearing on each case be held in the  
8 open before the public pursuant to Section 405B  
9 and 406 of the Open Meeting Amendment Act of  
10 2010, the Board may consistent with its rules and  
11 procedures and the Open Meeting Amendment Act  
12 enter into closed meeting or closed emergency  
13 meeting on a case for purposes of seeking legal  
14 counsel in a case per Section 405B4 and or  
15 deliberating on a case pursuant to Section 405B-  
16 13 of the law but only after providing the  
17 necessary public notice and taking a roll call  
18 vote. The decision of the Board in these  
19 contested cases must be based exclusively on  
20 public record, to avoid any appearance to the  
21 contrary the Board requests that persons present  
22 not engage the members of the Board in

1 conversation. Please turn off all beepers and  
2 cell phones at this time as to not disturb these  
3 proceedings. At this time the Board will  
4 consider any preliminary matters, preliminary  
5 matters relate to whether a case should or will  
6 be heard today such as a request for  
7 postponement, continuance or withdrawal or  
8 whether proper or adequate notice of a hearing  
9 was given. If you are not prepared to go forward  
10 today or you believe that the Board should not  
11 proceed, now is the time to raise such a matter.  
12 Mr. Secretary, do we have any preliminary  
13 matters?

14 MR. MOY: Madam Chair there are two  
15 items, the first for the record is that one of  
16 the cases for the morning session which is  
17 Application No. 18124 of Adam's Connecticut has  
18 been withdrawn and that is noted on "Exhibits 43  
19 and 44" in that record. The second item is that  
20 the ANC 4-B report to Application No. 18192 was  
21 filed late pursuant to Section 3115.1 of the  
22 Zoning Regulations but Staff would suggest that

1 the Board address that when I call the case.

2 CHAIRPERSON MOLDENHAUER: Thank you Mr.  
3 Moy I think what we'll do is we'll address that  
4 when we call the case then we can call that case  
5 right after we swear in all witnesses wishing to  
6 testify.

7 MR. MOY: Do you solemnly swear or affirm  
8 that the testimony you're about to present for  
9 this proceeding is the truth, the whole truth and  
10 nothing but the truth? Ladies and gentleman you  
11 may consider yourself under oath.

12 CHAIRPERSON MOLDENHAUER: We can all the  
13 first case and the parties can step forward.

14 **Application No. 18192**

15 MR. MOY: That would be Application 18192  
16 of Little Rascals Doggy Day Care and Boarding,  
17 LLC, pursuant to 11 DCMR 3104.1 and 3103.2 for a  
18 special exception to establish a dog day care and  
19 boarding service establishment under Section 735  
20 and a variance from the off street parking  
21 requirements under (Subsection 2101.1) in the C-  
22 3-A District at premises 5913 Georgia Avenue,

1 N.W., property located in (Square 2986, Lot 891).

2 CHAIRPERSON MOLDENHAUER: Good morning if  
3 you could turn on your microphone and introduce  
4 yourself for the record.

5 MS. GOMES: Hi my name is Debbie Gomes and  
6 my address is 5016 9<sup>th</sup> Street, N.W., D.C.

7 CHAIRPERSON MOLDENHAUER: So we have two  
8 preliminary matters actually the second one we'll  
9 address at the time we would call on the ANC, the  
10 first matter that wasn't reference is with our  
11 "Exhibit No. 5" we have your letter of  
12 authorization from PF Lou T. Sue but your letter  
13 of authorization only indicates that you can file  
14 the application not that you can actually come  
15 here today before us and present on behalf of her  
16 for this hearing, so one thing that we would also  
17 ask that you supplement the record and have the  
18 authorization provide you the authority to be  
19 here today in representing here. We'll go  
20 forward with the hearing today but we would also  
21 need you to supplement that authorization letter.  
22

1 MS. GOMES: I'm sorry I don't understand.

2 CHAIRPERSON MOLDENHAUER: The  
3 authorization letter we have which is "Exhibit  
4 No. 5" says that the owner Lu T. Sue authorizes  
5 you Debbie Gomes to file the BZA application but  
6 it doesn't identify that you have the authority  
7 to represent here today before this hearing.

8 MS. GOMES: I'm sorry why am I  
9 representing her, I'm representing me, P.F. Lu is  
10 the owner of the property I am the tenant and the  
11 owner of Little Rascals Doggy Day Care.

12 CHAIRPERSON MOLDENHAUER: So you're a  
13 tenant and then we would need the owner of the  
14 building to actually authorize you as the tenant  
15 to be here today on his behalf not just to file  
16 the application. So its just a matter of  
17 procedurally requiring, because right now it just  
18 says to file the application, it doesn't actually  
19 indicate that you then are authorized to come  
20 here today, you can obviously then sign the  
21 application in that regard which you did and you  
22 submitted all the information in that way, in the

1 postings but we also just need in his  
2 authorization for you to be here today as well.

3 MS. GOMES: I'm sorry has the process  
4 changed since three years ago when I did this,  
5 because I thought I was following the same  
6 process.

7 CHAIRPERSON MOLDENHAUER: The  
8 authorizations it's the same, the requirements  
9 are the same in that regards in the authorization  
10 but legally we're looking at the documentation  
11 and it's one thing that we've been trying to  
12 insure that we have the right requirements. We  
13 can still go forward today, we can set this for  
14 decision next week because we have decision next  
15 week and so we can still hear the whole hearing  
16 but we do need that as part of our record.

17 MS. GOMES: I'm sorry I just need clarity  
18 on what I need.

19 MS. GLAZER: Madam Chair would it be  
20 possible to have the applicant speak with  
21 somebody from staff afterwards to get the  
22 clarification because it appears that she's just

1 confused about the document that's needed.

2 CHAIRPERSON MOLDENHAUER: Okay that would  
3 be fine, I think the staff understands just the  
4 terminology that's required needs to be a broader  
5 terminology so you can work with staff  
6 afterwards. That being said we can continue on  
7 and we'll turn to the Applicant to go through  
8 their case.

9 MS. GOMES: So Little Rascals Doggie Day  
10 Care and Boarding has been operating for  
11 approximately three years now and our plan is  
12 actually to move to the building next door. We  
13 do agree like we did last time to meet all of the  
14 requirements for Section 735, I'm not sure what  
15 else I should say.

16 CHAIRPERSON MOLDENHAUER: No that's fine  
17 I think that you have a fairly full record in  
18 that regard and I think the Office of Planning  
19 report does go through and your prior submissions  
20 do address the issues. We did have one question  
21 in regards to the parking but I think that has  
22 been clarified to Board Members based on a recent

1 submission that we've received from Matthew  
2 LeGrant modifying his initial submission in  
3 regards to it and you can talk to OP about that  
4 as well I think. Do Board Members have any  
5 specific questions of the Applicant regarding the  
6 standards of 735?

7 MR. HINKLE: Yeah Madam Chair just a  
8 quick question for the Applicant, Ms. Gomes in  
9 terms of the sound proofing is there existing  
10 sound proofing in the building or is this  
11 something that you're going to add, I was just  
12 reading your submission materials but that wasn't  
13 clear to me.

14 MS. GOMES: We're not planning on adding  
15 anything, the building already has great  
16 acoustical materials that it has been built with,  
17 that coupled with the fact that we are a  
18 significant distance away from any neighbor that  
19 there would be no noise issues.

20 CHAIRPERSON MOLDENHAUER: Any other  
21 questions?

22 MR. HINKLE: In terms of the animal waste

1 container is that interior to the structure and  
2 they would come and pick it up during business  
3 hours or is that maintained on the exterior?

4 MS. GOMES: Both we do have existing  
5 today we do have interior and exterior so we do  
6 have a dumpster that is located on the lot.

7 MR. HINKLE: And there hasn't been any  
8 complaints I understand you're currently  
9 operating next door and there hasn't been any  
10 complaints.

11 MS. GOMES: There has not.

12 MR. HINKLE: Thank you, that's all Madam  
13 Chair.

14 CHAIRPERSON MOLDENHAUER: Thank you any  
15 further questions from Board Members? Seeing none  
16 then at this time I would turn to see if there's  
17 any individuals in the audience in support or in  
18 opposition of this case. Seeing none then we'll  
19 turn to the Office of Planning for their report.

20 MR. MORDFIN: Good afternoon I'm Stephen  
21 Mordfin with the Office of Planning, and the  
22 subject application is in forms for the criteria

1 for the granting of special exception or animal  
2 boarding because it does not abut a residential  
3 zone, this would take place within an enclosed  
4 masonry building, all the windows and doors would  
5 be kept closed, acoustical ceiling tiles would be  
6 used to absorb sound, animal waste would be  
7 placed within disposal bents and collected daily  
8 by a hauling contractor specializing in this type  
9 of waste removal, floors would be coated with  
10 epoxy to prevent the absorption of odors, an air  
11 filtration system would be used to control odors  
12 and no external yards or external facilities are  
13 proposed. Therefore the Office of Planning  
14 recommends that the application be approved.  
15 Also the Board did mention the issue regarding  
16 the parking relief which was originally  
17 recommended by the Zoning Administrator, however  
18 under filing discussions with him he modified his  
19 original recommendation. He was under the  
20 impression that a different, the the previous use  
21 of the building had been a bank which has a  
22 different parking requirement than what was the

1 actual issues which was, falls under retail sales  
2 and service and that is the same parking  
3 requirement that the proposed use falls under so  
4 therefore because the previous one was  
5 grandfathered in with the parking that exists on  
6 the site this is just a continuation, this new  
7 use does not require any additional parking. The  
8 applicant is not proposing to expand the building  
9 so the parking that exists now may be continued  
10 for the new use.

11 CHAIRPERSON MOLDENHAUER: Thank you very  
12 much for that clarification I think that the  
13 parking issue was something that we definitely  
14 appreciate that additional insight and has I said  
15 we had a letter from Mr. LeGrant clarifying the  
16 change from his initial submission or  
17 recommendation in regards to the applicants  
18 required relief. Do Board Members have any  
19 questions for the Office of Planning? Seeing  
20 none does the Applicant have any questions for  
21 the Office of Planning?

22 MS. GOMES: No.

1           CHAIRPERSON MOLDENHAUER: Thank you, then  
2 we turn to ANC-4-B, seeing no one I'll just  
3 reference that we just this morning got an  
4 "Exhibit 25" which was dated March 31<sup>st</sup>,  
5 indicating that a regularly held meeting on the  
6 28<sup>th</sup> of March where a quorum was present and  
7 notice was properly given, the ANC voted 5 to 3  
8 to adopt a resolution to support the application,  
9 this would then, the support would be given great  
10 weight. My only question I'm going to actually  
11 turn to the Applicant and ask, did you attend  
12 this ANC Meeting?

13           MS. GOMES: Yes I did.

14           CHAIRPERSON MOLDENHAUER: Okay can you  
15 explain I guess what some of the concerns were I  
16 mean a 5 to 3 vote what those 3 individuals that  
17 were voted to deny the support, what their  
18 concerns were?

19           MS. GOMES: They did not disclose.

20           CHAIRPERSON MOLDENHAUER: There was no  
21 discussion it was just a vote?

22           MS. GOMES: There was no discussion there

1 was one neighbor has a previous meeting that had  
2 an issue with people not collecting waste as  
3 they're out walking the dogs. I did present the  
4 panel with a map that showed our route and the  
5 neighbor was asked for a reference to the street  
6 that she is mentioning and it was not on our  
7 route, not even actually close to our route so I  
8 think they felt that the claim was not  
9 substantiated. Other than that there was no  
10 other issue. The other thing that we did do  
11 recently as a part of the Brightwood Community  
12 Meeting is we volunteered to assist with dog  
13 waste stations that they've already gotten  
14 approval to purchase so we're going to help them  
15 pick great places to put them and then I guess  
16 help manage them further.

17 CHAIRPERSON MOLDENHAUER: Thank you and  
18 thank you for addressing that question about the  
19 ANC. At this point in time do any Board Members  
20 have any other questions of the Applicant? Are  
21 there any closing comments you'd like to make?

22 MS. GOMES: I apologize for circling

1 back, I just wanted to reference in a part of the  
2 packet that was submitted for the special  
3 exception is a letter from P.F. Lu stating which  
4 is actually the identical letter that I submitted  
5 3 years ago with the exception it's a different  
6 landlord on it, that I should be able to proceed.

7           CHAIRPERSON MOLDENHAUER: Yes, this is  
8 the letter that I see and I have in my file. The  
9 issue is that he's authorizing you in this letter  
10 to file the application but not to come down here  
11 and actually testify on behalf of him or to be  
12 here at the hearing and I know it seems to be a  
13 small distinction and that you indicate that you  
14 filed a case before and this was accepted before  
15 however this is one of the types of procedural  
16 issues that we are trying to confirm that we have  
17 all the required documentation and that this  
18 would not satisfy our current standards. I think  
19 that's its something that you can resolve very  
20 quickly, we have a decision date for next week, I  
21 think there's not a lot a question, we can set  
22 this for decision next week and you can probably

1 address that very easily by talking to the Office  
2 of Zoning and confirming that you have the  
3 required authorization for the record before the  
4 decision next week. That being said if there's  
5 no other closing remarks from the Applicant what  
6 we'll do is we'll put this down for decision for  
7 April 12<sup>th</sup> and we'll leave the record open for the  
8 Applicant to submit just a supplemental  
9 authorization letter providing authorization for  
10 the tenant to have testified today for the  
11 hearing. Any final questions from the Board  
12 Members? Seeing none then we'll leave the record  
13 open for you to get that into our office by this  
14 Friday the 8<sup>th</sup>, is that something you can do by  
15 the 8<sup>th</sup>? Okay I see a confirmation nod so we'll  
16 leave the record open till the 8<sup>th</sup> and we'll have  
17 this for decision on the 12<sup>th</sup>, thank you very  
18 much.

19 MS. GOMES: I'm sorry who was going to  
20 assist me with the proper...

21 CHAIRPERSON MOLDENHAUER: If you go to  
22 the other side, the Office of Zoning if you go to

1 the other side of the corridor.

2 **Application No. 18191**

3 MR. MOY: The next application for Board  
4 Action is Application No. 18191, this is 2025  
5 Massachusetts Avenue, LLC, pursuant to 11 DCMR  
6 3104.1 for a special exception to establish  
7 office uses in an existing building under Section  
8 508 in the DC/SP-1 District at premises 2025  
9 Massachusetts Avenue, N.W., property is located  
10 in (Square 94, Lot 20).

11 CHAIRPERSON MOLDENHAUER: Good morning  
12 how's everyone doing? If you could just  
13 introduce yourselves for the record.

14 MS. ZIENTS: I'm Mary Zients and my  
15 address is 4500 Garfield Street, N.W.

16 MR. CUNNINGHAM: I'm Ralph Cunningham the  
17 Architect, 3524 Quebeck Street, N.W.

18 MR. TUMUONDS: And I'm Paul Tumuonds with  
19 the Law Firm of Goldston and Storrs(ph sp).

20 MS. DALEY: I'm Heather Daley also with  
21 the architect, thank you.

22 CHAIRPERSON MOLDENHAUER: We have a case

1 before us for a 508 special exception and I think  
2 that unless other Board Members have any specific  
3 concerns I think that the record is very full I  
4 don't know if you'll need to go through a full  
5 PowerPoint presentation if you guys are ready for  
6 that or what but what we can do is I'll turn it  
7 over to you to provide us with a summary of the  
8 merits of the case especially really hitting on  
9 the 508 requirements.

10 MR. TUMUONDS: Absolutely, as I  
11 mentioned, good morning Madam Chair, Members of  
12 the Board, I'm Paul Tumuonds from Golsten and  
13 Storrs, as you noted the case we are presenting  
14 to you this morning is a very simple straight  
15 forward special exception application. Approval  
16 of this application will allow for the renovation  
17 of the Historic Samuel M. Bryant House at 2025  
18 Mass Ave and the introduction of appropriate  
19 office uses on this property. As noted on in our  
20 statement filed the application materials, the  
21 pros to office users will be the Urban Alliance  
22 Foundation which is expected to have a maximum of

1 approximately 25 employees and the Zients Family  
2 Foundation which is expected ot have a maximum of  
3 approximately 10 employees. We believe that the  
4 information included in the statement clearly  
5 outlines how this project satisfies the special  
6 exception standards. I'm happy to note that the  
7 application has received the support of ANC 2-B  
8 and the Historic Preservation Review Board as  
9 well as the Office of Planning. Mr. Cunningham,  
10 I think what we'll maybe do is that I will  
11 quickly go through the 508 standards and then  
12 I'll leave Mr. Cunningham available to answer any  
13 questions you may have, as well as Ms. Zients is  
14 here to ask any questions you may have on the  
15 specific office uses. Because we have an  
16 existing historic building here I would say most  
17 of the special exception standards go to  
18 development of new office buildings and how a new  
19 building would fit into the fabric if this  
20 neighborhood, as we stated in the statement, this  
21 block, the 2000 block of Massachusettes Avenue  
22 does not have any residential uses along that

1 frontage includes a hotel and other office uses,  
2 so we believe the use itself is commensurate with  
3 the existing pattern or uses along the 2000 block  
4 of Massachusetts Avenue, so again Section 508.3  
5 which states that the use, height, bulk and  
6 design shall be in harmony with the existing  
7 structures of the neighboring properties, we  
8 believe it is. And as detailed in our statement  
9 we're not proposing any significant amount of new  
10 development on the site, there is a small  
11 addition on Q Street but we think that that  
12 addition is really a true benefit to this project  
13 is we are turning Q Street into a second front if  
14 you will to further encourage people coming from  
15 the Metro Station to use the Q Street entrance we  
16 believe that that is in fact a benefit to the  
17 surrounding properties and that right now the  
18 rear of 2025 Mass Ave is realistically a rear, we  
19 think that thorough renovations of the Q Street  
20 façade it will become a second entrance, we think  
21 that is beneficial to the surrounding property  
22 owners. With regards to Section 508.4 the use

1 shall not create dangerous or other objectional  
2 traffic conditions. Both the Urban Lights  
3 Foundation and the Zients Family Foundation  
4 specifically picked this property because of it's  
5 proximity to the DuPont Circle Metro Station and  
6 the significant bus corners of Connecticut Avenue  
7 and Masschusettes Avenue. The types of uses that  
8 we're proposing are not expected to have a large  
9 amount of vehicular traffic, we don't believe  
10 that that will be the case with these users, in  
11 addition because this is a historic structure and  
12 we're not increasing the density of the structure  
13 by more than 50% we're not required to provide  
14 parking spaces for this use. Finally with  
15 regards to whether the Board needs to require any  
16 special treatment in the way of design screen  
17 buildings, we don't think so, in fact I think  
18 that the Historic Preservation Review Board's  
19 approval as well as the designs at Cunningham  
20 have made really are going to revitalize,  
21 reinvigorate this property, really return it to  
22 it's past glory if I would call it, and this

1 would be a true benefit to the surrounding  
2 neighborhood. With regards to the 3104 more  
3 general standards that the granting of a special  
4 exception will be (inaudible) Zoning Reulations.

5 I would note that again this is a block that has  
6 significant office and hotel uses we are  
7 proposing to put an appropriate office use on the  
8 site, this is also a site that has been in non-  
9 residential use for the past 60 years so we think  
10 that keeping an office use on this site is in  
11 keeping with the intent, integrity, harmony of  
12 the Zoning Regulations and the Zoning Map. With  
13 that we're available to answer any questions that  
14 you may have.

15 CHAIRPERSON MOLDENHAUER: My only  
16 question is this property is also in the DuPont  
17 Circle Overlay and OP I'm going to ask the same  
18 question as well, they don't really reference the  
19 standards or requirements for us to review it as  
20 part of the Overlay District as well, you can  
21 just touch on that so we have that as part of  
22 our record.

1           MR. TUMUONDS: There are no additional as  
2 noted in our statement this property is located  
3 in the DuPont Circle Overlay/SP-1 District, there  
4 are no attributes of the DuPont Circle Overlay  
5 District that impacted this project.

6           CHAIRPERSON MOLDENHAUER: Do Board  
7 Members have any questions for the Applicant?

8           MS. SORG: Thank you Madam Chair, I have  
9 one comment to make and then one question. You  
10 know I really appreciated the submissions here  
11 and I just wanted to make a comment about the  
12 addition on Q Street I think it's really a nicely  
13 restoring addition and I think that from the  
14 renderings and the plans that we see here it's  
15 modern esthetic that doesn't seem to compete with  
16 the historic structure I'm not surprised that  
17 HPRB and thos folks have given you the green  
18 light. My question, I don't know who's going to  
19 answer it, is who is Samuel Byron? That was  
20 missing from the record?

21           MR. TUMUONDS: Exactly I think if you  
22 look at the Office of Planning attached a

1 historic preservation review I believe the  
2 precursor to one of the AT&T's I believe.

3 CHAIRPERSON MOLDENHAUER: Yes he had a  
4 career in post office department and theres a  
5 whole history I was quite fascinated by it.

6 MS. SORG: I will read that again.

7 CHAIRPERSON MOLDENHAUER: It's all part  
8 of the Historic Preservation Review Board and the  
9 history. Any other pressing questions? Is there  
10 any additional submissions from the Applicant?

11 MR. TUMUONDS: No.

12 CHAIRPERSON MOLDENHAUER: Then at this  
13 point in time I'll look to the audience which I  
14 see there's no one there but for procedural  
15 purposes ask if there's anybody in support or in  
16 opposition of this case. Seeing none then we'll  
17 turn to the Office of Planning for their report.

18 MS. THOMAS: Good afternoon Madam Chair,  
19 Members of the Board, the Office of Planning is  
20 recommending approval to permit the conversion of  
21 the former church use to office use, it has met  
22 the standards set forth in Section 508, and has

1 received concept approval from the Historic  
2 Preservation Review Board. We see that the  
3 property is exempted from providing parking and  
4 the conversion would not adversely affect the use  
5 of neighboring property as it is within a  
6 neighborhood we do have a lot of offices and  
7 hotel use, therefore we think that the  
8 application can be granted as requested, thank  
9 you.

10 CHAIRPERSON MOLDENHAUER: Thank you very  
11 much and I'm going to ask you the same question I  
12 asked the Applicant? Do you see any concern or  
13 any issue in regards to the standards that  
14 they've applied for property being located in the  
15 DuPont Circle Overlay?

16 MS. THOMAS: No Madam Chair we did not  
17 see that the Overlay was relevant, no major  
18 additions or instance of height or bulk was being  
19 added to this building that would in fact  
20 (inaudible).

21 CHAIRPERSON MOLDENHAUER: Thank you, do  
22 any Board Members have any questions for the

1 Office of Planning, seeing none does the  
2 Applicant have any questions for the Office of  
3 Planning, no questions okay. Then at this point  
4 in time we would turn to ANC-2-B to see if they  
5 have any additional submissions, I don't see  
6 anybody in the audience. We have "Exhibit No.  
7 18" in our record which indicates that on January  
8 12, 2011, the ANC 2-B met at a properly duly  
9 called public meeting with a quorum present and  
10 voted 8 to 0 to support the application. That  
11 being said that letter will be given great weight  
12 for our record. At this point in time I'll turn  
13 back to the Applicant for any closing remarks.

14 MR. TUMUONDS: Just that I think we have  
15 satisfied the special exception standards. We  
16 believe that it would be appropriate for the  
17 Board to take action today and then we can move  
18 forward on this exciting project.

19 CHAIRPERSON MOLDENHAUER: Thank you and  
20 at this point in time I think that unless there's  
21 any other questions from Board Members and seeing  
22 none, we'll conclude the hearing and I think we

1 can enter into deliberation, this case is before  
2 us under a 508 standard for creating new office  
3 use in the SP-1 Zone and based on that 508  
4 articulates a standard in which we have to review  
5 it in addition to the general special exception  
6 review and here we look at whether or not the  
7 use, height, bulk and design is in harmony with  
8 the existing use and structure of neighboring  
9 properties as is in our record and as the  
10 Applicant indicated there's no residential use on  
11 the block, the block is conforming with office  
12 space use and with the use that would be  
13 articulated here by the Urban Alliance Foundation  
14 and the Zients Family Foundation as well. That  
15 being said I think we indicate that there has  
16 been approval by HPRB and ANC support and in  
17 regards to any under 508 for use not create  
18 dangerous or other objectional traffic conditiona  
19 there's testimony in the record that this is a  
20 landmark property where there would be no parking  
21 requirements and do think that the proximity to  
22 DuPont Circle, Connecticut Avenue bus stops and

1 the same would also limit any potential traffic  
2 impact on this property. That being said I see  
3 no real issue with approving this application and  
4 the fact that they've satisfied 508. I'll open  
5 up the floor for any additional deliberation,  
6 seeing none.

7 MS. SORG: I would just say I agree with  
8 your assessment and I support a motion.

9 CHAIRPERSON MOLDENHAUER: Okay then I  
10 will submit a motion, a motion to approve  
11 Applicatin 18191 for relief for 2025  
12 Massachusettes Avenue, LLC under 11 DCMR 3104.1  
13 for a special exception to establish office use  
14 an in existing building under Section 508 in a DC  
15 SP-1 District, motion has been made is there a  
16 second?

17 MS. SORG: Second.

18 CHAIRPERSON MOLDENHAUER: Motion's been  
19 made and seconded, all those in favor say aye,  
20 aye.

21 CHORUS: Aye.

22 CHAIRPERSON MOLDENHAUER: All those

1 oppose.

2 MR. MOY: Staff would record the vote as 4  
3 to 0 to 1 this is on the motion of the  
4 Chairperson Ms. Moldenhauer to approve the  
5 Application for a special exception relief under  
6 Section 508, seconded the motion Ms. Sorg, also  
7 in support of the motion Mr. Hinkle and Mr.  
8 Selfridge, no other Board Members participating  
9 so again the vote to approve the application is  
10 on a vote of 4 to 0 to 1.

11 CHAIRPERSON MOLDENHAUER: Thank you very  
12 much Mr. Moy and seeing no opposition in this  
13 case the Board would request that we waive our  
14 requirements and ask for a summary order to be  
15 issued.

16 MR. MOY: Thank you Madam Chair.

17 CHAIRPERSON MOLDENHAUER: I believe that  
18 concludes our morning and so what we'll do is  
19 we'll reconvene at 1:30 for our afternoon cases.

20

21

22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

20 Good morning Madam Chair, yes we do it's for the  
21 second case for decision this morning but Staff  
22 would suggest that we address those preliminary

OLENDER REPORTING, INC.  
1100 Connecticut Avenue, NW Suite 810 Washington, D.C. 20036  
Washington: (202) 898-1108 / Baltimore: (410) 752-3376  
Toll Free: (888) 445-3376

1 matters when I call the case.

2 CHAIRPERSON MOLDENHAUER: Thank you then  
3 we can go forward with the agenda.

4 **Application No. 18166**

5 MR. MOY: The first application for Board  
6 Action is Application No. 18166 this is of the  
7 Government of the District of Columbia,  
8 Department of Housing and Community Development  
9 pursuant to; 11 DCMR 3103.2 for a variance from  
10 the lot area and lot width requirements under  
11 Section 401, the variance from the lot occupancy  
12 requirements under Section 403 and a variance  
13 from the rear yard requirements under Section  
14 404. The Application was also amended to add  
15 Zoning Relief from the off street parking  
16 requirements under Section 2101.1 and this relief  
17 is to allow the construction of a flat, a two  
18 family dwelling in the R-4 District at premises  
19 501 Rhode Island Avenue, N.W., (Square 475, Lot  
20 33). As the Board will recall this application  
21 was convened in a special meeting on February 15,  
22 2011, the Board continued with this deliberation

1 to allow the Applicant to submit additional  
2 information, the Applicant did so Madam Chair and  
3 that filing is identified in your case folders as  
4 "Exhibit 36". The Board is to act on the merits  
5 for the request of the multiple variances zoning  
6 relief that completes the Staff's briefing Madam  
7 Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you, as  
9 stated earlier I have recuse myself from this  
10 case so I'll turn to Ms. Sorg to handle the  
11 deliberations.

12 MS. SORG: Thank you Madam Chair, I think  
13 that in this case as was mentioned in the  
14 introduction we heard the case and received the  
15 submissions that we were looking for so I can  
16 start off our deliberation and then we'll turn  
17 over to other Board Members for their comments.  
18 To me this case really with regard to our  
19 variance test was lacking after our understanding  
20 at the hearings only a little bit in the sense  
21 that I think that the first and second prongs of  
22 the variance test are fairly easily satisfied

1 based on the, you know, extremely, you know, I  
2 think uniqueness and difficulty of the property  
3 it's dimensions, and topography in this area. I  
4 think that the relief that the Applicant is  
5 request mainly associated with, you know, lot  
6 occupancy in the rear yard, directly from the  
7 uniqueness from this property. In the hearing we  
8 heard from a couple of neighbors and in specific  
9 one of the adjacent neighbors who had some  
10 concerns about the property, I think actually  
11 similar to where we were as a Board in the end.  
12 They were looking in some cases for more  
13 information from the Applicant and as I recall in  
14 the record we got confirmation from the Applicant  
15 that they would continue to work with the  
16 neighbors. There were some questions about  
17 access and property lines and so forth. The  
18 specificity of those concerns regarding the  
19 construction and regarding permitting and so  
20 forth are in my opinion a little bit beyond what  
21 we're looking at here, but I think it was a good  
22 forum for the neighbors to show their concerns

1 and also for us to understand what the nature of  
2 those concerns were. For me based on the filings  
3 that we received after the last hearing which  
4 includes things that we requested like site  
5 plans, more complete although not, more complete  
6 building plans, photographs of the rear area, I  
7 think it's the south wall and the south property  
8 line on the side, what that looks like regarding  
9 the neighboring properties, the windows and the  
10 access and so forth there, to me filled out my  
11 analysis of the case through the third prong and  
12 I'm given in this case to understand at this  
13 point that the relief that the Applicant is  
14 requesting can in fact be granted without  
15 substantial detriment to the neighbors and the  
16 neighborhood and that is where I am at the case  
17 now I'll open it up for my fellow Board Members,  
18 if there are any comments.

19 MR. HINKLE: Yeah well thank you I agree  
20 with your analysis, I do think that the Board had  
21 requested additional information and we received  
22 a lot in supplemental information, is it

1 sufficient for this case, yes, I believe so. But  
2 as you said I do think that they have met the  
3 first and second prong it's the third prong that  
4 we're interested in and how this relief would  
5 impact not only the neighbors but the  
6 neighborhood and the city as well. So we  
7 received plans, we received what we requested. I  
8 still have questions in terms of how the  
9 staircase between the first floor and the  
10 basement can work, I believe there's not enough  
11 head room but that would be something that could  
12 be addressed in the permitting process. But we  
13 did receive information in terms of how it  
14 impacts the adjacent building in terms of does it  
15 cover up windows, does it cover up doors, it does  
16 cover up two windows, I think we heard from the  
17 neighbor that, that's okay, he just wanted to  
18 know what the impact was that was being proposed.  
19 So other than that I will say I'm in support of  
20 this application.

21 MS. SORG: Thank you Mr. Hinkle, any  
22 other comments?

1           MR. MAY: Yeah, I think that some of the  
2 aspects of this case are very clear right from  
3 the beginning, the site is very small and it's  
4 constricted, and its oddly shaped and so on so  
5 that makes a lot of the test without too much  
6 effort. There were definitely questions of this,  
7 I think most of the questions came from the fact  
8 that the Application itself was not very  
9 thorough, you know getting an application without  
10 a site plan, without some critical views of the  
11 site just makes it harder and take longer and so  
12 on and I think that the Applicant should learn  
13 something from this process because we very  
14 easily could be sending it back at this moment  
15 saying you know what there's just not enough  
16 there yet. It's sufficient at this moment but  
17 sort of barely sufficient. I think there is a  
18 question that remains with regard to the second  
19 floor deck, I don't know Mr. Hinkle you didn't  
20 raise that issue in particular but I know that  
21 the second floor deck technically would  
22 contribute to the lot occupancy so the lot

1 occupancy calculation may not be correct in the  
2 record the way we have it, I'm not sure if we can  
3 get clarity on that from, maybe from the Office  
4 of Planning or something but there is an open  
5 question with that, or it may be that if we  
6 approve it, that this lot occupancy the second  
7 floor deck won't be allowed because it wasn't  
8 included in the calculation. As for some of the  
9 other questions like the impact of this project  
10 on the neighbors windows, you know that, those  
11 windows are fronting onto somebody else property  
12 so there's not a right to have those, so those  
13 can be covered up, that happens with some  
14 frequency, it may be unfortunate for the neighbor  
15 but there's no real absolute right to that  
16 property. I will also say that there's some  
17 aspects of the design of this unit that I think  
18 needs serious work and the Applicant would do  
19 well to look very carefully at how the front of  
20 this building is going to look, the use of Hardy  
21 panel and steel tube as a façade is questionable  
22 at best so, but it doesn't go to the issue that

1 we have to decide here I would just encourage  
2 some strong examination of the plans for the  
3 building and the design of the elevation. The  
4 plans, Board Member Hinkle raised the issue of  
5 the interior design and layout and the room for  
6 the stairs and so on, I think that's only the  
7 beginning of their problems, there's some pretty  
8 basic issue with the design of these units and  
9 how they're laid out and I think needs some  
10 serious consideration, again beyond what our  
11 mandate is here, but I cannot just let it go, I'm  
12 just not the type to let it go, what can I say.  
13 Nonetheless I think the case has been made that  
14 the relief is appropriate. I would prefer to  
15 know definitively what the lot occupancy is on  
16 the assumption that the second floor deck  
17 contributes to it, so I'm not sure how best to  
18 get to that answer.

19 MS. SORG: Thank you Mr. May, well first  
20 to some of the issues, I agree with some of the  
21 issues that you and Mr. Hinkle bring up and I  
22 also agree with your assessment that issues of

1 code violations and of construction and so on and  
2 so forth will be brought up through the  
3 permitting process if they end up back here  
4 requiring a minor modification then that's, if  
5 that's what goes on, then that's what goes on.  
6 With regard to the question about the lot  
7 occupancy and how it's impacted by the second  
8 floor deck, I think you know this is a self  
9 certified application so we take the numbers that  
10 we have in front of us, also I think in OP's  
11 report and in their testimony, you know, we  
12 didn't get any question about the degree of  
13 relief necessary for the lot occupancy there so I  
14 would be, especially based on the fact that it is  
15 a self certified application, you know, we I  
16 think are best to look at what's in front of us  
17 and the discussions that we've had that are on  
18 the record. So I would be in favor of moving  
19 forward today on this case.

20 MR. MAY: I would agree we move forward I  
21 guess the question I have is since this is self  
22 certified if in fact the deck contributes to lot

1 occupancy in the decision on this doesn't  
2 necessarily support that inclusion in lot  
3 occupancy they'd have to come back for a minor  
4 modification, is that what it boils down to?

5 MS. SORG: Yeah, if it turns out that  
6 there would be, if the application were to be  
7 approved and they were turned up later on in  
8 their process to be outside of the degree of  
9 relief which is 18.7% of lot occupancy then they  
10 would either have to make some changes or come  
11 back to us, so what we are looking at here is the  
12 degree percentage of lot occupancy and things  
13 that fall outside of that would not be included,  
14 I think.

15 MR. MAY: Okay.

16 MS. SORG: Is there any further  
17 deliberation?

18 MR. HINKLE: So for clarification if what  
19 we see in the plans is not a lot occupancy of  
20 78.7% which is what I'm reading in the OP report  
21 then they would need to come back to us, is that  
22 clear?

1 MS. SORG: Yes, you know, as a Board we  
2 vote on plans and, you know, degrees of relief  
3 requested that are in front of us and on these  
4 types of self certified applications and those  
5 application that are approved when they later on  
6 in the building process, because, you know, we  
7 see applications and plans for projects, you  
8 know, fairly early on, often and so there are  
9 some changes that can happen and if those changes  
10 fall outside of the relief that we grant, you  
11 know, we tend to see people back here.

12 MR. HINKLE: Okay, thank you.

13 MS. SORG: If there's anything further,  
14 if there's nothing further then I would like to  
15 submit a motion in this case Application No.  
16 18166 to approve, rather to approve Application  
17 18166 for a variance relief under 401 for lot  
18 width 403 for lot occupancy, 404 for rear yard  
19 relief as well as under 401 lot area and parking  
20 under 2101 at 501 Rhode Island Avenue, N.W.

21 MR. MAY: Second.

22 MS. SORG: A motion has been made and

1 seconded, all those in favor say aye.

2 CHORUS: Aye.

3 MR. MOY: The vote is 3 to 0 to 2, this  
4 is on the motion of Vice Chair Ms. Sorg, to  
5 approve Application 18166 for the multiple  
6 variance relief requested, seconded the motion  
7 Mr. Peter May, in support of the motion Mr.  
8 Hinkle. This is also attended to the revised  
9 plans; this is for the record for revised plans  
10 that were attached to "Exhibit No. 36". So again  
11 the final vote is 3 to 0 to 2 to approve.

12 MS. SORG: Thank you Mr. Secretary and  
13 also can we make a summary order in this case?

14 MR. MOY: Yes, thank you Madam Chair.

15 **Application No. 18169**

16 MR. MOY: The next and last Board Action  
17 for decision is Application No. 18169, this is of  
18 Kyle and Laura Yost, pursuant to 11 DCMR 3103.2  
19 and 3104.1 for a special exception to allow a  
20 rear addition and accessory garage serving and  
21 existing one family semi-detached dwelling under  
22 Section 223 not meeting the lot occupancy Section

1 403, and side yard Section 405 requirements, and  
2 a variance from the area alley centerline garage  
3 setback requirements under (Subsection 2300.2,  
4 sub B) in the R-3 District, this is at premises  
5 3411 Prospect Street, N.W., the property is  
6 located in (Square 1221, Lot 831). On February  
7 15, 2011, the Board completed testimony, closed  
8 the record and scheduled its decision on March 8,  
9 2011. The Board requested additional information  
10 to supplement the record from the Applicant that  
11 filing from the Applicant is in your case folders  
12 Madam Chair dated March 3, 2011, identified as  
13 "Exhibit 41". Finally Madam Chair we have a  
14 preliminary matter in that the party opponents  
15 filed a response dated March 4, 2011, and that  
16 filing is identified as "Exhibits 41 and 43",  
17 other than that the Board is to act on the merits  
18 of the special exception relief under Section 223  
19 not meeting the lot occupancy, side yard  
20 requirements and the variance from the alley  
21 centerline garage setback requirements under  
22 (Subsection 2300.2, Sub B) and that completes the

1 Staff's briefing Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Thank you very  
3 much Mr. Moy and as indicated we have a  
4 preliminary matter in this case, we had left the  
5 record open specifically for the submission from  
6 the Applicant but we did have a party status  
7 individual in this case Mr. Thomason and Mr.  
8 Thomason submitted a documentation our "Exhibit  
9 No. 42 and 43" requesting his opportunity to  
10 respond to that submission and I think that while  
11 we did not specifically leave the record open for  
12 that as a party status individual he did have the  
13 right to at least respond to any additional  
14 submissions that were made and so that being said  
15 I will waive our requirements and obviously admit  
16 that into the record and we've already reviewed  
17 that as part of our deliberation for this  
18 morning, so that handles the preliminary matter,  
19 so now we'll just get into deliberation. At  
20 this hearing we went through the two different  
21 types of relief that are being sought here.  
22 First is a special exception to allow a rear

1 addition under 223, and then in regards to lot  
2 occupancy and side yard, and then the second one  
3 is a variance to allow the construction of a  
4 garage to be set back from the alley centerline  
5 requirements under 2300.2B. So I'll start off  
6 with the 223 relief, in this case as stated  
7 earlier we had a party opponent who presented  
8 arguments going towards the prongs of effecting  
9 light and air and effecting I think most, not  
10 really a privacy but more of use and enjoyment,  
11 and so as a 223 case those are our major issues  
12 that we have to look at, but we have to look at  
13 them in the guise of do they not unduly effect  
14 those things. Then the question is well, what  
15 exactly rises to the level of unduly effecting  
16 potentially light and air of the neighboring  
17 property, or unduly compromising the use and  
18 enjoyment of the neighboring property. That  
19 being said we have letters of no support from the  
20 ANC and from the Citizens Association of  
21 Georgetown, both of those address, or rather they  
22 reference their lack of support due to concerns

1 with increased density and loss of open space, to  
2 me that doesn't really go to the issue of what a  
3 223 should be evaluated under. As I said we're  
4 really looking at aspects of reduction of light  
5 and enjoyment or reduction of potentially use and  
6 privacy of the neighboring property, so while we  
7 will definitely be giving the ANC letter great  
8 weight, our "Exhibit No. 23" satisfies our  
9 requirement, I find that their rationale that is  
10 at least articulated in the resolution is lacking  
11 for me to really rely upon in great weight in  
12 regards to the standard that we have to apply it.  
13 That being said I then go to arguments that were  
14 made by both the Applicant and then the counter  
15 arguments made by Mr. Thomason during the  
16 hearing, and I think that the Applicant  
17 supplemented their documentation with the new  
18 diagrams, the new submissions which I think  
19 helped provide better clarity as to how exactly  
20 this addition was going to potentially effect the  
21 neighboring property and the light and air in  
22 that regard, and I think that was very helpful to

1 me in looking at this and to seeing potentially,  
2 you know what portion of property, 3413 Prospect  
3 Street would potentially have increased shade or  
4 less light due to this addition. I think that  
5 you know looking at page four of the supplemental  
6 submission that we received from the Applicant I  
7 think that it shows a very small area in the rear  
8 that's going to be newly shaded in, it's pretty  
9 much between the tree shade and where the trellis  
10 is. To me I think that in comparison to the  
11 degree of shade that already exists in the back  
12 of this neighboring property that addition is  
13 quite small and then in my mind I don't believe  
14 that it rises to a level of unduly effecting.  
15 Those are, it's hard, to try to say well when  
16 does something rise to the level of unduly  
17 effecting and when does it not? But I think in  
18 looking at this I don't think that it does,  
19 especially then looking at potentially what Mr.  
20 Thomason presented to us in his regard, he  
21 presented us documentation stating that it was  
22 going to create some additional challenges in

1 planting or providing some additional flowers in  
2 his backyard, obviously there's different types  
3 of flowers that can grow in different atmospheres  
4 but I think it's not going to stop him from being  
5 able to create a beautiful garden, it may be more  
6 challenging but I think that there still is a  
7 substantial amount of light in that back area and  
8 the amount that's potentially going to be changed  
9 is a smaller degree. That being said I think  
10 that because especially this is a 223 standard  
11 Office of Planning in our "Exhibit 26" is in  
12 support of this, I see really no problem with the  
13 223 case. I'll stop there and then look for  
14 additional deliberation.

15 MR. HINKLE: No I completely agree with  
16 your analysis on the 223 case. I think we  
17 received sufficient documentation that while  
18 there is some additional shade on the property  
19 adjacent to what's being proposed, I don't think  
20 it's a significant impact, so I'm completely in  
21 agreement with your analysis on the 223.

22 CHAIRPERSON MOLDENHAUER: Then we go onto

1 the area variance for the garage in regards to  
2 the alley line, center alley line setback. Here  
3 we have a case where it's a variance, it's not a  
4 223, it's a higher standard and Office of  
5 Planning is in support, we have a letter, our  
6 "Exhibit No. 37" from the Commission of Fine Arts  
7 indicating that they have no objection to it,  
8 articulating the reason being the Magnolia Tree  
9 desiring that to be maintained and thus creating  
10 a unique circumstance where there would be a  
11 practical difficulty in rehabbing the garage.  
12 Now in this case I do have some reservations, I  
13 always find that a variance standard is a very  
14 high standard and that it must be proven to all  
15 of the prongs, and I think here I have a question  
16 as to whether or not the Magnolia Tree  
17 potentially may be in and of itself may satisfy  
18 the first prong but then is there really a  
19 practical difficulty here in regards to  
20 potentially, you know, they could rehab the  
21 garage as it currently exists, do they need to  
22 actually enlarge the garage does that rise to the

1 level of a practical difficulty needing to get a  
2 legal space and they currently don't have a legal  
3 space in that location. We don't really have  
4 significant direct opposition to the garage, a  
5 lot of what Mr. Thomason as a party opponent was  
6 arguing was more towards the back area than the  
7 garage issue, we did have some statements from  
8 neighboring properties, the property directly  
9 across the alley that there was going to be some  
10 challenges there, but we do then have in the new  
11 submissions from the Applicant some letters of  
12 support from individuals that are, not directly  
13 across but catty-corner from them in the alley  
14 indicating that they are in support of that. I'm  
15 not going to go any further I'm going to see if  
16 there's any additional deliberation, if you have  
17 any additional insights as to provide me a better  
18 perspective to view this variance standard.

19 MR. HINKLE: Yeah, thank you Madam Chair,  
20 we did hear from the Old Georgetown Board and  
21 there is some concern about preserving the  
22 existing Magnolia Trees on the property and what

1 we did hear in testimony as well as in our  
2 written record is that to expand the garage  
3 towards the Magnolia Trees would be difficult in  
4 terms of preserving those trees, thus the  
5 Applicant had looked at expanding towards the  
6 alley way, and my understanding is that the  
7 existing garage is just over 18 feet and I'm not  
8 quite sure what the requirement for a legal space  
9 is but I believe it's 19 or so. So the  
10 application is looking at expanding the garage to  
11 just over 20 feet and that would expand it into  
12 the alley way, for me I think the practical  
13 difficulty really is expanding it into the garage  
14 towards the tree, we heard from the Old  
15 Georgetown Board that the preference would be to  
16 go the other direction. We have heard from the  
17 Applicant that there is an existing pole,  
18 telephone pole that's actually at the property  
19 line which is an additional four feet from what  
20 the garage would be expanded to. So the effective  
21 expansion would not effect what is the dimension  
22 of the alley, the width of the alley. So I think

1 there is some issues in terms of can they expand  
2 towards the yard, I don't think so because it  
3 would impact the Magnolia Tree, can they go into  
4 the alley, yes they can, would that negatively  
5 impact the alley, the width of the alley, no  
6 because there's an existing telephone pole. I'm  
7 not sure how you feel about that.

8 CHAIRPERSON MOLDENHAUER: I still think  
9 that it's a very weak case but as you were  
10 talking I was thinking about the fact that the  
11 Applicant's Attorney did mention on several  
12 occasions at the hearing about the case law which  
13 supports the fact that the degree of relief also  
14 then effects the degree of the standard and so  
15 here I think that we can probably apply that. I  
16 was looking in the prehearing statement  
17 submission and I don't see that case quoted  
18 otherwise I would quote it, but it is applicable  
19 here, I mean we're talking about 12 feet, we're  
20 talking about a very, very minimal relief that's  
21 being requested here even though it is a variance  
22 standard I think that based on that, taking that

1 into consideration and taking the fact that I  
2 think the Old Georgetown Board identified these  
3 are the only two Magnolia Trees on the block that  
4 provide shade so while I think it's a very weak  
5 case I think it does satisfy the standards in the  
6 regard because the Magnolia Trees are identified  
7 by the CFA, they're identified by OP and that,  
8 you know, if it satisfies, if you looked at that  
9 then it would satisfy the other two prongs of the  
10 test.

11 MR. HINKLE: I think we're looking at a  
12 difference of 1 foot 8.5 inches in this case and  
13 for me that's not a significant impact in this  
14 alley way it takes the garage door up to what's  
15 adjacent, on the adjacent property.

16 CHAIRPERSON MOLDENHAUER: I agree with  
17 you, I think that you have identified some of the  
18 stronger arguments here, so that being said is  
19 there any further deliberation on this case?  
20 Seeing none, then I will submit a motion, a  
21 motion to approve Application 18169 pursuant to  
22 11 DCMR 3103.2 and 3104.1 for special exception

1 to allow a rear addition and accessory garage  
2 serving an existing one family semi detached  
3 dwelling under Section 223 not meeting the lot  
4 occupancy under 403, side yard under 405,  
5 requirements and a variance from the alley  
6 centerline garage setback requirement under  
7 (Subsection 2300.2B) a motion has been made is  
8 there is a second?

9 MR. HINKLE: Second.

10 CHAIRPERSON MOLDENHAUER: A motion has  
11 been made and seconded, all those in favor say  
12 aye.

13 CHORUS: Aye.

14 CHAIRPERSON MOLDENHAUER: Mr. Moy do we  
15 have an absentee ballot?

16 MR. MOY: Yes Madam Chair, we have an  
17 absentee vote from another participant on this  
18 application from Mr. Anthony Hood and his  
19 absentee vote is to approve with such conditions  
20 as the Board may impose, so that would give a  
21 final resulting vote of 3 to 0 to 2 on the motion  
22 of the Chair to approve the application per the

1 special exception and variance relief, seconded  
2 by Mr. Hinkle and of course in support of the  
3 motion Mr. Hood, no other Board Members  
4 participating, so again it's 3 to 0 to 2.

5 CHAIRPERSON MOLDENHAUER: Thank you very  
6 much Mr. Moy. I believe that then concludes our  
7 morning decision and public meeting.

8 MR. MOY: Yes Ma'am.

9 **A.M. Session**

10 CHAIRPERSON MOLDENHAUER: This hearing  
11 will please come to order, good morning ladies  
12 and gentleman, this is the March 8, 2011, Public  
13 Hearing of the Board of Zoning Adjustments for  
14 the District of Columbia convening under the Act  
15 of a Chancellery Application pursuant to the  
16 Foreign Missions Act and Chapter 10 of the Zoning  
17 Regulations, my name is Meredith Moldenhauer,  
18 Chairperson, joining me today to my left is the  
19 Vice Chair Nicole Sorg, also joining me to my  
20 left is Peter May, Representative of the U.S.  
21 National Park Service and to my right Federal  
22 Representative Marcella Costa, representing the

1 National Capital Planning Commission. Copies of  
2 today's meeting agenda are available to you and  
3 are located to my left in the wall bin near the  
4 door. Please be advised this proceeding is being  
5 recorded by a court reporter and is also being  
6 webcast live. Accordingly we must ask you to  
7 refrain from any disturbing noises or actions in  
8 the hearing room. When presenting information to  
9 the Board please turn-on and speak into your  
10 microphone first stating your name and home  
11 address. When you are finished speaking please  
12 turn-off your microphone so that your microphone  
13 is no longer picking up sounds or background  
14 noise. All persons planning to testify either in  
15 support or in opposition are to fill out two  
16 witness cards these cards are located to my left  
17 on the table near the door and are also on  
18 witness tables. Upon coming forward to speak to  
19 the Board please give both cards to the court  
20 reporter sitting to my right. The order of  
21 procedures for Foreign Mission Cases is as  
22 follows: 1. Statement of the Applicant and

1 Applicant's Witnesses. 2. Government Reports  
2 including the United States Secretary of State  
3 and the District of Columbia Office of Planning  
4 on behalf of the Mayor. 3. Reports and  
5 recommendations of other public agencies. 4.  
6 Reports of the ANC. 5. Persons in support. 6.  
7 Persons in opposition. Please note that request  
8 for party status in a Chancellery Application are  
9 not applicable because it is a rule making  
10 proceeding. The following time constraints will  
11 be maintained; the Applicant including witnesses  
12 will be given 60 minutes to present its case.  
13 Persons testifying whether in support or in  
14 opposition will be presented 3 minutes each  
15 except for an ANC, these time constraints do not  
16 include time during which questions from the  
17 Board and the Board may place further reasonable  
18 restrictions on or permit additional time for  
19 testimony as it deems appropriate. Because this  
20 is a rule making procedure, there is no parties  
21 and therefore there is no cross examination. The  
22 record will be closed at the conclusion of each

1 case except it will remain open. The record will  
2 be closed at the conclusion of each case except  
3 for any materials specifically requested by the  
4 Board. The Board and the Staff will specify at  
5 the end of each hearing exactly what is expected  
6 and the date when the person must submit this  
7 evidence to the Office of Zoning. After the  
8 record is closed no other information will be  
9 accepted by the Board. The Sunshine Act requires  
10 that a public hearing on each case be held in the  
11 open before the public. The Board may consistent  
12 with its rules and procedures and the Sunshine  
13 Act enter into Executive Session during or after  
14 a public hearing on a case for purposes of  
15 reviewing the record or deliberating on a case.  
16 The decision of the Board in these legislative  
17 proceedings must be based exclusively on the  
18 public record, to avoid any appearance to the  
19 contrary the Board requests that persons present  
20 not engage the members of the Board in  
21 conversation. Please turn off all beepers and  
22 cell phones at this time as to not disturb these

1 proceedings. At this time the Board will  
2 consider any preliminary matters, preliminary  
3 matters relate to whether a case should or will  
4 be heard today such as a request for  
5 postponement, continuance or withdrawal or  
6 whether proper or adequate notice of a hearing  
7 was given. If you are not prepared to go forward  
8 today or you believe that the Board should not  
9 proceed, now is the time to raise such a matter.  
10 Mr. Secretary, do we have any preliminary  
11 matters?

12 MR. MOY: There are no preliminary  
13 matters at this time Madam Chair.

14 CHAIRPERSON MOLDENHAUER: Thank you then  
15 we can call the first case.

16 **Application No. 18162**

17 MR. MOY: The first case would be  
18 Application No. 18162 of the Embassy of the  
19 Republic of Congo, this is pursuant to 11 DCMR  
20 1002, 350.6, and Section 206 of the Foreign  
21 Missions Act to allow the location of a Chancery  
22 in the DC/R5-D District at premises 1720 16<sup>th</sup>

1 Street, N.W., (Square 178, Lot 800). Madam Chair  
2 this is a continued hearing from February 8,  
3 2011.

4 CHAIRPERSON MOLDENHAUER: Thank you the  
5 parties can please step forward.

6 MR. BROWN: Good morning Madam Chair and  
7 Members of the Board, I'm Patrick Brown from  
8 Greenstein, DeLorme and Luchs on behalf of the  
9 Republic of Congo, to my left Ambassador Mombouli  
10 and to my right Emily Eig from Traceries. I'd  
11 like to defer to Mr. Ambassador for some brief  
12 remarks and then quickly focus in on the case and  
13 I think there have been some positive and  
14 substantial developments in the last hour or so  
15 this morning which should make our mission  
16 quicker and simpler, so Ambassador.

17 AMBASSADOR MAMBOULI: Thank you Mr.  
18 Patrick, Madam Chairperson thank you very much,  
19 Members of the Board, good morning and thank you  
20 again for allowing me the opportunity to present  
21 a case of the Republic of Congo. As you know we  
22 have been interested to purchase the building in

1 question on 16<sup>th</sup> Street since October 2010, so the  
2 process has been going on now almost for 6  
3 months, and our interest is still the same,  
4 because of all the direction that we had during  
5 our last hearing when we left here we decided to  
6 withdraw our request for the driveway which was  
7 the argument for opposition (inaudible) who  
8 didn't want to hear about it and with that  
9 consideration however our interest for the  
10 building remains the same we are here today to  
11 redirect that request. You will here a Member of  
12 the Board, Madam Chair, some opposition here but  
13 I think at this point opposition that you hear  
14 here will not be based on the facts, DuPont  
15 Circle Conservancy sent you a letter that I have  
16 a copy here saying that they don't think that the  
17 2 million dollar will not be enough to preserve  
18 the property or to renovate the property, it's  
19 just I think afraid talk because it is not based  
20 on specific argument, it's not based on specific  
21 facts, our number of 2 million dollar for  
22 (inaudible) it's based on the estimate that we

1 requested from a reputable company that are based  
2 here in Washington and have experience in  
3 renovating historical building or other office  
4 building in Washington D.C. So basically the  
5 opposition that you hear from people here will be  
6 based a little bit on emotions but not really on  
7 the facts like I said I will therefore request  
8 that the Board calmly allow us to purchase and  
9 acquire this property, it will be preserved, we  
10 understand that it's an historical building, we  
11 like it that's why we are spending million of  
12 dollars to buy it, we will preserve it and we  
13 will make it even nicer. At this point the  
14 properties vacant, people who purchased it before  
15 already left the property its on short sale  
16 process and that short sale contract is ending  
17 very soon in less than a week so we have kindly  
18 requested that the Board support this  
19 application, approve this application and to  
20 really not consider opposition that are mainly  
21 based on emotions but not facts. Thank you very  
22 much Madam Chair, thank you very much Members of

1 the Board.

2 MR. BROWN: There's certainly no need to  
3 begin where we started, at the conclusion of the  
4 last hearing there were several issues of  
5 remaining outstanding, the first was the driveway  
6 being proposed from Riggs Place, that as you see  
7 on the plans and in the correspondence and in my  
8 supplemental submission has been withdrawn so  
9 that the property, the streetscape of this  
10 property remains in it's existing condition on  
11 Riggs Place and on the 16<sup>th</sup> Street façade no  
12 interference in the improvements that are there  
13 or the metro bus stop or no new curb cuts. The  
14 other historic preservation issue which was being  
15 requested and still is and shown on the plans is  
16 the entrance to the rear parking area from the  
17 alley and I'll defer to Ms. Eig on that issue  
18 specifically and then the last issue was the  
19 question of valet parking for the very limited  
20 special events and diplomatic functions proposed  
21 from the site. This morning I and Mr. Moy and Mr.  
22 Jackson received an email from Jeff Jennings at

1 DDOT indicating that based on the information we  
2 provided for accommodating off street parking for  
3 valet parking events, the DDOT was supporting the  
4 application and then in turn stilling Mr.  
5 Jacksons thunder slightly he has concluded based  
6 on that information that the application is now  
7 in the "municipal interest", again that all  
8 occurred through the offices of email which we  
9 can't escape but we can benefit from sometimes.  
10 So I think unless the Board has other questions  
11 the sole issue that I think worthy of our  
12 attention involves the penetration of the rear  
13 wall and the four parking spaces from the alley.  
14 With that Ms. Eig put a report in to our  
15 supplemental submission but I'll defer to her on  
16 that issue and any questions the Board may have.

17 MS. EIG: Good morning I'm Emily Hotaling  
18 Eig, the report that I put together for your  
19 benefit was based on addressing this issue of the  
20 appropriateness of cutting through the back wall  
21 to create an opening for parking in the rear yard  
22 of the property and in the report which you all

1 have a copy of I understand that there are  
2 photographs that essentially the rear wall is at  
3 the section that is being proposed for  
4 penetration is a new wall, the wall was  
5 constructed in the recent past, it's obvious from  
6 the brick and you can even see that the bricks  
7 have holes in them which is a very contemporary  
8 idea to prove materials, so cutting through that  
9 wall, as I think you know the Historic  
10 Preservation Review Board also did not have a  
11 problem with cutting that opening into the rear  
12 wall. There was a suggestion made of keeping the  
13 rear wall and instead going through the existing  
14 garage door that is on the alley and then cutting  
15 through the garage and while on the surface that  
16 sounds like a good solution, the fact is that the  
17 garage is an original element of the building and  
18 that garage wall that would be cut is original  
19 wall. The garage door that is there is not an  
20 original door, the garage is entered from the  
21 door, was entered from the door that is on the  
22 side street. So if you use the garage door there

1 you would then have to cut through the original  
2 door. It might be better to close off that  
3 garage door and put an opening in the non-  
4 original wall, because you can always build the  
5 wall back but you can't put back the original  
6 material, so that is the basis of that assessment  
7 which was not in my report, because I didn't  
8 consider it as an appropriate solution to the  
9 problem. The parking on the rear yard, the rear  
10 yard there is a photograph there, it has been  
11 landscaped in the fairly recent past and well of  
12 course we prefer not to ever have to park in the  
13 rear yard, we know that there's minimal, this is  
14 the only change that will take place to the  
15 exterior that is not in the pure rehabilitation  
16 of the building and there would be a gate to the  
17 parking and it would keep parking off the street  
18 for this use, so it's not a preservation issue  
19 it's a different issue. So generally that this  
20 makes a much nicer presentation without the  
21 benefit of the new driveway being put in at all,  
22 we have very minimal changes to the exterior of

1 the building and the changes that take place will  
2 not effect any historic fabric.

3 CHAIRPERSON MOLDENHAUER: Do Board  
4 Members have any questions for Ms. Eig or any  
5 other?

6 MR. MAY: Yeah, I'm just looking at the  
7 rear wall I'm a little confused about what I'm  
8 looking at and so on the third page of your  
9 report we have figure one it says view of non-  
10 original rear wall looking northeast so that's  
11 the...

12 MS. EIG: That's the above it printed  
13 out, it's the top picture is the new portion of  
14 the wall, the bottom picture, the caption that  
15 came on page 4 and that's the portion of the wall  
16 that is original, that is to if we looked at the  
17 back would be to the right of that garage door  
18 opening whereas the picture on the top is to the  
19 left.

20 MR. MAY: Got it, okay.

21 MS. EIG: Sorry about that print out.

22 MR. MAY: That's okay, and it looks like

1 there's some sort of an eave that's overhanging  
2 on the top picture and eave that's overhanging  
3 where the entrance gate, where the personnel  
4 entrance gate is, am I understanding that  
5 correctly?

6 MS. EIG: I think its not, if you look at  
7 the lower picture that is the little edge of that  
8 there's that blue...

9 MR. MAY: Oh it's just a garage, a roll  
10 up door or something.

11 MS. EIG: It's just a very, it's right up  
12 against that, it's just painted that blue color  
13 as is the, the gate that's there has been  
14 completely obscured with some kind of a plywood  
15 that's been painted or something like that, so  
16 you can't see into the garage there.

17 MR. MAY: Okay so this, the rear wall is  
18 very recent vintage.

19 MS. EIG: Yes.

20 MR. MAY: Okay and then on page 5; figure  
21 4, where the wall at the rear of the building is  
22 the brown brick to the right and then the north

1 side wall is that red brick that's what borders  
2 the neighbor's property.

3 MS. EIG: Exactly, I was just showing how  
4 they constructed it there and...

5 MR. MAY: Alright and then the last  
6 question is on page 6 non-original east wall.

7 MS. EIG: It's a very, it's just, that's  
8 not being touched at all, just wanted to show  
9 that that's another place, the fact is that  
10 brick, it's hard to see in this photograph but  
11 that was done at some later point, it's just  
12 another...

13 MR. MAY: And that's the little gate  
14 that's to the north of the house at the rear yard  
15 there.

16 MR. EIG: It wouldn't be touched in this  
17 proposal.

18 MR. MAY: Too bad.

19 MS. EIG: Would you like it to be  
20 repaired?

21 MR. MAY: Well the arch there is poorly  
22 done, so.

1 MS. EIG: Yeah it looks like it was not  
2 just built but then repainted at sometime so I  
3 think that would fall under the rehabilitation  
4 rather than the issues that I was looking at.

5 MR. MAY: It's a side note...

6 MS. EIG: Yes the wall is in poor  
7 condition all the way around it really needs to  
8 be attended to.

9 MR. MAY: Okay, then I just had a  
10 question about the valet parking situation you  
11 gave us some information about opportunities for  
12 valet parking, where the vehicles could go at the  
13 various parking lots in the area and maybe I  
14 missed it but I didn't see an indication that  
15 you've added those locations with the valet  
16 companies and they say those could work?

17 MR. BROWN: And we did not do that I think  
18 a point that's developed in my discussion with  
19 Mr. Jennings with DDOT and clearly I think his  
20 preference was the Spanish Rights Temple...

21 MR. MAY: Scottish.

22 MR. BROWN: Scottish rights excuse me, it

1 was referring a Spaniard case before the FMBZA  
2 his preference given proximity was the Scottish  
3 Right facility and through pictures and other  
4 discussion there are at least 33 parking spaces  
5 there, the significance of the Spanish Chancery  
6 case was that the Board acknowledged that as an  
7 off street valet parking venue for valet parking,  
8 whether that would be available on any given  
9 night is something that we would have to look far  
10 and in the future when they're scheduling and  
11 event but I think there are enough resources in  
12 the immediate area. Mr. Jennings made it clear  
13 that whatever permit application was submitted  
14 for valet parking would be judged at that time  
15 based on the specific circumstances so we didn't  
16 think it was necessary or appropriate to go..

17 MR. MAY: Are you aware that whoever's  
18 responsible for the Scottish Right Temples are  
19 actually does this?

20 MR. BROWN: They did it in the case of  
21 the Spanish..

22 MR. MAY: They agreed to it, was that

1 part of the case?

2 MR. BROWN: Yes it was referenced in the  
3 decision that that was one of the available  
4 parking resources whether it would be used on any  
5 given time we...

6 MR. MAY: Just so we know that there is  
7 some willingness on the part of the people  
8 responsible for that parking lot to engage in  
9 some kind of an arrangement.

10 MR. BROWN: That was the understanding in  
11 the earlier Spanish case as well as with DDOT.

12 MR. MAY: Alright, thanks.

13 CHAIRPERSON MOLDENHAUER: Any additional  
14 questions from Board Members?

15 MR. BROWN: And I think through the first  
16 hearing as well as this morning we've gone  
17 through the six criteria and effectively  
18 satisfied all six. I would like to conclude with  
19 a point that Mr. Ambassador made is that the  
20 short sale window of opportunity for this  
21 property is about to close I believe on the 11<sup>th</sup>,  
22 which is Friday, so that in keeping with the

1 Boards commitment earlier we'd like to take  
2 advantage for the opportunity for a bench  
3 decision today so that the short sale opportunity  
4 is not lost and the other implications for the  
5 property and for the Republic of Congo.

6 CHAIRPERSON MOLDENHAUER: At this point  
7 I'm just going to turn to see if there are any  
8 additional comments based on the revisions from  
9 the U.S. Secretary of State if there aren't we  
10 don't need to call you I just want to make sure  
11 to give everyone an opportunity. I'll now turn  
12 to the Office of Planning to see if there's any  
13 additional updated submissions that they need to  
14 present.

15 MR. JACKSON: Madam Chair thank you, my  
16 name's Arthur Jackson of the Office of Planning,  
17 I just wanted to step through our earlier support  
18 to highlight the issues that have been updated  
19 with respect to submissions and actions on the  
20 part of the Applicant, initially we said that we  
21 could not make a recommendation at that time  
22 because we needed more complete information about

1 provisions of off street parking for events at  
2 this location in light of what the Department of  
3 Transportation indicated in their email and in  
4 conversations with the Office of Planning they  
5 are satisfied that there are available resources  
6 identified and that the Applicant going through a  
7 licensed vendor for valet parking did have  
8 potential to find locations for parking for their  
9 events. The Applicant also indicated that  
10 instead of the 12 events that previously had been  
11 indicated there will be 2 to 3 a year for up to  
12 50 people so that addressed the issue of off  
13 street parking for those events. In terms of the  
14 explanations of the criteria not previously  
15 addressed in the 1002 of the Zoning Regulations  
16 the Representative of the Department of State  
17 addressed those issues during the last hearing in  
18 terms of modifying the plans to address concerns  
19 mentioned by the Historic Preservation Office the  
20 Applicants have made the changes necessary to  
21 address those concerns. In light of all of that  
22 and the fact that the Department of

1 Transportation is satisfied that the parking  
2 issue could be addressed we can now make a  
3 recommendation that in line with this application  
4 being consistent with the municipal interest with  
5 regard to both the use and the proposed changes  
6 that have been presented and so we recommend  
7 approval at this time.

8 CHAIRPERSON MOLDENHAUER: Thank you very  
9 much do Board Members have any questions for the  
10 Office of Planning or Mr. Jackson? Seeing none  
11 thank you for your updated report. Are there any  
12 other individuals in the audience from any  
13 government agencies that would need to present?  
14 I don't see anybody, is there anybody present  
15 from the ANC that would like to present testimony  
16 based on the changes that have occurred? Seeing  
17 none, are there any individuals in support or in  
18 opposition of this case? Seeing one individual  
19 if you could step forward. You will be proved  
20 three minutes.

21 MR. BOWER: Good morning Madam Chair and  
22 Members of the Commission, I'm Tom Bower, I'm

1 Vice President of the DuPont Circle Conservancy,  
2 first we do want to thank the Ambassador and the  
3 Republic of Congo for the changes that they've  
4 made up to now we greatly appreciate that things  
5 have been dramatically improved since the first  
6 application. In the interest of time most of the  
7 statements we've heard you've repeated so I'm not  
8 going to repeat them. Our concern is primarily  
9 about the future and the membership of the  
10 organization has a number of architects and real  
11 estate professionals and one of the things you  
12 know if you live in the Soric House is it's an  
13 open ended wallet and we were not aware that the  
14 estimate was professionally based on a 2 million  
15 dollar expense but among their general concern  
16 was that might, or might not be adequate so that  
17 was as much a caution to the purchaser that these  
18 homes are wonderful and that home is particularly  
19 wonderful but if you even walk by it, it needs a  
20 tremendous amounts of work, so if there are  
21 professional estimates that seem to belay the  
22 concern we wish the Republic of Congo all the

1 best but we have to add that caution, we remain  
2 opposed just because we think that it will be a  
3 major problem.

4 CHAIRPERSON MOLDENHAUER: Anything  
5 further?

6 MR. BOWER: No.

7 CHAIRPERSON MOLDENHAUER: Thank you very  
8 much Mr. Bower for coming down. That being said  
9 then at this point in time there are no  
10 additional individuals in the audience and so we  
11 will conclude this hearing and we will enter into  
12 deliberation. I will start us off, we have our  
13 criteria under 206D of the Foreign Missions Act  
14 and this case is to, I'll review that, we have  
15 criteria one which addresses whether or not the  
16 Foreign Mission assists the U.S. Government in  
17 maintaining a diplomatic relationship with  
18 international communities, we had a testimony  
19 from the U.S. Secretary of State that they are in  
20 support of that and so we rely upon that and move  
21 forward. Next our second criteria is determining  
22 whether or not there's any effect or aspect of

1 this property which would effect the historic  
2 preservation for the District of Columbia and  
3 that aspect we look to the Office of Planning,  
4 we've looked to HPO in their reports, we've heard  
5 testimony from Ms. Eig and I think that in my  
6 opinion the removal of the initial curb cuts and  
7 the front drive way is a huge aspect in regards  
8 to alleviating a lot of the concerns in that  
9 regard, then the second question would be  
10 potentially the new entrance into the rear of the  
11 property, while I do think that it does, it's a  
12 loss to lose that rear garden area for historic  
13 preservation purposes I don't think that based on  
14 testimony we've heard today in reviewing the  
15 record from HPO and from the other submissions we  
16 have it arises to a level where it would be  
17 something where it would potentially stop us from  
18 being able to support the application. Next we  
19 look at the question of adequacy of parking and  
20 we look to the Secretary of State for that issue  
21 and there's no concerns for security purposes for  
22 parking that was something initially discussed in

1 regards to the potential driveway issue but that  
2 was not something that there was any issue with  
3 and so we then another question which has kind of  
4 come up under the issue of parking has been the  
5 issue for valet parking and we've heard testimony  
6 today both from the Office of Planning relaying  
7 information from DDOT and that agency that they  
8 are satisfied with the current submission and  
9 that the applicant will look towards providing  
10 valet parking at locations such as the S.  
11 Scottish Right, we did have some questions from  
12 Board Members trying to see if the Embassy of  
13 Congo, or the Republic of Congo has kind of gone  
14 into some additional questioning with valet  
15 companies or with the Scottish Right, they  
16 haven't but it seems as though we're relying upon  
17 the fact that at least it's there and that  
18 there's an update potentially about 33 parking  
19 spaces there to provide sufficient valet parking.  
20 That being said we then look to the extent to  
21 which the area is capable of providing adequate  
22 protection, and we look to the U.S. Department of

1 State and heard testimony and that criteria is  
2 satisfied, we then look to the municipal interest  
3 as determined by the Mayor and we look to the  
4 Office of Planning and as we just heard from Mr.  
5 Jackson with his revised in additional  
6 deliberation and discussion that that is  
7 satisfied and then we look to the Federal  
8 interest as determined by the Secretary of State  
9 and we have written submissions and we had oral  
10 statements indicating that they were in support.

11 That being said we have heard some level of  
12 opposition to this case both at the prior hearing  
13 and at this hearing including the recent  
14 discussion from Mr. Bower the DuPont Circle  
15 Conservancy and other local organizations about  
16 their concerns. While I wholly agree with the  
17 issue of living in an old house costs money, I  
18 live in a 133 year old house and I know it costs  
19 money but I think, unfortunately it's not  
20 something that we have the ability to evaluate a  
21 case on. I definitely loving my city and I know  
22 that the Republic of Congo will love being in the

1 city as well and we'll take care of this  
2 beautiful historic property to the best of their  
3 ability we can't look at that as a factor in  
4 evaluating a case like this. That being said I  
5 think that a lot of the other concerns that are  
6 in the record have been adequately addressed in  
7 regards to the fact that the withdrawal of the  
8 driveway and based on the support of Historic  
9 Preservations and support of OP so that being  
10 said I see no issue with this application and I  
11 would be in support of not disapproving this  
12 case. I'll open up the floor to any additional  
13 deliberation.

14 MR. MAY: I would agree Madam Chair with  
15 your analysis across the Board, I would say that  
16 the issue of the ongoing, or the future  
17 renovation and then ongoing maintenance of the  
18 property is a question of municipal interest but  
19 we look to the Office of Planning to make the  
20 determination about whether they are comfortable  
21 proceeding with this and since they're  
22 recommending approval I don't see any reason why

1 we would not. I would just want to register my  
2 own concern that not knowing anything about the  
3 condition of the building 2 million may not be  
4 adequate I mean this is a very large building it  
5 looks like it's in the neighborhood of 10,000  
6 square feet, 2 million dollars, 200 dollars a  
7 square foot for a major renovation if that's  
8 what's in store 200 dollars a square foot isn't  
9 going to be enough, now maybe its mostly exterior  
10 work and then inside is less significant, I just  
11 would want to express my own concern that I t  
12 just doesn't sound, like it's a generous budget  
13 and I would be concerned about whether your going  
14 to have enough to do it with that amount of  
15 money, again not knowing the scope it may be  
16 plenty of money, I'll just register that. Again,  
17 it all goes back to the Office of Planning and  
18 what they have to say and since they believe this  
19 is in the municipal interest I think that's the  
20 threshold that had to be met. So that's it  
21 otherwise I would agree with your analysis and  
22 would support not disapproving this, is that the

1 right wording, whatever it is.

2 CHAIRPERSON MOLDENHAUER: Yes, any other  
3 individuals want to weigh in on this case seeing  
4 none then I would support a motion to not  
5 disapprove Application No. 18162 on behalf of the  
6 Embassy of the Republic of Congo, motion has been  
7 made is there a second?

8 MR. ACOSTA: Second.

9 CHAIRPERSON MOLDENHAUER: Motion has been  
10 made and seconded, all those in favor say aye.

11 CHORUS: Aye.

12 MR. MOY: Staff would record the vote as  
13 4 to 0 to 1; this is on the motion of Ms.  
14 Moldenhauer the Chairperson to not disapprove  
15 Application No. 18162 of Humberto T. Gonzalez and  
16 Francisco H. Gonzalez on behalf of the Embassy of  
17 the Republic of Congo, seconded motion Mr.  
18 Acosta, in support of the motion Ms. Sorg and Mr.  
19 Peter May, no other Board Members are  
20 participating, again the final vote is 4 to 0 to  
21 1.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy and seeing that there was no formal  
2 opposition I think we can have a summary order be  
3 issued, no summary orders? Okay, so...

4 MS. NAGELHOUT: It's a rule making so  
5 I'll direct a notice of the usual order.

6 CHAIRPERSON MOLDENHAUER: Just trying to  
7 make sure that we provide it as timely as  
8 possible, thank you, thank you very much.

9 **Morning Session**

10 CHAIRPERSON MOLDENHAUER: This hearing  
11 will please come to order, good morning ladies  
12 and gentleman, this is the March 8, 2011, Public  
13 Hearing of the Board of Zoning Adjustments for  
14 the District of Columbia, my name is Meredith  
15 Moldenhauer, Chairperson, joining me today to my  
16 left is the Vice Chair Nicole Sorg,  
17 Representative of the Zoning Commission is Conrad  
18 Schlater to her left and to my right is Jeffrey  
19 Hinkle, Representative of the National Capital  
20 Planning Commission. Copies of today's meeting  
21 agenda are available to you and are located to my  
22 left in the wall bin near the door. Please be

1 advised this proceeding is being recorded by a  
2 court reporter and is also being webcast live.  
3 Accordingly we must ask you to refrain from any  
4 disturbing noises or actions in the hearing room.  
5 When presenting information to the Board please  
6 turn-on and speak into your microphone first  
7 stating your name and home address. When you are  
8 finished speaking please turn-off your microphone  
9 so that your microphone is no longer picking up  
10 sounds or background noise. All persons planning  
11 to testify either in support or in opposition are  
12 to fill out two witness cards these cards are  
13 located to my left on the table near the door and  
14 are also on witness tables. Upon coming forward  
15 to speak to the Board please give both cards to  
16 the court reporter sitting to my right. The order  
17 of procedures for special exceptions and  
18 variances are as follows: 1. Statement of the  
19 Applicant and Applicant's Witnesses. 2. Parties  
20 and persons in support. 3. Parties and persons in  
21 opposition. 4. Government Reports including  
22 Office of Planning and Department of

1 Transportation. 5. Reports from the ANC. 6.  
2 Rebuttal and closing statements of the Applicant.  
3 Pursuant to Section 3117.4 and 3117.5 the  
4 following time constraints will be maintained,  
5 the Applicant/Appellant persons and parties  
6 except an ANC in support including their  
7 witnesses will be given 60 minutes collectively.  
8 The Appellees persons and parties except an ANC  
9 in opposition including witnesses will be given  
10 60 minutes collectively. Individuals will be  
11 given 3 minutes and associations or organizations  
12 will be given 5. These time restrictions do not  
13 include cross examinations or questions from the  
14 Board. Cross examination of witnesses is  
15 permitted by a party or an Applicant. The ANC  
16 within which the property is located is  
17 automatically a party to a special exception or  
18 variance case. Nothing prohibits the Board from  
19 placing reasonable restrictions on cross  
20 examination including time limitations or  
21 limitation on the scope of cross examination.  
22 The record will be closed at the conclusion of

1 each case except for any materials specifically  
2 requested by the Board. The Board and the Staff  
3 will specify at the end of each hearing exactly  
4 what is expected and the date when the material  
5 must submitted to the Office of Zoning. After the  
6 record is closed no other information will be  
7 accepted by the Board. The Sunshine Act requires  
8 that a public hearing on each case be held in the  
9 open before the public. The Board may consistent  
10 with its rules and procedures and the Sunshine  
11 Act enter into Executive Session during or after  
12 a public hearing on a case for purposes of  
13 reviewing the record or deliberating on a case.  
14 The decision of the Board as in these contested  
15 cases must be based exclusively on the public  
16 record, to avoid any appearance to the contrary  
17 the Board requests that persons present not  
18 engage the members of the Board in conversation.  
19 Please turn off all beepers and cell phones at  
20 this time as to not disturb these proceedings.  
21 At this time the Board will consider any  
22 preliminary matters, preliminary matters relate

1 to whether a case should or will be heard today  
2 such as a request for postponement, continuance  
3 or withdrawal or whether proper or adequate  
4 notice of a hearing was given. If you are not  
5 prepared to go forward today or you believe that  
6 the Board should not proceed, now is the time to  
7 raise such a matter. Mr. Secretary, do we have  
8 any preliminary matters?

9 MR. MOY: Not at this time Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you, then  
11 all individuals wishing to testify today please  
12 stand and take the oath.

13 MR. MOY: Do you solemnly swear or affirm  
14 that the testimony you're about to present at  
15 this preceding is the truth, the whole truth and  
16 nothing but the truth. You may consider yourself  
17 under oath.

18 CHAIRPERSON MOLDENHAUER: Thank you very  
19 much Mr. Moy and we can all our first case.

20 **Application No. 18177**

21 MR. MOY: That would be Application No.  
22 18177, of Kevin and Kristie Hassett, pursuant to

1 11 DCMR 1515.1 and 3104.1 for a special exception  
2 to allow a one story rear addition to an existing  
3 one family detached dwelling, not meeting the lot  
4 occupancy requirements under (Subsection 1513.1)  
5 in the TSP/R-1-B District at premises 2811 34<sup>th</sup>  
6 Place, N.W. property is located in (Square 1941,  
7 Lot 7), there is a request for proponent party  
8 status request Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Thank you very  
10 much, if the Applicant can step forward, okay you  
11 still have to take a seat and introduce yourself  
12 by turning on your microphone.

13 MS. HASSETT: Kristie Hassett, 2811 34<sup>th</sup>  
14 Place, N.W. Washington, D.C. 20007.

15 CHAIRPERSON MOLDENHAUER: And is Daniel  
16 Witt in the audience? Seeing that he is it's a  
17 preliminary matter that we received a party  
18 status request if he's not present we then would  
19 not be able to consider that but it's proponent's  
20 application so that's really not that crucial.  
21 Okay Ms. Hassett we would then turn to you and  
22 you can either present information if you would

1 like to stand on the record.

2 MS. HASSETT: I would like to stand on  
3 the record.

4 CHAIRPERSON MOLDENHAUER: So that being  
5 said then I'll turn to the Board to see what  
6 questions any Board Members have regarding the  
7 application of the Applicant.

8 MR. SCHLATER: Good morning Ms. Hassett,  
9 I think the record is pretty full in this case  
10 and you've submitted a good package here and  
11 you've got the support of your neighbors and I  
12 don't think there are a lot of objections here.  
13 I do have one question about the tree and slope  
14 overlay requirements there's additional burden  
15 that needs to be demonstrated specifically that  
16 the Applicant shall demonstrate that there are  
17 specific physical characteristics of the lot that  
18 justified the exception. Can you explain what  
19 are the physical characteristics of the lot that  
20 necessitate relief here?

21 MS. HASSETT: It's my understanding that  
22 our architect wants to put the addition out about

1 three feet on footers because we do have an  
2 existing concrete patio slab that no one knows  
3 the structural integrity of, there are no trees  
4 coming down and the grade will not change and he  
5 wants to do that to make sure that in fact there  
6 is solid support for it.

7 MR. SCHLATER: And I don't know if  
8 there's more to say on it, I just question  
9 whether that relates to the specific physical  
10 characteristics of the lot itself I mean that  
11 speaks to the foundation of the building and the  
12 patio and whether or not there's structural  
13 support there, I think that's for us to discuss  
14 up here and determine if that's sufficient.

15 CHAIRPERSON MOLDENHAUER: I share that  
16 same concern as you do and so I'm just looking at  
17 the lot and seeing is there anything else in your  
18 view that would identify the property as having  
19 any special physical characteristics?

20 MS. HASSETT: The only thing that I can  
21 say is that the addition I'm not sure what your  
22 talking about in terms of what you mean by the

1 characteristics of the lot, there are no trees  
2 coming down, there is no sloping change, the  
3 addition would not go back beyond the existing  
4 back wall of our kitchen, I don't know what to  
5 add on top of that, there would be no impact on  
6 the neighbors or anything impacting the trees or  
7 the slope of our ground.

8 MR. SCHLATER: Ms. Hassett I think I  
9 agree that this would not have an impact on your  
10 adjacent neighbors and if this were a straight up  
11 and down special exception review I don't think  
12 we'd have a problem, there are these additional  
13 requirements that we are required to consider  
14 when looking at an application and when we talk  
15 about the lot, we're not talking about the  
16 building, we're talking about the characteristics  
17 of the piece of land that you own and whether  
18 there's anything abnormal about it that would  
19 justify the exception.

20 MS. HASSETT: I don't think that we would  
21 be able to do the addition without the extra  
22 supports, I don't know, my architect is not here

1 he's working in Haiti right now and it was my  
2 understanding that he thought this would satisfy  
3 the requirements.

4 MS. SORG: I think maybe one of the ways  
5 that we can learn a little bit more about this  
6 and the discussions that you've had with your  
7 architect regarding the structural issues that  
8 your bringing up and how that may or may not be  
9 connected with the specific characteristics of  
10 the existing property. Maybe if you just go  
11 through a little bit of what's there now and how  
12 you're using the existing condition in your  
13 addition.

14 MS. HASSETT: Do you mean the existing  
15 space right now there are simply, it's an empty  
16 patio at the moment it's not being used. The  
17 ground there, there are no plantings around it,  
18 I've had them all moved, there are no trees  
19 coming down, there is no grading change, our  
20 neighbors do not object in fact have letters of  
21 not a position, the ANC does not object this will  
22 bring us back to the level with the back of our

1 kitchen, there is no, there is nothing on the lot  
2 that would be destroyed or harmed, I understand  
3 that we're in a special zone with respect to  
4 trees and parkland and that's why I understand  
5 that we have to get the special exemption and  
6 nothing is happening, there's no trees coming  
7 down.

8 CHAIRPERSON MOLDENHAUER: Do either Board  
9 Member have any additional questions for the  
10 Applicant?

11 MR. SCHLATER: One question, just on the  
12 grade of the lot, it looks like as you exit the  
13 rear of your home it slopes away, down.

14 MS. HASSETT: There is a slight grade, it  
15 is not steep, but yes I think that's true if you  
16 put a marble there I think it might roll in that  
17 direction if you gave it a little push. It's my  
18 understanding that our contractor intends to use  
19 the existing drainage and will not make any  
20 changes to the downspouts.

21 MR. HINKLE: So in terms or construction  
22 there's a limit on the effect of the topography,

1 as you mentioned you're not tearing down trees...

2 MS. HASSETT: No in fact we limited it,  
3 there's a very large Crepe Myrtle which is  
4 intentionally not being touched and we had some  
5 lilac bushes which I've moved, so there's really  
6 no plants that are coming down.

7 MR. HINKLE: Thank you.

8 MR. SCHLATER: Was there any  
9 consideration given to moving the brick slab, the  
10 patio?

11 MS. HASSETT: We were hoping to avoid  
12 that because of the cost and also just disturbing  
13 the general foundation of the house that we could  
14 just build this over it without disturbing.

15 MR. SCHLATER: So that, can you describe  
16 what's going on underneath that.

17 MS. HASSETT: No body is sure what's  
18 going on underneath that, there is no room under  
19 there it is simply ground, but the structural  
20 condition of it was something that we were just  
21 hoping to avoid getting close to our foundation.

22 MR. SCHLATER: Understand, there's a

1 possibility that it's integral to your  
2 foundation?

3 MS. HASSETT: I would assume so it's also  
4 brick and it's, I don't know if this is the right  
5 word, seamless.

6 MR. SCHLATER: That sounds right. Okay  
7 no further questions thank you.

8 CHAIRPERSON MOLDENHAUER: Any other  
9 questions from Board Members. That being said  
10 then at this point in time I'll look to see if  
11 there's any individuals in the audience in  
12 support, seeing none I will reference that we do  
13 have a couple of letters in our record indicating  
14 support of the Applicant from neighboring  
15 properties. In addition to that are there any  
16 individuals in the audience in opposition to this  
17 case? Seeing none we'll then turn to the Office  
18 of Planning for their report.

19 MR. MORDFIN: Good morning Madam Chair,  
20 Members of the Board, I'm Stephen Mordfin with  
21 the Office of Planning, and the subject  
22 application is in conformance with the criteria

1 for the granting of the special exception to  
2 increase the lot occupancy because no tree  
3 removal, grading or topographical changes are  
4 proposed and the specific characteristics of the  
5 lot is that the Applicant is unable to determine  
6 the condition of the concrete slab that is  
7 attached to the rear of the dwelling and instead  
8 proposes to construct a new foundation bridging  
9 over the existing slab to support the new room.  
10 The proposed addition would be generally  
11 consistent with the TSP overlay because it would  
12 not effect any trees, alter topography, or  
13 adversely effect parkland or trees and  
14 neighboring property owners have submitted  
15 letters to the file in support of the application  
16 and the application included a site plan for  
17 development, therefore the Office of Planning  
18 recommends that the subject application be  
19 approved, thank you.

20 CHAIRPERSON MOLDENHAUER: Thank you does  
21 the Applicant have any questions of the Office of  
22 Planning?

1 MS. HASSETT: No.

2 CHAIRPERSON MOLDENHAUER: Do any Board  
3 Members have any specific questions for the  
4 Office of Planning?

5 MR. SCHLATER: Sure, Mr. Mordfin do you  
6 think that rear deck and foundation system  
7 qualifies as a specific characteristic of the  
8 lot?

9 MR. MORDFIN: I thought it does qualify  
10 because it is an improvement to the lot that must  
11 be dealt with and anything that happens to this  
12 piece of property, so it was constructed there at  
13 one time, it is still there, so it has become  
14 part of the lot, it's not part of the shape or  
15 the size of the lot but it's an improvement to  
16 the lot that permanently effects to it, so  
17 therefore I do think it is a specific  
18 characteristic.

19 MR. SCHLATER: You wouldn't think that  
20 you should just remove that; I mean if it were  
21 removed then you wouldn't have the problem,  
22 correct?

1 MR. MORDFIN: That is correct but it is  
2 also attached to the dwelling and they were going  
3 to build above it so...

4 MR. SCHLATER: Okay thank you.

5 CHAIRPERSON MOLDENHAUER: Are there any  
6 other physical aspects of the lot that  
7 potentially we could look at to satisfy this  
8 prong?

9 MR. MORDFIN: In reference to you mean  
10 like the site, the shape or the size, or the  
11 topography?

12 CHAIRPERSON MOLDENHAUER: The shape, or  
13 the size or the topography or any other physical  
14 aspects?

15 MR. MORDFIN: I don't think there are any  
16 other physical aspects of this property are  
17 unusual, I think it's rectangular relatively  
18 level lot, not completely level as was discussed  
19 but I think it's other than that I think the  
20 shape and size of the property is typical.

21 CHAIRPERSON MOLDENHAUER: No trees will  
22 be removed at all in this design.

1 MR. MORDFIN: That is my understanding.

2 CHAIRPERSON MOLDENHAUER: Okay, I have no  
3 other questions of the Office of Planning do any  
4 other Board Members have any questions for the  
5 Office of Planning? Seeing none then we'll turn  
6 to the ANC, is anybody present from ANC 3-C?  
7 Seeing no one I will indicate we have "Exhibit  
8 No. 26" in our record which indicates that at a  
9 duly called public meeting with a quorum present  
10 of 9, 5 of 9 Commissioners the ANC 3-C submitted  
11 a resolution that they have no objection to the  
12 application, that resolution satisfies our  
13 standard and will receive great weight. That  
14 being said we'll turn back to the Applicant for  
15 any closing remarks.

16 MS. HASSETT: I certainly agree with what  
17 the Office of Planning proposes with respect to  
18 considering what the lot actually is.

19 CHAIRPERSON MOLDENHAUER: Any follow up  
20 questions for the Applicant? Seeing none then  
21 are there any additional submissions that any of  
22 the Board Members would like to see? No, then

1 thank you and this would conclude the hearing and  
2 we'll enter into deliberation. We have, I'll  
3 start us off, a fairly straight forward 223 case  
4 the only unique aspect of this case is that it's  
5 also in the Tree and Slope Protection Overlay  
6 District as I think has been kind of parsed out  
7 by some of our Board Members including Mr.  
8 Schlater, so in general under the 223 standard I  
9 really see no issue with this case in regards to  
10 the addition, the question is the special  
11 exception under the Section 1515.1 and so the  
12 question then is does the Applicant satisfy the  
13 special exception standard under 1515, and so we  
14 look at the issue of are there any trees that are  
15 being removed, any changes in the grading or the  
16 topography and both the Applicant submission and  
17 the Office of Planning indicate that there is no  
18 changes or removal of any trees, this is being  
19 built on top of a concrete slab that preexists  
20 and then the second question is the more  
21 challenging decision is has the Applicant  
22 demonstrated that there's any specific character,

1 physical characteristics of the lot that justify  
2 the exception. I think here there's a very  
3 dominimus exception that's being made because  
4 there are no changes to any of the trees or  
5 slopes or topography thus the minimal condition  
6 of the fact that there's a concrete slab here I  
7 think satisfies then this limited justification  
8 for an exception because there's really no  
9 exceptions as to the fact that there's no trees  
10 that are going to be removed or a grade that's  
11 going to be changed. Also the excepted building  
12 and overall site plan of the lot shall be  
13 generally consistent with the purpose of the TSP  
14 Overlay District and the Office of Planning and  
15 the Applicant submits that they are, and the  
16 Board may impose reasonable requirements and I  
17 don't think any potential reasonable requirements  
18 that we could implement not that would be  
19 required to further the TSP Overlay. That being  
20 said I'll look to any further Board Members for  
21 any additional deliberation.

22 MS. SORG: Thank you Madam Chair, I agree

1 with your analysis and I think you've gone  
2 through the merits of the case fully. Just to  
3 mention, you know, reiterate your point that the  
4 relief that's being requested here is dominimus  
5 and also I think through the testimony that we  
6 heard from the Applicant and OP today I think  
7 that questions I had regarding the second section  
8 of 1515 I think have been discussed to my  
9 satisfaction to support the application.

10 CHAIRPERSON MOLDENHAUER: That being said  
11 is there any further deliberation from any Board  
12 Members, seeing none I will submit a motion, a  
13 motion to approve Application No. 18177 pursuant  
14 to 11 DCMR 1515.1 and 3104.1 for a special  
15 exception to allow a one story rear addition to  
16 an existing one family detached dwelling not  
17 meeting the lot occupancy required under  
18 (Subsection 1513.1) in the TSP R-1-B District at  
19 premises 2811 34<sup>th</sup> Place, N.W. a motion has been  
20 made is there a second?

21 MS. SORG: Second.

22 CHAIRPERSON MOLDENHAUER: A motion has

1 been made and seconded, all those in favor say  
2 aye.

3 CHORUS: Aye.

4 MR. MOY: Staff would record the vote as  
5 4 to 0 to 1, this on the motion of the  
6 Chairperson Ms. Moldenhauer to approve  
7 Application No. 18177 for the special exception  
8 relief as cited by the Chair, seconded by Ms.  
9 Sorg, also in support of the motion Mr. Hinkle  
10 and Mr. Schlater, no other Board Members are  
11 participating. Again the final vote is 4 to 0 to  
12 1.

13 CHAIRPERSON MOLDENHAUER: Thank you very  
14 much Mr. Moy and seeing that we have no  
15 opposition in that case I'd like to waive our  
16 requirements and that a summary order be issued.

17 MR. MOY: Very good thank you Madam  
18 Chair.

19 **Application No. 18178**

20 MR. MOY: The next application for Board  
21 Action is Application No. 18178 of Elenora  
22 Giddings Ivory, pursuant to 11 DCMR 3104.1 for a

1 special exception to allow a rear addition to an  
2 existing one family detached dwelling under  
3 Section 223, not meeting the rear yard, Section  
4 404 requirements in the R-1-B District. This is  
5 at premises 3630 13<sup>th</sup> Street, N.E. property is  
6 located in (Square 3927, Lot 25).

7 CHAIRPERSON MOLDENHAUER: Good morning,  
8 if when you take a seat you can turn on your  
9 microphone and you can both introduce yourselves  
10 for the record.

11 MS. GIDDINGS-IVORY: I'm Elenora Giddings  
12 Ivory and I reside at 3630 13<sup>th</sup> Street, N.E.

13 MR. GIDDINGS: Edward Giddings and I  
14 reside at 7503 in Ft. Washington, MD.

15 CHAIRPERSON MOLDENHAUER: Thank you both  
16 and at this point in time we can turn to you to  
17 either present your case or if you'd like you can  
18 rest on the record as we have it before us.

19 MS. GIDDINGS IVORY: I'd like to rest on  
20 the record but I'd also like to say we're kind of  
21 anxious to get going, it's an old house and we'd  
22 like to get going. I'd be happy to answer

1 questions, I did give some additional information  
2 that shows the way that the addition is to be  
3 drawn and an email that was sent from one of my  
4 abutting neighbors, he sent it originally I think  
5 to the wrong email address so I made a copy.

6 CHAIRPERSON MOLDENHAUER: Thank you, yes  
7 we have received those in our submissions Do any  
8 Board Members have any questions for the  
9 Applicant?

10 MR. HINKLE: Thank you Ms. Ivory, I was  
11 hoping you could just tell the story in terms of  
12 what has occurred and how you got the permit and  
13 how you learned that you were short in terms of  
14 the rear yard, and how you discovered that.

15 MS. GIDDINGS IVORY: Okay well be began  
16 the building with the demolition of the old part  
17 of it which had these nails in it, I brought this  
18 so you could see how old the house was. The  
19 kitchen was really small in a large house and I  
20 needed a kitchen that's larger, I have family  
21 events there, so we went to an architect and had  
22 the plans drawn up and the architect put on the

1 plans that required 20 feet or proved it was plus  
2 or minus 22 feet. We took the plans through the  
3 whole process with the permit office stamps along  
4 the way and these are the plans here, and so if  
5 you have the pictures you will see that it has  
6 been constructed outside, so from the outside it  
7 looks complete. When we went to get the wall  
8 check it was discovered that because of rear  
9 property wall not being even and because of the  
10 amount of line that was given on the plans we  
11 were short, it was at that point going to the  
12 permit office that we discovered that it should  
13 have been 25 feet and not 20 feet as was put on  
14 the plans. So the wall check indicated that we  
15 weren't at the 22.10 as you can see on the plans.

16 So it was just to build an extension from the  
17 original house out 12 feet 4 inches and at that  
18 point we discovered that it was too short, the  
19 original house was too short which we discovered  
20 also in the process. But the house has been  
21 there longer than most of the houses around it.  
22 The person who built the house was Ebenezer

1 Southall in 1900 and he just chopped off pieces  
2 of it and other people took pieces of it. The  
3 wall check company discovered that almost no  
4 properties on that block have actual markers.  
5 Also earlier in the summer Otis Street was  
6 widened which also changed things so it's a  
7 series of mishaps I'll say. The addition does  
8 not in any way impinge on my existing driveway or  
9 the neighbors. The neighbors are happy with  
10 what's there and they want to enjoy it as much as  
11 I will enjoy it, does that help you?

12 MR. HINKLE: That does, thank you, so you  
13 originally you thought that you had the correct  
14 space in terms of the required rear yard and on  
15 further investigation you discovered the line  
16 actually was not where you thought it was.

17 MS. GIDDINGS IVORY: It's a shock to me  
18 and some of my of neighbors who want to put up  
19 new fences, are a little concerned about where  
20 their property ends and starts as well.

21 MR. HINKLE: Sure, thank you.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Hinkle it was a very help question. Do  
2 any other Board Members have any other questions  
3 for the Applicant? Seeing none, thank you. Then  
4 at this time I will look to see if there are any  
5 individuals in the audience in support or in  
6 opposition of this case? Seeing none, I'll just  
7 reference that we do have letters of support in  
8 the record. Are there any individuals in  
9 opposition of this case? Seeing none, I'll turn  
10 to the Office of Planning for their report.

11 MS. JACKSON: Good morning Chair, Members  
12 of the Board, for the record my name is Arlova  
13 Jackson with the Office of Planning, I'm happy to  
14 stand on the record and just state that the  
15 Office of Planning recommends approval of the  
16 request and find that it meets all the standards  
17 found within Section 223, and I'm happy to take  
18 any questions you have.

19 CHAIRPERSON MOLDENHAUER: Thank you very  
20 much; does the Applicant have any questions for  
21 Ms. Jackson?

22 MS. GIDDINGS IVORY: Just wondering when

1 we can get started again.

2 CHAIRPERSON MOLDENHAUER: Do Board Members  
3 have any questions for the Office of Planning?  
4 Seeing none then at this time I turn to see if  
5 there's anybody in the audience from the ANC?  
6 Seeing no one in the audience from the ANC-5-A, I  
7 don't believe we have anything in our report from  
8 the ANC.

9 MS. GIDDINGS IVORY: I did talk to  
10 Carolyn Steptoe who is the Commissioner for the  
11 ANC and she had no difficulty, I have emails that  
12 went back and forth between she and myself and  
13 she felt comfortable with what was going on  
14 especially since my abutting neighbors have no  
15 problems.

16 MR. HINKLE: And she's seen this, you're  
17 like 80% constructed or so is that correct?

18 MS. GIDDINGS IVORY: She knew exactly  
19 which house is mine because I usually have a flag  
20 outside, and she said or you're the house with  
21 the flag.

22 MR. HINKLE: But she's seen the addition

1 as constructed so far?

2 MS. GIDDINGS IVORY: Yes.

3 MR. HINKLE: Okay, thank you.

4 CHAIRPERSON MOLDENHAUER: Thank you,  
5 we'll take your oral statement but obviously we  
6 cannot provide the ANC great weight in that  
7 regard so but I appreciate you providing us the  
8 additional information that you have been in  
9 contact with the ANC and that they are aware of  
10 this and have no objections, because they didn't  
11 submit anything on the record. That being said  
12 then at this point in time we turn back to the  
13 Applicant for any closing remarks.

14 MS. GIDDINGS IVORY: No closing remarks,  
15 thank you for this time.

16 CHAIRPERSON MOLDENHAUER: You're very  
17 welcome. At this point then we'll enter into  
18 deliberation on this case, this is a 223 for a  
19 relief of a rear yard 25 feet is the requirement,  
20 there's only 22.1 here as we heard testimony from  
21 the Applicant and we have in our record the fact  
22 that that was a surprise and that obviously they

1 initially thought that the property was  
2 sufficient providing the required rear yard.  
3 That being said there's nothing in our record, we  
4 have letters of support from Danielle June at  
5 3628 13<sup>th</sup> Street, we have letters of  
6 recommendation from the Society of the Sacred  
7 Heart indicating that this would in no way effect  
8 any of the adjacent properties at 1235 Otis  
9 Street, a letter of support form 1250 Newton  
10 Street and so there seems to be nothing in the  
11 record that would indicate that there would be  
12 any impact on light and air of any neighboring  
13 properties by approving this relief. In addition  
14 to that there's nothing in the record that would  
15 indicate there would be any lack of privacy or  
16 use or enjoyment of any neighboring properties,  
17 based on this addition as indicated this addition  
18 is 90 probably percent complete and there's  
19 obviously nobody here indicating that they do  
20 have any opposition with this case, that stands  
21 to be fairly strong proposition typically if  
22 something is already built and there's a problem

1 you'll see more individuals coming forward  
2 echoing that they may have a concern. I'll refer  
3 to the OP report in regards to prong C and D in  
4 regards to any potential impact on neighboring  
5 street frontages and in regards to views of the  
6 addition and I don't think there's any issue  
7 there. That being said I see no problem in  
8 approving this application and I'll look to any  
9 Board Members for additional deliberation.

10 MS. SORG: Thank you Madam Chair I don't  
11 have much to add here except also just I agree  
12 with your analysis and also would just note that  
13 the relief that we're looking at here is about 3  
14 feet of rear yard and that's it.

15 CHAIRPERSON MOLDENHAUER: Yeah, so I  
16 think it's a very small relief that's being  
17 sought. That being said I'll submit a motion, a  
18 motion to approve Application No. 18178 from 11  
19 DCMR 3104.1 for a special exception to allow a  
20 rear addition to an existing one family detached  
21 dwelling under Section 223 not meeting the rear  
22 yard under 404 requirements in an R-1-B District.

1 Motion has been made is there a second?

2 MR. HINKLE: Second.

3 CHAIRPERSON MOLDENHAUER: Motions' been  
4 made and seconded all those in favor say aye.

5 CHORUS: Aye.

6 MR. MOY: Staff would record the vote as  
7 4 to 0 to 1 this on the motion of the Chairperson  
8 Ms. Moldenhauer to approve the special exception  
9 relief under Section 223 not meeting the rear  
10 yard requirements under Section 404, seconded  
11 motion Mr. Hinkle also in support of the motion  
12 Ms. Sorg and Mr. Schlater, no other Board  
13 Members, again the final vote is 4 to 0 to 1.

14 CHAIRPERSON MOLDENHAUER: Thank you very  
15 much Mr. Moy since we have no opposition in this  
16 case I'd like to waive our requirements and ask  
17 that a summary order be issued.

18 MR. MOY: Very good thank you Madam  
19 Chair.

20 CHAIRPERSON MOLDENHAUER: Thank you very  
21 much and good luck with your addition.

22 **Application No. 18179**

1           MR. MOY: The next and last Application  
2 for Board Action for the Morning Session is  
3 Application No. 18179, this is the Application of  
4 Mary Elizabeth McDaniel and Philippe A. Braindet  
5 pursuant to 11 DCMR 3104.1 for a special  
6 exception to allow an accessory garage addition,  
7 this is to a one family semi-detached dwelling  
8 under Section 223 not meeting the lot occupancy  
9 requirements under Section 403, in the R-4  
10 District at premises 1727 1<sup>st</sup> Street, N.W.  
11 property located in (Square 3105, Lot 105).

12           CHAIRPERSON MOLDENHAUER: Good morning  
13 how are you doing? If you could introduce  
14 yourself for the record.

15           MR. MCDANIEL: My name is Mary Elizabeth  
16 McDaniel; I reside at 12624 Capon Oak Drive in  
17 Ellicott City, MD. My husband and I are owners  
18 and soon to be occupants of 1727 1<sup>st</sup> Street, N.W.

19           CHAIRPERSON MOLDENHAUER: And at this  
20 time we'll turn to you to present your case, if  
21 you'd like you can rest on the record. I'd like  
22 to hear a little bit kind of as to how you got to

1 where we are today as well.

2 MS. MCDANIEL: I'm not sure I understand  
3 the question, we would like to build a garage,  
4 and there was a garage at the house. The house  
5 was purchased at some point by someone who I  
6 believe was going to turn it into condominiums  
7 and they tore down the garage, the concrete pad  
8 from the garage still exists and we would like to  
9 build a garage in the same location that would  
10 slightly exceed the lot occupancy because my  
11 architect calculated if we build a garage that  
12 meets the lot occupancy that there would only be  
13 like one inch on all four sides of the car so it  
14 really wouldn't be a useable garage. I think the  
15 overage that I'm asking for a special exception  
16 would not really have any great impact on the  
17 neighbors or the neighborhood but would allow us  
18 to have a useable garage.

19 CHAIRPERSON MOLDENHAUER: Thank you I'll  
20 just take a quick look at the plans. Do any  
21 Board Members have any other questions for the  
22 Applicant?

1           MR. HINKLE: Ms. McDaniel we have on  
2 letter of support from a neighbor. Have you spoke  
3 to the other neighbors and some of the neighbors  
4 that have been there when there was a garage  
5 existing beforehand and are they supportive of  
6 this?

7           MS. MCDANIEL: Yes I have, everyone in the  
8 neighborhood who I've talked to has verbally  
9 supported it. The adjoining neighbor I just got,  
10 I never received an email from him but I did turn  
11 in an email where he said he would send an email  
12 in support but he verbally has no objection, none  
13 of the people on the street have any objection.  
14 The neighbor across Randolph to the side he  
15 offered to write a letter and offered to come  
16 today but he's been hospitalized, he's been in  
17 the neighborhood almost 50 years and he has  
18 described the man who lived there for years and  
19 years and years backing his car into the garage  
20 but I don't have any pictures he said he would  
21 look but not many of the adjacent houses are long  
22 time residents so no one, I just have the

1 demolition permit to tear down the garage and the  
2 remaining concrete pad but everyone who has been  
3 in the neighborhood a long time recalls that  
4 there was a garage and most of the corner lots in  
5 the neighborhood do have garages, most of the end  
6 units have garages.

7 MR. HINKLE: Great, thank you.

8 MR. SCHLATER: Ms. McDaniel the garage  
9 that's proposed basically takes up the entire  
10 width of your property is that correct?

11 MS. MCDANIEL: Yes.

12 MR. SCHLATER: So it's 17 feet wide, does  
13 that sound right? I'm just reading the plans  
14 here; does that mean you'll be able to  
15 accommodate two cars in there?

16 MS. MCDANIEL: No.

17 MR. SCHLATER: The garage that was there  
18 before, I saw the pad it didn't look like it  
19 occupied the entire width. So why do you need  
20 the entire 17 feet?

21 MS. MCDANIEL: Because I want to build it  
22 of brick and so the structure itself will take up

1 some of the space and I also want, I mean there  
2 will be a little more space than necessary for a  
3 tight feet for one car but I have, because I'm an  
4 end unit I have 32 feet in the front and over 100  
5 feet on the side of yard and sidewalk to maintain  
6 so I was hoping to be able to have room to store  
7 equipment to maintain the yard and the sidewalk.

8 MR. SCHLATER: Okay thank you it does  
9 look like a very nice garage made out of brick  
10 and it has some detailing in it, it seems like  
11 you've taken some care to make sure it fits into  
12 the neighborhood.

13 MS. MCDANIEL: My architect wanted it in  
14 the style of the traditional style of the  
15 neighborhood, although not many remain that look  
16 like that.

17 MR. SCHLATER: Looks great, thank you.

18 CHAIRPERSON MOLDENHAUER: Any further  
19 questions from the Board? Seeing none then I'll  
20 see if there are any individuals in the audience  
21 in support or in opposition to this case? Seeing  
22 none then I'll just indicate that as stated

1 earlier we do have some letters of  
2 recommendation, "Exhibit 25, 28, and 29" all  
3 letters of support for this case. I'll turn now  
4 to the Office of Planning for their report.

5 MR. COCHRAN: OP's prepared to stand on  
6 the record except for one thing, just wanted to  
7 clarify the lot is actually 32 feet wide what the  
8 Applicant is building to is the maximum extent of  
9 the building restriction lot.

10 CHAIRPERSON MOLDENHAUER: Thank you for  
11 that point of clarification I appreciate that.  
12 Any questions for the Office of Planning from  
13 Board Members? Seeing none, thank you, does the  
14 Applicant have any questions for the Office of  
15 Planning?

16 MS. MCDANIEL: No thank you.

17 CHAIRPERSON MOLDENHAUER: Thank you then  
18 at this point in time, we would turn to see if  
19 anybody is present from the ANC? Seeing no one  
20 present from the ANC, did you have a chance to  
21 talk to your ANC?

22 MS. MCDANIEL: I communicated with one

1 member by phone and three members by email and  
2 one in person but none of them seem to have a  
3 problem with it but at the same time they didn't  
4 I was told by one member that they didn't have  
5 time in their agenda to consider it but I  
6 invited, the former member lives across the  
7 street and so he's very familiar with the house  
8 and the man who replaced him in January lives  
9 down the street and they don't seem to have any  
10 concern about it.

11 CHARIPERSON MOLDENHAUER: I appreciate  
12 you providing us with that oral update obviously  
13 we have nothing in our record to give weight to  
14 but we will consider obviously your statement  
15 about their support and the lack of formal  
16 opposition from ANC 5-C. That being said, are  
17 there any closing remarks by the Applicant?

18 MS. MCDANIEL: No thank you I appreciate  
19 your consideration.

20 CHAIRPERSON MOLDENHAUER: Thank you then  
21 at this point in time if there's any new final  
22 questions from any Board Members, I don't see

1 any, we will conclude this hearing and we'll  
2 enter into deliberation on this case. We have an  
3 application before us for 223 relief of increase  
4 in lot occupancy from 33% to 47% to permit lot  
5 occupancy up to 70% rather than the permitted 40%  
6 in the zone. That being said as we heard this is  
7 a rebuilding of a prior garage that had been  
8 demoed obviously it's not being reconstructed  
9 exactly as it was, we can see as Mr. Schlater  
10 identified that the parking pad which is being  
11 expanded but I think that based on the plans, and  
12 as based on the statements of the Applicant you  
13 know it's being recreated in a brick façade which  
14 his going to be more attracted to the area, the  
15 garage that they are putting in is not a  
16 mechanical garage up and down but rather it's a  
17 carriage style automatic garage which I think is  
18 quite nice to see that someone is taking the time  
19 and effort and the money to put in that type of  
20 physical attractive type of garage and structure.  
21 That being said we have letters of support as I  
22 said from some of the neighboring properties are

1 "Exhibit 25, 28, and 29". We don't have anything  
2 from the ANC indicating any concerns. Office of  
3 Planning is in support of this application and I  
4 see no issue of how this would potentially  
5 adversely effect light and air, privacy of any of  
6 the adjoining properties. Again this was a  
7 preexisting condition that was removed but that  
8 is now going to be put back up and I think that  
9 the addition while definitely visible from the  
10 street since this is corner property is being  
11 done in a way where it's going to enhance the  
12 character of the neighborhood and not provide any  
13 adverse effect on the street frontage. I will  
14 open up the floor for any additional deliberation  
15 from the Board Members. Seeing none then I will  
16 submit a motion, a motion to approve Application  
17 No. 18179 pursuant to 11 DCMR 3104.1 for a  
18 special exception to allow an accessory garage  
19 addition to a one family semi-detached dwelling  
20 under Section 223, not meeting the lot occupancy  
21 under 403 requirements in an R-4-District at  
22 premises 1727 1<sup>st</sup> Street, N.W. Motion has been

1 made is there a second?

2 MS. SORG: Second.

3 CHAIRPERSON MOLDENHAUER: Motion has been  
4 made and seconded all those in favor say aye.

5 CHORUS: Aye.

6 MR. MOY: Staff would record the vote as  
7 4 to 0 to 1 this is on the motion of the  
8 Chairperson Ms. Moldenhauer to approve the  
9 special exception relief under Section 223, not  
10 meeting lot occupancy requirements under Section  
11 403. Seconded motion Ms. Sorg, Vice Chair, also  
12 in support of the motion Mr. Hinkle and Mr.  
13 Schlater, and no other Board Members are  
14 participating. So again the final vote 4 to 0 to  
15 1.

16 CHAIRPERSON MOLDENHAUER: Thank you very  
17 much Mr. Moy and seeing that we have no  
18 opposition in this case we'd like to waive our  
19 requirements and ask that a summary order be  
20 issued.

21 MS. MOY: Thank you very much Madam  
22 Chair.

1                   CHAIRPERSON MOLDENHAUER: Thank you and  
2 thank you and that concludes our hearings for  
3 this morning, thank you.

4                   **Afternoon Session**

5                   CHAIRPERSON MOLDENHAUER: This hearing  
6 will please come to order, good afternoon ladies  
7 and gentleman, this is the March 8, 2011, Public  
8 Hearing of the Board of Zoning Adjustments for  
9 the District of Columbia, my name is Meredith  
10 Moldenhauer, Chairperson, joining me today to my  
11 left is the Vice Chair Nicole Sorg, to her left  
12 Representative of the Zoning Commission is Conrad  
13 Schlater and to my right is Jeffrey Hinkle,  
14 Representative of the National Capital Planning  
15 Commission. Copies of today's meeting agenda are  
16 available to you and are located to my left in  
17 the wall bin near the door. Please be advised  
18 this proceeding is being recorded by a court  
19 reporter and is also being webcast live.  
20 Accordingly we must ask you to refrain from any  
21 disturbing noises or actions in the hearing room.  
22 When presenting information to the Board please

1 turn-on and speak into your microphone first  
2 stating your name and home address. When you are  
3 finished speaking please turn-off your microphone  
4 so that your microphone is no longer picking up  
5 sounds or background noise. All persons planning  
6 to testify either in support or in opposition are  
7 to fill out two witness cards these cards are  
8 located to my left on the table near the door and  
9 are also on witness tables. Upon coming forward  
10 to speak to the Board please give both cards to  
11 the court reporter sitting to my right. The order  
12 for an appeal is as follows: 1. Statement of the  
13 Appellant and Appellants Witnesses. 2. The Zoning  
14 Administrator and the Government, Officials Case.  
15 3. Case of the owner, leasee or operator involved  
16 as an intervener if not the Appellant. 4. Other  
17 interveners in the case if permitted by the  
18 Board. 5. The ANC within which the property is  
19 located. 6. Rebuttal and closing statements of  
20 the Appellant. Pursuant to Section 3117.4 and  
21 3117.5 the following time constraints will be  
22 maintained, the Applicant/Appellant persons and

1 parties in support including their witnesses will  
2 be given 60 minutes collectively. The Appellees  
3 persons and parties except an ANC in opposition  
4 including witnesses will be given 60 minutes  
5 collectively. Individuals will be given 3  
6 minutes and associations or organizations will be  
7 given 5. These time restrictions do not include  
8 cross examinations or questions from the Board.  
9 Cross examination of witnesses is permitted by a  
10 party or an Applicant. The ANC within which the  
11 property is located is automatically a party to a  
12 special exception or variance case. Nothing  
13 prohibits the Board from placing reasonable  
14 restrictions on cross examination including time  
15 limitations or limitations on the scope of cross  
16 examination. The record will be closed at the  
17 conclusion of each case except for any materials  
18 specifically requested by the Board. The Board  
19 and the Staff will specify at the end of each  
20 hearing exactly what is expected and the date  
21 when that material should be submitted to the  
22 Board. After the record is closed no other

1 information will be accepted by the Board. The  
2 Sunshine Act requires that a public hearing on  
3 each case be held in the open before the public.

4 The Board may consistent with its rules and  
5 procedures and the Sunshine Act enter into  
6 Executive Session during or after a case for  
7 purposes of reviewing the record or deliberating  
8 on a case. The decision of the Board as in these  
9 contested cases must be based exclusively on the  
10 record, to avoid any appearance to the contrary  
11 the Board requests that persons present not  
12 engage the members of the Board in conversation.

13 Please turn off all beepers and cell phones at  
14 this time as to not disturb these proceedings.  
15 The Board will make every effort to conclude this  
16 hearing as close as possible to 6pm if the  
17 afternoon cases are not completed at 6pm the  
18 Board will assess whether it can complete pending  
19 or pending cases on the agenda. At this time the  
20 Board will consider any preliminary matters,  
21 preliminary matters relate to whether a case  
22 should or will be heard today such as a request

1 for postponement, continuance or withdrawal or  
2 whether proper or adequate notice of a hearing  
3 was given. If you are not prepared to go forward  
4 today or you believe that the Board should not  
5 proceed, now is the time to raise such a matter.  
6 Mr. Secretary, do we have any preliminary  
7 matters?

8 MR. MOY: Staff is not aware of any  
9 preliminary matters Madam Chair.

10 CHAIRPERSON MOLDENHAUER: The I will  
11 proceed with the agenda and all individuals  
12 wishing to testify please stand and take the  
13 oath.

14 MR. MOY: Do you solemnly swear or affirm  
15 that the testimony you're about to present at  
16 this proceeding is the truth, the whole truth and  
17 nothing but the truth. You may consider yourself  
18 under oath.

19 CHAIRPERSON MOLDENHAUER: Mr. Moy you can  
20 all the first and only case on the agenda today.

21 **Appeal No. 18181**

22 MR. MOY: Good afternoon Madam Chairperson

1 and Members of the Board that would be Appeal No.  
2 18181 of AMM Holdings Inc., pursuant to 11 DCMR  
3 3100 and 3101 from a November 18, 2010, decision  
4 by the Zoning Administrator, Department of  
5 Consumer Regulatory Affairs to issue a stop work  
6 order halting the construction of a new 3 unit  
7 apartment building in the R-4 District at  
8 premises 527 Irving Street, N.W., property  
9 located in (Square 3048, Lot 63).

10 CHAIRPERSON MOLDENHAUER: Thank you very  
11 much Mr. Moy and I think the parties area already  
12 at the table and if you can introduce yourself  
13 starting to my left.

14 MR. KAHN: Mudashir Kahn, 10419 Headly  
15 Coate, Fairfax, VA.

16 MR. KAHN: Mubashir Kahn, 10422 Headly  
17 Coate, Fairfax, VA.

18 MR. NAPPO: Vincent Nappo I'm the  
19 attorney for the Appellants.

20 MR. LEGRANT: Good afternoon Madam Chair,  
21 Members of the Board, I'm Matthew LeGrant Zoning  
22 Administrator with the Department of Consumer and

1 Regulatory Affairs.

2 MR. SURABIAN: Good afternoon, Assistant  
3 Attorney General Jay Surabian on behalf of DCRA.

4 CHAIRPERSON MOLDENHAUER: Okay we'll get  
5 started by looking at the Appellant and you can  
6 start by presenting your case and any witnesses.  
7 Do you think your going to need the full 60  
8 minutes today?

9 MR. NAPPO: I don't believe so ma'am.

10 CHAIRPERSON MOLDENHAUER: Okay what do  
11 you think you'll need and we'll put that on the  
12 clock.

13 MR. NAPPO: Forty minutes should do it. I  
14 take it that cross examination is not included.

15 CHAIRPERSON MOLDENHAUER: No it's not  
16 included. That way we can put it on the clock  
17 and we'll turn to you to present your case.

18 MR. NAPPO: I'm going to make a brief  
19 opening statement, the AMM Holding is my client  
20 and on January 8, 2010, they purchased the  
21 property at 527 Irving Street, N.W. which has  
22 been described as Lot 63, Square 3048. They

1 purchased it as a vacant piece of property and  
2 they applied for a building permit with DCRA.  
3 The Building permit was actually, the application  
4 was done on February 18, 2010, and the building  
5 permit clearly stated that they were requesting a  
6 new construction of a 3 unit apartment building.  
7 They were assisted by a gentleman named Agipong  
8 and he evidently employed a construction engineer  
9 whose name is Quentin Worrell who actually signed  
10 the drawings in the case. Be that as it may on  
11 February 18<sup>th</sup>, they presented a complete  
12 application asking for permission to build a new  
13 3 unit apartment building. The application was  
14 taken under advisement by DCRA and about 3 months  
15 later on May 7<sup>th</sup>, they issued a building permit  
16 again for a new 3 unit apartment building on the  
17 site. I should mention the site has 2708 square  
18 feet which apparently is within the scope of a 3  
19 unit building. The application we have in our  
20 attachment to the appeal in this case we've shown  
21 that 10 different departments within the Board  
22 approved it within DCRA, I'm sorry. But, and

1 then just as a footnote it was just brought to  
2 our attention today that on October 27<sup>th</sup>, my  
3 clients applied for another permit to do some  
4 work on the roof of the building and that was  
5 granted by the Zoning Division on October 27<sup>th</sup>,  
6 and suffice to say that in those 6 months my  
7 clients put up a very nice looking apartment  
8 building, we've submitted a photograph of it with  
9 our appeal, I don't know if every member has seen  
10 it but the building was in essence completed. On  
11 November 18<sup>th</sup>, someone came out from DCRA with a  
12 stop work order and ordered my clients to stop  
13 work on the building. They voiced some objection  
14 to that and in the next few days they had an  
15 interview with Mr. Matthew LeGrant the head of  
16 this particular group and Mr. LeGrant was very  
17 forthright and admitted to them that the permit  
18 had been granted in error, there' some  
19 correspondence back and forth by email where the  
20 words in error are quite prominent and I don't  
21 believe anyone is really disputing that the  
22 permit was granted in error. My clients are then

1 in kind of a tough spot because acting in good  
2 faith never trying to conceal anything about the  
3 enterprise, they asked for permission to put up a  
4 3 unit building, they are not novices they've  
5 been in the field and they have been through this  
6 before but unlike their council because this is  
7 my first time before the Board. They appealed to  
8 LeGrant to give them some relief and the answer  
9 was got to BZA because that's where you might get  
10 relief. My clients went to the BZA I wasn't with  
11 them at the opening meeting but they filed an  
12 appeal in this case and that's why we're here  
13 today, once again unless I'm greatly mistaken  
14 because I've had some conversations with Mr.  
15 LeGrant and with his council Mr. Surabian who  
16 have been very forthcoming and very decent, and  
17 very helpful but what they're saying in effect is  
18 our hands are tied we can't do anything about  
19 this, you've got to go to the Board concerning  
20 appeal. Now as I reviewed this great big thick  
21 book on Zoning Regulations I've used it a couple  
22 of times because in my practice I've had occasion

1 to sue on behalf of tenants of buildings injured  
2 maybe the staircase was faulty, or I have one  
3 case where a window came down and fracture the  
4 fingers of a child, terrible case, but I don't  
5 know the real ins and outs of it. However, our  
6 argument with the DCRA is as follows, they erred  
7 grievously in approving the application, relying  
8 on their permission my clients expended a ton of  
9 money upwards of 350,000 in putting up a 3 unit  
10 building which looks for all the world like a two  
11 unit building, it's within the height limit and  
12 all that stuff, but this building has a basement  
13 and a ground floor apartment with a bath and the  
14 usual, then there's a second unit bath and  
15 kitchen what have you, then there's a third unit  
16 bath and kitchen what have you. All the work is  
17 done, they still have to do a little work on the  
18 interior but the brick work is done, the roof is  
19 done, all the plumbing and that stuff is roughed  
20 in, in another month they would have completed  
21 the job. But that was not to be because Mr.  
22 LeGrant felt that he had to stop the work. Our

1 argument isn't really with Mr. LeGrant's decision  
2 to stop the work, I take it at face value he's a  
3 decent person who's doing his job and they found  
4 this mistake. It's too late to help my clients  
5 however and so we are appealing the issuance of  
6 the work order, that's what we're appealing  
7 because that's the action that stopped the  
8 construction but truly what we're appealing is  
9 the mistake that they made and freely admitted to  
10 it in allowing the construction to go on in the  
11 first place. I'm well aware, I've talked to my  
12 clients about possibly getting a variance or an  
13 exemption but that is so time consuming and the  
14 facts are just on the table, the building is  
15 built. My clients say to me but why must we ask  
16 for a variance we're real happy with the building  
17 permit that was issued and we've put in a third  
18 of a million dollars to get the building in  
19 spanking shape, it doesn't really intrude on the  
20 neighbors, it's pure hearsay but they tell me  
21 they have talked to the neighbors on either side  
22 who are pretty happy with the building it

1 actually improves the look of the block, they  
2 have off street parking for 3 units and what have  
3 you. Now in as much as my people went through  
4 the drill and got the permits and acted in good  
5 faith throughout they now have a building on  
6 their hands which in order to comply with the 2  
7 unit rule they'd have to tear out kitchens, tear  
8 out bathrooms, and then they've got a building  
9 that is not really suitable from their real  
10 estate point of view, I'm not in the business.  
11 But it's just a much less attractive proposition,  
12 lurking behind all of this is the fact that they  
13 really, I believe, and I've told them, have a  
14 case against the District of Columbia because a  
15 District of Columbia agency kind of put them in  
16 this position. However I'm appealing to the  
17 Board to see if there's some way that they could  
18 be permitted to complete the building as it's  
19 built. If any further input is required that  
20 that be done on a very expedited basis because  
21 I'm going to ask them to testify because I cannot  
22 testify and I don't know it as they do, but they

1 missed they're very careful operators my clients,  
2 they buy the properties and try to get the  
3 properties finished in time to get the full  
4 business, now I always think the spring well you  
5 have to be ready. I through determination of  
6 circumstances usually leaving little buildings  
7 that my wife loved and we wouldn't sell the  
8 properties, very stupidly I hung onto a property  
9 which I paid 13,500 for back in 1955 because I'm  
10 as old as the hills, but that property which I  
11 paid 13,500 for and a fellow came around and said  
12 look, I had put it up for rent because my wife,  
13 wonderful smart woman said you know there will  
14 come a day when we won't want to climb steps and  
15 this is one level beautiful little house and  
16 some hard rules real estate guy came around and  
17 says look I know what you paid for it, you paid  
18 13,750, I'll give you 22,500, I said no my wife  
19 wants to hang on to it, and he said that's crazy  
20 and he came back about a month later and said  
21 look I'll give you 25 but I will not go above  
22 that, I said you want to talk to my wife, because

1 I'm powerless, that house is now worth 500,000  
2 dollars and well if we have just a minute because  
3 I won't go above the 40 I then I had the GI Bill  
4 because I was in WWII but I hadn't used it to buy  
5 this 13,750, I think 5% was like 800 dollars  
6 something like that, which you get it FHA so then  
7 I found a house that I could get VA no money down  
8 108 dollars rent, a big house, two floors, two  
9 fireplaces, a beautiful house worth today about  
10 work 550 or 600 today, I paid 25,000 no money  
11 down, 108 dollars the first month rent,  
12 unbelievable. But now these fellows are real  
13 estate investors and they feel that they have  
14 missed the spring market, their money is tied up  
15 and I'll be pulling out my handkerchief and  
16 weeping in about two minutes because they're  
17 really in a bad spot and we appeal to the Board  
18 to somehow make them whole. Further information  
19 is required let it be done on an expedited basis  
20 because we here everything takes 6 months or 3  
21 months or 9 months and their capital is tied up.  
22 I think that's all I have to say..

1           CHAIRPERSON MOLDENHAUER: Mr. Nappo can I  
2 just interrupt you and ask you as their council  
3 I've heard some of the key terms that you've  
4 identified but I haven't' seen in your initial  
5 prehearing statement or even right now any legal  
6 doctrines that you're relying on to support your  
7 argument, have you identified a specific legal  
8 doctrine that you would want us to look to?

9           MR. NAPPO: I have not Madam Chairwoman,  
10 I'm appealing strictly on equitable grounds that  
11 they've been put in this terrible situation  
12 through no fault of their own and that, you know  
13 I've been practicing law for well over 50 years,  
14 if I was in front of an appeals judge I'd couch  
15 it on basis for instance of a stopple that they  
16 come very late with this after the money is spent  
17 and the building is built. After they had a  
18 chance in October to review it because when these  
19 fellows ask for permission to make a roof deck or  
20 something like that on October 27<sup>th</sup>, it was  
21 approved by the Zoning Division.

22           CHAIRPERSON MOLDENHAUER: So obviously if

1 you're going to argue Estoppels then I've heard  
2 you say good faith, I've heard you talk about the  
3 District's actions, and I've heard you talk a  
4 little bit about the reliance the reasonable  
5 reliance of your parties in that regard and then  
6 the fact that the equities are in favor.  
7 Obviously we'll hear from your witnesses as you  
8 present them, we'd like to hear from those  
9 issues.

10 MR. NAPPO: What you talk about is the  
11 effect of missing market date and also that you  
12 rely on their approval to build the building.

13 MR. MUBASHIR KAHN: Okay basically as we  
14 all know in this application it's very clear, we  
15 are put into this spot clearly because of DCRA  
16 negligence, mistake or remedy whatever you can  
17 say. We applied in good faith, we got these  
18 permits, we commenced with our construction and  
19 we were not in any violation, we were in  
20 compliance all that time till this person come  
21 out to our property on November 18<sup>th</sup>, who got  
22 instructions to stop work and it's quite funny

1 thing that my project manager was there and the  
2 DCRA inspector comes there and he has no idea why  
3 he's there, he looked at the plans, the permits,  
4 everything's in order and he tells him I'm here  
5 to stop your work but I don't know why. So he  
6 goes back to his car makes some phone calls and  
7 then comes back with a stop work order that  
8 you're not allowed to have 3 units on this R-4  
9 District.

10 MR. NAPPO: Can you make reference to  
11 your application for building permit and what you  
12 put down on the application?

13 MR. MUBASHIR KHAN: Sure I mean we  
14 applied the building permit, our agent applied on  
15 February 18<sup>th</sup> and it clearly states it's a 3 unit  
16 new construction, if you have the original  
17 drawings from DCRA stamped and approved from all  
18 10 different divisions including zoning, after a  
19 careful review it was not a walk through job, you  
20 can not miss this thing this was a three month  
21 review job, my agent was going there almost  
22 everyday, reviewing with the engineers and zoning

1 folks and getting this through. So it's a clear  
2 mistake, you can think whatever but this was a  
3 very, very clear thing on the drawings that's a 3  
4 unit property, 2708 square feet lot and it got  
5 approved and it's very clear on the building  
6 permit if you see that to construct 3 stories  
7 plus basement apartment building and we all know  
8 apartment building is minimum 3 buildings  
9 otherwise it's a flat and if you read the zoning  
10 the comments, and "Exhibit I" you can see that  
11 the dates, the different divisions, the different  
12 groups have approved this application from  
13 February 18<sup>th</sup> all the way to May 7<sup>th</sup> and you can  
14 see all the DDOT, mechanical, all of those  
15 including zoning and then if you flip over the  
16 next page of "Exhibit I" also you can read the  
17 zoning review details from May 3, 2010, and this  
18 is what zoning put themselves from their systems,  
19 from their website, it's very, very, very clear,  
20 zoning approved in R-4, it says Zoning approved  
21 wall check R-4 new, cellar plus 3 stories, 3  
22 units apartment building, the required 2 parking

1 spaces at rear, I think this is clear as crystal,  
2 there is no point when someone comes after 6  
3 months and telling us there's a mistake, it's a  
4 very clear thing, flip over on the other page  
5 "Exhibit I" again and you see the approval on  
6 October 27, 2010, 20 days before we got a stop  
7 work order and we applied for that roof top deck  
8 we got permission again from zoning and I think  
9 this is the second mistake they made, if they  
10 made a mistake first hand and now on October 27<sup>th</sup>,  
11 they found out oh you know what, if they do, they  
12 found out they made a mistake now and after 6  
13 months their giving us another approval, so I  
14 think they have no reasons to come back and tell  
15 us they made a mistake, if they made a mistake  
16 this should be the internal stuff, why are they  
17 penalizing us. We are doing some development in  
18 city, and we should not be penalized for their  
19 mistakes. The lot is spacious enough, It's 2708  
20 square feet it can fit 3 units that's what I  
21 thought when I bought it, that's what all those  
22 people probably in DCRA thought, the 2700 square

1 feet lot can fit three units but now on November  
2 18<sup>th</sup> we found out that since this new construction  
3 we cannot. But it's a clear mistake from their  
4 end, and on the stop work order as mentioned on  
5 November 18<sup>th</sup>, when it was issued the inspector  
6 was not aware of why he was there that's one  
7 thing. The other thing is, there are two things  
8 on stop work order, they are saying we cannot  
9 have 3 units in this zone and the second point is  
10 we raised the building without raise permit,  
11 that's what the stop work order says it's  
12 "Exhibit A" if you flip to there stop work order  
13 there are two points, the first one is 3 unit  
14 apartment building is not matter of right in R-4  
15 Zone which we already got the permits and the  
16 second one is previous principle building was  
17 removed without a raise permit, so that's another  
18 negligence you can think of DCRA because we  
19 bought this as a vacant lot with exception of a  
20 small shed on it and we got a permit, a raise  
21 permit on April 26<sup>th</sup>, from DCRA to raise that shed  
22 and on this stop work order they're mentioning

1 that we demolished the building which is not  
2 true, we have the pictures, we brought the  
3 property as a vacant piece of land and then we  
4 got a raised permit to demolish that small shed  
5 on it and that raised permit is "Exhibit D" in  
6 the application. So clearly the stop work order  
7 is not even accurate because the points they are  
8 trying to make here is not even correct. So I  
9 believe DCRA is making mistakes one after another  
10 and I think they need to fix their department  
11 internally, they need to have their own meetings,  
12 they need to contact this person who approved  
13 from Zoning it's Chad Anderson, the person who  
14 signed off on these drawings. If you flip it  
15 over to "Exhibit E" if you can go to there you  
16 can see that drawing, if you have original  
17 drawings here as well from DCRA stamped and this  
18 is one page of that clearly showing 3 units, unit  
19 number 1, unit number 2, unit number 3, on the  
20 right bottom corner it says new apartment  
21 building and it is approved from DCRA, so it's  
22 new, there was no building before. They new all

1 this time it's a new building and then you go to  
2 next exhibit which is (inaudible) "Exhibit F"  
3 again you see a stamp from DCRA and Janet  
4 Anderson she wrote, R-4 and you see the D85310  
5 and it also says new 3 units. So I cannot  
6 understand if it's a mistake or it's a blunder  
7 what is this but this is a clear negligence from  
8 their part and it's not only one time, it's not  
9 only two times, it's three, four times just in  
10 this case. They have done same kind of  
11 negligence in the past and it happened with me  
12 one time before also but that's not in this case  
13 so I don't need to bring that up what I suffered  
14 but at that time we decided not to pursue this,  
15 but that's apart from this. So as for the stop  
16 work order on November 18<sup>th</sup> which we got, we were  
17 required to talk to Mr. LeGrant, me and a couple  
18 of other folks, my other partner, I'm sorry my  
19 real estate agent we went to see Mr. LeGrant on  
20 November 22<sup>nd</sup> right after the stop work order, and  
21 he told us he can't do anything we have to go to  
22 BZA, I tried to escalate that, I sent an email to

1 Ms. Linda Argo about our meeting and tried to  
2 seek some help from her and there's an email  
3 attachment response from Linda Argo also is  
4 attached as "Exhibit B" and she also mentioned I  
5 need to appeal which is not going to get us  
6 resolve this issue but we need to go to BZA so to  
7 follow instructions I did appeal with DCRA on  
8 December 2<sup>nd</sup> and that is also attached as "Exhibit  
9 H" so on December 2, I filed electronically  
10 appeal with DCRA for the stop work order.  
11 Nothing happened the only thing was I got a call  
12 from a lady from Barbara from DCRA and she told  
13 me we cannot do anything on these because you're  
14 asking something which we cannot do so you have  
15 to talk to Mr. LeGrant and of course Mr. LeGrant  
16 told me to go to BZA, that's what Ms. Linda Argo  
17 told me so based on that recommendation I came  
18 here with my attorney with the DCRA we consulted  
19 with them what should we do and they told us this  
20 is this is the course you need to do, you need to  
21 file an appeal which we have done. So I guess  
22 you know this is where we are and I strongly

1 believe that this is DCRA fault, I don't  
2 understand if the fault was to issue the permit  
3 or the stop work order but that's not what we're  
4 trying to get at, our target is we need to get  
5 back to our jobs, we need to get this permit  
6 restored, our investors are behind us, we are  
7 losing time, since November 18<sup>th</sup> this work was  
8 shut down right away we lost a lot of materials  
9 on site, our contractors were lined up, so  
10 they're all gone so we are losing money, from we  
11 are paying mortgage on this, and then our plan  
12 was to finish this project by the end of December  
13 and put on the market for sell in spring and as  
14 we all know in D.C. the best time to sell  
15 properties is spring market in which we will miss  
16 it. Now even assuming we get our permits  
17 restored today by the time we get back to job,  
18 finish the job we are talking selling our units  
19 in late summer or early fall and we all know  
20 that's not good for real estate, I mean it's a  
21 slow market its at least 10 to 15% below what you  
22 can sell in the spring, so this is costing us

1 carrying costs and potential future profits and  
2 loses as well. So I guess this is what I have to  
3 say, is there anything you want to add? I guess  
4 that's what I have, so we have followed all the  
5 procedures, we have done whatever we could and we  
6 were never in any violation, so I guess we need  
7 to have some justice from here, thank you.

8 CHAIRPERSON MOLDENHAUER: Thank you, Mr.  
9 Surabian, do you have any cross examination for  
10 Mr. Kahn?

11 MR. SURABIAN: Yes I do, Mr. Kahn how  
12 many development projects have you done in  
13 Washington D.C.

14 MR. KAHN: More than 10.

15 MR. SURABIAN: And did those involve  
16 building on vacant land.

17 MR. KAHN: No.

18 MR. SURABIAN: Is this the first one?

19 MR. KAHN: The first one in D.C.

20 MR. SURABIAN: You bought this property  
21 at an auction?

22 MR. KAHN: Right from a public auction

1 right.

2 MR. SURABIAN: Why did you buy this  
3 particular property?

4 MR. KAHN: Because I wanted to put up a 3  
5 unit building that's one thing of course I didn't  
6 know at that time how many units but I wanted to  
7 put some kind of house or property, so that was  
8 the whole purpose to buy this property put a  
9 house or apartment building and sell it.

10 MR. SURABIAN: How did you know when you  
11 bought it what you could do with the property?

12 MR. KAHN: Because there's a very famous  
13 common understanding in DCRA that if you have  
14 more than 900 square feet lot, you can have a  
15 unit 3600 square feet can have 4 units and 2700  
16 can have 3, so that was the thing, that's what I  
17 was thinking, it's not only me it seems like 100  
18 other people in DC think the same thing that's  
19 why we have the permits.

20 MR. SURABIAN: So it was the size of the  
21 lot, you thought you could build on.

22 MR. KAHN: Exactly it was over 2700

1 square feet we felt, we thought we could do 3  
2 units.

3 MR. SURABIAN: Before you purchased the  
4 property you thought you could do 3 units?

5 MR. KAHN: No not before but of course the  
6 day, I don't know if you've been to these public  
7 auctions, you go there you don't know what you're  
8 buying all they tell you is the lot and square  
9 number, I didn't not even know at that time it  
10 was a vacant lot or it's a house there. It's  
11 like gambling you go there and you buy something  
12 but the price I paid I realize that okay this is  
13 the price even if it's an old house there I can  
14 fix it and sell it, so later on I found out it's  
15 a vacant piece of lot, later on meaning the same  
16 day.

17 MR. SURABIAN: So you didn't visit the  
18 site before you bought it?

19 MR. KAHN: My partner he did visit the  
20 same day before, the same morning.

21 MR. SURABIAN: And do you remember what  
22 you paid for it?

1           MR. KAHN: I paid 72,000 at the auction  
2 but of course after that there are more costs.

3           MR. SURABIAN: I made a filing with the  
4 Board yesterday I attached the deed did you get a  
5 copy of that Mr. Nappo? Is this the deed?

6           MR. KAHN: It looks like that. That was  
7 the day I purchased from Jerome Kuta he was the  
8 trustee that's true and the lot and square is  
9 72,000 dollars yep it seems like this is the  
10 right one.

11          MR. SURABIAN: Turn to "Exhibit B" have  
12 you ever seen a datasheet like this before?

13          MR. KAHN: Yeah it's a public record from  
14 DCRA website.

15          MR. SURABIAN: This is a part where  
16 there's tax information there?

17          MR. KAHN: You mean the 2012 tax  
18 assessment rule.

19          MR. SURABIAN: Right.

20          MR. KAHN: Right.

21          MR. SURABIAN: Do you see the land is  
22 valued at 193,000 dollars approximately.

1 MR. KAHN: Right.

2 MR. SURABIAN: So did you know if you  
3 paid 72 and it's assessed for 193 did you know  
4 you were getting a pretty good deal?

5 MR. KAHN: First of all I didn't know  
6 when I paid 72,000 dollars what it is assessed  
7 for, I didn't know that, and the second thing is  
8 yeah of course it's a good deal that's why people  
9 go to auctions.

10 MR. SURABIAN: Did you take any other  
11 steps before you bought the land to check out the  
12 property?

13 MR. KAHN: No not at all.

14 MR. SURABIAN: You didn't do a survey?

15 MR. KAHN: No not at all.

16 MR. SURABIAN: You didn't talk to a  
17 lawyer?

18 MR. KAHN: No not at all.

19 MR. SURABIAN: You didn't do a title  
20 search?

21 MR. KAHN: No not, as I told you that day  
22 before I went to auction I was told about this

1 property, that morning.

2 MR. SURABIAN: And so the sale happened  
3 in January of 2010 is that right?

4 MR. KAHN: Right.

5 MR. SURABIAN: And then you applied for  
6 your building permit in February.

7 MR. KAHN: Right.

8 MR. SURABIAN: So I guess between January  
9 and February is when you had your plans?

10 MR. KAHN: Actually you're right, that  
11 was the time for the plans but we started  
12 researching right after we bid at the auction on  
13 December 2, or 3<sup>rd</sup>, we have 30 days, it was  
14 probably December 8<sup>th</sup>, because we put the deposit  
15 if you don't buy, those rules are very strict at  
16 the auction so pretty much you take  
17 responsibility after that. So we started  
18 researching after that and we hired, and we  
19 started thinking about the project. MR.  
20 SURABIAN: Okay so between December and February  
21 you created your plans?

22 MR. KAHN: Right.

1           MR. SURABIAN: And the plans you created  
2 were for a 3 unit building.

3           MR. KAHN: Let me go back, you said  
4 between December, we did not create plans until  
5 we bought it but we started thinking about it,  
6 because we don't want to create the plans we  
7 don't want to hire someone until we are 100%  
8 owner of the property.

9           MR. SURABIAN: Okay and who did you hire  
10 to do that for you?

11          MR. KAHN: We hired this agent Mr.  
12 Agipong and my partner hired him, I'm mostly in  
13 the offices my partner he's the project manager  
14 also and we hired this guy for this particular  
15 job but we have hired a lot of other guys in the  
16 past but he's one of the guys we use him as a  
17 consultant but we have used tons of other people  
18 as well.

19          MR. SURABIAN: Did Mr. Agipong tell you  
20 he had zoning expertise?

21          MR. KAHN: He just told us he can run  
22 permits for us, he can get drawings for us that

1 are all he told us.

2 MR. SURABIAN: And did he get drawings  
3 for you?

4 MR. KAHN: Yes.

5 MR. SURABIAN: And what did you tell him  
6 you wanted?

7 MR. KAHN: We told him that this is the  
8 property and check if we can get 3 units here we  
9 want to put an apartment house.

10 MR. SURABIAN: And did he say 3 units  
11 were okay?

12 MR. KAHN: No he said he have to look  
13 into that, he have to do some research, he will  
14 do that, he will talk to DCRA, of course he  
15 cannot assure us and he didn't know even up  
16 front, he said okay I'll look into that what we  
17 can do about that.

18 MR. SURABIAN: And did you yourself or  
19 your partner consult the zoning regulations?

20 MR. KAHN: No we don't because that's why  
21 we hired these people.

22 MR. SURABIAN: I'll refer you to the..

1 MR. KAHN: The other thing I know about  
2 Mr. Agipong is he used to work in DC for 10 years  
3 and he was within DCR I don't know which division  
4 but within permitting or something like that.

5 MR. SURABIAN: So can you look at  
6 "Exhibit E" on your appeal?

7 MR. KAHN: Okay I see that.

8 MR. SURBIAN: Okay and then the stamp is  
9 from Quentin Worrell, do you know him?

10 MR. KAHN: No he works with Mr. Agipong,  
11 I don't know him.

12 MR. SURABIAN: You never met him?

13 MR. KAHN: No I never met him.

14 MR. SURABIAN: And he never told you that  
15 3 units...

16 MR. KAHN: I don't even know him...

17 MR. SURABIAN: Do you know if Mr. Worrell  
18 knew what zone the property was in?

19 MR. KAHN: As I said I never even met him  
20 I have no idea, because the way it works for us  
21 is we, Mr. Agipong was like lead for this job, as  
22 I said he's a consultant he's not an employee, no

1 relationship and we have used other consultants  
2 in the past as well so his job for us was to  
3 deliver us permits, go get the drawings done, run  
4 the permits, all that stuff you know. In DCRA  
5 it's very common all these builders have  
6 expeditors running for them, running for permits,  
7 so it's I guess that's very normal.

8 MR. SURABIAN: And did that concern you  
9 when you had a plan set that was stamped by  
10 someone you didn't know?

11 MR. KAHN: I didn't know that you just  
12 brought me up a couple of weeks ago when we met  
13 in your office.

14 MR. SURABIAN: Did you see the plans  
15 before the permit application was filed?

16 MR. KAHN: No I did not because it's my  
17 partners job, he's a partner and he's an engineer  
18 himself but he's not, he has a degree in  
19 engineering but it's his job, he's my project  
20 manager, I'm in the office so he goes and meet  
21 with Mr. Agipong or the engineers on a regular  
22 basis so they get his approval.

1 MR. SURABIAN: Do you know if your  
2 project manager met Mr. Worrell?

3 MR. KAHN: I did not.

4 MR. SURABIAN: Did Mr. Agipong know what  
5 zone the property was on?

6 MR. KAHN: Of course, I believe so it  
7 says here.

8 MR. SURABIAN: And did your project  
9 manager did he look at the plans before they were  
10 filed?

11 MR. MRDASHIR KAHN: I did yeah, he gave  
12 me a rough copy to see and I saw everything  
13 what's coming out.

14 MR. KAHN: Before it was approved right  
15 he just gave you a rough.

16 MR. MUDASHIR KAHN: They show you copy  
17 once they do the drawings before the submit so I  
18 saw that copy.

19 MR. SURABIAN: And have you looked into,  
20 have you gotten a bid from a contractor as to  
21 what it would cost you to convert this to a two  
22 unit building?

1           MR. KAHN: We already know that we are in  
2 this business.

3           MR. SURABIAN: So you have spoken to a  
4 contractor or you haven't.

5           MR. KAHN: We already no how much it will  
6 cost that's what I'm saying.

7           MR. SURABIAN: How much will it cost you?

8           MR. KAHN: For what?

9           MR. SURABIAN: To convert it to a two  
10 unit building?

11           MR. MUDASHIR KAHN: But in order to  
12 convert it we have to demo a lot of stuff and  
13 then at the end the building is designed for 3  
14 units, so the two units if we do two units its  
15 going to be very undesirable units because those  
16 units will be gigantic big units and it's going  
17 to be very hard for us to sell it. If we knew  
18 from day one if DCRA would not have issued this  
19 permit and they could have cashed this right  
20 there back in March, February last year we would  
21 have gone through another design for two units,  
22 smaller building more desirable for people. So

1 this building is designed for 3 but it's going to  
2 be expensive for us, we have to do a lot of  
3 demolition, a lot of design change and still we  
4 will end up with difficult units to sell. And of  
5 course with less sales so more cost.

6 MR. SURABIAN: So this property was an  
7 investment for you?

8 MR. KAHN: Of course it was an  
9 investment.

10 MR. SURABIAN: Let's say you had applied  
11 for the permit and DCRA denied it, wouldn't you  
12 have already spent a lot of money in acquiring  
13 the land and designing the building?

14 MR. KAHN: Repeat.

15 MR. SURABIAN: Had DCRA not approved the  
16 permit but denied it, you would have already  
17 spent a lot of money in the design cost...

18 MR. KAHN: But design cost is not as much  
19 as construction, we all know here, design cost us  
20 only like 15 or 20 grand I would never sit here  
21 to recall 15 or 20 grand alright so, the problem  
22 is if they would have denied me I would go back,

1 my project manager would go back to the engineers  
2 and tell them okay now lets redesign for two  
3 units and we know what we can sell, how bit units  
4 we should sell or we should not put a gigantic  
5 units, we would not have put a third floor here  
6 if we knew it was going to be two units, we would  
7 not build that big of building. We may have got  
8 away with sprinklers so there are a lot of things  
9 which we could have saved.

10 MR. SURABIAN: Why would you buy a piece  
11 of land and then spend 20,000 dollars designing a  
12 3 unit apartment building there if you never  
13 spoke to anybody who had expertise in zoning who  
14 could tell you that was allowed?

15 MR. KAHN: As I said we hired this guy  
16 and these expeditors they go out to DCRA every  
17 day, you are very much familiar with DCRA  
18 culture, you know, you don't see any developers  
19 and real estate investors sitting there all day  
20 having a ticket in their hand and try to talk to  
21 someone for this, because they have these people  
22 that's what they go with, this is their living,

1 right, and they tell people that they know about  
2 this. Especially in our case we had this guy who  
3 works for 10 or 12 years for DCRA, so you know  
4 it's just like I have Mr. Nappo here because he's  
5 expert in this job, I cant come here without  
6 having attorney, why would you take a case if you  
7 don't make money out of it, it's the same thing,  
8 it's not my job to do, I'm trying to administer  
9 my business I cannot go and talk to DCRA  
10 everyday. There are people out there for that.

11 MR. SURABIAN: But you didn't talk to  
12 DCRA before you bought the land?

13 MR. KAHN: Of course not.

14 MR. SURABIAN: And you didn't talk to  
15 DCRA before you had the plans drawn?

16 MR. KAHN: Do you think I should talk to  
17 DCRA before, I, no I did not.

18 MR. SURABIAN: Mr. Agipong didn't tell  
19 you, he told you that he didn't know what the  
20 zoning was right?

21 MR. KAHN: Let me tell first Mr. Agipong  
22 did not know I bought this land, we hired him

1 after we bought the building, after we bought the  
2 land so of course he did not tell us what zone it  
3 is but after that bidding they redid our research  
4 when we already bought it and found out what zone  
5 it is but being a developer in DC, we know these  
6 areas we know where R-4 is, where, so we had an  
7 idea just by the address that it should be R-4  
8 zoned.

9 MR. SURABIAN: So when you say you did y  
10 our research what did that entail?

11 MR. KAHN: After we bought it, we found  
12 out it's an R-4 Zone property.

13 MR. SURABIAN: Yes, and when you found  
14 out it was R4 did you check the regulations to  
15 see what that meant?

16 MR. KAHN: That's why we hired this agent  
17 to find out what we can do for this.

18 MR. SURABIAN: So Mr. Agipong told you  
19 that 3 units were allowed in R-4?

20 MR. KAHN: No I had it in my mind  
21 already, I knew it before as 2700 square feet, as  
22 I said I've done other developments as well so we

1 know if it's over 2700 square feet we assume we  
2 can do 3 units.

3 MR. SURABIAN: But you were wrong about  
4 that.

5 MR. KAHN: Yeah that's what I found out  
6 on November 18<sup>th</sup>, that's true.

7 MR. SURABIAN: I don't have any further  
8 questions.

9 CHAIRPERSON MOLDENHAUER: Before you have  
10 any, do you have any redirect? The Board will  
11 have some questions as well.

12 MR. NAPPO: May I reserve my redirect  
13 till after you?

14 CHAIRPERSON MOLDENHAUER: That will be  
15 fine. So you've done 10 developments you said in  
16 the District?

17 MR. KAHN: About that yeah, I don't  
18 remember exactly but probably should be at least  
19 that many.

20 CHAIRPERSON MOLDENHAUER: None of those  
21 were vacant properties all of those were  
22 conversions or rehabs?

1 MR. KAHN: Right.

2 CHAIRPERSON MOLDENHAUER: Can you  
3 explain, you said that you understand R-4 and you  
4 understand the fact that you know, different  
5 properties, can you tell me I guess the extent of  
6 your or your contractors, your project managers  
7 understanding of what zones permit, different  
8 uses. What did you understand the permitted use  
9 on that property?

10 MR. KAHN: As far as I understand, R4 is  
11 residential it's by default even if you have a  
12 smaller lot it's default for two flats, two  
13 apartments, and if you have more than 900 square  
14 feet per unit you can go with those, that's what  
15 I believe, like if you have 3600 square feet you  
16 can put four units there, if you have whatever  
17 27, 3, so that's what I think and that's what I  
18 believed until November 18<sup>th</sup>, until we got the  
19 stop work order so that's what I think R-4 is  
20 zoned for, it's 40 feet high, 60% lot occupancy  
21 if it's a single family house, 40% lot occupancy  
22 if it's multi-family, I mean all those basic

1 stuff.

2 CHAIRPERSON MOLDENHAUER: Do any Board  
3 Members have any other questions?

4 MR. SCHLATER: I think the facts here are  
5 actually not in much dispute, I think everybody  
6 knows what happened and then the question for us  
7 is to apportion responsibility and then figure  
8 out a way out of this mess, I think it is an  
9 unfortunate situation, there's no doubt about  
10 that. I think Mr. Kahn you as a developer bear  
11 some of the responsibility here and you should be  
12 willing to own up to that, you submitted the  
13 building permit application whether it was your  
14 consultant who ultimately made the mistake and  
15 counseled you incorrectly you still submitted a  
16 building permit application to the District that  
17 was in error, so Mr. Agipong clearly didn't do  
18 you any service, the engineer who stamped the  
19 plans, Mr. Worrell didn't do you any service and  
20 then unfortunately it slipped through DCRA as  
21 well and then that just multiplied the mistake.  
22 I wouldn't as you characterized it put all of the

1 burden on DCRA employees, I think you have to  
2 understand you made a mistake as well and you  
3 have to own up to that. I think my main  
4 questions have been covered mostly by Mr.  
5 Surabian I think, questions are did you do your  
6 due diligence leading up to the purchase, you  
7 didn't have a lot of time, so I think that's been  
8 answered, you were at an auction you were just  
9 purchasing it and you were going to figure out  
10 what to do afterwards but I work in development,  
11 I know that the first thing you do when you get a  
12 piece of property is you figure out what you can  
13 build on it, and that's a very important step in  
14 the process. So one question I would have is  
15 where is the engineer, should he be here today,  
16 MR. Agipong, I mean it would be helpful to  
17 understand what he was thinking, so I think we're  
18 at a little bit of a loss not having him here  
19 today as your agent.

20 MR. KAHN: If we knew he was needed here  
21 we would have tell him to come here.

22 MR. SCHLATER: Okay, I don't know, we can

1 work it out and figure out whether we need any  
2 information from him. The question I would like  
3 to know the answer to is how much would it cost  
4 to turn this into a two unit building? You can  
5 give me a rough estimate and I don't think that  
6 was answered, I understand what you said earlier  
7 which was there's other costs, not just the  
8 actual construction and conversion cost but it's  
9 not as marketable structure but it would have  
10 been good to know how much would it physically  
11 cost to make this building into a two unit  
12 building.

13 MR. KAHN: The point I was trying to make  
14 earlier was one thing is how much it's going to  
15 cost us to convert back into two units, but the  
16 other thing was we should not have built it as  
17 big..

18 MR. SCHLATER: I understand your point  
19 very well but I'm just asking you a question  
20 which is how much would it cost to convert it?

21 MR. KAHN: It's going to be another  
22 200,000 dollars from this point on. Can I ask

1 you a question or no, not at this point in time?

2 CHAIRPERSON MOLDENHAUER: I actually have  
3 a follow up question to that, what do you think  
4 the currently the three units would market at?

5 MR. KAHN: You mean the sales price?

6 CHAIRPERSON MOLDENHAUER: Sales price yes.

7 MR. KAHN: Okay we believe if we finished  
8 this project as three units, we should be able to  
9 sell the bottom unit which is a duplex with  
10 basement around it all depends on the market  
11 again around 400,000 dollars and the one above  
12 around 300 and the top one as well around 300.

13 CHAIRPERSON MOLDENHAUER: You're going to  
14 be selling these as condos?

15 MR. KAHN: Right.

16 CHAIRPERSON MOLDENHAUER: What would you  
17 consider if you had to covert to two units?

18 MR. KAHN: If we had to, the bottom would  
19 be again 400,000 and the top at the max 425  
20 because the layout has been...

21 CHAIRPERSON MOLDENHAUER: Did you hire a  
22 lawyer to do your condo conversion?

1           MR. KAHN: No we basically we do it in  
2 house.

3           CHAIRPERSON MOLDENHAUER: I'm just trying  
4 to find out if you had somebody that could have  
5 looked at this and advised you that there was a  
6 problem as well, but you do your condo  
7 conversions in house.

8           MR. KAHN: Right.

9           CHAIRPERSON MOLDENHAUER: Any other  
10 questions from Board Members at this time? We  
11 can come back to any additional questions in the  
12 future. Is there any redirect Mr. Nappo?

13          MR. NAPPO: There is but may I ask one  
14 question? My clients have an opportunity like a  
15 day or two to present the Board with a more  
16 reasoned figure for what it would cost, they seem  
17 to be talking a bit, just a bit off the cuff and  
18 I'm wondering if we might have a day for them to  
19 ponder the costs and think all the ramifications  
20 and present that figure to the Board because as I  
21 heard it the suggestion was what cost about  
22 200,000 thousand, I think the Board could use a

1 more definite figure than that.

2 CHAIRPERSON MOLDENHAUER: Mr. Nappo what  
3 we'll do at the end of the hearing we'll  
4 determine whether the Board thinks we can make a  
5 decision on the facts that we have in front of us  
6 or we'll determine whether we'd like to hold the  
7 record open for additional information, that  
8 would be one of the things if we decide to hold  
9 the record open we would give time to supplement  
10 the record but I think right now lets go forward  
11 with the hearing to determine if we feel that  
12 we're prepared to make a decision today, if not  
13 we need more information we will leave the record  
14 open for that.

15 MR. NAPPO: May I then redirect very  
16 briefly then my client? Mr. Kahn have you ever  
17 submitted a project or a plan to the DCRA which  
18 was rejected?

19 MR. KAHN: Yes, many, many times.

20 MR. NAPPO: And what happened, lets take  
21 the last time, what happened, can you just  
22 briefly tell us why the plan was rejected and

1 what you did in response to the rejection of the  
2 plan?

3 MR. KAHN: Only he can tell you that  
4 better.

5 MR. MUDASHIR KAHN: There have been times  
6 that basically we tried to get something and the  
7 rules are like different so we can't really do  
8 that so freehand we just make a modification to  
9 drawings make sure we get the permits according  
10 to our plans. If we know prehand we can plan  
11 better, in this case nothing was told to us, and  
12 we could have (Inaudible).

13 MR. NAPPO: But previously if I  
14 understand your answer you have submitted plans  
15 to DCRA which were not approved, and you would  
16 modify the plan to meet the objection is that  
17 correct?

18 MR. KAHN: That's correct.

19 MR. NAPPO: Then may I ask you a somewhat  
20 hypothetical question if this plan had been  
21 rejected as a 3 unit plan what would have been  
22 your response?

1           MR. MUDASHIR KAHN: I guess obviously we  
2 would have gone another route like make a two  
3 unit building, change the drawings, get new  
4 permits and then make sure they would go to  
5 planning.

6           MR. NAPPO: Do you want to add to that?

7           MR. KAHN: Right I want to add that we  
8 need to understand this; these permits were not  
9 approved right away so there were a lot of  
10 objections during that time which our consultant  
11 went back to DCRA trying to solve added drawings  
12 so it's not like it was an instant approval.

13           MR. NAPPO: Are you saying that in the 3  
14 months that they had to consider this they did  
15 voice some objections and you modified your plans  
16 accordingly?

17           MR. KAHN: Right it's always like that,  
18 they always pick up a lot of things, either  
19 plumbing, or this issue or that issue and you go  
20 back and fix it.

21           MR. NAPPO: And that happened in this  
22 project?

1 MR. KAHN: Absolutely.

2 MR. NAPPO: I think that's all I have.

3 CHAIRPERSON MOLDENHAUER: Thank you do  
4 you have any further witnesses?

5 MR. NAPPO: Could you indulge me a  
6 moment?

7 CHAIRPERSON MOLDENHAUER: Sure.

8 MR. NAPPO: Madam Chairperson, I would  
9 also say that if it becomes vital or critical or  
10 even necessary for the Board to hear from the  
11 architect, it's my fault I didn't think to bring  
12 him, once again we'd be happy to come back with  
13 him in a reasonable short period of time if that  
14 would be helpful for the Board.

15 CHAIRPERSON MOLDENHAUER: You're talking  
16 about Mr. Agipong? Because I mean you don't  
17 have...

18 MR. NAPPO: No I'm talking about Worrell,  
19 the fellow who stamped it.

20 CHAIRPERSON MOLDENHAUER: He's also not  
21 an architect he's a professional engineer.

22 MR. NAPPO: Oh professional engineer, I

1 use that term or both of those individuals if you  
2 feel that hearing from them would clarify your  
3 opinion we'll get them in here.

4 CHAIRPERSON MOLDENHAUER: Okay I think  
5 that actually maybe was a raised question from  
6 one of the other Board Members.

7 MS. SORG: Yeah actually thank you Madam  
8 Chair one of the things that you just said just  
9 reminded me, to the other Mr. Kahn, the project  
10 manager, are you a professional engineer?

11 MR. KAHN: I'm an engineer I have a  
12 degree civil engineer but I haven't cleared the  
13 BE exam for D.C.

14 MS. SORG: Okay but your degree is...

15 MR. KAHN: Civil Engineer from UDC.

16 MS. SORG: Okay thank you.

17 MR. NAPPO: That would conclude our  
18 presentation.

19 CHAIRPERSON MOLDENHAUER: Let me ask one  
20 other question, I'm looking at this Exhibit were  
21 you emailed Ms. Argo, and you sign off as Metro  
22 Construction Capital Hill Washington D.C.

1 MR. KAHN: Right.

2 CHAIRPERSON MOLDENHAUER: Is all of your  
3 work in construction in D.C.?

4 MR. KAHN: Right.

5 CHAIRPERSON MOLDENHAUER: Do you think  
6 that you should have known what the requirements  
7 are for an R-4 zone?

8 MR. MUDASHIR KAHN: I believe we knew but  
9 the thing is again as I said that's not a  
10 requirement and also they stamp this if someone  
11 submits the application DCRA they are the people  
12 who knows all these rules so if they can make a  
13 big mistake what about the people of the street,  
14 we're not required to know all these rules, so  
15 it's their baby basically so they're the one who  
16 is enforcing all this and it's not gone through  
17 one person, we all know that its gone through  
18 tons of people at DCRA so if I was assuming I can  
19 put 3 units I believe there are tons of other  
20 people in DCRA as well, because the law is very  
21 confusing about that, if I read the law book it  
22 still says 900 square feet is for conversion, new

1 construction, now we find out about all these  
2 details but if you walk into D.C. even I can tell  
3 you if you go to Zoning Office, I've consulted  
4 with Zoning in the past and they've given me  
5 wrong advice so where do you go from there. Back  
6 in 2005 I wish I could have brought that, there  
7 was a building on D Street N.E. back in 2005 I  
8 got permission for 6 units for conversion and  
9 after two weeks I got a letter from Zoning that  
10 no you can only have 4 units for within two weeks  
11 I did not lose a lot of money so I did not pursue  
12 and we end up having 4 units so basically these  
13 are the mistakes they do all the time, you go to  
14 Zoning and you still don't get satisfactory  
15 answers because I think the law is very confusing  
16 or the people there they are now educated as  
17 well.

18 CHAIRPERSON MOLDENHAUER: Any follow up  
19 questions for Mr. Kahn? Seeing none then thank  
20 you we'll turn over to the Districts case.

21 MR. SURABIAN: Thank you, I think as Mr.  
22 Schlater pointed out that it's sort of an

1 unfortunate situation but really the Appellant is  
2 working from a wrong assumption that it's not  
3 their responsibility to know the rules that it's  
4 DCRA's and that if a mistake is made that they  
5 don't have any accountability and I think that's  
6 the wrong assumption. It's the property owner,  
7 the investor who applies who needs to know and if  
8 they don't have the knowledge to take the steps  
9 to hire somebody who does have the knowledge to  
10 put together plans that comply with the law.  
11 Quite frankly DCRA doesn't review permits for the  
12 benefit of the Appellant we review permits for  
13 the benefit of the public and if a mistake is  
14 made we have an obligation to the public to  
15 correct that, we don't work for him in that if we  
16 made a mistake we necessarily owe him anything,  
17 we're enforcing the laws for the benefit of the  
18 public. The issue of Estoppels has come up  
19 before the court of appeals and a quote from an  
20 often sided case it's the Wike v District of  
21 Columbia Board of Zoning Adjustment Case 383 and  
22 the court of appeals said due to the important

1 general public interest then the integrity  
2 enforcement of the zoning regulations the  
3 affirmative defenses of Estoppels and latches are  
4 not judicially favored and that same case goes on  
5 to say that in order to evoke an Estoppels  
6 doctrine the equities need to be strongly in  
7 favor of the party invoking the doctrine and I  
8 don't think that the equities are really strongly  
9 in favor. I think if we look through the facts  
10 here, one the Appellant is there is a remedy for  
11 them to, they could seek a variance or they could  
12 convert it to a two unit flat. In that sense yes  
13 there are maybe some excess costs but they are  
14 not losing the use of their land nor do they have  
15 to tear down the entire building. There's a  
16 building in large part can remain standing, you  
17 know all of the costs associated with the  
18 structure of the building, the foundation, that's  
19 money they would have spend anyway. Look into  
20 the equities I think there's a clear lack of  
21 diligence on the part of the Appellant here that  
22 just can't be ignored they didn't go to the right

1 professionals to ask the questions about zoning,  
2 they didn't consult the Zoning Regulations  
3 themselves. They sort of were working on their  
4 own misapprehension of the law and didn't think  
5 that when building on a vacant lot in the  
6 District of Columbia that there could be rules  
7 out there that would stop them, I mean this is  
8 Washington, D.C. there could be historic  
9 regulations, there could be overlays there could  
10 be any number of agencies, regulations that would  
11 be applicable here and they didn't look into any  
12 of it. Any financial loss I think can be  
13 mitigated I mean first of they purchased the land  
14 for 72,000 dollars and the assessment records  
15 shows it's worth quite a great deal more than  
16 that. This is a commercial investment I think  
17 there are certain risks associated with that and  
18 costs can recouped over time in that they would  
19 still have two condos they could rent those out,  
20 they could sell them, there's still a great deal  
21 of value here in the building. And in terms of  
22 reliance yes DCRA issued a permit but they didn't

1 rely on DCRA before they purchased the land, they  
2 didn't rely on DCRA before investing money and  
3 hiring consultants and engineers who designed the  
4 plans. Certainly after before beginning  
5 construction they never did any independent  
6 research or hired an attorney to look into what  
7 they could use with the land. That's essentially  
8 my legal argument and I have one witness who's  
9 the Zoning Administrator. Please state your name  
10 for the record.

11 MR. LEGRANT: Matthew LeGrant.

12 MR. SURABIAN: What is your employment?

13 MR. LEGRANT: I'm the Zoning Administrator  
14 for the District of Columbia and the Department  
15 of Consumer Regulatory Affairs.

16 MR. SURABIAN: Are you familiar with 527  
17 Irving Street?

18 MR. LEGRANT: I am.

19 MR. SURABIAN: Are you aware of a  
20 building permit that was issued on May 5<sup>th</sup> for  
21 that property?

22 MR. LEGRANT: Yes I am.

1           MR. SURABIAN: That's "Exhibit C" in the  
2 Appellant's appeal.

3           MR. LEGRANT: Yes we're talking about  
4 Exhibit C Building permit number B1003393 for 527  
5 Irving Street, N.W. issued on May 7, 2010.

6           MR. SURABIAN: And you're familiar with  
7 that permit?

8           MR. LEGRANT: I am.

9           MR. SURABIAN: And did you review the  
10 application associated with that permit?

11          MR. LEGRANT: My staff did.

12          MR. SURABIAN: And do you believe that  
13 permit is issued in error?

14          MR. LEGRANT: I do.

15          MR. SURABIAN: And how so?

16          MR. LEGRANT: In the subject zone which  
17 was the R-4 District it is not possible to  
18 construct a new apartment building as a matter or  
19 right use under Section 330.5 it is allowable to  
20 convert an existing building into an apartment  
21 building as long as you have 900 square feet of  
22 lot area for each unit, but that is the, other

1 than a grandfathered apartment building use on  
2 this conversion apartments are not a matter of  
3 right use.

4 MR. SURABIAN: And are there, is the 900  
5 square foot per unit rule the only zoning  
6 regulation applicable to this property?

7 MR. LEGRANT: No, in addition to that  
8 basic density limitation then all the other  
9 zoning development standards of which we've heard  
10 a little bit about today do apply, the maximum is  
11 60% lot occupancy, 40 foot height limit, 3  
12 stories, at least one parking space for every two  
13 units and so forth.

14 MR. SURABIAN: So just based on the size  
15 of the lot wouldn't necessarily tell you if a lot  
16 was buildable?

17 MR. LEGRANT: No one would have to do a  
18 review and analysis before one could conclude  
19 depending upon what the particular proposal that  
20 is before us.

21 MR. SURABIAN: How did you ultimately  
22 learn that there was an error with this building

1 permit?

2 MR. LEGRANT: In early or late October,  
3 early November 2010, one of my staff came to me  
4 who had been reviewing the permit that was  
5 mentioned earlier today about the roof deck and  
6 she noted to me she said well there's a roof deck  
7 for a new apartment building and that apartment  
8 building was not a matter of right use but  
9 nonetheless it was, it looks like it was  
10 approved, it had been approved by another  
11 technician so when I looked into the matter and  
12 did the research my initial thought was well was  
13 it a conversion from an existing building or was  
14 it new construction but then that technicians  
15 information was correct that it was a new  
16 construction, that's the point that I became  
17 aware that this building permit that we just  
18 described was in fact issued in error.

19 MR. SURABIAN: And the Appellant  
20 referenced a permit to do work on the roof, are  
21 you aware of that permit?

22 MR. LEGRANT: Yes.

1 MR. SURABIAN: Could you describe that?

2 MR. LEGRANT: Yes this was a permit to  
3 construct or establish a roofed deck on the roof  
4 on top of this building.

5 MR. SURABIAN: And did you approve that  
6 permit?

7 MR. LEGRANT: Yes I did.

8 MR. SURABIAN: If it was a two unit  
9 building would a roof deck be allowed?

10 MR. LEGRANT: Yes.

11 MR. SURABIAN: How many staff do you have  
12 approximately?

13 MR. LEGRANT: 10.

14 MR. SURABIAN: How many building permit  
15 applications do they review in like a month lets  
16 say?

17 MR. LEGRANT: In a month I would say  
18 between 4 to 500.

19 MR. SURABIAN: And is there anything  
20 else your office reviews?

21 MR. LEGRANT: Yes in addition to the  
22 building permits review we review applications

1 for certificates of occupancy, we review  
2 applications for subdivisions, we work with the  
3 permitting division on reviewing home occupation  
4 permits, those are the basic permit streams that  
5 we review, we also have responsibility for  
6 enforcement function I have a dedicated  
7 enforcement staff.

8 MR. SURABIAN: And how many C of O  
9 applications would you review in a month?

10 MR. LEGRANT: I would say about 200 to  
11 250.

12 MR. SURABIAN: Then subdivision and home  
13 occupation permits about?

14 MR. LEGRANT: I would say about 30 to 40  
15 subdivisions and maybe 100 home occupation permit  
16 applications.

17 MR. SURABIAN: So between 500 building  
18 permit applications, about 200 to 250 C of O  
19 applications, 30 subdivision applications and 100  
20 home occupation applications in a month, how many  
21 times in a month do you discover an error, in a  
22 good month?

1           MR. LEGRANT: Well let's see, I would say  
2 maybe one or two errors may come to my attention.  
3 Let me clarify that those are issues that may be  
4 brought to my attention pre-issuance, maybe a  
5 reviewer has already approved something but the  
6 permit has not yet been issued then we'll go back  
7 and make the appropriate adjustments. I have to  
8 say post issuance I'm happy to say that's a very  
9 rare occurrence.

10           MR. SURABIAN: So maybe less than one a  
11 month. And after you learned of the error in  
12 this case what did you do next?

13           MR. LEGRANT: Well I wanted to find out  
14 how far the construction had proceeded, we looked  
15 at I had a staff member go out to see how far the  
16 construction had proceeded, we looked at the  
17 inspection record, the inspection record tells us  
18 how far the building had proceeding in terms of  
19 having inspections improved so those are the two  
20 things we looked at.

21           MR. SURABIAN: And then you issued a stop  
22 work order I guess at that time?

1 MR. LEGRANT: Yes.

2 MR. SURABIAN: I show the stop work order  
3 "Exhibit A" and you familiar with that?

4 MR. LEGRANT: I am.

5 MR. SURABIAN: Did you ask for this stop  
6 work order to be issued?

7 MR. LEGRANT: I did.

8 MR. SURABIAN: Can you describe the  
9 violation just for the record.

10 MR. LEGRANT: Right, the violation I'll  
11 read it, it's a 3 unit apartment building it's  
12 not a matter of right use in an R-4 Zone it also  
13 notes previous principle building was removed  
14 without a raise permit of the code section, I  
15 mentioned earlier 11 DCMR 330.5

16 MR. SURABIAN: And after the stop work  
17 order was issued did the Appellant call you?

18 MR. LEGRANT: Yes he called and wished to  
19 meet and we met four days later on November 22<sup>ND</sup>.

20 MR. SURABIAN: And what did you discuss  
21 at that meeting?

22 MR. LEGRANT: Well we, Mr. Kahn brought

1 in Mr. Achipong and two members of my staff and  
2 myself and we described the violation, the reason  
3 for the stop work order, I explained to him that  
4 because that the construction that he was  
5 proceeding with was not a matter of right use I  
6 did not have authority as a Zoning Administrator  
7 to approve that use. I told him he had options  
8 to try to remedy the situation.

9 MR. SURABIAN: What options did you  
10 describe to him?

11 MR. LEGRANT: I told him that in order to  
12 establish this use you can seek relief in form of  
13 a variance from this Board the Board of Zoning  
14 Adjustments, he could also redo the building and  
15 apply for a permit that reflected a matter of  
16 right use which could be a flat or a single  
17 family home.

18 MR. SURABIAN: And did, at the meeting  
19 did Mr. Agipong or Mr. Kahn dispute the  
20 regulation with you and suggest that a 3 unit  
21 building could be there?

22 MR. LEGRANT: As I recall they were

1 obviously upset having to stop their construction  
2 and they noted looking at the financial loss they  
3 would endure, I stated several times the limit of  
4 my authority that I was acting in capacity of  
5 enforcing the Zoning Regulations, that if they  
6 have the right to appeal my decision to this  
7 Board that the suggested remedy was to seek a  
8 variance and is the perhaps the most time  
9 efficient situation would to be to apply for a  
10 variance to see about getting relief.

11 MR. SURABIAN: Do you ever when a  
12 developer is in sort of the design phase of a  
13 project do you ever meet with developers and  
14 advise them of the regulations?

15 MR. LEGRANT: Yes all the time.

16 MR. SURABIAN: Did the Appellant in this  
17 case do that?

18 MR. LEGRANT: No.

19 MR. SURABIAN: Did they do that with any  
20 one of your staff?

21 MR. LEGRANT: Not that I'm aware of.

22 MR. SURABIAN: No further questions.

1                   CHAIRPERSON MOLDENHAUER: Mr. Nappo  
2 redirect, or cross sorry.

3                   MR. NAPPO: Mr. LeGrant, you just  
4 testified that you meet with people on occasion  
5 before issuing the permit, you meet with people  
6 who are asking building permits and their counsel  
7 and their architect before issuing the permit, is  
8 that right?

9                   MR. LEGRANT: That's correct.

10                  MR. NAPPO: Can you give us a good  
11 working estimate of how many times you meet with  
12 people before issuing a building permit as  
13 opposed to getting a request for a building  
14 permit and making your decision on it without a  
15 previous conference with the persons involved?

16                  MR. LEGRANT: Well, I'll try to answer  
17 your question this way, the organization of my  
18 office is such that most the permit reviews are  
19 done by my staff, my subordinates in terms of my  
20 zoning technicians and my deputy zoning  
21 administrator, I, myself and my deputy on  
22 occasion meet probably two or three times a week

1 with developers, their counsel, architects who  
2 seek clarification or who have questions about  
3 the Zoning Regulations so I would say we've  
4 already heard some of the numbers about the  
5 volume of the number of permits that my office  
6 reviews on occasion maybe one or two permits a  
7 week come directly to me, they're very complex  
8 cases or cases with particular specialized issues  
9 that I review but I do meet again 3 or 4 times a  
10 week with applicants seeking input on Zoning  
11 Regulations.

12 MR. NAPPO: And again I'm going to ask  
13 the question what percentage of applications do  
14 you actually meet with people as opposed to  
15 exercising your independent judgment on a  
16 building permit application?

17 MR. LEGRANT: Personally or my whole  
18 office?

19 MR. NAPPO: The whole staff.

20 MR. LEGRANT: So it's less than 1%.

21 MR. NAPPO: So 99 people out of 100 submit  
22 building permit applications to you and those

1 applications are acted on?

2 MR. LEGRANT: I would say that that's  
3 correct.

4 MR. NAPPO: Would you look at "Exhibit C"  
5 which is the building permit in this case.

6 MR. LEGRANT: I have it here before me.

7 MR. NAPPO: Description of work would you  
8 agree that this building permit application said  
9 to construct new 3-stories plus basement  
10 apartment building?

11 MR. LEGRANT: Yes that's what it states.

12 MR. NAPPO: Is there any word in that  
13 phrase that you failed to understand?

14 MR. LEGRANT: No.

15 MR. NAPPO: And then you acted  
16 accordingly, you issued a building permit, is  
17 that correct?

18 MR. LEGRANT: That's correct.

19 MR. NAPPO: About how long, well we know  
20 isn't it a fact that you had the application for  
21 almost 3 months before granting it?

22 MR. LEGRANT: I think that's accurate.

1           MR. NAPPO: And is it also accurate that  
2 10 different units within your office signed off  
3 on it?

4           MR. LEGRANT: To clarify that the  
5 different disciplines include the permitting  
6 division, the other departments, department of  
7 environment, for example the DDOE, and my office  
8 but you're right there's 10 disciplines,  
9 approximately 10 disciplines apparently involved  
10 with this review, this particular application.

11           MR. NAPPO: Was there any attempt or  
12 could you tell us of any attempt by the  
13 plaintiffs here to obfuscate or hide or conceal  
14 their obvious purpose in how they intended to  
15 develop this property?

16           MR. LEGRANT: I would not attribute any  
17 obfuscation to their application.

18           MR. NAPPO: Would you also agree that on  
19 October I believe 27<sup>th</sup>, a couple of weeks before  
20 this came about they applied for a roof permit?

21           MR. LEGRANT: Yes as I testified through  
22 that process is how I became aware of the issue

1 with the first permit.

2 MR. NAPPO: You also in one of your  
3 responses said that you looked over complex  
4 applications; I take it those are multi-unit  
5 apartment buildings?

6 MR. LEGRANT: Well, I guess I'll say it  
7 this way, sometimes there's multiple uses,  
8 multiple lots, that are approved by the Zoning  
9 Commission, Board of Zoning, cases approved by  
10 this Board, properties with past enforcement  
11 issues things as that type, that's how I would  
12 constitute a complex situation.

13 MR. NAPPO: And to be more direct would  
14 you consider this building permit application to  
15 be a complex case?

16 MR. LEGRANT: In the fact that it was, did  
17 not involve those matters no.

18 MR. NAPPO: Do you know from your own  
19 experience with this case or your review of the  
20 records whether in the roughly 3 month period  
21 that they were considering his application for a  
22 building permit whether any questions arose about

1 any phase of the project at all?

2 MR. LEGRANT: No and in the post analysis  
3 when this came to my attention and I spoke to the  
4 reviewer Ms. Anderson, who's name was mentioned  
5 before, I went back and spoke with her about what  
6 occurred, there was a mistake made which was  
7 acknowledged that instead of a conversion  
8 situation it was new construction so there was no  
9 additional analysis that the technician that was  
10 involved did other than the compliance with all  
11 the development standards that the height, the  
12 setbacks, lot occupancy and so forth.

13 MR. NAPPO: And in those obvious factors  
14 apparently the building was of a height that was  
15 allowable 40 feet and there was a 60% occupancy  
16 use, I take it that in the gross analysis this  
17 building passed?

18 MR. LEGRANT: Correct.

19 MR. NAPPO: That's all I have of this  
20 witness.

21 CHAIRPERSON MOLDENHAUER: Before we allow  
22 any redirect Board Members may have some

1 questions, I have one quick question. You  
2 indicated you met with the Appellant and Mr.  
3 Agipong is that correct?

4 MR. LEGRANT: That's correct.

5 CHAIRPERSON MOLDENHAUER: What was your  
6 impression of Mr. Agipong's knowledge of zoning  
7 regulations and zoning requirements?

8 MR. LEGRANT: Well Mr. Agipong who was  
9 a former DCRA employee I think his tenure  
10 preceded my tenure at DCRA it may have overlapped  
11 a little bit but my impression his expertise was  
12 in the realm of the building code in our meeting  
13 I don't recall specifically asking him about his  
14 knowledge of the Zoning Regulations but he did  
15 not represent to me that he had done a Zoning  
16 Analysis as I recall on this application?

17 CHAIRPERSON MOLDENHAUER: Did he seem  
18 surprised to understand I guess the correct  
19 aspect of the Zoning requirements?

20 MR. LEGRANT: I don't know I would use  
21 the word surprised, he shared with the Appellant  
22 the angst of having their job stopped and then I

1 explained to all assembled but with the  
2 regulation was the rationale of the stop work  
3 order and then the options to go forward.

4 CHAIRPERSON MOLDENHAUER: No other  
5 questions, do any Board Members have any follow  
6 up?

7 MR. SCHLATER: Sure, Mr. LeGrant can we  
8 just talk about the stop work order for a moment?

9 MR. LEGRANT: Sure.

10 MR. SCHLATER: Do you have discretion on  
11 whether to issue a stop work order if you know  
12 something's being built in violation of the  
13 Zoning Code. Specifically you know that you  
14 already issued the building permit and signed off  
15 on it, do you think you had any discretion as to  
16 whether to issue that stop work order?

17 MR. LEGRANT: The only discretion I have  
18 is to whether after consulting with my counsel  
19 where we are in terms of the construction and how  
20 far it proceeded but if there's a violation of  
21 the Zoning Regulations it's my duty, part of my  
22 job to enforce the Zoning Regulations and so I do

1 not have an option of saying well this one I'm  
2 not going to pursue enforcement or not issue a  
3 stop work order, if the authority to pursue the  
4 stop work order then that's my job as I must have  
5 to issue a stop work order.

6 MR. SCHLATER: Then when you sat and met  
7 with the Applicant and you gave them the options  
8 with respect to the variance or appealing the  
9 stop work order, had you also explored areas  
10 where you might have been able to grant some  
11 relief to the Applicant?

12 MR. LEGRANT: Well because we had gotten  
13 to the point of saying well there was the  
14 violation it did not comply it was not a matter  
15 of right construction the options that were laid  
16 out were either other matter of right  
17 construction is a possibility or and I strongly  
18 recommended to pursue relief in the forms of a  
19 variance and I preface my discussion as I always  
20 do with individuals I cannot speak for the Board  
21 but you have the opportunity to go before the  
22 Board and make your case and anything that I

1 could do to help get the matter before the Board  
2 in a timely matter I would do so.

3 MR. SCHLATER: Is there a burden on the  
4 Applicant of a building permit when they submit a  
5 building permit is there any burden that they  
6 demonstrate, do they make any representations  
7 with respect to that application and it's  
8 conformance to building code and the zoning  
9 regulations?

10 MR. LEGRANT: Yes it is incumbent upon an  
11 Applicant to make their place that they're  
12 compliant, I can speak for the Zoning Regulations  
13 but then the other aspects of DCRA look at  
14 compliance with the other Districts construction  
15 related codes.

16 MR. SCHLATER: Okay no further questions,  
17 thank you.

18 CHAIRPERSON MOLDENHAUER: Any redirect?

19 MR. SURABIAN: Yes I just have one  
20 redirect question. In the span between the  
21 filing of the permit in the middle of February  
22 and then the review by the Zoning Tech in early

1 May do you know what was happening during that  
2 time?

3 MR. LEGRANT: Well other than what was  
4 represented on the chart which was part of the  
5 Appellant's exhibit that the other disciplines  
6 were reviewing, no I don't know the particular  
7 details of the...

8 MR. SURABIAN: Did your zoning reviewer  
9 sort of say to you oh I was thinking about this  
10 one for 3 months or is it likely that it came to  
11 her at a much later time?

12 MR. LEGRANT: Well just to explain the  
13 process as the plans, it's not concurrent review  
14 it's typically a serial review so it's one  
15 discipline has the plans, they make their review  
16 or comments either to approve or hold for  
17 correction and then it moves down the line but  
18 its not a situation where it's sitting in the  
19 Zoning Office for 3 months.

20 MR. SURABIAN: Okay, so it's likely that  
21 those plans were not, they were not in your  
22 office when the Application was filed?

1           MR. LEGRANT: No they were not, not to my  
2 knowledge, no.

3           CHAIRPERSON MOLDENHAUER: Before we turn  
4 to Mr. Nappo for any closing comments I just had  
5 a couple of follow up questions for Mr. Kahn.  
6 Just looking at the issue of, you know kind of  
7 what you have in the deal and what it would take,  
8 what type of interest rate do you currently have  
9 on the property?

10          MR. KAHN: 6.25.

11          CHAIRPERSON MOLDENHAUER: Do any of the  
12 Board Members have any questions? Mr. Nappo if  
13 you like you can have closing remarks.

14          MR. NAPPO: I will have some very brief  
15 closing remarks but I don't want to forget this  
16 point. Mr. Surabian has quoted a case regarding  
17 what I mentioned about Estoppels, I would  
18 appreciate having five working days to review  
19 that case and presenting a very brief document to  
20 the Board about my analysis to that case as to  
21 what the facts were in that case compared to this  
22 case and whether Estoppels which evidently denied

1 or at least as Mr. Surabian, sure he's quoting  
2 correctly that the court, the equities need to be  
3 strongly in favor of the complaining party, so  
4 I'd like if I may have five working days or a  
5 week but I will try to get it in two or three  
6 days, it's just one case, I'd like to read it and  
7 make a comment.

8           CHAIRPERSON MOLDENHAUER: I think that's  
9 fine I think that if that's something that you'd  
10 like to do, I think that's probably a good idea  
11 because I think that was an interesting point  
12 that obviously was brought out by Mr. Surabian  
13 and it did make me look at the numbers more which  
14 is where I asked the question about the interest  
15 rate and looking to see would there be strong  
16 equities against just doing a two unit flat  
17 versus a 3 unit flat and I think also you know my  
18 rough calculations of what carrying costs would  
19 be and what potentially you know some other  
20 additional hard costs it would be preferable to  
21 also include maybe a better more artfully  
22 submitted document on your side in regards to

1 what the comparison is to show us the fact that  
2 potentially the equities are very strong in your  
3 favor in regards to flat versus a 3 unit,  
4 because I think those figures are going to be  
5 important in our evaluation. So is there  
6 anything else that the Board would want to see  
7 from the Applicant in that regard during this  
8 time frame?

9 MR. SCHLATER: Madam Chair I might like to  
10 see a statement form Mr. Agipong as to what he  
11 was thinking in terms of his zoning analysis when  
12 he prepared the plans and then subsequently went  
13 to the engineer to get them stamped and submitted  
14 to the DCRA.

15 CHAIRPERSON MOLDENHAUER: I think it's a  
16 question of good faith and right now we have  
17 these statements by Mr. Agipong that he didn't  
18 know what was going on, I had questioning about  
19 that with Mr. LeGrant but I think that would be  
20 helpful obviously whatever you can or cannot get  
21 based on the facts, but something like that would  
22 probably be helpful as well.

1 MR. NAPPO: Happy to provide that.

2 CHAIRPERSON MOLDENHAUER: Based on that  
3 and trying to also get, see we don't have any  
4 hearings on the 22<sup>nd</sup>, so the next day we could put  
5 this on the calendar for would be the 29<sup>th</sup> of  
6 March, so what we'll do is we will give you until  
7 the 17<sup>th</sup> to submit a filing, March 17<sup>th</sup> and then  
8 Mr. Surabian if you feel the need to reply to  
9 that you will have until the 24<sup>th</sup> to reply and  
10 then we will have this for decision on March 29<sup>th</sup>.

11 MR. SURABIAN: I just ask that Mr. Nappo  
12 could serve that to me via fax or email?

13 MR. NAPPO: I'll do that soon, that I can  
14 do.

15 MR. SURABIAN: Okay thank you.

16 CHAIRPERSON MOLDENHAUER: And obviously a  
17 copy will come to the Office of Zoning.

18 MR. NAPPO: Right, and Ma'am I've lost a  
19 little bit of track, one I'm going to have a  
20 comment on the case cited by Mr. Surabian. Two  
21 I'm going to have a statement from Mr. Agipong  
22 and three I'm going to have a clarifying

1 statement from my client more accurately as to  
2 the cost of converting from 3 units to 2 units.

3 CHAIRPERSON MOLDENHAUER: Showing  
4 potential obviously the substantiated figures  
5 showing a back up for those figures so we know  
6 obviously if there's a difference in the  
7 marketing prices showing back up for those, I'm  
8 sure you guys have a real estate agent of a  
9 construction cost estimator someone like that,  
10 that can provide us documentation of those  
11 figures with support for that.

12 MR. NAPPO: I think this is really their  
13 business so that they may realize to a great  
14 extent on their own experience as to what it would  
15 cost, because they actually could get it at a  
16 lower price than what a general contractor can,  
17 but I'll try, we will try to satisfy you in each  
18 of those particulars. We appreciate the  
19 opportunity.

20 CHAIRPERSON MOLDENHAUER: What I'm going  
21 to do, I'm actually just going to for the  
22 purposes of the record, the ability for you to

1 provide any written brief is not going to be  
2 limited just to that one case, if you feel the  
3 need to provide additional closing remarks  
4 because this is going to be your closing instead  
5 of providing an oral closing right now, if you  
6 have any need to provide any additional oral  
7 closing as to Estoppels or potential latches, the  
8 record will remain open in that regard not just  
9 to respond to that one case.

10 MR. NAPPO: Thank you very much.

11 MS. NAGELHOUT: Madam Chair does that go  
12 to both parties?

13 CHAIRPERSON MOLDENHAUER: Yes it does  
14 because obviously Mr. Surabian's response will be  
15 limited based on Mr. Nappo's statement so I think  
16 it depends on obviously how Mr. Nappo what type  
17 of submission he has. But again the deadline  
18 will be March 17<sup>th</sup>, for Mr. Nappo for the  
19 Appellant and then the 24<sup>th</sup> for Mr. Surabian for  
20 the District and then we'll hear this case on the  
21 29<sup>th</sup> for decision.

22 MR. SURABIAN: Thank you.

1                   CHAIRPERSON MOLDENHAUER: That concludes  
2 this hearing and that also concludes our day's  
3 cases.

4                   MR. KAHN: Thank you.

5 END

6 llz

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22