

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
February 15, 2011
Start: 9:35am - End: 2:14pm

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

MORNING SESSION

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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 February 15, 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 is
8 Jeffrey Hinkle, Representative of the National
9 Capital Planning Commission and Representative of
10 the Zoning Commission Anthony Hood. Copies of
11 today's meeting agenda are available to you and
12 are located to my left in the wall bin near the
13 door. We do not take any public testimony at our
14 meeting unless the Board asks someone to come
15 forward. Please be advised this proceeding is
16 being recorded by a court reporter and is also
17 being webcast live, accordingly we must ask you
18 to refrain from any disturbing noises or actions
19 in the hearing room. Please turn off all cell
20 phones and beepers at this time. Mr. Secretary,
21 do we have any preliminary matters?

22 SECRETARY MOY: None at this time for the

1 public meeting session Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Okay, fabulous
3 why don't we can move forward with our agenda.

4 **Application No. 18165**

5 MR. MOY: The first two cases for the
6 Special Public Meeting is Application No. 18165
7 this of Ellen M. Mahan; pursuant to 11 DCMR
8 3104.1 for a special exception to allow a rear
9 porch and patio addition to an existing one
10 family detached dwelling under Section 223 not
11 meeting and this is the final posted relief for
12 this Application, not meeting rear yard Section
13 404 a non-conforming structure (Subsections
14 2001.3) requirements in the CBUT/R-1-A District,
15 this is at premises 5039 Eskridge Terrace, NW
16 (Square 1411, Lot 16). At the public hearing on
17 February 8, 2011, the Board completed public
18 testimony, closed the record and scheduled this
19 decision on February 15th, the Board requested
20 supplemental information from the Applicant to
21 complete the record these revised drawings are
22 included in your case folders Madam Chair and

1 those documents is also supplemental to the
2 drawing are identified as "Exhibits 32 and 33"
3 filings were submitted by the deadline of
4 February 10, 2011, the Board is to act on the
5 merits of the request for special exception, and
6 that completes the Staff's briefing Madam Chair.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much Mr. Moy we'll get started on our
9 deliberation. As we said this hearing this is a
10 fairly straight forward 223 case, the Applicant
11 has worked diligently to obtain approval from her
12 neighbors and make modifications to ensure that
13 he has support of both of the neighbors. Office
14 of Planning is in support of this Application and
15 we've received as indicated on the record by Mr.
16 Moy we've received the revised drawings which
17 would satisfy all of our requirements. What I'll
18 do is under 223 I'll incorporate the Office of
19 Planning's analysis into our record for
20 deliberation purposes and I'll indicate that I
21 see no issues with approving this Application,
22 are there any further deliberations. Seeing none

1 then I'll submit a motion, a motion to approve
2 Application No. 18165 for request for special
3 exception or 223 to construct an addition to an
4 existing one family detached dwelling at 5039
5 Eskridge Terrace, N.W. for relief under 404.1 to
6 allow rear yard 8 feet 10 inches which is a
7 minimum of 25 feet requirement and under Section
8 2001.3 to allow an enlargement of a non-
9 conforming structure. Motion has been made is
10 there a second.

11 MR. HINKLE: Second.

12 CHAIRPERSON MOLDENHAUER: Motions been
13 made and seconded, all those in favor say aye,
14 aye. Mr. Moy do we get an absentee ballot?

15 MR. MOY: Yes we do Madam Chair, that
16 absentee ballot is from Mr. Peter May who is also
17 participating on the application and his absentee
18 vote is to approve with any conditions that the
19 Board may impose so that would give the final
20 vote of 3 to 0 to 2, this on the motion of
21 Chairperson Ms. Moldenhauer to approve the
22 special exception relief 223, seconded by Mr.

1 Hinkle and of course in support of the motion Mr.
2 May a member not present voting and so that would
3 give the final vote again as 3 to 0 to 2.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Moy, the next case on our agenda.

6 MR. MOY: Would consider waiving the
7 requirements for a summary order?

8 CHAIRPERSON MOLDENHAUER: Yes we'd like
9 to waive our requirements for a summary order as
10 there are no parties in opposition for this case
11 and request a summary order be issued.

12 MR. MOY: Thank you very much Madam Chair.

13 **Application No. 18166**

14 MR. MOY: The next and last Application
15 for decision for the Board to address is
16 Application No. 18166 of the Government of the
17 District of Columbia Department of Housing and
18 Community Development; pursuant to 11 DCMR 3103.2
19 for a variance from the lot area with
20 requirements under Section 401, a variance from
21 lot occupancy requirements under Section 403 and
22 a variance from the rear yard requirements under

1 Section 404 to allow the construction of a flat
2 two family dwelling in the R-4 District at
3 premises 501 Rhode Island Avenue, NW, (Square
4 475, Lot 33), a note for the Board that the
5 Applicant at the last hearing on February 8th,
6 amended the Application to add Zoning Relief
7 from the off street parking requirements under
8 Section 2101.1. The Board also (inaudible)
9 completed public testimony, and closed the record
10 (inaudible due to background noise) on February
11 15, the record was open for the Applicant to
12 submit supplemental information to complete the
13 record which included revised drawings and a
14 letter from ANC 2C, those filings (inaudible due
15 to background noise). The Board is to act on the
16 merits of a multiple variance relief and that
17 completes the Staff's briefing Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much Mr. Moy, I had recuse myself in this case so
20 I'll turn to Mr. Hinkle.

21 MR. HINKLE: Thank you Madam Chair, as
22 Mr. Moy noted the Applicant did submit some

1 additional information on this project, at the
2 last hearing, at the hearing last week, the Board
3 has some issues related to the materials in the
4 façade, the court on the adjacent property, how
5 this project may conflict with some doors and
6 windows on another adjacent property and how that
7 staircases worked. In reading the plans it
8 appeared that there might be some unworkable
9 staircases in the proposal. The supplemental
10 materials that were provided to us included a
11 proposed elevation for the front façade, a
12 basement floor plan, and a ground floor plan, and
13 a site plan and then a photograph of the adjacent
14 property which is actually 1714 5th Street where
15 there might be some conflict with some doors and
16 windows on that rear façade of that property with
17 what's being proposed. However this is not all
18 the information that the Board requested
19 specifically we asked for some dimensions on the
20 site plan and a full site plan that was not
21 included with the site plan. We asked for
22 dimensions on the doors and windows of the

1 adjacent property at 1714 5th Street and some sort
2 of graphic that shows how this property may or
3 may not be impacted by the proposal, we also
4 asked for a section of the proposal showing how
5 the staircases would work. In addition in
6 reviewing these plans the new plans, the new
7 supplemental information I have a number of
8 additional questions for example, there's a
9 staircase coming down from, and exterior
10 staircase coming down from the ground floor what
11 appears to be a patio which is in the same
12 location as the basement window and so it appears
13 there's a conflict there. There's a number of
14 questions, the windows on the front façade on the
15 front elevation don't match what's shown in the
16 plan, so because we don't have a quorum today and
17 of the number of Board Members that are actually
18 on this case, would I would suggest is that we
19 postpone a decision and allow the Applicant some
20 additional time to supplement the record with
21 additional materials specifically a full set of
22 drawings so that we could better understand this

1 proposal. My concern is that if we can't
2 understand the proposal then we can't understand
3 the requested relief as appropriate and how that
4 may also impact the adjacent neighbors. What I
5 might propose is a March 8th date for decision with
6 a week in advance to have an additional
7 supplemental materials submitted. That would
8 allow the Board some additional time to review
9 the supplemental information.

10 MR. MOY: Mr. Hinkle, you said March 1st
11 or March 8th?

12 MR. HINKLE: March 8th.

13 MR. MOY: March 8th, so if you decide to,
14 well my suggestion then would be the Applicant
15 supply the information March 1st that gives the
16 Board a week to review the materials.

17 MR. HINKLE: That would be appropriate.

18 MR. MOY: Very good, so March 8th is
19 decision, March 1st deadline for submission of
20 additional items.

21 CHAIRPERSON MOLDENHAUER: Thank you then,
22 I believe that concludes our public meeting, is

1 that correct?

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

3 CHAIRPERSON MOLDENHAUER: Thank you, then
4 this hearing will please come to order, good
5 morning ladies and gentleman, this is the
6 February 15, 2011, Public Hearing of the Board of
7 Zoning Adjustments for the District of Columbia,
8 my name is Meredith Moldenhauer, Chairperson,
9 joining me today to my right is Jeffrey Hinkle,
10 Representative of the National Capital Planning
11 Commission and to my left is a Representative of
12 the Zoning Commission, Chairman Anthony Hood.
13 Copies of today's meeting agenda are available to
14 you and are located to my left in the wall bin
15 near the door. Please be advised this proceeding
16 is being recorded by a court reporter and is also
17 being webcast live. Accordingly we must ask you
18 to refrain from any disturbing noises or actions
19 in the hearing room. When presenting information
20 to the Board please turn-on and speak into your
21 microphone first stating your name and home
22 address. When you are finished speaking please

1 turn-off your microphone so that your microphone
2 is no longer picking up sounds or background
3 noise. All persons planning to testify either in
4 support or in opposition are to fill out two
5 witness cards these cards are located to my left
6 on the table near the door at the entrance and
7 are also on witness tables. Upon coming forward
8 to speak to the Board please give both cards to
9 the court reporter sitting to my right. The order
10 for special exceptions and variances are as
11 follows: 1. Statement of the Applicant and
12 Applicant's Witnesses. 2. Parties and persons in
13 support. 3. Parties and persons in opposition. 4.
14 Government Reports including Office of Planning
15 and Department of Transportation. 5. Reports
16 from the ANC. 6. Rebuttal and closing statements
17 of the Applicant. Pursuant to Section 3117.4 and
18 3115.5 the following time constraints will be
19 maintained, the Applicant/Appellant persons and
20 parties except an ANC in support including their
21 witnesses will be given 60 minutes collectively.
22 The Appellees persons and parties except an ANC

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

1 each case be held in the open before the public.
2 The Board may consistent with its rules and
3 procedures and the Sunshine Act enter into
4 Executive Session during or after a hearing on a
5 case for purposes of reviewing the record or
6 deliberating on a case. The decision of the
7 Board as in these contested cases must be based
8 exclusively on the public record, to avoid any
9 appearance to the contrary the Board requests
10 that persons present not engage the members of
11 the Board in conversation. Please turn off all
12 beepers and cell phones at this time as to not
13 disturb these proceedings. At this time the
14 Board will consider any preliminary matters,
15 preliminary matters relate to whether a case
16 should or will be heard today such as a request
17 for postponement, continuance or withdrawal or
18 whether proper or adequate notice of a hearing
19 was given. If you are not prepared to go forward
20 today or you believe that the Board should not
21 proceed, now is the time to raise such a matter.
22 Mr. Secretary, do we have any preliminary

1 matters?

2 MR. MOY: There are some preliminary
3 matters to each of the two cases in the morning
4 session; Staff would suggest that the Board
5 address those matters as I call the case Madam
6 Chair.

7 CHAIRPERSON MOLDENHAUER: Thank you then
8 all individuals in the audience planning to
9 testify will you please stand and the oath will
10 be administered.

11 MR. MOY: Do you solemnly swear or affirm
12 that the testimony that your about to present in
13 this preceding is the truth, the whole truth and
14 nothing but the truth? Ladies and gentleman you
15 may consider yourselves under oath.

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much Mr. Moy we can call the first case then for
18 the morning.

19 **Application No. 18169**

20 MR. MOY: Good morning Madam Chair,
21 Members of the Board, the first case for the
22 Public Hearing this morning is Application No.

1 18169, this is the Application of Kyle and Laura
2 Yost, pursuant to 11 DCMR 3103.2 and 3104.1 for
3 a special exception to allow a rear addition an
4 accessory garage serving an existing one family
5 semi-detached dwelling under Section 223 not
6 meeting lot occupancy, Section 403 side yard,
7 Section 405 requirements and a variance from the
8 alley centerline garage setback requirement under
9 (Subsection 2300.2 Sub B) in the R-3 District at
10 premises 3411 Prospect Street, NW, property is
11 located in (Square 1221, Lot 831).

12 CHAIRPERSON MOLDENHAUER: Good morning
13 if the parties can take a seat. We also have
14 party status requests so if those individuals are
15 present they can come forward and take a seat at
16 the table as well.

17 MR. MOY: While there's a lull in the
18 proceedings Madam Chair I just want to remind you
19 that there's a untimely filing of the affidavit
20 of posting.

21 CHAIRPERSON MOLDENHAUER: Yes we'll take
22 that up first thing as well. All the parties

1 starting on my left can introduce themselves.

2 MR. MARKUS: Rich Markus, Architect.

3 MR. SULLIVAN: Marty Sullivan, on behalf
4 of the Applicant.

5 MR. YOST: Kyle Yost the Applicant.

6 MS. YOST: Laura Yost the Applicant.

7 MS. HOLLAND WIGGINS: Party in
8 opposition.

9 MR. THOMASON: Party in opposition.

10 CHAIRPERSON MOLDENHAUER: Why don't we
11 first address the party status, rendering party
12 status and then we'll address the posting issue.
13 We're in receipt of a our "Exhibit No. 24" which
14 is a party status on behalf of Ms. Wiggins and
15 Mr. Thompson and it said initially that you were
16 going to be represented by Council are you not
17 going to be represented by Council today?

18 MR. THOMASON: We're going to represent
19 ourselves today.

20 CHAIRPERSON MOLDENHAUER: Okay, I just
21 want to make sure that's clear for our record
22 then, thank you. I see that you've submitted

1 this, you satisfy, in my view, the requirements
2 in order to obtain a party status, do any Board
3 Members have any questions in regards to
4 satisfying the standards for party status or do
5 all Board Members feel that they've satisfied the
6 standard. Seeing a consensus of heads is there
7 any opposition by the Applicant?

8 MR. SULLIVAN: No objection.

9 CHAIRPERSON MOLDENHAUER: Okay so you
10 will be granted party status in this preceding.
11 And do you understand the different; I guess
12 rights that you have in regards to that party?

13 MR. THOMASON: Yes I understand I can
14 present evidence and testimony in opposition to
15 the Application.

16 CHAIRPERSON MOLDENHAUER: And if you like
17 you can also cross examine the witnesses as they
18 present their case.

19 MR. THOMASON: Thank you.

20 CHAIRPERSON MOLDENHAUER: That being said
21 we have satisfied the additional party status and
22 now on to the issue of the affidavit of posting.

1 Mr. Sullivan do you want to address the good
2 cause shown as to why we should waive our
3 requirements and accept the posting that was
4 filed, I think it was yesterday, which we got
5 this morning?

6 MR. SULLIVAN: Yes it was Council's fault
7 through no fault of the Applicant, the pictures
8 were taken 15 days before when the poster was
9 installed and there's no harm to any party as a
10 result of the late filing of the affidavit so we
11 would request that the Board waive that
12 requirement.

13 CHAIRPERSON MOLDENHAUER: Board Members
14 do you have any questions? Seeing none, then the
15 Board will waive that requirement and accept the
16 affidavit of posting seeing that even though it
17 was filed late as indicated by Council it was
18 properly posted within the timeframe, obviously
19 if it was properly posted within the timeframe
20 that would have created an issue, but since it is
21 we can move forward. That being said then at
22 this point in time we'll turn to the Applicant to

1 present their case.

2 MR. SULLIVAN: Thank you, good morning
3 Madam Chair and Board Members. I'm here on
4 behalf of Kyle and Laura Yost, residents of 3411
5 Prospect Street, NW in Georgetown. The Yost's
6 are requesting approval to build a small addition
7 in the rear of their semi-detached home and to
8 rebuild their existing accessory garage on the
9 rear alley. First regarding the garage, the
10 proposal is to rebuild a deteriorating structure
11 and in the process to extend that structure
12 toward the rear alley. Section 2300.2B requires
13 a distance of at least 12 feet between the garage
14 and the centerline of the alley. The proposal
15 would provide only 9 feet between the centerline
16 of the alley and the garage and point of
17 clarification there's one error in my prehearing
18 statement it says the distance is only 6.83 feet
19 and I don't have an excuse for that, it's 9 feet
20 from the centerline to the garage, so we're
21 asking for a variance of 3 feet. The garage is
22 subject to an exceptional condition for several

1 reasons; the garage is more than 80 years old.
2 The length of the garage is shorter than today's
3 typical garage, it is in need of a restoration
4 and there's a large magnolia tree near the rear
5 of the garage in the rear yard and as part of
6 their review of the addition, the Commission of
7 Fine Arts has approved the garage alterations
8 with the condition that the Magnolia tree be
9 protected and that rear wall of the garage not be
10 moved closer to the Magnolia tree which leaves us
11 the only option of extending the garage
12 approximately 20 inches out toward the alley
13 which would be resulting in the 9 foot distance
14 between the garage and the centerline. The use
15 of the garage in its current size even with
16 midsize cars is an unnecessary burden and
17 extending the garage into the backyard would
18 violate CFA's condition and threaten the Magnolia
19 tree. Variance relief would not cause
20 substantial detriment to the public good, there's
21 actually a telephone pole about four feet in
22 front of the garage now further out towards the

1 alley and this is a very minor extension so it
2 won't have any impact on the alley other than to
3 greatly improve the appearance of the garage and
4 the alley. The rear addition under Section 223
5 is very straight forward, as you know an addition
6 is permitted here if the proposal meets the
7 requirements of Section 223 and this Application
8 clearly does meet those requirements. The light
9 and air to neighboring properties will not be
10 unduly affected; the addition leaves a rear yard
11 of over 69 feet so the air to neighboring
12 properties is not impacted at all. We will
13 present shadow studies which clearly show that
14 the light of the neighboring properties is also
15 not unduly affected. In response to stated
16 concerns of the neighbor at 3413 Prospect to the
17 west, the originally planned addition was scaled
18 back significantly and all windows on the west
19 side of the addition were removed from the plans,
20 with no windows at all facing that property the
21 privacy of that neighbor is not unduly
22 compromised. The addition will not substantially

1 intrude upon the character, scale or pattern of
2 houses along Prospect Street, it's a residential
3 addition, it's approved for its design and it's
4 massing by the old Georgetown Board and it is not
5 visible from Prospect Street. We have provided
6 and will present graphical representations of the
7 proposed addition and its relationship to
8 neighboring properties. The lot occupancy as
9 proposed will be 60%, 10% underneath the 70%
10 maximum permitted lot occupancy in the R-3 Zone
11 under Section 223.3 We're obviously not
12 introducing or expanding a non-conforming use.
13 We believe this is a very modest addition that
14 safely meets all the requirements under Section
15 223. If there are no questions at this time I
16 would like to introduce the Applicants Kyle and
17 Laura Yost, thank you.

18 MR. YOST: Yes hello I'm Kyle Yost I'm
19 one of the Applicants here with my wife Laura.
20 I've lived in this house on Prospect Street in
21 Georgetown for 11.5 years now, Laura has been
22 with me for 4, we absolutely love the

1 neighborhood, we want to stay and we would like
2 to raise a family here, Laura's pregnant and
3 we're due to have our first in 3 weeks and we
4 love the neighborhood. As an ANC member
5 mentioned, commented in the resolution it's a
6 tiny home and a very modest addition and that's
7 exactly what it is, it's a very modest addition
8 of 8 feet 3 inches in length extended into our
9 backyard but those 8 feet 3 inches will give us
10 in combination with the basement will give us a
11 good deal more square footage to live in and
12 minimize any footprint impact. In fact it's
13 only, we would be going from 560 square feet
14 footprint impact to 730, 175 square feet and over
15 the entire lot, that's actually just 8% increase
16 but in combination with the basement, having the
17 basement and that extra square footage we are
18 able to nearly double the square footage of the
19 house and enable us to remain there and raise our
20 family there. It will still be a very small
21 house, it's a very modest addition that will
22 still be the smallest footprint on the north side

1 of the 3400 block of Prospect Street, and it's
2 consistent with other additions on that block and
3 actually will be smaller than all of the other
4 additions that are currently there on that block.
5 There's no visibility from the street this is
6 all in the back, there's no privacy concerns for
7 the neighbors there are not windows and there's
8 minimal light and air concerns that we can show
9 and demonstrate through shadow studies that we've
10 had done. We're lucky to have a two car garage
11 in Georgetown in the alley behind the house, when
12 I bought the house in 1999, the home inspector
13 said wow your lucky to have a garage in
14 Georgetown but I don't know that I would park my
15 car in it, it's now almost 12 years later and the
16 thing is falling apart, there's not way around
17 it. But in addition to the structural integrity
18 it's simply too shallow, it fits a mid size or
19 small SUV nose to the wall and bumper to the door
20 when it's closed, makes getting out of the garage
21 through the rear exit very difficult you have to
22 kind of scramble over the hood, so it's too

1 shallow and as part of this work we were hoping
2 to extend 20 inches. As Marty said the old
3 Georgetown Board Historic Commission would like
4 us to keep the rear wall in place so our proposal
5 is to come out 20 inches in to the alley. This
6 will have no effect on anyone, there's already a
7 telephone pole that's 4 feet extended that's
8 effectively acting as a barrier that is out
9 further than this 20 inch extension. The two
10 ends of the alley are 9 feet wide and 10 feet 8
11 inches wide, those are the bottlenecks to the
12 alley we're at 18 feet 4 inches from garage door
13 to garage door across the way. Additionally like
14 currently from the back of the garage door there
15 would be 5 feet 8 inches of our property before
16 the public space, this 20 inches would move that
17 down to 4 feet of our property to the public
18 space that is still amongst the widest on the
19 entire alley, most of these garages have far less
20 space between their garages and the public space.
21 We have much neighbor support for both the
22 addition and the garage, for the garage we have

1 letters of support from both owners of garages on
2 either side, we also have letters of support from
3 other owners of garages on the street and indeed
4 others have asked us independent of this project
5 whether we would consider fixing up our garage
6 because it's an eyesore on the alley. For the
7 addition we've received many letters of support
8 from neighbors who are interested in keeping us
9 as neighbors and interested in keeping our
10 property as an owner occupied residence. We have
11 strong support from out neighbors on the east
12 side who were to be here today to testify for us,
13 they haven't yet arrived, maybe they will. We
14 have support from other neighbors who are
15 interested in keeping the house as owner
16 occupied. Prospect Street on the west side of
17 Georgetown is from Potomac to the University is
18 essentially student rental row, the 3400 block of
19 Prospect Street is an oasis of owner occupied
20 homes that have no student rentals. When I
21 bought the home in 1999, it was a student rental;
22 neighbors are concerned that they don't want it

1 to return to be a student rental. We've received
2 support from the Old Georgetown Board and from
3 the Office of Planning for this. We've received
4 support from the ANC in November in preparation
5 for the Old Georgetown Board and then
6 surprisingly we didn't receive support from the
7 ANC in January in preparation of this meeting.
8 There are new members and the ANC's resolution
9 didn't address Zoning concerns whatsoever. We
10 have an opposing neighbor, Clark Thomason and
11 Holland Wiggins in the house west; they've made
12 it clear that they don't support these plans.
13 We've tried to alleviate their concerns, we've
14 reduced the addition by 30% from 11 feet to 8
15 feet, and we've removed westward facing windows.
16 We've twice had Clark in our home to discuss the
17 plans and to discuss their concerns, he's
18 expressed concerns about shade in his back yard,
19 we've made it clear that since September we've
20 had shadow studies done that show that there's
21 very minimal impact on shading their backyard
22 that at no point in the day after noon will there

1 ever be any impact of shade in their backyard.
2 We are able today to show at anytime of day at
3 any point in the year we can show current versus
4 proposed what the shade impact will be with
5 shadow studies, so we're willing and happy to do
6 that at any point today. Clark's also expressed
7 concern that an addition would decrease the
8 property value, I'm a little skeptical on that
9 but to help him alleviate that I offered to hire
10 a mutually agreed upon third party appraiser to
11 appraise this house and also look at the plans
12 and we would list to see but he wasn't interested
13 in taking me up on that offer. They've never
14 expressed any concerns with the garage plans
15 until their application for party status so we've
16 never discussed the garage plans with them
17 because that's a new opposition to us, but they
18 also don't have any property on the alley, so
19 Clark and Holland said we should move but we
20 don't want to move, we want to stay here, and
21 we've done the best we can to come up with
22 property that is as minimal impact to the lot

1 coverage and still provide us a home that we can
2 raise our family in. The neighbors to our east
3 are supportive of the project and we've also
4 worked to address their concerns, we've changed
5 the design of the roof design so that all
6 drainage would be maintained on our property. So
7 we want to raise our family in this neighborhood,
8 the garage extension is very low impact, the
9 addition is modest at 8 feet in depth and 175
10 square feet additional footprint, it's the
11 smallest that we realistically can do and enable
12 us to stay in the house and raise a family in it.
13 I think we'll show that privacy impact is none
14 and the light and air impact is very minimal and
15 thus we feel we meet the criteria of 223 special
16 exception and variance and we urge the Board to
17 approve, thank you.

18 MR. SULLIVAN: Introduce the Architect
19 Rich Markus.

20 MR. MARKUS: Hi, Rich Markus, Architect,
21 I will walk you through the project. This is
22 Prospect Avenue and this is a semi-detached house

1 in the center of the block, you can see there's
2 fairly large buildings up and down this, so it's
3 the smallest footprint on the block, it extends
4 all the way back to the alley. The existing
5 addition, there were two houses 3409 and 3411
6 which is this one built at the same time around
7 the 1840s they were small houses with entries on
8 the side, 3409 had filled in that entry on the
9 side at some point and put an addition on the
10 back this addition was put on the back in the
11 early right around 1920s. The difference between
12 and then there's also a garage which was added we
13 think about the 1920s. The addition on the back,
14 the proposal is to renovate the existing two-
15 story house and put an addition on the back.
16 We've went through the Old Georgetown Board and
17 the idea is to fill in this L and extend this
18 back, when we're looking at the structure of this
19 small addition it doesn't make sense to try and
20 keep the structure of it so the rear addition is
21 going to be all new from here back, but we're
22 keeping the line. This is the side yard it's

1 about less than 4 feet up front, it gets tight
2 back here, it's about 2 feet 4 inches, we just
3 extending that line back. The original addition
4 that we started with came out 11 feet from the
5 existing pushing it out and now after working
6 with the two neighbors we've scaled this back 30%
7 now it's 8 foot 3 from the existing structure and
8 it's a two-story addition on the back this
9 existing piece is two stories now so again we
10 extend this, fill in the L and that's how you get
11 this addition here. We're also digging down,
12 there's a crawl space right now underneath this
13 portion and we're going to dig that out and
14 create a basement, a new basement, underpin this
15 structure here and while we're doing the new
16 structure here going down to the full basement
17 here, so this entire space will have a full
18 basement. This is also showing a patio and a
19 stair going down to the basement in the back.
20 The garage, the existing garage is 5 foot 8.5
21 inches from the property line and like Kyle was
22 saying it's just very tight to fit a car in here

1 and actually be able to move around it and get
2 through so the extension the idea is to extend it
3 back and we aligned it with the neighboring
4 garage here and we're still going to be 4 feet in
5 from the property line. The original proposal
6 actually had moved the garage into the property
7 but after meeting with, talking to the ANC and
8 meeting with the Old Georgetown Board of the
9 Commission of Fine Arts there's two large
10 Magnolia Trees located on the site plan and this
11 one is about 5 foot 8 or so from this wall, this
12 is an existing brick wall and they were concerned
13 about maintaining the health of that tree so they
14 wanted to keep this line, so once we're keeping
15 that line, the only way to make the garage large
16 is to push it out towards the alley, so we pushed
17 it out the 20 inches, its still, the interior
18 dimensions are still going to be a little bit
19 less than 19 feet which is the D.C. requirement
20 for a parking space, so it's still a little bit
21 smaller but it's just enough space for cars to
22 park and for you to walk around, so that's pushed

1 out and it'll be even with this other garage
2 here. Here are some photos that show the
3 condition of the existing garage it's in bad
4 shape, its useable now but the intention is to
5 rebuild it. The existing structure we're
6 maintaining it has asbestos siding, it's a frame
7 structure, it's got stucco on the front, we've
8 gone through with the Historic Board maintaining
9 the front and the windows and adding some wood
10 shingles back, adding two windows down here so
11 this is all pretty much staying intact. The side
12 we're extending on the side elevation 8311, you
13 actually see the dotted line where the adjacent
14 house is and there's where we're extending past
15 that, the fifth dimension is 7 feet. The
16 difference between this, the existing and the new
17 we're adding a window right here, this is on the
18 side that faces the blank wall and we're adding
19 two windows right here. In the original plan we
20 actually had windows further out and in
21 consideration with the neighbor's privacy we
22 removed those windows so that the portion that

1 sticks past the existing house on 3413 is there's
2 no window so we're just trying to reduce any
3 impact of the privacy on that. The front of the
4 house is 24 feet 3 on the front elevation, you
5 see it steps back and on the back side it's only
6 20 foot 1, so it's a little bit smaller on the
7 backside. I'll just walk you through the plans
8 just quickly, this is the first floor so you walk
9 in, the doors on the side and that's existing we
10 kept it as the historic door and this is the
11 addition so we just opened up, put a kitchen back
12 here, the stairs going up, this is actually the
13 basement, this is some new stairs are going down
14 so this all basement structure is new and then on
15 the upper floor, this is the new piece back here
16 we're keeping intact what's up here kind of
17 renovating the bathroom but this is all new, not
18 showing any windows back here. This is the
19 garage keeping the existing brick wall, here's
20 the Magnolia tree, it's 5 foot 9 from there and
21 then extending back and the structure would be
22 all new, and the esthetic of it we worked out

1 with the Old Georgetown Board, it's got a metal
2 roof and siding on the back. In addition to, on
3 the last 3 pages there's a shadow studies and
4 I'll explain those just a little bit. This is a
5 typical one, we kind of do this I a fairly
6 standard way, we have 3 different shadow studies
7 and they're at the different solstices of the
8 year, ones at the winter solstice, which is
9 December 21st, and you can see because the sun is
10 so low that most of the interior to block is in
11 shadow throughout the day so the effect of the
12 addition, the way this is set up these are the
13 existing plans on the bottom 3411's right in the
14 middle, it's not the full block it's just a
15 portion of the block and this is the addition on
16 the upper sections. So this is taken at 9am, 12-
17 noon and 3pm. You can see this is an east west
18 block and these streets run north south so right
19 at noon the sun is just about directly south so
20 the shadows are directly on everybody's property,
21 just going straight up, then at 9 o'clock in the
22 morning of course the sun's over here and it's

1 very low in the winter, so it's throwing a lot of
2 shadow and then at 3 o'clock it's on this side
3 and it's throwing a lot of shadow that way. At
4 the sun's highest point, the summer solstice in
5 June the sun is highest so the shadows are
6 higher, what we did was there's a small portion
7 that's shaded darker and in the morning we were
8 showing the effect it has on 3413 which is the
9 neighboring property and there's the little
10 portion that's shaded darker is the difference
11 between the shadow of the existing building and
12 the shadow thrown from the new structure and we
13 just did it in the morning on this property, we
14 didn't show it on this side, the neighbors on
15 this side are consenting and their in support of
16 the project. March and September so the spring
17 and autumn solstice, this is the same at both
18 times of the year so on this property this is the
19 portion that's shaded a little bit darker is
20 showing the difference between the addition up
21 here and the existing that portion is shown
22 darker, what you see there's a little lined area

1 that's a little trellis on the neighboring house.

2 MR. SULLIVAN: I have a couple of
3 questions for the architect, Rich if you could
4 just clarify on the shadow study so is there,
5 during the winter is there any additional shadow
6 at any time as a result of the proposed addition?

7 MR. MARKUS: Well during the winter
8 basically the entire center area of the block is
9 hidden in shadow so there's no, on the adjacent
10 property there's no difference between the
11 existing and the addition.

12 MR. SULLIVAN: Okay, and in the summer,
13 you were saying at 9am there's a tiny amount and
14 is it in the area of the trellis, the shaded
15 trellis?

16 MR. MARKUS: Yes, you can see on the June
17 21st, on this section there's a shaded area and
18 it's actually throwing the shadow onto the area
19 of the trellis.

20 MR. SULLIVAN: And the trellis is shaded
21 by greenery?

22 MR. MARKUS: Right the trellis itself

1 they have some vines or some growth on the top of
2 it.

3 MR. SULLIVAN: Okay so in the spring and
4 the fall then at 9am there is a small amount of
5 additional shadow and it's just that sort of
6 double parallelogram there right? And is it gone
7 by noon?

8 MR. MARKUS: Correct, in the morning when
9 the sun rises and this is taken at 9am there's
10 some additional shadow thrown on the adjacent
11 property and by noon of course because this is
12 north south the shadow is completely off the
13 neighboring property and then it starts to shift
14 to the other side.

15 MR. SULLIVAN: Thank you, we have no
16 further testimony.

17 CHAIRPERSON MOLDENHAUER: I'll turn now
18 to see if the parties in opposition have any
19 questions for any of the witnesses of the
20 Applicant?

21 MR. THOMASON: There's only one
22 clarification...

1 CHAIRPERSON MOLDENHAUER: This is
2 specifically if you have a question for them, do
3 you have any statements you can hold that...

4 MR. THOMASON: I have a question about
5 something they said, they said that the backyard
6 was 69 feet that does not measurement does not
7 include the current 18 feet of the garage
8 correct? So the open space in the backyard is
9 significantly less than 70 feet.

10 MR. MARKUS: That's correct the rear yard
11 set back is measured from the property line at
12 the back so right now the existing is 53 feet 6
13 inches from the existing backside of the
14 property, of the house to the face of the garage
15 and we're extending that 8 feet 3 so it would be
16 53 minus 8 feet.

17 MR. THOMASON: Also second question for
18 the Architect. The measurement that you're using
19 is not from the true back plane of 3413 Prospect
20 it's from and auxiliary roof correct?

21 MR. MARKUS: You might have noted well
22 from, you said two different things I want to be

1 clear about this. From the existing house were
2 extending back 8 feet 3. From the distance from
3 the neighboring property there's a two story
4 portion of 3413 here, this is the one story
5 portion here with the roofed area here, the
6 existing house is on 3411 is 1 foot 3 back from
7 the one story portion and the new addition is 7
8 feet past that so it's 7 feet from the one story
9 addition to the back face of the property and I
10 believe that's 4 feet to the 2 story portion.

11 MR. THOMASON: Correct so the total would
12 be 11 feet from the back plane of the house, not
13 7.

14 MR. MARKUS: Its 11 feet from the 2 story
15 portion of the existing house this is a one
16 story.

17 MR. THOMASON: Thank you.

18 CHAIRPERSON MOLDENHAUER: No other
19 questions? Do Board members have any questions
20 for the Applicant or his Architect? I've got a
21 question for the Applicant, in regards to the
22 variance test it's a harder test than obviously

1 the 223 can you go through again what factors you
2 consider to qualify the garage as being unique or
3 exceptional?

4 MR. SULLIVAN: Yes I'll take that. It's,
5 there's several reasons one is the location of
6 the garage in relation to the Magnolia tree and
7 this ties in specifically to the fact that the
8 garage and the addition are subject to review and
9 approval by the Old Georgetown Board and the Old
10 Georgetown Board has stated it's preference that
11 the wall not be moved essentially more than a
12 preference it's a condition of the approval that
13 the Magnolia tree be protected in fact CFA in
14 their written recommendation, I'm not sure if you
15 have it before you, recommended that the garage
16 be extended out to be inline with the garage next
17 to it as well.

18 CHAIRPERSON MOLDENHAUER: I don't believe
19 I have a copy of that in my record.

20 MR. SULLIVAN: I'll get a copy.

21 CHAIRPERSON MOLDENHAUER: That would be
22 great.

1 MR. SULLIVAN: The other conditions of
2 these, so we have the tree, we have the age of
3 the garage it's 80 years old, the condition of
4 the garage, the size of the garage...

5 CHAIRPERSON MOLDENHAUER: Can you really
6 consider that, I mean, lots of times when we
7 consider the condition of the garage we consider
8 it because the Applicant's just buying a property
9 that's been deteriorated, here Mr. Yost indicated
10 that he's owned it for about 11 years so the
11 condition is really a self inflicted hardship
12 from failure to repair or maintain it on their
13 own, so can you really consider that as one of
14 the contributing factors?

15 MR. SULLIVAN: Well as you know the self
16 imposed hardship rule doesn't apply to area
17 variances and the concept of practical
18 difficulty. We don't have to prove that
19 complying with the regulations in this instances
20 is an impossibility it's just an unnecessary
21 burden and we think, all things when you consider
22 the tree, the OGB recommendation, the size of the

1 garage, the fact that they do want to restore it
2 but it's a significant expense to restore and
3 build a garage that is still not big enough and
4 when you consider the size the degree of the
5 variance and it's important to remember that the
6 slight degree of the variance is also something
7 the Board can consider in weighing the variance
8 test. This is 3 feet of 12 feet, and
9 particularly because of the telephone pole has no
10 impact whatsoever other than improving the alley.

11 CHAIRPERSON MOLDENHAUER: So the
12 Applicant has then considered potentially I guess
13 weighing being able as a matter or right just
14 rebuild the structure as it exists or renovate
15 and modify as it exists versus having to expand
16 it?

17 MR. SULLIVAN: Right just to rebuild it
18 and rebuild it in the same size would not be
19 worth it would not make any sense particularly
20 when its of no harm to anybody in particular the
21 party opposition that this be extended 20 inches,
22 for 20 inches they get a normal garage, that they

1 can use for their car, for any size car and it's
2 not longer an unnecessary burden to comply with
3 the 12 foot requirement. I'd also note one other
4 thing that unique about it, about this property
5 on this alley as you enter the alley on both
6 ends, it's tight, its very tight, there's
7 buildings up against it, it's 10 feet on one side
8 and I think less than 10 feet on the other then
9 it kind of bubbles out in the middle to as Clark
10 said 18 feet so there's a lot of room in the
11 middle there for this slight extension. There
12 was one picture that Rich had up I'm not sure if
13 you looked at that shows the telephone pole it's
14 a good 4 feet out in front of it.

15 CHAIRPERSON MOLDENHAUER: I didn't see
16 that specifically if you could point that out
17 that would be appreciated.

18 MR. SULLIVAN: It's the top right of that
19 one, yeah, it's A003.

20 CHAIRPERSON MOLDENHAUER: I see it on my
21 copy thank you. Do Board Members have any other
22 questions from the Applicant?

1 MR. HOOD: I just wanted to ask on the
2 rendering just so for the Chairperson can you
3 show me where 2413 is the garage is to the left
4 if I'm looking at the photograph correct, if you
5 can show me on that one, on the one to your right
6 where the telephone pole.

7 MR. MARKUS: Well I got to explain one
8 thing first about the neighboring property 3413
9 stops here at the back of the garage, the garage
10 is actually owned by a separate person so this
11 property is actually a separate owner from the
12 people who are here and then this is 3409, the
13 telephone pole is actually right on the property
14 line of 3411 and 3409, so here's the telephone
15 pole, this is 3411, the property next to it with
16 the white door and the black surround is 3409 and
17 then on this side where there's brick is the end
18 of the 3413.

19 MR. HOOD: So apparently another issue
20 I'm looking at the opponents issue Mr. Thomason
21 and Ms. Dwiggins, they also mention that they
22 have a garden or something; a garden is a key in

1 their property.

2 MR. MARKUS: That would be form their
3 house they have a trellis here back to this which
4 is not their property anymore so that's their
5 rear yard.

6 MR. HOOD: So where's the garden?

7 MR. MARKUS: Well they probably have to
8 speak to that some more but that's their rear
9 yard.

10 MR. HOOD: I can ask them.

11 MR. MARKUS: Okay we do have some pictures
12 of the neighboring property too.

13 MR. HOOD: Do we have those?

14 CHAIRPERSON MOLDENHAUER: I don't think
15 we have that in our record. You can also provide
16 a copy to Mr...

17 MR. MARKUS: We'll provide a copy to
18 them, what this shows it's a view from above and
19 it's showing the top of the trellis, right now of
20 course it's not green but there's plantings on
21 top of the trellis, this little piece down at the
22 bottom is the one story addition on the adjacent

1 property and then that would be the rear yard.

2 MR. HOOD: Okay, thank you.

3 CHAIRPERSON MOLDENHAUER: Any other
4 questions? Seeing no more questions at this
5 point in time, we'll turn to the party in
6 opposition to present their case but before we
7 get started we're just going to take a quick 2 to
8 5 minute break and we'll reconvene in a moment.
9 Recess

10 CHAIRPERSON MOLDENHAUER: Okay we're back
11 on the record and we'll turn to Mr. Thomason to
12 start us off.

13 MR. THOMASON: Well first of all thank
14 you very much I appreciate the opportunity to be
15 heard and the opportunity to speak so thank you.
16 Just a small bit of introduction, I'm Clark
17 Thomason, my wife Holland Dwiggins, we're the
18 owners of the property at 3413 Prospect Street,
19 we've lived in the area about 25 years, and we've
20 lived at that home about 13. We came to the home
21 as well when my wife was pregnant, had our first
22 son in the house and live there now with him and

1 attack (inaudible), so we're very much family
2 oriented as well and understand what that
3 involves, so what I've got is I've got a summary
4 statement of facts and testimony, there's about
5 10 pages, I'm going to just hit the high points
6 of it, I'm hoping that package has been
7 distributed to all of you. Some of the
8 supplementing letters of opposition have been
9 filed with the Board with the Board but I'm not
10 sure that they got in your package recently so
11 what I've done is I've assembled all of the
12 latest information and I'd like to step through
13 those 10 pages in summary and then we have a set
14 of appendices and supplemental documents in
15 support of my testimony. I also have a licensed
16 architect and historic specialist that is a
17 resident of Georgetown available to back up part
18 of the testimony so if it's alright with the
19 Board and your kind attention I'd like to just go
20 ahead and get started with the first page..

21 MR. SULLIVAN: I'd like to object we
22 don't have a copy of this.

1 CHAIRPERSON MOLDENHAUER: Okay if we can
2 provide Mr. Sullivan a copy please.

3 MR. SULLIVAN: I'd like to object to the
4 filing of it without serving us at this point if
5 I could possibly have 5 minutes to review it
6 because we'd like to keep things moving along as
7 well.

8 CHAIRPERSON MOLDENHAUER: Absolutely what
9 I'll do is I'll give everybody a few minutes to
10 review just let me know, give me a nod when
11 you've gone through it and it will give us an
12 opportunity as well to review it.

13 MR. THOMASON: No problem at all, thank
14 you.

15 MR. SULLIVAN: Okay thank you.

16 CHAIRPERSON MOLDENHAUER: Mr. Thomason
17 please continue.

18 MR. THOMASON: Okay thank you very much,
19 we appreciate it. If you could please turn to
20 the second slide, the second page in the deck,
21 like I said I'm going to do a summary flip
22 through of these slides my intent is not to read

1 every page for the duration of the meeting I
2 promise. The main points are three of the four
3 directly adjacent neighbors currently oppose the
4 project as submitted, those are the neighbors
5 3413 which is us, 3410 N Street which are the
6 neighbors directly opposite the garage on N
7 Street and 3400 Prospect Street which is Halcyon
8 House directly across and they have submitted
9 letters in the package of their opposition to the
10 project as submitted. Their concerns are with
11 increased density in the area, air and light and
12 also frankly the garage owner which I'll go to in
13 a little more detail across the back alley is
14 concerned with being able to get in and out of
15 their garage and the snow removal and other
16 issues that they brought up that are very
17 difficult in that garage in the winter time, so
18 their very worried about frankly worried about
19 there being anymore narrowness in that space.
20 Four of five neighbors within 100 feet with
21 direct views are in opposition so what that means
22 is we're to the west 3413, we're in opposition,

1 the next house to the west 3415 that has windows
2 facing into my backyard and into the open space
3 is also in opposition, so four of the five direct
4 neighbors with the most impact within 100 feet of
5 the project are in opposition, I think that's
6 significant versus some of the other support that
7 is not effected frankly. The Citizens Association
8 of Georgetown has independently reviewed the
9 Application, surveyed the site, come to the home,
10 walked the yard and does not support the
11 Application and is in support of the ANC. Two
12 other Georgetown residents with specific
13 expertise do not support and they found
14 significant inconsistencies and flaws in the
15 supply of materials and finally and I'll go into
16 that very briefly and finally an independent
17 light study that we had commissioned shows that
18 there is negative impact to the plantings and the
19 light and the backyard and the garden so if I
20 could please ask you to look at slide three. One
21 of the main tenants of the Application is that
22 the current house is unusable and is one of the

1 smallest in the square, on the contrary the
2 square consists of 31 single family homes, two
3 multi-unit rental buildings, one fraternity
4 house, 12 of those homes are significantly
5 smaller than 3411, 3 others are very close in
6 size with 2 bedrooms and 3 baths 3411 currently
7 is not unusually small in fact its now 13th out of
8 31 in size in the square, only 12 structures out
9 of the 34 have garage parking at all and most
10 homes in Georgetown do not, only 6 out of 34
11 garages have 2 car garages like the Applicant so
12 their in a very rare era to have a 2 car garage
13 with off street parking in Georgetown for two
14 midsized automobiles, it's a very luxury to do
15 that it is not an unusual hardship to have to
16 maintain your structure and then to expand it to
17 accommodate SUVs that is not undo hardship. So
18 3411 is already larger in over all square footage
19 than 12 of the single family houses in the square
20 it is 13th out of 31 in size. Page 4 shows a
21 picture just for your background, examples of
22 some of the other houses that are smaller and the

1 sizes of those houses currently, on 35th Street,
2 on N Street excuse me and it just shows they
3 range in size from about 840 square feet to
4 around 1000 square feet and there's a few others
5 that are 11 or 1200 square feet, so the nature of
6 this block and of the Zoning Protections for the
7 block or for the square excuse me square 1221,
8 are to protect this type of structure in this
9 type of area, so it's not unusual to have a home
10 of this size in this Historic District. Page
11 five please what we're looking at is to maintain
12 harmony with a general purpose and intent of the
13 Zoning Regulations, that's a very important fact,
14 the Zoning Regulations and maps are to we'll
15 discuss later with some of our experts to
16 provide, protect, the general purpose, the
17 intent, the nature, the light, the scale and the
18 value of the current homes. The neighbors, The
19 Citizens Association of Georgetown, subject
20 matter experts and ANC are providing substantial
21 evidence that allowing 150% over the lot
22 occupancy currently allowed for a semi-detached

1 home is unreasonable, 40% is the lot maximum
2 occupancy for an R-3 semi detached home in this
3 District, not 70%, 40%, so what we're avoiding is
4 we do not want to set a precedent of adding a
5 non-conforming to be even more non-conforming,
6 this zone is also very close to the University,
7 very sensitive to rental issues, very sensitive
8 to people trying to build onto their homes and
9 this Zoning is critically important. Okay the
10 expanding University throughout and to open
11 space, light and esthetic, now what we're talking
12 about is if you allow these things to be
13 overbuilt you get increased population in other
14 words you get, now you've got a home that instead
15 of two bedrooms it has three plus an enclosed
16 den, plus three bathrooms, suddenly you've got a
17 property that's very viable as a rental property
18 so before you know it if all of these other
19 properties were allowed to do this you would have
20 five, six, seven students and their cars living
21 in those homes. It's a significant and realistic
22 issue it happens all the time on this block, we

1 deal with it all the time. Okay let me keep on
2 schedule please. The direct impact of these
3 Zoning exemptions will go against the general
4 purpose and intent of the Zoning Regulations.
5 Hence forth the ANC motion and the confirming
6 motion from the CAG say its very dangerous
7 precedent to set to allow this increase in
8 density and exception to the Zoning Laws, Rules.
9 No. 6 substantially adverse effect on the use of
10 enjoyment of any abutting or adjacent dwelling of
11 property, the light and air will not be unduly
12 affected. An independent light study
13 commissioned by us by an experienced design and
14 horticulture firm and expert which are attached
15 for your reference shows that it will definitely
16 impact the light in the rear garden reducing the
17 available light and causing more shade for the
18 current plantings and restrict the type of
19 plantings that we use. I'll show you a picture a
20 little later in the presentation that shows a
21 very sunny picture of my son playing with his dog
22 in the winter about a week ago and it certainly

1 doesn't get totally enveloped with shade all
2 winter long as the computerized image shows it
3 just doesn't happen. So the proposed project
4 will take away from the current owners of
5 Prospect Street's ability to enjoy the use and
6 remove, open, light, cooling air flows key
7 feature of the home. We had an independent real
8 estate expert also do an assessment, he does not
9 work for us, her letter's attached, she's the
10 Vice President of (inaudible) Realty in
11 Georgetown has 25 years experience, she made it
12 very clear that this would impact the value of
13 the home, she sold it three times, not for us,
14 she didn't work for us, and she made it very
15 clear that the key feature of this home was the
16 garden because we don't have a garage, Prospect
17 Street is very noisy. And to build a 25 foot high
18 addition on the house 2.5 feet from the property
19 line, 10 feet back is a substantial project it is
20 not a minimal project, it is a substantial
21 project, they're taking the back half of the
22 house off and building it 25 feet high. The next

1 one please is a picture of the garden, as you can
2 see we have a very substantial investment in our
3 garden and I have a picture later in the
4 presentation but this is just a picture showing
5 we have a table and we have chairs, we spend a
6 lot of time in that back yard because our kitchen
7 is a galley kitchen it does not have an eat in
8 table and whenever the weather in the spring,
9 summer and fall, we spend a lot of time at that
10 table and in the backyard. As you can see by the
11 picture on page 7, my son, this was taken last
12 week there's a considerable amount of sun in the
13 backyard so it doesn't exactly jive with the
14 presentation. No. 8 the owners of 34 N Street
15 submit that it will reduce open space light and
16 views for the neighbors in their block of N
17 Street, they state to enhance the value of 3411
18 Prospect Street to it's owners by taking from the
19 value of the neighboring properties is
20 unreasonable. We also state as owners of 3413 a
21 10 foot by 24 foot high wall of the addition 2.5
22 feet from our breakfast table is a substantial

1 imposition on the light and air and enjoyment of
2 our backyard. Again, you have to visualize 10
3 feet by 24 feet. The independent real estate
4 review also says as to effecting our enjoyment
5 that it will negatively impact the proposed
6 addition will negatively impact the value of our
7 home and will further impact the owner's
8 enjoyment by tremendously diminishing the overall
9 value and resale of the home. No. 9 I presented
10 a graphic representation, I think it addresses
11 Mr. Hood's question earlier of where is the 3413
12 property garden in association with the building.
13 If you can see I've identified on the right a 10
14 foot slot of our prime entertaining space, that's
15 where we spend all our time, there's a brick
16 patio, there's a table, its right outside our
17 kitchen, my son and his dog run around in the
18 yard, that's really a very valuable space to us
19 and as you can imagine 100 degree weather in the
20 summer if you block any wind or air flow in there
21 it gets pretty miserable, you get the mosquitoes,
22 you get the bugs, so it's a substantial problem.

1 The green space is actually only 38 feet of
2 consequence; the space from the back wall of the
3 garage to the back wall of my home is only 50
4 feet, now these spaces are very small so whenever
5 you talk about little distances they take on
6 great proportion because they're small. If you
7 were in Great Falls 10 feet would be nothing but
8 in Georgetown when the whole garden is only 50
9 feet deep the prime planting space from y coy
10 pond in blue to the back of my house is 38 feet,
11 that's where everything grows, the green yard,
12 the flowers, that's where my son plays, that's
13 where any growth happens, anything back further
14 than that is not because of the Magnolia trees,
15 Magnolia trees are very pretty when they bloom
16 but a real pain the rest of the year, they drop
17 leaves and they put a huge amount of shade, those
18 trees have not been maintained at all in 12
19 years, they've not been trimmed, they've not been
20 cut back there's been no maintenance. There's
21 been no work on the backyard next door to our
22 home at all it's a hard dirt lot with cement

1 walls, the garage to address that issue, 12 years
2 of absolutely no maintenance as often happens in
3 Georgetown when you let something fall down then
4 you suddenly apply to have it fixed. So the
5 point is that 10 feet, the black square there is
6 the new construction, it is significant. They
7 are going to demolish this Historic structure,
8 gut it in the back, did it down and add 24 feet
9 by 10 it is a substantial project, 24 feet by 15
10 actually, 15 wide, 24 feet high, 10 feet sticking
11 over my property. The next picture on page 10
12 please is the view from my current table taken
13 last week which shows the view up from the eating
14 table across you can see 3411's house and you can
15 see the air and the light. The picture to the
16 right is a representation of what that view will
17 be like when the project is completed okay, it's
18 not very attractive and that's what I'm talking
19 about. It's going to be a 10 foot by 24 foot
20 wall, 2.5 from my table. Alright finally ANC,
21 the ANC opinion in the supplemented application
22 was minimized, ANC is to be given great weight

1 okay, the grueling of the ANC is directly
2 relevant to this because the increased density
3 and open space are the two primary concerns of
4 the Zoning, so when the Applicant and his
5 Application said that the ANC's opinion should be
6 basically disregarded and has no value well it
7 should not be disregarded, the ANC initially
8 rejected this on a close vote, approved it for
9 concept review for the OGB and then on final
10 review rejected the Application for variances and
11 exceptions. So again concerns about how this
12 could lead to increases in density are very easy
13 to understand allowing this exception to the rule
14 would set a precedent in the square that
15 homeowners could increase the size of their
16 houses eliminate the limited open space and
17 continue to contribute to our density problems.
18 The last two pages I'd like to submit if I'm
19 allowed I have the Architect who did an
20 assessment of the submission by the Historic
21 Preservation D.C. Review and if she would be
22 allowed to speak for a minute on her findings on

1 that I would appreciate it.

2 CHAIRPERSON MOLDENHAUER: You can call a
3 witness yes but before you call any other
4 witnesses are there any questions from the
5 Applicant of Mr. Thomason?

6 MR. SULLIVAN: Can I reserve the
7 questions until after his witness?

8 CHAIRPERSON MOLDENHAUER: That's fine.

9 MR. SULLIVAN: Okay thank you.

10 CHAIRPERSON MOLDENHAUER: Do Board
11 Members have any questions for Mr. Thomason at
12 this time?

13 MR. HOOD: Yes Mr. Thomason why do we
14 have the ruling, I remember this ruling by
15 Corporation Council at the time Mr. Ferron and I
16 see Mr. Nicholas expounded upon that where he
17 starts off with the ANCs (inaudible) only, why do
18 we have that again?

19 MR. THOMASON: It was recommended to me by
20 Council that we include the submission, the
21 Attorney General was very kind to forward a memo
22 showing the history of the great weight

1 requirement for the ANCs and since in the
2 Application the ANCs final opinion appeared to be
3 minimalized we thought that since the Attorney
4 General was kind enough to give us that memo that
5 we would incorporate it just as a basis for
6 saying we think the ANC is very important.

7 MR. HOOD: Yeah we are obligated to give
8 the ANCs great weight as well as the Office of
9 Planning, thank you, thank you Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Any other
11 questions of the Board Members at this time?
12 Seeing none then you can call your witness.

13 MS. BROADNITZ: Thanks very much my name
14 is Louise Brodnitz I'm an architect or Urban
15 Planner and I've been working in Historic
16 Preservation all my career and I'd like to just
17 point out, take some opportunity to point out
18 some of the oversights and misinterpretations in
19 the Office of Planning's review which kind of
20 surprised me. They claim that the extension, the
21 Applicants claim the extension is as of right and
22 the Office of Planning did not correct that but

1 in fact as a semi-detached it's only permitted
2 40% lot occupancy, existing lot occupancy is over
3 that amount and they proposed to expand the non-
4 conformance. OP states in their review that they
5 are not expanding the non-conformance in their
6 Application as I pointed out with the lot
7 occupancy they are expanding a non-conformance
8 and in addition the garage is non-conforming
9 currently the requirement is 12 feet from the
10 centerline of the alley, it's currently 9 feet
11 from the centerline of the alley and they propose
12 to extend that non-conformance even further. So
13 I'll just go through some of the concerns also
14 about the OP's submission. The discussion we had
15 about the 7 foot extension passed the dwelling of
16 3413 actually it's 7 feet past a very small roof
17 with a lattice work cover and it's essentially a
18 cover to a basement stair its not the substantial
19 part of the building. The face of 3413 will be
20 10 to 11 feet back from the face of the new
21 proposed addition of 3411. OP states that the
22 proposed addition would not result in the lack of

1 light to the adjoining rear yard but in fact
2 there would be a lack of, a decrease in light
3 particularly to the sensitive area of the outdoor
4 dining. OP claims that the building addition
5 reduces the rear yard to 69 foot 5 inches as we
6 already discussed it's actually a 50 foot rear
7 yard remaining once the addition is built because
8 part of that 69 foot 5 is taken up by the current
9 garage. OP claims that the addition, and OP also
10 had their Historic Preservation Review and they
11 claim that the addition would not substantially
12 intrude on the character, scale and pattern of
13 the houses in the alley but actually as you can
14 see from the map the entire rear half of the
15 house would be demolished and the characteristic
16 L shape which is typical of houses that were built
17 within the period of significance of Georgetown,
18 that L would be just gone and the entire back
19 except for a small setback from the property line
20 would be filled in. I won't get too far into
21 that because that's not a Zoning issue but I'm
22 addressing the OP document as a whole to show

1 that it is subject to challenge. Okay, so for
2 the garage addition, OP states that the requested
3 relief meets the uniqueness and undue hardship
4 criteria in fact the lack of a garage
5 sufficiently deep to accommodate a large vehicle
6 is far from unique as has already been discussed
7 and is not a unique or undue hardship in
8 Georgetown or on this block as the documents, Mr.
9 Thomason showed there are only 6 one car garages
10 and 6 two car garages on this square and one of
11 the two car garages is the applicants. OP states
12 that the requested variance would not
13 substantially impair the intent purpose and
14 integrity of the zone plan, in fact I believe it
15 impairs the zone plan in a number of ways, the OP
16 and actually OGB ruling puts the mature trees as
17 a priority ahead of the retaining significant
18 characteristics that qualify the property for
19 historic status. Finally the two car garage even
20 if it were compliant impairs the intent of the
21 zone plan to limit parking to encourage use of
22 alternatives to the automobile, and that's what I

1 have.

2 MR. THOMASON: Just to finish up then I
3 would just like to restate the key main points
4 and just make sure that you're familiar with
5 appendices. Four of the five neighbors strongly
6 oppose the current plan, they've reviewed it,
7 reviewed the plans, looked at the light and are
8 opposing for various reasons ranging from light
9 and density to frankly not wanting to encourage
10 an exception from the zoning to increase the
11 potential of this impacting increased density
12 because the university concerns. The people
13 across on N Street are concerned about access to
14 the alley for emergency vehicles, safety, being
15 able to get in and out of their garage and they
16 simply don't want to set a precedence of
17 expanding anymore garages. They're also concerned
18 with the density and the precedent that the
19 occupancy would set. The Citizens Association of
20 Georgetown independently is confirming that they
21 agree and support the ANC, so that's just a nice
22 confirmation by a group of Georgetown residents

1 representing that they agree that this would set
2 a bad precedent in the zoning to give a variance
3 an exception on the lot occupancy percentages
4 specifically and the side yard percentages. Two
5 other Georgetown residents have presented a light
6 study, I've presented pictures that show that
7 there is indeed the horticulturist went back and
8 looked at the types of plants I want to put in
9 what the impact would be and all of that so there
10 is an impact on light and it would make a design
11 challenge if this went forward for him to
12 continue to work in the backyard. The
13 experienced Georgetown Realtor made an assessment
14 of the value and the impact on the enjoyment and
15 use of the home and that the garden was a key
16 feature. I think we shown that the Applicants
17 house is not unusual in any way for this block,
18 in fact if they were to build it to 2100+ square
19 feet it would then end up being one of the larger
20 houses on the block, I think it becomes number 19
21 out of 31 so their effectively ripping it apart,
22 demolishing it, digging it down, building a

1 modern structure at double the size. So to go
2 from 1100 to 2200 you're doubling it and to take
3 the roof line to 24 feet of a peak it is a
4 substantial project, it's not a small project.
5 So in conclusion going through the appendices,
6 Appendices 1 is our letter of objection to the
7 plaintiff, the second letter is letter of
8 objection from 3410 N Street, NW, they talk about
9 they object to the extension of the garage, they
10 object to the air and light and most of all they
11 object to setting a precedence of saying to allow
12 one owner to profit at the expense of others and
13 to set a precedent in this sensitive Square 1221
14 and close to the University is a real concern to
15 them. The neighbor immediately to my left who
16 will be directly impacted by this project
17 seriously opposes it, he's put in writing that
18 he's opposes this project going forward. Not
19 only will the construction all summer be
20 difficult but the final product he objects to,
21 and also setting precedence on the zoning. The
22 neighbor across the street John Dryfess owning

1 Halcyon House also objects to this going forward
2 at the current size and scale. We made an attempt
3 to negotiate and to possibly offer and say well
4 how about a one story addition, we were told
5 quite frankly no, this is it, this is what we're
6 doing and I would be open to some sort of
7 negotiation but I was told no, it's a two story
8 addition, three story actually, the basement too.
9 I'm not unreasonable, I'm just concerned. The
10 ANC Commission is opposed after reviewing and
11 going through endless hours of meetings on this,
12 their final vote on the subject was in
13 opposition. The Citizens Association of
14 Georgetown representing hundreds of homeowners in
15 Georgetown has reviewed it, they have come to my
16 house, they have walked the site, and they are
17 opposed to it. Finally the Vice President in
18 charge of Georgetown Real Estate of Sales a very
19 experienced realtor who has sold the house three
20 times in it's history has worked in Georgetown 25
21 years does not represent me, is not hired by me,
22 is not compensated by me, wrote a letter saying

1 this is a key feature to your house you don't
2 want to destroy this, you don't want to mess with
3 it because it will impact the value of your home,
4 it will substantially decrease the value of your
5 home. My retirement is in my house equity I have
6 about 80% equity in the house it's a very serious
7 thing for me. Finally we have a letter of
8 opposition from Louise, Ms. Brodnitz who is an
9 experience architect has reviewed and called into
10 question many of the facts presented in the
11 Application. Because they are questions about
12 the facts we question whether or not the Historic
13 Preservation Board with having this disagreement
14 throughout the reports on factual issues could
15 have made a good assessment. Finally the
16 independent light study by an experienced
17 horticulturists assures there is a problem that
18 will impact the light and the type of plants that
19 can grow back there and it will present a design
20 challenge going forward that's his polite way.
21 So in conclusion this is very key, this is
22 important to me, we have a 12 year old son, we

1 have a dog, we're going to stay in Georgetown, we
2 want to stay there it's a very important issue to
3 us not, we bought the house fully knowing we were
4 told by the realtors and everybody it an Historic
5 District your not going to change it, buy the
6 home you want, so we bought a home without a
7 garage because that's what we could afford that
8 was a slightly larger home in square footage. We
9 bought it on a noisy street but we knew that if
10 we didn't like that we could move a few blocks
11 away, or buy a new house or whatever. Those are
12 the rules everyone should be required to play by
13 the rules, it's only fair. I didn't ask for
14 this, this was thrust upon me, thank you.

15 CHAIRPERSON MOLDENHAUER: Any questions
16 from Board Members? Seeing none at this time, we
17 can always go back to questions, I'll turn now to
18 Mr. Sullivan.

19 MR. SULLIVAN: Thank you, Mr. Thomason
20 you said those are the rules and we have to abide
21 by the rules, are you familiar with the rules for
22 special exception under Section 223?

1 MR. THOMASON: Yes sir.

2 MR. SULLIVAN: Are you familiar that the
3 maximum permitted lot occupancy provided other
4 Sections of 223 are met is 70%?

5 MR. THOMASON: That's not what my counsel
6 advised me and the ANC, the ANC ruled that it was
7 40% for semi-detached in this situation.

8 MR. SULLIVAN: Okay, thank you. You
9 mentioned that the addition in the back is 25
10 feet high; we'll let you use our drawings if you
11 could point out where it's 25 feet high?

12 MR. THOMASON: I used the number in your
13 submission the final submission that you dated
14 two weeks ago, front page it says I quote...

15 MR. SULLIVAN: Which notes the height of
16 the building but is the height in the back to
17 your knowledge 25 feet?

18 MR. THOMASON: I'm using your submission
19 sir. Your submission says the rear addition will
20 reach a height, page 2 propose alterations of
21 24.21 feet and will be 15.17 feet wide where the
22 yard set aside is 2.33 feet.

1 MR. SULLIVAN: Okay thank you, okay but
2 you don't know the actual height in the rear...

3 MR. THOMASON: Yes I do...

4 MR. SULLIVAN: You do...

5 MR. THOMASON: I know that the slanting
6 of the roof has now been rearranged to put all
7 the water and everything on my side so yes I'm
8 very familiar with the design.

9 MR. SULLIVAN: Okay I'm not talking about
10 the slanting of the roof; I'll handle that later...
11 I'll move on to the next question, you mentioned
12 that something was 150% over lot occupancy, can
13 you explain that calculation?

14 MR. THOMASON: 40% to 60% to go to 60%
15 would be 150%. It's simple math, I am an
16 engineer not a lawyer, I'm sorry.

17 MR. SULLIVAN: Wouldn't that be 50%?

18 MR. THOMASON: It would be taking 150%
19 overage of the current structure.

20 MR. SULLIVAN: Okay so it's not 150% over
21 the lot occupancy is it? Its 50% over the lot
22 occupancy?

1 MR. THOMASON: Either number is correct
2 depending on which way you look at it, it's still
3 over the lot occupancy presented.

4 MR. SULLIVAN: You mentioned that the
5 Citizens Association of Georgetown came to your
6 property and issued a letter, did they notify the
7 Applicant at all that they were undertaking such
8 a review?

9 MR. THOMASON: I have no idea.

10 MR. SULLIVAN: Did they give the Applicant
11 an opportunity to participate in such a review or
12 to provide any information?

13 MS. BRODNITZ: As a former member of the
14 Board of CAG we're not obligated to do so.

15 MR. SULLIVAN: Okay, thank you. Mr.
16 Thomason on one photo you show sunlight with your
17 son and your dog, is that picture showing the
18 rear of the property?

19 MR. THOMASON: It's showing right in front
20 on the main grass area in the middle of the yard
21 taken last week and it contradicts your claim
22 that there's no sun I the backyard in the winter

1 time.

2 MR. SULLIVAN: That's the middle of the
3 yard but it seems like there's sort of a birdbath
4 there on the side and then in a larger picture I
5 see the birdbath way in the back of the property.

6 MR. THOMASON: Way in the back, the whole
7 property's only 30 feet between those two things,
8 so way in the back...

9 MR. SULLIVAN: So is it in the center of
10 the property or is it near the back of the
11 property?

12 MR. THOMASON: It's in the center of the
13 property on the grass, if you look at my diagram
14 that I supplied if you'll refer to the diagram
15 that I supplied on page 9 the picture was taken
16 as you can see on that green square which is the
17 primary space that my son uses to run around with
18 his dog and it's only about 15 x 20 feet total.
19 You have to keep this whole thing in perspective
20 it's a very small site.

21 MR. SULLIVAN: I'm just looking at this
22 picture and asking you to tell me if this thing

1 here, whatever this birdbath is, is that the same
2 thing as that?

3 MR. THOMASON: Yes.

4 MR. SULLIVAN: Okay thank you. You have a
5 light study from somebody, are they an expert in
6 light studies? Have they been qualified as an
7 expert in light studies?

8 MR. THOMASON: We took a different
9 approach, we took a gentleman who is an expert
10 landscape designer that was going to be
11 freshening up and designing our backyard, we went
12 to three different firms, they recommended this
13 gentleman as part of their experienced design
14 staff, he has over ...

15 MR. SULLIVAN: Is he an expert qualified
16 before this Board?

17 MR. THOMASON: He has simply stated that
18 he's presented the situation with a planning's
19 and that they do have impact and I've
20 demonstrated again against the computer study
21 that there is light and air. So his testimony,
22 his input is that the plants in the backyard will

1 be negatively impacted and the limits of this
2 will impact what we can grow in the backyard.

3 MR. SULLIVAN: Is he an expert before
4 this Board?

5 MR. THOMASON: I have no idea.

6 MR. SULLIVAN: Thank you, can you explain
7 his methodology and how this light study refutes
8 or contradicts the shadow studies presented today
9 and the amount of additional shadow as a result
10 of the proposed addition?

11 MR. THOMASON: Shadow study primarily the
12 first part of the shadow study is presented by
13 the architect is a light study, it's done by
14 computer simulation it's intended to primarily
15 use industrial lighting and architectural type
16 lighting analysis, it is not the type of study
17 that is intended to take a horticultural and a
18 landscape and a design and a plant point of view.
19 So quite simply it is in flaw simply because it
20 shows that computer generation shows that there
21 is no light in the backyard of the garden in the
22 winter time and simply on that basis alone I can

1 demonstrate pictures, many of them that show
2 significant sunlight as you can see on my sun
3 with his coat on about a week ago in the back
4 yard. The horticulturist took it, went back,
5 took extensive measurements, looked at the
6 angles, looked at the individuals plantings and
7 made the assessment in the wintertime when there
8 was half sunlight in the backyard which there
9 shouldn't have been by your model that we could
10 indeed be impacted if that was further shaded,
11 simple as that. He brings into question the
12 assumptions of the light study you have, simple
13 as that.

14 MR. SULLIVAN: Specifically, so he's
15 claiming that they're incorrect?

16 MR. THOMASON: He's claiming based on his
17 expert judgment that will increase the shade and
18 impact the plantings in the backyard and that it
19 will present a design challenge to work around
20 the 10 foot by 24 foot structure that will now
21 be, you know, proposed to be sitting 2.5 feet
22 from my fence line.

1 MR. SULLIVAN: I'm confused he has to
2 design around the structure on the Applicant's
3 property?

4 MR. THOMASON: He has to finish designing
5 the updates to my formal garden which incorporate
6 modifications to the trellis, modifications to
7 the plantings in the side beds and selecting the
8 types and nature of plants that will go in that
9 backyard. So he said that the current plan that
10 we were pursuing would not, would no longer be
11 viable. And that's what he means by design
12 challenge.

13 MR. SULLIVAN: Okay, because no longer
14 viable because of the...

15 MR. THOMASON: Because of the proposed
16 construction he advised not...

17 MR. SULLIVAN: Small amount of shadow
18 that's

19 MR. THOMASON: It is not a small amount
20 of shadow.

21 MR. SULLIVAN: What evidence does he have
22 or are you presenting to contradict or refute the

1 shadow study scientifically done presented here
2 today, other than hearsay?

3 MR. THOMASON: Pictures submitted of my
4 son last week in the backyard with full sun, your
5 shadow study shows no sun, it's incorrect.

6 MR. SULLIVAN: What time of the day was
7 that taken?

8 MR. THOMASON: 1030 in the morning.

9 MR. MARKUS: What day of the week because
10 I'll just pull it up right here.

11 MR. THOMASON: This is not getting me
12 anywhere, the bottom-line is those are the facts,
13 you know I have four or five adjoining residents
14 that object...

15 MR. SULLIVAN: Thank you, thank you, you
16 answered the question. Did the ANC resolution
17 note any of the requirements of Section 223 or of
18 the variance test?

19 MR. THOMASON: Who are you addressing
20 your question to, there's not a representative.

21 MR. SULLIVAN: Mr. Thomason, you brought
22 up the ANC resolution and you spoke about it

1 extensively so I was just asking if the ANC
2 resolution mentioned Section 223 or the variance
3 test?

4 MS. BRODNITZ: Just to say that the ANC
5 objects to the increased density in the Historic
6 District and the precedent it could set and in
7 the interest of preserving open space. The open
8 space and the increased density are two sides of
9 the Applicants request to further encroach on the
10 yard and expand an existing non-conformance, so
11 they don't spell it out but the concerns are
12 directed.

13 MR. SULLIVAN: Do you speak for the ANC?

14 MS. BRODNITZ: I do not.

15 MR. THOMASON: She speaks as an expert on
16 the architectural and the zoning and how it
17 relates.

18 MR. SULLIVAN: Thank you are you an
19 expert qualified before the BZA Ms. Brodnitz?

20 MS. BRODNITZ: I actually don't know what
21 the qualifications are I didn't really anticipate
22 speaking this morning.

1 MR. THOMASON: She's a licensed architect
2 in the District of Columbia, thank you. Now
3 let's address your question...

4 CHAIRPERSON MOLDENHAUER: Mr. Thomason, I
5 think that...

6 MR. THOMASON: I'm sorry I thought he
7 wanted me to answer about the ANC; I had to look
8 at the reference to find it.

9 MR. SULLIVAN: Go ahead; just
10 specifically do they mention Section 223, Mr.
11 Holland.

12 MR. THOMASON: Excuse me...

13 CHAIRPERSON MOLDENHAUER: Mr. Thomason
14 just answer the question.

15 MR. THOMASON: Okay I just wanted to make
16 sure I wasn't out of order.

17 MR. SULLIVAN: Mr. Thomason, I'm sorry
18 Mr. Thomason do they specifically mention the
19 requirements of privacy.

20 MR. THOMASON: They talk about the
21 increased density and the precedence that this
22 case could shut for future cases and the interest

1 of preserving open space. So quite obviously
2 they're, you know we had a long discussion in the
3 meeting about lot occupancy and the percentage of
4 lot occupancy so it's very clear, you were at the
5 meeting that that's what they were talking about,
6 when they say preserving open space, they mean
7 staying at the 40% not going to 60.

8 MR. SULLIVAN: So you think the ANC is
9 always opposed to the 40%, are you aware that the
10 ANC has approved and this Board has approved some
11 15 to 20 special exceptions under Section 223
12 over the last 8 or 9 years?

13 MR. THOMASON: Again in this case the
14 ANC, the CAG and four of five directly connected
15 neighbors oppose.

16 CHAIRPERSON MOLDENHAUER: Mr. Sullivan the
17 document speaks for itself we can obviously
18 review it, if you have any further questions
19 please go ahead.

20 MR. SULLIVAN: Thanks sorry. You
21 mentioned that the extension of the garage would
22 impact the emergency access to the alley; can you

1 explain how that will happen?

2 MR. THOMASON: The neighbor at a, well
3 there's two situations that occur to me in the
4 history of owning the house. One was I wanted to
5 get a crane to come in at one point to both
6 replace my hot tub and replace the air
7 conditioning, that was extremely difficult and
8 they said it was a matter of inches and even once
9 they got through the narrow part to get to them
10 idle part of the alley and expand the arm to do
11 what they had to do was almost impossible, so
12 they said any further intrusion in that space
13 would make it almost impossible to get that type
14 of equipment back there, I have no access other
15 than that to my rear or my yard. The neighbor at
16 N Street, 34 N Street, Mr. Wales expressed
17 concern that based on his years of living there
18 that any further restriction directly opposing
19 his garage would make it extremely difficult, he
20 already has to back in and out two or three times
21 to get in and out and it would make it extremely
22 difficult as you know and the Yost's know in the

1 wintertime...

2 MR. SULLIVAN: Thank you, my question was
3 for emergency access please.

4 MR. THOMASON: Well the emergency access
5 is the same thing, if you have a narrow alley and
6 your trying to get a fire truck back there the
7 garbage service routinely runs into the walls of
8 the building.

9 MR. SULLIVAN: Does the extension of the
10 garage by 20 inches narrow the alley?

11 MR. THOMASON: The extension of the
12 garage cuts 50% into the allowed run from center
13 line per the Zoning Regulations. So your going
14 further against the common good at the expense,
15 your profiting at the expense of the common good,
16 that's what it says, and your inconsistency in
17 your numbers and what the depth of that does make
18 me extremely nervous, the numbers presented on
19 one filing is 3, one filing is 4, one filing is...
20 I mean what is the number?

21 MR. SULLIVAN: Okay so, just specifically
22 to your impact on the alley, I just want to be

1 clear. The impact to you on the 20 inch
2 extension and the restoration of the garage is
3 that it just may make it impossible to replace
4 your hot tub.

5 MR. THOMASON: It may make it impossible
6 for fire safety, garbage, snow plowing equipment.

7 MR. SULLIVAN: But the impact to you.

8 MR. THOMASON: My impact is primarily to
9 be honest fire and safety. They are very old
10 homes and the last thing I want is somebody not
11 getting a fire truck in there really quick
12 because my neighbor needs to park an SUV, I mean
13 you've got two midsize parking spots, only 6
14 people in the whole square have a garage and your
15 acting like that's an undue hardship, that's
16 unreasonable, okay, don't go there.

17 MR. SULLIVAN: Are you aware that undue
18 hardship is not necessary to prove for a variance
19 relief?

20 MR. THOMASON: All I know is that your
21 twisting words, you have a two car garage that is
22 fully adequate, it's been adequate...

1 MR. SULLIVAN: So you're not aware that
2 undue hardship is not...

3 MR. THOMASON: The reality of the
4 situation is that you do not have an undue
5 hardship, what you have is a garage...

6 MR. SULLIVAN: Thank you, thank you.

7 CHAIRPERSON MOLDENHAUER: Any final
8 questions?

9 MR. SULLIVAN: Just one quick question
10 for the architect Ms. Brodnitz. Were you aware
11 that the project was approved by the Old
12 Georgetown Board?

13 MS. BRODNITZ: Well I only, I did not see
14 the Old Georgetown Board Report, I did see the OP
15 Report, if I had the Old Georgetown Board Report
16 I probably would have addressed that too.

17 MR. SULLIVAN: Thanks, just one quick
18 question, on this photo here is this photo taken
19 from the same angle, from the same perspective on
20 both photos?

21 MR. THOMASON: As best I could, obviously
22 I had to try to recreate an image of what the

1 wall will look like. So that was sitting at a
2 chair at my table to get the blue and then I shot
3 the other way back towards the existing, which
4 the existing property already goes beyond my back
5 plane, and then I just stretched it a little bit
6 to give you the impression, as I stated in the
7 bottom simulation of what it would look like, I
8 think it's pretty accurate.

9 MR. SULLIVAN: Okay is this the
10 neighboring property here that you can see on the
11 edge of the yellow simulation?

12 MR. THOMASON: I assume probably.

13 MR. SULLIVAN: Okay and then where is it
14 on this picture?

15 MR. THOMASON: Well of course the
16 neighboring property would be back behind because
17 it's a simulation.

18 MR. SULLIVAN: So high up here, I wonder
19 why it's not on this picture.

20 MR. THOMASON: Because I was trying to
21 take a shot to make the point that obviously the
22 structure has not been built okay, I don't have

1 the ...

2 MR. SULLIVAN: Oh no I'm sorry, this
3 structure, the structure of the house that's
4 already built, in this photo it exists halfway up
5 the picture and in this photo it's gone.

6 MR. THOMASON: It's just a picture; I
7 just sat there and took a picture, nothing more.

8 MR. SULLIVAN: One last question is there
9 area here shaded by the trellis and all that
10 growth, that underbrush, the brush that's on top...

11 MR. THOMASON: Part of the year it is but
12 as the Applicants knows every spring I cut all
13 the growth off the trellis and I replace the
14 under trellis because the yard won't grow
15 otherwise. So that is a winter shot in the fall
16 the flowers bloom and that grows out and every
17 spring I cut all of that off as well as cut all
18 the top of the tree between our two properties
19 as a courtesy to allow as much light as possible.
20 It's really not a factor, it's a temporary
21 structure, and it's not a permanent structure.

22 MR. SULLIVAN: Thank you I have no

1 further questions.

2 CHAIRPERSON MOLDENHAUER: Thank you then
3 at this point in time what we'll do is we'll turn
4 to any individuals in support or in opposition of
5 this case, I see we have one individual, I don't
6 believe you were in the audience previously when
7 the oath was administered so if you could stand
8 and have the oath administered, then come
9 forward. While we're doing that I just want to
10 turn to Mr. Thomason, explain to you there were
11 some questions back and forth about...go ahead and
12 administer the oath and I'll talk.

13 MR. MOY: Do you solemnly swear or affirm
14 that the testimony you are about to present is
15 the truth the whole truth and nothing but the
16 truth, you are under oath then.

17 CHAIRPERSON MOLDENHAUER: You can take a
18 seat in that empty chair right here but by the
19 microphone and we'll get to you in a moment. I
20 just want to make sure that you understand the
21 requirements that we have to review. You did
22 indicate that obviously as a matter of right it's

1 40% lot occupancy, but if you come before the
2 Board under a 223 standard we are permitted to
3 approve that up to 70% so long as they satisfy a
4 multiple prong test, so you are aware of that.

5 MR. THOMASON: Yes Ma'am I was just...

6 CHAIRPERSON MOLDENHAUER: I understand
7 your perspective on things, I want to make sure
8 that you understand, I just want to make sure
9 that there's no misunderstanding as to what the
10 Board has to look at specifically in this case.
11 Okay, not that that's clear, I'll turn to the
12 individual, now are you in opposition or in
13 support? If you can state your name and home
14 address and you'll be given 3 minutes to present
15 your statements in support.

16 MR. LINUM: Certainly my name is Greg
17 Linum, my wife Laura and I live at 3409 Prospect
18 Street, the other next door neighbor. We are in
19 support of Kyle and Laura's plans to expand their
20 home primarily because we think it would provide
21 an adequate space to raise a family in
22 Georgetown. One of the things we are primarily

1 concerned about is Clark may get exactly what he
2 doesn't want to happen if this plan is not
3 approved, six University students don't need 2000
4 Square feet to live, they'd be more than happy to
5 have a place a block from school. The house as it
6 stands now is not adequate for a Georgetown
7 family, it is adequate for student housing and it
8 maybe what it becomes. We are also in support of
9 the plan because of how flexible we felt Kyle and
10 Laura have been in the process. As you can tell
11 from the plan their house will now be closer to
12 our property line, I know they're not going
13 closer to the other neighbors property line but
14 they are moving in closer to ours and they wanted
15 to feel us out on it first, how we felt about it
16 and when going over the plans when looking at the
17 roof we had some concerns about how the roof
18 line was going to be structured, they and their
19 architect worked with us to modify the plans,
20 they had no obligation to do so but because they
21 wanted to make sure that they were doing what was
22 in the best interest of the neighbors. The plan

1 as presented we feel actually increases our
2 privacy and the privacy of the neighborhood.
3 Currently from the back of my house I have a
4 lovely view into Clark and Holland's windows as
5 well as Kyle and Laura's I would no longer have
6 that view, it would be blocked off by the
7 addition and also Kyle, Laura, and my wife and I
8 we have a couple of windows that we actually look
9 right into each other and those would no longer
10 be the case so actually we feel there are many
11 positive aspects to this planned addition. With
12 respect to the garage listening to this I have
13 kind of regrets that its kind of come to this,
14 the idea that a 20 inch addition could cause such
15 concern for not just our immediate neighbors but
16 the neighbors on N Street, and I will point out
17 they're absolutely correct the alley is really,
18 really tight and the reason for that is our
19 garage is close up to the alley and the neighbors
20 on N Street the ones who are objecting their non-
21 conforming garages are very close to the alley as
22 well, but with the presence of that telephone

1 pole and the presence of our garage already being
2 that length I can't see how that would actually
3 impact the traffic in the alley in any way unless
4 I guess our neighbor on N Street may be opposed
5 because they back into Kyle and Laura's property
6 to get out of their garage maybe that's why they
7 don't want the garage expanded but other than
8 that I can see no impact that garage addition
9 would have. In fact unlike the street side
10 facades in Georgetown which are beautiful and
11 picturesque our alley is not beautiful and
12 picturesque and having work done on the garage to
13 modify it, the new construction I think that will
14 actually be one of the brighter points and then I
15 will be the eyesore of the neighborhood so I may
16 have to do something to make my garage look
17 nicer. In conclusion this addition is just
18 something that needs to happen for a modern
19 family to be able to live in the area. If you do
20 not grant their request for an exception this
21 will become student housing and there's nothing
22 wrong with that, students need a place to live as

1 well. But if you want to keep the character of
2 the block as one of single families and not
3 multifamily structures then the exception is I
4 think the right way to go, and I appreciate your
5 time.

6 CHAIRPERSON MOLDENHAUER: Thank you do
7 Board Members have any questions? Seeing none,
8 thank you very much. Are there any individuals
9 in the audience in opposition to this case?
10 Seeing none then at this time we'll turn to the
11 Office of planning.

12 MR. MORDFIN: Good morning I'm Stephen
13 Mordfin with the Office of Planning and the
14 Application request special exception relief
15 pursuant to Section 223 to permit a rear addition
16 and variance relief to permit a detached garage
17 to be set back less than 12 feet from the
18 centerline of the alley. The alley's conformance
19 to the provisions of Section 223 that is a semi-
20 detached garage permitted as a matter of right
21 within the R-3. The proposed addition will not
22 unduly affect light and air into their rear yard;

1 as a result in rear yard would be 69 feet or 45
2 feet approximately between the rear of the house
3 and the garage which is still more than twice the
4 normal requirement for a rear yard. The proposed
5 addition would have no windows on the sides that
6 would abuse into the adjoining rear yards. The
7 addition would be residential in appearance and
8 consistent with (inaudible) development. Plans
9 for the garage and elevation garage were
10 submitted as a part of the Application. The
11 requested lot occupancy of 60% is less than the
12 maximum permitted under Section 223 within the R-
13 3 District and the requested relief would not
14 result in the introduction or expansion of a non-
15 conforming use, therefore the Office of Planning
16 recommends that the Board approve the requested
17 special exception provided the Applicant installs
18 drip line fencing around the existing Magnolia
19 trees within the rear yard to protect them during
20 construction. The Application is also in
21 conformance with the criteria for the granting of
22 a variance. The site is unique because of the

1 two mature Magnolia trees within the rear yard.
2 Shifting the garage closer to these trees could
3 endanger their health which the OGB has indicated
4 they would like preserved. It would be an undue
5 hardship to require the Applicants to
6 construction a garage of insufficient depth for
7 the parking of a motor vehicle or to potentially
8 endanger the health of the Magnolia trees. The
9 granting of this variance would not substantially
10 impair the intent of the zone plan and that it
11 would allow for the construction of a detached
12 garage to accommodate the parking of one vehicle
13 for a semi-detached dwelling. Therefore the
14 Office of Planning recommends that the Board
15 grant the variance subject to the condition that
16 the drip line of the Magnolia trees be protected,
17 thank you.

18 CHAIRPERSON MOLDENHAUER: Mr. Sullivan do
19 you have any questions for the Office of
20 Planning?

21 MR. SULLIVAN: No questions thank you.

22 CHAIRPERSON MOLDENHAUER: Mr. Thomason do

1 you have any questions for the Office of
2 Planning?

3 MR. THOMASON: Yes just two, one the 69
4 foot measurement I think is incorrect, it's not
5 open air space of 70 feet, it's open air space of
6 about 48, I had a concern about that, secondly
7 the current garage their not worrying about
8 getting a single car in there as you state, their
9 worried about getting two cars in there it's more
10 than adequate right now for one car. I'm not
11 sure what that has to do with the argument.
12 There are many things factually inaccurate in the
13 memo that I saw that our expert has reviewed and
14 that calls into question that testimony.

15 CHAIRPERSON MOLDENHAUER: Procedurally
16 it's a time for questions.

17 MR. THOMASON: The question is the
18 requirement that you're trying to fulfill a one
19 car garage.

20 MR. MORDFIN: What they propose is the
21 minimum size of a, one parking space is 9.5 feet
22 by 19 feet that is how we measure one parking

1 space and that is how we determine whether or not
2 this garage is adequate to park one motor
3 vehicle.

4 MR. THOMASON: Right now two, okay

5 MR. MORDFIN: I didn't indicate that it
6 was parking for...

7 MR. THOMASON: Okay, secondly is the
8 measurement that you quoted the 70 feet the
9 actual open space as you state or is that
10 including the garage?

11 MR. MORDFIN: I also said that the space
12 between the rear of the proposed house and the
13 garage would be approximately 45 feet.

14 MR. THOMASON: Thank you that clarifies.

15 CHAIRPERSON MOLDENHAUER: Do Board
16 Members have any questions for the Office of
17 Planning? Seeing none then at this point in time
18 we'll turn to ANC 2-E is somebody present from
19 ANC 2-E, seeing nobody present all reference we
20 have "Exhibit No. 23" in our record which
21 indicates that at a regularly held public meeting
22 on January 3, 2011, in which a quorum was present

1 there was a vote of 4 to 2 following a resolution
2 the resolution was do not support the granting of
3 this special exception application. They also
4 reference in the text of document the request for
5 the variance from the alley centerline. So this
6 report does satisfy the great weight standard and
7 would be given great weight in that regard. At
8 the conclusion of our hearing I'll turn back to
9 Mr. Sullivan for a brief conclusion.

10 MR. SULLIVAN: In rebuttal please briefly
11 if you could Kyle could you speak a little bit
12 about your interaction with the neighbor from the
13 Halcyon House and the neighbor opposite on N
14 Street, opposite your garage.

15 MR. YOST: Sure one of the directly
16 connected neighbors I believe as I was referenced
17 is the Halcyon House which is not connected it is
18 across the street, the owner is John Dreyfus and
19 ironically he has letters both in support and in
20 opposition. I've spoken with him he thinks we've
21 been a great neighbor wants us to stay, thinks
22 the addition is modest, and he has urged us to

1 come to compromise and actually the letter that
2 Clark and Holland have submitted he doesn't
3 oppose he says he things we should be able to
4 come to compromise. We have tried to come to
5 compromise, we've been told that Holland wants to
6 kill the project, we came back 30%, Clark talked
7 about a one story addition, we said we'd done the
8 minimal we could and he said well Holland doesn't
9 want anything anyway and so that was as far as we
10 could come with compromise. So Mr. Dryefus across
11 the street is supportive of this, he wants the
12 neighbors to get along, quite frankly I want the
13 neighbors to get along this has been a very
14 disturbing process honestly. The neighbor on N
15 Street, they're not directly connected either but
16 they share a garage directly opposite ours on the
17 alley, their garage comes within two to three
18 feet of the public space where as mine is
19 currently 5 feet 8 inches. I spoke with them,
20 they were aware of the hearing, I asked, you
21 know, to speak with them if they had any concerns
22 and they never caught back to me and this letter

1 of opposition is the first I've heard it and so
2 I'm a little disappointed in that. I'll respect
3 that they're concerned about not being able to
4 pull onto my property to back out of their garage
5 by 20 inches as much as they currently do.
6 Concerns about the emergency vehicles though are,
7 I don't know if I can use the word ludicrous here
8 but I mean its nine feet to get into the alley on
9 one end, 10 feet 8 on the other end, the current
10 garages are 20 feet apart from each other, they
11 will be 18 feet 4 inches. The telephone pole,
12 we've been through that. I've spoken with them;
13 I'm a little disappointed to see their letter of
14 opposition for the first time today. We do have
15 letters of support from the owners of the two
16 neighboring garages that abut my garage so I'm
17 the same side, you heard from Greg they own the
18 garage at 3409, the one behind Clark and
19 Holland's house is owned by someone else he has
20 submitted a letter of support as well.
21 MR. SULLIVAN: Briefly I just want to have
22 the architect talk about the source of the shadow

1 studies and the legitimacy of the shadow study.

2 MR. MARKUS: The shadow studies were
3 created from Google earth, we took, they and
4 Google earth action in major cities including
5 Washington, DC that have 3D representation of the
6 buildings, we took those out of Google Earth, we
7 put our buildings the existing and the new in it,
8 we verified by looking at the buildings along the
9 street the heights and then we place it back into
10 the Google Earth program and you basically type
11 in the numbers and it calculates the shadows.

12 MR. SULLIVAN: For closing I just want to
13 say I think the Board has substantial evidence
14 that conclusively proves that our proposal meets
15 the requirements for both the special exception
16 under 223 and the variance relief. Regarding the
17 party opposition and I understand they may have
18 concerns about the construction itself but after
19 looking through everything they've submitted with
20 all due respect their case is one of hyperably,
21 exaggeration and sometimes flat out misleading
22 or false statements. They claim that this

1 additions going to exacerbate, impact the
2 neighboring properties, plural, no evidence that
3 it's going to impact another property. They say
4 the addition is 24 feet, I understand they're
5 taking that from my prehearing statement but
6 that's a correction it's 20 feet in the rear.
7 They claim the addition will enclose their
8 outdoor dining area and vastly reduce light and
9 air, I think they distort the definitions of
10 enclose and vast. They produce hearsay that
11 their real estate agent told them it would
12 significantly reduce the value of their property
13 yet present no evidence from an expert of this
14 irrelevant fact. Their lot does not connect to
15 the anywhere near the garage, they don't have
16 access to the alley; they don't have property on
17 the alley. They claim in their statement that we
18 have to prove that the garage would not be
19 functional without the extension, that's not the
20 case; requirement is to prove that it's an
21 unnecessary burden not impossibility. I've heard
22 it mentioned several times in a letter of support

1 and by them that we're going into public space;
2 we're obviously not extending the garage into
3 public space. They claim that the 20 inch garage
4 extension will create a hazardous situation by
5 limiting access to emergency vehicles, trash
6 trucks, and maintenance vehicles, again not a
7 hint of evidence in support of that because there
8 isn't any available and DDOT and DPW have both
9 informed OP they have no issue at all with the
10 extension. Finally they claim that this project
11 and I'm not sure which part of the project
12 they're referring to would adversely affect the
13 safety of their family and I don't even know how
14 to respond to that other than to say there's no
15 evidence at all for that gratuitous claim.
16 Regarding the ANC we obviously respect the
17 opinion of the ANC and we worked very hard with
18 the ANC to present our plans to them, when we met
19 with the Single Member District Representative
20 the evening before the ANC meeting at Mr. Yost's
21 house he said looks like you won't have any
22 problem it's a modest addition, well we had a

1 problem and frankly we're not sure we understand
2 why but some of the things that were discussed
3 were overall density in the Historic District,
4 that's really the only thing that was discussed.

5 The commissioners in decent said this is a
6 Zoning issue and there's no issue with privacy or
7 light and air so we should probably be approving
8 this. Again, the OGB did approve it as far as
9 historic goes and we're well under the 70% so
10 that should address those two issues. I think
11 that's it, I believe the Board has substantial
12 evidence to approve this application and we would
13 request that you do so expeditiously, timing is
14 important obviously and we'd like to get this
15 done before next winter, so thank you very much.

16 CHAIRPERSON MOLDENHAUER: Thank you, I
17 don't think we're ready to decide this case today
18 I think we have to look through some of the
19 documentation and put this down for deliberation
20 a different date. One thing I'd like to see is
21 there were some references in regards to letters
22 of recommendation that we don't have copies of, I

1 think you said that you had given those to either
2 the Old Georgetown Board of maybe CFA in those
3 packages but we don't have them in our record.

4 MR. SULLIVAN: I'm sorry you mean letters
5 that neighbors wrote to. neighbors wrote to the
6 ANC several months ago in relation to the OGB
7 process do you want those?

8 CHAIRPERSON MOLDENHAUER: You reference
9 that you have letters of support; you obviously
10 have counter statements in regards to letters of
11 opposition so I think if you have them we're
12 going to leave the record open so that you can
13 provide those. There's also the OGB letter in
14 general I don't think we have a copy of that, I
15 think there was also, oh you just provided it?

16 MR. SULLIVAN: I just provided it to Mr.
17 Moy that was the U.S. Commission of Fine Arts
18 letter.

19 CHAIRPERSON MOLDENHAUER: Okay, so that
20 was the Fine Arts Commission as well because that
21 letter I think specifically, I know we have it in
22 our OP report regarding the Magnolia trees but

1 I'd just like to see a copy of that myself. So
2 if we have that we'll obviously get a copy of it,
3 if we don't provide additional copies. I don't
4 know if there's anything else that we'd be
5 looking for. Board Members is there anything
6 else that assist us in making our deliberation?

7 MR. HOOD: Madam Chair for me, I know in
8 our regulations it talks about graphical
9 representations and I know that we have a number
10 or graphics showing what's proposed but I would
11 like to see a prospective, how that's going to
12 fit down in there, I'm not sure that we actually
13 ask for that but that would kind of help me to
14 kind of figure out exactly some of the impacts,
15 or maybe not impacts in this particular case.
16 Also I just want to mention Madam Chair is the
17 mention of the support letters, it appears that
18 the support letters were for the Old Georgetown
19 Board. Do you have support letters for the
20 Zoning process is what I would be looking for?
21 MR. SULLIVAN: We do and actually just
22 one of the letters was for the Old Georgetown

1 Board I thought and it was an attachment to the
2 letter. I think there was a cover letter, there
3 should be a cover letter saying please accept
4 this letter also in this case.

5 MR. HOOD: It may be here, we have a lot
6 of stuff up here.

7 MR. SULLIVAN: They may have been
8 submitted recently, I may have submitted them
9 just to be sure we had them.

10 CHAIRPERSON MOLDENHAUER: I don't have
11 any copies of letters in support. Mr. Hinkle is
12 also nodding his head that he did not receive any
13 letters of support so all I have, I'll identify
14 at the end the dates for, I do agree with you Mr.
15 Hood that a rendering an elevation from the rear
16 especially obviously from Mr. Thomason's property
17 to show how the elevation will appear. We have a
18 proposed view and Mr. Sullivan brought out some I
19 guess potential conflicts on how that was
20 created, we'd like to see a real architectural
21 rendering to see what that elevation would look
22 like from the neighboring property.

1 MR. MARKUS: Just a question on that, you
2 side elevation but your looking for some sort of
3 rendering.

4 CHAIRPERSON MOLDENHAUER: A rendering
5 perspective so we can see where that elevation's
6 coming from in perspective to the neighboring
7 property.

8 MR. HOOD: I want to see, I don't want to
9 go form code, and I want to see exactly how it's
10 going to fit in there. I can tell you, you can
11 take a picture and make it look a number of
12 different ways but we need to really see how
13 that's truly going to fit in there and do
14 different perspectives or different views for us
15 to be able to look at. I appreciate all the
16 graphical stuff that was here today but I think
17 we really need to see how that's going to fit.

18 CHAIRPERSON MOLDENHAUER: Any other
19 questions from Board Members that may help
20 provide clarification. Seeing none then what
21 we'll do is we'll leave this record open for
22 those specific documentation which means no other

1 documentation is being requested by the Board but
2 we'll leave that open and that documentation if
3 you can get that into our office by lets say
4 March, by March 3rd will that give you enough time
5 to create those documents that we're asking for
6 specifically?

7 MR. MARKUS: Yes.

8 CHAIRPERSON MOLDENHAUER: So by March 3rd
9 and then we'll put this on the calendar for
10 decision for March 8th, and any additional letters
11 of support that you have that way we can have
12 those in our record versus just referencing them
13 we'll also leave the record open for that. I
14 think that is everything, then thank you and this
15 concludes this hearing and we'll put this for
16 decision on March 8th.

17 MR. SULLIVAN: Thank you.

18 MR. THOMASON: Thank you very much.

19 **Application No. 18167**

20 MR. MOY: The next case is Application
21 No. 18167 of the Kings Creek, LLC; pursuant to 11
22 DCMR 3129.7 for interior and exterior

1 modifications to plans approved by BZA Order No.
2 17431 and 17431-A and an increase in the number
3 of dwelling units from 22 to 31 units to allow an
4 addition to an conversion of an existing building
5 for residential use in the R-C/R-5-B District,
6 this is at premises 2329 and 2335 Champlain
7 Street, NE, (Square 2563, Lots 103 and 816).

8 CHAIRPERSON MOLDENHAUER: Good afternoon
9 once everyone's together we'll look at all the
10 individuals and you can introduce yourself.

11 MR. COLLINS: I'm Christopher Collins
12 with the law firm of Holland and Knight.

13 MR. CORDINGLEY: I'm Dave Cordingley with
14 G and G, LLC the owner, the Applicant.

15 MR. BONSTRA: I'm Bill Bonstra the
16 Architect for the project.

17 MR. FREEMAN: Kyrus Freeman, Holland and
18 Knight.

19 MR. MEEHLING: Bobby Meehling, I with CV
20 Richard Ellis.

21 CHAIRPERSON MOLDENHAUER: Good afternoon
22 we have some preliminary issues to first discuss

1 in this case. The major issue before us is
2 really a question of the fact that this order was
3 initially approved on November 18, 2008, I'm
4 sorry no it was approved but then the final order
5 was issued I think December 2, 2008, so that
6 means that the two years would have expired on
7 that order on December 2, 2010. You submitted a
8 request for a modification which was filed on
9 November 30th, but pursuant to Section 3130.6 the
10 Board requires that a request for an extension be
11 provided in writing before the expiration of the
12 approval and we don't have any request for
13 extension in this case.

14 MR. Collins: Correct we did not file a
15 request for extension.

16 CHAIRPERSON MOLDENHAUER: If this, how do
17 we have jurisdiction if this order is going to
18 expire and there's going to be no request for
19 extension.

20 MR. COLLINS: There are two different
21 sections that are applicable to what your talking
22 about, what we filed is a request for a

1 modification of plans under Section 3129.7 and
2 that allows the Board to review all other aspects
3 of a Board order which by implication means not
4 including minor modifications which are under
5 Section 3129.3. A request for minor modification
6 may be filed within two years after the date of
7 the final order. Request for anything other than
8 a minor modification may be filed at any time. I
9 think that it' implicit in the regulations that
10 when you file a request for a modification if the
11 modification is granted then the extension is
12 granted or if the modification is entertained it
13 also includes an extension request as well,
14 otherwise how could you file a request for minor
15 modifications up to two years after the effective
16 date of the order unless the Board was going to
17 act upon it that day. How could the Board have
18 jurisdiction to review a modification after that
19 fact. This is something that and, let me back
20 up. There's nothing in Section 3129.3 or 3129.7
21 which cross references Section 3130 about
22 extensions. An extension is simply something

1 that you ask for by virtually an exchange of
2 letters with no public hearing and no opportunity
3 for public input. The modification that we're
4 going for does require public hearing and we
5 actually followed this very same process just
6 recently for the National Indian Gaming
7 Association and that case was Case No. 17985 was
8 the original order there and then the
9 modification was in 18144. In that case the
10 modification was heard a year after the original
11 order and the Board granted that approval and
12 gave another two years for the effective date of
13 that order. We're doing a similar thing here.
14 We filed the application request for modification
15 within the two years for minor modification, we
16 did not and as a matter of fact I reviewed this
17 with the staff, should we go ahead and file this
18 as a request for minor modification. Have the
19 Board tell us as you did in the National Indian
20 Gaming Association that no this is not minor and
21 then go ahead and set it for a hearing, or should
22 we just go ahead and file it under 3129.7 as not

1 a minor modification but as a modification that
2 requires a public hearing and that's what we did.
3 So there is pressing for having done it the same
4 way, in terms of procedural protections to the
5 public there are more procedural protections
6 during it this way that it would have been had we
7 just simply done an extension. An extension
8 request requires you to file the notice of the
9 extension request with the party, this case dates
10 back to 2006, the original case and there was a
11 party in opposition. In this case hadn't we just
12 filed an extension request we would have had to
13 file a notice of that extension request with that
14 party and that party would be given 30 days to
15 respond. That party from 2006, is also on the
16 property owner list for this Application, did get
17 notice of this public hearing and the span of
18 time was 75 days between our filing of this
19 Application and today's date. So that party had
20 more than twice a much time in which to file any
21 comments and an opportunity to participate in the
22 public hearing as well and to cross examine. So

1 there are more protections we believe because for
2 extensions there's no hearing required, the
3 notice we sent the parties a modification, there
4 is a public hearing required, the notice of
5 modification request was sent to the parties to
6 all owners of the property in the 200 feet, to
7 the ANC, to the Office of Planning, notice was
8 also published in the DC Register, the property
9 was posted and none of that would occur in an
10 extension request. So we think that there's
11 certainly protections to the public. Finally I
12 want to point out that the order; an order of the
13 BZA is valid for a period of two years unless a
14 permit Application is filed within that time. We
15 have filed, or the Applicant has filed several
16 permit applications resulting in the issuance of
17 four permits for this case. Frankly we have
18 copies of those permits that were issued, they
19 are not for the construction but they do show
20 movement toward getting ready for the
21 construction, they involve a interior demolition
22 permits for both buildings, that's two of the

1 permits and more recently a permit to install two
2 ground water monitoring wells because there has
3 been some ground water contamination which has
4 delayed moving forward on this case and delayed
5 the market of this property. Then another permit
6 for public space for a staging area in a public
7 space. So in conclusion we did follow the
8 regulations for modification as I mentioned we
9 did discuss this with staff to determine the
10 proper procedure to follow. I believe that the
11 regulations implicitly include an extension
12 request as in the National Indian Gaming
13 Association case. I would respectfully request
14 that you find as well that it is implicit in our
15 request, the procedural protections I mentioned
16 for the parties are greater in a public hearing
17 then they would be in simply a modification and
18 there were duplicated in this case for that
19 purpose and we are finally ready to address the
20 elements of 3130.6 to justify the need for an
21 extension if that's what your conclusion is.

22 CHAIRPERSON MOLDENHAUER: I'd like to

1 also turn to other Board Members to see their
2 opinion but I looked back at the old order and
3 some of the transcripts from that and I think
4 that back in 08' when there was a prior extension
5 on this case which was connected with an implicit
6 request for modification I think that was prior
7 to the 2009 amendment to Section 3130.6 in which
8 we provide new standards for the extension period
9 and we're thinking of the issue from the
10 discussion was that there was a need to have a
11 specific regulation which addressed extensions
12 and I think that in that regard I think there's
13 no longer a implicit extension that you have
14 specifically it says in writing request this
15 before the expiration. I'll go back and I'll
16 look at the National Gaming Association and take
17 a look at that case but I'm not sure how that
18 applies, it's a little different here considering
19 that the time frame has now expired under the
20 original order in that case as you indicated that
21 was only a year between, there was still a year
22 remaining on that order prior. In this case the

1 requirement under 3130.6 requires that the
2 Applicants do this before the expiration of the
3 approval, here we're not in February and the
4 initial order expired in December so that order
5 has expired and there's no request for an
6 extension all we have is the modification. So I
7 see that as a potential concern or a problem.

8 MR. COLLINS: Well ma'am may I address
9 that it's not our choice to be here on February
10 15th, having filed the Application in November and
11 the fact that we filed it while the case was
12 still the order was still valid was something
13 that we did with the understanding after talking
14 with Staff that this was the way that we should
15 proceed with this, I'm not impugning the staff at
16 all but we asked for advice and that's the advice
17 we had gotten. Also we have filed permit
18 applications which although they are not
19 applications for construction they are
20 application for, and there are building permits
21 having been issued in order to carry out
22 necessary work in order to allow that

1 construction to proceed, so with all these
2 circumstances together, we are prepared to
3 address before you today the elements of 3130.6
4 to justify the extension. I think this is a case
5 that if you look in the record there was no
6 opposition of this application, we have been to
7 the ANC in two separate public meetings with
8 further discussions privately between the ANC
9 Members and the Applicant which the Applicant can
10 describe more detail at the appropriate time and
11 we have a letter from the Council Member asking
12 you to please approve this case so that this
13 building can stop being a drag on the
14 neighborhood and be an active contributing
15 building in this neighborhood and a tax
16 generator. So with all these things together we
17 just request that you respectfully give us the
18 opportunity to address the elements of 3130.6.

19 CHAIRPERSON MOLDENHAUER: I guess one of
20 the questions is I know that you've already
21 argued that you've more than satisfied the notice
22 requirements I guess the fact that the

1 modification had a greater time frame for the
2 parties to respond but if we did indicate that
3 obviously you were going to address those orally
4 and that you were going to orally request for the
5 extension under 3130.6, I think that we probably
6 would have to or be obligated to give the 30 day
7 requirement notice to the parties specifically on
8 that relief. I'll look to OAG, is that something
9 that we could waive or just something that we
10 would be obligated to notice.

11 MS. NAGELHOUT: I believe that's one that
12 you can waive so long as there's no prejudice or
13 harm to any party in this case since the person
14 did get actual notice of the Application.

15 CHAIRPERSON MOLDENHAUER: Board members
16 is there any additional questions or opinions on
17 this issue?

18 MR. HOOD: Madam Chair I'll just say that
19 I think that one time Mr. Collins you're exactly
20 right, at one time modifications it was kind of a
21 foregone conclusion that modification that you
22 get extension of time and I think that's why the

1 Zoning Commission I'm not sure what year it was
2 09' well in that case I signed the order, the
3 Zoning Commission has changed that, so I would
4 expect, I think that you are exactly right for
5 the time, but Madam Chair I think you are exactly
6 right now because the Zoning Commission dealt
7 with the issue because that was an issue I'm not
8 sure if this was the case, but that was an issue
9 about how do we get an extension of time, I
10 remember that conversation I don't remember it
11 verbatim but I think Madam Chair your exactly
12 right. Mr. Collins I think that has been changed
13 and that was changed in June of 2009, so.

14 MR. COLLINS: But what were not changed
15 were 3129.3 or 3129.7, and there's nothing that
16 ties one to the other. 3130 talks about
17 extensions and if your simply asking for an
18 extension with no change in the plans or any
19 other aspects of the case then you follow 3130,
20 if your asking for a modification of plans you
21 follow 3129.3 or 3129.7 and they don't tie into
22 3130.

1 MR. HOOD: There's always a loop and same
2 old discussion about modifications and minor
3 modifications and when does it come to... you know
4 I will say that while I know what kind of slant
5 to make it fit but I can tell you the Board may
6 grant one extension, didn't you all have one
7 extension already in this case?

8 MR. COLLINS: There was one extension in
9 2008, that right.

10 MR. HOOD: So that would apply to that
11 but we've changed it now, how to acquire for an
12 extension, correct?

13 MR. COLLINS: Well we're asking for the
14 modification not necessarily the extension and
15 based upon what the Board recently did with the
16 National Indian Gaming Association when you get a
17 modification the extension comes with it.

18 MR. HOOD: When was that case dealt with?

19 CHAIRPERSON MOLDENHAUER: That was dealt
20 with recently I remember I was on both the
21 initial case and on the extension and obviously
22 I'd have to go back and look at the issues on

1 that case, that's one of the things I mentioned.

2 MR. COLLINS: I can give you, the
3 original Application for National Indian Gaming
4 was on November 10, 2009, and then we, that's
5 case No. 17985 and we applied for a modification
6 of plans within the two year period and were
7 instructed that the modification was not a minor
8 modification but it was a modification that
9 required a hearing. We applied for that under
10 Section 3129.7, were granted a public hearing,
11 got a new case number 18144, and that was granted
12 on December 9, 2010, so a year later.

13 CHAIRPERSON MOLDENHAUER: Is that deemed
14 to be a modification or was that deemed to be new
15 relief and that's why the new case number was
16 assigned, I'm just trying to recall this off the
17 top of my head.

18 MR. COLLINS: It was the modification of
19 plans plus we had to get a different Subsection
20 of a variance.

21 CHAIRPERSON MOLDENHAUER: So then, and
22 again I'd have to go back and look at that case

1 but if there's new relief sought which is why we
2 gave a new Application No. and maybe why there
3 was no extension need because there was a new
4 order based on that new relief that was be
5 acquired versus this case where's there's no new
6 relief it's a modification in this case, isn't
7 that correct?

8 MR. COLLINS: Correct we're not asking
9 for a new relief in this case.

10 CHAIRPERSON MOLDENHAUER: Yeah, so I
11 think there are some differences again I haven't
12 gone back and looked at that case you probably
13 know that better than I do but I think there are
14 some differences and I do agree with Mr. Hood
15 that, you know there is a requirement under and
16 even though it does indicated under Section..., you
17 kept on referencing 3129.3, that's for minor
18 modifications, we're not here for minor
19 modification.

20 MR. COLLINS: That's correct, that's
21 correct, now 3129.3 requires you to file within
22 two years, 3129.7 says you can file at anytime,

1 and getting back to the National Indian Gaming
2 Case, the similarity between that case and this
3 is that when we filed the second case under
4 3129.7 the Board did not revisit the prior
5 approvals per Section 3129.8 but only looked at
6 that one variance case. So I mean that one
7 variance that we raised in that modification
8 request, so to tie that case to this case what
9 we're saying is that if we had filed not only
10 just the modification request but had we filed a
11 found a small variance that we could have added
12 on that we would have been alright?

13 CHAIRPERSON MOLDENHAUER: I guess of my
14 questions is this then, so lets say you can apply
15 at anytime but the order is then only valid for
16 two years and there's no extension requested. We
17 would then approve the modification but then the
18 order it would be moot because the order would
19 have then died as of December 2, 2010.

20 MR. COLLINS: Well your right, when it
21 says at anytime, you have to read into that it's
22 at anytime that the order is still valid.

1 CHAIRPERSON MOLDENHAUER: And then without
2 having specifically requested the extension and
3 satisfying the requirement under Section 3130 you
4 could look at it at anytime but that kind of then
5 defeat the purpose because we would then have to
6 go back to the original order date. I know
7 that's something that this Board is trying to
8 make sure that we do is we go back to the
9 original order date when we make modifications.
10 We don't automatically implicitly extend it and I
11 know we've done that in other cases that we've
12 had more recently because of this new standard.

13 MR. COLLINS: But when we file the
14 Application of modification we give the
15 Application to you and you have jurisdiction over
16 it from that point, now if we want to take this
17 discussion to an extreme anyone could file and
18 application for modification well within the two
19 years, I mean your allowed to file it anytime up
20 to two years, you file it within the two years
21 and the Board for whatever reason could delay
22 action on that and then tell you oh well your

1 case is expired. So where's the line between when
2 you need to file an extension request and when
3 you don't so...

4 CHAIRPERSON MOLDENHAUER: And wouldn't
5 that mean then that if your coming up on the
6 timeframe in which your order is going to expire
7 that you would have to file both requests, the
8 extension and the modification simultaneously out
9 of abundance of caution just in case our calendar
10 didn't allow you to have the modification within
11 the timeframe.

12 MR. COLLINS: Well we thought we were
13 proceeding based upon the discussion with the
14 staff.

15 CHAIRPERSON MOLDENHAUER: Well then let's
16 do this, I think that... Your prepared to argue
17 3130 and amend your Application is that correct
18 to include that relief?

19 MR. COLLINS: Yes.

20 CHAIRPERSON MOLDENHAUER: I think that we
21 would be willing to waive the requirements of the
22 notice since there's been no prejudice shown and

1 you've already articulated that the individuals
2 and the parties in opposition have received this.
3 That being said why don't we go ahead and move
4 forward with that, I'm just trying to think
5 because we're going to have to take a brief
6 recess eventually to take a lunch and then we
7 only have two cases in the afternoon, so what I'm
8 thinking is if we can why don't we take a brief
9 recess now and we'll reconvene at 1 o'clock and
10 then you can get started at 1 o'clock and we'll
11 go through this case immediately at that point in
12 time.

13 MR. COLLINS: Okay.

14 MR. HOOD: Can I just ask Ms. Nagelhout
15 if we could make sure, that we, the Zoning
16 Commission may need to look at this, I don't know
17 if there's anything we need to do or it may come
18 out in the ZRR process, I know we're getting
19 ready to look at some administrative procedures
20 but I think this is an issue that we need to make
21 sure is clarified. So the Chairperson of the BZA
22 and the BZA will give clear direction of how we

1 proceed and it won't be mixed up right Mr.
2 Collins?

3 MR. COLLINS: That's the best way.

4 CHAIRPERSON MOLDENHAUER: I always like
5 when we have clarification in our regulations I
6 think that's always a great idea. I appreciate
7 you guys waiting just till 1 o'clock I know
8 you've already waited through a very long single
9 case this morning and I appreciate that but we'll
10 reconvene at 1 o'clock on the dot and we'll hear
11 this case immediately at that point, thank you.

12 MR. COLLINS: Thank you.

13 Recess

14 CHAIRPERSON MOLDENHAUER: Okay we're back
15 on the record its 1 o'clock we're going to be
16 continuing the A.M Session and the afternoon
17 session will convene after we conclude this last
18 case. I'll turn back to Mr. Collins to begin.

19 MR. COLLINS: Thank you Madam Chair and
20 Members of the Board, my name is Christopher
21 Collins with the Law Firm of Holland and Knight,
22 with me is Kyrus Freeman from our office, also to

1 my right is Mr. Dave Cordingley of G and G, G and
2 G is the owner of the property and to my far
3 right Mr. William Bonstra of Bonstra Harrison
4 Architect who is the architect for this project
5 and we will be joined by Mr. Bobby Meehling of
6 CV, Richard Ellis who is the broker of the
7 project, has been the broker on the project since
8 the original application, the date of the
9 original application in 2006. This is an
10 Application for modification of plans; these
11 modifications do not affect any of the areas of
12 Zoning Relief granted by the Board. We are not
13 asking for any new areas of Zoning Relief, the
14 height, the FAR the building envelope all remain
15 the same, the only changes as you'll hear in the
16 testimony is that the interior configuration of
17 the units has changed, the units have become
18 smaller and therefore greater in number, the
19 smaller unit sizes due to the current residential
20 market which will be talked about. Then the
21 exterior modifications to the building façade are
22 in keeping with the original design concept but

1 are more restrained may be a better word, more
2 differential to the existing building. Notice
3 has been provided to the party to the original
4 application and to all owners of property within
5 200 feet and to the original Applicant and all
6 the owners, the ANC, the Office of Planning.
7 There's no opposition to this Application, there
8 is support from Council Member Jim Graham and he
9 has a letter in the record and we also have no
10 (inaudible) recommending approval. The scope of
11 the hearing is under Section 3129.8 of the
12 Regulations, we have 3 witnesses and we can be
13 very brief. We have the owner's representative
14 Mr. Dave Cordingley of G and G; we have Mr.
15 Bonstra as I mentioned also we have Mr. Meehling.
16 We can address the elements of Section 3130.6 if
17 you'd like as they go through their testimony and
18 so with that. So the first will be Mr.
19 Cordingley, can you please introduce yourself and
20 present your testimony.
21 MR. CORDINGLEY: Good afternoon my name
22 is Dave Cordingley, my address is 2638 Paddock

1 Gate Court in Herndon, VA, I'm here as the
2 representative of G and G, LLC which is the owner
3 of Kings Creek which in turn is the owner of the
4 property at Champlain Street in the Adams Morgan
5 area of the District of Columbia and the
6 Applicant for the plan modification before you,
7 thank you for your time and this opportunity. G
8 and G is a private lender, we've been in business
9 for 26 years, we are the lender on this project
10 when it was before the BZA in 2006, and became
11 the owner of King's Creek, LLC in 2008 after a
12 default by the developer. We have been marketing
13 the property for sale since we took ownership, we
14 will not be the developer or builder of this
15 project, it's just not in our skill set we are
16 bankers. For marketing we engaged Bobby Meehling
17 of CB Richard Ellis who will speak with you later
18 on, because of his knowledge and experience in
19 the Adams Morning residential market. Bobby
20 lives within walking distance of the property and
21 has many sales of similar projects to his credit;
22 it is through his counsel and the research of CB

1 Richard Ellis that we come to you for this
2 modification. Through the marketing process we
3 learned that interested potential purchasers of
4 this project wanting to build on this project
5 would have an interest in smaller and more
6 marketable units than those in the original
7 plans. In order to achieve this goal we engaged
8 the Architecture Firm of Bonstra Harisein to
9 decrease the size of the units and improve the
10 unit layout without requiring additional variance
11 or special exception relief. Basically their
12 charge was to stay within the existing approved
13 building envelope but to revise the interior
14 layout in order to make the units fit the current
15 market demand. In so doing they also made
16 modifications to the building, exterior design to
17 provide what I believe is a more restrained and
18 complimentary approach to the existing building
19 while staying true to the original approved
20 design concept. We chose Bonstra Harisein in
21 part because of their experience and success with
22 similar projects in the Adams Morgan Market in

1 particular and in downtown DC Market in general.
2 Bill Bonstra will speak with you following my
3 remarks. The building in question is a two story
4 stone and cement block vacant building it was
5 built in 1920s as a car dealership, the most
6 recent tenant was the Brass Knob a retail store
7 sailing used fixtures from rehabbed buildings in
8 the District. The building has been vacant for a
9 number of years. The building is not classified
10 historic but the plans preserve the façade on all
11 sides. In 2006, the Board of Zoning Appeals
12 approved the application of the prior owner for
13 22 condo units basically the same footprint and
14 building envelop as you have before you today.
15 In 2008 the BZA approved an extension of the 2006
16 approval with minor changes to the roof top
17 level; we are here today with a request to modify
18 the current approval to allow 31 units with most
19 of the other element staying as with the 2006 and
20 2008 approvals. Basically we're reducing the
21 size of the units; the market clearly has
22 adjusted to smaller, more affordable units thus

1 this request to increase to 31 units in the same
2 footprint and height. The building is currently
3 under contract, a well qualified developer with a
4 contingency of your approval of the 31 units.
5 This modification if approve achieves the goal of
6 addressing the new market for appropriate sized
7 condo units. Adams Morgan will be getting an
8 attractive basically new residential building
9 that will help enliven the neighborhood in place
10 of a long term vacant commercial/industrial
11 building. I'm hopeful that you agree with our
12 proposal and you will approve this modification,
13 thank you.

14 MR. COLLINS: Mr. Cordingley referring to
15 Section 3130.6 of the Zoning Regulations and
16 specifically item C can you tell us how since the
17 time of the modification in 2008, when you were
18 before the Board seeking a modification of the
19 plans to make the building, I guess more
20 attractive in the market, can you tell me what
21 the economic climate has been in terms of your
22 efforts to proceed with that?

1 MR. CORDINGLEY: To a degree I'd defer to
2 Mr. Meehling for most of this but what we found
3 is that the market as I think I'm not saying
4 anything anybody doesn't know around here
5 already, that the market declined radically on
6 all sides and certainly people got much, much
7 more sensitive to the expenditure and the risk of
8 building especially presidential condo units in
9 this market. We have had conversations with
10 upwards of 10 organizations all of them capable
11 of undertaking this development and taking this
12 to fruition and none of them would do it under
13 the circumstances, both the economic
14 circumstances and the market circumstances at
15 that particular time which we do feel and I think
16 some of them feel it's turning and the cost of
17 construction and the market this was addressing.
18 The units were too large, they were going to be
19 too costly and we felt it was necessary to adjust
20 to a more appropriate level and we've stayed in
21 touch with the market all the way through
22 primarily through CB Richard Ellis and also in

1 conversations with others and for lack of a
2 better way to put it, you can't avoid it by
3 simply seating down with someone who is
4 interested in your property and have them say can
5 do it with that few rather.

6 MR. COLLINS: We're there any
7 circumstances or litigation or any other effects
8 any other actions affecting the property at that
9 time?

10 MR. CORDINGLEY: The only litigation
11 there was on this was a it was prior to our
12 becoming involved in the property which was a
13 suit against BP AAMCO for contamination of the
14 soil under the building for lack of a better way
15 to put it, the builder who we later financed
16 determined that there was the ability to go down
17 to excavate and get another level believe because
18 the foundation was so strong and they did what
19 you don't want to do in DC is they went down and
20 struck oil, then they sued BP AAMCO for the
21 contamination, they ultimately won that suit
22 there is a settlement in place, we came in after

1 that to finance the property, paid off the
2 existing lender, finance the property with
3 expectations of it being able to be developed and
4 built for the 21 condo units so subsequently the
5 22 condo units they've been approved for.

6 MR. COLLINS: And there has been
7 remediation on the property over a period of
8 time?

9 MR. CORDINGLEY: There's been testing
10 ongoing and that some of the permits that were
11 referenced earlier had to do with additional
12 drilling because for lack of a better way to put
13 it they're not getting any readings right now and
14 in order to go through the rest of the mediation
15 process they have to get readings so they went in
16 and got additional readings but we've had ongoing
17 discussions with them, they monitor on a
18 quarterly basis, give me reports, we met with
19 them about a week and a half ago and confirmed
20 now that there is a development plan, now that
21 there is a party who will be doing the building
22 that they will begin to undertake whatever

1 necessary to do fully remediation to take it to
2 case closure or no further action by the city.

3 MR. COLLINS: Thank you, no further
4 questions.

5 CHAIRPERSON MOLDENHAURE: Board members
6 do you have any questions? Seeing none if you
7 can go on to your next witness.

8 MR. COLLINS: What I'd like to do now is
9 to go out of order somewhat and go to Mr.
10 Meehling, he's the Real Estate Broker of this
11 property and I would like to introduce Mr.
12 Meehling as an expert witness in light of our
13 discussions this morning and I would like just to
14 ask him several questions. Mr. Meehling could
15 you identify yourself for the record and state
16 your, what your current employment is and your
17 professional qualifications.

18 CHAIRPERSON MOLDENHAUER: Mr. Collins can
19 I just jump in here, we have Mr. Bonstra's resume
20 but we don't have Mr. Meehlings do we?

21 MR. COLLINS: You do not.

22 CHAIRPERSON MOLDENHAUER: We do not so

1 you'll orally add him at this point? Okay thank
2 you.

3 MR. MEEHLING: I guess that was my fault.
4 Robert Meehling I live at 2007 Belmont Road, NW
5 and I work for CB Richard Ellis selling
6 multifamily in the District of Columbia.

7 MR. COLLINS: And could you expand on
8 that, how long you've been doing that, what are
9 your qualifications.

10 MR. MEEHLING: I've been selling real
11 estate for around 20 years; in DC I've sold over
12 100 buildings related to multifamily or
13 multifamily development.

14 MR. COLLINS: And that's your specialty
15 multifamily development?

16 MR. MEEHLING: Yes, the DC resume is in
17 the last I'd have to say 8 years, 8 to 10 years
18 so I've been pretty active and as it relates to
19 this site I've done a lot of significant deals
20 within walking distance of the Brass Knob sold
21 1711 Florida Avenue for the Verizon Center, on
22 the 1800 Block of Vernon Street a condo deal, the

1 1900 block of Kalorama and apartment building,
2 the Murray International House Development which
3 is right behind this and I represent the First
4 Church on Euclid which I'm sure your all familiar
5 with, for the hotel development 2424 18th Street
6 which was another condo development and old car
7 dealership on 18th Street converted something
8 similar to this but much larger units and fewer
9 number units.

10 MR. COLLINS: In terms of your
11 professional expertise you counsel the clients in
12 terms of the residential market and trends in the
13 residential market.

14 MR. MEEHLING: Absolutely all the way
15 through the transaction in terms of creating an
16 opinion of value from cradle to grave, from first
17 shaking hands to closing we track the deal.

18 MR. COLLINS: Your current trends, you're
19 familiar with the current trends in terms of
20 housing and market demands.

21 MR. MEEHLING: Absolutely.

22 MR. COLLINS: I'd like to offer Mr.

1 Meehling as an expert in residential real estate
2 sales and development, consultant in Washington,
3 DC.

4 CHAIRPERSON MOLDENHAUER: I have no
5 problem do any other Board Members have any
6 concerns with that? Seeing none then he's so
7 qualified as an expert.

8 MR. COLLINS: Mr. Meehling do you have an
9 opinion on the viability of this project as
10 originally approved with 22 units versus the
11 proposed plan with 31 units.

12 MR. MEEHLING: I do and I did, when I
13 first took the assignment the market was slightly
14 different, there was a different appetite for
15 condos at the time, it deteriorated very quickly
16 and what had changed was that these 20 or 21
17 units would have to sell for you know close to a
18 million dollars for some of them but blended
19 you'd probably be close to a million dollars for
20 each unit and there's not an appetite on that
21 block certainly for 21 units priced like that
22 which translates back to the land which would

1 mean there's not an appetite for the land.
2 Dennis Lee had a project two doors down from this
3 and it took him well over a year to sell 9 units.
4 That kind of project doesn't work with that kind
5 of time; you want to be sold out the day you
6 finish. So I think the project honestly was a
7 little ill conceived from the start, I think the
8 design was very expensive in terms of
9 construction, there was a lot of concrete and
10 steel in a lot of the open spaces made the
11 project even more expensive but trying to sell
12 units in that price point didn't fair well. By
13 example the project we did on Vernon Street which
14 was a 30 unit renovation of a vacant apartment
15 building right at the end of 08' which is not
16 when anybody wanted to be in the market with
17 anything. They had 30 units priced blended
18 through the building about 585 a foot, but the
19 price per door was between 450 and 650 which we
20 saw as the meat of the market and they sold out
21 in 3 weeks, they were very excited about it and
22 moved on to the next project. Whereas Dennis Lee

1 his 9 units he couldn't move them, honestly we
2 were getting calls from his back so we knew how
3 slow they were selling. So from that prospective
4 as we started marketing this and when we do a
5 marketing we do a scorched earth marketing, we go
6 to thousands of prospects and we make hundreds of
7 phone calls and we've shown this property
8 probably 50 times and every developer came back
9 with the exact same comments, any contract we
10 give you will be contingent on environmental
11 which we're still kind of working through, and
12 the number of units. The units are too big, even
13 if you gave it to us, we'd have trouble building
14 it and selling them because the units were too
15 big. So that's what we got, we got a lot of
16 contingent contracts based on that and through
17 this process the owner said well we're going to
18 have to deliver this ready as opposed to leaving
19 it up to the contract purchaser. We also went
20 through a time as you well know, where I can't
21 imagine you guys were busy, where you just
22 couldn't get financing for any construction, the

1 deck the cost ratio was so distorted and the
2 amount of cash you'd need to do a transaction
3 like this, I mean we were on hold for a year, I
4 mean literally there was no money around. It
5 wasn't until the middle of 09' when more capital
6 started showing up in the market.

7 MR. COLLINS: And based upon your opinion
8 or your view on the market, do you have an
9 opinion on the viability of the plan that's
10 before the Board today?

11 MR. MEEHLING: Well, I apologize if it
12 sounds self serving but it's, at the end of the
13 day we'll know but what we have is a contract in
14 place subject to the 31 units and he is confident
15 as we are that he's hitting the sweet spot of the
16 market, that that neighborhood is calling for
17 moderately priced apartments, not million dollar
18 units. Personally I live in the neighborhood, I
19 walk my dog down that block, I'd love to see it
20 filled up, I'd like to see 31 people coming in
21 and out and I think it hits the right price
22 point, I think we'll do very well with it.

1 MR. COLLINS: Thank you, I have no
2 further questions.

3 CHAIRPERSON MOLDENHAUER: No further
4 questions for Mr. Meehling or are you going to
5 call any other witnesses? Do Board Members have
6 any questions; I don't believe so, no.

7 J MR. COLLINS: Mr. Meehling has an
8 appointment across town he needs to leave
9 sometime very soon.

10 CHAIRPERSON MOLDENHAUER: We have no
11 questions for Mr. Meehling so.

12 MR. COLLINS: Mr. Bonstra we intend to
13 put Mr. Bonstra as an expert witness on
14 architecture in DC, a residential architecture in
15 DC and has included his resume in the submission
16 and we ask that he be qualified as such.

17 CHAIRPERSON MOLDENHAUER: I've reviewed
18 his resume and I was looking at the other Board
19 Members and I think that there are no issues and
20 he's so qualified.

21 MR. COLLINS: Thank you, thank you. Mr.
22 Bonstra would you please identify yourself for

1 the record and proceed with your testimony.

2 MR. BONSTRA: Yes I'm Bill Bonstra I'm a
3 practicing architect in DC for 27 years, I'm a
4 managing partner with Bonstra Harisein
5 Architects, I'm also a DC resident. I'm
6 appointed to the Zoning Task Force here in
7 Washington and I've designed over 3600
8 residential units, multi-family projects,
9 apartments and condominiums and in fact 3 of my
10 projects are right just about contiguous to this
11 property to the east to the west and to the
12 north, and so I have good experience working in
13 this specific neighborhood. I can show you a
14 site plan or let me just show you the building
15 first, I have four pictures here which I
16 submitted separately to your all they weren't
17 part of the original package but you can see the
18 existing two-story building which is Mr.
19 Cordingley said we are saving in it's entirety
20 and restoring it even though it's not considered
21 historic. The elevation you see is fronted on
22 Champlain Street both the top ones, the two shots

1 on the bottom are the rear alley. The project is
2 built just about to its 100% lot coverage about
3 92% which in fact we are reducing as part of our
4 current design. This is the site plan, this
5 drawing here which shows Champlain Street, north
6 is down on the drawing, our building entry is
7 here to the north and our lobby and we've set
8 back windows along the street, the existing
9 street is 50 feet wide, it's very narrow, and our
10 parking comes in from the rear. I don't know if
11 I need to get into the original approved project
12 as far as where that came to, the height was
13 approved at 50 feet, FAR 2.66, and there were
14 some modifications to the penthouse rather than
15 private penthouses that was the existing project
16 was made with shared recreation space. The
17 drawings, the original drawings, we're not the
18 original architects, we were hired just for this
19 go round to really look at the project, make an
20 assessment on how we could improve it so what you
21 see here are the original approved drawings.
22 This Board is our modified drawings and what we

1 really looked for is to improve the efficiency of
2 the building, reduce the cost of it, we felt it
3 was needlessly complex and that by adding the 9
4 units and making simple plans that would be a
5 more sellable, more marketable approach rather
6 than what we felt were some very large convoluted
7 plans which we believe our experience would be
8 hard to market, so the drawings you see here are
9 our cleaned up versions. The envelope is the
10 same, we're just adding units. When we looked at
11 the parking, the existing parking, we were only
12 able to get 18 Zoning Spaces with 2 tandem so
13 that is the reason for the reduction, we believe
14 that maybe the existing conditions that we
15 observe might not have been seen in the same way
16 earlier so that's the difference in parking. In
17 the lot coverage the difference is that we set
18 back our entry off the street which we felt was
19 better for the building and also eliminated a pop
20 up at the rear which was originally part of the
21 percentage of lot coverage. Those are the
22 changes that were made; I think I hit on

1 everything that our current submission talks
2 about. We ask you to approve this Application
3 and bring this building back to a viable multi-
4 unit residential project conforming to current
5 market conditions, thank you, I'm available for
6 questions.

7 CHAIRPERSON MOLDENHAUER: You indicated
8 18 parking spaces; I understand its 18 parking
9 spaces and two tandems making a total of 20 are
10 that correct?

11 MR. BONSTRA: Yes that's correct, by
12 eliminating what was originally sort of an over
13 extension of the parking below that was actually
14 going to be extended on the original drawings, we
15 eliminated that pop-up and we actually do get a
16 parking space on the alley which was not part of
17 the original design.

18 CHAIRPERSON MOLDENHAUE: Can you just
19 briefly go through how the exterior façade is
20 being modified?

21 MR. BONSTRA: One of the things we looked
22 at was to design a roof top addition that would

1 be deferential to the existing building,
2 something that was simple, that didn't over power
3 the wonderful stone building so what we did when
4 took a look, that was the proposed footprint
5 which you can see has a sort of large projecting
6 piece that actually projects out into the street
7 and we really tamed that and organized three bays
8 which stay back behind the line of the building.

9 We believe that the building as originally
10 conceived actually didn't conform to building
11 code because it's a 50 foot wide street and we
12 don't believe that we could, well Zoning for that
13 matter also, that it could not have projections.
14 We lessened that impact; we've simplified the
15 massing and the facades again to really work with
16 the existing rhythm of the building. The addition
17 we would see as a metal clad building that was
18 not trying to mimic the stone but really being
19 counter to the stone that exists. So this is the
20 front façade here and this is the rear façade.

21 CHAIRPERSON MOLDENHAUER: Thank you.

22 MR. CORDINGLEY: If I could interject to

1 add something to that, with the two tandem spaces
2 again we're not going to be the developer,
3 builder on it but it was envisioned and it's been
4 discussed that that could possibly be because
5 they are tandem spaces and don't count to the
6 parking but also for the logic to have that as
7 bicycle storage as well.

8 CHAIRPERSON MOLDENHAUER: So Mr. Collins
9 then actually the reduction would be down to 18
10 if the two tandems aren't legal spaces, is that
11 what I'm hearing?

12 MR. COLLINS: The count is 21 if we
13 include the space on the outside so it would be
14 down to 19, go down to 18, your right, go down to
15 18, the actual requirement is none because of the
16 grandfathering in the prior use but if you apply
17 the R-5-D standard it's 1 for every 2, so 31
18 would require 16 spaces, yes.

19 CHAIRPERSON MOLDENHAUER: I'm just trying
20 to make sure that I understand exactly how many
21 legal spaces would be created by the
22 restructuring, thank you. I have no questions;

1 do any other Board Members have any questions,
2 seeing none is there any other witnesses?

3 MR. COLLINS: That concludes our
4 presentation.

5 CHAIRPERSON MOLDENHAUER: Okay, then I'll
6 look to the audience to see if there's anybody in
7 support or in opposition of this case? Seeing
8 none then we'll turn to the Office of Planning
9 for their report.

10 MS. BROWN-ROBERTS: Good afternoon Madam
11 Chairman and Members of the Board, I'm Maxine
12 Brown-Roberts representing the Office of
13 Planning. Just to give a background and I'll go
14 through this pretty fast. The BZ Order, the
15 first BZ Order on this property was approved in
16 May 2, 2006, and at that time a special exception
17 was granted to increase the height of the building
18 to a permit up to 50 feet from 40 feet, there
19 were also 4 variances that were approved as part
20 of this Application. Again, in 2008, a
21 modification was approved, that modification did
22 not change any of the variance requests but it

1 did reduce and it did not reduce any of the
2 number of units but did reduce the configuration.
3 As stated by the Applicant it was also
4 elimination of the penthouses, private penthouse
5 which were further made into recreational space
6 for all the residents. The Application that is
7 front of us, the main trust of which is an
8 increase in the number of units from 22 to 31 and
9 then there are other modifications such as the
10 design of interior and exterior spaces, there's
11 also a slight reduction in the lot occupancy of
12 the original building and also a reconfiguration
13 of the parking garage. I think the main concern
14 for the Office of Planning was that this
15 modification does not change any of the variance
16 that were approved in the original order and
17 although there is a reduction in the number of
18 parking spaces we also think that it is
19 sufficient to meet the needs of the 31 units.
20 The Office of Planning therefore recommends
21 approval of the modification based on the fact
22 that there's not increase in approved variances

1 or special exception. Regarding the extension of
2 the order on 31 we did not do an analysis of that
3 but based on our review of the Application and
4 the information on the economics that the
5 Applicant has stated earlier we would recommend
6 approval of that extension also. Thank you Madam
7 Chairman and I'm available for questions.

8 CHAIRPERSON MOLDENHAUER: Thank you does
9 the Applicant have any questions for the Office
10 of Planning?

11 MR. COLLINS: No questions.

12 CHAIRPERSON MOLDENHAUER: Does any Board
13 Members have any questions for the Office of
14 Planning? Seeing none thank you very much. Then
15 at this point in time we'll turn to the ANC is
16 anybody present from the ANC for this case?
17 Seeing no one present. Mr. Collins do you have a
18 letter from the ANC in your package?

19 MR. COLLINS: No we do not the ANC took no
20 position, we met with the ANC twice and then as I
21 mentioned earlier Mr. Cordingley met with the ANC
22 representatives individually and they determined

1 to take no position.

2 CHAIRPERSON MOLDENHAUER: Okay we have a
3 letter in our file dated January 28, 2011, which
4 indicates based on their report they take no
5 action on this matter, so that will just be
6 referenced obviously in our case folder. That
7 being said we'll turn back to you for any closing
8 remarks.

9 MR. COLLINS: Thank you Madam Chair and
10 Members of the Board, we believe that this is a
11 fairly simple and straight forward application to
12 modify the design and the interior configuration
13 of this building for the sole purpose to turn
14 this vacant industrial commercial structure into
15 a viable residential building that would be an
16 asset to its neighbors and to the area of Adams
17 Morgan as a whole and we respectfully request
18 your approval of the Application, thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you, that
20 being said at this point in time we'll conclude
21 this hearing and we'll enter into deliberations.
22 I will start us off, we have before us a request

1 a modified application both a request for
2 modification and also a request for an extension
3 and in regards to the modification we have heard
4 the testimony from both the property owner and
5 the architect regarding the minor aspects of the
6 reconfiguration which are required in order to
7 sell the property and then market the property in
8 the current condominium multifamily residential
9 environment needing increase in the units and
10 also by needing a reduction in the size of the
11 units so that they're not so large or so
12 expensive so that they become unmarketable. The
13 modification also requests a modification or
14 change the interior and the exterior façade of
15 the building, the architect provided testimony as
16 to how the façade is going to be modified but as
17 indicated there's going to be no substantial
18 change in the relief that's being requested.
19 There's also a reduction of lot occupancy from
20 92.8% to 88% based on the change in the
21 configuration and as the architect identified the
22 change in the lobby entrance. That being said

1 there's also the issue in the regards to the
2 reduction in the parking, however the parking
3 does satisfy the requirements for parking and the
4 fact that the property is grandfathered. That
5 being said in regards to the standard under
6 3130.06 we had discussed the waiving of the
7 requirement to provide notice seeing that there
8 was good cause shown that there would be no
9 prejudicing that the parties including the party
10 in opposition and other parties had received
11 notification and had received potential time to
12 potentially respond to that. There was testimony
13 from the architect that there's not substantial
14 changes to any material facts or that there's not
15 substantial changes to the design. There's been
16 no documentation in our record that the area has
17 changed or that there's been any other material
18 changes that would have effected the initial
19 approval of this application. That being said we
20 also have, I think while oral typically we look
21 for written documentation and then we typically
22 hold a high standard in that regard. I think we

1 have heard typically we're not having a hearing
2 on these extensions which is why we require such
3 high standards in regards to physical
4 documentation. Here we had individuals under oath
5 which I think also provide a parallel to the
6 written documentation that we typically require,
7 but we had under oath the statements of both the
8 property owner in regards to the financial
9 hardship that they've endured in regards to
10 taking this property on after foreclosing on the
11 initially developer on the second developer and
12 then the challenges in regards to a law suit and
13 regards to oil that was, I guess identified
14 during construction or during the excavation of
15 the property, and that satisfying both prong C1
16 and 3, I see that the Applicant has satisfied the
17 requirements under 3130 with substantial
18 evidence. That being said I'll turn to my Board
19 Members to see if they have any other comments.

20 MR. HOOD: Madam Chair I don't think you
21 left anything out, I'll just wait for the motion,
22 okay any other comments? Then a motion a motion

1 to approve the Application of Kings Creek, LLC
2 pursuant to Section 3129.7 for an interior and
3 exterior modification to plans approved by BZA
4 order 17431 and 17431-A and increase the number
5 of dwelling units from 22 to 31 to allow an
6 addition to the conversion of an existing
7 building for residential use at the premises of
8 2329 and 2335 Champlain Street, N.W and to
9 approve a one time extension under Section 3130.6
10 and that extension would be from the expiration
11 of the prior order of December 2, 2010. Motion
12 has been made is there a second?

13 MR. HOOD: Second.

14 CHAIRPERSON MOLDENHAUER: Motions been
15 made and seconded, all those in favor say aye,
16 aye.

17 CHORUS: Aye.

18 MR. MOY: Staff would record the vote as 3
19 to 0 to 2; this is on the motion of the
20 Chairperson Ms. Moldenhauer to approve the
21 application pursuant to Sections 3129.7 and
22 3130.6 as amended, second of motion Mr. Hood,

1 Chairman Hood, and also in support of the motion,
2 Mr. Hinkle, no other Board Members participating,
3 again the final vote is 3 to 0 to 2.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Moy. Seeing that there's no opposition
6 in this case the Board would request that we
7 waive our requirements and ask for a summary
8 order to be issued.

9 MR. MOY: Very good, thank you very much
10 Madam Chair.

11 MR. COLLINS: Thank you.

12 **Afternoon Session**

13 CHAIRPERSON MOLDENHAUER: That then
14 concludes our morning and I will now read the
15 introduction to our afternoon session. This
16 hearing will please come to order. Good afternoon
17 ladies and gentlemen this is the February 15,
18 2011, Public Hearing of the Board of Zoning
19 Adjustments for the District of Columbia. My
20 name is Meredith Moldenhauer, Chairperson,
21 joining me today to my right is Jeffrey Hinkle,
22 Representative of the National Capital Planning

1 Commission, to my left as representative of the
2 Zoning Commission, chairman Anthony Hood. Copies
3 of today's meeting agenda are available to you
4 and are located to my left in the wall bin near
5 the door. Please be advised this proceeding is
6 being recorded by a court reporter and is also
7 being webcast live, accordingly we must ask you
8 to refrain from any disturbing noises or actions
9 in the hearing room. When presenting information
10 to the Board please turn on your microphone
11 stating your name and home address, when you have
12 finished speaking please turn off your microphone
13 so that your microphone is no longer picking up
14 sounds or background noise. All persons planning
15 to testify either in favor or in opposition are
16 to fill out two witness cards. These cards are
17 located to my left on the wall bin near the door
18 and are also on the table in front of us. Upon
19 coming forward please give both cards to the
20 court reporter sitting to my right. The order of
21 procedures for special exceptions and variances
22 are as follow: 1. Statement of the Applicant and

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

1 restrictions on cross examination including time
2 limitations and limitations on the scope of cross
3 examination. The record will be closed at the
4 conclusion of each case except for any material
5 specifically requested by the Board. The Board
6 and the Staff will specify at the end of the
7 hearing exactly what is expected and the date
8 when the persons must submit the evidence to the
9 Office of Zoning. After the record is closed, no
10 other information will be accepted by the Board.
11 The Sunshine Act requires that a public hearing
12 on each case be held in the opening before the
13 public. The Board may consistent with the rules
14 and procedures in the Sunshine Act enter into
15 executive session during or after a public
16 hearing on a case for purposes of reviewing the
17 record or deliberating on a case. The decision
18 of the Board in these contested cases must be
19 based exclusively on the public record, to avoid
20 any appearance to the contrary the Board requests
21 that all persons present not engage members of
22 the Board in conversation. Please turn off all

1 cell phones and beepers at this time as to not
2 disturb these proceedings. The Board will not
3 make every effort to conclude the Public Hearing
4 as near as possible to 6pm if the cases are not
5 completed at 6pm the Board will assess whether it
6 can complete the pending case or cases on the
7 agenda. At this time the Board will consider any
8 preliminary matters; preliminary matters are
9 those which relate to whether a case should or
10 will be heard today, that is a request for
11 postponement, continuance or withdrawal or
12 whether proper adequate notice of a hearing has
13 been given. If you are not prepared to go
14 forward today please raise such a matter now.
15 Mr. Secretary, do we have any preliminary
16 matters?

17 MR. MOY: Madam Chair there are
18 preliminary issues to be addressed attentive to
19 the ANC in both cases for the afternoon but Staff
20 would suggest that the Board address those issues
21 when I call the case.

22 CHAIRPERSON MOLDENHAUER: Very well thank

1 you, all individuals wishing to testify this
2 afternoon please stand and the oath will be
3 administered.

4 MR. MOY: Do you solemnly swear or affirm
5 that the testimony you're about to present in
6 this proceeding is the truth, the whole truth and
7 nothing but the truth? You may consider
8 yourselves under oath.

9 CHAIRPERSON MOLDENHAUER: Mr. Moy you can
10 call the first case and the individuals from the
11 first case can come forward.

12 **Application No. 18171**

13 MR. MOY: Yes thank you Madam Chair, that
14 would be Application No. 18171, Application of
15 Patrick S. and Allison C. Cooke; pursuant to 11
16 DCMR 3104.1 for a special exception to allow a
17 rear addition to a one family row dwelling under
18 Section 223 not meeting the court Section 406
19 requirements in the R-4 District at premises 809
20 D Street, NE property is in (Square 916, Lot
21 808).

22 CHAIRPERSON MOLDENHAUER: Good afternoon,

1 you can turn on your microphone and introduce
2 yourself for the record.

3 MR. COOKE: My name is Patrick Cooke; I
4 live at 809 D Street, NE.

5 CHAIRPERSON MOLDENHAUER: Thank you Mr.
6 Cooke, we have before us a 223 Application and I
7 think that the record is fairly full in this
8 case, if you'd like to present any additional
9 information that we don't have already in our
10 record please feel free to address those issues
11 nor or if you'd like you can rest on the record
12 as it stands.

13 MR. COOKE: Sure I can basically sum up
14 as well very quickly. We've met with the Office
15 of Historic Preservation on this and gotten their
16 review and consent on this project. We've met
17 with the Capital Hill Restoration Society as
18 well, taking them through the process and we've
19 got their support. We have met with and we're
20 close with both of our neighbors on either side,
21 have presented the plans to them for their
22 approval and talked with them about the

1 construction process in the backyards that we
2 share in an effort to try to keep that
3 disturbance as little as possible. We've also
4 met with our local ANC and there's a
5 representative who's here as well from our ANC
6 I've reviewed the project with them and we have
7 their support as well. I think that the report
8 put together by the Office of Planning very well
9 sums up the project and we're here today to gain
10 your support so that we can moved forward.

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much Mr. Cooke. Do Board Members have any
13 questions for Mr. Cooke based on the record?
14 Seeing none, thank you. Then at this point in
15 time we can turn to see if there are any
16 individuals in the audience in support of in
17 opposition of this case, seeing none, then we'll
18 turn to the Office of Planning for their report.

19 MR. JACKSON: Good afternoon Madam Chair,
20 Members of the Board, my name is Arthur Jackson,
21 (inaudible) with the Office of Planning. You
22 have our report before you and I will stand on

1 the record and will answer any questions you
2 might have about the report that we've prepared.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much Mr. Jackson, and do Board Members have any
5 questions for OP? Seeing none, I appreciate
6 that, does the Applicant have any questions for
7 the Office of Planning?

8 MR. COOKE: I do not have any questions.

9 CHAIRPERSON MOLDENHAUER: I appreciate
10 that, then at this point in time we turn to the
11 ANC 6-A.

12 MR. Holmes: Chair of ANC 6-A. If the
13 Board of Zoning Adjustment has accepted our late
14 filing of support, our letter or are prepared to
15 I have no addition comment we are in support of
16 this project.

17 CHAIRPERSON MOLDENHAUER: Having received
18 this yesterday it is late but I see no reason why
19 we cannot waive our requirements and at least
20 hear from the ANC we obviously always want to
21 provide the ANC to express their opinions,
22 especially when they've gone through the time to

1 have a meeting and to provide a letter. That
2 being said I'll indicate that if we waive our
3 requirement which I see from the consensus from
4 Board Members and admit this into the record, we
5 have a letter dated February 11, 2011, which
6 indicates that at a regularly held and noticed
7 public meeting with a quorum present that the ANC
8 evaluated this Application for a 223 relief and
9 that the commission is determined to support the
10 Application and this letter will received great
11 weight, Commissioner Holmes I appreciate that. No
12 other questions or comments?

13 MR. HOLMES: No, no as long as you accept
14 our support.

15 CHAIRPERSON MOLDENHAUER: Yes we do thank
16 you, so thank you very much for coming down and
17 thank you for providing that letter, that will be
18 added to the record. That being said I'll turn
19 back to the Applicant for any closing remarks?

20 MR. COOKE: No remarks at this time,
21 thank you.

22 CHAIRPERSON MOLDENHAUER: Thank you, then

1 at this point in time I'll conclude the hearing
2 and we'll enter into deliberation. This is a
3 great example of a case that could have gone
4 before the expedited review case since you have
5 all your neighbors support, you do have ANC
6 support, Office of Planning is in support of this
7 and it's a 223, this is a minor modification,
8 there's no issue with light and air. As you
9 indicated you have support of your neighbors and
10 letters in the record which indicate that they
11 don't have any concerns. OP has identified all
12 the standards and identified that there's no
13 issue of impact in regards to use and enjoyment
14 of neighboring properties and that there's no
15 affect on the view or vantage point from the
16 public streets or alleys. The ANC is in support
17 and I see no issue with approving this
18 application. I'll open up the floor to any
19 further deliberations from Board Members. Seeing
20 none then I will submit a motion, a motion to
21 approve the Application No. 18171 pursuant to
22 Section 3104.1 for a special exception to allow a

1 rear addition to a one family row dwelling under
2 Section 223, not meeting the court, under Section
3 406 and requirements in an R-4 District at
4 premises 809 D, NE. A motion has been made is
5 there a second?

6 MR. HINKLE: Second.

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

10 CHORUS: Aye.

11 MR. MOY: Staff would record the vote as
12 3 to 0 to 2 this on the motion of Chairperson Ms.
13 Moldenhauer to approve the Application for a
14 special exception relief under Section 223, not
15 meeting the court requirements under Section 406,
16 seconded motion Mr. Hinkle, also in support of
17 the motion Chairman Hood, no other Board Members
18 participated so again the final vote is 3 to 0 to
19 2.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much Mr. Moy and seeing that there's no
22 opposition in this case we'd like to waive our

1 requirements and request a summary order to be
2 issued.

3 MR. MOY: Yes thank you Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Thank you,
5 thank you very much.

6 **Application 18172**

7 MR. MOY: The next and final Application
8 for the afternoon session Madam Chair is
9 Application No. 18172 this is the Application of
10 BREOF 64 New York Avenue REO LLC, pursuant to 11
11 DCMR 3104.1 for a special exception to reduce by
12 less than 25% the amount of required parking for
13 an existing office building under Section 2108 in
14 the C-3-C District at premises 64 New York
15 Avenue, NE, property is in (Square 669, Lot 854).

16 CHAIRPERSON MOLDENHAUER: Good afternoon
17 when everyone's ready you can take a moment to
18 set up, feel free to take a moment, when everyone
19 is ready we'll have them introduce themselves.

20 MR. FREEMAN: Good afternoon Members of
21 the Board, my name is Kyrus Freeman with the law
22 firm of Holland and Knight and I'm here on behalf

1 of the Applicant BREOF 64 New York Avenue REO
2 LLC. Arranging our boards is Mr. Steve Sher as
3 you all know our expert in zoning, to my
4 immediate right is Ms. Gloria McMahon who's a
5 managing director at Cassidy Twirling which is
6 the owners representative, to my left is Mr.
7 Antonio Kittles also of Cassidy Twirling. Seated
8 in the audience are a few people available to
9 answer questions as they might arise. First we
10 have Mr. Seamus Foran on behalf of the Applicant,
11 Mr. Osborne George as the Applicant's
12 transportation expert, Ms. Terry Davis also of
13 O.R. George and Associates, Mr. Don Gent who is
14 the project architect and reconfigured/redesigned
15 the proposed parking lot. So that's everybody,
16 we are prepared to make a extremely long
17 presentation to keep you to your word of being
18 here until 6 or we are prepared to rest on the
19 record and answer any questions that you might
20 have.

21 CHAIRPERSON MOLDENHAUER: Well I think
22 that this case is fairly well articulated, I do

1 have maybe some question maybe Mr. George could
2 provide his presentation, I think most of my
3 questions just go to the fact that this building
4 has obviously been in existence for awhile,
5 there's a lot of information that you guys have I
6 your report regarding the current use both by
7 pedestrians and in regards to the traffic and
8 have him address some of those issues in more
9 detail so that would be the one individual that I
10 would be looking for, that's kind of the one area
11 where maybe we'll have questions.

12 MR. FREEMAN: What we'll do is we'd like
13 to submit Mr. George as an expert in
14 transportation and planning and engineering, he's
15 appeared before the Board numerous times and has
16 been accepted as an expert both for the BZA and
17 the Zoning Commission in that capacity, what I'd
18 like to do as you likely know as within our
19 prehearing submission included as "Exhibit D" of
20 that submission is a report prepared by Mr.
21 George so I'd ask him to kind of walk us through
22 the conclusions that he drew in preparing that

1 report.

2 CHAIRPERSON MOLDENHAUER: Mr. Freeman, we
3 have his report and I know we have qualified him
4 on many occasions in the past but I don't have a
5 copy of his resume, or I can have him describe
6 his background and some of the cases he's worked
7 on and presented before this Board.

8 CHAIRPERSON MOLDENHAUER: Why don't we
9 just have you submit his resume since as I said
10 we have heard it in the past but I think it's one
11 of the things that recently we've been trying to
12 require anybody that's qualifying as an expert we
13 have a copy of the resume in that actual file, so
14 I'd appreciate that.

15 MR. FREEMAN: Will do.

16 MR. GEORGE: Good afternoon Madam Chair
17 and Members of the Board, for the record I'm
18 Osborne George I've provided two cards for your
19 record, as Mr. Freeman noted a copy of a report
20 is part of the record and I would like to briefly
21 summarize the analysis we performed and the
22 findings that we made. As you know the property

1 exists with improvements, the improvements on the
2 property exist at the corner of Florida Avenue
3 and First Street in N.E. it's important to note
4 that it's within the NOMA District, the NOMA
5 Planning area which is receiving considerable
6 attention by the cities planning agencies. In
7 terms of it's location is' approximately 900 feet
8 away from the New York Avenue Metrorail Station
9 and it full fits this city's criteria as outlined
10 in the comprehensive plan of being a transit
11 oriented development. We considered those
12 factors, the location, the use as a major
13 business and employment center and we in our
14 analysis we focused on the rarest criteria
15 specified by the Zoning Regulations in Section
16 2108. I'd run through those very briefly, 2108 A
17 says that one should look at the nature and
18 location of the structure, the improvements, the
19 property I've essentially described those for
20 you. Section B says that we should address the
21 maximum number of occupants; it describes
22 employees, guests, customers, etc. I understand

1 that typically an office building of this time
2 within the central employment area would house
3 between 3 and 5 persons per 1000 square feet,
4 this would compute to between 1000 and 1100
5 persons perhaps a bit more potentially. The
6 building currently houses less than 900, 880 is
7 the number that we have. In terms of item number
8 C the amount of traffic congestion existing or
9 that the building or structure can reasonably
10 expected to create within the neighborhood. As I
11 looked at the Zoning Regulations the city calls
12 for major business and employment centers to be
13 located in proximity to major highway facilities
14 and transient stops, this fits both of those
15 criteria there are two major corridors New York
16 Avenue corridor and the Florida Avenue Corridor
17 perhaps you could even through in the North
18 Capital Street Corridor, so there's easy access
19 to the property form a number of corridors. I
20 think it is well known that these are heaving
21 used commuter corridors and that there is some
22 level of congestion. By reducing the parking I

1 think this fits with the cities policies which
2 call for greater use of transit facilities and
3 so if anything the reduction in parking spaces is
4 likely to result in reduction and congestion in
5 that it would induce users of the building to use
6 none personal vehicle (inaudible). Item D of
7 Section 2108 says that we should examine the
8 quantity of existing public, commercial or
9 private parking other than curb parking within
10 the area, we've done that, there are a number of
11 major lots, three major public parking facilities
12 pretty much abutting the site. There's 66 New
13 York Avenue which has a capacity of over 250
14 spaces immediately to the south on P Street to
15 the north there is a public parking facility
16 which has a capacity of 50 spaces and abutting
17 the property to the west is lot number 8053 which
18 has a capacity of about 205 spaces. Since I
19 don't think Mr. Free specifically mentioned it, I
20 would like to remind the Board that the subject
21 property and its improvements were approved with
22 a requirement of 180 parking spaces for the

1 record these are being reduced to 150 spaces
2 which is a reduction of approximately 17% well
3 less than the 25% which the regulations allow.
4 In addition to those specific criteria which I've
5 outlined and which I think the Application
6 clearly satisfies or fully address I think it's
7 also relevant to note that the properties within
8 the NOBA area, the city has done extensive
9 studies of traffic and parking conditions as part
10 of our analysis we interacted with DDOT and we
11 have communication from them saying that they
12 liked the approach of reducing parking and that
13 they do not have any concern. There's one other
14 fact that I think the current Zoning Regulations
15 called for the reduction of parking where the
16 property is within 800 feet of a Metrorail
17 station, this is just over that 900, the Board
18 is, I'm sorry the city's currently undertaking a
19 review of those requirements and they're
20 recommending that it be increased to quarter mile
21 or 1300 feet. Because of all those reasons Madam
22 Chairman, I believe that from the parking and

1 transportation perspective the Application fully
2 satisfied the city's criteria and conditions for
3 approval. I'd be happy to answer questions.

4 CHAIRPERSON MOLDENHAUER; Thank you, I
5 just have one question about the Section that you
6 talk about in regards to other potential private
7 parking that's near or adjacent to the property,
8 you identified 3 parking facilities, do you know
9 or did you research whether those facilities are
10 maxed out or is there availability in them
11 currently.

12 MR. OSBORNE: I can answer that based on
13 my anecdotal experience, I frequently park in the
14 lot that's identified as 66 New York Avenue, I
15 frequent that building, DDOT has an Office in
16 that building and I've yet to be turned away from
17 the spaces there. We did in enquire regarding a
18 new lot that was the one No. 2 if you look at my
19 report, page 6 of 9 on my report about the middle
20 of the page it talks of the lot of 22 P Street,
21 that's a new lot that was recently constructed so
22 within the last, I believe it's in the last 6

1 months and so there's been a recent increase,
2 we've spoken to them and again my assistant Ms.
3 Davis was part of my research they indicated yes
4 they have available spaces on a typical day and
5 spaces available for contract use. I've spoken
6 about 2 of those, the 3rd lot again lot 853 is
7 right next to the site that has a capacity of 205
8 spaces, we have a part of our study done parking
9 usage surveys, on a typical day between 10am and
10 3pm which is the period of peak occupancy we've
11 found general between 60 to 70 spaces available
12 and that computes to approximately 30% of the
13 available spaces on the lot immediately adjacent
14 to the site, so that would be my assessment in
15 terms of research of availability Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Another
17 question is that you indicated that there's about
18 880 people that work at this facility is that
19 correct?

20 MR. OSBORNE: Yes Ma'am.

21 CHAIRPERSON MOLDENHAUER: So those are
22 people that are employed, did you also consider

1 potential visitors or client of those office
2 buildings or spaces?

3 MR. OSBORNE: Did I also consider them,
4 to the extent that I know that visitation often
5 takes place and that would be reflected in the
6 parking demand within the area. In terms of
7 being able to quantify the number of visitors at
8 any one time over a particular day we didn't go
9 to that extent, I would say typical visitation
10 occurs, I am frequently a visitor to that
11 building and I've seen others, beyond that I
12 couldn't speak more specifically.

13 MR. FREEMAN: Madam Chair I could have
14 Ms. McMahon confirm that, that number, that 880
15 is over the course of the day, so it's not 880 at
16 one given time.

17 CHAIRPERSON MOLDENHAUER: That would be
18 helpful just to clarify for the record.

19 MS. MCMAHON: The full time equivalence
20 of the user occupancy is 880, any visitors that
21 generally come to the building would park in the
22 two lots and essentially our lot and as Mr.

1 George said the adjacent lot 853 and I think any
2 visitor count would be captured in the excess of
3 his study, if that makes any sense?

4 CHAIRPERSON MOLDENHAUER: That does, I
5 appreciate that. Do any Board Members have any
6 other questions?

7 MR. HOOD: Typically at least from my
8 observation is not part of our regulations. The
9 lot at the upper right is usually never full and
10 that's actually, this pictures the first time
11 I've seen, I don't know if you put some cars
12 there to make it look full but I have never seen
13 that lot and I pass there quite a bit, maybe it's
14 some other time. Let me ask this...no I'm talking
15 about up to the top which lot is that.

16 CHAIRPERSON MOLDENHAUER: The lot that's
17 in the V or no, that one.

18 MR. OSBORNE: Mr. Hood if I may, this is
19 64 New York Avenue, this is the building, this is
20 lot 854, lot 853 is to the west, north is up this
21 way, New York Avenue runs roughly east west. Lot
22 66 as I mentioned to the south, P Street just t

1 the north of the building.

2 MR. HOOD: Right so that's the exact lot
3 I'm talking about I don't see it ever full, at
4 least I don't.

5 MR. SHER: That's why we're requesting the
6 reduction.

7 MR. HOOD: And I think rightly so, but
8 that's not part of regulations, I just want to
9 make sure that was what we were talking about. I
10 guess my question is through your analysis and
11 that lot never being full is that the reason,
12 what else do you have planned to do, are you just
13 restriping, what is the overall plan?

14 MS. MCMAHON: The current 129 spaces on
15 the lot are just striped for single parker, we
16 will be restriping the lot to get it to 150 and
17 essentially the reason for our request is
18 previously both lots were under single ownership
19 and we'd like to be able to stand on our own, so
20 currently the balance of the 180 above the 129
21 are satisfied on the neighboring lot which we
22 don't own.

1 MR. HOOD: Your lot is ever full is it?

2 MS. MCMAHON: Day to day occupancy as the
3 property manager for the building we never find
4 that there's ever an issue with parking, there'
5 always plenty of space, including the District
6 actually storing some vehicles on the site, so we
7 feel very comfortable that there will be adequate
8 parking for both employees and visitors.

9 MR. HOOD: Alright thank you, thank you
10 Madam Chair.

11 CHAIRPERSON MOLDENHAUER: Any other
12 questions from Board Members, seeing none then
13 Mr. Freeman is there any further witness
14 testimony on behalf of the applicant?

15 MR. FREEMAN: That concludes our direct
16 thank you.

17 CHAIRPERSON MOLDENHAUER: Then I'll turn
18 to see if there's anybody in the audience in
19 support or in opposition in this case? Seeing
20 none, then we'll turn to the Office of Planning
21 for their report.

22 MR. COCHRAN: For the record Steve

1 Cochran, Office of Planning. OP would like to
2 stand on the record for Sections 1-6 of it's
3 report and just update Section 7 to note that the
4 Hanover Civic Association as now filed comments
5 in favor of the application and that the ANC has
6 also filed a letter and in closing that Hanover
7 Civic Association letter with the ANC asking for
8 the record to be kept open until after it's vote
9 tonight, that concludes OP's testimony.

10 CHAIRPERSON MOLDENHAUER: I appreciate
11 that very much Mr. Cochran. Do Board Members
12 have any questions for the Office of Planning?
13 Seeing none does the Applicant have any questions
14 for the Office of Planning?

15 MR. FREEMAN: No Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Okay, then
17 we'll turn to the ANC is anybody present from ANC
18 5-C, seeing no one I will reference as Mr.
19 Cochran indicated we do have "Exhibit No. 25" in
20 our record which was submitted to us and
21 indicates that they have not had a chance to
22 formally have a meeting that they've enclosed the

1 letter from the Hanover area Civic Association
2 which is in support. Their requesting that the
3 record remain open until the February 16, 2011
4 meeting which is this evening. That being said I
5 see no reason why we probably won't leave the
6 record open to provide for some time. I think
7 that this case is very full but I think at the
8 same time we always do like to especially when we
9 have a written request specifically asking for
10 that from an ANC we like to get ANC's input on
11 that. That being said I will turn back to the
12 Applicant for any closing remarks.

13 MR. FREEMAN: Thank you Madam Chair, I
14 think our record is pretty full, we've indicated
15 how we meet the standard for relief, we have the
16 support from the Office of Planning, and we have
17 a great report from Mr. Sher and Mr. George
18 indicating the requested parking reduction will
19 not create any adverse impact on the neighborhood
20 and again how it meets the standards for relief.
21 We've worked with the community, we've been to
22 multiple community meetings, I think, a few of us

1 can attest to, we have the letter of support from
2 the Hanover area Civic association, we've been in
3 close contact with the ANC and their letter says
4 that they want to leave the record open so that
5 they can submit their resolution in support of
6 the relief so we're certainly happy to do that.
7 I don't know from a procedural prospect if
8 there's any where to move forward and just leave
9 the record open for that to come later that would
10 be great, but if not we'll look forward to
11 hopefully your approval at the next available
12 date.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much if there are no other questions from the
15 Board then what I'll do is I'll indicate that
16 we'll leave the record open, next Tuesday we
17 don't have any hearing scheduled so I would then
18 put this on the calendar for March 1st which is
19 the next available date for decision. I think,
20 it's a pretty full day but I'll think I squeeze
21 this one in and we'll leave the record open then
22 for the ANC report to be added as well. Mr.

1 Freeman also add Mr. George's resume as well
2 please.

3 MR. FREEMAN: Thank you.

4 CHAIRPERSON MOLDENHAUER: Wonderful well
5 t hen we'll conclude this case except for those
6 two things that we will leave the record open for
7 and we'll set up for decision on March 1.

8 MR. FREEMAN: Thank you Madam Chair,
9 Members of the Board.

10 CHAIRPERSON MOLDENHAUER: And that then
11 concludes our day for today, thank you.

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