

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 7, 2012

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 1:00 p.m., Meridith Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER, Chairperson
NICOLE SORG, Vice Chairperson
LLOYD JORDAN, Board Member
JEFFREY HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Zoning Commissioner
MICHAEL TURNBULL, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on February 7, 2012.

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

2 1:24 p.m.

3 CHAIRPERSON MOLDENHAUER: This
4 meeting will please come to order. Good
5 afternoon, ladies and gentlemen.

6 We're located in the Jerrily R.
7 Kress Memorial Hearing Room located at 441 4th
8 Street. Today is February 7, 2012. Public
9 meeting of the Board of Zoning Adjustment for
10 the District of Columbia.

11 My name is Meridith Moldenhauer,
12 Chairperson.

13 Joining me today to my left is
14 Vice Chair Nicole Sorg, Mayoral Appointee. To
15 my right is Lloyd Jordan, Mayoral Appointee.
16 To my far right is Jeffrey Hinkle
17 representative of the National Capital
18 Planning Commission and to my far left is
19 Michael Turnbull representative of the Zoning
20 Commission.

21 Copies of today's meeting agenda
22 are available to you and are located to my

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1 left on the wall bin near the door.

2 We do not take any public
3 testimony at our meetings unless the Board
4 asks someone to come forward.

5 Please be advised this proceeding
6 is being recorded by a court reporter and is
7 also being webcast live. Accordingly, I must
8 ask you to refrain from any disturbing noise
9 or actions in the hearing room. Please turn
10 off all beepers and cell phones at this time.

11 Mr. Secretary, do we have any
12 preliminary matters?

13 MR. MOY: Madam Chair, we have a
14 host of preliminary matters and the staff
15 would suggest that the Board address those
16 matters when I call each case separately.

17 CHAIRPERSON MOLDENHAUER: Sounds
18 good. Thank you.

19 So, why don't we start off with
20 our first case.

21 MR. MOY: The first action before
22 the Board is the Expedited Review Calendar

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1 which today consists of two zoning
2 applications.

3 The first is Application Number
4 18303. This is of David Rosenblatt and Karen
5 Hoerst pursuant to 11 DCMR 3104.1 for a
6 special exception to allow a rear deck
7 addition to an existing one-family row
8 dwelling under Section 223 not meeting the lot
9 occupancy (Section 403), rear yard (Section
10 404) and nonconforming structure (Subsection
11 2001.3) requirements in the R-4 District at
12 premises 520 T Street, N.W. The property is
13 located in Square 3093, Lot 36.

14 This special exception 223 case is
15 on the expedited calendar. It satisfies the
16 eligibility standards pursuant to Section
17 3118.2 and noise requirements on the ANC
18 review period standards pursuant to Section
19 3118.3 and 3118.4.

20 In your case folders, Madam Chair,
21 you have the affidavit of posting which is
22 identified as Exhibit 29. The ANC 1B report

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1 is filed under Exhibit 26 and the Office of
2 Planning report is filed under Exhibit 28.

3 And as of this moment, there's no
4 filing requesting to remove the application
5 from the Expedited Review Calendar.

6 So, the Board should act on the
7 merits of the Expedited Review Calendar
8 pursuant to Section 3118 requirements for
9 special exception relief under Section 223.

10 That completes the status
11 briefing, Madam Chair.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much, Mr. Moy.

14 As indicated, this is an expedited
15 case for 223 for a rear deck. We have Office
16 of Planning's support. We have ANC's support
17 and I believe the Applicant has presented a
18 sufficient case to satisfy the 223 standard.

19 That being said, I'd like to see
20 if any Board Members have any questions or any
21 additional comments.

22 VICE CHAIRPERSON SORG: Madam

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1 Chair, I don't have anything further. Only
2 also would note that our files indicated that
3 HPO has approved on a staff level and DDOT
4 also had no issues in their report. I would
5 support a motion.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you and I just want to make sure for
8 clarification people under -- it's clear with
9 the record we had an initial letter from the
10 ZA indicating that there might be variance
11 relief necessary. That was Exhibit 6, but
12 then the ZA's referral letter was refined and
13 included that it was just for a special
14 exception 223 in the Exhibit 14. So, that's
15 the only thing that we're seeking or reviewing
16 today. Is just the 223 relief that was
17 identified in the ZA's referral letter,
18 Exhibit 14.

19 That being said, I will if there's
20 no -- there's no additional comments from
21 Board Members?

22 Seeing none, then I'll submit a

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1 motion, a motion to approve application 18303
2 pursuant to 11 DCMR 3104.1 for a special
3 exception to allow a rear deck addition to an
4 existing one-family dwelling under Section 223
5 not meeting the lot occupancy under 403, the
6 rear yard under 404 and nonconforming
7 structure under 2001.3 requirements in an R-4
8 District at premises 520 T Street, N.W.

9 The motion has been made. Is
10 there a second?

11 VICE CHAIRPERSON SORG: Second.

12 CHAIRPERSON MOLDENHAUER: The
13 motion's been made and seconded. All those in
14 favor say aye.

15 (Ayes.)

16 MR. MOY: Staff would record the
17 vote as 5 to 0 to 0. This on the motion of
18 Chairperson Moldenhauer to approve the special
19 exception relief 223 request. Second the
20 motion Ms. Sorg. Also in support of the
21 motion Mr. Turnbull, Mr. Jordan and Mr.
22 Hinkle.

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1 So, again, the final vote is 5 to
2 0 to 0 and the motion carries.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you very much, Mr. Moy, and seeing that
5 there's no opposition in this case, the Board
6 would like to waive the requirements and ask
7 that a summary order to issued.

8 MR. MOY: Thank you, Madam Chair.

9 The second and last application on
10 the Expedited Review Calendar is Application
11 Number 18331. This Frederic and Laure-Anne
12 Badey pursuant to 11 DCMR 3104.1 for a special
13 exception to allow a rear addition to an
14 existing one-family row dwelling under Section
15 223, not meeting the lot occupancy
16 requirements under Section 403 in the R-4
17 District at premises 541 14th Street, S.E.
18 Property located in Square 1043, Lot 860.

19 Again, this is a special exception
20 Section 223 case on the Expedited Calendar.

21 In your case folders, Madam
22 Chair, you have the Applicant's affidavit of

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1 posting identified as Exhibit 25, the ANC 6B
2 report is identified under Exhibit 22 and the
3 Office of Planning report is filed under
4 Exhibit 27.

5 There are two other filings from
6 organizations. One is from the Department of
7 Transportation -- the District Department of
8 Transportation and that filing is identified
9 under Exhibit 23 and the last filing in your
10 case folder is a letter in support from the
11 Capitol Hill Restoration Society and that is
12 identified as Exhibit 26.

13 And again, the Board should act on
14 the merits of the Expedited Review Calendar
15 requirements under Section 3118 for special
16 exception relief under Section 223.

17 CHAIRPERSON MOLDENHAUER: Okay.
18 One of the things we're just looking at, I
19 think that this case in general is fairly
20 straightforward, but there are some issues
21 about the relief that's specifically being
22 requested.

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1 But, just to kind of address that
2 first, there is a lot of support for this case
3 both from DDOT, the ANC and neighbors. The
4 question is in OP's report they identify that
5 there's an additional relief that's being
6 needed to the minimal lot width and then
7 closed court dimension.

8 That being said, I think that it's
9 a self-certified application. The Applicant
10 could, if they wanted to, amend the
11 application and then be put on the Expedited
12 Review Calendar for next month.

13 But, if we were to decide this
14 case right now based on the relief being
15 requested, the Applicant than potentially may
16 need to come back before the Board with
17 another submission and pay another fee for
18 additional relief. If at that point they took
19 the current plans the way they are to the
20 Zoning Administrator to get the plans
21 approved, that would need to be reviewed.

22 But, I just want to ask and I'm

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1 explaining that generally.

2 Is the Applicant present today?

3 Okay.

4 As I said, we don't take testimony
5 unless the Board asks someone to come forward.

6 So, I'm going to ask you to come forward.

7 And I'm going to ask you first to
8 stand and have the oath administered to you.

9 MR. MOY: Do you solemnly swear or
10 affirm that the testimony you're about to
11 present in this proceeding is the truth, the
12 whole truth and nothing but the truth?

13 You may consider yourself under
14 oath.

15 CHAIRPERSON MOLDENHAUER: If you
16 can turn on the microphone pressing the button
17 so that the light is green and then introduce
18 yourself stating your name and home address.

19 MR. BADEY: I am Frederic Badey.
20 I live at 541 14th Street, S.E. and I am the
21 Applicant for this case.

22 CHAIRPERSON MOLDENHAUER: Okay.

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1 Good afternoon, Mr. Badey.

2 Do you understand what I was
3 saying earlier about the fact that the Office
4 of Planning indicated that there's two
5 additional forms of relief that would be
6 needed? It's still needed under the 223.

7 However, this is a self-certified
8 application. So, if you were to orally amend
9 the application, we could then still consider
10 it and I guess that would be a question for
11 OAG.

12 Whether we can still consider it
13 today if the application is orally amended at
14 this point in time on an expedited review or
15 if we'd have to wait until next month
16 potentially and have it received in writing.

17 MS. GLAZER: Well, my view,
18 there's no problem with hearing the case today
19 on the Expedited Calendar after the Applicant
20 makes a request to amend the application.
21 It's still the same 223 relief. It's just by
22 virtue of some additional sections. It's a

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1 very technical amendment.

2 CHAIRPERSON MOLDENHAUER: I'm
3 happy. Thank you for that comment.

4 So, if you like at this point in
5 time, you have the option to orally amend your
6 application asking for additional relief under
7 lot width and closed court dimensions.

8 MR. BADEY: So, I -- I will be
9 pleased if you accept the new amendment to the
10 application in -- in order to process on the
11 Expedited Review just today.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 Thank you very much then.

14 Then at this point in time, do
15 Board Members have any questions for the
16 Applicant on those issues? Thank you.

17 Then at this point in time, you
18 can step back and we'll continue on in our
19 deliberation.

20 MR. BADEY: Thank you.

21 CHAIRPERSON MOLDENHAUER: Thank
22 you.

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1 That being said, as I indicated
2 earlier, we have support for this application
3 from the ANC which would receive great weight
4 which is our Exhibit 22. We have support from
5 DDOT or rather no objection from DDOT which is
6 our Exhibit 23 and no objection from two
7 neighbors which is our Exhibit Number 6 and
8 the Applicant, I believe, has made sufficient
9 case for 223 relief and as we indicated, the
10 application has now been amended to address
11 all relief that Office of Planning had
12 identified in their support letter.

13 That being said, I'll open up the
14 floor to any additional deliberation on this
15 case.

16 MS. GLAZER: Madam Chair, I am
17 sorry to interject. The Secretary just
18 mentioned that he did not believe that 2001.3
19 was mentioned as an additional section as well
20 and that OP had pointed out that that section
21 might be needed.

22 So, I'm raising this for

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1 clarification purposes so that the application
2 can be amended to include that as well.

3 CHAIRPERSON MOLDENHAUER: I think
4 based on our comments that was implicit in the
5 relief that was being requested and so, I
6 think we can move forward and just include
7 that as we identify a final motion.

8 But, before we get there, I just
9 want to see if there's any additional comments
10 from Board Members.

11 VICE CHAIRPERSON SORG: Madam
12 Chair, I agree with your analysis. I only
13 would mention that I noticed in our filings
14 the two letters that were received from the
15 neighbors, only one was readily visible as the
16 adjacent neighbor. But, I wanted to mention
17 that in their report, OP does note that both
18 of the letters do actually come from the
19 adjacent neighbors and also that we had
20 included a letter of support from Capitol Hill
21 Restoration Society.

22 So, I would be in support of the

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1 motion.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you. Thank you.

4 If there's no other comments from
5 Board Members, then I would submit a motion, a
6 motion to approve Application 18331 pursuant
7 to 11 DCMR 3104.1 for a special exception to
8 allow a rear addition to an existing one-
9 family row dwelling under Section 223, not
10 meeting the lot occupancy under Section 403,
11 not meeting the closed court width
12 requirements under 406, not meeting the lot
13 width requirements under 401 and not meeting
14 the nonconforming structure under 2001.3 at
15 premises 541 14th Street, S.E.

16 A motion has been made. Is there
17 a second?

18 MEMBER HINKLE: Second.

19 CHAIRPERSON MOLDENHAUER: The
20 motion's been made and seconded. All those in
21 favor say aye.

22 (Ayes.)

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1 MR. MOY: Staff would record the
2 vote as 5 to 0 to 0. This is on the motion of
3 Chairperson Moldenhauer to approve the amended
4 application as cited by the Chair. Second the
5 motion Mr. Hinkle. Also in support of the
6 motion, Mr. Turnbull, Ms. Sorg and Mr. Jordan.
7 Again, the final vote is 5 to 0 to 0. Motion
8 carries.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much, Mr. Moy.

11 Seeing there's no opposition in
12 this case, the Board would like to waive the
13 requirements and ask that the summary order be
14 issued.

15 MR. MOY: Very good. Thank you,
16 Madam Chair.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you.

19 MR. MOY: The next application for
20 action before the Board is Application Number
21 18306. This is of 1919 14th Street, LLC on
22 behalf of 14th Street Properties pursuant to

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1 11 DCMR 3104.1 and 3103.2 for a variance from
2 the court requirements of Section 776.3, a
3 variance from the off-street parking
4 requirements of Section 2101.1, a variance
5 from the compact space requirements of Section
6 2115.2, a variance from the off-street loading
7 requirements of Section 2201.1, a special
8 exception from the roof structure requirements
9 pursuant to 411.11 and a special exception
10 from the roof structure height limitation of
11 Section 1902.1(a). This is to allow the
12 construction of a new residential building
13 with ground floor retail and service uses in
14 the ARTS/C-3-A District at premises 1905 -
15 1917 14th Street, N.W., Square 237, Lots 179,
16 194 and 195).

17 As the Board will recall on
18 January 24th, 2012, the Board completed public
19 testimony, closed the record and scheduled its
20 decision on February the 7th. The Board
21 requested additional information to supplement
22 the record by Friday, February the 3rd, 2012.

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1 In your case folders, Madam Chair,
2 I'm going to go through these filings one by
3 one and most of these have preliminary
4 matters.

5 The first acceptable filing is a
6 DDOT letter dated January 31st, 2012
7 identified as Exhibit 44 which was received
8 into the record February the 3rd.

9 There are two letters submitted in
10 opposition. The first is an individual letter
11 from William Isasi, that's spelled I-S-A-S-I,
12 dated January 31st, 2012. Received into the
13 record February the 2nd. Identified as
14 Exhibit 45.

15 The second filing in opposition is
16 identified as a letter in opposition from
17 "Concerned Neighbors of Ward 1 and 2" dated
18 February 2nd, 2012. Received February 3rd,
19 2012. Identified as Exhibit 46. Signed by
20 Daniel McKay, Lisa Kelly and Caroline Mariz.

21 In conjunction with Exhibit 46,
22 there's a later filing identified at Exhibit

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1 50. Which are additional supplemental
2 documents from Daniel McKay which were
3 received into the record February the 6th,
4 2012.

5 ANC 1B submitted a letter
6 clarifying its earlier position. This was
7 received February the 3rd, 2012. Identified
8 as Exhibit 47.

9 A letter from the Applicants dated
10 February 3rd, 2012. Received on the same day.

11 Which contains proposed conditions and
12 addresses the issue of enforceability of the
13 residential permit parking restriction
14 identified as Exhibit 48.

15 To the first two exhibits I
16 identified which is Exhibit 45 and 46, there
17 is a letter from the Applicant dated February
18 6th, 2012 identified as Exhibit 51 which is a
19 motion to strike those two exhibits 45 and 46.

20 The last two filings, one is
21 identified as Exhibit 49. A letter in
22 opposition from Larry McAdoo. That's Exhibit

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1 49. Actually, I should say Karen Hardy-McAdoo
2 and Larry McAdoo. Exhibit 49. Received --
3 oh, is dated February 3rd. Received February
4 the 6th. So, this is untimely filing and they
5 did testify at the public hearing.

6 The last exhibit in your case
7 folders was submitted this morning at 10:51.
8 Identified as Exhibit 52 from a G. Ronald
9 Renchard R-E-N-C-H-A-R-D.

10 With that, the Board is to act on
11 these preliminary matters before acting on the
12 merits of the requested multiple variance
13 relief.

14 That concludes the status
15 briefing, Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you, Mr. Moy.

18 So, let me first just go through
19 the preliminary matters that we have. Rather
20 just start off with this to indicate I was not
21 present during the entire hearing, but I did
22 read the record and so, now, to address the

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1 preliminary matters that we have.

2 We have some submissions that were
3 submitted into the record late and in
4 reviewing both the office's file in regards to
5 what documentation was being permitted and the
6 record, I do think that it was general --
7 allowing individuals to orally testify, to
8 present written testimony.

9 So, in that case, I'll indicate
10 that, you know, we will be admitting obviously
11 the DDOT letter which is Exhibit 44.

12 We will not be admitting Exhibit
13 45 because William Isasi did not testify and
14 thus was not included in part of the purpose
15 for leaving the record open. So, that
16 document will be stricken.

17 The submission Exhibit 46 was
18 submitted by McKay and Kelly and Mariz and the
19 three of them did testify. Even though it was
20 identified as the Concerned Neighborhood, the
21 individuals that signed that document were
22 individuals that testified and so, that will

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1 be admitted into the record.

2 Exhibit 47 will be admitted into
3 the record from the Council, the ANC
4 Commission.

5 The DDOT letter will be submitted
6 into the record for purposes of the RPP.

7 The Applicant's submission I
8 believe is the next document and that will be
9 admitted.

10 We then have -- just want to go
11 through this one by one. Have Exhibit 49 by
12 McAdoo and they testified as well. That will
13 be admitted.

14 And then we've got -- I'm looking
15 at Exhibit 50 which I believe may also have
16 been attached to Exhibit 46. So, if that's
17 the case, if 50 was also attached to 46, I'm
18 seeing a nod from the Secretary. So, then
19 that would be admitted.

20 And then we have -- obviously, so,
21 I'm addressing the motion to strike which is
22 Exhibit 51 in a sequenced order.

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1 And then we have a submission 53
2 which was just submitted this morning and,
3 sorry, 52 which was just submitting this
4 morning which was not an individual who had
5 testified. So, that will be stricken from the
6 record as well.

7 I believe that addresses of the
8 preliminary matters in regard to the
9 documents.

10 That being said, at this point to
11 start off deliberation, I'll turn to Vice
12 Chair Ms. Sorg to start us off.

13 VICE CHAIRPERSON SORG: Thank you,
14 Madam Chair.

15 To start off with, as was
16 mentioned in the summary, this is a case that
17 is requesting several areas of relief that are
18 not unusual for this type of a project, but
19 what we have seen in this case is a great deal
20 of weigh in from the community.

21 So, what I'll do is in my remarks
22 I'll go through the variance and 223 tests and

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1 then I'll talk a little bit about the concerns
2 that were widely expressed from several of the
3 community members both in their oral testimony
4 at the hearing as well as in subsequent
5 written submissions.

6 With regard to the area variances,
7 I agree with -- the Applicant identified
8 several extraordinary and exceptional
9 situations in their hearing statements as well
10 as in their testimony itself. I tend to agree
11 with an instruction made by the Office of
12 Planning. Which is that really with regard to
13 their variances going towards the relief
14 that's requested, there are a few among those
15 that were mentioned that I think are
16 particularly relevant.

17 With regard to the variance in the
18 loading requirement, I do find for that first
19 prong of the variance test, the, you know,
20 site being bordered by a narrow alley of 15
21 feet as exceptional based upon the density
22 that can be built on the site not going to

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1 loading.

2 Regarding to the historic
3 preservation context and the design review and
4 approvals that this project has already gone
5 into the process of, I do find in this case in
6 the overlay district abutted by at least one
7 historic building, I do find that as
8 contributing to the unique condition of the
9 site and in particular, to the practical
10 difficulties related to, you know, roof height
11 and court width requests for relief.

12 With regard to the court width, I
13 think that as the Applicant demonstrated, the
14 historic building that is adjacent to the
15 court, the height of that would be controlled
16 by its historic status and, therefore, I think
17 it's a sensible design selection as well as
18 request for relief.

19 With regard to what I think is an
20 additional relevant, extraordinary condition
21 is in this case the ground water and soil
22 conditions which leads us to the request for

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1 reduced requirement -- variance relief for
2 reduced parking and this, in my mind, is
3 actually a significant request from 83 spaces
4 to 34 spaces.

5 We did hear testimony and have
6 filings on what the additional cost would be
7 to construct a second level of underground
8 parking on this site and I think to my mind
9 with regard to the request for parking
10 variance that high cost combined with the
11 requirement for ground floor retail within the
12 overlay district as well as the organization
13 and size of the units themselves as to the
14 market I think from a technical standpoint
15 gets me past the first prong of that test with
16 regard to the parking.

17 So, that is the area variances
18 that are being requested with regard to the
19 special exceptions.

20 I think that the uniform roof
21 structure height was discussed and several
22 questions were asked there. As well, the

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1 total height of the building. That relief, I
2 think, was well explained as a fairly,
3 actually, de minimis measure of relief. I
4 think it was said that the relief is for about
5 330 square feet of the elevator which is about
6 7 percent of the roof area and that itself, I
7 think, is set back about 75 feet.

8 So, to my mind, the Applicant has
9 demonstrated along with the presence of Office
10 of Planning support as well as conditional in
11 this case ANC support including several
12 letters of support for the application and the
13 support of a group called the U Street
14 Neighborhood Association, I think for me the
15 case is made on the technical level with
16 regard to the relief requested.

17 That brings us to some of the
18 concerns of the individuals in opposition and
19 in particular, I understood their concerns to
20 be very much related to the parking request.
21 Which I think -- driving through that
22 neighborhood every morning and evening myself,

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1 I know that it is difficult to park there and
2 spend -- you know, the development is
3 proceeding rapidly and I know that the current
4 residents are -- and the availability of on-
5 street parking is stressed in that
6 neighborhood.

7 But, I think that what the
8 Applicant is offering and what the ANC is
9 conditioning their support on has come in line
10 and I think that we heard from some of those
11 individuals that spoke in opposition that the
12 language of a condition of a prohibition for
13 the life of this building of residents,
14 renters or buyers, regardless of the ownership
15 of there being a prohibition on obtaining
16 residential parking permits does go a certain
17 -- it does go some distance to alleviating
18 what is clearly a potential adverse impact.

19 I think actually that that is
20 something -- I think that's an offering, you
21 know, because this is a BZA case not a PUD.
22 That's an offering I think that is pretty

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1 significant in my mind and so, that in
2 combination with, you know, some of the other
3 TOD strategies that the Applicant has apprised
4 us of in their testimony does also lead me to
5 be in support of that variance.

6 I think with regard to late-
7 breaking submissions having to do with the
8 width of the alley and turning radius I would
9 defer to other Board Members who may have
10 other questions about that, but I did look
11 over the -- you know, the traffic study and
12 the studies that were done by the Applicant
13 and the architect as well as the testimony
14 there and it seems to me, I mean, it's not a
15 lot safe. But, I didn't see personally a
16 major red flag with the evidence that had been
17 submitted in support of that request.

18 I think several of the other
19 concerns had to do with construction. While
20 that's not under our jurisdiction, we did, of
21 course, advocate that the Applicant engage
22 with a construction management with the

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1 community and so forth.

2 I've said a lot. So, I'll hand
3 back the talking stick to somebody else.

4 But, I think, you know, my overall
5 conclusion is that while I'm certainly at
6 least as a business resident close in that
7 neighborhood, I'm certainly sensitive to the
8 residents' concerns about the pace and scale
9 and density that's coming to that
10 neighborhood. But, I think in case that --
11 and I'm hopeful that the Applicant, you know,
12 will as is -- as is their burden continue or
13 their onus to continue to work with the
14 community to as much or a greater extent and I
15 do believe that their demonstrations here are
16 enough for my support.

17 Thank you.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you very much, Ms. Sorg. I think that that
20 was a very thorough analysis, but I want to
21 see if there's other comments from Board
22 Members. There's a lot of different issues

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1 that are brought up on this case.

2 Mr. Turnbull.

3 COMMISSIONER TURNBULL: Madam
4 Chair, I just wanted to add for the record
5 just in -- the Vice Chair was talking about
6 the -- we did have a follow-up letter. It's
7 Exhibit 47 from ANC 1B clarifying their vote
8 on the level 2 development in which they
9 specifically mention that they're in support
10 as long as they can restrict the residential
11 zone on-street parking permits for the
12 development.

13 And the follow up is Exhibit 48
14 from Mr. Freeman at Holland & Knight in which,
15 and I quote, "The Applicant shall include
16 language in all documents related to the lease
17 of the residential units that the residents of
18 the building are prohibited from applying for
19 residential permit parking stickers from the
20 District of Columbia regardless of the
21 building's ownership and for the life of the
22 building" and he mentions that we've added

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1 this before in our orders.

2 I mean just -- I'm just adding
3 that as supplementing the Vice Chair's remarks
4 for the record.

5 VICE CHAIRPERSON SORG: Thank you,
6 Mr. Turnbull.

7 Actually, I will just jump in
8 quickly again, and I appreciate your
9 clarifying that, to note also that one of the
10 major questions -- requests for information
11 that we had at the close of the last hearing
12 was whether or not this was something that was
13 enforceable and I was pleased to get the
14 letter from DDOT saying that yes, in fact, it
15 was something that was enforceable and that
16 seems -- that they've done before and is
17 perhaps not only possible, but routine I would
18 hazard to say.

19 Thank you.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you. I'll see if there's any additional
22 comments.

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1 MEMBER JORDAN: Yes, and I -- I
2 would like to say that I've reviewed the
3 hearing tape from the last meeting when the
4 testimony was given. So, I will participate.

5 I'm not real clear that DDOT said
6 this was enforceable. I just think that DDOT
7 said it wasn't designated if I was reading
8 properly. That the area is not designated for
9 presently getting residential parking permits
10 so that -- and there's no need to ask for it
11 going forward.

12 But, I think that I agree with
13 everything you said, Ms. Sorg, but I believe
14 -- my concern certainly was the substantial
15 impact to the community and neighborhood on
16 the parking. But, I think that the Applicant
17 has made a strong case in regards to not only
18 the physical, but the economic issues with the
19 parking.

20 That being said, I would have a
21 slight concern with the proposed conditions
22 except for the fact that it's voluntary to

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1 enter condition. So, I can think we can then
2 think that we would be protected under the
3 case law that says that they are by proposing
4 it and voluntarily agreeing to this condition
5 that there's no impact upon them in the long
6 term.

7 So, that that's a condition I
8 would find to be acceptable and the only
9 question I guess -- well, not that it's going
10 to run with the land and how they're going to
11 do it to their -- to the subsequent tenants, I
12 don't see anything there, but I think I can
13 accept everything else.

14 VICE CHAIRPERSON SORG: I think,
15 Mr. Jordan, I agree that that is a concern. I
16 would just point out also, and I agree with
17 what you're saying, in DDOT's letter, they do
18 indicate DDOT is authorized to issue a
19 memorandum to the D.C. Department of Motor
20 Vehicles instructing them to remove the site
21 address from the RPP system.

22 So, my reading of that is that not

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1 now and not in the future.

2 CHAIRPERSON MOLDENHAUER: I think
3 that the distinction that Mr. Jordan was
4 making, just to chime in, was that right now
5 there is no RPP zone in this area. So, it
6 wouldn't be necessary right now, but if they
7 deem to do it or if in the future there was an
8 opportunity for somebody at that address or
9 that block to get a parking permit, DDOT is
10 telling us in this report that they have the
11 authority if we conditioned it so to remove
12 that address so that if in the future there
13 was residential parking permits provided, they
14 could then eliminate that address from the
15 record or from the permitted parking
16 requirements.

17 I'm just going to jump in and kind
18 of identify some of my comments for the
19 record. I think that everyone's really talked
20 about a lot of them, but one of the issues
21 obviously is parking.

22 We have a lot of submissions from

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1 the Applicant or the opposition rather
2 indicating other projects that have parking
3 and other concerns that they have in regard to
4 the general parking in the neighborhood.

5 Ms. Sorg obviously indicated the fact,
6 you know, she does recognize that, you know,
7 there is a challenge, but I think that with
8 the potential agreed upon condition that none
9 of the potential future owners or tenants
10 could ever park on the street as a permitted
11 use. Obviously, that doesn't stop them from
12 parking there and getting tickets, but there's
13 nothing that we as a Board could do to stop
14 someone from parking in a two-hour zone and
15 just getting a whole bunch of tickets and
16 getting their car booted or something to that
17 effect or parking in a two-hour zone and
18 feeding the meter. Something to that effect
19 as well.

20 But, I do think that by
21 potentially agreeing to put an RPP restriction
22 on a building, it does take away from any

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1 substantial impact and it's not as though
2 they're providing zero parking spaces. I
3 think they are providing -- they're providing
4 a few and they are then just providing compact
5 spaces.

6 Obviously, you know, it's not
7 ideal for any area especially seeing a large
8 number of developments, but I know there was
9 also presentations or submissions in the
10 record from the new filings that I did admit
11 into the record talking about other projects
12 on the block.

13 One of the things that we say all
14 the time to applicants and individuals in
15 public is that you can't always compare.
16 Every case is unique and while other projects
17 may be providing parking, here from Office of
18 Planning support, there's not just an issue of
19 the ground water, but there's a confluence of
20 factors and I don't think that there's ever
21 one case which you can indicate or point to
22 another case that is the exact same situation.

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1 That being said, I just want to
2 jump into the issue of loading and I think
3 that there was some very interesting
4 submissions and I think Mr. Turnbull had made
5 some comments as well during the hearing in
6 questioning the issue of the loading berth and
7 the loading access in comparison to what's
8 currently on the site. But, based on my
9 reading of the record and my review of the
10 plans, the current condition is going to be
11 changed based on the size of the building.

12 And we just approved, I'm going to
13 just kind of parallel, we just approved
14 another case recently in another area of the
15 city where they were going to be providing
16 zero loading.

17 Here I think that they're going to
18 be providing some loading. While obviously,
19 you know, it would be ideal to have an
20 applicant or a project satisfying all of the
21 standards, I think that in this case they are
22 providing while reduced loading berth and

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1 loading space it is something that I don't
2 feel rises to the level of substantially being
3 a detriment to the public good because of the
4 fact that there is -- it's not a complete
5 reduction to zero of that loading requirement.

6 That being said, I would -- just
7 in regard to, I think, Mr. Jordan's comment,
8 if we were to recommend this case with a
9 condition for the RPP, I would just indicate
10 that it would have to either run with the land
11 for any -- if these units are sold or would be
12 a required condition on any lease so that we
13 don't have any potential issues or concerns
14 with that condition not being enforced or
15 satisfied.

16 And just in regards to the
17 variance standard, I don't believe that
18 there's any one factor alone that in my view
19 satisfies the standard and I think that OP
20 identifies certain factors that I think on
21 their own I would definitely not consider, but
22 I think that as a confluence of factors, this

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1 site does create an exceptional circumstance
2 that was asked by the variance standard.

3 That being said, I see if there's
4 any final comments.

5 Is there a motion?

6 VICE CHAIRPERSON SORG: I can
7 submit a motion, Madam Chair. I'll submit a
8 motion to approve Application Number 18306 for
9 1919 14th Street, LLC on behalf of 14th Street
10 Properties pursuant to 11 DCMR 3104.1 and
11 3103.2 for a variance from the court
12 requirements Section 776.3, a variance from
13 off-street parking requirements Section
14 2101.2, a variance from the compact space
15 requirements in Section 2115.2, a variance
16 form the off-street loading requirements of
17 Section 2201.1 and special exceptions from the
18 roof structure requirements pursuant to
19 Section 411.11, special exception from the
20 roof structure height limitation of Section
21 1902.1(a) to allow the construction of a new
22 residential building with ground floor retail

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1 and service uses in the ARTS/C-3-A District at
2 1905 - 1917 14th Street, N.W. subject to the
3 following two conditions.

4 The Applicant shall include
5 language -- condition number 1, the Applicant
6 shall include language in all documents
7 related to the lease or sale of the
8 residential units that residents of the
9 building are prohibited from applying for
10 residential permit parking stickers from the
11 District of Columbia regardless of the
12 building's ownership and for the life of the
13 building.

14 And number 2, the Applicant shall
15 have the flexibility to modify the design and
16 internal layout of the building to address any
17 comments from the Historic Preservation Office
18 and the Historic Preservation Review Board
19 during final review of the project so long as
20 the modifications do not require any
21 additional areas of zoning relief.

22 COMMISSIONER TURNBULL: Second.

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1 CHAIRPERSON MOLDENHAUER: Motion's
2 been made and seconded. All those in favor --

3 MEMBER JORDAN: How about on the
4 radius? And the only part I think we said
5 about it being a -- some type of covenant that
6 was going to run with the land and I didn't
7 hear that in the motion.

8 CHAIRPERSON MOLDENHAUER: It said
9 I think for the life of the building. But, I
10 think maybe when we finalize the order, we
11 indicate shall run with the land rather than
12 for the life of the building. I think that
13 that -- but, I think that just legally -- run
14 with the land is a more accurate term for
15 purposes of the covenant. So, than for the
16 life of the building or running with the
17 ownership.

18 Is that okay, Mr. Jordan? Any
19 beef on that then -- that modification?

20 A motion has been made and
21 seconded. All those in favor say aye.

22 (Ayes.)

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1 MR. MOY: Staff would record the
2 vote as 5 to 0 to 0. This on the motion of
3 Vice Chairperson Ms. Sorg to approve the
4 application per the multiple relief she cited.

5 Second the motion Mr. Turnbull. Also in
6 support of the motion Ms. Moldenhauer, Mr.
7 Jordan and Mr. Hinkle. So, again, the final
8 vote is 5 to 0 to 0. Also with the two
9 conditions as cited. The motion carries.

10 MEMBER JORDAN: Madam Chair, I
11 would just want in the -- when the order is
12 drafted that we be sure that we include that
13 was the voluntary condition that we accepted
14 and that -- so, that we don't have any problem
15 with the question later if someone's saying
16 about we didn't do an impact review or
17 something.

18 CHAIRPERSON MOLDENHAUER: Yes, and
19 I think that -- I think that's positive and I
20 think that typically, you know, there -- I
21 think rather than having a summary order for
22 this case seeing the extent of the opposition,

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1 I think that we'll ask for a full order for
2 this and that will also clarify for
3 opportunities to elaborate upon the conditions
4 and provide that.

5 That being said, if -- Mr. Moy, we
6 can go on to the next case and I'm not sure --
7 if you can call Case 18002.

8 MR. MOY: This would be -- the
9 next application before the Board is a Motion
10 for a Two-Year Time Extension of the Validity
11 of the Order to Application Number 18002.
12 This is of Gould Property company through
13 Square 374, LLC pursuant to 3130 of the Zoning
14 Regulations.

15 For the record, the original
16 application was approved on December 8, 2009
17 as amended and the caption read as follows:

18 Pursuant to 11 DCMR 3104.1 and
19 3103.1 for (1) a special exception under
20 Subsections 777.1 and 411.11 for relief from
21 the requirements of Subsection 411.3, 411.4
22 and 411.5 to allow two separate rooftop

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1 enclosures of varying heights; and second, a
2 special exception under Subsection 2202.2 for
3 relief from the requirements of Subsections
4 2204.9 and 2201.5 to allow a non-dedicated
5 service and delivery space and (3) a variance
6 from the requirements of Subsections 777.1,
7 411.2 and 400.7(c) to allow elevator
8 penthouses with a maximum height of 22 feet 6
9 inches, to allow the construction of a new
10 office building with ground floor retail in
11 the DD/C-3-C District (and Downtown Urban
12 Renewal Area) at premises 900 New York Avenue,
13 N.W. The property located in Square 374, Lot
14 45.

15 The Applicant filed their request
16 for this time extension on December 13, 2011.

17 This filing is identified in your case
18 folders under Exhibit 39.

19 The second filing in your record
20 is an Office of Planning report identified as
21 Exhibit 40.

22 Other than that, then the Board is

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1 to act on the merits of the request to extend
2 the life of the order pursuant to the
3 requirements to Subsection 3130 and
4 specifically 3130.6(a) through (c).

5 And that completes the status
6 briefing, Madam Chair.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you very much, Mr. Moy.

9 As indicated in this application,
10 it is a request for a two-year extension. We
11 have in our submission statements that there's
12 going to be no substantial change, material
13 change, to the relief that's being sought or
14 to the project.

15 The Applicant has, in my opinion,
16 provided a sufficient good cause shown under
17 the standard including the outlined
18 submissions and statements along with an
19 attached exhibit of the financial costs that
20 have gone into the project since -- in order
21 to pursue the project and continue with the
22 project. Along with an Exhibit C which is

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1 submitted by the Applicant and signed by the
2 Project Executive for Gould Property Company
3 identifying the steps that it's been taking to
4 try to pre-lease and obtain financing based on
5 that pre-leasing and the challenges that it's
6 had in that regard.

7 And based on that, I would find
8 that the Applicant has presented us
9 substantial evidence satisfying the good cause
10 shown under Section 3130.6(c),

11 That being said, I would be in
12 favor in supporting this application.

13 Is there any additional
14 deliberation from Board Members?

15 Seeing none, then at this point in
16 time, I would submit a motion. A motion to
17 approve Application 18002 for a motion to
18 extend the application at location 900 New
19 York Avenue, N.W. to June 29th, 2014.

20 The motion has been made. Is there
21 a second?

22 MEMBER HINKLE: Second.

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1 CHAIRPERSON MOLDENHAUER: Motion's
2 been made and seconded. All those in favor
3 say aye.

4 (Ayes.)

5 MR. MOY: Staff would record the
6 vote as 4 to 0 to 1. This is on the motion of
7 Chairperson Moldenhauer to approve the request
8 for a two-year time extension pursuant to the
9 requirements under Section 3130. Second the
10 motion Mr. Hinkle. Also in support of the
11 motion Ms. Sorg and Mr. Jordan. The Zoning
12 Commissioner not participating on this
13 application. So, again, the final vote is 4
14 to 0 to 1. The motion carries.

15 The next application for Board
16 action is Application Number 18304. This is
17 of Rui E. Lu (Andy's Carryout) pursuant to 11
18 DCMR 3104.1 for a special exception. This is
19 to allow a fast food establishment under
20 Section 733 in the C-2-A District at premises
21 5001 Georgia Avenue, N.W. Property located in
22 Square 3007, Lot 67.

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1 As the Board will recall, on the
2 24th of January 2012, the Board completed
3 public testimony, closed the record, scheduled
4 its decision on January or rather February the
5 7th.

6 The Board requested additional
7 information to supplement the record from the
8 Applicant with filings due by February the
9 3rd, 2012.

10 In your record, in your case
11 folders are two filings from the Applicant,
12 Exhibit 30 and 31. Exhibit 31 contains a
13 revised page 3.

14 Finally, the last filing in your
15 record is an OP report dated February 3rd,
16 2012 identified as Exhibit 32.

17 And with that, then the Board is
18 act on the merits of the special exception
19 relief to allow a fast food establishment.

20 That completes the status
21 briefing, Madam Chair.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you very much, Mr. Moy.

2 I am not participating in this
3 case. So, I will turn the record over to Ms.
4 Sorg.

5 VICE CHAIRPERSON SORG: Thank you,
6 Madam Chair.

7 I'm very pleased with the
8 submissions that we received in this case
9 after the hearing. This is a request for a
10 special exception under 733 actually to
11 continue a fast food establishment that's been
12 in operation for ten years and is stemming
13 from a ZA referral.

14 I felt that the application
15 materials that were submitted by the Applicant
16 as well as the OP report which recommends
17 approval and the testimony and the questions
18 that were answered before this Board combined
19 to form a very complete record.

20 I also would note we had a letter
21 from DDOT saying that they had no objection in
22 this case.

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1 Therefore, I think with the
2 subsequent memo from OP in our Exhibit 32 as
3 well as the submission from the Applicant in
4 which the property owner confirms that they
5 agree to build the requested enclosure around
6 the trash dumpsters on the property which
7 really was our -- in the hearing and was
8 really my own only question regarding the
9 Applicant's ability to satisfy and be
10 consistent with each of the prongs of 733.

11 So, that being said, we see a
12 drawing that has been submitted here. The
13 owner has agreed. OP has also reviewed this
14 submission.

15 I would be in support of the
16 application and I would also be in support of
17 approving the application subject to a
18 condition and I would suggest that the
19 condition read as follows:

20 The property owner shall construct
21 and maintain a gated, pressure treated wooden
22 stockade fence enclosing all trash and grease

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1 dumpsters located on the property.

2 Any additional deliberation?

3 COMMISSIONER TURNBULL: I would
4 only add -- I don't know if you mentioned it
5 or not. The special exception is for no
6 expiration date.

7 VICE CHAIRPERSON SORG: Correct.
8 I agree with that as well.

9 COMMISSIONER TURNBULL: Okay.

10 VICE CHAIRPERSON SORG: But, I
11 wasn't --

12 COMMISSIONER TURNBULL: It was
13 implicit in the OP report.

14 VICE CHAIRPERSON SORG: It was in
15 the OP and also, I don't believe that that
16 would require a condition --

17 COMMISSIONER TURNBULL: Right.

18 VICE CHAIRPERSON SORG: -- to a
19 potential order.

20 MEMBER JORDAN: Madam Vice Chair,
21 I just want to make for the record I did
22 review the video on this of the testimony and

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1 so, I'll be participating.

2 VICE CHAIRPERSON SORG: Excellent.

3 Thank you, Mr. Jordan.

4 Any further deliberations?

5 MEMBER HINKLE: Yes, Madam Vice
6 Chair, thank you.

7 I was having difficulties with
8 this application in terms of requiring the
9 Applicant which at the time was the tenant to
10 instruct screening for all the dumpsters on
11 the site, but like you mentioned, I'm very
12 pleased as well with the supplemental
13 information. The owner has agreed to screen
14 all the dumpsters on the site and I think
15 that's really a positive move.

16 VICE CHAIRPERSON SORG:
17 Absolutely. I agree and thank you for
18 bringing that up, highlighting that, Mr.
19 Hinkle.

20 So, without further ado, I will
21 submit a motion to approve Application Number
22 18304 of Rui E. Lu (Andy's Carryout) pursuant

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1 to 11 DCMR 3104.1 for a special exception to
2 allow a fast food establishment under Section
3 733 in the C-2-A District at premises 5001
4 Georgia Avenue, N.W. subject to the condition
5 as follows:

6 That the property owner shall
7 construct and maintain a gated pressure
8 treated wooden stockade fence enclosing all
9 trash and grease dumpster located on the
10 property.

11 And this would be an approval with
12 no expiration date.

13 A motion has been made. Is there
14 a second?

15 MEMBER HINKLE: Second.

16 VICE CHAIRPERSON SORG: Is there a
17 second?

18 MEMBER HINKLE: Well, Madam
19 Chair, we have a question.

20 VICE CHAIRPERSON SORG: Oh,
21 apologies.

22 MEMBER HINKLE: Do we need to

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1 waive Section 733.4 which requires a brick
2 enclosure?

3 MEMBER JORDAN: Madam Chair, yes,
4 the -- it's specific as to brick and they're
5 going to do the wooden fence and I think we
6 have to just include that.

7 VICE CHAIRPERSON SORG: I agree.
8 Yes, that was what -- something that we
9 discussed in the hearing, but I don't -- I
10 mean if we need to include language that we're
11 waiving that in the condition itself, then
12 that can be certainly added.

13 MEMBER HINKLE: Yes, I just not
14 sure what the procedure is.

15 MS. GLAZER: I don't think you
16 need to include it in the condition itself,
17 but --

18 VICE CHAIRPERSON SORG: The
19 condition --

20 MS. GLAZER: -- it was -- Mr.
21 Jordan brought up a good point. So --

22 VICE CHAIRPERSON SORG:

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1 Absolutely.

2 MS. GLAZER: As long -- I think
3 the Board by consensus can agree to waive that
4 -- the requirement of that section.

5 MEMBER HINKLE: Thank you.

6 VICE CHAIRPERSON SORG: Great.
7 Thank you for bringing that up.

8 MEMBER JORDAN: And now, I'll
9 second.

10 VICE CHAIRPERSON SORG: Great.
11 Motion has been made and seconded. All those
12 in favor say aye.

13 (Ayes.)

14 VICE CHAIRPERSON SORG: Mr. Moy,
15 can you please read back the vote?

16 MR. MOY: Yes, with pleasure. The
17 staff would record the vote as 4 to 0 to 1.
18 This on the motion of Vice Chair Sorg to
19 approve the special exception relief under
20 Section 733 with the condition as cited by the
21 Vice Chair which also includes by consensus
22 the waiving of the requirements under Section

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1 733.4. Second the motion Mr. Jordan who read
2 the record to participate. Also in support of
3 the motion, Mr. Turnbull and Mr. Hinkle. Yes,
4 Mr. Hinkle. So, again, the final vote is 4 to
5 0 to 1. The motion carries.

6 VICE CHAIRPERSON SORG: Thank you
7 and can we call for a summary order in this
8 case please?

9 MR. MOY: Yes, thank you.

10 The next application before the
11 Board for action is Application Number 18291.
12 This is the application of Mt. Olive Baptist
13 Church.

14 This application as the Board will
15 recall has been amended to withdraw special
16 exception relief from Section 205 which calls
17 for requirements under the DCD, child
18 development center, and has included variance
19 relief from the rear yard subsection for -- or
20 rather rear yard requirements under Section
21 404.

22 So, in its entirety, the relief

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1 requested would be variance relief from the
2 lot occupancy requirements under Section 403,
3 variance from the nonconforming structure
4 provisions under Subsection 2001.3, variance
5 from the off-street parking requirements under
6 Subsection 2101.1 and variance from the rear
7 yard requirements under Section 404.

8 The Board had closed the record
9 for any additional documents. Although, left
10 the record somewhat open to allow the
11 Applicant the opportunity to consult with the
12 Zoning Administrator. No? Yes.

13 But, if so, then the Board would
14 have to act on the filing from the Applicant
15 which is their filing of February the 2nd,
16 2012 received on the 3rd of February under
17 Exhibit 38.

18 So, other than that, the Board is
19 to act on the merits of the requested variance
20 relief.

21 That completes the status
22 briefing, Madam Chair.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you very much, Mr. Moy. One moment.

3 We had closed the record and I
4 think Mr. Moy was referencing some potential
5 issue in order to -- maybe leaving the record
6 open to talk with the ZA about a different
7 size footprint or something to that affect.
8 But, that's not what the last submission,
9 Exhibit 38, was addressing. That was simply
10 just, I guess, reiterating the case. So,
11 since we're trying to maintain a strong line
12 in regards to closing the record, we will
13 strike 38 and continue with the case.

14 That being said, we have a
15 submission before us which has been modified
16 during the course of the hearing, but what we
17 have is we have a request for relief that I
18 believe while it's a challenged argument or
19 it's the institutional necessity for the CDC,
20 I do think that it does satisfy the standards
21 under Draud.

22 While I had asked the Applicant in

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1 regards to whether this was going to be a
2 child development center that was, I guess,
3 putting forth its religious beliefs and it is
4 not, it is a child development center that is
5 going to be, I believe, from this testimony
6 and the submissions on the record something
7 that is in the mission and the intent of the
8 church and something that the church's
9 constituents and community as it's one of its
10 mission to, you know, provide services to the
11 community does provide for.

12 And I believe that under Draud, it
13 specifically talks about public service and
14 having inadequate facilities to apply a
15 variance to expand into the, you know,
16 adjacent areas of the common ownership and I
17 think that here we do have an area where there
18 is public service that the Applicant is
19 pursuing under the institutional necessity of
20 the church and that being said, I do feel as
21 though the Applicant, you know, does -- would
22 receive that type of reduced scrutiny in

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1 regards to the first prong of the variance
2 standard.

3 That being said, in regard to the
4 question of whether or not the Applicant
5 satisfies the standard in general in regards
6 to exceptional circumstances, I do think that
7 the age of the building, the fact that it's
8 been unused for a long period of time, the
9 fact that there's actually an existing parking
10 lot or parking path that actually runs
11 directly through an existing lot, I think is
12 quite unique and exceptional and I think based
13 on those factors, I would find that that does
14 satisfy the standards.

15 In addition to that, I then kind
16 of just jump into the discussion of whether
17 the Applicant satisfies the standard for the
18 parking relief that it's seeking.

19 Here I think that there's a
20 question of, you know, is there any other
21 place on the site that they could potentially
22 provide that parking and I think we had a in-

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1 depth discussion and conversation about the
2 alley and the alleyway and if there was room.

3 While currently the property is
4 not utilizing or using, there's a fence that's
5 not actually to the edge of their property
6 line. Could they still potentially provide
7 those two spaces on the lot? The Applicant
8 testified that while they could that there
9 would be some potential challenges with that
10 both safety-wise and then the question is the
11 Applicant -- can the Applicant satisfy the
12 standards and not provide those spaces and at
13 the same time not provide a substantial
14 detriment to the public good and I think that
15 here in this situation I feel that they can.

16 That, you know, based on testimony
17 in regards to the current parking I guess
18 demand on the street that it's not going to
19 create a substantial detriment to have, you
20 know, those two spaces that may potentially
21 have been able to be squeezed onto the rear of
22 the lot by the alley and so, I would be in

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1 support of that relief as well.

2 That being said, I think I've kind
3 of just gone through a precursory review of
4 the different relief that's being sought here
5 and my view in regards to how they satisfy
6 those standards. Obviously, in discussing the
7 issue of the parking that also incorporates
8 the rear yard relief that they're seeking and
9 I would be in support of the application.

10 I'll see if there's any additional
11 deliberation from Board Members.

12 VICE CHAIRPERSON SORG: Madam
13 Chair, I agree actually with your analysis.

14 I was having some trouble myself
15 in thinking about this application, but I
16 think your discussion of Draud and the way
17 that this application and the relief that's
18 being requested by this particular applicant
19 falls under that.

20 It was with that understanding I
21 think that I was able to sort of come away. I
22 think from the confluence of factors that you

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1 mentioned, you know, regarding the vacant
2 charge and also I think you alluded to this.
3 But, really, the configuration of this
4 building, you know, which was combined and is
5 considered one building for the purposes of
6 zoning does present a challenge and is
7 actually unique with regard to the request
8 that's being made.

9 And with regard to the amount of
10 space that's being allotted to the new CDC, I
11 think based on prior -- reading of prior cases
12 and Draud and so forth, the concerns that I
13 had regarding are they giving too much space
14 for the children, you know, what is the size
15 of this were allayed.

16 I also do commend. Although it
17 doesn't come into my consideration of the
18 first two prongs, I would commend the
19 Applicant for actually portions of the design
20 which do hold back the massing from the front
21 of the building and organizes the addition in
22 a way that despite the relief that it incurs

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1 is, in my mind, sensible.

2 That's all I wanted to add. Thank
3 you.

4 MEMBER JORDAN: And I would just
5 -- to ditto that. I agree that this meets all
6 the tests and it's worthy of the relief that
7 they're requesting. Particularly in regards
8 to the parking, I don't have any difficulty.
9 I think they give adequate evidence that there
10 is mechanical equipment in the back. The
11 trash disposals. A narrow alley. The issue
12 about making a turn that they can't make and
13 even regarding the aspect of neighbors talking
14 about the impact. I think it was not really
15 proved. I think that was just kind of in
16 passing. I didn't see anything that was
17 really of substance for me grab hold to except
18 for just the various complaint by the
19 neighbor.

20 So, I would agree with you. I
21 think this is one to which we can grant the
22 relief.

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1 VICE CHAIRPERSON SORG: I say I
2 would pipe up again and agree with Mr. Jordan
3 that if there's one thing that neighbors care
4 about, and we all do, it's parking and nobody
5 said a thing about it.

6 So, while that, of course, doesn't
7 satisfy the first two prongs of the test, it
8 certainly speaks toward the sentiment of the
9 community with regard to the church and those
10 programs using street parking.

11 CHAIRPERSON MOLDENHAUER: And just
12 to that point, I'll just indicate that we do
13 have in our record a unanimous support from
14 the ANC. Our Exhibit 26 which received great
15 weight.

16 We also have numerous letters. I
17 dare not even count from neighbors and members
18 of the church which is Exhibit 25 and like I
19 said, there's numerous letters that are all
20 part of 25. All recommending approval for the
21 application and for the variances here that
22 were being requested.

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1 You know, that being said, I do
2 agree with the Board Members in regards to the
3 support and I do think that the Applicant
4 satisfies the standard especially in light of
5 Draud and the National Black Child Development
6 Institute.

7 That being said, I will submit a
8 motion. A motion to approve Application 18291
9 under 11 DCMR 3104.1 and 3103.2 for a special
10 exception for a child development -- sorry.
11 Sorry. That's not actually the relief that's
12 being sought anymore. For a variance from the
13 lot occupancy requirements under Section 403
14 and a variance for the nonconforming structure
15 provision under 2001.3 and a variance from the
16 off-street parking requirement under Section
17 2001.1 and relief from Section 404 to
18 construct an additional to an existing church
19 structure at 1140 6th Street, N.W.

20 A motion has been made. Is there
21 a -- N.E. Looking at the end, N.E. N.E.

22 A motion has been made. Is there

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1 a second?

2 COMMISSIONER COHEN: Second.

3 CHAIRPERSON MOLDENHAUER: The
4 motion's been made and seconded. All those in
5 favor say aye.

6 (Ayes.)

7 MR. MOY: The staff would record
8 the vote as 4 to 0 to 1. This on the motion
9 of Chairperson Moldenhauer to approve the
10 application per the variance relief that the
11 Chair has just cited. Second the motion Ms.
12 Cohen. Also in support of the motion Ms.
13 Sorg, Mr. Jordan and Mr. Hinkle or rather --
14 strike that. Rather Mr. Hinkle is recused,
15 not participating. So, again, the final vote
16 is 4 to 0 to 1. The motion carries.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you very much, Mr. Moy and seeing that there's
19 no opposition in this case, the Board would
20 like to request -- waive the requirement and
21 ask a summary order be issued.

22 MR. MOY: Yes, thank you, Madam

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1 Chair.

2 The next application for Board
3 action is Application Number 18294 of Paul and
4 Emily Thornell pursuant to 11 DCMR 3104.1 for
5 a special exception to allow a rear addition
6 to an existing one-family semi-detached
7 dwelling under Section 223 not meeting the lot
8 occupancy requirements under Section 403 and
9 rear yard requirements under Section 404.
10 This is in the R-2 District at premises 3011
11 Ordway Street, N.W. Property located in
12 Square 2067, Lot 76.

13 On January 17th, 2012, the Board
14 completed public testimony, closed the record,
15 scheduled its decision on February the 7th.

16 The Board did allow additional
17 information to supplement the record by
18 Thursday, February 2nd, 2012.

19 There are two filings in the
20 record, Madam Chair, in your case folders.
21 The first is from Susan Finston, party
22 opponent. That filing is dated -- rather that

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1 filing is under Exhibit 38 and from the
2 Applicant, under Exhibit 39.

3 With that, then the Board is to
4 act on the merits of the special exception
5 relief under Section 223.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you very much, Mr. Moy.

8 And to start us off with
9 deliberations, we heard in this case from the
10 Applicant as well as hearing from some
11 neighboring property owners both in support
12 and in opposition to this case.

13 The major, I guess, opposition to
14 this case was from the Finston family and
15 that's the individual who submitted some
16 additional submissions.

17 What we're here for is we're here
18 for -- to review relief under 223 for a two-
19 story plus cellar rear addition. The relief
20 that's being sought here is a relief to --
21 going beyond the 40 percent permitted lot
22 occupancy to 43.5. Which is obviously a 3.5

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1 percent increase on the permitted lot
2 occupancy. Which is based on OP's report
3 approximately 99 square feet.

4 That being said, we have to
5 evaluate the case under the 223 standard and
6 determine whether or not this requested
7 addition would have any unduly affect on the
8 light and air of any neighboring properties or
9 have any impact on the use and enjoyment of
10 neighboring properties again to the degree of
11 whether it would unduly compromise the
12 privacy, use and enjoyment of neighboring
13 properties.

14 That being said, the question I
15 think that, you know, we have to answer is,
16 you know, does this project create an undue
17 influence or undue affect on the Finston's
18 property.

19 I do believe that the property,
20 Ms. Finston's property, is within the purview
21 of being a neighboring property based on the
22 fact that the rear of her property would be

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1 looking up the hill onto the rear of Ordway
2 Street based on the fact of just how the
3 topography is located and the alley is located
4 since the -- even the 30th Street obviously,
5 they're faraway if you're looking. If you're
6 driving, you're looking from the rear of the
7 property. They do have a relationship to each
8 other.

9 The question then is this --
10 again, to the question to the degree of unduly
11 affecting, is there a shadow that would be
12 cast and I don't think that anything submitted
13 by Ms. Finston was addressing that fact or was
14 alleging that there was going to be an
15 increased quantity of shadow.

16 But, rather, that there was going
17 to be a change in potentially the feeling of
18 her rear yard because of the fact that -- of
19 the topography of the location where you have
20 the houses on Ordway Street that are so high
21 in regards to the rear of property and how it
22 would potentially feel as she used, I believe

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1 in the hearing a number of times, it would be
2 looming over the rear of her property.

3 While I feel for her and I feel
4 that obviously, you know, there's obviously a
5 relationship here in regards to the two lots
6 and everything, I don't -- in my view after
7 reviewing the facts, reviewing her additional
8 submission that she provided on Exhibit 38,
9 hearing her testimony, I don't see as though
10 it creates a substantial or an undue affect.

11 I think that the relief that is
12 being sought is such a small degree. Only 99
13 square feet and I believe I asked her, and I'm
14 paraphrasing here now, I don't remember the
15 exact terminology, but I asked her that even
16 if their project was as a matter of right
17 would it still create the same concerns and
18 her answer was not specifically direct, but I
19 think that the reality was that no matter what
20 there was going to be some concerns for her
21 whether the property did not have an
22 additional 99 square feet, whether that was

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1 pulled back. I think it pretty much was the
2 same size of a deck portion.

3 Her main concern in my view, in my
4 understanding of her presentation both orally
5 and her submission, was the scale and the feel
6 of it in regards to the two-story nature. The
7 fact that this was going to be a cellar as
8 well as an addition to the rear. But,
9 unfortunately, in viewing the standard, that
10 cellar, that ability is within the Applicant's
11 right in regards to a matter-of-right project.

12 And so, even if we were to ask the
13 Applicant I think to pull the project back and
14 only provide the development at the 40 percent
15 lot occupancy, I don't believe that it would
16 eliminate the concerns and because of that
17 analysis, I then don't believe that the relief
18 here would create an undue affect by providing
19 that additional 99 square feet in the rear of
20 the project.

21 That being said, again, I do
22 understand her concerns, but I don't believe

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1 they rise to the level in regards to allowing
2 us to have to reject this application for a
3 223.

4 We do have a letter from the ANC
5 expressing no objection.

6 We have HPRB approving the
7 application in regards to the concept
8 drawings.

9 And we have Office of Planning's
10 support as well.

11 That being said, I'll open up the
12 floor to any additional deliberation from
13 Board Members.

14 COMMISSIONER COHEN: Madam Chair,
15 I would concur with your analysis in this
16 case.

17 CHAIRPERSON MOLDENHAUER: Any
18 additional deliberation?

19 MEMBER HINKLE: No, I think that
20 was fairly clear, Madam Chair. I certainly
21 agree with that analysis as well.

22 CHAIRPERSON MOLDENHAUER: That

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1 being said then, I'll submit a motion.

2 A motion to approve Application
3 18294 pursuant to 11 DCMR 3104.1 for a special
4 exception to allow a rear addition to an
5 existing one-family semi-detached dwelling
6 under Section 223 not meeting the lot
7 occupancy under 403 and the rear yard under
8 404 at premises 3011 Ordway Street, N.W.

9 A motion has been made, is there a
10 second?

11 VICE CHAIRPERSON SORG: Second.

12 CHAIRPERSON MOLDENHAUER: Motion's
13 been made and seconded. All those in favor
14 say aye.

15 (Ayes.)

16 MR. MOY: Staff will record the
17 vote as 5 to 0 to 0. This is on the motion of
18 Chairperson Moldenhauer to approve the
19 application special exception relief from
20 Section 223. Second the motion Ms. Sorg.
21 Also in support of the motion, Ms. Cohen, Mr.
22 Jordan and Mr. Hinkle. So, again, the final

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1 vote is 5 to 0 to 0 and the motion carries.

2 The next application is
3 Application Number 18296. This is the
4 application of Daniel T. Merlis pursuant to 11
5 DCMR 3104.1 for a special exception to allow a
6 rear deck addition to a one-family detached
7 dwelling under Section 223 not meeting the
8 rear yard (Sections 404 and 2503.1)
9 requirements in the R-2 District at premises
10 3825 Morrison Street, N.W. Property located
11 in Square 1859, Lot 62.

12 On January 17th, 2012, the Board
13 completed public testimony, closed the record,
14 scheduled its decision on February 7th, 2012.

15 The Board requested additional
16 information to supplement the record. Filings
17 due by Wednesday, February the 1st, 2012.

18 In your case folders, Madam Chair,
19 the Applicant has submitted a proposed
20 landscape plan which is dated by receipt of
21 email on Wednesday, February the 1st.
22 Identified as Exhibit 54.

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1 The Applicant also submitted under
2 separate cover a written narrative which staff
3 believes goes to Exhibit 55. Which was filed
4 on Thursday, February 2nd. Which would be
5 filed under Exhibit 55.

6 If the Board believes that this is
7 a separate exhibit, then it should be treated
8 as untimely submitted by one day.

9 The party opposition made a filing
10 dated and received February 6, 2012 identified
11 as Exhibit 56. This would be untimely since
12 this filing would also have been due by
13 February the 1st.

14 And finally, for the record, after
15 the public hearing on January the 17th, the
16 party opposition submitted written drawings
17 that were shown on the exhibit boards at the
18 public hearing. On January the 17th. Which
19 is identified as Exhibit 53.

20 The Board is to act on the merits
21 of the special exception relief.

22 And that completes the status

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1 briefing, Madam Chair.

2 COMMISSIONER COHEN: Madam Chair,
3 I would just like to state for the record that
4 I have to leave early, but I did read the
5 public record and watched the video.

6 CHAIRPERSON MOLDENHAUER: That
7 being said, there's obviously the submissions
8 that were submitted into the record, Exhibits
9 54, 55 and 56 and obviously, those are all
10 going to be admitted as part of the record and
11 are obviously significant in regards to the
12 deliberation on the case.

13 We had submitted in 55 a
14 submission from the Applicant indicating that
15 they had met and provided a revised and final
16 landscape plan.

17 Just to kind of go back, the case
18 before us is a case for 223 relief. However,
19 it's a unique factual background in this
20 situation in regards to the fact that the
21 majority of the project -- rather a
22 substantial -- the project has already been

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1 constructed. While that's not something that
2 we're taking into consideration, it's just a
3 factual situation that obviously I want to
4 make note of because some of the factors you
5 can visually see versus just having -- in
6 pictures that were presented by the Applicant
7 rather than simply looking at plans.

8 However, we are taking it as
9 though it's a 223 and they're constructing
10 this, you know, as of tomorrow or whenever
11 potentially if or when we were to approve the
12 application.

13 That being said, we have two
14 parties in opposition in this case, Kolker and
15 Miles-McLean and they submitted a late
16 submission, a submission on February 6th.
17 Which is Exhibit 56. Which indicates that
18 they're willing to withdraw their opposition
19 to the application provided that the plan
20 landscape architect Barbara Balman, dated
21 January 26, 2012 and revised on January 28th,
22 2012, is made a condition to the approval of

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1 the special exception.

2 That being said, they had also
3 previously submitted some documentation in
4 regards to filling in the parking space, but
5 that was something that they're obviously
6 willing to waive and considering the fact that
7 the Applicant is now willing to dig up the
8 portions of the driveway which are on both the
9 -- I'm awful with -- north and east side.
10 Especially when the submissions don't actually
11 show north and east. But, on either side of
12 the driveway, the Applicant is now submitting
13 that they would dig up the concrete and
14 provide planting areas on either side edging
15 it with cobblestone and planting two trees on
16 both of those corners and also providing
17 fencing along the corner by Mr. Miles-McLean
18 and planter boxes providing a buffer zone as
19 well on the fence area on the north and south
20 side of the driveway.

21 Thank you. I'm a lawyer not an
22 architect. I got to see what's on the plans

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1 and sometimes it's --

2 So, that being said, I think that,
3 you know, based on the submissions and based
4 on the fact that the Applicant is now
5 submitting that they would be willing to
6 modify their application and to be conditioned
7 upon that submission of the Balman plan, you
8 know, I would be obviously in favor of
9 supporting the application.

10 I think that this was a very
11 contentious case and I'm, you know, very, you
12 know, happy to see that the parties have been
13 able to sit down and, you know, work together
14 and try to come up with a solution that, you
15 know, both parties are agreeable to and, you
16 know, provides some relief in regard to the
17 light and air of both parties in that regard.

18 I'm just looking at a document and
19 kind of having -- with Ms. Sorg that just --
20 it is a little confusing because we do have a
21 submission and I don't have an exhibit number
22 on this, but it's submitted as of February

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1 3rd, 2012 from a Mr. and Mrs. Miles-McLean
2 indicating that they were still in opposition
3 to the case. However, they indicated they
4 also signed Exhibit 56 which is signed by them
5 on page 3 of Exhibit 56 which was signed on
6 February 3rd, 2012. So, they're both dated
7 the same date.

8 I'll open it up to other Board's
9 comments in that regard as to the --

10 VICE CHAIRPERSON SORG: Madam
11 Chair, I agree that it was a little bit
12 confusing for me especially given that these
13 were submitted on the same date.

14 But, I think -- I believe that the
15 letter from Mr. and Mrs. Miles-McLean
16 indicates a similar sentiment or is in the end
17 in keeping with the agreement that's signed
18 regarding the Balman landscape plan and
19 requesting -- in the last paragraph of their
20 letter, encouraging, you know, screening and
21 fencing and permanent physical elements to
22 screen the deck addition.

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1 So, I mean for me -- from my part,
2 you know, what I can gather from that is that
3 the plan that is contained within that exhibit
4 that's submitted on February 3rd meets with
5 their approval in that regard.

6 CHAIRPERSON MOLDENHAUER: I agree
7 with you and I think that question now is
8 just, you know, if I submit a motion to
9 approve the application, you know, how -- I
10 believe, you know, the submission is quite
11 clear in regards to the type of trees. It
12 indicates the planters on each side will have
13 evergreens. So, it's describing the exact
14 type of tree. That in regards to the
15 buffering trees, it provides that as well.
16 Planted in the ground. You know, flowering
17 trees. Based with flowering trees.

18 So, I think that this definitely
19 provides sufficient description and detailing
20 to confirm that this would for the life of the
21 property have these required landscaping
22 maintained as part of the property and for the

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1 life of the property.

2 And the reason why I'm saying that
3 is I think it's some of the comments in
4 regards to our training this morning and
5 making so that that's clear as part of the
6 record and so, to make sure that there's no
7 issue in regards to potential orders or in
8 regards to permitting or in the future, any
9 enforcement issues.

10 That this is obviously a
11 significant aspect of how -- why we're
12 approving this relief and I think that that
13 should also give some solace to the parties in
14 opposition that they have the ability to
15 enforce this as part of the condition, you
16 know, for the life of the property to confirm
17 that obviously this has to be maintained as,
18 you know, as provided in the Balman plan.

19 That being said, I think I'll
20 submit a motion.

21 A motion to approve Application
22 18296 pursuant to 11 DCMR 3104.1 for a special

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1 exception to allow a rear deck addition to a
2 one-family detached dwelling under Section 223
3 not meeting the rear yard requirements under
4 404 and 2503.1 at premises 3825 Morrison
5 Street, N.W.

6 This application would be approved
7 upon the condition that the Applicant
8 construct and conform with the landscape
9 diagram provided in the Balman landscape
10 design plan which was dated January 26, 2012
11 and revised on January 28th, 2012 and that
12 that plan would be maintained for the life of
13 the property and is also provided in Exhibit
14 54 of our record.

15 A motion has been made. Is there
16 a second?

17 MEMBER HINKLE: Second.

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

21 (Ayes.)

22 MR. MOY: Staff would record the

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1 vote as 5 to 0 to 0. This is on the motion of
2 Chairperson Moldenhauer to approve the
3 application from special exception relief
4 Section 223 not meeting rear yard, 404 and
5 Section 2501.3 relief on the condition that
6 the application is in conformance with the
7 submitted landscape plan in the record
8 pursuant to the Balman drawing dated January
9 26, 2012 and revised January 28, 2012 as
10 exhibited in Exhibit Number 54. Seconded the
11 motion Mr. Hinkle. Also in support of the
12 motion Ms. Cohen, Ms. Sorg and Mr. Jordan.
13 So, again, the final quote is 5 to 0 to 0.
14 The motion carries.

15 MS. GLAZER: Is there a question
16 regarding the type of order that's required?

17 CHAIRPERSON MOLDENHAUER: I'd
18 prefer a full order unless Mr. Secretary
19 believes we can do some sort of hybrid that's
20 a summary order, but still provides sufficient
21 disclaimers in regard to the condition. I
22 mean I personally would just rather have a

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1 full order.

2 MR. MOY: Yes, I would concur.

3 CHAIRPERSON MOLDENHAUER: Just for
4 the record, the Applicant asked for leniency
5 or flexibility in regards to their ability to
6 go forward. That's not something that
7 obviously we're ruling on. We're going to
8 provide a full order and --nor as to the
9 flexibility and leniency of them being able to
10 start landscaping prior to the order being
11 finalized.

12 MS. GLAZER: I'm somewhat puzzled
13 because the -- as I interpreted, the
14 opposition was withdrawn.

15 CHAIRPERSON MOLDENHAUER: Yes, but
16 that doesn't mean that we are required to
17 waive our requirements and --

18 MS. GLAZER: Okay.

19 CHAIRPERSON MOLDENHAUER: -- I
20 think that based on that there was opposition
21 in this case, in order for any future owner to
22 review it or to understand anything, it's

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1 better to have a full order to understand
2 exactly what happened in this case.

3 MS. GLAZER: Okay. Very well.

4 MR. MOY: The next application
5 before the Board for action is Application
6 Number 18297. This is Mohammad Pishvaeian
7 pursuant to 11 DCMR 3103.2 for a variance from
8 the lot area requirements under Subsection
9 401.3 to convert a rooming house to a three-
10 unit apartment building in the R-4 District at
11 premises 3609 13th Street, N.W. Property
12 located in Square 2829, Lot 62.

13 On January 17th, 2012, the Board
14 completed public testimony, closed the record
15 and scheduled its decision on February the
16 7th. The Board did not request any post-
17 hearing filings. Therefore, the Board is to
18 act on the merits of the variance relief from
19 the lot area requirements.

20 And that completes the status
21 briefing, Madam Chair.

22 CHAIRPERSON MOLDENHAUER: I'm

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1 going to turn to over to Ms. Sorg as I've
2 recused myself in this case. Thank you.

3 VICE CHAIRPERSON SORG: Thank you,
4 Madam Chair.

5 As the Secretary mentioned, this
6 is a request for a variance under 401.3 to
7 convert an 11-room rooming house into a three-
8 unit apartment building.

9 I'll start from the side of
10 support. We've got in this case clear ANC
11 support. DDOT indicates in a letter that they
12 don't have any issues. Additionally, the
13 Applicant submitted, I believe, 14 letters of
14 support along with their application. So,
15 that's good.

16 And then we come to the Office of
17 Planning who in their report indicated that
18 they cannot recommendation approval of the
19 variance.

20 I believe that this is a
21 challenging case and certainly a challenging
22 case to find classical cases of uniqueness and

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1 exceptional narrowness -- of uniqueness with
2 regard to exceptional narrowness, shallowness
3 or topography of the property as OP testified
4 that those were the only things that they were
5 looking for.

6 But, I think that in individual
7 specific cases and in my mind, this is such a
8 case, we are able to see a confluence of
9 contributing factors that combined -- combine
10 to rise to the level of satisfying the first
11 prong of the area variance test.

12 In this case, I think based on the
13 Applicant's testimony and submissions and the
14 images of the property and its context, I can
15 find that the property has been vacant and
16 also that this property is in significant
17 disrepair as we saw from the photographs that
18 were submitted.

19 Also, for me a factor, though not
20 significant in my mind on its own as a factor,
21 is the organization of the building internally
22 combined with its unique access and egress

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1 situation into the alley compared to those
2 properties in its immediate context.

3 I also believe that this decline
4 in use, that of a rooming house, while it is a
5 matter of right especially in this larger
6 area, has become, as I said though matter of
7 right, actually atypical of the development
8 residential character of the neighborhood.

9 And these are the areas in which
10 in my analysis I differ from OP who indicates,
11 as I mentioned, that they cannot support the
12 application.

13 So, therefore, I would find that
14 the first prong necessitating uniqueness for
15 the area variance test is met through this
16 confluence of factors.

17 Subsequently, in testimony, OP
18 indicated that regarding the second prong they
19 did not take any economic factors into
20 consideration. But, I think in this case that
21 there were -- the record with regard to the
22 economic factors was detailed and significant

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1 and so, the factors that I mentioned in my
2 mind do lead to the practical difficulties for
3 the Applicant in adhering to the Zoning
4 Regulations in this regard.

5 The Applicant submitted
6 documentation -- detailed documentation
7 sharing the financial difficulty in restoring
8 the property to a matter-of-right use. The
9 economic factors were not taken into account
10 as I said by OP, but in this case, I do
11 believe that the economic hardship for the
12 specific characteristics of the site are
13 related to the practical difficulties set out
14 in the application and this again is
15 documented through construction budgets and
16 profit and loss analyses provided and
17 discussed at pretty good length in the
18 hearing.

19 And a market -- well, my colleague
20 is mentioning the market analysis. To me,
21 that actually factored in somewhat less than
22 the construction budget and the profit and

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1 loss analyses based on the existing conditions
2 and the type of construction there. But, I
3 did find actually that the testimony in that
4 regard as well as the financial submissions by
5 the client were compiling.

6 You know, these analyses clearly
7 compare the cost of construction and potential
8 sale prices for the two matter-of-right uses
9 and it does demonstrate the practical
10 difficulty in my mind in that regard which
11 would result in losses on both of those
12 counts, but with the proposed project not a
13 financial loss.

14 So, that takes care of in my mind
15 through this confluence of factors viewing the
16 unique history and condition -- existing
17 condition of the property through the economic
18 difficulties of putting that towards a matter-
19 of-right use leads to the third prong of the
20 test.

21 I don't believe that there is
22 substantial harm to the Zone Plan in approving

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1 the application as it does actually decrease
2 the density from an 11-unit rooming house to a
3 three-unit flat. Also, that the amount of
4 density being requested above the matter-of-
5 right use is not exceptionally large with
6 regard to what is allowed as a matter of right
7 in the R-4 Zone.

8 I would mention also something
9 that the Office of Planning indicates in a
10 footnote, I suppose, in their report. Which
11 is that the purpose of the R-4 Zone is to
12 stabilize low density zone and so forth
13 residential and I think the word stabilization
14 is actually significant with regard to the
15 merits of this case. Taking a building that
16 is vacant and had for a very long period of
17 time a use that is declining in the area and
18 bringing it to a lower density and rehabbing
19 the property itself, in my mind, is exactly
20 what contributes to the stabilization of this
21 type of residential fabric.

22 So, those are my thoughts and so,

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1 therefore, I would say that based on the sort
2 of -- the unique factors here and also the
3 confluence of factors with regard to the area
4 variance test, I can be in support of the
5 application.

6 And I'll open it up for
7 discussion from other Board Members.

8 MEMBER HINKLE: Thank you, Madam
9 Chair -- Vice Chair.

10 VICE CHAIRPERSON SORG: Whatever.

11 MEMBER HINKLE: I'm really in
12 complete agreement with you on your analysis.

13 In particular, on the first prong as well as
14 the third prong of the test.

15 In terms of the second prong, I
16 just wanted to, you know, note that I
17 appreciate really the thorough process
18 analysis that was done for this project. I
19 recently voted against a similar case simply
20 because I didn't think we had sufficient
21 documentation in that respect.

22 But, in terms of the market

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1 analysis which you mentioned, I think that
2 also feeds into the practical difficulty in
3 terms of, you know, there's really a high cost
4 of purchasing these properties throughout the
5 city now and then to, you know, add on to that
6 the redevelopment cost, it's getting hard to
7 make some of these properties actually meet
8 some matter-of-right uses. Which is, you
9 know, becoming an issue through the city I
10 think. So, the market analysis was also
11 appreciated in terms of thinking about how
12 there's really economic and practical
13 difficulties related to this project.

14 So, that's all I have to say.

15 VICE CHAIRPERSON SORG: Thank you,
16 Mr. Hinkle. I appreciate your addition and I
17 agree.

18 Is there any further deliberation?

19 Seeing none, then I will submit a
20 motion to approve Application Number 18297,
21 Mohammad Pishvaeian pursuant to 11 DCMR 3103.2
22 for a variance from the lot area requirements

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1 under Subsection 401.2 to convert a rooming
2 house to a three-unit apartment building, R-4
3 District at premises 3609 13th Street, N.W.

4 A motion has been made. Is there
5 a second?

6 COMMISSIONER COHEN: Second.
7 Second.

8 VICE CHAIRPERSON SORG: A motion
9 has been made and seconded. All those in
10 favor say aye.

11 (Ayes.)

12 VICE CHAIRPERSON SORG: Mr. Moy,
13 can you please back the vote?

14 MR. MOY: Staff would record the
15 vote as 4 to 0 to 1. This is on the motion of
16 Vice Chair Sorg to approve the application for
17 variance relief from lot area requirements
18 under 401.3. Second the motion Ms. Cohen.
19 Also in support of the motion Mr. Jordan and
20 Mr. Hinkle. Ms. Moldenhauer is recused and
21 not participating. So, again, the final vote
22 is 4 to 0 to 1. The motion carries.

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1 VICE CHAIRPERSON SORG: Thank you,
2 Mr. Secretary and we can waive our
3 requirements and request a summary order in
4 this case.

5 MR. MOY: Very good. Thank you.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you. I think we have one last case on the
8 calendar. I think we have one last case for
9 Mr. Moy to call on the calendar.

10 MR. MOY: Indeed. This last
11 application before the Board is a motion for a
12 Minor Modification to Condition Number One of
13 BZA Order Number 18147 of Eun Sun Kim pursuant
14 to Section 3129 of the Zoning Regulations.
15 The original application was approved on
16 December 14th, 2010 and that application was
17 pursuant to 11 DCMR 3104.1 for a special
18 exception to allow a fast food establishment
19 under Section 733 in the C-2-A District at
20 premises 1100 Eastern Avenue, N.E. Property
21 located in Square 5200, Lot 805.

22 As the Board will recall, the

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1 Board convened this request from the Applicant
2 on January the 10th, 2012 and on the Board's
3 own motion, the Applicant's request was
4 rescheduled for a decision to January the 7th
5 to allow the record to be open to receive
6 supportive documentation.

7 As of this moment, Madam Chair,
8 there is no additional filing in your case
9 folders. So, with that, it's up to the Board
10 on how the Board would like to take action on
11 this application.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much, Mr. Moy.

14 At the last hearing, we indicated
15 to the Applicant that we were going to provide
16 him one month, postponing this from January
17 10th, to provide additional supplemental
18 documentation to address the issues that
19 Office of Planning identified in regards to
20 the distinctions in the addresses and the lack
21 of then jurisdiction we have. We have
22 received nothing and based on that, I'd like

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1 to move to dismiss this case.

2 Is there any additional
3 deliberation from Board Members before I
4 submit a formal motion?

5 VICE CHAIRPERSON SORG: Oh, I was
6 going to second.

7 CHAIRPERSON MOLDENHAUER: Then I
8 motion to dismiss this case 18147. Is there a
9 second?

10 VICE CHAIRPERSON SORG: Second.

11 CHAIRPERSON MOLDENHAUER: Motion's
12 been made and seconded and all those in favor
13 say aye.

14 (Ayes.)

15 MR. MOY: Staff would record the
16 vote as 4 to 0 on the motion. This is on the
17 motion of Chairperson Moldenhauer to dismiss
18 the request for a minor modification. Second
19 the motion Ms. Sorg. Also in support Mr.
20 Jordan and Mr. Hinkle. Mr. Schlater not
21 present not voting. So, again, the final vote
22 is 4 to 0 to 1. The motion carries to

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1 dismiss.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you very much, Mr. Moy, and I believe then
4 that concludes our day and we will reconvene
5 next Tuesday. Thank you.

6 (Whereupon, at 3:21 p.m., the
7 meeting was adjourned.)

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