

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
January 4, 2011
Start: 9:47am - End: 1:40pm

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

Board Members

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

C o n t e n t s

BOARDS ACTIONS/MOTIONS

1. Chairperson's Introduction3
2. Appeal 17109. 4

MORNING SESSION

1. Application 18153.12
2. Appeal 18151. 38

AFTERNOON SESSION

1. Appeal 18154. 57

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

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

1 preliminary matters?

2 SECRETARY MOY: Yes we do Madam Chair but
3 we'll address all those cases in the morning but
4 certainly none for the Special Public Meeting.

5 CHAIRPERSON MOLDENHAUER: Well then let's
6 proceed with the agenda I think we only have one
7 item on the agenda.

8 **Appeal No. 17109**

9 MR. MOY: Yes good morning Madam Chair,
10 Members of the Board and Happy New Year. That
11 case for Board action is the Board's own motion
12 to issue the proposed order for exceptions. This
13 is to the re-man of appeal No. 17109 of Kalorama
14 Citizens Association or (KCA) pursuant to;
15 Section 10(d) of the District of Columbia
16 Administrative Procedures Act. D.C. Official
17 code Section 1-509(d). The original appeal Madam
18 Chair was filed by KCA which was pursuant to 11
19 DCMR 3100 and 3112 from the administrative
20 decision of David Clarke, Director of the
21 Department of the Consumer Regulatory Affairs
22 from the issuance of Building Permits Nos.

1 B455571 and B455876, dated October 6, 2003, and
2 October 16, 2003, respectively to Montrose LLC,
3 to adjust the building height to 70 feet and to
4 revise the penthouse roof structure plans to
5 construct a five-story apartment building in the
6 R-5-D District, on remand from the courts, the
7 only issue to be decided is the Appellant's
8 allegation that the permits authorized the
9 construction of a building in violation of the
10 floor area ratio or (FAR) requirements of the
11 Zoning Regulations because DCRA failed to include
12 the top story when calculating FAR. The subject
13 property is located at 1819 Belmont Road, N.W.
14 (Square 2551, Lot 45). That complete Staff's
15 briefing Madam Chair.

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much and based on our requirement since this
18 order has been finalized and none of the Board
19 Members have participated in that July 20th
20 deliberation had personally heard the evidence
21 presented before this hearing on that appeal were
22 required to submit the draft order for exceptions

1 to all parties. That being said all of the Board
2 Members today have read and reviewed the draft
3 order and now what we'll do is we will vote to
4 send out the draft order for exceptions and we
5 will with the proposed order for an exception
6 dates of filing and serving all members by
7 February 4th and then filing responses to the
8 exceptions by February 22nd. So I will submit a
9 motion to send the draft proposed order to all
10 parties with the dates that I just read, motion
11 has been made is there a second?

12 MS. SORG: Second.

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

15 CHORUS: Aye.

16 MR. MOY: Staff would record the vote as
17 4 to 0 to 1. This on the Chairperson's motion Ms.
18 Moldenhauer to issue the proposed order for
19 exceptions seconded by the Vice Chair Ms. Sorg,
20 also in support of the motion Mr. Hinkle and Mr.
21 Anthony Hood. No other Board Members
22 participating, so again the final vote is 4 to 0

1 to 1. The two dates again Madam Chair to submit
2 comments for exceptions is February 4, 2011, any
3 responses by February 22, 2011.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Moy I believe that concludes our Morning
6 Public Meeting.

7 **Public Hearing Begins**

8 CHAIRPERSON MOLDENHAUER: This hearing
9 will please come to order, good morning ladies
10 and gentleman, this is the January 4, 2011,
11 Public Hearing of the Board of Zoning Adjustments
12 for the District of Columbia. My name is
13 Meredith Moldenhauer, Chairperson. Joining me
14 today to my left will be Nicole Sorg, Vice Chair,
15 to my right is Jeffrey Hinkle, Representative of
16 National Capital Planning Commission, and to my
17 left Representative of the Zoning Commission
18 Anthony Hood. Copies of today's meeting agenda
19 are available to you and are located to the left
20 in the wall bin near the door. Please be advised
21 this proceeding is being recorded by a court
22 reporter and is also being webcast live.

1 Accordingly we must ask you to refrain from any
2 disturbing noises or actions in the hearing room.
3 When presenting information to the Board please
4 turn on and speak into your microphone first
5 stating your name and home address. When you are
6 finished speaking please turn off your microphone
7 so that your microphone is no longer picking up
8 sounds or background noise. All persons planning
9 to testify either in support or in opposition are
10 to fill out two witness cards these cards are
11 located to my left on the table near the door and
12 on the witness tables. Upon coming forward to
13 the Board please give both cards to the court
14 reporter sitting to my right, the order of
15 procedure for special exceptions and variances
16 are as follows: The order of procedures for
17 appeals and applications for appeals are as
18 follows: 1. Statement of the Appellant and
19 Appellant's witnesses. 2. The Zoning
20 Administrator or other government officials. 3.
21 Case of the owner, lease or operator of the
22 property involved or intervener if not the

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

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

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

9 MR. MOY: Madam Chair the applications
10 before the Board there are motions, shall we say
11 telescoping motions certainly to Appeal No. 18151
12 this morning and, but I will announce that
13 Application No. 18155 of Milton Chinberg(ph sp)
14 has been withdrawn.

15 CHAIRPERSON MOLDENHAUER: Thank you then
16 before we precede all individuals wishing to
17 testify before the Board please stand and we will
18 administer the oath.

19 MR. MOY: Couldn't hear but Mr. Moy
20 administered the oath.

21 CHAIRPERSON MOLDENHAUER: Thank you Mr.
22 Moy we can call the first case then.

1 **Application No. 18153**

2 MR. MOY: Application No. 18153 of Julie
3 Norton pursuant to 11 DCMR 3104.1 for a special
4 exception to allow an addition to an existing one
5 family row dwelling under Section 223, not
6 meeting the lot occupancy Section 403, a non-
7 conforming structure Section 2001.3 requirements
8 in the DC/R4 District at premises 1461 S Street,
9 N.W., (Square 206, Lot 25). Madam Chair there is
10 the applicant's request to amend their
11 application from Section 202.10 which is
12 identified as "Exhibit 31" in your case folders.
13 Let me take that back, let me restate that, the
14 applicant's request to amend is from the off
15 street parking requirements Section 2101.1
16 identified in your case folders as "Exhibit 23".

17 CHAIRPERSON MOLDENHAUER: Thank you, if
18 the parties could introduce themselves first for
19 the record. Please go ahead.

20 MR. LAWLER: My name is Steven Lawler
21 with Lawler Architects.

22 MS. NORTON: I'm Julie Norton, the home

1 owner.

2 CHAIRPERSON MOLDENHAUER: Okay good
3 morning, actually if you could both identify your
4 home address or business address for the purposes
5 of the record as well thank you.

6 MS. NORTON: 1461 S Street, N.W.

7 MR. LAWLER: 120 4th Street, S.E.

8 CHAIRPERSON MOLDENHAUER: So in reviewing
9 this application there's two issues before we get
10 started. One which is the fact that there was
11 the change in the relief that was sought,
12 typically when sometimes if someone will submit
13 notice for a variance then they'll reduce the
14 standard to a special exception we may not
15 require re-noticing but since the standard that
16 you're submitting has increased even though you
17 have gone and submitted a lot of, a lot of due
18 diligence trying to, you've informed the ANC,
19 you've informed the DuPont Circle Conservancy and
20 you have posted for that, we still feel that out
21 of an abundance of caution we need to re-notice
22 to all of the individuals in the 200 feet

1 circumference to have that notification of the
2 variance. That being said that may be effective
3 or that may change based on my next comment. My
4 next comment is that after having reviewed this
5 case and what we'll do, I'm going to present you
6 an opportunity to kind of go through and talk
7 with us a bit but reviewing the case file I think
8 all of the Board Members in reviewing the Office
9 of Planning report, have you both had a chance to
10 review the Office of Planning report? You can
11 just acknowledge that on the record.

12 MR. LAWLER: Yes.

13 CHAIRPERSON MOLDENHAUER: Thank you, I
14 think that it's very challenging for this
15 application to satisfy the variance standard.
16 One thing I'd like to see if you could maybe talk
17 a little bit about the issue of whether or not
18 without having that public access for access to
19 the garage currently. Right now, your using
20 public space to access the garage is that
21 correct?

22 MR. LAWLER: Yes, there's a parking kind

1 of pad in front of the existing garage that's
2 right.

3 CHAIRPERSON MOLDENHAUER: Which is
4 helping provide you access instead of having to
5 gain access through the alley.

6 MR. LAWLER: That's right because the
7 alley is only 10 feet wide.

8 CHAIRPERSON MOLDENHAUER: Okay, but I
9 guess one of our questions would be if you were
10 no longer using that public space is it possible
11 or is it not possible to gain access to the
12 garage even for a single car?

13 MR. LAWLER: In order to gain access from
14 that garage from the alley the garage would need
15 to be increased in size to push us over the 70%
16 special exception size. Additionally negotiating
17 a turn from a 10 foot alley is extremely
18 difficult so that garage would, the garage itself
19 would have to be part of the turning radius of
20 the alley because 10 feet is like the width of a
21 normal parking stall in a mall or in a parking
22 lot. There's very little negotiation room

1 because we have a hard edge of a building
2 directly in back of our lot whereas the other
3 buildings along the alley have all been set back
4 and have all soft edges, so the alley actually
5 expands as it goes towards 14th Street where at
6 15th Street where we are we have a hard building
7 right up against the alley, so there's no soft
8 edge or gravel or shoulder or anything like that,
9 it's a 10 foot alley period.

10 CHAIRPERSON MOLDENHAUER: Okay, if you
11 want to demonstrate that, that would be...

12 MR. LAWLER: Here is 15th Street on the
13 bottom if you look at your sheet C2, 15th Street
14 is at the bottom of the drawing here. The alley
15 that connects 15th Street to 14th Street runs East-
16 West. The current garage is, you know, if we
17 were to make a garage that is large enough in
18 order to satisfy the D.C. Parking requirements of
19 a 9 x 19 stall it is nearly impossible to turn
20 into this garage from the alley because of the
21 alley's width. As you go further down the alley
22 the width of the alley gets wider, so at the end

1 of this building lot here which is on 15th Street,
2 the alley begins to get wider and the garages are
3 set back from the alley face. The other
4 complication is that if we expand this garage so
5 that when you come in from the alley into the
6 front the size of the garage is going to have to
7 increase to 20 feet in order to enclose the car.
8 That 20 foot depth will push the overall lot
9 coverage over 70%, so 72% approximately.

10 CHAIRPERSON MOLDENHAUER: Did the
11 applicant look into potentially, I know that HPRB
12 is requesting that you guys obviously remove the
13 concrete surface but had you looked into
14 potentially coordinating or working with OP HPRB
15 to provide some sort of paver and to continue to
16 use that public space and rent that public space
17 to gain access as you are currently gaining
18 access?

19 MR. LAWLER: That is our, I guess if you
20 want to call it our fall back, this project just
21 briefly has been in the process for about a year
22 and we have been working to satisfy the historic

1 preservation requirements, our first scheme,
2 you're looking a completely redone second scheme.
3 Our first scheme was approve by the DuPont
4 Circle Conservancy, the neighbors and the ANC 2-B
5 unanimously and the Historic Preservation
6 rejected it. We were going to add a third floor
7 and be fully compliant in every zoning capacity.
8 The current building is non-conforming it's over
9 60% but the proposed solution was going to add
10 more space to the house and be fully compliant.
11 HPRB rejected that on a 5 to 2 and so we went
12 back to the drawing board in order to get the
13 additional space that was required we filled in
14 the dog leg and you know turned what was a garage
15 into an accessory, was an accessory building but
16 using it for the home office where my client
17 works from. In trying to satisfy the
18 requirements for Historic Preservation which they
19 have a strong interest in removing this parking
20 pad which is in public space, their drive was to,
21 the Historic Preservation they weren't as
22 concerned about parking as I know zoning is

1 concerned about parking however we're required to
2 kind of balance the needs of both. So what we
3 proposed to them was to turn this into a building
4 that did not have parking and to continue to use
5 this parking pad which has been used, when my
6 client bought this property the parking pad had
7 been used as a parking space for decades. When
8 they bought the property it was represented as a
9 parking space and so when we applied for the
10 variance for lot coverage we had no idea that
11 this was no longer an allowable parking solution
12 or a legal parking spot.

13 CHAIRPERSON MOLDENHAUER: A couple of
14 different questions and a couple different points
15 maybe. One is that you could, potentially or
16 modify looking at your application continue to
17 keep one outdoor parking pad to satisfy the
18 requirement and work with OP to get some sort of
19 relief to make sure they sign off on that. What
20 you could do is you would apply for a variance so
21 just simply locate the parking off site even
22 though it's going to be right next to your

1 property not on your lot and then apply for a
2 variance for those purposes which would have less
3 of a stringent standard and I think that would be
4 something that we would be willing to take a look
5 at. The other question is the unit right now or
6 the property right now is considered a flat.
7 Because it's a flat is the reason for why it
8 requires the one parking space. This was
9 considered a single family home and I don't know
10 what the purposes are for the applicant or the
11 use of the house, but looking at the plans it was
12 described as an in-law suite and so if it's not
13 being used as an actual rental property the
14 applicant can work with your agent and determine
15 whether you want to reclassify the property as a
16 single family home. If it's a single family home
17 there's no parking requirement. So that can be
18 something that you can look at.

19 MR. LAWLER: Which agent are you
20 referring to?

21 CHAIRPERSON MOLDENHAUER: Yourself if you
22 want to obviously work with her in that regard.

1 What I'm thinking is that right now there needs
2 to be some review of the application and it needs
3 to be re-noticed, and we need to give it 45 days.

4 If you give the 45 day period you may then want
5 to re-evaluate how the case is presented in
6 regards to this variance. I think there are a
7 couple of different options as I was saying
8 either one presenting a variance for off street
9 parking and continuing to look at the parking pad
10 and public space or to potentially, I think that
11 the question is as OP states in their report,
12 this is a question of is it possible, I know that
13 you were saying that you would obviously need to
14 potentially expand the garage, but the question
15 is, is that a choice that you're making? I think
16 that's one of the problems that we're looking at.

17 Is it a choice to either have an office or
18 having parking? If you had the choice to
19 potentially change around the design and satisfy
20 the parking requirement then we were going to
21 have a really hard time satisfying the variance
22 standard versus the fact that it's a physical

1 constraint on the site which is not going to
2 permit that. It is a unique aspect to the site
3 that is not going to permit parking to exist.
4 That being said if you want to, what we can do is
5 you can, you can answer any questions, you can
6 address the Board in any and any Board Members
7 can jump in and add any additional comments that
8 they have, that might provide some additional
9 insight to the applicant. Why don't we do that
10 right now, do any Board Members have any
11 additional comments?

12 MR. LAWLER: Ma'am can I ask one question
13 first, to get back to what you were saying about
14 a single family residence versus a flat. How
15 would that change, how would we go about I guess
16 executing that direction or going in that
17 direction?

18 CHAIRPERSON MOLDENHAUER: I couldn't
19 advise you on that specifically but you can go to
20 the Office of Zoning and somebody at the Office
21 of Zoning after today's hearing could walk you
22 through the different options and could work with

1 you on that. Obviously what we're trying to do
2 is we're looking at the application and sometimes
3 you look at the application and say there's just
4 no way to grant this but sometimes you try to see
5 if there's other ways or other aspects where you
6 can look at the application and see a way that
7 maybe it could be approved but we can't obviously
8 provide specific advice but you can obviously go
9 to the office, go across the hall and someone
10 will walk you through that and Cliff would
11 definitely help you with doing that. Then what
12 you can do is we can then re-notice the
13 application whether it's maintaining the current
14 application with the additional variance the way
15 it is right now before us and re-noticing that
16 for 45 days or whether it is potentially
17 modifying your application in someway or your
18 plans in someway to either show parking or to
19 show some other type of variance request that
20 you're going to be seeking. Then you can come
21 back before the Board and hear the case once the
22 notice requirement is satisfied.

1 MR. LAWLER: What if we with the variance
2 component of this application put aside for a
3 second.

4 CHAIRPERSON MOLDENHAUER: We could hear
5 the 223 today.

6 MR. LAWLER: I would like to go ahead
7 with the 223 as a special exception request.

8 MS. NORTON: I'm just a little confused;
9 this is single family residence my mother and my
10 uncle live in the basement so it's not a rental
11 property. So if we reclassify it as a single
12 family home this parking situation will go away,
13 is that what you mean?

14 CHAIRPERSON MOLDENHAUER: The parking
15 requirement, and OAG can confirm for me, but the
16 parking requirement is part of 2001.1 the
17 regulations require one space for each two
18 dwelling units in a flat use. So since this is
19 considered, and I don't know how you bought the
20 property but you bought the property as a flat.
21 Whether your using it in that way or not right
22 now based on documentation I have before me that

1 you have a two-story dwelling which is a flat
2 with a one unit in the basement. So whether
3 you're using it for your in-laws and not renting
4 it, that's a question you need to review. There
5 are a lot of implications if you go to a single
6 family home.

7 MS. GLAZER: I don't know if the Board
8 got to the issue that OP raised and that OAG
9 discussed with the Board about relief from the
10 2100.10?

11 CHAIRPERSON MOLDENHAUER: 2100.10 is also
12 a statement which says that since the house was
13 built and it's pretty much grandfathered for
14 having not requiring parking at the time it was
15 built but since parking did exist at that time if
16 you remove the parking...

17 MS. GLAZER: If they change it to...

18 CHAIRPERSON MOLDENHAUER: If you remove
19 the parking you have to maintain the parking that
20 previously existed. You have to keep what you
21 have but it's based on the requirement under the
22 regulations and if this was a single family home

1 where there are no requirements then again I
2 think this needs to be reviewed in more depth.

3 MR. JACKSON: Madam Chair, I'm sorry...

4 CHAIRPERSON MOLDENHAUER: Please if you
5 can chime in.

6 MR. JACKSON: Happy New Year, my name is
7 Arthur Jackson, with the Office of Planning. I
8 just wanted to note that there is in all
9 Districts of the regulations for one family
10 dwelling you need to have one parking space.
11 What happens with a flat is the requirement does
12 not increase, so if they have a flat on the
13 property that doesn't require them to add an
14 additional parking space but there is a minimum
15 requirement of one parking space currently in the
16 regulations for a single family dwelling. Now to
17 reference the OP report was just saying based on
18 what the use is classified as this is the
19 requirement. So in light of the condition to
20 retain the existing parking onsite inline with
21 the existing requirement they still only need to
22 have one space. So for example the garage was

1 designed for two spaces, they don't have to keep
2 to spaces, just one. I just want to make that
3 clarification.

4 MS. GLAZER: Madam Chair obviously
5 there's some confusion, I think OAG will have to
6 consult further with the Board on this legal
7 issue and I'll leave it at that.

8 CHAIRPERSON MOLDENHAUER: I think what we
9 have to do here no matter what this needs to be
10 if the variance goes forward it needs to be
11 addressed. You have the option if you want to
12 move forward on the 223 this morning. That being
13 said if plans do change, if they decide to modify
14 the plans at all that 223 is locked in with the
15 current design, so if you end up having to modify
16 anything you then would have to come back before
17 the Board again, so it might be beneficial to
18 still wait and not move forward on the 223 today
19 and that way we can obviously, you can re-notice
20 the entire application. We're talking about just
21 simply 45 days, we're talking about a March 1st
22 hearing, we could squeeze you in for March 1st.

1 Why don't we do that, are you both available for
2 March 1st?

3 CHAIRPERSON MOLDENHAUER: I understand
4 but we have, you do have the requirement to
5 notice all of the individuals in your surrounding
6 community and no matter what the currently
7 application has an additional relief which is
8 your variance parking relief and since you did
9 not notice those individuals we have to go back
10 and we have to notice those individuals which is
11 a 45 day notice period, which would be February
12 22nd but providing you may be a week or so to
13 figure out exactly what you want to do we're
14 talking about a March 1st deadline.

15 MS. NORTON: Can you tell me how to do
16 this because I'm lost.

17 MR. LAWLER: Additionally when we found
18 out that we needed to amend our application I
19 talked to Mr. Nero in the Zoning Office and asked
20 him that question specifically if we would need
21 to change the posting or do some other aspect,
22 some other administrative aspect to satisfy the

1 requirements and he said no and he gave me new
2 text to put on the sign for the posting, we
3 complied fully with the posting and the sign out
4 front with the amended application, furnished
5 photographs, we did everything that we were told
6 to do, and if they had told us that we needed to
7 reissue letters to all the surrounding people
8 then we of course would have waited we wouldn't
9 have wasted your time or ours in coming here
10 today.

11 MS. NORTON: Additionally we also got our
12 immediate neighbors, from them we have letters.
13 We did go back to the neighbor immediately and
14 inform them that the parking issue had come up
15 and got letters of support regarding that as
16 well, I just feel like we have made every good
17 faith effort that we could possibly make.

18 CHAIRPERSON MOLDENHAUER: I understand
19 the fact that you have and you did go and you did
20 modify your posting however not everybody
21 observes postings which is why we have to send
22 out the 200 foot notice requirement. I don't

1 know what Mr. Nero told you but obviously the
2 decision is with the Board. Mr. Hood who was
3 before the Zoning Commission last night had a
4 situation where if someone may not have attended
5 an ANC meeting but did have some concerns we
6 actually even just this morning received a letter
7 just so that your on notice of this, I'm sure
8 you'll get a copy of this later on today. But
9 this is from a Kathleen Andrews indicating that
10 she objects and recommends denial of the
11 application, who indicated that she's a neighbor
12 on 15th and Swann, she doesn't provide her
13 specific address. We are required to make sure
14 that the posting occurs and at an abundance of
15 caution that has to occur. It's required by the
16 statute and if somebody may not have attended the
17 ANC meetings or may not have seen your modified
18 posting because they say oh well I got the letter
19 already and the letter said this and I'm fine
20 with that but all of a sudden now there's the
21 additional information on the parking, and the
22 public needs to be informed of that. So I'm

1 sorry if Mr. Nero pointed you in the direction
2 where obviously the Board is different from that
3 but the Board is going to be the final decision
4 maker and I think all Board Members and if
5 anybody wants to jump in.

6 MR. HOOD: I would agree with your
7 assessment actually in this situation and
8 especially in lieu of what we've seen with
9 Kathleen Andrews who obviously is one of the
10 neighbors. I think the, and it's very
11 unfortunate and I understand that this applicant
12 has been through a lot but we also have
13 requirements, and I'm not sure how far they've
14 been working with Office of Planning and I would
15 agree to you not giving them insight on how to
16 move with this case because typically you have to
17 make a decision on it so you can advise them,
18 cause a lot of times if you advise them they'll
19 come back down and say oh this is what you told
20 me to do, so I think to work with Office of
21 Planning is exactly the way to proceed, I'm
22 sorry, from my standpoint I'm sorry that you had

1 to go through this but there are regulations with
2 HPRB and there are regulations in the Zoning that
3 you have to deal with, it's probably doable, Mr.
4 Jackson is great he gets it done I've been here
5 13 years I wouldn't say that if it's not true.
6 That little more time may be able to get you to
7 achieve what you're trying to get, thank you.

8 CHAIRPERSON MOLDENHAUER: So thank you,
9 with that being said what we're going to do is
10 we're going to postpone this to March 1st, the
11 Zoning Office will issue, you don't have to issue
12 the notices the Zoning Office will reissue the
13 notices. All you have to do is work with them to
14 confirm what the relief that is being sought is
15 requested is on the notification. So that being
16 said we'll put this case on for, I think it's the
17 morning.

18 MR. LAWLER: Excuse me for one second may
19 I speak with my client for one moment?

20 CHAIRPERSON MOLDENHAUER: Sure.

21 MR. LAWLER; Excuse me I have one
22 additional question and that is if we chose to go

1 ahead on the 223 special exception application
2 and there is some additional space required but
3 still under the 70% threshold so right now we're
4 requesting a 67% lot occupancy if we went up to
5 say 70% would that trigger a revisit back here?

6 CHAIRPERSON MOLDENHAUER: Any change in
7 the plans would trigger that fact that you'd have
8 to come back before the Board. Even the smallest
9 change, the plans that you would present today
10 would have to be built as they are shown on the
11 plan. If you change it in anyway then obviously
12 you'd have to come back, so that's one of the
13 reasons why we'd recommend to hold off, because
14 if you do want to tweak the plans slightly to try
15 to accommodate or to revisit the parking the
16 issue we think it's best to hold off.

17 MR. LAWLER: So it would only if we
18 change the plans in anyway as it relates to
19 zoning if there's not zoning change we wouldn't
20 be required to come back.

21 CHAIRPERSON MOLDENHAUER: If the plans
22 change in anyway our approval is subject to plans

1 presented before us. So if the plans are changed
2 exteriorly, if they're changed then you have to
3 come back before us.

4 MS. NORTON: Can you rule on just the
5 plan of the main house and rule the garage and
6 parking situation as a separate matter.

7 CHAIRPERSON MOLDENHAUER: To try...

8 MS. NORTON: I'm just begging you because
9 I have been going through this for so long and
10 we're going to lose another couple months when we
11 could at least be planning the residence, at
12 least finishing the drawing for the residence.

13 MS. SORG: I think I'll just jump in,
14 unfortunately, I understand your situation and we
15 are believe me all very sensitive to it, but as
16 the Chair is indicating is what we vote on is a
17 set of plans so the set of plans that's in our
18 file that we vote on has to be what the order is
19 for, so if you wanted to just to the house we
20 would have to have plans with just the house
21 unfortunately.

22 CHAIRPERSON MOLDENHAUER: I understand

1 the fact that there is obviously time delay but
2 what we're trying to do is we're trying to make
3 this as expedite as possible when you come back
4 obviously, you know we can handle the case we'll
5 address all the issues at that one day. You can
6 even at that time request a bench decision and so
7 that way I can potentially speed things up.
8 That's all I can provide in regards to trying to
9 alleviate the delay. That being said I think
10 we're going to put this on for the afternoon of
11 March 1st so it will be the third case in the
12 afternoon, our afternoon starts at 1 o'clock on
13 March 1st. That will give you enough time to
14 notice and to satisfy the 45 day requirement.
15 Thank you and I apologize for the delay, I
16 understand your frustration but when you come
17 back on the 1st hopefully we can wrap this up and
18 you can move forward.

19 MR. LAWLER: Do we need to go back to the
20 Office of Zoning to re-file? What do we need to
21 do from an administrative perspective to meet the
22 March 1st deadline?

1 CHAIRPERSON MOLDENHAUER: You need to
2 obviously work with your client and figure out
3 what you want to do, if you're not going to
4 change the plans or the relief that's being
5 currently requested you just simply need to
6 notify them and say please send out the 45 day
7 notice. If you are going to work with OP and
8 potentially make some changes you have to do that
9 within the next week or so and then as soon as
10 you finalize those changes get that information
11 out to the Office of Zoning so that they can send
12 out potentially a different relief that's being
13 requested if that changes at all today.

14 MS. NORTON: I'm not trying to be
15 difficult but I still don't you mentioned some
16 guidance or that you had to figure things out
17 among yourselves I mean are we going to get the
18 benefit of your opinion on this so that we can
19 factor that into how we chose to proceed. Maybe
20 Steve knows what to do but I don't know what to
21 do.

22 MR. MOY: Madam Chair with my help, after

1 today's hearing I can get together with the
2 parties and we can discuss.

3 MS. NORTON: We have been in this zoning,
4 HPRB purgatory for a year.

5 CHAIRPERSON MOLDENHAUER: I understand
6 but this is the first time that you guys are
7 before us. Again we understand, as Chairman Hood
8 was indicating we understand the delay but this
9 is the first time this case is before us, this is
10 the first time that we're reviewing it and so I
11 understand the timeframe it takes to go through
12 all the other branches but we're looking at it
13 fresh today. I know it's been going on we don't
14 see the timeframe before us, we're just looking
15 at it from today forward and we're trying to
16 address this as quickly as we can. Thank you
17 very much. We'll call the next case for the
18 morning.

19 **Appeal No. 18151**

20 MR. MOY: Yes that would be Appeal No.
21 18151 of VanNess South Tenants Association
22 pursuant to 11 DCMR 3100 and 3101 from an August

1 13, 2010, decision by the Director of the
2 Department of Consumer and Regulatory Affairs to
3 grant building permit No. B1009105 allowing the
4 renovation of an existing apartment building for
5 dormitory use for the University of the District
6 of Columbia Students in the R-5-D District at
7 premises 3003 VanNess Street, N.W. the property
8 is in (Square 2049, Lot 806).

9 CHAIRPERSON MOLDENHAUER: Good morning,
10 how is everyone doing? What we'll do is we'll
11 start off on my right and we'll do introductions
12 down the table indicating your name and home
13 address please or office address.

14 MR. SURBIAN: Assistant Attorney General
15 Jay Surabian on behalf of DCRA and do you need my
16 address? 1100 4th Street, S.W., Washington, D.C.

17 MR. KOPECKY: David Kopecky, Assistant
18 General Manager of Archstone VanNess 3003 VanNess
19 Street, N.W.

20 MR. BROWN: Patrick Brown on behalf of
21 the property owners Smith Property Holding
22 VanNess 1620 L Street, N.W. Washington, D.C.

1 MS. PERRY: Karen Perry I'm a resident at
2 3003 VanNess Street.

3 MS. PRINCE: Allison Prince of Goldstein
4 and Storr's on behalf of the University of the
5 District of Columbia.

6 MR. AVITABILE: Dave Avitabile also with
7 Goldstein and Storrs on behalf of the University
8 of the District of Columbia.

9 CHAIRPERSON MOLDENHAUER: Okay we have a
10 couple of preliminary matters in this case. One
11 are the request for intervenor obviously both
12 interveners are recognized as integral parties in
13 this case so we will just, I see a consensus of
14 the Board Members and we'll address that grant
15 intervenor status, everybody both the Smith
16 Properties and UDC and we'll move forward now
17 that all individuals are parties to the case what
18 we'll do is we'll address the first motion. Ms.
19 Perry I'll turn to you to articulate the request
20 for postponement and then I'll turn to the other
21 parties. We obviously already have written
22 motions from everybody addressing potential

1 request for postponement then opposition but
2 we'll hear about, lets' say we'll try to keep
3 everybody to maybe a 5 minute statement on the
4 issue and then we'll address that and either move
5 forward or determine on how we move forward for
6 the day, so Ms. Perry.

7 MS. PERRY: Hi Ms. Moldenhauer and
8 Members of the Board. I'm actually here by
9 default, I was here actually for the Milton
10 Shemberg case as the ANC Commissioner which I'd
11 found out here that it was withdrawn today, so
12 that's why I was going to be here to begin with,
13 so I was asked just to come here and represent
14 Mr. Letterer at the same time. From what I
15 understand in speaking with him, he's a single
16 practitioner, they had this change in the order
17 which I think Ms. Prince pointed to yesterday but
18 I spoke to him last night after I read that and
19 he told me that what he's doing is he's tied up
20 in preliminary motions, there's discovery going
21 on in the case, there also before the licensing
22 board and the governor who's in favor of it and

1 he's representing the union and that he just
2 could not be here today to represent the tenant
3 association. One of the other witnesses that
4 they had just couldn't take off more time from
5 work after the holidays. That's all I really can
6 say because I wasn't a party to the case, it did
7 not come to the ANC by anybody but since I was
8 going to be here. I heard there was prehearing
9 motions, he told me, discovery witness
10 preparation going on and that he's back and forth
11 to Vermont. One other thing I don't think UDC is
12 prejudiced in anyway because they are continuing
13 to rent apartments at VanNess South, so it's not
14 like the 21 apartments, the appeal has prejudiced
15 them in anyway they do have more apartments there
16 and are continuing to rent.

17 CHAIRPERSON MOLDENHAUER: Thank you Ms.
18 Perry, Mr. Brown?

19 MR. BROWN: I think the point I focused
20 in on in my opposition to the continuance is that
21 this appeal is not being brought by Mr. Letterer
22 personally but being brought on behalf of a well

1 established organization. Mr. Letterer is not
2 their counsel he's just a member of that
3 organization he hasn't held himself out as their
4 counsel so whether Mr. Letterer is available or
5 unavailable which is not entirely clear to me and
6 certainly he had more notice than he gave any of
7 us about this. The VanNess South Tenants
8 Association should have the ability and has the
9 ability and the responsibility to move forward in
10 his absence and as a result of this occurring at
11 the last minute besides the prejudice of having
12 this hanging over my clients head and UDC and
13 DCRA we're all here this morning, I'm here, Mr.
14 Kopecky's here one of the other officials from
15 the property owner is here and that's an
16 extensive expenditure of resources that is in
17 fact prejudicial to everybody involved. This is
18 I think a relatively simple case and VanNess has
19 the obligation to move forward now, not three
20 months from now which is entirely unreasonable
21 and excessive as I pointed out. If in fact you
22 felt a need to postpone it looking at your

1 calendar January 11th, next Tuesday looks light,
2 this is not a big case that would be less
3 prejudicial to move forward quickly but I think
4 this is certainly a basis for moving forward
5 today.

6 CHAIRPERSON MOLDENHAUER: Thank you, Mr.
7 Surabian.

8 MR. SURABIAN: I think, I have the Deputy
9 Chief Building Inspector here and the Zoning
10 Administrators coming in a moment and I think the
11 most efficient thing would be to move forward
12 today but I don't have a strong formal objection
13 to one way or the other.

14 CHAIRPERSON MOLDENHAUER: Thank you, Ms.
15 Prince.

16 MR. AVITABILE: You know I think our
17 letter spoke for itself it's really more, it's
18 the fact that Mr. Letterer obviously knew well
19 ahead of time and didn't actually chose to
20 informs us until after all of the other parties
21 had taken the time to prepare their prehearing
22 statements and filed them, it was only at that

1 point that he thought to say hey, by the way I
2 can't be there. There's prejudice to our client
3 and the fact that we have to wait three more
4 months, they have to pay for us to come back
5 again, Archstone has to pay for their attorney's
6 to come back again but I think it's also a, it's
7 an issue of common courtesy, and I think we
8 thought it was important that the Board
9 understand that we all should have known this
10 ahead of time, instead he waited until after, as
11 I said, we showed our cards and then decided to
12 let us all know that he wasn't going to show up
13 today. I understand that he's busy, we're all
14 busy too and particularly given the time of year
15 I think it would have been a nice courtesy to
16 extend it to everyone else. So given that I
17 don't see why they should benefit from a two to
18 three month delay where we all have to wait in
19 limbo and wait for this matter which is otherwise
20 a very simple matter as resolved.

21 CHAIRPERSON MOLDENHAUER: Thank you I
22 appreciate everybody taking the time to go

1 through and orally discuss the motions, as I said
2 I think the motions had been fairly well briefed
3 in writing. What we'll do is I think we will
4 just finally deliberate on this right now and
5 make a decision, while I am definitely frustrated
6 not just that there was a late notice for
7 postponement but also that unfortunately the
8 Appellant has no one really here on their behalf.
9 Ms. Perry I appreciate your attending today but...

10 MS. PERRY: I'm here by default I was
11 here for another case.

12 CHAIRPERSON MOLDENHAUER: And I recognize
13 that...

14 MS. PERRY: I feel just as bad that I
15 didn't know my other case had been cancelled; I
16 could have slept in this morning. I came here a
17 month ago as many of you know and we were here
18 our ANC was prepared to go forth with testimony
19 and had a lot of witnesses here with us and he
20 postponed the Adams case at the request of the
21 developer at the last minute. So I feel their
22 frustration but you'd have to know Brian Letterer

1 to understand.

2 CHAIRPERSON MOLDENHAUER: Again as I said
3 just so that Mr. Letterer or anybody else from
4 the Appellant can review this testimony I'm
5 definitely just saying that I find it very
6 disheartening that no one came as somebody that's
7 actually asserting a claim that no one, anybody
8 in a large association such as that would be
9 present.

10 MR. PERRY: Mr. Brown characterized it as
11 a large association it really isn't. It's a six
12 or seven member board, everybody that works;
13 Brian is the only attorney on the board.

14 CHAIRPERSON MOLDENHAUER: But it is a six
15 member board where somebody could attend today.
16 So you are on the board okay.

17 MS. PERRY: I excused myself in this case
18 because I'm also the ANC Commissioner and not
19 knowing whether people would bring it to the ANC
20 I just, I try to stay as neutral as I can.

21 CHAIRPERSON MOLDENHAUER: Well that being
22 said I think that without having, needing the

1 Appellant to be present obviously while the
2 request for a March or April time frame is
3 absolutely unreasonable what we'll do is I think
4 we'll identify, look at the party's and see if
5 either February 1st or February 8th is available
6 for either party. Let me know if that date is
7 inconvenient for everybody.

8 MR. BROWN: Madam, Chairman not to be
9 difficult or more difficult than I already am
10 that's a month, we've got dates, I know your not
11 meeting on the 18th but you've got dates on the
12 11th and the 25th of this month, that would
13 certainly be a better scheduling compromise.

14 CHAIRPERSON MOLDENHAUER: The letter from
15 MR. Letterer indicated that he was going to be
16 busy the first two weeks of January which would
17 take out the 11th, then we have no hearings on the
18 18th or the 25th and then the 25th is actually
19 quite full in the afternoon, we have nothing
20 going on that morning. So I'm providing the next
21 most reasonable date for our calendar which would
22 be February 1st or February 8th.

1 MR. BROWN: But following up on your
2 comments I think you recognize that VanNess
3 Tenants Association is not just Mr. Letterer.

4 CHAIRPERSON MOLDENHAUER: I do however he
5 is someone that is representing himself to be
6 their spokesperson obviously maybe not
7 specifically their counsel but he is an attorney
8 and so recognizing that I think that we're
9 looking at either the February 1st or February 8th,
10 is there any conflict on those specific dates for
11 any of the parties?

12 MR. AVITABILE: February 1st works for
13 us, there is a conflict on the 8th.

14 MR. BROWN: February 1st will work.

15 MR. SURABIAN: February 1st is fine.

16 CHAIRPERSON MOLDENHAUER: Okay, Ms. Perry
17 did Mr. Letterer provide you with any dates, he
18 indicated in his letter that he was going to do
19 that, so then this will be scheduled for the
20 afternoon February 1st, we'll be the first case in
21 the afternoon.

22 MR. AVITABILE: Chairperson Moldenhauer

1 one additional question which is regarding
2 VanNess South Tenants Association failed to file
3 any prehearing statement any additional evidence
4 they were required to do that 14 days prior to
5 the original hearing. What we're a little
6 concerned about is that they're going to drop
7 something at the last minute. The burden of
8 proof is on them and they've already missed their
9 deadline, they were supposed to meet. So I guess
10 we want a sense from the Board at least of what
11 you expect from them so that we can plan our
12 schedules in terms of when we need to be prepared
13 to file a response if any?

14 CHAIRPERSON MOLDENHAUER: Yeah, I
15 appreciate that, what we'll do is I will indicate
16 that while I'm not going to grant any relief if
17 they want to file something and request relief
18 from the deadline they've already missed which
19 they'd have to actually do and provide good cause
20 as to why they missed the prior deadline. That
21 would have to be filed by Friday, January 14th and
22 that would provide sufficient timeframe for any

1 parties to file any responses so we would have
2 time to review that before the hearing on the
3 first.

4 MR. BROWN: Madam Chair responses will be
5 due seven days before the hearing, so that would
6 be Tuesday the 25th.

7 CHAIRPERSON MOLDENHAUER: Yes, okay so
8 everyone understands the timeframes, I'll ask Ms.
9 Perry to provide that information back to...

10 MS. PERRY: I'm just not clear on one
11 thing, they have to file a prehearing statement,
12 or they were supposed to?

13 CHAIRPERSON MOLDENHAUER: They're
14 required to and they are required to identify all
15 information that they will be presenting. Now
16 since they failed to do that they're actually
17 going to have to seek relief from that missed
18 deadline, now I'm not telling you right now
19 whether I'm going to grant that relief or not but
20 you need to provide good cause and explain to us
21 why you've missed that and then request that
22 obviously that information be admitted to the

1 record.

2 MS. PERRY: Okay.

3 CHAIRPERSON MOLDENHAUER: Then assuming
4 that you do that articulating timeframes for
5 responses for everybody so the Board has enough
6 time to do that prior to meeting. That being
7 said I think this should be able to be taken care
8 of quite swiftly on the first and we will see
9 everybody back here on the afternoon of the
10 first. I just want to make sure that Ms. Perry
11 that you understand that the Board absolutely
12 wants to see a prehearing statement, yes they
13 have to do that, so the only issue that I'm
14 saying is that I also want to see good cause as
15 to why it was late, OAG is just making sure that
16 I'm very clear because we want to understand what
17 the case is before we get in and have to go
18 through everything so I just want to make sure
19 that that is clear on the record and there is no
20 confusion.

21 MS. PERRY: I promise I will relay the
22 message as strongly as possible. I'm not

1 thrilled either with being here.

2 MR. BROWN: Looking ahead slightly
3 defensive posture but I want to guard against the
4 possibility that we find a recurrence of this
5 scheduling conflict for Mr. Letterer.

6 CHAIRPERSON MOLDENHAUER: Someone must be
7 present on February 1st and this case will go
8 forward on February 1st whether for some reason
9 there's a conflict, I'm looking to the
10 association to have somebody present and prepared
11 their case in some which way or form so that is,
12 thank you for letting me clarify that on the
13 record.

14 MR. BROWN: Thank you.

15 CHAIRPERSON MOLDENHAUER: So this case is
16 then concluded and that will conclude our morning
17 for today at an early time.

18 MS. PERRY: Can I just ask one question
19 it has nothing to do with this case. Why did the
20 Shemberg case get withdrawn?

21 CHAIRPERSON MOLDENHAUER: If you can ask
22 that off the record to Mr. Moy on the side, thank

1 you very much.

2 **Afternoon Session**

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

1 finished speaking please turn off your microphone
2 so that your microphone is no longer picking up
3 sounds or background noise. All persons planning
4 to testify either in support or in opposition are
5 to fill out two witness cards these cards are
6 located to my left on the table near the door and
7 on the witness tables. Upon coming forward to
8 the Board please give both cards to the court
9 reporter sitting to my right, the order of
10 procedure for appeal applications are as follows:
11 1. Statement of the Appellant and the Appellant's
12 witnesses. 2. The Zoning Administrators Case
13 3. The case of the owner, leasee, and operator of
14 the property involved, intervener, if not the
15 Appellant. 4. Other interveners in the case if
16 permitted by the Board. 5. The ANC on which the
17 property is located. 6. Rebuttal and closing
18 statements from the Appellant. Pursuant to
19 Section 3117.4 and 3117.5 the following time
20 constraints will be maintained: The Appellant,
21 persons and parties except an ANC in support and
22 including witnesses will be permitted 60 minutes

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

1 accepted by the Board. The Sunshine Act requires
2 that the public hearing on each case be held in
3 the open before the public. The Board may
4 consistent with its rules and procedures and the
5 Sunshine Act enter into Executive Session during
6 or after a hearing on a case for purposes of
7 reviewing the record or deliberating on a case.
8 The decision of the Board as in these contested
9 cases must be based exclusively on the record, to
10 avoid any appearance to the contrary the Board
11 requests that persons present not engage the
12 members of the Board in conversation. Please
13 turn off all beepers and cell phones at this time
14 as to not disturb these proceedings. The Board
15 will make every effort to conclude the Public
16 Hearing as near as possible to 6 pm if the
17 afternoon cases are not completed at 6 pm the
18 Board will assess whether it can complete the
19 pending case or cases remaining on the agenda.
20 At this time the Board will consider any
21 preliminary matters, preliminary matters relate
22 to whether a case should or will be heard today

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

7 MR. MOY: Good afternoon Madam Chair and
8 Members of the Board, yes there are, there are
9 motions to dismiss as well as other shall we say
10 telescoping motions as the only case for the
11 afternoon Staff would suggest that you take it up
12 when the case is called.

13 CHAIRPERSON MOLDENHAUER: Thank you then
14 what we'll do all individuals wishing to testify
15 before the Board please stand and the oath will
16 be administered.

17 MR. MOY: Oath given by Mr. Moy.

18 CHAIRPERSON MOLDENHAUER: We can call the
19 first case and the parties can step forward to
20 the table.

21 **Appeal No. 18154**

22 MR. MOY: That case would be Appeal No.

1 18154, this is the appeal of the Capital Hill
2 Restoration Society pursuant to 11 DCMR 3100 and
3 3101 from an October 13, 2010, decision by the
4 Department of Consumer and Regulatory Affairs to
5 grant a building permit, BLDG Permit No. B1008586
6 under the Fair Housing Act, allowing an addition
7 to a one family Row Dwelling in the R-4 District
8 at premises 1363 Massachusetts Avenue, S.E.
9 (Square 1037, Lot 73)

10 CHAIRPERSON MOLDENHAUER: We'll start off
11 to my left if all the parties at the table can
12 introduce themselves stating their name and home
13 address please.

14 MR. GARRISON: My name is David Garrison
15 I'm the Chair of ANC 6-B, I live at 8 4th Street,
16 S.E.

17 MR. O'DONNELL: I'm Mark O'Donnell the
18 next door neighbor at 1359 Massachusetts Avenue,
19 S.E.

20 MR. PETERSON: I'm Gary Peterson; I'm
21 Chair of the Capital Hill Restoration Society and
22 will be representing the Society today.

1 MR. LEGRANT: Matthew LeGrant, I'm the
2 Zoning Administrator with the Department of
3 Consumer and Regulatory Affairs.

4 MR. SURABIAN: Assistant Attorney General
5 Jay Surabian, on behalf of DCRA.

6 MS. BOLLING: Good afternoon Madam Chair,
7 Board Members, Melinda Bolling, DCRA General
8 Counsel.

9 CHAIRPERSON MOLDENHAUER: Thank you we
10 have a preliminary matter in this case as Mr. Moy
11 indicated, a preliminary matter is a motion
12 before us, motion to dismiss. Before we hear any
13 testimony the Board will first deliberate on this
14 motion and discuss the pertaining issues. We
15 have a question as to whether or not we have
16 jurisdiction, so obviously I think that's the
17 major issue that I see in the motion to dismiss,
18 that was raised in a question that obviously, I
19 have reviewed as to whether or not we have the
20 ability to review this case at all. The Board's
21 jurisdiction is limited and so one thing that I
22 did is I took a look at an old case that was

1 provided to us which is Appeal No. 03-001 and
2 this was a case which I think addressed a similar
3 issue as to whether or not in that case whether
4 the Board had the subject matter jurisdiction to
5 address a, in this case a notice of infraction
6 here dealing with a permit and FHA approval. In
7 that case what was determined was that the
8 Board's jurisdiction is only limited to reviewing
9 administrative decisions based in whole or in
10 part upon the zoning regulations or MAPS and that
11 we do not have the authority to hear any type of
12 case that arises out of a reference to or in
13 regards to the Zoning Act. In this case before
14 us today, this has to do with the Zoning Act and
15 FHA and so based on my review and following this
16 courts appeal case I would conclude that we do
17 not have the jurisdiction and that the Board is
18 not empowered to create jurisdiction where there
19 is none. That is something that we have
20 evaluated in other cases and so if we lack
21 jurisdiction we can't even look to any of the
22 other issues that were raised both in the motion

1 to dismiss and on the merits. That being said
2 I'll open up the floor to any other Board Members
3 for them to touch upon this issue.

4 MS. SORG: Thank you Madam Chair, I also I
5 agree with your analysis of the motions that have
6 been submitted and I don't think I would have
7 anything else to add.

8 CHAIRPERSON MOLDENHAUER: Since we don't
9 have jurisdiction I'm not going to open up the
10 floor for any additional discussion on the issue
11 since obviously we can't get into the merits of
12 the case so what I'm going to do I'm going to
13 submit a motion to the Board Members a motion to
14 deny this appeal for lack of subject matter
15 jurisdiction, a motion has been made is there a
16 second?

17 MS. NAGLEHOUT: Madam Chair I believe
18 you'd be dismissing.

19 CHAIRPERSON MOLDENHAUER: I'm sorry,
20 thank you a motion to dismiss the case for a lack
21 of subject matter jurisdiction. A motion has
22 been made is there a second?

1 MS. SORG: Second.

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

4 CHORUS: Aye.

5 MR. MOY: Staff would record the vote as
6 4 to 0 to 1, this is on the motion of the
7 Chairperson Ms. Moldenhauer to dismiss the appeal
8 for lack of jurisdiction, second the motion Ms.
9 Sorg the Vice Chair, also in support of the
10 motion Mr. Hinkle and Mr. Hood. No other Board
11 Members participating, so again the final vote is
12 4 to 0 to 1.

13 CHAIRPERSON MOLDENHAUER: Thank you and
14 obviously we have only the ability to vote on
15 those things that we have jurisdiction on I hope
16 that obviously the parties can pursue the case in
17 a forum. Thank you very much for coming down
18 today and this case has been dismissed. We have
19 one more matter before us this afternoon which is
20 to address the issues of Chairmanships and Vice
21 Chairmanships, so what I'll do is we have to
22 present a nomination for Chair and I'll open up

1 to the Board Members for any nominations.

2 MS. SORG: Thank you Madam Chair I would
3 be pleased to nominate Meredith Moldenhauer for
4 the position of Chair and also would note that it
5 has been a pleasure working with you in that
6 capacity so far.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much. So there's a nomination is there any other
9 nominations?

10 MR. HOOD: Madam Chair I would just like
11 to I don't know if this is appropriate but I
12 would like to agree with Vice Chair, Ms. Sorg and
13 also mention that we can do it in one motion. I
14 would also in that motion like to further
15 (inaudible) amendment to nominate Nicky Sorg for
16 Vice Chairperson, we can do it all in one motion.

17 CHAIRPERSON MOLDENHAUER: Absolutely I
18 would second that motion to nominate Ms. Sorg,
19 she's done a great job so then I'll submit a
20 motion to confirm or appoint myself as Chair and
21 Ms. Sorg as Vice Chair. A motion has been made
22 is there a second?

1 MR. HINKLE: Madam Chair I'll second
2 that.

3 CHAIRPERSON MOLDENHAUER: Fabulous thank
4 you very much, all those in favor say aye.

5 CHORUS: Aye.

6 MR. MOY: Staff would record the vote as
7 4 to 0 to 1 this is on the motion of the Chair
8 Ms. Moldenhauer for the Chairmanship and the Vice
9 Chairpersonship in this case, that second motion
10 was Mr. Hinkle support of that motion Ms. Sorg
11 and Mr. Hood again 4 to 0 to 1, congratulations.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much, congratulations Ms. Sorg.

14 MS. SORG: Thank you and to you also.

15 CHAIRPERSON MOLDENHAUER: Then that
16 concludes our business for today and we will
17 reconvene next Tuesday, thank you.

18 END 1:40

19 llz

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