

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 8, 2012

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Lloyd J. Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
RASHIDA MacMURRAY, Board Member
JEFFERY HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

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

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVEN COCHRAN
ARTHUR JACKSON

The transcript constitutes the
minutes from the Public Hearing held on May
8, 2012.

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

9:41 a.m.

CHAIRPERSON JORDAN: Good morning.

Would this hearing please come to order.

We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is May 8, 2012, for the public hearing of the Board of Zoning Adjustment, the District of Columbia.

My name is Lloyd Jordan, Chairperson. To the right of me is Rashida MacMurray. To the right of her is Jeffrey Hinkle, both Board members.

Please be advised that this proceeding is being recorded by a court reporter and is also being webcast live. Accordingly, we must ask that you refrain from any disruptive noise or actions in the hearing room. The Board hearing procedures and how we will process applications can be found on the table in the back by the door.

Let's begin today's hearing

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1 agenda. All individuals wishing to testify
2 today, please raise and take the oath.

3 Mr. Secretary, would you please
4 administer that.

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

9 WITNESSES: I do.

10 MR. MOY: Ladies and gentlemen,
11 you may consider yourself under oath.

12 CHAIRPERSON JORDAN: We'll handle
13 any preliminary matters with the cases as
14 called.

15 MR. MOY: Very good. Thank you,
16 Mr. Chairman. With that, good morning. Good
17 morning to the Board members.

18 The first application before the
19 Board is continued hearing from last Tuesday,
20 Application 18273-A.

21 This is a request for a
22 modification of approved plans for Application

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1 No. 18273 of 1328-1330 Wisconsin Ave., LLC, et
2 al, pursuant to 11 DCMR 3103.2, for a variance
3 from the floor area ratio requirements under
4 Section 771, a variance from the lot occupancy
5 requirements under Section 772, and a variance
6 from the rear yard requirements under Section
7 774, to allow rear additions to existing
8 buildings in the C-2-A District at premises
9 1328, 1330, 1332, and 1336 Wisconsin Avenue,
10 N.W. Property located in Square 1231, Lots
11 824 and 8453.

12 CHAIRPERSON JORDAN: Very good.
13 Good morning, Mr. Sullivan.

14 MR. SULLIVAN: Good morning.

15 CHAIRPERSON JORDAN: Would you
16 please introduce yourself for the record,
17 please?

18 MR. SULLIVAN: Yes. Thank you.
19 My name is Martin Sullivan with the law firm
20 of Sullivan and Barros.

21 CHAIRPERSON JORDAN: Now, we
22 received two additional documents from you, I

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1 believe. As I said before, I don't know if we
2 necessarily need any testimony or if you want
3 to explain. Let me, if you don't mind, go to
4 OP and get their opinion in regards to the
5 documents that were submitted.

6 MR. COCHRAN: Thank you, Mr.
7 Chair. Based on the information that the
8 Applicant submitted, OP is now happy to
9 recommend approval.

10 CHAIRPERSON JORDAN: Thank you.

11 Mr. Sullivan, just for the record,
12 would you summarize -- just summarize those
13 two documents for the record, please.

14 MR. SULLIVAN: Okay. Yes. Thank
15 you, Mr. Chairman. The first documents is a
16 letter from Mr. Ramadani's real estate
17 advisor. I think the two key points from that
18 are his opinion that the value of the square
19 footage -- the real estate per square foot at
20 that location is \$600 to \$700 a square foot.
21 The other thing that he opined on is that
22 there is no reasonable way to use the property

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1 for residential use.

2 Then the other document is from
3 the new architect and it's a construction
4 estimate under what is the currently approved
5 proposal and what would be built under the
6 modified request.

7 Without going into great detail,
8 the bottom line comparing the \$600 a square
9 foot because these construction estimates are
10 for unfinished space, and combining that with
11 the construction estimates, building the
12 smaller addition is not economically feasible.

13 In fact, it's a significant loss.
14 Building the now proposed and what was
15 originally proposed addition works out under
16 the numbers. That is the basis of an undue
17 hardship is the approximately \$30,000 loss
18 that would be taken under the currently
19 approved construction, in addition to the fact
20 that space can't be used for any other use
21 other than retail.

22 CHAIRPERSON JORDAN: Let me ask

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1 you, what is option A and option B? They were
2 referenced but I didn't see them particularly
3 carved out.

4 MR. SULLIVAN: I'm sorry. Yeah,
5 they weren't clear on that. Option A is what
6 is currently approved by the Board. Option B
7 is what was originally requested back last
8 summer and what is being requested now in the
9 modification.

10 CHAIRPERSON JORDAN: Very good.
11 Anyone have any questions of the Applicant?

12 MEMBER HINKLE: No, Mr. Chairman,
13 but I did want to state that I was not here
14 for the hearing last week but I have reviewed
15 the record and will participate further in
16 this case.

17 CHAIRPERSON JORDAN: Thank you.

18 Anyone from ANC present? We do
19 have a letter from the ANC in support that
20 meets all the criteria to be given great
21 weight which we will do so.

22 Any other department reports?

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1 Anything more from OP?

2 Anyone in the audience in support
3 of this application? Anyone in opposition?

4 Mr. Sullivan, is there anything
5 more you want to say?

6 MR. SULLIVAN: No, thank you.

7 CHAIRPERSON JORDAN: I'm going to
8 close the record for this hearing. We are
9 going to pass for a decision until next
10 Tuesday when our Zoning Commission Member
11 Konrad Schlater can participate. We'll have
12 it on the docket for next week for decision.
13 Thank you.

14 MR. SULLIVAN: Thank you.

15 MR. MOY: The next application for
16 public hearing --

17 CHAIRPERSON JORDAN: Mr.
18 Secretary, let's bring in Mr. May, please.

19 MR. MOY: He's on his way.

20 CHAIRPERSON JORDAN: Okay. Let's
21 wait.

22 MR. MOY: The next application

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1 before the Board for a hearing is Application
2 No. 18347. This is the application of Rick
3 and Alexis Juneja, I believe, pursuant to 11
4 DCMR 3104.1.

5 This is for a special exception to
6 allow a rear garage addition to the existing
7 one-family row dwelling under Section 223, not
8 meeting the lot occupancy (Section 403) and
9 nonconforming structure (Subsection 2001.3)
10 requirement in the R-4 District at premises
11 216 7th Street, N.E. Property located at
12 Square 865, Lot 88.

13 Let me for the record state that
14 Mr. Peter May, representative from the Zoning
15 Commission, has joined the dias and will be
16 hearing the rest of the cases from today.

17 Thank you.

18 Okay. Introduce yourself for us.

19 MS. FOWLER: Good morning. My
20 name is Jennifer Fowler, Fowler Architects.
21 I reside at 1819 D Street, S.E.

22 CHAIRPERSON JORDAN: Okay. I

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1 believe this record is pretty clear. We've
2 had the opportunity to examine this record.
3 If you have the opportunity if you want to put
4 on full testimony or we can just ask you some
5 questions or we can just move this thing
6 along.

7 Does anyone have any questions
8 from the Applicant?

9 OP?

10 MR. GOLDSTEIN: We're supportive
11 of the application and happy to rest on the
12 record.

13 CHAIRPERSON JORDAN: Do we have a
14 DOT letter? I believe we did. We have a
15 letter from the Department of Transportation
16 where they indicated there were no objections,
17 no potential adverse impact.

18 Is anyone present from the ANC?
19 We do have a letter from the ANC who voted
20 unanimously six to zero, but they also have a
21 caveat in their motion and the resolution
22 asking in regards to modification of a 12-foot

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1 setback but that is no longer applicable since
2 the 12-foot setback has been dealt with
3 appropriately.

4 Anyone else in support? We do
5 have a letter from the Capitol Hill Historic
6 Society indicating their support for this --
7 Capitol Hill Restoration Society. Thank you
8 -- indicating their support for this special
9 exception. Is anyone in opposition? Going
10 once, going twice, three times.

11 Is there anything you want to say
12 in closing on this particular application?

13 MS. FOWLER: I just wanted to
14 thank Mr. Goldstein for his assistance with
15 the project. We did submit the application
16 with an average 12-foot setback from the alley
17 center line but we ended up pushing it back so
18 that it cleared the 12 feet completely. That
19 was really the only hitch we came across but
20 he was very helpful with that. Thank you for
21 your time.

22 CHAIRPERSON JORDAN: Thank you.

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1 Glad to hear that. Based upon the record, I
2 find that the Applicant has satisfied the
3 burden of proof required for the elements to
4 receive a special exception from Section 403
5 in 2001. No parties appeared at the public
6 hearing in opposition to this application.

7 Accordingly, a decision from the
8 Board to grant this application would not be
9 adverse to any party having also given great
10 weight to the Office of Planning and to the
11 ANC and their particular report. I find that
12 there is no substantially adverse affect upon
13 the surrounding properties.

14 There is no impact on light and
15 air. There is no visual intrusion upon the
16 character of the property -- the area
17 surrounding the property. The geographical
18 representations which have been submitted to
19 the Board we find to be factual and proper and
20 the lot occupancy does not exceed 70 percent.

21 With that, I believe that we can
22 grant this special exception as requested in

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1 the application and I would so move.

2 MEMBER MacMURRAY: Mr. Chairman, I
3 second the motion.

4 CHAIRPERSON JORDAN: Motion made
5 and seconded that we approve the application
6 for the special exception. Any unreadiness?
7 Seeing none, all those in favor aye.

8 BOARD MEMBERS: Aye.

9 CHAIRPERSON JORDAN: Those opposed
10 nay. The motion carries.

11 Mr. Secretary.

12 MR. MOY: Staff would record the
13 vote as four to zero to one. This is on the
14 motion of Chairman Jordan to approve the
15 relief from special exception 223, seconding
16 the motion of Ms. MacMurray. Also in support
17 of the motion Mr. May, Mr. Hinkle. We have a
18 Board member not present and not
19 participating. Again, the final vote is four
20 to zero to one. The motion carries.

21 CHAIRPERSON JORDAN: Certainly I
22 believe this is proper for a summary order.

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1 MR. MOY: Yes. Thank you, Mr.
2 Chairman.

3 CHAIRPERSON JORDAN: Thank you.

4 MR. MOY: The next application
5 before the Board for public hearing is
6 Application No. 18345.

7 This is the application of Kevin
8 and Anne MacMillan pursuant to 11 DCMR 3103.2
9 and 3104.1, for a special exception to allow
10 a rear garage addition to an existing one-
11 family row dwelling under Section 223, not
12 meeting the lot occupancy (Section 403)
13 requirements, and a variance from the
14 accessory building height requirements under
15 Subsection 2500.4. This is in the R-2
16 District at premises 2933 Tilden Street, N.W.
17 Property located in Square 2235, Lot 68).

18 CHAIRPERSON JORDAN: Very good.
19 Thank you. Good morning.

20 MR. MacMILLAN: Good morning, Mr.
21 Chairman.

22 CHAIRPERSON JORDAN: Would you

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1 please introduce yourself for the record?

2 MR. MacMILLAN: Sure. I'm Kevin
3 MacMillan. I'm the resident at 2933 Tilden
4 Street.

5 CHAIRPERSON JORDAN: 93 --

6 MR. MacMILLAN: 2933 Tilden.

7 MR. SUMMERSGILL: I'm Commissioner
8 Bob Summersgill with ANC-3F here in favor.

9 CHAIRPERSON JORDAN: Thank you. I
10 think we do have some preliminary issues in
11 this particular matter. We have a need for
12 approval of special exception for Section
13 401.1, which I believe is required for this
14 particular application, and that a variance is
15 necessary under 2500.4 for the height
16 requirements for the accessory garage of 15
17 feet including the grade.

18 I know the application did not
19 include that so we are going to ask you to --
20 you can make an oral motion for us to amend
21 your application if that's what you wish.

22 MR. SUMMERSGILL: Yes, Mr.

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1 Chairman. I would appreciate that.

2 CHAIRPERSON JORDAN: I think there
3 is not any problem from the Board or anyone to
4 accept the oral motion to amend in light of
5 the additional relief that is necessary in the
6 401 and under 2500 so we will accept that
7 motion and grant that.

8 That raises another issue that I
9 believe we need some board action on. That is
10 the issue of whether or not there is a
11 requirement or a need to have the Applicant
12 renote this application since the variance
13 request was not there in the general notice.

14 It's my thought that we not
15 require it in this matter since this has been
16 properly noticed. The height indication is on
17 the plan itself. There has a complete
18 disclosure to all parties.

19 I think everybody who possibly has
20 an interest in this has written their support.
21 I don't think there is anybody else that could
22 be left out there who are not aware of this

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1 request.

2 With that, does anyone have any
3 other thoughts about that?

4 MEMBER HINKLE: No, Mr. Chair. I
5 agree with that assessment.

6 CHAIRPERSON JORDAN: With that
7 then I would move that we waive the provision
8 requirements under 3113 that requires notice
9 on this application -- additional notice on
10 this application. That would be my motion.
11 I need a second from someone.

12 MEMBER HINKLE: Second.

13 CHAIRPERSON JORDAN: Motion made
14 and seconded that under the authority under
15 3100.5 that we waive the requirements for
16 additional notice under 3113. Motion made and
17 seconded. Any questions? All those in favor
18 signify by saying aye.

19 BOARD MEMBERS: Aye.

20 CHAIRPERSON JORDAN: Those opposed
21 nay. The motion carries.

22 I believe the record is pretty

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1 full in your case. It's pretty
2 straightforward. I don't think we have -- I
3 don't have any questions regarding the relief
4 necessary.

5 Does any other Board members have
6 a question for the Applicant?

7 MEMBER MacMURRAY: No, Mr.
8 Chairman. I don't have a question but I just
9 want to note that -- I think this might be a
10 little premature but going to OP's report that
11 the proposed garage is similar to the
12 additional two-story dwelling that is already
13 in the neighborhood which goes to the support
14 of why I think that they're --

15 CHAIRPERSON JORDAN: Is there
16 anything else you want to provide us at this
17 point?

18 MR. MacMILLAN: No, not at this
19 point, Mr. Chairman. Thank you.

20 CHAIRPERSON JORDAN: Then we can
21 turn to the Office of Planning, please.

22 MR. JACKSON: My name is Arthur

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1 Jackson, D.C. Office of Planning. I'm here
2 representing Karen Thomas who was not able to
3 be here today. You have the Office of
4 Planning's report before you. We would simply
5 stand on the record. We are available to
6 answer any questions that you may have on this
7 application.

8 CHAIRPERSON JORDAN: Any questions
9 for Office of Planning? Very good.

10 Anyone here from the Department of
11 Transportation or any other Government agency?

12 We do have a letter, I believe,
13 from the Office of -- the Department of
14 Transportation which expressed no objections
15 and no concerns about your application and the
16 ANC, please.

17 MR. SUMMERGILL: I just want to
18 say that we voted unanimously five zero zero
19 in support. We were aware of the height
20 variance but since this lot is on a hill, it
21 doesn't quite apply. It would be essentially
22 the same height as the surrounding garages.

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1 Garages are typical on this alley and this
2 would be a welcome asset.

3 As well as it has a slanted roof
4 to collect rainwater runoff in a cistern for
5 later use reducing the overall -- reducing
6 water runoff into the river, or Rock Creek in
7 this case.

8 The slanted roof with the windows
9 also allows for passive heating in the winter
10 which is a nice plus. We think this is
11 exactly the kind of development we want in the
12 neighborhood.

13 CHAIRPERSON JORDAN: Thank you
14 very much. I appreciate you coming down.

15 MR. SUMMERSGILL: Sure.

16 CHAIRPERSON JORDAN: Any other
17 persons in support?

18 We do have two letters which were
19 submitted by the residents at 2931 Tilden;
20 Gillespie and Belcher at 2935. I think I saw
21 another -- oh, the Gillespies at 2139 in
22 support.

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1 Any other person in the audience
2 in opposition to this application? For the
3 record, no one identified themselves being in
4 opposition.

5 Is there anything else you want to
6 add to the record that is necessary?

7 MR. MacMILLAN: No, thanks.

8 CHAIRPERSON JORDAN: I know this
9 is really a tough hearing you're having.

10 Does any other Board member have
11 any questions for the Applicant or anyone?

12 COMMISSIONER MAY: I just have
13 one. I mean, this is not really that
14 important but why did you choose to slope the
15 roof toward the alley rather than toward the
16 property? It's very unusual.

17 MR. MacMILLAN: It's being sloped
18 toward the property, I believe.

19 COMMISSIONER MAY: The property?
20 That doesn't seem to be what is indicated.

21 MR. MacMILLAN: The high side is
22 on the south side so it will be able to

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1 collect solar light in the winter but then not
2 -- with the sun being higher in the summer
3 when it's hotter it won't shine directly into
4 the windows so it's passive solar heating.

5 COMMISSIONER MAY: Oh, I see.

6 Into the garage there. Got it. Thanks.

7 CHAIRPERSON JORDAN: Good. Well,
8 we'll close this record for this particular
9 hearing. I believe we can deliberate now if
10 the Board is willing.

11 I believe the record is pretty
12 full in this matter and it clearly shows that
13 the Applicant has met the burden of proof for
14 showing the elements necessary for the grain
15 of his special exception from 401.3 regarding
16 the lot width and the lot area, and 403.2 for
17 the lot occupancy requirement.

18 There is no party appearing here
19 in opposition to this application. There
20 hasn't been any showing that this application
21 would present an adverse affect on the
22 surrounding properties, no impact on light and

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1 air, no visual intrusion to the character of
2 the properties in the area.

3 The diagrams and drawings were
4 appropriate and certainly represent the change
5 being made. The lot occupancy will not exceed
6 the 50 percent requirement. With that, I
7 would submit to the Board that this Applicant
8 should be granted this special exception as
9 requested.

10 Additionally, based upon the same
11 information in the record and the need for a
12 variance that the variance also be approved.
13 There exist an exceptional situation and
14 condition to the property that creates a
15 practical difficulty to meet the requirements
16 of the Zoning Regulation. As we said before,
17 there is no detriment to the public or to the
18 Zoning Regulations to grant this variance.

19 With that, I move that this
20 application be approved for both the special
21 exception and the variance.

22 MEMBER MacMURRAY: Mr. Chairman, I

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1 second the motion.

2 CHAIRPERSON JORDAN: Motion made
3 and seconded that the application for the
4 special exception and the variance as amended
5 be approved. Any unreadiness or questions?

6 Seeing none, all those in favor
7 signify by saying aye.

8 BOARD MEMBERS: Aye.

9 CHAIRPERSON JORDAN: Those opposed
10 nay. The motion carries.

11 Mr. Secretary.

12 MR. MOY: Yes, Mr. Chairman. The
13 staff would record the vote as four to zero to
14 one. This is on the motion of Chairman Jordan
15 to approve the application for special
16 exception relief under Section 223 as amended.

17 Seconding the motion Ms.
18 MacMurray. Also in support of the motion Mr.
19 May, Mr. Hinkle, a Board member not present
20 and not participating. Again, the final vote
21 is four to zero to one.

22 CHAIRPERSON JORDAN: Thank you.

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1 Appreciate it very much.

2 MR. MacMILLAN: Thank you.

3 MR. SUMMERSGILL: Thank you.

4 CHAIRPERSON JORDAN: I'm still
5 bewildered on the four to zero to one. One
6 stands for an abstention. We don't have an
7 abstention.

8 MR. MOY: Yes. Well --

9 CHAIRPERSON JORDAN: We have an
10 absence.

11 MR. MOY: That's right. Absence,
12 not voting.

13 CHAIRPERSON JORDAN: So it's four
14 to zero.

15 MR. MOY: It's four to zero but I
16 usually have a third column.

17 CHAIRPERSON JORDAN: I just think
18 it's proper for the record that we show that
19 because an abstention actually kind of sends
20 a signal, I think.

21 COMMISSIONER MAY: Isn't it
22 recorded in the record, though, as not present

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1 and not voting?

2 MR. MOY: Not present and not
3 voting. Exactly.

4 CHAIRPERSON JORDAN: Okay.

5 COMMISSIONER MAY: That is what is
6 usually stated on Zoning cases.

7 CHAIRPERSON JORDAN: Okay. We put
8 four to zero and then we put the one. You
9 actually write on the side --

10 MR. MOY: One not present and not
11 voting.

12 CHAIRPERSON JORDAN: Okay.

13 COMMISSIONER MAY: It's not listed
14 as an abstention. It adds up to five.

15 CHAIRPERSON JORDAN: I've been
16 involved with several cases where someone was
17 on the record for abstaining versus recusing
18 himself and they got into a whole big issue
19 about what abstention really meant and so
20 that's kind of why I kind of brought it
21 because we kind of take it lightly, but good.
22 Thanks.

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1 Next case. Oh, summary order.

2 MR. MOY: All right. You waive
3 the requirements.

4 CHAIRPERSON JORDAN: I was reading
5 the list. Summary order, summary order.
6 Thanks, Cliff.

7 MR. MOY: The next and last
8 application before the Board's morning session
9 is Application No. 18344. This is the
10 application of JBG/New York Avenue Hotel, LLC,
11 pursuant to 11 DCMR 3104.1 and 3103.2.

12 This is for a variance from the
13 parking requirements under Section 2101.1, a
14 variance from the compact car parking space
15 provisions under Sections 2115.2 and 2115.4,
16 and a special exception from the roof
17 structure requirements under Sections 411 and
18 770.6, to permit the development of a hotel in
19 the C-3-C District at premises 33 New York
20 Avenue, N.E. Property is located in Square
21 671, Lot 27.

22 CHAIRPERSON JORDAN: Thank you,

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1 Mr. Secretary.

2 Good morning.

3 MS. SHIKER: Good morning.

4 CHAIRPERSON JORDAN: Can we make
5 sure that all witnesses have their green light
6 showing on their microphone there? If you
7 will introduce yourselves, please.

8 MS. SHIKER: Good morning,
9 Chairman, and members of the Board. My name
10 is Christine Shiker and I'm with the law firm
11 of Holland & Knight representing the Applicant
12 in this case.

13 To my right is Andrew McIntyre
14 from the JBG Companies representing the
15 Applicant. Farther to the right is Mr. Steve
16 Sher, also with the law firm of Holland &
17 Knight.

18 On my left is Andrea Schaub with
19 the architectural firm of Cooper Carry. And
20 Ms. Jami Milanovich is the farthest on the
21 left with Wells & Associates, the traffic
22 consultant. We also have Brook Katzen from

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1 the JBG Companies in the audience. Thank you.

2 CHAIRPERSON JORDAN: Okay. What
3 is this document we just received? Is this
4 what we already have in the record?

5 MS. SHIKER: We submitted a copy
6 of the PowerPoint presentation that we have
7 available for use in our presentation or with
8 questions today, as well as Mr. Sher's report
9 evaluating the case.

10 CHAIRPERSON JORDAN: So this is
11 just repetitive information?

12 MS. SHIKER: That is correct.

13 CHAIRPERSON JORDAN: I don't know
14 if we need a full presentation on this
15 application. I believe the record is pretty
16 full. The Board may have some questions for
17 you. Then if you would respond to that, I
18 think it might be a better way to handle it
19 because we have all reviewed the record in
20 this matter.

21 I think the issues can be handled
22 more succinctly that way unless you feel like

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1 you want to go through a full presentation.
2 I know you've gotten the PowerPoint kind of
3 thing going and you might want to just shoot
4 it and get some exercise.

5 MS. SHIKER: Mr. Chairman, we
6 would be happy to answer questions of the
7 Board. I would ask that the Board qualify our
8 expert witnesses for the discussion today. We
9 have submitted three expert witnesses, Ms.
10 Schaub on architecture, Ms. Milanovich in
11 traffic engineering, and Mr. Sher in land use
12 and planning.

13 Their resumes were submitted in
14 the prehearing submission at Exhibits H, I,
15 and J respectively. Ms. Milanovich and Mr.
16 Sher have been accepted numerous times as
17 experts before this Board. Ms. Schaub is
18 appearing today for the first time before this
19 Board. She has been a practicing architect
20 for over 16 years with 12 years focused in the
21 hospitality industry and hotels.

22 CHAIRPERSON JORDAN: Yes. Just a

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1 second, please. I took a look at this earlier
2 and I'm just trying to find out where I made
3 the indication. Okay. Yes, everyone except
4 Ms. Schaub has been previously identified and
5 has been approved by this Board as an expert
6 in this matter. I don't have any problems
7 with the acceptance of Ms. Schaub as an
8 expert. I think her qualifications meet that
9 so we will accept her as an expert witness.

10 MS. SHIKER: Thank you.

11 CHAIRPERSON JORDAN: Does the
12 Board have any questions on the application?

13 COMMISSIONER MAY: Yes.

14 CHAIRPERSON JORDAN: Please.

15 COMMISSIONER MAY: The really
16 amazing thing about this application is a
17 request for a complete variance from parking
18 relief. I need to understand exactly why you
19 think that's appropriate.

20 Relief on some level made some
21 sense. I saw an earlier plan that showed a
22 reasonable attempt to get parking in a very

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1 difficult site. That was where you started
2 out.

3 There was some resistance from the
4 Department of Transportation, I guess, having
5 to do with vault space parking so if somebody
6 could sort of walk me through all that and
7 explain to me why you think this can work this
8 way.

9 CHAIRPERSON JORDAN: And I would
10 join that same issue.

11 MS. SHIKER: Of course. So just
12 to refresh everyone, the original parking plan
13 that Commissioner -- Board Member May is
14 referring to was a plan that was accessed from
15 New York Avenue and did provide vault space.
16 The Applicant's team met numerous times, five
17 times, with DDOT to try to resolve these
18 issues.

19 Ultimately DDOT determined that
20 there would be no access from New York Avenue
21 and expressed grave concern about the vault
22 space which required a re-evaluation of the

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1 application once it was filed. At that point
2 that is when the architect and engineers
3 looked at the location of the garage.

4 I'm going to ask Ms. Schaub to
5 walk you through the ground floor plan, how
6 the parking garage would work. Then we can
7 talk further into given the site constraints,
8 especially the small size of the site and the
9 unusual shape, the trapezoidal shape, how that
10 starts to increase cost that would lead to a
11 practical difficulty. Mr. McIntyre can
12 address that prong of the issue.

13 I'll start with Ms. Schaub.

14 MS. SCHAUB: To start off with the
15 site-specific information, the site itself, as
16 Christy had mentioned, is very small in
17 nature. It is 112 feet on the south side and
18 67 feet on the west side. Those are the two
19 angles -- the two lines of the site here that
20 form our south and west spaces.

21 In addition to that, of course, it
22 is a through site. It sits in between New

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1 York Avenue and N Street. Therefore, we've
2 got an acute angle across New York Avenue
3 creating some additional complexities with the
4 geometries of the site.

5 We originally had a ramp space
6 that entered the site up here on the northeast
7 corner that came down into the garage. As
8 Christy mentioned, we were using a vault space
9 at that point as well to try to hit the amount
10 of parking that is required from the
11 regulations.

12 With the solution from DDOT to
13 remove that ramp -- they asked us to go ahead
14 and flip everything around to the N Street
15 side -- it causes several problems both from
16 a parking standpoint and from a layout
17 standpoint on the ground floor.

18 I'll go through the layout on the
19 ground floor first and then we'll jump down
20 into the garage. The way that the plan is set
21 up, because we are a through site we do have
22 entrances both off of New York Avenue and N

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1 Street. We have a through lobby from a
2 circulation standpoint.

3 We do have our core situated in
4 the center and I can get into some more detail
5 on that if we need to about why it is where it
6 is. We also have a loading facility back-of-
7 house spaces that are associated with the
8 functions of the hotel.

9 In introducing a ramp on this
10 face, basically on the southeast corner, which
11 is the place that made the most sense because
12 of the length of that wall, it really did
13 disrupt the ground floor to the point where we
14 had a hard time trying to fit all the
15 components that were required to get into the
16 hotel and have it function. They weren't
17 fitting. That being said and moving down into
18 the garage level.

19 CHAIRPERSON JORDAN: Which screen
20 is that? Which panel would it be in?

21 MS. SCHAUB: Oh, I didn't number
22 them unfortunately.

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1 CHAIRPERSON JORDAN: Okay.

2 MS. SCHAUB: It is --

3 MS. SHIKER: It's about halfway
4 through the PowerPoint. These two plans are
5 also found at Exhibit D in your prehearing
6 submission.

7 MS. SCHAUB: So this is the plan
8 of the garage taking a look at moving the ramp
9 onto N Street and how we would get into the
10 garage and actually place full-size parking
11 spaces within the space.

12 One thing to make note of, the
13 plans that we had originally submitted with
14 the vault we were taking advantage of the idea
15 of using compact spaces. We had enough spaces
16 per level that we could group those into more
17 or less groups of five and maintain something
18 close to what the regulations are in the
19 zoning ordinance.

20 In this case because we had so few
21 spaces per level we felt it appropriate to
22 provide full-size spaces. As you move down

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1 into the garage, as you can see on the first
2 level we were only able to accommodate five
3 spaces.

4 The main reason because we have to
5 accommodate the ramp, the drive aisles, and
6 there is a good bit of infrastructure for the
7 hotel just to function, utility spaces and
8 other back-of-house spaces that are required
9 to be on this level.

10 Moving down to the next level down
11 we have a total of eight spaces which is what
12 we would end up with on each level after this
13 one if we continue down. Again, eight spaces
14 on this level and five on the upper.

15 If we were to try to meet the 54
16 spaces that were required by the zoning
17 ordinance, we would end up with seven levels
18 of parking which you're talking over 70 feet
19 of excavation so there is a difficulty there
20 from a construction standpoint. In addition
21 to that from an operation standpoint it
22 becomes very difficult to actually utilize a

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1 garage of that nature.

2 One other little piece I failed to
3 mention earlier. I mentioned the site is 112
4 feet across the south side and 67 feet on the
5 west side. We also in the process of design
6 discovered we have two encroachments on both
7 the east and west side.

8 On the west side the Covenant
9 House building encroaches onto our site by
10 just under a foot. On the east side we have
11 a one-foot-six encroachment. We're being
12 pushed a little bit farther so, again, just the
13 compression there is --

14 MS. SHIKER: Okay. Thank you.
15 That is like the first step of creating the
16 practical difficulty. Here you have a very,
17 very small number of spaces that can be put
18 into a reasonable size garage. Then you start
19 to evaluate what is the cost of providing
20 these spaces.

21 We have submitted to the Board a
22 letter from Herman Stewart Construction

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1 summarizing those costs. I'm going to ask Mr.
2 McIntyre to talk about that. As we have
3 briefed in our prehearing submission,
4 excessive cost can lead to practical
5 difficulties in providing parking.

6 COMMISSIONER MAY: Before you go
7 there, that's not really what troubles me.
8 The question I have actually has to do with
9 DDOT's position. I don't know if anybody from
10 DDOT is here and whether they will be able to
11 speak to it later. No? Okay. If you could
12 explain to me why they had "grave concerns"
13 about the vault parking, as you said.

14 I understand their resistance in
15 wanting to have a curb cut on New York Avenue,
16 although I would argue that sometimes things
17 like this are inevitable. Explain to me why
18 they didn't want to have the vault parking
19 because if you could have made -- if you've
20 got the vault parking, the cost of the parking
21 per space would be improved.

22 MS. SHIKER: DDOT has uniformly

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1 taken the position in recent times, recent
2 months --

3 COMMISSIONER MAY: Oh, recent.
4 Just on the last few months? Because I
5 remember them recommending approval of vault
6 spaces.

7 MS. SHIKER: Six months. I would
8 say six to 12 months this has become the new
9 position and policy of the District Department
10 of Transportation. I hate to speak for them
11 in terms of what their policies are but we are
12 consistently hearing from DDOT that they do
13 not want parking in vault space.

14 They also have other issues with
15 vault space in general because they believe it
16 is the taking of public space. This is an
17 issue. It's coming down to utility vaults as
18 well. I mean, it certainly is something that
19 we see being discussed and coming up in
20 matter-of-right developments and PUDs and in
21 BZA cases.

22 This situation with the

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1 elimination of the vault space and, more
2 importantly, the relocation of the curb cut
3 which causes so many difficulties for the
4 site, we determined that it was best to seek
5 the relief based on the practical difficulties
6 that we have encountered on the site.

7 COMMISSIONER MAY: Okay. So one
8 last question which is did you look at garage
9 elevators and what that would do? I mean, we
10 approved a PUD with a garage elevator and it
11 was never built. It was modified subsequently
12 but we actually had approved one some time
13 ago.

14 MS. SHIKER: I'll ask Mr. McIntyre
15 to answer that question whether they looked
16 into that or not. I know that a variety of
17 solutions had been looked at. I would then
18 ask Ms. Milanovich to talk about the
19 evaluation that went into looking at what the
20 capacity is, the work that has been done in
21 terms of what the actual demand is for this
22 limited --

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COMMISSIONER MAY: I understand that. This is all on the record.

MS. SHIKER: Okay.

COMMISSIONER MAY: That's the only mitigating factor that you have going for you here. The other aspect of it is how you manage a hotel without parking. If the hotel operator is willing to do it, then there is an understanding of demand and there is an understanding of how you manage it that I wouldn't necessarily question because they are putting their money where their mouth is, if you will, or the developer is putting their money where their mouth is with regard to making it operate.

I just have a question about whether it's -- how practical it really is and what the potential impacts are to the neighborhood in the circumstance. There is a lot of emphasis on things like bus lines and so on. I don't imagine they are going to get

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1 a lot of people coming to the hotel by bus.
2 They may be traveling by bus once they get
3 here but I just can't imagine that is really
4 that much of an advantage.

5 MS. SHIKER: You certainly have
6 the tour buses that come and the taxis and the
7 Metro. I will have Mr. McIntyre talk to that.
8 I will tell you that the ANC voted unanimously
9 to support --

10 COMMISSIONER MAY: It's in the
11 record, too. Thank you.

12 MR. MCINTYRE: Thank you. Couple
13 of items. First, back to the curb cut itself
14 before I answer your question on the parking
15 lift. The location of that curb cut is
16 particularly onerous in our mind because of
17 the proximity to Metro, the New York Avenue
18 Metro. We really see this as being --
19 becoming the primary entrance to the hotel.

20 We feel that because of the New
21 York Avenue presence that we do need to have
22 dual lobbies. Whether it's for an elevator

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1 lift or a garage ramp, you all of a sudden
2 diminish this entire elevation to back-of-
3 house service. You won't have the ability to
4 turn it into a through lobby. With respect to
5 the elevator, we did not look at that and
6 evaluate the cost.

7 What I will tell you is that in
8 the past when we have looked at that solution,
9 we have found that you have to have a lot
10 higher economies of scale to make that worth
11 the cost because those elevator systems are
12 not only a function of the cost to create the
13 structure, which you are doing with the
14 parking garage, but then you have to put a lot
15 of hidden mechanical, expensive mechanical
16 equipment into that structure.

17 Right now if we were just to do
18 two levels, or about \$160,000 a space, which
19 is about \$120,000 or \$130,000 more than what
20 an actual -- an average parking space cost.

21 COMMISSIONER MAY: I'm sorry, how
22 much more?

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1 MR. MCINTYRE: Right now we're
2 about \$130,000 more. Maybe \$125,000 more than
3 an average space. You are going to throw
4 additional mechanical equipment in there on
5 top of the structure. If you reduce some of
6 the structure, you still have to build the box
7 and that is where a lot of the cost is coming
8 from.

9 Maybe we get more spaces and be a
10 little bit more efficient, but the cost of
11 mechanical equipment for a parking system
12 would still require an entrance. It would be
13 on N Street and we would drop down into a more
14 expensive box because of the equipment.

15 The last item that you mentioned
16 that had to do with operations, I think at any
17 given time we are either the largest or one of
18 the largest hotel developer/owner/operators in
19 the D.C. Metropolitan area. We live on our
20 revenues and that's a function of guest
21 satisfaction.

22 We have two hotels in this

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1 submarket already that 100 percent valet. We
2 will make sure that this is executed in a way
3 that our guests are absolutely satisfied or
4 else we won't be in the market for very long.
5 That is just the reality of it.

6 We are consistent with the rest of
7 the hotels in the submarket and it is to our
8 benefit to not allow this to be an impact
9 operations. We talked with our operator,
10 we've talked with our brand, and we've talked
11 internally with our assess management folks
12 and everybody is very comfortable with the
13 solution. Thank you.

14 COMMISSIONER MAY: Okay.

15 CHAIRPERSON JORDAN: If you are
16 doing the elevator, how many spaces do you
17 think you will be able to achieve?

18 MR. MCINTYRE: I think if we do
19 the elevator, we would probably get rid of the
20 ramp. We would still need the circulation of
21 the cars. I don't know these mechanical
22 systems well enough to be able to speak to

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1 their efficiency.

2 I would imagine that per level
3 maybe we could add a couple more spaces, two
4 or three. I would hesitate to say it would be
5 more than that because you still have to move
6 the cars around. There might be mechanical
7 requirements that are unknown and you still
8 need the other services and the cores and the
9 elevators and such.

10 You would get the space back from
11 the ramps but still have to move cars and in
12 and around you have to have some sort of
13 conveyance system from the way I've understood
14 these things. I don't think our geometry
15 really works for any of the office shelf
16 systems that you are thinking about. We have
17 looked at them.

18 We continue to look at them. We
19 know that sooner or later adjacent to our site
20 there are big Government blocks that those
21 might be the right solution for them just
22 because you need a certain amount of density

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1 and geometry.

2 CHAIRPERSON JORDAN: And your
3 footprint is so small.

4 MR. McINTYRE: It is but we still
5 believe this is going to be a very successful
6 project regardless.

7 CHAIRPERSON JORDAN: Any other
8 questions from anyone?

9 MEMBER MacMURRAY: Mr. Chairman, I
10 have a couple questions.

11 I noticed in here there is a
12 discussion about the vehicle trips and the
13 comparison to St. Gregory, the Hilton Garden
14 and Hilton Garden downtown. The location on
15 New York Avenue to me doesn't seem like it's
16 a comparison because New York Avenue is a
17 major thoroughway coming from -- if you are
18 coming north you are coming into the city.

19 Traffic in general if you go on
20 any afternoon is highly congested. My concern
21 is about eliminating spaces and saying that
22 recognizing on the premise that people will be

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1 coming and they would be using the Metro or
2 other accessible -- or vans or any other usage
3 of some kind of mobile transportation. I
4 can't really understand how that is going to
5 work in this area.

6 MS. SHIKER: I'm going to ask Ms.
7 Milanovich who did the study to answer that
8 question. I will point out that it is
9 anticipated that this hotel will kind of have
10 dual purposes, business, travel, Government
11 contractors during the week, tourists on the
12 weekend so you have a variety of different
13 modes that you're looking at in terms of
14 transportation.

15 Ms. Milanovich had studied that
16 and made the determinations with DDOT on the
17 location so I'll pass it to her.

18 MS. MILANOVICH: Sure. We
19 actually looked at four hotels we studied in
20 order to determine the estimated parking
21 demand for the proposed hotel. We believe
22 that the demand at these hotels are indicative

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1 of what can be expected at the proposed hotel
2 for several reasons.

3 First, the hotels that we studied
4 are in the Washington, D.C. comp set. They
5 are very comparable. They are in the same
6 city. They like the proposed hotel are select
7 service hotels so their operating
8 characteristics are very similar.

9 They don't have a lot of
10 conference room space or those types of spaces
11 that would generate their own traffic. The
12 space within the hotel is simply there to
13 serve the demands of the guests. Then also
14 each of the four hotels is located in close
15 proximity to transit.

16 Actually, I believe, at least
17 three, maybe all four of them, are actually a
18 little bit farther away from transit than the
19 subject hotel is. We believe that the
20 presence in proximity to the transit station
21 and being one stop from Union Station really
22 does lend itself to having other options

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1 available to guests rather than bringing their
2 own car.

3 Certainly we do contemplate that
4 some people will choose to bring their own car
5 and we've made accommodations for that to
6 accommodate those elsewhere. In terms of
7 predicting what the peak demand is for the
8 hotel, we really do believe that the four
9 hotels that were studied in the District are
10 very similar and very indicative of what can
11 be expected at this hotel.

12 CHAIRPERSON JORDAN: Any other
13 questions on parking?

14 Let me ask you, tell me a little
15 bit about the outreach to the property owners
16 on both sides of this hotel. What kind of
17 outreach has there been?

18 MR. MCINTYRE: We've been in
19 discussions with Covenant House probably going
20 back to last year, August of last year. They
21 are fully aware of our development plans. I
22 would not speak for them to say one way or the

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1 other in support or not. I don't know of any
2 objections that they have.

3 We had discussions about
4 potentially purchasing their site but it's not
5 really in the context of this property. They
6 have some long-term strategic plans that they
7 are looking to put that property on the
8 market. They have been very good discussions.

9 We are in the midst of a contract
10 negotiation on a crane over-swing agreement
11 now for this project. Then the neighbor to
12 the other side we have an option to purchase
13 their land as well. We are on good terms with
14 those neighbors.

15 CHAIRPERSON JORDAN: When you say
16 an option to purchase as well, you don't have
17 an option on the Covenant House.

18 MR. MCINTYRE: No, I apologize.
19 We do not. We have an option to purchase on
20 the subject property.

21 CHAIRPERSON JORDAN: So to really
22 complete the question, we don't have any

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1 reason to believe that any of our neighbors
2 are unaware of the project or have any issue
3 with it.

4 MS. SHIKER: I would just add that
5 we have also been working closely with Tony
6 Goodman who is the single member district
7 representative for NoMA and he is a very
8 active participant in all NoMA development.
9 He has been supportive of the project
10 throughout the time and was very supportive of
11 the project and the full parking variance to
12 the ANC at the meeting.

13 CHAIRPERSON JORDAN: Any other
14 questions for the applicant anyone?

15 Mr. May.

16 COMMISSIONER MAY: Yes, a couple
17 more.

18 Can you explain to me the layby
19 situation? I know you would like to have one
20 and DDOT is resisting. Is that still just up
21 in the air with them?

22 MS. SHIKER: We have shown a layby

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1 for the valet operations and we believe that
2 is the best way to accommodate the taxis,
3 buses, vehicles to the site. We have had
4 initial discussions with DDOT.

5 At those initial discussions there
6 was more of a positive feeling towards the
7 layby from DDOT in their oral discussions
8 indicating that their policies, DDOT's
9 policies, support laybys for hotels in the
10 city.

11 DDOT does not support laybys for
12 any other type of use in the city. We did see
13 the report saying that those issues would need
14 to be resolved through the permitting process
15 and we plan to continue to work with them to
16 resolve that issue.

17 COMMISSIONER MAY: Okay. Then one
18 last question which is the facade on the
19 eastern side where you have an option to
20 purchase that property. To you anticipate at
21 some point potentially expanding the hotel in
22 that direction?

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1 MR. MCINTYRE: No, we do not.

2 COMMISSIONER MAY: Okay. But you
3 are anticipating that they will eventually
4 build to the full -- that site will eventually
5 be fully built out so that your large blank
6 wall will --

7 MR. MCINTYRE: Correct.

8 COMMISSIONER MAY: -- will not be
9 visible anymore because --

10 MR. MCINTYRE: It's interesting.
11 That is correct. For a couple of reasons,
12 just to add a little bit, we really can't
13 expand just because of the nature of that
14 wall. The other reasons is just the nature of
15 the market and the type of hotel. We don't
16 see a need to grow the size of the hotel.

17 COMMISSIONER MAY: Okay. If this
18 were a PUD I would have a whole lot to say
19 about that wall. As walls like that go, it's
20 not too bad. It looks like it's being
21 articulated and that there is some effort to
22 introduce some vertical lines in some depth

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1 and so on. It's going to be a very, very
2 obvious wall for a long time. All right.
3 Thanks.

4 CHAIRPERSON JORDAN: Is that a
5 Hyatt sign? Is that what that is? The
6 colorful Hyatt sign?

7 MR. MCINTYRE: That's correct.

8 CHAIRPERSON JORDAN: Any other
9 questions of the Applicant? Anyone?

10 Let's turn now to -- is there
11 anything else you want to say on these issues
12 that we raised?

13 MS. SHIKER: Not at this time.
14 Thank you.

15 CHAIRPERSON JORDAN: Let's turn
16 now to the Office of Planning.

17 MR. JACKSON: Good morning, Mr.
18 Chairman and members of the Board. Arthur
19 Jackson again with the D.C. Office of
20 Planning. We have our report before you. We
21 looked at the issues that were raised in the
22 application.

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1 We did an analysis and we
2 supported the relief that was requested by the
3 Applicant. We also note that the memorandum
4 from the Department of Transportation that is
5 in support of the application. We note the
6 ANC report that was in support of the
7 application.

8 We think overall the Applicant has
9 addressed all the issues that we raised. That
10 includes a brief summary of the Office of
11 Planning's report. We are available to answer
12 questions.

13 CHAIRPERSON JORDAN: Thank you.
14 Any questions for Office of Planning, anyone?

15 COMMISSIONER MAY: Do you have any
16 position on the layby?

17 MR. JACKSON: We defer that to the
18 Public Space Committee because one of the
19 issues that we have probably is because we are
20 looking at the traffic routes on M Street. It
21 appears it's a one-way street -- it's a two-
22 way street now.

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1 Our concern -- our thought would
2 be we wonder what the future of that
3 circulation pattern would be. I mean, M
4 Street comes to a dead end at North Capitol so
5 you can turn right or left and you can't go
6 across.

7 COMMISSIONER MAY: Right.

8 MR. JACKSON: As long as --

9 COMMISSIONER MAY: You can turn
10 right. I don't think --

11 MR. JACKSON: No, no, you can turn
12 right.

13 COMMISSIONER MAY: You can't turn
14 left, though.

15 MR. JACKSON: No, no, you turn
16 right.

17 COMMISSIONER MAY: Right.

18 MR. JACKSON: Then you have to go
19 across New York Avenue to go across and
20 turn --

21 COMMISSIONER MAY: It's more or
22 less like a U turn, right?

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1 MR. JACKSON: Yes.

2 COMMISSIONER MAY: You can't
3 really even make a right onto North Capitol.

4 MR. JACKSON: Like a panhandle.

5 COMMISSIONER MAY: Right.

6 MR. JACKSON: The concern is --

7 COMMISSIONER MAY: I've done that
8 loop and it takes a really long time to get
9 back to where you started, I'll tell you.

10 MR. JACKSON: So because of the
11 limited circulation pattern there, the
12 presence of the layby would not be as much of
13 an issue because you are not going to have a
14 lot of traffic that is going to be rushing
15 through to get through the light. Basically
16 you always have to stop.

17 I guess in the long term, though,
18 will that always remain a two-way street or
19 will it make sense at some point to make it
20 one-way. The logic there is if it's going to
21 be one-way it probably would still be toward
22 North Capitol.

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1 I don't think given the location
2 and the current situation and the fact that
3 it's not going to be a raceway or anything, I
4 don't think having a layby there to serve
5 buses, cars, taxis, and other conveyances
6 would be an issue.

7 Also during the Applicant's
8 presentation to DDOT, which I witnessed, they
9 were very concerned about making sure that the
10 pedestrian pathway to their hotel was always
11 maintained in good order so the presence of a
12 layby as designed would not inhibit potential
13 customers or people who are trying to get back
14 and forth to the Metro so we don't see it
15 being a problem.

16 COMMISSIONER MAY: Has the Office
17 of Planning been engaged with DDOT on their
18 positions regarding parking and vault space
19 and placement of curb cuts and situations like
20 this?

21 MR. JACKSON: We have listened
22 intently.

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1 COMMISSIONER MAY: Listened.

2 MR. JACKSON: Yes.

3 COMMISSIONER MAY: That's what
4 concerns me is there's -- I'm not sure that
5 DDOT is being totally consistent or, frankly,
6 totally right in their approach on these
7 things. Some of these are planning issues and
8 not just transportation issues.

9 I mean, is it really beneficial to
10 the street life here, the pedestrian street
11 life here, to do everything that you can to
12 maintain high speed through traffic on New
13 York Avenue. I'm not sure that it really
14 does.

15 So is the right balance being
16 struck between the need to allow people to
17 quickly exit the city versus the street life
18 and the inconvenience of vehicles crossing the
19 sidewalk occasionally at a hotel of all
20 things? I don't know the right answer to
21 that. I just don't feel like this is being
22 properly explained. If DDOT were here I would

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1 ask them to explain it, but this is also your
2 domain in my view.

3 If I can't get an opportunity to
4 cross-examine, or to question DDOT on this, I
5 would at least ask that the Office of Planning
6 take that up and ask some of these hard
7 questions so that we can get really good
8 answers next time around.

9 MR. JACKSON: We are, of course,
10 in continuing discussions about overall policy
11 issues. Of course, on a case-by-case basis we
12 are using those as opportunities to refine
13 their positions on certain cases or mutual
14 positions in certain instances and we support
15 each other, particularly in instances that are
16 more important than others. I think it's an
17 ongoing conversation and they are adjusting
18 their views.

19 COMMISSIONER MAY: I hope it is an
20 ongoing conversation. I hope you share some
21 of the results of that with us.

22 MR. JACKSON: We have received I

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1 can think within the last few weeks probably
2 the same similar type of report regarding
3 vault space from DDOT. As I think about it,
4 I think most of them, and correct me if I'm
5 wrong, Mr. Hinkle, anything regarding New York
6 Avenue and Mass. Massachusetts Avenue I think
7 is where they kind of really -- I think they
8 have been routinely pushing back on vault
9 space that we've seen here. That might be an
10 issue.

11 COMMISSIONER MAY: I think it
12 frankly would be more helpful to me if DDOT
13 were to include something in their report
14 other than the sentence saying that DDOT's
15 views on vault space parking and curb cuts on
16 New York Avenue were explained to the
17 Applicant.

18 I mean, that doesn't enlighten me
19 at all because I want to understand why they
20 think these things are absolute no-nos on this
21 project. You know, it's not a deal killer on
22 the project from my perspective but it's not

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1 very informative.

2 MR. JACKSON: Okay. I'll convey
3 your concerns with better information on their
4 decisions.

5 COMMISSIONER MAY: All right.
6 Thank you.

7 CHAIRPERSON JORDAN: They use the
8 same line in all --

9 CHAIRPERSON JORDAN: Okay. Anyone
10 have any questions -- other questions of the
11 Office of Planning? I'm sure DDOT is not here
12 but we do have their report in the record
13 which indicated no objection based upon what
14 they have already reported.

15 Any representatives from the ANC-
16 6C? We do have a letter from ANC-6C
17 unanimously supporting this application and we
18 will give that great weight.

19 Any persons in the audience in
20 support? Any persons in opposition? If you
21 would, if you would like to do any wrap-up, we
22 would be glad to have it.

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1 MS. SHIKER: Thank you. Based on
2 the evidence in the record, we believe that
3 the Applicant has met its burden of proof for
4 the variance standard for the elimination of
5 parking as well as for the special exception
6 standard for the walls of equal height and
7 restructure setback on the southern court
8 wall.

9 We would request that the Board
10 consider this application at its earliest
11 convenience as the Applicant is eager to move
12 forward with this project as soon as possible.
13 Thank you.

14 CHAIRPERSON JORDAN: Thank you.
15 We'll move into deliberations at this point.
16 Again, DDOT is not here but that is not the
17 issue that we're having.

18 Any Board member have anything
19 they want to say about this application?

20 MEMBER MacMURRAY: I recognize
21 that the need to balance between development
22 of an area that is a throughway to the city

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1 coupled with the practical difficulty of being
2 -- I have driven on New York Avenue numerous
3 times and I understand from a practical
4 standpoint the parking situation driving it
5 can be quite the nightmare trying to get in
6 that area. I kind of wish that the applicant
7 would continue to figure out a little bit more
8 strategically than saying no parking.

9 I think that solution for the long
10 term of even just the precedent from this
11 Board is not going to be sending a good
12 message, but I understand that the need for
13 that whole NoMA area being revitalized.
14 That's just putting my point on the record.

15 CHAIRPERSON JORDAN: Anyone else?

16 COMMISSIONER MAY: Yeah, I share
17 some of the concern about trying to strike the
18 right balance in that neighborhood. I think
19 that the lack of parking at this particular
20 building is -- it's risky.

21 If the Applicant is willing to
22 take the risk, I think that is where the

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1 primary risk is, I think in the long run we
2 will see more substantial development of the
3 whole block and there will be certainly a
4 reasonable amount of parking associated with
5 those facilities.

6 I would think that the Applicant
7 in the long run, and I have to believe you
8 have already considered this, is thinking
9 about the prospect of getting parking space in
10 the building next door when it's developed
11 rather than having to travel distances in
12 order to get to parking spaces.

13 Traveling distances in that area
14 is in itself a difficult thing. We wind up
15 having to have a lot more valet staff if it
16 takes you 20 minutes to drive a half a block.
17 I can see the solution working itself out in
18 the long run. I think there is work to be
19 done.

20 Traffic patterns and circulation
21 in DDOT's realm to try to make life in that
22 area a little bit more practical or, I guess,

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1 traffic patterns a bit more practical. But
2 that's not what we're here to solve today.

3 With regard to the other relief
4 that has been requested and the roof
5 structures, it's not ideal but I certainly
6 understand the circumstance that leads to the
7 need for relief in these couple of areas
8 because of the size of the site and the need
9 to be able to accommodate necessary rooftop
10 structures.

11 I'm glad that we're not having to
12 wrestle with trying to squeeze a rooftop pool
13 in there and then that's what's driving it.
14 Fortunately the rooftop pool is on the lower
15 roof so that makes it an easier call to make.

16 It seems like what's there is only
17 what is really necessary. I'm comfortable
18 with that and I look forward to having more
19 information from DDOT in the future when it
20 comes to cases like this and in general about
21 what their policy is as we see more
22 development in this area.

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1 CHAIRPERSON JORDAN: As we come to
2 this particular property and the relief that
3 is requested, I think that the Applicant has
4 made a showing that this is an exceptional
5 condition. This property is a small
6 footprint, very, very small footprint.

7 In that whole general area of New
8 York Avenue, as we've all been saying over and
9 over again, is really going to start to be
10 even more contact as things happen in that New
11 York Avenue.

12 I think for all those reasons it
13 adds that the Applicant has made the required
14 showing of practical difficulty in having
15 below-grade parking facilities here because of
16 the shape of the lot, the extensive cost in
17 trying to do it, and the issues raised by DDOT
18 in its prevention from you being able to touch
19 the vault.

20 I think that we've made -- they've
21 made a case for this relief and the necessity
22 for what has to happen in regards to the

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1 penthouse and the height and the different
2 level of the roof. I think they've made that
3 showing.

4 Any other thoughts?

5 COMMISSIONER MAY: Mr. Chairman.

6 CHAIRPERSON JORDAN: Yes.

7 COMMISSIONER MAY: I just wanted
8 to make one other comment which is that I
9 actually -- I don't want the Applicant to
10 regard the scrutiny here as any sort of
11 negativity because I think, frankly, the idea
12 of trying to do this project in this
13 neighborhood at this time in this manner is
14 commendable in many ways.

15 The fact that you've done it
16 despite the complications of working out your
17 parking situation and getting through it and
18 getting all the support that you've gotten and
19 getting the ANC support I think is
20 commendable.

21 I hope that it is highly
22 successful and we'll start to see some of the

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1 areas that are significantly under developed,
2 large parking lot areas for example, that
3 something more beneficial will start to happen
4 in those areas.

5 CHAIRPERSON JORDAN: Seeing that
6 the Applicant has met its burden of showing
7 what's necessary for a variance here, that the
8 exceptional condition exist, and the practical
9 difficulty and the necessity in regards to
10 parking and why they are asking for the
11 relief, and in regards to the roof special
12 exception, that they met this burden, I would
13 move that we approve the Applicant's request
14 for the variance and for the special
15 exception.

16 COMMISSIONER MAY: Second.

17 CHAIRPERSON JORDAN: Motion made
18 and seconded to approve the application for
19 the special exception as requested and the
20 variance. Any unreadiness? All those in
21 favor signify by saying aye.

22 BOARD MEMBERS: Aye.

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1 CHAIRPERSON JORDAN: Those opposed
2 nay. The motion carries.

3 Mr. Secretary.

4 MR. MOY: Thank you, Mr. Chairman.
5 At my own risk, staff will record the vote as
6 four to zero to one. This is on the motion of
7 Chairman Jordan, second the motion of Mr. May.
8 Also in support of the motion Ms. MacMurray
9 and Mr. Hinkle. We have a Board member not
10 present and not participating and not voting.
11 Again, the final vote is four to zero to one.

12 CHAIRPERSON JORDAN: Seeing that
13 there are no parties in opposition and that
14 this decision is in favor of the Applicant, I
15 believe this is prime, Mr. Secretary, that we
16 issue a summary order.

17 MR. MOY: Thank you, sir.

18 CHAIRPERSON JORDAN: Thank you.

19 MS. SHIKER: Thank you very much.

20 MR. McINTYRE: Thank you.

21 (Whereupon, at 10:52 a.m. off the
22 record for lunch to reconvene at 1:10 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:10 p.m.

CHAIRPERSON JORDAN: If we would
bring this hearing to order, please. Good
afternoon. We are located at the Jerrily R.
Kress Memorial Hearing Room at 441 4th Street,
N.W. Today's date is May 8, 2012, for the
public hearing of the Board of Zoning
Adjustment, the District of Columbia.

My name is Lloyd Jordan,
Chairperson. To the left of me is Peter May,
representative of the Zoning Commission. To
the right of me is Rashida MacMurray, Board
member. To the right of her is Jeffrey
Hinkle, a Board member.

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

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1 room. The Board's hearing procedures and
2 processes, how we will process applications,
3 are contained in a handout back by the door if
4 you need to read it.

5 Let's begin this afternoon's
6 hearing. If any individual is going to
7 testify, we ask that you stand and be sworn in
8 by the secretary, please.

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 WITNESS: I do.

14 MR. MOY: You may consider
15 yourself under oath.

16 CHAIRPERSON JORDAN: I'm not aware
17 of any preliminary matters with this
18 particular application, Mr. Secretary. Would
19 you call the case then, please.

20 MR. MOY: Thank you, Mr. Chairman.

21 Good afternoon, Board members.

22 The application before the Board for the

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1 afternoon session is Application No. 18346.
2 This is the application of Wagtime, LLC,
3 pursuant to 11 DCMR 3103.2 and 3104.1 for a
4 special exception pursuant to Subsection
5 802.21, and a variance from Subsection
6 801.7(a)(iii), and (a)(iv)(D), to permit an
7 animal boarding and animal shelter use in the
8 C-M-1 District at premises 900 M Street, S.E.
9 Property located in Square 952, Lot 34.

10 CHAIRPERSON JORDAN: Thank you.

11 Would you introduce yourself,
12 please?

13 MR. FREEMAN: Good morning,
14 Chairman Jordan. For the record, my name is
15 Kyrus Freeman. I'm a partner at the law firm
16 of Holland & Knight on behalf of the Applicant
17 Wagtime.

18 Seated to my immediate right is
19 Mr. Ofer Khal on behalf of Wagtime, Lisa
20 Schreiber on behalf of Wagtime, and Mr. Steven
21 E. Sher of the law firm of Holland & Knight as
22 our land use expert.

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1 CHAIRPERSON JORDAN: Before we
2 begin, let me ask are there any parties in
3 opposition to this application in the
4 audience?

5 Mr. Freeman, we have taken a look
6 at the application. I think we've all
7 reviewed it so it wouldn't be necessary for
8 you to present your full presentation.
9 However, we would probably want the right to
10 ask questions and some further development of
11 issues that we may find as Board members that
12 need to be further dealt with if that is okay
13 with you.

14 MR. FREEMAN: Absolutely, sir.

15 CHAIRPERSON JORDAN: I know you
16 are tendering Mr. Sher as an expert. Is that
17 correct?

18 MR. FREEMAN: Yes, sir.

19 CHAIRPERSON JORDAN: And Mr. Sher
20 has already been accepted probably 357,000
21 times as an expert since the creation of this
22 building so we will accept him as an expert,

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1 of course. He has already been accepted.

2 With that, I'm going to, if I can,
3 defer to Board members regarding questions
4 about this application. Does anyone have
5 questions?

6 MEMBER MacMURRAY: Mr. Chairman, I
7 have two quick questions. The first is I
8 noticed the hours of operation. Is it just
9 boarding for individuals who already own their
10 dogs and they are going away traveling and be
11 boarding, as well as shelter providing for
12 strays or any other kind of dog?

13 MR. FREEMAN: When you say the
14 hours of operation, what are you referring to?

15 MEMBER MacMURRAY: Oh, drop off
16 particularly for the dogs.

17 MR. FREEMAN: Are you looking at
18 the --

19 MEMBER MacMURRAY: Sorry. Exhibit
20 28 which I know we'll get to in a little bit
21 for the Office of Planning but I was just
22 trying to get an understanding of what they

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1 envision as far as operations for the dogs.

2 CHAIRPERSON JORDAN: Be sure that
3 the microphone -- yes. Thank you.

4 MR. KHAL: My name is Ofer Khal
5 and I'm one of the owners. This is my wife
6 Lisa Schreiber. Both of us, of course, own
7 Wagtime. We operate a 24-hour daycare and
8 boarding facility so we dogs staying
9 overnight, client's dogs and, of course,
10 shelter dogs.

11 The store hours are only 7:00
12 until 8:00 and we do allow for clients to come
13 and pick up their dogs before 11:00 at night.
14 No activity like no one comes in and no one
15 goes out between 11:00 at night and 7:00 in
16 the morning.

17 MEMBER MacMURRAY: Thank you.

18 CHAIRPERSON JORDAN: Any other
19 questions for the Applicant?

20 Let me ask you, tell me a bit
21 about the interaction with the neighboring
22 business? I think it's a pizza restaurant?

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1 MR. FREEMAN: The existing
2 building is owned by a single landlord. The
3 landlord has -- we understand that the
4 landlord has been in touch with the pizza
5 delivery to confirm that they have no issues
6 with respect to the proposed uses at the site
7 because it's the same property owner.

8 CHAIRPERSON JORDAN: It's right
9 next door to the pizza restaurant and the
10 parking lot use and all that so I was
11 concerned whether or not they actually had any
12 dialogue with them.

13 MR. FREEMAN: So the proposed
14 parking spaces that are shown on the site
15 plan, a number of those parking spaces are
16 allocated to the dog daycare and the other
17 remaining portion, I think approximately
18 three, are allocated towards the pizza. The
19 pizza place, by the way, is just a takeout.
20 It's not a sit-in establishment.

21 CHAIRPERSON JORDAN: Is that going
22 to be one of the alternative meals for the

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1 dogs? Pizza for like a gourmet --

2 Any questions from any Board
3 members?

4 Let's turn now to Office of
5 Planning. We do have Office of Planning's
6 report. I'll turn to you.

7 MR. MORDFIN: Good afternoon
8 Chairman and members of the Board. I'm
9 Stephen Mordfin with the Office of Planning.
10 The Office of Planning does find the
11 application for the animal boarding to be in
12 conformance with the criteria for dog boarding
13 because these would be located in a masonry
14 building and approved with an air filtration
15 system.

16 Animal waste would be placed in
17 bags. It would not abut a residence. There
18 would be no external yards and windows and
19 doors would be kept closed to prevent noise
20 from emanating from the building. We also
21 find that the application conforms to the
22 granting of variances to allow an animal

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1 shelter to abut a residential use.

2 That is because the site is
3 divided into three commercial spaces all
4 located on one lot. The building is, again,
5 of masonry construction with the windows and
6 doors kept closed. It would not result in
7 substantial harm to the zoning regulations as
8 it is an unusually shaped property within an
9 industrial district.

10 And we also find that the
11 application is in conformance to the criteria
12 for the granting of a variance to permit an
13 outdoor run to be located less than 100 feet
14 from residential use because the only outdoor
15 area available is only 53 feet from the
16 residential uses.

17 The Applicant would minimize the
18 impact of that distance by reducing the hours
19 the animals could be outside and reducing the
20 number of animals that would be permitted.
21 Therefore, the Office of Planning recommends
22 approval of the application subject to the

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1 conditions contained within the report. Thank
2 you.

3 CHAIRPERSON JORDAN: Thank you.
4 The 53 feet is actually not -- that's the
5 residential district. Would that be correct?
6 Not actually residences?

7 MR. MORDFIN: It's residences.
8 The entire square is zoned industrially.
9 Those residences are located within an
10 industrial zone. The zoning regulations say
11 residential district or residential use. In
12 this case it's residential uses.

13 CHAIRPERSON JORDAN: I didn't
14 realize they were that close.

15 Any questions for the Office of
16 Planning?

17 Mr. May.

18 COMMISSIONER MAY: Yeah, just one
19 quick one. In the file we have probably four
20 or five sets of conditions. I just want to
21 know that the conditions that were in your
22 report are consistent with the conditions that

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1 were negotiated with the ANC and that are
2 cited by the Restoration Society without doing
3 a word-for-word check which would really be a
4 test for my mind. Can you assure us that
5 those conditions are all essentially all the
6 same?

7 MR. MORDFIN: They are essentially
8 all the same. I did supplement the ones that
9 had been worked out with the Applicant and the
10 ANC to add what to my report is condition
11 number 3 that all windows and doors within the
12 building should be kept close.

13 The purpose for that is because
14 there were other instances in other dog
15 boarding where with the windows opened the
16 neighbors were complaining that they could
17 hear noise going on. Since then we have
18 recommended that windows and doors be kept
19 closed in all applications for dog boarding.

20 COMMISSIONER MAY: Do we have a
21 reasonable expectation that the windows and
22 doors are going to be relatively sound proof?

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1 The windows in my house are not very sound
2 proof. Older windows tend to be less so. I
3 mean, since you got into that whole issue

4 MR. MORDFIN: I don't don't know
5 anything about the windows in this building.
6 My only experience is just that it was an
7 issue where they had --

8 COMMISSIONER MAY: Where the
9 windows were open.

10 MR. MORDFIN: Where they had
11 opened them on nice days and there were
12 complaints from neighbors. We did not have
13 complaints from the neighbors while the
14 windows were closed during the colder weather
15 months.

16 COMMISSIONER MAY: Okay. Thanks.

17 CHAIRPERSON JORDAN: Any other
18 agency? Department of Transportation or
19 anyone? Did we get a letter? Yes, we did
20 receive a letter from the Department of
21 Transportation. The letter stated they had no
22 objection to the application.

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1 Is there anyone here from ANC-6B?

2 Yes, please. Come forward. Turn
3 the microphone on and please give us your
4 name.

5 MS. OLDENBURG: Yes. I'm Kirsten
6 Oldenburg. I'm the ANC commissioner 6B-04.
7 That is my single member district in which
8 this facility is going to be located.

9 CHAIRPERSON JORDAN: Thank you.

10 We do have a letter and a
11 recommendation from the ANC but if you wish to
12 elaborate.

13 MS. OLDENBURG: I just wanted to
14 state that -- just restate that we had sent a
15 letter. We had voted unanimously on this
16 case. Part of that was a proviso that Wagtime
17 adopt the conditions that we had put together.

18 I had negotiated those -- the
19 residents and I negotiated that set of
20 conditions with the Applicant and the
21 Applicant prior to the ANC hearing readily
22 accepted them so I'm here today just to ask

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1 you to grant the relief that the Applicant is
2 seeking but only with those conditions
3 attached.

4 I understand from what Mr. Mordfin
5 has said he's added a condition to -- added
6 one additional which would be -- I certainly
7 agree with the necessity of that one. We
8 didn't think about that when we were doing
9 ours.

10 I would also like to comment on
11 that, that the building has been within the
12 last couple of years been totally renovated so
13 I would suspect that the windows are not the
14 kind of windows that Mr. May and I have in our
15 -- well, mine have been upgraded. Sorry -- in
16 our houses on Capitol Hill.

17 I also wanted to just state that
18 these conditions are extremely important to
19 the neighborhood because of the impact on it
20 of the operations of Dogma, a dog daycare
21 facility located a block away.

22 When the new zoning rules covering

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1 this type of facility were established, Dogma
2 was grandfathered in and, accordingly, has not
3 been subject to the standards in the
4 regulations. This has caused problems in the
5 neighborhood.

6 The neighbors of the proposed
7 facility need these additional conditions
8 including the establishment of the liaison
9 committee to assure them that Wagtime will
10 operate in a different manner from what they
11 are experiencing from Dogma and, if problem do
12 arise, they have a way to address them. Thank
13 you.

14 CHAIRPERSON JORDAN: Thank you. I
15 appreciate you coming.

16 Any other persons in the audience
17 in support that wishes to testify? Any
18 persons in opposition?

19 Mr. Freeman, let me ask a couple
20 of things. One, I think the ANC had another
21 kind of condition, and I don't know what the
22 discussion was, about the use of valet parking

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1 issue.

2 MR. FREEMAN: Right. The ANC
3 condition -- let me backtrack. The conditions
4 that we agreed to with the ANC are attached to
5 the ANC resolution, Capitol Hill Restoration
6 Society resolution, and they are enumerated in
7 our prehearing statement. Those are all the
8 same verbatim.

9 Item No. 6 says, "The Applicant
10 will encourage all customers to park on the
11 lot adjacent to M Street or use its valet
12 parking service when dropping off animals."
13 That will discourage customers from parking
14 basically on neighborhood streets. That does
15 not appear to be in the Office of Planning's
16 report.

17 CHAIRPERSON JORDAN: That was the
18 next thing I was about to ask. I don't see
19 that in the Office of Planning's report. Let
20 me ask, if I may, why that -- can you explain
21 why you might have not included that one?

22 MR. MORDFIN: Oh, with the valet

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1 parking? The valet parking is something that
2 would be offsite if they were parking in front
3 on M Street and dropping off their animals.
4 I didn't include it because it's within public
5 space and not within private property. It's
6 not within the part of the property that has
7 zoning on it. That is why I didn't include
8 that.

9 You can park on M Street. To the
10 extent possible the Applicants could park
11 there. I did discuss it with DDOT. They saw
12 no issues with it as long as you follow the
13 parking regulations with the amount of time
14 that you could park there. That was why I
15 didn't include that in my conditions.

16 Also, I did add a second condition
17 that I misspoke before. The second one was
18 that I put in that the approval should be for
19 a period of five years. The reason for that
20 is because this type of use has the potential
21 to cause issues and also because the Applicant
22 has requested to be closer to residential uses

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1 than would otherwise be permitted for the
2 animal shelter.

3 Therefore, because this is the
4 first time they are coming before us at this
5 location, we suggest that it have a time
6 period on it to give the community the
7 opportunity that for some reason if this
8 doesn't work out as proposed that there is --
9 that this would have to come back before the
10 Board in order to continue after the five-year
11 period.

12 CHAIRPERSON JORDAN: So the
13 differences between what the ANC has requested
14 and OP appears to be No. 6 regarding the valet
15 parking and then the issue about a five-year
16 kind of sunset on the permission authority.

17 MR. FREEMAN: OP added two
18 conditions, conditions 1 and 3, 1 being a
19 five-year term and 3 being all windows have to
20 be kept closed. It did not include condition
21 6 of what we agree to with the neighbors.

22 CHAIRPERSON JORDAN: Let me ask

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1 the question about enforceability on the
2 committee one. I'm assuming there is not
3 going to be -- at least the ANC would have
4 representatives and then ANC would have the
5 burden, I believe, to try to make sure that
6 the Applicant has another resident or so.

7 That's my only concern about us
8 using -- issuing an order where it might
9 require someone that is not before the Board
10 to take an action. For instance, the other
11 resident and other people who were suppose to
12 participate in this -- on this committee,
13 another neighborhood representative.

14 That was my only other concern
15 regarding this. I guess you've already had
16 discussion and kind of began to talk about how
17 this committee was going to operate and form.

18 MR. FREEMAN: We had generally but
19 to the extent that someone is not on the
20 neighborhood committee and let's just say
21 we're not doing item No. 5, anybody has the
22 right to go to the Office of Zoning to kind of

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1 make sure that the conditions of an order are
2 being enforced. You don't have to be a member
3 of the committee to ensure that conditions are
4 being enforced.

5 CHAIRPERSON JORDAN: I'm sure of
6 that, yeah.

7 MR. FREEMAN: Right.

8 CHAIRPERSON JORDAN: I'm just
9 saying if there is a lack of people on the
10 committee. As time goes on that might become
11 that way but we can live with it and let you
12 guys work it out. That's probably the best
13 way of going about this.

14 Any other questions?

15 COMMISSIONER MAY: I just wanted
16 to clarify. So with the two additional
17 conditions from the Office of Planning, you're
18 okay with those?

19 MR. FREEMAN: We are okay with
20 having a term given that is a common
21 condition. With respect to No. 3, all windows
22 and doors within the building shall be kept

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1 closed, we would like to add when dogs are in
2 that room. If the dogs aren't in the room, we
3 would like to be able to open that window.
4 Then I guess we would add 6 back to this list.

5 CHAIRPERSON JORDAN: I just put
6 that back. Which one was it about the doors
7 and windows? Oh, when dogs are in. Okay.

8 COMMISSIONER MAY: I assume the
9 Office of Planning would have no objection to
10 that modification.

11 MR. MORDFIN: I have no objection
12 to that modification.

13 CHAIRPERSON JORDAN: What room are
14 we referring to because it's a general
15 condition within the building.

16 MR. FREEMAN: I guess it would say
17 all windows and doors within the building
18 shall be kept closed when dogs are in a
19 particular room. I mean, we could -- if you
20 look at the site plan, there are a number of
21 different areas within the building.

22 CHAIRPERSON JORDAN: Let me tell

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1 you that I am really guarded about having
2 conditions that (1) are subject to
3 interpretation, and (2) that something is not
4 really enforceable.

5 MR. FREEMAN: Or we can take it
6 out.

7 CHAIRPERSON JORDAN: No. I think
8 we are going to -- no, I understand. I think
9 there is a concern for that and I think it's
10 necessary.

11 MR. FREEMAN: So, for example,
12 when I'm looking at the site plan here --

13 CHAIRPERSON JORDAN: Let me ask
14 Office of Planning.

15 Is there any particular room in
16 the site plan that would be more of a problem
17 for having animals in, dogs in, or whatever,
18 to the residents? Of it is something that you
19 have a concern about the whole building as you
20 have indicated here?

21 MR. MORDFIN: Well, generally we
22 have this concern about it with this whole

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1 building. Every other animal or dog boarding
2 that has come before the Board we've added
3 that condition. We've added that for each
4 one.

5 For this application the windows
6 that would be closer to the residential uses
7 would be more of a concern than the ones on
8 the east side of the property where the animal
9 boarding is. The purpose is just to confine
10 noise to the extent possible for the building.

11 MR. FREEMAN: Mr. Chairman, we'll
12 just leave the condition as it is.

13 CHAIRPERSON JORDAN: Yeah, I think
14 we are leaning that way. You might have to
15 run back and forth or close a door or window
16 if somebody brings a dog in. If the windows
17 are up and nobody is in the place, no dogs in
18 the place, then it becomes an enforcement
19 nightmare.

20 Are there any other questions we
21 need to ask of anyone, the Applicant or OP?
22 Anyone?

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1 Mr. Freeman, if you want to close
2 first.

3 Yes.

4 MS. OLDENBURG: I apologize. I
5 just would like to get some clarification on
6 this document that we are talking about. The
7 number 6, has that been returned as a
8 condition or has that been taken out? I would
9 speak to how important that is to the
10 neighborhood.

11 CHAIRPERSON JORDAN: You don't
12 have to do so. We have not issued our
13 decision and order but I think it's our
14 feeling that we would have that in.

15 MS. OLDENBURG: Okay. Because it
16 is a commercial zone -- industrial zone the
17 residents who live there have no residential
18 permit parking so they have a real problem
19 with parking on that block. That is why it's
20 there.

21 I just want to say I'm really -- I
22 want to thank the Office of Planning for

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1 adding the five-year term. I think that is a
2 very appropriate thing to do in this case.

3 CHAIRPERSON JORDAN: Thank you.

4 Mr. Freeman, if you would wrap
5 this up, please.

6 MR. FREEMAN: Thank you. Again,
7 thank you for your time today. I think the
8 record clearly indicates how we meet the
9 burden of proof for the special exception and
10 the variance relief. We appreciate the ANC
11 support, the Office of Planning support, DDOT
12 support.

13 And the Capitol Hill Restoration
14 Society also submitted a letter in support.
15 We feel we meet all the standards. We would
16 ask that the Board approve our application,
17 add the conditions in OP's report, and No. 6
18 from the other conditions stated in the
19 letters.

20 With that we have nothing further.
21 Thank you.

22 CHAIRPERSON JORDAN: Thank you.

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1 We will close this record.

2 Let me ask the Board if you think
3 at this time we can deliberate? Anyone have
4 anything you want to add either way? Okay.

5 I think based upon the record the
6 Applicant has shown the necessities required
7 for variance relief, that this property
8 possesses an exceptional situation due to the
9 size of the lot and where it's located and how
10 close it is to the residents for it to be able
11 to operate.

12 Therefore, it presents a practical
13 difficulty in regards to the use of the
14 property that there will be no substantial
15 detriment to the public good. That has been
16 weighed in by the ANC who we also give great
17 weight to and the Office of Planning who we
18 give great weight to. There will be no
19 resulting harm to the zoning regulations.

20 Similarly, that the request for
21 special exception should be granted in that
22 there was no objectionable condition with the

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1 property's use based upon what has been
2 presented to us today.

3 The fact that it's a masonry
4 building and there is going to be a
5 requirement that the doors are closed and that
6 the use, although it will abut the residential
7 district, has been mitigated to some extent so
8 that this application will be one that we can
9 grant -- I would offer would be one that we
10 can grant the variance and special exception
11 relief requested.

12 With that, I would move the
13 approval of this application.

14 MEMBER MacMURRAY: Mr. Chairman, I
15 second the motion.

16 CHAIRPERSON JORDAN: Motion made
17 and seconded that we approve this application
18 for the variance and special exception with
19 the conditions -- if I may, with the
20 conditions in the OP report and adding to that
21 No. 6 of the ANC report that required the
22 Applicant to encourage all customers to park

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1 in a lot adjacent to M Street, S.E. or use the
2 valet parking.

3 That section we would add to this
4 order. And give leeway to the Office of
5 Zoning and OAG to make the word more effective
6 has been offered.

7 Anything else for this order?
8 With that, all those in favor signify by
9 saying aye.

10 BOARD MEMBERS: Aye.

11 CHAIRPERSON JORDAN: Those opposed
12 nay? The motion carries.

13 Mr. Secretary.

14 MR. MOY: Staff will record the
15 vote as four to zero to one. This is on the
16 motion of Chairman Jordan to approve the
17 application for both the special exception and
18 variance relief with conditions as stated by
19 the Board.

20 Seconding the motion Ms.
21 MacMurray. Also in support of the motion
22 Peter May and Jeffrey Hinkle and a Board

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1 member not present and not participating and
2 not voting. Again, four to zero to one.

3 CHAIRPERSON JORDAN: Since we have
4 no one in opposition and this decision is in
5 favor of the Applicant, then I believe this is
6 prime for a summary order.

7 MR. MOY: Yes. Thank you, Mr.
8 Chairman.

9 MR. FREEMAN: Thank you.

10 CHAIRPERSON JORDAN: We have one
11 other item of business that we need as a Board
12 to take care of today and that is to decide
13 upon whether we are going to have a closed
14 meeting on May 14, 2012.

15 As Chairperson of the Board of
16 Zoning Adjustment for the District of Columbia
17 in accordance with Section 405(b)(4) and
18 (b)(13) of the District of Columbia
19 Administrative Procedures Act, I move the BZA
20 hold a closed meeting via telephone conference
21 on May 14, 2012,, for the purpose of seeking
22 legal counsel from our counsel and

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1 deliberating upon the following cases
2 scheduled for upcoming decision: Case No.
3 18371, Case 18374, Case 18361, Case 18330,
4 Case 18240, Case 18404, Case 18273, and Case
5 18321.

6 I move that we approve this closed
7 meeting. Second?

8 MEMBER MacMURRAY: Mr. Chairman, I
9 second.

10 CHAIRPERSON JORDAN: Motion made a
11 seconded that we approve this closed meeting.

12 A roll call vote, please.

13 MR. MOY: Yes. When I call the
14 Board member's name, if you would please reply
15 by yes or no, aye or nay.

16 Mr. May.

17 COMMISSIONER MAY: Yes.

18 MR. MOY: Chairman Jordan.

19 CHAIRPERSON JORDAN: Aye or nay.

20 Aye.

21 MR. MOY: Ms. MacMurray.

22 MEMBER MacMURRAY: Yes.

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1 MR. MOY: Mr. Hinkle.

2 MEMBER HINKLE: Yes.

3 MR. MOY: We have a Board member
4 not present and not participating. The motion
5 carries, Mr. Chairman.

6 CHAIRPERSON JORDAN: Thank you.

7 As it appears that the motion has
8 passed, I hereby give notice that the BZA will
9 hold this aforementioned closed meeting via
10 telephone conference pursuant to Section 406
11 of the District of Columbia Administrative
12 Procedures Act.

13 Notice will also be posted in the
14 Office of Zoning electronic reading room,
15 placed on the Office of Zoning's electronic
16 calendar on its website, and published in the
17 District of Columbia's register in as timely
18 a manner as practical.

19 Is there any other business that
20 needs to come before the Board today? Seeing
21 none, we stand adjourned.

22 (Whereupon, at 1:39 p.m. the

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1 hearing was adjourned.)

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