

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 20, 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 10:11 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)
RASHIDA MACMURRAY, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

HARRIET TREGONING, DIRECTOR
JENNIFER STEINGASSER
JOEL LAWSON
TRAVIS PARKER
STEPHEN MORDFIN
KAREN THOMAS
MAXINE BROWN-ROBERTS
DOUGLAS WOODS
STEVEN COCHRAN
ARTHUR ROGERS
MATT JESICK
ARTHUR JACKSON
STEPHEN RICE

The transcript constitutes the
minutes from the Public Hearing held on March
20, 2012.

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

2 10:11 a.m.

3 VICE CHAIRPERSON SORG: The
4 hearing will please come to order.

5 Good morning, ladies and
6 gentlemen. We are located in the Jerrily R.
7 Kress Memorial Hearing Room at 441 4th Street,
8 NW. This is the March 20th Public Hearing of
9 the Board of Zoning Adjustment of the District
10 of Columbia. My name is Nichole Borg, Vice
11 Chairperson. Joining me today to my far right
12 Mr. Jeffrey Hinkle representing the National
13 Capital Planning Commission. To my right, Mr.
14 Lloyd Jordan, Mayoral Appointee. To my left
15 we would like to welcome our new Mayoral
16 Appointee Ms. Rashida MacMurray. And to my
17 far left Chairman Anthony Hood representing
18 the Zoning Commission.

19 What we are going to do today
20 before I finish reading the introduction is
21 I'm sitting in this chair today because

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1 unfortunately the term of our Chairwoman,
2 Meredith Moldenhauer ended and so she's no
3 longer sitting with us.

4 So, what we will do in that case,
5 the BZA generally holds elections in January
6 of each year, but given the timing of the
7 departure of Ms. Moldenhauer and, of course,
8 as we mentioned on the record last week, we
9 are very sorry to see her go and we appreciate
10 very much her service.

11 What we will do this morning
12 before we begin the business of the day, we
13 will hold our annual election. That being
14 said, I will call for any nominations for the
15 Chairmanship of the Board of Zoning
16 Adjustment. Are there any nominations?

17 MEMBER HINKLE: Yes, thank you,
18 Madam Chair. I would like to nominate
19 yourself. I think you've done a terrific job
20 as Vice Chair over the past year and a half
21 that I've been on this Board and certainly led

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1 us through a number of difficult cases while
2 our chair was absent. So, I'd like to
3 nominate you.

4 VICE CHAIRPERSON SORG: Thank you
5 very much, Mr. Hinkle. I'm very humbled by
6 that.

7 Before I address any nominations,
8 I'll call to see if there are any additional
9 nominations.

10 MEMBER MacMURRAY: I'd like to
11 nominate Lloyd Jordan for Chair.

12 VICE CHAIRPERSON SORG: Thank you
13 very much, Ms. MacMurray.

14 Now that nominations have been
15 made, I will address those two. While I
16 appreciate the support of Mr. Hinkle and I
17 appreciate the work that I've been able to do
18 on this Board and the work I'll be continuing
19 to do, I will decline that nomination, you
20 know, based upon my schedule. I want to make
21 sure that the operation of this Board proceeds

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1 as efficiently and as best as it can to serve
2 the public. And so I will decline that
3 nomination based on my travel schedule and I
4 will support the nomination of Mr. Lloyd
5 Jordan.

6 ZC CHAIR HOOD: Okay. So, Madam
7 Chair, what I would like to do is to make a
8 motion that the Board of Zoning Adjustment
9 have the Chairs, Mr. Lloyd Jordan and the Vice
10 Chair as Ms. Nicole Sorg and that's my motion.

11 VICE CHAIRPERSON SORG: Thank you
12 very much, Mr. Hood. A motion has been made.

13 Is there a second?

14 MEMBER HINKLE: Second.

15 VICE CHAIRPERSON SORG: The motion
16 has been made and seconded. So, we will now
17 call for a vote on the confirmation of Mr.
18 Lloyd Jordan as the Chair of the Board of
19 Zoning Adjustment and myself as continuing as
20 the Vice Chair.

21 All those in favor please say aye.

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1 (AYES)

2 VICE CHAIRPERSON SORG: All those
3 opposed?

4 Thank you very much.

5 Is it necessary to read back this
6 vote, Mr. Secretary?

7 ZC CHAIR HOOD: It's always --

8 VICE CHAIRPERSON SORG: It's
9 always necessary, Mr. Chairman.

10 SECRETARY MOY: I can do that for
11 you, Madam Chair.

12 The staff would record the vote as
13 five to zero to zero this on a motion of Mr.
14 Hood, seconding the motion, Mr. Hinkle. And
15 this motion is for the Chairmanship to Mr.
16 Lloyd Jordan, Vice Chairperson to Nicki Sorg.

17 Again, the vote is five to zero,
18 zero. Also in support of that motion Ms.
19 MacMurray, Ms. Sorg and Mr. Jordan.

20 So, again, the final vote is five
21 to zero to zero and the motion carries.

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1 Congratulations.

2 VICE CHAIRPERSON SORG:
3 Congratulations everybody. Thank you very
4 much, Mr. Secretary.

5 What we will do now is we will
6 take a quick two-minute break and I will
7 appreciate the patience of all those people in
8 the hearing room today and we will very
9 quickly get on with the business of the day.

10 So, we will be back in just about
11 two minutes.

12 (Whereupon, off the record from
13 10:17 a.m. to 10:24 a.m.)

14 CHAIRPERSON JORDAN: We're back on
15 the record.

16 The hearing will please come to
17 order.

18 Good morning, ladies and
19 gentlemen. Copies of today's hearing agenda
20 are available for you and are located to my
21 left in the wall bin near the door. Please be

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1 advised that this proceeding is being recorded
2 by a Court Reporter and is also webcast live.

3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

6 When presenting information to the
7 Board, please turn on and speak into the
8 microphone, first stating your name and home
9 address. When you are finished speaking,
10 please turn off your microphone so that your
11 microphone is no longer picking up sounds or
12 background noise.

13 All personal planning to testify
14 either in favor or opposition are to fill out
15 two witness cards. These cards are located to
16 my left on the table near the door and on the
17 witness tables. Upon coming forward to speak
18 to the Board please give both cards to the
19 reporter sitting to my right.

20 Also, if you are to file written
21 testimony and additional supporting documents

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1 today, please submit an original and 12 copies
2 to the secretary for distribution. If you do
3 not have the requisite number of copies you
4 can reproduce copies on the machine in the
5 Office of Zoning located across the hall.

6 The order of procedure for special
7 exemptions and variances are (1) statement of
8 the Applicant and the Applicant's witnesses;
9 (2) parties and persons in support; (3)
10 parties and persons in opposition; (4) report
11 of the Advisory Neighborhood Commission; (5)
12 Government reports, including the Office of
13 Planning, Department of Transportation, the
14 Office of the State Superintendent of Schools
15 and the Department of Public Works, and (6)
16 the rebuttal and closing statement of the
17 Applicant.

18 If an appeal application is on the
19 agenda and I don't think we have any today,
20 the order of procedure -- I don't think we
21 have any today so we'll hold that, right, Mr.

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1 Secretary? Got to go through the script.

2 Pursuant to Section 3117.4 and
3 3117.5 and the following time constraints will
4 be maintained. The Applicant, Appellant,
5 persons and parties except ANC's in support,
6 including witnesses have 60 minutes
7 collectively. These persons and parties
8 except an ANC in opposition including
9 witnesses have 60 minutes collectively.
10 Individuals three minutes, organizations five
11 minutes.

12 These time constraints do not
13 include cross-examination and/or questions
14 from the Board, cross-examination of witnesses
15 if permitted by the Applicant or parties. The
16 ANC in which the property is located is
17 automatically a party in a special exception
18 or variance case.

19 Nothing prohibits the Board from
20 placing reasonable restrictions on cross-
21 examination including time limits and

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1 limitations on the scope of cross-examination.

2 The record will be closed at the
3 conclusion of each case except for any
4 material specifically requested by the Board.

5 The Board and the staff will specify at the
6 end of the hearing exactly what is expected
7 and a date when the persons must submit the
8 evidence to the Office of Zoning.

9 After the record is closed, no
10 other information will be accepted by the
11 Board.

12 The District of Columbia
13 Administrative Procedures Act requires that a
14 public hearing be held on each case be held in
15 the open before the public. Pursuant to
16 Section 405b and 406 of the Act, the Board may
17 consistent with the rules and procedures in
18 the Act enter into a closed meeting on a case
19 for purposes to seek legal advice on a case
20 per D.C. Official Code Section 2-575B4 and/or
21 when deliberating on a case per D.C. Code

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1 2575B13, but only after providing the
2 necessary public notice and in the case of
3 emergency closed meeting after taking a roll
4 call vote.

5 The decision of the Board in these
6 contested cases must be exclusively on the
7 public record to avoid any appearance to the
8 contrary. The Board requests that persons
9 present not engage the members of the Board in
10 conversation.

11 Please turn off all beepers, cell
12 phones at this time so not to disrupt the
13 proceedings.

14 The Board will now consider any
15 preliminary matters. Preliminary matters are
16 those which relate to whether a case will or
17 should be heard today such as a request for
18 postponement, continuance or withdrawal or
19 whether proper and adequate notice of the
20 hearing has been given.

21 If you are not prepared to go

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1 forward with the case today or if you believe
2 that the Board should not proceed, now is the
3 time to raise such a matter.

4 Mr. Secretary, do we have any
5 preliminary matters?

6 SECRETARY MOY: There are no
7 preliminary matters in the office record, Mr.
8 Chairman.

9 CHAIRPERSON JORDAN: Okay. All
10 individuals wishing to testify today please
11 stand so you can take the oath.

12 If you're going to testify today,
13 please stand so you can take the oath.

14 (Witnesses Sworn.)

15 CHAIRPERSON JORDAN: You may
16 consider yourself under oath.

17 And the first case on the docket,
18 Mr. Secretary?

19 SECRETARY MOY: Yes, good morning,
20 Mr. Chairman, Members of the Board.
21 Congratulations to the Chair and to the Vice

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1 Chair.

2 The first application before the
3 Board for action is Application Number 18326.

4 This is the application of Valery and Atalia
5 Portnoi, pursuant to 11 DCMR 3104.1 for a
6 Special Exception to allow a deck addition to
7 an existing one-family row dwelling under
8 Section 223. Not meeting the lot occupancy,
9 Section 403 requirements in the R-5-B
10 District. This is at premises 2032 17th
11 Street, Northwest. Property located at Square
12 150, Lot 158.

13 If you would introduce yourself
14 please.

15 MR. SULLIVAN: Thank you. Good
16 morning, Mr. Chairman. My name is Martin
17 Sullivan with the law firm of Sullivan &
18 Barros.

19 MR. PORTNOI: My name is Valery
20 Portnoi.

21 CHAIRPERSON JORDAN: Mr. Sullivan.

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1 MR. SULLIVAN: Thank you and good
2 morning, Mr. Chair and Members of the Board.

3 My name is Martin Sullivan. The
4 Applicant are Atalia and Valery Portnoi.

5 CHAIRPERSON JORDAN: If I may
6 interrupt you for a second.

7 I think we have two parties status
8 requests. If you'll come forward please.
9 Yes, you need to come forward so we can --

10 We have two party status requests.
11 one from Susan Flinn and Brad Sweet. And the
12 other is from Bridget and Doug Hunnicut.

13 Now, your party status requests,
14 do you have similar issues? Have you talked
15 and found out what your issues are and why you
16 want to be granted party status?

17 Let me remind everyone. Please
18 hit the button on and off where it says push
19 so that when you're speaking pus the button
20 on. Your green light will light up and then
21 when you need to be off you'll see it.

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1 MR. HUNNICUT: Yes, initially when
2 the application was submitted, there was a
3 double deck so when we saw that that's when we
4 submitted the party status application or
5 request. Since then I think they're only
6 requesting one deck so I'm not sure if we have
7 to be here for status at this point.

8 CHAIRPERSON JORDAN: No, and
9 that's fine. We appreciate that if you don't
10 want to keep your party status. Either way
11 you want to do it. But if you don't think
12 it's necessary, then it's fine.

13 MS. FLINN: I think we'd rather
14 have the option.

15 MR. HUNNICUT: Yes, we'd rather
16 have it than not have it.

17 MS. FLINN: We're the neighbors by
18 the way.

19 MS. HUNNICUT: We would like to
20 have it but I think we need to hear exactly
21 what's being requested.

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1 VICE CHAIRPERSON SORG: Mr.
2 Chairman, just respectfully. I think maybe
3 this happens a lot with some citizens who are
4 coming in when their neighbors are, you know,
5 starting new projects. And I think perhaps we
6 can explain what party status means because
7 it's not actually your only means of
8 participating in the public discussion on the
9 project. And if you want me to go forward
10 then I will.

11 CHAIRPERSON JORDAN: Okay.

12 VICE CHAIRPERSON SORG: Typically
13 party status means that you would act just
14 kind of like a lawyer might. You would have
15 the opportunity to cross examine any witnesses
16 or provide, you know, statements or a case of
17 an argument or rebuttal and without reading
18 you at all, it sounds to me from reading your
19 applications and from hearing you today that
20 what may suit you and this is, of course, your
21 choice. What may suit you is to just provide

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1 testimony and we have a forum for that where
2 individuals can come in and provide testimony
3 for three minutes and that can occur after the
4 case is brought by the Applicant so that if
5 there are remaining questions, you could
6 address that in your testimony in three
7 minutes. So, that's what the choice of the
8 Chair was sort of giving you, I think.

9 CHAIRPERSON JORDAN: Do you
10 understand all that? Yes. Party status means
11 you come in. You're basically thinking about
12 doing kind of a real full-blown presentation
13 to the Board but as Ms. Sorg said, that it
14 appears that you might just want to take a
15 look at making comments as either in support
16 or opposition. But going deeper, I understand
17 that some of the party status requests and I'm
18 trying to think which one it was that it
19 appears that you had not been given the plans
20 to review and that raised your concern.

21 MS. FLINN: That was out.

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1 CHAIRPERSON JORDAN: And have you
2 subsequently seen one?

3 MS. FLINN: I got them from Doug.

4 CHAIRPERSON JORDAN: Okay. And
5 have you had an opportunity to review them?

6 MS. FLINN: Right. Doug said
7 there were two decks, two very large decks.
8 So, we have not seen, I don't think, plans
9 with just the single deck.

10 CHAIRPERSON JORDAN: And that
11 raises a good question if the Board had seen
12 the single deck plans? Do we have the single
13 deck plans?

14 VICE CHAIRPERSON SORG: Mr.
15 Chairman, I don't believe that they are in our
16 record. Perhaps, Mr. Sullivan has some today?

17 MR. SULLIVAN: No, we came here
18 today prepared to amend the application to a
19 single deck. We can submit something for the
20 record after today. We don't have a drawing
21 with a single deck. It would just be -- the

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1 plan is the same just without anything above
2 the railings on that first-floor deck.

3 CHAIRPERSON JORDAN: We're going
4 to need the drawings.

5 MR. SULLIVAN: Okay.

6 CHAIRPERSON JORDAN: otherwise,
7 we're flying in the dark and it's a
8 requirement that we do have those drawings.
9 And it's also advised that the neighbors see
10 the drawings before you come back.

11 MR. SULLIVAN: Okay. The
12 neighbors have seen the drawings.

13 CHAIRPERSON JORDAN: With the
14 single deck?

15 MR. SULLIVAN: No, not with the
16 single deck but they've seen the whole first
17 deck and I think the Office of Planning will
18 find that what was submitted was sufficient as
19 well.

20 CHAIRPERSON JORDAN: Planning,
21 have you see the single deck plan?

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1 MR. JACKSON: Arthur Jackson D.C.
2 Office of Planning. No, we haven't seen any
3 revised plans. They have been described to us
4 as basically a lower level.

5 CHAIRPERSON JORDAN: The Board
6 strongly favors seeing the plans and requests
7 to have the plans, Mr. Sullivan. Do you have
8 them with you?

9 MR. SULLIVAN: I have -- I only
10 have plans for the two-story deck. I can
11 cross out of remove the portions. This s the
12 extend of the plan.

13 CHAIRPERSON JORDAN: I can't see
14 what you're showing and plus it's not on the
15 record.

16 MR. SULLIVAN: This is in the
17 record. This is in the application.

18 ZC CHAIR HOOD: I think, Mr.
19 Chairman --

20 CHAIRPERSON JORDAN: You have to
21 make reference to what you're talking about on

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1 this please for the record.

2 MR. SULLIVAN: It's an exhibit in
3 our application.

4 ZC CHAIR HOOD: I think it's
5 Exhibit 11.

6 SECRETARY MOY: Yes, Mr. Chairman,
7 it's Exhibit 11 in your case folders.

8 CHAIRPERSON JORDAN: Okay. We
9 have that. And have you, the neighbors, seen
10 the plans?

11 MS. FLINN: I got them from Doug,
12 not from the Portnois.

13 MR. HUNNICUT: And I've seen the
14 original plans. I haven't seen the revised
15 ones.

16 CHAIRPERSON JORDAN: First, before
17 we go on. I'm trying to remember, did all of
18 you take the oath?

19 MS. HUNNICUT: We didn't he did.
20 We didn't know if this was qualified as
21 testifying or -- sorry about that.

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1 CHAIRPERSON JORDAN: Well, we're
2 actually on the record and we're taking
3 statements from you and some of that will go
4 toward what we're doing. What we're trying to
5 decide now is your party status and whether or
6 not you want to go forward as party
7 participants in this or if you really want to
8 go and just add comments based upon what
9 you've seen.

10 MS. HUNNICUT: And are you asking
11 for revised drawings before it proceeds or is
12 it proceeding now?

13 CHAIRPERSON JORDAN: Well, I would
14 favor having the plans. But Counsel was
15 trying to offer that we can kind of
16 extrapolate what the plans are and I just
17 don't know if our Board is comfortable with
18 that.

19 ZC CHAIR HOOD: Mr. Chairman, I
20 would be inclined to move forward. I would
21 just say no decision should be rendered until

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1 the final plans are in the record. That would
2 be my way. And also I would agree with the
3 Vice Chair Sorg on asking the parties because
4 when you look at least at the application, one
5 of the party status that they say that we do
6 not know what the plan is for the deck. And I
7 think that as the Applicant goes through his
8 process and though we have to make heads or
9 tails because they have agreed to take off the
10 top part of the deck, just one story. I think
11 that as we go through this process it will
12 give you a chance to hear which is normally
13 done outside of the realm of the Board of
14 Zoning Adjustment. It's usually done at an
15 ANC meeting or civil meeting or just the
16 Applicant talking to those who are most
17 affected. So, that way, Mr. Chairman, I think
18 we can still move on t=with this case but I
19 would not be in favor of rendering a decision
20 until the Board sees otherwise, unless we have
21 the floor plan.

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1 CHAIRPERSON JORDAN: Thank you.
2 So, we can proceed, I'm going to hold in
3 abeyance the party status issue until you see
4 the presentation by the Applicant and then you
5 can make a determination then. I certainly
6 before that time would need you to also take
7 the oath.

8 But, additionally, I want to ask
9 Mr. Sullivan. What relief are you requesting?

10 MR. SULLIVAN: We're requesting
11 Special Exception relief under Section 223 to
12 go to a lot occupancy of 70 percent for the
13 deck addition.

14 CHAIRPERSON JORDAN: And I
15 understand the Office of Planning believes
16 that you may need additional relief. Have you
17 had that discussion?

18 MR. SULLIVAN: I have had that
19 discussion. I'm not sure we've come to an
20 agreement. With respect to the Office of
21 Planning I think they're incorrect. We're not

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1 a nonconforming structure, never have been and
2 never will be. And Chapter 20 only applies to
3 nonconforming structures.

4 CHAIRPERSON JORDAN: Okay. Go
5 ahead and proceed.

6 MR. SULLIVAN: Thank you.

7 Again, the Applicant is requesting
8 a Special Exception relief under Section 223
9 to go to 70 percent. The original proposal as
10 you know was for a Special Exception relief to
11 build a deck on both the first and second
12 floor levels. And in response to concerns of
13 Mr. Hunnicut at the ANC meeting on March 7th,
14 we agreed -- the Applicant agreed to scale
15 back the proposal to the one deck only on the
16 first floor. And based on that change, the
17 ANC 1C voted to support the application for
18 one deck and the Office of Planning also
19 offered their support and we believed at the
20 time and in the conversation that I had
21 yesterday with Mr. Hunnicut that they were

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1 also in support of the proposal now as well
2 because it was a single deck.

3 It is my understanding that the
4 Hunnicut's saw the plans last summer. They
5 haven't changed since then other than we would
6 remove the second deck.

7 And over the course of the last
8 couple of weeks, I have offered several times
9 to show them any new plans or to go over the
10 plans and he said he thought he had a good
11 understanding of the plans.

12 The first floor deck as proposed
13 will not impact the light and air or privacy
14 of the surrounding neighbors and it does
15 intrude upon the character, scale and pattern
16 of houses along the street frontage as
17 evidence primarily by the design approval by
18 the Historic Preservation Office.

19 That's all we have. If you have
20 any questions of the Applicant I'd be happy to
21 answer them.

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1 CHAIRPERSON JORDAN: Any
2 questions?
3 Why do you believe this is going
4 to be a nonconforming use?
5 MR. SULLIVAN: Well, it's not a
6 nonconforming use obviously but it's not a
7 nonconforming structure because it's currently
8 conforming in compliance with the zoning
9 regulations. The only way it would become a
10 nonconforming use is if there was some
11 condition of the property which was then
12 legislated out of compliance either n 1958 or
13 by some change in the regulations afterwards.
14 But -- and it's an academic discussion to
15 some extent because 223 covers Chapter 20 as
16 well. But Chapter 20 only applies to
17 nonconforming structures. We're not a
18 nonconforming structure.
19 CHAIRPERSON JORDAN: Ms. Sorg.
20 Is that the end of your
21 presentation?

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1 MR. SULLIVAN: Yes.

2 CHAIRPERSON JORDAN: So, the only
3 change to your plans is that you just simply
4 are not doing the second level?

5 MR. SULLIVAN: The second level is
6 completely removed and any posts going up to
7 the second level and there's no -- this is one
8 thing that Mr. Hunnicut asked that there be no
9 screening or any pergola or any additional
10 structure above the railing on the first floor
11 and so there won't be anything there. There
12 isn't anything in the plans there now and
13 there won't be.

14 CHAIRPERSON JORDAN: We'll now
15 hear from anybody in support. Persons and
16 parties in support.

17 See none, let's move now to the
18 Report from the ANC. Do we have an ANC
19 report?

20 In my file I have not seen an ANC
21 letter.

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1 OAG MEMBER GLAZER: Mr. Jordan, I
2 believe there is an ANC report that states
3 that they are in support provided there's
4 only one level of the deck.

5 CHAIRPERSON JORDAN: Do we have
6 the ANC letter?

7 OAG MEMBER GLAZER: We do.

8 VICE CHAIRPERSON SORG: Ms.
9 Glazer, I don't believe that it's in any of
10 our files. Mr. Sullivan, do you happen to
11 have knowledge of -- you have a copy? Perhaps
12 you can give that to the Secretary?

13 ZC CHAIR HOOD: I know it was
14 mentioned in the Office of Planning's
15 community comments. I didn't see a report
16 from the ANC.

17 SECRETARY MOY: For the record,
18 Mr. Chairman, there's none in the official
19 record, but I've just been handed one from the
20 Applicant and I'll make multiple copies for
21 you.

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1 CHAIRPERSON JORDAN: And to save
2 time, if you could read it for us that would
3 be good.

4 SECRETARY MOY: Yes, it says, "At
5 a duly noticed public meeting of ANC-1C held
6 on March 7th, 2012, with a quorum of seven of
7 eight commissioners present, ANC-1C took
8 action on BZA Case Number 18326, passed by
9 voice vote, ANC-1C does support granting of a
10 Section 223 Special Exception for the
11 construction of one porch at the rear of 2032
12 17th Street, Northwest. The support is
13 limited to a single porch, not two as
14 originally requested. AND-1C is pleased to
15 share this action and does urge the BZA to so
16 approve." Signed Wilson Reynolds.

17 CHAIRPERSON JORDAN: Thank you,
18 Mr. Moy.

19 We'll now go to the Office of
20 Planning.

21 MR. JACKSON: Good morning, Mr.

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1 Chairman and Members of the Board.

2 My name is Arthur Jackson, D.C.
3 Office of Planning and I have before you the
4 Office of Planning's Report. We'll stand on
5 the record and just say that we recommend
6 approval of the Special Exception relief for
7 the one-story deck in line with the ANC
8 recommendation.

9 CHAIRPERSON JORDAN: And so are
10 you withdrawing your concern about the other
11 relief needed?

12 MR. JACKSON: Yes.

13 VICE CHAIRPERSON SORG: Can I --
14 are we doing questions of the Office of
15 Planning? Why did you originally indicate for
16 my own edification.

17 MR. JACKSON: Well, if you look at
18 -- we're talking about Section 2001,
19 nonconforming structures, and if you take the
20 2001.3 by itself it talks about enlargements
21 or additional may be made to structure

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1 provided and it has some conditions under
2 that.

3 MR. JACKSON: What was that?

4 MR. JACKSON: Sorry, 2001.3, that
5 whole section A and B. It talks about
6 structures that could -- additions or
7 enlargements made to structures provided. And
8 so we take that as a statement, then you would
9 take it to be -- you could apply it to
10 nonconforming and nonconforming structures.
11 But Mr. Sullivan is right. This section is
12 strictly about nonconforming structures. And
13 so in that regard, this would -- if he added
14 an addition that did not conform, then it
15 would just be a legal addition, not
16 nonconforming because nonconforming predate
17 the regulations. Illegal additions come after
18 regulations if you build something that
19 doesn't match. So, we defer -- we think that
20 we identified this correct and so we are
21 withdrawing our concern about it.

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1 VICE CHAIRPERSON SORG: Oh, good.

2 I'm glad you clarified that because I spent
3 last night looking at all the plans being like
4 where's the nonconformity.

5 MR. JACKSON: And in the past the
6 Boards going back and forth about whether we
7 should highlight 2001.3 because we are trying
8 to by 223 and I think the Office of Planning,
9 our strategy has been basically to address it
10 in every case, even though we know it's going
11 to be resolves. But in this case it wasn't
12 really necessary so we accept the fact that in
13 this case it was misapplied.

14 VICE CHAIRPERSON SORG: Got you.
15 Thank you for your clarification.

16 CHAIRPERSON JORDAN: Any other
17 questions?

18 MR. JACKSON: Oh, Mr. Chairman, I
19 just want to note that I did have
20 conversations with the Department of
21 Transportation and they did not have any

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1 concerns about this proposal. And I'll also
2 note that the reference in the Office of
3 Planning's report is really based on a
4 conversation with the Applicant's attorney
5 that who had been to the meeting and was kind
6 enough to share what actually transpired.

7 CHAIRPERSON JORDAN: Thank you.

8 Now, we're going to turn to the
9 neighbors. Have you quite decided. You have
10 the opportunity to do a presentation as party
11 status. We have not granted it yet. I
12 believe we could give it to you but then you
13 can or you have a right providing as a witness
14 to say what your comments are regarding the
15 application, if you want to. It's not
16 necessary, but if you want to.

17 MS. HUNNICUT: I mean and we would
18 be able to see the revised plans. Is that
19 right? Did you say that in the beginning?

20 CHAIRPERSON JORDAN: Well, we are
21 proceeding as amended here --

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1 MS. HUNNICUT: That's fine.

2 CHAIRPERSON JORDAN: -- as it's
3 been related by Mr. Sullivan that the second
4 floor and all the pillars holding the second
5 floor is removed and in light of her
6 conversation, Mr. Hunnicut is the way the
7 process is going to go. But the structure is
8 going to be built. Great.

9 MR. SULLIVAN: Right, and I would
10 just add that the plans as proposed, they're
11 not in color, but as it pertains to any of the
12 guidelines in 223 for light and air and
13 privacy of use, I think they're sufficient for
14 those purposes.

15 CHAIRPERSON JORDAN: So, I'll turn
16 back to you. You can stand as it is and not
17 necessary to add anything. I think that's the
18 signal I'm picking up.

19 MS. HUNNICUT: I think that's
20 fine, yes.

21 CHAIRPERSON JORDAN: Okay. Do you

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1 want to withdraw your party status request?

2 MS. HUNNICUT: Yes, that's fine.

3 CHAIRPERSON JORDAN: And then we
4 will accept it as being withdrawn.

5 Any other questions?

6 Do you want a closing from this?

7 MR. SULLIVAN: Thank you. Nothing
8 further to add other than we're happy to
9 submit a revised plan if the Board requires.
10 And we'd appreciate a summary order following
11 a decision. Thank you.

12 CHAIRPERSON JORDAN: We will go
13 ahead and deliberate today but understand that
14 without the plan there will not be an order
15 issued.

16 MR. SULLIVAN: Thank you.

17 CHAIRPERSON JORDAN: I believe
18 that the Applicant has met the requirements of
19 223 for relief. I believe that all the
20 provisions of 223, particularly where light
21 and air will be available to the neighbors.

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1 The neighbors are here and are comfortable
2 with the drawings and as discussed here at the
3 hearing. The property is at the north end of
4 the lot with east/west orientation. The
5 shadows cast by the building is not an issue
6 for the neighbors. The privacy use and
7 enjoyment has been kind of worked out with
8 regards to restrictions as to what's necessary
9 for the one-level deck. And so it doesn't
10 appear that there's any hinderance to the
11 privacy and enjoyment of the neighbors
12 regarding this property.

13 I believe that the building and
14 the view from the street and alley and other
15 public way are not going to be intrude upon by
16 this particular deck and the need for --
17 there's not any particular need for any
18 special treatment other than what we've heard
19 by agreement by the Applicant that there's not
20 going to be any other fixtures added to this
21 particular deck. And so, therefore, I believe

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1 that this particular application meets the
2 requirements of 223 and I would stand to hear
3 any other comments.

4 VICE CHAIRPERSON SORG: Thank you,
5 Mr. Chairman. I don't have any comments to
6 add. I would commend the Applicant for
7 working with the neighbors to amend their
8 application upon the community comments and I
9 would support a motion to approve the
10 application.

11 Thank you.

12 MEMBER HINKLE: Mr. Chair, I just
13 wanted to state that in my opinion the plans
14 aren't necessarily complete because we're
15 looking at an initial lot occupancy and I
16 don't see anything in the plans that actually
17 shows the planned view and the measurements of
18 the deck that's being proposed and how that
19 relates to the square footage of the lot. So,
20 I understand that we're asking the Applicant
21 to submit some revised drawings and I would

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1 like to see that as well within the drawings
2 that are submitted.

3 CHAIRPERSON JORDAN: Prior to us
4 voting?

5 MEMBER HINKLE: No, no. Not
6 necessarily.

7 CHAIRPERSON JORDAN: Okay.

8 MEMBER HINKLE: I can support
9 the--

10 CHAIRPERSON JORDAN: But you're
11 asking specifically that requirement to be in
12 the plan so that you can understand it.

13 MEMBER HINKLE: Correct.

14 CHAIRPERSON JORDAN: Seeing
15 there's no other deliberations, the Chair will
16 entertain a motion to recommend approval of
17 the Special Exception relief request pursuant
18 to Section 223, relief from 403.2, the lot
19 occupancy requirement for the proposed rear
20 deck.

21 ZC CHAIR HOOD: Is that a motion,

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1 Mr. Chairman?

2 CHAIRPERSON JORDAN: Motion.

3 ZC CHAIR HOOD: I'll second it.

4 I have a question for discussion.

5 CHAIRPERSON JORDAN: Go ahead.

6 ZC CHAIR HOOD: I just wanted --

7 CHAIRPERSON JORDAN: Let me quick.

8 The motion has been made and seconded. Go

9 ahead, Mr. Hood.

10 ZC CHAIR HOOD: I just wanted

11 Board Member Hinkle though Exhibit 3 would

12 satisfy it or not. I was just asking.

13 Exhibit 3? Does that satisfy you?

14 MEMBER HINKLE: No, Mr. Hood, it

15 doesn't. There's not necessarily any

16 measurements in terms of how large the house

17 is --

18 ZC CHAIR HOOD: Okay. I got you.

19 MEMBER HINKLE: -- in comparison

20 to the proposed deck. And I'd just like to

21 have a complete record with --

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1 ZC CHAIR HOOD: Okay.

2 MEMBER HINKLE: -- and a plan that
3 shows the actual measurements of the deck
4 being proposed and how that relates to the lot
5 occupancy.

6 CHAIRPERSON JORDAN: And for the
7 record, I wanted to assume that that, Mr. Moy,
8 that that motion included that the approval is
9 subject to getting the drawings.

10 SECRETARY MOY: Absolutely, Mr.
11 Chairman.

12 CHAIRPERSON JORDAN: Okay. All
13 those in favor of approval signify by saying
14 aye.

15 (AYES)

16 CHAIRPERSON JORDAN: Those
17 opposed, nay.

18 SECRETARY MOY: The staff would
19 record the vote as five to zero to zero. This
20 is a motion of Chairman Jordan to approve the
21 application for a Special Exception under

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1 Section 223, not meeting the lot occupancy
2 requirements under Section 403.

3 Seconding the motion, Mr. Hood.
4 The understanding is that before an order can
5 be issued that amended plans needed to be
6 submitted into the record which includes a
7 plan view -- a plan view map.

8 Also in support of the motion, Ms.
9 MacMurray, Ms. Sorg and Mr. Hinkle. Again,
10 final vote is five to zero to zero and the
11 motion carries.

12 MEMBER HINKLE: Mr. Chair, before
13 we move forward, can we just request that the
14 plans also be provided to the neighbors?

15 CHAIRPERSON JORDAN: Oh,
16 absolutely, thank you.

17 MEMBER HINKLE: Okay.

18 CHAIRPERSON JORDAN: Mr. Sullivan,
19 if you would?

20 MR. SULLIVAN: Certainly.

21 CHAIRPERSON JORDAN: Thank you.

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1 MR. SULLIVAN: Thank you.

2 SECRETARY MOY: Okay. This would
3 also include a waive in the requirements or a
4 Summary Order, Mr. Chairman. Thank you.

5 The next application before the
6 Board for action is Application Number 18325.

7 This is the Application of Renaissance Centro
8 Third Street, LLC, pursuant to 11 DCMR 3104.1
9 and 3103.2, for a variance from the lot
10 occupancy requirements under Section 772, a
11 variance from the rear yard requirements under
12 Section 774, a variance from the off-street
13 parking requirements under subsection 2101.1,
14 and a special exception of allow a roof
15 structure with walls of unequal heights under
16 subsection 411.11. This is to allow an
17 addition to an existing building in the DD/C-
18 2-C District at premises 704 3rd Street,
19 Northwest. Property located at Square 529,
20 Lots 802, 803, 845 and 847.

21 CHAIRPERSON JORDAN: Yes.

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1 MR. ROSEN: I was sworn in. I'm
2 a--

3 CHAIRPERSON JORDAN: Okay. We'll
4 call the witnesses on the case.

5 Thank you. And thanks for letting
6 us know that you're sworn in.

7 Are you ready to proceed?

8 MR. KADLECEK: Just a minute,
9 we're pulling up our PowerPoint presentation.

10 Although before we proceed, there
11 is a preliminary matter and that is to have
12 Mr. Sacha Rosen qualified as an expert. I
13 believe you have his resume in front of you
14 and he has been qualified as an expert before
15 the Board.

16 VICE CHAIRPERSON SORG: Mr.
17 Chairman, just looking through the list of
18 experts and it appears we have had Mr. Rosen
19 in the past so I personally would see no
20 issues with the request.

21 CHAIRPERSON JORDAN: We will

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1 accept him as an expert.

2 MR. KADLECEK: We're ready to
3 begin.

4 CHAIRPERSON JORDAN: Board, are we
5 ready? Yes, go ahead, please.

6 MR. KADLECEK: Good morning,
7 Members of the Board. My name is Cary
8 Kadlecek of the lawn firm of Goulston and
9 Storrs. With me this morning is John Epting
10 also of Goulston and Storrs. Sunny Small,
11 Alonch Harstein, Doug Erdman, Stuart
12 Zuckerman, all of the development team and
13 Sacha Rosen, the project architect who is to
14 my right.

15 In this case, the Applicant plans
16 to make a 12-story addition to a historic
17 landmark building, thereby bringing life back
18 to this long upending building and animating a
19 prominent corner that is largely ignored in
20 its current condition and just a few blocks
21 from where we are today.

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1 The Applicant will accomplish this
2 transformation through a design that was
3 approved by the HPRB in September 2011.

4 In order to make such a project
5 feasible, the Applicant requests area variance
6 relief from the rear yard lot occupancy and
7 off-street parking requirements and a Special
8 Exception for a roof structure composed of
9 walls of unequal height.

10 It is important to note that the
11 Board in Case Number 17651 approved rear yard
12 variance and roof structure Special Exception
13 relief for a nearly identical project in terms
14 of footprint and massing back in 2007. The
15 exceptional conditions, practical difficulty
16 and no impact factors that contributed to
17 approval of that relief are very much the same
18 here and in some ways have exacerbated the
19 necessity for today's requested relief.

20 As the architect will explain in
21 his testimony, a confluence of factors

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1 contribute to the exceptional conditions
2 affecting this property but it is the presence
3 and required retention of an extremely fragile
4 landmark building that is the most prominent
5 exceptional condition.

6 As the architect will further
7 testify, the exceptional conditions affecting
8 the property result in a situation that is
9 very burdensome for the Applicant to comply
10 with the zoning regulations with respect to
11 the areas of request variance relief.

12 As the Board is well aware, the
13 Applicant's legal burden for the practical
14 difficulty is that complying with the zoning
15 regulations is burdensome, not impossible.

16 For all the variance relief
17 requested, it is indeed burdensome for the
18 Applicant to comply with the zoning
19 regulations and it is particularly so for
20 providing additional underground parking.

21 The Office of Planning agrees that

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1 this application meets the test for variance
2 relief from the rear yard and lot occupancy
3 requirements as well as the standards for
4 Special Exception relief from the roof
5 structural requirements.

6 Furthermore, the District
7 Department of Transportation recommends
8 approval of the variance from the off-street
9 parking requirements.

10 The Office of Planning requested
11 additional information regarding the practical
12 difficulty of providing additional underground
13 parking. In response, the materials we
14 submitted to you today provide detailed
15 information regarding the extraordinary burden
16 in terms of difficulty, complexity, cost and
17 time if the Applicant were required to provide
18 additional underground parking. As such, this
19 application satisfies the standards for this
20 requested variance relief from the off-street
21 parking requirement and we are confident that

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1 the Office of Planning will agree.

2 I would also like to note that the
3 Office of Planning has had the opportunity to
4 review the materials that we submitted to you
5 today.

6 The record in this case is quite
7 full in support of the requested relief. In
8 addition to OP and DDOT support, there is no
9 known opposition to this project and the ANC
10 unanimously voted to support it.

11 With that, we would like to give
12 you an overview of the project. Sasha Rosen
13 will now discuss the project and the requested
14 areas of relief.

15 CHAIRPERSON JORDAN: If you would
16 just focus on the parking issue and the
17 response particularly to the roof structure
18 setback issue?

19 MR. KADLECEK: Sure.

20 MR. ROSEN: Good morning, Members
21 of the Board. My name is Sasha Rosen with R2L

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1 Architects here in the District.

2 As you requested, I'll go quickly
3 through the plans so feel free to ask
4 additional questions or ask me to go quicker
5 if you need. Give me just a moment while I'm
6 waiting for this --

7 CHAIRPERSON JORDAN: Who is
8 managing the lights?

9 MR. ROSEN: Me, I guess. I am
10 ready with the lights.

11 Just to look at the project it's
12 about a block and a half from here on the
13 corner of Third and G Street, Northwest. Here
14 are some photos. If you have any questions
15 you can come back and look at these.

16 I want to point out, this diagram
17 clearly illustrates the nature of the project
18 which is that over here is a historic landmark
19 structure, the Canterbury. And an adjacent
20 empty lot. There are two record lots in this
21 area. In addition, there are three existing

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1 buildings which are not designated historic
2 landmarks or in the District but they are, in
3 fact, eligible for landmark status because
4 they're greater than 50 years old. They are
5 all Bearing Masonry Construction.

6 You'll also notice that the
7 existing landmark structure has two parts. A
8 north end and a south end and I'll talk a
9 little more about our decision from the
10 Historic Preservation Review Board about what
11 portions will be maintained.

12 And this is a diagram of the
13 parking. We'll start with the parking issue
14 first.

15 We proposed to provide one level
16 of underground parking for this project.
17 You'll notice, again, there are two portions.
18 The parking area is located in the south
19 portion of the building. There's an entry
20 ramp which comes from the north. There's an
21 alley on the north of the project. This was a

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1 design which resulted from working together
2 with the Historic Preservation Office and
3 approved by the Historic Preservation Review
4 Board which was to demolish the interior
5 component of the south end of the project of
6 the existing landmark structure and to
7 maintain the existing facade along the south
8 side and along the east side of that structure
9 but not demolish any component of the north
10 third of the project where you see in the fat
11 lines at the north end.

12 So, it was a specific requirement
13 of the Historic Preservation Review Board that
14 we not excavate underneath that area. As a
15 result, the area available to us for parking
16 was about two thirds of the site and we
17 actually have a rather efficient parking
18 layout here which affords us 21 parking
19 spaces.

20 In a prehearing statement we had
21 proposed to provide two or three levels of

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1 parking and you'll note that part of the
2 question that was raised by the Office of
3 Planning last week was why is it that we are
4 now providing one level of parking. And I'm
5 going to skip ahead in the drawings a little
6 bit to some of the new exhibits and explain
7 why. And I'll come back to these drawings to
8 discuss the roof structure and the set back
9 issues as well.

10 VICE CHAIRPERSON SORG: Do you
11 mind if -- pardon me, I'm sorry. Do you mind
12 if I just interrupt for a second.

13 MR. ROSEN: Sure.

14 VICE CHAIRPERSON SORG: I just
15 want to while we're going through the
16 explanation of the parking variance request,
17 can you just clarify? Is there a dual request
18 now or is it just a request for one level only
19 regardless of the use?

20 MR. KADLECEK: That's right. It's
21 a request for one level parking, 21 spaces

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1 regardless of the use.

2 VICE CHAIRPERSON SORG: Period.

3 Okay.

4 MR. ROSEN: Yes.

5 MR. JACKSON: Thank you.

6 MR. ROSEN: So, to clarify with
7 this diagram which is a new exhibit which was
8 provided to the Office of Planning late
9 yesterday and in which has been submitted this
10 morning. You can see that we will not be
11 excavating at the north end. This area here
12 is an area where we'll be allowed to excavate
13 for parking and here are the three adjacent
14 structure.

15 This is a section diagram through
16 the site. This component here on the right is
17 the exhibiting east wall, bearing masonry
18 construction of the landmark which will be
19 preserved in place. So, we're going to remove
20 the internal structure of the building but
21 embrace the exterior at considerable expense

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1 we'll be putting this engineered steel
2 structure which will actually have its own
3 foundation underneath the sidewalk here and
4 hold up that five and a half story wall in
5 place during the entire duration of the
6 excavation and reconstruction of the building
7 behind that facade until such time as the new
8 structure can then support the facade. So,
9 that's on that end.

10 This area back here is that square
11 portion at the north end which is a part of
12 our -- the landmark structure on our site
13 which we will be maintaining in place and
14 supporting again during the entire
15 construction sequence.

16 This is one of the adjacent
17 buildings. It has a small rear yard of our 12
18 feet. This is a four and half story structure
19 so it only goes underground about half a story
20 in that location. And what I want to show in
21 this diagram is that if we only excavate one

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1 level which down to the existing -- there's an
2 existing basement in the structure, if we only
3 excavate down to that level, we in fact do not
4 need to underpin any of the adjacent
5 structures either on the east half of the
6 block or in fact the north end of our own
7 building. Typically, as long as you're not
8 taking away the soil that that building is
9 sort of sitting on, you're okay.

10 Once you start excavating at these
11 additional levels and you see this with the
12 dash line, the engineering -- the rule of
13 thumb here is that we'll start at the corner
14 of the existing foundation and you stake a 45-
15 degree line down. And if you cross that line
16 with your foundations, if you go deeper than
17 that line, then you then have to support the
18 adjacent structures.

19 Due to the fact that these are
20 masonry bearing walls structures and, in fact,
21 the landmark itself is in exceptionally poor

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1 structural condition as noted by the Historic
2 Preservation Review Board, it would be quite a
3 burden to actually undertake that underpinning
4 and, in fact, potentially dangerous and could
5 lead to damage to the structures.

6 The process itself would be
7 dangerous but, in addition, the duration of
8 time that it would take to continue to
9 excavate to the bottom of the hole and to
10 bring the structure back up, but the longer
11 that takes, the more risk there is of
12 potential damage to settlement or weather
13 conditions, earthquakes like we had last year.

14 So, for that reason, it will be substantially
15 quicker and less burdensome to only excavate
16 the one level.

17 In addition to the presence of the
18 existing buildings surrounding, including the
19 landmark as well as the adjacent structures,
20 we have other factors contributing to the
21 practical difficulty of excavation as well as

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1 construction on this site. And one that it is
2 a relatively small site made that much smaller
3 by the fact that we can't excavate underneath
4 the north third of it because of the
5 restrictions placed on the site by the
6 Historic Preservation Review Board. So, it's
7 a relatively small site.

8 Also, on the north end there's an
9 existing building here and here's the fragile
10 landmark structure. There's only about 27
11 feet in between there and down at the south
12 end you'll see we'll preserve a portion of the
13 existing facade on the south end. So, there's
14 only about 70 feet of site access along the
15 south end as well.

16 What I'm showing in this diagram
17 here is, you know, in order to bring the soil
18 out you have to create a ramp so the trucks
19 can have an excavator machine which is, you
20 know, a big digger with the bucket somewhere
21 in the whole placing dirt into these trucks

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1 which then have to go up the ramp and out. If
2 we are only excavating one level, this is
3 approximately where the ramp would be and we
4 actually placed it here specifically because
5 this is where in the constant design we would
6 be putting the garage entry ramp anyway. So,
7 it would be quite efficient. But if we were
8 required to go to levels, this would be the
9 actual length of the ramp. So, we need to
10 somehow create a ramp in this location and
11 then the construction equipment would be down
12 at the bottom loading the trucks. And the
13 trucks would have to come all the way up this
14 ramp to off load.

15 And then somehow once this ramp
16 was done, then you need to bring in special
17 equipment to sort of dig your way out of the
18 hole and bring the ramp up with you which is
19 particularly difficult.

20 If we then had to go down a third
21 level, the ramp would actually be this long

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1 and you could see that there's actually no --
2 there's almost nothing but ramp in which case
3 it would be quite difficult and it would take
4 that much more time to sort of dig our way out
5 behind us.

6 I haven't added to this complexity
7 all the issues of actually retaining the soil
8 and the amount of structure that would be
9 around that. Sometimes there's actually
10 rakers that these steel posts sort of street
11 into the site that further complicate this but
12 I figured this was complicated enough.

13 The other issue here is that we
14 would then need to -- when we finally came to
15 removing the ramp, we need to bring in a
16 special piece of equipment which is a very
17 tiny bucket that's called a long stick. And
18 my concern here was that we would not be able
19 to park it in the public alley in order to
20 ring up that soil because that alley is
21 actually provides access to adjacent

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1 properties. So, we need to stage everything
2 from down here. And because again you're
3 working between existing buildings, there's a
4 lot of equipment moving around and there's
5 danger operating there. So, I probably beat
6 this horse to death. But I just wanted to
7 demonstrate that this is the difficulty of
8 excavation here is both the potential support
9 of the adjacent structures as well as creating
10 a construction management plan and actually
11 operating within this relatively small site.

12 So, that addressed our practical
13 difficulty for the parking issue. I'll now
14 move on to the roof structure.

15 CHAIRPERSON JORDAN: Before you go
16 there.

17 MEMBER MacMURRAY: Good morning.
18 I have just a few questions.

19 On the exit ramp that you propose
20 for doing the construction at anytime have
21 contemplated doing one level underneath --

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1 underground parking and one above ground and
2 maybe putting like a garden or something above
3 that second level?

4 MR. ROSEN: No, we never
5 contemplated that and I'll tell you why. I've
6 been working on this project for about almost
7 10 years now. And met multiple times with
8 Office of Planning, Historic Preservation
9 Review Board and the ANCs as they've actually
10 changed. And there was always a principal
11 concern among all parties that, in fact, we
12 would putting ground floor retail and
13 restaurants and active uses on the ground
14 floor. And, in fact, years ago we had
15 proposed an automatic self-park system. One
16 of these cool things from Germany where you
17 sort of drive in and it takes your car away.
18 And just that garage entry along without
19 having actual parking located off of G Street
20 was readily vetoed by the ANCs as well as
21 Office of Planning, DDOT and everybody else.

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1 So, because this is a downtown development
2 district, it would not be preferred use to put
3 parking on the ground floor.

4 MEMBER MacMURRAY: Okay. So, my
5 only concern particularly in that particular
6 area where you're eliminating that many spaces
7 and there's not sufficient off street parking
8 like in a residential area, it's not the
9 typical residential area where you would have,
10 so even if you didn't provide the sufficient
11 amount of spaces within the space on the
12 property, you would at least have some street
13 parking. So, are there any other options that
14 you guys might have considered?

15 MR. ROSEN: I would like to direct
16 your attention to the DDOT report on this
17 project which they said most of the trips for
18 this project are anticipated to be non-
19 vehicular because of it's location, because of
20 the proximity of the project to not only the
21 Metro Station, the Judiciary Square Station

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1 right in front of this building, as well as
2 multiple bus lines on H and Mass Avenue and
3 7th Street. So, for that reason, we
4 anticipate that the need for parking will be
5 reduced here. In addition, we understand that
6 there are several parking structures in the
7 neighborhood. There's one directly across the
8 alley here which is very little used. It's
9 never quite more than 30 percent full to my
10 understanding.

11 Also, the prior project --

12 CHAIRPERSON JORDAN: Because that
13 as these things come up we want to just kind
14 of get these questions out of the way while we
15 understand the position. Ms. Sorg.

16 VICE CHAIRPERSON SORG: I just
17 want to make sure Ms. MacMurray, have you got
18 all your questions answered? Do you mind if I
19 jump in.

20 MEMBER MacMURRAY: That's fine.

21 VICE CHAIRPERSON SORG: Okay.

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1 Just a point of clarification to the
2 Applicant.

3 It looks to me in your new filing,
4 if you're to go with the residential use
5 you're actually conforming with regard to off-
6 street parking, is that true?

7 MR. KADLECEK: Yes, that's
8 correct.

9 VICE CHAIRPERSON SORG:
10 Particularly, it seems to me that if you're
11 still requesting the relief then, you know,
12 with regard to the efficiency of parking we
13 would have to look at that a hotel use. And I
14 only say that as a comment so that we can kind
15 of direct our thoughts as you continue with
16 the presentation. Obviously as we all know a
17 hotel use need for parking is quite different
18 and generated and that kind of thing. And I
19 just wanted to make sure that that was
20 correct. So, if you're with residential,
21 you're conforming and then I guess you're

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1 requesting relief for 29 spaces for hotel
2 only?

3 MR. KADLECEK: For hotel only,
4 yes. And we're actually requesting 39 spaces
5 of relief. But, yes --

6 VICE CHAIRPERSON SORG: Okay.

7 MR. KADLECEK: -- you said 29.

8 VICE CHAIRPERSON SORG: I'm sorry,
9 I meant 39. I'm looking at it, right.

10 MR. KADLECEK: It's 39 and that is
11 correct. In fact, most of the statement that
12 wa submitted to you today discusses as if it
13 were a hotel.

14 VICE CHAIRPERSON SORG: Okay. We
15 obviously hadn't gotten a chance to read it.

16 MR. KADLECEK: And I wouldn't
17 expect that you did. And so you will see when
18 you read it that it assumes for the discussion
19 in that particular submission that it is a
20 hotel use.

21 VICE CHAIRPERSON SORG: Okay.

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1 Thank you.

2 ZC CHAIR HOOD: But on the
3 residential side, how did you come up with
4 the calculation you only need 21? What's the
5 configuration?

6 MR. KADLECEK: The requirement in
7 that zone is one for four units. And as you
8 are aware under the parking regulations, you
9 only have to -- in addition to an historic
10 building, you only have to provide parking for
11 the addition and that's how we came up with
12 the calculation of approximately 75 units in
13 the addition for which you would have to park.

14 ZC CHAIR HOOD: Thank you.

15 CHAIRPERSON JORDAN: Proceed.

16 MR. ROSEN: Okay. I'm now going
17 to move on -- if we're finished with the
18 parking issue, I'll move on to the roof
19 structures.

20 I'd like to note that in your
21 drawings if you turn to page 14 here, we have

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1 roof structures. The main roof structure is
2 18 feet 6 high and a portion of it is 12 feet
3 high. And then if you turn back to roof deck
4 plan on page 13, we've added a couple of
5 dimensions at the request of Office of
6 Planning that you'll note that the primary
7 roof structure is set back over 20 feet here
8 and 27 feet in this location. And in this
9 location 23 feet. Those are dimensions to the
10 18 foot high -- 18 6 high portion of the roof
11 structure. This portion here is 12 feet high
12 and it's also set back 12 feet so one to one.

13 Are there any questions on the
14 roof structure Special Exception?

15 I'll move on then. I'll address
16 both the lot occupancy as well as the rear
17 yard setback requirement at the same time.

18 I'm actually going to start with
19 these upper floor plans. And here I'd like to
20 point out that due to the presence of the
21 landmark structure on our site, it has been a

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1 critical component of our concept approval
2 through the Historic Preservation Review Board
3 that we, in fact, set the building back from
4 the 3rd Street frontage by 31 feet 3 inches
5 and that odd dimension derives from the fact
6 that on the lower floors, the width of the
7 historic structure along the G Street side is
8 that distance set back. So, therefore we're
9 starting the new edition right at that point
10 and carrying that point up. So, that was a
11 critical component of the approval.

12 Because we were then foregoing
13 development on this area here, it becomes
14 quite burdensome so then also have to have
15 rear yard as well because then there's
16 essentially no developable area or very
17 minimal developable area left if you are
18 squeezed on both the front and the back sides.

19 And, in fact as noted in the Office of
20 Planning Report that would create a sort of
21 vertical strip that would be so skinny that it

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1 would be quite inefficient. You wouldn't be
2 able to have a double corridor with hotel
3 rooms on both sides as currently configured.

4 I also want to note that because
5 we're then required to setback up above and
6 yet occupy the sort of interior volume of the
7 landmark structure that on our lower floors it
8 creates an incredible deep floor plate which
9 is also exceptionally inefficient and
10 difficult to develop in any efficient kind of
11 a way.

12 So, it's the presence of the
13 historic structure as well as trying to
14 incorporate the, you know, the available
15 vacant land adjacent to that that creates the
16 practical difficulty that makes it impossible
17 to develop and still comply with both the read
18 yard as well as the lot occupancy.

19 So, the lot occupancy specifically
20 refers to the fact that because we're setting
21 back up above, whether we built anything

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1 underneath that setback or not, it would still
2 be covered. So, essentially, we've got -- we
3 end up with about 100 percent lot occupancy on
4 the lower levels where we incorporate both the
5 landmark structure as well as the new
6 addition. And then we're about 65 percent- 68
7 percent lot occupancy on these upper levels
8 which is within the maximum allowed for either
9 residential or a hotel. And, in fact, I'll
10 just remind you that for a hotel use, 100 lot
11 occupancy is allowed.

12 MR. KADLECEK: We have nothing
13 further if the Board has questions.

14 CHAIRPERSON JORDAN: Any questions
15 by the Board? Ms. MacMurray.

16 MEMBER MacMURRAY: I just want to
17 clarify for the record that you're requesting
18 today, you're going to either use this
19 particular development -- it's either going to
20 be a hotel or is it going to be a residential.
21 You're not anticipating doing both?

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1 MR. ROSEN: That also may be a
2 possibility.

3 MEMBER MacMURRAY: Okay. Because
4 the only reason why is I noticed on page two
5 of the March 20th, 2012, letter that we
6 received via hand delivery, it states when you
7 provided the addition that the first -- for
8 the hotel, the provided parking would be 21
9 spaces. And then for the residential units
10 for 75 there would be 21 spaces. Are these
11 the same 21? Should it be 42? Or is it the
12 19 plus 2 for the hotel? I'm just trying to
13 get clarification.

14 MR. KADLECEK: Yes, I understand
15 your question. Basically, if it were a
16 mixture of uses you would do the parking
17 calculation accordingly based on how many
18 hotel units there are versus how many
19 residential units. And, in fact, the
20 calculation for all hotel is the most
21 burdensome requirement. So, anything that is

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1 less than a full hotel use will actually have
2 a lesser parking requirement. So, the most we
3 would ever need to provide under the
4 regulations is 60 spaces and if we were all
5 residential as you can see, the most we would
6 need to provide is 19. So, if there were a
7 mix of uses, the parking would be somewhere --
8 the requirements would be somewhere between 60
9 and 19.

10 MEMBER MacMURRAY: Okay. Thank
11 you.

12 CHAIRPERSON JORDAN: Seeing there
13 are no further questions by the Board -- oh,
14 Mr. Hood. Is this like stop, go, stop go?

15 ZC CHAIR HOOD: No, actually, it
16 was mentioned --

17 CHAIRPERSON JORDAN: Is that the
18 end of your presentation?

19 MR. KADLECEK: Yes, that's the end
20 of our presentation.

21 CHAIRPERSON JORDAN: Thank you.

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1 Do we have any parties or persons
2 in support?

3 Parties or persons in opposition
4 please? And I do believe that you did take
5 the oath, didn't you?

6 There is a little button that says
7 push to talk and --

8 MR. BIVIANO: My name is Richard
9 Biviano. I live at 705 4th Street, Northwest.

10 CHAIRPERSON JORDAN: And I just
11 want to remind you you have three minutes.

12 MR. BIVIANO: Okay. 705 4th
13 Street, Northwest, which is directly in back
14 of this building. They are going to take away
15 my eastern exposure as well as my southern
16 exposure.

17 The parking spaces I can't tend to
18 agree with them because since I've lived here
19 in 2006 there have been six new or seven new
20 buildings that have been built and the parking
21 there is only on the east side parking there's

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1 from 3rd Street or the 3rd Street ramp to G
2 and then on the west side, it's from Mass
3 Avenue to G. And on the front of the
4 building, it's on the west side from Mass
5 Avenue to G.

6 In listening to the chit chat
7 while I was in here earlier, saying that there
8 would never drive their car down here because
9 there's no parking. So, I'm a resident and I
10 deal with that all the time.

11 The ramp would concern me about
12 the pollution that it would cause me in my
13 apartment. I sit there and I watch the vermin
14 come in and out every day and I wonder what
15 they're going to do about vermin working
16 hours.

17 I went to a Washington Interfaith
18 Network Meeting and the mayor and councilman
19 Evans committed to affordable housing and D.C.
20 jobs for D.C. residents. I'm wondering where
21 in their plan that meets the affordable

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1 housing requirements and the D.C. jobs for
2 D.C. residents.

3 The parking on garages in the
4 neighborhood, if you live in the neighborhood
5 are extremely expensive. You can't afford to
6 park in them. And I already gave you the
7 rundown of where the parking is. And they
8 have removed the parking in the neighborhood
9 on the other side of H Street and I Street and
10 3rd Street in the six years since I've lived
11 here.

12 So, there's going to be a lot of
13 lack of parking. There's going to be no
14 parking for the residents. And it's the only
15 building that still affordable housing in the
16 area as well as affordable housing in the
17 areas we should be able to have affordable
18 parking.

19 The ramp on the south side goes
20 directly under my window so I'm concerned
21 about the dust, the noise and the

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1 construction. And the other building is the
2 Fraternal Order of the Police. And the
3 Fraternal Order of the Police don't
4 necessarily abide by the parking regulations
5 in the neighborhood. So, a lot of the
6 residential parking spots are taken up by the
7 Fraternal Order of the Police because they
8 park where they want to park and they put
9 theirs in in their window and they have
10 parking. So, that's another issue.

11 CHAIRPERSON JORDAN: Do you want
12 to rap up please.

13 MR. BIVIANO: The only other
14 concern I had was the duration of the project
15 in the working hours.

16 CHAIRPERSON JORDAN: All right.
17 Any questions for the witness?

18 VICE CHAIRPERSON SORG: Mr.
19 Chairman, I just wanted to make a comment to
20 the witness and also just ask one question.

21 You had also mentioned there are

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1 certain things that our Board has purview over
2 and unfortunately construction and working
3 hours and construction management plans and,
4 you know, vermin infestations and things --
5 well, fortunately, in some cases, not under
6 our purview. So, we can address and we're
7 very happy to have you come down with regard
8 to your concerns about the light and air to
9 your property as well as to your concerns
10 about the parking. And so that being said, I
11 just would ask you, of those concerns, is
12 there one that you feel is more concerning to
13 you?

14 MR. BIVIANO: What's more
15 concerning to me is the decrease in D.C. of
16 affordable housing and affordable parking.
17 And this building is 43 units of affordable
18 housing and at the moment there is limited
19 affordable parking.

20 VICE CHAIRPERSON SORG: Okay.
21 Great. Thank you.

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1 CHAIRPERSON JORDAN: Any further
2 questions of the witness?

3 Thank you.

4 VICE CHAIRPERSON SORG: Mr.
5 Chairman, I would actually -- I'm prompted to
6 ask a question of the Applicant. And the
7 question of affordable housing if you are to
8 provide a residential housing, do you come
9 under ID?

10 MR. KADLECEK: No, under the DD
11 overlay we're not required to provide
12 affordable housing?

13 VICE CHAIRPERSON SORG: Okay.
14 Thanks.

15 CHAIRPERSON JORDAN: And I do
16 believe we have a letter from the ANC. Or is
17 anyone from the ANC present?

18 Thank you, Mr. Chairman. I'm
19 trying to find the letter.

20 ZC CHAIR HOOD: It's Exhibit 26,
21 Mr. Chairman.

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1 CHAIRPERSON JORDAN: 26? Okay.

2 One second to catch up with myself.

3 We have a letter from ANC-6C and
4 the letter says "On December 15, 2011, on the
5 duly noticed regularly scheduled monthly
6 meeting of ANC-6C with a quorum of six out of
7 nine commissioners and the public present, the
8 above-mentioned item came before us. 704 3rd
9 Street, Northwest, BZA Case 18325.

10 The project requires zoning
11 relief, variance in three areas. Rear yard
12 requirement, to occupancy requirement and off-
13 street parking requirement. A Special
14 Exception is required for the roof structure
15 setback. The project has been addressed by
16 the ANC-6C previously when it was before the
17 Historic Preservation Review Board. There are
18 no changes in the project since the last time
19 it came before us. After hearing the details
20 of this project, the Harrison, the Commission
21 voted unanimously six to zero to support it.

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1 Thanks for giving great weight
2 recommendations of ANC-6C." And signed by
3 Karen Worth.

4 We will give great weight to ANC-
5 6C since this letter does meet the
6 requirements thereof.

7 Now, can we hear from OP, please.

8 MR. COCHRAN: Thank you, Mr.
9 Chair. For the record, my name is Steve
10 Cochran with the Office of Planning.

11 As Mr. Kadlecek and Mr. Rosen
12 testified this morning, they have supplied
13 sufficient information to address what had
14 been a concern of OP with respect to the
15 variance from 2101.1. They gave the
16 information about the roof structure setback.

17 Given that, OP is pleased to be able to
18 recommend approval of all of the requested
19 relief in this case.

20 We also note that DDOT recommended
21 approval of a parking variance but did

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1 encourage the Applicant to provide loaded
2 Smart Cards for either hotel guests or
3 residences. And as the Chairman just noted,
4 ANC-6C did vote to approve the project. And
5 open to questions if you have any.

6 CHAIRPERSON JORDAN: Are there any
7 questions for OP?

8 And as you said, the Department of
9 Transportation voted -- was in approval of
10 this application with the SmarTrip
11 recommendation.

12 MR. COCHRAN: The Department can
13 actually require the SmarTrip. They said the
14 Applicant should provide it which is a strong
15 encouragement, but it's not necessarily
16 something that you would have to take into
17 account for the case.

18 CHAIRPERSON JORDAN: Absolutely.
19 Any questions for OP?

20 Closing, Applicant? Applicant
21 have questions for OP?

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1 MR. KADLECEK: No questions. I'll
2 just make a couple of closing comments.

3 The first is with respect to and I
4 forget the gentleman's name to my left here,
5 with respect to a couple of his concerns.

6 As noted by the Vice Chair some of
7 his concerns with respect to construction,
8 hours of operation and so forth are not within
9 the purview of the Board. That being said,
10 the Applicant intends to and will, in fact,
11 comply with all of District regulations with
12 respect to work hours, environmental
13 compliance, any other construction activities
14 requiring permits and so on and so forth.

15 With respect to parking
16 availability in the neighborhood, I think it
17 can be well documented by the DDOT Report that
18 it is most likely the case that trips in this
19 location because it's in such a transit rich
20 location are most likely to be by non-
21 vehicular trips. Particularly what I think is

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1 important is if you consider the fact that we
2 wouldn't need any relief if the building were,
3 in fact, residential and we would satisfy the
4 parking requirement. But if you think about
5 the hotel use, hotels in the downtown area are
6 not typically frequented by people who are
7 driving their own vehicles. I think that it
8 is commonly the case in downtown hotels that
9 people would arrive by taxi or some other form
10 of public transportation. Most of them being
11 business people or people who are visiting
12 others in the immediate area.

13 With respect to the concern about
14 affordable housing as the Vice Chair asked and
15 I responded, it's something that we're aware
16 of, but as you know, the conclusionary zoning
17 regulations do not apply in the DD Zone, so if
18 this project were in fact going to be
19 residential, we would not be providing
20 affordable housing.

21 And, finally, with respect to the

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1 duration of the project that the gentleman to
2 my left brought up, it is worth noting that if
3 we were not required to provide the additional
4 levels of parking, the duration of the project
5 would, in fact, be shorter because as Mr.
6 Rosen testified, the additional levels of
7 parking as submitted in our statement today,
8 it would add approximately four months of
9 additional time. So, it is worth noting that
10 the duration of construction would be shorter.

11 With that and given the amount of
12 support that we have for the project, we would
13 request that a bench decision and a Summary
14 Order in this case.

15 Thank you very much.

16 CHAIRPERSON JORDAN: All right.

17 Thank you.

18 One second.

19 I think that this particular
20 application would meet the requirements for
21 the variance for the lot occupancy relief, the

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1 rear yard relief and the off-street parking
2 and for the Special Exception required for the
3 roof structure of unequal height.
4 Particularly, I think that the test for
5 variance has been met, especially as we talk
6 about exceptional situation and condition.
7 The impact of the historic designation of the
8 building and the effect that it would have and
9 the inability or the difficulty in trying to
10 support that building for the relief requested
11 would be -- if the relief was not given, it
12 would be very difficult for this project to go
13 forward as has been stated here.

14 And, additionally, the same thing
15 for practical difficulty, trying to -- I was
16 just listening to your presentation as you
17 talked about the excavation. I was kind of
18 there before you. I was like the whole block
19 might come down if you dig too deep under this
20 particular building. And so I think that that
21 is not an issue and I would think that they've

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1 met that particular test.

2 With respect to the parking,
3 parking is always a difficult issue for
4 everybody in the District. But as you have
5 set forth about the issue of being able to
6 have the parking and I think you've properly
7 answered the question of how you came up with
8 the 21 spaces, I think that there is an
9 exceptional condition that lies in regards to
10 the parking because you cannot do the digging
11 that's necessary to get there.

12 Regarding the Special Exception, I
13 think there is not an issue with that in my
14 view in that the need for Special Exception
15 roof structure and enclosures and the height
16 just doesn't work and so I think it easily
17 fits within the Special Exception requirement,
18 especially we do some profile of the Penn
19 House and, etcetera, as you talked about. And
20 that all the relief, the variance relief and
21 the Special Exception relief would not have

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1 any impact on the zoning regulations and/or
2 the neighborhood.

3 Anyone else?

4 VICE CHAIRPERSON SORG: Thank you,
5 Chairman. I agree with your assessment.

6 I would note only that I agree
7 with you and the Office of Planning that there
8 is a confluence of factors that affects this
9 property, but I do have a little bit of
10 discomfort with one of the factors brought
11 forward by the Applicant. I do agree that the
12 historic landmark designation certainly is a
13 unique -- does conjure to the uniqueness of
14 this site. In fact, I particularly enjoyed
15 reading the HPRB Report which is in our
16 Exhibit 10 in learning that this is the first
17 apartment building in the District. I didn't
18 know that, of course. But additionally I
19 agree that the layout of the property as well
20 as some of the other conditions, it's
21 narrowness and so forth, as well as the

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1 adjacent buildings contribute. But I don't
2 believe as the Applicant proposes that the
3 zoning characteristics itself contribute to
4 that.

5 That being said, I do believe that
6 the application does for me also meet the
7 variance test for the rear yard and the lot
8 occupancy based as Mr. Jordan said on the
9 existing historic building and its location
10 with regard to the rear yard and how that
11 would affect building of the addition. As
12 well, the efforts in working with HPRB and the
13 historic resource that's on this property with
14 regard to the variance from the lot occupancy
15 and I think that the Applicant also as Mr.
16 Jordan mentioned and the Office of Planning
17 very clearly indicated some of the exceptional
18 conditions leading to practical difficulties
19 with regard to the parking. And, in fact,
20 that what they are doing is parking these
21 spaces in an existing basement.

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1 And the other elements including
2 costly underpinning of the adjacent historic
3 buildings, the danger to the facades, the
4 length and schedule which is, of course,
5 something that the Applicant controls somewhat
6 to themselves, as well as the complexity of
7 construction and staging. Also, I think the
8 point is well noted that the request for the
9 parking variance would only be for the hotel
10 use and that given the location of the
11 potential hotel here that the requirements for
12 parking based on those that are proposed would
13 be sufficient.

14 That's all I will note.

15 The only other for the discussion
16 during the deliberations, the only other thing
17 that I would query would be whether in a
18 decision order we as a Board ought to indicate
19 as is now in our new submission a potential
20 approval for a 151 room hotel, specifying
21 those things, and a 75 unit building. My

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1 opinion is that I think that that should be
2 okay because I suspect although the Applicant
3 may, you know, rejigger some of those number
4 of units of number of keys, that should
5 probably take care of a maximum relief because
6 I think that basically our concern coming in
7 here and still was the variance on the
8 parking. So, if we agree and I think so far
9 it's been shown that the 21 spaces versus the
10 39 that would be required for a 151 unit hotel
11 is sufficient for us, then I think indicating
12 that in some way allows us to put a cap on
13 that where if the Applicant were to, you know,
14 decide on a different use or change the number
15 of keys and so forth to decrease the
16 requirement as opposed to increasing any
17 request for zoning, that that might be an
18 appropriate way to insure that we are
19 following that out.

20 Thank you.

21 CHAIRPERSON JORDAN: So, you

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1 didn't want to include the 75 unit apartment?

2 VICE CHAIRPERSON SORG: So, what
3 I'm indicating is that, you know, in a
4 potential order one or motion one might
5 indicate, you know, potential approval for a
6 75 unit residential building or 151 unit --
7 I'm sorry, room hotel at whatever the address
8 is here. That way we're making sure that the
9 upper limit there is at. But that's only a
10 suggestion and --

11 CHAIRPERSON JORDAN: I agree.

12 VICE CHAIRPERSON SORG: -- perhaps
13 there are even other ways to do that and I'm
14 not sure whether -- but I think it's good to
15 set that upper limit.

16 CHAIRPERSON JORDAN: Yes.

17 MR. KADLECEK: Mr. Chairman, a
18 point of clarification as the Vice Chair was
19 discussing. The 151 rooms is for the
20 addition. The total hotel would be 208. But
21 as I explained earlier for an historic

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1 building you only have to park for the
2 addition. So, I just want to make sure that
3 distinction is clear in the order that the
4 hotel would be 208 rooms, not 151.

5 VICE CHAIRPERSON SORG: And that's
6 a good point. So, in that case you would
7 mention 151 room addition to a historic -- but
8 I get ahead of the Chair so --

9 CHAIRPERSON JORDAN: Any other
10 comments?

11 MEMBER MacMURRAY: Mr. Chairman, I
12 would second and say that I agree with the
13 first two conditions of the applications have
14 been met. I still express concern regarding
15 the variance and the parking designations
16 because the use of the property has not been
17 identified at this time. If it was
18 residential and it's conforming, I have no
19 objection. But as the hotel room having 208
20 rooms and providing 21 spaces in an area
21 that's already congested with parking, I think

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1 that that's something we should note.

2 CHAIRPERSON JORDAN: Yes. Thank
3 you, Ms. MacMurray.

4 Anyone else?

5 Based upon all that we've
6 deliberated and heard how we believe that this
7 particular project meets the test with some
8 concerns, I would move that a variance be
9 granted from 774.1, the minimum rear yard
10 requirement, a variance from 772.1, the
11 maximum lot occupancy, as requested. A
12 Special Exception under 411.5 regarding
13 uniform height of roof requirement as set
14 forth in the plans and variance from Section
15 2101.1, the minimum off-street parking as it
16 relates for a maximum of 150 room hotel or a
17 75 unit apartment addition. Any correction on
18 that?

19 VICE CHAIRPERSON SORG: I would
20 only just indicate the 151 room hotel addition
21 or 75 room apartment.

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1 CHAIRPERSON JORDAN: Okay. Put
2 the addition back to the other side and that
3 this be issued in a Summary Order. That was
4 my motion.

5 VICE CHAIRPERSON SORG: Second.

6 CHAIRPERSON JORDAN: All those in
7 favor signify by saying aye.

8 (AYES)

9 CHAIRPERSON JORDAN: Those opposed
10 nay.

11 Mr. Secretary. I did hear a nay.

12 MEMBER MacMURRAY: Nay.

13 SECRETARY MOY: Staff would record
14 the vote as four to one to zero. This is on
15 the motion of Chairman Jordan to approve the
16 application for the three variance relief that
17 is stated as well as the Special Exception
18 relief under 411.11.

19 Seconding the motion Ms. Sorg.
20 Also in support of the motion, Mr. Hood, Mr.
21 Hinkle and -- let me go through that again.

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1 In support of the motion and
2 making the motion, Mr. Jordan. Seconding the
3 motion Ms. Sorg. Also in support of the
4 motion Mr. Hood and Mr. Hinkle. Opposed to
5 the motion Ms. MacMurray. So, again, the
6 final vote is four to one to zero. The motion
7 carries.

8 CHAIRPERSON JORDAN: And in that
9 motion we ask for a Summary Order.

10 SECRETARY MOY: For a Summary.
11 Thank you, Mr. Chairman.

12 CHAIRPERSON JORDAN: Thank you.

13 MR. KADLECEK: Thank you.

14 SECRETARY MOY: The next and third
15 application before the Board for this
16 morning's session is Application Number 18313.
17 This is an Application of 14th Street
18 Apartments, on Behalf of Irwin Edlavitch,
19 pursuant to 11 DCMR Section 3104.1 and 3103.2,
20 for a variance from the off-street parking
21 requirements under subsection 2101.1, a

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1 variance form the compact space requirements
2 under subsection 2115.2, variance from the
3 loading requirements under subsection 2201.1
4 and a special exception allowing multiple roof
5 strictures with walls of unequal heights under
6 subsection 411.11. This is to allow for the
7 construction of a new residential building
8 with ground floor retail use in the ARTS/C-3-A
9 District at premises 1326 and 1334 14th
10 Street, N.W. Property located in Square 211,
11 Lots 864 and 867.

12 CHAIRPERSON JORDAN: Proceed
13 please.

14 MR. FREEMAN: Good morning,
15 Members of the Board. For the record, my name
16 is Kyrus Freeman. I'm a partner with the law
17 firm of Holland & Knight here on behalf of the
18 Applicant.

19 I'd like to take a quick minute
20 and introduce our team and then we have a
21 couple of witnesses to proffer.

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1 Seated to my immediate right is
2 Ms. Sarah Alexander of the architectural firm
3 of Torti Gallas and Partners. She's an
4 architect for this project and we'd like to
5 proffer her as an expert in architecture and
6 design. You have her resume in front of you.
7 Ms. Alexander has appeared at least before
8 the Zoning Commission in a number of cases and
9 I believe has been recognized as an expert in
10 those cases.
11 To her right is Mr. Sharif Elfar.
12 His resume is also included in our
13 submission. He's here to answer any
14 questions. I don't think he'll do any direct
15 testimony, but we'd like to have his resume
16 submitted and proffer him as an expert as well
17 to the extent he testified.
18 To my immediate left is Mr. Dan
19 VanPelt with the firm of Gorove/Slade. We'd
20 like to proffer him as an expert in
21 transportation planning and analysis. He has

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1 appeared before both the BZA and the Zoning
2 Commission in a number of cases and has been
3 recognized as an expert by both of those
4 bodies.

5 To my far left is Ms. Steven E.
6 Sher, the Director of Zoning and Land Use.
7 You do not have his resume submitted today,
8 however, it is in your records and he's been
9 accepted as an expert in zoning and land use
10 analysis in a couple of cases before.

11 CHAIRPERSON JORDAN: I don't see
12 Ms. Alexander in our book for previously being
13 designated as an expert. Does anybody else
14 have any additional information?

15 VICE CHAIRPERSON SORG: Mr. Chair,
16 I agree. I don't believe we've seen Ms.
17 Alexander here before in this capacity and
18 she's also nodding her head. But she is a
19 registered architect and I see no reason to
20 deny her qualification as an expert.

21 CHAIRPERSON JORDAN: What's she

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1 being an expert of?

2 VICE CHAIRPERSON SORG:

3 Architecture.

4 MR. FREEMAN: Architecture and

5 design.

6 VICE CHAIRPERSON SORG: It'd be

7 interesting to see how you define the

8 difference between those things.

9 CHAIRPERSON JORDAN: I just think

10 -- yes. I just think one thing we do when we

11 ban the person as an expert we just leave it

12 out there. And I think we need to think about

13 that later how we drill down on it.

14 VICE CHAIRPERSON SORG: I think

15 generally speaking we do indicate the field in

16 which the person is an expert and, yes, in

17 this case it's I didn't indicate clearly in my

18 remarks. But, yes, I agree to the designation

19 as an expert in architecture and design.

20 ZC CHAIR HOOD: Mr. Chairman, I

21 would just tell you that I am looking at a

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1 way, especially for Mr. Sher. Mr. Sher is an
2 expert. He's been an expert. I'm actually
3 looking at the Zoning Commission where we can
4 kind of grandfather them in. I haven't talked
5 to OAG but I think it saves less time on the
6 Zoning Commission so we won't have to deal
7 with the issue about Mr. Sher is an expert or
8 not. We're going to kind of just find a way
9 to go ahead and grant that and make that the
10 staff --

11 CHAIRPERSON JORDAN: Well, once we
12 carry the book and then we've already done it
13 so it's just perfunctory. But his is blasted
14 across from every page across the front and
15 the back.

16 ZC CHAIR HOOD: Right.

17 CHAIRPERSON JORDAN: So, it's not
18 hard to find. I did not find a previous
19 designation by for Mr. VanPelt as -- I think
20 he was. Was he being offered as an expert?

21 MR. FREEMAN: He is being

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1 proffered as an expert.

2 CHAIRPERSON JORDAN: And I would
3 not have any problem with him being designated
4 as an expert and in particular civil
5 engineering and what area in civil
6 engineering?

7 ZC CHAIR HOOD: Transport.

8 MR. FREEMAN: Transportation
9 planning and analysis.

10 CHAIRPERSON JORDAN: Does anyone
11 have any problems with --

12 ZC CHAIR HOOD: They have both,
13 Mr. Sher and Mr. VanPelt has been proffered
14 in the Zoning Commission. I'm not sure if
15 that makes a difference but we have proffered
16 him as an expert. I know you all have your
17 own guidelines.

18 CHAIRPERSON JORDAN: Well, how
19 come your book doesn't match this book?

20 ZC CHAIR HOOD: I guess -- I see
21 Mr. VanPelt so much I just was with him last

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1 night until about 11:00 I think.

2 CHAIRPERSON JORDAN: Is that an
3 elitist attitude?

4 ZC CHAIR HOOD: No, it's not
5 elitist, it's just trying to save time. I
6 will be quiet from this point on.

7 CHAIRPERSON JORDAN: And as I
8 said, Mr. Sher is not an issue. We see him
9 regularly. I think he lives down here but --
10 and the many, many, many, many, many years
11 that he's been around the District and
12 handling these particular matters we don't
13 have any problems and we certainly accept Mr.
14 Sher. And so we accept all of your proffered
15 experts.

16 MR. FREEMAN: Thank you, Mr.
17 Chairman.

18 Again, I'd also like to note. I
19 forgot to do this in my introduction, but we
20 also have Mr. Chip Glasgal, one of my partners
21 at Holland & Knight and Mr. Richard Beyda on

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1 behalf of the Applicant to answer any
2 questions that are our esteemed panel here can
3 answer.

4 As you know, Members of the Board,
5 we're here seeking a number of areas of
6 relief. One, a variance from the off-street
7 parking requirements. Two, a variance from
8 the compact space requirements. Three, a
9 variance from the loading requirements in
10 terms of the size of berth and we don't have a
11 service delivery space. As well as a Special
12 Exception from the roof structure requirements
13 for three issues. One, they don't meet the
14 setbacks. Two, we have multiple structures,
15 and three, the walls are of unequal height.

16 Our architect will discuss each of
17 these areas for relief.

18 CHAIRPERSON JORDAN: Just so you
19 know, we believe we have a full record if
20 you - -

21 MR. FREEMAN: Okay. Well, as you

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1 noted, we have a very full record, including
2 the support of the Office of Planning, the
3 support of the Department of Transportation,
4 the support of ANC-2F and recently just filed
5 yesterday we have a letter filed by Mr. Jim
6 Kane, the President of 1426 Rhode Island
7 Avenue Condo Association and that notes a
8 significant amount of work in outreach the
9 Applicant has done with the community.

10 So, with that, we think again our
11 record is full. We're happy to proceed with
12 the architectural presentation or to just rest
13 on the record and answer any questions that
14 you have.

15 MEMBER MacMURRAY: Mr. Freeman,
16 will you be submitting that letter as part of
17 the record -- that last letter of support?

18 MR. FREEMAN: Yes.

19 MEMBER MacMURRAY: Okay. Great.
20 Thank you.

21 MR. FREEMAN: I believe it was

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1 filed yesterday but if not, I have extra
2 copies for you.

3 VICE CHAIRPERSON SORG: I don't
4 believe we have that letter.

5 SECRETARY MOY: Mr. Chairman, or
6 the record, the letter from Jim Kane is in the
7 record under Exhibit 29 dated March 19th.

8 CHAIRPERSON JORDAN: Well, yes.
9 If there's any questions of the Applicant.

10 VICE CHAIRPERSON SORG: Mr.
11 Chairman, Applicant, you had submitted a new
12 set of plans. Are there any changes from the
13 March 6th --

14 MR. FREEMAN: There are no
15 changes. That's just a copy fo the Power
16 Point in case you wanted to look through it--

17 VICE CHAIRPERSON SORG: Okay.

18 MR. FREEMAN: -- as Ms. Alexander
19 was doing her presentation.

20 VICE CHAIRPERSON SORG: Got it.
21 Also, just one question that I had is, do you

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1 also require relief from the setback
2 requirements of the roof structures?

3 MR. FREEMAN: Yes, we require
4 relief from the setback requirements because
5 of the northern most stair tower which steps
6 down from about 10 feet to 5 feet is not
7 setback from the courtyard on the west. So,
8 that's why we require relief.

9 VICE CHAIRPERSON SORG: Okay.
10 Thank you.

11 CHAIRPERSON JORDAN: Any other
12 questions?

13 Let me ask -- I didn't see an ANC
14 letter. I saw the Chair submit a letter, am I
15 correct or incorrect?

16 VICE CHAIRPERSON SORG: Mr.
17 Chairman, I do believe we have a letter from
18 the ANC. It's Exhibit Number 23. And I do
19 also believe that it's in support and it does
20 meet our requirements for great weight.

21 CHAIRPERSON JORDAN: I'm sorry.

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1 Don't want to stop you from asking questions.

2 Are there any questions of the Applicant?

3 Are there any other persons in the
4 audience, any parties or persons in the
5 audience in support that believe that they
6 need to say something?

7 Parties and persons in opposition?

8 And I do have a letter from ANC-2F
9 and the letter is addressed t BZA Case Number
10 18313. And the letter says, "Dear Members of
11 the Board. On February 1st, 2012, at a
12 regularly scheduled meeting and duly noticed
13 public meeting, in which a quorum was present
14 and acting throughout the Advisory
15 Neighborhood Commission 2F voted unanimously
16 6-0 to support the Board of Zoning
17 Adjustment's application number 18313 of 14th
18 Street Apartments.

19 The application comprises an area
20 variance of off-street parking, compact
21 parking spaces, loading requirements, Special

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1 Exception relief for multiple roof structures,
2 a wall of unequal height not meeting the
3 setback requirements. ANC-2F supports the
4 requested relief and finds the Applicant has
5 demonstrated that the property is affected by
6 exceptional situations and conditions due to
7 the sites dimensions and restored nature of
8 the building. ANC-2F finds the Applicant has
9 demonstrated that because of the relative
10 shallowness of the site, it would be
11 practicably difficult for the Applicant to
12 increase the number of proposed parking spaces
13 or to construct more than one level below
14 grade parking.

15 With respect to the requested
16 loading relief, the Applicant demonstrates
17 because of the narrowness of the alley behind
18 the proposed development, it would be
19 infeasible for a 55 foot tractor trailer to
20 navigate the public alley.

21 The ANC-2F believes that the

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1 approval of the project as proposed and the
2 requested area of variances will not have an
3 adverse impact on the neighborhood. ANC-2F
4 also finds that the Applicant presented a
5 thorough analysis in how it meets the Special
6 Exception standards for the roof structure.

7 ANC-2F therefore urges the Board
8 to approve the request of this application."
9 And it's signed Mike Bernardo, Chairman, ANC-
10 2F.

11 And since this letter meets the
12 requirements for obtaining great weight, we
13 will give this letter and ANC-2F great weight
14 in support.

15 Office of Planning please.

16 MS. THOMAS: Good afternoon, Mr.
17 Chairman, Member of the Board. Karen Thomas
18 for the Office of Planning.

19 The Office of Planning would rest
20 on its record. We are recommending approval
21 as requested by the Applicant for the variance

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1 relief from the off-street parking
2 requirements and compact space requirements,
3 the parking and loading and Special Exception
4 relief from the roof structure requirements
5 due to walls of unequal height.

6 We do not have anything further to
7 add. We do not believe relief from these
8 requirements would adversely impact the
9 neighborhood or the public good or have any
10 impact on the surrounding neighbors.

11 Thank you.

12 CHAIRPERSON JORDAN: Board, any
13 questions of the Office of Planning?

14 VICE CHAIRPERSON SORG: Thank you,
15 Mr. Chairman.

16 I am wondering and looking to see
17 if the relief from the roof structure setback
18 needs to be called out separately or is it
19 under 411.11?

20 MS. THOMAS: I think it should be
21 called out separately. I think that we missed

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1 that.

2 VICE CHAIRPERSON SORG: Then
3 what's the subsection there then? I'm looking
4 at 770.

5 MS. THOMAS: Let me just check.
6 Hold on.

7 VICE CHAIRPERSON SORG: That we
8 can make sure you call it out correctly
9 because that's why I was asking the Applicant.
10 I didn't see it called out -- the specific
11 subsection called out. And so before -- if we
12 are going to deliberate, perhaps we should
13 figure out what subsection that is.

14 MR. FREEMAN: We can --

15 VICE CHAIRPERSON SORG: Had
16 something to share.

17 MR. FREEMAN: We'll check this.

18 MR. SHER: Madam Vice Chair, the
19 Section 411.11 authorizes the Board to improve
20 as a Special Exception the location, design
21 and all other aspects of roof structures even

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1 if such structures do not meet the normal
2 setback requirements.

3 VICE CHAIRPERSON SORG: Right.

4 MR. SHER: So, it actually is
5 folded into 411.11.

6 VICE CHAIRPERSON SORG: So, you're
7 reading that it's folded -- that the relief
8 from the setback itself is folded into?

9 MR. SHER: It's folded under
10 411.11 for all of the various things that are
11 -- that are regulated as to roof structures
12 including setback.

13 VICE CHAIRPERSON SORG: Okay.
14 You're the expert. I'll take your word for
15 it. It just seems like the reading here may
16 want to call out the subsection that -- from
17 the C-3-A that governs the setback in addition
18 to 411.11. Because it's saying that even if
19 it's not meeting the roof structure setback,
20 so --

21 MR. SHER: Yes.

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1 VICE CHAIRPERSON SORG: -- I mean
2 it's self-certified so it's up to you guys,
3 right?

4 MR. SHER: Right. The section is
5 770.6b is the one that has the setback
6 requirement in it. But the relief is granted
7 pursuant to 411.11.

8 VICE CHAIRPERSON SORG: 411.11.
9 So the Applicant has decided they don't think
10 that you need to call out the 770.6? That's
11 what I was asking. Okay. Thank you.

12 ZC CHAIR HOOD: Mr. Chairman, I
13 just wanted to ask Mr. Freeman and maybe Mr.
14 VanPelt. You're asking for relief from the 30
15 foot -- well, from the loading berth and
16 you're saying 30 feet. Are we -- is there
17 something in place to make sure tractor
18 trailers and I looked in your submission where
19 you talked about not feasible for 55 foot
20 tractor trailer to navigate the existing
21 public alley and the whole system.

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1 Do we have something in place to
2 where moving in on a residential use will not
3 be using those 55 foot tractor trailers?

4 MR. FREEMAN: Mr. VanPelt, can you
5 talk to that.

6 MR. VanPELT: There will be a
7 truck management plant in the building so that
8 all of the move-in, move-outs will be
9 scheduled, that will have to be scheduled
10 whether there's a practical constraint of the
11 building itself just to be able to use the
12 freight elevator and get people in and out of
13 the building when they have those move-ins,
14 move-outs. So, all new tenants would be
15 notified that you can't bring anything larger
16 than a 30-foot truck to move-in or move-out of
17 the building. And we think just given the
18 size of the units and what people's patterns
19 are that probably 30 foot or less. You know,
20 a u-haul truck is even smaller than that.

21 ZC CHAIR HOOD: So, they'll know

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1 that in advance before they get there.

2 MR. VanPELT: They'll be informed
3 in advance.

4 ZC CHAIR HOOD: Okay. Thank you.
5 Thank you, Mr. Chairman.

6 CHAIRPERSON JORDAN: Any other
7 questions?

8 Has the Applicant any questions of
9 Planning?

10 MR. FREEMAN: No.

11 CHAIRPERSON JORDAN: Okay. And
12 transportation is not here. Mr. Freeman,
13 anything else you want to add? You want to
14 close?

15 MR. FREEMAN: Just time out.

16 VICE CHAIRPERSON SORG: Just,
17 sorry to hold things up, Mr. Freeman. Just to
18 address the DDOT report in our Exhibit Number
19 26 I note that they have no objection which is
20 great but they do recommend that the Applicant
21 provide a one-time annual membership or

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1 registration with Carshan Company or a one-
2 time enrollment Capital Bike Share program
3 upon move-in for each of the residential
4 units. That's something that you're planning
5 on doing?

6 MR. FREEMAN: They -- we will,
7 yes, consider likely doing a one-time
8 enrollment in Capital Bike Share Program for--
9 for the -- upon move-in for each residential
10 unit. However, we have 40 bike spaces in the
11 building so we'll offer it but we're not sure
12 if they're going to want it. And we will also
13 have a Zipcar space on the site. So, we will
14 -- we will as we move forward figure out or
15 either of those makes the most sense for the
16 project.

17 VICE CHAIRPERSON SORG: So, you
18 will be offering one or the other?

19 MR. FREEMAN: Yes.

20 VICE CHAIRPERSON SORG: Okay.
21 Thank you.

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1 CHAIRPERSON JORDAN: Anyone else?

2 Okay.

3 Mr. Freeman, if you just want to
4 wrap up for us.

5 MR. FREEMAN: Thank you, Mr.
6 Chairman.

7 As we noted at the beginning, the
8 record is full and clearly indicates how we
9 meet the standards for relief from the
10 variances and a Special Exception. We have
11 the support of the Office of Planning, DDOT,
12 the ANC and some local neighbors and,
13 therefore, we request that the Board approve
14 our application.

15 Thank you.

16 CHAIRPERSON JORDAN: That was a
17 thermostat yay. Okay.

18 Are you comfortable with leaving
19 the relief as requested in such a way. I know
20 the conversation we just had a minute ago. I
21 just want to be sure before we go forward.

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1 MS. THOMAS: Could I just
2 interject for a second?

3 CHAIRPERSON JORDAN: Yes.

4 MS. THOMAS: Just based on past
5 experiences when this type of situation is
6 left open like that and it goes to
7 preliminary, then there is a question
8 sometimes, preliminary standpoint. We seem to
9 go back and forth on it and I just think that
10 for safety and for clarity we would put just
11 as I put in 411 from 400 and whatever was in
12 the report, we also include that 770.6 as
13 well. Just as a safety.

14 VICE CHAIRPERSON SORG: I would
15 ask perhaps we may want to ask OAG, Ms. --.
16 We heard Mr. Sher -- yes?

17 MR. FREEMAN: We are absolutely
18 100 percent happy to add those two sections in
19 the description of the case if that, again,
20 out of an over abundance of caution. And
21 we'll add the citation numbers and work with

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1 the offices on the staff to make sure it's
2 properly cited and to the extent that you
3 issue a Summary Order that the appropriate
4 sections are cited in the Summary Order.

5 MR. FREEMAN: We're okay with
6 that.

7 VICE CHAIRPERSON SORG: That's
8 good but I still would like to know whether
9 OAG agrees with the reading of 411.11 as not
10 requiring calling out the specific setback
11 requirement. Just I want us, you know, as a
12 Board to, you know, cleanly understand the way
13 that we want to do this.

14 CHAIRPERSON JORDAN: And one thing
15 that we've talked about over and over again is
16 consistency in our practice.

17 Ms. Glazer.

18 MS. GLAZER: The way I read 411 is
19 that that's the section that's the vehicle to
20 get relief as Mr. Sher stated but the relief
21 can vary and it cites a number of different

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1 sections. So, it would be wise to specify
2 which section. In my view, it's similar to
3 223 relief where you say you're requesting
4 relief under 223 for and then you state the
5 section within it. I've seen it done both
6 ways as a matter of practice. But I think Ms.
7 Thomas' point is a good one. If the Board
8 were going to try to have a consistent practice
9 it would probably be better to include the
10 sections.

11 CHAIRPERSON JORDAN: And you're
12 agreeing and that would be in the order if
13 this was passed, of course.

14 VICE CHAIRPERSON SORG: Mr.
15 Chairman, I'm sorry. If the Applicant
16 officially amending their application to
17 request other relief and if so under which?

18 CHAIRPERSON JORDAN: Well, I
19 thought I heard the Applicant say that the
20 relief as defined it here was acceptable and
21 would wish that it was in the order. So, I

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1 think it's kind of the same.

2 VICE CHAIRPERSON SORG: Okay.
3 Just in the past we've asked them to amend the
4 application. But if that's your wish, then
5 that's fine.

6 Just so everybody is happy and
7 we're clear, are you requesting that relief?

8 MR. FREEMAN: Yes, we are hereby
9 officially amending our application to include
10 the specific sections in the zoning
11 regulations in addition to 411 for the
12 multiple roof structures, walls of unequal
13 height and not meeting the setback
14 requirements. So, we'll make sure that we
15 specifically add those specific sections to
16 the order.

17 CHAIRPERSON JORDAN: Are we ready
18 now, Board? Any issues?

19 VICE CHAIRPERSON SORG: In looking
20 at this application I think it's been a well
21 put together application regarding the request

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1 or the variance of the off-street parking
2 under 2101.1, the variance for compact space
3 requirement and all the relief that's
4 requested in this application.

5 I think that now especially since
6 we've kind of corrected -- not corrected or
7 added to what the relief request was, that we
8 are comfortable in moving forward with this
9 application.

10 Regarding these variances, I think
11 that the property in and of itself has a
12 uniqueness that results in a practical
13 difficulty. The dimensions and the layout of
14 the particular property being long and narrow
15 and the other constraints, the inability of
16 the site to allow for the off-street parking
17 becomes an issue. The lot size creates a
18 practical difficulty. And I think also
19 associated ramp is an issue for this
20 particular property as been set out in the
21 application.

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1 The loading seems to be that it
2 would be impaired due to the width of the
3 alley and, therefore, provide some difficulty.

4 I haven't seen anything nor do I
5 know of anything that requires a detriment to
6 the public or any harm to the zoning
7 regulations. I think that the light and air
8 is not an issue here. That the -- the ability
9 for the public to get back and forth there's
10 ample transportation on that street both Metro
11 and I think the circulator runs in that area.

12 And regarding the Special
13 Exception I think that the standard has been
14 met regarding the Special Exception in that
15 the location of the roof terrace presents a
16 problem and has an impracticality for this
17 particular structure.

18 And that's what I believe and it
19 meets the test and I think it's something I
20 can support.

21 Anyone else?

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1 VICE CHAIRPERSON SORG: Mr.
2 Chairman, I agree. I would also note in
3 addition to your comments with regard to the
4 off-street parking and the loading. I mean,
5 they're the largest department is 650 square
6 feet which is, you know, small. And so I
7 think you'd be hard pressed to fill a 50 foot
8 truck or the stuff for a 460 foot apartment,
9 although typically done. As well, I think,
10 based on the neighborhood fabric that the
11 decrease in parking in the provided off street
12 parking not only will I guy the exceptional
13 condition with the land, but also with the
14 market for the units here.

15 I also would just note that I
16 think the placement of the roof terrace
17 between those structures is actually a
18 positive thing based on screening that area
19 for the use of the residents and should be a
20 good idea.

21 That's all. Thank you.

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1 CHAIRPERSON JORDAN: Great. Any
2 other deliberations or any -- Mr. Hinkle.

3 MEMBER HINKLE: Yes, thank you,
4 Mr. Chair. I don't have anything really to
5 add except that though I understand that the
6 Applicant has worked hard with the
7 neighborhoods on this project and we haven't
8 heard the whole presentation, but I understand
9 it's been a lot of redesign and it's been a
10 lot of accommodation to, you know, satisfy a
11 number of people that had initial concerns
12 about this project. And I just wanted to say
13 that it's pretty remarkable that a project of
14 this size and this location is coming before
15 us without any opposition at all and I just
16 wanted to note that. And I think the
17 Applicant has done a pretty good job in
18 working with the community.

19 CHAIRPERSON JORDAN: And I would
20 agree with you on that and also appreciate it.
21 And I think if we had more applicants that

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1 did that, they would have less problems. And
2 so I do appreciate it.

3 Anyone? Motion?

4 MEMBER MacMURRAY: Mr. Chairman,
5 I'd like to make a motion to approve this
6 application to request a variance relief from
7 off-street parking requirements under Section
8 2101.1 to allow 20 spaces where 27 are
9 required. Also to request -- grant relief
10 variance for the compact space requirements
11 under Section 2115.2 to allow 85 percent of
12 the required parking spaces as compact spaces
13 where a maximum of 40 percent is permitted.

14 And, finally, to allow variance of
15 relief for the loading berth and service
16 relief requirement under Section 2201.1 to
17 provide a 30 foot deep loading berth, 50 deep
18 required and a 100 square foot service
19 delivery platform where 200 square feet is
20 required.

21 CHAIRPERSON JORDAN: Is there a

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1 second for that motion?

2 MEMBER HINKLE: Second.

3 SECRETARY MOY: Mr. Chairman --

4 CHAIRPERSON JORDAN: yes.

5 SECRETARY MOY: -- Ms. MacMurray,
6 did your motion also include the relief from
7 the Special Exception? The roof top
8 structures?

9 MEMBER MacMURRAY: Oh, to specify
10 in the Applicant's request to amend the
11 application to include the conforming sections
12 under 411 and particularly subsection 770.6.

13 CHAIRPERSON JORDAN: Okay. All
14 right. Good. All right.

15 The motion made and seconded. Are
16 we ready for the question?

17 All those in favor, signify by
18 saying aye.

19 (AYES)

20 CHAIRPERSON JORDAN: Those opposed
21 nay.

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1 The motion carries.

2 Mr. Secretary.

3 SECRETARY MOY: Yes, Mr.
4 Chairman, who called the second? Oh, Mr.
5 Hinkle. Thank you, sir.

6 The staff would record the vote as
7 five to zero to zero on the motion of Ms.
8 MacMurray to approve the application per the
9 Special Exception and multiple variance
10 relief. Seconding the motion, Mr. Hinkle.
11 Also in support of the motion Mr. Hood, Mr.
12 Lloyd Jordan and Ms. Sorg.

13 Motion carried.

14 CHAIRPERSON JORDAN: Thank you,
15 sir. Thank you. Appreciate it.

16 We will go into recess for let's
17 say 1:00 we'll resume. 1:00. We'll be in
18 recess until 1:00.

19 (Whereupon the hearing was
20 recessed at 12:27 p.m., to reconvene at 1:25
21 p.m., this same day.)

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

1:25 p.m.

CHAIRPERSON JORDAN: The hearing

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1 will please come to order.

2 Good afternoon, ladies and
3 gentlemen. We are located in the Jerrily R.
4 Kress Memorial Hearing Room at 441 4th Street,
5 Northwest. This is March 20th, 2012, Public
6 Hearing of the Board of Zoning Adjustment for
7 the District of Columbia.

8 My name is Lloyd Jordan,
9 Chairperson. Joining me today is Vice Chair
10 Nichole Sorg, Mayoral Appointee Rashida
11 MacMurray, Mayoral Appointee Jeffrey Hinkle,
12 representative of the National Capital
13 Planning Commission and the Chairman of the
14 Zoning Commission Anthony Hood.

15 Copies of today's hearing agenda
16 are available to you and are located to my
17 left in the wall bin near the door. Please be
18 advised that the proceeding is being recorded
19 by a Court Reporter and is also webcast live.

20 Accordingly, we must ask you to
21 refrain from any disruptive noises or actions

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1 in the hearing room. When presenting
2 information to the Board please turn on and
3 speak into the microphone, first stating your
4 name and your home address.

5 When you finish speaking please
6 turn your microphone off so that your
7 microphone is no longer picking up sound or
8 background noise.

9 All persons planning to testify
10 either in favor or in opposition are to fill
11 out two witness cards. These cards are
12 located to my left on the table near the door
13 and on the witness tables. Upon coming
14 forward to speak to the Board, please give
15 both cards to the Reporter sitting to my
16 right.

17 Also, if you wish to file written
18 testimony or additional supporting documents
19 today, please submit an original and 12 copies
20 to the secretary for distribution. If you do
21 not have the requisite number of copies, you

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1 can reproduce copies on a machine in the
2 Office of Zoning located across the hall.

3 The order of procedure for Special
4 Exception and variance is statement of the
5 Applicant and the Applicant witnesses, parties
6 and persons in support, parties and persons in
7 opposition, report of the Advisory
8 Neighborhood Commission, government reports,
9 including the Office of Planning, Department
10 of Transportation, Office of State
11 Superintendent for Education and the
12 Department of Public Works and six, rebuttal
13 and closing statement by the Applicant.

14 Pursuant to Section 3117A and
15 3117.4 and 3117.5, the following time
16 constraints will be maintained. The
17 Applicant, the Appellant, persons and parties
18 except the ANC in support, including
19 witnesses, 60 minutes collectively.
20 Applicants, persons and parties except the ANC
21 in opposition including witnesses 60 minutes

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1 collectively. Individuals three minutes,
2 organizations five minutes.

3 These time restraints do not
4 include cross-examination and/or questions
5 from the Board. Cross-examination of
6 witnesses is permitted by the Applicant or
7 parties.

8 The ANC within which the party is
9 located is automatically a party in a Special
10 Exception or variance case. Nothing prohibits
11 the Board from placing reasonable restrictions
12 on cross-examination, including time limits
13 and limitation on the scope of cross-
14 examination.

15 The record will be closed at the
16 conclusion of each case except any material
17 specifically requested by the Board. The
18 Board and staff will specify at the end of the
19 hearing exactly what is expected and a date
20 when the person must submit the evidence to
21 the Office of Zoning.

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1 After the record is closed no
2 other information will be accepted by the
3 Board.

4 The District of Columbia
5 Administrative Procedure Act requires that the
6 Public Hearing on each case be held and open
7 before the public. Pursuant to Section 405B
8 and 406 of the Act the Board may consistent
9 with the rules of procedure and the Act enter
10 into a closed meeting on a case for purposes
11 of seeking legal counsel on the case per D.C.
12 Code Section 2-575B4 and/or deliberating on a
13 case per D.C. Code Section 1575B13 but only
14 after providing the necessary public notice
15 and in the case of an emergency closed meeting
16 after taking a roll call vote.

17 The decision of the Board in a
18 contested case must be based exclusively on
19 the public record to avoid any appearance of
20 the contrary. The Board requests that persons
21 present not engage the members of the Board in

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1 conversation.

2 Please turn off all beepers and
3 cell phones at this time so as not to disrupt
4 these proceedings.

5 The Board will not consider all
6 preliminary matters. Preliminary matters are
7 those which relate to a case should or will be
8 heard today, such as a request for
9 postponement, continuance, withdrawal or
10 whether proper or adequate notice of the
11 hearing has been given.

12 If you're not prepared to go
13 forward with the case today or if you believe
14 that the Board should not proceed, now is the
15 time to raise such a matter.

16 Mr. Secretary, do we have any
17 preliminary matters?

18 SECRETARY MOY: Mr. Chairman,
19 there are no preliminary matters in the
20 record.

21 CHAIRPERSON JORDAN: Okay. With

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1 that, let's call our first case of the
2 afternoon.

3 SECRETARY MOY: Good afternoon,
4 Mr. Chairman, Members of the Board. The first
5 application before the Board for action is
6 Application Number 18327. This is the
7 application of the Fishing School, pursuant to
8 11 DCMR 3104.1 and 3129.7. This is for a
9 modification and a Special Exception approval
10 of an expansion of an approved child
11 development center per the BZA Order Number
12 18042. This is to include a new two-story
13 building devoted to space for administrative
14 use and parent workshop and activities use at
15 premises 4720 Meade Street, Northeast.
16 Property located in Square 5160, Lot 817.

17 CHAIRPERSON JORDAN: Will the
18 Applicant please identify the parties.

19 MR. HUGHES: Good afternoon, Mr.
20 Chair. For the record, my name is Dennis
21 Hughes with the law firm of Holland & Knight

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1 here on behalf of the Applicant Fishing
2 School. Joining me at the table at the far
3 right Mr. Leo Givs, Executive Director of the
4 Fishing School and to my immediate right, Mr.
5 Dahn Warner of Key Urban. Over my shoulder
6 are the architects for the project, Mr. James
7 Jordan and Ms. Kathy Dixon.

8 We appear before you today to
9 request Special Exception approval pursuant to
10 Section 3104 and 205 of the zoning regulations
11 to expand a child development center use that
12 the Board approved in 2010 at 4737 Meade
13 Street, Northeast. This expansion would
14 include a family support center at the
15 property located immediately across Meade
16 Street at 4720 Meade. The proposed expansion
17 would not result in any increase in the
18 overall number of students at the school.
19 There would be an increase of up to six staff
20 that would be for the new family support
21 center.

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1 Section 205 of the zoning
2 regulations permits child development center
3 use in an R-1 District by Special Exception.

4 CHAIRPERSON JORDAN: I'm sorry to
5 interrupt you but let me help you out. I
6 think our record is pretty full.

7 MR. HUGHES: Okay. Very good.

8 CHAIRPERSON JORDAN: And if there
9 is anything special that you want to point
10 out or that you think is not said in your
11 application, then I would offer you to cover
12 that or you have the right to go forward if
13 you want.

14 MR. HUGHES: Just to be abundantly
15 clear, I want to make sure that the Board has
16 the Applicant's statement which sets forth
17 compliance with the burden of proof. We also
18 have a letter of support from the Office of
19 Planning with certain conditions which the
20 Applicant is pleased to accept. And a letter
21 of support from the Department of

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1 Transportation as well as a letter from ANC-7C
2 which we would ask that the Board grant great
3 weight.

4 And with that, we'll conclude our
5 statement and be open to questions from the
6 Board.

7 Thank you.

8 VICE CHAIRPERSON SORG: Thank you,
9 Chairman.

10 Just one question. I agree, I
11 think that the application is very well done.

12 It was noted by the Office of
13 Planning that no communications have been made
14 by the immediately abiding neighbors to the
15 new property. I'm wondering if you can just
16 speak a little bit to outreach made to those
17 particular individuals, if any.

18 MR. HUGHES: I'm sorry --

19 VICE CHAIRPERSON SORG: That we
20 don't have any information from the abutting
21 neighbors to the new property and whether

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1 you've made any efforts of outreach to them or
2 had any communications or not.

3 MR. HUGHES: Certainly. I'll burn
4 that out to Dahn to answer that question.

5 MR. WARNER: Yes, we did send a
6 letter to both neighbors, the one to the west
7 and the one to the north and we provided
8 contact information and offered to meet with
9 them and we did not receive a response.

10 The neighbors to the west it
11 appears to be an abandoned property and the
12 letter was actually returned to us
13 undeliverable.

14 VICE CHAIRPERSON SORG: All right.
15 Thank you for clarifying that on the record.

16 CHAIRPERSON JORDAN: Any other
17 questions for the Applicant?

18 ZC CHAIR HOOD: Mr. Chairman, this
19 is not necessarily pertaining to -- is there
20 more than one site of the Fishing School?

21 MR. GIVS: No, sir, we have one --

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1 ZC CHAIR HOOD: Your microphone.

2 MR. GIVS: We have one site at
3 4737 Meade Street. However, we operate some
4 of our after school and summer programs at
5 other locations. We have an agreement with the
6 District of Columbia Public School System to
7 operate our after school programs in their
8 buildings.

9 ZC CHAIR HOOD: So, this is the
10 Fishing School -- I remember being on a case
11 in the late '90s and I see the order here was
12 done 2005. I'm just making sure it was the
13 same location.

14 MR. GIVS: We were previously
15 headquartered on Wylie Street in Ward 6 --

16 ZC CHAIR HOOD: Okay.

17 MR. GIVS: -- at that time and the
18 4737 location where we're now headquartered
19 was a satellite center. And a couple -- well,
20 2009 ABC Extreme Makeover Home Edition
21 television program came in, tore that building

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1 down and built this current new facility for
2 us.

3 ZC CHAIR HOOD: Okay. Well,
4 that's good. Thank you. Thank you for the
5 clarification.

6 CHAIRPERSON JORDAN: Any other
7 questions of the Applicant?

8 Do we now have any persons or
9 parties in support?

10 Parties and persons in opposition?

11 Going once, going twice? And
12 anyone from the ANC -- ANC-7C? Anyone from
13 ANC-7C?

14 We do have a letter from ANC-7C
15 dated December 8th, 2011. And the letter
16 states "Dear Members of the Board. The
17 Advisory Neighborhood Commission 7C at its
18 regularly scheduled public meeting held
19 December 8, 2011, in which a quorum was
20 present, unanimously voted to support the
21 application for Special Exception to be made

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1 by the Board of Zoning Adjustment by the
2 Fishing School.

3 The Fishing School is planning to
4 build a family support center on property
5 across the street from its 4737 Meade Street,
6 Northeast, headquarters. The property was
7 acquired via a donation by community members
8 who are favorably impressed with the work
9 performed by TFS and by the quality and
10 appearance and renovation. The new facility
11 will be two stories and will accommodate
12 administrative functions as well as parent
13 workshops.

14 Because the property is located in
15 an R-2 Zone District a child development
16 center can operate there only by Special
17 Exception granted by the BZA. Commission has
18 observed that the Fishing School contributes
19 positively to the neighborhood and that a
20 Special Exception can be granted without harm
21 to the public good.

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1 For all these reasons, the
2 Advisory Neighborhood Commission 7C supports
3 the Applicant's request for a Special
4 Exception which will allow the Applicant to
5 complete this project that is critical to TFS
6 and to Deanwood. Commission urges approval by
7 the Board of this Special Exception."

8 And this letter meets our
9 requirement for great weight and so this Board
10 will give it great weight.

11 Return now to the Office of
12 Planning.

13 MR. JACKSON: Good afternoon Mr.
14 Chairman and Members of the Board. My name is
15 Arthur Jackson and I'm sitting in for Paul
16 Goldstein who is away.

17 You have the Office of Planning's
18 report before you and we'll stand on the
19 record but just to summarize the
20 recommendation.

21 The recommendation of the Office

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1 of Planning is approval fo the Special
2 Exception relief requested under Section 201
3 and Section 3104 for the extension of the
4 existing child development center.

5 Our recommendation includes the
6 following conditions that BZA Order Number
7 18042 be modified to incorporate the subject
8 property at 4720 Meade Street, Northeast, and
9 to limit the combined child care center use to
10 65 children and 26 staff. And that the family
11 support center and property be limited to six
12 staff members and that the support center
13 property not be utilized as a classroom or for
14 the formal gathering space for the students of
15 the existing Fishing School Child Development
16 Center located at 4737 Meade Street,
17 Northeast, but that students be permitted to
18 visit the family support center and to
19 participate in the family oriented program
20 activities.

21 That concludes the brief summary

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1 of the Office of Planning report and am
2 available to answer questions.

3 CHAIRPERSON JORDAN: Thank you.
4 Are there any questions for the Office of
5 Planning?

6 The Applicant, any questions?

7 Okay. Would you close for us
8 please.

9 MR. HUGHES: Thank you, Mr.
10 Chairman.

11 With what is in the record and
12 before the Board and with that we believe the
13 application is complete and we request your
14 approval and if the Board is so inclined, a
15 Bench Decision to that end.

16 Thank you.

17 CHAIRPERSON JORDAN: Regarding
18 this application for a Special Exception, it
19 is my belief that the Applicant had met the
20 burden as required under Section 205 for the
21 Special Exception, that the center is capable

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1 of meeting all the applicable codes in
2 licensing and, in fact, I think they have all
3 the licensings from the State Superintendent
4 of Education for that requirement, that the
5 center design is not objectionable for traffic
6 conditions or unsafe use for picking up and
7 dropping off for the children. I think a
8 provision has already been made at the
9 location for the pick up and drop off that
10 there's no objectionable impact in regards to
11 this. That the center provided sufficient
12 off-street parking to meet the reasonable
13 needs of its teachers and employees. There's
14 been no objection to what's going on. In
15 fact, has been commended for what they've been
16 doing there. They exceed the normal
17 requirement as required by the zoning
18 regulations. That the center facility include
19 an outdoor play space provided shall be
20 located and designed so there will be no
21 objectionable impacts on the adjacent near by

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1 property due to noise, activities, visual and
2 other objectionable conditions. There's been
3 no reports of that activity happening.

4 The property would be used by
5 staff and the parents for office and meeting
6 space between normal business hours. The
7 Applicant has proposed to provide landscaping
8 and so that's all acceptable. The Board may
9 require special treatment by way of design and
10 screening. There's been no request for that
11 by the Office of Planning or by this Board.

12 The off site play area shall be
13 located as not to result in endangerment to
14 the children nor individuals in attendance.
15 The off site location family support center
16 would be primarily used by parents and staff.

17 I don't see any real reasons why
18 we would not be in support of this
19 application, especially based upon the history
20 and the previous operations of the school.
21 So, I would be willing to certainly -- in

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1 fact, let me go back on that. Not that I
2 won't be willing. Let me put it before the
3 body.

4 A motion to approve the Special
5 Exception relief from 205 and 3104 to expand a
6 residentially zoned child development center
7 to be used for a new building devoted for
8 administrative use and parental workshops and
9 activities. And also that we approve the
10 modification of the earlier BZA order in
11 18042. I so move.

12 VICE CHAIRPERSON SORG: Just by
13 way of additional deliberations before a
14 motion.

15 ZC CHAIR HOOD: Well, I second it
16 first.

17 CHAIRPERSON JORDAN: Thanks.

18 ZC CHAIR HOOD: Okay.

19 CHAIRPERSON JORDAN: I will put it
20 forth when we have the discussion and then we
21 move on it. It's a way of trying to save some

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1 time and be a little bit more efficient.

2 VICE CHAIRPERSON SORG: Oh, okay.

3 I just wanted to make a couple of
4 comments on this application in general. I
5 think that the services that will be provided
6 in this additional property are extremely
7 commendable. I think, you know, early
8 childhood education in this city is extremely
9 important and I personally believe that
10 involving training with regard to parenting
11 skills and parents involvement in early
12 childhood education really is extremely
13 important with regard to preparing both
14 parents and children for later stages of
15 education. So, I would commend the Applicant
16 for modifying their programming to include to
17 increase this type of programming.

18 And then just as a note for the
19 record, because I think that there were a
20 little bit of back and forth on the
21 individuals in support and opposition, I just

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1 wanted to note that the Applicant had
2 submitted -- which is in our Exhibit Number 29
3 letter F that all but the author of the
4 previous letter in opposition have rescinded
5 their opposition. And then had, in fact,
6 moved in support.

7 And also included in the
8 Applicant's submission in their Exhibit I, a
9 letter from Councilmember Alexander which is
10 also a document that we give great weight to.

11 That's all I wanted to add by way
12 of support.

13 Thank you.

14 CHAIRPERSON JORDAN: Okay. Any
15 additional discussion?

16 ZC CHAIR HOOD: Mr. Chairman, I
17 would also echo what I've heard both of our
18 colleagues mentioned, especially satisfying
19 the requirement in our Special Exception
20 section 205. I think all of the necessary
21 regulations have been satisfied.

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1 Also with the wide support and
2 also the services already mentioned that I've
3 know the Fishing School to have done in their
4 prior location and now with their new location
5 I think this is definitely an asset to the
6 city. And I will be voting in favor of your
7 motion, Mr. Chairman.

8 CHAIRPERSON JORDAN: Any others?
9 Mr. Hinkle.

10 MEMBER HINKLE: I just wasn't sure
11 that I heard it but your motion included the
12 conditions that OP has proposed?

13 CHAIRPERSON JORDAN: I don't
14 believe that I did add the conditions. Yes, I
15 don't think I put any conditions to the
16 motion. And we will after. Okay.

17 And if I could, Mr. Hood, with you
18 making the second, if you would agree that we
19 add to the motion the conditions that were
20 recommended by OP that BZA Order Number 18042
21 should be modified and incorporate the subject

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1 property at 4720 Meade Street, Northeast, and
2 to limit the combined child development
3 center's use to 65 children and 26 staff.

4 The family support center and
5 property would be limited to six staff
6 members. The family support center property
7 should not be utilized as classrooms or formal
8 gathering spaces for students of existing
9 Fishing School child development located at
10 4737 Meade Street, Northeast. Students shall
11 be permitted to visit the family support
12 center to participate in family oriented
13 activities.

14 ZC CHAIR HOOD: Yes, Mr. Chairman.

15 I thought that I was seconding but I guess we
16 need to spell it out.

17 CHAIRPERSON JORDAN: Yes.

18 Correct.

19 Thank you, Mr. Hinkle.

20 Any others?

21 Seeing no other unreadiness or

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1 deliberation, all those in favor of the motion
2 signify by saying aye.

3 (AYES)

4 CHAIRPERSON JORDAN: Those opposed
5 nay.

6 Mr. Secretary. Yes, motion
7 passed.

8 SECRETARY MOY: The staff would
9 record the vote as I believe it was five to
10 zero to zero? Okay, good. I'm sorry. I have
11 to pick up on the new rhythm of the new Chair.

12 On the motion of Chairperson Jordan to
13 approve the application for a Special
14 Exception modification of the CDC under
15 Section 205 and modification of the order
16 18042 under Section 3129.7 as well as
17 including conditions as noted on page 1 of the
18 OP Report.

19 Seconding the motion Mr. Hood.
20 Also in support of the motion Ms. MacMurray,
21 Ms. Sorg and Mr. Hinkle. Again, the final

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1 vote is five to zero to zero. The motion
2 carries.

3 CHAIRPERSON JORDAN: Great, thank
4 you.

5 MR. HUGHES: Thank you very much.

6 SECRETARY MOY: Mr. Chairman, is
7 there a desire that --

8 CHAIRPERSON JORDAN: Yes, thank
9 you.

10 SECRETARY MOY: The next
11 application before the Board is Application
12 Number 18328. This is the application of
13 Noddles & Company pursuant to 11 DCMR 3104.1
14 for a Special Exception to establish a fast
15 food establishment under Section 733 in the C-
16 1 and C-2-A District at premises 1815
17 Wisconsin Avenue, Northwest. Property located
18 in Square 1299, Lot 327.

19 CHAIRPERSON JORDAN: If you could
20 introduce yourself please.

21 MS. BROWN: Thank you, Mr. Chair,

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1 and good afternoon Members of the Board.

2 My name is Carolyn Brown. I'm
3 with the law firm of Holland & Knight. I am
4 here on behalf of the Applicant Noodles &
5 Company.

6 With me today are Mr. Trapper
7 Martin and Ms. Lilli Ferrari with Noodles.
8 They're available for questions.

9 We're very pleased to be here
10 today. This is Noodles second location in the
11 District. You will recall that we were here
12 in May for another Special Exception and some
13 variances for their location in Woodley Park.

14 The record is complete and very
15 full so we plan to rest on the record. I will
16 make two points before I turn it back to you.

17 First, we have asked for some
18 modifications of the requirements under the
19 Fast Food Establishment regulations under
20 Section 733. We've addressed two of those in
21 our statement. There's a third one raised by

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1 the Office of Planning about the gate to the
2 dumpster enclosure, the three-sided dumpster
3 enclosures. So, there will be a gate. We've
4 asked for flexibility on the design of that
5 gate in coordination with the landlord Safeway
6 and the Old Georgetown Board.

7 The other two are addressed. I'm
8 happy to bring those up as well but in the
9 interest of time, I'll let you ask questions
10 about it if they raise any concerns for you.

11 Secondly, with proposed
12 conditions, those are set out in our
13 prehearing statement at Exhibit 26. They are
14 also repeated in the Office of Planning Report
15 and also in the ANC letter. There are four
16 conditions plus the fifth one that we have
17 asked flexibility to address any design issues
18 by the Old Georgetown Board when we return in
19 April.

20 So, I'm happy to get into the
21 specifics of those but I'll rest now on the

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1 record and entertain any questions that you
2 have.

3 Thank you.

4 CHAIRPERSON JORDAN: Thank you.

5 Any questions for the Applicant?

6 Mr. Hinkle.

7 MEMBER HINKLE: Ms. Brown, just a
8 quick question. You had mentioned the trash
9 receptacle. I was unclear as to where that's
10 located on the site.

11 MS. BROWN: Sure. If you go to
12 Exhibit 26, our prehearing statement, there is
13 Tab B. There are two sheets. The second fold
14 out sheet has the site plan. You will see the
15 Noodles location and then there's the L-shaped
16 drive.

17 MEMBER HINKLE: Okay.

18 MS. BROWN: And then also
19 Wisconsin Avenue as you get to the L where the
20 Safeway ramp is you'll see a trash enclosure.

21 MEMBER HINKLE: Sure.

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1 MS. BROWN: That's where it's
2 located.

3 MEMBER HINKLE: Okay, thank you.

4 MS. BROWN: You're welcome.

5 CHAIRPERSON JORDAN: Any other
6 questions of the Applicant?

7 MEMBER HINKLE: I guess one more
8 question, I'm sorry.

9 The hours to the roof top deck.
10 Those would be the same as the proposed hours
11 for the restaurant?

12 MS. BROWN: Yes, they will be the
13 same.

14 MEMBER HINKLE: And there was no
15 issues with that in terms of the ANC or other
16 discussion for the neighborhood?

17 MS. BROWN: Initially, there were
18 some issues but then when we returned for the
19 second time, they said that as long as there
20 is no noise that permeates beyond the
21 boundaries of the property that they are fine

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1 with it. So, there can be music or noise up
2 there just as long as it doesn't migrate too
3 far.

4 MEMBER HINKLE: Okay, great.
5 Thank you.

6 MS. BROWN: You're welcome.

7 CHAIRPERSON JORDAN: Any others?
8 Okay.

9 Parties and persons in support?
10 Persons and parties in opposition?
11 ANC letter? Thank you.

12 We have a letter from ANC-2E dated
13 February 28th, 2012. "Dear Members of the
14 Board. The Advisory Neighborhood Commission
15 2E at a public meeting held on February 27,
16 2012, duly noticed in which five members were
17 present constituted a quorum unanimously
18 adopted the following resolution. ANC-2E
19 recommends approval of the Special Exception
20 as proposed by the Applicant on the following
21 conditions to which we understand the

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1 Applicant is agreeable.

2 One, the establishment will serve
3 dine-in customers with nondisposable plates
4 and utensils.

5 Two, the hours of operation will
6 not exceed 10:00 a.m. to 10:00 p.m. weekdays
7 and 10:00 to 11:00 p.m. Fridays and Saturdays.

8 Three, the establishment including
9 its roof deck will not produce sounds audible
10 outside the property line of the site in which
11 it is located, and

12 Four, the percentage of carry out
13 customers will not be expected to exceed 35
14 percent.

15 During our discussions on this
16 matter we noted that the proximity of
17 residents and potential issues with which we
18 had experienced elsewhere in Georgetown
19 regarding fast food, late night establishment
20 and roof decks near residential areas.
21 Conditions one and four are designed to

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1 recognize that the Applicant is more a
2 restaurant than a fast food establishment and
3 to limit exceptions accordingly. Conditions
4 two and three are designed to limit the late
5 night impacts of the vicinity.

6 ANC-2E Commissioner Solomon,
7 Lewis, Sticka, Starrels and Birch or anyone
8 authorized. We appreciate the opportunity to
9 bring this resolution to the attention of the
10 Board of Zoning Adjustment. We trust it will
11 be given great weight." And great weight will
12 be given.

13 Thanks.

14 We turn now to the Office of
15 Planning.

16 MR. MORDFIN: Good afternoon,
17 Chair, Members of the Board. I'm Stephen
18 Morphin with the Office of Planning.

19 And the Office of Planning stands
20 on the record on this case, recommending
21 approval of the application subject to the

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1 conditions as listed in the report.

2 Thank you.

3 CHAIRPERSON JORDAN: Does the
4 Board have any questions for the Office of
5 Planning?

6 Does the Applicant have any
7 questions for the Office of Planning?

8 MS. BROWN: No questions.

9 CHAIRPERSON JORDAN: Then if you
10 would like to make a closing.

11 MS. BROWN: Yes. Thank you for
12 your consideration of this application and we
13 request approval fo the Special Exception with
14 the conditions listed in the application and
15 the modifications as enumerated today and in
16 the application.

17 Thank you very much.

18 We would also request a decision
19 today if appropriate and a Summary Order.

20 CHAIRPERSON JORDAN: Sure, thank
21 you.

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1 Are we ready to deliberate, Board?

2 Okay.

3 Ms. MacMurray.

4 MEMBER MacMURRAY: Thank you, Mr.
5 Chairman.

6 I make a motion for the Board to
7 consider approval of the recommendations of
8 the Office of Planning subject to the
9 conditions. The first condition following the
10 relief under Section 733.1 and Section 3104
11 providing a Special Exception to permit fast
12 food establishment.

13 As the Office of Planning has
14 recommended, the conditions with the Applicant
15 has put forth is that the establishment will
16 serve dining customers. The hours of
17 operations will not exceed 10:00 a.m. to 10:00
18 p.m. on weekends. The establishment of the
19 roof deck will not produce audible sound
20 outside of the main area of the property line
21 even during the late hours. And the

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1 percentage of the carry out customers are not
2 expected to exceed 35 percent.

3 The Office of Planning had also
4 noted that a final condition requested by the
5 Applicant, the Applicant will be granted.
6 Flexibility to make modifications to the roof
7 deck and other exterior elements in
8 conformance with the design guidance from the
9 Old Georgetown Board of the Commission of Fine
10 Arts and/or Historic Preservation Review Board
11 regarding the setback.

12 With respect to Special Exception
13 744.1 and Sections 3104, because the property
14 is not separated by a street or an alley from
15 the neighboring residential district to the
16 east, the Applicant requests a modification of
17 this condition which the Board does agree
18 with.

19 And the notation that Noodles &
20 Company functions more as a restaurant rather
21 than a fast food establishment, particularly

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1 noting that there will be no deep fry waste
2 removal.

3 CHAIRPERSON JORDAN: Do you want
4 to recite the basis for -- in support of the
5 motion. Is there anything else you want to
6 add or anything -- if anyone wants to add but
7 particularly I could support the motion
8 especially as we look at the requirements for
9 a Special Exception under 733.1 and 3104, that
10 no part of the lot in which the use is located
11 shall be within 25 feet. Although no
12 separation exists, the retail space would not
13 abut the residential district based on the
14 proposed location within the existing
15 building. Also, that it's going to be
16 separated by the lot boundaries by another
17 retail space. That the lot line of the lot
18 abuts in the alley contain a zoning district
19 boundary line. The rear wall of the building
20 as well a brick wall separates the property
21 from Gillette Street and the provisions of the

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1 existing brick wall is tall enough and thick
2 enough that it allows for the required --
3 meeting that particular provision.

4 VICE CHAIRPERSON SORG: Sorry, Mr.
5 Chairman.

6 I think that the Applicant is
7 requesting a modification to that requirement
8 because there's holes in the wall so that
9 people can pass through from the Gillette
10 recreation site through to the, you know,
11 Sampson Avenue retail --

12 CHAIRPERSON JORDAN: Retail site.

13 VICE CHAIRPERSON SORG: -- without
14 going all the way around the block of S
15 Street. So, I think based upon the standards
16 of the Special Exception, not producing any
17 adverse impacts that all three of the
18 modifications that are being requested under
19 733 are reasonable with regard to the
20 standard.

21 CHAIRPERSON JORDAN: And in light

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1 of the fact that we have support of the ANC
2 for this particular relief being requested.

3 Any other deliberations? Yes?
4 No?

5 Mr. Hood.

6 ZC CHAIR HOOD: I just would
7 second Board Member's motion.

8 CHAIRPERSON JORDAN: I thought we
9 seconded, it's my error.

10 ZC CHAIR HOOD: Okay.

11 CHAIRPERSON JORDAN: All those in
12 favor of the motion signify by saying aye.

13 (AYES)

14 CHAIRPERSON JORDAN: Those opposed
15 nay.

16 The motion carries.

17 Mr. Secretary.

18 SECRETARY MOY: Before I give the
19 final vote, Mr. Chairman, who seconded the
20 motion to Ms. MacMurray's motion?

21 ZC CHAIR HOOD: I did.

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1 SECRETARY MOY: Mr. Hood, thank
2 you.

3 Staff would record the vote as
4 five to zero to zero on the motion of Ms.
5 MacMurray to approve the request for a Special
6 Exception under 733 to permit a fast food
7 establishment. Also included is the request
8 for the three modifications as cited by the
9 move.

10 Seconding the motion, Mr. Hood.
11 Also in support of the motion Mr. Lloyd
12 Jordan, Ms. Sorg and Mr. Hinkle.

13 Again, the final vote is five to
14 zero to zero.

15 ZC CHAIR HOOD: Mr. Chairman? I
16 would just and this is not dealing with any
17 cases. I would strongly recommend that the
18 Board of Zoning Adjustment go back into the
19 procedure under the title and the procedure
20 and order at sometime soon in the procedure
21 and order which is noted in the title in which

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1 the Zoning Commission has regulated.

2 Thank you.

3 CHAIRPERSON JORDAN: We will -- in
4 light of our conversation we will revisit
5 that, Mr. Hood.

6 And I think we're requesting a
7 Summary Order for this particular --

8 SECRETARY MOY: Yes, thank you.

9 MS. BROWN: Thank you very much.

10 SECRETARY MOY: The next and last
11 application for the afternoon session is
12 Application Number 18275. This is the
13 application of Potomac Avenue, LLC, pursuant
14 to 11 DCMR 3103.2 and 3104.1 for a Special
15 Exception for a change of nonconforming use
16 along with a coffee shop on the first floor
17 under subsection 2003.1 and a variance from
18 the use provisions to allow a pet supply store
19 on the second floor on an existing two-story
20 building under subsection 350.1 in the R-5-B
21 District at premises 1200 Potomac Avenue,

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1 Southeast, property located in Square 1021,
2 Lot 34.

3 CHAIRPERSON JORDAN: Good
4 afternoon. Would you go ahead and identify
5 yourselves please.

6 VICE CHAIRPERSON SORG: I'm sorry,
7 I don't think you're on the record, Mr. Acker.

8 MR. ACKER: I'm sorry. My name is
9 John Acker. I'm the project architect for the
10 firm of Henderson L. Walker and Associates
11 located in the District.

12 I'm the project architect for the
13 project. We were here before and the case was
14 continued. We presented our case as far as
15 the first and the second floor of this project
16 and I thought that the first floor, I thought
17 that that had a way of getting through.

18 But on the second floor the
19 project consists of converting what once was a
20 residential space into a commercial space and
21 that's why we're here for the variance. And

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1 when we looked back at the burden of proof in
2 terms of the reason why we would request a
3 variance for the second floor, the project was
4 conceived as a retail project. And if you
5 look at the site or if you look at the
6 building, the shape of the building is
7 somewhat of a trapezoid shape which one part
8 of the building is wider than the other.

9 And one of the reasons as far as
10 not being able to convert to the apartment on
11 the second floor, we believe that the building
12 -- we can convert the second floor to an
13 apartment. One of the concerns would be the
14 minimum property standards that generally
15 required by most agencies when we develop --
16 when we do projects for development
17 corporations like PIC or Development
18 Corporation of Columbia Heights. We've always
19 used minimum property standards to design a
20 one-bedroom which the minimum property
21 standard would be for HUD or FHA. When we

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1 apply those standards, it does make the second
2 floor a little tight in terms of putting a one
3 bedroom. We know -- we know we could get a
4 one bedroom and to be sure if we could get the
5 amenities to go with a one bedroom. But we
6 think that converting to the second floor
7 apartment would cause undue hardship to the
8 owner in terms of construction -- the cost of
9 construction.

10 The way we're set now the second
11 floor is a wide open space. We would just
12 have shelves to display the different items
13 for sale. And constructing a second floor
14 apartment then we would know -- additional
15 walls, doors, kitchen equipment, a bathroom,
16 ceramic tile. So, we really feel that in
17 terms of the uniqueness and the size of the
18 property it does call for somewhat of a
19 hardship to the owner in terms of
20 construction.

21 So, seated to my immediate right

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1 is Carl Allen who is one of the project team
2 members and he -- we discussed the project.
3 He may have something that he would like to
4 share with the committee.

5 UNIDENTIFIED PERSON: No, sir.

6 MR. ACKER: Okay. So, Carl is
7 okay. Well, so that's where we are. We -- we
8 -- we are trying to get -- make sure that we
9 get the second floor variance within the
10 project. So, that's all I have for now.

11 Thank you.

12 CHAIRPERSON JORDAN: Since our
13 last meeting have you made any other
14 submissions or had any other discussions with
15 Office of Planning regarding this project?

16 MR. ACKER: i recall having a --
17 we did have a telephone conversation with them
18 and we -- yes, I did. But we didn't get into
19 great depth of a conversation.

20 CHAIRPERSON JORDAN: Are there any
21 questions of the Applicant?

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1 Let me ask another question. Have
2 you had a chance to revisit this application
3 with the ANC?

4 MR. ACKER: We -- we met with the
5 ANC on several occasions and we thought that
6 they were in support of the entire project
7 which is the first and the second floor.
8 That's the way we understood them.

9 CHAIRPERSON JORDAN: I believe we
10 have a letter from the ANC in opposition to
11 this project. Am I incorrect on that?

12 MR. ALLEN: Yes. I'm Carl Allen,
13 11906 Bion Drive, Fort Washington, Maryland
14 20744.

15 There was a letter submitted by
16 the ANC and they were on board with both the
17 first and the second floor. The opposition
18 was from the Office of Planning, but the
19 letter is in support of both.

20 CHAIRPERSON JORDAN: Do we have a
21 copy fo the ANC letter?

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1 VICE CHAIRPERSON SORG: Yes.

2 CHAIRPERSON JORDAN: We're talking
3 about ANC-6B?

4 MR. ACKER: Yes. Yes, sir.

5 CHAIRPERSON JORDAN: Do you have a
6 copy of their letter?

7 MR. ACKER: I don't have it with
8 my papers here. But we -- we definitely
9 understood that the ANC was with us.

10 CHAIRPERSON JORDAN: Let me read
11 to you the letter we received from the ANC.

12 "Dear Board Members. At a
13 regularly called and properly noticed via
14 posting at the Southeast Library, East and
15 Market, ANC-6B website, a meeting on November
16 8th, 2011, with a quorum present, six being a
17 quorum, ANC-6B voted unanimously -- oh, okay.

18 Unanimously nine to zero to zero to oppose
19 the Applicant's above request. The Commission
20 is taking this action because the Applicant
21 provided no evidence or justification for the

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1 variance request.

2 Additionally, the Commission voted
3 unanimously to authorize Commissioner Greene
4 to represent ANC-6B."

5 MR. ACKER: Yes, I think that's --
6 there's another letter from the ANC that
7 should be in the record.

8 CHAIRPERSON JORDAN: You got
9 another one?

10 OAG MEMBER GLAZER: Mr. Jordan,
11 it's Exhibit 28 and the Applicant is correct.

12 CHAIRPERSON JORDAN: There's a new
13 letter.

14 OAG MEMBER GLAZER: Refers to a
15 meeting on December 13th.

16 CHAIRPERSON JORDAN: Okay. So,
17 there's a new letter. Yes, I didn't have it
18 in my -- so, I do see a December 19th, 2011,
19 letter that says that the ANC with a quorum
20 present, six being a quorum, voted unanimously
21 nine to zero to zero to support the

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1 Applicant's above request.

2 The Commission is taking this
3 action after reviewing the Applicant's
4 documentation and believes that the project's
5 impact on air, light and privacy will be
6 negligible. So, we stand correct.

7 MR. ACKER: Yes, sir, thank you.

8 MR. ALLEN: And we did also have
9 support from all the neighbors too.

10 CHAIRPERSON JORDAN: Is there
11 anything else you want to present to the
12 Board?

13 MR. ACKER: Not at this time.

14 CHAIRPERSON JORDAN: Does the
15 Board have any questions of the Applicant?

16 Are there any persons or parties
17 in the audience in support of this
18 application?

19 Are there any persons or parties
20 in the audience in opposition to the
21 application?

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1 I just read the ANC letter which
2 will carry great weight. It meets the
3 requirements for great weight.

4 Now, we'll hear from the Office of
5 Planning.

6 MR. MORDFIN: Good afternoon. I'm
7 Stephen Morphin with the Office of Planning.

8 And the Applicant his requesting a
9 Special Exception to change a nonconforming
10 use from a grocery to a coffee shop on the
11 first floor. However, as the grocery use was
12 abandoned approximately years ago, the
13 nonconforming status expired, therefore, the
14 Office of Planning reviewed this request foro
15 as a variance.

16 The first floor is designed as a
17 commercial space with show windows along each
18 frontage and a door facing the intersection.
19 The show windows are located at ground level
20 are not designed for privacy and the entrance
21 opens on to the intersection of 12th Street, K

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1 Street and Potomac Avenue. This results in an
2 extraordinary or exceptional situation making
3 the first floor not suitable for residential
4 use. Lack of privacy and exposure of the
5 entrance results in a peculiar and exceptional
6 practical difficulty. Use of the first floor
7 for commercial use would not cause substantial
8 detriment to the public good or impair the
9 intents of the zone plan because the entrance
10 is located at the corner away from the
11 adjoining residential uses. Therefore, the
12 Office of Planning recommends approval of the
13 use variance to the first floor as a coffee
14 shop.

15 The application also requests a
16 use variance to permit a retail pet supply
17 store on the second floor. The second floor
18 was originally designed as a residential space
19 with windows one flight up providing privacy
20 to the residents.

21 The entrance is located away from

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1 the intersection adjacent to the hazards on
2 Potomac Avenue. As there is no uniqueness
3 resulting from exceptional or practical
4 difficulty, use of the second floor for
5 commercial uses would impair the intent of the
6 zone plan.

7 The Office of Planning did hear
8 the Applicant state that there are building
9 codes that would make it difficult or
10 standards, not building codes, excuse me.
11 Make it difficult to use the second floor as a
12 residential space but did not elaborate on
13 what those -- I'm not familiar with what
14 standards would be -- that would cause an
15 issue. I don't have any further information
16 on what problems there would be with using the
17 second floor for residential purposes.
18 Therefore, the Office of Planning recommends
19 denial of the use variance for the second
20 floor.

21 Thank you.

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1 CHAIRPERSON JORDAN: Say the last
2 bit again?

3 MR. MORDFIN: The Applicant did
4 indicate that there are some standards from I
5 think HUD and some other agencies that would
6 make it difficult to use the second floor in
7 that they would have to put up walls and put
8 in bathrooms. If you were to use this as a
9 commercial space, I'm not sure how many walls
10 you would need. You would need to put in a
11 bathroom. You would still have to finish out
12 the second floor. I don't -- it would be
13 finished differently if you were to do it as a
14 residential space as opposed to a commercial
15 space. But I don't have any information as to
16 what would make that a difficult conversion.

17 CHAIRPERSON JORDAN: So, you're
18 still missing information enough to make a
19 recommendation for support --

20 MR. MORDFIN: Right.

21 CHAIRPERSON JORDAN: -- of the

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1 second floor?

2 MR. MORDFIN: For me.

3 CHAIRPERSON JORDAN: Any questions
4 of the Office of Planning?

5 VICE CHAIRPERSON SORG: Sorry, I
6 just want to clarify.

7 Do you feel that you're missing
8 information for support or that you have
9 enough information that you know that you
10 recommend denial?

11 MR. MORDFIN: I feel I'm missing
12 information for support.

13 VICE CHAIRPERSON SORG: Okay.

14 CHAIRPERSON JORDAN: Any other
15 questions from the Board for Office of
16 Planning?

17 Any questions by the Applicant of
18 the Office of Planning?

19 MR. ACKER: Yes, well, pardon me.

20 When I -- when we mentioned minimum property
21 standards is what we use when we are designing

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1 a project where multi families whereby the --
2 the -- the Federal Housing Authority have
3 minimum standards for bedrooms. A bedroom has
4 to be X amount of square feet or it should be
5 X amount of square feet or preferred to be X
6 amount of square feet. So, normally when we
7 use minimum property standards, we are using
8 the smallest -- smallest multipliers that we
9 have. So to create a bedroom it needs -- it
10 would -- it's desired to be a certain size and
11 space to accommodate.

12 But partly though with this
13 particular project, and we often time use the
14 rule of thumb that if we're going after a
15 single -- a one-bedroom apartment, it's
16 sufficient. If we're going -- if we're going
17 after a married couple with no children, a
18 one-bedroom would be sufficient. But when we
19 get into the market -- the demand today, often
20 times there's more than just a single moving
21 into a one-bedroom -- moving into an

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1 apartment. Often times we'll put in a two
2 bedroom where multi -- multiple professionals
3 will -- two master suites where -- where we
4 can get the amenities and the project. So,
5 for this particular project, we can create a
6 one bedroom apartment that the minimum
7 property standards would be right on. If it
8 said a bedroom was 100 square feet --

9 CHAIRPERSON JORDAN: This wasn't
10 an opportunity for you to give testimony.

11 MR. ACKER: Oh, I'm sorry, I'm
12 sorry. Okay.

13 CHAIRPERSON JORDAN: It's did you
14 have any questions of --

15 MR. ACKER: I apologize.

16 CHAIRPERSON JORDAN: -- the Office
17 of Planning? And that this would come to the
18 point where it would be your time, if you
19 didn't have any questions of Office of
20 Planning that we would allow you to then to do
21 a wrap u and closing. So, we'll put part of

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1 what you said in that and give you an ability
2 to wrap up.

3 MR. ACKER: Okay. All right.
4 Yes, at this particular time we do not have
5 any additional questions. We would just ask
6 that you would consider the project that we
7 put forward to you and approval as
8 expeditiously as soon as you see fit to -- for
9 the first floor and the second floor portions
10 of the project.

11 Thank you.

12 CHAIRPERSON JORDAN: Okay. Thank
13 you.

14 Then the Board will enter into
15 deliberations at this point. Any comment or--

16 VICE CHAIRPERSON SORG: We'll see
17 how it is that you want to go ahead but I will
18 submit a motion to approve the variance relief
19 for 350.1 for the coffee shop on the first
20 floor and deny the variance relief under 350.1
21 for the pet supply store on the second floor.

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1 The reasons for that I believe, I'll
2 reference the Office of Planning report in our
3 Exhibit Number 26 with regard to the
4 satisfaction of the use variance standard for
5 the coffee shop on the first floor with regard
6 to the uniqueness in the building age, it's
7 layout and organization, the windows of
8 privacy and so forth, those leading to the
9 practical difficulty mentioned in the undue
10 hardship which is the higher standard for the
11 use variance test. So, I can be supportive of
12 that use on the first floor.

13 With regard to the second floor I
14 think, you know, this application has been
15 postponed three times. We've received -- we
16 indicated that the application was very thin
17 with regard to this request. The use variance
18 request for this for commercial space and
19 we've not received any additional filing after
20 such a long time of postponing this hearing.
21 Additionally, I didn't hear anything

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1 personally today that would swayed my opinion.
2 Unfortunately, with regard to recommending
3 and denial, I think as I mentioned the under
4 hardship standard is the higher use variance
5 standard here. And I think the Applicant is
6 mentioning certain unnamed provisions for, you
7 know, room sizes and although the Applicant
8 has not in this application provided any
9 dimensions with regard to the lot size, the
10 lot area, the building size, the footprint one
11 can see based on the plat that there is
12 clearly plenty of room for a one-bedroom
13 apartment, four standard sized room, four
14 bedrooms with light and air and windows that
15 would meet all the building codes so
16 unfortunately I don't find that argument
17 persuasive. In addition, when arguments with
18 regard to construction costs are convincing,
19 we have previously as a Board requested a
20 great amount of data and information with
21 regard to construction costs estimates, market

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1 data, you know. In this case, if you're not
2 going to use it for a matter of right use,
3 just residential, you've got a very high
4 burden of proof in terms of showing that it
5 would be a very large hardship n to to use
6 this as a residential. That would include as
7 I mentioned, market data, real estate data,
8 you know, in-depth data with regard to the
9 construction costs from a contractor or other
10 such professional. So, as I mentioned, in
11 summary, I don't find that there is enough
12 evidence here for me to support that portion
13 of the application.

14 CHAIRPERSON JORDAN: And I just
15 want to second the motion and add I was
16 concerned about the lack of documentation and
17 I don't know if you understand what's required
18 to be presented to the Board, the back-up
19 documentation as we said. We don't have that.

20 And I think we've asked for it, you know,
21 several times and this matter has been

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1 carrying over for at least three times now?

2 Are there any other statements,
3 deliberations?

4 OAG MEMBER GLAZER: Mr. Chair, I'm
5 sorry to interrupt but I need to bring this to
6 the Board's attention.

7 The relief that was requested for
8 the first floor was actually not a use
9 variance. It was a Special Exception and --
10 okay. It was a Special Exception to switch
11 out nonconforming uses. OP opined that they
12 did not think that was appropriate relief but
13 I'm not sure that the Board ever ruled one way
14 or the other and said that -- or asked the
15 Applicant to amend his application to a use
16 variance.

17 This may be an academic point
18 since the Board is inclined to grant the use
19 variance but for clarity, you know, the
20 caption at this point now refers to a Special
21 Exception for the first floor, not a use

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1 variance.

2 VICE CHAIRPERSON SORG: I do think
3 that actually is important to bring up that on
4 the application. I do believe that in the
5 first hearing we did discuss that because we
6 have had, you know, this application -- I'm
7 sorry, report for a good long time now and I
8 believe that certainly it's clear that
9 Applicant has discussed the application for
10 the first floor as a use variance, as well. I
11 think he's had conversations and I do believe
12 that that can amount to, you know, we can
13 amend that application for the use variance
14 for the first floor. Because I believe we had
15 a consensus among the Board Members who sat on
16 the case prior that we agreed with the Office
17 of Planning that it was, in fact, a use
18 variance because the initial commercial use
19 had lapsed.

20 OAG MEMBER GLAZER: That may be
21 so. I agree with you the matter was

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1 discussed. I went through the transcript for
2 the December hearing and I believe what
3 happened was the matter was discussed. The
4 Chair asked the Applicant whether the last use
5 had expired because OP had said that the
6 Special Exception -- that they couldn't
7 qualify for a Special Exception because that
8 use had expired. And the Applicant was going
9 to do more research. So, I thought it was
10 still an open questions.

11 You may be right that it may in
12 the Board's mind the Board may have been
13 wanting to treat it as a use variance. But
14 it's just a matter of clarifying it for the
15 record.

16 CHAIRPERSON JORDAN: Ms.
17 MacMurray.

18 MEMBER MacMURRAY: I do want to
19 note for the record that although I did not
20 participate in the hearings, I have reviewed
21 the record that was presented and filed.

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1 CHAIRPERSON JORDAN: You're
2 participating in the decision?
3 MEMBER MacMURRAY: Yes, Mr.
4 Chairman.
5 CHAIRPERSON JORDAN: Mr. Hood, I
6 see you reaching.
7 ZC CHAIR HOOD: No, actually, I'm
8 going to be participating in this hearing
9 also. I was not here some of the other times,
10 but I was here for the major presentation
11 previously.
12 CHAIRPERSON JORDAN: Okay.
13 ZC CHAIR HOOD: I think the
14 Applicant can vouch for that. Okay.
15 CHAIRPERSON JORDAN: Okay. I
16 already seconded your motion. We're just
17 going to put it for a vote.
18 ZC CHAIR HOOD: Mr. Chairman, are
19 we clear on that issue about the -- I will
20 recall the same as the Vice Chair. I thought
21 it was clear but if we need to do some

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1 amendments, are we going to do that?

2 CHAIRPERSON JORDAN: The motion I
3 think was proper within the frame of the
4 discussion.

5 ZC CHAIR HOOD: Okay.

6 CHAIRPERSON JORDAN: And so we're
7 going to move the motion and the motion was to
8 approve the first floor variance relief and to
9 deny the use variance for the second floor
10 use, as proposed for the retail pet supply
11 store.

12 All those in favor of the motion
13 signify by saying aye.

14 (AYES)

15 CHAIRPERSON JORDAN: Those opposed
16 nay.

17 The motion carries.

18 SECRETARY MOY: Staff would record
19 the vote as five to zero to zero. This is the
20 motion of Vice Chair Sorg too approve the
21 amendment for a use variance for the coffee

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1 shop on the first floor and deny the use
2 variance for the pet supply store on the
3 second floor.

4 Seconding the motion I believe is
5 Mr. Jordan. Also in support of the motion Mr.
6 Hood, Ms. MacMurray and Ms. Hinkle. So,
7 again, the final vote is five to zero to zero.

8 CHAIRPERSON JORDAN: Thank you.

9 That concludes out hearings for
10 today.

11 Do we have anything.

12 SECRETARY MOY: Yes, we do. I
13 would like to add an addendum for the Board's
14 consideration. The staff is in receipt of a
15 language that the Applicant neglected to
16 present to the Board. This is to Application
17 Number 18313 of 14th Street Apartments. And
18 it's the language for flexibility to modify
19 their design after receiving comments from
20 HPRB. So, if the Board desires, I mean, I can
21 pass this letter to you to read the language

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1 if you want to take this up?

2 CHAIRPERSON JORDAN: I think we

3 are aware of that.

4 SECRETARY MOY: Okay.

5 CHAIRPERSON JORDAN: And I think--

6 do we need a motion to do that or do we just -

7 - can we do it administratively?

8 SECRETARY MOY: By consensus would

9 be fine.

10 CHAIRPERSON JORDAN: Yes. For the

11 record, everybody is in agreement.

12 SECRETARY MOY: Thank you, sir.

13 CHAIRPERSON JORDAN: If there's no

14 other business for us today --

15 SECRETARY MOY: No, sir.

16 CHAIRPERSON JORDAN: -- then we

17 stand adjourned.

18 (Whereupon, the above matter was

19 concluded at 2:28 p.m.)

20

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