

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +
TUESDAY
JANUARY 15, 2013
+ + + + +

The Regular Public Meeting
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 2:11 p.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MARCIE COHEN, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

**The transcript constitutes the
minutes from the Public Meeting held on
January 15, 2013.**

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

2 2:11 p.m.

3 CHAIRPERSON JORDAN: Would the
4 meeting please come to order.

5 We'll move now to the additional
6 cases that are remaining on our docket for the
7 day.

8 Mr. Moy, let me first introduce
9 Marcie Cohen who is a member of the Zoning
10 Commission who will be sitting in this
11 afternoon with the Board.

12 Would you call our first case. I
13 believe that's 18445.

14 MR. MOY: Yes, sir, I'm looking
15 for my agenda.

16 ZC COMMISSIONER COHEN: Here it
17 is.

18 MR. MOY: Okay. Let's go.

19 Good afternoon, Mr. Chairman and
20 Members of the Board. The first case for a
21 decision is Application No. 18445. This is
22 the application of Ana Maria Lora-Garcia,

1 pursuant to 11 DCMR 3104.1, for a special
2 exception for a child development center and
3 as amended this is for eight children and two
4 teachers under Section 205 in the R-1-B
5 District at premises 1353 Tuckerman Street,
6 Northwest. Property located in Square 2786,
7 Lot 106.

8 As the Board will recall on
9 November 13th, 2012, the Board completed
10 public testimony, closed the record and
11 scheduled its decision on January the 15th.

12 The Board also requested
13 additional information to supplement the
14 record by Monday, January the 7th, 2013.

15 In your case folders, Mr.
16 Chairman, the Applicant has filed their post-
17 hearing document on January the 3rd, 2013, and
18 that is Exhibit Number 41.

19 Also the staff notes for the
20 record that ANC-4A submitted a letter dated
21 November 15th, 2012, under Exhibit 40. And
22 this, of course, would be two days after the

1 public hearing when the record was officially
2 closed.

3 Finally, the Applicant also filed
4 which the office accepted as a supplement to
5 their earlier filing to Exhibit Number 41 --
6 under Exhibit Number 14, as well as a copy of
7 the executed copy of the Neighborhood
8 Cooperation Agreement dated January 1st, 2013.
9 This is their agreement with ANC-4A, I
10 believe, and that's under Exhibit 42.

11 So, with that, the Board acts on
12 the merits of the special exception relief.

13 That's the briefing, Mr. Chairman.

14 CHAIRPERSON JORDAN: We do have
15 the -- that's Exhibit 42 is the executed
16 agreement with the ANC?

17 MR. MOY: Yes, sir.

18 CHAIRPERSON JORDAN: Okay.

19 I think I'm missing the ANC-4A
20 letter, Exhibit 40. Let me take a look at
21 that, Mr. Moy.

22 MR. MOY: I'll have that for you

1 in a minute.

2 CHAIRPERSON JORDAN: Sure. It was
3 filed out of time, is that correct? Do you
4 have it pulled up?

5 MR. MOY: Yes.

6 CHAIRPERSON JORDAN: I need to see
7 the letter unless we have it --

8 I don't have -- and it was a late
9 filing?

10 MR. MOY: This was filed back on
11 November 15th, I believe.

12 CHAIRPERSON JORDAN: On November
13 15th, then the Exhibit would be 40?

14 MR. MOY: That doesn't sound
15 right.

16 CHAIRPERSON JORDAN: It would be
17 40 or 41. I can't see that being the Exhibit
18 Number.

19 MR. MOY: Okay. It would actually
20 be Exhibit Number 28.

21 CHAIRPERSON JORDAN: Okay. I
22 thought you said there was a new filing from

1 the ANC. So, the only exhibit we have filing
2 from the ANC would be the ANC agreement which
3 would be ---

4 MR. MOY: That's right.

5 CHAIRPERSON JORDAN: -- 42 which
6 would be the executed signature on the
7 agreement with the ANC. Is that correct?

8 MR. MOY: Yes.

9 CHAIRPERSON JORDAN: Which was
10 actually executed in counterparts because
11 there's two different parts for signature.
12 Okay. Then let's move forward with this.

13 I'm going over this agreement.

14 Okay. According to this agreement
15 executed between the Applicant and the ANC, it
16 contained 20 conditions, actually applicable
17 to conditions dealing with impact on the
18 neighborhood. It's probably seven conditions
19 which include Condition No. 1, excuse me.
20 Condition No. 3 has about 15 subparts and
21 Condition No. 3 is in regards to mitigating
22 and traffic or transportation issues or impact

1 on the neighborhood regarding a pick up and
2 drop off. Our children are to be dropped off
3 and picked up. The monitoring of the traffic
4 flow and setting the peak hours of when there
5 should be a Traffic Management Plan put in
6 place.

7 MR. MOY: Okay.

8 CHAIRPERSON JORDAN: So, if the
9 Board's ready to deliberate, let's move into
10 the -- this is a matter that came before the
11 Board regarding the request for relief of the
12 special exception to a child development
13 center to one which is already operated as a
14 child development center and an expansion to
15 allow for a total of eight children under the
16 age of -- between the ages of six months and
17 five years.

18 We held a hearing in this matter
19 and I believe the biggest issue that came out
20 of the hearing and which raises concern for me
21 is the overall impact upon those living around
22 the property.

1 During the time of that hearing,
2 there was a question about whether or not
3 there was actually community support for this
4 relief and there was a question raised whether
5 or not the signatures were -- I don't want to
6 use the word "legitimate" signatures --
7 whether or not the signatures actually had to
8 get tied into an address with actual
9 signatures which we didn't have before.

10 The Board kept the record open to
11 allow for submission of additional signatures
12 or to make sure we had signatures.

13 There was a subsequent filing by
14 the Applicant of numerous letters and
15 signatures from neighbors in support of this
16 application which takes away one of my
17 concerns but I still have a concern about the
18 proximity of the child development center to
19 the neighborhood and the noise level.

20 I think we have some part of this
21 which is matter of right and that this child
22 care center has already been operating where

1 it is prior to seeking this relief. And I
2 think what we're actually only looking at here
3 is two additional children. I think that's
4 what the relief is. It's becomes minor.

5 I believe the impact of this child
6 care center would have been -- well, the
7 public really didn't have any input on the
8 earlier aspect of it but I think it was matter
9 of right in this.

10 The Office of Planning has
11 submitted its report in support of this
12 application which we are required to give
13 great weight to the results and report of
14 Office of Planning.

15 More importantly, ANC-4A has given
16 their support for this application and has
17 entered into an agreement as I said earlier
18 with the Applicant. And we're required by law
19 to give great weight to the ANC and their
20 weighing in whether or not this matter has any
21 impact upon the neighborhood.

22 We did have testimony from several

1 people in opposition to this matter. We had
2 the Neighborhood Association in opposition to
3 this application and all were concerned about
4 the traffic, the traffic pick up and it was
5 the Brightwood, I believe, Neighborhood
6 Association and the issue about the traffic
7 flow and the traffic congestion.

8 Well, the ANC agreement basically
9 sets criteria on limits for that. This is not
10 an application which I'm very happy about.
11 However, because the special exception we are
12 limited to those facts that if those I's are
13 dotted and T's are crossed in regards to a
14 special exception we are required as a matter
15 of law to grant it.

16 The area where the discussion
17 centered around the traffic and traffic
18 congestion has been contained -- I believe
19 would have been mitigated by the ANC's
20 agreement that was just executed and just
21 recently filed which has as I said before
22 several provisions and conditions about the

1 traffic flow and traffic conditions.

2 Based upon the ANC's
3 recommendation and with that agreement I would
4 be willing to support this but I would support
5 this in a limited capacity that we would put
6 a ceiling for review.

7 As you know, we at times will
8 limit operations just to see how things will
9 go so that we can have some control -- the
10 neighborhood can have some control over going
11 forward if things don't go the way the way
12 they're supposed to be going on paper.

13 I think OP made a recommendation
14 of three years. I would even be willing to
15 drop it less than that so that we can really
16 monitor this because as I said, with this
17 property being right in the neighborhood and
18 very close to others, it gives me great pause.
19 And so I would want to see a condition on here
20 and I know we generally don't like it, but a
21 condition where we make a two-year -- make
22 this use allowable for two years and come back

1 so that the neighborhood can really have some
2 input to see whether or not this thing is
3 really working. If not, then we would adjust
4 it to do away with it.

5 So, it would be my thought that we
6 would grant the relief subject to a condition
7 of two years provided that everything that's
8 in the ANC agreement and conditions of what
9 the Applicant is supposed to do has actually
10 gone into effect. That's my thought. Do you
11 have a thought, Mr. Hinkle?

12 MEMBER HINKLE: Yes, thank you,
13 Mr. Chair. I tend to agree with you in terms
14 of the whole review of this request.

15 Certainly it did come clear that
16 kind of the overall impact of the neighborhood
17 was the big concern here. And there has been
18 a track record that this has been in operation
19 the child center in the last couple of years.
20 So, you know, there is some understanding of
21 what some of the neighborhood concerns are.
22 And I'm encouraged that there has been this

1 agreement that's been made between the ANC and
2 the Applicant that tries to address a number
3 of those concerns. And just reading through
4 it, it's pretty thorough and I appreciate the
5 work that the ANC has done in this regard.

6 With that said, I can certainly
7 and knowing that that agreement between the
8 Applicant and the ANC is in place, I can be
9 supportive of this application.

10 I agree with you in terms of the
11 approval period. Two years seems reasonable
12 just to have a check in and see how things are
13 going.

14 I just wanted to note that, you
15 know, OP had seven conditions that they
16 recommended and I didn't know if you wanted to
17 incorporate those in.

18 CHAIRPERSON JORDAN: Definitely.

19 MEMBER HINKLE: I don't recall if
20 we got that.

21 CHAIRPERSON JORDAN: Are you
22 comfortable with that.

1 MEMBER HINKLE: I'm certainly
2 comfortable with that. So, I think two of
3 them that they recommended need to be changed
4 and that's the first and the second. So, the
5 first is two year instead of three years and
6 the second is eight children instead of twelve
7 children.

8 CHAIRPERSON JORDAN: Correct.

9 MEMBER HINKLE: Reasonable and not
10 in conflict with anything within the ANC
11 agreement. So, I'm not sure if you made a
12 motion or not.

13 CHAIRPERSON JORDAN: No, I would
14 make a motion that we grant the conditional
15 approval -- the Applicant's request subject to
16 the ANC agreement and also the following
17 conditions. That we have conditional approval
18 of the application for a two-year period from
19 the date of the approved order; that
20 enrollment shall not exceed eight children or
21 an addition of two children from ages six
22 months to five years; that the maximum number

1 of staff shall not be more than two persons
2 including the Applicant; that the day's
3 operation shall be Monday through Friday from
4 8:00 a.m. to 6:00 p.m.; and that the pick up
5 and drop off periods be in accordance with the
6 agreement with the ANC; that their parking
7 area for two vehicles shall be maintained in
8 the rear yard for use of staff and that the
9 trash collection shall be scheduled at least
10 once a week.

11 That would be my motion.

12 MEMBER HINKLE: I'll second that.

13 CHAIRPERSON JORDAN: A motion made
14 and seconded.

15 All those in favor signify by
16 saying aye.

17 (AYES)

18 CHAIRPERSON JORDAN: And, Mr. Moy,
19 do we have an absentee ballot?

20 MR. MOY: Yes, sir. As a matter
21 of fact we have two absentee ballots. One
22 from Ms. Sorg and one from Mr. Hood, both of

1 whom have participated at the public hearing
2 and both are absentees to approve the
3 application with such conditions as the Board
4 may impose.

5 So, that would give a resulting
6 vote four to zero. This is on the motion of
7 Chairman Jordan to approve the special
8 exception relief with the conditions as
9 stated. Seconding the motion Mr. Hinkle and,
10 of course, an agreement with the motion of
11 Vice Chairperson Sorg and Mr. Hood in their
12 absence and, of course, we have a Board seat
13 vacant. So, the motion carries, Mr. Chairman.

14 CHAIRPERSON JORDAN: And if we
15 could have a summary order please.

16 MR. MOY: Yes, sir.

17 The next application for Board
18 decision is Application No. 18400. This is
19 the application of the Jewish Primary Day
20 School of the Nation's Capital, Inc., pursuant
21 to 11 DCMR 3103.2 and 3104.1 for a variance
22 from the off-street parking requirements under

1 subsection 2101.1 and a special exception
2 under section 206. This is to increase the
3 student enrollment cap from 275 to 300
4 students and to increase the faculty and staff
5 cap from 56 to 72 persons and to extend the
6 private school campus boundaries to include
7 additional property in the R-1-B and R-5-A
8 Districts at premises 6045 16th Street,
9 Northwest. The property is located in Square
10 2726, Lots 825 and 831.

11 As the Board will recall, on
12 November 27th, 2012, the Board granted the
13 Applicant's request to postpone the Board's
14 decision to January 15, 2013, to allow time
15 for the Applicant to complete the noise
16 mitigation plan as well as finalizing a plan
17 and agreement with party opposition.

18 In your case folder, Mr. Chairman,
19 you'll find the Applicant's proposed
20 mitigation plan under Exhibit 41. There is
21 also as requested a supplemental report from
22 the Office of Planning under Exhibit 42. A

1 draft of proposed of fact and conclusions of
2 law by the Applicant under Exhibit 43.

3 Finally, there is also a party
4 opposition and response to the proposed noise
5 mitigation plan. And that is in your case
6 folders under Exhibit 44 as well as a
7 subsequent file from party opposition under
8 Exhibit 45.

9 The Board is to act under the
10 merits of the request for the variance relief
11 from the off-street parking requirements and
12 the special exception under section 206.

13 And that completes the staff's
14 briefing, Mr. Chairman.

15 CHAIRPERSON JORDAN: Thank you,
16 Mr. Moy. Let me catch up with myself, one
17 second here.

18 We heard this matter on November
19 27th -- no, we heard it before that.

20 What was the date of the hearing
21 on this matter?

22 MR. MOY: September 25th.

1 CHAIRPERSON JORDAN: We left the
2 record open for some supplemental filing. We
3 were concerned about the impact on the
4 neighborhood/residents. We asked for a
5 different mitigation plan and I think the
6 record has been supplemented to provide for
7 those.

8 And I understand there was some
9 discussions but not really discussions and so
10 it requires us then to make the decision
11 regarding what's going to happen with this
12 request for relief.

13 With that said, I saw the
14 mitigation plan offered by the school and I'm
15 not jumping up and down in joy for that
16 because we really don't know if that's
17 necessarily going to be something that's going
18 to be impactful to the neighbor. I would
19 rather see a result-oriented condition as
20 opposed to having a condition which is simply
21 an activity for them to put up fencing as they
22 described with the barrier and if they do

1 that, it may not have a real effect.

2 The bottom line for me is that if
3 we grant this relief, the relief should not
4 have any impact at all on Dr. -- is it
5 Welsing? Welsing. Shouldn't have any impact
6 whatsoever on her. So, I guess it's just like
7 what I said. When the earlier cases, when
8 people come up with these remedies about what
9 they're going to do, it's not the act of doing
10 it. It's the bottom line result, does it
11 work? Simply putting up a fence and I think
12 before this property had a fence that was put
13 up and there wa a discussion about vegetation
14 was going to block off the noise and all that
15 and it really didn't work, my understanding
16 from our last hearing.

17 However, our decision is limited
18 to this increased use and not the past issues
19 that have been raised with this property.
20 However, I don't think we should be completely
21 blind-eyed to what has happened before.

22 So, I would find that in this

1 matter that this is a campus which has 67,000
2 plus square foot in size, that the property is
3 improved with a two-story school building;
4 that the main campus is located in a R-1-B and
5 an R-5-A Zone District. The increased student
6 enrollment for the school located at 6045 16th
7 Street, Northwest, from 275 to 300 students
8 and an increase of staff from 56 individuals
9 to 72 and to expand the campus on 1617 16th
10 Street.

11 They're seeking a variance from
12 the off-street parking requirement for 48
13 spaces, although they're going to provide 24
14 spaces on site and additionally are going to
15 have some 25 off-site spaces.

16 The Office of Planning has
17 recommended approval of the special exception
18 and for the variance on both of these so we
19 have to give great weight to the Office of
20 Planning in their review.

21 The parking variance would be
22 appropriate, I believe, based upon the

1 configuration of the school campus as it's
2 laid out in regards to the playground and how
3 bound it is in regards to be able to put in 45
4 parking spaces on the property and they do
5 have the off-site parking agreement to do the
6 parking.

7 DDOT also has supported this
8 application. They required a transportation
9 demand management plan which the Applicant has
10 previously had in place and has agreed to
11 further increase that.

12 We did have Dr. Welsing in
13 opposition and she testified about her
14 concerns about the noise level being generated
15 by the children on the playground and the
16 adult playing area which I also have a concern
17 about that.

18 The school presently runs a bus
19 program and I think it's been testified that
20 it's been a very successful bus program and
21 nobody else has said anything to the contrary
22 and that they have several alternative modes

1 of transportation which would be in play here.
2 However, again, the issue arises whether or
3 not there is a sufficient amount of noise
4 raised to have an impact on the neighbor.

5 We have the school's noise
6 consultant testify that -- I mean, by their
7 own admission that the school does generate
8 noise to the neighboring property and that the
9 conditions that were in place to reduce that
10 noise has fallen off. There's gaps in the
11 fenced in area. There's some vegetation that
12 is no longer there. So, by their own
13 admission this area does have some -- well,
14 it's kind of contradictory to say we have no
15 negative effect, well, no major impact but it
16 does have an impact.

17 We also have transportation report
18 by the school's expert who said there is going
19 to be negligible effect upon the traffic and
20 went through a whole review of that. And the
21 Applicant has agree to take firm steps to
22 reduce trip generation by alternative means by

1 bus service, by other transportation demand
2 alternatives.

3 With that, I would conclude that
4 we should grant the variance and the special
5 exception with conditions.

6 The school building is situated on
7 a lot which makes it difficult to carve out
8 additional space. The only available space
9 for additional parking is the existing parking
10 lot or the playground and it's impossible to
11 put those parking spaces there as I said.

12 And I would find that the
13 Applicant meets the requests for a variance
14 and could not meet by the strict application
15 of the Zoning review to put the parking that's
16 required.

17 Also, I believe that they meet the
18 conditions for a special exception if we put
19 in place the conditions that has been offered
20 to us. Plus I want to add some additional
21 conditions to make sure that we mitigate any
22 impact upon the neighbor.

1 So, the conditions would be that
2 the enrollment cannot exceed 300 students;
3 that the faculty and staff shall not exceed
4 72; that no more than 65 students shall be
5 permitted at any one time in the play area
6 adjacent to the residential property; that the
7 use of the play area is restricted from Monday
8 through Friday from 10:00 a.m. to 2:30 p.m.
9 and between 3:30 p.m. to 4:30. The school
10 shall publish it's program for the play area
11 for both the school and the summer camp. The
12 play area shall be set back 15 feet from the
13 south property line and landscaped accordingly
14 as in the previous Board Order 17700A.

15 No permanent play equipment shall
16 be placed in the play area. The school shall
17 maintain a Transportation Demand Management
18 Program in place, as outlined in the
19 Transportation Impact Study. That 24 standard
20 and 21 stack parking spaces shall be provided
21 at the school. Twenty-five additional spaces
22 shall be provided for in a satellite locations

1 with bus and car pool transportation made
2 available from the satellite location for
3 faculty and staff. And reserve parking shall
4 be available for car poolers only and that car
5 pooling should be encouraged.

6 The school shall construct a fence
7 as set forth in the expert report to noise
8 mitigation, but in addition, the Applicant
9 shall put in place a noise mitigation plan
10 that assures that no activity at the school
11 shall impact Dr. Welsing's property to exceed
12 the noise that is allowed under the D.C. Code,
13 that being 60 dBA's in the day and 55 at night
14 based upon the normal industry standard.

15 I would offer as a condition for
16 each quarter of the first year of the
17 implementation that the implementation of this
18 special exception and of granting of this
19 relief that the Applicant be caused to measure
20 noise level at that property, the doctor's
21 property, on a quarterly basis and if the
22 noise level exceeds that that's allowed by

1 D.C. law that the Applicant put forth
2 additional remedial measures significant to
3 reduce the level of noise on that property for
4 that year.

5 That would be the conditions and
6 my thought in moving forward. I would make
7 that a motion, Mr. Hinkle.

8 MEMBER HINKLE: Yes, thank you,
9 Mr. Chairman.

10 I was just thinking about your
11 last condition to address the noise.

12 And certainly that's been the
13 issue with this application. And I agree with
14 you in the draft condition that was set forth
15 by the Applicant and also by the Office of
16 Planning. It did not seem to quite address
17 the issue. It said we will construct a fence
18 with some mitigation on it for noise. But
19 there's no check-in to see if that's working.
20 There's nothing related to that.

21 So, I think I can support your
22 recommended condition in terms of the noise

1 mitigation. It seems like there does need to
2 be some sort of mechanism in here that really
3 addresses the noise issue and that does allow
4 some check-in to see if the mitigation
5 measures are working. So, I guess I'll second
6 your motion.

7 CHAIRPERSON JORDAN: And I
8 appreciate that. Because we have to have real
9 alternative, not just lip service to what
10 people are doing that are affecting people's
11 lives.

12 All right. With that then all
13 those in favor of the motion signify by saying
14 aye.

15 (AYES)

16 CHAIRPERSON JORDAN: Mr. Moy, do
17 we have absentee ballots?

18 MR. MOY: We do, Mr. Chairman. As
19 a matter of fact, again, I have two absentee
20 ballots from two participants, one from Vice
21 Chairperson Sorg and also Mr. Anthony Hood.
22 And before I call the vote, their absentee

1 votes are to approve the application with such
 2 conditions as the Board may impose. So, with
 3 their votes that give a total vote of four to
 4 zero on the motion of Chairman Jordan to
 5 approve the application for the variance and
 6 special exception relief and per the
 7 conditions as the Chairman has just cited.
 8 Seconding the motion of Mr. Hinkle and, of
 9 course, Ms. Sorg and Mr. Hood. We have a
 10 Board vacancy. So, again the motion carries,
 11 Mr. Chairman.

12 CHAIRPERSON JORDAN: And note
 13 Summary Order please.

14 MR. MOY: Yes, sir.

15 The next application for Board
 16 action is Application NO. 18446. This is of
 17 Edward Bruske, pursuant to 11 DCMR 3103.2 for
 18 a variance from the lot area requirements
 19 under subsection 401.3. This is to allow the
 20 conversion of a flat, a two-unit dwelling
 21 into a three-unit apartment building in the R-
 22 4 District at premises 1308 Euclid Street,

1 Northwest. Property located in Square 2866,
2 Lot 55.

3 On November 27th, 2012, the Board
4 completed public testimony, closed the record
5 and requested additional information to
6 supplement the record from the Applicant as
7 well as a supplemental report from the Office
8 of Planning.

9 In your case folders, Mr.
10 Chairman, we have both those filings. The
11 Applicant filed under Exhibit 32. The Office
12 of Planning filed under Exhibit 33.

13 Finally, there is another filing
14 from the Applicant which was on Monday,
15 January the 14th with a cover letter asking
16 for a waiver of the time requirement. Other
17 than that, the Board is at the merits of the
18 request for the variance relief from the lot
19 area requirements.

20 That concludes the staff briefing,
21 Mr. Chairman.

22 CHAIRPERSON JORDAN: Okay. Thank

1 you.

2 Then we open ourselves to
3 deliberation.

4 Does anyone have a feel one way or
5 the other about this -- want to begin to talk
6 about this project?

7 Thank you. I was trying to see
8 where I am. This is the one where --oh, we
9 have the ANC that voted and given great
10 weight. And OP has recommended denial both to
11 give great weight. But OP generally issues
12 these conversions such as this in the R-4 as
13 a standard practice to being against.

14 This is a matter where the
15 property owner has, I believe, owned this
16 property for a number of years and through
17 disrepair -- the place has come under
18 disrepair in that period of time to where
19 there are structural problems, etcetera, and
20 now the Applicant comes before us to do some
21 expansion of the project and for relief.

22 There's been some alternative

1 offered in regards to this project about
2 connecting the first floor and the second
3 floor and doing one unit as an alternative to
4 put the project within the regulations.

5 I'm concerned because -- well,
6 then the Applicant pushes back on that saying
7 that -- well, using the basement unit in that
8 way doesn't lead to marketability and etcetera
9 and etcetera, etcetera.

10 This is one where we do need the
11 housing stock. I think we can make the
12 argument that for me would be very borderline
13 to approve this. But I can do that. I can be
14 supportive of it but it's very, very
15 borderline, just barely for me making the
16 test.

17 Ms. Cohen.

18 ZC COMMISSIONER COHEN: Thank you,
19 Mr. Chairman.

20 I also after reading the record
21 believe that the Office of Planning does have
22 some major concerns with regard to consistency

1 and interpretation. However, again, like you
2 the housing is a necessity in this city
3 especially marketable units. So, I'm actually
4 inclined to support the variance because of
5 the need. And I know that that sometimes
6 one's desire to improve the situation of the
7 lack of housing in the city doesn't
8 necessarily mean we should be manipulating the
9 zoning regulations to account for that.
10 However, it is a borderline case.

11 The ANC does support it. It
12 really does not have a negative impact on the
13 neighborhood. So, those are just the issues
14 that have come forward in my mind.

15 CHAIRPERSON JORDAN: Mr. Hinkle.

16 MEMBER HINKLE: Yes, thank you,
17 Mr. Chair.

18 I might actually surprise you
19 because I'm typically in support of these
20 types of applications. But those that I have
21 been in support of have typically been for
22 vacant structures. And, you know, one of my

1 thoughts is to. you know, often times these
2 are in pretty bad condition and need a lot of
3 work to be brought back up and, you know, it's
4 an economic issue.

5 In this case, it was once
6 configured for three apartments but that was
7 25 years ago. And it's been used as a flat
8 for the past number of years and I've been
9 having a real difficult time understanding
10 what the practical difficulty in this
11 particular case is. And, you know, I've read
12 up and down all the submissions and for me I
13 just can't seem to find the uniqueness here
14 that's being used, it has been used. I'm not
15 just there. I haven't been convinced in this
16 case that the relief should be given.

17 I appreciate the write up that
18 actually in this case that was provided by the
19 Office of Planning. I think they made some
20 good argument.

21 CHAIRPERSON JORDAN: Okay. Well,
22 this is like I said is very borderline and

1 based upon the financials and all that and
2 etcetera that's why I support it.

3 I would move that we grant the
4 relief requested.

5 ZC COMMISSIONER COHEN: And I'll
6 second that.

7 CHAIRPERSON JORDAN: Motion made
8 and seconded. Any additional unreadiness?

9 All those in favor signify by
10 saying aye.

11 (AYES)

12 CHAIRPERSON JORDAN: Those opposed
13 nay.

14 (NAY)

15 CHAIRPERSON JORDAN: Mr. Moy, do
16 we have an absentee?

17 MS. NAGELHOUT: Mr. Moy went to
18 check. He does not have anything yet but
19 let's double-check.

20 CHAIRPERSON JORDAN: Uh-oh. Then
21 that means that we're at a stalemate.

22 We don't have -- then we don't

1 have a decision in this matter because we need
2 at least three votes one way or the other in
3 this matter.

4 MR. MOY: Yes, sorry, Mr.
5 Chairman. I wanted to double-check again in
6 case an absentee vote slipped under the table,
7 but that did not occur so we're where we're
8 at.

9 MR. MOY: Sorry.

10 CHAIRPERSON JORDAN: Then let's
11 set this down for another date.

12 MR. MOY: Yes, sir. The next
13 decision then, the regular decision would be
14 February the 12th.

15 CHAIRPERSON JORDAN: Okay. Put it
16 on for February 12th.

17 MR. MOY: Thank you, sir.

18 CHAIRPERSON JORDAN: And be sure
19 we let Ms. Sorg know too because she sat on
20 the hearing.

21 MR. MOY: Indeed.

22 CHAIRPERSON JORDAN: And put it on

1 in the morning. We'll put it on in the
2 morning anyway.

3 We'll do it this way. Whenever
4 you're here we'll take care of it.

5 Could you call the next case
6 please.

7 MR. MOY: The next application for
8 decision is Application No. 18448 of 3579
9 Warder Street, LLC, pursuant to 1 DCMR 3103.2
10 for a variance from the lot area requirements
11 under subsection 401.3 to allow the conversion
12 of a rooming house into a four-unit apartment
13 building in the R-4 District at premises 1221
14 Otis Place, Northwest. Property located in
15 Square 2829, Lot 57.

16 On November 27th, 2012, the Board
17 completed public testimony, closed the record
18 and scheduled its decision on January 15th.
19 The Board also requested additional
20 information to supplement the record.

21 The filings requested are proposed
22 findings of fact and conclusions of law as

1 well as the supplemental report from the
2 Office of Planning.

3 In your case folders, Mr.
4 Chairman, the Applicant made their filing
5 under Exhibit 38 as well as Exhibit 39. The
6 party opposition filed as well their draft
7 findings of fact and conclusions of law under
8 Exhibit 40. The supplemental report by the
9 Office of Planning is filed under Exhibit 37,
10 so with that the Board is at the merits of the
11 request for the variance relief.

12 That completes the staff's
13 briefing, Mr. Chairman.

14 CHAIRPERSON JORDAN: Thank you,
15 Mr. Moy.

16 Okay. This is our -- I can do
17 what you can't do property? Okay. Got it.

18 All right. This is the matter
19 where the Applicant requested to be allowed
20 the conversion as a matter of right a rooming
21 house into a four-unit apartment building and
22 seeking a variance under 401.3 and 403 for lot

1 occupancy and lot area.

2 We granted party status to Mr.
3 Wolfburg. He's in opposition. OP does not
4 support the requested relief. As I said,
5 generally, that is part of their standard
6 practice in regards to these types of
7 conversions.

8 The Applicant seeks to convert the
9 existing two-story building plus cellar into
10 three apartments and construct a third floor
11 for an additional unit for a total of four
12 units. The property is in a deteriorated
13 condition. It's an inefficient layout of the
14 rooming house. Configuration requires
15 significant investment to bring the structure
16 up to code and also to make it marketable.

17 Under the current regulations, two
18 units will be allowed. The Board previously
19 approved a similar situation of a conversion
20 of 12 unit rooming house to allow for a three-
21 unit apartment building and then we did it
22 again on several other properties.

1 The existing structure is
2 deteriorated due to the extensive passes of
3 time and vacancy of the property and the
4 failure of the prior owners to maintain the
5 premises.

6 We've received profit and loss
7 data that shows that conversion of the
8 existing building into three units, one on
9 each floor, is economically feasible. A
10 fourth unit structure is required to really
11 make the project one that can really be
12 financially worth going forward.

13 I find that the strict application
14 of the zoning regulations would be a
15 hinderance in regards to this project and
16 create a practical difficulty.

17 It does not appear that permitting
18 one apartment on each of the existing floors
19 for a dwelling would negatively impact the
20 surrounding neighborhood.

21 We had 12 letters of support from
22 area neighbors. ANC-1A voted in support of

1 this application.

2 The opposition basically argued,
3 well, this is my neighborhood. It's going to
4 ruin my view cite, although they have the same
5 type of expansion at their project. But they
6 really argued that this will increase the area
7 density.

8 Well, the rowhouse could have at
9 least 11 units or 11 people and so it would
10 still be as dense as if it was used as a
11 matter of right on this property.

12 For those reasons, I would move
13 that we approve this application for relief.

14 Anyone else got anything to say?
15 Anyone want to add in? I made a motion.

16 ZC COMMISSIONER COHEN: Mr.
17 Chairman, I will second that motion.

18 CHAIRPERSON JORDAN: Motion made
19 and seconded. Anybody else? Mr. Hinkle.

20 MEMBER HINKLE: Well, this is just
21 in contrast to what I said the last time. But
22 I think it's a matter of bringing this

1 property back up and add some value to the
2 city in having some additional residential
3 space.

4 CHAIRPERSON JORDAN: Motion made
5 and seconded.

6 All those in favor signify by
7 saying aye.

8 (AYES)

9 CHAIRPERSON JORDAN: Those opposed
10 nay.

11 The motion carries.

12 Mr. Moy, do we have any absentees
13 that we need to include?

14 MR. MOY: Yes, in this one we do,
15 Mr. Chairman. We do have an absentee ballot
16 from--

17 CHAIRPERSON JORDAN: We might
18 have-- no, go ahead.

19 MR. MOY: We do have an absentee
20 ballot from Vice Chairperson Sorg and her
21 absentee vote is to approve the application
22 with any conditions the Board may impose.

1 So, that would give a resulting
2 vote of four to zero on a motion by Chairman
3 Jordan to approve the application for the
4 variance relief requested. Seconding the
5 motion Ms. Cohen. Also in support Mr. Hinkle
6 and, of course, Ms. Sorg and a Board seat
7 vacant. So, the motion carries, Mr. Chairman.

8 CHAIRPERSON JORDAN: All right.
9 Thank you, Mr. Moy. And I believe we have to
10 have an order here.

11 MR. MOY: Thank you.

12 The next and final decision for
13 the Board is Appeal Number 18439. This is of
14 Valor 1350 Maryland, LLC, pursuant to 11 DCMR
15 3100 and 3101 from a May 4th, 2012, decision
16 by the Department of Consumer and Regulatory
17 Affairs, to issue a building permit number B,
18 as in Bravo, 1107494, allowing the repair and
19 renovation of a gasoline station in the HS-
20 A/C-2-A at premises 1400 Maryland Avenue,
21 Northeast. Property located in Square 1049,
22 Lots 21 and 803.

1 On November 27th, 2012, the Board
2 completed public testimony, closed the record
3 and requested additional information to
4 supplement the record. The Board requested
5 proposed findings of fact and conclusions of
6 law by January the 7th.

7 In your case folders, Mr.
8 Chairman, those post-hearing documents are one
9 from an intervener, Holland & Knight on behalf
10 of DAG Realty and the Appellant Greenstein
11 DeLorem on behalf of Valor, 1350 Maryland
12 Avenue, although --strike that.

13 The only findings of fact and
14 conclusions of law is filed by Holland &
15 Knight and that's under Exhibit 23. And there
16 are no other filings in the record.

17 That concludes the staff's
18 briefing, Mr. Chairman.

19 CHAIRPERSON JORDAN: Very good.

20 Is the Board ready to deliberate
21 on this matter? Okay.

22 This is a case where the Applicant

1 argued that the permits were issued improperly
2 because the property was not a single sub-
3 divided separate lot of record in violation of
4 11 DCMR 3202. The permit application and the
5 plans that were submitted were incorrect and
6 misleading. The plans did not provide for
7 installation of unbroken raised median strip;
8 that the grocery store was not part of the
9 building permit that was issued and a separate
10 permit for the grocery store was filed after
11 the time frame providing for the filing of the
12 building permit.

13 And I think also during that --
14 well, before the hearing there was an
15 amendment of an appeal but they subsequently
16 pulled back on the second issue of building
17 permit.

18 The ground leasee in this case
19 argued that the approval of the May 4th, 2012,
20 permit was proper in that the subdivision
21 application had been previously filed with the
22 D.C. surveyor timely to combine the lot.

1 There was evidence placed before us that the
2 records got misplaced or lost over at the D.C.
3 surveyor's office; that the plans when they
4 were submitted were complete and accurate on
5 their face. And that the median requirement
6 for the waterway on Maryland Avenue was
7 constructed as proposed in the previous BZA
8 order. And that the original plans for the
9 building permit and as referenced in the
10 previous order included the grocery store.
11 And the grocery store's use was as a matter of
12 right within the C-1 and C-2 Districts.

13 The ANC 6-A has joined by letter
14 but not by argument the Appellant arguing that
15 DCRA was in error for issuing the permit.

16 The application for the permit was
17 filed in this matter in May I think, May 31st,
18 2001. In the initial plans it included the
19 interior layout which included the grocery
20 store and the plans were revised to change the
21 use of that particular space to allow for
22 storage. And I think a cashier's cage --

1 cashier's space and we took a look at those
2 plans. Those plans clearly showed that that
3 space was on the original plan application and
4 had already been designated there.

5 And then May 24th, 2012, the
6 application for a building permit was filed
7 with DCRA which proposed a scope of work which
8 included the integration alterations of that
9 area which we call grocery store, cashier's
10 cage, storage, meaning the same thing. And
11 that the permit that ended with 455 was
12 actually issued on November 1st, 2012. And
13 DCRA approved the building permit plans for
14 the gas station and the use and the demolition
15 at that time.

16 And then June 13, 2011, the
17 subdivision application was filed with DCRA,
18 as I said before and that got kind of screwy.
19 The subdivision plat had been redrawn and all
20 the signatures were in place and they had been
21 submitted. And DCRA as the evidence that came
22 before us has as a pattern and practice for

1 years issued the permits pending the
2 subdivision. And I think that was part of the
3 action for being more effective and efficient
4 rising out of all the management reform plans
5 that came out of the control board era to move
6 things along. However, the problem with it is
7 that our zoning regulations from way back had
8 never been amended to reflect that type of
9 practice. And so it's kind of something where
10 you want to slap on the hand but I don't see
11 any harm, any filing in regards to what the
12 pattern of practice has been or any impact
13 that that had upon this particular process
14 since it's something that has been going on
15 for awhile.

16 As I said before, the Applicant
17 withdrew its amendment to go after the second
18 application that ended in number 494 in this
19 process.

20 So, with that, I would move based
21 upon the record that is before us and the
22 things I've kind of said before us that we

1 deny the appeal -- rule against the appeal and
2 rule in favor of DCRA Zoning Administrator.

3 Is there a second on the motion?

4 ZC COMMISSIONER COHEN: Yes, Mr.
5 Chairman. I would second that and I just want
6 to comment on some of the attempts to expedite
7 the process. I basically have heard many
8 complaints about how slow the process usually
9 is. So, I actually would like to also hope
10 that in the future we do allow the Zoning
11 Administrator some flexibility to get projects
12 underway. So, I do second your motion and I
13 just wanted to state for the record my belief
14 that we should allow some flexibility for the
15 Zoning Administrator.

16 CHAIRPERSON JORDAN: And I'm glad
17 you said that because the other part of that
18 is, if those practices are going on, then
19 other than we doing -- grant a ZRR appoint,
20 but a text amendment would have been
21 appropriate at that point.

22 Mr. Hinkle, anything? All right.

1 No further unreadiness.

2 All those in favor of the motion
3 signify by saying aye.

4 (AYES)

5 CHAIRPERSON JORDAN: Those opposed
6 nay.

7 Mr. Moy, do we have any --

8 MR. MOY: I'm smiling.

9 CHAIRPERSON JORDAN: Would you
10 read us the absentee list.

11 MR. MOY: And Vice Chairperson
12 Sorg did participate and her absentee ballot
13 was to deny the appeal. So, that would give
14 a final vote of four to zero.

15 Now, this is on the motion of
16 Chairman Jordan to deny the appeal. Seconding
17 the motion, Ms. Cohen and also in support of
18 the motion Mr. Hinkle and, of course, Ms. Sorg
19 and we do have a Board seat vacant. So, the
20 vote is four to zero. The motion carries, Mr.
21 Chairman.

22 CHAIRPERSON JORDAN: Very good.

1 Then, is there any other business
2 coming before the Board today?

3 MR. MOY: The only thing that
4 staff would like to announce just for the
5 public transcript is that the one case which
6 was on the expedite review calendar today
7 which is Application No. 18492 of McCann and
8 An was withdrawn by the Applicant and that's
9 for the record.

10 CHAIRPERSON JORDAN: Okay. And,
11 again, as we go forward, I think this change
12 of docket works, if we just put the little
13 line showing where it's approximated for us to
14 take the break and then that would be good and
15 encourage others to check the website and see
16 where we are or call in to the Office of
17 Zoning to find out where we are before you
18 come down.

19 But, good. I appreciate
20 everybody's hard work. We handled a lot of
21 cases here today.

22 MR. MOY: Quite a few, Mr.

1 Chairman.

2 CHAIRPERSON JORDAN: Yes, very
3 good. Thanks a lot.

4 ZC COMMISSIONER COHEN: And, Mr.
5 Chairman, I just wanted to state for the
6 record that that also applies for the
7 commissioners who are sitting. They should
8 call as well.

9 CHAIRPERSON JORDAN: Thanks.

10 (Whereupon, the above matter was
11 concluded at 3:09 p.m.)

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In the matter of: Public Meeting

Before: DC BZA

Date: 01-15-13

Place: Washington, DC

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