

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +
TUESDAY
NOVEMBER 27, 2012
+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
ROBERT MILLER, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

SHERRY GLAZER, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on
November 27, 2012.

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(9:49 a.m.)

CHAIRPERSON JORDAN: Good morning,
would the meeting please come to order? We're
located at the Jerrily R. Kress Memorial
Hearing Room at 441 4th Street, Northwest.

Today's date is November 27th,
2012. We're here for the public meeting of the
Board of Zoning Adjustment of the District of
Columbia. My name is Lloyd Jordan,
Chairperson.

To my right is Jeffrey Hinkle,
Board Member. To my immediate left is Nicole
Sorg, Vice Chair, and to her left, Michael
Turnbull, member of the Zoning Commission who
will be in for part of this morning's meeting.

Please be advised that this
proceeding's being recorded by a court
reporter and also being webcast live.
Therefore, I'm going to ask you to refrain
from any disruptive noises and actions in the
meeting room.

1 Today's agenda for the Board is to
2 consider decisions on matters which we have
3 had hearings or do not require hearings. We
4 will handle any preliminary matters with the
5 case, well except there's one preliminary
6 matter, Mr. Moy, you wanted to bring up?

7 MR. MOY: Yes, sir. Good morning,
8 Mr. Chairman, members of the Board. Staff
9 would like to announce for the record that an
10 application number, EZA application number
11 18381 of Lawal Abduganiyu, which the Board had
12 rescheduled for public hearing, scheduled for
13 December the 18th, 2012.

14 The applicant has filed the Motion
15 to Continue that scheduled date to February
16 5th, 2013 for just cause. So that's the
17 staff's announcement on that application, Mr.
18 Chairman.

19 CHAIRPERSON JORDAN: Thank you,
20 Mr. Moy. What date did we move that to?

21 MR. MOY: February the 5th, 2013.

22 CHAIRPERSON JORDAN: You sure

1 that's enough time for that one?

2 MR. MOY: Well the board, from
3 what I recall, was giving this application
4 special attention.

5 CHAIRPERSON JORDAN: You sure you
6 want to do 2/13 and not 2/14? But okay. All
7 right, then let's call our first case.

8 MR. MOY: The first action before
9 the Board in its public decision meeting is
10 the expedited review calendar. There's one
11 application on that calendar, and that
12 application is application number 18481 of
13 Christian Creech.

14 Pursuant to 11 DCMR 3104.1 for a
15 special exception to rebuild, renovate and
16 make additions to an existing vacant building
17 for a one family occupancy under Section 223,
18 not meeting the lot area requirements under
19 Section 401, lot occupancy requirements under
20 Section 403, open court requirements under
21 Section 406 and non-conforming structure
22 requirements under Subsection 2001.3 in the R-

1 4 District at premises 1400 Montello Avenue,
2 Northeast, property located in Square 4059 Lot
3 29.

4 As the Board will recall,
5 applications on expedited review calendars are
6 zoning applications where the applicant waives
7 the right to a public hearing and the
8 applications are subject to either Board
9 approval or removal from the calendar for
10 rescheduling to a future hearing date pursuant
11 to Sections 3118.3, 3118.6 and 318.7 of the
12 zoning regulations.

13 So with that, Mr. Chairman, the
14 Board is to act on the merits of the case
15 pursuant to the requirements as I've cited for
16 special exception relief under Section 223.

17 CHAIRPERSON JORDAN: And there's
18 been no objection to it being on an expedited
19 calendar, correct?

20 MR. MOY: That's correct, sir.

21 CHAIRPERSON JORDAN: Okay.

22 Regarding Application 18481, based upon having

1 a complete record in this file, I believe that
2 the applicant has met the requirements for the
3 special exception request in his application.
4 Any other Board member have anything to say
5 about this application?

6 VICE CHAIRPERSON SORG: Thank you,
7 Mr. Chairman. I think despite being a little
8 bit thin on some, I think what we would have
9 preferred to see in the record a little bit
10 more information from neighboring properties,
11 the fact that there's no opposition in this
12 case given the notice that was given, if that
13 was a motion, I would second it.

14 CHAIRPERSON JORDAN: Well, why
15 don't you make your motion?

16 VICE CHAIRPERSON SORG: Oh, well
17 then I'll move to approve Application 18481
18 with the relief requested.

19 MEMBER HINKLE: I'll second that.

20 CHAIRPERSON JORDAN: Motion made
21 and seconded that we approve the relief
22 requested in Application 18481. Any

1 unreadiness? Hearing none, all those in
2 favor, signify by saying aye.

3 (Chorus of ayes)

4 CHAIRPERSON JORDAN: Those
5 opposed, nay. The motion carries. Mr. Moy?

6 MR. MOY: Yes, sir. Staff would
7 record the vote as three to zero to two. This
8 is on the motion of Vice Chairperson Sorg to
9 approve Application number 18481 pursuant to
10 special exception under special exception 223.

11 Second the motion, Mr. Hinkle.
12 Also in support of the motion, Chairman
13 Jordan. We have no other members
14 participating on this application. So again,
15 the motion carries on a vote of three to zero
16 to two.

17 CHAIRPERSON JORDAN: All right.
18 And summary order, please?

19 MR. MOY: Yes, sir. Thank you.

20 CHAIRPERSON JORDAN: If you would,
21 Mr. Moy, would you call 18395?

22 MR. MOY: The application next

1 before the Board for action is Application
2 number 18395 of CWC WDC, LLC pursuant to 11
3 DCMR 3104.1. This is for a special exception
4 under Sections 706, 726 and 2302.

5 This is to allow the construction
6 of a new gasoline station in the C-2-B
7 District on the portion of the premises
8 located at 2441 Market Street, Northeast,
9 property located at Square 4327, Lot 5.

10 If the Board will recall, the
11 decision was originally scheduled for November
12 the 7th, 2012 and the Board, on its own
13 motion, tabled its decision to today, November
14 27th.

15 CHAIRPERSON JORDAN: Okay. Thank
16 you. Give me one second. Okay, this matter
17 is pending for decision. Is the Board ready
18 to deliberate in this matter?

19 VICE CHAIRPERSON SORG: Yes.

20 CHAIRPERSON JORDAN: Well, after
21 having a long hearing and reviewing all the
22 documents in this file, I believe this is a

1 matter where the relief requested should be
2 granted.

3 I think the record shows it's very
4 clear that OP has recommended approval of the
5 zoning relief, and that their recommendation,
6 which we give great weight to, is that the
7 applicant has met the standards required for
8 the special exception under 726, 706 and 2302.

9 That DDOT also has recommended
10 approval of this application provided there's
11 a trip generation by the gas station is
12 mitigating coordination with the plans of
13 mitigation. And so DDOT is comfortable with
14 this.

15 Also, that the gas station meets a
16 criteria that's set for the access regarding
17 the intersection proposed for the shops at the
18 Dakota Crossing.

19 And that DDOT also agreed with the
20 applicant's overall approach estimating the
21 roadway impact of the gas station would have
22 in that area.

1 We did receive, and we shall grant
2 leave to ANC 5A who voted in support. And we
3 will give great weight to ANC 5A's vote in
4 support of this application.

5 MR. MOY: Mr. Chairman? Sorry to
6 interrupt. I just wanted to note for the
7 Board, I don't mean to throw you off on your
8 rhythm.

9 I just want to note and refresh
10 your memory that in the supplemental
11 information that the Board requested, which
12 were draft findings of fact and conclusions of
13 law as well as responses by October the 16th,
14 2012, in the filings there was a filing from
15 the party in opposition where the opposition
16 party also filed a "correction of
17 typographical errors" to its draft under
18 Exhibit 45.

19 And of course, this is a document
20 the Board did not request. Second, the --

21 CHAIRPERSON JORDAN: Mr. Moy,
22 where are we going with this? You're just

1 supplementing what the record's supplemented
2 with?

3 MR. MOY: Well, in the Board's
4 request for filings, there was a document that
5 was not requested by the board.

6 CHAIRPERSON JORDAN: Okay.

7 MR. MOY: And because in the
8 filing from the party in opposition, they also
9 responded to ANC 5A letter, which is Exhibit
10 50. And the filing also includes the Motion
11 to Strike ANC letter as untimely filed.

12 CHAIRPERSON JORDAN: Yes.

13 MR. MOY: Proper notice, ANC
14 meeting did not occur, and endorsement of
15 Commissioner Robert King should not be filed
16 because according --

17 (Crosstalk)

18 CHAIRPERSON JORDAN: -- did you
19 accept the document from 5A --

20 MR. MOY: All right, okay.

21 CHAIRPERSON JORDAN: -- and so
22 we're moving on.

1 MR. MOY: Okay, sorry. Just want
2 to be clear.

3 CHAIRPERSON JORDAN: All right,
4 thanks. No, no, we granted leave for 5A and
5 we had talked about that being one of the
6 other documents that we left the record open
7 at the time because it came in between.

8 They didn't have enough time to
9 meet prior to our hearing. So where was I?
10 Okay --

11 MR. MOY: You were moving forward,
12 Mr. Chair.

13 CHAIRPERSON JORDAN: Right. I
14 can't remember where I was. Okay. Well, I
15 think I just talked about the 5A voting in
16 support, and that the gas station is permitted
17 in a C-2-B District as a special exception if
18 it meets the criteria in 706 and 726.

19 And I believe that this
20 application has done so. Regarding 706.3, the
21 requirement that it's not located within 25
22 feet of a residential district, this station

1 is beyond that. It's beyond 25 feet.

2 706.4 requires that the operation
3 use shall not create a dangerous situation.
4 We've heard in regards to DOT's report, Office
5 of Planning's report, and more importantly, I
6 would recommend that we accept the filing of
7 Wales and Associates traffic study.

8 I found that more credible than
9 the opposition's traffic report, and that the
10 operation of use as proposed gasoline service
11 station on this site will not create a
12 dangerous or objectionable traffic condition.

13 The traffic study also showed that
14 the impact of the station will have an
15 equitable impact upon the surrounding
16 intersection.

17 That under 706 that the Board
18 could approve different screening operation.
19 I think there's already some landscaping
20 that's going to go on and some other aspects
21 that's been presented that's going to go help
22 to make this area less imposing and has less

1 impact.

2 Regarding 2302 for special
3 exception, the station, again as I said, is
4 not located within 25 feet of a residential
5 district. And it also requires under 2302.4
6 that no driveway or entrance or exit use shall
7 be closer than 40 feet.

8 And I think the vehicle entrance
9 and exit, the record has shown that it will be
10 at least, I think, 325 feet from the nearest
11 intersection.

12 Under 2302, the requirement that
13 all grease pits and hoisting construction be
14 within the building, there are none being
15 located in this gas station.

16 Regarding the opponent's argument,
17 which was basically under 25313, which this
18 board doesn't have jurisdiction to entertain
19 the arguments made, and I think we said that
20 over and over and over in the hearing, but
21 they didn't seem to want to hear us in that
22 regard.

1 And again, we don't have basis to
2 make that a consideration. And I also find
3 not credible their argument, nor do I find it
4 really within our control the economic impact
5 in the marketplace, especially their argument
6 about its impact throughout the whole District
7 of Columbia.

8 I don't find that convincing for
9 our consideration. So I would recommend that
10 the board approve the application. Anyone
11 else?

12 COMMISSIONER TURNBULL: Mr. Chair,
13 I would concur with your thoughts
14 wholeheartedly. And I'm very pleased at the
15 ANC 5A report. I thought it was very
16 thorough.

17 I appreciated the sequence of
18 events, the attachments of meeting minutes and
19 all of the other relevant hearings that went
20 on with this case. So I really appreciated
21 looking at their thoroughness in putting
22 together that package.

1 And like you, I was not convinced
2 by the opposition's response to Exhibit 50 to
3 the ANC. I didn't think any of the arguments
4 were very convincing at all. And I would
5 agree with you on your motion to approve.

6 CHAIRPERSON JORDAN: Vice Chair
7 Sorg?

8 VICE CHAIRPERSON SORG: Thank you,
9 Mr. Chairman. I will also echo my agreement
10 with your analysis and Mr. Turnbull's comments
11 regarding the completeness of the ANC report
12 that we did receive.

13 You know, I would just note that I
14 think based upon, as you clearly mentioned,
15 the actual special exception standard that I
16 think the case is made very clearly.

17 There may be wider issues under
18 Section 25, or there may be environmental
19 issues or they may be economic issues.

20 But those, as we said during the
21 hearing, and as I think became more evident in
22 subsequent filings and discussion are not

1 under the purview of this Board. So I could
2 also be in support. Thank you.

3 CHAIRPERSON JORDAN: Mr. Hinkle?
4 Well, although I said recommend, it's also by
5 basis of a motion I think Mr. Turnbull, you
6 seconded it, right?

7 COMMISSIONER TURNBULL: I did.

8 CHAIRPERSON JORDAN: Okay. Great.
9 Then motion made and seconded that we approve
10 the request for relief under 18395. Any
11 additional deliberation, conversation? All
12 those in favor, signify by saying aye.

13 (Chorus of ayes)

14 CHAIRPERSON JORDAN: Those
15 opposed, nay. The motion carries. Mr. Moy?

16 MR. MOY: Staff would record the
17 vote as four to zero to one. This on the
18 motion of Chairman Jordan to approve the
19 application pursuant to special exception
20 relief requested.

21 Second the motion, Mr. Turnbull.
22 Also in support of the motion, the Vice

1 Chairperson Sorg and Mr. Hinkle. The Board
2 has no other Board members participating. So
3 again, the final vote is four to zero to one.
4 The motion carries.

5 (Off the record comments)

6 CHAIRPERSON JORDAN: We need to
7 see who's on deck. Thank you, Mr. Turnbull.
8 Thanks a lot. There's no more? So we keep
9 right on rolling, okay.

10 (Off the record comments)

11 CHAIRPERSON JORDAN: Let's call
12 18400 first.

13 MR. MOY: The next application
14 before the Board is Application number 18400.
15 This is the application of Jewish Primary Day
16 School of the Nation's Capital, Inc.

17 Pursuant to 11 DCMR 3103.2 and
18 3104.1 for a variance from the off street
19 parking requirements under Subsection 2101.1
20 and a special exception under Section 206 to
21 increase the student enrollment cap from 275
22 to 300 students and to increase the faculty

1 and staff cap from 56 to 72 and to extend the
2 private school campus boundaries to include
3 additional property in the R-1-B and R-5-A
4 Districts at Premises 6045 16th Street,
5 Northwest, property located at Square 2726,
6 Lot 826 and 831.

7 On September 25th, 2012, the Board
8 completed public testimony, closed the record
9 and scheduled its decision on November 27th.
10 The Board requested additional information to
11 supplement the record from the applicant, and
12 provided responses from all parties as well as
13 proposed findings of fact and conclusions of
14 law.

15 In your case records, Mr.
16 Chairman, the applicant filed the motion for
17 the Board to delay its decision at least
18 another 45 days, which would allow more time
19 for the applicant to prepare a noise plan and
20 coordinate the findings with the party
21 opposition.

22 And that's under Exhibit 37 in

1 your case record. And I think with that, I'll
2 conclude, Mr. Chairman.

3 CHAIRPERSON JORDAN: All right.
4 So with 18400, let's set a date that's at
5 least 45 days out.

6 MR. MOY: Okay, we're into January
7 2013, Mr. Chairman. And staff would suggest -
8 -

9 CHAIRPERSON JORDAN: And that's a
10 decision date, correct?

11 MR. MOY: That's correct. I'm
12 looking for a decision date in January, later
13 in the month. We have a regular decision date
14 on January 15th.

15 CHAIRPERSON JORDAN: January 15th.

16 MR. MOY: Okay.

17 CHAIRPERSON JORDAN: What about
18 January 15th?

19 MR. MOY: Tuesday, January 15th we
20 have a public meeting date.

21 CHAIRPERSON JORDAN: Okay.
22 Fifteenth, I don't know why that date's

1 sticking in my mind. But okay, let's go ahead
2 and set it for January 15th.

3 MR. MOY: All right, thank you,
4 sir. So then the Board will reschedule its
5 decision to January 15th. But we do have an
6 absentee ballot, as well, Mr. Chairman, from
7 Mr. Hood.

8 CHAIRPERSON JORDAN: Okay.

9 MR. MOY: And he would be in
10 agreement with the date that the Board
11 decided. So with that, then what's before the
12 Board's Application number 18399. Again, the
13 Jewish Primary Day School of the Nation's
14 Capital, Inc.

15 Pursuant to 11 DCMR 3103.2 and
16 3104.1 for variance relief from the off-street
17 parking requirements under Subsection 2101.1
18 and a special exception under Section 206 to
19 increase the private school student enrollment
20 cap from 125 to 130 students and to increase
21 the faculty and staff cap from 15 to 26 in the
22 R-1-B District at premises 4715 16th Street,

1 Northwest, property located in Square 2707,
2 Lot 33.

3 Again, the Board completed public
4 testimony, closed the record on September
5 25th, 2012 and scheduled its decision on
6 November 27th. The Board requested additional
7 information to supplement the record from the
8 applicant, as well as provision for responses
9 from parties and proposed findings of fact and
10 conclusions of law.

11 In your case folder, Mr. Chairman,
12 there is a Office of Planning supplemental
13 report which was requested. It's dated
14 November 16, 2012, identified as Exhibit 37.

15 The applicant filed its post
16 hearing document, and that is identified as
17 Exhibit 38. And a supplemental report also
18 from the Department of Transportation
19 identified under Exhibit 39.

20 And the applicant's proposed
21 findings of fact and conclusions of law under
22 Exhibit 40. And that completes the staff's

1 briefing, Mr. Chairman.

2 CHAIRPERSON JORDAN: Thank you.

3 Regarding 18399, is the Board ready to
4 deliberate in this case? Okay, great then.

5 I think in regards to 18399, this is really,
6 in essence, the modification of the previous
7 order that was issued under Lowell school.

8 And I think that Order was 14919.

9 And we're really dealing with the criteria,
10 the increased numbers. We're not dealing with
11 the number for 130 new students. We're
12 looking at an increase of five students.

13 And increase, for the record, is
14 actually from 14 faculty and staff to 26, not
15 15. I think the applicant had it wrong in
16 regards to the application and their
17 discussion, because Lowell school provided for
18 a maximum 14 faculty and staff in that order.

19 But we were talking about an
20 increase from that point to the 26. Not from
21 one to 26, but from 14 to 26. And generally,
22 the same thing under Lowell school, the

1 applicant had already been granted, or the
2 Lowell school had been granted a relief from
3 parking in that matter to be required only
4 seven parking spaces.

5 And the same of seven parking
6 spaces again requested here. Although, by
7 increasing the number of students and the
8 number of faculty, they're required to have 17
9 spaces. But in essence, they're asking for a
10 maintained status quo in regards to the seven
11 parking spaces.

12 And in this regard, since it's
13 being viewed more so as a modification, the
14 standard for this variance has already been
15 argued under the underlying case, and it's
16 showing that the property had exceptional
17 condition and practical difficulties.

18 And based upon those particular
19 findings, I would submit that we have the
20 same. So we're certainly not inconsistent.
21 And in regarding the same for the special
22 exception standard that had been met.

1 With that, I would recommend that
2 we grant the application with the conditions.
3 Well actually, the conditions are almost the
4 same conditions that were adopted in the
5 Lowell school matter.

6 There's some differences in
7 between what OP has recommended and the
8 applicant has recommended. And I would
9 recommend that we adopt the conditions as set
10 forth kind of in a hodge podge.

11 Conditions number one to four are
12 identical with the applicant and OP so that we
13 should adopt those. Condition number five,
14 there's a slight change offered by the
15 applicant, and I would offer the applicant's
16 condition number five.

17 Instead of parking spaces being
18 available at a specific location, although I
19 believe that's where the agreement's already
20 been worked out, we can't say what's going to
21 happen in the future, but they have to have
22 off-street parking within a half mile of the

1 property.

2 They both agree as to condition
3 six, so we would adopt condition six. As to
4 condition seven, I believe they are the same.
5 And the same for eight, except that the
6 applicant is more specific in regards to
7 what's been entered in the record in Exhibit
8 36.

9 Condition number nine is the same.
10 Condition ten is basically the same, except
11 that the applicant is asking that they get
12 combined with condition number five, which
13 either way, we can do that, we can adopt that
14 number ten.

15 Regarding condition number 11, I
16 would adopt more OP's recommendation but
17 modify the applicant's recommendation and say
18 that JPDS shall file and implement a
19 monitoring program to ensure that it meets the
20 projections set forth in the transportation
21 analysis, and that JPDS will take traffic
22 counts at the intersection of Decatur and 16th

1 Street and Crittenden and 16th Street on an
2 annual basis and will submit the results to
3 DDOT by November 30th of each year for two
4 years.

5 So the addition I added there was
6 for each year for two consecutive years after
7 the proposed plans are in place. If JPDC
8 successfully meets the projections, its
9 obligations shall cease.

10 If it does not, then it shall meet
11 with DDOT to develop techniques and mechanism
12 to mitigate the impact and reduce the parking
13 demand and trip generation. So that would be
14 my motion for this one.

15 VICE CHAIRPERSON SORG: Second.

16 CHAIRPERSON JORDAN: Okay, motion
17 made and seconded. Unreadiness or discussion,
18 please? Okay seeing none, all those in favor,
19 signify by saying aye.

20 (Chorus of ayes)

21 CHAIRPERSON JORDAN: Those
22 opposed, nay. The motion carries. Mr. Moy?

1 MR. MOY: Before the staff gives
2 the vote count, Mr. Chairman, there is a
3 absentee ballot from Mr. Hood who is
4 participating on this application.

5 And his absentee vote is to
6 approve with such conditions as the Board may
7 impose. So that would give a final vote of
8 four to zero to one.

9 This is on the motion of Chairman
10 Jordan to approve, seconded by Chairperson
11 Sorg. Also in support of the motion, Mr.
12 Hinkle and of course, Mr. Hood. No other
13 Board members participating.

14 So this is approval of the
15 application for the relief requested as well
16 as the conditions as revised by the Board. So
17 again, the motion carries on the vote of four
18 to zero to one, Mr. Chairman.

19 CHAIRPERSON JORDAN: Thank you.
20 And let's do a summary. Do we have
21 opposition?

22 MS. NAGELHOUT: There is a party

1 in opposition.

2 CHAIRPERSON JORDAN: Okay, then
3 let's not --

4 MS. NAGELHOUT: The applicant has
5 provided a draft already.

6 CHAIRPERSON JORDAN: Okay, then
7 let's go ahead and have a full order.

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

9 CHAIRPERSON JORDAN: Let's call,
10 if you would Mr. Moy, Friendship, 18435.

11 MR. MOY: The application before
12 the Board is Application number 18435.
13 Application number 18435. This is Friendship
14 Family, LLC.

15 Pursuant to 11 DCMR 3103.2 for a
16 variance from the floor area ratio
17 requirements, or rather floor area ratio
18 limitation under Section 772, variance from
19 the rear yard requirements under Section 774,
20 variance from the parking requirements under
21 Subsection 2101.1.

22 This is to allow an addition to an

1 existing veterinary hospital in the C-2-A
2 District at premises 4105 Brandywine Street,
3 Northwest. Property located at Square 1732
4 Lot 822.

5 As the Board will recall, on
6 November 7th, 2012 the Board completed public
7 testimony, it closed the record and scheduled
8 its decision on November 27th.

9 The Board requested that the
10 applicant submit an updated consolidated set
11 of conditions based on the testimony of
12 November 19th.

13 That post hearing document, Mr.
14 Chairman is in your case folders identified
15 under Exhibit 41. So with that, the Board is
16 to act on the merits of the relief requested,
17 Mr. Chairman.

18 CHAIRPERSON JORDAN: All right.
19 Thank you, Mr. Moy. Is the Board ready to
20 deliberate on 18435? Okay, all right. Ms.
21 Sorg?

22 VICE CHAIRPERSON SORG: Thank you,

1 Mr. Chairman. This is a case of a
2 longstanding veterinary hospital requesting
3 variances and special exceptions to allow a
4 second story addition.

5 And one note among the regulations
6 under request is we had some discussion in the
7 hearing regarding 771.2 with regard to a ZC
8 amendment.

9 But here, I believe that the
10 precedent is to treat that as a use variance,
11 something that we discussed. And I believe
12 that in that case as well as in the case of
13 the other variances that were requested, the
14 applicant has demonstrated both variance
15 standards.

16 I believe that with regard to the
17 applicant's filings and arguments made, that
18 the request seems reasonable. The use is in
19 harmony and the additional space certainly
20 needed for the continued operation.

21 I know, also, that there are
22 several community in support. And I know that

1 they have, as I mentioned, a longstanding
2 reputation among this type of operation in the
3 city.

4 Additionally, we had one neighbor
5 in opposition, and I would commend the
6 applicant in this case for working with that
7 neighbor to execute an agreement that allowed
8 him to withdraw his opposition.

9 That being said, to comment on the
10 conditions drafted by the applicant, which
11 have pretty much all to do with the
12 transportation demand management program that
13 they are agreeing to institute.

14 I would be in agreement with all
15 of the conditions. There are four of them.
16 Except I would slightly change condition
17 number two in the same way that, actually, we
18 spoke about with the previous case to indicate
19 that an annual meeting should be held, you
20 know, or an annual monitoring should be
21 documented and submitted to DDOT just so that
22 we can have a little bit of assurance that

1 that will be a condition that can be
2 mitigated.

3 CHAIRPERSON JORDAN: Okay.

4 VICE CHAIRPERSON SORG: Thank you.

5 CHAIRPERSON JORDAN: Thank you.

6 Any other Board member? Mr. Miller?

7 COMMISSIONER MILLER: I would just
8 concur with the Vice Chair and all of her
9 comments.

10 CHAIRPERSON JORDAN: Anyone else?
11 Mr. Hinkle?

12 MEMBER HINKLE: Yes, I certainly
13 agree with the Vice Chair, as well and will
14 support the change in the condition that she
15 proposed.

16 CHAIRPERSON JORDAN: Good. So Ms.
17 Sorg, was that a motion to adopt?

18 VICE CHAIRPERSON SORG: Well, I
19 hadn't framed it as such, but I will then
20 submit a motion to approve application 18435
21 with the four conditions submitted in the post
22 hearing filing, with condition number two

1 revised to read that monitoring should be --
2 how do I say it? An annual monitoring --

3 CHAIRPERSON JORDAN: Report, DOT.

4 VICE CHAIRPERSON SORG: -- submit
5 --

6 COMMISSIONER MILLER: I'll second
7 that.

8 VICE CHAIRPERSON SORG: Okay,
9 thank you.

10 CHAIRPERSON JORDAN: Motion made
11 and second. Any further unreadiness? Seeing
12 none, all those in favor, signify by saying
13 aye.

14 (Chorus of ayes)

15 CHAIRPERSON JORDAN: Those
16 opposed, nay. The motion carries. Mr. Moy?

17 MR. MOY: Yes, sir. Staff would
18 record the vote as four to zero to one. This
19 is on the motion of Vice Chairperson Sorg to
20 approve the application for the relief
21 requested, as well as concluding the
22 applicant's proposed four conditions with the

1 modification of the language to condition
2 number two as cited.

3 Second the motion, Mr. Robert
4 Miller. Also in support of the motion,
5 Chairman Jordan and Mr. Hinkle. There's no
6 other board members participating. Again, the
7 motion carries on a vote of four to zero to
8 one.

9 CHAIRPERSON JORDAN: All right,
10 thank you Mr. Moy. A summary order?

11 MR. MOY: Yes, sir.

12 CHAIRPERSON JORDAN: Our party in
13 opposition withdrew. So we're okay. You can
14 call the next case. Let's go into the
15 hearing, so we'll come back out. We'll come
16 back out.

17 MR. MOY: We'll take a short
18 recess, Mr. Chairman.

19 CHAIRPERSON JORDAN: Yes, we'll
20 recess this meeting and then go into our
21 public hearing process, Mr. Moy.

22 (Whereupon, the foregoing matter

1 went off the record at 10:28 a.m. and went
2 back on the record at 10:29 a.m.)

3 CHAIRPERSON JORDAN: Mr. Moy,
4 let's call 18413, please.

5 MR. MOY: Okay. That would be
6 Application number 18413 of Marcus A. Watkins.
7 Pursuant to 11 DCMR 3103.2, this is for a
8 variance from the lot area and lot width
9 requirements under Subsection 401.3 to allow
10 the subdivision and construction of two new
11 flats, two family dwellings in the R-4
12 District at premises 257 Warren Street,
13 Northeast, property located in Square 1033,
14 Lots 135, 136 and 137.

15 As the Board will recall, on
16 October 16th, 2012, the Board completed public
17 testimony, closed the record and scheduled
18 this decision on November 27th.

19 The Board did request that the
20 applicant file revised corrected drawings and
21 plans by November 19th, 2012 to supplement the
22 record.

1 The applicant did make its filing,
2 Mr. Chairman. However, the filing was logged
3 and received into the record on Friday,
4 November 23rd. So the filing is a bit
5 untimely.

6 Other than that, the Board is to
7 act on the merits of the variance request
8 under the requirements under Subsection 401.3.
9 And that completes the staff's briefing, Mr.
10 Chairman.

11 CHAIRPERSON JORDAN: Thank you.
12 Is the Board ready to deliberate on 18413? I
13 believe so. All right, very good. Then let's
14 begin. Ms. Sorg, do you have something? It
15 was untimely?

16 VICE CHAIRPERSON SORG: Yes.

17 CHAIRPERSON JORDAN: All right,
18 then let's accept that. We accept his Exhibit
19 number 27 as being one day late.

20 VICE CHAIRPERSON SORG: Thank you,
21 Mr. Chairman. I think that in this case of
22 looking at three substandard lots and

1 consolidating those into two, also non-
2 conforming lots or the other possibility of
3 into one very large lot.

4 Given the testimony at the
5 hearing, as well as the filings, my view on
6 the merits of this case fall primarily to OP's
7 determination that the creation of two
8 substandard lots in this case, and the degree
9 to which they are substandard fits more into
10 the character of the neighborhood and the zone
11 plan than would one large single lot.

12 So that allows this area to be put
13 into use in a way that is, let's say non-
14 conforming but potentially more in keeping
15 with the character and development of housing
16 in this area.

17 Additionally, I think that the
18 plans submitted by the applicant, although
19 obviously untimely, were important to accept
20 being that they were improved from what we had
21 received earlier.

22 So that being said, I think while

1 I don't view the architecture to be as
2 harmonious as it may be as an insertion in
3 this area, I do believe that for the relief
4 being requested in thinking of its
5 appropriateness in terms of the subdivision of
6 the lots, as well as in terms of its effect on
7 the neighboring properties, I think the
8 attached homes potentially to the, I think
9 north as well as those homes who have their
10 rear yards facing, the effect on the light in
11 there is not undue. So that would conclude my
12 comments.

13 CHAIRPERSON JORDAN: Anyone else?

14 COMMISSIONER MAY: Mr. Chairman, I
15 would agree. I appreciate getting the
16 corrected drawings, although they're not, even
17 in terms of corrections I would say there are
18 still some inconsistencies, but I think
19 generally speaking, we have a better picture
20 of what's going on.

21 And I think it's appropriate to
22 allow these slightly narrower than normal

1 townhouses, the new normal, I guess. They're
2 going to be wider than the houses next to
3 them.

4 But all the houses next to them
5 predate the zoning regulations. And I think
6 that I appreciate Commissioner Sorg's eloquent
7 understatement about the design itself.

8 I would agree with that. But it
9 is what it is, and I think it beats the test
10 and we should grant this variance.

11 CHAIRPERSON JORDAN: All right,
12 thank you. Ms. Sorg, did you make a motion?

13 VICE CHAIRPERSON SORG: I did not,
14 but I will do so. So I would move to approve
15 Application 18413 with the relief as
16 requested.

17 CHAIRPERSON JORDAN: And I'll
18 second. Motion made and seconded to approve
19 the relief as requested. Any further
20 discussion? Seeing none, all those in favor,
21 signify by saying aye.

22 (Chorus of ayes)

1 CHAIRPERSON JORDAN: Those
2 opposed, nay. The motion carries. Mr. Moy?

3 MR. MOY: Yes, sir. Staff would
4 record the vote as four to zero to one. This
5 is on motion that Vice Chairperson to approve
6 the application for the variance relief
7 requested.

8 Second the motion, Chairman
9 Jordan. Also in support, Mr. Peter May and
10 Mr. Jeffrey Hinkle. There was no other board
11 members participating. So again, the motion
12 carries on a vote of four to zero to one.

13 CHAIRPERSON JORDAN: Very good.
14 And may we have a summary order, please?

15 MR. MOY: Yes, sir. The next
16 application, I believe, before the Board is
17 the appeal, Appeal number 18469 of Susan L.
18 Lynch.

19 Pursuant to 11 DCMR 3100 and 3101
20 from a decision by the Zone Administrator to
21 issue building permits, these are building
22 permits RW1200113, RW1207072, B1207074 and

1 B1207074.

2 Issuing the construction of two
3 one family detached dwellings in the R-1-B
4 District at premises 2334 King Place,
5 Northwest, property located in Square 1394 Lot
6 24 and 2338 King Street, Northwest, Square
7 1394 Lot 23.

8 Again, this appeal was originally
9 scheduled for decision on November 7, 2012.
10 The Board completed public testimony and
11 closed the record on October 16, 2012.

12 The Board requested additional
13 information to supplement the record which
14 included proposed findings of fact and
15 conclusions of law, as well as the affidavit.

16 And Board provided for responses
17 to the affidavit. In your case photos, Mr.
18 Chairman, there are draft findings of fact,
19 conclusions of law from the appellant under
20 Exhibit 27 and the intervener identified with
21 a cover letter of Exhibit 31 and Exhibit 29.

22 The affidavit is under Exhibit 25

1 and 26 and the appellee's filing of
2 declaration of Matthew L. LeGrant and Rohan
3 Reed is identified under Exhibit 28.

4 So with that, Mr. Chairman, the
5 Board is to act on what I believe there was a
6 motion to dismiss, which was held in advance
7 on October 26th. And then the Board's action
8 after that. And that completes the staff's
9 briefing, Mr. Chairman.

10 CHAIRPERSON JORDAN: Thank you,
11 Mr. Moy. Yes, we asked for some additional
12 information and documents regarding the motion
13 to dismiss.

14 I believe that we requested an
15 affidavit from the permit processor, and I
16 think that was submitted, I think it's
17 Rochelle Joseph, an affidavit was submitted.

18 Based on the motion to dismiss, I
19 would move that we grant the motion to dismiss
20 based upon the evidence that's been deduced at
21 both the hearing and subsequently in this
22 matter, and that this appeal be dismissed

1 because it was not timely.

2 More than 60 days had transpired
3 after the zoning decision complained of. The
4 applicant knew and should have known that the
5 zoning approval had been issued on May 30th,
6 several different ways.

7 One, based upon what was actually
8 in the DCRA electronic system, but had actual
9 knowledge, the documents clearly showed June
10 1st, 2012, and by the Zoning Administrator's
11 affidavit. Also by the comments and
12 admissions made by the appellant.

13 And at the very least, they knew
14 on June 6, based upon emails between the
15 appellant and her council. And it could have
16 been filed 60 days from the decision that was
17 made, or by July 30th, 2012.

18 This was not filed until August
19 28th, a month or so later. And there has been
20 no extenuating circumstances shown for any
21 reason why it was not filed timely.

22 The reliance, and during the

1 hearing, that the permit processor had been
2 told that she could not get the files, did not
3 pan out in the affidavit.

4 In fact, the affidavit does not
5 show that there was an attempt to actually
6 receive those documents. But based upon what
7 she thought was a policy and belief that she
8 could not obtain those documents did not
9 obtain those documents.

10 And so for those reasons, I would
11 move that we dismiss this as not being timely.
12 Mr. Hinkle?

13 COMMISSIONER MAY: Mr. Chairman, I
14 would disagree. I can't say that I have a
15 very strong argument to the contrary. But I
16 think that there should be a reasonable
17 expectation on the part of someone who's
18 appealing a decision by the Zoning
19 Administrator that there would be strong
20 specific deadlines for when information is
21 available.

22 I mean, the mere fact that a

1 decision had been made, to me does not
2 necessarily communicate to the appellant
3 sufficient information to make a judgement
4 about whether invest further in legal fees
5 required to file an appeal.

6 And I think that that's really
7 only known when the drawings are clearly
8 available. Now maybe a greater effort could
9 have been made to make those drawings
10 available, or for the appellant to track down
11 those drawings.

12 But I think that they were making
13 a reasonable effort for it, and they proceeded
14 based on the assumption that well, once they
15 were able to get the drawings and the permit
16 was actually issued, that that was when the
17 clock started ticking.

18 So I think to decide otherwise is
19 to put an extraordinary burden on people who
20 are potentially affected by incorrect
21 decisions by the Zoning Administrator. Pretty
22 much sums up where I stand.

1 CHAIRPERSON JORDAN: Mr. Hinkle?

2 MEMBER HINKLE: Yes, thank you,
3 Mr. Chair. I tend to agree with your analysis
4 in terms of looking at the motion to dismiss.
5 Understandably, there should be some
6 opportunity for people to appeal, but that
7 appeal needs to be in a timely manner.

8 And for me, what's convincing is
9 the notification on the DCRA website that
10 states specifically that the zoning review was
11 approved on May 30th. And for me, that's when
12 the clock starts running.

13 And sure, you know, do people know
14 all the time to check that website? Maybe
15 not. But there have been additional
16 conversations between the parties in terms of
17 this decision that was made.

18 And so I'm convinced that the
19 clock started ticking on May 30th when that
20 public notification was made on the DCRA
21 website. And based on that, I do agree that
22 the appeal was not timely filed. So I will

1 second your motion.

2 CHAIRPERSON JORDAN: And let me
3 add to that, Mr. May, the point whether or not
4 they even looked on the website, which they
5 have a duty to do, the basis of not doing so
6 as was represented to us in this hearing is
7 because they were told they couldn't get the
8 documents for a certain date.

9 Well, that came from their own
10 agent that had a false assumption.
11 Additionally, you have emails and
12 documentation as early or as late as June 6
13 among the appellant and her attorney saying
14 that they knew a decision was made, and they
15 did not act.

16 So even taken outside the realm of
17 what was on the DCRA website or if DCRA picked
18 up the phone and called them and said they
19 made a decision, they had knowledge of it on
20 June 6 based upon their own admission.

21 So I don't accept the fact that it
22 was some type of requirement for DCRA to get

1 on, and I know you didn't say this, but get on
2 the phone or do something affirmative to let
3 them know even further.

4 But by their own admission, they
5 knew on June 6. Additionally, this opens up
6 a whole can of worms by allowing this type of
7 behavior to go forward in regarding other
8 matters.

9 By their own admission they knew
10 as late as June 6 and should have known as
11 early as May 30th, June 1st. But by their own
12 admission, June 6. So for those bases is why
13 I say that they're out of time and well beyond
14 the 60 days.

15 COMMISSIONER MAY: You know, I
16 think there's a significant difference between
17 knowing that a decision has been made and
18 knowing what the decision is.

19 And I don't believe it's possible
20 to properly evaluate that decision without
21 having the drawings in hand. And regardless
22 of what DCRA may state their policy is with

1 regard to release of documents, it's hardly a
2 transparent process.

3 I mean, even when you are
4 processing your own application, communication
5 is not always what it should be. And I think
6 that in this circumstance, I think that the
7 appellant was making a reasonable effort
8 through their agent to get the drawings and
9 that it was not an easy thing to do.

10 And that knowing that the time at
11 which it is certain that the information is
12 available really is when the permit was
13 issued. I think I would tend to side with the
14 appellant here.

15 CHAIRPERSON JORDAN: Okay, well,
16 anyone else, let's just move for a vote on the
17 motion.

18 COMMISSIONER MAY: Mr. Chairman, I
19 do want to make one other point with regard to
20 whatever, you know, we are opening the door
21 to. I think that if we were to decide in
22 favor of the appellant here, we would open the

1 door to greater communication and greater
2 openness and transparency on the part of DCRA,
3 greater cooperation with people who may have
4 an issue with decisions they have made. And
5 it's another good reason to vote in favor of
6 the appellant.

7 CHAIRPERSON JORDAN: Well, all
8 right. I was going to have a comment. But
9 you're really asking us to legislate in
10 regards to that, and that's not what this body
11 is.

12 COMMISSIONER MAY: I'm not
13 suggesting that we're legislating or that we
14 should legislate. You know, you made the
15 comment that it opens the door to this kind of
16 behavior as if there was some misbehavior on
17 the part of the appellant and I don't believe
18 there was.

19 I think they were making a
20 reasonable effort. And I think that just
21 simply erring on the side of greater
22 information, greater communication is a

1 positive thing, not a opening the door to
2 further bad behavior.

3 CHAIRPERSON JORDAN: All those in
4 favor of the motion, signify by saying aye.

5 (Chorus of ayes)

6 CHAIRPERSON JORDAN: Those
7 opposed, nay.

8 COMMISSIONER MAY: Nay.

9 CHAIRPERSON JORDAN: Mr. Moy,
10 would you poll the Board?

11 MR. MOY: Yes, sir. Staff would
12 record the vote as three to one to one. This
13 is on the motion of Chairman Jordan to --

14 CHAIRPERSON JORDAN: No, two to
15 one to one.

16 MR. MOY: Did I get my vote wrong?

17 VICE CHAIRPERSON SORG: Two to one
18 to two. I'm not --

19 MR. MOY: Oh, oh. I stand
20 corrected, you weren't participating. So
21 anyway, so the final vote is two to one to
22 one. This is on the motion of Chairman Jordan

1 to grant the motion to dismiss.

2 Second the motion is Mr. Hinkle.

3 We have Mr. May opposed to the motion to
4 dismiss, and there's no other Board member
5 participating.

6 CHAIRPERSON JORDAN: I believe the
7 motion passes and carries. Is that correct,
8 because we had three people participating, had
9 a quorum for the hearing, and we have a vote
10 of two to one.

11 Only if we had a panel of three,
12 if we sat as a board of five, then we needed
13 three to pass. But we sat as a board of
14 three, and we had two to one, so the motion
15 carries. This is dismissed. Is that correct?

16 MS. GLAZER: I believe the Chair
17 is correct. I'm just checking the regs to
18 double check, but I believe he's correct.

19 CHAIRPERSON JORDAN: And straight
20 parliamentary, it doesn't indeed carry, yes.
21 And even if a rule, because you have to have
22 a majority of the board voting, and you had

1 three voting and we had two to one.

2 We had a quorum to have the
3 meeting, which we did. And of that quorum,
4 two were in favor of the motion, one was not.
5 So it passes.

6 Thank you. Yes, move on. Thank
7 you, Mr. May. Thank you. Mr. Moy, would you?
8 All right, so that concludes our public
9 meeting?

10 MR. MOY: That's right. There's
11 no other applications for Board decision.

12 MS. GLAZER: Mr. Chair, I just
13 wanted to point out the section is Section
14 3125.2 that states.

15 CHAIRPERSON JORDAN: Yes, so it
16 does stand. It does, yes. All right, so now
17 we'll go back into our other, switching hats.
18 Let's now move, Mr. Moy, to our Public
19 Hearing.

20 MR. MOY: Yes, sir. Shall I
21 administer the oath, Mr. Chairman?

22 CHAIRPERSON JORDAN: We're now

1 moving to our --

2 MR. MOY: Public Hearing session?

3 CHAIRPERSON JORDAN: -- Public
4 Hearing session. But we're going to take just
5 a very, very brief five minute recess, if we
6 may. Five minutes, no more than five minutes,
7 back in.

8 (Whereupon, the meeting in the
9 above-entitled matter was concluded at 10:52
10 a.m.)

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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC/BZA

Date: 11-27-12

Place: Washington, DC

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