

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY
NOVEMBER 27, 2012

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 10:28 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 MEMBER PRESENT:

MARCIE COHEN, Commissioner
OFFICE OF ZONING STAFF PRESENT:
CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

ARTHUR JACKSON

STEPHEN GYOR

BRANDICE ELLIOTT

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

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(10:28 a.m.)

CHAIRPERSON JORDAN: I'm going to open this session as a Public Hearing session for the Board of Zoning Adjustment. As already announced, we're here at the Jerrily R. Memorial Kress hearing room at 441 4th Street.

Today's date is November 27th, 2012. I'm Lloyd Jordan, Chairperson. To my right is Jeffrey Hinkle, Board member. To my left is Nicole Sorg, Vice Chair. To her left is Marcia Cohen. Oh, Peter's here, okay.

COMMISSIONER COHEN: I was just keeping it warm.

CHAIRPERSON JORDAN: Okay. Roll with us, please. Then we will come back to our Public Hearing session and now actually break from recess and go back to the public meeting. You with me, Court Reporter?

(Whereupon, the foregoing matter went off the record at 10:29 a.m. and went

1 back on the record at 10:58 a.m.)

2 CHAIRPERSON JORDAN: All right, so
3 now we're back in session as a Public Hearing
4 for November 27th. Sitting with us today is
5 Marcia Cohen, member of the Zoning Commission.

6 And so now we will now go back
7 into our Hearing session. All those who plan
8 to testify in any matter before us this
9 morning or this afternoon, whatever time it
10 is, please stand and take the oath or
11 affirmation being given by the Board
12 Secretary.

13 And additionally, afterwards, I'm
14 going to ask to be sure that you complete two
15 witness cards and hand them to the court
16 reporter for each person who will testify.

17 Thank you. Mr. Moy?

18 (Swearing in of Witnesses)

19 COMMISSIONER MILLER: Ladies and
20 gentlemen, you may consider yourself under
21 oath.

22 CHAIRPERSON JORDAN: Thank you.

1 Yes, that's it.

2 MR. MOY: All right, with that Mr.
3 Chairman and members of the Board, the first -
4 -

5 (Off microphone comments)

6 MR. MOY: -- the first application
7 Public Hearing session is Application number
8 18447. This is the application of Karen
9 Slachetku.

10 Pursuant to 11 DCMR 3104.1 for a
11 special exception to allow a rear deck to an
12 existing one family road dwelling under
13 Section 223, not meeting the lot area and lot
14 width requirements under Section 401, lot
15 occupancy requirements under Section 403 and
16 rear yard requirements under Section 404 in
17 the R-4 District at premises 1139 Abbey Place,
18 Northeast property located at Square 773, Lot
19 193.

20 CHAIRPERSON JORDAN: Thank you.
21 Would the persons for this case please come
22 forward? The applicant or anyone else? I

1 guess there is no one else. Okay. Is the
2 Board ready or anything you need with this
3 one?

4 Anybody got any issues with this
5 case? I guess then we can't really ask
6 anybody anything because they're not here.
7 Yes, is the applicant or anyone here in this
8 case?

9 Okay. You've got a question,
10 something OP can answer or no? Yes, nothing
11 for the neighbors or ANC? Yes, yes. Is the
12 applicant here for 18447? Okay. The address
13 is 1139 Abbey Place, Northeast.

14 (Off microphone comments)

15 CHAIRPERSON JORDAN: Let's roll
16 it. Let's move to the next. Let's move this
17 to the end of the docket and give them another
18 chance in this matter.

19 COMMISSIONER COHEN: Somebody just
20 walked in the door, so maybe if you could
21 repeat it? Oh.

22 CHAIRPERSON JORDAN: Yes, we're

1 looking for the applicant on 18447, 1139 Abbey
2 Place, Northeast. No, okay. Then let's move
3 to our next matter, Mr. Moy.

4 MR. MOY: Yes, sir. That would be
5 Application number 18450. This is the
6 application of Karl and Julie Moeller.

7 Pursuant to 11 DCMR 3104.1, this
8 is for a special exception to allow a third
9 story addition and roof deck to an existing
10 one family road dwelling under Section 223,
11 not meeting the court requirements under
12 Section 406, and non-conforming structure
13 requirements under Subsection 2001.3 in the R-
14 4 District at premises 426 11th Street,
15 Northeast, property located at Square 992 Lot
16 806.

17 CHAIRPERSON JORDAN: Okay. Thank
18 you. Would you please identify yourselves,
19 for us?

20 WHEREUPON,

21 JENNIFER FOWLER

22 was called as a witness for the Applicant and,

1 having been first duly sworn, assumed the
2 witness stand, was examined and testified as
3 follows:

4 MS. FOWLER: Good morning, I'm
5 Jennifer Fowler of 1819 D Street, Southeast.

6 CHAIRPERSON JORDAN: Okay.

7 WHEREUPON,

8 KARL MOELLER
9 was called as a witness for the Applicant and,
10 having been first duly sworn, assumed the
11 witness stand, was examined and testified as
12 follows:

13 MR. MOELLER: Karl Moeller of 426
14 11th Street, Southeast.

15 CHAIRPERSON JORDAN: Okay. We
16 have here a party request in opposition, which
17 we will grant party status to.

18 (Off microphone comment)

19 CHAIRPERSON JORDAN: Okay, thank
20 you. And that was by Vonda Harris. Is Ms.
21 Harris here? Then we will move on. We have
22 her letter in the file, and I think we've all

1 had the opportunity to look at it.

2 Regarding this application, any
3 questions the Board has for the applicant?
4 Before we begin, let me find out if there's
5 anything particular that the Board needs
6 addressed before you have the opportunity to
7 do your presentation.

8 COMMISSIONER COHEN: Thank you,
9 Mr. Chairman. I just have a question.
10 Capitol Hill Historic District, do they have
11 to approve this?

12 MS. FOWLER: The Capitol Hill
13 Restoration Society? Yes, in fact they have.
14 And Mr. Peterson hand delivered letters to me
15 just this morning, and we have these here.
16 They've approved it unanimously.

17 CHAIRPERSON JORDAN: Does anybody
18 else have a question they need to get answered
19 from the -- or do you think that -- yes, Ms.
20 Sorg?

21 VICE CHAIRPERSON SORG: Thank you.
22 I just want to ask one question. I guess we

1 know that one of the adjacent neighbors has
2 submitted the party status request.

3 She did indicate in her request
4 that she would not be available to attend the
5 hearing. So we understand her issues with the
6 proposed project.

7 And if you can comment on
8 interactions. I know you have letters of
9 support, but I didn't see whether you did from
10 the other adjacent neighbor, or not.

11 MR. MOELLER: I did meet with the
12 neighbors on the south side of the property.
13 Went over personally, shared a glass of wine
14 in their backyard. Flipped through our plans
15 that Jennifer had put together.

16 We have talked to a number of
17 other neighbors in the Walker Court area. I
18 think we have seven to ten letters of support.
19 Seven. The Harris letter, I was made aware of
20 that and we did present that to the ANC with
21 our materials and with our letters of support.

22 The ANC Zoning Board approved it,

1 even with considering that letter, as did the
2 full ANC and the Capitol Hill Restoration
3 Society.

4 CHAIRPERSON JORDAN: Yes, and I --

5 VICE CHAIRPERSON SORG: Great, but

6 --

7 CHAIRPERSON JORDAN: I was going
8 to say I was incorrect. You actually have
9 nine letters of support in our files.

10 VICE CHAIRPERSON SORG: Right.
11 But just to clarify, so you shared a glass of
12 wine with your other adjacent neighbor, and
13 then did they submit a letter?

14 MR. MOELLER: The neighbors to the
15 south --

16 VICE CHAIRPERSON SORG: And that's
17 428?

18 MR. MOELLER: Twenty eight and
19 thirty.

20 VICE CHAIRPERSON SORG: Yes.

21 MR. MOELLER: The neighbors at 430
22 called me actually over the weekend to say

1 they were not going to oppose the project. I
2 have a voicemail I could play for you if you
3 would like to listen to it.

4 VICE CHAIRPERSON SORG: We'll take
5 your testimony.

6 CHAIRPERSON JORDAN: I think, Ms.
7 Sorg, are you asking regards to Miss Harris?

8 VICE CHAIRPERSON SORG: No, I'm
9 asking about the other adjacent neighbor at
10 428. He was describing their interactions, but
11 I didn't understand whether or not they
12 indicated their support or not.

13 MR. MOELLER: The other neighbor
14 to my immediate south, 428 wrote a letter
15 saying that they opposed the letter, but would
16 support it if their property was permitted to
17 do the same thing, which I wrote to them and
18 said I would fully support, you know, your
19 expansion of your house, but I would hope not
20 to have to delay my project to wait for you to
21 be ready to do that.

22 VICE CHAIRPERSON SORG: And that's

1 obviously not how zoning works.

2 MR. MOELLER: Right, right.

3 VICE CHAIRPERSON SORG: Thank you.

4 MR. MOELLER: You're welcome.

5 CHAIRPERSON JORDAN: Any other
6 questions that we may have for the applicant?
7 Okay. I believe that our file is very full
8 already regarding the requested relief.

9 You certainly have the right and
10 the opportunity to do a presentation before
11 the Board. And that's certainly up to you to
12 decide, or you can just waive that and we can
13 proceed on.

14 MS. FOWLER: I think we would be
15 happy to waive that and proceed, if
16 everybody's comfortable.

17 CHAIRPERSON JORDAN: Then let's
18 turn to the Office of Planning to see if
19 there's anything in addition that they need to
20 add to their already submitted report
21 recommending approval.

22 MR. GYOR: Good morning, Mr.

1 Chairman and members of the Board. Stephen
2 Gyor with the Office of Planning. We support
3 the applicant's request for relief and rest on
4 the record. Thank you.

5 CHAIRPERSON JORDAN: And do we
6 have DDOT, anything from DDOT? No, we don't.
7 Okay. Oh, well nothing from DDOT. Anyone
8 here from ANC 6B?

9 We do have a letter of support
10 from ANC 6B, which we would give great weight
11 to in support of the application. Well, our
12 file does contain nine support letters from
13 neighbors regarding this matter.

14 Is there anyone else here in
15 support of this application wish to testify?
16 Those in opposition? We do have, as I said
17 before, a Vonda Harris who has voiced her
18 opposition, has submitted her letter which the
19 Board has considered and will consider in this
20 deliberation.

21 Then let's turn back to the
22 applicant for any rebuttal, but there's

1 nothing to rebut. And there's no additional
2 questions. So then we'll close this hearing
3 based upon the record already before the
4 board.

5 Is the board ready to deliberate?
6 I see a lot of heads shaking, yes, we're
7 ready. Then I move that we grant the relief
8 requested under Application 18450.

9 COMMISSIONER COHEN: And I'll
10 second that, Mr. Chairman.

11 CHAIRPERSON JORDAN: Motion made
12 and seconded. Any additional discussion? All
13 those in favor, signify by saying aye.

14 (Chorus of ayes)

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

17 MR. MOELLER: Thank you very much,
18 Mr. Chairman and members of the board.
19 Appreciated.

20 MR. MOY: Staff would record the
21 vote as four to zero to one. This is on the
22 motion of Chairman Jordan to approve the

1 application for the relief being requested.

2 Also in support of the motion, Miss Marsha

3 Cohen --

4 COMMISSIONER COHEN: Marcy.

5 MR. MOY: Marcy Cohen. And also
6 in support of the motion, Chairperson Sorg and
7 Mr. Hinkle. No other Board members
8 participating. So again, the motion carries
9 on a vote of four to zero to one.

10 CHAIRPERSON JORDAN: I know we
11 said give Miss Harris party status, but she
12 didn't show up for this hearing. And so I'm
13 going to move the Board to that we rescind the
14 party status. Someone second?

15 VICE CHAIRPERSON SORG: I would
16 second that.

17 CHAIRPERSON JORDAN: Okay, motion
18 made and seconded that we rescind the party
19 status since Miss Harris didn't show up. All
20 those in favor, signify by saying aye.

21 (Chorus of ayes)

22 CHAIRPERSON JORDAN: Those

1 opposed, nay. Great. And so we can have a
2 summary order, please, Mr. Moy?

3 MR. MOY: Yes, sir.

4 CHAIRPERSON JORDAN: Next?

5 MR. MOY: The next application
6 before the Board is Application number 18446.
7 This is the application of Edward Bruske.
8 Pursuant to 11 DCMR 3103.2 for a variance from
9 the lot area requirements under subsection
10 401.3.

11 This would allow the conversion of
12 a flat, a two unit dwelling into a three unit
13 apartment building in the R-4 District at
14 premises 1308 Euclid Street, Northwest.
15 Property located in Square 2866, Lot 55.

16 CHAIRPERSON JORDAN: Okay. Good
17 morning. Would you please introduce
18 yourselves?

19 WHEREUPON,

20 MARTIN SULLIVAN
21 was called as a witness for the Applicant and,
22 having been first duly sworn, assumed the

1 witness stand, was examined and testified as
2 follows:

3 MR. SULLIVAN: Good morning, Mr.
4 Chair and members of the Board. My name is
5 Martin Sullivan of Sullivan and Barros, here
6 on behalf of the applicant.

7 WHEREUPON,

8 EDWARD BRUSKE
9 was called as a witness for the Applicant and,
10 having been first duly sworn, assumed the
11 witness stand, was examined and testified as
12 follows:

13 MR. BRUSKE: My name is Edward
14 Bruske. I'm the owner at 1308 Euclid Street,
15 Northwest for the last 25 years.

16 WHEREUPON,

17 ERIK HOFFLAND
18 was called as a witness for the Applicant and,
19 having been first duly sworn, assumed the
20 witness stand, was examined and testified as
21 follows:

22 MR. HOFFLAND: And I'm Erik

1 Hoffland. I'm an architect working with the
2 owner on the property.

3 CHAIRPERSON JORDAN: Your name
4 again?

5 MR. HOFFLAND: Erik Hoffland.

6 CHAIRPERSON JORDAN: Hoffland,
7 thank you.

8 MR. SULLIVAN: Mr. Chairman, I
9 would like to qualify Mr. Hoffland as an
10 expert witness. He's not yet been before this
11 board, but he is highly qualified, and I have
12 copies of his CV to distribute.

13 CHAIRPERSON JORDAN: We don't have
14 it in our record?

15 VICE CHAIRPERSON SORG: Mr.
16 Hoffland, are you registered?

17 MR. HOFFLAND: Yes, I'm registered
18 in D.C., Maryland and Virginia.

19 VICE CHAIRPERSON SORG: And when
20 did you obtain your registration?

21 MR. HOFFLAND: 2009.

22 VICE CHAIRPERSON SORG: Okay.

1 CHAIRPERSON JORDAN: And what
2 would Mr. Hoffland be an expert in?

3 MR. SULLIVAN: Architecture and
4 design, and he's going to talk specifically
5 about practical difficulties with reconnecting
6 the basement and first floor units.

7 CHAIRPERSON JORDAN: Have you been
8 out to the site?

9 MR. HOFFLAND: Yes, I've done full
10 documentation of the existing building.

11 CHAIRPERSON JORDAN: All right.
12 Have you been accepted as an expert in any
13 forum before?

14 MR. HOFFLAND: Not that I can
15 recall.

16 COMMISSIONER COHEN: And Mr.
17 Chairman, just for the record, he did work on
18 the Cohen residence, but it was not mine.

19 CHAIRPERSON JORDAN: Okay. Oh, I
20 see, I see.

21 MR. HOFFLAND: Which residence?

22 COMMISSIONER COHEN: Cohen.

1 MR. HOFFLAND: There is a Cohen
2 residence that I did work on. Oh, I see.
3 Another Cohen.

4 CHAIRPERSON JORDAN: Okay. I
5 don't know if he necessarily has to be
6 qualified as an expert since he's actually
7 been out to the property, can testify from
8 first hand knowledge as to what's going on and
9 he's done the investigation.

10 But so let's just proceed. Let me
11 make sure what questions the Board may have
12 first so we can kind of limit or direct your
13 presentation. Board, is there a question
14 particularly we want to talk about?

15 Has the procedural deficiency
16 regarding ANC 6A versus 1B been taken care of?

17 MR. SULLIVAN: We contacted the
18 ANC before we even filed.

19 CHAIRPERSON JORDAN: 1B?

20 MR. SULLIVAN: Yes, 1B. So it was
21 essentially cured before it happened. I found
22 out about it two weeks ago. But we notified

1 the single member district rep before we
2 filed, and we stayed on top of it, and we went
3 before their Planning and Zoning Committee and
4 the full ANC.

5 CHAIRPERSON JORDAN: For 1B?

6 MR. SULLIVAN: For 1B, yes. And
7 there should be a letter in the file. It was
8 only received, though, last week when we
9 noticed it wasn't there. I have one copy of
10 it here. But I have an email noting that it
11 was received on Friday by this office.

12 CHAIRPERSON JORDAN: I don't think
13 we have a copy of it. So if you could make
14 that available. Does the Board have any
15 questions they need to have --

16 MR. SULLIVAN: If I could, Mr.
17 Chairman, before we get into questions, I did
18 have a presentation prepared, and I can limit
19 it to the extent you would like me to, but --

20 CHAIRPERSON JORDAN: That's what I
21 really want you to do. That's why I'm asking
22 the Board what particular questions do we have

1 so that you can limit your presentation.

2 MR. SULLIVAN: What I have is a
3 handout where I've identified a precedent. I
4 call it a blueprint of a case that the board
5 approved about three years ago which is
6 strikingly similar to this case.

7 And in fact, it's the last time
8 that the Office of Planning actually supported
9 one of these types of relief requests. So I
10 would like to hand that out because I think it
11 will make your analysis a lot easier. Thanks.

12 CHAIRPERSON JORDAN: Sure. And if
13 you want to step through it with us, we can do
14 that. While you're doing that, let me ask a
15 question.

16 This repair work that has to be
17 done on the property has to be done
18 regardless, whether or not you do this
19 additional unit or not, isn't that correct?

20 MR. SULLIVAN: That's correct.

21 CHAIRPERSON JORDAN: So then how
22 does it factor in to the need of creating a

1 difficulty, exceptional situation and
2 difficulty for the relief being requested?

3 MR. SULLIVAN: The primary area,
4 and I don't know that this was fully flushed
5 out in our initial application, but the
6 primary area of practical difficulty is the
7 practical difficulty in reconnecting the
8 basement and the first floor units.

9 And this is why I've provided the
10 comparison with Case 17991, which again, the
11 Office of Planning supported. And I include
12 the Office of Planning report for your
13 reference, and the Board's Order, which was a
14 Summary Order.

15 But in 17991, what the Office of
16 Planning and the Board found to be critical
17 factors in determining whether or not there
18 was an exceptional condition which led to a
19 practical difficulty, it was the fact that the
20 applicant purchased the property in three
21 units because prior to his purchase, it was
22 converted to a three unit building, and that's

1 how he found the property.

2 That's, in effect, the exceptional
3 condition of the property. The practical
4 difficulty is the cost and difficulty of
5 reconnecting the basement and the first floor
6 because there's no connection for them right
7 now.

8 And that's why I thought it was
9 easiest to lay out, it's not a lot of
10 information, but 17991, almost exact same case
11 and the Office of Planning supported that
12 emphatically.

13 CHAIRPERSON JORDAN: Continue,
14 please.

15 MR. SULLIVAN: And we would
16 submit, we have the architect here to submit
17 testimony to the difficulty of reconnecting
18 those units because it's more than just
19 opening up a floor and throwing down a set of
20 stairs.

21 COMMISSIONER COHEN: Mr. Chairman?

22 CHAIRPERSON JORDAN: Yes, please.

1 COMMISSIONER COHEN: It's the
2 premise of connecting the basement and the
3 first floor. I mean, it seemed to me that
4 there's a lot of deferred maintenance and that
5 that's why, now you want to create that third
6 unit, as opposed to, you know, as long as you
7 have to correct many things that have happened
8 to this property, that's really what's driving
9 it, the major repair work that's been
10 deferred.

11 MR. SULLIVAN: I would say that
12 that's accurate in the sense that being able
13 to make that idle portion of the property
14 productive again will enable us to make the
15 structural repairs that are necessary.

16 And it's not a question of
17 maintenance, and Mr. Bruske can testify to
18 that. It's structural deficiencies.

19 MR. BRUSKE: And they weren't
20 deferred, either. We just learned, really,
21 the extent of the problems a year and a half
22 ago when we had an engineer visit the site.

1 So what basically, I've been
2 wrestling with this and living with this
3 basement issue for 25 years since I bought the
4 property in June of 1987 thinking it was a
5 three unit building and finding out only later
6 that we could not legally, you know, renovate
7 that basement.

8 A year and a half ago, we had an
9 engineer come in because we noticed that we
10 had subsidence in the floors around the
11 stairwell area going all the way up to the
12 third floor.

13 And he had discovered that there
14 had been a beam there that is no longer there.
15 He also noticed that there are water issues,
16 in other words, seepage in the breeze way that
17 we share with a neighbor, against the brick
18 that has to be excavated and parged.

19 That the slab in the basement is
20 hardly a slab at all, but just a thin layer of
21 concrete that was laid directly over the dirt
22 without any windows that have rotted out and

1 need to be replaced.

2 So these are all things that were
3 not necessarily deferred but were really
4 defined just within the last year and a half
5 or so. We know we're going to have to deal
6 with them and we thought this is it. We
7 either find out whether we can get a zoning
8 variance and do this basement now, or it's
9 going to stay empty forever, basically.

10 CHAIRPERSON JORDAN: Haven't you
11 been there for 25 years?

12 MR. BRUSKE: Sorry?

13 CHAIRPERSON JORDAN: Have you
14 lived there for 25 years, at this property for
15 25 years, or no?

16 MR. BRUSKE: Not continuously.
17 But there was a break. But we have moved back
18 in.

19 CHAIRPERSON JORDAN: Okay, but
20 you've owned it for 25 years?

21 MR. BRUSKE: Yes.

22 CHAIRPERSON JORDAN: Okay.

1 MR. SULLIVAN: And if I could step
2 away back from the maintenance issue, the
3 source of the variance relief comes from not
4 wanting to leave property idle.

5 And I think this Board is familiar
6 with generally why variance relief exists and
7 why that one of the reasons it exists is to
8 keep property from remaining idle and not to
9 encourage idle property.

10 And because it's disconnected from
11 the rest of the building, it is, in effect,
12 idle. And we would like to be able to provide
13 what would be more affordable housing in the
14 basement level.

15 And this was the rationale in Case
16 17991. It wasn't so much what's the cost of
17 the maintenance that's necessary. It's that
18 we have a space here that is unusable,
19 essentially because it's disconnected from the
20 rest of the house.

21 And in order to use that property,
22 we have a practical difficulty in meeting the

1 strict regulations. And we have the practical
2 difficulty would be maintaining that as part
3 of an upstairs unit and only having two units
4 because it would require redesign of the whole
5 first floor.

6 CHAIRPERSON JORDAN: Mr. Hinkle?
7 Do you have, I thought you had --

8 MEMBER HINKLE: No, I just wanted
9 some clarification. You're saying this
10 property, there's some unused property here.
11 But there's two units that are occupied, is
12 that correct?

13 MR. SULLIVAN: I'm saying just the
14 portion in the basement.

15 MEMBER HINKLE: Okay, thank you.

16 MR. SULLIVAN: Yes.

17 CHAIRPERSON JORDAN: Ms. Sorg?

18 VICE CHAIRPERSON SORG: Thank you.
19 I'm having a little trouble with timeline,
20 here. I understand from your testimony and
21 your filings that the property was bought 20
22 years ago, 25 years ago. And I want to

1 clarify a few things that I see are
2 differences.

3 In your pre-hearing statement, you
4 indicated that Mr. Bruske lived in the
5 basement at the beginning of having purchased
6 the home because the rest of the home was in
7 severe disrepair which would indicate that
8 that space was not idle and was habitable.

9 So I'm having a little trouble
10 with the argument of putting that into proper
11 use when it was able to be lived in. So
12 perhaps some clarification of what happened in
13 the ensuing years to that space.

14 But I also just want to get to a
15 couple of other areas that can be maybe a
16 little bit larger discussion. Similarly, in
17 the handout that you just gave, you indicate
18 that, and I don't know whether this plays into
19 my first question or not, it may, you indicate
20 that the building was previously used as a
21 rooming house.

22 That's not something that I can

1 recall being mentioned in the pre-hearing
2 submissions at all. So I want to understand
3 where that comes from. Did you find a
4 Certificate of Occupancy or so forth.

5 And also, I appreciate the
6 comparison here, you know, to understand that
7 but also, it seems to me the difference here
8 is that when the home here at 1308 Euclid was
9 purchased, it was vacant and not operating as
10 a three unit, non-conforming use.

11 So I'm having trouble with that
12 connection in your comparison of these two
13 cases. So those are sort of the three things
14 that have come up from what you've described
15 so far for me. Thank you.

16 MR. SULLIVAN: I'll start, and
17 then you can. Thank you. I'm not sure if we
18 mentioned it specifically, but we do have the
19 rooming house C of O as an exhibit. I'm sorry
20 if we didn't mention it.

21 But it's an exhibit to the
22 applicant's statement. It was from 1966. It

1 does not mention the number of units within
2 that rooming house, it just says rooming
3 house. It's Exhibit C to the applicant's
4 statement.

5 And again, I don't think that's
6 the primary factor. It's a factor that has
7 been considered in the past to be a
8 contributing factor. Maybe more towards Prong
9 3 than anything else.

10 Regarding the fact that there's
11 been 25 years, the practical difficulty and
12 the exceptional condition existed in 1987 when
13 he purchased the property, regardless of the
14 condition of the property because there were
15 three separate units and they were not
16 connected.

17 And in order to connect them,
18 aside from any necessary renovation, would
19 have been a practical difficulty. The
20 renovation that took place was superficial.
21 It wasn't a gutting and changing around of
22 pipes.

1 The fixtures were put where they
2 were put before. And so there was nothing
3 changed with the layout of the design or the
4 internal configuration.

5 So the practical difficulty and
6 the exceptional condition comes from the
7 internal configuration which was there when he
8 found it, which was non-conforming just like
9 in Case 17991.

10 The only difference is he didn't
11 proceed to operate the property illegally. He
12 abandoned the basement effectively and waited
13 until it became necessary to pursue an action,
14 which in 17991 the owner pursued immediately
15 after he purchased the property. And Mr.
16 Bruske can talk more about his history with
17 the property.

18 MR. BRUSKE: Yes, I guess the
19 previous hearing was so fast, I don't know how
20 much you want me to say. I mean, I was a
21 young cub reporter at The Washington Post at
22 that time on a meager salary.

1 I had been looking for months for
2 a house to buy. And the only way the math
3 worked was if it had a rental unit. So I was
4 kind of delighted to find this place that had
5 two rental units.

6 The only one that was even
7 marginally habitable was the basement. For
8 some reason, somebody had been there before me
9 and started a renovation from the bottom up.

10 And the first floor was there. It
11 needed a major re-do of the kitchen. It
12 needed bathroom, closets, doors, et cetera.
13 The basement, well it was kind of like camping
14 out.

15 And what happened was, you know,
16 when we finally finished the upstairs, we had
17 a one and a half year deadline from the seller
18 who had given me a second mortgage for a year
19 and a half.

20 When we finally were able to get
21 permanent financing and moved upstairs, it was
22 just obvious to me that the basement was in no

1 condition to rent to anybody.

2 The drywall was moldering away.
3 Behind the drywall, the stud work was termite
4 ridden and moldering away. And so I just
5 ripped it all out and it's been empty ever
6 since because of this issue.

7 And you know, just as far as
8 connecting it to the first floor, well the
9 stairway that used to be in there is in our
10 apartment.

11 We live on the second and third
12 floors. And when you enter our apartment from
13 the vestibule, that's where the stairwell was
14 going down into the basement.

15 So there's in order to build a new
16 stairwell to created a duplex, in effect, you
17 would have to, you know, cut out joists,
18 engineer a new stairway going down to the
19 basement.

20 We never considered doing that. I
21 mean, it would create a huge apartment that's
22 not in character with the neighborhood at all,

1 not something we can afford to do, and I don't
2 know who would rent it.

3 Meanwhile, the first floor, we
4 have people standing in line to rent that
5 apartment when it comes up. And I think they
6 would for the basement apartment, as well.

7 So you know, it's never been a
8 consideration for us to connect the first
9 floor and the basement. It would be a monster
10 apartment and I don't know who would rent it.

11 And I wouldn't want to put my
12 money at risk doing it. So I guess that we're
13 here to see if the basement finally qualifies
14 for, you know, a zoning adjustment.

15 MR. SULLIVAN: And along those
16 lines, if I could point to the last page of
17 the handout, it gives some indication of what
18 is in the surrounding area, and it's
19 apartments.

20 It's a lot of apartments, large
21 apartment buildings. And there's only two
22 single family homes on the south side of this

1 street, and both of them have filed letters of
2 support.

3 But this colors the other issue in
4 17991 that I keep going back to, the
5 marketability of a two story 1900 square foot
6 unit, and that itself being a practical
7 difficulty, which the Office of Planning
8 believed it was three years ago in that case.

9 CHAIRPERSON JORDAN: I may have
10 missed it, but I don't see any financials in
11 this application and in the record.

12 MR. SULLIVAN: Right. The
13 practical difficulty is that we could provide
14 financials if the Board required. The
15 practical difficulty, we think, is obvious
16 from the testimony of the architect saying
17 what's involved in reconnecting basement and
18 one.

19 This situation's a little
20 different. Normally in a typical case like
21 this, you have a speculator or developer
22 coming in and saying I'm buying this property

1 and I need a unit or I'm going to loose money,
2 and here's what I'm paying. This is a little
3 different because he's owned it for 25 years.

4 CHAIRPERSON JORDAN: But you've
5 been making argument from 17991 which I
6 haven't read the full case, but just by your
7 outline here, it's based upon the economics of
8 the matter.

9 And so you're just coming here
10 saying that and there's no back up
11 documentation that that is at issue.

12 MR. SULLIVAN: Well, we would like
13 to have the architect testify as to some of
14 the things that are necessary to --

15 CHAIRPERSON JORDAN: But can you
16 testify in regards to the marketability of the
17 building? He's not an expert in that regard?

18 MR. SULLIVAN: No. And I don't
19 believe that we need an expert to testify that
20 you can't rent a 2,000 square foot unit.

21 CHAIRPERSON JORDAN: Well, Mr.
22 Sullivan, we can go this round and round, but

1 I'm trying to help you get to where you need
2 to. And I'm telling you what probably this
3 Board needs to see.

4 Now if you think it's not
5 necessary, then don't do it. But I'm just
6 saying it's something that we have done in
7 other cases, required that kind of evidence to
8 support the argument that you're making.

9 MR. SULLIVAN: Right. Well, we
10 have testimony from the owner, who's lived in
11 the neighborhood for 25 years. When he
12 originally moved into the neighborhood, it was
13 a bad neighborhood. It's gotten better.

14 He's got experience with that, so
15 we can submit that. But we're happy to submit
16 comps after the hearing, and any financial
17 information you want.

18 The amounts, it's going to be a
19 significant amount to reconnect basement and
20 one. And there's nothing to compare that
21 number to. If it's \$30,000, it doesn't
22 compare to whether or not we need to get a

1 unit because the practical difficulty is in
2 actually reconnecting basement and one.

3 CHAIRPERSON JORDAN: You said you
4 wanted, Ms. Sorg?

5 VICE CHAIRPERSON SORG: I'm a
6 little confused with the way that you are
7 parsing this because the practical difficulty
8 that you are describing is the cost of
9 reconnecting those things.

10 There was a stair there. There's
11 room for a stair there. You can see it in the
12 plans. So it's not the actual organization of
13 the structure that disallows you from
14 reconnecting those things.

15 What you have described in your
16 testimony so far, and also in the filings that
17 we've read, there is an economic issue. So I
18 mean, we've not finished with the hearing yet,
19 but I would in that case, echo what the Chair
20 has been saying.

21 And I would also note, Mr.
22 Sullivan, that in all of these cases, big or

1 small, developer or homeowner, the record I
2 think would show that we have always received
3 cost estimates and we have always received
4 market analyses.

5 So I mean, as we move forward, for
6 me as well, those two things would be
7 something that I would really look for, and
8 that I was looking for originally in the
9 application and is a big part of that
10 documentation. Quantitative documentation is
11 something that, to me, was missing from the
12 arguments.

13 MR. SULLIVAN: Okay. We're happy
14 to provide that. And I would like to have the
15 architect testify. But the standard is that
16 it be unnecessarily burdensome to comply with
17 the zoning regulations.

18 And whether the estimate to
19 connect B and 1 is \$30,000 or \$100,000, it's
20 unnecessarily burdensome. But we're happy to
21 submit that.

22 CHAIRPERSON JORDAN: Yes, but

1 again, and I understand you trying the matter
2 and you making that opinion, but this is the
3 Board that's going to vote on it. And we're
4 telling you probably what we need for us to
5 get to where you are.

6 MR. SULLIVAN: Okay.

7 CHAIRPERSON JORDAN: You may be
8 there, but we're not there so far. Are you
9 going to have the architect testify?

10 MR. SULLIVAN: Yes. Thank you.

11 MR. HOFFLAND: It's true that, you
12 know, at some point historically there was a
13 stair from the first level to the lower
14 basement level of the building.

15 The way that the first floor unit
16 is currently configured, there is a very small
17 kitchen, a mechanical room and a full bathroom
18 right in the middle of the house.

19 And so in order to put a new
20 stairwell connecting the two in kind of the
21 most logical place, we would have to demolish
22 and/or relocate the bathroom.

1 At the same time, having a large
2 1,900 square foot apartment would, and I think
3 anybody that's owned a house or an apartment
4 could understand this, would necessitate, you
5 know, it's going to be a three bedroom
6 probably, maybe even four bedroom unit would
7 require a much larger kitchen than what
8 currently is there to be marketable and useful
9 for that quantity of people that would be
10 living in an apartment.

11 So the kitchen has to be expanded,
12 and it can't be expanded in the way it is now
13 because of where the mechanical room is. So
14 that has to be relocated.

15 So really, while there are lots of
16 different ways to organize the internal
17 spaces, what we're really talking about on
18 that first level is to gut everything because
19 the bathroom, the kitchen and the mechanical
20 room all have to be relocated and/or majorly
21 renovated in order to support the kind of size
22 and capacity that three or four bedroom

1 apartment would need to be marketable.

2 And at the same time, then,
3 presumably the lower level becomes the bedroom
4 level. And then you have a very large
5 apartment that has all the bedrooms
6 subterranean.

7 And maybe this now comes more to
8 where I have renovated many houses in the
9 area. I live in the neighborhood. And you
10 know, really I don't think people that are
11 looking for such a large apartment would put
12 up with having subterranean bedrooms and no
13 parking and so forth.

14 So really, it becomes an awkward
15 apartment, but more to the point I guess, the
16 entire first floor would really have to be
17 gutted and completely renovated to make it
18 work as one large apartment, whereas if we
19 just renovated the basement, it's very easy to
20 do that and create a separate apartment there
21 without doing anything to the first floor.

22 MR. BRUSKE: And as the owner,

1 that is a real concern of mine is investing a
2 whole lot of money to basically create a white
3 elephant. Not interested.

4 VICE CHAIRPERSON SORG: Yes, I
5 actually think that you make some good points.
6 And there are spaces that want to be certain
7 sizes. And you've got to have a certain size
8 kitchen and living room if you're going to
9 have, you know, four bedrooms, a family with
10 four kids or whatever living in a place. So
11 I understand that.

12 What I do think would be helpful
13 in illustrating those differences would be,
14 and correct me if I'm wrong, I don't believe
15 that we've received any existing conditions,
16 plans of what is there now?

17 MR. SULLIVAN: Just photos. No,
18 not existing plans, but photos in the
19 applicant's statement.

20 MR. HOFFLAND: I do have, not with
21 me here, but I do have those plans. They've
22 been documented. So I suppose I could give

1 those to Marty to distribute if you would
2 like.

3 VICE CHAIRPERSON SORG: I think
4 that would be nice.

5 CHAIRPERSON JORDAN: Any other
6 questions of the applicant? Well, Mr.
7 Sullivan, anything else you want to present to
8 us before we move to Planning?

9 MR. SULLIVAN: Not at this time,
10 no.

11 CHAIRPERSON JORDAN: Then let's
12 turn now to the Office of Planning.

13 MR. COCHRAN: Thank you, Mr.
14 Chair. The Office of Planning, based on the
15 information that we have now and that you have
16 now has recommended against your approving the
17 requested relief.

18 We would certainly be willing to
19 reconsider if the Board does ask the applicant
20 to submit additional information. But at this
21 point, as I believe we said in our report, it
22 does appear that the applicant has not

1 documented the exceptional conditions on this
2 site.

3 That it really does appear to be
4 more a case of deferred maintenance, for which
5 the applicant wishes to receive additional
6 income to help to pay for a quarter century of
7 deferred maintenance.

8 And that does not seem to comport
9 with the intention of the zoning regulations.
10 I can go into more detail if you would like.

11 CHAIRPERSON JORDAN: Yes. Does
12 the Board have any questions of Planning?
13 Does the applicant have questions?

14 MR. SULLIVAN: Yes, just a couple,
15 please. Are you familiar with Case 17991, Mr.
16 Cochran?

17 MR. COCHRAN: Excuse me. No, sir,
18 I'm not.

19 MR. SULLIVAN: Okay. In that
20 case, your office determined that the
21 practical difficulty was the fact that there
22 was no connection between the basement and the

1 first floor unit, and that the practical
2 difficulty was in reconnecting those two.

3 So would that square with your
4 contention that this is just a case of
5 deferred maintenance?

6 MR. COCHRAN: I feel a bit
7 uncomfortable answering that question without
8 really understanding all of the conditions in
9 Case number 17991. It's very difficult for me
10 to make a comparison about something I don't
11 know anything about.

12 MR. SULLIVAN: Did you have a copy
13 of the handout?

14 MR. COCHRAN: I do.

15 MR. SULLIVAN: The OP report, do
16 you have a copy of the OP report?

17 MR. COCHRAN: You've attached it.

18 CHAIRPERSON JORDAN: And the
19 difference here, because I'm just recognizing,
20 what you passed out, it was from the OP report
21 because it's not what the Board actually found
22 in that case. I mean, that wasn't what the

1 Board because it was a Summary Order, was it
2 not?

3 MR. SULLIVAN: It was a Summary
4 Order, that's correct.

5 CHAIRPERSON JORDAN: I thought so.

6 MR. SULLIVAN: I have one more
7 question, I think, for the Office of Planning.
8 You stated in your report that the 2007 text
9 amendment reinforced the minimum lot area
10 requirements for apartment conversions.

11 Can you explain what that means
12 and what impact that has on this decision?

13 MR. COCHRAN: Prior to those
14 amendments, there had been some question about
15 whether the R-4 zone was appropriate as an
16 apartment zone or not.

17 The 2007 amendments, as I
18 understand it, reiterated that the R-4 zone is
19 not intended to be an apartment zone, that
20 these conversions are allowed for existing
21 structures, which your applicant's is.

22 And it, again, reiterated that the

1 900 square feet was the appropriate minimum
2 for a unit in a building that has been
3 converted to an apartment building.

4 MR. SULLIVAN: How exactly did it
5 reiterate? Did it just say we really like
6 this provision, so we want to keep it going?

7 MR. COCHRAN: I'm sorry, I would
8 have to go back to the OP report on that.

9 MR. SULLIVAN: Isn't it true, in
10 fact, that that case had to do with apartment
11 buildings that existed prior to 1958 and not
12 conversions, because prior to that text
13 amendment, the interpretation was that there
14 was no lot occupancy limit and no unit limit
15 for any building that was an existing
16 apartment building prior to 1958.

17 And all that text amendment did
18 was it said that these provisions are now
19 going to apply to preexisting apartments, just
20 like it applies to conversions. So it was, in
21 a sense, shoring up a loophole for apartment
22 buildings that existed prior to 1958.

1 MR. COCHRAN: Thank you for
2 explaining what I wrote.

3 MR. SULLIVAN: Okay. I'm not sure
4 I understand how that was what you wrote. But
5 did the 2007 text amendment say that this
6 Board didn't have the ability to consider
7 variance relief for a 900 foot role?

8 MR. COCHRAN: Of course not. Of
9 course. We're not suggesting --

10 MR. SULLIVAN: Did the text
11 amendment say that it was more difficult than
12 other areas of variance relief?

13 MR. COCHRAN: No. The test for
14 variance relief is the test for variance
15 relief.

16 MR. SULLIVAN: Thank you. You
17 stated in the report that according to our
18 engineer's report, that it appeared that, you
19 said the applicant has submitted information
20 from a structural engineer that indicate that
21 within the context of other repair needs, the
22 reinsertion of a staircase may be a relatively

1 minor task.

2 My recollection is that structural
3 engineer's report didn't even address the
4 reinsertion of the staircase. So can you tell
5 me how you got that determination from that?

6 MR. COCHRAN: I would be happy to.
7 While there were no estimates of how much it
8 would cost to do the repairs that were
9 necessary, the tone of, no I shouldn't say the
10 tone.

11 When you look at the numbers of
12 things that the applicant is saying need to be
13 addressed in order to shore up the structure
14 of the building, it seems considerable.

15 When you're considering putting in
16 a steel beam or two, and the various other
17 things that the applicant mentions, the cost
18 of putting in the framing out for a staircase
19 seems to be relatively minor compared to the
20 other things that are entailed in the ongoing
21 maintenance costs, or the current needs for
22 the maintenance of the building.

1 MR. SULLIVAN: Okay. So how do
2 you get the opinion that it was a relatively
3 minor expense from the engineer's report.
4 You're just making a judgement on your --

5 MR. COCHRAN: I'm making a
6 judgement, yes.

7 MR. SULLIVAN: Thank you. I have
8 no further questions.

9 CHAIRPERSON JORDAN: You want to
10 ask that question?

11 VICE CHAIRPERSON SORG: Okay. So
12 one of the things, one of the paths that
13 you're just going down with the Office of
14 Planning is kind of interesting, I think.

15 And I'm sure there's at least,
16 like, four lawyers in the room who may also be
17 able to think potentially even more than me
18 about this. But in places in your testimony
19 and your filings, what you're indicating is
20 this is already a three unit building, right?

21 MR. SULLIVAN: That's correct.

22 VICE CHAIRPERSON SORG: Okay.

1 MR. SULLIVAN: It's configured --

2 VICE CHAIRPERSON SORG: Okay, just
3 wait.

4 MR. SULLIVAN: -- internally as a
5 three unit dwelling, yes.

6 VICE CHAIRPERSON SORG: Right,
7 okay. So you're saying this is already a three
8 unit building. What you're coming here for is
9 an area variance.

10 MR. SULLIVAN: That's correct.

11 VICE CHAIRPERSON SORG: And when
12 you're talking about reiterating the 900
13 square feet, that's for converting two units
14 or a single family or other uses into a non-
15 conforming use, in this case, a three unit
16 building.

17 MR. SULLIVAN: We're legally a
18 flat, a two unit flat. That's the legal
19 status of this structure.

20 VICE CHAIRPERSON SORG: Okay. So
21 there's a C of O for a flat?

22 MR. SULLIVAN: Actually, there

1 isn't a C of O. But that's what it operates
2 as. And so it, just like in all the other
3 cases to come before the Board, when there's
4 a preexisting --

5 VICE CHAIRPERSON SORG: That's
6 based on taxes.

7 MR. SULLIVAN: There's what the
8 building exists as and what it's configured as
9 and what it's --

10 VICE CHAIRPERSON SORG: I
11 understand. Why does it not exist as a three
12 unit building where only two units are being
13 used?

14 MR. BRUSKE: You mean legally?

15 VICE CHAIRPERSON SORG: Yes.

16 MR. BRUSKE: Because when I went
17 to the permit office, they said you cannot get
18 a permit to work on three units there because
19 your lot --

20 VICE CHAIRPERSON SORG: That's
21 because you requested to establish three
22 units.

1 MR. SULLIVAN: Our C of O for
2 rooming house was 1966. So the assumption
3 would be that sometime after 1966 and prior to
4 1987, somebody created a third unit.

5 VICE CHAIRPERSON SORG: Yes.

6 MR. SULLIVAN: There's evidence
7 that perhaps it was a single family house
8 before it was a rooming house. We don't know
9 what it was configured as a rooming house.

10 But after it was a rooming house,
11 it was most likely reconfigured into its
12 current --

13 MR. BRUSKE: The man I bought it
14 from, in the late '70s, 1980 had obtained a
15 permit to build the flat.

16 VICE CHAIRPERSON SORG: Okay.

17 MR. BRUSKE: And I believe what he
18 did at that time was he just took out the
19 stairway to the basement, built a vestibule to
20 create first floor, second and third floor
21 units, and basement unit, but he never had a
22 permit for it.

1 VICE CHAIRPERSON SORG: Okay. I'm
2 trying to, you know, you get where I'm sort of
3 trying to look at.

4 CHAIRPERSON JORDAN: I'm trying to
5 get where you need to be.

6 MR. SULLIVAN: That's why I wanted
7 to go from the beginning and do the
8 presentation based on 17991 because it was
9 very clear to them that --

10 CHAIRPERSON JORDAN: But it's not
11 clear to us, and we did step through that with
12 you, Mr. Sullivan.

13 MR. SULLIVAN: An exceptional
14 condition is --

15 CHAIRPERSON JORDAN: And that was,
16 again, what Office of Planning has done, but
17 not what this Board, we don't know what this
18 Board considered since we had a summary
19 opinion.

20 And we did step through this
21 analysis with you, your comparison. You had
22 the opportunity, you did do that. And we

1 still have questions. So it may be clear to
2 you, it's not as clear to us.

3 MR. SULLIVAN: Okay.

4 CHAIRPERSON JORDAN: But, you
5 know, if you want to --

6 MR. SULLIVAN: Can we go through,
7 would it be helpful to go through, step by
8 step, my handout?

9 CHAIRPERSON JORDAN: Well, I asked
10 you did you want to present anything else, and
11 I thought that you were done. So let me
12 finish. You can do that in your rebuttal
13 phase.

14 Is there anyone from ANC?
15 Department of Transportation, have they
16 submitted a document? I don't think they did,
17 did they? Department of Transportation?

18 No, we do have a letter. Is ANC
19 1B here? Then we do have a letter from ANC 1B
20 voting in support, however we can't give great
21 weight to since it doesn't meet the
22 requirements for granting great weight from my

1 review of the letter.

2 Is there anyone here wishing to
3 testify in support of this application? Is
4 there anyone here wishing to testify in
5 opposition to the application?

6 Then Mr. Sullivan, do you want to
7 present your rebuttal, your additional
8 discussion?

9 MR. SULLIVAN: Thank you. I have
10 a question about the ANC 1B report. I'm
11 puzzled why it's not valid.

12 CHAIRPERSON JORDAN: Well, you
13 want to tell me why it is valid for bearing
14 great weight?

15 MR. SULLIVAN: Sure. It's signed
16 by the Chair and it notes that it was at a
17 regularly scheduled meeting with a quorum.

18 CHAIRPERSON JORDAN: Okay, it does
19 say a quorum.

20 MR. SULLIVAN: And it was
21 unanimously voted to support the application.

22 CHAIRPERSON JORDAN: I stand

1 corrected. We will give it great weight.

2 Yes, we just got it and I didn't see that.

3 All right, thank you.

4 MR. SULLIVAN: Thank you. I'll
5 just go briefly through my handout in this
6 side by side analysis. And I used 17991 as a
7 model because it was the only case I know of
8 where the Office of Planning supported this
9 variance relief.

10 And yes, it was a Summary Order, I
11 could provide parts of the transcript. But it
12 essentially referred to the transcripts then,
13 too. And it referred and deferred to OP's
14 reasoning on that.

15 CHAIRPERSON JORDAN: Let me offer
16 this as help for you. I don't know if this is
17 going to be helpful for you to say that this
18 is something that mirrors our particular
19 action in this matter.

20 You can continue to make the
21 argument, but we're asking you to build this
22 up independently with this Board, if you

1 would.

2 MR. SULLIVAN: Okay.

3 CHAIRPERSON JORDAN: I don't know
4 if you can use this as any type of precedence
5 for what this Board's action is because one,
6 it was a Summary Order by this Board.

7 There could have been a lot of
8 other discussions going on and all other kind
9 of reasons, and I don't know, based upon a
10 Summary Order, what this Board actually laid
11 its hat on in this decision to set any level
12 of precedence. So I just want to offer that
13 to you as a suggestion in your argument.

14 MR. SULLIVAN: Thank you. And I'm
15 not calling a precedent, I'm calling it a
16 blueprint because I think it makes sense.

17 And some of the things that Office
18 of Planning looked at in that case was that
19 after the rooming house use was in effect, the
20 building was then illegally converted to a
21 three unit apartment house by a previous
22 owner, and then purchased by the applicant.

1 That was considered to be an
2 exceptional situation or condition. And I
3 believe that's true in this case, as well. In
4 1987, when he purchased it as three separate
5 units, he then had a property that was subject
6 to an exceptional condition or situation as a
7 result of the previous owners converting that
8 to three units and him believing.

9 And this was something that was
10 present in the Board's transcript, it was
11 critical the fact of his knowledge that he
12 believed he was purchasing three units without
13 knowledge of it not being legal.

14 And those three units existed for
15 the last 25 years. The practical difficulty
16 is in using, being able to use that space
17 effectively. To be legal and to comply with
18 the strict zoning regulations, you need to
19 combine the basement level and the first
20 level.

21 That's unnecessarily burdensome.
22 And that's what our architect's testimony went

1 to. And we're happy to provide financial
2 information specifically about all the costs
3 involved in doing that.

4 The other practical difficulty
5 that was mentioned by OP in the other case,
6 and I think is present in this case is that
7 you're creating a two story, 1,900 square foot
8 unit.

9 And we can submit information on
10 that, although I think that kind of
11 information's been submitted many times and
12 it's in the Office of Planning report here
13 that we're submitting that there's very few
14 units of such a large size in an apartment
15 house area such as this.

16 Regarding the substantial
17 detriment to the zone plan or the public good,
18 I think the Office of Planning did comment
19 that there is no substantial detriment to the
20 public good.

21 Regarding the zone plan, I would
22 just add that the comp plan, land use category

1 here is possibly even medium density
2 residential, which supports large apartment
3 buildings. It's on the border and straddling
4 the moderate density and the medium density.

5 And it's also surrounded by
6 apartment houses. So for that reason, and
7 because, and this is why I'm presenting 17991,
8 it's in line with another decision and it's in
9 line with rationale where Office of Planning
10 has said in their report, we don't like this
11 variance, we don't hardly ever support it.

12 But this is one of those cases
13 where we will. And since this is a similar
14 case, this I believe is also a unique case
15 that doesn't impact the zone plan negatively
16 for that reason.

17 And that's all I have. We're
18 happy to submit financial information or
19 market information.

20 CHAIRPERSON JORDAN: Does the
21 board have any other questions of --

22 VICE CHAIRPERSON SORG: Sorry.

1 CHAIRPERSON JORDAN: No, go ahead
2 then.

3 VICE CHAIRPERSON SORG: Okay. One
4 question. Just if you wouldn't mind
5 repeating, Mr. Bruske. You said that when the
6 previous owner sold you the house, they had
7 obtained the building permit, I guess, for two
8 flat unit and had kind of abandoned the
9 basement.

10 That was what you, I think, just
11 testified to. And you should correct me if
12 I'm wrong because that was my understanding of
13 your testimony.

14 MR. BRUSKE: No. I started to do
15 some, after meeting with Mr. LeGrant, went to
16 the archives to see what they had. And for
17 the first time, saw that the previous owner
18 had taken out a permit, I believe it was late
19 '70s, early '80s.

20 And I conjectured from what he was
21 doing that he went ahead and created the flat,
22 but also took out the stairs to the basement

1 and created apartment down there with all the
2 plumbing and kitchen, all that stuff, even
3 though he didn't have a permit.

4 VICE CHAIRPERSON SORG: And that
5 was there when you found it, all the --

6 MR. BRUSKE: Yes, and like I --

7 VICE CHAIRPERSON SORG: -- fit out
8 of the basement was there when you found it?

9 MR. BRUSKE: Yes it was. I was
10 able to live there. And --

11 VICE CHAIRPERSON SORG: In a
12 camping type --

13 MR. BRUSKE: -- like I said, it
14 was a little bit like camping out. But it
15 was, you know, habitable. It just was not in
16 any condition.

17 It was so substandard, it was not
18 something that I, you know, would ever feel
19 comfortable renting to anyone. And in fact,
20 it really needed to be removed.

21 MR. HOFFLAND: I would just add
22 briefly here, since I did a lot of work with

1 Ed trying to determine the use and what we
2 could do to renovate this, that there is a
3 document, home inspection report from 1987
4 when he purchased it that states it as a three
5 unit building.

6 So when I was looking through,
7 there's no obviously legal record of a three
8 unit building, but it shows in the home
9 inspector's report as a three unit. And there
10 are three separate meters for it as well.

11 So I think that only supports the
12 fact that it was assumed to be a three unit
13 when you purchased it.

14 MR. BRUSKE: Yes, actually there
15 were two or three home inspection reports from
16 prior to when I arrived that all, you know,
17 said it was a three unit building with
18 separate meters. So there wasn't any
19 question.

20 CHAIRPERSON JORDAN: Mr. Cochran?

21 MR. COCHRAN: This is in response
22 to Mr. Sullivan's question earlier about the

1 case on North Capitol Street. It appears from
2 looking at the information you submitted that
3 there is a significant difference between the
4 two.

5 For North Capitol Street, that was
6 a recent purchase on the part of the
7 applicant. Admittedly, the applicant had an
8 obligation to make sure that every piece of
9 information presented by the realtor that sold
10 it to him was correct.

11 I don't know whether the applicant
12 did or not. But it could have been sort of a
13 whoops, didn't know that kind of a situation.
14 Your client has had 25 years of owning this
15 house, and has been aware for some time that
16 it didn't have a permit to do three units.

17 Your client is working on the
18 assumption that there's a right to use the
19 basement. That there's a right to use the
20 house for its maximum economic return.

21 Your filing actually says that
22 absent the reconversion of the basement into

1 a residential unit, there would not be, and I
2 quote, "any corresponding material economic
3 benefit to mitigate restoration and
4 maintenance costs."

5 Now that's what I had a very
6 difficult time finding anything in the zoning
7 regulations that entitle an applicant to an
8 economic return on maintenance.

9 CHAIRPERSON JORDAN: Mr. Cochran,
10 let me end that. I thought we were just going
11 to -- that's not the basis of where we need to
12 have that argument. And we're going to close
13 this hearing based upon the record that we
14 have --

15 COMMISSIONER COHEN: Mr. Chairman?

16 CHAIRPERSON JORDAN: Yes?

17 COMMISSIONER COHEN: I have one
18 other statement, though, or question.

19 CHAIRPERSON JORDAN: Certainly.

20 COMMISSIONER COHEN: I would like
21 to see more market information. And the
22 reason why, this is a very mixed neighborhood.

1 And I think some of the things you have said,
2 you know, I'm evaluating, digesting.

3 But there are very few units of
4 1,900 square feet for a family in that
5 neighborhood, especially immigrant families.
6 One of the things that the District lacks are
7 larger units for families.

8 And again, I don't know this
9 market. I don't know what rents are. But I
10 just think we need to have a better
11 understanding and grasp with regard to that.

12 CHAIRPERSON JORDAN: And Ms.
13 Cohen, what I was going to say as we close
14 this hearing, the record will remain open for
15 you to submit one, financial data of what the
16 cost of doing the work that you talked about.

17 We need to have the marketability
18 analysis presented to the board in this
19 regard. And is there anything else that the
20 board feels that they need?

21 MR. BRUSKE: Well, I would just
22 like to --

1 CHAIRPERSON JORDAN: Wait a
2 second. Ms. Sorg?

3 VICE CHAIRPERSON SORG: Yes. What
4 I had mentioned was cost estimates, the you
5 know, market information, rental information,
6 as well as the existing conditions.

7 And I think any of those, you
8 know, if you're mentioning inspection reports
9 or any of those things. I mean, you never
10 know. You know, I think if you leave it
11 fairly open, it might be of a benefit. I
12 don't know. Back to you.

13 CHAIRPERSON JORDAN: Yes, because
14 I just don't want to open the door to a whole
15 bunch. But those are the things that we have
16 this record open.

17 And if there's something else, you
18 can certainly petition the Board to submit it
19 and submit it and ask for leave, and we will
20 deal with that. Okay, then lets -- yes?

21 MR. BRUSKE: I just wanted to
22 interject very briefly a couple of things.

1 First, we welcome families in our building.
2 In fact, we've had three children in there,
3 and actually one baby born in the first floor
4 apartment.

5 And our most recent tenant also
6 has a toddler that was born while they were
7 there. So that's not an issue.

8 And I just want to, again, sort of
9 object to the notion that we've had these
10 deferred maintenance issues, which is why we
11 want to build an apartment to pay for them.

12 We just don't operate that way.
13 As I said before, these are structural issues
14 that came to light at the engineer's visit a
15 year and a half ago.

16 We know we have to take care of
17 them, but regardless, I mean the question is,
18 is that basement going to be put to good use,
19 or not? I think that's where we are with it.

20 CHAIRPERSON JORDAN: Okay. So --

21 MR. SULLIVAN: And in response to
22 what Mr. Cochran said --

1 CHAIRPERSON JORDAN: We're not
2 going to have any more response at this point.
3 I've already closed at this point. I'm not
4 going back and forth anymore. Thank you.

5 Mr. Moy, do we have a date in
6 which we can put this on for any more
7 testimony? Let's go for a decision date,
8 then.

9 MR. MOY: Decision date. The
10 decision date in December, Mr. Chairman is in
11 the afternoon of December the 18th.

12 CHAIRPERSON JORDAN: Will that be
13 enough time for you? December 18th is enough
14 time for you to get all that?

15 MR. SULLIVAN: I don't think so.

16 CHAIRPERSON JORDAN: Let's have
17 another date, Mr. Moy.

18 MR. MOY: Different date?

19 CHAIRPERSON JORDAN: Yes, please.

20 MR. MOY: A later date. Okay,
21 well that puts us into 2013. We already have
22 a special public meeting on the morning of

1 January the 8th. Other than that, then --

2 CHAIRPERSON JORDAN: What's wrong
3 with the 15th? What do we have on the 15th?
4 On that day we already have a case on the
5 15th?

6 MR. MOY: December 15th again?

7 CHAIRPERSON JORDAN: January 15th.

8 MR. MOY: Oh, oh. That works.
9 One, two, three, this would be the fourth
10 decision on --

11 CHAIRPERSON JORDAN: Okay, that
12 makes sense. Thanks.

13 MR. MOY: -- January 15th.

14 CHAIRPERSON JORDAN: January 15th,
15 Mr. Sullivan.

16 MR. SULLIVAN: Yes, that's fine
17 with us. When would be the date for
18 submitting additional information, then?

19 CHAIRPERSON JORDAN: Mr. Moy, what
20 date do you need that so it can get to the
21 Board? Probably by the 9th is it?

22 MR. MOY: Yes, give me a second,

1 let me pull up my calendar.

2 CHAIRPERSON JORDAN: No, probably
3 the 8th.

4 MR. MOY: Let's see. December,
5 January 15th. Assuming this is only requests
6 for filing into the record, staff would
7 suggest if do-able with the applicant, Monday,
8 January the 7th.

9 MR. SULLIVAN: Yes, that's fine
10 for us. Thanks.

11 CHAIRPERSON JORDAN: All right,
12 thank you.

13 MR. MOY: Would that include any
14 supplemental from the Office of Planning, sir?
15 Yes, no?

16 CHAIRPERSON JORDAN: That means
17 Planning would need to see it before then.
18 Yes, so can we do it that Friday and then
19 maybe get something from planning?

20 MR. MOY: Okay, so if the
21 applicant can file, lets say that Friday which
22 would be January the 4th?

1 MR. SULLIVAN: Yes, that's fine.

2 Thanks.

3 MR. MOY: And the Office of
4 Planning, if they could file, like, two or
5 three days? Okay, let's make it Wednesday the
6 9th. Wednesday, January 9th for OP.

7 So once again, Mr. Chairman, it's
8 a decision on Tuesday, January 15th.
9 Applicant to file by Monday, January the 7th,
10 Office of Planning to do a supplemental report
11 by Wednesday, January 9th.

12 CHAIRPERSON JORDAN: All right,
13 thank you. Then let's conclude this hearing.

14 MR. SULLIVAN: Thank you.

15 CHAIRPERSON JORDAN: Thank you.

16 MR. MOY: The next application
17 before the Board, then, would be Application
18 number 18448. This is the application of 3579
19 Warder Street, LLC.

20 Pursuant to 11 DCMR 3103.2, this
21 is for a variance from the lot area
22 requirements under Subsection 401.3 to allow

1 the conversion of a rooming house into a four
2 unit apartment building in the R-4 District at
3 premises 1221 Otis Place, Northwest. Property
4 located Square 2829, Lot 57.

5 And I believe in this application,
6 Mr. Chairman, there's a request for party
7 status under Exhibit number 27 and 28.
8 Exhibit 28 being a waiver of the time
9 requirements, I believe.

10 VICE CHAIRPERSON SORG: I'm good,
11 I think.

12 MR. MOY: While there's a pause,
13 Mr. Chairman, the Zoning Office is in receipt
14 of a letter, a report from ANC 1A at 11:57 to
15 be exact.

16 CHAIRPERSON JORDAN: Okay, let's
17 deal with the party status issue first.
18 There's a motion to waive the time in the
19 party status. Mr. Wolfberg? Well, first let
20 me have the persons at the table identify
21 themselves for us, please.

22 WHEREUPON,

1 ELIAS WOLFBERG

2 was called as a witness for the Applicant and,
3 having been first duly sworn, assumed the
4 witness stand, was examined and testified as
5 follows:

6 MR. WOLFBERG: Mr. Chairman and
7 members of the Board, my name is Elias
8 Wolfberg. I live at 3601 13th Street. And my
9 property abuts the property that we are all
10 here to talk about.

11 CHAIRPERSON JORDAN: When you use
12 the term abut, what do you mean?

13 MR. WOLFBERG: The rear of my
14 property, sorry, looks out on the side of his
15 property. And so that sidewall on the left --

16 CHAIRPERSON JORDAN: So that's why
17 it's a different street name?

18 MR. WOLFBERG: Correct, yes.

19 CHAIRPERSON JORDAN: Okay, all
20 right. Got it, okay. Yes, all right.

21 WHEREUPON,

22 RICHARD KLUGMAN

1 was called as a witness for the Applicant and,
2 having been first duly sworn, assumed the
3 witness stand, was examined and testified as
4 follows:

5 MR. KLUGMAN: My name is Richard
6 Klugman, 3603 13th Street, Northwest. And
7 obviously, my property is next to Elias's and
8 is to the left of the photograph. Sorry, over
9 there.

10 CHAIRPERSON JORDAN: Okay. All
11 right, Ms. Molderhauer?

12 WHEREUPON,

13 MEREDITH MOLDERHAUER
14 was called as a witness for the Applicant and,
15 having been first duly sworn, assumed the
16 witness stand, was examined and testified as
17 follows:

18 MS. MOLDERHAUER: Good morning, my
19 name is Meredith Molderhauer from Griffin and
20 Murphy. I am here representing the Applicant
21 in this case, which is 3579 Warder Street,
22 LLC.

1 On the applicant's behalf today we
2 have Mohammed Pishvaeian, represented also
3 James Killette representing a James Klutten
4 Associate which is the architect for the
5 project.

6 I believe there are a few
7 different preliminary matters.

8 CHAIRPERSON JORDAN: Go ahead.

9 MS. MOLDERHAUER: One of them is
10 the preliminary matter of just clarifying that
11 Mr. Wolfberg is the individual that applied
12 for the party status.

13 I am understanding, obviously, Mr.
14 Klugman may be a witness, but that it's not --

15 CHAIRPERSON JORDAN: I only have
16 Mr. Wolfberg's. That's what my assumption
17 was.

18 MS. MOLDERHAUER: I just want to
19 make sure that that's clarified for the
20 record. In addition to that, I don't know if
21 the Board or if Mr. Wolfberg has already
22 presented it to the board, but there was a

1 submission that Mr. Wolfberg was going to
 2 provide in addition to supplement his party
 3 status. And I think that might be an issue as
 4 well, as a preliminary matter.

5 CHAIRPERSON JORDAN: What do you
 6 mean, other than the waiver of time? What are
 7 you referring to?

8 MR. WOLFBERG: Well, so we have a
 9 brief that we would like the Board to
 10 consider. It was completed last night, and
 11 there are copies for the Board that I
 12 presented earlier.

13 CHAIRPERSON JORDAN: Hold that,
 14 Mr. Moy. Go ahead, finish please.

15 MR. WOLFBERG: Yes, and as I am
 16 representing myself and Richard is
 17 representing himself pro se, putting together
 18 this brief unfortunately took longer than we
 19 had hoped.

20 We think it's a solid, strong
 21 brief which is compelling and chock full of
 22 important and material information. But

1 unfortunately, I was unable to present this to
2 you, nor to opposition counsel prior to this
3 hearing.

4 I would hope that you would still
5 consider the information that's contained in
6 the brief, even though you're only now
7 receiving it.

8 And I guess also very relevant is
9 the fact that we include Exhibits that help,
10 we think, prove our case. They certainly
11 support our points.

12 CHAIRPERSON JORDAN: Well, so you
13 can make that, if we grant you party status,
14 then you can make that part of your case, is
15 that what you're saying?

16 MR. WOLFBERG: Right. Correct.

17 CHAIRPERSON JORDAN: Now let's go
18 back to the waiver of time issue because you
19 were not timely in filing your request for
20 party status.

21 MR. WOLFBERG: That is correct. I
22 filed it 12 days prior to this hearing, and I

1 should have filed it 14 days prior to this
2 hearing.

3 I will point out that the
4 applicant did not post that orange sign on his
5 front door but for 13 days prior to this
6 hearing.

7 And so it took me 24 hours to sort
8 of focus on the fact that this was the day
9 that the hearing was occurring, and then to
10 submit my application to appear here before
11 you. Again, this is the first time that I
12 have appeared before the Board.

13 And so I recognize that I was
14 tardy by 48 hours, and I would hope though
15 that considering the interest that I have,
16 considering the interest that Richard have,
17 that you would still certainly allow me and
18 hopefully Richard as well, to appear as party
19 opponents.

20 MS. MOLDERHAUER: Chairman Jordan,
21 I would just like to kind of respond to that.

22 CHAIRPERSON JORDAN: Yes, I was

1 going to ask you a question about that.

2 MS. MOLDERHAUER: We do not oppose
3 party status in this case. Obviously the
4 Board can make their own determination, but I
5 want to make sure that's clear, we do not
6 oppose it.

7 However, I would like to clarify a
8 couple issues. As presented to the Board, we
9 did have a meeting, the applicant did meet
10 with both gentlemen in October, middle of
11 October to try to see if they couldn't resolve
12 the issues and very clearly discussed the
13 issues and let them know about the different
14 dates that were coming up.

15 We then provided an email copy to
16 both individuals of the supplemental filing as
17 at the time, which our firm actually formally
18 became representing the applicant, because
19 this case was actually filed in July when we
20 were not representing the applicant.

21 Both parties attended the ANC
22 meeting and presented, you know, their

1 opposition to that case, as well. And I just
2 want to make one other point is that Mr.
3 Wolfberg indicated that he's never been before
4 the Board before, but he has. You said you
5 never appeared before the Board?

6 MR. WOLFBERG: Yes.

7 MS. MOLDERHAUER: Okay. But I
8 just want to make sure that the clarification
9 is that actually Mr. Wolfberg has had a case
10 before the Board wherein his property actually
11 received relief and, you know, he did an
12 addition to his property as well as Mr.
13 Klugman received relief from a two unit to a
14 three unit flat property.

15 So they both understand the
16 process very well, and they're both attorneys
17 by practice, maybe not in this area. I got
18 it, not in this area, I know and I understand
19 that.

20 But I'm just putting that on the
21 record. Again, we do not formally oppose the
22 party status, though. That concludes my

1 remarks.

2 MR. WOLFBERG: Yes look, that is
3 all accurate. And I did receive a copy of the
4 applicant's brief. I practice as an attorney.
5 I've had a lot of things that I've had to do
6 and so I was not able to focus and spend time
7 until more recently.

8 And so, but considering the
9 interest that we have, I hope that form over
10 substance won't rule out your --

11 CHAIRPERSON JORDAN: All right.
12 Thank you for the clarification, because I was
13 a bit concerned about that aspect of
14 communication and I think we've been just a
15 little bit moving in our request for leave to
16 file late. But we will allow you to be a
17 party opponent.

18 MR. WOLFBERG: Thank you.

19 MS. MOLDERHAUER: Now I believe,
20 Mr. Jordan, is the question of the admission
21 of the late written brief?

22 CHAIRPERSON JORDAN: No, no. We

1 have a posting issue.

2 MS. MOLDERHAUER: Okay, yes, that
3 as well.

4 CHAIRPERSON JORDAN: And I read
5 your brief, and we will accept your affidavit
6 posting.

7 MS. MOLDERHAUER: Thank you.

8 CHAIRPERSON JORDAN: Now, the
9 written brief I have not had a chance to
10 review it and we're not going to accept that
11 in the record until you actually go through
12 it.

13 And if you can do a presentation
14 from it and use it that way because otherwise,
15 the opponent hasn't had a chance to properly
16 research and respond to it and et cetera.

17 And we're just not going to do it.
18 And that's late on top of it being late on top
19 of the other stuff being late on top of being
20 late.

21 MR. WOLFBERG: Fair enough.

22 CHAIRPERSON JORDAN: So it's just

1 a lot of late. Okay? So let us then move --
2 yes, Ms. Sorg?

3 VICE CHAIRPERSON SORG: I just
4 have one question. So you accepted Mr.
5 Wolfberg as the party opponent. Mr. Kluberg
6 is an individual?

7 CHAIRPERSON JORDAN: We have no
8 request for party status, and --

9 VICE CHAIRPERSON SORG: Just want
10 to clarify they've, you know, putting
11 themselves together. But I want to understand
12 how you want to proceed.

13 MR. WOLFBERG: Just as a
14 clarification over here, can Richard speak as
15 an interested --

16 CHAIRPERSON JORDAN: As a party in
17 opposition, if that's what you're here for.
18 Or party in support if you wish to. Either
19 way.

20 MR. WOLFBERG: Okay. And just one
21 further clarification. Considering the
22 tardiness of the brief that I have provided

1 you all, and also considering the fact that I
2 think it really does contain some very, I
3 mean, I obviously think this contains strong
4 legal arguments, that would counter the
5 applicant's legal argument.

6 Is the only way that it will be
7 read into the record if I read that, which
8 it's approximately 12 pages, and while
9 scintillating --

10 CHAIRPERSON JORDAN: No, no. We
11 want you to do a presentation from it, then
12 we'll decide how we handle it.

13 MR. WOLFBERG: Yes, okay, great.
14 Okay, thank you.

15 CHAIRPERSON JORDAN: Okay. Where
16 are we now? Who's on first?

17 MS. MOLDERHAUER: I believe we are
18 prepared to start our presentation. However,
19 I do want to identify just one new preliminary
20 matter.

21 We have reviewed, between 9:30 and
22 I think unfortunately now 12 o'clock, the

1 submission that Mr. Wolfberg was going to
2 present to the Board, and will obviously
3 articulate during his opposition.

4 In that, he legally, you know,
5 there are a lot of legal issues that are not
6 specifically germane to this case in regards
7 to claims of self created hardship, which as
8 the Board knows, is not relevant or does not
9 bar an area variance based on multiple years
10 of Court of Appeals case precedent including
11 ALW.

12 But in addition to that, they do
13 identify a potential question mark in regards
14 to the lot occupancy of the property. And as
15 the Board is aware from kind of the timing of
16 the filing, you know, I was not the attorney
17 of record in this case until October.

18 And so this morning, again between
19 9:00 and 12:00, we reviewed that. And we, you
20 know, took a look at it.

21 And we do believe that based on
22 reviewing the record and the architect, Mr.

1 Killette can kind of identify where there may
2 have been a discrepancy in regards to the
3 calculation, but the calculation initially, in
4 the self certified application was based on
5 the internal measurements when you're doing a
6 marketing analysis.

7 So measuring the walls from
8 interior wall to interior wall, not measuring
9 the exterior brick. And from again, you know,
10 very quick analysis this morning, we do
11 believe that the project, that the statements
12 in regards to the square footage on the
13 property are not 54 percent, but rather the
14 existing condition is higher than that and
15 over 60 percent.

16 Now, that being said, that would
17 require additional relief, but that relief we
18 don't believe is requiring any additional
19 notice since it's still an area variance and
20 all the plans submitted would be plans based
21 on the same project that has always been in
22 existence.

1 And that has been presented to the
2 neighborhood, and presented to the Board in
3 this submission. And also is the, you know,
4 project that the parties in opposition have
5 seen.

6 We will go through the exact
7 numbers kind of as we go forward, but I just
8 wanted to make sure that that's on the record
9 and that the Board does know that we are
10 requesting a amendment to our self certified
11 application to modify the relief in that
12 regard.

13 The relief is from obviously
14 2001.3 for a non-conforming structure as it
15 currently exists under 403 for lot occupancy.
16 The project currently with the rear deck has
17 a 65.5 percent lot occupancy.

18 So we're talking about a 5.5
19 percent deviation from lot occupancy. The
20 applicant will explain, and so will the
21 architect, as they testify they will explain
22 that there is the opportunity, potentially, to

1 remove the deck and make the property more
2 conforming at the 61.5 percent lot occupancy,
3 which would be under the two percent deviation
4 permitted by the Zoning Administrator in
5 Section 407.

6 So that would be the potential
7 option. However, we would like to continue at
8 the Board's, you know, deference to simply
9 modify the application as it exists today
10 based on the current plans asking for the
11 additional relief.

12 CHAIRPERSON JORDAN: You're here
13 now.

14 MR. WOLFBERG: I would like to
15 object to that request.

16 CHAIRPERSON JORDAN: On what
17 basis?

18 MR. WOLFBERG: Pardon me?

19 CHAIRPERSON JORDAN: Your
20 objection, why is that?

21 MR. WOLFBERG: Well unfortunately,
22 this is not my practice area, but that strikes

1 me that if she is seeking to modify something
2 that has been presented not only to us but to
3 the public, that is a material change to the
4 application.

5 It also raises questions about
6 some of the factual statements that are
7 included in the entire brief. And I think
8 this is one of those things where I would
9 certainly like the opportunity to do research
10 into how it could --

11 CHAIRPERSON JORDAN: Thank you.
12 Your objection is overruled. We will accept
13 the modification. The amendment --

14 MS. MOLDERHAUER: In that regard,
15 I'm going to turn to the applicant to start
16 his presentation.

17 CHAIRPERSON JORDAN: Let me first
18 check with the Board to see if there is, what
19 particularly we may need just so you can
20 hammer in. But I don't want to stop your
21 presentation.

22 Anything we want to be sure that

1 we hear from the applicant before? Well,
2 certainly we're hitting the parking issue. I
3 guess there's not an argument being made about
4 the peace and enjoyment issue. No that's just
5 raised in the opposition. Okay, just please
6 go forward. Go ahead, please.

7 MR. PISHVAEIAN: Good afternoon
8 Mr. Jordan, Mr. Hinkle, Mrs. Sorg, Mrs. Cohen.
9 My name is Mohammed Pishvaeian. I've been
10 here at the Board in front of you before.

11 I'm 57 years old. I'm a
12 developer. I'm developing in this instance
13 2004. I have developed over 41 homes and over
14 \$16.5 million of sales. I've been through all
15 areas in Southeast and Anacostia and Northwest
16 and Northeast.

17 The location of this property is
18 on 1221 Otis. It's right on the conjunction
19 of 13 and Otis, one block away from 14th
20 Street, eight tenths of a mile from metro.
21 It's in zoning map R-4 zone.

22 CHAIRPERSON JORDAN: Let me help

1 kind of we can direct this. If you would get
2 to the various requirements for the relief.
3 I don't need the tour.

4 Just get us to the requirements of
5 relief because I think there's a lift there,
6 and you need to spend time lifting us.

7 MS. MOLDERHAUER: We're jumping
8 into that right now. Going to the facts of
9 the needs of the case.

10 MR. PISHVAEIAN: These two
11 pictures are showing that the picture of the
12 property on the left hand side, that when I
13 purchased the property on July 20th, it was a
14 rooming house.

15 And the picture is showing that
16 this is the way it's standing right now here.
17 The bricks are loose and they can fall out.
18 On this side, this is an end unit, and we have
19 this problem at end units, usually when the
20 joists are sitting inside the walls after so
21 many years, they put pressure on the end
22 unit's wall.

1 So we had to go through. All we
2 had was a demolition permit, but we went
3 through and we repointed all the bricks and we
4 put primer so it would hold it off.

5 We had to take out all the
6 interior walls off because of the weight that
7 it's putting on the joists. So the sooner we
8 can release the pressure from the exterior
9 wall, which is again, the end unit, the sooner
10 we can come back and we actually put bolts
11 between the walls on different parts, about 12
12 different parts to hold it up.

13 Then the second picture on the
14 right hand side that you see, this is the
15 property. And Mr. Wolfberg's property is this
16 here. This is his third floor looking at the
17 side of this. Mr. Klugman is next to him on
18 the other side.

19 This is the back of the property.
20 This is just a stairway's coming out from the
21 top to here, and then walking from back here
22 to downstairs.

1 There are two legal parking space
2 here in the backyard. And this is the back
3 alley, and this is the side wall that you saw
4 from the other picture.

5 These are just the neighbors on
6 14th Street and rooming houses. I mean, I'm
7 sorry, apartment buildings. These are the
8 interior pictures of the property.

9 When I bought the property, it
10 looked like this. And you can see the
11 deterioration in the walls, in the ceilings
12 and the joists and the rain that it was coming
13 through the property.

14 Again, this was a rooming house,
15 and it has not been repaired for many, many
16 years. You still have a strong odor of sewer
17 inside the property that we haven't touched.

18 But basically, the plumbing and
19 electricity and everything else has been
20 gutted out. So we can removed everything so
21 we can stop the deterioration of the wood and
22 plywood from the rain coming in and basically

1 make it lighter.

2 So the only thing that I want to
3 mention here is the profit and loss statement
4 is submitted, and it's included. And it shows
5 all the cost comparisons for each relief
6 required.

7 And I understand the OP
8 recommended for three units, unfortunately.
9 Three units is not financially feasible based
10 on the investment and the time and risk.

11 I purchased the property last
12 July. And by the time it will be finished and
13 will be sold, it will be a year and a half
14 project.

15 Carrying costs alone would not
16 give me enough margin to stand on three units
17 if I can't sell one unit and I just have to
18 carry it for extra seven, eight months.

19 The last thing is I have 28
20 letters of support that I went to the
21 neighbors one by one, and I had them read the
22 letters and support it if they were for the

1 support of development.

2 And we have the ANC support that
3 we went through the ANC and we had our case
4 presented.

5 MS. MOLDERHAUER: At this point in
6 time, we can turn over to the architect.
7 Okay, so Mr. Killette?

8 CHAIRPERSON JORDAN: Well, we
9 still just really need to get to the basis of
10 the relief. Whatever you feel is comfortable
11 to get us.

12 MR. KILLETTE: James Killette.
13 1221 Otis Place is an existing two story
14 structure with a cellar to be converted from
15 a rooming house to four units.

16 Each unit will house two bedrooms,
17 two full baths with an open living room,
18 dining room area with laundry and utility.
19 There are two legal parking spaces.

20 And the elevations show the third
21 floor addition per the ANC meeting, a cone
22 roof was added to the bay area. The existing

1 floor plans show the rooming house layout with
2 bedrooms and a bath.

3 And the proposed layout shows,
4 which is typical of a two bedroom, two bath
5 with open kitchen. And the third floor
6 addition, as well.

7 MS. MOLDERHAUER: Board members,
8 the relief that we're seeking is to convert a
9 existing Certificate of Occupancy property
10 that has the ability to be a rooming house
11 based on its C of O for an 11 bedroom C of O
12 rooming house to a four unit apartment
13 building.

14 The crux of this case is that
15 there are, as past cases in which the Board
16 has found that a rooming house is unique in
17 the fact that the ability to continue that use
18 is challenging based on the current dichotomy
19 and contacts for neighborhoods.

20 And in addition to that, the
21 additional cost associated with the fact that
22 most rooming houses, as testified by the

1 applicant, based on the extended levels of
2 deferred maintenance and the extensive wear
3 and tear that is incurred by that type of use,
4 creates additional costs which create a
5 practical hardship, a practical difficulty for
6 the applicant.

7 And here we are, I think, based on
8 the testimony and the submissions that we've
9 presented to the Board, previously both in the
10 initial submission and the supplemental that
11 there is there is a confluence of factors
12 based on the deteriorated structure based on
13 unnecessary walls and unconventional layout,
14 that it creates an economic infeasibility.

15 We have not relied upon
16 generalities, rather but provided a specific
17 cost basis analysis and cash flow report to
18 the Board, which shows, as the applicant
19 testified, that a three unit project creates
20 challenges for financial feasibility based on
21 the diminimous perspective.

22 CHAIRPERSON JORDAN: Okay, but

1 that I have some concerns about because I see
2 where three units with the existing floor
3 plan, with no additional floors rather, is a
4 profitable operation.

5 MS. MOLDERHAUER: I would not call
6 that --

7 CHAIRPERSON JORDAN: It's not
8 maximizing your money --

9 MS. MOLDERHAUER: And it's not a
10 question of maximizing. And the Board has, in
11 other cases, you know, found that that amount
12 of profit is not a profit or is not reasonable
13 or is not viable in other cases.

14 And in that situation, as is here,
15 you know, to take an investment based on the
16 time of risk and invested opportunity, you're
17 talking about something that is less than a
18 1.5 percent return, which is equivalent to
19 what you would get in your bank account.

20 CHAIRPERSON JORDAN: Is that what
21 \$64,900 --

22 MS. MOLDERHAUER: It's equivalent

1 to about a 1.5 percent return.

2 CHAIRPERSON JORDAN: Okay.

3 MS. MOLDERHAUER: And so you're
4 not, you know, we're not looking to maximize
5 the return. We're looking to simply do what
6 is potentially viable. And I believe that's
7 what the numbers show.

8 COMMISSIONER COHEN: Is the
9 property owned free and clear? Do you know?

10 MS. MOLDERHAUER: Mr. Pishvaeian?

11 MR. PISHVAEIAN: I'm sorry?

12 COMMISSIONER COHEN: Do you own
13 the property free and clear? I mean, is it
14 optioned or do you own it free and clear?

15 MR. PISHVAEIAN: No, there's a
16 lien on it. I mean, I purchased the property
17 with a mortgage or with a loan from the bank.

18 COMMISSIONER COHEN: Okay, okay.

19 MR. PISHVAEIAN: United Bank.

20 CHAIRPERSON JORDAN: Yes? Do you
21 have something else for us, or does the Board
22 have any questions of them?

1 COMMISSIONER COHEN: I just want a
2 clarification. On the height of this
3 building, you said that you added a dome or
4 something?

5 MS. MOLDERHAUER: A mansard roof,
6 yes.

7 COMMISSIONER COHEN: And when you
8 say that the height is approximately 39 feet,
9 whereas 40 feet is allowed. So what is the
10 approximate --

11 MS. MOLDERHAUER: The zoning
12 requirements indicate that the height is
13 measured to the top of the ceiling of the top
14 floor.

15 COMMISSIONER COHEN: Right.

16 MS. MOLDERHAUER: So a mansard
17 roof would not actually legally be counted.
18 It would be considered an architectural
19 embellishment, which would not be considered
20 part.

21 So by adding that, it was
22 something that was to accommodate something

1 the ANC has requested after an extensive
2 discussion with the ANC and something that
3 they wanted to see in the area.

4 COMMISSIONER COHEN: Okay, thanks.

5 VICE CHAIRPERSON SORG: That's
6 just something that's on the building
7 currently?

8 MS. MOLDERHAUER: Yes, it's
9 currently, yes.

10 VICE CHAIRPERSON SORG: So it's
11 keeping the character, I would think.

12 MS. MOLDERHAUER: Yes, exactly.

13 CHAIRPERSON JORDAN: All right.

14 VICE CHAIRPERSON SORG: Yes, I
15 don't think we would have wanted to see a
16 project without it, I think. So I think
17 that's probably a good choice.

18 MEMBER HINKLE: Could you speak a
19 little bit towards the issue of the lot
20 occupancy? And we're looking at plans that
21 have the deck in the back, and you said there
22 might be some option to remove that deck. You

1 don't need additional egress out of those
2 units? Or how does that work?

3 MS. MOLDERHAUER: I'll turn to Mr.
4 Killette to speak about the ability to
5 potentially remove the deck and the building
6 code issues in that regard.

7 MR. KILLETTE: You're not required
8 to have two means of egress up to three
9 stories, if a building's fully sprinkled. So
10 this building's fully sprinkled.

11 And the one means of egress that's
12 required is met through the interior. So the
13 stair would be a convenience stair if we did
14 a stair at the rear.

15 MEMBER HINKLE: Okay, thank you.

16 MS. MOLDERHAUER: If there's no
17 other questions, the applicant would rest at
18 this time, but obviously request an
19 opportunity to provide a conclusion or
20 rebuttal based on comments that we are aware
21 of possibly through opposition.

22 CHAIRPERSON JORDAN: Certainly.

1 Then let's turn, now to Office of Planning.

2 MR. JACKSON: Good afternoon, Mr.
3 Chair, members of the Board. My name's Arthur
4 Jackson of the D.C. Office of Planning. You
5 have before you a copy of the Office of
6 Planning's report on this case.

7 Briefly, I will summarize the
8 report by starting off saying this is not a
9 case where the applicant has been denied any
10 economical use of the property.

11 And it is not a case where an
12 existing condition on site, relief with the
13 building or lot, prevents them from using the
14 property in accordance with our regulations.

15 So we note that there are a lot of
16 uses that are currently allowed under the
17 zoning regulations that could be applied to
18 the property.

19 The applicant is focusing on,
20 however, the flat, the three unit apartment,
21 the four unit apartment, and of course, the
22 single family dwelling.

1 Okay, our contention is that there
2 has been no uniqueness shown particular to the
3 property that's preventing them from using for
4 an economic purpose, a purpose that's
5 economically feasible.

6 Okay, now when we go through those
7 uses, though, they did prepare a comparison of
8 the uses, and the numbers that they project
9 would be generated in long term.

10 Now we should note that the
11 applicant, of course, has done another
12 application of a similar project in the area.
13 So they have some experience.

14 So this is not information that's
15 coming from an unknowledgeable source. It's
16 an experienced developer that understands what
17 he's put on, you know, paper.

18 We think for the purpose of these
19 regulations, he's asking for relief from the
20 lot area requirement for individual units.
21 He's asking to reduce that requirement to five
22 50 percent.

1 He's also indicating in his
2 analysis that there are, of the four options
3 he has chosen to pursue, there are two options
4 that generate a positive revenue. One is the
5 three unit apartment. The other is a four
6 unit apartment.

7 Our contention is that if the
8 Board was to consider the apartment approach
9 to create apartments, we think it's most
10 appropriate to use the most conservative
11 relief that is available that appears to be
12 economically feasible, if the Board's using
13 that as a standard.

14 Economically feasible to us is
15 essentially there's not a negative return. In
16 this case, in both cases, with a three unit
17 and a four unit, there is a positive return.

18 So we would strongly recommend
19 that if the Board was to consider this
20 argument, they would approve a three unit
21 apartment and not a four.

22 Again, this would be more

1 consistent with the intent of the regulations
2 in terms of currently the zoning district, and
3 is not creating multiple apartments on
4 property.

5 More consistent with the existing
6 building in that there would not be expanded
7 to create more apartments. More consistent
8 with the existing zoning and the existing land
9 use designation for the area.

10 That's essentially what the Office
11 of Planning's position is on this case. And
12 we're available to answer questions.

13 CHAIRPERSON JORDAN: Does the
14 Board have any questions for Office of
15 Planning? Mr. Hinkle?

16 MEMBER HINKLE: Thank you, Mr.
17 Chair. Just real quick, on your note in terms
18 of a preference, four units versus three
19 units, what would your opinion be in terms of
20 the third prong of the variance test?

21 Is there any harm to the public
22 good or the zoning regulations for the

1 difference between a three unit and a four
2 unit?

3 MR. JACKSON: We feel that the
4 granting three units would be more in line
5 with what the regulations have called for.
6 Granting four would be detrimental to the
7 regulations because we're encouraging
8 additional development for additional
9 apartments in this zone district.

10 MEMBER HINKLE: Sure, sure. But
11 the preference for OP is a matter of right?

12 MR. JACKSON: We think that it
13 would be less detrimental to the intent of the
14 regulations and more consistent with the
15 intent of the regulation with regards to the
16 area, lot area per unit.

17 MEMBER HINKLE: Okay.

18 CHAIRPERSON JORDAN: Any other
19 questions from the Board? You'll have an
20 opportunity, but --

21 MEMBER HINKLE: Just one more?

22 CHAIRPERSON JORDAN: Yes, please.

1 MEMBER HINKLE: Thanks. We did
2 modify the application in terms of the lot
3 occupancy. Did you have an opinion on that?

4 MR. JACKSON: Well, I think it
5 would probably be good to give the applicant
6 an opportunity to re-look at it in detail.
7 They've only had it for a few minutes.

8 We would really not like to see
9 any more relief granted for this case. Of
10 course, if this is an existing condition and
11 you can't do anything about it, you would deal
12 with that situation accordingly.

13 But we're wondering if the rear
14 exits became, and emergency stair, because I
15 assume the emergency stair that exists
16 actually was why it wasn't calculated as part
17 of the floor area.

18 And we would just encourage, I
19 think, to work to make sure that exactly what
20 the numbers are. And at that point, we would
21 like to consider it when they're actually a
22 final set of plans that reflect those correct

1 numbers.

2 MEMBER HINKLE: Okay, thank you.

3 CHAIRPERSON JORDAN: Any other
4 questions of Planning by the Board? Does the
5 applicant have any questions of Planning?

6 MS. MOLDERHAUER: Thank you very
7 much. Good afternoon, I think it is now, Mr.
8 Jackson. So --

9 MR. JACKSON: Don't rub it in.

10 MS. MOLDERHAUER: You're
11 indicating that you would support three units?

12 MR. JACKSON: We're indicating
13 that if the Board was to accept this being
14 developed as an apartment house, that we would
15 be more comfortable with the three unit option
16 because we think that's closer to the intent
17 of the regulations.

18 MS. MOLDERHAUER: So then it's
19 more of a question of the fact that you could
20 potentially see that the three prongs could be
21 satisfied, then, based on prior precedent of
22 the Board?

1 MR. JACKSON: We think the
2 applicant has a better chance of making the
3 case for three as opposed to four in this
4 case.

5 MS. MOLDERHAUER: And that's based
6 on the assumption that a approximately \$60,000
7 profit is enough to make the project viable?

8 MR. JACKSON: It's based on the
9 assumption that, well our perspective is that
10 a positive outcome from the proposal is a
11 viable solution in that the regulations do
12 not, in itself, state that the applicant can
13 maximize the proposal for the sake of benefit.

14 MS. MOLDERHAUER: Do you think
15 that there is an area between viability and
16 maximization such as potentially a reasonable,
17 you know, viable project?

18 Or is it simply just making a
19 dollar or making something more than a dollar
20 is maximizing the overall benefit of the
21 project?

22 MR. JACKSON: Well, I think in

1 this case, well I think from the zoning
2 perspective, we're looking at whether this
3 would result in a taking of the property or
4 the applicant make economic benefit from the
5 property. \$60,000 is an economic benefit from
6 the development.

7 MS. MOLDERHAUER: Are you aware
8 that there are multiple other cases that the
9 Board has approved, such as 1 Fairmont, which
10 is Application 18163 where they evaluated the
11 case and the applicant was arguing for over
12 \$300,000 in profit, and that that was to them,
13 and that was approved by the Board as
14 something that was necessary but not a over
15 maximization of profit?

16 MR. JACKSON: I'm not aware of
17 that case, no.

18 MS. MOLDERHAUER: Are you aware of
19 other cases where the Board has disagreed with
20 OP and found that there is such thing as a
21 need for reasonable return in order for
22 property to be not left idle or not returned

1 to reasonable use?

2 MR. JACKSON: I know of a number
3 of cases that the Board has disagreed with OP,
4 yes.

5 MS. MOLDERHAUER: Thank you. No
6 other questions.

7 CHAIRPERSON JORDAN: Okay. Mr.
8 Wolfberg, you may ask questions, yes.

9 MR. WOLFBERG: I was just hoping
10 that you had clarified. Have you weighed in
11 on your thoughts on their recently changed
12 position or their seeking a new variance to
13 construct a third floor?

14 And could you weigh in on whether
15 or not --

16 MS. MOLDENHAUER: Objection,
17 that's not an accurate statement of the facts.

18 MR. WOLFBERG: Oh, it's not?

19 CHAIRPERSON JORDAN: Sustained.

20 MR. WOLFBERG: Sorry. Okay, they
21 are proposing building a third floor, and are
22 seeking a variance for that currently.

1 MS. MOLDENHAUER: No, we are
2 seeking a variance to the nonconforming lot
3 occupancy.

4 MR. WOLFBERG: Sorry, better said.

5 MS. MOLDENHAUER: That the plans
6 have always shown the third floor. There's no
7 question there.

8 MR. WOLFBERG: Okay, so they are
9 seeking approval to construct an additional
10 floor at this hearing. No.

11 CHAIRPERSON JORDAN: That's a
12 mischaracterization of what the request is.

13 MR. WOLFBERG: Okay, so I am not
14 trying to be a problem, I'm just trying to
15 understand.

16 CHAIRPERSON JORDAN: I understand.

17 MR. WOLFBERG: Okay. What do you
18 think, can you weigh in on whether or not an
19 additional third floor would be consistent
20 with the existing adjacent structures on Otis
21 Place?

22 MR. JACKSON: The unit facing to

1 the west, which is your unit, has a third
2 floor, but the units to the east along the
3 same frontage as the applicant's dwelling have
4 two floors, and I assume they all have
5 basements or cellars.

6 So in that way, the additional
7 floor on this building would not be consistent
8 with the existing buildings along that
9 frontage.

10 MR. WOLFBERG: Okay, thank you.

11 VICE CHAIRPERSON SORG: I just
12 want to clarify something. Isn't the third
13 floor a matter of right?

14 MR. JACKSON: His question was,
15 would --

16 VICE CHAIRPERSON SORG: I know,
17 but a different question.

18 MR. JACKSON: Okay, what is your
19 question?

20 VICE CHAIRPERSON SORG: Is the
21 third floor outside of the use a matter of
22 right?

1 MR. JACKSON: The third floor,
2 they would be able to put, add on a third
3 floor as a matter of right up to a height of
4 40 feet.

5 VICE CHAIRPERSON SORG: Okay.

6 MR. JACKSON: The issue's only
7 that it could not be for an additional
8 apartment at this point.

9 VICE CHAIRPERSON SORG: Yes, I
10 understand that.

11 CHAIRPERSON JORDAN: Do you have
12 an additional question?

13 MR. WOLFBERG: I have an objection
14 to that point.

15 CHAIRPERSON JORDAN: Do you have a
16 question?

17 VICE CHAIRPERSON SORG: You cannot
18 object -- sorry. Sorry.

19 CHAIRPERSON JORDAN: Folks, I'm
20 chairing this hearing. Okay.

21 Do you have a question that you'd
22 like to ask the Office of Planning?

1 MR. WOLFBERG: Oh, I'm sorry.

2 Yes, can I have my colleague --

3 CHAIRPERSON JORDAN: Question of
4 Office of Planning.

5 MR. WOLFBERG: Okay, I'm sorry
6 about that.

7 CHAIRPERSON JORDAN: And the time
8 is running out if you don't get to ask the
9 question. No, you need to ask it.

10 MR. WOLFBERG: No, sorry.

11 CHAIRPERSON JORDAN: Okay, if you
12 want to whisper it or something then that's
13 where we're proceeding. Okay. I'm taking it
14 there's no other questions of Office of
15 Planning?

16 Do we have the Department of, is
17 anyone here from the Department of
18 Transportation?

19 MS. MOLDENHAUER: We do have a
20 letter in the record from DDOT.

21 CHAIRPERSON JORDAN: And the DDOT
22 letter, let's see -- we just got it? Okay,

1 this is just in yesterday, kind of hot off the
2 press, and it's a letter of no objection,
3 Department of Transportation.

4 And do we have a letter from, is
5 anyone here from ANC-1A? I think we do have
6 a letter from ANC-1A. Yes, I think we just,
7 what did I do with it?

8 Oh, that's right. This is another
9 hot off the press by, about as you start
10 sitting down we got a letter from ANC-1A which
11 recommends approval, and that we can give
12 weight to.

13 Is there anyone here in the
14 audience wishing to testify in support of this
15 application?

16 Then let's move to the
17 presentation of the opponents.

18 MR. WOLFBERG: I'm sorry. Mr.
19 Chairman, right before I get to my
20 presentation, can I ask that question to the -
21 -

22 CHAIRPERSON JORDAN: You need to

1 go to your presentation at this point, yes.

2 MR. WOLFBERG: Okay, fair enough.

3 Okay, so --

4 CHAIRPERSON JORDAN: You can call
5 Planning as a witness if that's what you're
6 trying to say, but you have 30 minutes, Mr.
7 Wolfberg.

8 MR. WOLFBERG: Okay, fair enough.

9 Well, then --

10 CHAIRPERSON JORDAN: Well,
11 actually I think it was 20 minutes used by
12 the, 25 minutes were actually used by the
13 applicant so would 25 -- okay, go ahead.

14 MR. WOLFBERG: I would like to
15 refer to exhibits which are contained in the
16 brief I had written.

17 CHAIRPERSON JORDAN: Then we will
18 pass it out for the sake of your discussion --

19 MR. WOLFBERG: Thank you so much.

20 CHAIRPERSON JORDAN: -- for us to
21 step through the exhibits --

22 MR. WOLFBERG: Thank you.

1 CHAIRPERSON JORDAN: -- and your
2 presentation, but you need to do a
3 presentation.

4 MR. WOLFBERG: Okay. So the
5 thrust of my presentation is this.

6 This is a professional real estate
7 developer who spent \$465,000 to purchase a
8 single, a two-story row house in an R-4
9 district. And what he is now seeking from you
10 is a variance that would allow him to put in
11 four luxury condominium units such that he can
12 maximize the return on his, what I would
13 characterize as a quite high investment.

14 I would argue that case law has
15 shown and, in fact, from the facts as he
16 presented that he just cannot meet Prong 1, 2
17 nor 3 in proving that A, he has a unique
18 property.

19 And that B, the strict application
20 of the zoning rules would cause such a
21 hardship to him, and also C, that the
22 construction that he wants to do wouldn't

1 really drastically change the Columbia Heights
2 neighborhood.

3 Now as to Prong 1, I would sort of
4 quote what the Office of Planning just
5 testified to, which is that this is not a
6 unique property. The fact of the matter is,
7 is that he purchased a 100 year old row house,
8 and I think that -- I, for instance, purchased
9 the exact same type of house, which had been
10 a rooming house, and I can tell you that I did
11 have to put money into it.

12 But what the applicant stated
13 which is that he had to point up the bricks,
14 he had to put on primer, he had to take out
15 all of the interior walls, those don't create
16 the type of extraordinary expense that would
17 rise to the threshold that would meet Prong 1,
18 which is that this is unique to this property.

19 I would instead offer the fact
20 that this is consistent with a 100 year old
21 row house. I mean I have a 100 year old row
22 house. I spent \$16,000 taking out all of the

1 interior walls.

2 And to me, I mean like \$16,000
3 isn't peanuts but at the same time that's not
4 a sufficiently exorbitant cost to create the
5 unique situation that is contemplated by Prong
6 1. So I would just like to sort of underscore
7 that.

8 And just briefly I would also like
9 to point out that just prior to the applicant
10 purchasing the property there had been a
11 single family living there, and it was not,
12 even though at the time their certificate of
13 occupancy showing that it was a rooming house
14 for the past ten years, a single family had
15 lived in that house, which just speaks to the
16 fact that, granted, it would not ever have
17 been considered a luxury place, but at the
18 same time people fully occupied that structure
19 for ten years.

20 As to Prong 2, I would say that
21 the applicant also hasn't met his legal burden
22 to meet Prong 2, insofar as this Board in the

1 D.C. Court have appeals, has held that in the
2 type of situation which we have here, which is
3 that when an applicant has created what he
4 calls a economic hardship, that that is not
5 the type of, that that situation won't, is not
6 sufficient to meet Prong 2.

7 Now I had, so I am using the term
8 "self-created economic hardship." My
9 understanding is that that is a term of art
10 and that I'm using it in the correct way.

11 MS. MOLDENHAUER: I would object
12 any testimony in regards to using a self-
13 created hardship because it is specifically
14 not, bar an area variance.

15 CHAIRPERSON JORDAN: Yes, well, I
16 think he's, well, let's be careful about
17 saying what's a term of art.

18 And we're not showing here, he's
19 not required to show an undue hardship. I
20 know you said that earlier too, but I just let
21 that pass because that's not the standard in
22 which an area variance is granted. So why

1 don't you proceed?

2 MR. WOLFBERG: Sure. In the case
3 Carliner versus District of Columbia Board of
4 Zoning Adjustment, in that case there was a
5 petitioner who purchased three adjacent
6 contiguous lots.

7 The petitioner, and those lots,
8 there was a house on one lot and then there
9 were two lots that, yes, okay. So the
10 petitioner then gave the lot that had the
11 house on it to her daughter, I believe, and
12 then came before the Board and sought a
13 variance, sought an area variance such that
14 she could use the two existing, such that she
15 could place a home on the two existing lots
16 that she herself retained.

17 And in that case the Court of
18 Appeals stated that her affirmative actions
19 made those two lots economically useless. And
20 the Court of Appeals wouldn't overturn the
21 Board's choice not to give that applicant a
22 variance because the Court held that this

1 petitioner created its own economic hardship.

2 And so I would draw the parallel
3 to right here, which is that here the
4 applicant paid \$465,000 for a two-story row
5 house which he can do, but I would also argue
6 that that's a lot of money to pay for a house,
7 and it's not the Board's role to help him to
8 maximize the possible profits.

9 I would also say that as the
10 Office of Planning testified, in their opinion
11 he can turn a profit, it won't be a huge
12 profit but it will be a profit. And so
13 consequently I would argue that the applicant
14 has not met his burden as to Prong 2.

15 Then as to Prong 3, I would like,
16 would it be possible for Richard to, in fact,
17 argue Point 3?

18 CHAIRPERSON JORDAN: He doesn't
19 have a position to argue. Now if you can ask
20 that question you can use him as a witness.

21 MR. WOLFBURG: That might take
22 more time than I probably have, so if it's

1 okay I would like to just move on to Prong 3
2 and explain why I don't think that, in fact,
3 he has -- so give me one second if you would.

4 So one of the main points that the
5 applicant makes is in the applicant's argument
6 that, in fact, you should grant him the
7 ability to construct four condominium units is
8 that he would reduce the density of the
9 neighborhood.

10 I would point out that even though
11 the house had a certificate of occupancy as a
12 rooming house, A, that certificate of
13 occupancy was voided when the property was --

14 MS. MOLDENHAUER: Objection.
15 These are incorrect legal statements or, and
16 it's also an issue about DCRA versus the BZA.
17 I can clarify if the Board would like, but I
18 just want to object.

19 CHAIRPERSON JORDAN: Well, that
20 was one of the questions I had was that was it
21 still, it's use still legitimate for a rooming
22 house?

1 MS. MOLDENHAUER: Certificates of
2 occupancy are not, are related to the property
3 owner. Now they are transferable, but what
4 you have to do is you have to actually go down
5 to the DCRA office and apply for what's called
6 a "change of use" versus a change of
7 ownership.

8 CHAIRPERSON JORDAN: That's kind
9 of what I'm asking. It never happened.

10 MS. MOLDENHAUER: It did not
11 happen but that could occur if the applicant
12 wanted to. However, the applicant is here
13 today.

14 CHAIRPERSON JORDAN: So, in fact,
15 the property can be operated as a rooming
16 house today if he wanted to.

17 MS. MOLDENHAUER: If we went down
18 tomorrow, yes, and just simply applied for it.

19 MR. WOLFBERG: But yes, no, that's
20 100 percent accurate. I would also point out,
21 and perhaps this is conjecture that for an
22 applicant to pay \$465,000 for that type of a

1 property, the chances of him going down and
2 turning it into a rooming house is
3 extraordinarily small.

4 So then I would just, you all are
5 clearly aware of and you know the reason why
6 the R-4 designation is what it is. And I
7 would point out that it is our understanding,
8 and I would expect that there would be an
9 objection if, but that they're in the Columbia
10 Heights neighborhood that there currently are
11 no four-unit apartments.

12 MS. MOLDENHAUER: I would object
13 because you're making an assumption that you
14 do not know as the facts, so it's an
15 assumption.

16 MR. WOLFBERG: Okay. Well --

17 CHAIRPERSON JORDAN: Proceed.

18 MR. WOLFBERG: All right. In our
19 neighborhood of Columbia Heights, in the
20 surrounding at least two or three streets,
21 there are no two-story row houses that have
22 four condominium units in them.

1 So I would argue that, in fact,
2 this would actually harm the current zoning
3 regulations. And look, this is, most
4 importantly I have pictures of the houses to
5 the west of Otis Place from the property, and
6 I believe those are in Exhibit 3 and 4.

7 And all to the west there are
8 really, there are just two-story single-family
9 homes with one or two units in them. Again
10 this is Otis Place opposed to 13th Street.

11 And so if, in fact, the applicant
12 were to receive an area variance, I would
13 argue that this really would change the
14 complexion of the surrounding neighborhood,
15 and as a result he has not met his burden to
16 prove Prong 3.

17 And I guess I would just close on
18 the fact that it really is as the courts have
19 long recognized, it is the applicant's burden
20 to show that he meets all three of the prongs.
21 And I would submit to you that in his brief he
22 just has not supplied the type of facts that

1 would rise to prove inconclusively Prong 1, 2
2 or 3. Thank you.

3 CHAIRPERSON JORDAN: Thank you.
4 Does the Board have any questions of Mr.
5 Wolfberg?

6 Ms. Cohen?

7 COMMISSIONER COHEN: Thank you,
8 Mr. Chairman. Your home is a single-family
9 home, one occupant, or are there --

10 MR. WOLFBERG: Two.

11 COMMISSIONER COHEN: There's two
12 families?

13 MR. WOLFBERG: Yes, two.

14 COMMISSIONER COHEN: And when did
15 you purchase and renovate this home?

16 MR. WOLFBERG: I purchased my home
17 in October of 2010. And then I -- yes.

18 COMMISSIONER COHEN: And then you
19 had to rip out the interior to upgrade it, to
20 renovate it?

21 MR. WOLFBERG: Yes, I did. The
22 home that I purchased, it had been abandoned

1 for at least 20 years. There was wood on the
2 panels, I'm sorry, wood encompassed all of the
3 windows and I didn't have electricity, I
4 didn't have water. There hadn't been any
5 people living there. And so I had to gut
6 everything.

7 COMMISSIONER COHEN: And that's
8 where you came up with the \$15,000 number?

9 MR. WOLFBERG: It was \$16,000,
10 yes. Yes, and I did not submit anything to
11 prove that. I would be more than happy to
12 provide an Excel spreadsheet of the cost for
13 the entire renovation project.

14 COMMISSIONER COHEN: I was just
15 curious. The email, you had numbers and I
16 just didn't know how old they were. Thank
17 you.

18 CHAIRPERSON JORDAN: Any other
19 questions from the Board?

20 VICE CHAIRPERSON SORG: Yes, thank
21 you, Mr. Chairman. Mr. Wolfberg, you're a
22 party opponent, but you're also a neighbor.

1 I want here a little bit less of a legal side
2 and more on how you feel your living situation
3 in your home will be negatively affected by --

4 MR. WOLFBERG: What the
5 applicant's proposing?

6 VICE CHAIRPERSON SORG: -- the
7 proposed project. What are those specific
8 elements that you feel are really going to
9 negatively affect you. That's sort of what I
10 want to hear.

11 MR. WOLFBERG: Okay, sure. First
12 of all, I would like to say that I think
13 highly of the applicant. I think that he,
14 when he constructs things I think he
15 constructs things in a, you know, positive
16 way.

17 So as I said when I asked to be
18 recognized here, one of the concerns that I
19 have is that he is proposing to build a third
20 floor and I currently have a view of the sky,
21 and if he constructs a brand-new third floor
22 that will be compromised. So that is

1 certainly one of the reasons why I am opposed
2 to this.

3 However, on top of that I have two
4 units in the building that I have which is me
5 and then one other family. I do have a real
6 concern that if the BZA, or if he is allowed
7 to do four, then every other person in his
8 shoes will come and ask for four.

9 And you're going to see all of
10 these two-story houses get turned into four,
11 and they're all going to have the same story
12 which is that the Columbia Heights
13 neighborhood is hot. I had to pay \$465,000,
14 I had to pay \$550,000. The only way I can
15 recoup and make any money is if you give me
16 four units.

17 And so this is, so it's really, I
18 will try to conclude just as quickly as I can,
19 but that is a real concern.

20 And I, and Richard as well, we
21 chose the area that we chose because I mean
22 the housing stock is a smaller housing stock.

1 It currently, there really are single families
2 there and when you start jamming in four units
3 you really are going to change the complexion
4 of the entire area and that really speaks to
5 Prong 3.

6 CHAIRPERSON JORDAN: Any other
7 questions? Okay, then I'm going to turn to
8 the applicant for any cross examination.

9 MS. MOLDENHAUER: Thank you. Mr.
10 Wolfberg, you came before the Board and asked
11 for relief when you built an addition to your
12 property?

13 MR. WOLFBERG: Yes. Yes, I did.

14 MS. MOLDENHAUER: And you're aware
15 that Mr. Klugman to your left also came before
16 the Board and asked for relief.

17 MR. WOLFBERG: Yes.

18 MS. MOLDENHAUER: And Mr. Klugman
19 asked for relief to turn a 12-room rooming
20 house into three units?

21 MR. WOLFBERG: Yes.

22 MS. MOLDENHAUER: And that in

1 submitting his application and in the
2 testimony before the Board that he argued and
3 the Board agreed and granted his approval
4 based upon that a rooming house was unique and
5 satisfied the first prong.

6 MR. WOLFBERG: So I actually can't
7 speak to the transcript of his case because --

8 MS. MOLDENHAUER: But are you
9 aware of these facts?

10 MR. WOLFBERG: Could you restate
11 your question, I guess?

12 MS. MOLDENHAUER: Are you aware of
13 the fact that Mr. Klugman had a 12-room
14 rooming house and asked to have the property
15 converted to three rooms and that the Board
16 approved that case and now he has a three-
17 unit?

18 MR. WOLFBERG: Three-unit, yes.

19 MS. MOLDENHAUER: And your
20 property does not provide any parking?

21 MR. WOLFBERG: No, it does not.
22 But can I expand upon that or no?

1 MS. MOLDENHAUER: No. And that
2 Mr. Klugman's property, does his property
3 provide any parking?

4 MR. WOLFBERG: Not that I'm aware
5 of.

6 MS. MOLDENHAUER: You had
7 indicated that the property could be used for
8 a single-family home, but are you aware that
9 there is no kitchen in the property?

10 MR. WOLFBERG: I was unaware and I
11 can't say that I'm aware, yes, I can't speak
12 to that point.

13 MS. MOLDENHAUER: You said that
14 there's no other four-unit dwellings, but are
15 you aware that in our supplemental we
16 identified property at 749 Park Road as a
17 four-unit dwelling? Are you aware of that in
18 Columbia Heights?

19 MR. WOLFBERG: My understanding is
20 that, in fact, that was grandfathered in.

21 MS. MOLDENHAUER: Okay, but it
22 exists.

1 MR. WOLFBERG: Yes.

2 MS. MOLDENHAUER: And in your
3 party status request you identified as you
4 stated earlier to the Board that one of your
5 concerns is losing the view from your deck.

6 MR. WOLFBERG: Yes, I believe I
7 also just restated that.

8 MS. MOLDENHAUER: And so it's not
9 really a question of how many units, it's more
10 a concern of the additional floor?

11 MR. WOLFBERG: Well, I mean I
12 think that to respond to that, when I sought
13 to be a party I spoke about the additional
14 floor but then I also spoke about the four
15 units. So it's not fair to characterize it as
16 only talking about that extra floor.

17 MS. MOLDENHAUER: If the applicant
18 were to squeeze, and I know this is a
19 hypothetical because it's, but were to squeeze
20 four units into three floors, would you still
21 be opposed to that case?

22 MR. WOLFBERG: Yes.

1 CHAIRPERSON JORDAN: Let me ask
2 you.

3 MR. WOLFBERG: Yes.

4 CHAIRPERSON JORDAN: When you did
5 your unit you didn't have, did you add a
6 fourth floor?

7 MR. WOLFBERG: I went up one floor
8 and so I put on a third floor, but I created
9 only two units.

10 CHAIRPERSON JORDAN: Okay.

11 MS. MOLDENHAUER: I may have
12 misspoke. It's a third floor as well with the
13 applicant. It's four units and a third floor.

14 CHAIRPERSON JORDAN: So you have a
15 third floor, that's what I meant. So you did
16 add a third floor?

17 MR. WOLFBERG: Yes. But I would
18 like to point out that I have a 13th Street
19 address, and so I would --

20 CHAIRPERSON JORDAN: I understand
21 where your property lies and --

22 MR. WOLFBERG: Okay.

1 CHAIRPERSON JORDAN: Any other
2 questions in cross examination?

3 MS. MOLDENHAUER: No other
4 questions.

5 CHAIRPERSON JORDAN: All right
6 then. Well, I definitely know that Mr., is it
7 Klowberg, wishes to have three minutes to
8 provide testimony in opposition.

9 MR. KLUGMAN: Thank you. As we've
10 already heard, the applicant now knows that
11 the property is not at 54 percent as he
12 claimed in his brief but it is actually 68
13 percent, and now he has amended his
14 application to reflect such.

15 However, when he went to the ANC
16 and when he met with us he stated it is a
17 matter of right for him to build a third
18 floor, and it is a much different conversation
19 when you tell a committee, I have the right to
20 build a third floor, I don't need your
21 permission as opposed to, I do not have the
22 right to build a third floor, I do need

1 permission.

2 And so it is not fair now to amend
3 his complaint without hearing at least from
4 the neighborhood who never had a chance to
5 respond to a variance for the third floor.

6 There has been some comments about
7 my case versus his case. Obviously I'm here,
8 and I would like to point out some vast
9 differences for the Board to consider between
10 18115, which is myself, and 18448, which is
11 today's hearing.

12 Obviously in my case there were
13 only three units sought and here is an
14 unprecedented fourth. In 2010, 3603 Street
15 sat on the market for over six months without
16 a buyer. Here, the property was purchased at
17 a private auction between five bidders over
18 one weekend for \$465,000.

19 And as to the point of sitting on
20 the market for six months, let me quote from
21 the transcript from 18115. "It does tip the
22 scale in his favor here that he's articulated

1 that the property has not but sat on the
2 market for over six months and that no other
3 purchasers or other investors found the
4 property to be adequate enough for an
5 investment." This is Chairman Moldenhauer.

6 Number 3, I am at 36, I'm a 13th
7 Street address, and I am among 92 percent of
8 the homes from my address south that are three
9 stories. There are no homes on Otis Place
10 between 11th and 14th that are three stories.

11 The financial hardship that was in
12 18115 was a much different situation obviously
13 because of the price, because it sat on the
14 market and was bought below market value as
15 opposed today which was bought at far greater
16 than market value.

17 And finally in my case there was
18 no neighborhood opposition. We have
19 signatures here from over 50 residents who,
20 all the adjacent neighbors, who do oppose this
21 plan. So with ten seconds left I'll
22 summarize.

1 CHAIRPERSON JORDAN: We appreciate
2 that. Does the Board have any questions of
3 Mr. Klugman? Any questions?

4 Does the applicant wish to cross
5 examine? Is that a yes or what?

6 MS. MOLDENHAUER: That is a yes,
7 and I'm sorry. I was just looking briefly
8 down at my paper.

9 CHAIRPERSON JORDAN: I was about
10 to roll on.

11 MS. MOLDENHAUER: Jump up and make
12 sure I get my chance. You indicated that none
13 of the other properties on Otis have an
14 additional story, a third floor.

15 MR. KLUGMAN: From 11th to 14th.

16 MS. MOLDENHAUER: Is there not a
17 property on that may have an address of 13th
18 but actually is bordering right across the
19 street on Otis that goes up three floors both
20 on 13th and on 12th?

21 MR. KLUGMAN: An address on 13th
22 Street?

1 MS. MOLDENHAUER: They're on, they
2 both have their side, the side of the property
3 is on Otis and you can see all three floors
4 from, as you walk down Otis on the other side
5 of the property.

6 MR. KLUGMAN: 13th Street has much
7 larger lots.

8 MS. MOLDENHAUER: I'd like just to
9 answer yes or no.

10 MR. KLUGMAN: So yes, obviously
11 mine is as well. 13th Street has much larger
12 lots and they do have three stories.

13 MS. MOLDENHAUER: And you
14 indicated that you've obtained all of these
15 letters of opposition. Did you present
16 opposition to the ANC? I'm asking the
17 question, did you present your opposition to
18 the ANC?

19 MR. KLUGMAN: Yes, we did.

20 MS. MOLDENHAUER: And was it an
21 extended discussion with the ANC about your
22 opposition and the same statements that you're

1 making here today before the Board?

2 MR. KLUGMAN: Yes, the ANC
3 considered the facade of the building quite
4 thoroughly but not the density.

5 MS. MOLDENHAUER: But did the ANC,
6 after hearing the different arguments, approve
7 the application?

8 MR. KLUGMAN: Yes, they did.

9 MS. MOLDENHAUER: No other
10 questions.

11 CHAIRPERSON JORDAN: Does the
12 Board have any additional questions? Okay,
13 then we'll turn back to the applicant for
14 wrap-up, please.

15 MS. MOLDENHAUER: Thank you. I
16 just want to allow my client to speak briefly
17 about some of the figures here. There was
18 comments made by Mr. Klugman, and about the
19 time on the market and things to that effect.

20 We've been very transparent in
21 providing documentation on the pricing and the
22 purchase and everything, and just want my

1 client to kind of walk through those and
2 outline the practical difficulty that's being
3 articulated here, in a little more detail for
4 the Board.

5 MR. PISHVAEIAN: I want to thank
6 you for listening to us. And the market has
7 changed. It's been in Washington Post two
8 weekends ago, the properties in D.C. has,
9 prices has gone up 33 percent. The inventory
10 is the lowest that it has been in last 30
11 years.

12 This is what I do for a living. I
13 have to purchase a property to change it, to
14 sell it, to produce income to put food on the
15 table for everybody and myself. So the fact
16 that their property was \$100,000 less than
17 this two or three years ago when the economy
18 was bad is irrelevant. It is what it is right
19 now. Properties, they sell within 24 hours
20 from the time they come in the market.

21 At this point, the only thing that
22 I can explain to you is about this profit and

1 loss statement, the difference between
2 \$64,000, earning \$64,000 after two years hard
3 working and investing \$1.4 million versus
4 making \$183,000, which is ten percent of
5 \$1,700,000 investment.

6 When you look at these numbers and
7 when you say, okay, so you're selling four
8 units at \$400,000 or \$500,000 apiece, it's not
9 like I make \$500,000 per unit. If you look at
10 these numbers that again I've provided, the
11 total sales cost and the condominium warranty
12 on four units is \$375,000 that I give away to
13 D.C. government and transfer tax and agents.

14 So after all of that \$375,000 and
15 investing \$478,000, renovating \$620,000, it
16 leaves \$183,000 at the end of the day after
17 two years of work.

18 I purchased another property right
19 around the corner on 13th Street, June of
20 2011, and due to the market and due to being
21 in the basement, the lower unit has not been
22 sold yet. We're hoping that we can have

1 something coming year. Those are some of the
2 experiences that I have learned from the 13th
3 Street.

4 All the bond companies that they
5 were in the business that we were paying
6 \$5,000 to buy bonds, they're all out of
7 business. Now we have to put ten percent up
8 with the D.C. government, which is \$75,000 in
9 this case. And I'm sure you know, five
10 percent of condo conversion fee that we have
11 to pay to the D.C. government.

12 MS. MOLDENHAUER: I think, so
13 you're identifying the risk associated with
14 doing an investment project. And, you know,
15 can you just wrap up and kind of identify why
16 being able to do a three-unit without doing an
17 addition would not be viable or economically
18 feasible for you?

19 MR. PISHVAEIN: Exactly. So in
20 laymen language, as you know we call it a
21 cushion. \$65,000 is not enough cushion that
22 I can hang onto hoping that I would sell all

1 these three units and make some money and walk
2 away with it so I can move on with doing what
3 I'm doing.

4 3609 13th Street, which was a
5 rooming house that I converted to three units,
6 first floor and second floor, has been sold 48
7 hours after it went in the market. The
8 basement is still sitting there. So at this
9 point, at this moment on 3609 13th Street, I
10 have a loss of \$300,000 hoping that I would
11 sell the basement and make money there. That
12 would be my income.

13 So from those experiences, you
14 know, I've been doing this for seven, eight,
15 nine years, but the economy changes. The
16 market changes. The cost of construction went
17 up from \$125 to \$160 right now, and
18 requirements and zoning regulations and
19 sprinkler, all of that has changed. So we
20 keep changing everything every day and it's
21 just a road that we're through and these are
22 the numbers.

1 MS. MOLDENHAUER: So that being
2 said, I'm at the point where we'd like to
3 either provide a final closing argument unless
4 the Board has any final questions.

5 CHAIRPERSON JORDAN: No, please do
6 so. Unless you've got a question, anybody
7 have a question? No.

8 MEMBER HINKLE: Just real quick.

9 CHAIRPERSON JORDAN: Yes.

10 MEMBER HINKLE: We don't have any
11 market analysis that supports these projected
12 sales prices, do we, in this --

13 MR. PISHVAEIN: Absolutely.
14 Absolutely. I'm sorry. Absolutely I do have
15 the, the numbers that I put in here is the
16 numbers that I --

17 MEMBER HINKLE: We don't have it
18 in our records.

19 CHAIRPERSON JORDAN: We don't have
20 it in our record, do we?

21 MS. MOLDENHAUER: Let me just try
22 to explain what my client's getting at. My

1 client sold a property right around the street
2 just two blocks from Mr. Klugman, or two
3 houses from Mr. Klugman's property, and he's
4 using the exact sales prices there for the pro
5 forma here.

6 So we don't have it as a MRIS
7 comparison, but we use actual figures of what
8 those units sold for, for a project that he
9 did two houses down the street.

10 MR. PISHVAEIN: They're exact same
11 square footage. They're exact two bedrooms,
12 two bathrooms with a deck in the back and
13 1,800 square feet, the lot, which is all of
14 those houses are on 3601 to 3609, including
15 Mr. Klugman and including Mr. Wolfberg.

16 Those are all 1,800 which is, this
17 is 1,800 also. So I used exact same numbers
18 hoping that I can get the same numbers.

19 MEMBER HINKLE: Okay.

20 COMMISSIONER COHEN: Except you
21 really haven't sold the basement so those may
22 be inflated?

1 MR. PISHVAEIN: Or the other way
2 around. The basement has something to do with
3 people don't want to be in the basement, so
4 it's really hard to sell it. So we offered
5 closing help and parking space and all of that
6 and so far we didn't have any luck.

7 We have one gentleman that he is
8 working on writing a contract. So we think
9 the price will be \$425,000, which is what I
10 included in here, which is \$75,000 below the
11 first floor, and under \$25,000.

12 So in 20 feet difference it's
13 \$125,000 less. So based on that assumption,
14 based on that experience I've learned that I
15 can't concentrate on the basement unit.

16 CHAIRPERSON JORDAN: All right,
17 why don't you take two minutes to close?

18 MS. MOLDENHAUER: Yes. Based on
19 our submissions in the record and based on the
20 testimony here today, we feel that the
21 applicant has satisfied the three-prong test
22 based on for the first prong, a confluence of

1 factors.

2 As the applicant stated, there is
3 an exceptional circumstance in regards to a
4 rooming house use as has been determined by
5 two other cases that were approved by the
6 Board. And the fact of the irregular layout,
7 the additional dilapidated condition as
8 pointed out by the applicant based on the
9 deteriorated condition and the extended use
10 and the wear and tear created by a rooming
11 house and the delayed maintenance from the
12 prior owner, we pointed out evidence of the
13 brick problems, roof leaks that had been
14 extensive and had not been repaired for a
15 significant period of time, and those factors
16 create a confluence of factors to satisfy the
17 first prong.

18 And then to create the practical
19 difficulty, which is an economic practical
20 difficulty here which we are not relying upon
21 as I said earlier, generalities, but rather
22 providing specific, clear cut numbers.

1 There's been no issue of hiding the ball in
2 regards to purchase price and about the time
3 frame in that regard.

4 We're just simply showing the
5 figures and showing that as the applicant just
6 testified to the ability to a project and to
7 have such a minor, really insignificant value
8 will be erased by any potential contingencies.

9 As the Board is aware of the
10 construction contingencies anything may occur,
11 and that to ask that to be considered a viable
12 project we believe is something that is not
13 considered in regards to case precedent.

14 As I indicated earlier and
15 identified in the record, Fairmont is a case
16 where the applicants had articulated somewhere
17 upwards of 15 percent of a profit in that
18 case. And the Board in that case found that
19 that was not considered to be maximizing the
20 use as OP was indicating to go beyond what is
21 permitted. We are not even asking for that
22 much. We are simply asking for, you know, to

1 provide something much lower but just simply
2 indicate that that is necessary in order to
3 return this property to a viable use to
4 provide individuals that are going to own
5 their units, care about the property and to
6 live in the community.

7 There's no issue here in regards
8 to parking. We are providing the two required
9 spaces for all four units. As indicated by
10 the opposition, neither of their properties
11 actually have parking, and as stated during
12 Mr. Klugman's hearing, he stated that actually
13 it's not a problem because he was reducing
14 from a 12-room rooming house down to three
15 units. And the same argument could be applied
16 here, but we're actually providing the legal
17 parking that is required.

18 In addition to that the applicant
19 has gone through extraordinary lengths to talk
20 both with the parties in opposition and other
21 neighbors and to present the case before the
22 ANC. As indicated, it was an extended

1 discussion similar to this here today, and at
2 the end of the day the ANC determined to vote
3 in support and that letter of support should
4 receive great weight.

5 In addition to that we have Office
6 of Planning's report which we do recognize is
7 not an outright recommendation of denial but
8 rather just simply three units. And I think
9 we have proven why three units is not viable
10 and why the applicant is seeking the
11 additional fourth unit.

12 In addition to that we've
13 identified the additional relief under 2001.3
14 for 403, lot occupancy relief, and we believe
15 that this application would create a harmony
16 and balance of residential uses in the area
17 and would not harm the zone plan or the public
18 good. Thank you.

19 CHAIRPERSON JORDAN: Thank you.
20 Then we'll conclude this hearing based upon
21 the testimony and the record before us.

22 I'm going to ask that the

1 applicant prepare for us findings of facts and
2 conclusions of law as well as the party in
3 opposition prepare findings of facts and
4 conclusions of law, and that you -- we need a
5 date for when we put this for a decision.

6 Mr. Moy? So then we can do, so
7 everybody can exchange their documents.

8 (Off microphone discussion)

9 CHAIRPERSON JORDAN: I'd rather
10 not. Just give me a hearing date and then
11 we'll work our way backwards. I mean a
12 decision date and we'll work our way back.

13 MR. MOY: A decision date would be
14 scheduled for the afternoon of December 18th.

15 CHAIRPERSON JORDAN: Do you want
16 it that soon?

17 Mr. Hinkle, did you want to say
18 something?

19 MEMBER HINKLE: Yes, I'm not sure
20 if you're going to get to this, but I was
21 hoping to get a supplemental from the Office
22 of Planning in regards to the lot occupancy

1 issue.

2 MR. MOY: Okay, very good. Okay,
3 then we'll put it further down the road then.

4 MEMBER HINKLE: Thank you.

5 MR. MOY: Then we have, Mr.
6 Chairman, the January 15th date.

7 CHAIRPERSON JORDAN: We're
8 starting to stack up on the 15th, aren't we?

9 MR. MOY: Yes, but you know.

10 (Off the record comments)

11 CHAIRPERSON JORDAN: Okay, does
12 anybody need anything else from the parties?
13 Then we will close this hearing and --

14 MR. MOY: Mr. Chairman?

15 CHAIRPERSON JORDAN: Yes.

16 MR. MOY: I didn't give a date for
17 --

18 CHAIRPERSON JORDAN: Submissions.

19 MR. MOY: -- for submissions. You
20 were going to work backwards from the decision
21 date of the 15th.

22 CHAIRPERSON JORDAN: So what's

1 your date, Mr. Moy?

2 MR. MOY: Well, there's no
3 responses then I would suggest the Monday of
4 January the 7th.

5 CHAIRPERSON JORDAN: Okay.

6 MR. JACKSON: Mr. Chairman, just a
7 point of clarification.

8 CHAIRPERSON JORDAN: Yes.

9 MR. JACKSON: At this point the
10 Board doesn't have a correct plat showing the
11 right dimensions on the property.

12 MS. MOLDENHAUER: It is correct,
13 it's just, yes. Everything is correct, it's
14 just a question of the calculation.

15 MR. JACKSON: Okay, sorry, just
16 want to clarify that, okay.

17 MS. MOLDENHAUER: And the plans
18 are not changing.

19 MR. MOY: Which reminds me, Mr.
20 Chairman, since Mr. Jackson spoke up, would
21 you want a supplemental from the Office of
22 Planning?

1 CHAIRPERSON JORDAN: Yes, I
2 thought we did include that.

3 MR. MOY: Okay, on the same date,
4 January 7th.

5 CHAIRPERSON JORDAN: Okay, then
6 let's conclude this hearing and we'll stand in
7 recess for a half hour for this afternoon's
8 session. Thank you.

9 (Whereupon, the foregoing matter
10 went off the record at 1:36 p.m. and went back
11 on the record at 2:16 p.m.)

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

(2:16 p.m.)

CHAIRPERSON JORDAN: Mr. Moy,
let's close out this morning's docket, please.

MR. MOY: Yes. As a preliminary
matter before you open for the afternoon
session, Mr. Chairman.

There was a matter of that one
case in the morning, which is Application
Number 18447, the application of Karen
Slachetku. Not sure if I pronounced that
correctly or not, but my understanding is the
applicant is here with us at the moment.

So the Board may want to readdress
that application before proceeding with the
afternoon session.

CHAIRPERSON JORDAN: Yes,
whoever's here for 18447, yes, please turn on
your microphone and give us your name, please.

MR. PERUZZI: Good afternoon, I'm
sorry because I couldn't make on time this
morning. I have a flooding problem in my

1 house.

2 CHAIRPERSON JORDAN: So the reason
3 why you didn't make it this morning is because
4 you had a flood?

5 MR. PERUZZI: Yes.

6 CHAIRPERSON JORDAN: We wish we'd
7 received some type of notification. This
8 matter was on the docket for this morning.
9 We're now into our afternoon session. So we
10 didn't dismiss it, which we could have
11 dismissed this matter but we didn't. So what
12 we will do is reschedule this for another
13 decision date.

14 Mr. Moy, what date do we have?
15 January?

16 MR. MOY: We're looking at January,
17 okay.

18 CHAIRPERSON JORDAN: Or do you
19 want to do it the 15th?

20 (Off microphone discussion)

21 MR. MOY: Today's the 27th. Yes,
22 we're looking at continuing this application

1 to another public hearing, for what I'm
2 hearing.

3 (Off microphone discussion)

4 CHAIRPERSON JORDAN: We can do it
5 on the 15th then.

6 MR. MOY: January 15th. So
7 January 15th in the morning.

8 CHAIRPERSON JORDAN: That's a
9 hearing date?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON JORDAN: Okay. So we
12 will hear your case on January 15th.

13 MR. PERUZZI: Okay, thank you very
14 much.

15 CHAIRPERSON JORDAN: Okay, then we
16 can begin the afternoon docket, please.

17 MR. MOY: Well, the preliminary
18 matter, Mr. Chairman, is that just for the
19 record, staff to note for the record that the
20 Appeal Number 18438 of Advisory Neighborhood
21 Commission 6A has been withdrawn from the
22 agenda.

1 So that leaves this afternoon
2 session with the Appeal Number 18439 of Valor
3 1350 Maryland LLC, pursuant to 11 DCMR 3100
4 and 3101, from a May 4th, 2012, decision by
5 the Department of Consumer and Regulatory
6 Affairs, to issue a building permit, building
7 permit number B1107494, allowing the repair
8 and renovation of a gasoline station in the
9 HS-A/C-2-A, C2A District at premises 1400
10 Maryland Avenue, N.E., property located in
11 Square 1049, Lots 21 and 803.

12 CHAIRPERSON JORDAN: Will the
13 parties please come to the witness table,
14 please?

15 MR. MOY: Shall I administer the
16 oath, Mr. Chairman?

17 CHAIRPERSON JORDAN: Let's just
18 get people situated first.

19 If there's anyone who's going to
20 testify in this appeal, please stand and take
21 the oath or affirmation from the Board
22 secretary, please.

1 (All sworn in)

2 MR. MOY: You may consider
3 yourself under oath, thank you.

4 CHAIRPERSON JORDAN: All right,
5 could the parties identify themselves, please?

6 MR. BROWN: Good afternoon, Mr.
7 Chairman, Patrick Brown from Greenstein
8 DeLorme & Luchs on behalf of the appellant,
9 1350 Valor Maryland LLC.

10 MR. GLASGOW: Good afternoon, Mr.
11 Chairman and members of the Board. For the
12 record, Norman M. Glasgow, Jr. with the law
13 firm of Holland & Knight on behalf of the
14 ground lessee.

15 MR. LEGRANT: Good afternoon,
16 members of the Board. I'm Matthew LeGrant,
17 the zoning administrator with the Department
18 of Consumer and Regulatory Affairs.

19 MR. SURABIAN: Good afternoon.
20 Assistant Attorney General Jay Surabian on
21 behalf of DCRA.

22 CHAIRPERSON JORDAN: Very good.

1 Let's see where we are. Please, do we have
2 any preliminary matters in this case?

3 MR. MOY: Yes, sir. The appellant
4 filed a motion to amend the appeal as well as
5 a motion for continuance under Exhibit 15, I
6 believe.

7 CHAIRPERSON JORDAN: Mr. Brown,
8 what's the basis of the motion to amend the
9 appeal?

10 MR. BROWN: The current pending
11 Appeal 18439 is based on a building permit
12 from May of this year for, and keeping it
13 simple, for the gas station portion of the
14 development.

15 We filed an appeal in a timely
16 manner, and then as we approached the hearing
17 date a second permit, which was issued on
18 November 1st for what I'll refer to as the
19 grocery or convenience store, convenience
20 store having gone out of vogue as a term,
21 permit was issued on November 1st.

22 ANC-6A has already filed an appeal

1 of the second building permit for the quote
2 "grocery store." Rather than filing a
3 separate appeal I chose to amend, at request
4 to amend the current appeal to include the
5 second building permit which was bifurcated
6 from the original permit.

7 You'll notice from the various
8 briefs filed by my colleagues at Holland &
9 Knight and DCRA that there's a community of
10 issues involved. So it makes sense from an
11 economy of time and effort to amend the
12 original appeal and proceed on both permits
13 simultaneously.

14 To do so, the original, the second
15 permit only issued November 1st, I'm still
16 collecting documents and I'm not prepared to
17 proceed on the merits of that in the 14 days
18 since I became aware of the permit and filed
19 the motion to amend. So that's the four
20 corners of it.

21 CHAIRPERSON JORDAN: Is it my
22 understanding, I think you said that the ANC

1 has filed an appeal also?

2 MR. BROWN: That's correct.

3 They've filed an appeal, I think it's 18499 of
4 the second building permit.

5 CHAIRPERSON JORDAN: It's the same
6 one that you're seeking to amend on?

7 MR. BROWN: That's correct. And
8 that was filed on November 14th according to
9 the copy I have and assigned Case Number
10 18499.

11 CHAIRPERSON JORDAN: Okay, Mr.
12 Glasgow?

13 MR. GLASGOW: Yes, sir. Mr.
14 Chairman, we filed an opposition to
15 appellant's motion to amend, which should be
16 a part of the record, on the basis that the
17 discussion that they have with respect to the
18 building and the location of the building was
19 shown on the original permit and therefore is
20 untimely.

21 And at the appropriate time we
22 will be filing a motion to dismiss ANC-6A's

1 appeal because they had withdrawn their appeal
2 that was timely filed and then they're
3 appealing on the same basis that the, Valor is
4 appealing.

5 When you look at the documents
6 that was filed, the building that was shown on
7 the permit application initially --

8 CHAIRPERSON JORDAN: Which one of
9 the exhibits is the original building permit?

10 MR. GLASGOW: The original
11 exhibit, and we have larger copies so that
12 they're more legible, but Exhibit A --

13 CHAIRPERSON JORDAN: Well, let me
14 have that if we can have that passed to the
15 Board, please.

16 (Off microphone discussion)

17 CHAIRPERSON JORDAN: On the permit
18 application.

19 MR. GLASGOW: Correct.

20 MR. BROWN: Could I ask which
21 permit application we're referring to?

22 CHAIRPERSON JORDAN: I think Mr.

1 Glasgow referred to the first permit
2 application.

3 (Off microphone discussion)

4 CHAIRPERSON JORDAN: Okay, on the
5 set of plans you mean, but not on the
6 application itself? I thought you would
7 indicate --

8 MR. GLASGOW: This is what went
9 with the first application.

10 (Off microphone discussion)

11 CHAIRPERSON JORDAN: Do you think
12 it'll stand up, Mr. Moy?

13 MR. MOY: Someone would have to
14 hold this.

15 CHAIRPERSON JORDAN: All right
16 then, let's not worry about it.

17 (Off the record comments)

18 MR. GLASGOW: Because of the size
19 of the drawings and the legibility, what we've
20 done is a combination of, when we first filed
21 the submission we had the reduced copies here,
22 and you can see Ms. Mack's signature here for

1 the zoning.

2 Yes, and Stephen's got the full
3 size set. Mr. Gyor has the full size set
4 there. And this was with the original permit.

5 CHAIRPERSON JORDAN: Come down
6 here because we're not going to shoot it, are
7 we? Okay, and make sure that the Board can --

8 (Off microphone discussion)

9 MR. GLASGOW: Yes, they signed off
10 November 4th, 2011. And if you look at then
11 Sheet C-10, once again you'll see the sign off
12 by the zoning technician right there and the
13 building is shown on the plans.

14 (Off microphone discussion)

15 MR. BROWN: Mr. Chairman, I'm
16 confused about the whole purpose of this line
17 of discussion. I think my colleague is trying
18 to argue timeliness of an appeal that, one,
19 hasn't been accepted in my request to amend
20 and is certainly pending before the Board, and
21 the party who filed that appeal is not here
22 and prepared, a representative is here but

1 hasn't been asked to respond.

2 CHAIRPERSON JORDAN: So we're
3 clear, making a determination whether or not
4 we're going to allow you to amend. And so
5 based upon the timeliness is the argument in
6 opposition to allow you to amend, so that's
7 why it's relevant.

8 So we have on the original, plans
9 that went with the first application back in
10 November of 2011?

11 MR. GLASGOW: That's when it was
12 approved. The application was filed prior to
13 that.

14 CHAIRPERSON JORDAN: When was it
15 filed?

16 MR. GLASGOW: The building permit
17 application is dated April 4th, 2011. Zoning
18 approval was obtained in November of 2011, and
19 the plans clearly show the building as of that
20 date.

21 And the motion to amend is on the
22 basis of the rezoning of the site and

1 statements that the building does not conform
2 with the subsequently adopted change of
3 zoning. And the building is clearly shown on
4 the plans and has not changed since it was
5 originally filed in April 4th, 2011.

6 CHAIRPERSON JORDAN: And the
7 application was based upon the BZA Case Number
8 --

9 MR. GLASGOW: 17825.

10 CHAIRPERSON JORDAN: -- 17825,
11 which granted the relief requested that
12 allowed this.

13 MR. GLASGOW: Yes, sir. And the
14 sign-off by the zoning technician references
15 the BZA application number.

16 CHAIRPERSON JORDAN: Okay, thank
17 you.

18 MR. BROWN: Mr. Chairman, can I
19 respond?

20 CHAIRPERSON JORDAN: Yes, go
21 ahead, please.

22 MR. BROWN: And if you go and you

1 look, and you have to go beyond just the plans
2 that were submitted, the application, again
3 this is the original application for what I
4 refer to as the fueling station, the gas
5 station portion.

6 And if you go back to the
7 application which the applicant amended
8 themselves and then they removed the grocery
9 store/convenience store portion from the
10 permit application and proceeded based solely
11 on the gasoline service station.

12 CHAIRPERSON JORDAN: There was a
13 removal? There was a subsequent amendment to
14 this application?

15 MR. BROWN: The applicant amended
16 the permit application, again it was filed
17 correctly on April 4th of 2011, to remove the
18 store.

19 And if you then go forward, fast
20 forward to where we are November 1 when a
21 permit was issued, a separate permit was
22 issued for the grocery store which says,

1 "Grocery store to be added to existing vehicle
2 service station under separate building permit
3 B1107494, which is the plans you're looking
4 at. And then it says originally the one-story
5 store was part of the previous application and
6 was removed to become this permit.

7 So the applicant, for reasons that
8 we don't need to get into, going back to the
9 first permit bifurcated the gas station from
10 the grocery store.

11 CHAIRPERSON JORDAN: I think
12 you're off-mic maybe.

13 MR. BROWN: I'm just not close
14 enough to the mic. But the applicant of their
15 own doing bifurcated --

16 CHAIRPERSON JORDAN: Do you have a
17 document that, was there a formal removal of
18 this from the original application?

19 MR. BROWN: It's on the
20 application form that was amended by the
21 applicant. And I can provide copies to the --

22 CHAIRPERSON JORDAN: It says

1 removal, that it's been --

2 MR. BROWN: They've crossed off
3 one-level convenience store and put "remove"
4 in the margins. So that the permit that was
5 issued was strictly for renovation, alteration
6 and repair of existing vehicle service
7 station.

8 So the grocery store building
9 which is a separate building from the gas
10 station was removed from the original permit.

11 MR. GLASGOW: Mr. Chairman, I'll
12 object to that. Those plans never removed
13 that building.

14 MR. BROWN: The application itself
15 --

16 CHAIRPERSON JORDAN: What
17 application?

18 MR. BROWN: -- then there would
19 have, as a practical --

20 CHAIRPERSON JORDAN: Which
21 application are you speaking of?

22 MR. BROWN: The application form -

1 -

2 CHAIRPERSON JORDAN: For the
3 second permit or for the first?

4 MR. BROWN: For the first permit,
5 and perhaps --

6 CHAIRPERSON JORDAN: And you said
7 it has on there that it has been amended to
8 say "remove?"

9 MR. BROWN: The one-level
10 convenience store "remove." And it's been
11 crossed out, and I can provide that to the
12 Board. And it makes sense.

13 MR. GLASGOW: Mr. Chairman, it was
14 just the use that was discussed, and we'll get
15 into that with respect to the BZA order which
16 says specifically that since a convenience
17 store is a matter or right use in the C3
18 District, this is Application Number 17825,
19 the subject of this application and the sole
20 focus of the Board's decision is the gasoline
21 service station use.

22 The use of whether you want to

1 call it a convenience store or a grocery store
2 or any of those things is all permitted as a
3 matter of right.

4 The building was never removed
5 from the permit. The permit that was issued
6 by the District permitted the construction of
7 the building, and in fact, later on in the
8 Board's order. I was reading from the first
9 paragraph of the decision and the order right
10 there.

11 CHAIRPERSON JORDAN: Yes, I know
12 what the order says. And that it says that
13 the convenience store or the
14 grocery/convenience store is a matter of right
15 and that the order was going to just generally
16 address the other issues raised.

17 MR. GLASGOW: That's correct. And
18 we left the building, the building was never
19 removed from the plans on the thing. The use
20 within the building, at one point in time we
21 had a cashier's area.

22 We had initially a convenience

1 store, which is permitted as a matter of
2 right, then we had the cashier's office and
3 storage, and then when we got further along
4 with the health department and whatever.

5 Then we got the interior permit,
6 which is essentially what the second permit is
7 that's being appealed. It's for the interior
8 work for the fill out of the convenience
9 store, which in a couple of different places
10 in this order says it's a matter of right.

11 And the building, when they're
12 talking about the building and it doesn't
13 comply with the H Street overlay that it's not
14 in, that has to do with setbacks from the H
15 Street overlay. The building has never
16 changed its position or its size as approved
17 by the Board.

18 MR. BROWN: Mr. Chairman, I
19 disagree.

20 CHAIRPERSON JORDAN: Let me see
21 the document you just had with the removal on
22 it, please.

1 COMMISSIONER COHEN: Can I ask a
2 basic question? What is the basic complaint
3 with the use? I mean what is the actual, I
4 mean I know that there's issues with, you
5 know, issuing a permit and issue, but what is
6 the basic issue?

7 MR. BROWN: Well, and my clients
8 are building a condominium building across the
9 street. But the problem is, and it goes much
10 deeper than just these permits, is that work
11 has been done at the site without permits.

12 The ground lessee, who I assume is
13 doing the work, has been cited and fined.
14 Buildings have been demolished including this
15 quote "grocery store" building, so that it's
16 really just a bunch of cinder blocks that are
17 being incorporated into a new building.

18 And that the applicant, having
19 chosen to bifurcate their permits, operate in
20 such a way that they're cited for illegal
21 demolition, underground storage tank work with
22 permits. And then demolishing, and I can

1 provide pictures, of the grocery store
2 building that they claim is dealt with in the
3 permit.

4 Well, the permit was issued in
5 May. The wall was demolished after that so
6 that you're down to just part of a rear wall,
7 and then they get a second permit to build the
8 grocery store, rebuild the grocery store. And
9 it's pretty clear that's the case.

10 The community has moved on. My
11 clients have moved on. The H Street overlay
12 is the law of the land there. And they
13 should, having chosen to bifurcate their
14 permits, to demolish an existing building
15 which would have grandfathered them to stay in
16 its current location, they're now subject to
17 the H Street overlay which has a much
18 different requirement.

19 The building is not in the back of
20 the property, it's on the front, the street
21 level with respect to the corner, their
22 entrances, and much more pedestrian,

1 community-friendly setup than a grocery store
2 behind pump islands.

3 So I think that's the, whether I'm
4 talking about my clients who are building an
5 apartment building or others in the community
6 is that there's a new standard that by virtue
7 of the ground lessee's actions they're now
8 subject to, and they should be because it
9 results in a much different physical
10 appearance and community relationship between
11 the site.

12 And again for whatever reason, I
13 don't represent the ground lessee, but they
14 chose to do it this way and then when they
15 chose to, I can provide pictures, when they
16 chose to demolish the existing building which
17 would have grandfathered them, they did this
18 sometime after the first permit was issued in
19 about July, they were then cited on July 10th
20 by the city for illegal demolition and
21 underground storage tank work.

22 So having taken those steps,

1 they've lost their grandfather rights having
2 operated illegally and destroyed the existing
3 building and are now subject to --

4 MR. GLASGOW: Mr. Chairman, we
5 object to those characterizations. We have
6 worked out all our permits with the District
7 of Columbia. We're presently are not cited
8 for any violations. The gas station is
9 essentially, and the building are on the site
10 as of this time.

11 Also Mr. Chairman, I'd like to
12 reference that where it says Description of
13 Proposed Work, there's one little piece of
14 that that says, "all renovation, alterations
15 and repair for existing vehicle fuel station"
16 and all of those things in accordance with the
17 BZA plan, and there's one part of one line
18 that's stricken through on that permit
19 application that Mr. Brown was citing.

20 It says special exception granted
21 to Exhibits Number 60, revised plan, and
22 Number 66A, floor plan with elevation and

1 reduced sign size. None of that's stricken
2 through and all of that is reflected on those
3 plans.

4 He's taking out of context one
5 small line with respect to the description of
6 the work. There was no intent and it's not
7 even showing on the permit set to remove that,
8 that the building is no longer going to be
9 part of the application or part of what was
10 approved by the Board.

11 CHAIRPERSON JORDAN: All right,
12 let's deal with this issue of whether or not
13 we're allowing him to amend.

14 There's a couple of issues for me
15 that's rolling out this. One, that we already
16 have an appeal pending under 18449 that's
17 going to again bring up the issue of this
18 permit which we can handle it at that date.

19 I believe that the initial appeal
20 in this matter should have included all your
21 objections to what was already in your initial
22 applications, what my beliefs and thoughts are

1 regarding this matter.

2 Does the Board have any other
3 thoughts on this?

4 (Off microphone discussion)

5 CHAIRPERSON JORDAN: We're just
6 dealing now with the opportunity to amend to
7 allow. We're not into the substance of the
8 underlying appeal yet, or we kind of are but
9 we're not.

10 Yes, let's hear from DCRA
11 regarding that.

12 MR. SURABIAN: I would just say
13 that Mr. Glasgow's statement of the facts is
14 correct, that the second permit was just a
15 question of the grocery store use. It wasn't
16 the structural changes to the building. That
17 was allowed under the first permit from May.
18 It was just a question of use.

19 And secondly, the structural
20 changes to the building were all part of the
21 applications submitted to the Board. It was
22 shown on the site plan that the Board approved

1 and indicated in the order that as part of the
2 special exception it has to be constructed
3 pursuant to that site plan.

4 So it's all part of the order
5 which is approved, and so even if there's a
6 change in the law they're allowed to continue
7 under 3202.6.

8 CHAIRPERSON JORDAN: Well,
9 actually I'm looking at this as one continuous
10 application project, is the way I'm seeing it.

11 Anybody else on the Board have any
12 idea about this? That when they filed the
13 application back in April, that's kind of what
14 started the, it was all included, everything
15 about this project.

16 And so I'm saying that there's
17 nothing new that's occurred in regards to why
18 this should be amended on this appeal. They
19 had the opportunity. It should have all been
20 done at that point. Nothing new to me has
21 arisen in regards to why it should be changed.

22 But if you have a thought, I'm now

1 turning to the Board for their thoughts on the
2 matter before we rule.

3 Ms. Sorg?

4 VICE CHAIRPERSON SORG: I'm just
5 looking at the description on the second
6 building permit and it says, "grocery store to
7 be added to existing vehicle service station."

8 And, you know, because, for
9 example, when we were going through our case
10 files because we had a rather difficult, the
11 plans were pretty dense and difficult to read,
12 you know, it was difficult to tell, you
13 couldn't tell whether that was just the use
14 inside or still having to do with the exterior
15 building. Was it an addition? Was it just,
16 you know, how you're constructing the interior
17 layout or whatever.

18 So I mean I remain unclear as to
19 whether there is a potential that the
20 appellant believed there to be exterior
21 changes, and then second to that whether or
22 not that is relevant if there were not to be

1 any exterior changes that would then kick in
2 the H Street overlay.

3 CHAIRPERSON JORDAN: So you
4 believe that --

5 VICE CHAIRPERSON SORG: I maintain
6 that I'm not yet clear on that.

7 MR. GLASGOW: We have a copy of
8 the permit plans for the second permit and it
9 shows the building in the exact same
10 dimensions, the exact same size.

11 And also when you're talking about
12 changes to the building, the Board in its
13 order stated that the building had to be
14 reduced in size from 1,321 square feet minus
15 385 square feet, which is less than 1,000
16 square feet, so of course there was going to
17 be substantial removal of building. But we
18 have those set of plans that show the building
19 in the exact same location. And Mr. Gyor has
20 those.

21 (Off microphone discussion)

22 VICE CHAIRPERSON SORG: So between

1 the first building permit application and the
2 second building permit application the
3 building shrank but it's siting didn't change?

4 MR. GLASGOW: No, the building
5 never changed because the Board ordered the
6 reduction in size.

7 VICE CHAIRPERSON SORG: Before
8 this?

9 MR. GLASGOW: Before that. So the
10 location of the building and the size of the
11 building through both permit sets did not
12 change in location or size. The only thing
13 that changed with respect to designation of
14 permitted uses within the building.

15 MR. BROWN: And one, I don't think
16 the facts bear that out. One, this is July of
17 this year between the first and the second
18 permit. This is the building, what happened
19 to the building. It actually got smaller
20 after this when they started. And they didn't
21 start construction of the grocery store
22 building until after the second, the November

1 1, 2012 permit.

2 So the facts do not indicate that
3 they had permission to build a grocery store
4 building in the first. The facts would
5 indicate that, one, they tore down the
6 building after the first permit, didn't start
7 construction of the grocery store building
8 until after the November 1 permit.

9 So I don't think the facts, and
10 the fact that they got a second building
11 permit, they got a building permit, they
12 didn't get an interior layout permit. They
13 got a separate permit, and between the first
14 and the second permit this illegal demolition
15 occurred. And I can provide the notice --

16 MR. GLASGOW: The District doesn't
17 take the position that we have the problems
18 that Mr. Brown has that he's asserting that
19 the District has.

20 CHAIRPERSON JORDAN: Go ahead.

21 VICE CHAIRPERSON SORG:

22 Regardless, I mean illegal demolition isn't

1 what we're talking about.

2 CHAIRPERSON JORDAN: Right, that's
3 not before us.

4 MR. BROWN: Mr. Chairman, maybe it
5 would make it easier, because I don't, there's
6 no need to have an extended battle about
7 amending the appeal. I'm willing to withdraw
8 my request to amend and continue.

9 We will file a separate appeal of
10 the second permit to coincide with the ANC
11 permit, and in due course we'll have a hearing
12 on the merits.

13 MR. GLASGOW: We'll file obviously
14 a motion to dismiss that.

15 CHAIRPERSON JORDAN: Yes, okay,
16 and thank you. This is where we are. It's
17 withdrawn. We accept your withdraw. Now
18 let's move to the merits of the initial
19 appeal, of the initial appeal that's filed.

20 And note for the record that the
21 motion to amend has been withdrawn and we
22 accepted that. And we're not going to

1 continue this because he withdrew that. It
2 was based upon that. So let's proceed. Let's
3 go forward. Let's get this done.

4 I think this matter has been
5 briefed well enough for the parties. We're
6 going to give each side, we're going to give
7 you ten minutes each to argue your appeal of
8 this matter, all parties. The appellant can
9 begin.

10 MR. BROWN: Sure. And I'm going
11 to make it very simple. I don't expect to use
12 ten minutes, Mr. Chairman and members.

13 Notwithstanding the --

14 CHAIRPERSON JORDAN: So you and I
15 are on the same page. At first I was going to
16 say five but I thought I'd give you some --

17 MR. BROWN: Well, if I do it in
18 five --

19 CHAIRPERSON JORDAN: No, go ahead.
20 Go ahead.

21 MR. BROWN: -- do I get the extra
22 points?

1 The sole issue that's worth
2 discussing in the context of the original
3 appeal now is the absence of a single record
4 lot, a subdivision of Lot 21 and 803.

5 And both the ground lessee and
6 DCRA have acknowledged that at least when they
7 filed their briefs that the subdivision hasn't
8 occurred, and that in the case of the ground
9 lessee that it was purely an administerial
10 matter and that would have no regulatory
11 impediment to that being completed.

12 The regulation is clear that no
13 permits shall be issued until you have the
14 record lot. We now have two permits that have
15 been issued and -- if Mr. Glasgow, Chip, to do
16 you have the recorded plat?

17 MR. GLASGOW: No, but I have the
18 plat signed by the applicant for this.

19 MR. BROWN: The regulations, there
20 are no permits shall be issued until the
21 single record lot has been created. We have
22 had two instances now, two permits issued.

1 There was no impediment based on the ground
2 lessee's filing to doing that but they chose
3 or were not able to do that.

4 At this moment they acknowledge
5 that there still is no subdivision plat, and
6 we don't know when it will occur. But the
7 regulations are clear, and I've been doing
8 this almost as long as Mr. Glasgow, that I
9 don't have the good fortune on behalf of my
10 clients to get building permits before I have
11 subdivision plats.

12 And in this case two permits have
13 been issued without a subdivision plat.
14 Certainly the first permit as to the appeal,
15 they didn't comply with the zoning
16 regulations. They admit it, and the permits
17 should be revoked on that basis.

18 What they do in the future to cure
19 that is irrelevant because we all have moments
20 in our lives where we're judged. They should
21 have been judged when the permit was issued
22 the first time. They weren't. They should

1 have been judged when the second permit was
2 issued. They weren't. And now we're before
3 the BZA.

4 And again this goes back to, they
5 filed their first permit on this property in
6 April of 2011. By my count that's 18 months
7 ago and they still don't have a subdivision
8 plat, but they're going to promise you that
9 they're going to do it.

10 At this moment they're not in
11 compliance with the zoning regulations and
12 have admitted so, and I think that's the basis
13 for a summary judgment on my behalf on that
14 fact.

15 Three minutes, I believe.

16 CHAIRPERSON JORDAN: Okay, thank
17 you. Does the Board have any questions they
18 would like to ask the appellant?

19 VICE CHAIRPERSON SORG: Thank you,
20 Mr. Chairman. Can you summarize which again
21 for us, which are the zoning regulations that
22 they're currently not in compliance with?

1 MR. BROWN: If you go to section
2 3202.3, and it begins, "Except as provided in
3 the building lot control regulations," and
4 then you go down beyond all the cites.

5 It says, "A building permit shall
6 not be issued for the proposed erection,
7 construction or conversion of any principal
8 structure or for any addition to any principal
9 structure unless the land for the proposed
10 erection, construction or conversion has been
11 divided so that each structure will be on a
12 separate lot of record." That's a subdivided
13 lot created by the surveyor's office.

14 In this case we have Lot 21 and
15 Lot 803 comprising the site, not a single
16 record lot. A clear violation of the zoning
17 regulations that should have been, quite
18 frankly, done 18 months ago.

19 But in my experience, and Mr.
20 Jordan, you've been at DCRA, permits are not
21 issued without a record lot, and we've now had
22 two permits. We come to the BZA hearing,

1 there still isn't a subdivision.

2 These are, in Mr. Glasgow's words,
3 administerial, and no regulatory impediment to
4 accomplishing it, yet 18 months later they
5 haven't done that and they're in violation of
6 the zoning regulations as to the first and the
7 second permit. The first permit is before you
8 and should be revoked.

9 CHAIRPERSON JORDAN: Ms. Cohen?

10 COMMISSIONER COHEN: Yes, I think
11 that could be mitigated. I mean I know that
12 he didn't follow, you know, the rules and we
13 should slap him around a bit, but it could be
14 mitigated.

15 So what is going to, you know, if
16 we continue this kind of discussion it's just
17 going to, you know, be sort of circular. So
18 what are you proposing be the punishment?
19 Just revoking the permits and then going
20 forward with the same plan because the
21 original order allows them to do this, meaning
22 provide the mini-mart or whatever you want to

1 call it, grocery store, and the particular gas
2 station?

3 MR. BROWN: I don't think
4 mitigation is the Board's role in an appellate
5 function. If we were a special exception
6 variance we might have that discussion. The
7 Board's function in an appeal case is to judge
8 the validity of a zoning determination. In
9 this case a permit, but any zoning decision.

10 And the question is, when the
11 zoning decision was made and the first permit
12 was issued was that permit issued in
13 compliance with the zoning regulations? The
14 answer is clearly, and I don't think anybody's
15 going to dispute it, no.

16 What we do after that is not for
17 this body in the appellate function, it's left
18 to others. But in your appellate role, you're
19 judging this permit at the time the decision
20 was made, they weren't in compliance with the
21 zoning regulations.

22 And even raising mitigation, May

1 of 2012, the permit was issued. They had from
2 May until now, six months, to mitigate, come
3 into compliance. They still haven't done it.
4 So I think again, when the permit was issued
5 in May 4th of 2012, you have to say, were they
6 in compliance with the zoning regulations?

7 They've admitted they weren't.
8 They admitted they still aren't. It's a
9 summary judgment. There's no material
10 disputed fact. There's no material disputed
11 law. It doesn't say you shall do it when it's
12 convenient. It says, no permit shall be
13 issued.

14 CHAIRPERSON JORDAN: How do you
15 reconcile that with the Board's order in
16 17825? How do you reconcile that requirement
17 or the alleged requirement in regards to what
18 the Board did on 17825? The lots were still,
19 were not subdivided at that time, correct?

20 MR. BROWN: And that happens all
21 the time where the Board approves it based on
22 a site which comprised as two lots. The Board

1 is not approving a building permit. That's a
2 different function. That's a DCRA function.

3 And the Board was clearly within
4 its right and jurisdiction to approve the
5 application. They did so. All your
6 applications are approved subject to getting
7 your building permits.

8 So it goes to a different phase
9 which is now before you whether, in fact, DCRA
10 was correct or incorrect in issuing that
11 building permit, and I think it's pretty clear
12 that they were incorrect in issuing a building
13 permit for this site without a subdivision
14 creating a single record lot.

15 CHAIRPERSON JORDAN: All right,
16 thank you. Mr. Surabian?

17 MR. SURABIAN: Thank you.

18 CHAIRPERSON JORDAN: You're on the
19 clock for ten too, which you're not going to
20 take all ten, right?

21 MR. SURABIAN: I hope not.

22 Well, thank you, members of the

1 Board. Even though Mr. Brown didn't address
2 them I'll just quickly indicate the bases he
3 raised in his initial appeal are all without
4 merit. The median strip has been installed.
5 The gas station use as we know is allowed by
6 the special exception. The grocery store use
7 is allowed as a matter of right. There really
8 shouldn't be any debate on those questions.

9 As for the subdivision, he's
10 correct that it hasn't been recorded yet. The
11 fact is, this isn't unknown to DCRA and we
12 haven't bypassed this regulation.

13 The fact is that it takes a
14 considerable amount of time to process that
15 and so as accommodation DCRA has allowed
16 permits to be issued in its cases like this
17 provided that the subdivision is complete and
18 recorded before you get your final inspection.
19 So in other words, you won't get your C of O,
20 you won't be approved in the final inspection
21 so long as that subdivision's incomplete.

22 So we have a regulatory control in

1 place, it was done because what happened was
2 months, you know, projects could be held up
3 for months that were ready that are otherwise
4 ready to go that were just being held up for
5 this requirement.

6 There isn't any regulatory
7 impediment to this being accomplished and it
8 has been applied for, so I don't see the Board
9 revoking the permits or doing, I don't see how
10 that accomplishes anything or resolves the
11 issue. So we would ask the Board to deny the
12 appeal.

13 CHAIRPERSON JORDAN: When was a
14 subdivision applied for?

15 MR. GLASGOW: Mr. Chairman, I have
16 copies of our subdivision application as
17 approved, as accepted by the Department of
18 Consumer and Regulatory Affairs. We applied
19 for the subdivision June 13th, 2011.

20 CHAIRPERSON JORDAN: And it's my
21 understanding from your argument that this has
22 been a pattern and practice of the ZA?

1 MR. SURABIAN: It's been a policy
2 put in place because of the delays that can
3 sometimes occur.

4 CHAIRPERSON JORDAN: What's the
5 average time for processing a subdivision such
6 as this?

7 (Crosstalk)

8 MR. LEGRANT: The question is how
9 long typically for subdivisions?

10 CHAIRPERSON JORDAN: Yes.

11 MR. LEGRANT: It varies depending
12 upon the size of the subdivision. Many
13 subdivisions are simply conversions of tax
14 lots to record lots. Some subdivisions
15 involve, you know, tens if not hundreds of
16 lots. So a subdivision like this, it's my
17 experience typically run two to three months
18 in terms of processing time.

19 CHAIRPERSON JORDAN: Is there any
20 questions? Yes, go ahead.

21 VICE CHAIRPERSON SORG: Thank you.
22 So if that's the average, why is this one

1 taking so long you think?

2 MR. GLASGOW: Our application was
3 lost and then it was redrawn. And we asked
4 for that a couple of months ago after we found
5 out that the subdivision had been misplaced
6 and we never had it.

7 And so then it took several weeks
8 even after that to get it drawn, and it was
9 then issued to us, I believe it was last week.
10 We have signatures of the owners on the
11 subdivision plat. I'm going to enter that
12 into the record.

13 VICE CHAIRPERSON SORG: So the
14 subdivision plat was restored to DCRA, do you
15 know when? Last week?

16 MR. GLASGOW: We asked, where is
17 our plat, because we're getting, the
18 building's being constructed, has been for
19 some period of time, and we needed our record
20 lot because we knew that we would need it for
21 the final inspections and to get our C of O.

22 And then weeks after that the plat

1 showed up. We got it last week. We signed it
2 in like two business days, and we're trying to
3 process it as quickly as we possibly can. And
4 as Mr. Surabian indicated, there's no
5 impediment. There's no regulatory impediment
6 for the processing of that plat.

7 VICE CHAIRPERSON SORG: Thank you.

8 CHAIRPERSON JORDAN: Any other
9 questions?

10 MR. GLASGOW: It's just consistent
11 with the District's practice at this point in
12 time.

13 CHAIRPERSON JORDAN: I'm about to
14 defer to your portion of this, unless you want
15 to take some as part of your minutes.

16 Any other questions of Mr.
17 Surabian? Okay, then let's now turn to the
18 ground lessee. Well, let's wait for Mr. Moy
19 to get back so he can put you on the clock.

20 I don't know, you've used some of
21 your ten minutes. You're probably down to
22 like three. No, let's go ahead and put him on

1 ten minutes, please.

2 Just what I like, more paper, poor
3 trees. Okay, then let's begin, please.

4 MR. GLASGOW: All right. Thank
5 you, Mr. Chairman. I'll just defer to the
6 comments that Mr. Surabian made with respect
7 to all the other issues that were raised in
8 this appeal other than the subdivision.

9 I think that those are very clear
10 and disposed of and we also wrote document
11 with respect to that on our response that
12 opposed the motion to amend. I think we
13 covered the other issues in there, so we would
14 want to know if the Board has any questions or
15 issues on any of the other comments.

16 With respect to the subdivision,
17 picking up on something that Ms. Cohen
18 referenced, if the Board were to revoke the
19 permit we would just continue processing the
20 plat that we have and the permit would be
21 reissued and the subdivision's in place.

22 I mean it's clear, and I don't

1 view that particularly even as mitigation or
2 anything. It's just completing that part of
3 the administerial process of which we had no
4 control over, and we more than timely filed
5 everything that we were supposed to file, the
6 building permit application, the subdivision
7 application filed in June of 2011.

8 And so we would submit that the
9 applicant has done everything that it's
10 supposed to do under the BZA order and all we
11 have sought to do with respect to this project
12 is build it in accordance with the Board's
13 approval and BZA Application 18725, or 17825.
14 And that's all we've sought to do from the
15 beginning, and what we're planning to do at
16 this point in time and continue to do.

17 CHAIRPERSON JORDAN: Does anyone
18 from the Board have any questions of Mr.
19 Glasgow or the ground lessee?

20 All right, then we're going to
21 conclude this hearing.

22 VICE CHAIRPERSON SORG: Mr.

1 Chairman, I do have one other question for the
2 appellant --

3 CHAIRPERSON JORDAN: Sure.

4 VICE CHAIRPERSON SORG: -- which
5 came up for me when you were giving your
6 testimony.

7 If we were to grant this appeal,
8 what material relief would that provide to you
9 given Mr. Glasgow's comments? What material
10 relief would that provide to you and your
11 clients?

12 MR. BROWN: Well, one, the
13 building permit would be revoked, the first
14 one.

15 VICE CHAIRPERSON SORG: No, I
16 understand that. But I'm talking about
17 material --

18 MR. BROWN: Well, and then the
19 question of the proper review of that building
20 permit in the context of the current zoning,
21 the BZA decision, the demolition that's
22 occurred to the building, and where we are now

1 would all have to occur.

2 VICE CHAIRPERSON SORG: Okay, then
3 that leads me to a question. Thank you.

4 MR. BROWN: Can I also --

5 VICE CHAIRPERSON SORG: Yes.

6 MR. BROWN: And Mr. Glasgow was
7 very helpful because he provided the
8 application from June of 2011. Let's put that
9 in the context.

10 That was shortly after the first
11 building permit application was filed, it's
12 what, 15 months ago. And the fact that it was
13 lost and is, I mean that happens. We've all
14 been through that. But a 15-month period and
15 still no subdivision recorded lot, two permits
16 being issued, the system breaks down.

17 And I'm not aware of any policy of
18 building permits being issued without the
19 record lot being in place. I'm certainly not
20 aware of any policy that would allow you to
21 continue construction until your final
22 inspection to get a record lot, particularly

1 in the context where Mr. Glasgow says that
2 this was purely administerial.

3 Mr. LeGrant says two to three
4 months. That sounds about right. And we
5 still don't have it, and Mr. Glasgow says
6 there was no impediment to. Well, the ground
7 lessee, the one seeking the building permit,
8 the burden's on them.

9 And I don't think it's reasonable
10 to the process and to the Board to say, well,
11 it took us longer than it should have. At the
12 moment you need to judge this, which is the
13 time the permit was issued, the first permit
14 which is May 4th of 2012, they did not have a
15 record lot. The regulations don't give you
16 the authority to deviate from that. So I'll
17 just leave it at that.

18 COMMISSIONER COHEN: It appears to
19 me, and correct me if I'm wrong, but that you
20 want to go back to the BZA for a re-review of
21 the original request under the overlay, the H
22 Street overlay?

1 MR. BROWN: I didn't say that. I
2 just said that we'd have to go back to ground
3 zero from the permits. And there are enough,
4 and we heard the discussion earlier on,
5 there's enough --

6 CHAIRPERSON JORDAN: But aren't
7 you really saying, Mr. Brown, you're saying
8 you just call it quits since there was a
9 violation. It's a violation, you can't
10 correct it, it's done.

11 And then you would piggyback upon
12 the argument that if any new application is
13 made in the manner which you say it should
14 happen, then that that's outside the two-year
15 time frame and so this issue, this whole thing
16 would be dead. Is that kind of where you are?

17 MR. BROWN: That may be the end
18 result. I don't get to make that --

19 CHAIRPERSON JORDAN: I figured
20 that's where you are. And so I just want this
21 Board to understand what his argument was and
22 where he was with my understanding of where we

1 are.

2 MR. BROWN: But Mr. Chairman, the
3 consequences of your decision shouldn't be --

4 CHAIRPERSON JORDAN: I understand.

5 MR. BROWN: -- that you may not
6 disagree with those consequences. In your
7 appellate rule you have to decide whether the
8 permit was issued in compliance with the
9 regulations regardless of how that, what
10 effect that has.

11 CHAIRPERSON JORDAN: All right.

12 VICE CHAIRPERSON SORG: But the
13 Board's mandate is to take into consideration
14 when decisions made by the Board have only an
15 administrative effect or can have an effect of
16 providing relief for people in front of the
17 Board.

18 So that's beside the point, but I
19 do want to ask a question of Mr. Surabian
20 which is, if the building permit were revoked
21 and had to be reapplied for now, would that
22 have to --

1 CHAIRPERSON JORDAN: And just
2 before that I just want to also put on the
3 table that this Board does have the ability to
4 give relief in regards to various regulations.

5 VICE CHAIRPERSON SORG: No, yes,
6 and I'm saying --

7 CHAIRPERSON JORDAN: I know. No,
8 I'm supporting what you're saying.

9 VICE CHAIRPERSON SORG: Yes.

10 CHAIRPERSON JORDAN: Just so that
11 we put this out there.

12 Okay, Mr. Surabian, you have a
13 question.

14 VICE CHAIRPERSON SORG: Right. So
15 --

16 CHAIRPERSON JORDAN: And we're
17 going to wrap this up.

18 VICE CHAIRPERSON SORG: You got
19 it?

20 MR. SURABIAN: I don't see that
21 scenario playing out. I think in the time
22 that it would take the Board to even issue a

1 decision it would be complete. So it would
2 all sort of be for nothing.

3 CHAIRPERSON JORDAN: Okay. I
4 think we've had all the arguments, but I do
5 want to add into the record that ANC-6A
6 submitted a letter and where they voted 6-0-0
7 with a quorum present to support the appeal
8 filed by the applicant on the building permit
9 1107494, and as well as the amendment.

10 However, that's not before us at
11 this point anymore. I just want to add that
12 to the record on this matter.

13 All right, we're going to conclude
14 this hearing on the appeal. I'm going to ask
15 that each party present a finding of facts and
16 conclusions of law to the Board so that we put
17 this on for a decision.

18 Mr. Moy, what are we looking at at
19 our favorite January something date? Is it
20 the 15th?

21 MR. MOY: Yes, yes.

22 CHAIRPERSON JORDAN: Is that our

1 favorite date?

2 MR. MOY: Yes.

3 CHAIRPERSON JORDAN: How are we
4 stacking up? We've really been stacking that
5 date today.

6 MR. MOY: We're doing fine.
7 What's one more, right?

8 CHAIRPERSON JORDAN: Yes, that's
9 what you said, and that's why we're sitting
10 here at this time of day and we had the
11 morning rolled over to -- but anyway.

12 Yes, how are we looking on that
13 day?

14 MR. MOY: About five decision
15 cases at this point.

16 CHAIRPERSON JORDAN: Okay, plus we
17 have the findings of the facts and conclusions
18 of law coming in that will probably be in on
19 January 8th. Is that the day for those things
20 to be submitted?

21 (Off the record comments)

22 MR. MOY: I think that was about

1 right. January 7th, which is a Monday.

2 CHAIRPERSON JORDAN: January 7th,
3 so from all the parties. Okay. And we're not
4 taking in any responses or rebuttals to the
5 finding of facts and conclusions of law. Just
6 submit those to the Board, please.

7 MR. GLASGOW: And Mr. Chairman,
8 we'd like to be able to file our subdivision
9 if it is processed by that date, for the
10 record.

11 CHAIRPERSON JORDAN: I think
12 either the, as they say, the horse is out of
13 the barn or not, we've already got your
14 testimony regarding where it is. I mean
15 because the issue is what happened at the
16 time, yes, and we already know when the
17 application was filed, so I don't think we
18 really need it in the record.

19 All right, so then let's conclude
20 this hearing, and thank you.

21 MR. GLASGOW: Thank you.

22 MR. MOY: And there's one other

1 administrative item, Mr. Chairman.

2 CHAIRPERSON JORDAN: Oh, sure, and
3 now I've got to read this thing. Gee. Okay.

4 Excuse me, could you sit down,
5 please?

6 (Off microphone discussion)

7 CHAIRPERSON JORDAN: Who's
8 responsible for this guy? No.

9 (Laughter)

10 CHAIRPERSON JORDAN: If I may, in
11 accordance with section 405C of the Open
12 Meeting Act of D.C. Official Code section
13 2575(c), I move that the Board of Zoning
14 Adjustment hold closed meetings on Monday of
15 December 3rd, December 10th and December 17th.

16 This will begin at 4:00 p.m. for
17 the purpose of obtaining legal advice from our
18 counsel, and to deliberate upon but not voting
19 on the cases scheduled to be publicly heard or
20 decided by the Board on the day after each
21 such closed meeting.

22 Those cases are identified on the

1 Board's public agenda for December 4th,
2 December 11th and December 18th.

3 Is there a second?

4 MR. HINKLE: Second.

5 CHAIRPERSON JORDAN: Motion made
6 and seconded. Will the secretary please take
7 a roll call?

8 MR. MOY: Yes, sir. Thank you.
9 When I call your name if you would reply with
10 either yes, no, aye or nay.

11 Ms. Cohen?

12 COMMISSIONER COHEN: Yes.

13 MR. MOY: Vice Chair Sorg?

14 VICE CHAIRPERSON SORG: Yes.

15 MR. MOY: Chairman Jordan?

16 CHAIRPERSON JORDAN: Yes, no, aye
17 or nay. Oh, yes.

18 MR. MOY: Thank you. And Mr.
19 Hinkle?

20 MR. HINKLE: Yes.

21 MR. MOY: The motion carries, Mr.
22 Chairman.

1 CHAIRPERSON JORDAN: Thank you.

2 Seeing that the motion was
3 approved, I request that the Office of Zoning
4 provide notice of these closed meetings in
5 accordance with the Act. Thank you.

6 Is there any other business coming
7 before the Board today?

8 MR. MOY: Not from the staff, Mr.
9 Chairman.

10 CHAIRPERSON JORDAN: Thank you.
11 Then we will adjourn.

12 (Whereupon, the foregoing matter
13 went off the record at 3:17 p.m.)
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Before: DCZC/BZA

Date: 11-27-12

Place: Washington, DC

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