

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
+ + + + +**

BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING AND MEETING

+ + + + +

**TUESDAY
FEBRUARY 12, 2013
+ + + + +**

**The Regular Public Hearing and
Meeting convened in the Jerrily R. Kress
Memorial Hearing Room, Room 220 South, 441
4th Street, N.W., Washington, D.C., 20001,
pursuant to notice at 9:40 a.m., Lloyd
Jordan, Chairperson, presiding.**

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

**LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson**

**JEFF HINKLE, Board Member (NCPC)
S. KATHRYN ALLEN, Board Member
ZONING COMMISSION MEMBER PRESENT:
ROBERT MILLER, Board Member
PETER MAY, Board Member**

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

**The transcript constitutes the
minutes from the Public Hearing or Meeting
held on February 12, 2013.**

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

2 9:40 a.m.

3 CHAIRPERSON JORDAN: Good morning.
4 Will this hearing please come to order. Good
5 morning ladies and gentleman. We are here at
6 the Jerrily R. Kress Memorial Hearing Room at
7 441 4th Street. The date is February 12,
8 2013. We are here for the meeting of the
9 Board of Zoning Adjustment.

10 My name is Lloyd Jordan,
11 Chairperson. To the right of me is our new
12 Board member S. Kathryn Allen and to her right
13 is Jeffrey Hinkle. The Board member to my
14 left is Vice Chair Nicole Sorg and to her left
15 is Robert Miller, member of the Zoning
16 Commission.

17 Please be advised that we are
18 being recorded by a court reporter and being
19 broadcast -- webcast live. Therefore, I'm
20 going to ask you to refrain from any
21 disruptive noises, to turn off your cell
22 phone, like I need to do.

1 The Board's hearing procedures and
2 processes are contained in the pamphlet by the
3 door to my left. Please feel free to get
4 that. Our docket is a rolling docket of cases
5 so we will process those kind of not
6 necessarily in the order that is sitting there
7 but what is a more efficient manner for the
8 Board.

9 We are going to take -- the first
10 matter we have is a hearing. We don't have
11 any testimony necessary for any cases today
12 so, therefore, there is no need for anyone to
13 take the oath.

14 Is that correct, Mr. Secretary?

15 MR. MOY: Well, with the exception
16 of --

17 CHAIRPERSON JORDAN: Yes, we do on
18 the appeal. Correct.

19 MR. MOY: That's correct.

20 CHAIRPERSON JORDAN: So if anyone
21 is here for Case 18499, would you please stand
22 and take the oath or affirmation from the

1 Board's secretary. Then thereafter complete
2 two witness cards apiece and then hand them to
3 the court reporter prior to providing
4 testimony.

5 (Whereupon, the witnesses were
6 sworn.)

7 CHAIRPERSON JORDAN: With that,
8 Mr. Moy, would you please call our first case?

9 MR. MOY: Yes, sir. Good morning,
10 Mr. Chairman, members of the Board. Also on
11 behalf of the Director of the Office of Zoning
12 we welcome Kathryn Allen to the Board of
13 Zoning Adjustment. We now have a full Board.
14 I'm always happy about that.

15 Well, first of all, preliminary
16 for the three appeals on the docket for the
17 hearing session. For the record, Appeal No.
18 18497, the appeal of the 2115 N Street Condo
19 Association, that appeal has been postponed
20 and rescheduled to April 9, 2013.

21 No. 2, the Appeal No. 18501 of
22 ANC-6A, this is the property at 607 14th

1 Place, N.E., that appeal was withdrawn by the
2 appellant.

3 What is before the Board in the
4 hearing session is Appeal No. 18499 of ANC-6A.
5 This is the Advisory Neighborhood Commission
6 6A pursuant to 11 DCMR 3100 and 3101, from a
7 decision by the Department of Consumer and
8 Regulatory Affairs to issue Building Permit
9 No. B1209455, dated November 1, 2012,
10 approving the construction of a gasoline
11 station and grocery store in the HS/C-2-A
12 District at premises 1400 Maryland Avenue,
13 N.E. Property located in Square 1049, Lots 21
14 and 803.

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

17 Would the parties for 18499 please
18 come to the witness table.

19 Very good. Would you please
20 identify yourselves? Starting with you. Make
21 sure -- I don't think it's on.

22 MR. WRIGHT: Thomas Wright,

1 Capitol Petroleum. There we go.

2 CHAIRPERSON JORDAN: Mr. Wright.

3 MS. SHIKER: Christine Shiker with
4 the law firm of Holland & Knight representing
5 the ground leasee at the site.

6 MR. LeGRANT: Good morning.
7 Matthew LeGrant. I'm the Zoning Administrator
8 with DCRA.

9 MS. BOLLING: Good morning.
10 Melinda Bolling, General Counsel for DCRA.

11 CHAIRPERSON JORDAN: Is there
12 anyone else for this proceeding? I think
13 there's a preliminary matter which is before
14 us. Is that correct?

15 MS. SHIKER: Yes, Chairperson. We
16 filed a motion to dismiss for a variety of
17 reasons and you should have that along with
18 exhibits in your record.

19 CHAIRPERSON JORDAN: Our first
20 order of business will be to take up the
21 Motion to Dismiss. I note the absence of the
22 appellant in this matter and his cause but we

1 do have the brief that's been submitted. The
2 position has been submitted.

3 We have before us a motion to
4 dismiss. Basically my understanding is you're
5 making a collateral estoppel argument,
6 administrative collateral estoppel argument.
7 Is that correct?

8 MS. SHIKER: That is correct, as
9 well as a timeliness argument for the appeal
10 since all of the issues in the appeal also
11 deal with the May permit.

12 CHAIRPERSON JORDAN: Why don't we
13 take five minutes to allow you to do a
14 presentation of the motion. The proponents
15 will have five minutes but there is no one
16 here.

17 MS. SHIKER: Thank you. Good
18 morning, Chairperson and Board members.
19 Christy Shiker with the law firm of Holland &
20 Knight. We have submitted a motion to dismiss
21 on a variety of matters.

22 First, it would be on the

1 timeliness factor. The Zoning Regulations
2 provide an aggrieved party 60 days to submit
3 an appeal from a building permit upon which
4 they complained.

5 The ANC, in fact, did submit an
6 appeal on the original permit that was issued
7 for the construction of the facilities for the
8 gas station that was approved in the original
9 Board of Zoning Adjustment case. The ANC
10 withdrew that appeal and has subsequently
11 submitted a second appeal based on an interior
12 alterations permit that was for the grocery
13 store use.

14 Because both the building that was
15 being constructed and the zone district, which
16 is what the two issues they complain about
17 were part of the May permit, they should have
18 appealed that within 60 days of the original
19 permit. This permit, which is several months
20 after that, would be untimely. This appeal,
21 excuse me, would be untimely.

22 Secondly, under the doctrine of

1 collateral estoppel, the issues that were
2 complained of in this appeal were already
3 decided and actually litigated before the
4 Board of Zoning Adjustment in Appeal 18439 for
5 which the Board considered and took a decision
6 on January 15, 2013.

7 We would also add to that that the
8 appellant does have the burden of proof and is
9 failing to prosecute the case by now
10 presenting any evidence today. Outside of
11 these preliminary jurisdictional issues we do
12 believe that the appeal would fail on its
13 merits as well as with respect to the zone
14 district. The zone district category does
15 permit the grocery store use and there has
16 been no evidence to say that it didn't.

17 Then, secondly, with respect to
18 compliance with the 8th Street Overlay, the
19 original permit was filed within the two years
20 for the BZA approval. That BZA approval
21 vested the site under the regulations at the
22 time of the decision and, thus, compliance

1 with those two physical requirements under the
2 8th Street Overlay do not apply to this case.
3 That is a summary of what our position is and
4 we appreciate your consideration.

5 CHAIRPERSON JORDAN: Thank you.

6 Does the Board have any questions
7 they need to ask?

8 Thank you. I think we understand
9 clearly what your argument is. I don't have
10 any additional questions for you.

11 Does DCRA want to have time to
12 either support or rebuttal? We didn't get
13 anything from DCRA regarding this appeal and
14 that concerns me. I didn't know why this
15 happened.

16 Certainly you have the opportunity
17 to espouse one way or the other your position
18 on this matter, particularly on the
19 preliminary matter the motion. First, why
20 didn't we get anything from DCRA?

21 MS. BOLLING: Well, thank you,
22 Chair, for the opportunity to speak. It was

1 our understanding upon information and belief
2 that the ANC was going to withdraw the appeal.

3 When they submitted a letter in
4 lieu of that stating they weren't going to
5 appear, we felt that we didn't want to burden
6 the Board with any additional arguments on the
7 merits. We support the motion to dismiss
8 filed by Ms. Shiker on behalf of her client.
9 We don't oppose that at all.

10 CHAIRPERSON JORDAN: Does the
11 Board have any questions? The appellant is
12 not here but we do have their submission. We
13 can let the Board deliberate.

14 Is the Board ready to deliberate
15 on the motion to dismiss?

16 In my review of this matter, I
17 believe that this matter has already been
18 litigated by this Board in the previous case
19 of 18439. I would give support to the
20 collateral attack argument offered in this
21 Motion to Dismiss. I would believe that it
22 would be one that we would sustain the motion.

1 The issues raised in this matter
2 are exactly the same issues that were raised
3 in the earlier case 18439. In 18439 the issue
4 about whether this permit was issued in
5 violation of HSA Overlay, particularly 1324.2
6 and 1324.10 was raised before this Board as
7 well as all the other issues, whether or not
8 the grocery store was in the first permit or
9 not.

10 This Board made a decision in
11 18439 that everything related back to the
12 first permit. We were very clear about what
13 that was. Therefore, there would have been a
14 two-year time period in which the BZA order
15 and the C-3-A zone at that point were the
16 requirements.

17 If you look at the two briefs, the
18 two statements or the two briefs offered in
19 both cases, they look like the paragraphs were
20 pulled out of each one and inserted one in the
21 other. The ANC in that particular matter did
22 not appear before the body. However, they

1 sent us a letter that indicated their support
2 for that and that they were a party to all our
3 activities anyway.

4 Additionally they indicated in
5 their letter that they would be represented at
6 that hearing by three people who did not show.
7 It would be my thought that the motion should
8 be sustained for the grounds I just set forth.

9 Any other Board member have --

10 VICE CHAIRMAN SORG: Thank you,
11 Mr. Chairman. I agree with your support of
12 the motion on your first point that, you know,
13 we did deal directly with these issues in the
14 last appeal case which was denied.

15 I do actually believe that the
16 timeliness issue was better explained in this
17 briefing. I think that there is also
18 something to that. Many projects require
19 multiple permits and if those people investing
20 in economic development cannot be certain that
21 their project is vested, I think it raises
22 some concerns in that regard.

1 In that way, I think that in this
2 case, as you mentioned, the project was vested
3 by the first building permit that was issued
4 as we discussed in the last appeal and
5 modified by subsequent permits which is not
6 altogether uncommon so I will support your
7 motion.

8 CHAIRPERSON JORDAN: Any other
9 comments, Board members?

10 Mr. Miller.

11 MEMBER MILLER: Thank you, Mr.
12 Chairman. I would concur with both of your
13 comments and the Vice Chairman's comments. If
14 we were to deny the motion to dismiss, I would
15 be prepared to deny the appeal on the merits.

16 CHAIRPERSON JORDAN: If there are
17 no other comments, then I would move that we
18 sustain the motion to dismiss and dismiss the
19 appeal for the reasons stated. Is there a
20 second?

21 MEMBER ALLEN: Second.

22 CHAIRPERSON JORDAN: Hit the mic.

1 MEMBER ALLEN: Second.

2 CHAIRPERSON JORDAN: Motion made
3 and seconded. Any further discussion? All
4 those in favor signify by saying aye.

5 BOARD MEMBERS: Aye.

6 CHAIRPERSON JORDAN: Those opposed
7 nay. The motion carries.

8 Mr. Moy.

9 MR. MOY: The staff would record
10 the vote as five to zero. This is on the
11 motion of Chairman Jordan to grant the motion
12 to dismiss or to, in effect, dismiss the
13 appeal.

14 Seconding the motion, I believe,
15 was Chairperson Sorg. Also in support Mr.
16 Robert Miller, Ms. Allen, and Mr. Hinkle. The
17 final vote is five to zero. The motion
18 carries, Mr. Chairman.

19 CHAIRPERSON JORDAN: Thank you.
20 That resolves this matter. Thank you.

21 MR. MOY: As to the decision cases
22 on the public meeting's docket, Mr. Chairman,

1 I believe the first application for decision
2 is Application No. 18449 of Israel Baptist
3 Church and Israel Manor, Inc., pursuant to 11
4 DCMR 3104.1 and 3103.2 for a variance from the
5 parking requirements under Subsection 2101.1
6 and a special exception under Subsection
7 2116.3 for a community health facility and
8 ancillary church social and recreation space
9 to be erected as an addition to the existing
10 church building with required on-site parking
11 located elsewhere than on the subject property
12 in the R-5-A District at premises 1251
13 Saratoga Avenue, N.E. and 2403, 2407, 2409,
14 and 2411 12th Street, N.E. Property located
15 in Square 3939, Lots 31, 33, 34, 35, and 36.

16 I think I have something else to
17 say, too, if I can find my notes. For the
18 record also, Mr. Chairman, the Applicant had
19 previously amended his application to withdraw
20 zoning relief from 2116.3 and replace that
21 with a special exception relief under Section
22 2116.4(a) which is to locate a part of the

1 onsite parking area between the building
2 restriction line and the lot line abutting the
3 street.

4 CHAIRPERSON JORDAN: Is that it?

5 MR. MOY: Yes. Let me conclude
6 with that, sir.

7 CHAIRPERSON JORDAN: Okay. One of
8 those days. I think we have some preliminary
9 matters that's pending. I think there was
10 some late filings offered in this matter. Our
11 record was closed if I'm not mistaken. Is
12 that right, Mr. Moy?

13 MR. MOY: Yes. I found my notes.

14 CHAIRPERSON JORDAN: I think we
15 only left for our record to be open regarding
16 the decision of the Public Space Committee.
17 We left open for a detail floor plan and
18 programming.

19 MR. MOY: Yes.

20 CHAIRPERSON JORDAN: The ANC --
21 was there a comment from the ANC?

22 MR. MOY: Let me backtrack a

1 little bit, sir. The Applicant made their
2 filing as requested by the Board and that is
3 in your case folders under Exhibit 42.
4 Subsequent to the Applicant's filing they were
5 telescoping responses which the Board had not
6 requested.

7 One being Exhibit 39 which is a
8 collection of letters in opposition. Exhibit
9 40 is the appellant's motion to strike Exhibit
10 39. Exhibit 41 is a letter from the chair of
11 ANC-5C requesting the Board to postpone its
12 decision so the ANC-5C can meet at its monthly
13 meeting on February 20th. Finally, Exhibit 43
14 is the Applicant's response and objection to
15 ANC's request to postpone. I hope that's
16 helpful.

17 CHAIRPERSON JORDAN: What was
18 Exhibit 42?

19 MR. MOY: 43.

20 CHAIRPERSON JORDAN: What was 42?

21 MR. MOY: 42 is the Applicant's
22 initial filing and response --

1 CHAIRPERSON JORDAN: And response
2 to our request.

3 MR. MOY: That's correct.

4 CHAIRPERSON JORDAN: The time
5 frames and requirements for what we kept our
6 record open does not allow for the acceptance,
7 in my opinion, of Exhibit No. 39. Unless the
8 Board has any other thought about it, it's my
9 intent to not accept Exhibit No. 39. Our
10 record is closed regarding those particular
11 things.

12 Ms. Sorg.

13 VICE CHAIRMAN SORG: I agree, Mr.
14 Chairman. I also think throughout the hearing
15 and the original filings we did get an idea
16 that there are varying community factions with
17 varying feelings regarding the project.

18 CHAIRPERSON JORDAN: Regarding --
19 Yes, Mr. Miller.

20 MR. MILLER: I agree that it's a
21 late filing. However, you did encourage the
22 Applicant to work with the community and get

1 more community, ANC particularly, input. I
2 wouldn't particularly object to it being part
3 of the record. Many of them testified at the
4 hearing. Either way, I just wanted to state
5 that for the record.

6 CHAIRPERSON JORDAN: Anybody else?
7 Mr. Hinkle.

8 MEMBER HINKLE: Thank you, Mr.
9 Chair. The purpose of the hearing is to hear
10 from people, in my opinion, and we did close
11 the record.

12 While we did ask the Applicant to
13 work with the community a little bit further,
14 I think it makes sense to at least strike this
15 exhibit in this case simply because we did
16 close the record.

17 CHAIRPERSON JORDAN: Then I would
18 rule that we close the record and Exhibit 39
19 be excluded. Let's put that to a vote. My
20 motion would be to exclude Exhibit 39.

21 VICE CHAIRMAN SORG: Second.

22 CHAIRPERSON JORDAN: Motion made

1 and seconded. All those in favor signify by
2 saying aye.

3 BOARD MEMBERS: Aye.

4 CHAIRPERSON JORDAN: Those opposed
5 nay.

6 MR. MILLER: Nay.

7 CHAIRPERSON JORDAN: The motion
8 carries.

9 Mr. Moy.

10 MR. MOY: Yes. Staff would record
11 the vote three to one on the motion of
12 Chairman Jordan to strike Exhibit 39 from the
13 record. Seconding the motion was the Vice
14 Chairperson Sorg. Also in support Mr. Hinkle.
15 Mr. Miller in opposition. Your motion
16 carries, Mr. Chairman.

17 CHAIRPERSON JORDAN: I think
18 procedurally it goes back to our whole
19 argument. What we've been doing, and one
20 thing we've been trying to do so everyone
21 understands, is that the Board has to start
22 maintaining these time frames in order to be

1 fair not only to Applicants, but to be fair to
2 the public so we can do our duty.

3 What we've experienced is that
4 just before a hearing, maybe a day before a
5 hearing, two days before a hearing, or the
6 morning of the hearing sometimes people will
7 try to do filings 600 pages long and put it
8 before the Board for us to make a decision on
9 and try to include although we have already
10 looked at the record and studied up on the
11 file. That's the reason why we try to do
12 that.

13 Mr. Moy, going further, I think
14 it's again procedurally what we've talked
15 about. Nothing should be in the record if
16 it's after the fact. I guess we've got to
17 work out administratively how that happened
18 because we shouldn't be striking it from the
19 record. It should be a request to add it to
20 the record. We'll step through that as we get
21 some things straight in order to try to be
22 fair to everyone.

1 Regarding the request of ANC-5C
2 becomes another issue that I think we really
3 have to discuss as a Board. It's my
4 understanding based upon the previous
5 testimony deduced at the hearing at the time
6 ANC-5B was the required ANC to receive notice
7 and to participate in the underlying matter.

8 It was discussed at that time
9 whether or not it should be 5B and 5C. I
10 think we resolved that 5B was going to be the
11 real party in interest under the law and so we
12 went forward.

13 We subsequently got Exhibit 41
14 January 31st after the hearing period where
15 ANC-5C -- I certainly want to give all
16 difference to ANCs as much as we can -- making
17 a request to postpone this. I don't know if
18 -- it's a two-week request. Is a
19 representative of Israel Baptist here? Is the
20 attorney here?

21 I was looking for the attorney but
22 he's not here.

1 Reverend, could you come forward,
2 please? Take the mic. Make sure it's turned
3 on. I understand that you opposed ANC-5C
4 having this extension. I think they only want
5 an extension for another week to allow them to
6 meet. Possibly we could schedule this for the
7 week after next to make a decision if that's
8 okay with you.

9 Otherwise, we can make a decision
10 here but I want to try to be fair because this
11 is the quagmire of the law. It was a
12 redistricting, as you know -- I mean,
13 redistricting? Yes, redistricting that took
14 you from 5B to 5C and like overnight the
15 situation changed.

16 I think there's some merit about
17 going forward where we have now but I know you
18 want to be a good shepherd of the neighborhood
19 and community and work with everybody. Would
20 a two-week delay give you problems in regards
21 to your funding? I understand that's an issue
22 and some other things.

1 REV. SHEARIN: That's the main
2 issue. We are trying to move the process
3 forward as it relates to funding with no
4 income tax credit. We did not have enough
5 time. We did not have enough time in order to
6 transact that. We will work --

7 CHAIRPERSON JORDAN: You've
8 already been granted or you're applying?

9 REV. SHEARIN: Right.

10 CHAIRPERSON JORDAN: What is the
11 date of submission on the application for low-
12 income tax credits?

13 Please identify yourself on the
14 record.

15 REV. SHEARIN: He's Andy
16 Botticello. He's the developer.

17 MR. BOTTICELLO: Thanks. It's
18 actually new market tax credit.

19 CHAIRPERSON JORDAN: Oh, new
20 market tax credit.

21 MR. BOTTICELLO: But the
22 allocation is occurring in April. We have a

1 commitment from Chase to purchase the new
2 market tax credit so we are waiting for an
3 allocation but the allocation requires a
4 building permit at least close to being in
5 hand. We are getting very tight here to get
6 a building permit by April.

7 CHAIRPERSON JORDAN: Oh, so this
8 is new market tax credit.

9 MR. BOTTICELLO: Right.

10 CHAIRPERSON JORDAN: So it's not
11 competitive for low-income tax credit.

12 MR. BOTTICELLO: Right.

13 CHAIRPERSON JORDAN: Okay. It's
14 new market tax credit. You also have a
15 temporary -- you've already got a tentative
16 commitment?

17 MR. BOTTICELLO: For the purchase
18 of it and then the allocation occurs in April.

19 CHAIRPERSON JORDAN: Mr. Moy, if
20 we had a new date, what is the first date
21 after the 20th if we were to grant the request
22 of 5C?

1 MR. MOY: The first date that's
2 scheduled, Mr. Chairman, is Tuesday, March
3 5th. Also I want to add, too, since I have
4 the mic the ANC is present, too, if the Board
5 would care to hear from them.

6 CHAIRPERSON JORDAN: Please
7 identify yourself.

8 Reverend, did you identify
9 yourself? I know I just called you forward.

10 REV. SHEARIN: Morris Shearin.

11 MS. JAMES: Good morning, members
12 of the Board.

13 CHAIRPERSON JORDAN: I don't think
14 you're on.

15 MS. JAMES: Good morning members
16 of the Board. My name is Regina James, ANC
17 Commissioner 5C-05, formerly 5B-03. As it
18 relates to an extension, I would hope that the
19 Board would move forward in this matter. As
20 a community of people we have done everything
21 that was asked of us as a community from the
22 chair of public space and this body here.

1 As a commission we met January the
2 16th at an ANC public meeting. The chair was
3 notified about this back in December. I had
4 mentioned the last time we were here that we
5 would go through this period of redistricting.

6 So at the public meeting I made a
7 public announcement for us to have a special
8 meeting January 30th. Well, we came but it
9 didn't transpire.

10 I really don't think -- as a
11 community I had a single member district
12 meeting January 17th just to kind of give the
13 community an update to where we stand now. It
14 is the community's desire because this has
15 been going on since August that we kind of
16 resolved this issue, please.

17 CHAIRPERSON JORDAN: Ms. James,
18 you did testify with evidence during the
19 hearing?

20 MS. JAMES: Yes, sir. I did, Mr.
21 Chair.

22 CHAIRPERSON JORDAN: And you were

1 5B and then you became 5C if I understand you
2 correctly?

3 MS. JAMES: Yes, sir.

4 CHAIRPERSON JORDAN: All right.
5 Thank you. That was very helpful. Appreciate
6 it.

7 VICE CHAIRMAN SORG: I would just
8 like to ask one question, Ms. James, before
9 you get up.

10 MS. JAMES: Yes, ma'am.

11 VICE CHAIRMAN SORG: You mentioned
12 the January 30th meeting and then your words
13 were "it did not transpire." I don't
14 understand what you mean by that.

15 MS. JAMES: Well, at the ANC
16 public meeting, because we come together as a
17 body, and we agree to meet every third
18 Wednesday of the month so the commissioners
19 had some unreadiness because now we have new
20 commissioners.

21 There's only about two people in
22 our commission from the old ANC-5B so there

1 was unreadiness on the part of the new
2 commissioners even though the chair at that
3 time had the information back in December.

4 At the public meeting I had asked
5 and requested for a special meeting to take
6 place just to hear this matter. Everyone in
7 the commission approved but needless to say
8 the meeting did not take place for whatever
9 reason. It's in our ANC public minutes.

10 CHAIRPERSON JORDAN: All right.
11 Thank you. I appreciate that. You can return
12 back. Thank you so very much.

13 REV. SHEARIN: Our attorney is
14 here.

15 CHAIRPERSON JORDAN: I know.
16 Thank you very much.

17 In light of the comments made here
18 today, I am of the belief that we proceed
19 forward to our deliberation to make a decision
20 on this and that we would reject the request
21 from ANC-5C to postpone this further in light
22 of the comments from Ms. James. That would be

1 my thought.

2 VICE CHAIRMAN SORG: I agree.

3 MR. MILLER: I agree, Mr.

4 Chairman.

5 CHAIRPERSON JORDAN: Any other
6 problem? Then we will move forward to
7 deliberation in this matter. That is by
8 consent do I understand? Okay. Unless there
9 was anybody objecting to it. Let's proceed to
10 the merits of this particular matter.

11 This is a case that has a lot of
12 parts to it and a lot of concern. I
13 understand it's been pending for awhile
14 regarding the action. We took testimony on
15 this at great length. There has been some
16 giving back and forth and there's been some
17 changes in regards to relief requested.

18 It's just my initial thought as we
19 move to deliberation that the Applicant has
20 met its burden for the relief requested,
21 particularly since we are looking at more of
22 an institutional church necessity issue from

1 promotion of community health, child care
2 center, and locating office space for the
3 church. The community health center facility
4 is actually down the street, although this
5 would be a little bit more intent but, as a
6 matter-of-right, community health facilities
7 are allowed.

8 This property particularly has
9 some characteristics which would rise to the
10 level where the relief requested should be
11 granted. It has a sharp 12-foot grade
12 challenge in the middle of the site. It has
13 kind of a disfunctioning section of property,
14 sloping land with restricted boundaries. The
15 lot is irregular in size. They do have 45
16 spaces on there.

17 There were some questions raised,
18 or issues raised, about traffic flow but there
19 was no supporting evidence to show that
20 traffic was going to lead to any congestion.
21 It was the thought but we had no concrete
22 evidence.

1 There was no traffic studies
2 presented by those opposing saying that there
3 was going to be an increase or that we would
4 have something definitive to deal with, nor
5 was there any credible evidence or real
6 evidence presented.

7 I don't mean credible because
8 everything said was credible but any hard
9 evidence that said that public safety was
10 going to be jeopardized by this particular
11 relief if relief was granted.

12 The Applicant has shown that they
13 have tried to work with the community. They
14 have revised the plans a couple of times in
15 trying to reduce the impact on the community.
16 The plan was modified to eliminate the vehicle
17 entrance on 12th Street and some additional
18 landscaping was offered for this. I think
19 there were some other changes presented to us
20 regarding the pedestrian access point.

21 The church has worked with the
22 surrounding -- another church and also the

1 shopping center behind it to add additional
2 parking that would be off their site and they
3 have an agreement in place for additional
4 years.

5 I would believe that we would
6 grant the relief requested by the Applicant.
7 I do believe that we need to be sure to have
8 some conditions in place in order to take care
9 of those issues raised by those who testified
10 in opposition or had concerns.

11 I would think this is one which we
12 would take a look at a time limitation so that
13 the community can have -- we will have a break
14 point, a break point so the community can have
15 the opportunity if necessary to come back here
16 and get relief if there's a problem.

17 I would believe that somewhere
18 between five and seven years might be that
19 term but it's something that is certainly open
20 to discuss. There are additional measures.

21 It was talked about but these
22 measures actually get put in place by

1 condition of our order such as that the
2 property -- the church will be required to
3 have valet parking for special events or other
4 activities when there is an increased
5 capacity.

6 That they should make sure that
7 the church and its tenants, any tenants that
8 it has, also adheres to reducing the parking
9 load. That they emphasize a use of public
10 transportation and also publicize the use of
11 using -- where the bus routes are and how to
12 get to Metro.

13 That they education the users on
14 public transportation opportunities. That the
15 church as well as any of its tenants provide
16 for its employees some flexible benefits for
17 transportation so that we can discourage the
18 use of vehicles in the area.

19 And that the property owner, the
20 church, would also designate a transportation
21 coordinator to be the primary contact person
22 responsible for coordinating this whole

1 traffic relief but, more importantly, to have
2 a person so that the community can go to to
3 quickly get responses back to any issues that
4 they have.

5 That the church be required to
6 provide some type of Ride Share opportunities
7 for its employees or its tenants. That they
8 implement a bike program and make sure that is
9 in cooperation with DOT and provide their
10 employees some incentives to utilize
11 alternative traffic -- alternative
12 transportation modes.

13 And I think there should be a
14 requirement that the church as the property
15 owner at least twice a year be in contact with
16 the ANC or attend the ANC meetings to make
17 sure they are on base that there's not any
18 additional problems being caused in the
19 neighborhood or community. Those are just my
20 thoughts what I would tend to want to offer
21 regarding this matter.

22 Anybody else on the Board have

1 comments?

2 Ms. Sorg.

3 VICE CHAIRMAN SORG: Thank you,
4 Mr. Chairman. I won't add a great deal. Your
5 comments were in depth. I agree. I'll just
6 make a couple of comments. I think actually
7 if you follow what the Board requested post-
8 hearing, I think the Applicant's submission to
9 me really answered all of my hanging
10 questions, obviously regarding public space.

11 Regarding the programming and the
12 site plan, I think the use is clearly
13 connected to the church mentioned. To me it's
14 clear that the availability of a primary care
15 facility will be a benefit to the community at
16 large.

17 I also believe that given the
18 revisions to the site plan that the Applicant
19 has made -- they have gone a long way in
20 mitigating some of the safety and traffic and
21 parking concerns that the community has had.
22 I do support, however, the condition that the

1 property owner, the church, be in regular
2 contact with the ANC.

3 I think that is a good condition.
4 It seems to me there were three presentations
5 in front of ANC-5B since December and we have
6 a good idea of that organization's comments in
7 some ways and several other of those in the
8 community. However, for me those don't rise
9 to the level of denying this use.

10 I do also support the conditions
11 that the Chair mentioned regarding the TDM
12 measures. As we have seen in some other
13 cases, sometimes these tax credit deals do
14 require certain conditions to be met with
15 regard to financing.

16 With regard to the time limit, I
17 might want to make sure that isn't something
18 that would jeopardize because I think
19 potentially three to five years may be a
20 little bit short in my opinion.

21 I also think that some of the
22 conditions that are being built into -- that

1 are potentially being built into an order will
2 go towards mitigating the potential negative
3 impact. In that regard, I might like to hear
4 from the Applicant or the developer regarding
5 that.

6 CHAIRPERSON JORDAN: I heard
7 everything but the last thing.

8 VICE CHAIRMAN SORG: The last
9 thing that I was indicating was regarding the
10 limit as a proposed condition. I think
11 because they are pursuing new market tax
12 credit and presumably other sort of financing
13 of that nature, I think I would like to hear
14 from the developer regarding whether that may
15 or may not jeopardize. It's up to you but I
16 think that a three-to-five-year condition with
17 a leap of faith and requiring financing may be
18 tricky. Those are my thoughts.

19 CHAIRPERSON JORDAN: I appreciate
20 your comments. The new market tax credit is
21 a 15-year program, basically a 15-year
22 required commitment. I know probably

1 developers are going to want to have the 15-
2 year outreach with this. My thought was try
3 to best mitigate any potential problems for
4 the community.

5 Okay. If you want to come
6 forward. I just think 15 years is --

7 MR. BOTTICELLO: Andy Botticello
8 again. I agree that, first, we would want to
9 continue to work with the community so the
10 conditions that you mentioned about the church
11 working with the community and making sure
12 that's included in the agreement, that would
13 be fine. I think that helps just to promote
14 the ongoing relationship and improving the
15 relationship between the community and the
16 church.

17 As far as financing, if there is
18 something out there that could cause the
19 building to lose its ability to continue to
20 lease space to Unity Health, that obviously is
21 going to be an issue with the financing entity
22 if they have to keep the financing in place.

1 We have in addition to the new
2 market tax credit we have a private sector
3 loan from United Bank. They're basing their
4 loan on the fact that there is a 15-year lease
5 in place with Unity Health.

6 If there are conditions that don't
7 impact the use of the building, we're happy to
8 work with the community and the Board. If
9 there was a condition imposed that would
10 negate the ability to use the building as we
11 are proposing now, that would be problematic.

12 CHAIRPERSON JORDAN: Appreciate
13 it. Thank you. That same argument can be
14 made anytime we take in an issue dealing with
15 anything with finance. I just think because
16 of those that were in opposition, and we had
17 a lot of people here in opposition.

18 We have a community, although I
19 think it's going to be minimally effective, is
20 going to be effective in some type of way. We
21 need to put a breakpoint is my thought in the
22 matter and that's why I'm thinking five years.

1 I understand the lease with Unity
2 can still be whatever it's going to be but the
3 five-year breakpoint, as you know, we've
4 regularly gone up the rungs that we've had.
5 Good stewardship by the Applicants is usually
6 something that we've been rolling over on.

7 Any other thoughts on this? Any
8 other Board member?

9 Mr. Hinkle.

10 MEMBER HINKLE: Thank you, Mr.
11 Chair. Just thinking about this case I want
12 to state that initially I had some real
13 concerns about this and especially because of
14 the opposition from the community and what
15 we've heard during the hearing.

16 I wanted to say that I appreciate
17 the supplemental information that we did
18 receive the revised site plan, a discussion on
19 additional community involvement, the proposed
20 actions to mitigate the traffic and parking
21 impacts. Just everything that was submitted
22 as a supplemental really got me to be able to

1 support this request.

2 I do agree that because of the
3 potential impacts that a time frame would be
4 helpful. In thinking about the time frame to
5 construct and get Unity Health within the
6 building and operating, you know, I can
7 support a longer time frame. I am certainly
8 happy to entertain five to seven years.

9 VICE CHAIRMAN SORG: I would like
10 to just make one more comment on this point.
11 I think certainly we certainly are sensitive
12 to community concerns and we did hear a good
13 deal of testimony in this case. The ANC did
14 not submit a letter that we can give great
15 weight to. Yet, we decided based upon the
16 community outreach and our ways of
17 understanding to go forward with our
18 deliberations. That's one point.

19 Second point is that the comments
20 and the concerns that we heard from the
21 community were primarily related to things
22 like storm-water runoff, parking, and traffic.

1 I didn't hear a great deal of complaint
2 regarding the use. I think in this case our
3 time limit is potentially redundant to some of
4 the other conditions that the Chairman has
5 proposed which I'm certainly in support of.

6 I think that within those
7 conditions that are being proposed regarding
8 the TDM, regarding meeting with the ANC bi-
9 annually or whatever, that there is recourse
10 for the community there. If the property
11 owner is not in compliance with those
12 conditions, then the community has recourse to
13 be able to call that up and call attention to
14 that in the administrative arena.

15 I think this is a good use. There
16 are some concerns about the parking and the
17 traffic by the community and a few other
18 things. But it's also a use that has been
19 located in this area for some time now so it's
20 not new in that regard. It's new on this
21 site.

22 If all of the other Board members

1 are in favor of looking at a time frame, which
2 I can also sort of understand, I think perhaps
3 it is may be better to think of one that is
4 potentially more in keeping with generally
5 speaking the way that commercial leases go.
6 Often times it's five years with a five-year
7 option, a 10-year to five-year option. That
8 is sort of my last comments on that.

9 MR. MILLER: Thank you, Mr.
10 Chairman. I just want to associate myself
11 with your remarks about all the measures to
12 mitigate community impact and the Vice Chair's
13 remarks about the overall public benefit of
14 this project to the larger community in that
15 area.

16 I would just note that in Exhibit
17 42 the Applicant's submission that we
18 requested at the close of our hearing, there
19 is the section on mitigation of community
20 impact. If I could just read into the record
21 briefly a few of the measures, some of which
22 you've touched on.

1 The plan was modified to eliminate
2 the vehicular entrance on 12th Street, add
3 additional landscaping along 12th Street and
4 any adjoining properties, address drainage
5 concerns, and eliminate the wall on the 12th
6 Street side of the project.

7 An additional pedestrian access
8 point was also added on Saratoga Avenue to
9 reduce pedestrian traffic through the
10 adjoining residential areas. To address
11 parking concerns the church has reached an
12 agreement. This has happened since our
13 hearing with the District at the Public Space
14 Committee to lease additional parking along
15 the abandoned Bryant Street right-of-way.

16 The church also has an existing
17 verbal agreement with the Isle of Patmos
18 Baptist Church located across Saratoga Avenue
19 to utilize their parking during special events
20 and all of the other specific actions that
21 you've noted and they have entered into the
22 record to mitigate traffic and parking issues.

1 I think those are all important
2 considerations.

3 CHAIRPERSON JORDAN: I just want
4 to make sure the community has some aspect of
5 relief with just making this thing open.
6 We've had some issues with those who are
7 responsible for doing administrative
8 enforcement of matters. I mean, I could even
9 see maybe a 10-year period but at least I want
10 some breaks here if necessary.

11 MEMBER HINKLE: I think a time
12 limit is appropriate, Mr. Chair, since you
13 asked me directly.

14 CHAIRPERSON JORDAN: Mr. Hinkle,
15 how about 10 years? Can you live with that?

16 MEMBER HINKLE: I think that's
17 appropriate.

18 CHAIRPERSON JORDAN: If we're
19 going to do it.

20 VICE CHAIRMAN SORG: If you're
21 going to -- if everybody else is in favor of
22 a time limit, I think 10 years is better than

1 five or three.

2 CHAIRPERSON JORDAN: I just don't
3 want to leave the community out there. I know
4 everybody has good intentions but we've seen
5 sometimes once people -- certainly I know this
6 church would not do it.

7 The Reverend wouldn't allow that
8 but, you know, a lot of times we leave these
9 places -- people leave here and as soon as
10 they get outside the door it's a whole
11 different ball game and I just think that we
12 need to make sure that we are good stewards in
13 behalf of the community for the community.

14 VICE CHAIRMAN SORG: I just want
15 to say regarding that I understand where
16 you're coming from but I think part of our
17 role is not to sort of cast out on
18 administrative ability or the intention of
19 people coming before us but to expect that
20 people will hold to their word.

21 Then if they don't, that's why we
22 put in conditions. That's my perspective. I

1 expect that the people that are coming here
2 will respond responsibly and honestly. If
3 they don't, then they will be back.

4 CHAIRPERSON JORDAN: With that, I
5 would move that we grant the relief requested
6 for the 10-year term and that we impose
7 conditions that I read earlier in the record
8 in addition to those that are indicated in the
9 Applicant's Exhibit 42 with the vegetation
10 screening and all the other additions that
11 they said they were doing for mitigation.
12 That would be my motion.

13 VICE CHAIRMAN SORG: Second.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded. All those in favor signify by
16 saying aye.

17 BOARD MEMBERS: Aye.

18 CHAIRPERSON JORDAN: Those opposed
19 nay. The motion carries.

20 Mr. Moy.

21 MR. MOY: Staff would record the
22 vote as four to zero. This is on the motion

1 of Chairman Jordan to approve the application
2 with the conditions as cited by the Board
3 including the 10-year term limit.

4 Seconding the motion Vice
5 Chairperson Sorg. Also in support Mr. Robert
6 Miller and Mr. Jeffrey Hinkle. Of course, at
7 that time of the hearing there was a vacant
8 Board seat so the motion carries, Mr.
9 Chairman.

10 CHAIRPERSON JORDAN: Thank you,
11 Mr. Moy.

12 Let's move to our next case. We
13 have joining us Zoning Commission Member Peter
14 May.

15 MR. MOY: Application No. 18489 of
16 GA Views Management, LLC, pursuant to 11 DCMR
17 3103.2. I'm going to cite what was
18 advertised.

19 This was for a variance from the
20 rear yard requirements under Section 774,
21 variances from the roof structure provision
22 under Sections 777 and 411, and variance from

1 the off-street parking requirements under
2 Subsection 2101.1, to allow the development of
3 a mixed-use (ground floor retail and
4 residential above) project in the GA/C-3-A
5 District at premises 3557 through 3559 Georgia
6 Avenue, N.W. Property located in Square 3003,
7 Lot 89.

8 For the record, Mr. Chairman, as
9 you know, the filing in your case folders from
10 the Applicant which was requested is
11 identified as Exhibit 34. In that exhibit the
12 Applicant amended its application to withdraw
13 relief from the roof structure provisions.
14 Other than that, there are no other filings in
15 the record. That completes the staff's
16 briefing, Mr. Chairman.

17 CHAIRPERSON JORDAN: Okay. Thank
18 you. Did I hear you correctly? Did you say
19 that they amended because they withdrew the
20 request for relief --

21 MR. MOY: From the roof structure.
22 Yes, sir.

1 CHAIRPERSON JORDAN: That was one
2 of the Board's sticking points here.

3 All right. Is the Board ready to
4 deliberate on 18489? I believe, especially
5 since the relief requested for the roof was
6 withdrawn, that the Applicant has met his
7 burden for the relief that it sought.

8 The property has some unique and
9 exceptional situations affecting it. It's a
10 small footprint that is challenged by the
11 building restriction line. The developable
12 areas reduce this condition's ability due to
13 construction that would necessarily make them
14 within the regulations.

15 The required below-grade building
16 utility space is another issue for this
17 property. Additional levels of below-grade
18 parking would be inefficient and hard for them
19 to work within the confines of this property
20 so I would lean toward granting the relief.

21 Anything else from either Board
22 member?

1 Mr. May.

2 MEMBER MAY: I appreciate the fact
3 that they fixed the issue with the roof top
4 relief. The other issue that I was still
5 concerned about was parking and the situation
6 with residential parking permits.

7 We did get some information on
8 that. I can't say that I'm totally confident
9 that there will not be a problem in the future
10 with this building gaining RPP for its
11 residents. It seems to leave the door open
12 for that and that could be a problem in the
13 future.

14 Given the fact that it's been
15 supported, and I may be one of the few people
16 who are concerned about that, I'm willing to
17 go along. In the future it's always best to
18 know clearly what the situation is with RPP.

19 Given all the debates across the
20 city about parking minimums and meeting what's
21 required and dealing with the potential bad
22 effects from spill-over parking of under-

1 parked residential buildings, I think better
2 clarity on this issue would make it easier to
3 make such decisions. I'm comfortable enough
4 going forward but would just note those
5 continuing concerns.

6 CHAIRPERSON JORDAN: Mr. Hinkle.

7 MEMBER HINKLE: Yes. Thank you,
8 Mr. Chair. Just one -- two comments, I guess.
9 I do appreciate the Applicant doubling the
10 amount they are offering for the Capital Bike
11 Share membership or the SmarTrip card. I
12 think that's helpful, although that won't
13 necessarily solve the parking problem I think.

14 With the withdrawal of the request
15 for the zoning relief for the roof structure,
16 I would at least like the Applicant to
17 supplement the record before the order is
18 provided with new plans to show what that new
19 design looks like.

20 CHAIRPERSON JORDAN: Okay. The I
21 would move that we grant the relief requested
22 with the condition that the TDM measures as

1 specified and the latest submission be added
2 as a condition to our order, as well as that
3 they update the plans for this matter. That
4 would be my motion.

5 MEMBER HINKLE: Second.

6 CHAIRPERSON JORDAN: Motion made
7 and seconded. All those in favor signify by
8 saying aye.

9 BOARD MEMBERS: Aye.

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

12 Mr. Moy.

13 MR. MOY: Staff would record the
14 vote as three to zero, Mr. Chairman. This is
15 on the motion of Chairman Jordan to approve
16 the application with the inclusion of TDM
17 measures as well as the updated revised plans
18 in the record.

19 Seconding the motion Mr. Hinkle.
20 Also in support Mr. Peter May. Ms. Sorg is
21 not participating on this application. Of
22 course, at the time there was a Board seat

1 vacant. Again, the motion carries three to
2 zero.

3 CHAIRPERSON JORDAN: Can we have a
4 summary order?

5 MR. MOY: Yes, sir.

6 CHAIRPERSON JORDAN: All right.

7 MR. MOY: The next application for
8 decision before the Board, this is appellant's
9 motion for reconsideration of Condition No. 1
10 in Order No. 18472 of Excel Academy, D.C.
11 Public Charter School, pursuant to Section
12 3126 of the Zoning Regulations.

13 The original application for the
14 record was pursuant to 11 DCMR 3103.2 for a
15 variance to reduce the off-street parking
16 requirements under Section 2101.2, for a
17 school in the R-5-A District at premises 1501
18 through 2553 Martin Luther King, Jr. Avenue,
19 S.E. Property located in Square 5862, Lot
20 960.

21 The Applicant filed the request
22 for reconsideration on January 9, 2013 and

1 that filing, Mr. Chairman, is in your case
2 folders identified as Exhibit 36.

3 There were, for the record, on
4 filings in response to the Applicant's request
5 for reconsideration. The only matter I would
6 like to leave with the Board is that in the
7 Applicant's filing to remove condition No. 1
8 that in the alternative in their statement if
9 the Board denied their request to remove the
10 condition that the Board would consider a 10-
11 year term limit for reasons specified in their
12 Exhibit 36. That completes the staff's
13 briefing, Mr. Chairman.

14 CHAIRPERSON JORDAN: Is the Board
15 ready to deliberate on this? This is one with
16 the motion filed for reconsideration.

17 Although I am inclined to grant this and it
18 would simply be on equitable grounds, I think
19 the motion itself is deficient in that it
20 failed to provide any additional evidence or
21 anything else other than supposition.

22 More importantly, the motion talks

1 about that the Board erred. The Board did not
2 err. The Board had discussion and legitimate
3 substantial basis why it had put a time limit.
4 I think the error was that the Applicant's
5 attorney failed to question Office of Planning
6 appropriately when Office of Planning put
7 forth the suggestion that there is a three-
8 year term.

9 It was well discussed that there
10 were a lot of plans that were kind of fluent.
11 The Applicant had not set forth exactly how
12 many spaces they are going to need, what was
13 going to be the increased student flow. There
14 was a lot of discussion around that.
15 Additionally, that the area had some other
16 growth issues and what the boundaries were
17 going to be.

18 I think at that time Mr. May also
19 discussed and asked questions of the Applicant
20 as well as OP regarding the type of growth
21 that was going around and raised the
22 uncertainty about the area.

1 Mr. Jackson from OP over and over
2 again we talked about the three years possibly
3 being a break point so we can assess this new
4 growth, the impact a charter school moving
5 into this community would have. The Board
6 didn't err.

7 The Board actually had discussion
8 and had some rational basis for adding the
9 three-year term. That is just my thought on
10 it right now. I can understand if there is an
11 issue that it might cause for the Applicant.
12 I want to hear from other Board members on
13 this.

14 Ms. Sorg.

15 VICE CHAIRMAN SORG: Thank you,
16 Mr. Chairman. I agree. I would be in support
17 of granting the motion for reconsideration.
18 If there are issues of financing and the
19 school's continued financial health that may
20 be impacted by the term limit, then I don't
21 believe that we heard those in the original
22 hearing. I think we could hear those and see

1 how they might impact the inclusion of the
2 specific condition No. 1. Thank you.

3 CHAIRPERSON JORDAN: Anyone else?
4 Mr. May.

5 MEMBER MAY: I don't have any
6 objection to reopening the discussion on the
7 time limit. I did go back and read the
8 transcript of the case and I did not see a lot
9 of discussion of the time limit other than
10 what we had in deliberation. That doesn't
11 mean there wasn't a lot of material in the
12 record. I didn't review the full record for
13 this consideration.

14 I agree with you that what was
15 submitted by the Applicant in the motion for
16 reconsideration doesn't prove the case that
17 there really is additional information that we
18 did not consider. I think there is the
19 potential that such information exist. On
20 that basis I'm willing to reconsider.

21 CHAIRPERSON JORDAN: I appreciate
22 that. Actually I've noted in the transcript

1 there's 10 spaces -- 10 spots in this
2 transcript where there was dialogue about this
3 three years or the issue about moving. I just
4 want to put that on the record so we did have
5 that. I also want to say it is the burden or
6 responsibility of the Applicant to make these
7 showings at the time of the hearing.

8 That being said, I can support the
9 reconsideration and then allow the Applicant
10 to come in and show us why we need to move
11 from that. That would be my motion to grant
12 the reconsideration.

13 VICE CHAIRMAN SORG: Second.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded. All those in favor signify by
16 saying aye.

17 BOARD MEMBERS: Aye.

18 CHAIRPERSON JORDAN: Those opposed
19 nay. The motion carries.

20 Mr. Moy.

21 MR. MOY: Staff would record the
22 vote as four to zero, Mr. Chairman. This on

1 the motion of Chairman Jordan to grant the
2 request for reconsideration. Seconding the
3 motion Ms. Sorg. Also in support Mr. Peter
4 May and Mr. Jeffrey Hinkle. At that time the
5 Board seat was vacant so the motion carries,
6 Mr. Chairman. Is there a date where the
7 Board would like to --

8 CHAIRPERSON JORDAN: When can we
9 comfortably hear this?

10 MR. MOY: Comfortably?

11 CHAIRPERSON JORDAN: I'm not
12 trying to squeeze it.

13 MR. MOY: Well, as I said earlier,
14 the next scheduled decision meeting is March
15 5th. The Board could request the Applicant to
16 furnish the additional information by a week
17 earlier which would be February 26. Any
18 response time needed?

19 CHAIRPERSON JORDAN: No, I don't
20 think that's necessary. No, that is not
21 necessary.

22 MR. MOY: Okay. So then we're

1 looking at the Applicant filing by the latest
2 Tuesday, February 26th, with the Board's
3 decision being on March 5th.

4 CHAIRPERSON JORDAN: Let me take a
5 step back because OP might weigh in on it.

6 MR. MOY: Okay.

7 CHAIRPERSON JORDAN: Because
8 that's kind of where it originated. Although
9 Mr. Jackson was not in concrete on three years
10 but we need to make sure his concerns were
11 addressed, too, because it's some of the same
12 things that we raise. Let's take a -- let's
13 add another five days or so to that so that we
14 can get the submission and then give OP the
15 opportunity to submit prior to your mail-out
16 period.

17 MR. MOY: Are we still keeping the
18 March 5th or do you want to push that date?

19 CHAIRPERSON JORDAN: Whatever.

20 MR. MOY: Okay. All right.

21 CHAIRPERSON JORDAN: Whatever is
22 comfortable for you managing the docket.

1 MR. MOY: Let's do a special
2 public meeting on March 12th. That would give
3 the Applicant time to reply or submit by
4 February 26th and Office of Planning to
5 provide a supplemental by March 5th.

6 CHAIRPERSON JORDAN: Okay. Let's
7 do that.

8 Then we're going to call our last
9 case with Mr. May for today. I believe it's
10 18455.

11 MR. MOY: No, no, no. He's
12 completed for the day.

13 CHAIRPERSON JORDAN: Oh, you're
14 done?

15 MR. MOY: He's not sitting on the
16 other application, sir.

17 MEMBER MAY: I did not hear the
18 original case on this and did not review it
19 for the last time this came before us.

20 CHAIRPERSON JORDAN: All right.
21 Let's bring Mr. Miller who has been waiting
22 patiently. I appreciate you all going with

1 the flow.

2 Let's take a quick five-minute
3 break.

4 (Whereupon, at 10:50 a.m. off the
5 record until 10:56 a.m.)

6 MR. MOY: With that the next
7 application before the Board's deliberation
8 decision is Application No. 18436 of David
9 Benson. This is pursuant to 11 DCMR 3103.2
10 for a variance from the lot area requirements
11 under Subsection 401.3 --

12 CHAIRPERSON JORDAN: No, we're
13 just doing Mr. Miller.

14 MR. MOY: That's what I was doing.

15 CHAIRPERSON JORDAN: Okay. You
16 called 436. We'll deal with that. Let's go.
17 It's already called.

18 MR. MOY: Okay. Let me start over
19 here. Okay. Pursuant to 11 DCMR 3103.2 for
20 a variance from the lot area requirements
21 under Subsection 401.3, to allow the
22 conversion of a flat (two-unit dwelling) to a

1 three-unit apartment house in the R-4 District
2 at premises 2703 11th Street, N.W. Property
3 located Square 2858, Lot 17.

4 As the Board will recall, on
5 January 15th of this year the Board
6 deliberated. After discussion the Board
7 rescheduled its decision to February 12th to
8 allow the Applicant to file additional
9 supplemental information attended to the
10 financial data on rental units.

11 That filing from the Applicant,
12 Mr. Chairman, is in your case folder
13 identified as Exhibit 37. There are no other
14 filings in the record. That completes the
15 staff's briefing, Mr. Chairman.

16 CHAIRPERSON JORDAN: Okay. Let's
17 move to deliberation on this. This is a
18 matter which I think is questionable whether
19 or not the Applicant has met its burden. We
20 asked for additional information regarding the
21 financials on this and I think -- well, I
22 don't know --

1 I don't want to use the word
2 credible these financials are but we have
3 something in the record that would give some
4 basis for the relief request by the Applicant.
5 The burden being required about not being able
6 -- the practical difficulties to me is still
7 questionable but I would want to hear from
8 other Board members what they believe in
9 regards to this application.

10 Yes, Mr. Miller.

11 MR. MILLER: Mr. Chairman, thank
12 you. I think this is a case where the
13 Applicant wants to convert a flat to a three-
14 unit apartment in the R-4 district and has the
15 support of all their neighbors, has the
16 support of the ANC, but it doesn't meet the
17 Zoning Regulation requirement that there be
18 900 square feet of land area which is
19 something that we talked about in this case
20 and other cases, too many cases, that maybe
21 needs to be changed as part of the zoning
22 rewrite process to a lesser amount.

1 Probably in my mind 500 square
2 feet of land area. These are row-house
3 districts that aren't going to be converted to
4 apartment house districts by having a third
5 unit. We are growing at 1,100 a month and we
6 have to put these people somewhere.

7 I know this isn't a test for a
8 variance but when there isn't an adverse
9 impact on the neighborhood and the
10 neighborhood actually supports that happening,
11 I think that is a natural way to go. I will
12 be looking at the Zoning Commission to try to
13 get that to be incorporated as a proposal that
14 will have public input, of course, as
15 something to possibly change in the future.

16 I think in this case I think the
17 Applicant did respond to our request to
18 provide the financial data that showed the
19 hardship of renting out a two-unit versus a
20 three-unit.

21 I think there is a confluence of
22 factors that leads to the practical difficulty

1 or exceptional circumstance where we could be
2 justified in granting a variance in this case.
3 I would be inclined to go in that direction if
4 there is support by the Board.

5 CHAIRPERSON JORDAN: Anyone else?

6 Ms. Sorg.

7 VICE CHAIRMAN SORG: Thank you,
8 Mr. Chairman. I wholeheartedly agree with Mr.
9 Miller's comments regarding this regulation
10 and the necessity of it being reviewed by the
11 Zoning Commission.

12 I would actually add that I think
13 that there actually probably has to be a
14 different rubric by which this is judged
15 rather than lot area. I agree with Mr. Miller
16 that there is no danger here of this becoming
17 an apartment district regarding this third
18 prong of the test.

19 I had some comments on the second
20 prong but I'll wait for a moment to see if
21 there are other comments.

22 CHAIRPERSON JORDAN: I'm still

1 struggling with the first prong but I'm
2 listening to the rest of you because I don't
3 see where they kind of raised the exceptional
4 circumstances or characteristic of this
5 property. You even asked them what is
6 different between this place and the
7 surrounding and their answer was they are all
8 generally the same. Anyway, I'll keep an open
9 mind. Anybody else?

10 Mr. Hinkle, you want to weigh in?

11 MEMBER HINKLE: Well, I mean,
12 these are difficult cases and we do see a lot
13 of these. I tend to agree with both Board
14 Member Sorg and Commissioner Miller in terms
15 of the measurement that we are obligated to
16 look at in these cases. I think there is
17 something not quite right in the zoning code
18 in terms of these cases.

19 For me it's always been an issue
20 of how these properties can be put back into
21 production as a productive property. We did
22 ask for financials. In this case we got

1 financials if these units were to be sold as
2 well as if they were rented.

3 While you could question where
4 those numbers came from, I think they
5 illustrated that this property may continue to
6 sit vacant without an additional unit because
7 it is simply not feasible to redevelop the
8 property into a matter-of-right use.

9 That's my opinion in terms of the
10 first prong.

11 CHAIRPERSON JORDAN: All right.
12 Anybody else have further discussion?

13 Ms. Sorg.

14 VICE CHAIRMAN SORG: Yes.

15 Regarding the uniqueness and practical
16 difficulty -- I'm sorry, I'm just trying to
17 find the revised plans that the Applicant
18 submitted. Let me see if I can remember which
19 exhibit those are in and then I can speak
20 coherently to those. Is it 37?

21 Regardless, I will try. I will
22 say regarding the practical difficulty, I

1 agree with Mr. Hinkle regarding, you know, we
2 did ask for some significant financial and
3 market information and the Applicant certainly
4 has provided those things.

5 One other thing that I did find
6 compelling was the existing and proposed site
7 plans -- floor plans that the architect
8 submitted. I think that you can see that
9 there is significant interior changes that
10 would have to be made to make this into a
11 duplex unit.

12 It has an entrance into the
13 basement unit and to create the third bedroom,
14 which for a unit that size would be necessary,
15 it does create that in combination with adding
16 the interior stair and so forth as was
17 demonstrated on the plans does create a rather
18 odd configuration for a duplex unit and one
19 that I think based on the market data and the
20 information that we received from the realtors
21 that they went to does kind of get me to
22 squeak over the goal post here with regard to

1 the second part. I could be along with Mr.
2 Miller in support of the application.

3 CHAIRPERSON JORDAN: Do one of you
4 want to make a motion?

5 MR. MILLER: I would be happy to
6 move to approve the variance in Zoning
7 Commission -- I mean BZA Case 18436, variance
8 to allow the conversion of a flat to a three-
9 unit apartment in R-4, 2703 11th Street, N.W.
10 and ask for a second.

11 VICE CHAIRMAN SORG: Second.

12 CHAIRPERSON JORDAN: A motion made
13 and seconded to support the request for
14 relief. All those in favor signify by saying
15 aye.

16 BOARD MEMBERS: Aye.

17 CHAIRPERSON JORDAN: Those opposed
18 nay.

19 Nay. The motion carries. Mr. Moy.

20 MR. MOY: Staff would record the
21 vote to three to one. This is on the motion
22 of Mr. Robert Miller to approve the request

1 for variance relief under Section 401.3.
2 Seconding the motion Vice Chairperson Sorg.
3 Also in support of the motion Mr. Jeffrey
4 Hinkle.

5 In opposition to the motion Mr.
6 Jordan. We had a Board seat vacant at that
7 time of the hearing. Again, the motion
8 carries with a vote of three to one, Mr.
9 Chairman.

10 CHAIRPERSON JORDAN: Very good.
11 Summary order, please.

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

13 CHAIRPERSON JORDAN: You want to
14 call our next case, please.

15 MR. MOY: The next case for
16 decision, this is the appeal of -- this is
17 Appeal No. 18429 of Edward V. Hanlon, pursuant
18 to 11 DCMR 3100 and 3101, from an April 10,
19 2012 decision by the Department of Consumer
20 and Regulatory Affairs to issue a building
21 permit.

22 This is building permit No.

1 B1206336 allowing the construction of a roof
2 deck in the DC/R-4 District at premises 1550
3 Swann Street, N.W. Property located in Square
4 191, Lot 76.

5 On December 4, 2012 the Board
6 completed public testimony, closed the record,
7 and scheduled its decision on February 12th.
8 The Board requested additional information to
9 supplement the record.

10 The parties were allowed to file
11 Proposed Findings of Fact and Conclusions of
12 Law. The only filing in your case folder, Mr.
13 Chairman, is a filing of Proposed Findings of
14 Fact and Conclusions of Law from the appellant
15 dated February 4, 2013.

16 With that, Mr. Chairman, the Board
17 is to act on the merits of the appeal. That
18 concludes the staff's briefing, Mr. Chairman.

19 CHAIRPERSON JORDAN: Regarding
20 this matter, I believe that the case was not
21 shown. In fact, I think we know almost as a
22 matter of law that the argument being made

1 about the roof deck -- well, the issue about
2 the roof deck is that the roof deck is not to
3 be considered in the calculation thereof.

4 And that the stairwell -- the
5 position of the stairwell should be excluded
6 also. I'm inclined to deny this appeal but I
7 wanted to hear from other Board members.

8 VICE CHAIRMAN SORG: Thank you,
9 Mr. Chairman. Thank you. I agree with your
10 inclination. I don't believe that the
11 Applicant in this case has met their burden of
12 proof with regard to showing that there are
13 any zoning infractions being made by the
14 building of this roof deck.

15 That being said, I personally
16 believe that the roof deck is out of scale but
17 that doesn't mean that I think we can do
18 anything about it from a regulatory
19 standpoint. It may be a matter for DCRA if
20 there are other issues that the appellant has
21 brought up.

22 I would also be in support of

1 denying the appeal.

2 CHAIRPERSON JORDAN: The roof deck
3 is, as a matter-of-right, is a stumble we
4 can't get past and the issue about the court.
5 The court. We're starting to get microscopic
6 whether or not there is a court there or not.

7 I think the zoning administrator
8 has -- we'll have to defer to that aspect of
9 what he believes is a court. If you look at
10 it, again, we are bound to what is left in
11 that area from a microscopic view.

12 Anybody else have anything to say
13 about this one?

14 Mr. Miller.

15 MR. MILLER: Yes. I would just
16 associate myself with your remarks and the
17 remarks of the Vice Chair and just add in
18 terms of the out of scale or compatible, that
19 really wouldn't be a zoning issue.

20 It really would be a Historic
21 Preservation Office, HPRB, which apparently
22 did go through there. If there is any error

1 there or anything to be reviewed, that would
2 be the place to review the design and
3 compatibility with the neighborhood. There
4 are a number of roof decks in that block. I
5 would just note that as well.

6 CHAIRPERSON JORDAN: Anyone else?
7 Then I would move that we deny this appeal.

8 VICE CHAIRMAN SORG: Second.

9 CHAIRPERSON JORDAN: Motion made
10 and seconded. All those in favor signify by
11 saying aye.

12 BOARD MEMBERS: Aye.

13 CHAIRPERSON JORDAN: Those opposed
14 nay. The motion carries.

15 Mr. Moy.

16 MR. MOY: Staff would record the
17 vote as four to zero, this on the motion of
18 Chairman Jordan to deny the appeal. Seconding
19 the motion is Chairperson Sorg. Also in
20 support Mr. Robert Miller and Mr. Jeffrey
21 Hinkle. Of course, at the time of the hearing
22 there was a Board vacancy. Again, the motion

1 carries, Mr. Chairman, four to zero.

2 CHAIRPERSON JORDAN: Thank you.

3 Thank you, Mr. Miller.

4 MR. MILLER: Thank you.

5 CHAIRPERSON JORDAN: Thank you for
6 working with us today.

7 MR. MILLER: It was a pleasure.

8 CHAIRPERSON JORDAN: We aim to
9 accommodate and please.

10 Mr. Moy, let's keep rocking and
11 rolling. Let's do the two-year extension.

12 MR. MOY: Very good. Okay. The
13 next decision for the Board is an Applicant's
14 request for what appears to be a third two-
15 year time extension of Application No.s
16 18167/17431-B of King's Creek, LLC pursuant to
17 Section 3130 of the Zoning Regulations.

18 Also, the Applicant is requesting
19 waiver of Section 3130.9 which is the time
20 extension filing at least 30 days prior to
21 expiration of an order. And Section 3130.6
22 which is the one extension of the time period

1 permitted.

2 The most recent application to
3 approve modifications and extend validity of
4 the order was approved on February 15, 2011,
5 and issued on March 23, 2011.

6 That application was, for the
7 record, pursuant to 11 DCMR 3129.7 for
8 interior and exterior modifications to plans
9 approved by BZA Order Nos. 17431 and 17431-A
10 and an increase in the number of dwelling
11 units from 22 to 31, and for an extension of
12 BZA Order No. 17431, pursuant to 11 DCMR
13 3130.6, to allow an addition to and conversion
14 of an existing building for residential use in
15 the RC/R-5-B District at premises 2329 and
16 2335 Champlain Street, N.W. Property located
17 in Square 2263, Lots 103 and 816.

18 On December 10, 2012 and recorded
19 on December 11th the Applicant made their
20 filing for the time extension and that is in
21 your case folders identified as Exhibit 37.

22 Also in your case folders are two

1 subsequent filings, one from ANC-1C identified
2 as Exhibit 39, and the second filing from the
3 Office of Planning -- Exhibit 39, I believe.

4 CHAIRPERSON JORDAN: I don't have
5 a 39.

6 MR. MOY: You don't have a 39?

7 CHAIRPERSON JORDAN: Do you have
8 39?

9 MR. MOY: Let me pull the record
10 for you.

11 CHAIRPERSON JORDAN: Tell us what
12 the --

13 MR. MOY: And the second is from
14 the Office of Planning which is your Exhibit
15 38. With that the Board is to act on the
16 merits of the request to extend. That
17 completes the staff's briefing. In the
18 meantime I'll pull the record for you.

19 CHAIRPERSON JORDAN: I don't have
20 39. Okay. Well, we'll grant the waiver
21 regarding the time period of filing unless
22 there is an objection by anybody on the Board.

1 The Office of Planning has weighed in and
2 certainly recommends the approval of the
3 extension.

4 Mr. Moy, this wasn't scanned
5 because it's all bound up? I guess Holland &
6 Knight didn't get the memo about the
7 electronic copy being shot over? I guess
8 Holland & Knight didn't get the memo about the
9 electronic copy of this being shot over in
10 addition to your binder?

11 Although this is for a second,
12 actually a third request for an extension, I
13 think the documentation is quite fulfilled to
14 show that the basis of why this extension is
15 necessary. I think as the economic times are
16 getting better and these other matters get
17 freed up, then they are going to be able to
18 move this project along.

19 With that I would move the
20 approval of the two-year extension.

21 VICE CHAIRMAN SORG: I would
22 second that.

1 CHAIRPERSON JORDAN: Any further
2 discussion? Motion made and seconded. All
3 those in favor signify by saying aye.

4 BOARD MEMBERS: Aye.

5 CHAIRPERSON JORDAN: Those opposed
6 nay. The motion carries.

7 Mr. Moy.

8 MR. MOY: Yes, sir. Before I read
9 the final vote, we do have an absentee ballot
10 from another participant in this case and that
11 is from Mr. Anthony Hood, Chair of the Zoning
12 Commission.

13 CHAIRPERSON JORDAN: Okay.

14 MR. MOY: His absentee ballot is
15 to approve the request for extension so that
16 would give a final vote of four to zero.

17 CHAIRPERSON JORDAN: I'm glad
18 Anthony followed our lead. I know he's
19 watching us.

20 MR. MOY: Let me do my vote here.
21 Four to zero. This is on the motion of
22 Chairman Jordan to approve the time extension.

1 Seconding the motion Vice Chairperson Sorg.
2 Again, in support Mr. Anthony Hood and Mr.
3 Jeffrey Hinkle. There was a Board seat vacant
4 at the time of this application. Again,
5 motion carries, Mr. Chairman.

6 CHAIRPERSON JORDAN: Thank you. A
7 summary order would be appropriate, please.

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

9 CHAIRPERSON JORDAN: We are going
10 to call case 18446.

11 You want me to help you out and
12 call it?

13 We will next call case 18446,
14 Edward Bruske, variance to convert a flat to
15 a three-unit apartment building in R-4 at 1308
16 Euclid Street, N.W. Is the Board ready to
17 deliberate on this? We already took a vote,
18 didn't we? We took one vote and I think Ms.
19 Sorg was going to read in the record.

20 VICE CHAIRMAN SORG: Which, for
21 the record, I did.

22 CHAIRPERSON JORDAN: Okay. We had

1 a previous vote. I don't know, Ms. Sorg, if
2 you want to indicate where you are on this
3 matter.

4 VICE CHAIRMAN SORG: Thank you,
5 Mr. Chairman. This is another one of those
6 pesky 900-square-foot problems. As Mr. Miller
7 indicated in our last case dealing with this,
8 I hope that the Zoning Commission will take
9 this up and figure out a way that this type of
10 regulation can be recreated to fit better with
11 the circumstances of these changing
12 neighborhoods and changing density and
13 dwelling requirements of the District as it
14 continues to grow.

15 That being said, this is another
16 case where I am very much on the fence. I do,
17 however, think that the Applicant's post-
18 hearing statement was compelling in this area.
19 I think seeing the appraisal documents from
20 the purchase did help regarding a compliance
21 factor, although would not be the top in any
22 reasoning for me to understand the first or

1 second prong of the test.

2 I think, however, the floor plan
3 provided by the project architect did go a
4 good long way to clarifying some issues
5 regarding the second prong. Here also as in
6 the last case, I think showing the way that
7 the narrative describing the creation of the
8 community stair, as well as the relocation of
9 the first-floor kitchen and the relocation of
10 the mechanical room.

11 At the beginning during the
12 hearing I was not convinced that these things
13 would be necessary, but showing the plans that
14 were submitted in the post-hearing, I think
15 similarly to create a functional dwelling unit
16 that is a duplex there are some fairly costly
17 hoops to jump through.

18 I think in the interest of
19 creating a functional dwelling space, that in
20 combination with a few other factors including
21 the real estate analysis that was provided
22 post-hearing by the applicant, I again can

1 squeak over the fence and be in support of the
2 application and granting the relief.

3 CHAIRPERSON JORDAN: Mr. Hinkle.

4 MEMBER HINKLE: Yes. Thank you,
5 Mr. Chair. As you know, I vote not to support
6 relief in this case the last time around. I'm
7 still at that position. This property has
8 been known by the Applicant for upwards of 25
9 years. This property has been a flat for,
10 from my understanding, close to 20 years.

11 The Applicant has submitted
12 information in terms of some necessary
13 repairs. To me the request is give us another
14 unit and we might be able to then rent that
15 out and afford these repairs.

16 I don't think it's the
17 responsibility of either the citizens of the
18 District or this Board to ensure that a
19 property owner has enough cash flow to do
20 necessary repairs. I mean, property owners
21 need to maintain and repair their property.
22 That is a matter of fact.

1 I won't get into the details but
2 I'll reference both Office of Planning
3 reports. I thought they did an excellent job
4 in discussing this case, Exhibit 27 as well as
5 Supplemental Exhibit 33 stating that there is
6 really no exceptional condition with this
7 property and I tend to agree with that. I
8 continue to not be able to support this
9 request.

10 CHAIRPERSON JORDAN: Ms. Sorg.

11 VICE CHAIRMAN SORG: Thank you. I
12 just want to say I agree with you, Mr. Hinkle,
13 regarding the sort of like "give me this
14 really fennel repair of my house" argument
15 which I found frankly a little silly and so
16 didn't -- and, in fact --

17 CHAIRPERSON JORDAN: It rubbed me
18 the wrong way.

19 VICE CHAIRMAN SORG: Yeah,
20 exactly. I think, in fact, I found that it
21 distracted from the way that I was able to
22 understand the other elements of this case.

1 I also at first felt like perhaps
2 the decision in this case hinged on that 25-
3 year number but, in thinking about it later,
4 and also in reviewing the post-hearing, it
5 doesn't to me. Those two things, I think,
6 were the reasons that I can get behind this.
7 I don't think that the hinge is the 25-year
8 for me. That's just where I'm coming from.

9 CHAIRPERSON JORDAN: It also put
10 me on the fence. The other thing, too, in
11 that appraisal if you look at it, it does talk
12 about three units but there is also a
13 provision there that says there's two units.
14 Someone looking at that appraisal didn't do a
15 very good job because it says the townhouse
16 two to three stories and number of units two.
17 Later on it talks about three so the appraisal
18 wasn't in sync.

19 As I indicated before, it's kind
20 of borderline. However, in light of the
21 financials and in light of our consistency in
22 how we try to make -- what we've done in the

1 past, I can support this.

2 With that, I would move that we
3 support this application with all the
4 hesitations in the world but I move to support
5 this.

6 VICE CHAIRMAN SORG: Second.

7 CHAIRPERSON JORDAN: Motion made
8 and seconded. All those in favor signify by
9 saying aye.

10 BOARD MEMBERS: Aye.

11 CHAIRPERSON JORDAN: Those opposed
12 nay.

13 MEMBER HINKLE: Nay.

14 CHAIRPERSON JORDAN: Mr. Moy, do
15 we have any outstanding ballots?

16 MR. MOY: Yes, we do. Thank you
17 for reminding me. We do have an absentee
18 ballot from a participant, Ms. Marcie Cohen.
19 Her absentee ballot is to approve the
20 application with any conditions the Board may
21 impose.

22 That would give, by my arithmetic,

1 a final vote of three to one. This on the
2 motion of Chairperson Jordan to approve the
3 application. Seconding the motion Vice
4 Chairperson Sorg. Also in support, of course,
5 the absentee ballot of Marcie Cohen. We have
6 a Board seat vacant at that time. The motion
7 carries, Mr. Chairman.

8 CHAIRPERSON JORDAN: Thank you.
9 Summary order, please.

10 MR. MOY: Thank you.

11 CHAIRPERSON JORDAN: Our next case
12 on the docket for today is 18455. That's our
13 last case for today, isn't it?

14 MR. MOY: Yes, sir.

15 CHAIRPERSON JORDAN: We are just
16 so effective and efficient.

17 MR. MOY: That would be
18 Application No. 18455 of Lafon McCrae. This
19 is pursuant to 11 DCMR 3103.2 for variances
20 from the lot area and lot width requirements
21 under Subsection 401.3, to allow the
22 construction of two semi-detached dwellings in

1 the R-2 District at premises 4257 and 4259
2 Brooks Street, N.E. Property located in
3 Square 5087, Lots 930 and 937.

4 As the Board will recall, at its
5 public hearing on January 15th of this year,
6 the Board closed the record and scheduled its
7 decision on February 12th. This would allow
8 Vice Chairperson Sorg to review the record
9 since she participated at the December 11th
10 public hearing. The Board is to act on the
11 merits of the request for the variance relief.
12 That completes the staff's briefing, Mr.
13 Chairman.

14 CHAIRPERSON JORDAN: Okay. This
15 is one we've kind of gone back and forth on
16 for a while because we thought this could be
17 granted as a matter of right. We had to
18 search out the ownership issue which has been
19 resolved and it does still require relief.

20 This is one that I think kind of
21 screams for relief because the lot is no
22 narrow that I would think it would be

1 impractical for anybody to be able to build on
2 this lot unless they have this type of relief
3 so I would be inclined to grant it.

4 Any other Board member have
5 something?

6 Ms. Sorg.

7 VICE CHAIRMAN SORG: Mr. Chairman,
8 I would agree with you. I think it was
9 confusing and then it was clarified and now
10 it's very clear that the Applicant requires
11 relief. They have the support of their
12 neighbors and DDOT and OP and the ANC so if
13 you made a motion, then I would second it.

14 CHAIRPERSON JORDAN: Mr. Hinkle,
15 do you want to weigh in on anything?

16 VICE CHAIRMAN SORG: Sorry, Mr.
17 Hinkle.

18 MEMBER HINKLE: No. I think
19 everything has been said. I do appreciate the
20 input from the ANC. I know that was something
21 that I was looking for.

22 CHAIRPERSON JORDAN: Right. Yeah.

1 They voted to support this application, as
2 well as OP. Great weight will certainly -- we
3 give great weight to that.

4 My motion is that we approve the
5 relief requested.

6 VICE CHAIRMAN SORG: Second.

7 CHAIRPERSON JORDAN: Motion made
8 and seconded. All those in favor signify by
9 saying aye.

10 BOARD MEMBERS: Aye.

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

13 Mr. Moy.

14 MR. MOY: Yes, sir. The staff
15 would record the vote as three to zero. This
16 is on the motion of Chairman Jordan to approve
17 the application for variance relief from lot
18 area and lot width under 401.3.

19 Seconding the motion Vice
20 Chairperson Sorg. Also in support Mr. Jeffrey
21 Hinkle. We had a Board vacancy as well as no
22 Zoning Commissioner sitting. The motion

1 carries on a vote of three to zero, Mr.
2 Chairman.

3 CHAIRPERSON JORDAN: May we have a
4 summary order, please?

5 MR. MOY: Yes, sir.

6 CHAIRPERSON JORDAN: Is there any
7 other business that needs to come before the
8 Board today?

9 MR. MOY: Not from the staff, Mr.
10 Chairman.

11 CHAIRPERSON JORDAN: Then we're
12 adjourned.

13 (Whereupon, at 11:30 a.m. the
14 hearing/meeting was adjourned.)

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Before: DCZC

Date: 02-12-13

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