

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA**

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING AND HEARING

+ + + + +

**TUESDAY
APRIL 23, 2013**

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**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 10:05 a.m., Lloyd Jordan,
Chairperson, presiding.**

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

**LLOYD JORDAN, Chairperson
NICOLE SORG, Vice Chairperson
S. KATHRYN ALLEN, Board Member
JEFF HINKLE, Board Member (NCPC)**

ZONING COMMISSION MEMBER PRESENT:

**ROBERT MILLER, Commissioner
OFFICE OF ZONING STAFF PRESENT:
CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist**

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

TAMAR GLAZER, ESQ.

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

MAXINE BROWN-ROBERTS

STEVEN COCHRAN

ARTHUR JACKSON

ELISE VITALE

**The transcript constitutes the
minutes from the Public Hearing held on April
23, 2013.**

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

10:02 a.m.

CHAIRPERSON JORDAN: Good morning.

We apologize for being a little bit out of sync this morning. Will this meeting/hearing come to order. Good morning, ladies and gentlemen. We are located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is April 23, 2013. We're here for a meeting and hearing of the Board of Zoning Adjustment.

My name is Lloyd Jordan, Chairperson. To my immediate left is Nicole Sorg, Vice Chair. To her left is Robert Miller, member of the Zoning Commission. To my right is S. Kathryn Allen, member of the Board, and to her right is Jeffrey Hinkle, member of the Board.

Please be advised that these proceedings are being recorded by a court reporter and also being webcast live.

Therefore, I'm going to ask you refrain from

1 any disruptive noises today and ask you to be
2 sure that your cell phones are turned off.

3 Additionally, the Board's agenda
4 and rules and procedures are contained to my
5 left in the back so be sure to get those.

6 Since we have a rolling agenda,
7 anyone who is here to testify in a case before
8 the Board or bring statement in a case that is
9 before the Board today, would you please stand
10 and take the oath or affirmation being given
11 by the Board secretary, Mr. Moy.

12 Thereafter, once you've done that
13 and prior to you testifying, I need you to
14 complete two witness cards apiece and give
15 them to the court reporter who is seated to my
16 right.

17 MR. MOY: Thank you, Mr. Chairman.
18 Good morning.

19 (Whereupon, the witnesses were
20 sworn.)

21 CHAIRPERSON JORDAN: Again, I'm
22 going to need you to complete two witness

1 cards and give those to the court reporter,
2 anyone who plans on giving testimony here
3 today.

4 Let's roll into our docket. Mr.
5 Moy, do we have any housekeeping things we
6 need to do?

7 MR. MOY: Not during the public
8 decision meeting portion, Mr. Chairman.

9 CHAIRPERSON JORDAN: Why don't you
10 -- we roll our docket and we are going
11 straight through.

12 MR. MOY: Okay.

13 CHAIRPERSON JORDAN: There may be
14 people sitting here that may not need to be
15 sitting here.

16 MR. MOY: Okay. Very good. I got
17 the cue. In that case, I will announce for
18 the record that two applications scheduled for
19 public hearing have been rescheduled to a
20 future date. That would be Application No.
21 18459. This is the application of Quiton
22 Cooper. That has been rescheduled to July 9,

1 2013.

2 The second case is Application No.
3 18541, application of Jubertha Payne. That
4 application has been rescheduled to May 21,
5 2013. Thank you, Mr. Chairman.

6 So, with that, the first action of
7 the Board for decision is Application No.
8 18474. This is of Wagtime, LLC, pursuant to
9 11 DCMR 3104.2.

10 This is for a special exception
11 for animal boarding under Section 735, a
12 special exception for pet grooming under
13 Section 736, and a special exception for an
14 animal shelter under Section 739 in the C-2-A
15 District at premises 1232 9th Street, N.W.
16 Property located in Square 398, Lot 911.

17 As the Board will recall, the
18 Applicant amended this application and now
19 includes variance relief from Sections 735.3,
20 736.5, 739.6 to permit the use of external
21 facilities at the subject property.

22 On March 5, 2013, the Board

1 completed public testimony, closed the record,
2 and scheduled its decision on April 23rd. The
3 Board requested to supplement the record with
4 proposed findings of fact and conclusions of
5 law from the parties.

6 In your case folders, Mr.
7 Chairman, there are draft orders from the
8 Applicant under Exhibit 33 and from the party
9 opposition under Exhibit 54. The Board is to
10 act on the merits of the relief that I've just
11 cited. That completes the staff's review, Mr.
12 Chairman.

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

15 Is the Board ready to deliberate
16 on 18474? Don't all step up at once here.
17 Let's go ahead and move to handle the
18 situation. Does anyone want to begin?

19 Ms. Sorg.

20 VICE CHAIR SORG: Sure. Thank
21 you, Mr. Chairman. So this has been an
22 interesting case. I think through the

1 hearings and all the submissions there has
2 been a lot of different kinds of information
3 and competing information that has been
4 submitted.

5 For me it actually comes down to a
6 few fairly simple questions. I think there's
7 kind of two areas to deal with. The Applicant
8 is asking for special exceptions in three
9 areas; for animal boarding, pet grooming, and
10 animal shelter uses.

11 Based on the standards for special
12 exceptions, you know, dealing with that
13 portion at the beginning the Applicant has
14 support from OP to which we give great weight,
15 from DDOT, from the local ANC in their letter,
16 as well as several letters from neighbors that
17 have been submitted.

18 I think for my part for the
19 special exceptions based upon that and the
20 sort of lack of detriment that can be seen
21 from a business that's been operating for some
22 time now, I can be supportive of the special

1 exceptions.

2 Which brings us to the variance
3 request that the Applicant has made. Those
4 are variances from 735.3, 736.5, and 739.6,
5 all of which deal with the use of external
6 yards in dealing with animals.

7 Here specifically the Applicant
8 had built a deck which has a certain history
9 which was explained in testimony regarding its
10 permits, its design, and so forth, its cost
11 and everything.

12 All of those regulations from
13 which the Applicant is requesting a variance
14 have to do specifically with the keeping of
15 animals out of doors in accessory fields and
16 yards. Lucky for us the Zoning Regulations
17 don't define keeping which is extraordinarily
18 helpful in this matter.

19 Secondly, lucky for us, the
20 dictionary -- which one is it? Merriam
21 Webster or Oxford? The heavy one that is
22 sitting on the floor over here next to me,

1 which we use when the regulations don't
2 clearly define a term used in the regulations,
3 have about, I don't know, a column and a half
4 in the definition of keeping, most of which is
5 also not terribly relevant in a direct way to
6 the use of the word keeping that is in these
7 three regulations.

8 But what one can glean, and what I
9 can glean from the definitions of keeping from
10 Webster's Dictionary, is that each portion of
11 the definition has at its core the connotation
12 of longevity. It's actually not until the 9th
13 definition in the dictionary of keeping that
14 we get to a direct reference that is relevant
15 here and that is keeping in terms of living as
16 in keeping a house, living in a house.

17 That combined with other public
18 regulations; for example, D.C.'s Animal
19 Cruelty Statute which is in, I think, 18 and
20 other animal welfare provisions on a federal
21 level as well as studies that have to do with
22 that, the definitions of keeping there also

1 indicate long-term forcing of an animal to be
2 outside.

3 The collection of these sources,
4 these public sources, and the definitions that
5 we need to rely on under the regulations lead
6 me actually to believe -- to have an
7 understanding of the word keeping in these
8 three definitions that has to do with a
9 longer-term keeping of animals outside and,
10 therefore, actually not to relate directly to
11 exercising animals or using an outdoor space
12 for recreational use.

13 Therefore, in matters like this, I
14 would actually argue that the Applicant may
15 actually not require a variance. Those are my
16 thoughts.

17 CHAIRPERSON JORDAN: Does anyone
18 else want to weigh in on this one?

19 Please.

20 MEMBER ALLEN: Thank you, Mr.
21 Chairman. I'm a little bit concerned about
22 this analysis only because as I read through

1 the regs there seemed to be very clear
2 direction regarding animals, animal shelters,
3 animal boarding in this residential zone kind
4 of thing.

5 The testimony that we heard from
6 the opposition regarding having these animals
7 where they can see them and where they could
8 potentially hear them caused me to pause and
9 to really think about do the regs really try
10 to prohibit having this use of the space
11 infringe upon whatever neighbors may be in the
12 area.

13 Ms. Sorg, I agree with your
14 comments but I think I go back to my original
15 concerns about when they said that they had --
16 I guess when I read through the Applicant's
17 statement and they were saying if they weren't
18 allowed to have this space, they would only be
19 allowed to walk the dogs in the neighborhood
20 or whatever.

21 I have dogs. I take them into
22 many shelters. In fact, they walk the dogs.

1 That's what they do. Otherwise, they stay in
2 the facility. I don't know that I was
3 persuaded by the argument unless we get to
4 your point which is do we need it at all. I
5 guess I just need you to help me get there.

6 VICE CHAIRMAN SORG: I actually
7 totally agree with some parts of both of the
8 points that you're making. I think with
9 regard to the argument in the Applicant's
10 proposed motion, or proposed order rather, I
11 mean, I can understand, sure, if you have a
12 business that deals with a larger number of
13 animals and dogs that there could be a drain
14 on staff resources having to walk them all.
15 That's fine.

16 But with regard to a variance
17 test, I agree that alone it's not compelling
18 enough. I think actually to me in terms of
19 looking at the definition of keeping which
20 from the beginning of this has kind of been
21 sort of like a button for me, I think, that's
22 where I would come from.

1 With regard to the restaurant next
2 door, I agree with you when we heard in
3 testimony the owners of the property next door
4 who are planning to put in a restaurant and
5 they talked about a roof deck and things like
6 that. I think that is kind of the image that
7 was also sticking in my mind.

8 I would say with regard to that,
9 as a statement and a plan I think it caused a
10 very visual image. I do think that also there
11 is substantial other support that has been
12 shown and also a good relationship with other
13 neighbors including other restaurants that are
14 in the proximity.

15 I think you have to take the
16 affect of a particular use in a broader sense
17 on all different types of close neighbors and
18 on the neighborhood as a whole so I think --
19 I mean, I pinpointed that also kind of scene
20 as well. I think taken as a whole the
21 reaction and the support of the neighborhood
22 is something that would overcome that for me.

1 CHAIRPERSON JORDAN: Well, this is
2 a case that I find interesting to say the
3 least. I am persuaded by your argument, Ms.
4 Sorg. That is something I looked at the first
5 day we had this hearing, the definition of
6 keeping.

7 I had the opinion then that
8 keeping was something that was long term
9 meaning that -- I was going to pull up some of
10 those definitions again -- that it's beyond
11 just a simple use, walking in and walking out,
12 the basis of that definition.

13 You did say something and, for the
14 record, I know what you're saying but I want
15 to be sure we're clear on the record. You
16 used the term "not for long-term keeping."
17 You said you thought the intent was not for
18 long-term keeping. You don't even want to use
19 the word keeping in there I'm sure. This is
20 temporary use of some sort.

21 VICE CHAIRMAN SORG: Yes. I
22 appreciate the correction.

1 CHAIRPERSON JORDAN: I want to
2 make sure the record is clear. I can
3 understand that because there is a difference
4 in keeping. It talks about in some of the
5 definitions that I reviewed -- in light of the
6 ones that you cited it talked in terms of
7 ongoing maintenance, etc. To me that meant it
8 was a place where there was more permanency,
9 a longer-term use.

10 Here we are talking about more
11 recreational in and out. I could live by that
12 and that would be very helpful in this case.
13 I also have some issues about the variance
14 that was requested because I do see if this
15 was a variance case, it would be a use
16 variance.

17 The other side of the issue that I
18 have with this case is that I do believe that
19 the Applicant's hands are not all clean. They
20 did some things where they had notice that it
21 was against what the regulations was allowing.
22 However, if we look at this as a special

1 exception, then our hands become a little bit
2 more tied here.

3 They were already in and it was
4 the intent of DCRA to allow them to have these
5 uses. In fact, they were informed that there
6 was going to be some changes in the additional
7 uses that we're talking about as special
8 exceptions so I can live with that.

9 But, for the record, you have
10 persuaded me -- actually, you've changed me as
11 we sat here today because I was not very
12 supportive of that ability to use that deck
13 for the dogs but it did report me back to the
14 definitions on the word keeping. This is one
15 of those other areas which we have to make
16 sure we're clear.

17 I recommend, Mr. Miller, when the
18 Zoning Commission picks up the Zoning rewrite
19 and all that these are the kind of things that
20 gets drilled down so that we are real clear
21 about the words that we're using. Probably do
22 some reference every time we use the words

1 making sure they have been cross-referenced
2 and see how applicable they are.

3 When it gets to this body, then we
4 are required to do some interpretation. A lot
5 of times we don't make people happy with our
6 interpretations but that is why we get paid
7 the big bucks. I don't know where that would
8 come from. As we know, that's a joke. I
9 would tend to side with your thoughts on this
10 matter.

11 Anyone else? Ms. Allen.

12 MEMBER ALLEN: Let me just ask one
13 more question. When I thought about the
14 keeping it didn't have the benefit of this
15 conversation earlier. I really took it more
16 to mean the overall keeping of these animals
17 here, not necessarily specifically on the
18 deck.

19 The idea being that if they walked
20 the dog, you walk it, you do what you have to
21 do, you come back and you put it away. My
22 sense was that having that deck it's not like

1 they are going to walk it necessarily on the
2 deck. They are going to put it out there and
3 maybe let it stay for awhile.

4 Again, when I was thinking about
5 the sense of keeping, it was longer than sort
6 of a walk out and come back in because if that
7 was the case, why wouldn't they just walk it
8 on the outside? So I'm still having a little
9 bit of difficulty getting over that hurdle.

10 VICE CHAIRMAN SORG: I think your
11 point is very well made actually. I think
12 that's why the conditions in this case are
13 actually of critical importance because the
14 conditions that are being proposed that are
15 related to the roof deck are --

16 I forget the exact wording but it
17 says the dogs will only be kept out there for
18 a maximum of 20 minutes or 30 minutes. They
19 will be supervised for playtime for
20 recreational exercise. They will be
21 supervised by something like five staff
22 members. I hope I'm not saying this wrong.

1 And, you know, they will be
2 cleaned up after in an immediate fashion which
3 actually are exactly the actions that one
4 would take while walking a dog so I think the
5 longer that -- it leads to and controls the
6 use of this outdoor area to exercise and
7 recreation, which are the functions that the
8 walk of a dog, for example, would also
9 perform. That's what your comments kind of
10 bring me back to.

11 CHAIRPERSON JORDAN: I'm think
12 it's in terms of playtime. The definition for
13 me and use is more playtime or rec time as
14 opposed to, you know, an overnight situation
15 as you would board a dog or keep a dog or
16 maintain a dog. That's what that meant for
17 me.

18 Does any other Board member want
19 to weigh in on this? All right. If we're
20 ready to move for a decision, Ms. Sorg, do you
21 want to make a motion in regards to this?

22 VICE CHAIRMAN SORG: Well,

1 regarding -- I mean, I'm not sure exactly from
2 our procedural manner how we should move
3 forward because the Applicant has requested a
4 variance so I'm not -- so I would look to the
5 other Board members as to how to procedurally
6 handle such a thing given the conversation
7 that we've been having.

8 CHAIRPERSON JORDAN: Also, I
9 believe inherent in the request for a special
10 exception is that use. I think we can deny
11 the variance but make it clear for the record
12 that the special exception does allow for the
13 use of the deck. I'm going to ask counsel in
14 just a section.

15 VICE CHAIR SORG: Okay. Then I
16 would move that we dismiss the request for
17 variances from -- dismiss the request for
18 variances contained in the application and
19 move to approve request for special exception
20 under 735, 736, and 739 in Application 18474.
21 I will leave it to you for potential
22 conditions.

1 CHAIRPERSON JORDAN: I'm trying to
2 do some conditions as we sit here. Okay. I
3 think I've got it now.

4 VICE CHAIR SORG: Okay. So that's
5 my motion.

6 MEMBER ALLEN: I'll second your
7 motion. Oh, you have to do it with the
8 conditions.

9 CHAIRPERSON JORDAN: Let me add
10 some conditions. I'm trying to do these
11 conditions so that we have something that's
12 enforceable but, more importantly, that takes
13 any potential impact.

14 Again, it's not going to make
15 everybody happy here but that's not what we're
16 here for, to make everybody happy but to get
17 us beyond where we are and begin to mitigate
18 that if there are any impacts, that they are
19 reduced. I would like to add some conditions
20 here.

21 I would support the motion made by
22 Ms. Sorg but we add to it that the approval

1 shall be for a period of three years beginning
2 at the date upon which the order becomes
3 final.

4 No animal shall be permitted on
5 the roof deck between the hours of 6:00 p.m.
6 and 9:00 a.m.

7 No more than five live -- no more
8 than five animals shall be permitted on the
9 roof deck at any one time and no dog shall be
10 allowed on the deck greater than for 30
11 minutes.

12 A Wagtime employee shall be on the
13 deck at all times when an animal is present.

14 Within 60 days of the effective
15 date of the order the Applicant shall put in
16 place a process and procedure to show they are
17 working cooperatively with the ANC, the
18 neighbors, and surrounding businesses in order
19 to stay abreast of any negative impacts which
20 their use of the facility is having. That
21 would be the conditions that I would place on
22 this application.

1 Ms. Allen.

2 MEMBER ALLEN: I second that
3 motion.

4 CHAIRPERSON JORDAN: Is that okay
5 with the Board?

6 So we have before us a motion to
7 approve the special exception and to dismiss
8 the variance request and the conditions that
9 I've just provided. Any further discussion?

10 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: Yes, sir. Before staff
17 gives the final vote, there is -- I am in
18 receipt of an absentee vote from Mr. Michael
19 Turnbull who participated on the application.
20 His vote is to approve the application for
21 special exception relief with such conditions
22 as the Board may impose.

1 Brief comment on his absentee
2 ballot which perhaps I should read into the
3 record which he says, "I agree with the Office
4 of Planning that the Applicant has met the
5 threshold for meeting the special exceptions
6 requested."

7 That would give a final vote of
8 four to zero to one. We do have Mr. Hinkle
9 not participating on the application. This is
10 on the motion of Vice Chair Sorg, seconded by
11 Ms. Allen. Also in support Mr. Jordan and Mr.
12 Turnbull with his absentee ballot. Again, the
13 motion carries, Mr. Chairman.

14 CHAIRPERSON JORDAN: Mr. Moy,
15 would you contact counsel for the Applicant
16 and tell them we want a finding of facts
17 consistent with the Board's deliberation to be
18 presented within 10 days, please?

19 MR. MOY: Yes, sir. I'll do that.

20 The next application for decision
21 is Application No. 18527. This is the
22 application of Jill and Blaise Marion,

1 pursuant to 11 DCMR 3104.1 and 3103.2, for a
2 special exception under Subsection 2516.1, a
3 variance from the nonconforming structure
4 provisions under Subsection 2001.3, a variance
5 from the rear yard requirements under Section
6 404 --

7 CHAIRPERSON JORDAN: Mr. Moy,
8 let's go over what's been advertised.

9 MR. MOY: Advertised?

10 CHAIRPERSON JORDAN: The
11 advertised order.

12 MR. MOY: Oh, okay. I can do
13 that.

14 CHAIRPERSON JORDAN: I just want
15 to make sure.

16 MR. MOY: All right. In that
17 case, that would be the Applicant's request
18 for a two-year time extension of Application
19 No. 18182. This is of Lincoln-Westmoreland
20 Housing pursuant to Section 3130 of the Zoning
21 Regulations.

22 The original application, which

1 was approved April 5, 2011, issued on April
2 14, 2011 was pursuant to 11 DCMR 3103.2 and
3 3104.1 for a variance from the height
4 requirements under Subsection 770.1 and
5 2604.2; variance from the floor area ratio
6 requirements under Subsection 771.2; variance
7 from the rear yard requirements under
8 Subsection 774.1; variance from the parking
9 requirements under Subsection 2101.1; and a
10 variance from the loading requirements under
11 Subsection 2201.1 and special exception from
12 the roof structure requirements under
13 Subsection 411.5 to allow the construction of
14 a new apartment building in the ARTS/C-2-B
15 District at premises 1718 through 1734 7th
16 Street, N.W.

17 Property located in Square 419,
18 Lot 846 and 847. On March 7, 2013 the
19 Applicant filed the request for a two-year
20 time extension and that is in your case
21 folders under Exhibit 33.

22 There is a government report filed

1 in the record from the Office of Planning and
 2 that is filed under Exhibit 34. With that
 3 then the Board is to act on the merits of the
 4 request to extend for another two years
 5 pursuant to Section 3130, specifically the
 6 criteria under Subsection 3130.6. That
 7 completes the staff's briefing, Mr. Chairman.

8 CHAIRPERSON JORDAN: Whew. I
 9 forgot what you were even reading about, what
 10 this case was about. Mr. Moy, just for some
 11 direction in the future, when we handle these
 12 time extensions, let's just say the request
 13 and what the request is from because I don't
 14 want the public to think that we're rehearing
 15 a case about something that has already been
 16 granted. I think when we do all that, it
 17 confuses me.

18 MR. MOY: Oh, okay. I can do
 19 that. A lot of that was for the record.

20 CHAIRPERSON JORDAN: I understand.
 21 Regarding 18182 I don't think,
 22 Board, that this is a matter that is ready for

1 us to deliberate. I think this Board has been
2 very, very consistent what we've requested for
3 request for extensions.

4 We have said -- well, I think
5 we've been consistent. I think it's important
6 that we remain consistent about the
7 requirements and that we do this evenhanded to
8 all applicants.

9 This file lacks -- although we
10 have the request for an extension, the file
11 lacks (1) an affidavit from the Applicant
12 attesting to what they are saying is actually
13 true and factual. We have always asked for
14 that. It's not in this case. They have not
15 presented that.

16 Additionally, we ask for a
17 supporting letter or two, especially when you
18 raise the issue of -- to show your good faith
19 attempt to receive financing or other issues
20 that you can back up with support other than
21 just a blanket statement from the Applicant
22 saying, "We need a request. We've tried this

1 and tried that and we need a request for
2 relief."

3 I think this Board has been very
4 consistent about that. I would move that we
5 continue this, give the Applicant a period of
6 time to get these documents in, say 10 days
7 and we can put it on at another point, Mr.
8 Moy, and come back to that.

9 Ms. Sorg.

10 VICE CHAIRMAN SORG: I agree. It
11 is customary that we do receive the
12 information that is contained in the
13 Applicant's filing for this request for time
14 extension formulated as an affidavit and that
15 we do hope to receive letters from the
16 institutions, whether they're banks or
17 agencies, although I can imagine that is a
18 little more difficult regarding that.

19 I will say two things about this
20 application just to note for the record. One,
21 I actually really did appreciate the schedule
22 that the Applicant submitted indicating when

1 construction should be complete which is
2 actually something that we don't see for all
3 the applications.

4 Also the detailed nature of the
5 dealings with WMATA and HUD and so forth.
6 Regarding content I actually wanted to commend
7 the Applicant for that but I do agree that in
8 terms of our standards with a short extension
9 to file this.

10 CHAIRPERSON JORDAN: Even if it's
11 from a government agency and whatever,
12 somebody can also supplement the record by
13 showing the letters making the request for
14 verification or a response so that we have
15 that for the record.

16 Anyone else want to add to this?

17 My motion would be that we -- Mr.
18 Moy, what's a date we can have to put this on?

19 MR. MOY: Given the number of days
20 you just cited, we can hold a public meeting
21 on May 7th with filings by Friday May 3rd.

22 CHAIRPERSON JORDAN: Then that

1 would be the order. Let's just make it by
2 motion. That would be my motion.

3 VICE CHAIR SORG: Second.

4 CHAIRPERSON JORDAN: Motion made
5 and seconded. Any unreadiness? All those in
6 favor signify by saying aye.

7 BOARD MEMBERS: Aye.

8 CHAIRPERSON JORDAN: Those opposed
9 nay. The motion carries.

10 MR. MOY: Okay. The staff records
11 the vote count five to zero on the motion of
12 Chairman to reschedule the decision to May
13 7th. Filings to be submitted to the office by
14 Friday May 3rd. Seconding the motion Vice
15 Chairperson Sorg. Also in support Mr. Miller,
16 Ms. Allen, and Mr. Hinkle. The motion
17 carries, Mr. Chairman.

18 CHAIRPERSON JORDAN: Thanks. If
19 you'll get the direction to the Applicant,
20 please.

21 MR. MOY: Yes, sir.

22 The next item before the Board for

1 decision is an Applicant's request for a third
 2 two-year time extension. This is of
 3 Application No. 17606-C pursuant to Section
 4 3130 of the Zoning Regulations. On March 12,
 5 2013, the Applicant filed their request under
 6 Exhibit 49 in your case folders.

7 Mr. Chairman, following the
 8 Applicant's filing, there are two other
 9 filings in the case folders. One is from
 10 Single Member District of ANC-4B which is
 11 under Exhibit 52, and a report from the Office
 12 of Planning under Exhibit 51. With that, the
 13 Board is to act on the merits of the request
 14 to extend pursuant to Section 3130.

15 CHAIRPERSON JORDAN: Again, the
 16 same issue, the same time, same matter,
 17 request for extension. I don't believe there
 18 was an affidavit in this case. I know I don't
 19 have supporting documentation on the other
 20 aspect of the request.

21 I'm just surprised that we don't.
 22 This is not new the way this Board has been

1 operating regarding request for extension.
2 Similarly, I would move that we move this
3 matter to May 2nd?

4 MR. MOY: Yes, sir.

5 CHAIRPERSON JORDAN: The May 2nd
6 date and have this Applicant provide the
7 affidavit and the backup supporting
8 documentation. May 7th is it? Yeah. That
9 would be my motion. Anyone?

10 MEMBER ALLEN: Second

11 CHAIRPERSON JORDAN: Any
12 unreadiness? Mr. Hinkle? All those in favor
13 signify by saying aye.

14 BOARD MEMBERS: Aye.

15 CHAIRPERSON JORDAN: Those opposed
16 nay. The motion carries.

17 MR. MOY: The staff would record
18 the vote as five to zero on the motion of
19 Chairman Jordan reschedule its decision to May
20 7th with filings -- supplemental filings from
21 the Applicant by Friday, May 3rd. Seconding
22 the motion was Ms. Allen. Also in support of

1 the motion Mr. Miller, Vice Chairperson Sorg,
2 and Mr. Hinkle. Again, the motion carries
3 five to zero.

4 The last item for decision is
5 Application No. 18527. This is the
6 application of Jill and Blaise Marion pursuant
7 to 11 DCMR 3104.1 and 3103.2, for a special
8 exception under Subsection 2516.1, a variance
9 from the nonconforming structure provisions
10 under Subsection 2001.3, a variance from the
11 rear yard requirements under Section 404, and
12 a variance from the off-street parking
13 requirements under Subsection 2101.1, to
14 permit two principal buildings on a single
15 subdivided lot in the R-4 District at premises
16 1116 K Street, N.E. Property located in Square
17 980-N, Lot 7.

18 On April 2, 2013 the Board
19 completed public testimony, closed the record,
20 and scheduled its decision on April 23rd. The
21 Board requested additional information to
22 supplement the record from the Applicant.

1 That filing from the Applicant, Mr. Chairman,
2 is in your case folders identified as Exhibit
3 33.

4 The Board also allowed responses
5 from the Office of Planning and ANC-6A. The
6 only filing in the record is a report from the
7 Office of Planning under Exhibit 34 in your
8 case folders. With that the Board is to act
9 on the merits of the request for relief.

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

12 Is the Board ready to deliberate
13 in this case?

14 MS. GLAZER: Mr. Chair, excuse me.
15 I believe an ANC report came in this morning
16 also, Exhibit 29.

17 CHAIRPERSON JORDAN: Okay, yeah.
18 Is the Board ready to deliberate? Does anyone
19 have any thought about -- this has been a
20 heavy-thought morning for this Board on a lot
21 of these cases. I don't know if that's by
22 design that we stacked them all up here on the

1 same docket.

2 Anyway, this is another
3 application that kind of tugs and pushes the
4 Board and really have to take a serious look
5 at the impact of what the Applicant's request
6 is doing, weighing various tests. Some of
7 those things are right on that border of
8 whether the relief should or should not be
9 granted.

10 Does anyone have any thoughts or
11 opinion about 18527?

12 Ms. Sorg.

13 VICE CHAIRMAN SORG: Okay. I do
14 although they are not entirely well formulated
15 yet. Okay. The variances relating to the
16 rear yard requirements under 404, parking
17 requirements under 2101.1, and two principal
18 buildings on a single lot to me are no-
19 brainers based upon the clear practical
20 difficulty uniqueness of this lot.

21 I think even from the beginning in
22 the first submissions that the Applicant made

1 it's clear that the situation here would lead
2 one to support those variances. That leaves us
3 with the question of the non-conforming
4 structure and the potential third floor which
5 is actually not exactly -- well, the non-
6 conforming structure and the third floor.

7 OP in their supplemental report
8 maintains that there is not a practical
9 difficulty in creating a third floor. This
10 party is not running into problems with height
11 or anything. I think it's just this question
12 of the variance under 2001.3 in creating what
13 OP is calling a third floor.

14 Now, I want to actually kind of
15 jump over to mention that I found the
16 Applicant's post-hearing submissions showing
17 the neighborhood context and the other mansard
18 roofs that are there to be convincing with
19 regard to the design and including a mansard
20 roof. That was something that we had spoken
21 a good deal about in the hearing itself.

22 That leaves me with the single

1 issue of the loft. When you look in the -- so
2 I'm thinking, okay, this is actually to my
3 mind not a third floor but a mezzanine which
4 would then not require -- that is sort of one
5 way to go about it.

6 The definition of mezzanine says
7 that it cannot cover more than a third of the
8 area of the floor below. When you look at the
9 plans in Exhibit 9 and you look at the
10 placement of the mezzanine, I actually believe
11 that it does conform to that regulation
12 because a portion of that mezzanine, which is
13 being shown in the plan, is actually stair and
14 over the stair and so, therefore, circulation.

15 This portion is over a stair and I
16 believe is what's going up. The plans are
17 showing that there's a stair going up. That
18 is actually not part of the floor area of the
19 mezzanine. The plans on page A7 are actually,
20 I believe, not showing that circulation in the
21 way that it should. So that's one question.

22 Now, I with regard to that

1 variance I also did find the Applicant's
2 submission in which they demonstrated the area
3 of the living space which is interesting to
4 me. In this rather small front part of the
5 house pretty much everything is dedicated
6 space to either kitchen or laundry or a
7 bedroom or a bathroom.

8 The living space is exceptionally
9 small actually. There's no dining table. I
10 mean, I think you would be hard pressed to
11 find a sofa that would fit in a six by seven
12 space.

13 In additional to my belief that
14 this is a mezzanine, I also am persuaded that
15 the living space and the sort of family
16 recreation space, which is what living space
17 is, space not dedicated to sleeping or eating
18 or other personal duties, is exceptionally
19 small in this small, small home. Those are
20 generally my thoughts.

21 CHAIRPERSON JORDAN: I appreciate
22 that and certainly can support that. I do have

1 a concern. I have a concern regarding the
2 height. I think those pictures, as you said,
3 were very, very helpful of the other roofs in
4 the area so that it's consistent with the
5 other roofs in the area and that this is not
6 going to have some major impact on people
7 going, "Oh, my God. How did that get in this
8 neighborhood?"

9 I think that was really helpful to
10 my decision. I do think that there is a
11 height issue in that the roof as proposed is
12 well above those that surround it. In fact,
13 the Applicant in their supplement said that
14 they recognize it themselves and said they
15 would be willing to lower the height of the
16 roof.

17 That is where I would -- the only
18 issue that I have. I think they can make the
19 alterations to that which they propose to
20 bring it down to -- OP also agreed with that
21 that it should be lowered in height to be
22 compatible with the other roofs of similar

1 sort in the neighborhood.

2 Mr. Hinkle.

3 MEMBER HINKLE: Thank you, Mr.

4 Chair. I would like to comment on that. The
5 property is located in R-4 so I think it's 35
6 feet in height that is allowed. I think the
7 entire block is within the R-4 zone.

8 While there is not adjacent
9 properties that are at that height, I think
10 they potentially could be and we might see
11 that in the future. If you also look at the
12 zoning map, there is C-2-A directly across the
13 street on Florida Avenue. I think you are
14 allowed to go up 50 feet in that zone.

15 While this is in a set structure
16 -- the principal structure on this lot is
17 actually the townhouse on K Street -- what
18 we're looking at is a proposal for a structure
19 that essentially fronts on Florida Avenue now.

20 Practically it's on the alley way
21 but it's essential on Florida Avenue where, as
22 I said, across the street you could

1 potentially go up to, from my understanding,
2 50 feet. The Applicant did submit some
3 photographs that show varying heights along
4 Florida Avenue. For me the height issue is
5 not a problem.

6 I think the Applicant did submit
7 sufficient evidence to show that it does
8 conform actually with what is occurring on
9 Florida Avenue today. I think with the
10 ability to go up to 35 feet, even in this R-4
11 zone, I don't think what is being proposed
12 would be out of place in terms of the height.

13 VICE CHAIR SORG: I just want to
14 add I would agree with Mr. Hinkle. I also
15 note that in the hearing I think it was me
16 that asked OP outside of the address of this
17 structure in what streetscape or in what
18 context does it really contribute.

19 The fact is this structure, as you
20 can see from the images, from the testimony of
21 the Applicant, and even OP answered in the
22 affirmative that this is a structure that

1 actually acts like it's part of the Florida
2 Avenue streetscape.

3 I think that is also a piece for
4 me that would corroborate Mr. Hinkle's point.
5 As well as they are not asking for relief from
6 height. Even OP notes that they are at most
7 five feet above any of the surrounding
8 properties that OP notes, even in their
9 supplemental report.

10 CHAIRPERSON JORDAN: What does
11 this say? Say that again.

12 VICE CHAIR SORG: The structure
13 that the Applicant is proposing is going to be
14 30 feet and half an inch, 30-feet tall, which
15 is under the 35-foot maximum. The existing
16 dwelling on that property is 27-and-a-half
17 feet so two-and-a-half feet shorter.

18 Then the other properties that OP
19 in their supplemental report also indicate as
20 contributing to this sort of out-size height,
21 which I don't tend to agree with, are
22 structures that are 27-and-a-half feet tall

1 versus this 30 foot, or 26 feet tall versus
2 this 30 foot, or 25 feet eight inches tall
3 versus this 30 foot.

4 It's not like I don't believe what
5 is being created here is something that is
6 going to look like a pop-up structure with a
7 whole other floor. I don't think that's what
8 we're dealing with.

9 CHAIRPERSON JORDAN: There is one
10 29.5 too.

11 VICE CHAIR SORG: Which is, okay,
12 six inches and a half shorter. I mean,
13 because they're not requesting relief in that
14 area and because I don't think it's out-of-
15 scale of the neighborhood, especially given
16 its interaction with the Florida Avenue
17 streetscape, I don't feel like there is a need
18 to mess around with the height of it.

19 CHAIRPERSON JORDAN: I appreciate
20 Mr. Hinkle bringing up the point about across
21 the street and raising this issue because it
22 does offset what the Office of Planning

1 actually placed here in their recommendation.
2 If I go back and look at the height, there is
3 one of the properties nearby that is 29.5 so
4 I could live with that.

5 Is there any other deliberation or
6 discussion? The I move that we grant the
7 relief requested by the Applicant.

8 VICE CHAIR SORG: Second.

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

12 BOARD MEMBERS: Aye.

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

15 Mr. Moy.

16 MR. MOY: Yes, sir. Before staff
17 calls the vote, there is an absentee ballot
18 from another participating member on this
19 application. That is Zoning Commissioner
20 Marcie Cohen. Her absentee vote is to approve
21 the application. That would give a final
22 vote, Mr. Chairman, of five to zero.

1 This is on the motion of Chairman
2 Jordan to approve the application for the
3 relief requested. Seconded by Vice
4 Chairperson Sorg. Also in support Ms. Allen
5 and Mr. Hinkle. The motion carries, Mr.
6 Chairman.

7 CHAIRPERSON JORDAN: Do we have
8 any opposition to this?

9 MR. MOY: There is no party
10 status.

11 CHAIRPERSON JORDAN: Okay. Then
12 let's have a summary order, please. Thank
13 you.

14 We are going to take a five-minute
15 break. Let's do this. It's 10:53. Is that
16 correct?

17 MR. MOY: Yes.

18 CHAIRPERSON JORDAN: Be back at
19 11:00. Bottom line, 11:00. Thanks.

20 (Whereupon, at 10:55 a.m. off the
21 record until 11:04 a.m.)

22 MR. MOY: I'm here, sir. Ready to

1 go. Which case would the Board desire to
2 start off with?

3 CHAIRPERSON JORDAN: We're doing
4 it as the printed docket. That would be
5 18535.

6 I hope you are 18535. You assume
7 you're going to be the next case.

8 MR. MOY: With that introduction
9 then, the first case of the public hearing is
10 Application No. 18535, application of Joel
11 Starr and Melissa Moye, pursuant to 11 DCMR
12 3104.1, for a special exception under Section
13 223, not meeting the side yard requirements
14 (Section 405), for a rear addition to an
15 existing one-family row dwelling in the R-2
16 District at premises 3411 Quebec Street, N.W.
17 Property located in Square 2063, Lot 87.

18 MR. MOY: Thank you.

19 Please identify yourselves for the
20 record.

21 MS. MOYE: I'm Melissa Moye, the
22 property owner.

1 MR. CUNNINGHAM: Ralph Cunningham
2 from Cunningham Quill Architects in
3 Washington.

4 MR. MILES: Sylvan Miles from
5 Cunningham Quill Architects as well.

6 CHAIRPERSON JORDAN: Unless the
7 Board has something different, I think the
8 application here was pretty full and complete.
9 I think the Board has enough to make a
10 decision based upon what we have from you
11 subject to other witnesses coming forward.

12 I don't know if there is anything
13 the Board particularly needs for this
14 Applicant to talk or explain or any issues
15 that comes up. I'm seeing nods from the Board
16 that we don't.

17 You have the opportunity to do a
18 presentation if you feel as though you need to
19 but the Board is saying to you we believe your
20 application is sufficient as it is.
21 The only thing you can do is make it worse,
22 but you have the opportunity to say -- you

1 have the right to do a presentation if you
2 wish.

3 MR. CUNNINGHAM: Yes, sir. We
4 choose to stand on the record. Thank you.

5 CHAIRPERSON JORDAN: Then let's
6 turn now to the Office of Planning and see if
7 Ms. Vitale has for us anything different.

8 MS. VITALE: Good morning, Mr.
9 Chair, members of the Board. Elisa Vitale
10 with the Office of Planning. OP recommends
11 approval of the requested relief. We'll rest
12 on the record and can answer any questions.

13 CHAIRPERSON JORDAN: Does the
14 Board have any questions for Planning?

15 Does the Applicant have any
16 questions for Planning?

17 Is there anyone here from
18 Department of Transportation? There is not.
19 We do have a letter of no objection to the
20 request for relief by the Department of
21 Transportation.

22 Is there anyone here from ANC-3C?

1 We do have a letter in support from ANC-3C
2 supporting this application.

3 Is there anyone in the audience
4 wishing to testify in support of the
5 application? Anyone wishing to testify in
6 opposition? Then we would normally turn it
7 back to our Applicant for rebuttal or a
8 closing but I see that you've already waived
9 that, right? There is no need for that.

10 Then we will close the record.

11 Do you have a question?

12 VICE CHAIR SORG: No, Mr.

13 Chairman. Just one clarification on the
14 application. I noticed in our report that we
15 only mention one letter of support which is
16 from the adjacent neighbor. Also in that
17 document was another letter of support from
18 the other adjacent neighbor. Since they had
19 obtained those two and it wasn't reflected in
20 our report, maybe it should be on the record.

21 CHAIRPERSON JORDAN: There's two
22 letters. Yeah, there's two letters. There's

1 one from the resident at 3409 and one from
2 3411 in support.

3 With that we will close the record
4 and move to deliberation.

5 Ms. Sorg.

6 VICE CHAIR SORG: I would move to
7 approve Application 18535.

8 ZC COMMISSIONER MILLER: I second.

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

12 BOARD MEMBERS: Aye.

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

15 Mr. Moy.

16 MR. MOY: Yes, sir. Staff would
17 record the vote as five to zero. This is on
18 the motion of Vice Chairperson Sorg, seconded
19 by Mr. Robert Miller. Also in support
20 Chairman Jordan, Ms. Allen, and Mr. Hinkle.
21 This is approval of the special exception
22 request and the motion carries.

1 CHAIRPERSON JORDAN: Thank you.

2 MR. CUNNINGHAM: Thank you.

3 CHAIRPERSON JORDAN: Heck of a
4 presentation. Great pictures on the wall.

5 For the record, so people know,
6 actually the Board reviews all these cases and
7 prior to these hearings we take at least
8 probably 16 hours -- I think that's what we
9 found on the average, 16 hours of prepping for
10 each one of these dockets that we have so we
11 don't take these things lightly. We attempt
12 to focus in where applications have issues.
13 That's how we proceed generally.

14 Are we ready?

15 MR. MOY: Yes, sir. With that,
16 then the next application for public hearing
17 is Application No. 18537. This is the
18 application of John Merrick and Heather
19 Phillips, pursuant to 11 DCMR 3104.1, for a
20 special exception under Section 223, not
21 meeting the lot occupancy requirements under
22 Section 403, side yard requirements under

1 Section 405, and nonconforming structure
2 requirements under Subsection 2001.3 for an
3 addition to an existing one-family semi-
4 detached dwelling in the R-4 District at
5 premises 525 5th Street, S.E. Property
6 located in Square 822, Lot 825.

7 There is a preliminary matter in
8 this application, Mr. Chairman. In your case
9 folders there is a filing from ANC-6B.

10 CHAIRPERSON JORDAN: We do have
11 one?

12 MR. MOY: Yes, which was filed
13 this morning even though the letter is dated
14 April 16th so that's before the Board.

15 CHAIRPERSON JORDAN: That was my
16 preliminary note that there was no ANC letter.
17 Oh, that is this letter, 6B. Okay, got it.

18 MR. MOY: Yes, sir. That's it.

19 CHAIRPERSON JORDAN: Does the
20 Board have a concern about -- does anyone
21 object if I accept this into the record? Then
22 we will accept ANC-6B's filing which might not

1 have been late but we just received it. That
2 indicates that the ANC-6B voted in support of
3 this application 9-0. I just want to make
4 sure it meets the great weight requirement.
5 We accept the recommendation.

6 Would you please identify
7 yourselves. Make sure your light is on bright
8 green.

9 MS. PHILLIPS: Got it.

10 CHAIRPERSON JORDAN: There you
11 are.

12 MS. PHILLIPS: Heather Phillips,
13 property owner.

14 MR. MERRICK: John Merrick,
15 property owner.

16 CHAIRPERSON JORDAN: Good. Again,
17 I think that since the ANC letter is in, it
18 took away one of my issues. There are letters
19 of support here from the neighbors and the
20 Capitol Hill Restoration Society.

21 Does the Board have any issues
22 that we need to drill down on? Seeing none.

1 It's your opportunity to do a presentation or,
2 as you saw in the previous case, you can rest
3 on the record.

4 We believe at this point that you
5 have met all the requirements efficient to be
6 granted the relief subject to someone coming
7 up and telling us something different in this
8 hearing. It's your right to waive additional
9 testimony, we can proceed on, or you can give
10 us testimony.

11 MR. MERRICK: We'll waive that
12 right.

13 CHAIRPERSON JORDAN: Then we'll
14 turn to Mr. Jackson, the Office of Planning.

15 MR. JACKSON: Good morning, Mr.
16 Chairman, members of the Board. You have the
17 Office of Planning's report in front of you.
18 We support approval of this application and we
19 are available to answer any questions.

20 CHAIRPERSON JORDAN: Does the
21 Board have any questions for the Office of
22 Planning? Does the Applicant have any

1 questions for Office of Planning?

2 MR. MERRICK: No.

3 CHAIRPERSON JORDAN: Then we'll go
4 to Department of Transportation. Do we have
5 anything from the Department of
6 Transportation? I don't think they have any
7 impact in this anyway.

8 MS. GLAZER: I have Exhibit 22.

9 CHAIRPERSON JORDAN: You do have
10 22? What's that? No objection. I don't know
11 how I missed that. We do have a letter from
12 ANC-6B. Is there anyone here from ANC-6B? I
13 just read their recommendation in support
14 which we will give great weight to.

15 Is there anyone in the audience
16 wishing to testify in support of this
17 application? Anyone wishing to speak in
18 support? Anyone wishing to speak in
19 opposition? Anyone in opposition?

20 Then we will turn back to the
21 applicant. Knowing they have waived any
22 additional testimony, then we will close the

1 record as presented. Does the Board have
2 anything they need to --

3 Okay. Then I would move that we
4 grant the relief to this Applicant.

5 MEMBER ALLEN: Second.

6 CHAIRPERSON JORDAN: Motion made
7 and seconded. Any additional discussion? All
8 those in favor signify by 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 five to zero. This is on the motion
15 of Chairman Jordan to approve the special
16 exception request under Section 223. Also in
17 support -- seconding the motion, rather, Ms.
18 Allen. Also in support Mr. Robert Miller,
19 Vice Chairperson Sorg, and Mr. Hinkle. The
20 motion carries, Mr. Chairman.

21 CHAIRPERSON JORDAN: May we have a
22 summary order, please?

1 MR. MOY: Yes, sir.

2 CHAIRPERSON JORDAN: Thank you
3 very much.

4 MS. PHILLIPS: Thank you.

5 CHAIRPERSON JORDAN: Appreciate
6 it.

7 MR. MOY: The next application
8 before the Board for public hearing is
9 Application No. 18534. This is the
10 application of Dean Street Mews, LLC, pursuant
11 to 11 DCMR 3103.2, for a variance from the lot
12 area and lot width requirements under
13 Subsection 401.3, and a variance from the side
14 yard requirements under Section 405, to allow
15 the construction of two semi-detached
16 dwellings in the R-2 District at premises 4601
17 and 4603 Grant Street, N.E. Property located
18 in Square 5145, Lots 10 and 11.

19 CHAIRPERSON JORDAN: Thank you,
20 Mr. Moy.

21 Please identify yourself.

22 MR. AGBIM: My name is Ike Agbim.

1 CHAIRPERSON JORDAN: Say your last
2 name again?

3 MR. AGBIM: Ike Agbim.

4 CHAIRPERSON JORDAN: Okay.

5 MR. AGBIM: I'm the architect and
6 also the owner of the property.

7 CHAIRPERSON JORDAN: Again, this
8 is another one I think the application is
9 pretty full but the Board may have questions
10 or issues. Anyone?

11 We do have a letter in opposition
12 from Ms. Harris. Ms. Harris indicates -- I
13 think her letter basically talks about debris
14 and garbage or something in the area and I
15 don't think it goes to the zoning impact
16 unless somebody else on the Board has
17 something different. I don't think there is
18 anything I need to have you address regarding
19 this

20 Mr. Miller.

21 ZC COMMISSIONER MILLER: Thank
22 you, Mr. Chairman. Just one question of the

1 Applicant.

2 I see, I think, on the plan that
3 you have -- correct me if I'm wrong -- a
4 perimeter fence that you are constructing as
5 part of this?

6 MR. AGBIM: Yes, sir.

7 ZC COMMISSIONER MILLER: I just
8 wanted to note that for the record. I think
9 whatever concern that neighbor had might be
10 addressed by the fact that a fence is being
11 constructed as part of the landscaping plan.
12 Then there is the public alley that separates
13 the properties as well.

14 CHAIRPERSON JORDAN: Thank you for
15 that, Mr. Miller.

16 Ms. Sorg.

17 VICE CHAIR SORG: Yes. Thank you.
18 I do have a question. In the plan it shows
19 that the houses are set back to slightly
20 different distances away from the street.
21 That is not the case for the other semi-
22 detached homes that are on the street and so

1 forth. I'm wondering why was that move made?

2 MR. AGBIM: Actually, I think it's
3 more of a graphic issue. The other houses on
4 the street are also set back. I can show you
5 the area photograph, or you can look at the
6 photographs and see that there is a slight
7 setback on the houses next door.

8 VICE CHAIR SORG: Okay. Then that
9 answers that.

10 MR. MOY: Is there anything that
11 you feel you need to add to this record? I
12 think the Board has indicated they are okay
13 with the application and the documents that
14 support it and the need for the relief. You
15 can stand on the record or you can do a
16 presentation.

17 MR. AGBIM: I'll stand on the
18 record.

19 CHAIRPERSON JORDAN: Let's turn to
20 the Office of Planning.

21 MR. MORDFIN: Good morning. I'm
22 Stephen Mordfin with the Office of Planning.

1 The Office of Planning stands on the record in
2 this case.

3 MR. MOY: Board, any questions for
4 Office of Planning?

5 Mr. Miller.

6 ZC COMMISSIONER MILLER: Just for
7 the record, the Office of Planning supports
8 the application?

9 MR. MORDFIN: Yes.

10 ZC COMMISSIONER MILLER: Thank
11 you.

12 CHAIRPERSON JORDAN: Does the
13 Applicant have any questions for the Office of
14 Planning?

15 MR. AGBIM: No.

16 CHAIRPERSON JORDAN: Is there a
17 Department of Transportation letter. I would
18 love to see DOT participate in this. Yes, DOT
19 did. How can I miss that? They are issuing
20 their no objection letter.

21 Is there anyone here from ANC-7C?
22 We do have a letter from ANC-7C that supports

1 this application to which we will give great
2 weight.

3 Is there anyone in the audience
4 wishing to testify in support of this
5 application? Anyone in the audience wishing
6 to testify in opposition?

7 Then turning back to the
8 Applicant, there is nothing else you need to
9 say to us, is there?

10 MR. AGBIM: No, sir. Thank you.

11 CHAIRPERSON JORDAN: Are you sure?
12 Okay. We haven't had anybody blow it in a
13 long time.

14 Then we will close the record. Is
15 the Board ready to deliberate? I would move
16 that we grant the relief requested.

17 VICE CHAIR SORG: Second.

18 CHAIRPERSON JORDAN: All those in
19 favor signify by saying aye.

20 Uh-oh. We got an uh-oh. In
21 looking at the ANC letter, they haven't raised
22 any zoning issues but they are certainly

1 concerned about the Applicant's ability to
2 maintain the area while going through the
3 construction. I'm sure you're going to do
4 that.

5 MR. AGBIM: Yes, sir.

6 CHAIRPERSON JORDAN: I think we
7 already have a motion before the body. All
8 those in favor of the motion signify by saying
9 aye.

10 BOARD MEMBERS: Aye.

11 CHAIRPERSON JORDAN: Those opposed
12 nay.

13 Mr. Moy.

14 MR. MOY: Yes, sir. Staff would
15 record the vote as five to zero. This is on
16 the motion of Chairman Jordan to approve the
17 application with the relief requested.

18 Seconding the motion Vice Chairperson Sorg.
19 Also in support Mr. Robert Miller, Ms. Allen,
20 and Mr. Hinkle. The motion carries, Mr.
21 Chairman.

22 CHAIRPERSON JORDAN: May we have a

1 summary order, please?

2 MR. MOY: Yes, sir.

3 CHAIRPERSON JORDAN: Thank you.

4 That's it.

5 MR. AGBIM: Thanks a lot.

6 CHAIRPERSON JORDAN: Unless you
7 want to stick around and visit with us.

8 I'll just order it. I'll just
9 order it. Let's do this. Mr. Moy, on that
10 last case we have a summary order but I would
11 like to add the sentence why we didn't impose
12 the condition as I stated on the record that
13 it was not a zoning-related matter. It dealt
14 with the clean-up and construction.

15 MR. MOY: Oh, I understand. Staff
16 will take care of that, Mr. Chairman.

17 CHAIRPERSON JORDAN: Thank you.

18 MR. MOY: Okay. The next
19 application before the Board is Application
20 No. 18538. This is the application of TC
21 MidAtlantic Development IV, Inc. on behalf of
22 PNC Realty Investors, pursuant to 11 DCMR

1 3103.2, for a variance from the court width
2 requirements under Subsection 776, to allow
3 the construction of a new office building in
4 the C-3-C District at premises 400 6th Street,
5 S.W. Property located in square 494, Lot 31.

6 CHAIRPERSON JORDAN: Thank you.
7 Again, this is another fine -- well, Mr.
8 Freeman, you always put together great
9 applications and all the information that we
10 have here. With that, I don't know if the
11 Board has any issues that we need to address.

12 Your applications normally are
13 fine-tuned. Seeing that the Board doesn't
14 have any questions, then the Applicant has the
15 opportunity to do a presentation. You well
16 know how we operate here, Mr. Freeman.

17 MR. FREEMAN: Thank you. For the
18 record, Kyrus Freeman of the law firm of
19 Holland & Knight. We are prepared to rest on
20 the record. Thank you.

21 CHAIRPERSON JORDAN: Let's turn to
22 Mr. Cochran to see if there is anything else

1 that Planning wants to add.

2 MR. COCHRAN: No, Mr. Chair. OP
3 is happy to stand on the record recommending
4 approval of the application.

5 CHAIRPERSON JORDAN: Does the
6 Board have questions for the Office of
7 Planning?

8 Does the Applicant have questions?

9 MR. FREEMAN: No, Mr. Chairman.

10 CHAIRPERSON JORDAN: Mr. Sher is
11 not here today. I should have made you do
12 some testimony.

13 Let's turn to DDOT. Is anyone
14 here from the Department of Transportation?
15 We do note that they give no objection but I
16 think you still have to get some public space
17 relief. I guess that's pending.

18 MR. FREEMAN: We are going through
19 the public space process but that will not
20 have an impact on zoning in any manner.

21 CHAIRPERSON JORDAN: Is anyone
22 here from ANC-6D? Then we do have a letter of

1 support which we give great weight to for ANC-
2 6D that also supports this application.

3 Is there anyone in the audience
4 wishing to testify in opposition -- I mean
5 support. Excuse me. In support of this
6 application?

7 Anyone wishing to testify in
8 opposition?

9 Then we will turn back to the
10 Applicant. I indicate by the head waving
11 there is nothing additional you want to say.

12 Does the Board have any additional
13 questions they would like to ask anyone?

14 With that, I would move then --
15 strike that. I will close the record based
16 upon what we already have. Then I would move
17 that we grant the relief requested.

18 VICE CHAIR SORG: Second.

19 CHAIRPERSON JORDAN: Motion made
20 and seconded. Any unreadiness? All those in
21 favor signify by saying aye.

22 BOARD MEMBERS: Aye.

1 CHAIRPERSON JORDAN: Those opposed
2 nay. The motion carries.

3 MR. MOY: Staff would record the
4 vote as five to zero. This is on the motion
5 of Chairman Jordan to approve the relief
6 requested, the variance relief under
7 Subsection 776. Also seconded by Ms. Allen.
8 Also in support Mr. Miller, Vice Chairperson
9 Sorg, and Mr. Hinkle.

10 I've been corrected that the
11 second of the motion is Chairperson Sorg.

12 CHAIRPERSON JORDAN: We're all one
13 big family here.

14 MR. MOY: With that correction
15 then the motion carries, Mr. Chairman.

16 CHAIRPERSON JORDAN: Summary
17 please.

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

19 CHAIRPERSON JORDAN: Thank you.
20 Appreciate it, Mr. Freeman.

21 MR. MOY: The next application,
22 and final application for the day, is

1 Application No. 18547. This is the
2 application of Curtis Investment Group
3 pursuant to 11 DCMR 3103.2, for a variance
4 from the off-street parking requirements under
5 Subsection 2101.1, to allow the occupancy of
6 an existing warehouse by the Anacostia
7 Playhouse in the C-M-1 District at premises
8 2020 Shannon Place, S.E. Property located in
9 Square 5772, Lot 984.

10 For the Board there are two
11 filings today, Mr. Chairman. The first that
12 was submitted to the office this morning is a
13 letter from ANC-8A letter which would be
14 untimely so I have copies here depending on
15 how the Board rules on this untimely document.
16 The Applicant has submitted a letter of
17 authorization.

18 CHAIRPERSON JORDAN: What's the
19 date on the ANC letter?

20 MR. MOY: It's dated -- well,
21 that's a good one. Apparently it was faxed
22 into the office today. There is no date on

1 the letter so it was received today, April
2 23rd.

3 CHAIRPERSON JORDAN: And the
4 authorization letter was just received today?

5 MR. MOY: That's correct. This
6 morning, sir.

7 VICE CHAIR SORG: (Off mic.)

8 CHAIRPERSON JORDAN: Right.
9 That's true. Thank you, Ms. Sorg. We accept
10 both of those and you can pass those out.

11 Let me have the Applicants
12 identify themselves.

13 MR. FEOLA: Thank you, Mr.
14 Chairman. For the record, Phil Feola with the
15 law firm of Goulston & Storrs on behalf of the
16 Applicant.

17 MR. PICHON: Sean Pichon with PGN
18 Architects.

19 MS. CHRISTIAN: Julia Christian
20 with Anacostia Playhouse.

21 MS. ROBEY: Adele Robey, Anacostia
22 Playhouse.

1 CHAIRPERSON JORDAN: Well, now
2 some of the questions I have like, one, where
3 is the letter of authorization? Two, where is
4 the ANC letter? I don't have a DDOT letter.
5 Has DDOT weighed in? Do we have a DDOT
6 letter? Those are the issues I have arising
7 out of this. I think the record shows it's
8 clear why you need the relief.

9 Does the Board have any questions
10 of this Applicant? Something they really want
11 to drill down?

12 Please, Ms. Sorg.

13 VICE CHAIR SORG: Yeah, just one
14 question, Mr. Chairman. There is in the
15 prehearing statement a mention of an agreement
16 to use off-site parking. I just wanted to
17 make sure and clarify the variance is to get
18 rid of all of the parking, not to do off-site.
19 If you want to make that agreement part of the
20 record or not just to clarify.

21 MR. FEOLA: No. The application
22 is for a variance for relief. All parking

1 requirements on the site.

2 CHAIRPERSON JORDAN: Say that
3 again?

4 MR. FEOLA: The application is for
5 a variance for relief of all parking
6 requirements on the site.

7 VICE CHAIR SORG: The reason that
8 I wanted to clarify is that in the prehearing
9 statement they do indicate an agreement to
10 provide off-site parking just so it would be
11 clear in the record.

12 CHAIRPERSON JORDAN: Any
13 additional questions for the Applicant? Does
14 the Applicant believe they need to present
15 anything additional to the Board?

16 MR. FEOLA: No. We are happy to
17 rest on the record, Mr. Chairman.

18 CHAIRPERSON JORDAN: Thank you.
19 Then let's turn to the Office of Planning for
20 its input.

21 MS. BROWN-ROBERTS: Good morning,
22 Mr. Chairman, and members of the Board.

1 Maxine Brown-Roberts for the record. The
2 Office of Planning recommends approval of the
3 requested variance and we stand on the record.
4 Thank you, Mr. Chairman.

5 CHAIRPERSON JORDAN: Great. Does
6 the Board have any questions for the Office of
7 Planning?

8 Does the Applicant have any
9 questions for the Office of Planning?

10 MR. FEOLA: No, sir.

11 CHAIRPERSON JORDAN: Then let's
12 turn to the Department of Transportation. I
13 don't have anything in my file from the
14 Department of Transportation. Did I miss it,
15 anyone?

16 MR. MOY: It's not in our official
17 record either, sir.

18 CHAIRPERSON JORDAN: Especially
19 since we're dealing with parking but I don't
20 think there is any real parking -- I mean, any
21 impact. They didn't submit so --

22 Anyone here from ANC-8A? We do

1 have a letter that we just received from ANC-
2 8A which we will recognize that they are in
3 support but we can't give great weight to
4 because it does not meet the qualifications
5 for great weight.

6 Is there anyone here in the
7 audience wishing to testify in support of the
8 application? Anyone wishing to testify in
9 opposition? Then we will turn back to the
10 Applicant for anything they believe they need
11 to summarize for us.

12 MR. FEOLA: We're happy to rest o
13 the record.

14 CHAIRPERSON JORDAN: Okay. Thank
15 you. Then we will close the record on this
16 matter.

17 Does the Board have anything else
18 that they need? Any information or discussion
19 that they need to have?

20 MEMBER ALLEN: Mr. Chairman, I do
21 want to -- since we don't have a DDOT because
22 it is parking, are we not concerned about

1 where the cars are going to go? I know there
2 was some mention, as Ms. Sorg said, or is it
3 just not worth the discussion? I mean, I
4 would feel better frankly if DDOT had
5 something.

6 CHAIRPERSON JORDAN: There's a lot
7 of times when DDOT doesn't weigh in. In fact,
8 we've been very happy that they have been
9 participating on a lot and this matter was
10 expedited so maybe it's in their normal
11 process. Has planning seen the issue with
12 parking?

13 MS. BROWN-ROBERTS: No, Mr.
14 Chairman. Actually, I did talk to the
15 planners at DDOT and they said they didn't
16 have any issues with the application.

17 CHAIRPERSON JORDAN: Thank you.
18 Then I would move that we grant the relief
19 requested.

20 ZC COMMISSIONER MILLER: Second.

21 CHAIRPERSON JORDAN: Motion made
22 and seconded by Mr. Miller to grant the

1 relief. Any further deliberations?

2 Questions? All those in favor of the motion
3 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. Staff would
9 record the vote as five to zero. This is on
10 the motion of Chairman Jordan, seconded by Mr.
11 Robert Miller. Also in support Vice
12 Chairperson Sorg, Ms. Kathryn Allen and Mr.
13 Jeff Hinkle. The motion carries, Mr.
14 Chairman.

15 CHAIRPERSON JORDAN: Then if we
16 can have a summary order, please.

17 MR. MOY: Yes, sir.

18 CHAIRPERSON JORDAN: Thank you
19 very much.

20 Is there any other business to
21 come before the Board?

22 MR. MOY: No, sir.

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CHAIRPERSON JORDAN: Then we're
adjourned.

(Whereupon, at 11:36 a.m. the
meeting and hearing were adjourned.)

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This is to certify that the foregoing transcript

In the matter of: Public Meeting and Hearing

Before: DC BZA

Date: 04-23-13

Place: Washington, DC

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