

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY
APRIL 30, 2013

+ + + + +

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 10:21 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:

PETER MAY, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN RICE, Zoning Specialist
STEPHEN VARGA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
STEPHEN MORDFIN
KAREN THOMAS
BRANDICE ELLIOTT

**D.C. DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:**

JONATHAN ROGERS

**The transcript constitutes the
minutes from the Public Hearing held on
April 30, 2013.**

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10:21 a.m.

MR. MOY: The first case in the public hearing part of the session is Application No. 18542. This is the application of John M. Crain pursuant to 11 DCMR 3104.1.

This is for a special exception to allow a rear addition to an existing one-family row dwelling under Section 223, not meeting the lot occupancy requirements under Section 403, rear yard requirements Section 404, and non-conforming structure provisions under Subsection 2001.3 in the R-4 District at premises 452 New Jersey Avenue, S.E. Property located in Square 694, Lot 803.

CHAIRPERSON JORDAN: Joining us is Zoning Commission Member Peter Moy. I'm sorry, Peter May. You guys are sitting too close. I'm sorry. It's one of those mornings. I hope you were following our dialogue back there. It's just one of those

1 mornings.

2 So you called 18542?

3 MR. MOY: Yes, sir. I just did.

4 CHAIRPERSON JORDAN: We're going
5 to take a moment and let Ms. Sorg come back.

6 Okay. Let's do this. Could the
7 persons sitting at the witness table please
8 identify themselves.

9 MS. PRICE: Nicole Price with
10 Hains Architects.

11 MR. HAINS: Jeffrey Hains with
12 Hains Architects.

13 MR. CRAIN: John Crain, the
14 homeowner, at 452 New Jersey.

15 MS. RYAN: And Shannon Ryan,
16 homeowner, 452 New Jersey Avenue.

17 CHAIRPERSON JORDAN: You're the
18 what for who? Oh, okay. I thought you said
19 you were the promoter or something.

20 Let me ask. We have a letter in
21 opposition from Thomas Alder. One of the
22 things that he raises is that there was

1 improper notice that people within 200 feet of
2 the property did not receive notification.
3 Who is speaking? Who is the lead to speak for
4 this application?

5 Yes. Is it Mr. Hains?

6 MR. HAINS: Yes. My understanding
7 is that the Applicants were identified and
8 notice given.

9 John, do you agree?

10 MR. CRAIN: That's correct. We
11 posted a sign up in our front yard very
12 visibly. The neighbor, Thomas Alder, is a
13 nonresident. He hasn't been occupying the
14 house since I've lived there for eight-and-a-
15 half years. I do know he had received a notice
16 via U.S. Postal.

17 CHAIRPERSON JORDAN: So you did
18 turn in the list to the Office of Zoning and
19 you do know the letters went out and you also
20 did a posting?

21 MR. CRAIN: That's correct.

22 CHAIRPERSON JORDAN: Mr. Moy,

1 according to our records that we did do the
2 mailing?

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

4 VICE CHAIRMAN SORG: Just to be
5 clear, when you turned in the list of all the
6 residences in 200 feet you included those on
7 the other side of New Jersey Avenue?

8 MR. CRAIN: That's correct.

9 CHAIRPERSON JORDAN: Everybody
10 that would fall into that diameter. Then you
11 also did a posting, the affidavit of posting.
12 Okay. I just wanted to raise it for the sake
13 of outside of that I don't see any real
14 further need for discussion.

15 I think it's very clear about what
16 you're doing and what you need to have done.
17 You have the various support from OP, ANC-6B,
18 and DDOT issued no objection.

19 Does anybody on the Board have
20 some issues or discussion they would like to
21 raise on this application?

22 Oh, you don't have witness cards.

1 I need those witness cards to the court
2 reporter. Two for each person. Thank you.

3 ZC COMMISSIONER MAY: Mr.
4 Chairman, my only question is that the
5 drawings that I received in my package were
6 very hard to read so I don't really understand
7 what's going on here.

8 It's hard to imagine there is any
9 objection because we're talking about a four-
10 and-a-half-foot extension to a building that
11 is adjacent to something else. You can't tell
12 anything in the quality of the copy I have.

13 CHAIRPERSON JORDAN: That might be
14 an internal issue that we have for the
15 drawings. Do you have a set that we can take
16 and peruse them for a minute, please?

17 ZC COMMISSIONER MAY: That would
18 be helpful.

19 CHAIRPERSON JORDAN: Were those
20 submitted to --

21 Mr. Moy, can we see the file,
22 please, so that we have the drawings that we

1 have in our file.

2 MR. HAINS: My apologies. I gave
3 you the wrong set of documents that would
4 replicate what was submitted.

5 ZC COMMISSIONER MAY: These are
6 good. I like these. You don't need to give
7 me what I already have that's not very good.

8 CHAIRPERSON JORDAN: Let's see
9 those.

10 ZC COMMISSIONER MAY: These are
11 really good.

12 CHAIRPERSON JORDAN: Well, we've
13 got to be consistent about what we have.
14 We've also got to be consistent what we give
15 to the Board.

16 ZC COMMISSIONER MAY: And now that
17 we've seen this, this has to go in the record.

18 CHAIRPERSON JORDAN: Why didn't
19 you submit those plans the first time?

20 ZC COMMISSIONER MAY: Can I just
21 ask one question about this? It looks,
22 according to this, that the grade of that

1 small alley in the back, the three-foot-wide
2 alley, is fairly close to the existing grade
3 of your second floor. Is that right?

4 MR. HAINS: That's correct. It's
5 about within a foot.

6 ZC COMMISSIONER MAY: Within a
7 foot.

8 MR. HAINS: Yes.

9 ZC COMMISSIONER MAY: Okay. It
10 was hard to understand why there is so much
11 excavation in the backyard. Now we
12 understand.

13 CHAIRPERSON JORDAN: We're going
14 to add this to the record. Since you have
15 another set we want to add this to the record.

16 MR. HAINS: Sure. That's fine.

17 CHAIRPERSON JORDAN: Still, even
18 with that I think we've got a suitable case.

19 Does the Board have any other
20 questions or concerns about this application?

21 Then, to the Applicant, you have
22 the opportunity to stand on the record as

1 submitted, or you can do a presentation for
2 the Board. It's up to you but we think that
3 we have enough already in the record to
4 justify moving on.

5 MR. HAINS: We'll stand as
6 presented.

7 CHAIRPERSON JORDAN: Then we will
8 turn to the Office of Planning to see its
9 position if it's changed or want to add
10 anything.

11 MS. THOMAS: No changes. We'll
12 stand on the record. Thank you.

13 CHAIRPERSON JORDAN: DDOT. Anyone
14 for Department of Transportation? The
15 Department of Transportation has submitted a
16 letter of no objection to the application.

17 ANC-6B. Is there a representative
18 for ANC-6B wishing to testify?

19 We do have a letter from ANC-6B
20 that recommends approval for which we will
21 give great weight.

22 Is there anyone in the audience

1 wishing to testify in support of the
2 application? Anyone in support? Anyone in
3 opposition?

4 As I mentioned before, we have a
5 letter from Thomas Alder who writes in
6 opposition one claim that did not get noticed
7 but I understand he's out of town. He's been
8 out of town even by virtue of his own letter.
9 I think also the questions he raises of
10 holding this to a higher standard almost like
11 it's a variance request, which it's not. It's
12 a 223 request.

13 We would normally turn back to the
14 Applicant for any rebuttal or closing but I
15 think we're beyond that point. We will close
16 the record based upon what we already have a
17 move to deliberation.

18 I would move that we grant the
19 relief requested by the Applicant in 18542.

20 MEMBER HINKLE: Second.

21 CHAIRPERSON JORDAN: Motion and
22 seconded. Any unreadiness? Any discussion?

1 All those in favor signify by saying aye.

2 BOARD MEMBERS: Aye.

3 CHAIRPERSON JORDAN: Those opposed
4 nay. The motion carries.

5 Mr. Moy. Mr. Clifford Moy and not
6 Peter Moy.

7 MR. MOY: I could have gone the
8 other way, too. That would have been okay by
9 me.

10 The staff would record the vote as
11 five to zero. This is on the motion of
12 Chairman Jordan to approve the application for
13 the relief requested. Seconding the motion
14 Mr. Hinkle. Also in support Mr. Peter May,
15 Ms. Kathryn Allen and Vice Chair Sorg.

16 For the record, Mr. Chairman, the
17 new Exhibit number for the revised drawings
18 would be Exhibit No. 31 for the record. The
19 motion carries.

20 CHAIRPERSON JORDAN: Thank you.
21 Summary order, please.

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

1 CHAIRPERSON JORDAN: Mr. Moy, I
2 think we are going to call out of order here.
3 I think we are going to do 18545.

4 MR. MOY: The next application
5 then, indeed, is Application No. 18545. This
6 is the application of Charles King pursuant to
7 11 DCMR 3104.1, for a special exception to
8 allow a rear addition to an existing
9 one-family semi-detached dwelling under
10 Section 223, not meeting the lot area under
11 Section 401, lot occupancy requirements under
12 Section 403, rear yard requirements under
13 Section 404, and non-conforming structure
14 provisions under Subsection 2001.3 in the R-4
15 District at premises 650 C Street, N.E.
16 Property located in Square 864, Lot 802.

17 CHAIRPERSON JORDAN: Thank you.
18 Would you please identify
19 yourself?

20 MR. FOWLER: I'm Mike Fowler from
21 Fowler Architects. Our client, Charles King,
22 couldn't make it this morning so I'll be

1 representing him.

2 CHAIRPERSON JORDAN: Do we have
3 your letter of authorization?

4 MR. FOWLER: Yes.

5 CHAIRPERSON JORDAN: One thing I
6 want to get clear is has there been a request
7 for relief for 2001.3, the non-conforming? I
8 think there has been. Do we have the request
9 for relief?

10 MR. FOWLER: I believe so, yes.

11 CHAIRPERSON JORDAN: Okay. I just
12 wanted to make sure it was in because it was
13 going back and forth, in and out, in and out.
14 I wanted to make sure that was still in. I
15 don't think there's any opposition that we had
16 with this application. No, there was not. I
17 think we're clear.

18 Does the Board have questions they
19 need addressed by this Applicant? I think
20 it's pretty straightforward.

21 ZC COMMISSIONER MAY: Mr.
22 Chairman, we did have a late submission with

1 an objection.

2 CHAIRPERSON JORDAN: Oh, we did?

3 ZC COMMISSIONER MAY: Exhibit No.

4 32. It was from Maria Pavlides who owns a
5 property around the corner at 301 7th, N.E.

6 CHAIRPERSON JORDAN: I don't have
7 it. Oh, there it is. It came in late.
8 That's why I missed it. You put them
9 together.

10 VICE CHAIRMAN SORG: The major
11 issues that I can see from this letter have to
12 do with parking in the neighborhood. Although
13 I will admit that it was a little bit
14 difficult to read in the way that I received
15 it. Naturally the application doesn't have
16 request for parking relief.

17 CHAIRPERSON JORDAN: Right. It's
18 not relevant to this.

19 ZC COMMISSIONER MAY: I don't see
20 any relevance to these arguments to the relief
21 that is requested from us here. There is a
22 reference to parking and there is a reference

1 to additions to homes in general.

2 It sounds like a bit of a
3 complaint about not being able to get
4 something else approved by historic
5 preservation that she wanted to do on her
6 property. Again, I don't see that as
7 particularly relevant. I just think they
8 needed a way to say there was an objection.

9 CHAIRPERSON JORDAN: So the I
10 think the Board is clear about the request in
11 the application. You have the right to do a
12 presentation if you want but I think you're
13 probably okay if you want to stand on the
14 record.

15 MR. FOWLER: I'd like to stand on
16 the record.

17 CHAIRPERSON JORDAN: Then let's
18 turn to the Office of Planning for their
19 report if there is any addition that you would
20 like to make.

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

1 OP has nothing additional to add.

2 CHAIRPERSON JORDAN: Okay. Anyone
3 from the Department of Transportation? They
4 submitted their letter of no opposition. We
5 have a recommendation --

6 Anyone here from ANC-6C? They
7 have submitted a letter in support to which we
8 will give great weight in support of this
9 application.

10 We also have a letter from Capitol
11 Hill Restoration Society that they are in
12 support of this application. We have letters
13 of support from adjacent owners that's
14 contained in our Exhibit 25 and 27 and Exhibit
15 No. 9, I believe it is. As we've already
16 mentioned, there was a letter we received in
17 opposition that we just discussed.

18 Turning back to the Applicant, we
19 would normally have you do rebuttal or
20 closing.

21 Let me ask if there is anybody in
22 the audience wishing to testify in support?

1 Anyone in the audience wishing to testify in
2 opposition? We have already noted what it is
3 in the record, both those in support and those
4 in opposition.

5 Then we will close this record
6 based upon what has already been submitted.
7 Is the Board ready to deliberate?

8 Seeing that we are ready to
9 deliberate, I would move that we grant the
10 requested relief.

11 VICE CHAIRMAN SORG: Second.

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

15 BOARD MEMBERS: Aye.

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

18 Mr. Moy.

19 MR. MOY: Yes, sir. Staff would
20 record the vote as five to zero. This is on
21 the motion of Chairman Jordan to approve the
22 application for the relief requested.

1 Seconding the motion Vice Chairperson Sorg.
2 Also in support Mr. Peter May, Ms. Kathryn
3 Allen, and Mr. Hinkle. The motion carries,
4 Mr. Chairman.

5 CHAIRPERSON JORDAN: Let's have a
6 summary order, please.

7 MR. MOY: Thank you, sir.

8 MR. FOWLER: All right. Thank
9 you.

10 MR. MOY: Sir, I believe on the
11 agenda --

12 CHAIRPERSON JORDAN: Where are we?

13 MR. MOY: -- we are back to --

14 CHAIRPERSON JORDAN: No, I think
15 we're at 44.

16 MR. MOY: Okay, we're moving
17 forward. Okay. That would be Application No.
18 18544. This is the application of Penn Avenue
19 Partnership, LLC pursuant to 11 DCMR 3104.1
20 and 3103.2, for a special exception from the
21 roof structure provisions under Section 411,
22 a variance from the off-street parking

1 provisions under Section 2101, a variance from
2 the size of parking space requirements under
3 Section 2115, and a variance from the loading
4 requirements under Section 2201. This is to
5 allow a residential project in the C-2-A
6 District at 1550 Pennsylvania Avenue, S.E.
7 Property located in Square 1077, Lot 130.

8 CHAIRPERSON JORDAN: Would those
9 sitting at the witness table be sure that
10 they've given the cards to the court reporter
11 and also identify yourselves, please.

12 MR. FINK: Christina Fink.

13 MR. TUMMONDS: Paul Tummonds.

14 CHAIRPERSON JORDAN: Please
15 identify your roles.

16 MR. FINK: Christina Fink, traffic
17 engineer.

18 CHAIRPERSON JORDAN: Okay.

19 MR. DICKENS: Steve Dickens,
20 architect, with Eric Colbert & Associates.

21 MR. TUMMONDS: Paul Tummonds,
22 counsel with Goulston & Storrs.

1 MR. SELFRIDGE: Greg Selfridge
2 with NOVO Development, the Applicant in this
3 case.

4 CHAIRPERSON JORDAN: I think we
5 are clear about the relief that you're
6 requesting. You are requesting a special
7 exception from 411, 2101 as a variance, 2115
8 as a variance for parking space size, 2101
9 variance from off-street parking, and 2201
10 variance for loading.

11 An issue was raised by a person
12 that is not a party who wrote in opposition
13 that you thought you needed rear yard relief.
14 We are not dealing with that since you have
15 not made a request for that.

16 MR. TUMMONDS: In regards to that
17 there was a motion made. I think that it
18 would be beneficial to this case to say it was
19 addressed so that if there is in the future an
20 appeal of the Zoning Administrator's decision
21 on this very issue, we would have addressed it
22 in this forum now.

1 CHAIRPERSON JORDAN: We need to
2 know whether or not you are making a request
3 for relief from it or not.

4 MR. TUMMONDS: We are not. We
5 believe that --

6 CHAIRPERSON JORDAN: I'm not going
7 to address it.

8 You raised your hand for what
9 reason?

10 MR. BADISSY: Just to clarify, I
11 applied for party status.

12 CHAIRPERSON JORDAN: Who are you?
13 Do we have a party status request? I must
14 have missed that.

15 MR. MOY: Not on the record, sir.

16 CHAIRPERSON JORDAN: We have no
17 record of party status request. When did you
18 file that? Come to the table please and get
19 on the record for me, please. Were you here
20 earlier to raise your hand and get sworn in?

21 MR. BADISSY: No.

22 CHAIRPERSON JORDAN: Okay. Then I

1 need you to stand and get sworn in by the
2 Board secretary. I want you to stand and
3 swear, please.

4 (Whereupon, the witness was
5 sworn.)

6 CHAIRPERSON JORDAN: Now I need
7 you to sit down and complete two witness cards
8 and give them to the court reporter. That's
9 okay. We'll do that after. I want you to
10 state your name clearly so the court reporter
11 can get your name at this point. Make sure
12 your microphone is turned on.

13 MR. BADISSY: My apologies. The
14 first name is Mohamed, M-O-H-A-M-E-D. Last
15 name is Badissy, B-A-D-I-S-S-Y.

16 CHAIRPERSON JORDAN: Can you show
17 us where you submitted a request for party
18 status, please?

19 MR. BADISSY: Sir, if I could just
20 clarify. I first submitted it by email and
21 the phoned the office. I was told that the
22 request was received and the proper procedure

1 was to wait until the day of the hearing at
2 which time it would be considered and approved
3 or denied.

4 CHAIRPERSON JORDAN: Do you have
5 the party status application request?

6 MR. BADISSY: Let me double check,
7 sir.

8 CHAIRPERSON JORDAN: Our records
9 do not indicate you completed a Form 150
10 Motion or Request and that was not what we do
11 for party status. You made a request for
12 motion to amend the relief sought is what I
13 have in our file.

14 MR. BADISSY: I understand. Let
15 me find the party status form for you so we
16 can clear this up.

17 CHAIRPERSON JORDAN: It would need
18 to be in our record if that is the case.

19 MR. BADISSY: Right. Here is the
20 signed copy which is --

21 CHAIRPERSON JORDAN: Would you
22 give it to the Board secretary, please.

1 MR. BADISSY: Sure. Who is that?

2 I'm sorry.

3 CHAIRPERSON JORDAN: Mr. Moy.

4 MR. BADISSY: Would you also like
5 a supporting criteria that was asked for as
6 part of the application justifying party
7 status?

8 CHAIRPERSON JORDAN: Was that a
9 date stamped copy that you submitted to Mr.
10 Moy?

11 MR. BADISSY: I've signed and
12 dated it, yes.

13 CHAIRPERSON JORDAN: No, was it
14 date stamped from this office?

15 MR. BADISSY: No, because it was
16 electronically submitted.

17 CHAIRPERSON JORDAN: It was?

18 MR. BADISSY: Yes, it was. I
19 would be happy to show you the emails if you
20 would like.

21 CHAIRPERSON JORDAN: Yes, you need
22 to support that.

1 MR. BADISSY: Who should I show
2 that to?

3 CHAIRPERSON JORDAN: Give it to
4 Mr. Moy when he comes back.

5 MR. BADISSY: Honestly, all I
6 wanted to do is ask a few questions as part of
7 the hearing. If this is an unnecessary delay,
8 I'm happy to step back and be given an
9 opportunity to ask those questions. What
10 would you prefer is the easiest way to
11 proceed? I'm really not trying to make
12 trouble.

13 CHAIRPERSON JORDAN: I need to
14 know where you are first.

15 MR. BADISSY: Sure. Should I wait
16 until Mr. Moy returns?

17 CHAIRPERSON JORDAN: Yes.

18 MR. BADISSY: The first email was
19 the 15th and the second was on the 18th. I
20 had the conversation with the office on the
21 19th.

22 CHAIRPERSON JORDAN: Do you have

1 that email?

2 MR. BADISSY: Yes, I do.

3 CHAIRPERSON JORDAN: What do you
4 have? What attachment was it? On the 18th?
5 Mr. Moy indicates he received the email from
6 you yesterday.

7 MR. BADISSY: (Off mic.)

8 CHAIRPERSON JORDAN: Okay.

9 VICE CHAIRMAN SORG: Did you get a
10 response from the office?

11 MR. BADISSY: Yes. That was the
12 phone call that I received. I spoke to them.
13 That was when I was informed that they had
14 received the application and that rather than
15 being ruled on ahead of time, I would wait
16 until the day of the hearing and be informed
17 whether my party status would be approved or
18 not.

19 CHAIRPERSON JORDAN: We don't
20 allow -- see, the problem is that this was
21 submitted by email and that is not the way we
22 normally file things in our hearings in our

1 request for relief. We accept filings on
2 appeals online but we don't do it -- what you
3 probably sent it to was a generic kind of box.
4 Someone did pull it and made a response to
5 you.

6 MR. BADISSY: Can I respond to
7 that, sir?

8 CHAIRPERSON JORDAN: No. We'll
9 work through this. Did you physically bring
10 in your Form 150 to the office or did you
11 email that also?

12 MR. BADISSY: The motion?

13 CHAIRPERSON JORDAN: Yeah.

14 MR. BADISSY: The motion was
15 brought in physically. That's what I was told
16 during the phone call. Just to clarify the
17 procedure, I phoned the office and was told
18 that email is okay for submitting the party
19 status request.

20 Emailed it to Mr. Moy's address
21 which I was provided with. I phoned
22 afterwards, three days later, to follow up.

1 I received a phone call back from the office
2 being told that the party status request had
3 been received and it would be considered today
4 and that if I wanted to file a motion, that
5 had to be done in person which is exactly the
6 procedure that I followed afterwards.

7 I don't want to unnecessarily
8 delay this process. All I want to do is have
9 an opportunity to be heard. If that is more
10 appropriate --

11 CHAIRPERSON JORDAN: We'll do
12 that. I'll accept you for -- give you
13 expanded portion for a person responding to --
14 persons in opposition and will allow you if
15 you need to ask some questions to do so.

16 MR. MOY: Mr. Chairman, if I may,
17 I just want to clear the record for the Board.
18 In our official record file, I'm not denying
19 anything that the gentleman just spoke but
20 officially in the record we have his filings
21 which is his filing of a motion on our Form
22 150 and it's date stamped April 26.

1 As previously heard on this form
2 is the request to amend the relief sought. Of
3 course, he's a nonparty making that request.
4 There is no other exhibit in the file. That
5 is the filing form that he had just submitted
6 which is Form 140. Thank you.

7 CHAIRPERSON JORDAN: What was that
8 last point, Mr. Moy?

9 MR. MOY: The filing of the
10 request for party status request on Form 140
11 is the form that the gentleman has just filed
12 but this form is not in the official record.

13 CHAIRPERSON JORDAN: Right. He
14 indicated that he emailed it to you but you
15 have no record of that. Okay. That's why
16 it's important to file things in and make sure
17 you get a date-stamped copy and you always
18 have that.

19 In our process we allow filings on
20 appeals online but we have not done so --
21 we're getting there -- on other matters.
22 We're already made accommodations so we don't

1 need to discuss this anymore.

2 Let's move forward finally. One
3 of those days. Does anybody else have any
4 other stuff? We just want to move that to the
5 side. We'll have a line form to the right.

6 Where were we? Okay. Let's go
7 back to the Applicant. We understand the
8 relief requested and have examined the file.
9 Does the Board have any particular questions
10 they need to raise with this Applicant or
11 would like to hear addressed by this Applicant
12 regarding the application?

13 CHAIRPERSON JORDAN: Mr. May.

14 ZC COMMISSIONER MAY: There are a
15 handful of things that I would like to see
16 addressed. First of all, I would like you to
17 address the rear yard measurement issue. How
18 did you measure the rear yard in the way that
19 you would have? You clearly believe you met
20 the requirement but that is not apparent from
21 anything that you submitted. At least that I
22 saw.

1 Second is there is rooftop
2 interior space that is accessory to the
3 outdoor use. In order for that to be -- in
4 order for that to work as accessory to the
5 rooftop use there has to be a calculation that
6 it's less than 20 percent of the area of the
7 outdoor use and I'm wondering if you made that
8 calculation.

9 Accessory interior space in the
10 rooftop has to meet the definition of
11 "accessory." The third thing is if you could
12 address the eligibility of anybody who lives
13 in this building for residential parking.

14 CHAIRPERSON JORDAN: I have a
15 concern about the TDM measure period.

16 ZC COMMISSIONER MAY: Then also
17 there's a statement in the submission that it
18 would not be possible to park more cars within
19 the building because of the location of the
20 core and so on unless you did a second floor.
21 I'm not arguing that you need to prove that
22 second floor parking is burdensome because I

1 think it would be burdensome.

2 I'm not totally convinced that
3 there isn't a way to park more cars on that
4 same level as the existing parking. If you
5 could talk a little bit about what you've done
6 to try to fit more parking into that level and
7 see if you can demonstrate that a little bit
8 more clearly than what was in your submission.
9 Those are the initial questions I have.

10 CHAIRPERSON JORDAN: Does any
11 other Board member have any issues that they
12 want to have addressed that has not been
13 covered by what we are requesting the
14 Applicant to respond to today?

15 VICE CHAIRMAN SORG: Thank you,
16 Mr. Chairman. I think two things in addition.
17 No. 1, I know that subsequent to receiving the
18 DDOT report you all made a second submission
19 but I think it would be good on the record to
20 indicate how that submission and the redesign
21 in some of the areas such as the TDM and the
22 public space on Kentucky Avenue were addressed

1 by the revisions in the plan that's on page 2
2 of the DDOT report. I think that's it.

3 CHAIRPERSON JORDAN: Any other
4 Board member? Then I want to be very clear
5 about what we need from you. We don't need
6 the dog and pony show. We're not doing that
7 anymore. We want to try to get to specific
8 issues where the Board has questions in
9 regards to relief that is being sought.

10 I hope you kept a record. That
11 was the rear yard measurements, the rooftop
12 space as it involves the accessory use for
13 outdoor space. Your TDM measures. We need to
14 understand your TDM measures and how you think
15 that is going to grant relief. And the
16 possibility of the second-level parking. In
17 addition, Ms. Sorg, you said -- okay the
18 request and the DDOT report.

19 MR. TUMMONDS: Sure. I will start
20 with regards to the rear yard. Pursuant to
21 Section 774.11 in the case of a through lot or
22 a corner lot abutting three or more streets

1 the depth of the rear yard may be measured
2 from the center line of the street abutting
3 the lot at the rear of the building or other
4 structure.

5 Here we have a through lot and a
6 lot that also abuts three streets with Barney
7 Circle coming in there. In discussions with
8 the Zoning Administrator on this specific
9 issue, they concurred that here with a front
10 of Pennsylvania Avenue we can measure the rear
11 yard to the middle of Kentucky Avenue.

12 Therefore, in the certification
13 that we filed with this initial application we
14 noted that there is a rear yard measured of 60
15 feet. That was concurred with by the Office
16 of Planning.

17 In addition to the degree that you
18 would like us to, we have prepared them and we
19 will submit for the record even if we were to
20 agree with Mr. Badissy's comment that we do
21 need to provide a rear yard along Freedom Way
22 which, again, the Zoning Administrative has

1 said we do not need to do and we don't think
2 we need to do.

3 When you measure the mean depth of
4 a rear yard along the alley, we do satisfy the
5 15-foot rear yard requirement. We'll submit
6 that for the record so we believe that we are
7 covered on two fronts. One, the application
8 we submitted. Two, even if we were to accept
9 Mr. Badissy's argument.

10 CHAIRPERSON JORDAN: Where did you
11 do your measurement for your rear yard again?

12 MR. TUMMONDS: On a through lot
13 you can measure to --

14 CHAIRPERSON JORDAN: This Board
15 has had a heck of a time dealing with the
16 measurement of rear yards with the cases we've
17 gone through.

18 MR. TUMMONDS: Kentucky.

19 CHAIRPERSON JORDAN: From
20 Kentucky.

21 MR. TUMMONDS: To the middle of
22 the road on Kentucky.

1 CHAIRPERSON JORDAN: Can you show
2 us on one of your maps or plans so we all can
3 see it, please? Okay. Good.

4 MR. DICKENS: The submittal
5 drawing --

6 CHAIRPERSON JORDAN: State your
7 name, please.

8 MR. DICKENS: Steve Dickens with
9 Eric Colbert & Associates Architects. The
10 drawing that was pasted out --

11 CHAIRPERSON JORDAN: Hold on. I
12 think we are having camera problems trying to
13 get you on the camera maybe. I think it's
14 trying to turn. Okay. He's getting you. Too
15 far. Kind of turn around so the camera --
16 yeah, he's got you.

17 MR. DICKENS: Thank you very much.
18 Steve Dickens with Eric Colbert & Associates
19 Architects. The drawing that we passed out
20 shows that the 60-foot dimension to the center
21 line of Kentucky Avenue which is what we used
22 on the self-certification based on the Zoning

1 Administrator's interpretation.

2 However, it also shows that on the
3 two sides of the alley, the eastern leg and
4 the western leg, both of them comply with the
5 requirement the reason being, which we would
6 go to the trouble of selling out here, is the
7 definition of rear yard depth of is a mean.
8 It is not an absolute setback.

9 As a result, when you take the
10 mean, the one that is closest is the eastern
11 leg, when you take the mean of that it ends up
12 with 16.78 feet. The other leg of the alley,
13 I think, is maybe a little more obvious
14 because of the amount that it stands out with.

15 CHAIRPERSON JORDAN: Does the
16 Board have any other questions in regard to
17 that particular matter?

18 Let me ask Mr. Badissy if he wants
19 to ask any questions about what was just said
20 by Mr. Dickens.

21 MR. BADISSY: Really just one
22 question. Aside from the legal arguments

1 whether this really does front on three
 2 streets or not, which I accept it really
 3 doesn't matter for lawyers to decide, as
 4 defined a rear yard requires it to be an
 5 unoccupied space. I think they are being a
 6 little bit generous in assuming that this is
 7 an occupied space for the measurements they've
 8 detailed. Can you --

9 CHAIRPERSON JORDAN: Ask the
 10 question.

11 MR. BADISSY: Can you please
 12 detail for us the parking equipment, the HVAC
 13 equipment, the loading berth, the trash chute
 14 and other equipment that will be occupying
 15 this rear yard space so we can more accurately
 16 understand which really is the unoccupied
 17 space for the purpose of determining the rear
 18 yard measurement.

19 MR. TUMMONDS: The requirements
 20 for unoccupied space in a required yard deal
 21 with structures that are more than four feet
 22 tall. Parking spaces are allowed in the

1 required rear yard. Access to parking spaces
2 are allowed in the required rear yard.
3 Loading is allowed in the required rear yard.
4 In fact, everything that's labeled is
5 essentially strips on asphalt.

6 MR. BADISSY: Okay. Can I clarify
7 one thing very quickly?

8 CHAIRPERSON JORDAN: No. You ask
9 a question.

10 MR. BADISSY: Would you not define
11 the stairs, the trash chutes, and the HVAC
12 equipment, which you've decided to leave off
13 of this designation as structures for the
14 purpose of this --

15 MR. DICKENS: We've answered the
16 question. No.

17 MR. BADISSY: Okay.

18 CHAIRPERSON JORDAN: Thanks.

19 Board, any questions? Then let's
20 move onto the rooftop space as accessory to
21 the outdoor space.

22 MR. DICKENS: I'm afraid the short

1 answer is we have not done that analysis. I
2 am embarrassed to tell you this is the first
3 time I've ever heard that particular number
4 put out. Had we known it, we certainly would
5 have done it. Maybe it's on the edge but I'm
6 doubtful.

7 We did, however, address this with
8 the Zoning Administrator when we met with him
9 and there was a bit of hemming and hawing on
10 his part and he ultimately decided he felt
11 like what we were showing was probably
12 acceptable. This was at this point six or
13 eight weeks. I don't know if this standard
14 has been put in place since then.

15 ZC COMMISSIONER MAY: Well, yeah.
16 I think this is -- my understanding is this is
17 the result of specific questions that we asked
18 on another case of the Zoning Commission and
19 that was probably decided, I want to say,
20 three months ago and it was based on input
21 from the Zoning Administrator.

22 Their understanding in this

1 circumstance is that the interior space above
2 and beyond whatever is there for restrooms or
3 stairway or mechanical or whatever, I think
4 just like the party room for lack of a better
5 term, has to be accessory to the outdoor and
6 has to be no more than 20 percent of the
7 outdoor use.

8 It is surprising sometimes how the
9 calculation works out. I think before I can
10 decide this I would like to see that
11 calculation. I think it's a relatively new
12 thing that we are insisting on out of the
13 Zoning Commission but since it was first
14 decided it has come up like three other times.

15 MR. TUMMONDS: We will submit that
16 calculation for the record.

17 MR. DICKENS: We will submit it.

18 CHAIRPERSON JORDAN: And right now
19 you haven't made the calculations from what
20 I'm understanding.

21 MR. DICKENS: Correct.

22 CHAIRPERSON JORDAN: It's not

1 difficult to adjust one or the other to get it
2 to work. It in no way hinges on that
3 question.

4 ZC COMMISSIONER MAY: Okay.

5 MR. TUMMONDS: Next we will
6 address our TM plan and the idea of RPP.

7 Mr. Selfridge.

8 MR. SELFRIDGE: Thank you, Mr.
9 Chairman. I'm sure you've seen the submittal
10 that lays out the TDM. We feel like we've
11 addressed a lot of concerns in terms of impact
12 of reduced parking. Some of those items which
13 are covered is the bicycle parking, the fact
14 that we're unbundling the parking spaces.

15 We are designating a loading
16 coordinator, a transportation management
17 coordinator. We are also working with Zipcar
18 to try to get Carshare co-located on the site.
19 Because of the time frame, the development
20 from today until it's actually completed it's
21 hard to get a commitment but they have
22 indicated this is something they would be

1 interested in doing so we are going to
2 continue those conversations.

3 We've also indicated we provide
4 each initial residential lessee with a
5 SmarTrip card, a Bikeshare, or a Carshare
6 membership. We are prepared to make that
7 available to all residents both --

8 CHAIRPERSON JORDAN: You haven't
9 given us detail on the SmarTrip card. What
10 are you actually giving? What is the value
11 given? What is the length of time?

12 MR. TUMMONDS: This is attached to
13 Page 17.

14 CHAIRPERSON JORDAN: Page 17 of
15 what?

16 MR. TUMMONDS: Of Exhibit B as in
17 boy to our April 15, 2013 filing.

18 CHAIRPERSON JORDAN: Exhibit 17?

19 MR. TUMMONDS: Page 17 of Exhibit
20 B as in boy.

21 CHAIRPERSON JORDAN: Okay.

22 MR. SELFRIDGE: So on that, Mr.

1 Chairman --

2 CHAIRPERSON JORDAN: Let me go
3 back one second again.

4 MR. SELFRIDGE: Sure.

5 CHAIRPERSON JORDAN: Tell me where
6 it is again. Page 17?

7 MR. TUMMONDS: Of Exhibit B as in
8 boy.

9 CHAIRPERSON JORDAN: All right.
10 Just be helpful and tell me what it is. Oh,
11 here it is. Okay. Let me see.

12 MR. SELFRIDGE: So on No. 10 of
13 our Transportation Management Plan, "The
14 Applicant will provide to each initial
15 residential lessee or purchaser either (a) a
16 SmarTrip card with a value of \$75, (b) a one-
17 year membership to Capital Bikeshare or a
18 subsidy to a car sharing service also valued
19 at \$75.

20 We've had some feedback from the
21 Department of Transportation since this was
22 initially submitted. They would like to see

1 us extend that subsidy to all future residents
2 whether purchasers or lessees and that is
3 certainly something we are willing and able to
4 do.

5 CHAIRPERSON JORDAN: You know,
6 we've been really looking hard about these
7 Transportation Demand Plans, particularly
8 because parking has been an issue throughout
9 the District. One thing that we've talked
10 about one time giving a SmarTrip cards, once
11 that's gone people go back to using their
12 vehicles and it's a real concern.

13 I mean, if we're going to do
14 alternative relief from parking, then we need
15 to have some real alternatives that are
16 lasting and not just token. That's what this
17 Board has talked about several times. That
18 gives me some pause about what you are
19 recommending.

20 \$75 is better than \$50 some people
21 have been offering and says that's going to
22 take care of the parking demand in the

1 neighborhood and that's going to get people
2 hooked on taking Metro and alternative modes
3 but \$50 can go relatively quickly. That's one
4 month of going to work probably.

5 MR. TUMMONDS: If I might add, the
6 \$75 that is the annual membership fee for
7 Bikeshare or Zipcar. Then it's interesting
8 when you look at DDOT's report. DDOT didn't
9 want to include the notion that you could give
10 someone \$75 to put on their SmarTrip card.

11 To them their view was no, it
12 should just be to Bikeshare or to Carshare.
13 That's why the number of \$75. Again, it's
14 this idea of getting people accustomed to it.

15 CHAIRPERSON JORDAN: I understand.
16 I think DDOT is talking a different language
17 than what we're talking because we are living
18 with these issues as we sit here to grant you
19 the relief that you're requesting.

20 MR. TUMMONDS: Yes. And that's
21 why we believe that \$75 should also go to
22 Smartcar if someone doesn't want to do

1 Bikeshare, they don't want to do Zipcar.

2 CHAIRPERSON JORDAN: That's for
3 every new resident?

4 MR. TUMMONDS: As Mr. Selfridge
5 just alluded to, that would be for every
6 future resident.

7 MR. SELFRIDGE: As you may be
8 aware, Mr. Chairman, we are within two blocks
9 of the Metro. There is Capital Bikeshare up
10 there as well, plus we are providing
11 significant bicycle parking so we think in
12 addition to Carshare there is certainly other
13 modes of transportation.

14 There is also a bus stop right on
15 Pennsylvania Avenue directly out front of the
16 building so we don't think that this is really
17 the linchpin to the strategy. It's just a
18 piece of the strategy and it being part of the
19 existing infrastructure which is already in
20 place is really what makes this a car light
21 type development.

22 CHAIRPERSON JORDAN: Does the

1 Board have any other questions on the TDM?

2 Mr. May.

3 ZC COMMISSIONER MAY: I'm sorry.

4 Did you answer the question about residential
5 parking permits because I was trying to find
6 this exhibit and I didn't.

7 MR. SELFRIDGE: No, Mr. May.

8 There is no discussion about RPP. We believe
9 that the residents of the building of they
10 were so inclined that they should be able to
11 have access to it but we don't think that will
12 be the case.

13 ZC COMMISSIONER MAY: Okay.

14 CHAIRPERSON JORDAN: So there are
15 none?

16 MR. SELFRIDGE: There are no
17 restrictions.

18 ZC COMMISSIONER MAY: Do we have
19 somebody here from DDOT? Okay.

20 The question I'll have for you,
21 just a heads up, is this building going to be
22 eligible for RPP? My understanding is if the

1 address is on a commercial street that it's
2 not.

3 CHAIRPERSON JORDAN: Why don't you
4 respond now.

5 MR. ROGERS: For the record,
6 Jonathan Rogers, transportation planner with
7 DDOT. That's an excellent question. I don't
8 have that information in front of me. I would
9 be happy to get that information and provide
10 it.

11 ZC COMMISSIONER MAY: Okay. I
12 think we'll need that.

13 Let me finish my questions here at
14 the very least. So, Mr. Tummonds, maybe you
15 have run into this before as well. Is that
16 correct, DDOT, if it's on a commercial street
17 that it's not RPP eligible?

18 MR. TUMMONDS: I'm not aware of
19 that, no.

20 ZC COMMISSIONER MAY: Okay. This
21 has come up in other Zoning cases.

22 MR. TUMMONDS: I think in other

1 Zoning cases it has been would the applicant
2 be willing to restrict RPP to its future
3 residents.

4 ZC COMMISSIONER MAY: That has
5 come up, too. Sometimes when we ask that
6 question, the answer from DDOT is it's on a
7 commercial street. It wouldn't be eligible
8 anyway. I assume since this is a commercial
9 zone, I mean, this is already zoned C-2-A, tnt
10 this would be considered a commercial street.
11 Are you fronting on Pennsylvania?

12 MR. TUMMONDS: That's correct.

13 ZC COMMISSIONER MAY: Then the
14 address has got to be Pennsylvania.

15 MR. TUMMONDS: Yes.

16 ZC COMMISSIONER MAY: It would be
17 helpful to know whether or not it is eligible.
18 That may address some -- there was some
19 concern from at least one neighbor about
20 parking issues.

21 MS. THOMAS: Certainly it's an
22 issue that we've dealt with. As you said, Mr.

1 Tummonds, we have been asked for restrictions
2 either by lease or by covenant that they would
3 not be eligible so it's important for us to
4 kind of understand that going forward on this
5 application.

6 MR. TUMMONDS: We can address
7 that. Obviously we are going to have a post-
8 hearing filing to address the issue of the 20
9 percent. We will get you that answer.

10 CHAIRPERSON JORDAN: Mr. Badissy,
11 you wanted to ask a question?

12 MR. BADISSY: Right. I want to
13 ask is it correct that the correct address for
14 the property is 1600 Pennsylvania Avenue
15 because that is not currently registered as
16 RPP eligible on the city's database.

17 MR. TUMMONDS: The address is 1550
18 Pennsylvania Avenue.

19 MR. BADISSY: Oh, so not 1600 as
20 it says on the application?

21 VICE CHAIRMAN SORG: Why is not
22 1600 Pennsylvania Avenue? That would be so

1 cool.

2 MR. TUMMONDS: There was internal
3 discussion but right now it's 1550.

4 CHAIRPERSON JORDAN: Southeast,
5 though.

6 MR. TUMMONDS: Yes.

7 VICE CHAIRMAN SORG: You may want
8 to consider that in your marketing.

9 CHAIRPERSON JORDAN: Put a
10 footnote and then put southeast.

11 MR. TUMMONDS: Exactly.

12 VICE CHAIRMAN SORG: Really small.

13 CHAIRPERSON JORDAN: Get people
14 lined up.

15 Okay. Let's move on. Any other
16 questions about the TDM?

17 MR. BADISSY: If I could just
18 clarify. It does say 1600 in the application
19 and I didn't get an answer to that question.

20 MR. TUMMONDS: Oh, no it doesn't.
21 Our February 12, 2013 --

22 CHAIRPERSON JORDAN: I'm not

1 finding it relevant if it's 1550 or 1600.
2 It's a matter of walk down three or four
3 steps. Not relevant for us to go through that
4 kind of debate.

5 MR. BADISSY: 1600 is not
6 currently RPP eligible.

7 ZC COMMISSIONER MAY: Right, but
8 the Applicant is going to clarify that.

9 CHAIRPERSON JORDAN: Clarify it
10 because we do want to know. It's important
11 for the Board, as I said. It's one of the
12 things I guess people don't understand the
13 Board is really taking seriously about the
14 issues of parking and the affect upon the
15 neighborhoods for those coming for parking
16 relief.

17 VICE CHAIRMAN SORG: Not related
18 I'll ask a couple of questions that I believe
19 are related to parking.

20 Also, I think we have been
21 notified that the alarm is not a problem just
22 for those people sitting in here.

1 We've got floor plans and in your
2 submissions you talk about lease or purchase.
3 Maybe you haven't decided yet if this is
4 residential or condo building so if you can
5 talk a little bit about the unit mix and what
6 the market is, is it affordable and so forth,
7 what are the general sizes of the units that
8 you are thinking of. If you've got all
9 studios, then less people potentially having
10 cars and so forth.

11 MR. SELFRIDGE: Thank you, Vice
12 Chairman. This is a 80-unit building. We
13 believe it to be apartments. It is primarily
14 one bedroom. The mix is about -- I don't have
15 it exactly in front of me -- about 65 one-
16 bedroom, three studios with a balance of two
17 bedrooms.

18 The average unit size for the one
19 bedroom is about 550 square feet. The average
20 unit size for the two bedrooms is about 850
21 square feet. We very much believe that we are
22 marketing to a young professional demographic.

1 We think that demographic
2 traditionally has driven much less than
3 perhaps myself or Mr. Tummonds. They utilize
4 Metro. They utilize public transportation.
5 They ride their bikes. They walk. They are
6 much more --

7 (Whereupon, alarm notice.)

8 CHAIRPERSON JORDAN: What? Do I
9 run or not run?

10 ZC COMMISSIONER MAY: Mr.
11 Chairman, if I might, I used to be involved in
12 the operation of this building and I can tell
13 you the way the alarm system works is that if
14 there is an alarm on another floor and it's
15 not an actual fire but somebody overheats
16 their popcorn or something like that, it will
17 often set off an alarm that affects three
18 floors; that floor and the floor above and
19 below. The PA system is how they communicate
20 that this is not really a problem for us on
21 this floor. We don't have to worry about
22 evacuating. We are not ignoring any rules or

1 anything like that.

2 CHAIRPERSON JORDAN: If I burn up,
3 Peter, my ghost will get you.

4 ZC COMMISSIONER MAY: That's
5 perfectly fine.

6 CHAIRPERSON JORDAN: Okay. Where
7 are we? What did I say about this day?

8 MR. TUMMONDS: I guess maybe to
9 answer Ms. Sorg's question, in our
10 comprehensive transportation statement
11 starting on page 13 through 15 there was a lot
12 of discussion about the expected parking
13 demand for the types of people that Mr.
14 Selfridge discussed. In addition, there was an
15 analysis of the existing on-street parking
16 availability. This is on pages 14 and 15 of
17 the statement.

18 ZC COMMISSIONER MAY:
19 Unfortunately, I don't know why but my Exhibit
20 24 did not include the traffic study.

21 (Whereupon, alarm notice.)

22 ZC COMMISSIONER MAY: I didn't

1 quite catch that.

2 CHAIRPERSON JORDAN: Let's go
3 ahead until we see some flames come in.

4 Mr. Moy, would you have someone
5 from your office go check on this for us,
6 please?

7 (Whereupon, alarm notice.)

8 CHAIRPERSON JORDAN: Let's keep
9 going. Where are we?

10 MR. TUMMONDS: I'm sorry. Maybe
11 I'll paraphrase some of that, Commissioner
12 May, and then we can make sure that there is
13 adequate --

14 ZC COMMISSIONER MAY: I'll get a
15 copy from the file before we get to --

16 CHAIRPERSON JORDAN: I thought
17 there was a parking question. Did we answer
18 that one in regards to the DDOT conditions?

19 ZC COMMISSIONER MAY: Mr. Tummonds
20 is going to address some information for my
21 sake.

22 CHAIRPERSON JORDAN: Okay.

1 MR. TUMMONDS: Sure. With regards
2 to -- this is on Page 15. Based on the
3 observed on-street parking and discussions
4 with the Advisory Neighborhood Commission, it
5 appears the majority of vehicles parked on the
6 street belong to residents of the
7 neighborhood. It does not appear there is a
8 significant volume of commuters parking to
9 access their workplaces by Metrorail.

10 Based on this data, additional
11 parking spaces are available on the street
12 within a very short walk of the proposed
13 development and, thus, should additional
14 parked vehicles be generated by this
15 development, there appears to be adequate on-
16 street capacity to handle a modest increase.

17 That's paraphrase what was there
18 but then there was more information about how
19 this is where we looked, these are the
20 streets, this is the availability of on-street
21 parking.

22 ZC COMMISSIONER MAY: That was

1 exactly the information I was looking for
2 because some of that language was in, I think,
3 OP's report. I saw it there and I was like
4 where is the basis for that. It's either in
5 OP or your statement. Somewhere I saw a
6 summary of it.

7 CHAIRPERSON JORDAN: Just for the
8 record, Mr. Moy's office checked with the
9 building management and we're fine as we sit
10 here.

11 MR. TUMMONDS: I think we are now
12 prepared to address the last issue raised by
13 Commissioner May.

14 CHAIRPERSON JORDAN: Before you do
15 that, Mr. Badissy, do you have any questions?

16 MR. BADISSY: No.

17 CHAIRPERSON JORDAN: Okay. Very
18 good. Let's go to the next one, please.

19 MR. TUMMONDS: This is in regards
20 to the ability to park more cars on the first
21 level of parking.

22 Mr. Dickens.

1 MR. DICKENS: Thank you.

2 If you turn to C-3 which is the
3 English basement level which shows the
4 parking, the question is whether the parking
5 area, which is in proposed 1600 addresses in
6 the west wing whether it can extend to the
7 east wing.

8 The answer, and I believe this is
9 actually what was written in the application,
10 it's not that it can't. It's not impossible.
11 It's just that you have the core elements that
12 make it extremely inefficient, especially when
13 you use the odd shape of the site.

14 The elevator pretty much has to
15 fall in the middle of the building in order
16 for it to come out the right place on the
17 roof, although I guess we could be asking for
18 a difference variance. We have it in the
19 middle so in the roof it has the right
20 setbacks and all that.

21 In the larger building a lot of
22 this relates to a larger footprint versus a

1 smaller footprint and regular versus
2 irregular. In a larger building like an
3 office building you put the whole car in the
4 middle and the parking goes around it and you
5 can have a double-loaded aisle and it's very
6 efficient.

7 This is a small building. You get
8 the elevator here and you really want to get
9 a 20-foot aisle. You don't even have enough
10 space on one side for contacts fronting in.
11 You can have them the long way but it's very
12 inefficient.

13 Really with the egress stairs in a
14 larger building they might be in the core or
15 they might not align with the stairs above and
16 that works out for the size footprint that you
17 have.

18 In the smaller building if we were
19 to move these stairs to a corner where they
20 would impact a parking layout as minimally as
21 possible, they would suddenly eat up a lot of
22 space on the first floor and, furthermore,

1 really good space for the residential units
2 because otherwise they would end up in a
3 corner or somewhere like that.

4 The argument is not that it's
5 impossible but it is very inefficient to do it
6 and it has a ripple effect which is
7 undesirable. I would also note that in terms
8 of the driveway this is really just about the
9 only place the driveway can go on the site
10 that doesn't start on a forbidden street,
11 let's say, and it actually gets you down.

12 The site doesn't have a lot of
13 slope but if it works out the slope is exactly
14 wrong for parking because it's the low end of
15 this and the high end is about six-and-a-half
16 feet higher on this end.

17 Trying to get a driveway in here,
18 which we've looked at that, ends up knocking
19 out a third of your only efficient area to
20 park on the site. This is really where the
21 driveway ends up. That being the case, you do
22 end up down here before you are even all the

1 way down. It's difficult trying to get into
2 that space.

3 I guess lastly I would just note
4 the units are something that -- the English
5 basement units at this end of the site they
6 are approximately half out. It's something
7 that the community had a warm fuzzy about as
8 being similar to other houses in the
9 neighborhood. I think that is just an extra
10 added bonus.

11 ZC COMMISSIONER MAY: Mr.
12 Chairman.

13 CHAIRPERSON JORDAN: Yes.

14 ZC COMMISSIONER MAY: Did you look
15 at parking cars into where the English
16 basements are?

17 MR. TUMMONDS: In our April 15,
18 2013 submission, which included the traffic
19 report that you didn't get perhaps.

20 ZC COMMISSIONER MAY: I didn't get
21 that submission at all is what it turns out.

22 All right. Then this leads open

1 DDOT's issue of the ramp in public space.

2 Right?

3 MR. TUMMONDS: We will discuss
4 that, yes, which will address Commissioner
5 Sorg's question.

6 MR. DICKENS: This is a diagram of
7 the back which is blown up. We do have 11 by
8 17s if you want to distribute them if you
9 don't have, you know, x-ray vision to see all
10 the way over here.

11 MR. TUMMONDS: Going toward
12 Commissioner Sorg, this probably answers some
13 of the questions you had because you are
14 looking at plans that were not the plans that
15 DDOT comments on. This plan right here, the
16 plan that we submitted on April 15, is the
17 plan that DDOT's report discusses.

18 VICE CHAIRMAN SORG: I do have
19 those plans.

20 MR. TUMMONDS: Only Mr. May
21 didn't.

22 VICE CHAIRMAN SORG: Unfortunately

1 only Mr. May didn't.

2 MR. DICKENS: On this drawing the
3 yellow shows the actual alley which is also
4 known as Freedom Way for reasons I couldn't
5 tell you. The potential alley you note has
6 the not quite 90-degree turn where our site
7 turns around it.

8 There's a so-called SU30 which
9 from Autoturn is one of their -- it's a
10 computer program -- one of their standards for
11 truck size that DDOT uses. This is showing
12 the path of a SU30 truck going south and east.
13 It is a one-way alley so that is the only
14 direction that it will go.

15 Right now this truck, which
16 includes -- trash trucks aren't actually this
17 big but they can't make it around the corner.
18 According to the neighbors they usually just
19 back all the way up this alley which is, in
20 fact, a pretty long alley to back up and
21 narrow, too.

22 What this is doing is -- you will

1 note if you are comparing with the original
2 submittal that we have rearranged things in
3 order to create this space for the truck to
4 get through so that is one specific reaction
5 that we are working with DDOT.

6 Also, we are working with the
7 community. That is part of the community,
8 too. The loading berth originally was more
9 around where it says service vehicle parking
10 space in the current one which is more behind
11 the neighbors. They expressed a desire to
12 shift that away from them somewhat.

13 In this scheme the loading berth
14 is moved down to the eastern leg of the alley
15 away from the neighbor's backyard. That was
16 another thing that we were addressing. In
17 that case DDOT wasn't necessarily concerned
18 about that.

19 In terms of the driveway, we had a
20 meeting with DDOT where we showed a couple of
21 alternatives. One of them was the original
22 BZA. Another, which I might call the

1 community-preferred version, was where the
2 driveway came out and had a curb cut on
3 Kentucky Avenue.

4 What we have now you might call a
5 compromised situation. This has been vetted
6 with DDOT, although apparently not enough. We
7 are going to have to do some more work with
8 them possibly. Our feeling is that this is
9 the right solution for the situation.

10 The way it takes the cars in and
11 out makes going two-way in the alley more
12 difficult. It allows the 30-foot truck to
13 work. Cars coming in and out their lights
14 don't shine in the front yards of the
15 neighbors.

16 It keeps the cars away from the
17 neighbors. Also because it holds the whole
18 driveway back a little bit the loading works
19 much better here in terms of sectional
20 relationship.

21 There is a lot of things about
22 this that work very well for this particular

1 situation both for our building and for the
2 immediate neighbors who have been, as you can
3 see, very concerned people.

4 PARTICIPANT: (Off mic.)

5 MR. DICKENS: You're one of them.

6 CHAIRPERSON JORDAN: Gentlemen,
7 let's proceed on. You're doing a
8 presentation. We are not doing this back and
9 forth. Thank you.

10 MR. DICKENS: I guess just to wrap
11 up I would just reiterate this design came
12 about as a result of working with DDOT and
13 with the community and with our own internal
14 programmatic needs. We have a very good
15 feeling about it. We intend to take this to
16 the Public Space Committee and I guess we will
17 see what happens.

18 MR. TUMMONDS: Could you address
19 the sufficiency of the driveway with regards
20 to pedestrian traffic along the sidewalk on
21 Kentucky avenue?

22 MR. DICKENS: A concern was

1 raised, I believe by DDOT, about the driveway
2 comes up and it's kind of right next to the
3 sidewalk and they had a concern about this
4 that a car could hit a pedestrian essentially.

5 My response would be that would be
6 a concern any time that pedestrians and
7 automobiles cross but given that this garage
8 only has 22 spaces and the load is very, very
9 low. Also in the traffic report you'll see
10 that on Freedom Way the alley doesn't get much
11 traffic. Also this parking on Kentucky Avenue
12 doesn't have a huge amount of pedestrian
13 traffic.

14 As a result we're just not talking
15 about a congested area. Cars would be coming
16 up and they could clearly see the pedestrian
17 and the pedestrian could see them. It's not
18 a concern that I'm personally that worried
19 about.

20 MR. TUMMONDS: And I would just
21 add in our traffic report, page 5, the number
22 of vehicle trips coming in and out of that

1 entrance there, approximately 30 in the AM
2 peak hour and approximately 40 in the PM peak
3 hour. We are talking about one vehicle coming
4 out of that entrance -- less than one vehicle
5 a minute.

6 MR. DICKENS: And that number
7 isn't nearly -- the parking garage is also the
8 surface spaces and the other uses that are off
9 the alley which aren't really questioned
10 because DDOT I think has felt okay about the
11 90-degree intersection of pedestrians and
12 cars.

13 MR. TUMMONDS: And address one
14 other question of an issue that DDOT had with
15 the slope.

16 MR. DICKENS: We are sloping down
17 in public space a little bit. It's the so-
18 called blended part of the driveway. It's
19 only a nine percent slope. Those of you who
20 practice would a handicap ramp is usually 8.33
21 percent so that gives you a sense it's not a
22 very steep slope.

1 (Whereupon, alarm notice.)

2 MR. DICKENS: To wrap up on that
3 thought, the driveway is only one foot wider
4 than the minimum required by Zoning so it's 15
5 feet. You are sloping up and then you have
6 the bend.

7 All of these are what you would
8 normally think of as "traffic calming
9 measures" suggesting that cars coming out of
10 this garage would not be going very fast
11 between going up hill being in a relatively
12 narrow driveway and making a turn. That adds
13 to my sense that the pedestrian issue really
14 is not that serious.

15 MR. TUMMONDS: I think that
16 addresses all the questions that were raised.

17 CHAIRPERSON JORDAN: Let me before
18 you leave, Mr. Badissy, do you have any
19 questions about that? Okay.

20 Does the Board have any other
21 questions of the Applicant that they need to
22 have addressed?

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

3 MR. GYOR: Good morning, Mr.
4 Chairman, members of the Board. Stephen Gyor
5 with the Office of Planning. The Office of
6 Planning support the Applicant's request for
7 relief and stands on the record. I will note
8 that OP supports DDOT's condition regarding
9 additional bike parking. If the Board agrees
10 and it is feasible, we think it would be a
11 positive addition to the proposal.

12 I will also note that OP supports
13 the Zoning Administrator's interpretation that
14 rear yard relief as measured from Kentucky is
15 not necessary.

16 Finally, in addition to that, as
17 far as the roof top recreation space, I'm not
18 familiar with the 20 percent figure but I know
19 that in past cases the applicant would have to
20 show that the indoor space is somehow
21 supporting the outdoor space.

22 Restrooms would be permitted and

1 some circulation space would be permitted. I
2 think in a past case the Zoning Administrator
3 requested that the applicant provide them a
4 detailed floor plan in order to make a final
5 interpretation. Thank you.

6 CHAIRPERSON JORDAN: Does the
7 Applicant have any questions of the -- excuse
8 me. Does the Board have any questions of the
9 Office of Planning?

10 Does the Applicant have any
11 questions for the Office of Planning?

12 MR. TUMMONDS: No questions.

13 CHAIRPERSON JORDAN: Mr. Badissy,
14 do you have any questions for the Office of
15 Planning?

16 MR. BADISSY: No.

17 CHAIRPERSON JORDAN: Then let's
18 move to the Department of Transportation.

19 MR. ROGERS: Good morning. Again,
20 this is Jonathan Rogers, transportation
21 planner with DDOT. I'll keep my comments
22 brief and would be happy to answer any

1 questions.

2 So we did work with the Applicant
3 to develop a scope of work for the
4 transportation analysis. Based on that
5 analysis we found that the project is expected
6 to have minimal impact on the transportation
7 network.

8 There are expected to be
9 approximately 25 peak-hour trips peak
10 direction which is relatively minimal given
11 the volumes, especially on Pennsylvania Avenue
12 which are 20,000 vehicle trips average.

13 In this type of development it has
14 occurred throughout the city and in other
15 locations with similar variances related to
16 parking. Those have occurred without any
17 significant negative impact on transportation.
18 DDOT has no problems with the variances
19 themselves.

20 With respect to parking relief,
21 the site has sufficient access to high-quality
22 transit including being in close proximity to

1 the Metrorail station. Excellent bus service
2 as well as excellent biking and walking
3 infrastructure.

4 We expect these alternatives to
5 reduce the need for driving and, therefore,
6 reduce the need for parking. Should
7 additional parking be necessary beyond what is
8 provided on site, the Applicant's parking
9 study confirmed that there is excess capacity
10 of curbside parking in the neighborhood.

11 While we have no objections to the
12 variances themselves, we do have concerns with
13 the proposed design, especially for the garage
14 access. We are aware that our concerns are
15 related to the public space which is not a BZA
16 concern per se but because we feel that a
17 satisfactory ramp access, garage access may
18 require the elimination of a certain number of
19 parking spaces, the elimination of parking
20 spaces is relevant to the BZA because of the
21 magnitude of the parking variance being
22 requested.

1 I will say to address some of the
2 concerns or questions of the Applicant, DDOT's
3 concerns about the parking entrance are
4 primarily about the public space and the
5 pedestrian concerns about sort of -- while
6 they are real concerns, they are sort of
7 secondary to what we would review during the
8 permitting process which resolves mostly
9 around the public space.

10 In addition to the concerns about
11 the park -- excuse me, the park garage access
12 and the design -- and some of the proposed
13 designs, we do request additional bike
14 parking, a condition of approval.

15 We are moving towards one long-
16 term parking space per residential unit
17 requirement as part of the Zoning updates and
18 sort of a gesture to move towards that
19 direction. Because of the expected usage of
20 bicycling for this site, we are requesting that
21 one long-term bicycle parking space be
22 provided for every two units.

1 Additionally, as was discussed
2 earlier, DDOT would like to see the financial
3 incentive be extended to all residents
4 including initial and future residents and to
5 limit that to only Bikeshare membership or
6 Carshare membership. I would be happy to get
7 into some of the reasons behind that request.
8 I'll leave it at that.

9 CHAIRPERSON JORDAN: Does the
10 Board have any questions of the Department of
11 Transportation?

12 Ms. Sorg.

13 VICE CHAIRMAN SORG: Thank you,
14 Mr. Chairman.

15 I'm curious why you're not into
16 the idea of including SmarTrip.

17 MR. ROGERS: In a nutshell, DDOT
18 feels that limiting the financial incentive to
19 Bikeshare or Carshare membership would
20 actually be more effective in terms of
21 reducing car usage, automobile usage.

22 We feel that by virtue of the

1 location of this project that potential
2 residents will already be transit users so a
3 \$75 incentive would be incentivizing the
4 behavior that is already occurring.

5 Additionally, sort of a minor
6 point but \$75 in terms of Metro SmarTrip card
7 doesn't go as far, whereas a year membership
8 to Capital Bikeshare has a long life span and
9 can help incent people into trying a new
10 behavior. The same goes with Carsharing. \$75
11 would probably last you the entire year. The
12 positive impacts would be much longer lasting.

13 CHAIRPERSON JORDAN: So your
14 reasoning again is that the people who live
15 there need to go to work because of proximity
16 to Metro, etc., will do that on their own.

17 MR. ROGERS: Yes.

18 CHAIRPERSON JORDAN: And their
19 biggest use for a car is probably more
20 recreational or something on the weekend to
21 run errands. Is that what I'm understanding?

22 MR. ROGERS: That's correct. An

1 additional point is that a lot of workers in
2 this area get some sort of transit benefit
3 through their employer and is not really
4 eligible for Carshare membership or Bikeshare
5 membership. Again, this would be a way to
6 provide a small incentive to encourage people
7 to do something they might not already do.

8 CHAIRPERSON JORDAN: Any other
9 questions for the Department of
10 Transportation?

11 Mr. May.

12 ZC COMMISSIONER MAY: So on the
13 ramp and public space, if I understand what
14 you are implying or saying, the Applicant is
15 going to have to go through a separate process
16 with DDOT in order to get that ramp permitted
17 in public space.

18 MR. ROGERS: That's correct.

19 ZC COMMISSIONER MAY: And then the
20 implication of that is that if you're not
21 willing to approve it the way it has been
22 designed in the way the design is that we are

1 evaluating, then they may wind up needing
2 additional relief.

3 MR. ROGERS: That is correct.

4 ZC COMMISSIONER MAY: Okay. So
5 the Applicant needs to either respond to that
6 or prepare for that possibility. Right?

7 MR. ROGERS: Yeah. I mean, we are
8 somewhat in a rock and a hard place here. One
9 thing we need to address is here when we talk
10 about public space this is that area for all
11 intents and purposes looks like a front yard.
12 While it is technically public space, it is
13 also the alley to most people.

14 That distance right there that Mr.
15 Dickens is showing us, that is the public
16 space. I think anyone walking down Kentucky
17 Avenue you would think that is someone's front
18 yard in front of their home. Because of that
19 we are now --

20 ZC COMMISSIONER MAY: You are
21 arguing for us to approve what you're
22 proposing. What I'm asking is if they say no

1 to that and you have to change your ramp and
2 move the entrance so that it is on your
3 property, that is going to kill another three
4 or four parking spaces. Right? I mean, is
5 that the net?

6 MR. SELFRIDGE: We don't believe
7 that's true, Mr. May. We are still working
8 through the issue. We appreciate DDOT's
9 concern that it would take out additional
10 parking spaces but we don't necessarily
11 believe that's true.

12 MR. TUMMONDS: To answer your
13 question, and this is, I think, maybe what we
14 would like as requested. Typically 3125.7 says
15 the plans that were presented and approved by
16 the BZA are what has to be built.

17 We think that here the flexibility
18 requested is as long as we are not requesting
19 additional areas of flexibility with regards
20 to the number of parking spaces that you would
21 give us flexibility to address DDOT's
22 concerns.

1 ZC COMMISSIONER MAY: I wouldn't
2 have any issue with your having to move the
3 location of the entrance ramp but if you need
4 to come back and say, "You know what? We
5 can't do 30 spaces. We can only do 28," then
6 you're coming back before the Board.

7 MR. TUMMONDS: We think we can
8 maybe make the parking spaces work. I think
9 the bigger issue may be the -- right now it's
10 the loading. Right now an 80-unit residential
11 building requires a 55-foot loading berth. We
12 are asking for relief from that because we are
13 not providing that.

14 We do have a plan that shows a 40-
15 foot loading berth. It may be since we are
16 already requesting relief from the requirement
17 to provide the required loading on site, the
18 flexibility we may need in working with DDOT
19 is the ability to put that loading -- not have
20 any loading, not have a 30-foot loading berth
21 on the site but then be allowed to have access
22 and loading on Pennsylvania Avenue. I think

1 in working out DDOT's issues with this
2 Committee, that is probably more likely where
3 we may have to ask for --

4 ZC COMMISSIONER MAY: It seems to
5 me that with all these things in flux, you
6 need to be very precise about what relief
7 you're requesting so that you do not have to
8 come back again.

9 MR. TUMMONDS: I would say --

10 ZC COMMISSIONER MAY: I'm all for
11 sticking with 30 parking spaces as long as you
12 can figure out some way to make it work for
13 them.

14 MR. TUMMONDS: In DDOT's report
15 they said they would support additional onsite
16 parking reduction of up to five spaces. That
17 is in the DDOT report. We haven't requested
18 that. I do think we are not as concerned
19 about the parking. It would be the loading.
20 We are already requesting the loading relief
21 so there's a section -- you know, we are
22 requesting relief from 2202.

1 ZC COMMISSIONER MAY: Okay. So
2 I'll leave that alone.

3 I did have one other question for
4 DDOT which is that there is a reference I
5 think in your report to obstacles for
6 pedestrians walking along Pennsylvania Avenue
7 to the Metro. I assume that a lot of that
8 comes from the row of houses there that have
9 garages and people park in front of the
10 garage.

11 MR. TUMMONDS: That's correct.

12 ZC COMMISSIONER MAY: How bad is
13 that? That occurs in a lot of places. It's
14 the curse of Capitol Hill and other
15 neighborhoods where there are all these
16 Barrett Linde townhouses that have these curb
17 cuts and people park in front of them in the
18 public space.

19 MR. TUMMONDS: You have correctly
20 addressed the issue. There are cars parked in
21 their driveway but sticking into the sidewalk
22 area and --

1 ZC COMMISSIONER MAY: They are
2 parked in public space.

3 MR. TUMMONDS: They are, yes. It
4 is creating at least a partial obstruction to
5 pedestrians trying to travel along that route.
6 It's not a complete obstruction as we
7 understand it.

8 ZC COMMISSIONER MAY: Is there
9 enough room for people to safely walk by? I
10 understand that past attempts to clamp down on
11 this have met with certain political
12 resistance.

13 MR. TUMMONDS: Right. I think it
14 depends on the length of the car. In some
15 instances there may be enough space and in
16 others there isn't. We understand that is
17 sort of an issue beyond the extent of this
18 particular proposal, etc., project itself but
19 it is relevant because of the expected transit
20 usage and Pennsylvania Avenue being the most
21 direct route between the site and the Metro
22 station.

1 ZC COMMISSIONER MAY: It's unclear
2 who is ultimately responsible for this but I
3 would urge DDOT to work very closely with
4 whoever they have to work with to try to
5 resolve this, not just in this circumstance
6 but elsewhere as well because I think it's a
7 situation that needs to be addressed because
8 it does create some unsafe situations around
9 the city.

10 This prompted one question for the
11 Applicant about the number of parking spaces
12 for bicycles. I think they are looking for
13 another dozen or so spaces, something like
14 that. Just out of curiosity, are you planning
15 to charge residents for the bicycle parking
16 spaces? They look pretty fancy compared to
17 other bike parking spaces.

18 MR. SELFRIDGE: That's an amenity
19 with the building.

20 ZC COMMISSIONER MAY: So it's
21 first come first serve?

22 MR. SELFRIDGE: To be honest, I

1 don't think we've thought that through
2 completely in terms of how they would be
3 allocated but it would not be something we
4 would charge for.

5 DDOT also discussed the
6 possibility of putting some additional short-
7 term racks outside and we would work with them
8 and that is something that we would support as
9 well as check to see if our streets need
10 improvement which will be part of the
11 development.

12 ZC COMMISSIONER MAY: I'm
13 certainly not suggesting that anybody charge
14 for bicycle parking but --

15 MR. TUMMONDS: And to answer your
16 question, too, as you know we have multiple
17 issues, I think, going on with the bike
18 parking spaces. The Ward 3 council member put
19 in a law outside of the Zoning Regulations
20 this notion now that we have to provide park
21 parking for residential at one to three.

22 That's not in the Zoning

1 Regulations but we're doing that and that is
2 being treated in every case that comes before
3 you now as, "Well, that's what the Zoning
4 Regulations say." That's not what the Zoning
5 Regulations say but we're doing it.

6 This idea, too, in the DDOT report
7 that refers to a Section 1603.1. That is a
8 section that doesn't exist right now, the idea
9 that we need to have one for two. I think
10 that is why we have the Zoning Regulations
11 rewrite to talk about what is the appropriate
12 amount of bike parking spaces.

13 I think the size that you
14 mentioned, in order to meet all these
15 requirements, these bike parking spaces are
16 getting larger and larger. Do you really --
17 realistically could we provide 41 bike parking
18 spaces in the area that we're proposing now
19 and maybe a little bigger? Yes. Could we
20 provide 41 bike parking spaces that meet these
21 rather expansive area requirements around
22 those bike parking spaces? That will probably

1 be difficult. I think we will meet the 28
2 requirement. We will look to put in as many
3 as we can. Can we get to 41? Perhaps.

4 Mr. Dickens, anything to add?

5 ZC COMMISSIONER MAY: I don't
6 think your microphone is on.

7 MR. DICKENS: Now?

8 ZC COMMISSIONER MAY: Yes.

9 MR. DICKENS: Bicycle rooms in the
10 basement. These are the two bicycle spaces
11 with at least five feet behind them. In the
12 Mary Cheh legislation, which is the size that
13 they required there, they have this absolute
14 curiosity to me which is that we are required
15 to have some kind of device so the bike can be
16 locked in two different places even though
17 it's in a locked room in a locked building.

18 I think we all know the reality is
19 in this room we could probably fit twice as
20 many bikes easily but the standards they have,
21 the area standards, do create very large
22 spaces.

1 ZC COMMISSIONER MAY: Thank you
2 for enlightening me on that wrinkle in bicycle
3 parking.

4 CHAIRPERSON JORDAN: Any other
5 questions for Transportation by the Board?

6 Does the Applicant have any
7 questions of Transportation?

8 MR. TUMMONDS: No questions.

9 CHAIRPERSON JORDAN: Mr. Badissy,
10 do you have any questions of Transportation?

11 MR. BADISSY: Just one question.
12 There is a lot of discussion of car traffick
13 in here. Has there been any study on the
14 impact of truck traffic and the capacity of
15 Freedom Way to handle that and whether
16 rehabilitation would be necessary?

17 MR. ROGERS: No, that has not been
18 studies. Given the size of the proposed
19 building, we don't expect additional truck
20 traffic to cause any sort of significant
21 adverse impact.

22 CHAIRPERSON JORDAN: Then let's

1 move to any representative from the ANC
2 wishing to speak on this application. ANC-6B.

3 We do have a letter of support
4 from ANC-6B which we will give great weight
5 to.

6 Anyone in the audience wishing to
7 speak in support of this application?

8 Yes, would you come forward and
9 identify yourself, please. To the table,
10 please. To the table if you would. Sit down
11 and give us -- did you swear yourself in this
12 morning?

13 MS. WELCH: No.

14 CHAIRPERSON JORDAN: Mr. Moy.

15 Stand, raise your hand and then
16 you're going to have to fill out two witness
17 cards and give them to the court reporter
18 after you testify.

19 (Whereupon, the witness was
20 sworn.)

21 MS. WELCH: Good morning. My name
22 is Shannon Welch and I live with my husband,

1 Ed Welch, at 829 Kentucky Avenue which is
2 three houses down from the corner of Freedom
3 Way. We signed the Memorandum of
4 Understanding that we arrived at with Brian
5 Flahaven and Greg Selfridge and his group.

6 We are supporting their building.
7 We worked really closely with them to try to
8 come to an understanding of the design. We
9 are representing a group of neighbors. We
10 can't say we represent all the neighbors but
11 certainly a core group of us who have been
12 working really closely with the group. We
13 appreciate Greg's team really working with us.

14 We do have concerns about DDOT
15 coming in and saying that they are concerned
16 about this public space at the entrance of
17 Freedom Way and Kentucky Avenue.

18 Greg and his team really worked
19 hard to take into our consideration where that
20 entrance would be to try to decrease the
21 affect on our back property. We just would
22 like DDOT to take that into consideration when

1 they are asking them to change the location.

2 Also I wondered why they don't
3 consider the rest of Freedom Way public space
4 or even some of the areas behind the public
5 space, too, which in my mind could be equally
6 as dangerous or create a conflict between
7 pedestrians and vehicles crossing. Children
8 play in that alleyway. It's a small alleyway.

9 That's pretty much it. We do
10 support the project and I have been really
11 grateful to the team in working with us and
12 coming to this agreement.

13 CHAIRPERSON JORDAN: Does the
14 Board have any questions of Ms. Welch?

15 Does the Applicant have any
16 questions?

17 Does Mr. Badissy have any
18 questions?

19 Any other person wishing to speak
20 in support? Any person wishing to speak in
21 opposition? Any other persons wishing to
22 speak in opposition?

1 Mr. Badissy, you had the ability
2 to ask questions. Do you want to make a
3 statement in regards to something?

4 MR. BADISSY: I would like to make
5 two points. Many have been raised so I'll
6 keep this brief.

7 CHAIRPERSON JORDAN: You have five
8 minutes.

9 MR. BADISSY: Thank you.
10 Hopefully I won't need that much. I really
11 just want to testify to the fact that we
12 really do have a developer who has been trying
13 here. I don't want to make this situation
14 seem more adversarial than it really is.

15 There has been back and forth
16 discussion. There has been not the amount of
17 information sharing we would have wanted but
18 we caught up eventually.

19 The only real questions before us
20 today that are still a concern to myself and
21 to others in the community is how do we ensure
22 that this development turns out the way the

1 developer is saying it's going to turn out.
2 A building with relatively low impact, with
3 minimal impact on local traffic, and great
4 utilization of the public transportation
5 infrastructure.

6 There are only two ways we can do
7 that. One is having sufficient parking on the
8 property, and two is somehow incentivizing the
9 residents of the property to use public
10 transportation.

11 Very quickly on the property
12 itself I'm a little bit disturbed by the way
13 the narrative has been written about the
14 English basement. First of all, the Applicant
15 is treating this area as a cellar, not a
16 basement for calculation of the FAR. They are
17 not being taken into account for the space as
18 part of the floor to area ratio. It is
19 essentially free space.

20 VICE CHAIRMAN SORG: It is free
21 space so that is not a point that is going to
22 be relevant. Not to interrupt the proceedings

1 but it is free space so it's not a point that
2 is going to be relevant to what we're
3 deciding.

4 MR. BADISSY: Sure. It is free
5 space. That's actually my point. What is
6 being argued here is what that free space
7 should be put to use for and the Applicant is
8 somehow arguing that to be required to put in
9 sufficient parking would be inefficient, would
10 somehow be too great of a burden under the
11 standards that we have and the Zoning code.

12 We need to decrypt this. Really
13 what they are saying is that they have
14 marketable space here but they would prefer to
15 put units in because they are profit-
16 generating entities.

17 They have a ripple effect which
18 they have not detailed. They have not said
19 how much additional square footage would be
20 eaten up on floors above and what the actual
21 impact would be on the overall economics of
22 the project.

1 They are simply saying we would
2 prefer to use this space for units rather than
3 use this space for parking. They have
4 stipulated in their submission that it is
5 possible to expand in the east basement. They
6 have stipulated in their submission that this
7 entire subfloor is perfectly constructable
8 given the layout and the geology of the
9 property.

10 All their arguing is that it would
11 be inefficient. Inefficiency alone has never
12 been a basis for granting a variance. It has
13 to be a totality of circumstances. The only
14 circumstance being argued for here is they
15 would prefer to use this as profitable space.

16 Now, I just want to be clear what
17 they have said is what would be inconvenient
18 would be the shifting of the elevator.
19 Perhaps that's the variance that should be
20 before us today. Maybe they should have
21 thought from the beginning where do we need to
22 put the elevator to be able to use the space

1 to provide the necessary amount of parking.

2 They have discussed what that
3 impact would be, what the economic hardship
4 would be from that movement. We simply don't
5 have enough information to really assess the
6 statement of the Applicant that this is an
7 efficient use. What we do know is they would
8 prefer to use it for units.

9 What we don't know is how easily
10 it could be used for parking. We don't have
11 plans. We don't have alternatives. We don't
12 even know what the cost would be for building
13 a second subfloor. That's all I'll say on
14 that point.

15 Very quickly on the issue of RPP.
16 I just want to note that in my review of the
17 case law there have been two cases recently
18 where the BZA has ordered the developer to
19 withhold RPP rights. There have been six
20 cases in the last 12 months.

21 The Zoning Commission would have
22 done the same thing. It is becoming a trend.

1 It is not unheard of. It is well within the
2 power of the BZA. All I would is this. We
3 have a currently commercial property on a
4 commercial street in a commercial zone. That
5 is the current status of the property.

6 They are asking to turn it into a
7 high-density residential property and it is
8 only fair in keeping with their philosophy of
9 it being a minimal transportation impact that
10 we require the residents to forego their RPP
11 rights.

12 That simple choice would ensure
13 that we, the neighborhood, would not bear the
14 brunt of this insufficient parking space, and
15 it would ensure that the actual market the
16 developer is seeking would be exactly the type
17 of people who end up in this building. I
18 don't think it's unheard of. It's well within
19 your power and I would encourage the BZA to
20 make that choice. Thank you.

21 CHAIRPERSON JORDAN: Does the
22 Board have any questions of Mr. Badissy?

1 Does the Applicant have any
2 questions?

3 MR. TUMMONDS: No questions.

4 CHAIRPERSON JORDAN: Then -- where
5 are we? Then we will turn back to the
6 Applicant for any rebuttal or wrap-up if you
7 believe that any is necessary.

8 MR. TUMMONDS: No. I think in our
9 post-hearing submission we will address the 20
10 percent accessory roof structure issue. In
11 addition, we will address the ability for a
12 commercial property to be allowed to have RPP.

13 CHAIRPERSON JORDAN: Commercial
14 street.

15 MR. TUMMONDS: Commercial street.
16 Yes, I'm sorry. And then the third issue that
17 we will address is what Commissioner May
18 touched on is if we are required to tweak the
19 plan to address DDOT's concerns, would any
20 additional flexibility be needed, required, or
21 is the relief that we are seeking here today
22 the relief from Section 2100 and 2200

1 sufficient. And, with that, I think with
2 regards to our timing we would be able to
3 submit that within two weeks.

4 CHAIRPERSON JORDAN: Mr. May --
5 Mr. Moy. Alarms, other kind of stuff. What
6 else is going to happen today? Hands burning
7 up?

8 MR. MOY: Any of the above, Mr.
9 Chairman. Giving that time frame, I would
10 suggest the Board decide this on May 21st.

11 CHAIRPERSON JORDAN: So what is
12 the submission time?

13 MR. MOY: Two weeks for filing
14 would put us at May 14th. That's two weeks
15 from today. Any responses to the Applicant's
16 filing?

17 CHAIRPERSON JORDAN: Seven days?

18 MR. MOY: That makes it tight.

19 CHAIRPERSON JORDAN: They are
20 going to submit within two weeks, right?

21 MR. MOY: Yeah, which would be May
22 14th.

1 CHAIRPERSON JORDAN: The hearing
2 is the 21st.

3 MR. MOY: The hearing would be the
4 21st so that makes it a little tight for --

5 MR. TUMMONDS: We can submit in
6 seven days.

7 CHAIRPERSON JORDAN: Okay. There
8 you go.

9 MR. MOY: Thank you. In that
10 case, on the good graces of the Applicant,
11 then that puts us at --

12 CHAIRPERSON JORDAN: File and
13 bring it in. Get a date-stamped copy.

14 MR. MOY: So the Applicant will
15 submit by May 7th and any responses by May
16 14th, decision on May 21st. Any other parties
17 to respond, Mr. Chairman?

18 CHAIRPERSON JORDAN: Yes.
19 Everybody the same time period.

20 MR. MOY: Okay.

21 CHAIRPERSON JORDAN: All right.
22 We will close the record except for those

1 things which we've talked about here today to
2 be submitted subsequently and for decision on
3 May 21st. Thank you.

4 Board, we are at the point of
5 either taking a break for five or 10 minutes
6 or take a lunch break. Half hour? I just
7 hate people waiting. Otherwise if we go on,
8 we're going to be into 2:00 or 3:00.

9 Let's take not a real lunch break
10 but a half-hour break. Let's move quickly to
11 do what we have to do. We'll come back here
12 in a half hour which would be -- is it 12:00
13 now? What time is it?

14 MR. MOY: It's 12:02 or 12:05 now.

15 CHAIRPERSON JORDAN: Okay. So
16 12:35. We'll be in recess until then. Thank
17 you.

18 (Whereupon, at 12:05 p.m. the
19 hearing was adjourned until 12:50 p.m.)

20 CHAIRPERSON JORDAN: We are going
21 to call 18543. I think that's where we are,
22 Mr. Moy.

1 MR. MOY: Thank you, Mr. Chairman.
2 That would be 18543, the Application of Yves
3 Balcer, pursuant to 11 DCMR 3104.1, for a
4 special exception to allow an addition to an
5 existing one-family detached dwelling under
6 Section 223, not meeting the rear yard under
7 Section 404, and side yard requirements under
8 Section 405. This is in the R-1-A District at
9 premises 5063 Overlook Road, N.W. Property
10 located in Square 1430, Lot 6.

11 I believe there are four requests
12 for party status, Mr. Chairman.

13 CHAIRPERSON JORDAN: That's
14 correct.

15 Would the Applicant come to the
16 table and the parties making a request for
17 party status come to the table, please, if
18 we've got enough room.

19 I think we have a husband and wife
20 that have applied separately but they will
21 present jointly. They will not be separated
22 if they are granted party status.

1 Would you identify yourselves,
2 please, starting to my right.

3 Before that, let me ask has
4 everyone that's going to testify or speak been
5 sworn in and given witness cards? Then I need
6 those people who have not been sworn please
7 stand and take the oath from the Board
8 secretary and also complete two witness cards
9 to present to the court reporter.

10 (Whereupon, the witnesses were
11 sworn.)

12 CHAIRPERSON JORDAN: Thank you.
13 Make sure you complete the witness cards,
14 please. Make sure the microphones are turned
15 on.

16 First we are going to deal with
17 the various requests for party status. Let me
18 have you identify yourselves.

19 Your microphone. Can you make
20 sure it's turned on, please?

21 MR. FORET: I'm Palmer Foret and I
22 have requested party status.

1 CHAIRPERSON JORDAN: Thank you.

2 MS. FORET: Mari Foret.

3 CHAIRPERSON JORDAN: I know you
4 two submitted separate party status but we're
5 not going to be doing anything separately.
6 You two will be joint if we grant you party
7 status.

8 MR. FORET: Thank you.

9 MR. LEONE: Mark Leone.

10 CHAIRPERSON JORDAN: And you're --
11 Mr. Foret, give me your address again.

12 MR. FORET: 5069 Overlook Road.

13 CHAIRPERSON JORDAN: Mr. Leone.

14 MR. LEONE: 5057 Overlook Road.

15 CHAIRPERSON JORDAN: Okay.

16 MR. BALCER: Yves Balcer, 5063
17 Overlook. I'm the property owner.

18 CHAIRPERSON JORDAN: You are
19 again?

20 MR. BALCER: I'm the proponent.

21 CHAIRPERSON JORDAN: No.

22 And you are?

1 MR. GAROFALO: Gary Garofalo.

2 CHAIRPERSON JORDAN: And your
3 address?

4 MR. GAROFALO: 5132 Rockwood
5 Parkway, N.W.

6 CHAIRPERSON JORDAN: Any other
7 person for party status? Okay. Let's
8 continue with the Applicant identification.

9 MR. BALCER: Yves Balcer, 5063
10 Overlook, the proponent.

11 MS. PRINCE: Allison Prince,
12 Goulston & Storrs on behalf of the Applicant.

13 MR. GURNEY: Robert Gurney,
14 architect for the project.

15 CHAIRPERSON JORDAN: What's your
16 name again?

17 MR. GURNEY: Gurney, G-U-R-N-E-Y.

18 CHAIRPERSON JORDAN: Make sure
19 your mic is on.

20 MS. MAILHOT: Sarah Mailhot with
21 Robert Gurney, Architect.

22 CHAIRPERSON JORDAN: We've read

1 your request for party status. The concern I
2 have is that everybody has raised some of the
3 same issues in regards to sight lines, etc.,
4 about the view and its impact.

5 Therefore, I'm not inclined to
6 grant each one of you a separate party status
7 but will ask that you combine your party
8 status to one person speaking in regards to
9 all those in opposition but give you
10 individually the opportunity for three minutes
11 to talk separately but one of you will be
12 designated as the party status person because
13 it's all rising out of the same kind of
14 questions and issues regarding this
15 application.

16 That's what I'm inclined to do
17 here unless you have something different that
18 you want to present to the Board to change
19 that.

20 MR. KEYS: Mr. Chairman, my name
21 is George Keys. I will be representing Mr.
22 Garofalo who has requested party status. I

1 would assert that Mr. Garofalo has a different
2 vantage point literally on the project.

3 CHAIRPERSON JORDAN: Because he's
4 behind the house and not on the side?

5 MR. KEYS: The proposed
6 architectural element that is being proposed
7 is not visible. There is no sight line. It
8 is the presence of the pool house because he
9 is below that structure. We have a
10 different --

11 CHAIRPERSON JORDAN: Let me be
12 clear. The pool house is not in front of us.
13 We are not going to handle anything in regard
14 to the pool house. We are talking about a
15 connection. I just want to make sure
16 everybody is clear we are dealing with the
17 requested relief for the connection and not
18 any impact of the pool house.

19 I'm sorry. I didn't mean to cut
20 you off but unless you have something
21 different than that. Tell me, is your issue
22 the pool house? I'm seeing your client shake

1 his head up and down like yes.

2 MR. KEYS: The issue is the
3 implications of what the connection does.

4 CHAIRPERSON JORDAN: I understand
5 that. We are not dealing with the pool house.
6 The pool house is there. We are dealing with
7 the connection. Anything that is futuristic
8 request will be dealt with at that time if
9 there is any need to come back for any relief.

10 So I'm just being very clear with
11 you so everybody understands where we are as
12 we sit here today. The pool house is not
13 before us regarding the relief requested. I'm
14 asking you guys if anybody else have anything
15 that they think they are different and should
16 not be treated as part of a group in
17 opposition?

18 MR. SULLIVAN: Good afternoon,
19 Chairman Jordan. My name is Marty Sullivan
20 with Sullivan & Barros and I'm representing
21 Mark Leone, the owner of the property just to
22 the south of the subject property. I have a

1 letter of authorization with me here that I
2 can hand to the secretary.

3 CHAIRPERSON JORDAN: Go ahead and
4 talk and we'll get it going.

5 MR. SULLIVAN: Two things. I
6 would just add to the point that I think all
7 three party status applicants have some
8 differing point of impact and to limit all of
9 their testimony to three minutes might be
10 harsh. If there was some compromise where
11 there was one party status but the other party
12 status applicants at least had maybe a little
13 more time to speak on the issue. That's one
14 point.

15 The other point is I would like to
16 know if we at least get the chance to make the
17 argument that the pool house should be under
18 review. I won't make that argument now but
19 there is an argument and I think it should be
20 heard.

21 CHAIRPERSON JORDAN: What should
22 be heard about the pool house?

1 MR. SULLIVAN: The reason we're
2 here is because they need relief from the rear
3 yard and side yard setbacks. How do you grant
4 relief under 223 for those setbacks without
5 actually considering the structure that
6 violates those setbacks?

7 If it was only the building
8 connection that was under review -- the
9 building connection does not violate the rear
10 yard or side yard setbacks -- we wouldn't even
11 be here. Granted the building exists and the
12 pool house exists. We understand that but it
13 exists as an accessory structure.

14 The Zoning Commission views
15 accessory structures as different from the
16 main house presumably because of the use that
17 is intended for those structures, whereas an
18 accessory structure is usually used for a
19 garage on an alley or for storage or for a
20 shed and has passive activity.

21 When it becomes part of the main
22 house, it takes on a whole other character,

1 particularly as it relates to the privacy of
2 use and enjoyment of abutting neighbors. It's
3 now a living space. It can be an
4 entertainment room. It could be an accessory
5 apartment. It could be anything that is
6 permitted in the main house.

7 I don't know the heart of the
8 reason why the Zoning Commission wrote the
9 regulations to permit accessory structures in
10 rear yards but not permit main houses but I
11 would presume that has to do with the use.

12 Converting this area of the pool
13 house from a passive activity to an active
14 human activity has some impact on the area
15 requirements. Specifically it has an impact
16 on the privacy and use and enjoyment of
17 abutting neighbors.

18 The precedent -- one more point I
19 would like to make. The precedent being set
20 if you say we are not going to review the pool
21 house, only the connection, here is what I
22 could do next week. I can go build an

1 addition not connected to the house, put it in
2 the rear yard, and have no review and it would
3 be subject to the limits of accessory
4 structures but I could put it in the rear
5 yard.

6 After that's done I can come to
7 the Board and say I'm connecting it. It's now
8 an addition to the house and you can't review
9 it. You can only review the connection. I
10 have effectively avoided 223 consideration of
11 my addition.

12 CHAIRPERSON JORDAN: I don't think
13 that's correct but let's proceed on.

14 Does the Board have a feel one way
15 or the other about party status?

16 VICE CHAIRMAN SORG: Mr. Chairman,
17 I think Mr. Sullivan's suggestion is a good
18 one, to combine the party status but allow
19 each person to speak maybe with more time and
20 give testimony.

21 CHAIRPERSON JORDAN: Anybody else
22 want to weight in?

1 Mr. May.

2 ZC COMMISSIONER MAY: That's fine
3 with me. It seems to me that no matter what
4 the actual particulars are of each property
5 owner who is adjacent, there is enough
6 commonality that it would be most efficient if
7 there was some combined party here and then
8 additional time for folks to speak
9 individually. I think that is perfectly
10 appropriate.

11 CHAIRPERSON JORDAN: We can raise
12 that to five minutes. Anybody else want to
13 weigh in on this?

14
15 Why don't you take five minutes to
16 have a discussion on who is going to represent
17 the party status group meaning that you have
18 the opportunity to raise questions and cross-
19 examine witnesses and do a presentation but
20 everyone has the opportunity -- will have a
21 five-minute opportunity to do their own
22 presentation but just one of you would have

1 the opportunity to do cross-examination. You
2 want to take five minutes to discuss among
3 yourselves to find out who would do that?

4 On the microphone, please.

5 MR. FORET: The issue of the
6 individual versus separate, or combined party
7 status, I mean, there are some distinct issues
8 that pertain only particularly to us at 5069
9 Overlook. Also I agree with what Mr. Sullivan
10 and Mr. Keys has said to their clients also.

11 I am requesting that when it comes
12 to cross-examination there are some distinct
13 issues that are different between each of us
14 that have applied for party status in terms of
15 questions for cross-examination. I would ask
16 the Board for leeway, at least to some
17 witnesses, to be allowed to do that.

18 CHAIRPERSON JORDAN: I tell you
19 what we're going to do. We're going to allow
20 you to -- we'll allow you all to speak.
21 You'll have five minutes to do a presentation.
22 As far as cross-examination you each get to do

1 two questions and then we'll move on that way
2 so make sure it's the most germane.

3 I really don't want to do it that
4 way because I think you all have the same
5 issues that you're dealing with. One is
6 looking at the view from the left side, one is
7 looking at the view from the right side, one
8 from the rear but it's still the overall
9 impact of the view.

10 You might say, "It hits my
11 trellis." The other one says, "It's to the
12 right of my trellis." The other one says,
13 "It's over the wall." It's generally all the
14 same so that's the way we'll proceed. Let's
15 move forward.

16 ZC COMMISSIONER MAY: Mr.
17 Chairman, is I could make a suggestion. I'm
18 sorry. I don't mean to contradict what you
19 proposed here but very office in the Zoning
20 Commission what we do in circumstances like
21 this when we have a kind of forced marriage of
22 parties is that there will be one spokesperson

1 but the other -- the subgroups within would be
2 able to pass questions onto the person who
3 does the cross-examination just as a way of
4 doing it with a single person as long as
5 that's done in a quick fashion.

6 CHAIRPERSON JORDAN: I was going
7 to do that but I thought there might be a
8 difference in interpretation of getting that
9 question across to the person who is asking.

10 ZC COMMISSIONER MAY: It has
11 worked reasonably well in the past in the
12 Zoning Commission.

13 CHAIRPERSON JORDAN: Okay.

14 ZC COMMISSIONER MAY: Rather than
15 arbitrary limit on questions. One person is
16 going to be unlimited and then everybody else
17 gets two more or something like that.

18 CHAIRPERSON JORDAN: I can accept
19 that.

20 Who is going to be the
21 spokesperson for the group in opposition?
22 What is being suggested is that those special

1 questions should be submitted to the one
2 spokesperson to ask those questions. Who is
3 that going to be? You want five minutes to
4 talk about it?

5 MR. FORET: Will be still be
6 allowed or not to have a couple of questions
7 for each of us or not?

8 CHAIRPERSON JORDAN: No, you will
9 not.

10 MR. FORET: We'll combine them?

11 CHAIRPERSON JORDAN: You will
12 submit it to the person asking the questions.

13 Why don't you take five minutes
14 and decide who is going to move forward.

15 (Whereupon, at 1:15 p.m. off the
16 record until 1:18 p.m.)

17 CHAIRPERSON JORDAN: Okay. We're
18 back.

19 MR. FORET: Mr. Chair, through the
20 luck of the draw I'll be the one to question
21 witnesses, at least on cross-examination and
22 does that for the parties.

1 CHAIRPERSON JORDAN: Very good.

2 MR. FORET: I have one other very
3 brief preliminary matter. I have several
4 photographs that will be referenced in our
5 testimony or, at least, in Mari's testimony.

6 I have one notebook for myself
7 plus nine others and I was going to hand
8 members of the Board a notebook each and then
9 I have extras for Mr. Moy or whatever. I do
10 not have a total of 10 but there are color
11 copies I can submit after the hearing for any
12 additional sets of those photographs that are
13 necessary.

14 CHAIRPERSON JORDAN: Okay. We'll
15 stumble through and get to that point.

16 All right. So let's then move to
17 the Applicant. Let me find out where the
18 Board is in regards to things specifically
19 that they need to have addressed before we
20 proceed on to having any level of
21 presentation.

22 Does the Board have anything

1 specifically that we want this Applicant to
2 discuss? Okay.

3 One, I think in your presentation
4 if you'll discuss for us the issue with the
5 connection and the pool and the present
6 accessory pool structure and how that relief
7 is separate from this relief and why we should
8 not consider any discussion on it would be
9 helpful. The other thing is why -- I'm
10 looking at my notes here. And discuss with us
11 why you believe there is no impact on --
12 adverse impact on the views from the
13 neighbors.

14 Does the Board have anything else
15 they want to hear directly? Anything else?

16 MR. GURNEY: Nothing in particular
17 from the Applicant.

18 CHAIRPERSON JORDAN: Just if you
19 would address those things for us then.

20 Proceed.

21 MS. PRINCE: Good afternoon,
22 Chairman Jordan and members of the Board. I'm

1 Allison Prince with Goulston & Storrs and I'm
2 here today on behalf of the property owner.

3 Today's application involves an
4 extremely modest proposal to construct a 60-
5 square-foot glass link that connects the
6 basement level of the existing house to the
7 existing pool house.

8 During this hearing I ask you to
9 focus only on the connection and not
10 speculative matters that are not before this
11 Board. This case is only about the link. The
12 link itself is setback from the side lot line,
13 the northern property line, that is, 18 feet.
14 It is almost completely transparent. It is as
15 transparent as it can be yet still exist. It
16 is all glass with some metal supports.

17 This case is not about any current
18 or future plan to expand the existing pool
19 house. That pool house was constructed almost
20 a decade ago by a previous owner.

21 In fact, the owner has drafted a
22 covenant prohibiting any expansion of the pool

1 house and would be pleased to include the
2 recordation of that covenant as a condition to
3 any order issued by this Board. A reason for
4 doing that is to try to align my client's
5 interest with the owner's concerns.

6 CHAIRPERSON JORDAN: Excuse me.
7 You said there's a covenant that's already in
8 place on this land?

9 MS. PRINCE: No. We've drafted a
10 covenant. We've shared it with the parties.
11 It is a covenant that precludes any expansion
12 whatsoever to the pool house. Further, we
13 were asked by two of the parties to add
14 additional language constraining the pool
15 house to its current use and we are happy to
16 do that.

17 This case is also not about the
18 fully permitted matter of right additions to
19 the house that were constructed by the owner
20 once he purchased the house. Those additions
21 are all complete.

22 You will hear arguments that the

1 link if constructed will convert the house and
2 the pool house into a single structure and,
3 therefore, will facilitate the later ability
4 to expand or change the use of the pool house.
5 That is not a valid concern for two reasons.

6 The first reason is obvious. If
7 we are willing to place a covenant on the
8 property that 100 percent addresses those
9 issues and is for the benefit of all the
10 property owners within 200 feet, we wanted to
11 state it very broadly, it is simply a non-
12 issue.

13 In addition, the link itself it
14 below the main level of the house. For that
15 reason, it won't convert the house and the
16 pool house into a single structure. Under the
17 definition of building the existence of
18 communication between separate portions of a
19 structure below the main floor shall not be
20 construed as making the structure one
21 building. Any expansion would, therefore,
22 require BZA approval.

1 CHAIRPERSON JORDAN: What is the
2 citation on that?

3 MS. PRINCE: The definition of
4 building.

5 CHAIRPERSON JORDAN: Okay.

6 MS. PRINCE: In the Zoning
7 Regulations.

8 CHAIRPERSON JORDAN: Under 199?

9 MS. PRINCE: 199. Now, the Zoning
10 Administrator seems to have reached a
11 different conclusion. By citing us for rear
12 yard and side yard relief he, in essence, must
13 have concluded that the length would convert
14 this to a single structure.

15 We didn't challenge that because
16 we knew that if we had applied for a permit
17 for a link and secured it as a matter of
18 right, it was likely to be challenged by the
19 neighbors one way or the other. We have taken
20 the high road and asked this Board to review
21 the link and it is the link that is before
22 you.

1 Regarding the burden of proof in
2 Section 223, the architect is here to review
3 that in detail. But, as you know, the test
4 has an important two words in it; substantial
5 and undue. The first test is there is no
6 substantial --

7 CHAIRPERSON JORDAN: I think we
8 are clear in regards to what your argument is
9 in regards to why you qualified for the relief
10 unless I have some other difference from the
11 Board who want to hear more about it. Okay.
12 Go ahead.

13 MS. PRINCE: If that's the case,
14 then I can proceed with the testimony of Mr.
15 Balcer, the property owner, and then we'll
16 have brief testimony from the architect.

17 CHAIRPERSON JORDAN: All right.
18 Very good.

19 MR. BALCER: Good morning members
20 of the Board. My name is Yves Balcer and I'm
21 the owner of the house that is the subject of
22 this application. I purchased this house in

1 2004 and I've lived there with my wife and my
2 two children ever since except during some
3 period of renovation.

4 Over time I've made improvements
5 in the main house to make it more suitable for
6 me and my family. All these renovations were
7 made within the confine of what the Zoning
8 Regulations permits so BZA relief was never
9 required.

10 The most notable feature of the
11 house is the enclosed pool in the rear of the
12 property. The enclosure allows me and my
13 family to use the pool year around which is a
14 significant benefit for living there.

15 It is important to understand the
16 pool house was already constructed when I
17 bought the house. While I have enjoyed an
18 enclosed pool, I have not altered the pool
19 house since I bought the property.

20 I'm here today to request approval
21 of an insignificant addition that would allow
22 my family and me more comfortably pass between

1 the house and the pool house during the cold
2 months. It is that simple.

3 I asked my architect to design a
4 connection that would be as small and
5 unnoticeable as possible. His proposal more
6 than satisfied this request. I will let the
7 architect explain the particulars of the
8 connection and my goal is only to have a
9 simple enclosed passageway between the house
10 and the pool house and nothing more.

11 I understand that some neighbors
12 and the ANC are concerned that this connection
13 could lead to a future expansion of the pool
14 house. Let me assure you this is not my
15 intention. Other than the proposed connection
16 I am happy with the pool house as is. I have
17 no desire to expand the pool house in any
18 respect and I am willing to memorialize that
19 in a covenant of the property.

20 I intend this proposal to have no
21 noticeable affect on my neighbors. I think it
22 is clear that it will not but I am willing to

1 provide the additional assurance of a covenant
2 so there is no doubt in their mind. Thank you
3 very much for your time.

4 MR. GURNEY: Good afternoon. I'm
5 Robert Gurney. I'm the architect and I'm the
6 person who designed this link. Basically the
7 intent when we designed this link was to do
8 something that really required the absolute
9 minimal square footage that would be required
10 to sort of make this passage between the two
11 buildings.

12 The link is five-feet wide.
13 Approximately it's 12 feet 7 inches long and
14 it's 18 feet from the property line. The
15 walls and the roof are glass. There are
16 basically only two supporting beams that sort
17 of connect the two buildings and hold the
18 glass in place.

19 The building requires no footings,
20 no foundations. There is no electrical.
21 There is no heating. There's no cooling.
22 From an architectural standpoint it's as

1 minimal and as least intrusive as it can
2 possibly be.

3 CHAIRPERSON JORDAN: Do you need
4 the hand microphone?

5 MR. GURNEY: Thank you. We've
6 done a couple of drawings. We've also done
7 some collages which might be sort of helpful
8 as a means of sort of conveying actually just
9 how sort of small our addition is.

10 These are some collages of the
11 overall project. You can barely see the link.
12 You can get a sense of its relative size to
13 the overall pool house and main house.

14 In terms of the addition itself,
15 we have some images and renderings of the pool
16 house and the house as it currently exist and
17 then what it would look like with the
18 connection.

19 Again, you can see from these
20 renderings that the link is minimal. It's not
21 intrusive and it's transparent. I don't see
22 how it blocks any view or any light into any

1 neighboring properties, especially since the
2 closest neighboring property is over 18 feet
3 away. Thank you.

4 CHAIRPERSON JORDAN: Let me see if
5 the Board has any questions so far on what has
6 been submitted.

7 Please continue.

8 Yes, Ms. Sorg.

9 VICE CHAIRMAN SORG: I want to go
10 back to your argument earlier on sort of
11 taking the high road with the ZA's response.
12 It just seems an odd thing to, on the one
13 hand, to indicate that one should only
14 consider the connection and then, on the other
15 hand, the relief of the rear yard from 25 feet
16 to two feet and the side yard from eight feet
17 to two feet. It's clearly for the placement
18 of the pool house.

19 MS. PRINCE: The pool house is
20 already there.

21 VICE CHAIRMAN SORG: Right. I
22 understand that.

1 MS. PRINCE: So this is just one
2 of those situations where because of the
3 Zoning Administrator's determination that the
4 link creates a single building, it pulls the
5 property into the Board's jurisdiction but I
6 don't know that you can really review the pool
7 house when the pool house is already there and
8 isn't going anywhere.

9 It's the link that creates the
10 non-conformity. Therefore, it's the link that
11 gets reviewed. That is what is before this
12 Board. Were you not to approve this
13 application, the pool house would stay there.

14 VICE CHAIRMAN SORG: Okay. That's
15 a fair answer. Thanks.

16 CHAIRPERSON JORDAN: Any other
17 questions from the Board?

18 Ms. Prince, is there anything else
19 you want to --

20 MS. PRINCE: That completes our
21 presentation.

22 MEMBER ALLEN: Ms. Prince, when

1 you talked about the covenant had you
2 discussed that with the neighbors or not? Is
3 this a new proposition or was that actually
4 presented to them prior to this?

5 MS. PRINCE: It was brought up in
6 concept at the Advisory Neighborhood
7 Commission meeting. I guess there wasn't
8 enough traction or interest in it to go
9 anywhere. Once I got involved in the case I
10 thought, "Well, let's try to align interest
11 here."

12 I'm hearing continuously this
13 concern about expansion of the pool house and
14 that is literally not something my client
15 wants to do so we drafted the covenant and I
16 shared it with some of the parties here today
17 and got some comments back on it.

18 We had a lot of time this morning
19 with the other cases and that is when I heard
20 back that they wanted a restriction on the use
21 as well. No problem. We are happy to
22 accommodate the parties in that way and I had

1 hoped that would address their concerns.

2 CHAIRPERSON JORDAN: Anybody else
3 from the Board have questions for the
4 Applicant?

5 Then I'm going to ask, Mr. Foret,
6 do you have questions you would like --

7 ZC COMMISSIONER MAY: Mr.
8 Chairman, I'm sorry. I do have one question.

9 CHAIRPERSON JORDAN: Yes.

10 ZC COMMISSIONER MAY: In your
11 logic if this is not -- if this connection
12 does not make it part of the main house, it
13 remains an accessory structure. How is it
14 that an accessory structure didn't have to
15 comply with the side yard requirement?

16 MS. PRINCE: The accessory
17 structures don't need to comply with the side
18 yard requirement. They are not --

19 ZC COMMISSIONER MAY: Where is
20 that stated?

21 MS. PRINCE: In the Zoning
22 Regulations.

1 ZC COMMISSIONER MAY: I know but
2 where? I've been looking for the reference to
3 it.

4 MS. PRINCE: That is always a
5 point of contention. Quite often you see
6 garages built right on a side lot line.

7 ZC COMMISSIONER MAY: Right. I'm
8 familiar with a lot of different circumstances
9 but I just --

10 CHAIRPERSON JORDAN: What was the
11 citation to that?

12 ZC COMMISSIONER MAY: I'm looking
13 for it.

14 MS. PRINCE: I'm looking for it
15 now.

16 ZC COMMISSIONER MAY: If anybody
17 knows -- OAG is looking for it, too. I tried
18 to look myself because I wanted to understand
19 exactly what the language said there and I
20 couldn't find it, but I didn't look very hard.
21 I'm trying to listen too, you know.

22 MS. PRINCE: It simply states that

1 an accessory structure can be located in a
2 rear yard.

3 ZC COMMISSIONER MAY: In a rear
4 yard but it doesn't say anything about side
5 yard.

6 MS. PRINCE: No. This is located
7 in the rear yard.

8 ZC COMMISSIONER MAY: Right. But
9 it isn't a side yard because the side yard
10 goes from front to back. Doesn't it? From
11 the front of the property to the back of the
12 property?

13 MS. PRINCE: No. The side yard
14 ends when the rear yard begins. The rear yard
15 begins at the rear of the house.

16 ZC COMMISSIONER MAY: At the rear
17 wall.

18 MS. PRINCE: The rear yard wall to
19 the rear lot.

20 ZC COMMISSIONER MAY: There is no
21 side yard requirement when it's an accessory
22 structure.

1 MS. PRINCE: In the rear yard. It
2 can be located --

3 ZC COMMISSIONER MAY: That's when
4 it gets --

5 MS. PRINCE: -- anywhere in the
6 rear yard.

7 ZC COMMISSIONER MAY: That's where
8 it gets very muddy. Okay.

9 CHAIRPERSON JORDAN: That might be
10 something to rewrite because we want to define
11 what is a rear yard. That has been a point of
12 contention in a lot of cases.

13 MS. PRINCE: What is a rear yard?

14 CHAIRPERSON JORDAN: It is
15 something that -- I'm talking about what needs
16 to be possibly added to the ZRR because the
17 rear yard has been such a moving target.

18 MS. PRINCE: The rear yard is from
19 the rear of the structure 25 feet back, the
20 required rear yard.

21 CHAIRPERSON JORDAN: I understand
22 that.

1 ZC COMMISSIONER MAY: We
2 understand that.

3 CHAIRPERSON JORDAN: We understand
4 that.

5 ZC COMMISSIONER MAY: He's talking
6 to me about the Zoning Regulation rewrite.

7 CHAIRPERSON JORDAN: Everybody
8 doesn't have that same understanding and it's
9 been changing as even a case we had this
10 morning and especially those which are bound
11 by different aspects. We've had a couple
12 Court of Appeals cases and so it's -- anyway,
13 we'll get to it. We'll get to it.

14 Any other questions for the
15 Applicant from the Board?

16 Then let's turn to Mr. Foret. Mr.
17 Foret, would you please -- you have the
18 opportunity to ask questions of the Applicant.

19 MR. FORET: Thank you, Mr. Chair.
20 Before I ask any questions, may I just follow
21 up on the question that Commissioner Allen
22 asked?

1 CHAIRPERSON JORDAN: No. You're
2 on cross-examination.

3 MR. FORET: Okay. Thank you.

4 Mr. Balcer --

5 CHAIRPERSON JORDAN: In your
6 presentation you can do that.

7 MR. FORET: Mr. Balcer, how are
8 you this afternoon? The construction that you
9 mentioned went on at your house started in the
10 spring of 2009. Is that correct?

11 MR. BALCER: I don't remember
12 exactly but that sounds reasonable.

13 MR. FORET: Okay. I mean, I
14 actually have a letter from your contractor
15 saying it started in April/May so you'll
16 accept that, right?

17 MR. BALCER: Yes.

18 MR. FORET: Thank you. Then the
19 construction that went on before you were only
20 able to move back into your house in December,
21 this past December, 2012. Correct?

22 MR. BALCER: No. I moved January

1 -- in December and January 2011/2012. I've
2 been in the house a year-and-a-half.

3 MR. FORET: And the construction
4 just went on until this past December? At
5 least some of the cleanup.

6 MR. BALCER: There was some
7 cleanup to be done. Correct.

8 MR. FORET: Then in terms of the
9 application that we're here for today, the
10 application was filed on February 8th. I
11 don't expect you to remember the exact date
12 but if the Board record indicates it was filed
13 in February you'll accept that. Correct?

14 MR. BALCER: (No audible
15 response.)

16 MR. FORET: You didn't come to any
17 of the neighbors or, at least, to us until
18 approximately a month later to discuss it. Is
19 that right?

20 MR. BALCER: That's probably
21 correct.

22 MR. FORET: As far as the

1 application itself and the wording of the
2 application, I assume that you relied on Mr.
3 Gurney to draft that and for the wording of
4 that. Is that correct?

5 MR. BALCER: Correct.

6 MR. FORET: You're not familiar
7 with the wording of the application itself.

8 MR. BALCER: That's correct.

9 MR. FORET: That's all the
10 questions I have of Mr. Balcer.

11 I do have some questions of Mr.
12 Gurney. In order to ask those questions, I
13 need to provide some photographs as I
14 mentioned before.

15 CHAIRPERSON JORDAN: Okay. Make
16 sure the Board has a set. Give it to Mr. Moy,
17 please. Thank you.

18 MR. FORET: In the notebook I just
19 passed out are 10 tabbed exhibits and then
20 there's some additional photographs on the
21 inside pocket. I'm not going to be asking, I
22 don't think, Mr. Gurney, any questions of you

1 regarding the photographs on the inside
2 pocket, but I actually do have in here the
3 original application and then it was made
4 aware to me by the Office of Planning that a
5 revised application had been filed. Let me
6 first just ask you a couple of questions about
7 the initial application. Okay? That is under
8 Tab 9.

9 CHAIRPERSON JORDAN: The initial
10 application has been revised?

11 MR. FORET: My understanding is
12 that a revision was -- it was provided to me
13 very nicely by the Office of Planning. I
14 don't know if it was filed with the Board or
15 not.

16 CHAIRPERSON JORDAN: Let's find
17 out where we are on that, if the revised plan
18 was filed.

19 MS. MAILHOT: Yes, it was revised
20 and submitted to the BZA, the revised
21 statement. The reason for that was to address
22 the ANC.

1 VICE CHAIRMAN SORG: But the plans
2 never changed?

3 MS. MAILHOT: Oh, the plans were
4 revised slightly to add a slight plan and just
5 clarify the drawings.

6 VICE CHAIRMAN SORG: The
7 architecture plan had not changed. I know you
8 submitted the drawings and perspectives and so
9 forth.

10 MS. MAILHOT: Right. So, no, the
11 design has not changed.

12 CHAIRPERSON JORDAN: That's our
13 Exhibit 28.

14 MS. MAILHOT: Exhibit 28?

15 CHAIRPERSON JORDAN: I'm trying to
16 make sure the date of this particular -- it
17 was filed April 17th. Would that be correct?

18 MS. MAILHOT: Right. The revised.

19 CHAIRPERSON JORDAN: So that's
20 what we're working with, Mr. Foret.

21 MR. FORET: Mr. Chair, the only
22 reason I asked the Chair for some leniency on

1 my questions there is an issue I would like to
2 address with Mr. Gurney that goes directly to
3 the initial application. I will only ask
4 several questions.

5 CHAIRPERSON JORDAN: Is that still
6 the same issue on the revised plan?

7 MR. FORET: Yes, it is still the
8 same issue.

9 CHAIRPERSON JORDAN: Okay. I'm
10 sorry.

11 MR. FORET: Mr. Gurney, in the
12 initial application -- do you have that in
13 front of you? It's also, as I said, under Tab
14 10. Excuse me, Tab 9. The second page under
15 Tab 9 is specifically what I'm addressing.

16 In the application this is the
17 initial application, or part of the initial
18 application. Correct?

19 MS. MAILHOT: Yes.

20 MR. FORET: Under the section
21 entitled Light and Air, there is a statement
22 about three-quarters of the way down. The

1 sentence reads as follows, "The neighbor to
2 the left..." That would be my house, 5069.
3 Correct? We can agree on that?

4 MS. MAILHOT: Yes.

5 MR. FORET: Okay. I'll ask the
6 questions to whomever you all tell me to ask
7 them to.

8 CHAIRPERSON JORDAN: Just ask them
9 in general to the Applicant and let them
10 decide who's responding.

11 MR. FORET: Okay. Anyway, it
12 says, "The neighbor to the left is exposed to
13 the addition." This would be to the passage.
14 Correct?

15 MS. MAILHOT: Correct.

16 MR. FORET: But there are no
17 windows on the neighbor's house that look
18 directly out to the addition. Now, that's not
19 correct. Correct?

20 MS. MAILHOT: I can clarify
21 exactly but I'll wait until I am allowed to do
22 that.

1 CHAIRPERSON JORDAN: Go ahead.

2 MS. MAILHOT: Okay. When I wrote
3 that statement I have two photographs here
4 that I submitted with the revised application.
5 What I meant when I said directly looking out,
6 what I meant by that was the white-sided
7 volume in this photograph that doesn't have
8 any windows. That's the only thing I meant
9 about not looking directly out onto the
10 addition.

11 MR. FORET: Obviously we covered
12 this at the ANC meeting so --

13 MS. MAILHOT: And I clarified.
14 Basically --

15 MR. FORET: You know the issue I
16 have.

17 CHAIRPERSON JORDAN: Wait, wait,
18 wait. We're going to have a question asked
19 and we are going to have a response. We are
20 going to have a question asked and we're going
21 to have a response but we are not going to
22 have questions and answers like that. Let's

1 try again. Your question.

2 MR. FORET: My question is that
3 the statement as written in your initial
4 application that there are no windows from my
5 house that look out onto where this proposed
6 passage goes is not correct.

7 MS. MAILHOT: Actually --

8 MR. FORET: Do you agree with that
9 or not?

10 MS. MAILHOT: Well, I clarified in
11 that what exactly I meant. I actually wrote
12 later on that you can get a glimpse of the
13 addition from the side windows or the front.

14 I went on but then I realized at
15 the ANC meeting that Mr. Palmer took that as
16 I was saying you couldn't see the addition at
17 all and that's not what I meant at all, nor
18 did I write that. What I did in the revised
19 application I attached these two photographs
20 of what I meant.

21 I just meant the white-sided
22 volume specifically that is directly across

1 from the addition does not have any windows
2 and that is exactly what I meant. I'm sorry
3 if you took it any other way but that's what
4 I meant. I just want that to be on the
5 record.

6 MR. FORET: Now, in answer to my
7 question, though, when you said there were no
8 windows, that wasn't exactly correct.
9 Correct?

10 CHAIRPERSON JORDAN: It's been
11 asked and answered. Next question.

12 MR. FORET: All right. Then would
13 you take a look at Exhibits 1 and 2 in the
14 notebook that I gave you. These were
15 photographs that I did present to the ANC so
16 you may or may not have seen those before.
17 Just tell me when you've had a chance to look
18 at Exhibits 1 and 2 and then I'll ask my
19 question.

20 My question is that if the
21 testimony in this case establishes that, in
22 fact, these exhibits, the four pictures in

1 Exhibits 1 and 2 are, in fact, views from my
2 house out of four different windows, then
3 would you agree with me that clearly you can
4 see where the proposed passage is suppose to
5 go from windows in my house?

6 CHAIRPERSON JORDAN: Wait, wait,
7 wait. Let's go back a second. You're asking
8 again the question you just asked before that
9 I said has been asked and answered?

10 MR. FORET: No, I'm not, Mr.
11 Chair. The question I'm asking now deals with
12 the view from my house and that's how I would
13 differentiate it.

14 CHAIRPERSON JORDAN: Okay. You
15 can answer it, please.

16 MR. GURNEY: Yeah, I would agree
17 that from your windows you can see this. We
18 did not have access into the inside of your
19 house.

20 MR. FORET: Okay. And then as far
21 as the windows from outside of the house, you
22 just made a reference to -- well, let me start

1 my question over again. The revised
2 application says, and I quote -- do you have
3 the revised application? That's in Tab 11 of
4 the notebook.

5 MS. MAILHOT: The revised
6 statement?

7 MR. FORET: The revised statement.

8 CHAIRPERSON JORDAN: There's no 11
9 in our notebook.

10 MR. FORET: Did I say 11?

11 CHAIRPERSON JORDAN: Yes, you did.

12 MR. FORET: I sometimes have a
13 tendency to misspeak. It's Tab 10. I'm
14 sorry.

15 CHAIRPERSON JORDAN: Now, what's
16 your question about that again?

17 MR. FORET: My question about the
18 revised application is that in the revised
19 application you say as follows. This is,
20 again, under Light and Air about three-
21 quarters of the way down.

22 The sentence reads, "The

1 neighbor's volume with white siding looking
2 directly at the glass addition does not have
3 any windows." And you say, "See attached
4 image." Now, all you are addressing in that
5 is that white siding that you referenced or
6 referred to before in that picture. Correct?

7 MS. MAILHOT: That's correct.

8 MR. FORET: All right. Now, if
9 you look at Tab 8 in the notebook, that is a
10 photograph of two windows on the side of my
11 house that faces, or if you look out you would
12 see where this proposed passage is going to be
13 built. You would agree with me that certainly
14 those are two windows that do look out on this
15 area of the proposed passage among other
16 things. Correct?

17 MR. GURNEY: They are actually
18 beyond where -- they actually are beyond where
19 the existing house ends and the link starts.
20 Basically I'm not so sure and, again, from
21 these windows looking directly out you would
22 be able to see the addition -- proposed

1 addition.

2 MR. FORET: If the pictures that
3 are marked as Exhibits 1 and 2, at least some
4 of those pictures are taken from those
5 windows, you would certainly agree with me,
6 Mr. Gurney, that you can see where the
7 proposed passage is from windows in my home.
8 Correct?

9 CHAIRPERSON JORDAN: Just so we
10 stop going through all this, the pictures that
11 are in Exhibits 1 and 2 were taken from the
12 windows that are contained in 8. Is that what
13 you're saying?

14 MR. FORET: Two of the pictures.
15 The picture in Exhibit 1, view from the family
16 room is taken from the lower window.

17 CHAIRPERSON JORDAN: I think the
18 better question would be he has no reason to
19 doubt that is what these are because he said
20 he did not have access to inside your house to
21 look out.

22 MR. FORET: That would be correct,

1 Mr. Gurney, you would have no reason to
2 disagree with the views from inside my house
3 looking out of these windows onto where the
4 proposed passage is to be built. Correct?

5 MR. GURNEY: No. These pictures
6 were taken from inside your house.

7 MR. FORET: They show what they
8 show.

9 MR. GURNEY: Correct. I'm not
10 disputing that.

11 CHAIRPERSON JORDAN: We understand
12 where we are.

13 MS. PRINCE: Chairman Jordan, I
14 would appreciate some reasonable limits on
15 cross-examination. There is no standard of
16 invisibility for an addition and we've never
17 asserted that the addition will be invisible.

18 MR. FORET: I have no other
19 questions.

20 CHAIRPERSON JORDAN: I'm trying to
21 monitor allowing some fairness and I'm trying
22 to do that. I think I've stepped in a couple

1 of times. I know my job and I'll handle it.

2 You got any other questions?

3 MR. FORET: I have no other
4 questions.

5 CHAIRPERSON JORDAN: Board, any
6 other questions after what we've already been
7 through?

8 All right. Let's then turn to the
9 Office of Planning.

10 MS. ELLIOTT: Good afternoon, Mr.
11 Chairman, members of the Board. For the
12 record, I'm Brandice Elliott representing the
13 Office of Planning. The application that was
14 considered with this request was the proposed
15 construction of the glass enclosure.

16 The relief sought is actually --
17 I'm sorry. Hang on just a second here. The
18 relief is actually required for the pool house
19 which is existing in the rear and side
20 setback. The proposed glass enclosure does
21 comply with all development requirements.

22 It does not sit in the side/rear

1 setbacks and complies with lot occupancy
2 requirements. Frankly, no changes have been
3 proposed to the pool house. As a result, and
4 for the reasons provided in OP's report, we
5 are recommending support of this application.

6 I believe that the applicant has
7 addressed some of the concerns of the
8 neighbors by offering to provide a covenant so
9 we are in support of that as well. If you
10 have any questions, I would be happy to answer
11 them.

12 CHAIRPERSON JORDAN: Your report
13 kind of -- I thought I was in flow and then I
14 read something that said that there are some
15 issues but you never made an opinion yourself
16 for an OP evaluation.

17 For instance, you have in your
18 report it says, "The neighbors are expected to
19 describe how they would have substantial
20 adverse impact on use and enjoyment," but you
21 didn't say whether or not you found that there
22 was some adverse impact or have the enjoyment

1 of the neighbors affected by this connection.
2 That was one of my questions I need to have
3 addressed.

4 MS. ELLIOTT: We met with Mr.
5 Foret the day that the report -- I'm sorry,
6 the day prior to the report filing so we were
7 made aware of his concerns at that time.

8 However, we were not convinced of
9 an adverse impact to the property. Therefore,
10 our recommendation remains approval because we
11 did not feel that there was impact other than
12 slight visibility.

13 CHAIRPERSON JORDAN: Did you go
14 out to the property?

15 MS. ELLIOTT: Yes.

16 CHAIRPERSON JORDAN: And did you
17 try to -- you did a walk-around assessment
18 yourself?

19 MS. ELLIOTT: Well, when we do go
20 to the property we only have -- we assess the
21 neighborhood from public streets, public ways,
22 alleys which there aren't in this case. As

1 far as we could tell from the street the
2 neighborhood would not be impacted
3 detrimentally.

4 CHAIRPERSON JORDAN: Okay. Maybe
5 I missed that in the report but I didn't hear
6 that as definitive as you just said it here.

7 Board, any other questions for OP?
8 Ms. Sorg.

9 VICE CHAIRMAN SORG: Thank you.
10 I'm curious what your thoughts are
11 on Ms. Prince's contention that the connection
12 is coming from the lower level of the main
13 house and, therefore, doesn't actually
14 constitute the combination of the two
15 structures.

16 MS. ELLIOTT: In regard to this
17 application, I believe that an interpretation
18 has been made by the Zoning Administrator
19 concerning the relief needed. I think if I
20 were to address that, I may be contrary to
21 that but --

22 CHAIRPERSON JORDAN: We need to

1 hear what you have to say.

2 VICE CHAIRMAN SORG: It's kind of
3 new to me that OP is unwilling to state their
4 own opinions. This is the second time this
5 happened. I'm curious about why. Is it a
6 policy thing that OP cannot disagree with the
7 Zoning Administrator? It's just surprising to
8 me because over the last several years -- it's
9 interesting.

10 CHAIRPERSON JORDAN: And I see
11 your face grimaces in not wanting to respond
12 to that but --

13 VICE CHAIRMAN SORG: Your
14 implication is that you would, in fact, as a
15 trained Zoning Specialist with degrees and
16 work experience, you yourself --

17 CHAIRPERSON JORDAN: That's
18 interesting.

19 VICE CHAIRMAN SORG: -- may be in
20 disagreement. It would be interesting for the
21 rest of you all to figure this out.

22 CHAIRPERSON JORDAN: It gets to a

1 lot of issues of conflict, the central
2 conflict, but we need to know what your
3 thoughts are and the direct question being
4 asked I believe is fair. Do you want to
5 respond to the question or are you saying you
6 don't want to respond to the question? Then
7 we can move on.

8 MS. ELLIOTT: I'm looking over the
9 definition right now. Just a moment. I
10 believe the argument made by the Applicant is
11 a reasonable one.

12 CHAIRPERSON JORDAN: Okay.
13 Gotcha. So your response is that you believe
14 the Applicant is correct. Am I correct? Is
15 that what your response was?

16 MS. ELLIOTT: Yes.

17 CHAIRPERSON JORDAN: Okay. Just
18 say what you think. I hope we don't have to
19 get down to the point where sometimes when we
20 go to council hearings members of the
21 Government have to get sworn in and make their
22 statements. Everybody else does it.

1 Any other questions for Office of
2 Planning?

3 Thank you, Ms. Sorg, on your last
4 day. I tell you this day has been kind of
5 mushrooming out here.

6 Any other questions?

7 MEMBER HINKLE: Yes. Thank you,
8 Mr. Chair. One of the criteria we need to
9 judge the special exception against is really
10 addition or accessory structures shall not
11 have a substantially adverse effect on the use
12 or enjoyment of any abutting or adjacent
13 dwelling or property.

14 You had mentioned that you spoke
15 with Mr. Foret and yet you make your analysis
16 from the public space. I'm just curious if
17 you spoke to some of the other neighbors as
18 well and got their input before doing your
19 analysis.

20 MS. ELLIOTT: I did not have any
21 conversations with other adjacent neighbors
22 but the analysis isn't strictly from the

1 right-of-way. Another thing that we look at
2 is to see where the enclosure is actually
3 located.

4 It is 18 feet from the side
5 property line in buildable area. If the pool
6 house was not located in the rear and side
7 setback, if it was, in fact, in buildable
8 area, this particular addition would be
9 allowed by right.

10 It's just the matter of the
11 location of the pool house. In that regard
12 and the fact that the enclosure is actually
13 transparent, we feel that it is not
14 prohibiting the neighbor from enjoying their
15 property.

16 CHAIRPERSON JORDAN: Okay. Board,
17 any other questions?

18 Mr. Hinkle, any follow up?

19 MEMBER HINKLE: No.

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

1 MS. PRINCE: No questions.

2 CHAIRPERSON JORDAN: Mr. Foret?

3 MR. FORET: Thank you, Mr.

4 Chairman.

5 Ms. Elliott, the analysis that the
6 Office of Planning went through was
7 predominately what the effect would be -- I
8 don't know if you referred to it as the common
9 area or street area or whatever, but that's
10 what I understood when we met that you were
11 looking at this at least primarily from that
12 point of view. Is that right?

13 MS. ELLIOTT: Correct.

14 MR. FORET: Okay. And then do you
15 know whether or not it's unusual to consider
16 rear and side yard relief for a structure such
17 as this, the passageway that is not actually
18 located in the rear and side yard where the
19 relief is being sought? Do you understand my
20 question?

21 CHAIRPERSON JORDAN: Could you
22 rephrase that, please, because you lost me.

1 MR. FORET: I think I lost myself,
2 too.

3 Do you know whether or not it's
4 unusual to consider such as in this case
5 whether an applicant should receive rear and
6 side yard relief when the proposed structure
7 is not in the rear and side yard?

8 MS. ELLIOTT: To be honest, we
9 don't receive too many of these cases and in
10 this instance we had a certified letter from
11 the Zoning Administrator identifying what the
12 specific relief was so I couldn't actually get
13 into too much detail about what other
14 precedent there might be.

15 MR. FORET: Let me just ask a
16 couple questions about your report. On the
17 first page of your report you say the full
18 house was issued a building permit in 2010 but
19 that was not for the pool house. That was
20 issued awhile ago.

21 MS. ELLIOTT: Correct. I was
22 misinformed. The Applicant actually has

1 issued a letter to us indicating that it was
2 constructed prior to his purchase of the home.

3 MR. FORET: All right. Also, on
4 the first page of your report under adjacent
5 properties, I'm summarizing but adjacent
6 properties are similar and similarly
7 developed. Right?

8 MS. ELLIOTT: Correct.

9 MR. FORET: In this neighborhood,
10 though, to your knowledge there are no other
11 properties that would have the structure that
12 we're talking about here today connecting a
13 main house to a pool house. Correct?

14 MS. ELLIOTT: Off hand I cannot
15 think of properties in this neighborhood that
16 I did not do an analysis of each lot by lot.

17 MR. FORET: And would that also
18 include to your knowledge there would be no
19 other properties in this neighborhood that
20 even have a pool house. Right?

21 MS. ELLIOTT: I actually can't
22 confirm that because there are other detached

1 structures in this property -- I'm sorry, in
2 this neighborhood.

3 MR. FORET: All right. You don't
4 know what they are used for. Right?

5 CHAIRPERSON JORDAN: Does that
6 include any other accessory structure like
7 garages?

8 MR. FORET: I guess my question
9 was actually limited to whether or not there's
10 any other -- whether or not Ms. Elliott is
11 aware that there are any other accessory
12 structures that are used as a pool house.

13 CHAIRPERSON JORDAN: Are there any
14 other pool houses is what he's asking, that
15 you know of.

16 MS. ELLIOTT: I can't confirm that
17 because we do an analysis by aerals and I
18 know there are other detached structures but
19 I don't know what the use of those structures
20 are.

21 CHAIRPERSON JORDAN: Other
22 accessory structures and detached structures.

1 Okay. Gotcha.

2 Next question.

3 MR. FORET: In the map attached to
4 your report which shows where the subject site
5 is and then it obviously has some of the
6 neighborhood but the question I'm asking now
7 is just limited to the houses on Overlook Road
8 and Rockwood Parkway that are in this, I'll
9 call it, rectangular area that's on the map.
10 You're not aware that any of those homes have
11 an accessory building at all. Are you?

12 MS. ELLIOTT: According to our
13 aerial map, no, there are no accessory
14 structures on that block.

15 MR. FORET: Thank you.

16 CHAIRPERSON JORDAN: I want to be
17 sure as a pulse check that the other persons
18 are giving Mr. Foret the questions to ask. I
19 see your head nodding up and down meaning yes.
20 Okay.

21 MR. FORET: I think they are.

22 Starting at the bottom of page 2

1 of your report and going onto the top of page
2 3, let me just read what I'm talking about.
3 You start off by saying the addition will not
4 be significantly visible from the street but
5 then you say as follows, "It would be visible
6 by the neighbor located north of the subject
7 property." That's us, right? Just so we're
8 clear on the direction.

9 MS. ELLIOTT: Right.

10 MR. FORET: And you say, "While
11 there are no windows along the south building
12 elevation," let me just deal with that. Are
13 you addressing the south side of my house?

14 MS. ELLIOTT: Correct. Based on
15 the information that I had from the Applicant
16 there were no windows but you did present the
17 one photograph previously showing that you did
18 have a window along the south building
19 elevation.

20 MR. FORET: Actually, two windows.
21 All right. So could we agree that would be --
22 we agree on that change to your report then,

1 in fact, there are windows along the south
2 building elevation?

3 MS. ELLIOTT: Yes.

4 MR. FORET: Okay. Thank you. And
5 you were asked this about your statement about
6 the neighbor expected to describe how it would
7 have a substantial adverse impact. That would
8 be us you're referring to. Correct?

9 MS. ELLIOTT: Correct. You
10 indicated at our meeting that you would be
11 presenting an opposition to this request.

12 MR. FORET: Okay. Which evidently
13 I'm doing today. Right? Okay.

14 And then going on on page 3 of
15 your report under the privacy of use and
16 enjoyment of the neighboring properties and
17 then the last sentence of that again you're
18 referring to our property located north.
19 Correct? Right?

20 MS. ELLIOTT: Correct.

21 MR. FORET: And it sits -- you
22 said it sits -- "The property located north of

1 the subject property sits at a lower elevation
2 which along with the mature landscape would
3 somewhat obscure the proposed addition." I
4 mean --

5 Can I provide the photographs to
6 Ms. Elliott? A set.

7 CHAIRPERSON JORDAN: Yes, please.
8 Go ahead.

9 MR. FORET: And if you look at the
10 pictures in Tab 1 and representing to you that
11 they are taken from the inside of my house
12 certainly they do show where the proposed
13 passage is going to go. Correct?

14 MS. ELLIOTT: Correct.

15 MR. FORET: And do the pictures in
16 Exhibit 2. Correct?

17 MS. ELLIOTT: Correct.

18 MR. FORET: So could we agree that
19 with that additional information in evidence
20 that you now have that certainly we do have a
21 very clear view of the proposed structure?

22 MS. ELLIOTT: You would have a

1 view of the structure, yes.

2 MR. FORET: Was the revised
3 application which you refer to in your report
4 done at your request?

5 MS. ELLIOTT: The Applicant
6 indicated that we had made that error and
7 rather than make a verbal correction at the
8 hearing, they did prefer that we provide a
9 memorandum.

10 MR. FORET: I'm sorry but the
11 revised application obviously was done by the
12 Applicant, or on behalf of the Applicant.
13 Correct?

14 MS. ELLIOTT: Correct.

15 MR. FORET: My question is did you
16 ask them to do that revision?

17 MS. ELLIOTT: I'm sorry. No. I
18 apologize. I was thinking of something else.
19 No, the Applicant does have the option of
20 providing a prehearing statement, a corrected
21 prehearing statement, addressing issues that
22 have come up during our time of review.

1 MR. FORET: At the time we met
2 they hadn't done that revised application yet.
3 Correct? Or at least you weren't aware of it.
4 Whether they had done it or not hadn't been
5 made available to you.

6 MS. ELLIOTT: I was not aware of
7 it.

8 MR. FORET: Thank you. I have no
9 other questions.

10 CHAIRPERSON JORDAN: Where are we?
11 Department of Transportation. Anyone here
12 from the Department of Transportation? I
13 guess not.

14 Do we have a letter from DOT in
15 our file? There are no objections to this
16 particular relief.

17 Is there anyone here from ANC-3D?

18 COMMISSIONER WELLS: Yes.

19 CHAIRPERSON JORDAN: Please come
20 forward. Please identify yourself first.

21 COMMISSIONER WELLS: I have
22 completed a witness card.

1 CHAIRPERSON JORDAN: Thank you.

2 You did. Did you also get sworn?

3 COMMISSIONER WELLS: Yes. Should

4 I stand?

5 CHAIRPERSON JORDAN: Did you or --

6 COMMISSIONER WELLS: I have not
7 been sworn.

8 CHAIRPERSON JORDAN: Mr. Moy.

9 (Whereupon, the witness was
10 sworn.)

11 CHAIRPERSON JORDAN: Are you
12 Commissioner Wells?

13 COMMISSIONER WELLS: Yes, I am.
14 Let me start first by that. I also am glad
15 that the Applicant has left up the drawings
16 from the architect because I was going to pass
17 out to everyone copies. They presented these
18 boards at the ANC meeting and I think it's
19 very important for people and I may use them
20 as an illustration in a moment. I also have
21 copies of it for each of the members.

22 I am also bringing to submit a

1 copy of a statement for the BZA from Anne and
2 Lloyd Hand who are the neighbors that are
3 catty-cornered across from Mr. Balcer. They
4 have withdrawn their support for what he
5 intends to do and they are now opposing this
6 application.

7 I similarly had -- I have a copy
8 for you, as well I have 10 for the -- we had
9 a copy which we submitted to the Applicant of
10 support that had been withdrawn by Mimi
11 Dorment and I believe that's been taken out of
12 their package as well. This is part of their
13 package.

14 Each of these people have said
15 that they felt they did not know enough and it
16 was not explained to them in a way where they
17 understood some of the implications.

18 My name is Nan Wells. By the way,
19 my testimony says I tell you good morning.
20 Good afternoon members of the Board. You're
21 wonderful. Thank you for the opportunity to
22 address the Board.

1 I am the Commissioner for ANC-3D-
2 03. The application for a special exception
3 before you today is for a property in my
4 Single Member District that I was elected to
5 represent. The area includes neighborhoods in
6 Spring Valley and Kent part of D.C.

7 Mr. Balcer's property is located
8 in an R-1-A residential zone at 5063 Overlook.
9 The application was reviewed by the 10-member
10 D.C. ANC-3D at our public meeting on April
11 3rd.

12 At that meeting the members of the
13 Commission voted unanimously 10 to zero to
14 oppose the application for a special exception
15 pursuant to 223.1 to permit an addition that
16 will connect the main structure, which the
17 main structure is currently a detached single-
18 family dwelling, to an accessory structure, a
19 one-story detached pool house.

20 I was authorized by a separate
21 vote of the ANC to represent the Commission
22 and the community before your Board. I have

1 been very pleased to hear that the ANC is to
2 be given great weight. We don't always hear
3 that when we go before agencies and other
4 boards.

5 Currently the accessory building
6 is not in compliance with the required minimum
7 rear yard setback from 404.1 and not in
8 compliance with the minimum side-yard setback
9 from 405.9.

10 The application seeks approval of
11 a special exception for relief from the eight-
12 foot setback side yard and the 25-foot rear
13 yard requirement. The adjoining neighbors
14 have raised objections to the project.

15 Mr. Balcer is seeking 75 percent
16 relief on the sides and 92 percent relief on
17 the rear. Mr. Balcer's accessory building
18 appears to be the only such building at the
19 time on Overlook Road. I did use the Office
20 of Zoning's, I believe, maps to determine
21 that.

22 After reviewing the application

1 ANC believed that the addition will have a
2 significantly adverse affect on the light and
3 air and the privacy of the adjacent buildings.
4 That is a very important issue.

5 Consequently, the ANC believes the
6 application has not met the criteria in
7 Section 223 of the D.C. Zoning Regulations and
8 we, therefore, recommend that members of the
9 BZA not approve this application.

10 The surrounding neighbors attended
11 the April 3 meeting and they are in opposition
12 as they spoke to us to an approval for the
13 exception. Several of them, as you may have
14 noticed, are attending this hearing.

15 They are concerned that any new
16 structures, even if made of glass, will
17 further obscure the light and the air
18 available to residents. The new buildings on
19 this property have been under construction
20 since 2009 and numerous revisions in the
21 original plans were made.

22 Since we are speaking of the

1 Zoning Regulations I'm going to put in a small
2 plug here. We are not know notified at the
3 ANC of Zoning revisions even if they are
4 significant.

5 I think it's very important that
6 the Zoning Office consider adding that in the
7 revision package so that, indeed, we will
8 receive notice. There have been very
9 significant changes made in this from the
10 initial proposal in the building, the new
11 additions.

12 The new additions have already
13 significantly blocked the views from the
14 adjoining properties and invaded the privacy,
15 particularly of the Forets. The pool house
16 currently has a wall of windows overlooking
17 the Forets' living space.

18 The buildings on Mr. Balcer's lot
19 are at this point already significantly over
20 regularly required boundaries in R-1-A.
21 Photos from the adjoining neighbors Palmer
22 Foret and Mark Leone show the impact.

1 In an R-1-A area like Spring
2 Valley the required setbacks from the
3 neighbor's property on the two sides of the
4 property are eight feet. Currently on the
5 Balcer lot the actual size setbacks are only
6 22 and 24 inches.

7 He is asking for a 75 percent
8 variance of six feet. The minimum rear yard
9 setback is 25 feet. Currently the rear yard
10 setback provided is only two feet rather than
11 25 and he is requesting a 92 percent variance.

12 When the application was
13 submitted, the Applicant stated that the lot
14 occupancy was only 32 percent. However, upon
15 the request of neighbors, the DCRA reviewed
16 and recertified the lot occupancy at 38
17 percent.

18 There are still some revised
19 permits we are trying to get. This revision
20 and recertification occurred from DCRA on
21 April 2, the day before the meeting. This was
22 based on information that had been provided by

1 the attorney.

2 As an accessory structure the pool
3 house is -- I realize this is now
4 controversial but I'm reflecting what the ANC
5 came to conclude. As an accessory structure
6 the pool house is permitted to occupy the
7 required side yard and a percentage of the
8 required rear yard.

9 Once the structures are conjoined
10 by the proposed breezeway the pool house's
11 intrusion into the required side and rear
12 yards become a violation and, hence, they
13 needed the request for the special exception
14 granting relief from these.

15 However, if granted this special
16 exception, the opinions I have received from
17 Zoning experts including people on our ANC
18 Zoning Committee, as well as from attorneys,
19 indicate Mr. Balcer could then request BZA
20 approval to continue to build to 50 percent
21 lot occupancy, not the 40 percent that is the
22 limit on R-1-A.

With BZA approval he could also replace the current structures like the pool house with additional structures in the current footprint up to three stories and 40 feet in height. Without approval of the variances he could do no additional building on the lot.

Members of the ANC want the residents of Spring Valley to be able to build the homes on their property as they need and want their homes to be. However, the Zoning Regulations are crucial in protecting neighbors from excessive development and intrusive over-building in their community.

At this point the neighbors have very serious objections to the impact of the recent expansion of this property. I do want to point out one or two views on the boards over there. We have very grave concerns about future building on this property. So, if I might --

ZC COMMISSIONER MAY: You need a

1 microphone.

2 COMMISSIONER WELLS: I think in
3 particular it's important to look at this
4 profile of the current situation on the land
5 itself. You can see the height. This is
6 another view of that. I'll make sure the
7 camera man gets it.

8 This is another review which shows
9 you how densely this has been built. We do
10 feel at this point this is very unusual for
11 our neighborhood. In fact, I would say it's
12 unique. I'm happy to answer questions if
13 there are any.

14 CHAIRPERSON JORDAN: Does the
15 Board have any questions for Commissioner
16 Wells?

17 ZC COMMISSIONER MAY: I do.

18 CHAIRPERSON JORDAN: Yes, please.
19 Just give her one second so she can take her
20 seat.

21 We appreciate your testimony.

22 ZC COMMISSIONER MAY: You made a

1 statement about not being notified about
2 Zoning changes?

3 COMMISSIONER WELLS: That's
4 correct.

5 ZC COMMISSIONER MAY: Can you
6 explain what you mean by that because you are
7 on a notification list. You are suppose to
8 get notified anytime anything is requested
9 from this office or anytime the Zoning
10 Commission considers something that would
11 affect you.

12 COMMISSIONER WELLS: It's the
13 revised permits that are not sent to the ANC.

14 ZC COMMISSIONER MAY: Oh, that's
15 not Zoning. That's building permits.

16 COMMISSIONER WELLS: Uh-huh. What
17 happens is you can permit one thing and then
18 go in for alterations. There have been a very
19 significant number of alterations.

20 ZC COMMISSIONER MAY: I'm just
21 trying to understand what you said because we
22 are the Zoning Commission. We are not people

1 who issue building permits.

2 COMMISSIONER WELLS: Oh, okay. So
3 I need to talk with someone else.

4 ZC COMMISSIONER MAY: Right. The
5 Zoning Administrator happens to be in the room
6 for another case.

7 CHAIRPERSON JORDAN: Get him.

8 COMMISSIONER WELLS: Thank you for
9 pointing out my target.

10 ZC COMMISSIONER MAY: I just want
11 to make clear we take very seriously making
12 sure everyone is notified of anything relating
13 to zoning --

14 COMMISSIONER WELLS: Appreciate
15 that.

16 ZC COMMISSIONER MAY: -- that
17 comes before the BZA or the Zoning Commission.

18 You pointed out that lot occupancy
19 went from 32 to 38 percent.

20 COMMISSIONER WELLS: That's
21 correct.

22 ZC COMMISSIONER MAY: Both of

1 which are compliant?

2 COMMISSIONER WELLS: Yes. I
3 understand that. What bothered us is we were
4 being told this is just 32 percent and it
5 turned out, so I'm told, and Sarah and I
6 worked on this because I was being told by
7 officials in the Government that this lot
8 looked over 32 percent. They couldn't believe
9 it when we discussed this. This is one of the
10 things that caused --

11 ZC COMMISSIONER MAY: I think the
12 bottom line, though, is it's still less than
13 40 percent.

14 COMMISSIONER WELLS: It's still
15 less than 40 percent at this time.

16 ZC COMMISSIONER MAY: Which is the
17 really crucial question for us. We can't
18 evaluate were they accurate the first time
19 around and did they lose points because they
20 weren't. No, that doesn't really matter. The
21 point is they are still less than 40 percent.

22 COMMISSIONER WELLS: We have made

1 requests for additional permits because there
2 were so many revisions over time. I know one
3 of the wall test things that I received was
4 clearly inaccurate and I don't know how it got
5 into the mix. I'm not suggesting that I can
6 prove but there are certainly concerns that
7 this is more built than it appears to be by
8 the numbers.

9 ZC COMMISSIONER MAY: Okay. You
10 can take that up with the Zoning Administrator
11 if you think there is something incorrect
12 about that.

13 COMMISSIONER WELLS: I will.

14 ZC COMMISSIONER MAY: If it is, in
15 fact, over 40 percent, they would have to come
16 back to us in that circumstance.

17 COMMISSIONER WELLS: Okay.

18 ZC COMMISSIONER MAY: You also
19 said you were advised that once this
20 connection is made that they could go to 50
21 percent lot occupancy?

22 COMMISSIONER WELLS: Um-hum.

1 ZC COMMISSIONER MAY: But that
2 would require coming back to the BZA.

3 COMMISSIONER WELLS: That's
4 correct. That's correct.

5 ZC COMMISSIONER MAY: It wasn't
6 clear to me from what you said that you
7 understood that you would have to come to BZA.

8 COMMISSIONER WELLS: No. We
9 understand that they would have to come back
10 but they would be in a position to do so.

11 ZC COMMISSIONER MAY: Well, I
12 mean, they are in a position now. You're in
13 a position to do that now because that's part
14 of the rules. The statement about the ability
15 -- if this now becomes part of the main
16 building, which the Applicant does not think
17 it should be and the Zoning Administrator has
18 opined that it has or that is the net effect,
19 but the Applicant recognizing the concern that
20 people have that there might be future
21 construction modification, enlargement,
22 whatever of the pool house, they have

1 testified that they would put a covenant on
2 the property to eliminate that possibility and
3 eliminate the possibility of changing the use
4 of the pool house. Does that address the
5 concern of the ANC?

6 COMMISSIONER WELLS: I think some
7 part of it would but we were advised during
8 the ANC meeting by members of the Commission
9 who are attorneys and who have knowledge in
10 this area that it's very hard to do that
11 because if the property is sold, the new owner
12 wouldn't be bound by that. Now, I have no
13 idea.

14 ZC COMMISSIONER MAY: I think
15 that's what they are offering to do is to put
16 on a binding covenant that would continue with
17 the land and it would be binding on subsequent
18 purchases.

19 COMMISSIONER WELLS: Always or
20 could they come back?

21 ZC COMMISSIONER MAY: The
22 Applicant can address this in rebuttal but

1 that's my understanding of how it would work.

2 COMMISSIONER WELLS: That was
3 discussed at the meeting and we were told it
4 would be very, very difficult to do so and we
5 had not at that time had an offer. That was
6 April 3, I guess.

7 ZC COMMISSIONER MAY: I think
8 that's it for my questions.

9 CHAIRPERSON JORDAN: Any other
10 Board members have questions?

11 VICE CHAIRMAN SORG: Yes. Thank
12 you.

13 Hi, Ms. Wells. Thank you for
14 coming down. I'm interested that you
15 indicated that you in your capacity as the ANC
16 Single Member representative had made some
17 inquiries with other agencies regarding
18 construction projects and lot occupancy and so
19 forth. I'm curious has the ANC held meetings
20 or sort of investigation or looked into this
21 property prior to this request from the BZA?

22 COMMISSIONER WELLS: This has been

1 under discussion among ANC members because the
2 proposed plans back in 2009, I think, or 2010
3 we got involved. In full disclosure I am
4 married to Mark Leone who was here earlier and
5 I occupy the house next door with my husband.

6 I have watched this throughout and
7 I called in several ANC members to assist me
8 in assessing what was going on on the property
9 because it seemed to us it was out of
10 character with the neighborhood.

11 VICE CHAIRMAN SORG: Modern
12 addition.

13 COMMISSIONER WELLS: No, it wasn't
14 the modernness. It was the height variation.
15 What you can see over there. It was very kind
16 of jumbled if you will. In any case, that was
17 when we started talking about side setbacks
18 and things like that, but it was not a formal
19 subject until this most recent thing came
20 forward and it was referred to the ANC.

21 We did not receive the DDOT. I
22 believe you have some setbacks in the front

1 for the walls and what? Some public things
2 but those did not come to the ANC at that
3 time.

4 VICE CHAIRMAN SORG: Okay. Thank
5 you.

6 CHAIRPERSON JORDAN: Board, any
7 other questions?

8 Does the Applicant have any
9 questions of Ms. Wells?

10 MS. PRINCE: No questions.

11 CHAIRPERSON JORDAN: Mr. Foret.

12 MR. FORET: (No audible response.)

13 CHAIRPERSON JORDAN: Very good.

14 We thank you very much for your
15 input, Ms. Wells -- Commissioner Wells. Thank
16 you.

17 Is there anyone else in the
18 audience wishing to testify in support of this
19 application? Anyone wishing to testify in
20 support of this application?

21 Then let's move to those people
22 who wish to testify in opposition. Those who

1 we've granted party status have five minutes
2 to make whatever statement they would like to
3 make. Five minutes then, please. Come to the
4 microphone so we can have your input.

5 Mr. Foret, are you going to begin?
6 Who is going to begin? You have five minutes.
7 Who is going first? You need a two-minute,
8 three-minute conference time?

9 We are going to take a five-minute
10 break for whatever services people need to use
11 it for.

12 (Whereupon, at 2:30 p.m. off the
13 record until 2:41 p.m.)

14 CHAIRPERSON JORDAN: I just want
15 to note for the record that Board Member Allen
16 had an emergency she had to leave for. She's
17 going to review the rest of the record of this
18 case so we don't be rendering a decision today
19 on this matter.

20 Where are we?

21 MR. KEYS: MR. Chairman, I'm
22 George Keys representing Gary Garofalo, the

1 neighbor to the east on the property. We've
2 had a discussion among the party opponents to
3 this project.

4 On consideration of the
5 Applicant's proffer of a covenant that would
6 restrict the pool house to its current uses
7 and current dimensions, we would withdraw
8 opposition to this application on the
9 condition that we can put the covenant before
10 the Board to be included as one of the terms
11 of the order if the Board determines to
12 approve the application.

13 CHAIRPERSON JORDAN: I was
14 thinking that also. If it's okay with the
15 Applicant we were thinking that also. I would
16 appreciate that. Very good. Then let's do
17 this. Have you reviewed the covenant or do we
18 need to come for another date on the covenant
19 to make sure you dot your I's and cross your
20 T's.

21 MR. KEYS: I think by the time you
22 set this for decision we should have it ready

1 for that.

2 CHAIRPERSON JORDAN: What about
3 the ANC? Is the ANC in agreement?

4 COMMISSIONER WELLS: I can't speak
5 for the entire ANC.

6 CHAIRPERSON JORDAN: But you could
7 convey it.

8 COMMISSIONER WELLS: If this is
9 granted in perpetuity and we have a way to
10 make certain that it can never be overturned.

11 CHAIRPERSON JORDAN: That covenant
12 is filed and recorded.

13 COMMISSIONER WELLS: We are
14 getting so many cases of people who want to
15 buy places and over develop them. It has
16 become a real problem.

17 MR. MOY: She should say that on
18 the microphone, Mr. Chairman.

19 CHAIRPERSON JORDAN: I think we
20 are picking her up.

21 I understand. So the ANC --
22 Commissioner Wells is speaking only for

1 herself but she will take it back to the ANC
2 provided all the bells and whistles that need
3 to be in the agreement are there. We are
4 going to move this for a date. Is it May
5 21st? Is that the date we're using?

6 MR. MOY: Let me double check to
7 make sure. Yes, May 21st.

8 CHAIRPERSON JORDAN: May 21st.
9 When can you get the proposed covenant?

10 MS. PRINCE: We are happy to
11 submit the proposed covenant for the record.
12 We'll negotiate it with Mr. Keys. We already
13 have a draft being circulated.

14 CHAIRPERSON JORDAN: Get it to us
15 by a week or something.

16 MS. PRINCE: A week.

17 CHAIRPERSON JORDAN: Then we will
18 extend this -- no, we will move this for
19 decision on May 21st pending the covenant.

20 MR. MOY: One week from today.

21 CHAIRPERSON JORDAN: We will
22 recess it. We will recess the hearing and put

1 this on for decision for May 21st. In case
2 there is not an agreement on the covenant,
3 then we will resume the hearing to conclude
4 that.

5 MR. FORET: You'll resume the
6 hearing on the 21st?

7 CHAIRPERSON JORDAN: No, no, no.
8 That's not what I'm saying. I'm saying we are
9 setting it for a decision for the 21st
10 provided there is an agreement on the
11 covenant. If something falls through, and
12 I've seen it. It might be a one-word
13 difference and it might fall through. Then we
14 will resume a hearing if necessary.

15 MR. FORET: At a to-be-scheduled
16 time.

17 CHAIRPERSON JORDAN: Is that good?

18 ZC COMMISSIONER MAY: Continued
19 for a future date or on the 21st?

20 CHAIRPERSON JORDAN: Can we do it
21 on the 21st?

22 MR. MOY: Yes.

1 CHAIRPERSON JORDAN: We could
2 actually hear it on the 21st.

3 MS. GLAZER: Mr. Chair, would you
4 be requesting a document from the ANC, a
5 supplemental report?

6 CHAIRPERSON JORDAN: No. The ANC
7 will be a party to --

8 MS. GLAZER: If they decide to
9 withdraw?

10 CHAIRPERSON JORDAN: If they
11 decide to participate. Withdraw or
12 participate.

13 Are we good? We're all good.
14 Thank you. More importantly, I really
15 appreciate your patience. As you see, these
16 days sometimes you think is going to be one
17 way and it turns out to be another. I really
18 do appreciate you sitting here.

19 More importantly, I appreciate you
20 all taking an active role in what is going on
21 in the community and neighborhood. It means
22 a lot. A lot of times people don't. They

1 just gripe about it later and say, "How come
2 it happened this way?" Well, you didn't step
3 up.

4 Very good. Thank you so much.

5 (Whereupon, at 2:46 p.m. off the
6 record until 2:47 p.m.)

7 MR. MOY: The next application for
8 hearing is 18522. This is the Appeal of
9 Washington Harbour Condominium Unit Owner's
10 Association pursuant to 11 DCMR 3100 and 3101,
11 from a decision by the Department of Consumer
12 and Regulatory Affairs to issue a
13 determination letter dated November 7, 2012,
14 for construction of a new mixed use
15 (residential, retail, office and inn) building
16 in the W-2 and W-3 Districts at premises 3050
17 K Street, N.W. Property located in Square
18 1173, Lot 102.

19 CHAIRPERSON JORDAN: Please
20 identify yourselves.

21 MR. SURABIAN: Good afternoon,
22 members of the Board. This is Attorney

1 General Jay Surabian on behalf of DCRA.

2 MR. LeGRANT: Good afternoon. My
3 name is Matthew LeGrant, Zoning Administrator
4 from DCRA.

5 MS. BRAY: Good afternoon. Kinley
6 Bray with the law firm of Arent Fox on behalf
7 of the Appellant.

8 CHAIRPERSON JORDAN: Your last
9 name again?

10 MS. BRAY: Bray.

11 CHAIRPERSON JORDAN: Okay.

12 MS. BRAY: On behalf of the
13 Washington Harbour Residential Unit Owner's
14 Association, the Appellant in this case.

15 MS. DEOUDES: Good afternoon. I'm
16 Stephanie Deoudes, manager of Washington
17 Harbour Condominium.

18 MS. MCCARTHY: Good afternoon.
19 Ellen McCarthy. I'll be an expert witness in
20 this case for the Appellant.

21 CHAIRPERSON JORDAN: Is it Deoudes
22 that you said? And you are?

1 MS. DEOUDES: Manager of
2 Washington Harbour Condominium.

3 CHAIRPERSON JORDAN: To we have an
4 intervenor? There is no intervenor.

5 MR. UTZ: The property owner is
6 here.

7 CHAIRPERSON JORDAN: Who is the
8 property owner?

9 MR. UTZ: RP MRP Washington
10 Harbour, LLC is the property owner.

11 CHAIRPERSON JORDAN: RP?

12 MR. UTZ: RP MRP Washington
13 Harbour, LLC is the owner. I'm Jeff Utz with
14 Goulston & Storrs representing that entity.
15 And Charley McGrath from MRP representing that
16 entity is here as well, along with Laura Croce
17 of Shalom Baranes Architects, the project
18 architect.

19 CHAIRPERSON JORDAN: Okay. So we
20 don't have a filing by you?

21 MR. UTZ: Correct.

22 CHAIRPERSON JORDAN: Have you

1 intervened in this matter?

2 MR. UTZ: Not formally.

3 CHAIRPERSON JORDAN: So you're not
4 in this matter?

5 MR. UTZ: Well, it was an
6 understanding under the Rules of Procedure.

7 CHAIRPERSON JORDAN: That you are
8 automatic?

9 Is that correct, Ms. Glazer?

10 MS. GLAZER: Yes.

11 CHAIRPERSON JORDAN: Okay. What
12 is being present to us by the Appellant today?

13 MS. BRAY: Good afternoon,
14 Chairman Jordan, members of the Board. Again,
15 Kinley Bray with Arent Fox on behalf of the
16 Appellant.

17 As described in our initial appeal
18 pleading, we have actually two of the three
19 witnesses that were identified in that
20 pleading here today. I would like to give a
21 brief presentation before introducing them for
22 their testimony.

1 We expect to be very brief. The
2 critical issue in this case is really the lack
3 of information with respect to use that is
4 contained on the plan that were deemed by the
5 Zoning Administrator to be compliant with the
6 Zoning Regulations and, therefore, allowing a
7 project to proceed as a matter of right.

8 Zoning reliance letters are an
9 extremely critical service to the development
10 community and to community activists and those
11 who are concerned about development in their
12 community. However, they are not published as
13 a matter of record. They are placed on a DCRA
14 website.

15 There is not really a process for
16 notifying property owners when a Zoning
17 determination letter is made and, therefore,
18 in this case the Washington Harbour
19 Condominium Association, Residential Owner's
20 Association, which I'm going to refer to as
21 the Condominium Owners, came to learn of this
22 letter only because a report from the

1 Washington Business Journal happened to pick
2 up that this was on the website and published
3 a brief article about MRP's desire to
4 redevelop the property. That is critical here
5 because of --

6 CHAIRPERSON JORDAN: I'm not
7 understanding how that affects this issue.
8 You're saying that DCRA didn't properly give
9 notice?

10 MS. BRAY: No. I'm not saying
11 they weren't properly noticed. I'm saying
12 that there is really not a process for
13 providing notice to anybody, that these
14 reliance letters are issued for any particular
15 property.

16 That's important because this
17 Board in two recent cases has made a
18 determination that the mere existence of
19 communication between the Zoning Administrator
20 and an applicant, or somebody who is in
21 opposition to development may bar an appeal of
22 the building permit once that building permit

1 is issued because of an issue of timeliness
2 under the Baskin case.

3 CHAIRPERSON JORDAN: And are you
4 aware that there is case law that says that
5 anything on that website system is considered
6 public notice?

7 MS. BRAY: I am and that is
8 particularly why we brought this appeal when
9 we did.

10 CHAIRPERSON JORDAN: Okay.

11 MS. BRAY: Because --

12 CHAIRPERSON JORDAN: And I'm just
13 saying it's something that we can't change.

14 MS. BRAY: Correct. It's not
15 really designed to be a criticism of the DCRA
16 system but I just note for the record it was
17 dumb luck that a reporter happened to pick up
18 this story and then Residential Unit Owners
19 happened to be aware of this letter.

20 Otherwise, they would have been
21 deemed, as you said, to know that this was
22 published because it was published on a

1 website.

2 And under the holdings in both
3 Baskin as that case has been interpreted by
4 this Board in the appeal of Lawrence and
5 Kathleen Ausubel and in the Lynch case in the
6 last year, you would have probably barred an
7 appeal on a later building permit because of
8 the mere existence of this letter. That is
9 why we are here today from a procedural
10 standpoint.

11 From a factual standpoint our main
12 concern is the lack of information with
13 respect to the use, as I mentioned, that is in
14 this Zoning determination letter. The Zoning
15 Administrator's letter determines that either
16 a residential project of 80 units or an inn of
17 120 units is permitted as a matter of right as
18 an addition to the existing building on the
19 premises which is split zoned in the W-2 and
20 W-3 zone.

21 It is a particularly complex issue
22 because of the way the FAR is calculated among

1 split-zone properties. It is also
2 particularly complex when you get into the
3 mixture of uses in a large-scale development
4 like the Washington Harbour.

5 As a practical matter, the types
6 of Zoning reliance letters that we typically
7 see, those who represent developers, are
8 opinions on method of calculation, method of
9 calculation of anything from how a rear yard
10 is to be applied on a particular property to
11 show FAR is to be calculated.

12 In my personal experience I find
13 it to be exceedingly rare that the Zoning
14 Administrator would issue a complete analysis
15 and determination that a project is permitted
16 as a matter of right right down to rear
17 yard/side yard setback and use without
18 extremely detailed dimension plans.

19 Although there are some dimensions
20 on the plans that were attached to the Zoning
21 Administrator's letter, our concern is that
22 the letter is so broad and absent the ability

1 to challenge a building permit we think that
2 further review is warranted at this time.

3 Further review is warranted not
4 only because of basic compliance issues but
5 because of the impact that the development
6 would have on the existing residential
7 condominium.

8 With that, I would like to
9 introduce Stephanie Deoudes, the residential
10 manager of the Washington Harbour Condominium
11 who is prepared to testify on that specific
12 issue.

13 I would also like to note that
14 Marc Fleischaker, who is the president of the
15 Condominium Board, is also now present. He
16 had to leave and has now come back.

17 Stephanie, if you could state your
18 name again for the record and tell me how long
19 you have been employed with Washington
20 Harbour.

21 MS. DEOUDS: Yes. I'm Stephanie
22 Deoudes. I've been at the condominium eight

1 years.

2 MS. BRAY: And can you describe
3 very briefly the kind of things that you do
4 for the association?

5 MS. DEOUDES: I handle all the
6 day-to-day activities with the owners, the
7 board, the contractors, and various events
8 that are before the condominium.

9 MS. BRAY: And does that include
10 interaction with the manager of the rest of
11 the Washington Harbour development?

12 MS. DEOUDES: Yes, it does.

13 MS. BRAY: And things that happen
14 on a day-to-day basis as part of the greater
15 development of Washington Harbour?

16 MS. DEOUDES: Yes.

17 MS. BRAY: To the best of your
18 knowledge, prior to the Washington Business
19 Journal article that I just mentioned had MRP
20 discussed any plans to redevelop its portion
21 of Washington Harbour with the Residential
22 Unit Owners prior to this Zoning determination

1 letter?

2 MS. DEOUEDES: We did have a
3 meeting. I'm not clear if it's before or
4 after the announcement.

5 MS. BRAY: What was proposed at
6 that time?

7 MS. DEOUEDES: Some plans were
8 shown to Mr. Fleischaker, Mr. Sram and myself
9 by Charley and some other of the people at MRP
10 that were present about something that they
11 were thinking about and exploring but didn't
12 know that they were going to pursue.

13 MS. BRAY: Can you describe what
14 those plans were? Did they show commercial,
15 residential, hotels?

16 MS. DEOUEDES: What was presented
17 that day was a picture of some commercial and
18 the possibility of a hotel.

19 MS. BRAY: And what was the
20 response of the condominium to that?

21 MS. DEOUEDES: Well, the response
22 was not positive mainly because the structure

1 -- a lot was not positive. The proposed
2 retail is right in front of the condominium
3 blocking the condominium.

4 The building itself was on the
5 grass area in front of Bangkok Joe's right at
6 the circle which is at the entrance of the
7 condominium in a very, very busy and well-
8 monitored space.

9 MS. BRAY: Just for the Board's
10 records, when we refer to circle, I'm going to
11 show you a plan so that they can follow along.
12 It's Exhibit D to Exhibit 3 in the record, the
13 Appellant's detailed Statement of Reasons.

14 When you refer -- and on page 3 of
15 that -- I'm sorry, page 5 of that exhibit.
16 When you refer to the grassy area and the
17 circle, are you referring to the areas that
18 are directly abutting K Street in front of the
19 development?

20 MS. DEOUDES: The only way to the
21 plaza and to the commercial spaces and
22 restaurants at Washington Harbour for visitors

1 that are not parking in the commercial garage
2 is to come to the circle either by foot or to
3 be dropped off by cab, by bus. That's the
4 only way you can come onto the plaza and enjoy
5 or visit or do whatever your business is.

6 MS. BRAY: Would you characterize
7 that circle as busy?

8 MS. DEOUDES: It's very busy. The
9 guards are there all the time making sure
10 things move through.

11 MS. BRAY: Okay. Are you aware of
12 how many parking spaces are existent on the
13 property?

14 MS. DEOUDES: I was told that
15 there are 486 spaces in the garage but I don't
16 know for sure.

17 MS. BRAY: Of these do you know
18 what portion are owned by the Condominium
19 Association?

20 MS. DEOUDES: The Condominium owns
21 53 spaces.

22 MS. BRAY: Okay. And do the

1 remainder of those spaces, to the best of your
2 knowledge, serve all of the other uses on the
3 property and would that include guests to the
4 condominium?

5 MS. DEOUDES: Yes.

6 MS. BRAY: Guests of the
7 restaurants in Washington Harbour?

8 MS. DEOUDES: Yes.

9 MS. BRAY: Guests of the office
10 tenants?

11 MS. DEOUDES: And all the
12 employees that would work in those buildings.

13 MS. BRAY: Based on your
14 observations or other information available to
15 you, can you describe the utilization of the
16 parking garage? Would you characterize it as
17 regularly full, regularly empty, somewhere in
18 between?

19 MS. DEOUDES: I think it's
20 regularly full. It's very well visited and
21 enjoyed space. The garage is a very busy
22 place with everyone who works there and visits

1 there.

2 MS. BRAY: If it's full is there
3 an apparent indication that it's full?

4 MS. DEOUDES: There would be a
5 sign placed on various levels saying to go to
6 the next level. At times outside it would say
7 that the garage is full.

8 MS. BRAY: Can you say how often
9 that takes place on the property?

10 MS. DEOUDES: No.

11 MS. BRAY: If the garage is full,
12 is there any impact on the rest of the
13 property like the circle you described?

14 MS. DEOUDES: Well, the circle is
15 busy every day and every night, every day and
16 every night. There is no abatement of any
17 usage of that circle.

18 MS. BRAY: It's my understanding
19 that MRP recently added a skating rink and
20 additional seating to the general commercial
21 areas of Washington Harbour.

22 MS. DEOUDES: Yes.

1 MS. BRAY: Has that had any change
2 or impact on the way that the circle operates?

3 MS. DEOUDES: May I say one thing
4 to this Board here? I'm sure you all hear all
5 the time about adversarial conditions between
6 condominiums and their counterparts or
7 partners but we enjoy a very good relationship
8 with MRP. The condominium has been very happy
9 to go to the ANC with MRP and support their
10 expansion of restaurant seating.

11 Very happy to welcome the skating
12 rink which has brought thousands and thousands
13 of more people to the Harbour, and to support
14 the general improvement and changes to various
15 lightings and different things around the look
16 of the property.

17 This is a good relationship. In
18 this one instance the residents have a very
19 strong reaction and concern about something
20 that's proposed and I want to make it clear
21 this is something unusual to us.

22 MS. BRAY: Based on this plan,

1 page 5 again of Exhibit D to the Appellant's
2 Statement of Reasons, it shows what looks like
3 green space with trees along K Street in front
4 of the existing condominium. Is there a
5 similar space where this building is proposed
6 now? Is there green space there now?

7 MS. DEOUDES: Between Bangkok
8 Joe's and the sidewalk leading to K Street the
9 area is now a grassy area.

10 MS. BRAY: Okay. Aside from those
11 two areas, the one in front of the condominium
12 building and the one in front of Bangkok
13 Joe's, are there other green spaces on the
14 property, open spaces, that are landscaped?

15 MS. DEOUDES: There is landscaping
16 along curbs and along property lines.

17 MS. BRAY: Okay. It seems to me
18 that a significant amount of landscaping is
19 going to be eliminated by this new building.
20 Is that a concern of the residents of the
21 condominium?

22 MS. DEOUDES: Well, the curb

1 appeal is very important. I don't know what
2 the plan would be for anything like that.

3 MS. BRAY: Okay. Based on the
4 concerns that you've heard from your
5 residents, what impact would the addition of
6 80 residential units, or 120 hotel rooms, have
7 on the general operation of the condominiums
8 and Washington Harbour in general?

9 MS. DEOUDES: Well, if you could
10 be there to see that the circle is at the
11 entrance of the condominium, you would see
12 that having an entrance of a building right
13 there and the building and everything that
14 comes with it there's just so many things with
15 it.

16 There's additional and constant
17 traffic there to drop people off or pick them
18 back up to deliver luggage if it's a hotel.
19 It's an additional hardship really to coming
20 and going easily in and out of their home.

21 As backed up as it is now, having
22 additional traffic there would really be a

1 burden, as well as a security issue for having
2 to go through people every time you're trying
3 to come in and out of your door.

4 In addition, the building itself
5 would block the view of many condominiums that
6 are built right up the street from that
7 corner. It would just be a very undesirable
8 change.

9 MS. BRAY: Thank you, Ms. Deoudes.

10 I have no further questions for
11 Ms. Deoudes. I don't know if it's the Board's
12 pleasure to allow cross-examination now or if
13 we should go to our second witness.

14 CHAIRPERSON JORDAN: Let's go
15 ahead and finish and then we'll come back.

16 MS. BRAY: Okay. I would like to
17 introduce Ellen McCarthy who I would like to
18 offer as an expert. She has previously been
19 accepted as an expert by this Board. She has
20 30 years of experience in Planning and Zoning.

21 CHAIRPERSON JORDAN: She's
22 accepted.

1 MS. BRAY: Okay. Thank you.

2 Ms. McCarthy, have you reviewed
3 this project?

4 MS. MCCARTHY: I have. Good
5 afternoon to the Board. Understanding that
6 all of us have been here for a really long
7 time, I will skip reading my testimony and
8 just summarize the key points.

9 The first is, as Ms. Bray has
10 indicated, we are not so much indicating --
11 this appeal is not so much about an error on
12 the part of the Zoning Administrator. It's
13 simply that the Zoning reliance letter is
14 premature.

15 The unit owners, as was just
16 expressed by Ms. Deoudes, have a number of
17 concerns about adverse impact from the
18 project. What I wanted to focus on are some
19 of the important zoning unknowns that should
20 this appeal be dismissed with prejudice, we
21 will be unable to appeal if the facts present
22 themselves later on.

1 I think it's important to raise
2 these issues and for the Board to be aware of
3 them. First of all, as you have heard, the
4 project that is proposed is proposed as either
5 a residential apartment building or an inn.

6 As you can see from the photos
7 that are at the end of my testimony, as a
8 residential project there is a lot that has
9 very little appeal about this building. The
10 views on every single side are largely either
11 blank walls or gaping parking lot or loading
12 zone entrances in addition to the lovely
13 Whitehurst Freeway that will be basically at
14 the -- very little of the building will even
15 be above the Whitehurst Freeway and the people
16 who are above it simply get treated to the
17 traffic.

18 Being that it is unlikely to be
19 attractive for full-time residents, our guess
20 is that it is more likely to be utilized as an
21 inn. As you will see in my testimony, the
22 Zoning Regulations while they permit an inn as

1 a matter of right, and they do distinguish inn
2 from hotel, it's not very clear what the
3 difference is.

4 Inns are counted as residential
5 space without any differentiation of the types
6 of space, while hotels it is much more clear
7 in the Zoning Regulations what kinds of uses
8 are not considered residential.

9 Assuming that the same
10 distinctions apply, and I certainly would
11 recommend this to the Zoning Commission as an
12 area that could merit some clarification in
13 the Zoning Revision, but assuming that those
14 same differentiations apply, the inn
15 essentially -- I'm sorry.

16 Let me go back to this. As you
17 can see from page 5 in Exhibit 3D of the
18 Applicant's detailed Statement of Reasons
19 there is a very large space on the ground
20 level of this proposed project for it to serve
21 as an inn.

22 It's immediately adjacent to a

1 loading dock which constitutes the only
2 connection to the rest of the main building.
3 It is separated by the very busy driveway that
4 you can also see in the photographs that is
5 the sole entrance to and exit from the parking
6 garage.

7 The elevator does not come down to
8 this area at all. If you were to be a guest in
9 the inn and this were to be used as the only
10 permitted ground floor non-hotel room use that
11 you could do with an inn, a breakfast room,
12 guests would have to come down in the
13 elevator, cross through the traffic to get
14 over to the breakfast room which would then
15 have the scenic views out the breakfast room
16 windows that you see illustrated in the
17 photos. It all means that it seems highly
18 unlikely to us that this use would be a
19 breakfast room.

20 Following the analogy to hotels,
21 it cannot be used since the Zoning
22 Administrator held that the building is now

1 above and is not conforming because it has
2 more commercial use in the W-2 area than is
3 permitted.

4 The building could not -- this
5 room is a large space which is not dimensioned
6 so I can't tell you for sure how large it is,
7 but could not be used as a dining room,
8 meeting or function room, exhibit space,
9 commercial adjuncts like a restaurant, dining
10 room, cocktail lounge, coffee shop, dry
11 cleaning, laundry, flower shop or barber shop.

12 All of those uses would be
13 prohibited. But because the Zoning
14 Administrator has determined based on these
15 plans that it is a matter of right project,
16 the policing of the use of that space and
17 guarding against commercial use there is all
18 left up essentially to the residents.

19 They will come in with a building
20 permit. They will come in with the letter
21 from the Zoning Administrator saying it's a
22 matter of right. The Zoning tech will approve

1 the building permit and the only recourse that
2 -- well, then the condominium residents won't
3 have any recourse because the building will
4 have been approved.

5 The use question was a big
6 question but that is not the only question
7 that is left if one looks at these rather
8 rudimentary plans that have been deemed to be
9 as a matter of right. There are several
10 additional questions that cannot be answered
11 based on the plans.

12 No. 1 is with respect to parking.
13 As the Zoning Administrator has held, if this
14 is used as an inn, there is a requirement for
15 60 spaces and I believe 22 residential -- 17
16 for residential.

17 The Zoning Administrator
18 determined that sufficient parking is
19 available for those 60 spaces in the existing
20 building based solely on the Zoning
21 Computation Sheet which was done 20 or 30
22 years ago whenever the building was done.

1 At that point there were 17 spaces
2 that were allocated to residential. At this
3 point in time, as you heard from Ms. Deoudes,
4 53 of those parking spaces have been bought by
5 condominium owners so those spaces are not
6 available.

7 We were not able to obtain from
8 the parking management firm any information
9 about how many spaces are conveyed with the
10 lease to the law firms and the commercial
11 tenants that are there.

12 We also don't have the square
13 footage of the additional restaurants that
14 have been added, both the additional spaces
15 that were converted to restaurants which all
16 carry a parking requirement in addition to
17 that which was used in the Zoning Computation
18 Sheet.

19 The restaurants which have now
20 expanded space going out into the exterior and
21 then, of course, the skating rink which MRP
22 has indicated in the press in the past have

1 had up to 40,000 people enjoying the use of
2 the rink.

3 To determine that there are 60
4 spaces that would be available to meet parking
5 requirements cannot be determined based on the
6 information that the Zoning Administrator had
7 in front of him, an obsolete Zoning
8 Computation Sheet and very, very sketchy
9 plans.

10 No. 2, with respect to the rear
11 yard the Applicant says they have a 52-foot
12 rear yard which the Zoning Administrator's
13 letter said "presumably" was between the
14 building and the water but there is nothing
15 identifying that is, indeed, the rear yard.

16 Then it's very confusing because
17 the Zoning Administrator's letter then goes on
18 to deal with the court and the dimensions of
19 the court which separates the proposed new
20 building from the old building.

21 The Zoning Administrator indicates
22 that the court meets the court requirements

1 and then concludes, "Therefore, the proposed
2 rear yard complies with the Zoning
3 Regulations." It's very confusing. Is the
4 court the rear yard or is the space between
5 the main building and the Potomac the rear
6 yard.

7 Since rear yards are required for
8 residential use, it's a little yard to say,
9 "Well, here we have a residential use and the
10 rear yard is separated by an enormous
11 commercial building. Then we get to some
12 residential space and that is the rear yard of
13 this proposed new addition."

14 MR. SURBABIAN: Mr. Chair, I'm
15 going to object. None of these issues were
16 raised in the appeal or raised in a subsequent
17 filing. This is all setbacks, courts,
18 parking. None of this was mentioned in the
19 appeal or in any kind of filings. This is all
20 new being raised at the hearing.

21 MS. MCCARTHY: But all I am
22 indicating is these are questions that can't

1 be determined --

2 MR. SURBABIAN: Well, these are
3 questions that --

4 MS. MCCARTHY: -- as to whether it
5 complies with the Zoning Regulations.s

6 MR. SURBABIAN: -- that need to be
7 raised in an appeal so the parties have notice
8 of these issues if you're alleging an error.

9 MS. BRAY: Mr. Chairman, if I may,
10 the Appellant's pleadings specifically say
11 that the Zoning Administrator's letter is
12 unclear, does not have sufficient basis for
13 the determinations that it makes therein.
14 That applies globally. Ms. McCarthy's detail
15 of the questions raised by the lack of
16 information I think is germane to the issues
17 raised on appeal.

18 Moreover, as this Board held in
19 the Ausubel case, there is actually nothing
20 prohibiting the introduction of new
21 information either prior to or at the hearing
22 provided as germane to the issues identified

1 in the initial appeal document.

2 CHAIRPERSON JORDAN: All right.

3 Let's proceed on but let's be more germane.

4 MS. MCCARTHY: Okay. The third
5 question is what is proposed is essentially
6 three separate principal uses; a condominium,
7 the commercial office space, and a bunch of
8 retail and restaurants, and then this new inn
9 and/or apartment building.

10 Now, multiple buildings are
11 permitted on one lot in this zone but
12 according to Section 2517.2 of the Zoning
13 Regulations, each must meet its own separate
14 open space requirements.

15 The 23-foot court that is behind
16 that separates this building in only part of
17 the space, this small area here, the court of
18 which is 23-feet in diameter, does not meet
19 the 25-foot -- does not meet the rear yard
20 requirements because this yard is covered.

21 That is another area that is very
22 difficult to determine whether or not we're

1 talking about separate buildings and whether
2 they meet the rear yard requirements. The
3 Zoning Administrator's letter says they are
4 all one building.

5 The Applicant says they are all
6 one building but there seems to be evidence to
7 suggest that is not the case. Which brings me
8 to the last question, the nature of the
9 connection.

10 To claim this as one building the
11 new structure must have a "meaningful
12 connection" above grade. This is the only
13 connection. It is a covered loading dock.
14 There is no indication on the plans as to how
15 much is an actual connection and how much is
16 simply a loading dock as the trucks come down
17 here on 30th Street and pull in.

18 Since we don't have dimensions we
19 can't tell how much of that space is just
20 going to be taken up by loading docks and
21 trucks. There is a notation on the plan that
22 says "interior conditioned connection to

1 existing building." But if it's also the
2 loading dock, how is that an interior
3 condition connection to the building?

4 In summary, the information
5 provided in the submission to the Zoning
6 Administrator is not sufficiently detailed to
7 permit a conclusion that the proposed
8 buildings could be constructed and used as a
9 matter of right. There are questions about
10 meaningful connection, about parking
11 sufficiency, about separated buildings, about
12 rear yards.

13 Because these issues cannot be
14 truly resolved until the detailed plans are
15 submitted with a building permit, it would
16 appear that the most prudent action for the
17 Board to take would be either to grant the
18 appeal or to deny it without prejudice so that
19 the unit owners could revisit these issues
20 when a building permit is submitted and can be
21 viewed and fully understood and for us not to
22 be precluded from appealing a determination at

1 that point in time that the project would be
2 a matter of right. Thank you.

3 MS. BRAY: We have nothing further
4 at this time other than anticipated rebuttal.

5 CHAIRPERSON JORDAN: Does the
6 Board have any questions of the Appellant? Is
7 this premature?

8 MS. BRAY: I think our position is
9 that the Zoning Administrator's letter if
10 premature given the information that was
11 presented to him, but the broad determination
12 that a project, which includes either a hotel
13 or an inn as shown on the footprint of the
14 building, is permitted as a matter of right is
15 enough of a determination that this
16 organization, or any other resident, would be
17 precluded from bringing an appeal on the
18 building permit itself. On the one hand it
19 may be premature but for this Board's
20 interpretation of Baskin and holdings in --

21 CHAIRPERSON JORDAN: They would
22 have to come back for relief.

1 MS. BRAY: They could potentially
2 have to come back for relief.

3 CHAIRPERSON JORDAN: They at least
4 have to come to the ZA.

5 MS. BRAY: But equally likely, I
6 think, is that this Zoning determination
7 letter gets attached to a set of building
8 permit plans, submitted to the Zoning
9 Reviewer.

10 The Zoning Reviewer finds the
11 opinion of the Zoning Administrator saying
12 that the project complies with the Zoning
13 Regulations and is permitted as a matter of
14 right and there is no independent review. I
15 mean, for all intents and purposes that is
16 what these Zoning determination letters --
17 that is how they are used in the development
18 community.

19 They are used as a
20 predetermination of compliance with the Zoning
21 Regulations and that is consistent with this
22 Board's holding in Ausubel and Lynch that the

1 Zoning Administrator has made a determination
2 prior to issuance of the building permit.

3 CHAIRPERSON JORDAN: Any other
4 questions from the Board?

5 Ms. Sorg?

6 VICE CHAIRMAN SORG: Yeah. It's
7 kind of interesting. I was thinking the same
8 thing. What if we were to say to you this
9 sounds premature. You answered that question.
10 But with regard to your narrative about what
11 could happen next, it seems that an
12 interpretation of the Zoning Administrators
13 letter that is here is that, you know, this is
14 an addition, presented as an addition, to an
15 existing building.

16 The courts and parking and loading
17 and rear yard and meaningful connection and so
18 forth has to be satisfied for the reviewer for
19 a building permit to approve that. I'm
20 wondering how is what you are saying different
21 than what if they are not paying attention or
22 what if they screw up the reviewer. I'm wondering.

1 MS. BRAY: I think that's a fair
2 question. I'll turn it over to Ellen McCarthy
3 based on her experience in coordinating with
4 the Office of Zoning over many years at the
5 Office of Planning. I think she is prepared
6 to answer that and I may have a couple other
7 thoughts as well.

8 MS. MCCARTHY: I would just
9 suggest as somebody who has spent time on both
10 sides of the counter that the workload on
11 zoning technicians is very high and that if a
12 project comes in with a letter from one's boss
13 that says, "This is a matter of right
14 project," (A) The reviewer probably doesn't
15 have a lot of time to do detailed research on
16 all of these questions; (B) As with most
17 people, one tends not to question or second
18 guess one's boss.

19 The likelihood is the project
20 comes in, the Zoning Technician signs off,
21 goes to the rest of the review process. Then
22 if the Condominium Association or any of the

1 neighbors are concerned about the fact that
2 they think it was an error, they are now
3 precluded from bringing an appeal or
4 questioning that.

5 Prematurity is an issue but it
6 seems like the prematurity is for
7 determination that the project is totally
8 matter of right which is on these key issues
9 in the Zoning Administrator's letter is what
10 the Zoning Administrator found.

11 MS. MCCARTHY: I would just add as
12 a practical matter having sought many of these
13 determination letters on behalf of both
14 developer clients and clients who are
15 concerned about development, we typically see
16 Zoning determination letters that are really
17 on one particular issue of the interpretation.

18 This is the method of calculating
19 FAR for this particular project. This is the
20 method of calculating the rear yard. In this
21 case I'm sure that the developer and their
22 counsel, who are very competent and

1 experienced folks, put together a
2 comprehensive set of information that they
3 took to the Zoning Administrator and the
4 Zoning Administrator then evaluated that and
5 issued a letter that said, "We think that this
6 complies -- "I think this complies and can
7 proceed as a matter of right."

8 But for this sort of ambiguous
9 issue of what is permitted in an inn as
10 opposed to a straight residential project, I
11 think it's likely that there would be no
12 further zoning review or no indepth review
13 done. The review might instead look like a
14 check against what plans were attached to the
15 Zoning determination letter.

16 In the past because the Zoning
17 Administrator has ruled on a more narrow
18 issue, that is not a problem. It's only when
19 we are looking at an opinion on an entire
20 project combined with the Board's procedural
21 holdings that it is problematic for somebody
22 who wants to then challenge the building

1 permit when the question is perhaps more
2 right.

3 VICE CHAIRMAN SORG: I would just
4 comment that I think what both of you are
5 saying is very reasonable from a practical
6 standpoint. I won't be here at the end but I
7 think there are some questions how a potential
8 infraction to Zoning that have been only
9 presented in concept can be the subject of
10 appeal such as your example of the use of the
11 larger inn and so forth.

12 Also whether it's proper or right
13 for an appeal of this nature to hinge in many
14 ways on expected failings of the system
15 itself. It's difficult to sort of govern on
16 those things.

17 I would also note that I do think
18 there are some important differences between
19 what is being seen here and Ausubel and other
20 cases which I did sit on.

21 MS. BRAY: I would just point out
22 in response to that in particular in the

1 Ausubel case this Board held that an email, a
2 one-line email --

3 VICE CHAIRMAN SORG: I remember.

4 MS. BRAY: -- from the Zoning
5 Administrator that said, "I will proceed to
6 approve the permit." In response to a request
7 for inquiry on revised plans that had not been
8 seen by the appellant in that case was a full
9 determination that was appealable and should
10 have been appealable within 60 days of that
11 email rather than the issuance of a building
12 permit on those plans.

13 VICE CHAIRMAN SORG: I very much
14 remember the case and can understand your
15 abundance of caution.

16 MS. BRAY: So the question of
17 prematurity, this is a much more developed
18 opinion.

19 CHAIRPERSON JORDAN: This is what
20 I'm seeing. You're not really saying that the
21 Zoning Administrator is wrong. You're simply
22 saying he has not made an explanation in the

1 issuance of his letter so that someone picking
2 it up later is very clear about what he meant
3 by that letter.

4 MS. BRAY: That may be, or that,
5 as we allege in our Statement of Reasons,
6 there simply wasn't enough information that we
7 have been able to see was before him to
8 justify the decision made.

9 MS. MCCARTHY: It's an extremely
10 complicated project and this is what the
11 Zoning Administrator attached as what he
12 viewed in making these determinations. They
13 are mostly not dimensioned. They don't
14 identify uses.

15 In particular, they don't deal
16 with the parking availability. If that is the
17 only thing that is mentioned in the Zoning
18 Administrator's determination other than that
19 he had -- that he discussed this in a meeting
20 October 22nd, it just seems like, as I
21 indicated in my testimony, you don't even have
22 to grant the appeal but you could dismiss it

1 without prejudice so that our ability to
2 appeal later if when the more detailed
3 information becomes available and it appears
4 that it's not really matter of right, it could
5 be appealed at that point in time.

6 MS. BRAY: One final point on that
7 issue is that we did FOIA the records of the
8 Zoning Administrator to see whether there was
9 more information upon which he relied or more
10 information that was submitted in
11 correspondence from the developer.

12 The response from DCRA was "no."
13 In fact these six or seven pages of documents
14 and the letter were all that existed including
15 any email correspondence between the two
16 parties.

17 CHAIRPERSON JORDAN: That's kind
18 of where we were. We are kind of one the same
19 page here. It's my understanding if we allow
20 you to dismiss it without prejudice and allow
21 you to come back on a time with more
22 information filed, then you will still be

1 timely. Is that what I understand?

2 MS. BRAY: That is a particular
3 concern of ours. I think we would feel more
4 comfortable if this Board made a determination
5 that this reliance letter is really not
6 sufficient without an independent review to
7 issue a building permit and to allow us to
8 come back on appeal upon the issuance of a
9 building permit.

10 CHAIRPERSON JORDAN: We could keep
11 this case open. Continue to case and keep it
12 open until the time that the permit is
13 actually issued.

14 VICE CHAIRMAN SORG: To that
15 point, that could be a long, long, long time.
16 To the point of a determination that the
17 reliance letter needs independent Zoning
18 review, I believe that is as a matter of
19 course the process.

20 ZC COMMISSIONER MAY: Mr.
21 Chairman, I would be very interested in
22 hearing what the Zoning Administrator has to

1 say on this.

2 CHAIRPERSON JORDAN: I was going
3 to get to him.

4 ZC COMMISSIONER MAY: I know. I
5 just feel like we're already figuring out what
6 path we're taking.

7 CHAIRPERSON JORDAN: I think we
8 are really talking about a little premature.
9 Let me hear from the Government, please.

10 MR. SURBABIAN: I want to let Matt
11 speak as well but I think what I'm hearing
12 from the Appellant is exactly confirming what
13 Ms. Sorg and Mr. Jordan was saying is that
14 this is based on a fear of a future error by
15 the Zoning Administrator staff which is not a
16 basis to sustain an appeal.

17 There needs to be an error of the
18 Zoning Regulations in this letter. There is
19 no Zoning Regulation that says the Zoning
20 Administrator needs to look at X amount of
21 detail right before he writes a letter.

22 There is a Zoning Regulation about

1 what the plans need to consist of before
2 approving a building permit. So that's the
3 stage with these questions about the use of
4 space would be relevant.

5 The conceptual plans don't show
6 any type of commercial use so this speculation
7 or fear that there would be is completely
8 misplaced. The letter talks about an inn or
9 multi-family dwelling and everyone seems to
10 agree that is allowed as a matter of right.

11 If there is no violation of a
12 Zoning Regulation here, we should dismiss this
13 appeal. If/when more detailed information is
14 submitted with a permit application --

15 CHAIRPERSON JORDAN: Which is
16 required.

17 MR. SURBABIAN: -- which may or
18 may not ever be filed.

19 CHAIRPERSON JORDAN: It's
20 required.

21 MR. SURBABIAN: Which is required.
22 Floor plans are required. If a floor plan

1 shows a restaurant or some type of commercial
2 use and the Zoning Administrator approves it,
3 that would be another appeal, but a restaurant
4 is not mentioned in the letter. That can't be
5 a basis to grant this appeal today.

6 I'll also let the Zoning
7 Administrator say something.

8 MR. LeGRANT: Thank you very much.
9 I think there is a misunderstanding of the use
10 of the reliance letter or the determination
11 letter. The terms are used sort of
12 interchangeably.

13 What that means for my office,
14 what that means in the case of a subsequent
15 permit application, I just have to really
16 strongly refute the implication that the mere
17 issuance of a reliance letter will bind my
18 office, a member of my staff or myself, to,
19 "Oh, now we're just going to rubber stamp the
20 building permit."

21 That is not going to happen. My
22 staff is very clear that at the time a

1 building permit application and plan set is
2 submitted, even in the case where there was a
3 prior determination letter, reliance letter
4 issued, that application is the same thorough
5 vetting analysis as a matter of right
6 application.

7 All the details down to the width
8 of a parking isle, the specification of the
9 uses detailed in the floor plans, court
10 calculations and so on and so forth will have
11 a separate independent evaluation.

12 At that time my office then if
13 it's deemed to be compliant, then and only
14 then will the permit be issued by DCRA. It is
15 certainly the province of the Board as to the
16 meaning of a determination letter in terms of
17 its view of appeals.

18 From my office's perspective, any
19 subsequent application will have a complete
20 evaluation. My staff is not going to look at
21 a letter and not come to me. In fact, when
22 there is a letter, they always come to me. We

1 have a discussion, a thorough vetting of the
2 proposals.

3 MR. SURBABIAN: I should add that
4 a reliance letter is only valid for the four
5 corners of this document. If the facts
6 change, if this information was incorrect,
7 then the conclusion was incorrect. That
8 doesn't mean that the permit is issued as a
9 matter of course. If the concept changes
10 completely, then this is not worth the paper
11 it's written on.

12 ZC COMMISSIONER MAY: Even if it
13 changes slightly the question again should be
14 reviewed about whether it complies with
15 Zoning. I think what is missing from the
16 letter that might give people some comfort is
17 that there isn't this sort of qualification
18 language that one often finds in letters like
19 this saying that based on the information that
20 has been presented and also knowing at the end
21 if anything varies from these circumstances,
22 then all bets are off. And, of course, much

1 more artful and expensive lawyerly language.

2 CHAIRPERSON JORDAN: I think they
3 are saying that's what their practice is but
4 you're saying --

5 ZC COMMISSIONER MAY: I agree.

6 CHAIRPERSON JORDAN: -- explicitly
7 see it.

8 ZC COMMISSIONER MAY: I'm not
9 saying I would like to see it that way. I'm
10 just suggest that if it were that way, it
11 might give some people some comfort. I would
12 also say that in one of the two prior cases
13 cited I voted against that because I did not
14 believe there was sufficient notification from
15 the Zoning Administrator to an affected party.

16 I would like to see tnt process
17 changed to make sure there is ample
18 opportunity for affected people to know when
19 a permit has been issued or changed because I
20 do not feel that was the case. I did not feel
21 that there was notice. Of course, I was not
22 in the majority but that doesn't stop me from

1 speaking up again.

2 CHAIRPERSON JORDAN: I understand
3 and agree with you but those are sitting in a
4 higher chair than ours over in the Court of
5 Appeals. They have kind of dealt with that
6 issue.

7 I got burnt myself in a matter
8 that I had that was issued to the computer
9 system and some other stuff was done regarding
10 the Record of Deeds office and they said
11 that's sufficient notice. Anything that is
12 filed somewhere in a public system, then you
13 are deemed to have known about it. I'm with
14 you on that.

15 Mr. Utz, do you have anything to
16 add to this discussion?

17 MR. UTZ: Please. Yes.

18 CHAIRPERSON JORDAN: I don't know
19 if you had any cross-examination.

20 MR. SURBABIAN: I don't think it's
21 necessary.

22 MS. BRAY: Mr. Chairman.

1 CHAIRPERSON JORDAN: Yes.

2 MS. BRAY: I do have some
3 questions for the Zoning Administrator.

4 CHAIRPERSON JORDAN: But --

5 MS. BRAY: Okay.

6 CHAIRPERSON JORDAN: Mr. Utz, you
7 got anything you want to add?

8 MR. UTZ: Yes. Thanks.
9 Definitely.

10 I just wanted to broadly just
11 respond to the conversation that is ongoing.
12 Generally Zoning determination letters issued
13 by the Zoning Administrator kind of run the
14 gamut. They often do deal with one discrete
15 issue that needs to be kind of vetted before
16 any further planning can occur or they can
17 discuss a wider array of issues as this one
18 does.

19 It is not uncommon that there is a
20 wide breadth of items that are hashed out like
21 this letter does. In fact, because this is a
22 complicated project, this owner needed to kind

1 of come to an understanding of what all the
2 Zoning constraints were that were going to
3 affect this project.

4 In particular how the use was
5 affected by this unique bifurcation between
6 the W-2 and W-3 zoning. It is very important
7 for owners and developers and the real estate
8 community in general to have a finality very
9 early in the process before they spend money.
10 Sometimes before they even purchase a
11 property.

12 CHAIRPERSON JORDAN: But you just
13 agree it is not definitive of going forward.

14 MR. UTZ: Absolutely.

15 CHAIRPERSON JORDAN: This is the
16 framework. That is where we have been
17 operating from for awhile.

18 MR. UTZ: Exactly. Thank you.
19 Yes. It's purely a very initial vetting of
20 the concept so that we know. Essentially we
21 are going down the proper path and those
22 topics are locked in but then where the rubber

1 hits the road the actual practical design and
2 a much more expansive design comes later
3 during the building permit process.

4 The whole thing is revisited again
5 with kind of the agreed-upon framework that
6 these letters represent in an earlier state.
7 There is no thought that this is kind of the
8 building permit review and these attached
9 plans that are admittedly conceptual,
10 purposely conceptual, are the end of the
11 inquiry.

12 CHAIRPERSON JORDAN: Absolutely.
13 I think of a process I started because when
14 you didn't -- people who are doing projects
15 need to know early on some constraints where
16 there were instead of coming to the last
17 minute and finding out what they thought they
18 could do they couldn't do.

19 We invoked the process of some
20 early reviews and put that in so we could stop
21 people going crazy but it was not definitive
22 of what could actually happen. We just set

1 the parameters.

2 I'm going to allow the appellant
3 to have some short leeway on questions because
4 I think we are pretty close to where we need
5 to be.

6 MS. BRAY: I have just a couple of
7 questions for the Zoning Administrator and
8 they do relate specifically to the use.

9 Mr. LeGrant, when you reviewed the
10 documents that were submitted by the
11 developer, in particular the plans that are on
12 page 5 of Exhibit 3D in the record in this
13 case which are titled Washington Harbour
14 Residential/Inn Ground Floorplan.

15 MR. LeGRANT: Yes.

16 MS. BRAY: There is an area that
17 is disconnected from the potential lobby of
18 either the residential building or the inn
19 that is identified as amenity/service space.

20 MR. LeGRANT: Yes.

21 MS. BRAY: Can you tell me whether
22 you discussed or whether you were provided

1 with any information by the developer with
2 respect to what those uses might include,
3 amenity/service?

4 MR. LeGRANT: What I recall, and I
5 believe the verbal discussions we had, was
6 that these were accessory to the inn or
7 residential use. It might have been a club
8 room. It might have been a manager's office.
9 It might have been an exercise room. I think
10 that was the scope of the discussion.

11 MS. BRAY: But none of those uses
12 are clearly delineated on the plan or shown
13 how they might be divided within the space.
14 is that correct?

15 MR. LeGRANT: That's correct.A

16 MS. BRAY: And this space is not
17 dimensioned either, is it?

18 MR. LeGRANT: That's correct.

19 MS. BRAY: So there is no way to
20 determine how much of this -- I mean, other
21 than by general observation how much of this
22 amenity space or service space there is

1 relative to guest rooms or lobby or core
2 functions of a building and whether it's
3 accessory.

4 MR. LeGRANT: It's understood that
5 this would be subject to further review upon
6 the submission of a building permit
7 application.

8 MS. BRAY: Does your letter say
9 that the amenity/space or other uses within
10 the building would be subject to further
11 review?

12 MR. LeGRANT: No, it does not.

13 MS. BRAY: If I could have just a
14 moment.

15 MR. UTZ: Since we're talking
16 about this commercial versus residential use,
17 can we say a little bit about that? I didn't
18 think we were going back to that.

19 MS. BRAY: I don't have any
20 further questions for the Zoning
21 Administrator. If there are no further
22 questions from the intervenor, I would like a

1 few minutes for rebuttal.

2 MR. UTZ: Yes, please. Thank you.

3 Now that we're talking about the
4 commercial versus residential use of the
5 property, it is pretty clear in the letter
6 that the project isn't going to step into any
7 uses that would trigger the commercial use.
8 It very narrowly defines residential and inn
9 as what is going on here.

10 It doesn't really even indicate
11 anywhere that we are going to -- this project
12 is going to bring in a restaurant or any
13 office of anything along those lines at all.
14 That is a very purposeful approach of this
15 project and that's what we met with the Zoning
16 Administration about.

17 If you would like, we could go
18 into further detail with both the owner and
19 the architect to kind of explain exactly what
20 the plan is. I can assure you it does not
21 include commercial.

22 The letter can only kind of be so

1 long and call out so many possibilities. It
2 can't call out everything. It says you are
3 permitted to do residential and inn so that
4 was really kind of the point behind getting
5 it.

6 Also I just wanted to kind of go
7 back generally because I'm not sure if I'll
8 get a chance to speak again to the concept of
9 dismissing the appeal without prejudice and
10 kind of possibly hearing it again.

11 CHAIRPERSON JORDAN: The point is
12 that no matter what we do here today it's
13 going to be another step for anything that
14 goes further. If something is wrong, then the
15 door opens and the pill comes in. Notice how
16 it's in the Register, how it's in the computer
17 system is something that we don't control
18 here.

19 We've indicated several times we
20 wish there was another way. That might be
21 something administratively you might want to
22 still do, put up on the board or shoot out

1 something. I think we're clear. If you think
2 you need to add something, then --

3 MR. UTZ: Just that we essentially
4 need something to rely on now that isn't
5 revisitable within the corners of this
6 document.

7 CHAIRPERSON JORDAN: Well, we're
8 not going to give you all that. The document
9 speaks for itself. Now you're asking for
10 something else on the other end.

11 MR. UTZ: Just the document. I
12 mean, basically we want to lock in --

13 CHAIRPERSON JORDAN: Depending on
14 how we rule and if we rule to deny this
15 appeal, you got the document for what the
16 document is worth and we're not going to give
17 you anything more than what that document
18 says. That goes back to square one. I'm sure
19 you're not asking us that.

20 MR. UTZ: No. I'm not asking
21 anything beyond what is in the document.
22 We're just saying that we actually need the

1 document and we are looking to the document as
2 kind of the broad framework of the project,
3 the guidance of the Zoning constraints on the
4 project.

5 CHAIRPERSON JORDAN: Okay. I
6 understand. I just want to make sure it's
7 clear.

8 Can I have some rebuttal, please?

9 MS. BRAY: Yes. Absolutely. I
10 will try to be as brief as possible.

11 CHAIRPERSON JORDAN: Don't do it
12 because I asked you to.

13 MS. BRAY: No. I have lots to
14 say.

15 CHAIRPERSON JORDAN: No, we're not
16 going to do a lot. You've got a three-minute
17 rebuttal.

18 MS. BRAY: I think the issue of
19 how these -- first of all, I think the issue
20 of how these letters are used by developers
21 and how they are treated at DCRA once a
22 building permit application is submitted is a

1 bit of a red herring here because the appeal
2 process exist because Zoning Administrator
3 may, and in fact sometimes do, make errors.
4 Any aggrieved person can then challenge that
5 decision and come before this Board.

6 But unless this Board is prepare
7 to reverse its decision in interpreting
8 Baskin, which I will point out discussed a
9 four-year lapse from the issuance of a
10 building permit and the issuance of a
11 Certificate of Occupancy that was then
12 appealed as a collateral attack on the
13 building permit.

14 Very different than your two
15 holdings in Ausubel and Lynch where you were
16 talking about a matter of, I think, maybe 10
17 days in Ausubel, maybe a month or two --
18 actually I think less than a month in Lynch.

19 Unless the Board is prepared to
20 reverse its decision in either of those cases
21 and say that a Zoning determination letter is
22 only as good as the paper that it's written on

1 and cannot preclude an appellant from
2 challenging the issuance of a building permit
3 later, which is not what you've held in those
4 cases, I think there is a genuine legal issue
5 here.

6 The idea of speculation of error
7 is not misplaced, as Mr. Surabian said.
8 Appellant is locked out of the appeal process
9 by the mere existence of a Zoning
10 determination letter. I say that because, as
11 I pointed out earlier, Ausubel was deemed to
12 be a determination and it was far less
13 detailed. It was a one-line email.

14 Understanding Zoning constraints
15 in order to proceed with design of a project
16 and getting a reliance letter that explains
17 those constraints I think is very different
18 than an evaluation by a Zoning Administrator
19 and an opinion that a project complies with
20 the Zoning Regulations and is permitted as a
21 matter of right which is what this specific
22 letter says.

1 I find it very difficult to
2 reconcile the idea that this letter combined
3 with the Board's holdings interpreting Baskin
4 would not close the door on any further
5 challenge on a full review of developed
6 building permit plan.

7 You have previously said it is the
8 mere existence of a communication notifying
9 someone that a decision has been made starts
10 the clock and the clock is jurisdictional. An
11 appeal cannot be heard if it is not timely.
12 That is why we are here today. It really
13 doesn't matter what the letter in and of
14 itself says, how many errors it alleges.

15 The mere existence of a Zoning
16 determination letter in this case that makes
17 an opinion if a project complies as a matter
18 of right under your legal holding would
19 prevent any further challenge. That is the
20 legal issue that we present to you today.

21 CHAIRPERSON JORDAN: Thank you.

22 ZC COMMISSIONER MAY: Mr. Chair,

1 I'm confused by that. You're just saying the
2 mere fact that they have this letter in hand
3 and the fact that the Board has taken certain
4 positions in the past means that there isn't
5 going to be a future avenue for appeal?

6 MS. BRAY: Under your holdings in
7 Ausubel and Lynch that is exactly what it
8 means. We think there are clear reasons that
9 suggest errors --

10 ZC COMMISSIONER MAY: There is
11 always an opportunity of a building permit.

12 MS. BRAY: No. That's not what
13 happened in Ausubel. In Ausubel what was said
14 was this appeal is not timely because it was
15 filed more than 60 days after an email
16 notification from the Zoning Administrator
17 that a permit would be issued. In Lynch --

18 ZC COMMISSIONER MAY: That's not
19 what we have here. We don't have a statement
20 that a permit will be issued. We have a
21 statement that what was present complies with
22 Zoning.

1 MS. BRAY: In Lynch you had the
2 same conclusion that the project complied with
3 Zoning and, therefore, the Zoning
4 Administrator would proceed to issue a permit
5 barring an actual challenge of that permit.

6 ZC COMMISSIONER MAY: I remember
7 that one and the issue there had more to do
8 with the finer points of the timing, whether
9 the applicant should have reasonably known
10 based on conversation or based on an email or
11 something like that.

12 MS. BRAY: Going back to the fact
13 at hand, we think that the letter in and of
14 itself suggest enough error for this Board to
15 decide an appeal, that there is a ripe
16 question.

17 ZC COMMISSIONER MAY: I think the
18 mere fact that you have even appealed it at
19 this point and if we make a determination on
20 this ourselves and there is a subsequent
21 issuance of a building permit, we are not
22 going to look back at this moment and say,

1 "You know what? You had your chance back
2 then." That's absurd.

3 MS. BRAY: I agree it's absurd but
4 that is precisely what happened in the Ausubel
5 case.

6 ZC COMMISSIONER MAY: That is
7 precisely what happened? It's exactly what
8 happened? I challenge that. I don't even
9 know the case but I cannot believe that's what
10 this Board would have said.

11 MS. BRAY: In dismissing the
12 appeal that is exactly what the Board said.

13 ZC COMMISSIONER MAY: This Board
14 dismissed one appeal and then subsequently
15 ruled that you should have filed that
16 previously appeal and won back then? That is
17 what this Board said?

18 MR. SURBABIAN: No, that's not
19 what the Board said. I worked on that case.
20 That's not what that case said.

21 VICE CHAIRMAN SORG: I think we
22 are not here to discuss --

1 CHAIRPERSON JORDAN: Time out,
2 time out, time out. We've had rebuttal.
3 We've had oral argument. We've done
4 everything. Are there any questions that the
5 Board needs to have answered before we move
6 on?

7 Thank you. We will conclude this
8 hearing on this appeal. Is the Board ready to
9 deliberate or you need to do something else?
10 I would move to deny the appeal based upon the
11 fact I find this premature and that the
12 Applicant has an opportunity -- the Appellant
13 has the opportunity once a building permit is
14 issued to bring another appeal if necessary.

15 VICE CHAIRMAN SORG: I think that
16 I would feel more comfortable in dismissing
17 the appeal rather than denying it because I
18 think that there are potentially scenarios in
19 which if a future appeal were to happen, then
20 opposition to that could call upon the denial
21 of some material facts that were contained in
22 the letter that is the subject of this appeal.

1 I think dismissing it, in my opinion, would be
2 a better course of action that allows all the
3 parties.

4 CHAIRPERSON JORDAN: Thank you. I
5 accept that as a motion.

6 Any other?

7 ZC COMMISSIONER MAY: I'm sorry.
8 We have a motion to dismiss now without
9 prejudice and a second.

10 CHAIRPERSON JORDAN: Yes.

11 ZC COMMISSIONER MAY: Did you
12 second?

13 CHAIRPERSON JORDAN: I seconded
14 it. I didn't get a second to my motion. Ms.
15 Sorg made a motion and I seconded it.

16 ZC COMMISSIONER MAY: A subsequent
17 motion. Okay. I wanted to understand where
18 we were in the discussion. I want to make
19 some comments before we take a vote on this.
20 It seems that we are spending all out time
21 arguing about the technicalities of a
22 particular bureaucratic act. It's missing, I

1 think, kind of the bigger point.

2 I don't know if there is no
3 restaurant in this proposed building that
4 suddenly it's going to be acceptable to the
5 Condominium Association. Okay? I don't think
6 that is really the key issue here. I think
7 that the building is the issue.

8 It seems apparent to me that the
9 condominium owners and probably other people
10 don't want to see a building in this space
11 period. I think that is a lesson for MRP and
12 for the Applicant to understand that very
13 clearly that there is opposition and there is
14 likely to be serious opposition to this. We
15 should not forget that for the sake of this
16 technical argument.

17 The other lesson from this is that
18 the Homeowner's Association or the Condominium
19 Owner's Association, whatever it is, needs to
20 watch this very carefully to make sure that
21 everything goes the way it should from a
22 technical point of view, from a Zoning point

1 of view.

2 I would just urge great
3 communication. We started this out with a
4 discussion of how well you all get along with
5 MRP and I hope that will be the course of the
6 future and that we will never, ever see you
7 all in the same room like this again. Thanks.

8 CHAIRPERSON JORDAN: Well said.

9 MR. SURBABIAN: Mr. Chair, I'm
10 concerned about dismissing without
11 prejudice --

12 CHAIRPERSON JORDAN: It doesn't --

13 MR. SURBABIAN: -- for this
14 reason.

15 CHAIRPERSON JORDAN: It's not open
16 for that level of debate. We are having
17 deliberation on the Board.

18 MR. SURBABIAN: Okay.

19 CHAIRPERSON JORDAN: I understand.

20 MR. SURBABIAN: I would suggest
21 the Board get advice from the Attorney
22 General's office.

1 CHAIRPERSON JORDAN: We're moving
2 on. Thanks.

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

5 BOARD MEMBERS: Aye.

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

8 Mr. Moy.

9 MR. MOY: Yes, sir. Staff would
10 record the vote as four to zero. We have one
11 member not present and not participating.
12 This is on the motion of Vice Chairperson Sorg
13 to dismiss the appeal. Seconding the motion
14 is Chairman Jordan. Also in support Mr. Peter
15 May and Mr. Jeffrey Hinkle. The motion
16 carries, Mr. Chairman.

17 CHAIRPERSON JORDAN: We had fire
18 alarms and you name it. Dialogue and three or
19 four parties in opposition. It's been an
20 eventful day.

21 MS. BRAY: Thank you.

22 CHAIRPERSON JORDAN: I appreciate

1 the spirit of debate.

2 Wait a minute. Let me officially
3 say that -- gosh, this day has gotten long but
4 how much we are going to miss Vice Chair Sorg
5 on this Board who has served this Board for
6 three years.

7 VICE CHAIRMAN SORG: Nobody leave.

8 CHAIRPERSON JORDAN: No. It's
9 very, very important. I want to make sure
10 everybody knows that. I mean, I've been
11 fighting to try to keep her here. She has
12 been invaluable to me and to this Board with
13 her input and her knowledge and wisdom in all
14 these cases, and hard work.

15 People don't realize how much
16 time. It's 16 hours a week we all average
17 dealing with these cases. It's something we
18 don't take very lightly. I am really going to
19 miss her and I would ask that you all join me
20 to salute her.

21 (Applause.)

22 CHAIRPERSON JORDAN: Anything

1 other Board members want to say?

2 MEMBER HINKLE: Yes. Thank you,
3 Mr. Chair. I just have to say I have worked
4 with Ms. Sorg two-and-a-half years now or
5 something.

6 CHAIRPERSON JORDAN: About three.

7 MEMBER HINKLE: Just about every
8 day that I've come here I've learned something
9 new from her. She always brings a new insight
10 into these cases. It's actually been quite an
11 honor and quite a joy working with her and
12 we're going to miss her.

13 CHAIRPERSON JORDAN: Mr. May.

14 ZC COMMISSIONER MAY: I'll join
15 the chorus. It has been a pleasure for me as
16 well. I'm not here as frequently on Tuesday
17 as enjoyable as it is. I don't get here often
18 enough. I'll miss you in my future meetings.
19 It's always been a bright spot working with
20 you.

21 VICE CHAIRMAN SORG: I'll just say
22 quickly thank you to everybody. I really

1 appreciate it. This has been a really, really
2 incredible and nerdy and difficult, intense
3 and exciting experience for me. A lot of you
4 know my background and so it's a pretty
5 special thing to have gotten to do.

6 I've been here for three years and
7 I owe a debt of gratitude to everyone that I
8 served with and all the chairmen that I've
9 worked with, Mr. Jordan and Mark and Meridith
10 and everybody that I'm worked with on the
11 Board including everybody sitting here. It's
12 just been wonderful. As well as the entire
13 staff of the Office of Zoning.

14 It's just been such a pleasure to
15 get to know all of you and everything that you
16 have helped me with personally with questions
17 and random things. It's just a really, really
18 wonderful family to get to be a part of for
19 about three years. Thank you very much.

20 CHAIRPERSON JORDAN: Our last act
21 is that in accordance with Section 405(c), the
22 Open Meetings Act, I move the Board of Zoning

1 Adjustment hold close meetings on Monday, May
2 6th and May 20th.

3 This will begin at 4:00 p.m. for
4 the purposes of obtaining legal advice from
5 our counsel and to deliberate on without
6 voting on cases scheduled to be publicly heard
7 or decided by the Board on the day after the
8 closed meeting. These cases are identified on
9 the Board's public agenda for May 7th and May
10 21st.

11 Is there a second?

12 MEMBER HINKLE: Second.

13 CHAIRPERSON JORDAN: Motion made
14 and seconded.

15 Would the secretary please roll
16 call the motion.

17 MR. MOY: Yes, sir. With
18 pleasure.

19 When I call the member's name, if
20 you could reply with a yes or no.

21 Peter May.

22 ZC COMMISSIONER MAY: Yes.

1 MR. MOY: Vice Chairperson Sorg.

2 VICE CHAIRMAN SORG: Yes.

3 MR. MOY: Chairman Jordan.

4 CHAIRPERSON JORDAN: Yes.

5 MR. MOY: Mr. Hinkle.

6 MEMBER HINKLE: Yes.

7 MR. MOY: Ms Allen is absent. The
8 motion carries, Mr. Chairman.

9 CHAIRPERSON JORDAN: Thank you.

10 Then we are adjourned. Thank you all again.

11 (Whereupon, at 4:03 p.m. the
12 hearing was adjourned.)

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 04-30-13

Place: Washington, DC

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