

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,  
MAY 7, 2013

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson

S. KATHRYN ALLEN, Board Member

ROBERT MILLER

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

TAMAR GLAZER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN  
BRANDICE ELLIOTT  
STEPHEN GYOR  
ARTHUR JACKSON  
KAREN THOMAS  
ELISA VITALE

D.C. DEPARTMENT OF TRANSPORTATION STAFF

PRESENT:

LEWIS BOOKER  
FLEMING EL-AMIN

The transcript constitutes the  
minutes from the Public Meeting held on May 7,  
2013

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

2 9:41 a.m.

3 CHAIRPERSON JORDAN: Good  
4 morning. Would this meeting of the Board of  
5 Zoning Adjustment please come to order. We're  
6 located here at Jerrily R. Kress Memorial  
7 Hearing Room at 441 4th Street, N.W. Today's  
8 date is May 7, 2013.

9 My name is Lloyd Jordan,  
10 Chairperson of the Board of Zoning Adjustment.  
11 To my right is S. Kathryn Allen, Board Member  
12 and to my left is Robert Miller, a member of  
13 the Zoning Commission.

14 Please be advised that this  
15 hearing and meeting is being recorded by a  
16 court reporter and also being Webcast live,  
17 therefore I'm going to ask you to refrain from  
18 any disruptive noises here in the meeting room  
19 and to ensure that you have your cell phones  
20 or any other device turned off or on vibrate.

21 The Board's hearing procedures and  
22 meeting procedures are contained in the

1 document to my left by the back door so if you  
2 need to familiarize yourself with our process  
3 please get the pamphlet and read through it.  
4 Anyone who's here to testify in a matter on  
5 our docket today I need you to stand and take  
6 the oath or affirmation being given by the  
7 Board secretary and thereafter I need you to  
8 complete two witness cards each. Two witness  
9 cards each and give them to the court reporter  
10 prior to testifying.

11 So if anyone's here for any of the  
12 cases where we're taking testimony please  
13 stand and take the oath or affirmation being  
14 given by Mr. Moy.

15 (WITNESSES SWORN)

16 MR. MOY: Good morning, Mr.  
17 Chairman and Members of the Board, the first  
18 case for decision making is a motion for  
19 reconsideration and rehearing of Order No.  
20 18400 of the Jewish Primary Day School of the  
21 Nation's Capital pursuant to Section 3126 of  
22 the Zoning Regulations.

9 There is a response filing from  
10 the opposition to the motion and that was  
11 submitted on May 1, 2013 and is identified as  
12 Exhibit 52. The Board is to act on the merits  
13 of the request for reconsideration under the  
14 requirements under Section 3126.

21 CHAIRPERSON JORDAN: Well let's  
22 move into that one. Ms. Allen?

1 MS. ALLEN: Yes, I have read the  
2 transcript and reviewed the record and am  
3 prepared to participate Mr. Chairman.

4 CHAIRPERSON JORDAN: Okay. Then  
5 let's move on. This matter came before us on  
6 a motion -- well kind of a dual motion by the  
7 party in opposition and by counsel which  
8 actually alleged two different matters within  
9 our rules of 3125 -- for consideration and  
10 rehearing.

11 Those rules are real clear and  
12 specific as what is required for  
13 reconsideration and rehearing and after  
14 reviewing this record there's no specific  
15 error cited in this matter. It was just a  
16 rehashing of the same case that was presented  
17 by the Board over a period of days.

18 There was no new evidence  
19 presented in this matter by the movement and  
20 there was a claim of not providing by ADA,  
21 which is not applicable to the Zoning  
22 Regulations but, more importantly, there has

1 been resolution placed in this particular  
2 order to mitigate any issue if it did arise  
3 to make sure that there would not be any harm.

4 So with that it would be my intent  
5 to deny the motions of the movement for  
6 rehearing and reconsideration.

7 MS. ALLEN: Second.

8 CHAIRPERSON JORDAN: Motion made  
9 and seconded. Any discussion? Then all those  
10 in favor signify by saying aye.

11 ( VOTE TAKEN )

12 CHAIRPERSON JORDAN: Mr. Moy, do  
13 we have an absentee ballot?

21                           This is on the motion, Mr.  
22                           Chairman to deny, second the motion Ms. Allen,

1 and of course also in support of the motion,  
2 Mr. Hood. So again the final vote is 3-0 and  
3 the motion carries, Mr. Chairman.

4 CHAIRPERSON JORDAN: Then fine,  
5 let's have a full discussion of that please.

6 MR. MOY: Yes sir. The next  
7 action before the Board is a motion for  
8 modification of approved plans to Order No.  
9 18486 of AG Georgetown Park Holding 1, L.L.C.  
10 This is pursuant to Section 3129 of the Zoning  
11 Regulations.

12 On April 22, 2013 the applicant  
13 filed the request to modify approved plans and  
14 that Exhibit in your case folder, Mr.  
15 Chairman, is identified as Exhibit 44. There  
16 are two other filings in the record and  
17 response. One is from the ANC-2E which filed  
18 on Friday, May 3rd, identified the document,  
19 identified it as Exhibit 47 and also from the  
20 Office of Planning, their supplemental report  
21 and that is identified as Exhibit 46. So with  
22 that the Board is -- the merits of the request

1 to modify pursuant to the requirements under  
2 Section 3129.

3 Again, the participating members  
4 on this motion is the Chairman, Mr. Peter May,  
5 and Kathryn Allen who also I believe has  
6 reviewed the record to participate.

7 CHAIRPERSON JORDAN: Thank you.

8 Ms. Allen, do you have a --

9 MS. ALLEN: Yes, Mr. Chairman, I  
10 have read the transcript and reviewed the  
11 record and am prepared to participate.

12 CHAIRPERSON JORDAN: Based upon  
13 the documents filed and the support also of  
14 the ANC-2E and the recommendation of Office of  
15 Planning that the modification being made by  
16 the applicant is indeed minor and it would be  
17 my motion that we approve the request for  
18 minor modification of the plans under 18486.

19 MS. ALLEN: Second.

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

1 (VOTE TAKEN)

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

4 MR. MOY: Yes sir, before I give  
5 the final vote, as I said Mr. Peter May also  
6 participated or is participating and his  
7 absentee vote is to approve the request for  
8 modification, so that would give a final vote  
9 of 3-0. We have two members not  
10 participating.

11 Again, this is on the motion to  
12 approve by the Chairman, Chairman Jordan,  
13 second motion Ms. Allen and, of course, in  
14 support of the motion Mr. Peter May. The  
15 motion carries 3-0, Mr. Chairman.

16 CHAIRPERSON JORDAN: Thank you.  
17 Next case please.

18 MR. MOY: The next action before  
19 the Board is the applicant's request for a  
20 two-year time extension of application No.  
21 18182 of Lincoln Westmoreland Housing,  
22 pursuant to Section 3130 of the Zoning

1                   Regulations.

2                   As the Board will recall, at its  
3                   public meeting on April 23, 2013, the Board  
4                   deliberated and rescheduled its decision to  
5                   May 7, 2013. The Board requested that the  
6                   applicant submit additional information  
7                   including support documentation for showing a  
8                   good cause.

9                   In your case folder, Mr. Chairman,  
10                  is the applicant's post-hearing document dated  
11                  May 2, 2013 and is identified as Exhibit 35.  
12                  That completes staff's briefing, Mr. Chairman.

13                  CHAIRPERSON JORDAN:    Thank you.  
14                  This matter is before us on a request for a  
15                  time extension. It appeared before us at an  
16                  earlier hearing, I think we then moved it off.  
17                  We at the hearing requested additional  
18                  document to be in line with the Board's  
19                  practice of receiving back up information,  
20                  supporting information for time extensions.

21                  Subsequently the applicant has  
22                  provided the affidavit on Exhibit 35 and other

1 documents, showing that the basis for the need  
2 for the time extension is justified. With  
3 that I would move that we grant the time  
4 extension.

5 MS. ALLEN: Second.

6 CHAIRPERSON JORDAN: Motion made  
7 and seconded. Any unreadiness? All those in  
8 favor signify by saying aye. Those opposed  
9 nay?

10 (VOTE TAKEN)

11 CHAIRPERSON JORDAN: The motion  
12 carries. Mr. Moy?

13 MR. MOY: Before I give a final  
14 vote, Mr. Chairman, we do have an absentee  
15 vote from Mr. Hinkle who participated and his  
16 absentee vote is to approve the request for a  
17 two-year time extension. So that would give  
18 a final vote -- and I believe Ms. Allen is  
19 participating -- correct?

20 CHAIRPERSON JORDAN: Yes.

21 MS. ALLEN: Correct.

22 MR. MOY: Great. So that would

1 give a final vote of 4-0. We have one member  
2 not participating so this would be on the  
3 motion of Chairman Jordan, seconded Mr. Robert  
4 Miller, also in support Ms. Allen and of  
5 course the absentee ballot in support, Mr.  
6 Hinkle. The motion carries Mr. Chairman.

7 CHAIRPERSON JORDAN: Thank you.  
8 Then let's move to our next. I believe we can  
9 have summary orders in 18486, 18182.

10 MR. MOY: Yes sir. Okay. The  
11 last decision action before the Board is an  
12 applicant's request for a third, two-year time  
13 extension of application No. 17606-C. The  
14 Board will recall at its public meeting on  
15 April 23, 2013, the Board deliberated and  
16 rescheduled its decision to May 7th. Again,  
17 this was to allow the applicant to submit  
18 additional information requested by the Board.

19 In your case folders, Mr.  
20 Chairman, there is the filing from the  
21 applicant dated May 3rd, identified as Exhibit  
22 55. And the second filing is a support

1                   document via DDOT which was submitted  
2                   yesterday May 6th, identified as Exhibit 56.  
3                   And that completes the staff's preview Mr.  
4                   Chairman.

5                   CHAIRPERSON JORDAN:    Okay.  This  
6                   is another matter that came before us earlier  
7                   that we took testimony on.  However, the Board  
8                   wanted additional documentation as we've been  
9                   requiring again for these extensions and so  
10                  the applicant has successfully provided those  
11                  additional documents, the affidavit by the  
12                  applicant and the subsequent documents  
13                  supporting the request for relief.

14                  This is one I'm comfortable in  
15                  granting the time extension and so I would  
16                  move that we grant the time extension as  
17                  requested by the applicant.

18                  MS. ALLEN:    Second.

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

22                  (VOTE TAKEN)

1 CHAIRPERSON JORDAN: The motion  
2 carries. Mr. Moy?

3 MR. MOY: Yes sir, again before I  
4 give a final vote we do have an absentee vote  
5 from Mr. Hinkle who participated and his  
6 absentee vote is to approve the request for a  
7 time extension so that would give a final vote  
8 of 4-0. No other member voting. So again  
9 this is on the motion of Chairman Jordan to  
10 approve, second the motion Ms. Allen, also in  
11 support Mr. Robert Miller, and Mr. Hinkle by  
12 absentee vote. So again the motion carries 4-0  
13 Mr. Chairman.

14 CHAIRPERSON JORDAN: And summary  
15 report please.

16 MR. MOY: Yes sir. Thank you.

17 Okay. The Board is now at the point for the

18 public hearing of new applications. Before I

19 begin I just want to announce for the record

20 that Application No. 18549, this is the

21 application of Carlos Jackson, has previously

22 been rescheduled for public hearing on June

1 11, 2013. So with that the first application  
2 for public hearing is Application No. 18548.  
3 This is the application of Marc Fisher and  
4 Jody Goodman.

5 CHAIRPERSON JORDAN: Mr. Moy, do  
6 we need Mr. Turnbull.

7 MR. MOY: Yes, we do.

8 CHAIRPERSON JORDAN: We're going  
9 to do a tag team hand off here. There you go.

10 (MIKE TURNBULL JOINS)

11 MR. MOY: I'm going to go ahead  
12 and read the caption Mr. Chairman. So again  
13 this application No. 18548, this is the  
14 application of Marc --

15 CHAIRPERSON JORDAN: And Mr. Moy,  
16 we're very comfortable with the bold point  
17 with the applicant's name and the number  
18 because it's been posted and it's been listed  
19 and it's been everything.

20 MR. MOY: Well it saves my voice.

21 CHAIRPERSON JORDAN: Yes, I do  
22 that for the record but I understand.

1                   MR. MOY: I know you do. And  
2                   we're being joined by Michael Turnbull, a  
3                   member of the Zoning Commission. Yes you've  
4                   already changed -- you're quick.

5                   CHAIRPERSON JORDAN: Okay. We're  
6                   back. And first up at bat is application No.  
7                   18548. This is the application of Marc Fisher  
8                   and Jody Goodman. And this I believe is for  
9                   a special exception relief under Section 223.  
10                  Good morning, please identify yourselves and  
11                  make sure your mic's on.

12                  MR. SNOWBER: My name is Chris  
13                  Snowber with Hamilton, Snowber Architects and  
14                  the architects for the clients.

15                  MS. GOODMAN: Good morning, I'm  
16                  Jody Goodman.

17                  MR. FISHER: Marc Fisher.

18                  CHAIRPERSON JORDAN: Now let's  
19                  get a couple of things clear here. Let me ask  
20                  you, there's a question about the non-  
21                  conformance side yard issue and whether or not  
22                  relief is necessary. Let me ask, when was the

1 property -- was this side yard in shape, I  
2 mean nothing's changed since 1958?

3 MR. SNOWBER: Correct.

4 CHAIRPERSON JORDAN: And you're  
5 not making a request to do anything in regards  
6 to what might be perceived as a non-conforming  
7 side yard?

8 MR. SNOWBER: Well, we're  
9 extending the existing house which is five and  
10 a half feet from the side yard so my  
11 understanding is we're by 409 allowed to  
12 extend that to the rear yard.

13 CHAIRPERSON JORDAN: Okay. So  
14 then I think we're okay. I think the record is  
15 pretty full about the relief that's necessary  
16 in what you're requiring. I don't see any  
17 real road blocks. Let me check with other  
18 Board members to see if there is something  
19 that we need to have you to address  
20 specifically as opposed to going in a  
21 roundabout way of looking at this example.

22 Is there an issue about posting

1           this? Was this posted? We do have the  
2           application --

3                    MR. MOY: Yes, we do. It's  
4                   Exhibit No. 28 and it's dated May 2nd.

5                   CHAIRPERSON JORDAN: Very good.  
6                   Thank you. Does the Board have any questions  
7                   that we need to ask.

8                   MR. SNOWBER: Mr. Jordan, could I  
9                   interrupt you for one second. Regarding the  
10                  posting I may actually have made an error  
11                  regarding the posting. I counted my calendar  
12                  back 15 days and included today and counted  
13                  back till the 23rd of April, and that's when  
14                  I posted it. And I think in fact the 15 days  
15                  should have included one more day and should  
16                  have been done on the 22nd given that we did  
17                  get the mail out to the neighbors within 200  
18                  feet.

19                   CHAIRPERSON JORDAN: So you're  
20                  asking for the Board to waive if there's a  
21                  violation?

22                   MR. SNOWBER: I would be asking

1 the Board to waive.

2 CHAIRPERSON JORDAN: Then I think  
3 I would grant that unless there's a problem.  
4 Then we will accept that.

5 MR. SNOWBER: Thank you. Sorry  
6 for the error.

7 CHAIRPERSON JORDAN: Ties go to  
8 the runner but anyway -- so I believe the file  
9 is pretty clear. The Board doesn't appear to  
10 have any questions about it. You have the  
11 opportunity to do a presentation if you want  
12 to risk that or you can waive your  
13 presentation at this point and we can turn to  
14 the Office of Planning to have them continue  
15 on.

16 MR. SNOWBER: I waive thank you.

17 CHAIRPERSON JORDAN: All right.  
18 Very good. Let's turn to the Office of  
19 Planning and see if there's anything that Ms.  
20 Vitale has for us.

21 MS. VITALE: Good morning, Mr.  
22 Chair, members of the Board. Elisa Vitale with

1                   the Office of Planning. We support the  
2                   requested special exception relief and we'll  
3                   rest on the record. I can answer any  
4                   questions.

5                   CHAIRPERSON JORDAN: Does the  
6                   Board have any questions of Ms. Vitale? Does  
7                   the applicant have any questions that you'd  
8                   like to ask the Office of Planning?

9                   MR. SNOWBER: No, thank you.

10                  CHAIRPERSON JORDAN: Okay. Then  
11                  do we have anyone from the Department of  
12                  Transportation. Did I have a report from the  
13                  Department of Transportation? I think not.

14                  MR. MOY: That should be Exhibit  
15                  21, Mr. Chairman.

16                  CHAIRPERSON JORDAN: Okay. And do  
17                  they have their usual no objection?

18                  MR. MOY: That's correct.

19                  CHAIRPERSON JORDAN: Anyone here  
20                  from the ANC? Did we do a presentation with  
21                  the ANC?

22                  MR. SNOWBER: We did, we had a

1 unanimous vote 4-0.

2 CHAIRPERSON JORDAN: I don't see  
3 -- do you have the ANC report? Let me see.  
4 Let me go back. Okay. So ANC-3E supports  
5 the application. Does anyone in the audience  
6 wish to speak in support of the application?  
7 Anyone here wishing to speak in support of the  
8 application?

9 Anyone here wishing to speak in  
10 opposition to the application. Anyone in  
11 opposition?

12 Then let's turn back to the  
13 applicant and we normally would have any  
14 rebuttal and closing. However, that's not  
15 necessary, would you agree. So we'll move  
16 forward and close on this hearing on the  
17 information already deduced and based upon  
18 what we have in the record and today then I  
19 would move that we grant the relief requested  
20 by this applicant.

21 MS. ALLEN: Second.

22 CHAIRPERSON JORDAN: Motion made

1 and seconded. Any discussion? All those in  
2 favor signify by saying aye. Those opposed  
3 nay?

4 (VOTE TAKEN)

5 CHAIRPERSON JORDAN: The motion  
6 carries. Mr. Moy?

7 MR. MOY: Yes sir. Staff would  
8 record the vote as 3-0, this on motion of  
9 Chairman Jordan to approve the application for  
10 the special exception relief under Section 223  
11 that meeting the rear yard requirements under  
12 Section 404. Second the motion Ms. Allen.  
13 Also in support Mr. Turnbull and two other  
14 members not participating.

15 So again the motion carries, Mr.  
16 Chairman.

17 CHAIRPERSON JORDAN: A summary  
18 order please.

19 MR. MOY: Thank you.

20 MR. SNOWBER: Thank you for your  
21 time.

22 CHAIRPERSON JORDAN: Thank you

1 very much. Have a good day.

2 MR. MOY: The next application  
3 for public hearing is application No. 18532.  
4 This is the application of Michelle B. Hassine  
5 I believe if I've pronounced that correctly.  
6 This I believe is for again a special  
7 exception request and variance for an  
8 accessory apartment under Section 202.10, Mr.  
9 Chairman.

10 CHAIRPERSON JORDAN: Is anyone  
11 here for 18532? Would you please identify  
12 yourself for us please?

13 MS. HASSINE: My name is Michelle  
14 B. Hassine.

15 CHAIRPERSON JORDAN: And you are  
16 in regards to this application, are you the  
17 applicant?

18 MS. HASSINE: I'm the applicant.

19 CHAIRPERSON JORDAN: And did you  
20 turn in your witness cards to the court  
21 reporter?

22 MS. HASSINE: Yes.

1 CHAIRPERSON JORDAN: Okay. Good.

2 This is another matter before us on a request  
3 for special exception and variance to allow  
4 for an accessory apartment unit. I think the  
5 documentation on file is more than sufficient.  
6 Let me check with the Board to see if there's  
7 some additional information that other Board  
8 members may need before they can render a  
9 decision in this matter.

10 MR. MOY: Does anyone have any  
11 issues with --

12 CHAIRPERSON JORDAN: Yes, this is  
13 pretty straightforward. Well then the Board  
14 is comfortable with your request for relief  
15 based on what is in the record. You have the  
16 opportunity to do a presentation if you want  
17 but you certainly can waive it and we can move  
18 on and just get it done.

19 MS. HASSINE: I will waive it.  
20 Thank you.

21 CHAIRPERSON JORDAN: Okay. Then  
22 let's turn the Office of Planning and see if

1 Ms. Thomas has some addition for us.

2 MS. THOMAS: No additional  
3 information. Good morning, Mr. Chair and  
4 members of the Board. Karen Thomas with the  
5 Office of Planning. We'll rest on the record.  
6 Thank you.

7 CHAIRPERSON JORDAN: Thanks for  
8 the correction. You did withdraw the request  
9 for the variance because the zoning  
10 administrator used the 2 percent discretion  
11 which happens to have been put in place when  
12 I -- but anyway the 2 percent discretion  
13 aspect of it and so that helps us move this  
14 along.

15 Anyone from the Department of  
16 Transportation? They had a recommended report  
17 of no objection to the request for relief and  
18 anyone here from ANC-6C?

19 MS. THOMAS: 3C.

20 CHAIRPERSON JORDAN: 3C? Okay.  
21 Then my notes are wrong. 3C. And they have  
22 a letter in support of this application. Is

1       there anyone here wishing to testify in  
2       support of this?    Anyone wishing to testify  
3       in opposition?    Anyone in opposition?

4                    Then we will move back to the  
5       applicant.   I already note there's nothing  
6       that you need to add and so we will conclude  
7       the hearing based upon our record as of this  
8       moment.

9                    Based upon the information  
10      submitted I wold recommend that we approve the  
11      request of relief.

12                  MR. TURNBULL:   Second.

13                  CHAIRPERSON JORDAN:   Motion made  
14      and seconded.   Any unreadiness?   All those in  
15      favor signify by saying aye.   Those opposed  
16      nay.

17                  (VOTE TAKEN)

18                  CHAIRPERSON JORDAN:   The motion  
19      carries.   Mr. Moy?

20                  MR. MOY:   Yes sir.   Staff would  
21      record the vote as 3-0 this on the motion of  
22      Chairman Jordan to approve the request for

1 special exception relief under 202.10. Second  
2 the motion Mr. Turnbull; also in support Ms.  
3 Allen. No other members participating. The  
4 motion carries to approve Mr. Chairman.

5 CHAIRPERSON JORDAN: Summary  
6 order. Thank you.

7 MS. HASSINE: Thank you.

8 CHAIRPERSON JORDAN: Oh, thank  
9 you.

10 MR. MOY: The next application  
11 for a hearing is Application No. 18521. This  
12 is the application of 819 6th Street L.L.C.  
13 and I believe as captioned this is requesting  
14 relief for variances from lot occupancy and  
15 rear yard.

16 CHAIRPERSON JORDAN: Would you  
17 please identify yourselves?

18 MR. GARCIA: Carlos Garcia,  
19 owner.

20 MR. SULLIVAN: Marty Sullivan  
21 from the law firm of Sullivan & Barros.

22 MS. LEMLEY: Christina Lemley

1 with Studio Crowley Hall.

2 MR. HALL: Michael Hall, Studio  
3 Crowley Hall Architects.

4 CHAIRPERSON JORDAN: Okay. Let  
5 me ask, I didn't see anything from ANC-2C  
6 here. Do we have anything from ANC?

7 MR. SULLIVAN: They said they  
8 filed on May 1st.

9 MR. MOY: Okay. I just want to  
10 make sure the ANC had been involved in this  
11 process.

12 MR. SULLIVAN: I have a copy of  
13 the resolution if you'd like me to bring it  
14 forward.

15 CHAIRPERSON JORDAN: Yes. Do we  
16 have it?

17 MR. MOY: There's nothing in the  
18 record from ANC.

19 CHAIRPERSON JORDAN: Yes, please  
20 do. Thank you. Okay. I'm comfortable with  
21 this one. Yes. Good. Then we'll accept the  
22 ANC-2C's report into our record, Mr. Moy.

1 Mr. Sullivan, let me check with  
2 the Board but I think we clearly understand  
3 the relief and why there's a relief necessary,  
4 at least I do. Does the Board have other  
5 issues they'd like to discuss about this one?

6 MR. SULLIVAN: The only issue --  
7 was there an HPRB report?

8 CHAIRPERSON JORDAN: There's a  
9 staff report. I thought I filed it with the  
10 pre-hearing statement if I remember correctly.

11 MR. TURNBULL: It is filed and  
12 they said it was compatible.

13 MR. SULLIVAN: And it was  
14 approved in concept unanimously two weeks ago  
15 by the Board.

16 CHAIRPERSON JORDAN: By the full  
17 Board. So we have the staff report that said  
18 it was compatible and so then -- okay. Yes,  
19 I see. I want to take a moment to look at  
20 it. I think, Mr. Sullivan, we may be in good  
21 shape here.

Well let's do this. I'm sure you

1       don't mind waiving any presentation until you  
2       just want to do that.

3                    MR. SULLIVAN: Happy to stand on  
4       the record. Thank you.

5                    CHAIRPERSON JORDAN: Okay. And  
6       if we have any other questions. Then let's  
7       turn to the Office of Planning to see if  
8       there's anything additional you need to say.

9                    MR. GYOR: Good morning, Mr.  
10      Chairman and Members of the Board. Stephen  
11      Gyor with the Office of Planning. We stand on  
12      the record. Thank you.

13                  CHAIRPERSON JORDAN: Does the  
14      Board have any questions for Mr. Gyor? Or the  
15      Office of Planning? Does the applicant?  
16      Anyone here with the Department of  
17      Transportation? And we do have a letter of  
18      no objection to the request of relief by the  
19      Department of Transportation. Representative  
20      ANC-2C, do you want to come forward? Or the  
21      letter can show if you want. We need you on  
22      the mic. If you're going to speak we need you

1 on the mic but if you just want to submit the  
2 letter than we've got it. Okay? Make sure  
3 the mic's on for us please. You've got to push  
4 it.

5 MR. PEAY: Johnson Peay ANC-2C01  
6 and we just for the record would like to say  
7 that applicant has complied and met with the  
8 neighbors separately and agreed to work  
9 closely with the neighbors during the  
10 construction process, and unanimously ANCs  
11 have agreed to support it.

12 CHAIRPERSON JORDAN: Very good.  
13 Thank you. Thank you for taking the time to  
14 come down. Any questions Board anyone?

15 MR. TURNBULL: No issues surfaced  
16 during your ANC meeting that you were  
17 concerned about?

18 MR. PEAY: The neighbors brought  
19 up different issues such as blocking access,  
20 traffic, parking, various issues. But the  
21 applicant has been very compliant and agreed  
22 to work closely so the neighbors agreed that

1 | it is okay.

2 CHAIRPERSON JORDAN: Thank you.

3 Any other questions? Does the applicant have  
4 any questions?

5 MR. PEAY: NO, Mr. Chairman.

6 Thanks.

7 CHAIRPERSON JORDAN: Is anyone  
8 here wishing to testify in support of the  
9 application? Anyone wishing to testify in  
10 support?

18 So now let's turn back to the  
19 applicant to see if there's anything that you  
20 need to add or that we can discuss.

21 MR. SULLIVAN: No, nothing to  
22 add. Thanks.

1 CHAIRPERSON JORDAN: Then we'll  
2 close the record on this matter. I believe  
3 based upon the evidence introduced in the file  
4 to date and what's come from this hearing that  
5 this applicant should be granted the relief  
6 requested in 18521 so I would so move.

7 MS. ALLEN: Second.

8 CHAIRPERSON JORDAN: Motion made  
9 and seconded to grant the relief requested.  
10 Any unreadiness? All those in favor signify  
11 by saying aye. Those opposed nay.

12 | ( VOTE TAKEN )

13 CHAIRPERSON JORDAN: The motion  
14 carries. Mr. Moy?

21 CHAIRPERSON JORDAN: Great thank  
22 you. Let's have a summary order please.

1                   MR. MOY: Yes. Thank you.

2                   MR. SULLIVAN: Thank you very  
3                   much.

4                   MR. MOY: The next application  
5                   for public hearing is Application No. 18546.  
6                   This is the application of Manny & Olga's  
7                   Pizza. This is for a special exception for a  
8                   fast food establishment under subsection  
9                   1302.4(c).

10                  CHAIRPERSON JORDAN: All right.

11                  We just took a detour for a second because  
12                  there's been some bouncing around of terms and  
13                  I wanted to verify where we were.

14                  This is for a special exception of  
15                  a fast food establishment, not a food delivery  
16                  service, and there's something in these  
17                  reports and/or request that's been kind of  
18                  attempting to interchange the use of those  
19                  terms -- food delivery service and/or with  
20                  fast food establishment. So this is one which  
21                  is being held under 733 as a fast food  
22                  establishment so I want to make sure we're all

1       clear on that. Okay. Mr. Sullivan, do you  
2       want to do introductions?

3                    MR. SULLIVAN: Yes. Thank you. My  
4       name is Martin Sullivan and I'm with the law  
5       form of Sullivan & Barros on behalf of the  
6       applicant, which is Surinake LLC but the  
7       tenant is Manny & Olga's Pizza.

8                    MR. ATHANUSAKILE: Bobby  
9       Athanusakile, Manny & Olga's Pizza.

10                  MR. CROCKER: Cyril Crocker.

11                  MR. HOLMES: David Holmes, ANC-  
12       6A.

13                  CHAIRPERSON JORDAN: Okay. So  
14       we're clear about the relief, Mr. Sullivan?

15                  MR. SULLIVAN: Yes. It's a fast  
16       food establishment.

17                  CHAIRPERSON JORDAN: Okay. Let's  
18       take a moment. There are some issues that the  
19       Board just needs to have addressed. I want to  
20       go through some of these conditions and some  
21       other things and Ms. Allen I know you had some  
22       issues. But I want you to talk about the

1                   ability to keep the garbage pick-up area  
2                   within the lot line and that kind of stuff.

3                   MS. ALLEN:    Mr. Chairman, if  
4                   you'll allow me.

5                   CHAIRPERSON JORDAN:    Um-hmm.

6                   MS. ALLEN:    As you talk about  
7                   that really I just want to have a better sense  
8                   of sort of his operations to how much trash is  
9                   sort of expected on a normal time.   That's  
10                  really my question.

11                  CHAIRPERSON JORDAN:    Okay.  So  
12                  it's still a trash issue?

13                  MS. ALLEN:    Right.

14                  CHAIRPERSON JORDAN:    Okay.  Mr.  
15                  Turnbull, anything in particular you want?

16                  MR. TURNBULL:    I guess the only  
17                  question was in the back of the building there  
18                  is an area before the alley there was at least  
19                  one picture in there which showed debris or  
20                  some partial construction and I just wanted to  
21                  know what the status of that would be.   I'm  
22                  assuming it's going to be cleaned up and ready

1 for operation when the place opens?

2 MR. SULLIVAN: I think Mr.

3 Athanusakil can talk about the status of  
4 construction in the back.

5 MR. ATHANUSAKIL: We're just  
6 about finished so the whole area is going to  
7 be cleaned up and the back area like the  
8 property line is enclosed with fence so the  
9 trash will be in there. But the debris in the  
10 picture that's all cleaned up. That's not  
11 there any more.

12 MR. TURNBULL: Will there be a  
13 fence at the alley or back further?

14 MR. ATHANUSAKIL: Like the back  
15 door there's like a fence where we have  
16 concrete slabs where the trash cans are going  
17 to be, so that's going to be enclosed. The  
18 trash cans are not going to be in the alley,  
19 they're going to be on our property.

20 MR. TURNBULL: Oh so there will  
21 be an enclosure then?

22 MR. ATHANUSAKIL: Yes,

1                   MR. TURNBULL: Oh okay. All  
2                   right.

3                   MR. ATHANUSAKIL: A chain link  
4                   fence.

5                   MR. SULLIVAN: It will be fence  
6                   not a brick enclosure.

7                   MR. ATHANUSAKIL: It's not going to  
8                   be a brick enclosure.

9                   MR. TURNBULL: That's fine. I  
10                  just think I didn't understand from what was  
11                  submitted that there was even going to be any  
12                  enclosure. All right. Thank you.

13                  CHAIRPERSON JORDAN: Ms. Allen,  
14                  are you good?

15                  MS. ALLEN: Yes.

16                  CHAIRPERSON JORDAN: So it is  
17                  feasible that this can all sit behind the  
18                  establishment? The garbage pick-up will also  
19                  happen behind --

20                  MR. SULLIVAN: Yes. It will  
21                  happen behind and I think the critical aspect  
22                  of the trash collection is that it's going to

1       be five times a week so it's not going to be  
2       able to accumulate that much. We do have to  
3       use a smaller size container because of the  
4       telephone pole and guy wire that's in the way  
5       but you can get the 95-gallon containers past  
6       that and they've constructed the fence and the  
7       concrete base as well to facilitate orderly  
8       trash collection.

9                   CHAIRPERSON JORDAN: And have you  
10       discussed with OP the type of screening so  
11       that they're comfortable with it?

12                  MR. SULLIVAN: We have not and I  
13       didn't believe that the Office of Planning  
14       commented on that specifically on the type of  
15       screening.

16                  CHAIRPERSON JORDAN: Well they  
17       had concerns about that refuse storage area  
18       and the screening so I didn't know if you'd  
19       had the conversation but let's get to that  
20       this morning. Anything else that we need to  
21       discuss with the applicant? There are four  
22       conditions proposed and are you comfortable

1 with that all loading for the fast food  
2 delivery service shall occur at the rear of  
3 the building. Garbage pick-up shall occur at  
4 the rear of the building.

5 MS. ALLEN: Mr. Sullivan, you  
6 just said that -- I think maybe it was your  
7 wording but you just made a comment that all  
8 of the trash would be picked up from the site  
9 whereas the conditions indicate that in fact  
10 it's going to go out into the rear alley.

11 MR. SULLIVAN: Well, it will go  
12 out in the rear alley when the pick-up comes  
13 or within a hour before. It'll be in the  
14 alley.

15 MS. ALLEN: Okay, because I  
16 thought you said --

17 MR. SULLIVAN: I'm not sure and  
18 maybe you can clarify this, whether the  
19 company actually comes on the property and  
20 gets the containers or the operator has to  
21 actually take them out an hour before. One or  
22 the other. But there's nothing else back

1 there, it's the dead end of the alley.

2 CHAIRPERSON JORDAN: Okay. Let's  
3 go through these conditions and verify what  
4 these conditions are and certainly we'll go to  
5 OP and have -- let's go to OP now and let's  
6 come back to that so we can get an  
7 understanding if you can Steve.

8 MR. COCHRAN: Okay. Thank you,  
9 Mr. Chair. Steve Cochran for the record from  
10 Office of Planning. OP's recommending  
11 approval with the four conditions and given  
12 what you've just discussed a couple of minutes  
13 ago we'd like to stick with conditions No. 1,  
14 2 and 4 exactly as they're written.

15 I'd suggest a small change to  
16 condition No. 3. The applicant shall store  
17 all refuse within a securely closed metal  
18 mini-dumpster or a group of securely closed  
19 metal 95-gallon waste receptacles. Refuse  
20 containers shall be enclosed within a chain  
21 link fence with opaque in-fills or a wooden  
22 fence and shall remain within the applicant's

1                   lot, etc.

2                   CHAIRPERSON JORDAN:    Within a  
3                   chain link?

4                   MR. COCHRAN:    A chain link fence  
5                   with opaque in-fill, those basically diagonal  
6                   slats of plastic that go in or a wooden fence.  
7                   And then the rest of it would remain the same  
8                   in the condition.

9                   CHAIRPERSON JORDAN:    A chain link  
10                  fence and the second part?

11                  MR. COCHRAN:    Okay.   A chain link  
12                  fence with opaque in-fills or a wooden fence.  
13                  And then back to "shall remain with the  
14                  applicant's lot at all times other than one  
15                  hour before and one hour after the five day a  
16                  week refuse pick-up that the applicant shall  
17                  schedule with a private service."

18                  CHAIRPERSON JORDAN:    Okay.

19                  MR. TURNBULL:    Is there a height  
20                  requirement?   Six foot or --

21                  MR. COCHRAN:    I don't know how  
22                  high a mini-dumpster -- it wouldn't have to be

1 six feet, it should be to the top of either  
2 the trash cans or the mini-dumpster. If it  
3 has to go to six feet that may be higher than  
4 is needed.

5 CHAIRPERSON JORDAN: Okay.

6 MR. COCHRAN: Especially given  
7 that the applicant doesn't seem to have a lot  
8 of room for foundation posts and things like  
9 that. I wouldn't want it to get blown over in  
10 the wind.

11 MR. TURNBULL: Right. Okay.

12 CHAIRPERSON JORDAN: And is the  
13 applicant good with those modifications?

14 MR. SULLIVAN: Yes, we're fine  
15 with those and I think our fence is already at  
16 six feet. That's where it was constructed.

17 CHAIRPERSON JORDAN: What about  
18 the opaque nature request?

19 MR. SULLIVAN: That's fine as  
20 well, yes. We are behind the brick wall at  
21 the gas station too so nobody can see it but  
22 that's simple enough to do.

1 CHAIRPERSON JORDAN: So there's  
2 still -- I don't know if Ms. Allen had her  
3 question answered regarding the amount of  
4 trash that's generated. Do you have a thought  
5 of how much trash is being generated on a  
6 daily basis?

7 MR. SULLIVAN: The trash is  
8 getting picked up every day.

9 CHAIRPERSON JORDAN: Like five  
10 days a week?

11 MR. SULLIVAN: They've estimated  
12 five days a week because they've got  
13 experience with other locations in the  
14 District so they're basing it on that.

15 MR. ATHANUSAKIL: Maybe two and a  
16 half of 95-gallon trash cans will be picked up  
17 each of the five days.

18 MS. ALLEN: Thank you. And how  
19 many trash receptacles do you plan to have  
20 there?

21 MR. ATHANUSAKIL: We're going to  
22 have three for trash and one for the recycle.

1 MS. ALLEN: Okay. Thank you.

2 CHAIRPERSON JORDAN: Any

3 additional questions of the applicant or  
4 Office of Planning?

5 (BOARD CONFERS OFF THE RECORD)

6 CHAIRPERSON JORDAN: Okay. I'm  
7 going to ask the Office of Attorney General to  
8 opine regarding the particular regulation  
9 where relief is necessary here. There seems  
10 to be question whether or not it's 733 or 734.

11 MS. GLAZER: In this case you  
12 have a zoning administrator referral that says  
13 you need a special exception under Section  
14 1302.4(c) to establish your use. And then I  
15 see the Office of Planning analyze this under  
16 Section 733 which is fast food establishments  
17 in (c)(ii)(a) but I believe this property is  
18 zoned C(iii)(a) so I'm wondering why it was  
19 not analyzed under Section 743.4.

20 MR. SULLIVAN: If I could have a  
21 second to look up the regulations but doesn't  
22 that section just refer back to the

1 requirements of 733?

2 MS. GLAZER: No, it lists (a)  
3 through (g) which are similar to 733 but  
4 slightly different, in a different order. I  
5 think there are fewer of them.

6 CHAIRPERSON JORDAN: All right.  
7 Are we clear? So where are we on this relief  
8 that's necessary?

9 MR. COCHRAN: I've just talked  
10 with the OHE rep and it looks like they would  
11 need an exemption from 743.4(a), the refuse  
12 dumpster, the provisions there.

13 CHAIRPERSON JORDAN: 743.4.

14 MR. COCHRAN: If you meet the  
15 requirements for 733 then you've more than met  
16 the requirements for 734. They're just a  
17 little bit stricter than 733 so there's no  
18 problem. But if you want to do the order  
19 correctly you need to refer to 743 not 733.

20 CHAIRPERSON JORDAN: So we would  
21 do 743 and 734? Or just 734 would take it all  
22 in?

1                   MS. GLAZER: 743.4 would take it  
2                   all in.

3                   CHAIRPERSON JORDAN: Okay.

4                   MR. COCHRAN: And I would mention  
5                   that DDOT is here and they have one other  
6                   condition they'll want to discuss.

7                   CHAIRPERSON JORDAN: All right.

8                   So Mr. Sullivan, are we clear, we will take  
9                   that as an amendment for relief if that's --

10                  MR. SULLIVAN: Thank you, yes.

11                  CHAIRPERSON JORDAN: And we did  
12                  go through those conditions and a change of  
13                  condition as set forth by OP and you're okay  
14                  with that?

15                  MR. SULLIVAN: The conditions on  
16                  the -- yes. Yes. As amended by them, yes.

17                  CHAIRPERSON JORDAN: And so now  
18                  let's turn to the Department of Transportation  
19                  and see that input they have. Go ahead.

20                  MR. EL-AMIN: Good morning. Thank  
21                  you, Mr. Chairman. My name is Fleming El-Amin  
22                  representing DDOT. We generally support the

1 request for the special exception granted; we  
2 have two conditions. One has already  
3 previously been mentioned relating to all  
4 loading and garage pick-up occurring from a  
5 public alley. Additionally, we also have a  
6 condition that business operations of the site  
7 should not block vehicular access to any  
8 portion of the public alley, essentially no  
9 parking in the alley. Parking in the alley  
10 requires DDOT permitting and typically  
11 permitting is only considered when the alley  
12 is 30-feet wide and that's not applicable in  
13 this case.

14 CHAIRPERSON JORDAN: That's  
15 already been a proffered condition in No. 4.  
16 "Business operations on a site shall not block  
17 vehicle access to any portion of public  
18 alleys." So I think we have it. Thank you.

19 Does the Board have any questions  
20 of the Department of Transportation. Does the  
21 applicant have any questions of the Department  
22 of Transportation?

1 MR. SULLIVAN: No.

2 CHAIRPERSON JORDAN: Thank you.

3 Is there anyone here from ANC-6D?

4 MR. MOY: ANC-6A.

5 CHAIRPERSON JORDAN: ANC-6A.

6 Okay. Sorry about that.

7 MR. HOLMES: I'm David Holmes,  
8 I'm Chair of ANC-6A. We're in agreement with  
9 the conditions of DDOT and with Office of  
10 Planning. We have asked them additionally to  
11 ensure that they'll join a business district  
12 when one is organized, that they sweep the  
13 space in front of the store at least twice a  
14 day since this is a fast food establishment,  
15 and that they prevent their vehicles from  
16 blocking the alley obviously.

17 This block has no residences. Fast  
18 food should be no problem for the block. It  
19 will almost certainly be the only fast food  
20 restaurant on the block. Fast food is very  
21 important to 6A, we have gone to court a  
22 number of times and we have pursued various

1       things here before you so this is actually the  
2       first one that we have supported in 6A. This  
3       is a lovely block, an historic block, and we  
4       have a number of establishments coming in.  
5       There will be nightclubs -- not nightclubs but  
6       a lot of taverns and so forth are now starting  
7       to pour into this block.    Thank you.

8                   CHAIRPERSON JORDAN:    There's so  
9       much happening on that block.    Thank you.  
10      Appreciate it.   Does the Board have any  
11      questions for Mr. Holmes?   Does the  
12      applicant?

13                  MR. SULLIVAN:    No. Thank you.

14                  CHAIRPERSON JORDAN:   We thank you  
15      for coming down and giving us that input. Is  
16      anyone wishing to speak in support of this  
17      application?   Anyone wishing to speak in  
18      support of the application?   Anyone wishing  
19      to speak in opposition to the application?  
20      Anyone in opposition?

21                  Then let's turn back to the  
22      applicant to see if there's anything that you

1 think you need to say that we haven't already  
2 covered. Mr. Sullivan?

3 MR. SULLIVAN: No, thank you, Mr.  
4 Chair.

5 CHAIRPERSON JORDAN: Then we will  
6 close the record on this matter and move into  
7 deliberations. I would move that we grant the  
8 relief requested under Section 743.4, correct,  
9 743.4 granting a special exception for this  
10 establishment with the following conditions.

11 One, all loading for the fast-food  
12 delivery -- wait a minute, that's where the  
13 wrench came in. That's not what it is. Fast-  
14 food establishment "shall occur at the rear of  
15 the building with delivery vehicles backing  
16 into the alley and pulling out onto 14th  
17 Street, N.E."

18 Garbage pick-up shall occur at the  
19 rear of the building from the public alley.

20 Three, the applicant shall store  
21 all refuse within a security closed metal  
22 mini-dumpster or group of securely closed

1 metal 95-gallon waste receptacles. Refuse  
2 containers shall remain within the applicant's  
3 lot line at all times other than one hour  
4 before or one hour after the five day a week  
5 refuse pick-up that the applicant shall  
6 schedule with the private service. That the  
7 refuse containers shall be contained behind a  
8 chain-link fence with opaque in-fill or wooden  
9 fence.

10 Four, business operations at the  
11 site shall not block vehicle or traffic access  
12 to any portion of the public alley.

13 That would be my motion.

14 MS. ALLEN: Second.

15 CHAIRPERSON JORDAN: Motion made  
16 and seconded. Any unreadiness? All those in  
17 favor of the motion signify by saying aye.  
18 Those opposed nay.

19 (VOTE TAKEN)

20 CHAIRPERSON JORDAN: The motion  
21 carries. Mr. Moy?

22 MR. MOY: Yes sir. Staff would

1 record the vote as 3-0. This is on a motion  
2 of Chairman Jordan to approve the application  
3 for the four conditions as cited as well as  
4 amending the language in condition No. 3.  
5 Second the motion Ms. Allen. Also support Mr.  
6 Turnbull. Two members not participating.  
7 Motion carries, Mr. Chairman.

8 CHAIRPERSON JORDAN: And we can  
9 have a summary order please.

10 MR. MOY: Yes. Thank you.

11 CHAIRPERSON JORDAN: And we're  
12 going to recess for five minutes.

13 (A BRIEF RECESS WAS TAKEN)

14 MR. MOY: The next application  
15 for public hearing is Application No. 18550  
16 Valor 1350 LLC special exception for a  
17 variance from parking requirements under  
18 subsection 2116.12 and a special exception to  
19 allow a new residential building under  
20 subsection 1320.4.

21 CHAIRPERSON JORDAN: We have some  
22 issues with the party status. Brad

1 Greenfield is the only person who submitted  
2 the party status request and signed the party  
3 status request form and in fact the memorandum  
4 states that it's in support of Brad  
5 Greenfield's party status. There is not a  
6 Gerstle, is it Gerstle, is not even indicated  
7 that is an intent to be a party. You're listed  
8 as a witness and not and request for party  
9 status.

10 MS. GERSTLE: I understand. It  
11 sounds like from a technical perspective we  
12 should have put us both down as party status  
13 but I can provide proof that I am his wife and  
14 the second owner of the house and we are less  
15 than 150 feet from this development. So I  
16 would ask respectfully that the planning board  
17 allow us to participate. We've been quite  
18 involved in this matter from the beginning and  
19 represent as well the concerns of the  
20 community. So thank you for your  
21 consideration.

22 CHAIRPERSON JORDAN: Let me hear

1 from the applicant's counsel. What's your --

2 MR. KADLECEK: We don't object to  
3 it to per se based on that but I will say that  
4 we actually have an agreement with her husband  
5 that they would not be opposing us. So I just  
6 want the Board to be aware of that. There  
7 seems to be a little bit of confusion given  
8 that we've come to an agreement with her  
9 husband so for that reason we think that --

10 CHAIRPERSON JORDAN: Where is  
11 Brad Greenfield? How come he's not here  
12 today? Can you tell me where Brad Greenfield  
13 is?

14 MS. GERSTLE: My husband is at  
15 work but what we have done is we do have an  
16 agreement and we would like it to be read into  
17 the record.

18 CHAIRPERSON JORDAN: It doesn't  
19 necessarily happen like that. It does not.  
20 We don't just simply take things and read into  
21 the record, it's got to be germane to this and  
22 an agreement necessarily does not get read

1           into the record. Well, do you have a copy of  
2           your --

3                   MS. GERSTLE: Well then I should  
4                   just add we haven't actually signed that  
5                   agreement with them yet. It's goodwill that  
6                   we're going to. But I think quite frankly as  
7                   well if you're going to for some reason block  
8                   our participation, that doesn't signal  
9                   goodwill.

10                  CHAIRPERSON JORDAN: Wait a  
11                  minute.

12                  MR. KADLECEK: We are actually at  
13                  one --

14                  CHAIRPERSON JORDAN: No, Mr.  
15                  Kadlacek, you know we don't run hearings like  
16                  that. You speak when you're requested to speak  
17                  and allowed to speak. Thank you. He just said  
18                  he didn't have any concern. He would  
19                  potentially waive party status. But let me  
20                  ask, are you in opposition or do you just  
21                  simply want to make a statement into the  
22                  record? Is that what you want to do?

1                   MS. GERSTLE: I would like to  
2                   hear the proceedings and hear the reports from  
3                   the Office of Planning and DDOT to hear how  
4                   they do their analysis. And I think based on  
5                   that Brad has an agreement with them which in  
6                   principle if it's following what we understand  
7                   are the issues, then we are going to sign it  
8                   with them after this meeting. We haven't  
9                   signed that agreement currently sir.

10                  CHAIRPERSON JORDAN: All right.  
11                  I'm going to hold in abeyance the decision of  
12                  whether or not a party status. I don't think  
13                  party status is going to be necessary from  
14                  what I'm hearing but I'm going to hold this  
15                  request for party status in abeyance and make  
16                  a decision at a later point during this  
17                  hearing if that's okay with the rest of the  
18                  Board, and let's proceed on.

19                  MR. KADLECEK: Okay.

20                  CHAIRPERSON JORDAN: Just one  
21                  second, please.

22                  MR. KADLECEK: Sure.

1 CHAIRPERSON JORDAN: Now I was  
2 informed -- well what relief are you  
3 requesting?

4 MR. KADLECEK: Yes, I wanted to  
5 make a motion --

6 CHAIRPERSON JORDAN: First let me  
7 have -- because we haven't even got an  
8 identification. Would you identify yourself?

9 MR. KADLECEK: Sure. My name is  
10 Cary Kadlecak from the law firm of Goulston &  
11 Storrs, counsel on behalf of the applicant.

12 MR. PICHON: Sean Pichon with the  
13 PGN Architects for the project.

14 MR. GOODE: Jack Goode with A.  
15 Morton Thomas & Associates.

16 MR. LANSING: Will Lansing with  
17 Valor Development the applicant.

18 CHAIRPERSON JORDAN: And please  
19 identify yourself again?

20 MS. GERSTLE: Tracy Gerstle,  
21 owner and resident at 1330 Maryland Avenue,  
22 N.E.

1 CHAIRPERSON JORDAN: Okay. Now

2 Mr. Kadlecek?

3 MR. KADLECEK: Sure. So we wanted  
4 to make a motion to amend the application to  
5 request permission to add special exception  
6 relief under Section 411.11 for the roof  
7 structure which has walls of varying heights;  
8 that's germane to Section 411.51 and does not  
9 setback a distance equal to its height from  
10 the rear yard; that's germane to Section  
11 411.2.

12 That's in addition to the relief  
13 that you already see before you in the  
14 application.

15 CHAIRPERSON JORDAN: So you're  
16 making a request to amend under 411?

17 MR. KADLECEK: 411, yes.

18 CHAIRPERSON JORDAN: And 411.5?

19 MR. KADLECEK: 411.5 and 411.2.

20 CHAIRPERSON JORDAN: That's an  
21 exception from --

22 MR. KADLECEK: From the walls of

1       varying heights and setback distance equal to  
2       its height.

3                   CHAIRPERSON JORDAN: For walls  
4       not roof?

5                   MR. KADLECEK: The walls of the  
6       structure are at varying heights.

7                   CHAIRPERSON JORDAN: Do we have  
8       roof plans?

9                   MR. KADLECEK: I just gave them  
10      to Mr. Moy.

11                  CHAIRPERSON JORDAN: You just  
12      gave them to him?

13                  MR. KADLECEK: Yes.

14                  CHAIRPERSON JORDAN: All right.  
15      Also we didn't notice this relief from roof  
16      structure did we? Was it noticed.

17                  MR. KADLECEK: It was not  
18      noticed.

19                  CHAIRPERSON JORDAN: Was it  
20      discussed in the ANC meetings?

21                  MR. KADLECEK: It was not.  
22      However --

1 CHAIRPERSON JORDAN: It was not  
2 discussed in the ANC meetings, it was not  
3 noticed? We're just now making an application  
4 for it? We're just now getting the roof  
5 plans. This didn't just happen, these things  
6 have been coming about. Just a second.

16 MR. MOY: Okay. Mr. Chairman, we  
17 have two dates in June. We have June 4th and  
18 the other date is June 11th.

19 CHAIRPERSON JORDAN: June 4th and  
20 June 11th.

1 CHAIRPERSON JORDAN: Okay. June  
2 4th it is.

3 MR. TURNBULL: Any time frames  
4 for the applicant regarding their meeting with  
5 the ANC?

6 CHAIRPERSON JORDAN: I don't know  
7 how soon he's going to be able to do that. We  
8 at least certainly need to get some type of  
9 notice and get a framework from the ANC. I  
10 don't know if there's any other submission  
11 that he needs to do because we just now --

15 Yes, Mr. Holmes?

16 MR. HOLMES: Allowing the ANC to  
17 review the relief --

18 MR. KADLECEK: Sorry, I don't  
19 want to interrupt but we're actually willing  
20 to withdraw the relief to allow the hearing to  
21 proceed today and we can change the penthouse.  
22 We don't want to continue the hearing and

1       we're willing to withdraw the relief to save  
2       everyone this discussion.

3                   CHAIRPERSON JORDAN:    Okay.

4                   MR. TURNBULL:    If we decide you  
5       do need relief you could get denied.

6                   MR. KADLECEK:    Sorry, say that  
7       again.

8                   MR. TURNBULL:    If we feel you  
9       need roof relief you could be denied. So it's  
10      up to you. However, you want to do it.

11                  MR. KADLECEK:    I think we believe  
12      that we can make a conforming penthouse.

13                  MR. TURNBULL:    You can make a  
14      conforming penthouse? So it's not conforming  
15      now?

16                  MR. KADLECEK:    That's why we  
17      requested the relief.

18                  MR. TURNBULL:    So you're going to  
19      be delayed anyways. It's up to you.

20                  MR. KADLECEK:    We have the  
21      ability to change the plans that would not  
22      affect any relief that we're asking for today

1 which would make a conforming penthouse. The  
2 plans you have before you don't have a  
3 conforming penthouse but we can provide plans  
4 that have a conforming penthouse that don't  
5 affect any of the relief that we're requesting  
6 today which we believe allows us to proceed as  
7 is.

8 CHAIRPERSON JORDAN: All right.  
9 We'll proceed on. We'll proceed on as we are,  
10 and certainly understand that you want to  
11 change so you're not going to need zoning  
12 relief at any point.

13 MR. KADLECEK: Right. That's what  
14 we're saying, we won't need any zoning relief  
15 for the penthouse. If you are all ready we  
16 can proceed.

17 CHAIRPERSON JORDAN: Tell us how  
18 you're not going to need the relief from 411.

19 MR. KADLECEK: I'll let Sean the  
20 architect explain that.

21 MR. PICHON: We have the ability  
22 to make all the rooftops at the same height.

1 Obviously the stair towers don't necessarily  
2 need to go up to the same height as --

3 CHAIRPERSON JORDAN: Excuse me  
4 one second. Mr. Moy, can we have the roof  
5 information.

6 MR. TURNBULL: Right. So we're  
7 not going to be able to do anything anyway.

8 CHAIRPERSON JORDAN: That's  
9 right. That's the other thing, Mr. Turnbull  
10 is actually correct, you're going to have to  
11 submit revised drawings anyway to the Board.

12 MR. KADLECEK: Yes, we agree with  
13 that but it wouldn't be germane to any of the  
14 relief that we're asking for.

15 CHAIRPERSON JORDAN: Okay.

16 MR. KADLECEK: The stair towers  
17 right now don't necessarily have to go up to  
18 the same height as the elevator overrun but we  
19 can raise the stair towers to meet that same  
20 height and the setback would be accommodated  
21 by one of increasingly have an additional  
22 building height that we're allowed we can

1       increase the height of our parapet thus  
2       reducing the overall height of the penthouse  
3       and making the penthouses meet the setback  
4       requirement.

5                   Right now our building is -- I can  
6       show you. Our building is currently 61 foot  
7       6 inches, we can raise our building height to  
8       65 feet which would then reduce the overall  
9       height of the penthouse and thus the setback  
10      requirement.

11                MR. TURNBULL: You said raise --

12                MR. KADLECEK: The building  
13      height, the exterior parapet walls.

14                MR. TURNBULL: Well how can we  
15      approve something we can't see and analyze?

16                CHAIRPERSON JORDAN: Right I got  
17      it. This is what we'll do. This hearing is  
18      being continued. By right I can continue it  
19      to June 4th although June 11th is better for  
20      the ANC, you can accept a June 11th date or  
21      we'll just push it to June 4th and you still  
22      won't have the ANC date.

1                   MR. HOLMES:    We're okay with the  
2                   11th.

3                   CHAIRPERSON JORDAN:    Okay.   So  
4                   then we'll set this for June 11th.   Mr.  
5                   Holmes, that will help and Mr. Turnbull?

6                   MR. TURNBULL:    Well, whatever say  
7                   you're going on this I'd like a roof plan that  
8                   clearly shows what you're doing, dimensioned  
9                   which sections of the roof and different  
10                  parts, whatever explains either setbacks,  
11                  heights of all equipment, roofs, everything up  
12                  there so that we have a pretty good picture of  
13                  what's going on up at the roof and where it is  
14                  in relation to the different sides of the  
15                  building.

16                  CHAIRPERSON JORDAN:    And we need  
17                  to get that in at least two weeks before the  
18                  hearing so that OP can have the opportunity to  
19                  opine and everybody else will have an  
20                  opportunity to opine on these changes.   And  
21                  then I'm going to probably expect a new party  
22                  status request from you.   So Mr. Moy, you want

1 to give us some target dates please?

2 MR. MOY: Yes. Two weeks prior  
3 to June 11th according to my calendar would be  
4 May 28th which is a Tuesday, that's two weeks  
5 prior to the June 11th hearing date.

6 CHAIRPERSON JORDAN: Okay. All  
7 right. Mr. Jackson please?

8 MR. JACKSON: Just a point of  
9 clarification. Does OP's response need to  
10 come after -- oh so between then?

11 CHAIRPERSON JORDAN: Yes, between  
12 then. Let's say at least when we get that  
13 Wednesday/Thursday delivery before so that  
14 would be the, what's the date? The 7th?

15 MR. MOY: It would be June 6th.

16 CHAIRPERSON JORDAN: June 6th.  
17 Okay.

18 MR. KADLECEK: Okay. Thank you.

19 (BOARD CONFERS)

20 CHAIRPERSON JORDAN: I want to  
21 take a step back on a case 18546 Manny &  
22 Olga's Pizza. We've had some other discussion

1       regarding the relief that was requested. It's  
2       all consistent with the evidence supports the  
3       same relief but the various sections of the  
4       regulations which would be applicable, and so  
5       I want to be sure the record states that on  
6       Case No. 18546 the relief is actually -- there  
7       was an error in the zoning administrative  
8       referral letter and the relief is actually  
9       from 1320.4(c) fast-food establishment in the  
10      H Street overlay as a special exception use,  
11      the application requires a waiver of  
12      1320.4(c)(iii) the dumpster provision and that  
13      requirement was the same as that provided in  
14      743. I'm sorry, I just want to make sure  
15      that when we issue the order that that's what  
16      we're doing and that the evidence certainly  
17      supported one supported the other. And I  
18      think I'm finally finished with that case. All  
19      right.

20                    MR. MOY: The next application  
21      for a public hearing, and this is a continued  
22      hearing from March 26, attendant to

1 application No 18518 the application of YMCA  
2 Capitol View and this is for special exception  
3 for a Child Development Center under Section  
4 205 and I believe, Mr. Chairman, there is a  
5 number of additional information the Board  
6 asked of the applicant and the applicant did  
7 file yesterday I believe program information  
8 which I have on hand to pass out to the Board.

9 CHAIRPERSON JORDAN: Would you  
10 please identify yourselves.

11 MS. TALLEY: Stacey Talley.

12 MS. JOHNSON: Yoshimi Johnson.

13 MS. SMITH: Marsha Smith.

14 CHAIRPERSON JORDAN: You know  
15 this matter gives me some concern. I know  
16 you're trying to self do and what have you but  
17 we gave some real clear directions to you the  
18 last time you were here.

19 Yes, we wanted the program  
20 information which we have, thank you, but had  
21 contact been made with the ANC?

22 MS. TALLEY: Yes.

1                   CHAIRPERSON JORDAN: And there  
2                   was a presentation to the ANC?

3                   MS. SMITH: Yes.

4                   CHAIRPERSON JORDAN: And I don't  
5                   think we got anything from the ANC. Is that  
6                   right, Mr. Moy?

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

8                   CHAIRPERSON JORDAN: Yes.  
9                   Nothing from the ANC. So what did you do with  
10                   the ANC?

11                   MS. SMITH: Well, we met with the  
12                   ANC and did our presentation and also that  
13                   evening submitted a letter that they said that  
14                   they will send to you for an extension pending  
15                   a public hearing at the Merrick Center.

16                   CHAIRPERSON JORDAN: So they want  
17                   you to do another presentation from the --

18                   MS. SMITH: Yes, with the  
19                   community. But they stated that they would  
20                   forward that letter here. We didn't actually  
21                   get a copy.

22                   MR. MOY: We don't have anything

1                   from them. We also wanted you to file the  
2                   letters that went to the neighbors and all  
3                   that kind of stuff and we haven't gotten that.

4                   MS. SMITH:    They also asked us  
5                   not to canvass the neighborhood pending that  
6                   hearing. We were ready to do everything that  
7                   was asked.

8                   CHAIRPERSON JORDAN:   Isn't that  
9                   a rock and a hard place?

10                  MS. SMITH:    Excuse me?

11                  CHAIRPERSON JORDAN:   I said isn't  
12                  that a rock and a hard place. It's important  
13                  that the community is aware of what you're  
14                  doing. The ANC is important to be able to  
15                  weigh in. You guys kind of have gotten ahead  
16                  of yourself and we tried to let you know that  
17                  before and we could have gotten rid of this  
18                  but we wanted to keep it alive so we can get  
19                  you the relief that you wanted because I don't  
20                  think it's that a big a lift.

21                  But there's things that we have to  
22                  do. When is the ANC meeting scheduled?

1                   MS. SMITH: It's scheduled for  
2 May 24th.

3                   CHAIRPERSON JORDAN: Oh so it's  
4 coming up here?

5                   MS. SMITH: Yes.

6                   CHAIRPERSON JORDAN: We're going  
7 to move this Mr. Moy to our June 4th date.

8                   MR. MOY: Yes sir.

9                   CHAIRPERSON JORDAN: We're going  
10 to move to our June 4th to keep you alive.

11                  MS. SMITH: Thank you.

12                  CHAIRPERSON JORDAN: If the ANC  
13 should -- at least they can get back to us and  
14 tell us you know at least what the vote was  
15 and what the people said at the meeting I  
16 think because it's going to be May 24th and  
17 then June. But you need to get that  
18 information to us no later than, what date is  
19 that, that Wednesday, Thursday, Mr. Moy so you  
20 can get it out.

21                  MR. MOY: Yes, that Thursday  
22 would be May 30th.

1 CHAIRPERSON JORDAN: Yes, so no  
2 later than May 30th we need to have the letter  
3 from the ANC or at least a follow up filing by  
4 you saying that you met with the ANC, you did  
5 the presentation and let us know what went on.  
6 But certainly push the ANC if you would for  
7 the letter.

13 MR. MOY: I understand, Mr.  
14 Chairman, and I'll contact them personally.

15 CHAIRPERSON JORDAN: Okay. Very  
16 good. All right. Well thank you but we've  
17 got to do to make sure it's done so if  
18 somebody would challenge it then it would just  
19 waste everybody's time. Okay? Thank you.

20 MS. SMITH: Thank you.

21 MS. TALLEY: Thank you.

22 MR. JOHNSON: Thank you.

1 CHAIRPERSON JORDAN: The next  
2 application, this is a continued public  
3 hearing of 18533 application of Perseus 1827  
4 Adams Mill Investments L.L.C. and this is in  
5 for variance relief from a required number of  
6 parking spaces under 2101.1. The applicant  
7 did amend to withdraw variance from 2116.4 sub  
8 (a) and I believe we're still intact for a  
9 special exception roof structure under  
10 subsection 411.11 but again I'll have the  
11 applicant clarify the relief before the Board.

12 Let me declare for the record that  
13 I have reviewed all the documents in this file  
14 and sat up and watched the full hearing on  
15 video, by demand, and so I will keep  
16 participating in this matter.

17 MR. TURNBULL: The same goes for  
18 myself.

19 CHAIRPERSON JORDAN: All right.  
20 So let's identify ourselves and then we'll  
21 roll on. Chris?

22 MR. COLLINS: Good morning. I'm

1           Christopher Collins with the law firm of  
2           Holland & Knight representing the applicant in  
3           this case.

4                            MR. GOINS:    Good morning, I'm  
5                            Jeff Goins with PGN Architects.

6                            MS. MILANOVICH:    Good morning.  
7                            I'm Jami Milanovich with Wells & Associates.

8                            CHAIRPERSON JORDAN:    I think  
9                            we're pretty clear about where we are in this  
10                           matter except there's been that whole rear  
11                           yard discussion.    And Mr. Collins, is there  
12                           something you want to say about that in  
13                           regards to your conversations with the ZA and  
14                           whether or not the relief requested.

15                           MR. COLLINS:    Yes.    Mr. Chair,  
16                           thank you for clarifying that you've read the  
17                           record or watched the video because it has  
18                           been a rather confusing issue and since the  
19                           time of the original hearing I've had  
20                           subsequent discussions and they've been  
21                           reflected in my post-hearing submissions with  
22                           the Zoning Administrator on his view on the

1 rear yard.

2 He has determined that rear yard  
3 would be required in this case. There was  
4 significant question about that before. The  
5 building is the same as the building that's  
6 been before the Board in the original  
7 application, there's no changes to it. And  
8 because of the confusion about the various  
9 views on whether rear yard relief would be  
10 required we respectfully request that you  
11 waive the rules to allow the rear yard to be  
12 considered.

22 CHAIRPERSON JORDAN: Yes, I

1 believe that -- I don't know if we need to do  
2 anything new and different. I think the  
3 record was really clear. We had a long  
4 discussion on the rear yard and the issues and  
5 it's just for us to put our brand and grant  
6 the request for relief.

7 I think we understood the  
8 different theories -- rear yards have been  
9 giving the District a problem for a while now  
10 and at some point something over high is going  
11 to say this is what a rear yard is for  
12 everybody and we all walk from the same manner  
13 in regards to it and its manner.

14 MR. COLLINS: Well and two of sat  
15 on that case with the library.

16 CHAIRPERSON JORDAN: Yes. I know  
17 the library. No, I was the deciding role in  
18 the library.

19 MR. COLLINS: Yes, you were.

20 CHAIRPERSON JORDAN: I just  
21 thought it was common sense. But anyway so I  
22 think we're okay and we would not need any new

1                   testimony regarding that. I think we've just  
2                   beat this one and beat this one.

3                   The only questions that I had,  
4                   unless the Board has other questions and be  
5                   sure to ask it, is that on the conditions, a  
6                   couple of conditions here, I didn't see  
7                   anything in the conditions talking about  
8                   trucks longer than 24-feet being prohibited.  
9                   I saw that in your management plan, your load  
10                  management plan. Things in your load  
11                  management plan weren't necessarily in the  
12                  conditions. And excuse me while I find that.

13                  MR. COLLINS: Um-hmm.

14                  CHAIRPERSON JORDAN: Or we can  
15                  just adopt your load management plan as  
16                  conditions. Is that okay?

17                  MR. COLLINS: It was referenced  
18                  in my conditions, if I could just get to it;  
19                  Item 10, the applicant shall implement the  
20                  transportation demand management plan and  
21                  loading management plan included in the Wells  
22                  & Associates report. That was shorthand.

1 CHAIRPERSON JORDAN: Got it.

2 MR. COLLINS: Okay.

3 CHAIRPERSON JORDAN: Got it. Did  
4 you track down anything more about No. 5 I  
5 think it was that gave me concern: applicant  
6 shall provide new residents in the building  
7 the opportunity to purchase or rent one of the  
8 available residential parking spaces before  
9 any other resident of the building is given  
10 the opportunity to rent. I mean how do we  
11 track that?

12 MR. COLLINS: If it's a  
13 condition the applicant must comply with it.  
14 It was a request from the ANC that we not have  
15 a situation where someone comes in and feels  
16 that for an investment opportunity they can  
17 buy two or three parking spaces.

18 CHAIRPERSON JORDAN: So that's  
19 what the purpose was. Okay. Got it.

20 MR. COLLINS: And so we will  
21 limit in the sales of the units we'll limit  
22 the sale to one space and if there's any left

1 over then we would open that to a second one  
2 but no one could buy more than one at a time.

3 CHAIRPERSON JORDAN: What's the  
4 exhibit number of that parking plan offhand?  
5 Of your parking plan?

6 MR. COLLINS: It is sheet A1.0 of  
7 the March 26th plans.

8 MR. TURNBULL: Mr. Chair, I note  
9 the Exhibit 26 I believe.

10 CHAIRPERSON JORDAN: Exhibit 26.  
11 I just need to refer to it. I don't have any  
12 other particular questions. You did explain  
13 something in regards to -- well, the issue  
14 came up and I've kind of bounced this around  
15 in my mind was your testimony and your intent  
16 not to seek a retail tenant that is  
17 destination bound but more of a neighborhood  
18 retail service.

19 And I've toyed with that but I  
20 don't think there's any way that we can lock  
21 that in in any way. It's kind of got to flow  
22 because we've had other restaurants that were

1 supposed to be neighborhood restaurants and  
2 the next thing you know everybody thought they  
3 had the best piece of meat in town and they're  
4 coming from all the jurisdictions to go there.  
5 And the neighborhood then starts griping and  
6 it's another issue.

7 So I just don't know how to codify  
8 that in any way and I don't know how you even  
9 measure it keep it down because businesses are  
10 all trying to be successful.

11 MR. COLLINS: If I could make a  
12 comment on that and maybe Ms. Milanovich would  
13 have a view too. But not only would the  
14 restaurant want to be successful but the owner  
15 of the property wants to be successful, and  
16 when they lease to the commercial tenants on  
17 the ground floor they want to make sure that  
18 it's something that will be successful.

19 And so if they want to lease for a  
20 destination type of use and people would drive  
21 there and find they can't come, so they want  
22 to make sure -- it's in their own best

1                   interest and they've said that and we've said  
2                   that publicly to the ANC that we are  
3                   interested in neighborhood-serving retail  
4                   uses. It's either one or two or maybe three.

5                   CHAIRPERSON JORDAN: And let me  
6                   ask you about your inclusionary zoning. What  
7                   is the mean that you're shooting for in the  
8                   inclusionary zoning.

9                   MR. COLLINS: I'm sorry. I can't  
10                  hear.

11                  CHAIRPERSON JORDAN: What is your  
12                  mean inclusionary zoning. What is the mean  
13                  income of what you're going for?

14                  MR. COLLINS: It's 50 percent  
15                  moderate income and 50 percent low income.

16                  CHAIRPERSON JORDAN: So you're  
17                  doing 50 percent mean, 50 percent on the  
18                  inclusionary zone?

19                  MR. COLLINS: Of the requirement.

20                  CHAIRPERSON JORDAN: Okay. How  
21                  many units is that? The square footage, do  
22                  you have that?

1                   MR. GOODE: It's approximately 2800  
2                   square feet.

3                   CHAIRPERSON JORDAN: 2800 square  
4                   feet. And how many units does that equate to?  
5                   Close enough I mean?

6                   MR. GOODE: Four. Three to four  
7                   units.

8                   CHAIRPERSON JORDAN: And they're  
9                   going to be at the 50 percent mean?

10                  MR. COLLINS: 50 percent are  
11                  moderate income, 50 percent are low income but  
12                  when you have a split like that you start with  
13                  the low income so if we had three, two of  
14                  three would be low income.

15                  CHAIRPERSON JORDAN: Okay. And  
16                  so -- help me because the ANC, I was kind of  
17                  confused about the ANC's request so were they  
18                  trying to target you that as a top or where  
19                  they trying to target you that as a bottom,  
20                  the 50 percent? I don't want to say the  
21                  affordability, the income level.

22                  MR. COLLINS: They were asking

1 that all the units be low income.

2 CHAIRPERSON JORDAN: Got you. I  
3 didn't know which way they were trying to use  
4 the number. Okay. Anybody else have any  
5 questions? Mr. Turnbull?

6 MR. TURNBULL: I just have one and  
7 I wonder if you could indulge me to maybe pull  
8 up the roof plan on that because although I  
9 think I understood the issues and looked at  
10 it, I'm looking at that kind of a little  
11 drawing and magnifying glass sometimes. It  
12 gets a little bit difficult. So I wonder if  
13 you could walk through the room relief that  
14 you're looking at.

15 I think I'm okay but I'd like you  
16 just to walk through it.

17 MR. GOODE: Okay. Well in a  
18 nutshell the site as you can see is a unique  
19 site. We have two building restriction lines,  
20 one on Lanier and one on Adams Mill.

21 CHAIRPERSON JORDAN: Mr. Moy, can  
22 we do the lights? I'm sorry.

1                   MR. MOY: Yes, sure.

2                   CHAIRPERSON JORDAN: Okay.

3                   That's better.

4                   MR. GOODE: And then designing  
5                   the project, No. 1 getting the parking to work  
6                   and the upper floors so I'm going to kind of  
7                   skip to the upper floors real quick just so I  
8                   can explain. One of the reasons I was  
9                   thinking we're only going to have three units,  
10                  we actually have much larger units than  
11                  probably your typical project here just  
12                  because we have a wedge and the units get very  
13                  deep as you can see along the back site here.  
14                  And the square footage has just got large.

15                  It was a very difficult site to  
16                  work to actually get the units to be, you  
17                  know, really nice units and marketable units.  
18                  As you can see we had to put a courtyard right  
19                  here so this unit is actually 1000 square foot  
20                  and actually wraps around that courtyard so  
21                  you get your rear air and light here and then  
22                  your other bedroom and that unit actually

1       stacks all the way up so it has a private  
2       courtyard if you will.

3                   CHAIRPERSON JORDAN:   Nice one.

4                   MR. GOODE:    Yes, that's a nice  
5       unit.  As you can see what it kind of did  
6       though it forced us to kind of put the main  
7       elevator and plus we wanted a residential  
8       entrance along Lanier anyway, so it put the  
9       stair and the elevator core along the Lanier  
10      side and pushed it all the way against the  
11      party wall.

12                  So the relief that we're looking  
13      for is two things on the roof here.  One, we  
14      did not want to build the stair towers nor the  
15      -- we have a common roof deck up there.  We're  
16      not doing the individual units, individual pop  
17      ups, just a common roof deck.  So you're  
18      required by code to bring up the stair and the  
19      elevator and we're going to have a bathroom up  
20      there for people to use in the common roof  
21      deck.

22                  We wanted to build those at a

1       lower height, not to actually be at the same  
2       height as the elevator. So that's the first  
3       one, the uneven structures because there's our  
4       elevator there, here's our stair here and  
5       another stair with two bathrooms there.

6                   And the other relief is one that  
7       was kind of new to me. It is that we do not  
8       meet the setback requirement for the elevator  
9       right here. There's a jog in the --

10                  CHAIRPERSON JORDAN: You've got a  
11       3-foot jog or something.

12                  MR. GOODE: There's a 3-foot jog  
13       there so by definition when you measure this  
14       penthouse from here to this jog here you do  
15       not meet the one-to-setback. However, it is  
16       70 feet from the Lanier side and 70 feet from  
17       the alley side. It's just there's a jog here  
18       where we have an alley. So those are the two  
19       reliefs that we're seeking.

20                  MR. COLLINS: There's actually a  
21       third and that is that we're not joining the  
22       two roof structures together. We would be

1 required by matter of right we'd have to build  
2 a wall to connect all of the roof structure  
3 elements or surround them all in one big  
4 enclosure. We're actually seeking relief to  
5 build less on the roof than we're otherwise  
6 required by law or code.

7 CHAIRPERSON JORDAN: Got you.

8 MR. GOODE: And the opening here  
9 is actually a corridor that actually goes all  
10 the way through for that one unit.

11 MR. TURNBULL: And so the  
12 courtyard has a parapet around it?

13 MR. GOODE: Yes. So it will have  
14 a parapet around it, yes.

15 MR. TURNBULL: And this is right  
16 adjacent to this rowhouse there. What's the  
17 impact? I can't remember the elevation or  
18 what that --

19 MR. GOODE: Let me see, I think  
20 we have it here. You can kind of see here the  
21 penthouse will be fifteen nine right there,  
22 adjacent to his property right there, and you

1 can kind of see where it's located in the  
2 middle here.

3 Here's the height that we're  
4 proposing for the adjacent stair and this will  
5 be the adjacent stair over there.

6 MR. TURNBULL: And which end of  
7 the property?

8 MR. GOODE: Let me see. I think  
9 we have that. It's right here so you'd see  
10 this. It's right here.

11 MR. TURNBULL: And then that's  
12 the --

13 MR. GOODE: Yes, that's the pop  
14 up there.

15 MR. TURNBULL: Is that three feet  
16 there?

17 MR. GOODE: We've had  
18 conversations with our neighbor. We've had  
19 plenty of conversations with him. I think  
20 two houses down from that current house he was  
21 okay with the relief that we were seeking. He  
22 asked us to repair some damage to his back

1 wall.

2 MR. COLLINS: We're not seeking  
3 relief from that setback on the interior lot  
4 line, it's simply from the rear portion of it.

5 MR. TURNBULL: The rear portion.  
6 And how high is that?

7 MR. GOODE: It's an 8-foot-8  
8 trellis.

9 MR. TURNBULL: And that's setback  
10 from all sides?

11 MR. GOODE: Yes, that's setback.

12 MR. TURNBULL: And that's a  
13 permanent trellis? It's attached to the roof.

14 MR. GOODE: Honestly, we haven't  
15 designed that yet. I mean we're showing it in  
16 the drawing just in case you know we do build  
17 a trellis there. I'm assuming that we'll have  
18 a permanent trellis up there for the common  
19 roof deck though.

20 MR. TURNBULL: Okay. But  
21 everything else meets the setback from all the  
22 other sides on the principal elevations?

1                   MR. GOODE:    We exceed one to one  
2                   in all cases.

3                   MR. TURNBULL:    Okay. Thank you.

4                   MR. GOODE:    You're welcome.

5                   CHAIRPERSON JORDAN:    Lights  
6                   please.    Let me just check my notes.    And  
7                   because we're having private secure parking I  
8                   guess that's one of the reasons why you didn't  
9                   run any traffic, the weekend traffic patterns?  
10                  Because your testimony was that you didn't and  
11                  you were asked about the traffic and the  
12                  parking issue on the weekends and your  
13                  response is that you didn't run it for that  
14                  period of time.    Is that correct?

15                  MS. MILANOVICH:    Right. Well the  
16                  intent is that the retail uses would be  
17                  neighborhood-serving retail uses and you may  
18                  recall part of my testimony was regarding some  
19                  surveys that we did that showed that there's  
20                  really a very small percentage of people going  
21                  to those neighborhood-serving retail uses that  
22                  drive.    And so we focused just on the weekday

1 peak period for those reasons.

2 CHAIRPERSON JORDAN: Any

3 questions? Then Mr. Collins, I don't think  
4 there's anything additional we need if we go  
5 ahead and proceed on, unless you have  
6 something that you think you need to say.

7 MR. COLLINS: Well, there's only  
8 one point that I would like to make in a  
9 rebuttal testimony, and that is with regard to  
10 the number of parking spaces.

11 In the Department of  
12 Transportation's report and testimony, and  
13 they're not here today, they did state in  
14 testimony that they would probably not --  
15 probably, that was their word -- allow the  
16 vault to be used for parking. And I've  
17 attached at Tab H of the April 24, 2013  
18 submission several documents in rebuttal for  
19 that.

20 The first is the Public Realm  
21 Design Manual that was co-authored by the  
22 directors of DDOT and Office of Planning which

1 does say that acceptable uses in a vault  
2 include automobile parking.

3 And then two other documents, the  
4 Building Code 12A DCMR and the Public Space  
5 and Safety Regulations 24 DCMR, both of which  
6 identify parking motor vehicles as appropriate  
7 uses in a vault. So what I would like to do,  
8 Mr. Chair, is be able to discuss that, if you  
9 are inclined to approve this application, to  
10 discuss that issue with DDOT when we get to  
11 that stage. I don't believe there's any basis  
12 for --

13 CHAIRPERSON JORDAN: And I think  
14 that's just going to be kind of a public space  
15 issue and we've gone back and forth with them  
16 on that and they're kind of drawing lines in  
17 the sand. So good luck, just have at it.

18 MR. COLLINS: And then the second  
19 point in my request is that in cross-  
20 examination of the DDOT representative after  
21 he spoke about the fact that they would  
22 probably not allow the vault to be used for

1 parking that we would lose a number of parking  
2 spaces, and he opined that we might lose five.

3 CHAIRPERSON JORDAN: He said like  
4 three.

5 MR. COLLINS: He said five --  
6 well okay but he said that we probably would  
7 wind up with like 19 spaces. So I asked him on  
8 cross-examination whether DDOT believes that  
9 this project could be supported with 19  
10 parking spaces and he said yes it could.

11 So what I have in our rebuttal  
12 testimony but also attached to a report from  
13 Wells & Associates and I'd like to ask Ms.  
14 Milanovich --

15 CHAIRPERSON JORDAN: I think  
16 we're clear on the relief that you're asking.  
17 I don't think you need to do any other  
18 presentation.

19 MR. COLLINS: Okay. But what I'm  
20 asking is for is the flexibility so that we  
21 don't have to come back to the Board. The  
22 flexibility that if in the future DDOT does

1       determine that parking cannot be put in a  
2        vault, that this project would still remain a  
3        conforming project with 19 parking spaces.

4                   CHAIRPERSON JORDAN:    Okay.

5                   MR. COLLINS:    And that was not in  
6        -- I don't believe that was in my draft  
7        conditions because I anticipated some  
8        discussion about that.    But we can revise our  
9        conditions to include.

10                  CHAIRPERSON JORDAN:    So that would  
11        be still 18 for residential and one retail?

12                  MR. COLLINS:    Oh I'm sorry, it is  
13        item 6 in our draft conditions.    And that  
14        would be consistent with a decision that this  
15        Board recently made in a case at 1700 Columbia  
16        Road, N.W., and I'm looking for the Case  
17        number 18506, similar project, similar relief  
18        being requested, much larger building where  
19        you approved a parking variance to require the  
20        parking for the residential but have no  
21        parking at all for the commercial uses.    So we  
22        would be consistent with that.

1                   We fully intend and expect that we  
2                   will be able to build the 24 parking spaces.

3                   CHAIRPERSON JORDAN: Yes. And  
4                   I'm glad we come back to that. I'm  
5                   comfortable because of the residential point  
6                   being met and not knowing -- that's why I was  
7                   kind of leaning toward that retail tenant, how  
8                   do you kind of make sure you're locking it in  
9                   and what have you. But it also raises an  
10                  issue about the residential parking permits.  
11                  Is this something in order to try to force the  
12                  residents in the building to park in the  
13                  building, is there a need to you know restrict  
14                  the ability to get residential parking  
15                  permits? That's just kind of a thought you  
16                  know just bouncing around in my head here  
17                  because you know as well as I or better that  
18                  the parking in neighborhoods, and that's what  
19                  everybody's been griping about, is a parking  
20                  issues that we've really got to nail down. But  
21                  that's just a thought. Do you have a reply?

22                  MR. COLLINS: I have a couple of

1 thoughts. First of all, the project does meet  
2 the residential parking requirement. Second  
3 of all, someone who I respect recently said to  
4 me that the two best influencers of behavior  
5 are pain and money. And so if people choose to  
6 park illegally and get tickets or fines then  
7 they will either stop or continue writing  
8 checks.

9                   The RPP we expect in this project  
10 with the demographic the type of tenant that  
11 we're expecting here, you know, we don't  
12 expect that we'll need more than 18 parking  
13 spaces frankly. Fifty percent is probably  
14 high on what we're expecting for residential  
15 parking.

16                   CHAIRPERSON JORDAN: But I was  
17 thinking so just in light of what you're  
18 saying that if the residents of the building  
19 could not get the RPP then they would have to  
20 do the parking in the garage in a building.

21                   MR. COLLINS: Or elsewhere. Or  
22 not have a car.

1 CHAIRPERSON JORDAN: Or not have  
2 a car. That's kind of what I was thinking but  
3 we can get that to some other point, get  
4 planning to weigh in. But we're good.

5 MR. COLLINS: Thank you.

6 CHAIRPERSON JORDAN: Any other  
7 questions for the applicant anyone? Okay.  
8 Then let's turn to planning. Is there  
9 anything in addition that we need from  
10 planning?

11 MS. ELLIOTT: Good morning, Mr.  
12 Chairman, Members of the Board. For the  
13 record my name is Brandice Elliott  
14 representing the Office of Planning.

I would like to say that the Office  
of Planning does continue to be supportive of  
this request in terms of the request for  
special exception for the roof structures as  
well as the variance for the parking, and we  
are in agreement with the applicant's request  
to at least provide enough parking to  
accommodate the residential element of this

1 project provided that there are at least 18,  
2 depending on what happens with the parking in  
3 the vault.

4 In addition, it sounds as if the  
5 request has been modified to provide rear yard  
6 relief and planning is also supportive of that  
7 request. Based on the shape of the property  
8 it does lend itself to be an exceptional  
9 condition and so we believe all the  
10 requirements have been met for the variance.  
11 And I believe that's all I have for you, so if  
12 there's anything else that I can help with I'd  
13 be happy to answer any questions.

14 CHAIRPERSON JORDAN: Any  
15 questions?

20 MS. ELLIOTT: Unfortunately, I  
21 don't have a colleague to weigh in on that.  
22 Planning does not typically weigh in on issues

1       of RPP because it falls within the realm of  
2       DDOT. But I do understand that it has been  
3       done in previous cases. I'm not sure how to  
4       respond other than that.

5                    MR. TURNBULL: We're just trying  
6        to put you on the spot.

7                    MS. ELLIOTT: You're good at  
8        that.

9                    MS. ALLEN: I think when we were  
10        doing the original hearing we were very  
11        concerned about it and I think Ms. Sorg and I  
12        both made comments about continuing to  
13        overburden, especially the Adams Morgan area,  
14        but parking in general.

15                  And so I would certainly, you  
16        know, the concept that we would certainly try  
17        to encourage anyone with a car to certainly  
18        park in this building any way that could  
19        relieve what's already I think a congested  
20        area in Adams Morgan I would certainly  
21        support.

22                  CHAIRPERSON JORDAN: Are there

1 any other questions for Ms. Elliott by the  
2 Board? Does the applicant have any  
3 questions?

4 MR. COLLINS: No sir.

5 CHAIRPERSON JORDAN: Anything  
6 that you want to add? You're good? I'm  
7 always getting in the hot seat -- was it last  
8 week she said you just got me in the hot seat  
9 again. You want me to say something I  
10 shouldn't be saying.

11 MS. ELLIOTT: I love this job.  
12 But I believe I've said everything that I need  
13 to say at this point.

14 CHAIRPERSON JORDAN: Department  
15 of Transportation, no one's here but we've  
16 certainly had their dialogue before and their  
17 information and we know we kind of ongoing  
18 dialogue in regards to other relief that  
19 you've got to get from those guys. Anyone  
20 here from ANC-2 was it 2?

21 MR. TURNBULL: 1C.

22 CHAIRPERSON JORDAN: Was it 1C?

1 Yes, ANC-1C. You know certainly they've been  
2 participating in the process and they had a  
3 list of issues and agreements and conditions  
4 and they support the application. They made  
5 a recommendation for some conditions which  
6 you've absorbed most of those in there. Some  
7 of those are not germane to Zoning and so it  
8 wouldn't have any applicability to this Board.  
9 So I think we've had them weigh in.

10 Is there anyone here wishing to  
11 testify in support of this application?  
12 Anyone wishing to testify in support? Anyone  
13 wishing to testify in opposition? Anyone in  
14 opposition? Then let's turn back to the  
15 applicant for any rebuttal or wrap up.

16 MR. COLLINS: Thank you, Mr.  
17 Chair. I think the record is complete and  
18 full and we've certainly discussed all the  
19 relevant issues back and forth. We have  
20 amended the application to request the rear  
21 yard variance in addition to having the roof  
22 structure special exception and the parking

1 variance before you, so with that we  
2 respectfully request that you approve the  
3 application as submitted at the earliest  
4 possible date.

5 CHAIRPERSON JORDAN: Thank you.

6 Then we will close the record on this hearing.  
7 Oh let me ask, does the Board have any other  
8 questions? Okay.

9 Let's walk through one last thing  
10 here. Let's walk through these conditions  
11 making sure we're all on the same page.

12 So No. 1 the applicant will  
13 provide either a \$75 dollar Smartcard or \$75  
14 dollars toward a one year membership. Why  
15 isn't that a one year membership? Why  
16 wouldn't you guys buy a one year membership on  
17 bike share or car share?

18 MR. COLLINS: Well maybe the  
19 price may go up at some point in the future.

20 CHAIRPERSON JORDAN: What does a  
21 bike share car share cost now do you know?

22 MS. MILANOVICH: The bike share

1 is currently \$75 dollars for an annual  
2 membership now. Car share there's now several  
3 options in the District, a couple of those  
4 options actually don't have any annual  
5 membership and ZipCar I believe is either \$50  
6 or \$75 dollars for an annual membership.

7 CHAIRPERSON JORDAN: All right.  
8 So then No. 2 the applicants shall coordinate  
9 with a car sharing service to determine the  
10 feasibility of locating the car sharing  
11 vehicle in nearby public space subject to  
12 DDOT.

22 | The applicant shall provide each

1 new resident of the building the opportunity  
2 to purchase or rent one of the available  
3 residential parking spaces before any resident  
4 of the building is given the opportunity to  
5 rent or purchase a second parking space.

6 The parking plan shall be in  
7 accordance with the parking plan submitted in  
8 Exhibit 26 with this application. If DDOT  
9 determines that the below grade portion of Lot  
10 521 beyond the building restriction line must  
11 be taken for public purposes, the parking  
12 spaces in the garage may be reconfigured to no  
13 less than 19 spaces.

14 The applicant shall determine  
15 whether it is feasible to offer one of the  
16 commercial parking spaces in the garage to a  
17 car sharing service. The applicant shall  
18 determine whether it is feasible to allow non-  
19 residents of the building to lease available  
20 residential parking spaces in the garage.

21 The developer shall meet with ANC-  
22 1C planning and zoning transportation

1 committee concerning any proposed -- well that  
2 shouldn't be one of our conditions. I think  
3 No. 9 we need to strike from our standpoint.

4 Ms. Glazer, do you agree with that?

5 MS. GLAZER: In the past the  
6 Board has said that it would not impose  
7 conditions regarding meetings because it might  
8 run afoul of freedom of association rights.

9 CHAIRPERSON JORDAN: And the fact  
10 that also this is a construction issue too.

11 MS. GLAZER: Yes, that too.

12 CHAIRPERSON JORDAN: And then No.  
13 10 the applicant shall implement the  
14 transportation demand plan and loading  
15 management plan included in the Wells &  
16 Associates report.

17 I think I want to add another and  
18 let me try to see where the Board is on this  
19 one. I'm thinking about adding that residents  
20 of this building should not be eligible --  
21 that the applicant shall, how did we do that  
22 in the others? On the residential parking

1 | permits?

2 Mr. Collins, what I'm thinking  
3 about implementing is that we restrict their  
4 ability to get residential parking permits  
5 that help force them back into this building,  
6 and that it would be something that needs to  
7 be either added by if it's a rental by lease  
8 or if it's by sale by deed, by covenant. So  
9 where are you guys on that? What do you think  
10 about that?

11 MR. COLLINS: Our original  
12 position is that we're not asking for any  
13 variance relief on residential parking and  
14 therefore we didn't think that we had to go in  
15 that direction, unlike other projects which  
16 we're asking for residential parking relief  
17 and did agree to something like that.

18 CHAIRPERSON JORDAN: What's the  
19 cost of parking projected to be for a space?

20 MR. GOODE: We just got a  
21 pricing. Unfortunately, well over \$50,000 per  
22 parking space right now. To build.

1                   CHAIRPERSON JORDAN: That's to  
2                   build?

3                   MR. GOODE: That's to build so  
4                   to sell I'm not sure. I mean the depth of the  
5                   parking garage, the average parking spot if  
6                   you do the math it's much larger than your  
7                   typical spot.

8                   MR. COLLINS: The general range  
9                   in the market is about \$40,000 per space. And  
10                  that's what the representative of the  
11                  applicant just told me.

12                  CHAIRPERSON JORDAN: The issue is  
13                  that if the cost is prohibitive to them to buy  
14                  a space in the building then they're going to  
15                  be out on the street which is going to add to  
16                  the congestion that we already have.

17                  I think we should, for the  
18                  protection of the citizens and the parking  
19                  there, that we need to make a condition that  
20                  the residents or owners in the building would  
21                  not be allowed to get -- that the owner of the  
22                  building shall provide by document in either

1 whatever leasehold conveyance instrument that  
2 the residents of the building cannot apply for  
3 residential parking permits. I think that's  
4 the language I will use.

## 5 ( BOARD CONFERS )

6 CHAIRPERSON JORDAN: I'm adding  
7 that as 11 and we'll work with the language of  
8 that and I'm going to ask the Office of the  
9 Attorney General to certainly present us the  
10 proper language, but the language should be --  
11 and it would be No. 10 -- that the applicant  
12 shall provide by document that residents,  
13 tenants or owners in the building would not be  
14 eligible for residential parking permits,  
15 would be prohibited from residential parking  
16 permits and that's to run with this particular  
17 building.

18 So that would be my motion that we  
19 approve this application as requested as  
20 amended with the addition relief and with the  
21 conditions which I've read.

22 | MS. ALLEN: Second.

1 CHAIRPERSON JORDAN: Motion made  
2 and seconded. Additional discussion? All  
3 those in favor signify by saying aye? Those  
4 opposed nay?

5 (VOTE TAKEN)

6 CHAIRPERSON JORDAN: The motion  
7 carries. Mr. Moy?

15 CHAIRPERSON JORDAN: And I  
16 believe we're safe for a summary order here.  
17 There's been no party in opposition to ANC  
18 supporting so I think we're safe with a  
19 summary order please.

20 MR. COLLINS: Thank you, sir.

21 MR. GOODE: Thank you. I  
22 appreciate it.

1 CHAIRPERSON JORDAN: So what else  
2 are we going to do here today? Mr. Moy, any  
3 other business before the Board today?

4 MR. MOY: Not from the staff sir.

5 CHAIRPERSON JORDAN: Okay. Then  
6 we will be in adjournment. Thank you. Thank  
7 you everybody. This was kind of a different  
8 day but we made it through. Tag team, the  
9 whole nine yards.

10 (Whereupon, the above-entitled  
11 Public Hearing of the Board of Zoning  
12 Adjustment having been concluded, went off the  
13 record at 11:51 a.m.)

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: BZA

Date: 05-07-13

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

*Neal R. Gross*  
Court Reporter

**NEAL R. GROSS**

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