

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 6, 2012

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:44 a.m., Meridith Moldenhauer, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER, Chairperson
NICOLE SORG, Vice-Chairperson
LLOYD JORDAN, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

KONRAD SCHLATER, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

PAUL GOLDSTEIN

The transcript constitutes the minutes from the Public Hearing held on March 6, 2012.

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TABLE OF CONTENTS

Preliminary Matters	9
Application No. 18322	10
Application No. 18323	10
Approval	22
Application No. 18318	24
Approval	125
Appeal No. 18321	134
Roll Call	152
Approval	153

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

2 9:43 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 hearing will please come to order. Good
5 morning, ladies and gentlemen.

6 We are located in the Jerrily R.
7 Kress Memorial Hearing Room located at 441 4th
8 Street, N.W. Today is March 6, 2012. Public
9 hearing of the Board of Zoning Adjustment for
10 the District of Columbia.

11 My name is Meridith Moldenhauer,
12 Chairperson.

13 Joining me today to my left is
14 Vice Chair Nicole Sorg, Mayoral Appointee. To
15 my far left is Konrad Schlater representative
16 of the Zoning Commission. To my right is
17 Lloyd Jordan, Mayoral Appointee. To my far
18 right is Jeffrey Hinkle representative of the
19 National Capital Planning Commission.

20 Copies of today's agenda are
21 available to you and are located to my left on
22 the wall bin near the door.

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1 Please be advised this proceeding
2 is being recorded by a court reporter and is
3 also being webcast live. Accordingly, I must
4 ask you to refrain from any disturbing noise
5 or actions in the hearing room.

6 When presenting the information to
7 the Board, please turn on your microphone
8 first stating your name and home address.
9 When you are finished speaking, please turn
10 off your microphone so your microphone is no
11 longer picking up any sounds or background
12 noise.

13 All persons planning to testify
14 either in favor or in opposition are to fill
15 out two witness cards. These cards are
16 located to my left on the table near the door
17 and on the table in front of you. Upon coming
18 forward to speak to the Board, please give
19 both cards to the court reporter sitting to my
20 right.

21 Also, if you wish to file any
22 written testimony or additional supporting

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1 documentation today, please submit an original
2 along with 12 copies to the Secretary for
3 distribution. If you do not have the
4 requisite number of copies with you, you can
5 reproduce copies at the machine in the Office
6 of Zoning across the hall.

7 The order of procedures for
8 special exception and variance are as follows:

9 (1) statement of the applicant and
10 applicant's witnesses, (2) parties and persons
11 in support, (3) parties and persons in
12 opposition, (4) reports of the ANC, (5)
13 Government reports including the Office of
14 Planning and Department of Transportation, (6)
15 rebuttal and closing statements of the
16 applicant.

17 Pursuant to Section 3117.4 and
18 3117.5, the following time constraints will be
19 maintained: The applicant/appellant, persons
20 and parties except the ANC in support
21 including their witnesses will be given 60
22 minutes collectively; appellees, persons and

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1 parties except an ANC in opposition including
2 witnesses will be given 60 minutes
3 collectively; individuals will be given three
4 minutes and organizations will be given five.

5 These time restrictions do not
6 include cross examinations or questions from
7 the Board. Cross examination of witnesses is
8 permitted by the applicant or party.

9 The ANC within which the property
10 is located is automatically a party to a
11 special exception or a variance case.

12 Nothing prohibits the Board from
13 placing reasonable restrictions on both cross
14 examination based on time limitations and also
15 the scope of cross examination.

16 The record will be closed at the
17 conclusions of each case except for any
18 material specifically requested by the Board.

19 The Board and the staff will state to the end
20 of the hearing exactly what is expected and
21 the date when that material must be submitted
22 to the Office of Zoning.

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1 After the record is closed, no
2 other information will be accepted by the
3 Board.

4 The District of Columbia's
5 Administrative Procedures Act requires that a
6 public hearing on each case be held in the
7 open and before the public. Pursuant to
8 Section 405(b) and 406 of the Act, the Board
9 may consistent with the rules and procedures
10 in the Act enter into a closed meeting on a
11 case for purposes of seeking legal counsel,
12 entering into a closed meeting for purposes of
13 legal counsel per Section 2-575(b)(4) and/or
14 deliberating on a case pursuant to D.C. Code
15 Section 2575(b)(13), but only after providing
16 the necessary public notice and in the case of
17 an emergency closed meeting after taking a
18 roll call vote.

19 The decision of the Board in each
20 contested case must be based exclusively on
21 the record. To avoid any appearance to the
22 contrary, the Board requests that persons

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1 present not engaged Members of the Board in
2 conversation.

3 Please turn off all beepers and
4 cell phones at this time as to not disturb
5 these proceedings.

6 The Board will now consider any
7 preliminary matters. Preliminary matters
8 relate to whether cases will or should be
9 heard today such as a request for
10 postponement, a continuance or withdrawal or
11 whether proper or adequate notice of the
12 hearing has been given.

13 If you're not prepared to go
14 forward today, if you believe that your case
15 should not proceed, now is the time to raise
16 the matter.

17 Mr. Secretary, do we have any
18 preliminary matters?

19 MR. MOY: Well, Madam Chair, there
20 are preliminary matters in the morning session
21 attendant to Application Number 18318. Staff
22 would suggest that the Board address that

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1 preliminary matter when I call that case.

2 Other than that, I'd like to also
3 note for the record that Application Number
4 18322 of Eighth Street, LLC has been withdrawn
5 from the morning session.

6 CHAIRPERSON MOLDENHAUER: Very
7 well. Then, we'll proceed. All individuals
8 wishing to testify today if you can please
9 stand and the oath will be administered.

10 MR. MOY: Do you solemnly swear or
11 affirm that the testimony you're about to
12 present in this proceeding is the truth, the
13 whole truth and nothing but the truth?

14 You may consider yourself under
15 oath.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much, Mr. Moy.

18 If we can call the first case for
19 this morning.

20 MR. MOY: Good morning, Madam
21 Chairperson and Members of the Board.

22 The first case before the Board

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1 for action is Application Number 18323. This
2 is the application of Robert M. Holland
3 pursuant to 11 DCMR 3104.1 for a special
4 exception to allow a 55 space accessory
5 parking lot under Section 214 in the R-2
6 District at premises 3831 McKinley Street,
7 N.W., property located in Square 1860, Lots 5,
8 6, 7, 17 and 18.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much.

11 If the parties can please
12 introduce themselves.

13 How about that now?

14 MR. SULLIVAN: Oh, here it goes.
15 Thanks.

16 Good morning, Madam Chair and
17 Members of the Board. My name is Martin
18 Sullivan with the law firm of Sullivan &
19 Barros here on behalf of the Applicant.

20 MR. BORTNICK: Hi, my name is Gary
21 Bortnick. I'm Vice President and CO of
22 Magruder's Grocery Store and Liquor Store.

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1 CHAIRPERSON MOLDENHAUER: Good
2 morning. I think that we have a fairly solid
3 record in front of us. I think that if you'd
4 like to present anything additional, we can
5 hear that. Otherwise, we may just move to
6 Board questions.

7 MR. SULLIVAN: We're happy to
8 stand on the record and answer any questions
9 you might have.

10 CHAIRPERSON MOLDENHAUER: I'll see
11 if any Board Members have any questions.

12 I would like to kind of have you
13 go through it and make sure that you're okay
14 with the conditions that have been obviously
15 previously on the property and then maybe just
16 address -- I think that there were some
17 concerns about the landscaping not having been
18 satisfied and there were some issues in that
19 regard about maybe improving on that.

20 MR. BORTNICK: Well, as you know,
21 we've been -- Magruder's has been a long-time
22 business operating on Connecticut Avenue. We

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1 have a liquor store there and with the parking
2 lot of 55 spaces, we have a long-time history
3 and these are basically the same six
4 contingencies that we've met with the ANC over
5 the past 50 years and we've narrowed them down
6 to about these six about the last 12 or 15
7 years.

8 So, we do our landscaping. We
9 have a professional landscaper that comes in,
10 cuts the grass, replaces trees as necessary.

11 We try to please all the
12 neighbors. Not such an easy task.

13 Up in northwest, I've grown up in
14 the area. So, I'm very familiar with the
15 area. I've worked in the store for the past
16 30 years.

17 Now, my role is that I'm in and
18 out of the store probably two or three times a
19 week. So, I also want to drive up, make sure
20 that the parking lot -- we have somebody on
21 the parking lot. We sweep it constantly and
22 replace some trees as necessary.

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1 And I think I may have submitted
2 that we have not had any complaints that I
3 know of, any written complaints, in the last
4 15-plus years. We have full approval from the
5 ANC.

6 So, we like to consider ourselves
7 a good business neighbor of the community.

8 CHAIRPERSON MOLDENHAUER: The ANC
9 report has indicated that two neighbors had
10 some concern and maybe if you can tell us -- I
11 mean obviously I hear what you're saying.
12 You're saying that you've done everything you
13 can to kind of -- you try to maintain it, but
14 just maybe -- I'm sure that you attended the
15 ANC meeting and just maybe tell us exactly
16 what that was relating to and then how your --

17 MR. BORTNICK: Sure. Well --
18 well, I was there with our liquor store
19 manager who she's probably in the store 80
20 hours of a week.

21 One gentleman, quite honestly who
22 we haven't heard from in the past ten years,

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1 decided to show up at the meeting and state on
2 the record that I've never liked Magruder's
3 being here. I don't like that the retail
4 strip is two blocks from my house and I'm
5 opposed to it.

6 I stood up and said sir, I'm
7 sorry. I remember our relationship from ten
8 years ago. If you've had any issues with the
9 landscaping, I wish you would have addressed
10 them with Leslie Gimble, our liquor manager.
11 He said well, I haven't been in your store in
12 over ten years. So, I said we'll do the best
13 that we can.

14 There's another lady who lives
15 directly across. She had an issue with some
16 trees that died. We have since replaced four
17 trees back in the fall. I think they're pine
18 trees. Three have done well. One died.
19 That'll be replaced in the spring. It was
20 under guarantee.

21 We maintain the surrounding wall
22 and there was a thick brush in front of her

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1 house looking into the parking lot and she
2 seemed to be okay with it as long as we kept
3 in these six stipulations which we certainly
4 agreed to do.

5 So, other than -- she was a
6 legitimate complaint in my opinion. The other
7 gentleman who stated that he had an issue with
8 Magruder's ten years ago and showed up at a
9 meeting, I spoke to the ANC Chair and said
10 don't get upset. Just we'll deal with that
11 and then we took our vote and we had -- we
12 came back a second time. We had a unanimous
13 approval.

14 So, I think hearing from just one
15 resident out of a very boisterous neighborhood
16 means we're doing something right in that
17 area. So, I like to think that we're doing
18 something right up on the upper northwest.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you for that explanation and the additional
21 information.

22 Do any Board Members have any

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1 other questions?

2 Seeing none, then if there's no
3 other submissions from the Applicant, we'll
4 look to the audience to see if there's any
5 individuals in support or in opposition to
6 this case.

7 Seeing none, then we'll turn to
8 the Office of Planning for their report.

9 MR. JACKSON: Good morning, Madam
10 Chair, Members of the Board.

11 CHAIRPERSON MOLDENHAUER: Good
12 morning.

13 MR. JACKSON: My name's Arthur
14 Jackson with the D.C. Office of Planning and
15 before you have the Office of Planning's
16 report, we visited the site.

17 It was well maintained. The
18 striping on the property indicated directions
19 for traffic circulation and the parking spaces
20 were well striped. Obviously, been maintained
21 well.

22 The landscaping was in good shape.

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1 We were just indicating in our report that
2 any opportunities to enhance the landscaping
3 that comes up in the next few years, for
4 instance, the bald spots that could be instead
5 of replaced with grass with more trees, we
6 should encourage the Applicant to do that.

7 We noticed the -- that the area
8 around -- not only in the parking lot, but
9 around -- the open space around the parking
10 lot between the parking lot and the street had
11 no debris, no trash. Everything was very neat
12 and clean.

13 And so, we -- we viewed the
14 standards for the application and we think we
15 meet the -- the current status of the site
16 meets the standards for approval.

17 We know that the application -- we
18 suggested the Applicant might want to consider
19 extending the time frame since they've had it
20 for so long, but the Applicant was adamant
21 that they wanted to be consistent with what
22 the ANC had asked for so that there would be

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1 no confusion or any need for further
2 discussion with them about any changes to be
3 made. So, essentially, we folded the other
4 conditions from the previous order into this
5 order which is in line with what they asked
6 for originally.

7 On that basis, we recommended
8 approval and continued good neighbor practices
9 in this area.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you very much, Mr. Jackson.

12 Does the Applicant have any
13 questions of the Office of Planning?

14 MR. SULLIVAN: No, we don't.
15 Thank you.

16 CHAIRPERSON MOLDENHAUER: Do any
17 Board Members? Seeing none. Thank you.

18 Then at this point in time, we
19 will turn to any other Government reports and
20 we do have in our record a report from the
21 Department of Transportation which is Exhibit
22 28 which indicates that they have no objection

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1 to this application.

2 I'll then turn to the ANC report
3 which is our Exhibit 21.

4 I want to see if there's anybody
5 in the audience from ANC-3G. Seeing no one,
6 I'll indicate that they had a public meeting
7 on 11/14/11 and that it was a properly noticed
8 meeting and that they had a quorum present and
9 they voted to support the application 6 to 0.

10 This submission would receive great weight in
11 support of the application.

12 That being said, we'll turn back
13 to the Applicant for any closing remarks.

14 MR. SULLIVAN: No closing remarks
15 other than to say that we're out of compliance
16 currently. So, would love to get a summary
17 order and a bench decision.

18 Thank you.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you.

21 Are there any final questions from
22 Board Members?

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1 Seeing none, then at this point in
2 time we will conclude the hearing and we will
3 enter into deliberation on the case.

4 I think that this is a fairly
5 straightforward case where there had been
6 prior approval of the application. Obviously,
7 this case had gone out of compliance.
8 Otherwise, it could have been just simply, you
9 know, an extension.

10 They obviously have to satisfy all
11 the standards, but I think that it's, you
12 know, very positive and in a community, you
13 have ANC support. There's no formal
14 opposition on the record.

15 I think that the Applicant
16 sufficiently addressed the comments that were
17 provided in the ANC report and referred to the
18 two neighbors in opposition.

19 Office of Planning is important.
20 So is DDOT.

21 I think that satisfy the
22 requirements under Section 214 and I would be

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1 in support of the application.

2 I'll see if there's any additional
3 comments. Obviously, conditioned upon the six
4 conditions provided in the OP report. I'll
5 see if there's any comments from any other
6 Board Members.

7 Seeing none, then I'll send in a
8 motion. A motion to approve Application 18323
9 pursuant to 11 DCMR 3104.1 for a special
10 exception to allow 55 spaces accessory parking
11 lot under Section 214 in an R-C District at
12 premises 3831 McKinley Street, N.W.
13 conditioned upon the six conditions provided
14 in the Office of Planning report in Exhibit
15 27.

16 A motion's been made. Is there a
17 second?

18 VICE CHAIRPERSON SORG: Second.

19 CHAIRPERSON MOLDENHAUER: A
20 motion's been made and seconded. All those in
21 favor say aye.

22 (Ayes.)

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1 MR. SULLIVAN: Thank you.

2 MR. BORTNICK: Thank you.

3 MR. MOY: Staff would record the
4 vote as 5 to 0 to 0. This is on a motion of
5 Chairperson Moldenhauer to approve the
6 application with six conditions as conveyed
7 from the original order of 17069. Second the
8 motion Ms. Sorg. In support of the motion,
9 Mr. Konrad Schlater, Mr. Jordan and Mr.
10 Hinkle. So, again, the final vote is 5 to 0
11 to 0. The motion carries.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much, Mr. Moy and if there's no
14 opposition in this case, the Board would like
15 to waive the requirements and ask that a
16 summary order be issued.

17 MR. MOY: Thank you, Madam Chair.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you. Thank you.

20 Whenever we're ready, we can call
21 the next case.

22 MR. MOY: That would be

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1 Application Number 18318. This is the
2 Application of KB Developers LLC and Rupp OB
3 LLC pursuant to 11 DCMR 3103.2. This is for a
4 variance from the lot width and area -- lot
5 width and lot area requirements under
6 Subsection 401.3, a variance from the lot
7 occupancy requirements under Subsection 403.2
8 to allow the construction of three one-family
9 row dwellings on alley lots in the R-4
10 District at premises 1321 Naylor Court, N.W.,
11 property located in Square 367, Lot 862.

12 Madam Chair, there are, as a
13 preliminary matter, two requests for party
14 status.

15 CHAIRPERSON MOLDENHAUER: Good
16 morning. If the parties can introduce
17 themselves.

18 MR. KADLECEK: Good morning. Cary
19 Kadlecek from the law firm of Goulston &
20 Storrs, counsel on behalf of the Applicant.

21 MR. RUPPERT: I am Sean Ruppert.
22 I am principal of OPaL LLC aka Rupp OB which

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1 is what you read off.

2 MR. BATTEH: Hi, I'm Kevin Batteh
3 with KB Developers.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 We first have a preliminary matter which was
6 the two-party status request. I just want to
7 make sure. Is Dr. David Salter in the
8 audience? Okay. And Lynda Wright? Okay.

9 You have the -- you've asked for
10 party status in support of the application.
11 Party status means that you would have the
12 opportunity to potentially cross examine the
13 Applicant and be given 60 minutes to present
14 your own case. The question is do you want
15 that and if you want, you can come forward to
16 the microphone or would you simply like to be
17 provided with the three minutes to provide
18 your support of the application and obviously,
19 if you have to go longer than three minutes,
20 we'll provide you with some latitude.

21 So, if you would like to still be
22 a party status, if you can just come to the

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1 microphone so we can address this issue that
2 would be fantastic and just first indicate
3 your name and home address. Yes, if you'll
4 sit down and indicate your name and home
5 address and then let me know if you're still
6 interested in being a party status or if you'd
7 just simply like to potentially be individual
8 in support.

9 DR. SALTER: We're both speaking
10 in support on behalf the proposal. We don't
11 need an hour, but we would like to be engaged.

12 I have a presentation with a flash drive copy
13 of it that I've given to your recorder and I
14 can give to your Secretary as well and I'm --
15 my name is Dr. David Salter. I live at 1315
16 Naylor Court. Just a few doors down from the
17 project and Lynda.

18 MS. WRIGHT: My name is --

19 CHAIRPERSON MOLDENHAUER: Lynda,
20 if you can just push the button towards --

21 MS. WRIGHT: Thank you.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you.

2 MS. WRIGHT: My name is Lynda
3 Wright. I live at 1335 10th Street and the
4 rear of my lot is on Naylor Court and I am --
5 I can see the project from my windows.

6 CHAIRPERSON MOLDENHAUER: Okay.
7 Okay. Again, so, we will give you the
8 flexibility if you don't need to be a party
9 status to provide your full presentation. I
10 think I understand from Mr. Salter that would
11 be sufficient so long as we make sure that you
12 have the time frame. I just want to make
13 sure.

14 DR. SALTER: If we have party
15 status, that would give us an option to be
16 engaged in the conversation should issues come
17 up that we would like to address.

18 I understand if we were not a
19 party status, we might not be able to do that.

20 CHAIRPERSON MOLDENHAUER: You
21 would only be provided the time frame, yes, to
22 provide your comments. Otherwise you would

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1 have an opportunity to potentially provide
2 additional information at the end of their
3 presentation.

4 So, you still would like to have
5 party status?

6 DR. SALTER: Yes.

7 CHAIRPERSON MOLDENHAUER: Okay.
8 So, that means that -- Ms. Wright, is that the
9 same thing as well? You'd still like to have
10 party status or would you like rather to just
11 be provided with the time frame to provide
12 your consent during a three-minute period?

13 MS. WRIGHT: Dr. Salter has more
14 input on this case than I do. So, I really
15 don't need more than three minutes, but we can
16 combine.

17 CHAIRPERSON MOLDENHAUER: All
18 right. Well, I mean if you were fine then
19 with just the three minutes, then what we'll
20 do is if you -- we'll allow you to be an
21 individual and obviously, Mr. Salter will then
22 maintain a party -- as a party status and if

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1 obviously there's anything that you need to,
2 you can kind of talk to him.

3 MS. WRIGHT: I can -- I can ask
4 him.

5 CHAIRPERSON MOLDENHAUER: Exactly.

6 MS. WRIGHT: Yes.

7 DR. SALTER: Perfect. Thank you.

8 CHAIRPERSON MOLDENHAUER: Okay.
9 Wonderful. Well, then I will see if the Board
10 Members have any concern with granting Mr.
11 Salter party status at this time.

12 Seeing none, does the Applicant?

13 MR. KADLECEK: No concerns.

14 CHAIRPERSON MOLDENHAUER: Then at
15 this point in time, we'll grant Mr. Salter
16 party status.

17 We'll turn to the Applicant to
18 present their case and just having reviewed
19 it, I think obviously the case is fairly full.

20 I think that there were obviously some
21 concerns, Office of Planning's report and you
22 did provide some supplemental information that

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1 kind of I think honed it on some of those
2 points. So, if you want to maybe focus on
3 things to that effect, that would be positive.

4 MR. KADLECEK: Yes, we definitely
5 intend to focus on the nature of the Office of
6 Planning's concerns. Given the Office of
7 Planning's concerns, we're going to give a
8 little more full of a presentation than I
9 think we otherwise might have. But, we'll try
10 and keep it brief.

11 Good morning, Members of the
12 Board.

13 Again, my name is Cary Kadlecek
14 from the law firm of Goulston & Storrs.

15 As mentioned, Sean Ruppert of the
16 development team is to my right and to his
17 right is Kevin Batteh also of the development
18 team.

19 We're excited to present this
20 project to you this morning.

21 In this case, the Applicant
22 proposes to construct three single family row

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1 dwellings on an alley lot. In order to
2 accommodate the proposed houses, the Applicant
3 requests minor area variance relief for lot
4 dimensions and lot occupancy.

5 The need for this de minimis
6 request arises out of the economic marketing
7 aesthetic and historic considerations that
8 must be incorporated in developing this
9 unusually large historic lot.

10 The Applicant requests leave from
11 the lot dimension requirements because
12 building anything fewer than three houses on
13 this site is simply not feasible. The simple
14 fact that this site has languished undeveloped
15 for many years in a rapidly developing
16 neighborhood reflects this.

17 As evidence in the record
18 demonstrates and as we will reiterate in our
19 testimony, this application meets the three
20 part variance test for relief from the lot
21 dimension requirements. The Office of
22 Planning agrees that this application meets

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1 the test for variance relief from the lot
2 dimension requirements.

3 Well, it may seem that building
4 two conforming houses on this site is a viable
5 development alternative, the simple fact is
6 that it is not. Building flats is not
7 possible because of the alley lot. Maximizing
8 the building envelope with two larger houses
9 would be unmarketable and unfinanceable. Two
10 smaller houses characteristic of the
11 neighborhood would be unfinanceable,
12 aesthetically unpleasing and would run afoul
13 of good planning principles.

14 Further, relief from the lot
15 occupancy requirement is necessary to account
16 for the historic marketing and programmatic
17 concerns that must be incorporated into new
18 row dwellings on an historic alley lot.

19 As the evidence in the record
20 demonstrates and as we will further show in
21 our testimony, it would be extraordinarily
22 difficult for the Applicant to design three

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1 new row dwellings attractive to modern buyers
2 without the requested lot occupancy relief.

3 The exceptional community support
4 for this project should not go without notice.

5 The ANC, a community organization, and many
6 neighbors all support this project. Indeed,
7 the neighborhood wants this project to happen.

8 As I think you can agree, it is an
9 uncommon occurrence for a small residential
10 project to gain this high level of support.
11 We ask that you take this tremendous support
12 into close consideration when deliberating
13 this case.

14 With that, we would like to give
15 you an overview of the project. First, Sean
16 Ruppert will discuss the project in the areas
17 of requested relief and Kevin Batteh will
18 follow him with some background about the
19 community outreach.

20 MR. RUPPERT: Testing. Well, I
21 have three handouts that you guys have.

22 The first thing I want to do is

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1 talk about the current building and that is
2 shown on the area map that I think you should
3 have, 11 by 14 piece of paper. Highlighted in
4 red is the actual project that we're talking
5 about and then there are some photographs of
6 the current building. It's an old garage that
7 was built in the 1920s.

8 Previously, the property had been
9 zoned commercial and it's been downzoned and I
10 think that one of my teammates can probably
11 expand on how that relates to what we're
12 asking for.

13 The overall size of the property,
14 like Cary said, it's a -- it's a large alley
15 lot. It's 95 feet deep, 52 feet wide and it's
16 about -- that makes it about 5,000 square
17 feet.

18 Sorry. I should have taken my
19 notes.

20 And then, of course, it's located
21 in the Blagden Alley/Naylor Court Historic
22 District.

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1 My interest in the project, and I
2 know that this doesn't matter for anyone, but
3 it does matter for me, I grew up on a horse
4 farm in Baltimore County. We raised
5 thoroughbreds. My grandfather raced horses
6 for years. So, this alley with the equestrian
7 history of it is really intriguing to me. I
8 actually sought Kevin out because of that and
9 because when you go down the alley and you see
10 all of the existing carriage homes and stables
11 that are already lived in, it's an incredibly
12 charming neighborhood.

13 So, what we set out to do before
14 one pencil was put to any tracing paper,
15 before anything happened, our architect was on
16 a conference call with Steve Calcott in
17 Historic. We went back and forth for about a
18 week with conference calls and revised
19 renderings until we got to this product.

20 This is what Historic approves.
21 It's incredibly charming. This is also what
22 the neighborhood has accepted.

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1 As Cary described, it's a two and
2 a half story structure, resembles one stable
3 from the outside with a recessed third level.

4 Three subdivided internally into three
5 townhomes. There is a private gated motor
6 court in the back and then detached carriage
7 homes with one-car parking on the inside and
8 then another surface spot outside. So, each
9 home has two off-street parking spaces which
10 is really key. I think that's also something
11 else the neighbors appreciated.

12 As Cary went through, we are
13 asking for three things. Our lot area, there
14 are two home sites. Lot one and two need 185
15 square feet. Lot three needs 90 square feet.

16 We're also asking for lot width on
17 lots and one and two. They both are 12 inches
18 thinner than what they should be.

19 And then lot occupancy. In the OP
20 report, they referred to this -- our request
21 as relatively minor in scope and for that, we
22 need between 81 and 85 square feet per lot.

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1 Now, I want to go into why
2 building two homes is unreasonable for the
3 property. We talked about building two larger
4 homes and/or two smaller homes. If you were
5 to divide this into two lots, each lot would
6 be 2500 square feet. That's one-third larger
7 than anything else in the neighborhood as far
8 as a row home goes.

9 I gave you another handout of
10 comps. If you look at -- oops. This guy with
11 the map. I think they'll have it. Right.

12 What I did for that I only pulled
13 fee-simple row homes between L and S Streets,
14 7th and 14th Streets sold between April of
15 2007 and last month. So, relatively recent.
16 I actually went a few months longer than any
17 appraiser's going to look.

18 During that time, 13 homes sold at
19 an average price of just under \$800,000, an
20 average square foot of 823 -- 1823 square
21 feet. Our homes as designed are 1850 square
22 feet. So, they're comparable to everything

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1 else that's been sold in the last year and
2 then the average price per square foot is \$436
3 for those homes.

4 If we were to divide the property
5 into two -- two lots of 2500 square foot for
6 the lots and built them to 60 percent, that
7 would be a 3900 square foot dwelling, 3900
8 square feet.

9 I'm building four homes now in a
10 Cabin John community. Those homes on half-
11 acre lots are 3600 square feet.

12 So, as you can tell, if we were to
13 build that to 60 percent, it would be
14 something unreasonable to build.

15 Then if we were to build two
16 smaller homes, what comes into play with that
17 is the actual fixed cost to build.

18 There are a lot of things that
19 don't change regardless if you build two homes
20 or 40 homes. For instance, Washington Gas is
21 going to charge us \$15,000 to run gas to this
22 site and they don't care if there's two homes

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1 or three homes. It's \$15,000. That's one
2 example of a dozen things that don't change.

3 What else doesn't change? Our
4 operations. We have to pay somebody to be
5 there to build the homes. We have to pay for
6 the warranties. We have to pay commissions to
7 buy the property, closing costs, everything
8 fixed.

9 The largest chunk of this though
10 is land development and the land. If we take
11 this and divide it into two lots, our land
12 exposure is here on each lot. If it's three
13 homes, it's a little bit smaller and that gets
14 into to -- gets us into what Cary had talked
15 about with financing.

16 There ain't a bank in this town,
17 not one bank, that's going to lend you 55
18 percent of your cost on land. What goes on
19 here banks in this are expect your land cost
20 to be between 35 and 40 percent of what your
21 out sale price is going to be. If we divide
22 the lot into two, then our land cost is

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1 actually 55 percent and that's not
2 financeable.

3 So, if we're lucky enough (a) to
4 find a lender which isn't going to happen and
5 then we're lucky enough to find a buyer who
6 can afford to buy the homes that are that
7 large, because when you're building something
8 larger, it costs more to build and then you're
9 only dividing that cost into two home sites,
10 it just becomes incredibly expensive. The out
11 sale price would end up being somewhere
12 between \$1.5 and \$1.6 million if it were a
13 large home or a small home just because of the
14 fixed cost.

15 So, if you're lucky enough to get
16 a lender, great. If you're lucky enough to
17 find a buyer, that's another hurdle. Then you
18 have to find appraisals. The property has to
19 be appraised for it to close.

20 There's not one justification in
21 anything that's sold in the neighborhood
22 within ten blocks to justify anything over a

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1 million dollars. So, it would just be
2 unreasonable and not really very easy to do
3 two homes smaller or larger.

4 And then the lot occupancy. OP in
5 their report says that what we're asking for
6 is relatively minor in scope and indeed it is.

7 We're asking for 81 to 86 square feet per lot
8 and the third handout that I gave you is the
9 floor plan of the upper two and half levels of
10 the home and I don't know how much detail I
11 should go into, but I want you to know that we
12 didn't just throw this together. We thought
13 about what we were doing. We thought about
14 the buyer profile. We thought about the price
15 range and we thought about what other homes in
16 this neighborhood are like.

17 Just take for instance the master
18 bedroom. It's 11 11 by 16. Anyone in this
19 price range is going to expect to put a king
20 bed in that room. A king bed is 6 and a half
21 feet wide. Nightstands are 2 feet wide maybe
22 3 feet wide. That still leaves enough

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1 circulation space around the bed to get around
2 or put a chest of drawers in.

3 Look at the guest bedroom. The
4 guest bedroom is 11 by 11 or 12 by 12. That
5 fits a queen which is 5 feet wide and then a
6 nightstand, maybe a small desk and you can
7 still walk around it.

8 Look at the breakfast nook. It's
9 a 11 by 11. That's designed to fit a 4-top
10 table. Somebody might be able to cram a 6 top
11 in there for a party or something, but it's
12 really designed -- if you want to push your
13 chairs out and walk around the table, it's a 4
14 top.

15 So, there's -- if you look at the
16 house in that way, there's nothing about this
17 house that was overdone or over designed or
18 that would eventually be overbuilt for this
19 neighborhood.

20 So, I think that what we've come
21 up with are three homes that fit what we think
22 are going to be the buyer profile. They

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1 definitely fit the housing stock of the
2 neighborhood and then beyond that, the
3 neighborhood supports the design, Historic
4 supports the design and I would hope that you
5 do, too.

6 MR. BATTEH: I'm Kevin Batteh and
7 my -- I guess my -- I'm here as the owner of
8 KB Developers. I'm not a developer. I formed
9 KB Developers for this project to buy this
10 property. This is not my day job.

11 But, I am a neighbor. I live just
12 sort of across the street from Naylor Court
13 and I've lived in the neighborhood for about
14 ten years and ever since I -- I moved into the
15 neighborhood, this was abandoned. This
16 building was an abandoned auto shop and an
17 eyesore. It's -- I referred to it as a the
18 pink pig.

19 It's been the subject of much
20 discussion in the neighborhood and I think
21 everybody in the neighborhood has wanted it to
22 be developed and I think two years ago David

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1 -- Dr. Salter and I and some others were
2 shoveling off some of the flat roofs in our
3 neighborhood after the big snowstorm that
4 February. I think it was two years ago and we
5 jokingly said maybe the roof of this building
6 will fall in and we can finally get it
7 condemned or razed or something like that and
8 actually, the next day it did fall in and then
9 it was a -- that's all right.

10 Anyway, so, this project has a
11 long and tortured history. Before we got
12 involved, another neighbor tried to develop it
13 with -- it was a sort of a three-person
14 partnership that bought the building. They
15 came to this body and received, I think, a
16 height and lot occupancy variance in order to
17 do two larger units and that was in a much
18 better economic time. I don't want to be
19 quoted. I think it was something like they
20 were going to do four -- 4,000 square foot
21 home. Something like that or maybe -- maybe
22 -- I think -- they were going to do large and

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1 that didn't work financially.

2 Then I think Sean's point was it
3 won't work financially now because if you
4 build the big homes, if you build to 60
5 percent on this lot with two homes, you're
6 going to -- you've going to have a -- you
7 know, a castle in a corn field and if you --
8 nobody's going to -- nobody's going to pay
9 what it cost and then the land cost and the
10 development costs on two homes that are
11 characteristic for this neighborhood aren't
12 going to work because they're just not
13 financially, you know, viable to develop it.

14 This is a unique lot. It's the
15 biggest in the square by a long shot. I think
16 it was at one time, a long time ago, five
17 sliver lots. I know -- I don't know when it
18 was -- it was turned into one big lot. So,
19 that makes it a little bit more challenging.

20 If it was a little bit bigger or a
21 little bit smaller, I think it would be easy,
22 but it's just sort of that awkward size.

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1 The historic nature of the area
2 also is a constraint for us because, you know,
3 I'm a neighbor. I want to see something that
4 fits in with the rest of the area. So, I
5 don't -- I mean I'm glad that we -- this --
6 this area has the historic constraints, but,
7 you know, we couldn't put something sort of
8 modern there.

9 We couldn't put protruding bays in
10 the front of the building. So, our lot
11 occupancy went about, I think, 4 or 5 percent
12 over. Those bays in the rear of the building
13 are part of what's putting us over and then
14 the fact that we've got -- maybe I'll just do
15 this real quick. The fact that we have off-
16 street parking in the form of a carriage house
17 which is typical of this area also puts us
18 over the lot occupancy.

19 But, we and the neighbors felt
20 that -- sorry. Am I -- I'm sorry.

21 VICE CHAIRPERSON SORG: If you can
22 move that. If you're going to point to that

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1 other diagram, I don't think any of us can see
2 it.

3 MR. BATTEH: Yes.

4 VICE CHAIRPERSON SORG: No, I
5 think it looks like it's the elevation that we
6 have in the file.

7 MR. BATTEH: Yes, it's simply --
8 this -- this protruding -- this bay counts as
9 part of our lot occupancy and we're -- that's
10 -- that's part of what's taking us over and
11 then, you know, of course, this is just
12 parking. But, it's -- it's -- you know, it
13 counts toward our lot occupancy.

14 I mean, you know, if we just
15 wanted to maximize the building, we could --
16 we could get rid of that and put a big, you
17 know -- still have plenty more on the house.
18 But, to have the house at the right size and
19 -- and I think some of the -- you'll hear from
20 some of the community members security is an
21 issue in this neighborhood and having secured
22 parking is -- is a big -- it's an important

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1 selling point, but it's also important for
2 neighborhood safety.

3 You should have on the record a
4 letter of support from the ANC. Basically,
5 all of the neighborhood supports this. The
6 Blagden Alley/Naylor Court Community
7 Association has a letter in the record. The
8 next-door neighbor who's unable to be here
9 today happens to be an architect himself and
10 he's got a letter in the record as well of
11 support and then the neighbor -- another
12 neighbor who's directly -- his -- the rear of
13 his property -- he owns a carriage house
14 across the street from this and then his main
15 house is -- is behind the carriage house.
16 He's the President of the Blagden Alley/Naylor
17 Court Association and he also, you know, lives
18 across the street from the project. He has a
19 letter of support in the record and he
20 actually talks about some of the safety and
21 security issues I just mentioned.

22 So, I think -- I think that's all

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1 that I wanted to say and certainly we want to
2 answer any questions that you have.

3 MR. KADLECEK: I just have a
4 couple of redirect questions.

5 Sean or Kevin, is it the case that
6 you paid fair market value for the land?

7 MR. BATTEH: Yes.

8 MR. KADLECEK: Okay. Sean, can
9 you please explain the historic -- the
10 accommodations for historic concerns that you
11 made in the house that resulted in the lot
12 occupancy increasing?

13 MR. RUPPERT: Right. Right. I
14 actually meant to go over that.

15 When we were going through the
16 historic review process, they had asked that
17 the third level be recessed from the alley so
18 that when you're on a pedestrian scale you
19 don't see that level. So, in doing that, the
20 loft was pushed back 11 feet from the front
21 and about 5 feet from the side of the building
22 and then Historic had also asked us to recess

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1 the front entryways which took away from some
2 square footage that was usable in the house.

3 When I brought up the floor plans,
4 I had meant to tie that in, but when we had
5 asked Greg -- Greg is our architect and we had
6 asked him to come up with how would we make
7 this work with 60 percent lot coverage. We
8 would have to chop 4 feet. Either get rid of
9 the garages or chop 4 feet off of the home and
10 that's why I wanted you to look at the floor
11 plans.

12 In addition, there's really not --
13 if we'd lose a bathroom or lose a bedroom or
14 make them all smaller, there's not a lot that
15 keeps the home marketable in this
16 neighborhood.

17 So, when we pushed the -- when we
18 pushed this back, that protrudes the bay
19 window out over space that would be landscaped
20 below even though that falls into our lot
21 coverage.

22 And, of course, the garage. I

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1 can't imagine a selling a new home in this
2 neighborhood. Half the reason that people are
3 concerned about the alley is safety and then
4 parking their cars back there, I -- I -- the
5 garage is equally important to the entire
6 marketing appeal of it.

7 MR. KADLECEK: With that, we're
8 available for questions.

9 CHAIRPERSON MOLDENHAUER: I'm
10 going to first open it up to Dr. Salter to see
11 if you have any questions of any of the
12 witnesses.

13 DR. SALTER: No, I don't.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 Then I'm going to open it up to Board Members
16 for any questions.

17 VICE CHAIRPERSON SORG: Madam
18 Chair, I just want to get a little bit of
19 clarity on some of the handouts that we have
20 today. I'm not sure they were all quite
21 addressed.

22 Mr. Ruppert, were you indicating

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1 just now in your comments that the two -- that
2 the floor plans that you have now which looks
3 like two lots --

4 MR. RUPPERT: I was just showing
5 you an end unit because the end unit has a
6 smaller loft and that's recessed and then I
7 was showing you one of the interior homes.
8 So, I think I printed out lot 3 which is the
9 end unit.

10 VICE CHAIRPERSON SORG: Right.

11 MR. RUPPERT: And I printed out
12 just one of the interior homes. That shows a
13 different loft layout. That's all.

14 VICE CHAIRPERSON SORG: And are
15 these changed from the original submissions
16 that we had?

17 MR. RUPPERT: No.

18 VICE CHAIRPERSON SORG: Okay. I
19 was -- that's why I'm asking.

20 MR. RUPPERT: No.

21 VICE CHAIRPERSON SORG: Whether
22 there were changes in the plans for those.

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1 And then I think -- it looks like
2 you've got some pretty fancy boards with other
3 views. It might be worthwhile sharing them
4 with us.

5 MR. RUPPERT: Oh.

6 VICE CHAIRPERSON SORG: Well,
7 they're nice boards.

8 MR. RUPPERT: Oh. Oh, I'm sorry.
9 Yes.

10 VICE CHAIRPERSON SORG: May as
11 well. You know what I mean.

12 CHAIRPERSON MOLDENHAUER: Can you
13 make sure that you're on the mike? If you can
14 grab the --

15 MR. RUPPERT: How awesome is this?
16 This is the gated motor court. So, anyway,
17 this is the detached carriage house gated
18 motor court and this is the bay window
19 extension part of what puts us out over.
20 Right. Right. So, there's one surface spot
21 and then one parking -- one garage spot.

22 VICE CHAIRPERSON SORG: Sort of

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1 English basement type level underneath?

2 MR. RUPPERT: It's unfinished
3 basement space. So, people could opt to
4 finish the basement, but it's nothing that
5 could have a legal bedroom or anything. It's
6 mechanical systems and whatever.

7 VICE CHAIRPERSON SORG: Okay.

8 MR. RUPPERT: Yes, so, you
9 actually walk in from the grade. You'll walk
10 in the grade one or two steps up to the main
11 level. Right.

12 VICE CHAIRPERSON SORG: So, the
13 entry to the motor court is from the 30-foot
14 alley. No, it's from the 15-foot alley?

15 MR. RUPPERT: Right.

16 VICE CHAIRPERSON SORG: I'm going
17 to look back at my --

18 MR. RUPPERT: Right. So, you'll
19 pull in off of 0 onto Naylor Court and then
20 make a left onto the 15-foot alley and right
21 into the motor court.

22 VICE CHAIRPERSON SORG: Okay.

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1 Thank you.

2 MR. RUPPERT: Sure.

3 MEMBER JORDAN: Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Um-hum.

5 MEMBER JORDAN: I have a couple of
6 questions if I may.

7 First, I haven't -- is it Mr.
8 Ruppert?

9 MR. RUPPERT: Yes.

10 MEMBER JORDAN: And I didn't know
11 if we qualified what -- if Mr. Ruppert was
12 qualified as an expert for any particular
13 thing, but I know there was -- I know he's a
14 real estate --

15 CHAIRPERSON MOLDENHAUER: He's not
16 an architect. He's just --

17 MEMBER JORDAN: But, he's a
18 broker. But, I have not seen and I don't know
19 if you have the real numbers on construction.

20 What are the differences in the construction
21 cost itself based upon what you said? But, I
22 have not seen those numbers and additionally,

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1 I've seen nothing in regards to -- from any
2 institution that has provided the information
3 that you provided about the loan -- the cost
4 of loan value and et cetera. So, I don't know
5 if that exists or if you have those type of
6 things.

7 MR. RUPPERT: Okay. Actually, the
8 architect would have been here today, but he
9 is in the Bahamas on his 15-year anniversary
10 with his wife and he said that he'd get killed
11 if he wasn't there.

12 So, anyway, I'm -- and I'm a
13 licensed broker. I've been selling new homes
14 in this city since 1999 and in Virginia since
15 1994. I started my company which is OPaL a
16 homebuilder in 2000. Since then, I've built
17 120 homes around the Capital Beltway.

18 And as far as what 35 to 40
19 percent, no bank is going to tell you that.
20 That's a rule a thumb that any lending in this
21 region. You can go to Kansas or Texas and it
22 might be a little bit lower like 20 or 25

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1 percent of cost of your out sale. It could be
2 expected to be in land, but in this region, in
3 this city, a bank really wants you to be
4 around 30 to 40 percent. It's nothing that's
5 written in a rule book, but that is what banks
6 expect land to be and then this -- go ahead.

7 MEMBER JORDAN: I guess what I'm
8 looking for is something that we can have to
9 support our record in regards to findings that
10 are necessary to be made.

11 MR. RUPPERT: Okay.

12 MEMBER JORDAN: And so, I don't
13 see those type of things for us to say that
14 there's some difficulties for you to get to
15 where you need to be.

16 Additionally, I guess another
17 question is are there any other dwellings that
18 front in that alley on the same side?

19 MR. RUPPERT: Yes, there are.

20 MEMBER JORDAN: Okay. How many?

21 MR. BATTEH: We're counting.
22 There's -- Dr. Salter's fronts. His next-door

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1 neighbor fronts. Then ours would be three and
2 the across the street -- what's that? Yes,
3 carriage house, Sarah Snyder and -- so, that's
4 on that part of the alley. It's an H-shaped
5 alley, but on the immediate leg of the H is
6 five.

7 MEMBER JORDAN: Thank you.

8 MR. BATTEH: I think there's
9 probably a map in the -- in your materials.
10 Yes, five right in that -- right in that
11 vicinity.

12 CHAIRPERSON MOLDENHAUER: Are
13 there other questions from Board Members?

14 I just -- can you -- I'm trying --
15 looking at this -- the larger map that you
16 provided us today and can you just describe.
17 I'm trying to understand behind the carriage
18 houses for the garages. What type of building
19 is that that this is backing up against?

20 MR. BATTEH: That is the D.C.
21 Archives building.

22 CHAIRPERSON MOLDENHAUER: Okay.

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1 MR. BATTEH: And yes, you can kind
2 of see it's mass in the pictures there.

3 CHAIRPERSON MOLDENHAUER: And
4 you're building to the property line?

5 MR. BATTEH: No, there's -- oh,
6 the garages would be -- the back of the
7 garages would touch the back of the D.C.
8 Archives. If that's the question, yes.

9 CHAIRPERSON MOLDENHAUER: Yes,
10 that was the question.

11 You're not on the mike.

12 MR. RUPPERT: The D.C. Archives is
13 approximately -- if our homes are to 30 feet
14 tall, the D.C. Archives is, I'm assuming,
15 40/45 feet tall.

16 CHAIRPERSON MOLDENHAUER: Okay.
17 And then the front on Naylor Court, there's a
18 parking lot on the other side of this project?

19 MR. BATTEH: That's correct. It
20 belongs to a church and I can also represent
21 to you that that church is in support of this
22 project. In fact, they came to the last

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1 Zoning hearing when the neighborhood --
2 someone in the neighborhood tried to develop
3 this property in support.

4 CHAIRPERSON MOLDENHAUER: And I
5 mean I understand the presentation in regards
6 to the value and the real estate pricing.

7 Has there been any consideration
8 about potentially forecasting seeing that this
9 is so close to the D.C. City Center Project
10 and the potential I guess really change in
11 marketability for a larger project or a larger
12 building, developing two homes on this project
13 seeing that maybe a couple of years ago when
14 this project was previously approved it wasn't
15 able to come to fruition that that project had
16 not yet been formalized, but now, the, you
17 know, ground's been broken. That project's,
18 you know, in the works. How do you see that
19 affecting your forecast?

20 MR. RUPPERT: One of the problems
21 with building two homes there is just the
22 Historic. Would have a difficult time getting

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1 -- doing two larger homes in that
2 neighborhood.

3 When you compare this project to
4 what's happening in O Street, everything at O
5 even though it's going to be a new grocery
6 store, hotel, apartments and that is
7 representative of what everything else in the
8 city new pretty much coming up out of the
9 ground is. Apartments, one bedrooms and two
10 bedrooms. The maximum size of those units are
11 typically 700 square feet at the most. Maybe
12 a two bedroom gets up to 800 square feet and
13 the price per square foot for those on a
14 retail value put them at like \$500,000 to
15 \$600,000 at Market Street. If you go over to
16 O Street, a lot of those one bedrooms coming
17 up out of the ground are going to be \$500,000
18 to \$700,000 for a two bedroom for \$700,000.
19 So, that really doesn't change the effect.

20 I think when we're building three
21 homes in this neighborhood, I really do think
22 that three homes at 1800 square feet is the

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1 larger home that we're looking for. That's
2 the market. I don't really think that it's a
3 -- maybe we don't do 3900 square feet because
4 that's just ridiculous. Maybe it's a 3,000
5 square foot home and I don't even see that as
6 something that's feasible.

7 I see 1800 square as market. As
8 what someone Googling us or finding us on the
9 MLS or whatever, I think that's really the
10 sweet spot of where there is going to be
11 successful and where a bank is going to be
12 like, you know, hand to God.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Any other questions from Board Members? Mr.
15 Schlater.

16 MEMBER SCHLATER: I'll give it a
17 whack. I think this is a great project first
18 of all. It's exciting. Doing these alley
19 projects is -- you know, adds vitality to
20 these alleys. Makes them feel safer and it
21 just makes the city a better place to live.
22 So, I'm excited to find a way to move it

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1 forward.

2 The lot occupancy issue is a tough
3 one because we have, you know, set standards.

4 I think, you know, the Office of Planning has
5 laid out some of their concerns with granting
6 relief and I don't think you're going to get
7 any push back with the notion that doing two
8 very large homes here doesn't make financial
9 sense. I think we'd agree with that.

10 But, I still think we have a lot
11 occupancy problem. In, you know, every -- you
12 know, every part of me wants to just say ah,
13 it's not a big deal, but the problem is that
14 it sets a precedent for other projects around
15 the city, much lower quality projects that
16 come in.

17 People who overpay for their land
18 and then say ah, because I overpaid for my
19 land, I need relief on my lot occupancy so I
20 can build a bigger project and I'm not saying
21 that you're doing that here or that you
22 overpaid for your land. But, you can't just

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1 come in and say we paid X number of dollars
2 assuming we could get three lots when you
3 require zoning relief to get those three lots.

4 So, my question to you is have you
5 really tried to figure out how to make these
6 three lots work from a lot occupancy
7 perspective? We're talking about 81 to 86
8 square feet per lot that needs to be shaved
9 off.

10 What is the footprint of each
11 garage?

12 MR. RUPPERT: The garages are 19
13 by 17. When you take a garage -- the garages
14 are 19 and a half by 17 feet wide. A typical
15 garage, you can't go any smaller than 19 feet
16 to get a normal car in the garage and then if
17 you go to make it center, you're actually
18 making it a detached garage. Each building
19 would be a separate entity to itself and there
20 wouldn't be a separate door to be able to get
21 into it. It would just be the car door.

22 MEMBER SCHLATER: Nineteen feet

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1 deep is --

2 MR. RUPPERT: Um-hum. Yes. Yes.

3 MEMBER SCHLATER: I don't know.

4 MR. RUPPERT: Everything I've ever
5 built has had a garage and I've never seen
6 anything smaller than 19 feet.

7 Prior to building homes, I worked
8 for Eakin-Younentob --

9 MEMBER SCHLATER: Yes.

10 MR. RUPPERT: -- and sold three of
11 their communities. It was two -- one in the
12 city, one in Old Town Alexandria. Not one
13 thing that they build is less than 19 feet
14 deep for a garage.

15 MEMBER SCHLATER: I've been in
16 some of those homes. They feel like they're
17 narrower than 19 feet.

18 MR. RUPPERT: It does. Oh, deep.

19 MEMBER SCHLATER: I mean --

20 MR. RUPPERT: Deep.

21 MEMBER SCHLATER: -- not narrow.

22 MR. RUPPERT: Fourteen and 16 feet

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1 wide homes, but they're thinner. But, yes,
2 they're -- they're 19 feet deep.

3 Right. If we go to do anything
4 with the garages, the garages were an
5 important part of the Historic approval along
6 with the neighborhood support.

7 CHAIRPERSON MOLDENHAUER: Can I
8 jump in here and just ask a question? I mean
9 you could do -- couldn't you do a one-story
10 garage without having the staircase and that
11 would make it smaller and reduce your lot
12 occupancy and you don't have to have the
13 mezzanine level in the garage.

14 MR. RUPPERT: Right. That's --
15 that was -- the mezzanine was just like a
16 freebie because -- because of the width of it.
17 That really doesn't have much to do with it.
18 That's kind of what Konrad had asked about.

19 If we go to make the garages
20 thinner, then they would be somewhat detached
21 from each other.

22 CHAIRPERSON MOLDENHAUER: I see.

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1 It's just to fill --

2 MR. RUPPERT: Because the lot is
3 still going to be a certain width and when you
4 go to make it thinner, you're either pulling
5 back from the left or pulling back from the
6 right and -- and then the one in the middle
7 remains the same width or they all get thinner
8 and then become detached.

9 MR. BATTEH: And that -- that also
10 raises a security issue. I mean if you know
11 this neighborhood, my -- well, that would be a
12 concern if you had narrow slots -- spaces
13 between each garage where someone could hang
14 out or hide or loiter or have sex which is
15 kind of what happens here now all the time.

16 CHAIRPERSON MOLDENHAUER: Konrad,
17 can I jump in?

18 MEMBER SCHLATER: Sure.

19 CHAIRPERSON MOLDENHAUER: I just
20 have a question. I mean going down the
21 questions in regards, you know, you're talking
22 about, you know, marketability to put in a

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1 queen bed. Are you looking to sell this to --
2 you know, you've got three bedrooms. So, you
3 -- I mean obviously if a newlywed buys this,
4 you know, they're not going to need three
5 bedrooms. They're not going to need three
6 bedrooms with queen-size beds in it because,
7 you know, I don't think that they are going to
8 want their in-laws there that often, you know.

9 You know, I mean or if you're talking about
10 someone with families, you don't need a queen-
11 size bed for a toddler or for a nursery.

12 So, isn't there room with still
13 having the project being marketable to take
14 out that 81 square feet and maybe push the
15 bedrooms and make them a little smaller.

16 MR. RUPPERT: Right. Well, I was
17 actually -- I'm working on a nursery for
18 myself and I can tell you that it's not just a
19 crib that goes in there.

20 CHAIRPERSON MOLDENHAUER: Oh, I've
21 got a ten-month old and I'm pregnant right
22 now. So, believe me I know.

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1 MR. RUPPERT: Exactly and I think
2 -- well, I know our buyer's profile's going to
3 be the same for anything that we built in this
4 product. It's going to be young couples,
5 young single people and empty-nesters that
6 look at this product and I think that the room
7 dimensions are suitable for what is comparable
8 in the neighborhood.

9 CHAIRPERSON MOLDENHAUER: Konrad,
10 do you have any follow-ups? I'll hand the
11 mike back to you since I jumped in on you.

12 MEMBER SCHLATER: Well, I guess my
13 question would be the concept of market value
14 for the property. If you can't build three
15 buildings here under zoning, what is the
16 market value for the property?

17 MR. RUPPERT: Well, I think that
18 Kevin addressed that before when in the height
19 of the real estate market two homes came here
20 and were not -- or they were approved and then
21 we're not financeable.

22 MR. BATTEH: Yes, I mean the

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1 current -- I don't know if this makes a
2 difference, but the current structure that's
3 there is also over the lot occupancy. It's
4 over 60 percent and I don't recall that off
5 the top of my head. I think it was around --

6 MR. RUPPERT: Yes, 65.

7 MR. BATTEH: So, the current
8 structure of 65 and to do the two units, they
9 were -- I think they were able to keep the
10 footprint at 65 that last time that they came
11 up to this Board. But, we are, of course,
12 razing this building. So, I understand that's
13 a different consideration.

14 MEMBER SCHLATER: Here's my
15 suggestion. I think the economic rationale
16 for the lot occupancy area variance is shaky.

17 I would feel more comfortable doing it on the
18 basis of the fact that this is property in an
19 historic area and there are limitations
20 imposed by that Historic approval that require
21 the variance and that would be an avenue I'd
22 be comfortable going down and I'd be

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1 interested to hear from OP if they think that
2 is a decent approach.

3 CHAIRPERSON MOLDENHAUER: Well,
4 let me see if there are any other questions
5 from Board Members. Seeing none at this time,
6 obviously, we can go back to it.

7 Then at this point in time, I will
8 turn to Dr. Salter to present your case.

9 DR. SALTER: Thank you very much.

10 I appreciate the opportunity to be able to be
11 part of this discussion and maybe since Lynda
12 and I are friends, know each other and are
13 neighbors, we can do this a little less
14 formally than a formal presentation and I
15 could cede the beginning part to her so that
16 she could make comments to start if that's all
17 right with the Board.

18 CHAIRPERSON MOLDENHAUER: That's
19 fine. She can be your witness and she can
20 present during part of your presentation.
21 That sounds perfect.

22 DR. SALTER: Thank you.

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1 MS. WRIGHT: Thank you. I have
2 lived in my home since 1977. That's 35 years
3 and one of the chronic problems in this
4 neighborhood living and being downtown was
5 safety.

6 This alley used to be disgusting.
7 There were cars. I have a picture of this
8 alley with cars from O Street to the T in the
9 alley, three across. So, I cannot begin to
10 tell you the challenges living in this
11 neighborhood.

12 But, it's such a wonderful
13 neighborhood and the homes are lovely and I
14 have to say that this project just makes my
15 heart soar. It's just beautiful. I don't see
16 any safety negatives.

17 One of the best things that I ever
18 did in my property was secure the back of my
19 property so I wouldn't have to worry about
20 people jumping into my yard and I see that
21 they've taken that into 100 percent
22 consideration.

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1 There's just no way given the
2 aesthetics of the alley and how much work
3 everyone has put into living in this alley
4 which is the way it used to be that you could
5 deny it on the basis of a few feet and oh,
6 we're going to set a precedent. The precedent
7 is the design and it's beautiful.

8 So, I mean that's pretty much what
9 I have to say.

10 Just because you have three
11 bedrooms doesn't mean you have three beds. A
12 person can use it as a nursery, a master
13 bedroom and a library or an office. I mean,
14 you know, whatever, but trying to make these
15 people hold up to a standard of all this.

16 I understand what you're talking
17 about in terms of lot size and setting a
18 precedent and the marketability. People don't
19 move into town to get 3,000 square foot homes.

20 They move in because they're downsizing and
21 this is so attractive that I can see it
22 selling very easily and I'm hoping we get new

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1 neighbors.

2 So, I guess that's about it. I'll
3 take any question anybody wants to ask.

4 CHAIRPERSON MOLDENHAUER: Does the
5 Applicant have any questions?

6 MR. KADLECEK: No questions.

7 CHAIRPERSON MOLDENHAUER: Do any
8 Board Members? Seeing none, then we'll turn
9 back --

10 MS. WRIGHT: Thank you.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you very much.

13 DR. SALTER: Thank you, Lynda.

14 I think you'll get a sense as we
15 chat formally and informally that what we're
16 talking about in this particular block is what
17 people refer to often as a village and there
18 are people who have very eclectic backgrounds
19 or people who have been there for a few
20 months, young couples or people who have been
21 there 25/30 years and who've seen things in
22 evolution.

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1 I live in that alley and, in fact,
2 the home that my wife and I live in looks not
3 dissimilar to this. So that it will be a
4 bookend to our particular property.

5 Over the last nine years, I've
6 lived in that stable. It's over 100 years old
7 and it's within 50 yards of this property and
8 I've developed a good first-hand since of the
9 history and the evolution of this particular
10 block and alley and its potential.

11 I've been active in architectural
12 historic preservation in Washington to address
13 credentials. They are not formal. But, not
14 only have I an interest, but I have been
15 active. Been a member of the D.C.
16 Preservation League, the Latrobe Chapter of
17 the Society of Architectural Historians, a
18 member of the Coalition to Save the Franklin
19 School and I've written 97 blog articles on
20 stables and alleys in Washington, D.C. on my
21 blog site. It's called Preserving D.C.
22 Stables and I'm the immediate Secretary of the

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1 Blagden Alley/Naylor Court Association.

2 I've been supporting development
3 on this site on Lot 862 for seven years and
4 so, I know it's history pretty well.

5 And thirdly, Kevin Batteh's a
6 neighbor and a friend and I've known him for
7 nine years during which time I've come to
8 respect his work at the Department of Justice,
9 his intellect, his integrity as well as his
10 heartfelt interest in the welfare of Naylor
11 Court as a neighbor of where he lives.

12 We also have an informal
13 relationship because I wasn't going to bring
14 this up, but another part of my life is what
15 people would refer to as a car guy because
16 we've bought an old garage that used to be on
17 of the rogue mechanic garages and so, we have
18 spent time together there.

19 If I might be allowed to address
20 one of the questions that was raised by Madam
21 Chair, the question in relation to what is
22 happening in this neighborhood. It's

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1 considered the most blogged area in
2 Washington. Whoever calculates this
3 statistics comes up with that and says it's
4 very hot.

5 It's is -- it's part of the
6 advancing wave front of change and there are a
7 lot of things. It's a coalition of many
8 things happening at the same time and yet to
9 speculate at this moment as to what will
10 happen two years, five years or ten years from
11 now is beyond my comprehension.

12 We've had people move in thinking
13 that this would be a great place to invest and
14 they haven't quite hit the right wave surf and
15 within this particular block, there are three
16 businesses right now at the moment who are
17 bankrupt. Actually, a fourth and I'm happy to
18 name them. I'd rather not on record, but
19 people come in and it isn't a given that
20 things are going to succeed.

21 I would support Lynda's point that
22 people from what I can understand moving back

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1 into the city inherent to growing -- supports
2 that as well, by and large, are people who are
3 younger and downsizing and CAS Reigler and the
4 people who are doing projects in the next
5 neighborhood alley in Blagden Court are very
6 sensitive to that as well. So, mega-buildings
7 are probably not going to fly.

8 Another point that occurred to me
9 as I was listening is when you're talking
10 about historic buildings, historic
11 preservation, it's a very difficult thing to
12 meld historic and new and a lot of this taste.

13 But, one of the fact about stables
14 is that the D.C. Archives which is the
15 building that is immediately behind this
16 particular project occupies 100 percent of its
17 lot and that's because it was a stable built
18 in 1883. It was a Tally-Ho Stable. Then
19 became the U.S. Parks Department Stable. The
20 building that we live in occupies 100 percent
21 of its occupancy. It's a little bit unusual,
22 but for large stables, it was not uncommon.

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1 So, I wanted to put that out on record.

2 ANC-2F has given, as you say,
3 their great weight support for the project.
4 The Blagden Court is really enthusiastic.
5 It's one of the hottest things that's come
6 across our radar for a long time and it -- I
7 know a lot of work has gone into developing
8 this because the first iterations of this
9 particular project are not as elegant as what
10 you're seeing before you today.

11 In 2005, I testified on behalf of
12 the previous development and while it was
13 supported and passed, finances collapsed and
14 the property languished and not only did the
15 roof fall in because of the snow, a tree fell
16 on it and knocked out the whole front. So, it
17 was really un-salvageable.

18 Having infill space has really
19 enthused everybody not only in Logan Circle
20 and Shaw, but the Annual Logan Circle
21 Christmas Committee is excited because they
22 want to put this property on their Christmas

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1 tour either 2012 or 2013. So, there's a lot
2 invested emotionally.

3 It's an awkward property to
4 develop. As Kevin said, originally there were
5 five different properties and if you go back
6 to the original map, there are eight
7 individual buildings back to 1887.

8 The previous developers went
9 through the process of coalescing this into
10 one site and the other day, I paced it off and
11 I calculated that it was about 68 percent
12 occupancy in terms of the building that is
13 there right now and so, with the complexity of
14 consolidation and the past history of this
15 building and so on, want of a variance didn't
16 seem to be a great deal in my mind.

17 Originally, the stables and the
18 garages were a really significant part of a
19 core of this block. The Victorian and Federal
20 residences were built around the periphery and
21 the stables and garages were built to support
22 the transportation needs and small business

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1 needs of that particular block and that's true
2 of all of the major blocks in Washington.
3 There are a huge number of stables and small
4 businesses still available or still stand.

5 But, if you look at the maps, from
6 1887 all the way through 1897, there is a
7 disturbing and progressive loss, an erosion of
8 buildings in this alley block and I have a
9 handout that I'll give to Mr. Moy in terms of
10 a flash drive handout and I also have I think
11 about eight handouts that I prepared
12 beforehand. I'm happy to share that with
13 everyone.

14 Most of the demolished buildings
15 over the last 100 years haven't been replaced
16 and the default has been open parking and many
17 neighbors and the local police can attest to
18 the high rate of vandalism in this particular
19 area.

20 As pointed out by Kevin and the
21 developer and his lawyer, the building that is
22 being proposed is of high quality and it's

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1 reasonable to assume the buyers who are
2 willing to purchase projects of this nature
3 anticipate covered and protected parking. In
4 a depressed economy, in a depressed real
5 estate market, every property needs to be
6 attractive to buyers in order to sell. A lack
7 of covered and protected parking's a deal
8 breaker for many buyers.

9 And open parking also reinforces
10 the widely prevalent changing idea that in
11 D.C. alleys are only of value for service
12 access, trash management and parking. Having
13 tastefully designed garages on this lot at
14 1321 will help reverse this destructive trend
15 on the block and enhance the appearance not
16 only of this property but of the entire alley.

17 Covered and protected parking is
18 especially important to the neighborhood
19 that's around Naylor Court. I looked up the
20 data yesterday in preparing for this and the
21 theft model, that's a smash and grab, broken
22 windows, within a 1500-foot radius of this

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1 particular lot has increased 42 percent in the
2 last year and is now occurring at a rate of
3 176 car break-ins a year.

4 Similarly, within a 1500-foot
5 radius, car thefts have increased by 68
6 percent and are now at a rate of 37 per year.

7 So, having the ability to secure a
8 car in a locked garage in this area is of
9 value for insurance companies, the police,
10 real deterrence to criminals and provides a
11 sense of security to owners.

12 Open space parking lots are well
13 known as an invitation for many other criminal
14 activities. Something often witnessed and
15 well documented in Naylor Court and the total
16 crime in this 1500-foot radius has gone up
17 from 362 to 439 cases in the last year. A 21
18 percent increase.

19 So, parenthetically, I applaud the
20 people who are developing this for the courage
21 to develop in an area that is not a slam dunk
22 in terms of many of the issues we've talked

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1 about and within an economic time that is not
2 especially favorable. Even large developers,
3 many of whom you know, are having trouble
4 financially and are having to joint venture.

5 With the increase in our community
6 density competing for parking and it's already
7 very, very difficult, the Old Street Market
8 project, Marriott Hotel, City Center, new
9 restaurants, new businesses along the 9th
10 Street corridor, parking is rapidly
11 disappearing and it's important for people to
12 be able to have secured parking, keeping cars
13 off the street and safe if they have that
14 option.

15 Additionally, the proposed garages
16 for the project, well, a certain amount of
17 storage space that augments the capacity of
18 the homes if there is no basement for storage
19 and brings added value.

20 I walked around the block day
21 before yesterday and I took photographs of all
22 the parking that currently exists in that

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1 block which is essentially or predominantly
2 open gated and ungated parking and a couple of
3 roll-down parking spots and so, you'll be able
4 to have a look at the aesthetic of the area as
5 it is and to my mind, this is not the
6 aesthetic that the Naylor Court Stables
7 Project is aspiring to and neither is it the
8 aesthetic that Harriet Tregoning, the Office
9 of Planning and David Maloney from Historic
10 Preservation are aspiring to in their new
11 efforts to improve the appearance and
12 functionalities of alleys in Washington, D.C.

13 Having appealing protective
14 covering for homeowner's transportation is a
15 big step in helping to clean up visual
16 appearance of the alley. It's an opportunity
17 for a developer to do so much better than what
18 is currently accepted and to honor the spirit
19 of the transportation management of the past.

20 The historic and evolving
21 aesthetic of the alley is such that the more
22 the cars are hidden from the view, the better.

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1 There's a push to make the alley more
2 pedestrian friendly and to show foresight in
3 terms of parking and planning and I liked the
4 comment that was echoed at the last segment
5 talking about the value of alleys in general
6 in cities. The alleys were really the pulse
7 of a city and many cities across the country
8 are now recognizing that these can be very
9 inviting pedestrian walkways and add a
10 significant amount to the city.

11 So, in conclusion, I believe that
12 granting each of the variances requested in
13 Case 18318 would not cause substantial
14 detriment to the public good and that granting
15 this request is consistent with the general
16 intent and purpose of the Zoning Regulations.

17 Furthermore, I believe that
18 allowing these requests would do much to
19 enhance the appearance of the National
20 Register Historic Inner Block and move it
21 architecturally into the future by reversing
22 decades of erosive trends while at the same

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1 time maintaining the spirit of its past.

2 I believe this can be done without
3 impairing the intent, purpose and integrity of
4 the Zoning Plan.

5 With that, I conclude formal
6 comments and am happy to answer any questions
7 and as I said, my capacity here in testifying
8 is from many points of view and I have many
9 different perspectives that I'd be happy to
10 share or flesh out anything that I've said.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you very much, Dr. Salter, for your testimony.

13 I'll see if Board Members have any questions.

14 Seeing none, does the Applicant
15 have any questions?

16 MR. KADLECEK: Yes, I just have
17 one question.

18 Dr. Salter, in your opinion as
19 somebody who lives in the alley and is very
20 familiar with alleys, do you think that the
21 garages proposed in this project are an
22 important piece of maintaining the historic

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1 character of the alley?

2 DR. SALTER: Thank you. When the
3 alley was -- I have a plat from 1779 of this
4 particular alley. So, it's been around for a
5 long time. The homes that were built on the
6 periphery were built between about 1875 and
7 1900 by in large. The stables were built at
8 the back of the homes because of fire risk,
9 smell, cleanliness, noise and so on.

10 So, they were all -- anytime you
11 go in an alley and you see -- look for a
12 stable, it's always two stories because the
13 hay loft is on the second floor and you'll see
14 a lot of little details that are accouterments
15 that go with a stable and by the way, it's
16 nice to see that that has been included in the
17 architectural renderings. Such as the sliding
18 doors and the bollards that are in the
19 pictures and so on.

20 Yes, the model that I go back to
21 when you talk about alleys and restoration,
22 renovation and support and rejuvenation is in

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1 England where you have mews that were used for
2 both -- originally for horses, but people
3 lived on the top of it.

4 If I had my druthers, I would not
5 only have the garage at the back, but I also
6 make the garages into two-story rather than
7 just one level so that you would be able to
8 have the option for affordable housing and
9 when I talk to Harriet Tregoning and David
10 Maloney about 18 months ago about alleys in
11 general in Washington, Ms. Tregoning said that
12 her mandate was to actually increase density
13 in the city and that there were some
14 restrictions because of bylaws that were
15 written in the 1930s. Those are now changing.

16 So, in answer to your question,
17 yes, historically, I think it is appropriate.

18 It makes sense. You're building a building
19 at the front that is essentially a stable-like
20 unit and it would make sense to have
21 outbuildings at the back of it.

22 Alternatively, you could make it

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1 one massive thing if you wanted to mirror the
2 D.C. Archives, but I think that would be a big
3 push.

4 CHAIRPERSON MOLDENHAUER: Any
5 other questions?

6 MR. KADLECEK: No further
7 questions.

8 CHAIRPERSON MOLDENHAUER: Okay.
9 And I believe that completes your testimony?

10 DR. SALTER: Yes, except for
11 giving you my flash drive material.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 I'm not sure, Mr. Moy, if we're able to accept
14 a flash drive. I think that that would have
15 to be either printed out --

16 MR. MOY: Yes, we prefer that it's
17 printed out. That could be done either by
18 staff or --

19 DR. SALTER: Okay. I gave a copy
20 to your recorder of the material.

21 CHAIRPERSON MOLDENHAUER: A
22 physical copy?

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1 DR. SALTER: No, the flash drive
2 and I have -- I think I have eight copies.

3 CHAIRPERSON MOLDENHAUER: If you
4 have eight copies, if you can provide those to
5 Mr. Moy and we'll distribute those --

6 DR. SALTER: Thank you.

7 CHAIRPERSON MOLDENHAUER: -- and
8 make at least one of those part of the record.

9 DR. SALTER: Thank you very much.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you. Then at this point in time, I'll see if
12 there's any other individuals in the audience
13 in support or in opposition of this case.

14 Seeing none, then we'll turn to
15 the Office of Planning for their report.

16 MR. GOLDSTEIN: Good morning. My
17 name is Paul Goldstein with the Office of
18 Planning.

19 As you've heard the Applicant's
20 requested lot dimension relief, lot width
21 relief and lot occupancy relief to create
22 three substandard size alley lots to

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1 accommodate three rowhouses at 1321 to 1325
2 Naylor Court.

3 Concerning the lot area and
4 dimension relief, OP's original recommendation
5 is that we didn't oppose it. We felt that
6 there was a lot of good argument there. We
7 were hoping to push the Applicant a little
8 further with the economic argument. I think
9 we've heard some more today.

10 Commissioner Jordan has also asked
11 for some more information that may help to
12 bolster the record.

13 We kind of view that this is a
14 confluence of factors. These are large lots.

15 Our initial hesitance with this one is that
16 the three lots to the south are all 26 feet
17 wide and 2,470 square feet which would be the
18 exact dimensions if this lot was divided in
19 two, but given what we've heard about the
20 financial interest at stake and additionally,
21 it's a de minimis amount of relief and doing a
22 bit more study on what size alley residences

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1 are generally in the R-4 District as well as
2 the square feet of single family homes in the
3 square, I think we feel comfortable that three
4 lots can make the variance test in this case.

5 I'm happy to provide more
6 information on that.

7 Regarding the lot occupancy, we
8 share Commissioner Schlater's concern as well.

9 We just couldn't quite get there on the lot
10 occupancy argument. These lots -- it's kind
11 of -- we're creating smaller lots, but then we
12 need to use more of the lots to justify and
13 it's a little difficult for us. We were
14 encouraging the Applicant to explore as well
15 ways to maybe shave the 80 square feet off.

16 We don't have any opposition to
17 covered secure parking. Garages could be
18 smaller. I've heard there's a preference for
19 the two-story garages. I'm not quite there
20 yet with the necessity of it. These garages
21 could be narrower. It could be re-configured
22 to make it work as well. So, we're still not

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1 there on the lot occupancy portion of this.

2 Overall, I mean it's an attractive
3 project. We're not against housing on this
4 alley. In fact, actually, it's a by-right use
5 on this alley. So, they, of course, can do
6 housing and it is a very appealing looking
7 project.

8 We just -- there are legal tests
9 that they have to satisfy to get there and
10 we're not quite there yet with the lot
11 occupancy.

12 As you've heard, there's a lot of
13 public support for it. We're definitely -- we
14 acknowledge that and happy to -- oh, let me --
15 I'm sorry. I should probably address
16 Commissioner Schlater's question about the
17 historic nature.

18 We don't like to say that historic
19 -- that the fact that it's in an historic
20 district and that the Historic Preservation
21 Office has had influence in maybe the way the
22 design has turned out. Is itself any kind of

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1 uniqueness? You've got so many properties in
2 historic districts that have HP weigh in on
3 them.

4 I'm certainly willing to
5 acknowledge historic does play a role probably
6 in the design, but I would be afraid of going
7 too far down that road with pinning that as
8 the cause of the uniqueness here.

9 So, with that, I'm happy to answer
10 any additional questions.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you. I'll see if the Applicant has any
13 questions for the Office of Planning.

14 MR. KADLECEK: Yes, I just have a
15 couple.

16 Paul, in just the comments you
17 were just making right now, would you agree
18 that an inability to sell a house is a
19 practical difficulty when it arises out of
20 design considerations made to accommodate
21 historic concerns, i.e., providing garages
22 consistent with the alley, i.e., pushing back

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1 the top floor of the house, i.e., pushing back
2 the entry?

3 MR. GOLDSTEIN: I think that's
4 kind of a complicated question and has a
5 number of pieces to it.

6 I will say that yes, if you're
7 getting at that two homes is financially not
8 feasible for this property, I think that is a
9 practical difficulty or at least a piece of an
10 argument of a practical difficulty.

11 Whether you're saying that a two-
12 story, you know, 17 or 18-foot wide 19-feet
13 deep garage design is key to the financial
14 feasibility of this project, I'm just not
15 there yet. I haven't quite heard enough to be
16 able to come around to that.

17 MR. KADLECEK: Maybe I'll rephrase
18 my question a little bit.

19 I'm mostly concerned with the lot
20 occupancy argument. So, if, in fact, the
21 historic accommodations that the Applicant's
22 making to maintain the character of the

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1 historic district acknowledging that in and of
2 itself being in a historic district isn't a
3 uniqueness, but contributes to the uniqueness
4 element, but if making accommodations in the
5 design of the house to accommodate for the
6 historic character resulted in the lot
7 occupancy increasing, would you agree that
8 that is, in fact, then a practical difficulty?

9 MR. GOLDSTEIN: You know, I'm not
10 totally sure how to answer that question. I
11 think it can contribute to a practical
12 difficult. I'll leave it at that.

13 MR. KADLECEK: Just one other
14 question. Your report concluded that the
15 variance for lot occupancy would not cause a
16 substantial detriment to the public good.

17 Since that is the case, how is it
18 that it would impair the intent, purpose and
19 integrity of the Zone Plan?

20 MR. GOLDSTEIN: We weren't able to
21 come around to the fact that there was a
22 uniqueness for the lot occupancy argument,

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1 that there was a practical difficulty for the
2 lot occupancy request and as a result, it
3 wouldn't be consistent with the Zoning
4 Regulations. The intent of them.

5 MR. KADLECEK: Just one follow up.

6 So, it's OP's position then that something
7 can have no adverse impact, but can still
8 impair the intent of the Zone Plan?

9 MR. GOLDSTEIN: Yes.

10 MR. KADLECEK: Okay. Thank you.

11 CHAIRPERSON MOLDENHAUER: Dr.
12 Salter, do you have any questions for the
13 Office of Planning?

14 DR. SALTER: Not a question, but a
15 comment and I just wanted to --

16 CHAIRPERSON MOLDENHAUER: This is
17 just an opportunity for questions.

18 DR. SALTER: Oh. All right. Have
19 you framed your discussion and considerations
20 about this particular property not only in
21 light of the fact that it's in an historic
22 district, but that it is on the National

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1 Register of Historic Places and, therefore,
2 each individual element within that block and
3 like an alley -- its sister alley who was also
4 on the National Register is important.

5 The National Register designation
6 was because of the collection of buildings.

7 So, my question to you was how
8 have you looked at this particular alley in
9 the context of it being not just historic, but
10 on the National Register?

11 MR. GOLDSTEIN: I haven't looked
12 at it in that lens.

13 DR. SALTER: Would that change
14 your approach to it?

15 MR. GOLDSTEIN: I don't know that
16 it would.

17 CHAIRPERSON MOLDENHAUER: Any
18 further questions?

19 DR. SALTER: What would you do to
20 be able to answer that question?

21 MR. GOLDSTEIN: I'm not quite
22 sure. I certainly have acknowledged that

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1 there are historic preservation issues at
2 play. I don't know how much more that
3 analysis needs to go.

4 DR. SALTER: Well, I guess what
5 I'm asking you is are you looking at this
6 building in the context of a building in its
7 own right or are you looking at it in context
8 with how it interacts with every other
9 building on that particular block?

10 MR. GOLDSTEIN: Interacts -- how
11 it interacts?

12 DR. SALTER: Well, the National
13 Register status is related to the collection
14 of buildings. It's not related to one
15 particular building.

16 MR. GOLDSTEIN: I feel like this
17 is maybe getting a little further afield of
18 zoning per se. There's the Historic
19 Preservation Review Board that reviews it for
20 HPRB issues.

21 Certainly, if you're going to the
22 character of the two-story carriage house,

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1 garages I don't really have sense of how that
2 comports with a greater historic scheme. If
3 that's what you're asking.

4 DR. SALTER: I guess I'm asking
5 whether the scale of the other 15 buildings
6 that are in that block and their lot occupancy
7 will in anyway historically reflect on how
8 this building would fit into that context.

9 MR. GOLDSTEIN: You know, I did do
10 an analysis of alley lots in the square and I
11 think that analysis did play in for the lot
12 area, lot width. I don't quite know the lot
13 occupancy. How that would fit in with this
14 lot.

15 I mean we're creating new lots
16 with new buildings that under normal
17 circumstances would need to conform to zoning.

18 I'm sorry. Let me clarify that.
19 All lots in new development need to conform to
20 zoning. It's only you're seeking exceptions
21 here.

22 CHAIRPERSON MOLDENHAUER: I think

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1 -- does that answer your question? So, I'll
2 see if Board Members have any questions of the
3 Office of Planning.

4 VICE CHAIRPERSON SORG: Madam
5 Chair, one question.

6 To what extent does the -- did you
7 calculate the extent to which the projecting
8 bays in your conversations with the Applicant
9 contribute to the additional lot occupancy?

10 MR. GOLDSTEIN: I just did some
11 informal estimates and I would invite the
12 Applicant team to correct me if I'm wrong.
13 Somewhere in the nature of 40 to 50 square
14 feet. About 4-feet deep, 12-feet width, maybe
15 48 square feet. Something to that effect.

16 MR. RUPPERT: Yes, that's true.

17 MR. GOLDSTEIN: And I wasn't sure
18 if there was any kind of court issue which is
19 something I raised in my report that could
20 contribute more lot occupancy, but I haven't
21 heard that. So, I'm assuming that we have
22 some conforming courts.

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1 MR. RUPPERT: Each -- each bay
2 window is 36 feet square. So, each -- each
3 one is 36 feet.

4 We did have Greg -- am I allowed
5 to talk? Oh.

6 We did have Greg, the architect,
7 noodle around with it when we -- when he told
8 us that we would have to chop -- lose 4 feet
9 off of the depth of the homes if we were
10 keeping the garages because we really couldn't
11 figure out how to make the garages thinner and
12 work with the lot lines.

13 And while he was noodling around
14 with that, he said if we attached -- if we
15 took the garages and attached them to the back
16 of the house which is not -- I mean there'd be
17 no windows on the back of the house. They're
18 be no way to get to the back of the property
19 without going -- it's -- that's not happening.

20 But, if we did that, we would be at 61
21 percent lot coverage.

22 So, it's just interesting how he

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1 went through three different incarnations of
2 how to lay this out from losing 4 feet from
3 the homes, trying to make the garages thinner
4 and how we get to 61 percent. When you put
5 that garage up against the house, then the bay
6 window isn't in question and then we're at 61
7 percent.

8 So, what I think that we have here
9 is the best compromise that we could between
10 what Historic had been asking us to do with
11 the recess of the loft and then providing
12 garage parking which we think is necessary in
13 the neighborhood.

14 VICE CHAIRPERSON SORG: You know,
15 here's the thing. Your comment right now is
16 actually -- and referencing the design
17 iterations that have been gone through by the
18 architect that you're working with is, in
19 fact, something that I think going along with,
20 you know, Mr. Salter's point to see those
21 things and see how it was -- for the Board to
22 see how, you know, you tried to put the garage

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1 here, you tried to do without the bay window
2 and none of it worked.

3 I mean I know we're not in this
4 portion yet of further questions, but, you
5 know, I think that's exactly the kind of thing
6 that could help to bolster the argument with
7 regard to lot occupancy and I think it's
8 something that was -- has been, you know, thin
9 with regard to that application as it was
10 received and then when we go back to the
11 proper time for questions for the Applicant,
12 you know, I will want to address a couple of
13 questions to the Exhibit 2 in the last
14 prehearing statement. But, I'll let the Chair
15 keep her order.

16 CHAIRPERSON MOLDENHAUER: Well, I
17 think we're complete. No other questions for
18 Office of Planning. So, thank you very much,
19 Mr. Goldstein for coming down and presenting
20 that and for clarifying, I guess, now for
21 support for 401 relief, but that you still
22 cannot recommend approval for the lot

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1 occupancy relief under 403.

2 At this point in time in the
3 proceeding, we now look to see if there's
4 anybody from ANC-2F in the audience. Seeing
5 none, we'll indicate that.

6 We have Exhibit 26 which states
7 that a duly called meeting on November 2nd, a
8 quorum was present and that they voted
9 unanimously 5 to 0 to support the application.

10 This documentation would receive great weight
11 in support of the application.

12 We also just received two
13 additional letters of support from Mark
14 Laurens who's an architect and also lives in
15 Naylor Court and then also from the President
16 and owner of 1327 10th Street and 1330 Naylor
17 Court, N.W. also a letter of support and we
18 also have other letters of support in the
19 record which have been reviewed by the Board
20 Members.

21 That being said, at this point in
22 time, we'll turn back to the Applicant or

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1 we'll first turn back to the Board Members for
2 any final questions of the Applicant.

3 Well, actually, I also want to
4 just indicate, sorry, that we have a letter in
5 our record from DDOT indicating that they've
6 reviewed the relief under 401 and 403 and have
7 no objection.

8 That being said, as I said, I'll
9 turn back to see if Board Members have any
10 final questions of the Applicant before we
11 provide the Applicant with closing remarks.

12 Ms. Sorg, do you have?

13 VICE CHAIRPERSON SORG: Thank you.

14 I just wanted to go through a couple of the
15 points that were made and I understand that
16 he's not here, but by the architect in the
17 last submission.

18 There's two statements in here
19 that I'm not sure I understand. The first is
20 that the bays are necessary to provide light
21 into the circulation spaces for all of the
22 homes. From the plans, it doesn't really look

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1 like that is what's really going on here.
2 They're not actually providing, you know,
3 light into the stairwells and so forth.

4 Secondly, that I think without the
5 bays, the project would be unable to provide
6 sufficiently sized bedrooms. I understand
7 your argument from your previous testimony
8 regarding the preference for a 16 by 11-foot
9 bedroom, but in terms of -- I mean here I'm
10 sort of pointing -- getting to point out a
11 couple --

12 MR. RUPPERT: I know where you're
13 going. Because I read that, too and I wished
14 that there had been another sentence
15 explaining that, but I didn't process it in
16 that moment.

17 VICE CHAIRPERSON SORG: Sure.

18 MR. RUPPERT: When you push the
19 bay out, that provides that staircase to be
20 what we call an open staircase. If you look
21 at the top of the floor plan, there's a
22 skylight at the top of that and we've built

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1 homes similar to this floor plan in Baltimore
2 in Fells Point in another historic district
3 and that skylight with the open staircase
4 filters sunlight, natural light, all the way
5 down onto the main level and when you push --
6 when you don't have that bay window extension,
7 that bedroom shifts back into the house
8 creating a scissors staircase where it's just
9 like right next -- the staircase is right next
10 to each other or it runs along the wall
11 without any room for that skylight shaft
12 through the middle of the home.

13 Now, in the end unit, it's not
14 such a problem except that Historic did want
15 us to have horse height head windows on the
16 side and on the front. So, those windows are
17 really small, but at least they're there in
18 the end unit.

19 On the interior homes, there's
20 none of that. So, with that recessed front
21 door and that tiny one little window on the
22 front of the home, that's actually the western

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1 side of the house. So, as the sun is setting,
2 you're only going to have sun in that guest
3 bedroom and through that skylight shaft to get
4 to that main level. That's all you're going
5 to have.

6 So, I think that's -- well, I know
7 that's what he meant. So.

8 VICE CHAIRPERSON SORG: So, I
9 think that's also something that could, if
10 there's a further submission, be demonstrated
11 perhaps better and perhaps more convincingly
12 in the plan because it's a question of
13 dimension and also of the looking at the
14 light.

15 MR. RUPPERT: Right.

16 VICE CHAIRPERSON SORG: Then my
17 only -- my other question in this submission
18 is about the requirement. Was there an actual
19 requirement to recess the front door back from
20 the stable doors?

21 MR. RUPPERT: Yes, there was.

22 VICE CHAIRPERSON SORG: Where does

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1 that come from and --

2 MR. RUPPERT: From Historic.

3 VICE CHAIRPERSON SORG: Um-hum.

4 MR. RUPPERT: That was when we
5 were -- no, Steve Callcott from Historic asked
6 us to do that.

7 CHAIRPERSON MOLDENHAUER: We just
8 don't have anything on the record --

9 VICE CHAIRPERSON SORG: Another
10 thing -- yes. I think in regard to that
11 there's a lot of discussion about, you know,
12 requirements from Historic and National
13 Register and whether that -- and whether or
14 not that indicates that a higher standard
15 should be used in terms of looking at this and
16 yet, there's nothing in writing for HPRB in
17 the record. It would be, I think, extremely
18 helpful.

19 MR. BATTEH: I think -- what we --
20 I mean part of the lack of anything in the
21 record we engaged Historic because we know of,
22 you know, other projects in the neighborhood.

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1 Historic has been very -- they've wanted to
2 have a lot of --

3 VICE CHAIRPERSON SORG: Involved.

4 MR. BATTEH: -- involvement and
5 so, we started before -- as Sean said, before
6 we drew up the plan, we started talking to
7 Historic and so, this was the -- this is after
8 several iterations where we got to where they
9 were comfortable with the design and the
10 neighbor -- you know, we consulted with our
11 neighbors, too.

12 So, there was -- I mean there's
13 probably many draft plans, but basically, we
14 got to the point where Historic said this is
15 okay and we -- we like this design.

16 VICE CHAIRPERSON SORG: They would
17 have provided you with a letter and comments
18 and so forth.

19 MR. BATTEH: Yes, and that should
20 be in the -- that should be in the record that
21 Historic supports. Yes, we got support from
22 HPRB.

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1 I -- I -- okay. There -- there --
2 with our application, there should have been
3 -- there's a letter from HPRB in support. It
4 should be in the file.

5 Sorry. I just assumed that we're
6 all on the same -- so, Historic --

7 VICE CHAIRPERSON SORG: I think we
8 definitely understand.

9 MR. BATTEH: That was a big part
10 of this design.

11 VICE CHAIRPERSON SORG: Of course.
12 We totally understand that it was. The
13 Historic Preservation, you know, and
14 historical aspects of this that have really
15 shaped a lot of the decisions here, but to
16 have an actual letter from, you know, the
17 horses mouth as it were. Ha. Ha. Thank you.
18 I think is really a good idea.

19 MR. RUPPERT: Just so you know,
20 all that we did get was a letter in support.
21 It wasn't -- it didn't go through any kind of
22 architectural requirements. That was all

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1 hashed out on conference calls, but I
2 understand what you're talking about.

3 MR. KADLECEK: I mean I think as
4 you members have probably seen many times, the
5 reports from the Historic Preservation Office
6 are often very short and say we recommend
7 approval of this project with some, you know,
8 minimal details about the project. But, of
9 course, as you know, there are a lot of
10 iterations that go back and forth between the
11 Applicant and the Historic Preservation Office
12 about how the design will evolve and once both
13 parties are in agreement about the design,
14 that's when the Historic Preservation Office
15 writes a report.

16 CHAIRPERSON MOLDENHAUER: Yes, I
17 mean if we could just maybe get something in
18 the record, I mean that probably would be
19 helpful.

20 Ms. Sorg, do you have any other
21 questions?

22 I just -- I have a question. I

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1 think it seems as though we're asking -- going
2 to be asking for some additional information.

3 One thing that, you know, was
4 testified to, I think, by Mr. Ruppert was that
5 your architect had taken the garage and had
6 attached it to the rear of the home and that
7 that created a 61 percent lot occupancy, but
8 that that would have a problem because it
9 would take away the bays in the first floor.
10 But, when I'm looking at the -- you don't have
11 a diagram, but it's pretty much the side, the
12 full --

13 MR. RUPPERT: Right.

14 CHAIRPERSON MOLDENHAUER: It looks
15 as though if you didn't have a two-story
16 garage, that you had a single-story garage and
17 you actually attached that to the rear of the
18 home, you potentially wouldn't come in contact
19 with the windows or the bays and I know
20 obviously you want to testify on this. But, I
21 think it's something that we could -- it would
22 be better seen from the architect and actually

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1 showing how that maybe does not work.

2 Because while obviously you would
3 provide, you know, support of your project as
4 it's designed now, I think that it would be
5 important for us to see potentially how that
6 works or doesn't work because as I'm saying,
7 just looking at this not being an architect
8 myself, just kind of drawing the line across
9 the rear of this sectional diagram, it appears
10 as though it would potentially work and allow
11 for windows still though on the first floor.

12 No?

13 MR. RUPPERT: Yes, if you put the
14 garage up against the back, then there's no
15 windows.

16 CHAIRPERSON MOLDENHAUER: If you
17 take off the -- the top floor though.

18 VICE CHAIRPERSON SORG: Only for
19 one of the units.

20 CHAIRPERSON MOLDENHAUER: Only for
21 one of the units. What do you mean --

22 MR. RUPPERT: And I just meant

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1 that once the garage is on the back, then the
2 bay window is still there. It just take up
3 any additional lot coverage because it's part
4 of the garage.

5 CHAIRPERSON MOLDENHAUER: Oh, the
6 family room. Okay. Sorry. I can't see that
7 from the -- there are windows then below that.
8 It's hard to see. Sorry. I can't see the
9 windows on the lower level. I was thinking
10 that the first floor was elevated and so, that
11 was -- but, it's not. Okay.

12 MR. BATTEH: Yes, I don't think he
13 was saying the bays go. I think he was
14 talking about the windows below the bays.

15 CHAIRPERSON MOLDENHAUER: Below
16 the bays.

17 MR. BATTEH: Yes.

18 CHAIRPERSON MOLDENHAUER: Yes, I
19 can't see that from that diagram and that
20 wasn't clear. I thought that it was just the
21 bays were the first floor. It was -- I
22 understand now based on the elevation. I've

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1 got it. I'm -- I'm on board.

2 Then I guess the question is now
3 if there are no final questions from Board
4 Members, I don't know if the Applicant would
5 like to provide a final closing statement.

6 I would also like to see if Board
7 Members have any specific documents that they
8 would want to see.

9 I think, Mr. Jordan, you had
10 indicated that you wanted to see some
11 additional documentation as well.

12 Is there any additional comments?
13 No.

14 I'll turn to the Applicant for
15 their closing remarks then.

16 MR. KADLECEK: If it pleases the
17 Board, if we can take a couple of minutes to
18 confer amongst ourselves.

19 CHAIRPERSON MOLDENHAUER: Okay.

20 MR. KADLECEK: Thank you.

21 CHAIRPERSON MOLDENHAUER: There's
22 no final comments, I'm sorry, even from a

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1 party status individual. That Applicant is
2 the one that gets closing remarks.

3 (Whereupon, at 11:25 a.m., a
4 recess was taken until 11:28 a.m.)

5 CHAIRPERSON MOLDENHAUER: Okay.
6 Are we back on the record?

7 MR. KADLECEK: We're back on the
8 record. Yes.

9 We'll make some concluding
10 remarks.

11 The first is that we would like to
12 withdraw our request for the lot occupancy
13 relief. We are now only requesting relief for
14 lot area and lot width.

15 So, given that, I think that the
16 record in the case before you is quite full
17 and quite compelling. There's extraordinary
18 community support for this project. There is
19 Office of Planning support for this project.

20 And I think that we have made the
21 case quite clear that building two houses that
22 conform is simply not feasible. If the

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1 developer were to build two houses that were
2 maximizing the building envelope like any
3 developer would, that's simply not practical.

4 It's not financeable. It's not marketable
5 and it's not in character with the
6 neighborhood.

7 If we were to build two smaller
8 houses that were in character with the
9 neighborhood, it's equally not financeable and
10 it's running afoul basically of good planning
11 principles.

12 Board Member Jordan did request
13 additional information about the finance data
14 which we recognize, but I think the fact that
15 Mr. Ruppert has been a broker in the District
16 for 12 years or more, has been a developer for
17 much of that time, I think he's pretty
18 familiar with the standards that banks hold
19 developers to in financing projects.

20 Not to mention and I think Mr.
21 Ruppert mentioned this, that the buyers
22 themselves could have difficulty obtaining

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1 houses if there are no comparables.

2 So, again, I think if you consider
3 all those factors, the uniqueness that has
4 been laid out clearly both by our application
5 and by the Office of Planning, the practical
6 difficulty that the Applicant would face in
7 building only two houses and the fact that as
8 the parties in support, the person in support,
9 the Office of Planning and we have
10 acknowledged in our application, there would
11 be no adverse impact for a lot width that's
12 only 1 foot smaller on only two of the lots
13 and lot area that is also negligible, we quite
14 strongly meet the variance test.

15 So, for those reasons, we request
16 that the Board approve our variance relief for
17 the lot dimensions to construct three houses
18 on this property.

19 Thank you very much.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you very much.

22 Then at this point in time, that

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1 concludes the hearing and seeing that the
2 Applicant has modified their request and I
3 believe the Board feels comfortable at this
4 point in time entering into deliberation on
5 this case --

6 MR. KADLECEK: One last question.
7 We would request a bench decision and a
8 summary order.

9 CHAIRPERSON MOLDENHAUER: That's
10 where I was going.

11 MR. KADLECEK: Thank you.

12 CHAIRPERSON MOLDENHAUER: So, I
13 think the Board can feel comfortable going
14 into deliberation at this time.

15 The Applicant has, as I indicated,
16 withdrawn their request for relief under 403
17 for lot occupancy. All we have before us then
18 is a request for 401 relief.

19 I think that the Applicant has met
20 their burden in regards to a variance for that
21 standard in regards to showing the exceptional
22 circumstances in regards to the size of the

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1 lot, the uniqueness in regards to the
2 challenges that that would pose then to
3 building two properties or two projects on
4 that lot rather than three.

5 I think that the Office of
6 Planning modified orally their original
7 inability to provide or that they did not
8 oppose the project to actually then supporting
9 that relief indicating that the additional
10 submissions both in the prehearing statement
11 including the statements about the cost of
12 properties that are being sold, the price per
13 square foot, the initial purchase price of the
14 land and how that then relates to the
15 challenges of providing just two lots rather
16 than providing the three lots that are
17 requested by the Applicant.

18 We also have support of neighbors.
19 We had individual party support here, Dr.
20 Salter, who testified in great support of this
21 project, the design and of the desire to
22 potentially increase the density and provide

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1 the three houses rather than two on the lots.

2 We also had Lynda Wright testify in regards
3 to the support of this project. We have DDOT
4 support and we also have the ANC support for
5 the project.

6 The Board will need amended plans
7 revising the plans, taking away the --
8 changing the plans that they're no longer
9 requiring the lot occupancy. I think what we
10 can do is if we approve the project depending
11 upon obviously the way the rest of the Board
12 Members see, we would have the order held in
13 abeyance until the Applicant supplements the
14 record with revised plans and so, the plans
15 are required as part of the record.

16 That being said, I'll open up the
17 floor to any additional deliberation from
18 Board Members on this case.

19 VICE CHAIRPERSON SORG: Madam
20 Chair, I agree with your analysis. I think
21 this is a lovely project, high-quality project
22 that will go towards, you know, helping to

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1 preserve and helping to continue to enliven
2 what is, you know, a vibrant close community.

3 So, I definitely would also be in support.

4 CHAIRPERSON MOLDENHAUER: That
5 being said, seeing no other comments, I think
6 all Board Members are in agreement that this
7 is a great project and we look forward to
8 seeing it.

9 I submit a motion, a motion to
10 approve Application 18318 pursuant to 11 DCMR
11 3103.2 for a variance from the lot width and
12 area requirements under Subsection 401.3 to
13 allow the construction of three one-family
14 dwellings on an alley lot in an R-4 District
15 at premises 1321 Naylor Court, N.W.

16 A motion has been made. Is there
17 a second?

18 MEMBER HINKLE: Second.

19 CHAIRPERSON MOLDENHAUER: A
20 motion's been made and seconded. All those in
21 favor say aye.

22 (Ayes.)

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1 MEMBER JORDAN: I'm going to
2 abstain.

3 MR. MOY: Staff would record the
4 vote as 4 to 0 to 1. This is on the motion of
5 Chairperson Moldenhauer to approve the
6 application, the amended application for
7 variance relief from lot area, lot width under
8 Section 401. Applicant withdrawing relief
9 from lot occupancy Section 403.

10 Seconded the motion Mr. Hinkle.
11 Also in support of the motion Mr. Schlater and
12 Ms. Sorg. Abstaining is Mr. Jordan.

13 So, again, the final vote is 4 to
14 0 to 1. The motion carries.

15 CHAIRPERSON MOLDENHAUER: Thank
16 you very much, Mr. Moy.

17 We'd like to waive our
18 requirements and ask that a summary order be
19 issued, but that order must be held in
20 abeyance until the Applicant supplements the
21 record with modified plans showing the reduced
22 lot occupancy.

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1 So, that's just a condition upon
2 the summary order.

3 MR. MOY: Thank you, Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you.

6 MR. KADLECEK: Thank you.

7 CHAIRPERSON MOLDENHAUER: And that
8 concludes our morning. Thank you very much
9 everyone coming down. We'll reconvene at
10 1:00.

11 (Whereupon, at 11:36 a.m., the
12 hearing was recessed to reconvene this same
13 day at 1:00 p.m.)

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1:15 p.m.

We are located in the Jerrily R. Kress Memorial Hearing Room located at 441 4th Street, N.W. This is March 6, 2012. Public hearing of the Board of Zoning Adjustment for the District of Columbia.

Joining me today to my right is
Lloyd Jordan, Mayoral Appointee and to my far
right is Jeffrey Hinkle representative of the
National Capital Planning Commission.

Copies of today's agenda are available to you and are located to my left on the wall bin near the door.

Please be advised this proceeding is being recorded by a court reporter and is also being webcast live. Accordingly, I must

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1 ask you to refrain from any disturbing noise
2 or actions in the hearing room.

3 When presenting the information to
4 the Board, please turn on your microphone
5 first stating your name and home address.
6 When you are finished speaking, please turn
7 off your microphone so your microphone is no
8 longer picking up any sounds or background
9 noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These witness cards
13 are located to my left on the table near the
14 door and on the witness tables in front of
15 you. Upon coming forward to speak to the
16 Board, please provide both witness cards to
17 the court reporter sitting to my right.

18 Also, if you wish to file any
19 written testimony or additional supporting
20 documentation today, please submit an original
21 along with 12 copies to the Secretary for
22 distribution. If you do not have the

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1 requisite number of copies, you can reproduce
2 copies at the machine at the Office of Zoning
3 across the hall.

4 The order of procedures for an
5 appeal is as follows: (1) statement of the
6 appellant and appellant's witnesses, (2) the
7 Zoning Administrator or Government official's
8 case, (3) the case of the owner, lessee or
9 operator of the property involved if not the
10 appellant, (4) other interveners to the case
11 if permitted by the Board, (5) the ANC within
12 which the property is located and (6) rebuttal
13 and closing statements of the appellant.

14 Pursuant to Section 3117.4 and
15 3117.5, the following time constraints will be
16 maintained: The appellant, persons and
17 parties except an ANC in support including
18 their witnesses will be given 60 minutes
19 collectively; appellees, persons and parties
20 except an ANC in opposition including
21 witnesses will be given 60 minutes
22 collectively; individuals will be given three

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1 minutes and organizations will be given five.

2 These time restrictions do not
3 include cross examinations or questions from
4 the Board. Cross examination of witnesses is
5 permitted by the applicant or party.

6 The ANC within which the property
7 is located is automatically a party to a
8 special exception or a variance case.

9 Nothing prohibits the Board from
10 placing reasonable restrictions on cross
11 examination including the time limitations and
12 limitation on the scope of cross examination.

13 The record will be closed at the
14 conclusion of each case except for any
15 material specifically requested by the Board.

16 The Board and the staff will specify at the
17 end of each hearing exactly what is expected
18 and when that information must be presented
19 to the Office of Zoning.

20 After the record is closed, no
21 other information will be accepted.

22 The District of Columbia's

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1 Administrative Procedures Act requires that a
2 public hearing on each case be held in the
3 open and before the public. Pursuant to
4 Section 405(b) and 406 of the Act, the Board
5 may consistent with the rules and procedures
6 in the Act enter into a closed meeting on a
7 case for purposes of seeking legal counsel on
8 a case per D.C. Code Section 2575(b)(4) and/or
9 deliberating on a case per D.C. Code Section
10 2575(b)(13), but only after providing the
11 necessary public notice and in the case of an
12 emergency closed meeting after taking a roll
13 call vote.

14 The decision of the Board in these
15 contested cases must be based exclusively on
16 the public record. To avoid any appearance to
17 the contrary, the Board requests that persons
18 present not engaged Members of the Board in
19 conversation.

20 Please turn off all cell phones
21 and beepers at this time as to not disturb
22 these proceedings.

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1 The Board will now consider any
2 preliminary matters. Preliminary matters
3 relate to whether a case will or should be
4 heard today such as a request for
5 postponement, continuance or withdrawal or
6 whether proper or adequate notice has been
7 given.

8 If you're not prepared to go
9 forward with your case today or if you believe
10 the Board should not proceed, now is the time
11 to raise such a the matter.

12 Mr. Secretary, do we have any
13 preliminary matters?

14 MR. MOY: Yes, Madam Chair, there
15 is a preliminary matter for the only case for
16 the afternoon.

17 CHAIRPERSON MOLDENHAUER: Okay.
18 Well, why don't we first swear in our
19 witnesses and then we'll call that case.

20 All individuals wishing to testify
21 this afternoon, if you can please stand and
22 the oath will be administered.

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1 MR. MOY: Do you solemnly swear or
2 affirm that the testimony you're about to
3 present in this proceeding is the truth, the
4 whole truth and nothing but the truth?

5 You may consider yourself under
6 oath.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you very much, Mr. Moy.

9 If we can call the case for this
10 afternoon.

11 MR. MOY: That case will be Appeal
12 Number 18321. This is the Appeal of the
13 Citizen's Association of Georgetown pursuant
14 to 11 DCMR 3100 and 3101 from an August --
15 this is what is advertised -- has been
16 advertised. This is from an August 26, 2011
17 decision by the Zoning Administrator,
18 Department of Consumer and Regulatory Affairs,
19 to issue a building permit, Building Permit
20 Number B -- B as in bravo 1010202, for
21 construction of a two -- of rather for
22 construction of a new two-story rear building

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1 in the C-2-A District at premises 1525
2 Wisconsin Avenue, N.W. Property located in
3 Square 1271, Lot 813.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you very much, Mr. Moy and I'll start off on
6 my left and if the parties can introduce
7 themselves.

8 MR. HORSEY: Outerbridge Horsey
9 from the Citizens Association of Georgetown.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you.

12 MS. MOKHTARI: Should I push --

13 CHAIRPERSON MOLDENHAUER: Yes, you
14 can push it. Right.

15 MS. MOKHTARI: Hi. My name is
16 Sara Mokhtari. I'm the owner.

17 MR. SURABIAN: This is Attorney
18 General Jay Surabian on behalf of DCRA.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you very much.

21 We have before us a preliminary
22 matter which is a request for postponement

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1 submitted by the Appellant. Requesting a
2 three-month postponement and I will turn to
3 first DCRA to see if there's any opposition to
4 that.

5 MR. SURABIAN: No opposition.

6 CHAIRPERSON MOLDENHAUER: No. And
7 then now, I'll turn to the property owner.
8 I'm sorry. Your name again.

9 MS. MOKHTARI: Sara Mokhtari.

10 CHAIRPERSON MOLDENHAUER: Ms.
11 Mokhtari, is there any opposition to the
12 request for a postponement?

13 MS. MOKHTARI: I actually would
14 like to oppose the request for postponement.

15 The appeal that was filed is a
16 separate issue from the reason that Mr. Horsey
17 would like to ask for the postponement. So, I
18 would like to address the appeal and put this
19 one to rest.

20 If he wants to file another one,
21 then he can do that.

22 CHAIRPERSON MOLDENHAUER: All

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1 right. I mean Mr. Horsey's asking for three
2 months. I think maybe that may be a little
3 extensive. I do -- maybe there may be time to
4 provide him to review some of the information
5 in more depth. Do you think that there's a
6 time for him that might be more amenable to
7 you to provide consent?

8 MS. MOKHTARI: I would prefer to
9 just address it today. I -- I don't -- I
10 don't really see the need to postpone.

11 CHAIRPERSON MOLDENHAUER: All
12 right. I have reviewed the information. I do
13 think that there is -- you know, it would be
14 essentially wise to provide a postponement and
15 to allow some additional time to make sure
16 that the building permits were finalized and
17 that Mr. Horsey can then present the case in
18 full.

19 The question then is three months
20 really necessary and Mr. Horsey, I'll turn to
21 you now.

22 MS. MOKHTARI: Sorry. Could I

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1 just -- I have one thing or ask a question.

2 I'm not familiar with the process.

3 This is the first time I've been before this
4 Board. So, I guess just for my understanding,
5 someone can file an appeal and then we have
6 the opportunity to discuss or address the
7 appeal.

8 If there is new information that's
9 come up, shouldn't I have the right to review
10 it or discuss it or know what's going on? I
11 mean my understanding was that I was in
12 compliance. I have a stamped set of permits
13 from the Zoning Administrator at DCRA and I
14 was told that I didn't even have to be at this
15 hearing today.

16 So, I found out about 30 minutes
17 ago from my attorney that Mr. Horsey is
18 attempting to ask for a postponement. So, I
19 just want to make sure that I'm aware of all
20 my rights and I know what's going on and am
21 apprised of everything. Because my experience
22 in the last three or since October since I was

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1 introduced to Mr. Horsey is that he's just
2 tried everything possible to sabotage my
3 project and to come up with one problem after
4 another and to cause a lot of financial
5 hardship for me.

6 And so, I just want to make sure
7 that I'm not in a situation to give him more
8 time to cause more problems and if there are
9 some things that are wrong, then I shouldn't
10 have a stamped set of plans from the Zoning
11 Administrator. So, I just -- you know, I just
12 want to make sure that I'm aware of all my
13 rights.

14 CHAIRPERSON MOLDENHAUER: I
15 definitely -- I understand that. Let me just
16 kind of address some of your points.

17 Obviously, you don't have to be
18 here today. It's your right to either appear
19 as the property owner since whatever is
20 decided here either today or at a later date
21 would impact you obviously greatly whether we
22 decided, you know, for the appeal or against

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1 the appeal.

2 DCRA is obviously also here to
3 support the issuance of the permit which is in
4 parallel with obviously I'm sure your desires
5 and intent. However, we typically see -- not
6 -- see a lot of owners that bring their own
7 counsel and defend the issue as well in
8 parallel or in conjunction with the District
9 because obviously as you indicated you have
10 the most to benefit here. The District
11 obviously has an incentive administratively to
12 support the decisions that are made by the
13 Zoning Administrator in issuing permits, but
14 obviously you have financial incentive to
15 insure that this permit is not deemed to be
16 issued in error.

17 So, that being said, I also think
18 that I don't know if you're -- you said that
19 you just found out about this. So, you may
20 not really be prepared on the merits in
21 regards to the zoning analysis to really
22 address potentially the challenges that are

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1 being brought up today.

2 That being said, I think that it
3 may benefit you to provide a postponement to
4 make sure that you -- if you want to be
5 represented by counsel, you can. If don't
6 want to be represented by counsel, that you
7 have fully had an opportunity to prepare and
8 present an opposition to the challenges that
9 Mr. Horsey is bringing.

10 MS. MOKHTARI: If -- sorry.

11 CHAIRPERSON MOLDENHAUER: Go
12 ahead.

13 MS. MOKHTARI: If there is no
14 opposition and there are, in fact, any zoning
15 violations, is this an appropriate place or
16 setting to have you approve the violations or
17 accept the violations or --

18 CHAIRPERSON MOLDENHAUER: Let me
19 just jump in to make sure that we understand
20 the terms correctly.

21 Obviously, Mr. Horsey's
22 challenging the building permit.

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1 MS. MOKHTARI: Right.

2 CHAIRPERSON MOLDENHAUER: DCRA is
3 going to support the building permit. So,
4 there already are two sides represented.

5 MS. MOKHTARI: Right.

6 CHAIRPERSON MOLDENHAUER: If we
7 hear the case on the merits today or on
8 another day, we would evaluate whether Mr.
9 Horsey's challenge is challenging whether
10 there was an error based on the Zoning
11 Regulations and we would then determine
12 whether or not the permit was issued in error
13 or is issued properly.

14 MS. MOKHTARI: Um-hum.

15 CHAIRPERSON MOLDENHAUER: If we
16 determine that the building permit is issued
17 in error, then you and the DCRA have to go
18 back kind of to the drawing board and
19 reevaluate things based on the decision or if
20 we agree that the permit was issued correctly
21 and not in error, then you just go on -- you
22 know, go on with the building process.

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1 MS. MOKHTARI: Right. Okay.
2 Well, my understanding just speaking with
3 DCRA's counsel is that I have the option to
4 ask for a variance if there is a zoning
5 violation, but that's not something that can
6 happen today. It has to be a different --

7 CHAIRPERSON MOLDENHAUER: No, that
8 would have to be -- you'd have to potentially
9 -- and this is your choice and I cannot
10 provide legal advice.

11 MS. MOKHTARI: Right.

12 CHAIRPERSON MOLDENHAUER: You can
13 either wait until this is decided and you get
14 a remedy and then you move on or you could
15 potentially, you know, hedge your bets and
16 apply now. But, that's obviously something
17 that you and your counsel should discuss.

18 MS. MOKHTARI: Okay. But, just so
19 I'm clear, it's not that today we're
20 discussing the case of the appeal that was
21 filed and that we are addressing the specific
22 appeal. So, at any point, anything else can

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1 surface. That's not in writing that we --

2 CHAIRPERSON MOLDENHAUER: No.

3 MS. MOKHTARI: -- we can address.

4 CHAIRPERSON MOLDENHAUER: Mr.
5 Horsey, if he -- there is nothing else other
6 than what's on appeal that can be addressed.
7 Right now, we're not even going into the
8 merits of the case. We're just talking about
9 postponement and I'm just trying to make sure
10 that you have an opportunity to understand the
11 process.

12 MS. MOKHTARI: Okay.

13 CHAIRPERSON MOLDENHAUER: There
14 are issues in regards to making sure that
15 whatever is brought up on appeal that it's
16 limited to that issue.

17 MS. MOKHTARI: Um-hum.

18 CHAIRPERSON MOLDENHAUER: And this
19 is maybe again where being -- having an
20 opportunity to have time to have counsel if
21 that's what you deem to be appropriate may be
22 beneficial or not to make sure that that's

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1 focused on the issue.

2 MS. MOKHTARI: Okay.

3 CHAIRPERSON MOLDENHAUER: And
4 that's -- I'm going to turn to Mr. Horsey now
5 since there has been an objection and a
6 question in regards to the postponement and
7 ask you to articulate the rationale or your
8 request for postponement and the time frame.

9 MR. HORSEY: Sure. Thank you,
10 Madam Chair.

11 What we have here really is a
12 moving target. The Zoning Administrator
13 essentially acknowledged that there had been
14 an error made in the issuance of the permit.
15 That particular issue was resolved as I
16 explained in my letter which gave course to
17 yet another nonconformity in zoning. That,
18 too, was eventually resolved, but we have with
19 the most current set of plans that I have seen
20 yet another nonconformity and so, no revised
21 building permit has been issued since our
22 appeal last October that I'm aware of and

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1 there's no final set of drawings that has
2 received the Zoning Administrator's stamp.

3 So, it's in flux and the best
4 course of action is for the Applicant to
5 decide how she is going to proceed with
6 various aspects of the project both from a
7 zoning point of view and from an Historic
8 Preservation point of view so that then both
9 the Zoning Administrator and the neighbors who
10 I represent can see if there in the final
11 plans are any nonconforming conditions that
12 should either be appealed or should be the
13 subject of an application for relief before
14 the Board.

15 Which is my understanding of what
16 is the situation with the current plans.

17 CHAIRPERSON MOLDENHAUER: Can I
18 just make sure I understand? You're saying
19 that potentially if the owner revises the
20 plans to potentially have no nonconformity,
21 you would then dismiss the case as being moot
22 because potentially there would be no zoning

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1 violations?

2 MR. HORSEY: That would be
3 something we'd have to consider. Yes. Yes.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 So --

6 MR. HORSEY: I mean obviously I
7 think that would be incumbent on us. Yes.

8 CHAIRPERSON MOLDENHAUER: Okay. I
9 think that with that being said in regards to
10 having, you know, administrative efficiency
11 and I don't think that it behooves us or any
12 of the parties, the District, the owner or the
13 Appellant, to go forward with a hearing today
14 on plans that are not finalized. Then having
15 another case, the same facts almost that are
16 back before us if there's new plans, then
17 having that kind of repetition occur.

18 And additionally, if the error is
19 corrected by the revised plans that are, I
20 think, in process right now, the appeal would
21 be moot anyway and so, that obviously would be
22 something that we could consider, you know,

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1 once that's finalized and that might be an
2 efficient resolution to everything. You know,
3 if coming in a couple of months, you know, the
4 entire case is moot because the plans have
5 been corrected.

6 That being said, if there's
7 anything else. I mean I'm going to look to
8 Board Members to see if they have any other
9 comments.

10 I am in support of postponing the
11 case for efficiency and to make sure that when
12 we have the filings -- obviously, just in
13 regards to if there's any changes to the
14 appeal, that would not be permitted unless
15 there was an amendment to the appeal and any
16 potential amendment could potentially be
17 challenged by any of the parties and that
18 would have to be formally done in writing.

19 Now, that the property owner has
20 issued her appearance in this case, all
21 filings will have to go to all of the parties
22 in the case. So, you would actually receive

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1 documentation of anything that's filed or
2 supplemented in the record and you would
3 obviously have the right as well between now
4 and the hearing date to provide your own
5 opposition in writing if you so chose or you'd
6 have an opportunity obviously to come before
7 the Board at the time that the case is decided
8 on this merit.

9 That being said, I'm in support of
10 granting the postponement. By seeing a nod of
11 heads from my other Board Members, it looks
12 like we are all in agreement.

13 I'm looking at the calendar with
14 the help of the Secretary and it looks like
15 May 15th at 1:00 p.m. is our earliest date to
16 address this based on the request.

17 Is that okay with all parties?
18 May 15th.

19 MR. HORSEY: Madam Chair, I didn't
20 address the three-month time period. I think
21 that's important because we don't know what
22 the Applicant's intent is. There is -- the

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1 owner has the option to appeal the directives
2 of the Old Georgetown Board to the Mayor's
3 Agent and I don't know what that will entail
4 and I don't know what the Mayor's Agent's
5 schedule is. So, that's why I said three
6 months rather than a shorter period of time
7 and --

8 CHAIRPERSON MOLDENHAUER: I don't
9 really want to get into the whole issue of the
10 Old Georgetown Board --

11 MR. HORSEY: Right.

12 CHAIRPERSON MOLDENHAUER: --
13 because I think that there may be some
14 questions in regard to jurisdiction on our
15 part in that regard.

16 MR. HORSEY: Right. No. But, I'm
17 just saying that's where the zoning
18 nonconformity arose. That that's in the
19 current plan. That's where I first saw it and
20 I don't know if the Mayor's Agent can also
21 relieve zoning non-conformities or not, but --

22 CHAIRPERSON MOLDENHAUER: Again, I

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1 think there's some issues of jurisdiction that
2 were --

3 MR. HORSEY: Right. I understand.

4 CHAIRPERSON MOLDENHAUER: I think
5 that we were willing to give the time to make
6 sure that all parties have resolved the
7 issues.

8 MR. HORSEY: Okay.

9 CHAIRPERSON MOLDENHAUER: I think
10 -- is May 15th --

11 MS. MOKHTARI: Yes, I'll say this.
12 I think it's important that if I need to
13 pursue something on whatever date, that, you
14 know, if I needed the time that I would
15 request it, but May 15th works good for me.

16 CHAIRPERSON MOLDENHAUER: Okay.

17 MS. MOKHTARI: Thank you.

18 CHAIRPERSON MOLDENHAUER: Okay.

19 Mr. Surabian?

20 MR. SURABIAN: That's fine with
21 me. Yes.

22 CHAIRPERSON MOLDENHAUER: That's

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1 fine with you. Okay. Then this case now is
2 then going to be postponed until May 15th at
3 1:00 p.m.

4 Thank you all for coming down and
5 thank you for coming down.

6 MR. HORSEY: Thank you.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you, Mr. Horsey.

9 MS. MOKHTARI: Thank you.

10 CHAIRPERSON MOLDENHAUER: And
11 before we adjourn for the day, we have one
12 more matter of business before us.

13 This is our closed meeting roll
14 call. As the Chairperson of the Board of
15 Zoning Adjustment for the District of Columbia
16 and in accordance with Section 405(b)(4) of
17 the District of Columbia's Administrative
18 Procedures Act, I move that the BZA hold a
19 closed meeting via telephone conference on
20 Monday, March 12th, 2012 at 4:00 p.m. for the
21 purposes of seeking legal counsel from our
22 counsel -- legal advice from our counsel in

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1 the following cases scheduled for upcoming
2 decision: Application 18339 request for a
3 second time extension, for Application 17753,
4 Application 18308, Application 18312,
5 Application 17676 and the Appeal of the ANC-
6 1C.

7 Is there a second?

8 MEMBER JORDAN: Second. Second.

9 CHAIRPERSON MOLDENHAUER: Will the
10 Secretary please take a roll call vote on the
11 motion before us that has now been seconded?

12 MR. MOY: Yes, on the roll call
13 vote if Board Members can reply with yes or
14 no.

15 With the motion that's on the
16 table, Ms. Moldenhauer?

17 CHAIRPERSON MOLDENHAUER: Yes.

18 MR. MOY: Mr. Jordan?

19 MEMBER JORDAN: Yes.

20 MR. MOY: Mr. Hinkle?

21 MEMBER HINKLE: Yes.

22 MR. MOY: Ms. Sorg is not present

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1 and not participating and there's no other
2 Board Members.

3 So, that would give a final vote
4 of 3 to 0 to 2.

5 The motion carries, Madam Chair.

6 CHAIRPERSON MOLDENHAUER: As it
7 appears that the motion has passed, I hereby
8 give notice that the BZA will hold this
9 aforementioned closed meeting via telephone
10 conference pursuant to 406 of the District of
11 Columbia Administrative Procedures Act.

12 Notice will also be posted in the
13 Office of Zoning's electronic reading room and
14 placed on the Office of Zoning's electronic
15 calendar on its website and published in the
16 District of Columbia's Registry in as timely a
17 manner as possible.

18 Thank you and that concludes our
19 hearing for today. We reconvene next Tuesday.

20 Thank you.

21 (Whereupon, at 1:35 p.m., the
22 hearing was adjourned.)

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