

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JULY 17, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN	Chairperson
NICOLE SORG	Vice Chairperson
RASHIDA MacMURRAY	Board Member
JEFFREY HINKLE	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
STEPHEN GYOR

This transcript constitutes the minutes from the Regular Public Hearing held on July 17, 2012.

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

9:38 a.m.

CHAIRPERSON JORDAN: Would the hearing, please, come to order?

Good morning, ladies and gentlemen.

We are located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is July 17, 2012.

We are here for the Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. Joining me today to my left is Vice Chair Nicole Sorg. To her left is Marcie Cohen, Zoning Commissioner. And to my right one space over is Jeffrey Hinkle, Board Member.

Please be advised that this proceeding is being recorded by a court reporter and also is being webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

The Board's hearing procedures and

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1 how we will process applications and appeals
2 can be found on the table in the back by the
3 door.

4 With that, let's begin today's
5 hearing. All individuals wishing to testify
6 today, please, rise to take the oath or
7 affirmation. Mr. Secretary, would you, please,
8 administer the oath?

9 MR. MOY: Thank you, Mr. Chairman.

10 (Whereupon, witnesses were sworn.)

11 MR. MOY: Ladies and gentlemen, you
12 may consider yourself under oath.

13 CHAIRPERSON JORDAN: I
14 additionally ask when you come to the table to
15 testify, to complete two witness cards and give
16 them to the court reporter to my right and your
17 left. So there are witness cards that you need
18 to prepare and you can do that in advance and
19 give them to the court reporter, please.

20 Mr. Moy, is there any informal
21 matters that we need to do?

22 MR. MOY: Yes, Mr. Chairman. There

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1 are some preliminary matters attendant to some
2 of the cases in the morning session. Staff
3 would suggest that the Board address those when
4 I call each of the cases separately.

5 Apart from that, the first
6 application in the morning session, which is
7 Application No. 18379 of Gerald and Kara
8 Morrissey has been withdrawn. So that's it for
9 the preliminary matters, Mr. Chairman.

10 CHAIRPERSON JORDAN: Okay. Then
11 let's proceed with the call of the docket.

12 MR. MOY: Good morning, Mr.
13 Chairman, Members of the Board. The first
14 application before the Board is Application No.
15 18381. And I apologize in advance for my lack
16 of skills, but this would be the application
17 of Lawal Abdulganiyu and this is pursuant to
18 11 DCMR 3103.2, for a variance from the lot area
19 or rather lot width requirements under ' 401,
20 a variance from the side yard requirements under
21 ' 405, and a variance from the use provisions
22 under ' 201.1. This is to construct a

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1 semi-detached dwelling in the R-1-B District
2 at premises 4336 Douglas Street, N.W., property
3 located in Square 5116, Lot 115.

4 For the record, Mr. Chairman, I
5 believe there is a request for party status under
6 Exhibit 24. That completes the staff's
7 briefing, Mr. Chairman.

8 CHAIRPERSON JORDAN: Okay. Would
9 the parties and persons on this case, please,
10 come to the witness table, please? If you would
11 turn the -- push the button, see the button that
12 says push, you will see a green light. Just
13 push it once. Is the green light on?

14 MS. PYNDELL: Yes.

15 CHAIRPERSON JORDAN: Could you
16 identify yourself for us, please?

17 MS. PYNDELL: I'm Benita Pyndell.
18 And I believe, if I may say so?

19 CHAIRPERSON JORDAN: Yes.

20 MS. PYNDELL: Mr. Moy, you said
21 northwest. This is northeast, Douglas Street,
22 N.E.

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1 MR. MOY: Thank you. I stand
2 corrected.

3 MS. PYNDELL: Yes.

4 CHAIRPERSON JORDAN: And Ms.
5 Pyndell, I understand you are the party in
6 opposition? Is that correct?

7 MS. PYNDELL: Correct.

8 CHAIRPERSON JORDAN: Is the
9 applicant here?

10 MS. PYNDELL: I have no idea.

11 CHAIRPERSON JORDAN: No, I'm not--

12 MS. PYNDELL: Oh.

13 CHAIRPERSON JORDAN: I'm sorry,
14 that's just a general question. Let me ask,
15 did you give the witness cards to the court
16 reporter?

17 MS. PYNDELL: She has one. I was
18 just filling out the other one.

19 CHAIRPERSON JORDAN: Okay. Good.
20 That's good. Mr. Moy, do you want to call this
21 again, so we can see -- we haven't heard from
22 the applicant?

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1 MR. MOY: No, I have not. We have
2 had no phone calls or any notice that he was
3 not going to appear.

4 CHAIRPERSON JORDAN: Okay. Yes,
5 has Planning heard from them?

6 MR. COCHRAN: Planning has had
7 numerous phone calls with the applicant.

8 CHAIRPERSON JORDAN: But you
9 haven't heard anything about today and where
10 they are going or if they are withdrawing or
11 asking for a continuance or anything, have you?

12 MR. COCHRAN: No.

13 CHAIRPERSON JORDAN: Okay.

14 MR. MOY: What I might suggest, Mr.
15 Chairman, is that if you wanted to move on to
16 the next case and --

17 CHAIRPERSON JORDAN: That's fine.

18 MR. MOY: -- okay and deal with this
19 in the morning session, should the application
20 -- does appear. In the meantime, I'll have
21 staff try and contact the applicant.

22 CHAIRPERSON JORDAN: Ms. Pyndell,

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1 if you would give us just -- allow us to give
2 them some time and just wait, we're going to
3 put this case back on the docket. I don't think
4 you have to wait very long.

5 MS. PYNDELL: I'm getting ready to
6 say, it's not, you know, fair to me --

7 CHAIRPERSON JORDAN: Oh, I
8 understand.

9 MS. PYNDELL: -- to have me wait an
10 hour or two when I'm here on time.

11 CHAIRPERSON JORDAN: Yes, I
12 understand that. Thank you. If it was going
13 to be a long delay, I would not have asked you
14 to do that.

15 Let's call the next case, please.

16 MR. MOY: The next application
17 before the Board then would be Application No.
18 18376. Again, that would be Application No.
19 18376 of Cornelle Smith, pursuant to 11 DCMR
20 3103.2, for a variance from the building height
21 requirements under ' 400, and a variance from
22 the open court requirements under ' 406. This

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1 is for an addition to an existing apartment
2 building in the R-4 District at premises 3453
3 Holmead Place, N.W., Square 2834, Lot 73.

4 Mr. Chairman, in your case folders,
5 the applicant did submit an Affidavit of
6 Posting, a letter of authorization yesterday,
7 Monday, July the 16th under Exhibit 31 and 30,
8 respectively.

9 Naturally, the filing of the
10 affidavit is untimely. And that completes the
11 staff's briefing, Mr. Chairman.

12 CHAIRPERSON JORDAN: Yes, we will
13 accept those filings, but in the future, these
14 things need to be filed timely and you're taking
15 a very -- a risk that we would accept them and
16 we would proceed on as if they were not filed.

17 So they need to be filed timely, but we will
18 accept them into the record, please.

19 MS. REED: Thank you. Good
20 morning, Mr. Chairman.

21 CHAIRPERSON JORDAN: Just give me
22 one second, please. Okay. If you would

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1 identify yourselves, please?

2 MS. REED: Sure. Good morning, Mr.
3 Chairman and all relevant parties. My name is
4 Dianna Reed, land use consultant with Land Use
5 by Design. I'm representing my client, Mr.
6 Cornelle Smith, owner of the property located
7 at 3453 Holmead Place, N.W.

8 CHAIRPERSON JORDAN: Okay. And
9 have you both -- have you completed the witness
10 cards?

11 MS. REED: Yes.

12 CHAIRPERSON JORDAN: Okay. The
13 Board has reviewed this file and so you don't
14 have to start from scratch in your presentation.

15 We are very much aware. However, I want to
16 tell you right up front, this file, to me,
17 appears to be lacking a lot in regards to why
18 the relief that you are requesting should be
19 granted.

20 So I just want to tell you that from
21 the start. Have you had conversations with the
22 Office of Planning regarding this?

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1 MS. REED: Yes, sir, I have.

2 CHAIRPERSON JORDAN: Is there
3 anything else besides hearing just the general
4 presentation from the applicant that the Board
5 wants the applicant to focus on? I want to make
6 sure we hit those things up front. Ms. Cohen?

7 MS. COHEN: Yes, Mr. Chairman, I
8 think that the plans were very vague and
9 difficult to read and follow for me. I just
10 didn't think that they were well -- they were
11 well-drawn, but I just couldn't see them. They
12 were practically invisible and also some of the
13 material that was submitted, I had no idea where
14 it came from. It wasn't signed and like Exhibit
15 No. 25, for me, it started at No. 4 as opposed
16 to any explanation as to what the submission
17 was.

18 So I think I'm just agreeing with
19 your initial comment.

20 VICE CHAIRPERSON SORG: Oh, I'm
21 sorry.

22 MS. COHEN: No, go on, because I

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1 just --

2 CHAIRPERSON JORDAN: Ms. Sorg?

3 MS. COHEN: Go on.

4 VICE CHAIRPERSON SORG: I'm sorry,
5 Ms. Cohen. Thank you, Mr. Chairman.

6 I think, you know, OP notes this in
7 their report, but I think, you know, before we
8 get to -- I feel like for me and the file, the
9 story is fairly clear. But that the first and
10 second prongs of a practical difficulty not
11 associated with already having constructed
12 something, as well as I think you understand
13 from discussion with OP that the problematic
14 nature of some of the claims regarding DCRA,
15 so I think we've got to hear a little bit more
16 on the property itself and practical
17 difficulties therein. Thank you.

18 CHAIRPERSON JORDAN: With that, if
19 you want to begin and be sure to hit those points
20 in your presentation or if you feel that you
21 feel a need to, before we begin, want to roll
22 this continuous and go to another date, so you

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1 can be properly -- to supplement this record,
2 it's your option, however, or you can go ahead
3 and proceed on it.

4 MS. REED: Mr. Chairman, I would
5 like to request another date for continuance
6 to properly get you the materials that you need.

7 I would ask, however, if we could have in detail
8 what exactly is needed for the file, so that
9 I could properly prepare.

10 CHAIRPERSON JORDAN: I think Office
11 of Planning would be glad to work with you and
12 discuss that with you. Does the Board have a
13 feeling in regards to a continuance?

14 Are there any other parties, any
15 other persons here for this particular case,
16 matter of 18376? Yes. And you are?

17 MR. GRANADOS: Yes, my name is --

18 CHAIRPERSON JORDAN: Yes, could you
19 come up to the table? And I know this gentlemen.
20 You just came in late. Come forward, please.
21 And I know that -- and you are here for what
22 reason?

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1 MR. GRANADOS: I am the neighbors
2 of Mr. Smith, 3455 Holmead Place. I own the
3 property since 1986 and it's my primary
4 residence.

5 CHAIRPERSON JORDAN: And your name
6 again? I'm sorry.

7 MR. GRANADOS: Jorge Granados.

8 CHAIRPERSON JORDAN: Granados.
9 And you are in opposition. I do have your
10 opposition letter.

11 MR. GRANADOS: Yes.

12 CHAIRPERSON JORDAN: The applicant
13 is asking that we continue this to another date
14 to let them to resolve some issues that are
15 pending and the Board is inclined to grant that
16 continuance, unless you have a major objection
17 to that. I just want to hear if you do.

18 I know you were not here at the time
19 that we took the oath and affirmation from
20 people, but for right now, I don't think we need
21 to do that at this particular point.

22 Do you have a concern about granting

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1 the continuance and giving them time to either
2 correct or withdraw whatever they are proposing?

3 MR. GRANADOS: I don't have any.

4 CHAIRPERSON JORDAN: Okay. Then
5 the Board will continue this matter to a new
6 date.

7 Mr. Moy, can we get a date, please?

8 And I'm going to recommend that the applicant
9 meet with the Office of Planning.

10 MR. MOY: Yes, Mr. Chairman. As
11 you know, the Board is in recess in the month
12 of August. Our last hearing for -- before that
13 recess is July 31st.

14 CHAIRPERSON JORDAN: Is that the
15 date you and I talked about that has some wiggle
16 room?

17 MR. MOY: Yes. Wiggle room in the
18 morning. We have three cases in the afternoon.

19 We could add this as a fourth case in the
20 afternoon.

21 CHAIRPERSON JORDAN: That might be
22 too soon for this applicant, unless you think

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1 you can be prepared and be ready by the 31st?

2 That requires the time to submit to this body
3 the documents and meeting with OP.

4 MS. BROWN-ROBERTS: For the record,
5 this is Maxine Brown-Roberts from the Office
6 of Planning. Mr. Chairman, I'm going to be out
7 of the office starting next week. Actually,
8 starting tomorrow. And so I don't know, you
9 know, if I would be able to meet with them and
10 have a revised report, especially since I have
11 been the one who has been working on this case.

12 CHAIRPERSON JORDAN: When will you
13 return?

14 MS. BROWN-ROBERTS: I'll be back on
15 the 15th of August.

16 CHAIRPERSON JORDAN: Oh. All
17 right. This is what we're going to do. Yes?

18 MS. REED: Mr. Chairman, if I might
19 add, after speaking with my client, I was
20 wondering if we could continue forward off the
21 premise that there is very little new
22 information that could be introduced?

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1 CHAIRPERSON JORDAN: Okay. We
2 will do that.

3 MS. REED: And then also the ANC is
4 voting in favor.

5 CHAIRPERSON JORDAN: All right.
6 We will accept that. So let's proceed in this
7 hearing.

8 MS. REED: Thank you.

9 CHAIRPERSON JORDAN: And let me
10 have Mr. Granados --

11 MR. GRANADOS: Granados.

12 CHAIRPERSON JORDAN: Granados?

13 MR. GRANADOS: Yes.

14 CHAIRPERSON JORDAN: If you would
15 stand and have Mr. Moy provide you the oath or
16 affirmation, please?

17 MR. MOY: Sure.

18 CHAIRPERSON JORDAN: Stand and
19 raise your right hand.

20 MR. GRANADOS: Yes.

21 (Whereupon, the witness was sworn.)

22 MR. MOY: Consider yourself under

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1 oath.

2 CHAIRPERSON JORDAN: Good. Thank
3 you very much. Would you proceed, Ms. Reed?

4 MS. REED: Sure. I did want to add
5 into the exhibits 12 copies of a bank statement.

6 CHAIRPERSON JORDAN: 12 copies of
7 what?

8 MS. REED: Of a bank statement for
9 3453 Holmead Place. I have an original as well.

10 CHAIRPERSON JORDAN: A bank
11 statement? Let me take a look at it. We very
12 well -- again, these documents need to be filed
13 with the Board previous to you trying to admit
14 these things into our record. We will hold this
15 in abeyance whether we accept it into the record
16 or not.

17 MS. REED: All right. Thank you.

18 CHAIRPERSON JORDAN: Yes.

19 MS. REED: If I may begin, without
20 stating a lot of the case, I think the most
21 important feature of this case, I have cited--

22 CHAIRPERSON JORDAN: Excuse me. I

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1 want you to be comfortable and present to us
2 that which you want to present. So don't feel
3 handcuffed, but we just wanted to identify for
4 you up front where our issues were.

5 MS. REED: Okay. I'll address
6 those first. To speak to the point of the
7 practical difficulty as well as the uniqueness
8 of 3453 Holmead Place, I have cited in a document
9 that was actually submitted to the Office of
10 Planning that notes BZA Case 17218, Tonya
11 Harris, in which an addition was approved in
12 R-4, as well as Louise Delascott vs. the Board
13 of Zoning Adjustment, that was a zoning history.

14 That was considered an exceptional
15 circumstance. This applicant cited its history
16 with DCRA as an exceptional circumstance.

17 Next would be the Court of Appeals
18 McAdams case, that case shows where an addition
19 was approved by the Board of Zoning or I'm sorry,
20 by the Court of Appeals based off of the fact
21 that removing it would be a practical difficulty
22 to the applicant.

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1 And then the last case, BZA Case
2 17039, that case was similar and that four story
3 addition was approved as well in R-4.

4 So beginning with those four case
5 precedents, the difference in my case up front
6 is Mr. Smith created or built his addition third
7 and fourth story without a permit, an illegal
8 construction, that has been acknowledged.

9 Any type of financial difficulties
10 that arise from that, of course, would not be
11 something that we could cite as a practical
12 difficulty or exceptional circumstance.
13 However, there was throughout the building
14 permit process after one was submitted through
15 Matt LeGrant's office or the Office of the Zoning
16 Administrator, that should be one of the
17 exhibits as well. A letter dated 2009, that
18 was actually cced to Mr. Rick Nero in this office
19 as well.

20 The reason why I speak to that
21 letter, that letter, basically, notes the
22 history of Mr. Smith trying to become compliant.

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1 There was a building permit that was submitted.

2 It took about a year and one month to receive
3 a notice back from DCRA what was needed, you
4 know, referencing the possibility of the Board
5 of Zoning Adjustment being the relief, then back
6 and forth meetings from 2009 until now.

7 And between that time, the chief of
8 the BLRA or Building and Land Regulation
9 Administration, Mr. Rabbiah Sabbakhan, has
10 worked with my client and that the stop work
11 orders created a difficulty for utilities to
12 come out. The tenants had to be vacated from
13 the property.

14 Mr. Smith was forced to actually pay
15 for hotel stays by the tenants -- for the tenants
16 during that time. And that was actually noted
17 in the infraction.

18 I want to actually present this
19 board here. These buildings and the immediate
20 radius or vicinity of 3453 Holmead Place are
21 referenced not for the purposes of saying they
22 did it, why can't Mr. Smith. They are

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1 referenced to show the character of the
2 neighborhood, to show that Mr. Smith's addition
3 does not go against the character or the fabric
4 of the existing neighborhood.

5 These pictures, as well as the
6 information, show that they are all in the R-4
7 Zone. In addition, there are third, fourth and
8 fifth story additions as well. From my history
9 with DCRA and checking and researching, I only
10 found that 3311 13th Street got building permits
11 for that, which did not require a special
12 exception nor a variance. They actually went
13 through the process pretty smoothly.

14 The other portion that I wanted to
15 discuss for Mr. Smith's neighbor, I'm sorry,
16 what's your last name?

17 MR. GRANADOS: Granados.

18 MS. REED: Mr. Granados. I wanted
19 to note that Mr. Smith has tried to work with
20 his neighbor at 3455 and it was requested for
21 a land lease to be drafted, which Mr. Smith paid
22 \$7,500 to have drafted, so that his neighbor

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1 and he could come to some terms about parking.

2 His neighbor wants to -- or in the
3 past has requested a portion of Mr. Smith's land
4 after contesting that a part of the land was
5 on his side after having a survey done. His
6 neighbor asked for a portion of his land for
7 the purpose of parking in the rear.

8 I think that is important to note,
9 because not that his claims are untrue. We all
10 know that the construction was illegal, but
11 knowing that that is being held over Mr. Smith's
12 head, that land lease for a portion of his land,
13 I think that's pretty important for the case.

14 CHAIRPERSON JORDAN: When was the
15 land lease requested?

16 MS. REED: That was actually
17 requested back in --

18 MR. SMITH: 2008. I have an email
19 actually.

20 CHAIRPERSON JORDAN: That was after
21 the construction, right?

22 MS. REED: That's correct. Yes,

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1 sir. So, at this point, DCRA wanted the
2 neighbors, of course, to have consent. A part
3 of that was well, I would like to build or have
4 two parking spaces in the rear, just as you have,
5 and I would like a portion of your land to do
6 so. So that's all in writing and documented
7 and a land lease was paid for and drafted.

8 The reason why that didn't come to
9 fruition is after Mr. Smith spoke with his
10 neighbor, that didn't seem enough. The windows
11 on the side that is 3455 have been closed, trying
12 to work with his neighbor at 3455. It was
13 requested that, you know, the privacy be
14 addressed. And so Mr. Smith closed those
15 windows.

16 Also, it is important to note that
17 the construction in the rear on the side facing
18 3455 is incomplete due to the stop work orders.

19 Therefore, a lot of damage has happened to the
20 legal construction at 3453.

21 CHAIRPERSON JORDAN: Just one
22 second, if you would.

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1 MS. REED: Oh, no problem.

2 CHAIRPERSON JORDAN: I'm sorry.
3 I'm going to ask you to pause and recess this
4 just one second. Stay at the table.

5 MS. REED: No problem.

6 CHAIRPERSON JORDAN: Mrs., is it
7 Pyndell? Pyndell. Mr. Moy, do you want to call
8 back the case of 18381, please?

9 MR. MOY: Yes, sir. That would be
10 Application No. 18381. This is the application
11 of Lawal Abdulganiyu, pursuant to 11 DCMR
12 3103.2, for a variance from the lot width
13 requirements under '401, a variance from the
14 side yard requirements under ' 405, a variance
15 from the use provisions under ' 201.1, to
16 construct a semi-detached dwelling in the R-1-B
17 District at premises 4336 Douglas Street, N.E.,
18 property located in Square 5116, Lot 115.

19 CHAIRPERSON JORDAN: Thank you.
20 And I apologize to the parties for this present
21 case, but I did not want Ms. Pyndell, who has
22 been here for this other case, to have to sit

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1 here any longer.

2 Ms. Sorg, could I have your
3 attention, please? What we have, Board -- do
4 you want to report, Mr. Moy?

5 MR. MOY: Yes, sir. For the Board,
6 when this case was initially called, the staff
7 called the agent that is representing the owner
8 to this application and, apparently, I have been
9 told that the agent had said that he would have
10 to contact the owner of the property, number
11 one.

12 Number two, it was also stated that
13 no one would be appearing today for this
14 application.

15 CHAIRPERSON JORDAN: All right.
16 Thank you. I would move that the Board dismiss
17 Case No. 18381 for failure to show and prosecute
18 their application. Ms. Cohen?

19 MS. COHEN: And I will offer a
20 second.

21 CHAIRPERSON JORDAN: The motion
22 made and seconded that we -- yes?

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1 MS. GLAZER: Mr. Chair, I'm sorry
2 to interrupt. I missed something, because I
3 was reviewing another issue.

4 CHAIRPERSON JORDAN: Do you want to
5 talk to me down here, please, before you say
6 anything on the record?

7 MS. GLAZER: Sure.

8 CHAIRPERSON JORDAN: Thank you.
9 All right. So let me amend that motion, if I
10 may. That we do a Show Cause Order, that we
11 will dismiss this for their failure to appear,
12 that they need to come and show cause why it
13 should not be dismissed. Okay.

14 MS. COHEN: And I will second that.

15 CHAIRPERSON JORDAN: Good. All
16 right. The motion made and seconded that we
17 issue a Show Cause Order of our intent to dismiss
18 this matter and that be sent to the applicant
19 to show cause.

20 All those in favor signify by saying
21 aye.

22 ALL: Aye.

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1 CHAIRPERSON JORDAN: Those opposed
2 nay? And the motion carries. Mr. Moy?

3 MR. MOY: Yes, Mr. Chairman. Staff
4 would record the vote as 4-0-1. This is on the
5 motion of Chairperson Jordan to direct -- with
6 direction to issue a Show Cause with intent to
7 dismiss because of failure to appear, seconding
8 the motion Ms. Cohen. Also in support of the
9 motion, Vice Chair Sorg, Mr. Hinkle. I think
10 that was four, right? And no other Board
11 Members presenting.

12 So again, the final vote is 4-0-1.

13 CHAIRPERSON JORDAN: As long as you
14 don't come up with five, six or seven, we're
15 okay.

16 Thank you. And we really
17 appreciate you coming down and we will notify
18 you of the new date and time. You will get a
19 letter of notice for that.

20 MS. PYNDELL: So there will be
21 another hearing?

22 CHAIRPERSON JORDAN: There may be

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1 another hearing. We don't know if they are
2 going to respond to us within time for their
3 Show Cause Notice.

4 MS. PYNDELL: Wow.

5 CHAIRPERSON JORDAN: Yes. It's
6 required under the law that we give them an
7 opportunity to show cause.

8 MS. PYNDELL: Why they didn't
9 appear?

10 CHAIRPERSON JORDAN: Yes.

11 MS. PYNDELL: And I don't have to
12 show cause why I did appear.

13 CHAIRPERSON JORDAN: No. But
14 thank you. We so note that you did come. Thank
15 you very much.

16 MS. PYNDELL: Even though it was
17 hard getting down here and parking and
18 everything.

19 CHAIRPERSON JORDAN: Oh, yes, I --

20 MS. PYNDELL: And all that and being
21 able to park and get up here yet.

22 CHAIRPERSON JORDAN: Yes.

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1 MS. PYNDELL: But anyway, I
2 appreciate the Board and I think it will be
3 dismissed, but that's my opinion.

4 CHAIRPERSON JORDAN: Thank you.

5 MS. PYNDELL: Thank you.

6 CHAIRPERSON JORDAN: And again, I
7 apologize to the present case to take that highly
8 unusual action, but I did not want Ms. Pyndell
9 to sit here and to wait. She has been here
10 diligently and thank you. Appreciate it.

11 And I apologize again. If you would
12 go ahead and continue where you were?

13 MS. REED: Sure. I'm only
14 mentioning this again, because I think it's a
15 key point, but I'll just quickly reference it
16 again.

17 Just to speak to the property, it
18 has been declared as of December 10, 2012
19 actually, yes, 2012, through the DCRA or the
20 Office of Construction that the property was
21 legal. I'm sorry, was actually safe for
22 inhabitation. So I wanted to speak to the point

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1 of the safety of the property.

2 And I also wanted to mention that
3 we had a very thorough presentation go before
4 the ANC twice. The first time the ANC asked
5 that we come back, so that they could prepare
6 for the case, although a lot of the materials
7 were sent in-hand -- by hand as well as via email
8 in advance.

9 The most recent hearing, they
10 actually voted in favor and Mr. Smith's neighbor
11 here was not present at that ANC meeting.

12 Next, I wanted to speak to --

13 CHAIRPERSON JORDAN: Excuse me, do
14 you have a letter from the ANC?

15 MS. REED: I do not. They said that
16 they would provide that to you, but it was
17 actually voted 0 opposed, four abstain and five
18 in favor of both variances.

19 CHAIRPERSON JORDAN: 5-0-4?

20 MS. REED: That's correct. Yes,
21 sir.

22 CHAIRPERSON JORDAN: When was this

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1 ANC meeting?

2 MS. REED: This ANC meeting was last
3 Wednesday. It was actually the second time we
4 appeared before them.

5 CHAIRPERSON JORDAN: Okay. So
6 that would have been July 11th. Do we have any
7 record or notice from the ANC, Mr. Moy?

8 MR. MOY: Just a second, Mr.
9 Chairman.

10 CHAIRPERSON JORDAN: Well, while he
11 looks for that, you can proceed.

12 MS. REED: Sure. I have an email
13 correspondence, if that helps, after the
14 hearing.

15 CHAIRPERSON JORDAN: Okay.

16 MS. REED: So to speak to that
17 portion, there was an opportunity for public
18 comment twice. And we were actually last on
19 the agenda at the ANC meeting, so that it would
20 allow for anyone that was in opposition to speak
21 to that.

22 Council Member -- or Commissioner

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1 Betty Pair that represents the Single Member
2 District that Mr. Smith's property is located
3 in, she actually brought up the point of 3455
4 Holmead Place, his neighbor. And she asked
5 those questions about safety and privacy and
6 she felt that, I guess, with her not voting
7 against, I would assume that she felt that our
8 presentation was sufficient.

9 Back to the point of exceptional
10 difficulty or practical difficulty and
11 exceptional circumstances. Aside from the
12 illegal construction, the amount of money that
13 was put into the land lease as well as having
14 to vacate the tenants for utility reasons,
15 completely separate from the illegal
16 construction, DCRA made an error, which was
17 acknowledged by their chief, that they put
18 numerous stop work orders in for the same scope
19 of work.

20 Those stop work orders made it very
21 difficult, actually impossible for Mr. Smith
22 to do anything on the property, even including

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1 the utilities. So that's where I think I would
2 like to focus on, that aside from the illegal
3 construction that was an error of DCRA.

4 And the way they addressed that was
5 actually for the infraction allowing Mr. Smith
6 to have tenants actually in the third story.

7 CHAIRPERSON JORDAN: What is DCRA's
8 error again?

9 MS. REED: They issued numerous
10 stop work orders for the same scope of work and
11 work had already halted. Mr. Smith did go ahead
12 and pay all of the fines, but DCRA, I'm sure,
13 would not dispute that fact.

14 MR. SMITH: Am I allowed to speak?

15 CHAIRPERSON JORDAN: Sure.

16 MR. SMITH: For the record, my name
17 is --

18 CHAIRPERSON JORDAN: Yes, you can
19 speak, but do you have a question?

20 VICE CHAIRPERSON SORG: Thank you,
21 Mr. Chairman. You referenced an email from DCRA
22 or perhaps a letter in which DCRA takes

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1 responsibility for the, I guess, erroneous stop
2 work orders. Is that something that you
3 submitted into the record?

4 MS. REED: That was actually not via
5 email. I said that they acknowledged it by
6 correction when the infraction was brought up
7 through the Office of the Zoning Administrator.

8 So once that was brought up at the infraction
9 stage, the Office of the Zoning Administrator
10 allowed Mr. Smith to finish, you know, utility
11 work by okaying it through the Building
12 Regulation Administration.

13 VICE CHAIRPERSON SORG: So the stop
14 work order was removed and with no fine?

15 MS. REED: No, there was fines and
16 all of them were paid. The stop work was removed
17 about a year later. I'm sorry, eight or nine
18 months later, so that Mr. Smith could address
19 the utilities for, you know, the tenants that
20 were there.

21 VICE CHAIRPERSON SORG: Okay.
22 Thank you.

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1 MR. SMITH: Can I add some clarity
2 to that, if possible? My name is Cornelle
3 Smith, for the record, I'm the owner of 3453
4 Holmead Place.

5 Originally, I did receive stop work
6 orders and infractions for building illegal
7 construction and I paid those fines for initial
8 infractions. The issue that made this case go
9 ongoing and the reason why we are here five,
10 six years later is because after that point,
11 even though I wasn't working on the property
12 any more, I continued to receive stop work
13 orders.

14 I have gotten at least 11 stop work
15 orders on the place and the effort that it is
16 taking me, I have spent most of my time -- I
17 know everybody down at the Stop Work Order Office
18 from the top to the bottom. I have been down
19 to Council Member Graham's office and spoke with
20 him, because my neighbor was calling someone
21 in Mr. Graham's office who unbeknownst to Mr.
22 Graham, once I met with him, they were using

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1 his weight to call the Stop Work Order Office
2 and report that I was working, but I wasn't
3 working.

4 And it took me a while to get to the
5 bottom of this, because I kept going down and
6 saying that I wasn't -- stop work order, so they
7 would remove the stop work order and realize
8 that it had been satisfied.

9 But then, I was given a tip from the
10 Stop Work Order Office that everything was
11 coming from Mr. Graham's office. And so that's
12 why I went and personally met with him and him
13 and I sat down and he said, Mr. Smith, he pulled
14 out an email and showed me that as far as he
15 was concerned, this case was closed and he had
16 no further input or was not dealing with the
17 Stop Work Order Office.

18 And then he called in a young lady
19 in his office, I can't recall her name off --
20 right now, but this young lady had a relationship
21 with Mr. Jorge Granados and unbeknownst to Mr.
22 Graham, he, you know, showed that he did -- just

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1 in his expression once she said that she had
2 been a part of calling down to the Stop Work
3 Order Office, he apologized to me deeply for
4 it and said that I would have no more -- further
5 problems.

6 And from that, I have been allowed
7 to be able to start resolving this case working
8 with Matthew LeGrant, but a lot of the efforts
9 over this past five or six years have been
10 dealing -- I have been spending my days down
11 at the Stop Work Order Office trying to get it
12 corrected.

13 And it is not because I didn't want
14 to correct it, so I just wanted to let that be
15 known.

16 MS. COHEN: Mr. Chairman?

17 CHAIRPERSON JORDAN: Yes, please.

18 MS. COHEN: I have a question. For
19 clarity purposes, your first stop work order
20 was because you did not have a permit. Is that
21 correct?

22 MR. SMITH: Yes, ma'am. I take

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1 full responsibility. I erected an illegal
2 addition in the back of Holmead without proper
3 permits. Yes, ma'am.

4 MS. COHEN: And shouldn't you have
5 moved ahead and gotten that permit, then the
6 stop work order would not have continued to have
7 been delivered.

8 MR. SMITH: Well, what I did is I
9 met with -- originally, I was dealing with an
10 architect that really wasn't as skilled as I
11 should have been dealing with. So I was
12 spending a lot of time with Mr. LeGrant
13 personally. He -- I have record of the emails.

14 And I have a sequence of about 40 emails that
15 I sent out a copy to everybody from Linda Argo
16 down to Mr. Graham that I hope is a part of your
17 package.

18 And the reason why we are at this
19 point is because Mr. LeGrant has personally
20 taken his time to walk me through the process.

21 I made a terrible mistake in building an
22 addition. I take full responsibility, but not

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1 knowing how to correct it is the problem and
2 not being pointed in the right direction.

3 MS. REED: Also to that point, in
4 the exhibits from 2009, there is a letter that
5 was actually -- Mr. Nero was cced on that and
6 it was directed to Mr. Matthew LeGrant asking
7 for the process and what should be done next.

8 I think the -- what has been --

9 CHAIRPERSON JORDAN: Well, let me
10 help you. Let me let you know where I am,
11 because we are going around this thing about
12 DCRA --

13 MS. REED: Sure.

14 CHAIRPERSON JORDAN: -- which
15 doesn't get you where you need to be.

16 MS. REED: Okay.

17 CHAIRPERSON JORDAN: Let's assume
18 that you have not built this thing.

19 MS. REED: Okay.

20 CHAIRPERSON JORDAN: Tell us why
21 you would have come -- you would have come to
22 this Board and it's not built. It has not been

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1 constructed. Why this Board would have given
2 you the relief that you are requesting.

3 MS. REED: Well, to speak for the
4 third story addition, that was something that
5 is a matter-of-right. The fourth story
6 addition, if I may, I'll focus on that one.
7 The reason why I request relief, even if there
8 was no illegal construction and permits were
9 received, is because the client has shown that
10 he has contacted DCRA prior to asking for
11 processes.

12 After which, it is also shown that
13 DCRA has -- it took a while for them to actually
14 address that concern. Moreover, the addition
15 was for the purposes of extending the third unit,
16 which was the smallest unit. It went from being
17 720 square feet to 1,500 for a little bit more
18 rent, but not much.

19 So the reason why I would request
20 relief without the illegal construction would
21 be the fact that Mr. Smith is having -- well,
22 Mr. Smith has had difficulty getting a straight

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1 answer, it has been dragged out for years, on
2 what the process is.

3 In fact, I would like to note that
4 the BZA memo was revised twice by the Office
5 of Zoning Administration about what was needed
6 to bring this type of addition or construction
7 to fruition legally.

8 So I would like to note that the
9 administration that was -- that is currently
10 in office is the same administration that was
11 there when the construction happened.

12 CHAIRPERSON JORDAN: You had a memo
13 from the ZA before construction began?

14 MS. REED: No, sir.

15 CHAIRPERSON JORDAN: Okay.

16 MS. REED: After. But I'm bringing
17 the point that it is the same Zoning
18 Administration and I would like to assume that
19 the same advice will be given by the two as well,
20 based off the fact that it is the same
21 administration, the same interpretations.

22 And like I mentioned, the BZA memo

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1 was revised twice only after Mr. Smith hired
2 me and I pointed out some things that I said
3 well, the code doesn't speak to this or the code
4 does speak to this. And after meetings with
5 Mr. Fernando Rivero and the legal counsel office
6 for DCRA as well as Mr. Matthew LeGrant, we came
7 to a determination that the memo had had some
8 errors in it, which were corrected twice.

9 And then speaking to Ms. Maxine in
10 the Office of Planning, she had some concerns
11 that even the revised memo had some concerns
12 for her. So from a layman's terms, from a
13 layman's standpoint, the client requested over
14 and over again for information on what the
15 process is, what needs to be done.

16 And even after the memo was revised
17 twice, the Office of Planning still has
18 questions about why the memo was drafted in the
19 way that it was. And that's actually in her
20 report.

21 So the question would be then the
22 things that we came to you guys for a variance

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1 from are those things even adequate? Should
2 he have gone for a variance for something else?

3 And so the professionals he paid, like myself
4 and architects, have we done this work in vain?

5 What exactly is needed of him next? That still
6 is in the air.

7 So to answer your question, Mr.
8 Chairman, I believe that the process has not
9 been documented and it's shown that my client
10 has gone above and beyond trying to get the
11 information needed for what to do next to make
12 his third unit larger.

13 CHAIRPERSON JORDAN: Okay. Let me
14 ask, are you an architect? Did you --

15 MS. REED: Actually, I'm not. No,
16 not in the District of Columbia.

17 CHAIRPERSON JORDAN: You're an
18 attorney?

19 MS. REED: No, I'm actually a land
20 -- I used to work in the Office of Zoning.

21 CHAIRPERSON JORDAN: Okay.

22 MS. REED: So I'm the land use

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1 consultant. But I'm not licensed in the
2 District, so I have to answer that question as
3 no.

4 CHAIRPERSON JORDAN: Okay. Okay.
5 But you are an architect in other
6 jurisdictions?

7 MS. REED: That's correct, yes.

8 CHAIRPERSON JORDAN: Okay.

9 VICE CHAIRPERSON SORG: Do you have
10 an architectural degree?

11 MS. REED: That's correct, yes.

12 CHAIRPERSON JORDAN: A license?

13 VICE CHAIRPERSON SORG: And are you
14 a registered architect?

15 MS. REED: No.

16 VICE CHAIRPERSON SORG: She is not
17 registered.

18 MS. REED: The answer to that is no.

19 CHAIRPERSON JORDAN: Okay. So
20 it's no across the board. Yes, I understand
21 that. I understand that. I understand that
22 now, but you helped me with that, yes, um-hum.

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1 Okay. Board any other questions?

2 Ms. Cohen?

3 MS. COHEN: Yes. I think again
4 what the record seems to be missing is any
5 communication from Mr. LeGrant to your client.

6 There are summaries that communication between
7 the two have been made, but I don't see the
8 evidence, the actual communication or letter
9 from the Zoning Administrator, so that would
10 be very helpful to get.

11 MS. REED: That was actually sent
12 directly to Mr. Nero, even starting back in 2009.

13 I can reforward those if necessary, but those
14 were already sent.

15 MS. COHEN: I don't see them in my
16 package. If anybody else sees it, I would be
17 willing to -- I see a lot of June 2012
18 information, but I don't see anything from Mr.
19 Nero.

20 MS. REED: At the time of
21 submission, I made a very complete package if
22 that was not brought in or I apologize.

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1 CHAIRPERSON JORDAN: Again, it's
2 one of the after-the-fact letters. There is
3 a letter to Mr. Nero and a cc to Mr. Nero in
4 the file, but it is --

5 MS. COHEN: What I'm looking for is
6 Mr. Nero's letter to the applicant.

7 CHAIRPERSON JORDAN: Oh, which --

8 MS. COHEN: I mean, the ZA's letters
9 to the applicant. Thank you for that.

10 CHAIRPERSON JORDAN: Oh, the ZA's
11 letters.

12 MS. COHEN: Yes.

13 CHAIRPERSON JORDAN: Okay. I got
14 you.

15 MS. COHEN: That's what I'm looking
16 for.

17 MS. REED: I'm not sure if it was
18 -- if that has been made clear, but there was
19 actually a case against Mr. Smith from the
20 District of Columbia started from DCRA. So I
21 can -- that's a civil case, so I'm not sure if
22 that wasn't brought to your attention, but that

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1 was --

2 CHAIRPERSON JORDAN: There is an
3 exhibit, I think it was, Exhibit No., if I can,
4 I want to say, 26. And at the back of it, it
5 lists a series of -- it does not present the
6 document. It presents --

7 VICE CHAIRPERSON SORG: No, but I
8 think the first question, I'm sorry to interrupt
9 you, Mr. Chairman, is to either our, I don't
10 know, Office of Zoning or to the applicant, is
11 this a self-certified application or is this
12 a ZA referral?

13 MS. REED: This is a ZA referral.

14 VICE CHAIRPERSON SORG: I do not
15 have a ZA letter in my file. Is that something
16 -- is this a ZA referral or is this a
17 self-certified application?

18 CHAIRPERSON JORDAN: This is a --

19 MS. GLAZER: It's a ZA referral, I
20 believe.

21 VICE CHAIRPERSON SORG: I don't
22 have it then and neither does Marcie.

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1 MR. MOY: That would be under
2 Exhibit 5.

3 VICE CHAIRPERSON SORG: Yes.

4 MS. COHEN: Yes.

5 MR. MOY: Exhibit 5.

6 MS. REED: And at the top of that
7 it says revised.

8 MR. MOY: Right?

9 VICE CHAIRPERSON SORG: It's --

10 MS. COHEN: I have it. I'm sorry.
11 I do have it. Do you have it?

12 VICE CHAIRPERSON SORG: No, I just
13 looked.

14 MS. COHEN: It's in here.

15 VICE CHAIRPERSON SORG: Okay.

16 CHAIRPERSON JORDAN: Yes, it's
17 dated February 10th. It was filed February 10,
18 2012.

19 VICE CHAIRPERSON SORG: Are we
20 asking questions, Mr. Chairman?

21 CHAIRPERSON JORDAN: Yes, go ahead,
22 yes.

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1 VICE CHAIRPERSON SORG: Okay. So
2 now that we've got that cleared up --

3 MS. REED: Okay.

4 VICE CHAIRPERSON SORG: -- we have
5 all got the ZA letter. Thank you. And that
6 would have come not from you, so no worries on
7 that.

8 MS. REED: Okay. Thank you.

9 VICE CHAIRPERSON SORG: Now, to try
10 and untangle what feels a little bit like a knot
11 here.

12 MS. REED: Okay.

13 VICE CHAIRPERSON SORG: The first
14 thing I think we need to do is maybe -- I mean,
15 my first question is the relief that is being
16 requested doesn't -- I have a question about
17 whether or not you need relief for the third
18 floor.

19 MS. REED: I have that question as
20 well.

21 VICE CHAIRPERSON SORG: But you are
22 a land use consultant.

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1 MS. REED: That's correct.

2 VICE CHAIRPERSON SORG: Do you have
3 an opinion --

4 MS. REED: That's why at the --

5 VICE CHAIRPERSON SORG: -- on that?

6 MS. REED: Yes, I do. My opinion
7 is that the -- like I mentioned earlier in this
8 hearing, the third story addition is a
9 matter-of-right in that zone and that -- the
10 reason why I wanted to focus on the fourth story,
11 as I said before, is because I believe that was
12 the portion that would require relief.

13 And I spoke with Mr. Matthew LeGrant
14 about that prior to coming here and after major
15 deliberation and a couple of months with
16 Fernando Rivero, as I mentioned before, as well
17 as Matthew LeGrant, Mr. LeGrant decided that
18 the revised memo is the most accurate memo to
19 -- for Mr. Smith to seek relief from.

20 And I wanted to note that his very
21 first memo requested four zoning reliefs, two
22 special exceptions. I'm sorry, five. Two

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1 special exceptions and three variances. And
2 so I wanted to mention that.

3 CHAIRPERSON JORDAN: Whose letter
4 to who?

5 MS. REED: Mr. LeGrant's first
6 memo, initial memo to my client showed five types
7 of relief that was needed to --

8 CHAIRPERSON JORDAN: That was
9 needed.

10 MS. REED: -- to get this done.
11 That's correct.

12 CHAIRPERSON JORDAN: But that
13 letter came after the time of construction
14 again, correct?

15 MS. REED: Yes, sir, yes.

16 CHAIRPERSON JORDAN: Let me turn to
17 Ms. Glazer, so we can talk about the relief.
18 I know we are talking about also the
19 nonconforming issue that befalls around the
20 court that extends up to the third floor. Can
21 you provide us guidance, please?

22 MS. GLAZER: Well, for starters,

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1 the ZA referral referred this application to
2 the Board on two grounds. The first was the
3 story relief for the fourth floor. But with
4 respect to the nonconforming court, that
5 pertains to both the third and the fourth floor.

6 So the third floor would not --
7 addition would not be matter-of-right. It is
8 matter-of-right, however, with respect to the
9 story as the applicant points out.

10 CHAIRPERSON JORDAN: Say that one
11 more time. The third floor -- the nonconforming
12 aspect of the third floor is not a
13 matter-of-right, but the third floor addition
14 would be? Okay.

15 MS. GLAZER: The open court relief
16 is needed for the third floor and the fourth
17 floor. Therefore, the third floor is not
18 entirely matter-of-right.

19 CHAIRPERSON JORDAN: Yes.

20 MS. GLAZER: The story is
21 matter-of-right.

22 CHAIRPERSON JORDAN: That's it.

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1 Okay. That would be my thought. Okay.

2 MS. REED: Now, may I speak to that
3 point? It has been determined in meetings with
4 Matthew LeGrant as well as Mr. Rabbiah Sabbakhan
5 and the BLRA Office that the reason why Mr.
6 Smith's addition on the third floor goes into
7 the open court is a matter of material selection.

8 And as the construction has sat unfinished,
9 it means that piece of the property actually
10 has to be replaced anyway, because of mold and
11 water that has gone down into it to affect the
12 second floor as well.

13 So that has to be done for a safety
14 standpoint for the existing tenants. So Mr.
15 Smith has already committed to changing the
16 material to a 2 x 4 rather than a 4 x 6 -- 2
17 x 6 which would make that portion going into
18 the open court a moot point.

19 CHAIRPERSON JORDAN: All right.
20 Any other questions of the applicant? Ms.
21 Cohen?

22 MS. COHEN: Yes, just one other one.

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1 The HVAC system, the third and fourth are going
2 to be connected. Is that what I read somewhere?

3 MS. REED: Yes, ma'am, that's
4 correct. The addition wasn't for the purpose
5 of creating an additional unit, but to make one
6 unit larger, so they are directly tied into the
7 third floor. And the third floor is tied --
8 directly tied into the second floor.

9 CHAIRPERSON JORDAN: Any other
10 questions of this applicant?

11 Let's turn now to the Office of
12 Planning. Again, good morning, Mr. Chairman.

13 I would just like to address the
14 height portion for the fourth floor of this
15 application. I think we may be in agreement
16 in all the other aspects.

17 I do agree that an open court for
18 the third floor that they do need the variance
19 for that portion. I'm not in agreement with
20 the reasons that has been stated by the
21 applicant, but from the drawings I think they
22 do need the open court. And they can be -- they

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1 do meet the requirements for granting that for
2 expanding the open court.

3 Regarding the height of the fourth
4 floor, I haven't heard anything here this
5 morning that the applicant has presented that
6 I haven't heard before and I'm in total
7 disagreement with what -- with the presentation
8 that she has given.

9 The BZA cases that she has
10 referenced are, I think, totally different
11 cases. In all the cases that are reviewed, the
12 first thing was that the additions were made
13 subsequent to the DCRA granting them a building
14 permit, which is totally different from what
15 is being presented in this case.

16 The applicant agrees that they did
17 construct the addition illegally. I have not
18 seen or the applicant has not demonstrated to
19 me in any way, you now, a uniqueness that would
20 cause them to want this fourth floor addition.

21 And even though there are other buildings with
22 fourth floors in the community, again, you know,

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1 as the they should know, that we do address each
2 application, you know, individually.

3 And based on that, I will continue
4 to recommend denial of the fourth floor addition
5 and approval of the third floor addition and
6 the other areas of -- other variances that they
7 have requested.

8 Thank you, Mr. Chairman.

9 CHAIRPERSON JORDAN: Thank you.
10 It's also my understanding that you have a belief
11 that additional relief is required from ' 401
12 of lot width and 403 from lot occupancy. Is
13 that correct?

14 MS. BROWN-ROBERTS: Yes. And
15 those are existing nonconformities, so just to
16 make a clean -- the application clean, those
17 were brought in.

18 CHAIRPERSON JORDAN: Have you
19 discussed that with the applicant?

20 MS. BROWN-ROBERTS: I don't
21 actually remember, but --

22 MS. REED: I have gotten a copy.

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1 MS. BROWN-ROBERTS: -- my report
2 was sent to her, so, you know, if she had a
3 problem with that, she could have addressed
4 that.

5 CHAIRPERSON JORDAN: Any other
6 questions for OP, please? Anyone? Okay. We
7 do have -- well, let me ask. Is anyone here
8 from any other governmental agency,
9 particularly, Department of Transportation?

10 We do have a letter in our file from
11 the Department of Transportation. It
12 recommends no objection.

13 We will turn to the ANC. Is there
14 anyone here from the ANC, ANC-1A? We don't have
15 a letter in our file from ANC-1A. It has been
16 reported that ANC-1A met on July 11th and voted
17 5-0-4, but I have nothing else in regards to
18 ANC. And the secretary of the Board has went
19 back and looked at all the records and has also
20 not been able to find a letter from the ANC.
21 Nor is there anyone here from the ANC present.

22 Are there parties in support of this

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1 application in the audience?

2 Now, waiting so patiently is Mr.
3 Jorge Granados, who has been sitting here and
4 he has submitted a letter in opposition as well
5 as we have a letter from the DeVillers and DeCuir
6 in opposition. But if you would proceed,
7 please?

8 MR. GRANADOS: Yes, thank you, Mr.
9 Chairman.

10 CHAIRPERSON JORDAN: State your
11 name for the record.

12 MR. GRANADOS: Yes. My name is
13 Jorge Granados and I live at 3455 Holmead Place,
14 N.W., Washington, D.C. since 1986.

15 And well, first, I want to say that
16 Mr. Smith or whoever did the lease, they never
17 include me in the lease of this case. I didn't
18 know until my neighbor called me and said do
19 you know about this? And I come over with Mr.
20 Nero and he gave me the names of the people who
21 got notified for this case.

22 The other party didn't make it

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1 today, but I assume that you have the letters
2 that they wrote to you where they explain and
3 also we include some pictures of what is the
4 construction. And I want to respond in regard
5 to the --

6 CHAIRPERSON JORDAN: I think you
7 were not in on the ANC. Something you wanted
8 to say about the ANC.

9 MR. GRANADOS: Oh, the ANC, right.
10 We went over there. Mr. Bear told us that she
11 will oppose to the approve -- the construction.
12 She told us. We went over there. They had
13 meeting on June, because I was on vacation.
14 I just got back last night because of this case
15 and I'm sorry to be late. Parking was a little
16 difficult.

17 And they say that -- she says that
18 she is going to oppose to that, because we went
19 by and we present all the documents of the reason
20 why we are opposed to this construction.

21 The other issue here is in regard
22 to the -- that he say, there have been cold and

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1 the document that he prepared for me to sign,
2 I told him that we need to have a permit to do
3 it.

4 What happened is I had my family in
5 that door and at the beginning he said he have
6 a permit to build it two floors, but then we
7 figured out that he doesn't have any permit.
8 And this is kind of scary and he is responsible
9 on his part to be doing the construction next
10 door to our family without-- and even they will
11 tell us that he has the permit.

12 So I told him that I am not going
13 to get into any agreement until he have a real
14 permit and show me the permit that he has for
15 do what he was doing. And the other concern
16 I have, and I have some pictures, I don't know
17 if you have it that we sent it to Mr. Nero, is
18 that he encroach. He pass to my side with the
19 construction that he did.

20 And I asked him to move back,
21 because, I mean, it was not really his property.

22 The last time I talked to him like a couple

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1 months ago, I told him I don't have any problem
2 you do a really good construction brick or block
3 construction all the way up. It's dangerous.

4 As you can see, I can show you some pictures
5 how the plywood has been deteriorated.

6 And always when -- and I take
7 responsibility for me. When he has his crew
8 working in the building, I called just find out
9 if he has a permit. And he hasn't any permit.

10 He keep going and doing construction in there,
11 which is very scary. I decide I don't do
12 anything, I would be responsible for my whole
13 family and I tried to be as responsible as I
14 can. And I have to do what I have to do in order
15 to protect the safety of my family.

16 And that's why I am very concerned
17 and I think he overpass by not getting permit,
18 by telling me that he already had the permit,
19 that he went to the ZA. The parking space is
20 two and I told him we can do it. He showed me
21 what he has. But again, he doesn't have the
22 permit to do what he was doing.

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1 And that's one of the main reason
2 I oppose and the neighbors also oppose to that
3 case. If you don't have the letter of the
4 neighbor, I have it here. I have the lease of
5 the --

6 CHAIRPERSON JORDAN: We do have it.

7 MR. GRANADOS: -- persons that was
8 including in the notification. I wasn't
9 included in here. It's not a good faith way
10 to work when you are responsible.

11 CHAIRPERSON JORDAN: Okay. And so
12 I understand your opposition is that, one, it's
13 the construction is being done without the
14 permit.

15 MR. GRANADOS: That's right.

16 CHAIRPERSON JORDAN: Two, the
17 quality of the materials being used during the
18 construction?

19 MR. GRANADOS: Right, right.

20 CHAIRPERSON JORDAN: Okay.

21 MR. GRANADOS: And also, he have
22 encroached into my property with his -- the way

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1 how he build the property, he goes above into
2 my property when he build it.

3 CHAIRPERSON JORDAN: Okay.

4 MR. GRANADOS: That's why I request
5 him to move it back in order to, you know, do
6 it the right way. But then I figure out that
7 -- and I say how he can do that and he has a
8 permit? And then when I found out that he didn't
9 apply for a permit when he was doing it. So
10 I request that that thing has to go down whatever
11 it was originally or --

12 CHAIRPERSON JORDAN: Gotcha.
13 Understood.

14 MR. GRANADOS: -- correct the side,
15 the area that he move into my property.

16 CHAIRPERSON JORDAN: Are there any
17 questions for Mr. Granados?

18 Ms. Glazer? Ms. Glazer? Can I see
19 you a second, please?

20 MS. COHEN: Can I just ask you your
21 address one more time, please?

22 MR. GRANADOS: My address?

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1 MS. COHEN: Yes.

2 MR. GRANADOS: It's 3455 --

3 MS. COHEN: 3455.

4 MR. GRANADOS: -- Holmead Place and
5 next door to Mr. Smith.

6 MS. COHEN: Are you the owner of
7 your home?

8 MR. GRANADOS: Sorry?

9 MS. COHEN: Are you the owner or do
10 you --

11 MR. GRANADOS: Yes, I am the owner
12 of the home, yes.

13 MS. COHEN: Okay. Thanks.

14 MR. GRANADOS: Yes. With my wife
15 and four kids.

16 CHAIRPERSON JORDAN: Okay.

17 MR. GRANADOS: I have nine
18 years-old daughter and my house.

19 CHAIRPERSON JORDAN: All right.
20 Let's turn back to the applicant for rebuttal,
21 please, and wrap up.

22 MS. REED: Sure. Concerning the

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1 safety of the addition, it was actually
2 inspected per the direction of Mr. Matthew
3 LeGrant by Mr. Don Masoero, who was, at the time,
4 the Chief of Building Inspections for D.C.

5 The list that was cited involved the
6 handrails and asking Mr. Smith to address the
7 handrails, so that you are going down the steps,
8 you wouldn't fall being stuck on the handrails.

9 The property was deemed actually
10 safe. Mr. Nick Majett, Nicholas Majett, at the
11 time, was head of inspections. He is now the
12 current Director of DCRA. And at the time of
13 the inspection, it was shown that Mr. Smith's
14 addition or construction was safe per their
15 guidelines.

16 Also, I wanted to speak to the fact
17 that Mr. Smith is encroaching on his neighbor's
18 property by 1/2 inch. That was addressed, if
19 you recall, earlier in my presentation when I
20 mentioned the difference between a 2 x 4 and
21 a 2 x 6. And that was already the come -- already
22 came to grips with from the Office of the Zoning

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1 Administrator that that needed to come down,
2 because since stop work orders were put down
3 on the property, the construction is not
4 complete and the second floor, third floor and
5 the fourth floor has had some deterioration
6 along that wall as a result of that.

7 Also, for the portion about whether
8 his neighbor received notice, that -- the list
9 that you all have in front of you came from the
10 Office of Tax and Revenue for the 200 foot radius
11 that is required for us to get that from D.C.

12 So the letters are sent out at the time of
13 submission to BZA staff from the Office of Tax
14 and Revenue. Those addresses aren't arbitrary.

15 And also, those addresses were sent
16 to us from a Mr. Mamadou Ndaw, who is a current
17 DCRA zoning employee. He is still with the
18 Office of the Zoning Administrator. So if there
19 were addresses left off from there, I follow
20 protocol in getting the information just like
21 most people do for their cases.

22 So I cannot speak to that portion.

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1 For the -- involving the -- your
2 children and the agreement for the parking, I
3 wanted to note that a past chair for the BZA,
4 Mrs. Moldenhauer, was the person that drafted
5 the land lease for the parking, which was
6 initiated by you not by Cornelle. And that's
7 documented as well.

8 The reason why Mr. Smith drafted
9 that land lease was per your direction. You
10 stated that you wanted parking in your rear and
11 that you would be more prone to work with him
12 had he granted that to you. That's the way we
13 have it documented. So if that's not accurate,
14 your emails state the opposite of that.

15 So, in my opinion, that is a way--
16 if you ask me my professional opinion, I would
17 say that that's -- you know, I'll give you an
18 approval if you give me parking. I don't know
19 how that is -- you know, how that is going to
20 be taken into account. But again, my client,
21 at that point, paid \$7,500 to have that drafted,
22 again, trying to appease his neighbor. And then

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1 also closing up the windows to appease his
2 neighbor as well.

3 And I have no further on my rebuttal.

4 CHAIRPERSON JORDAN: Any
5 questions? Any questions for the applicant,
6 any one, please?

7 MS. COHEN: Yeah, I just have one
8 other question. You submitted something today,
9 a statement, a bank statement, I have no idea
10 why.

11 MS. REED: The reason for that
12 submission is Mr. Smith has filed bankruptcy
13 two years ago. And the bankruptcy although we
14 want to speak to why -- you know, a reason outside
15 of the illegal construction, the bankruptcy came
16 from the third unit being unrentable or
17 unsellable and that's actually the reason why
18 the addition happened. That third unit was 720
19 square feet.

20 The loan was a balloon loan. And
21 with Mr. Smith not being able to get revenue
22 during this time, during DCRA's mishap with the

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1 stop work order and Council Member Graham's
2 Office, Mr. Smith has gone into bankruptcy.
3 So I submitted that to show that not only is
4 he in bankruptcy, but the money that he has
5 borrowed from others, he is also about \$20,000
6 in arrears on that as well.

7 Well, actually, more than that,
8 because that statement is from June of this year,
9 so a little bit more than that in arrears. So
10 I mentioned that because out of the four cases
11 that I mentioned as precedent, the applicant
12 was able to show financial hardship, so I thought
13 that would be helpful for you all to see as well.

14 MEMBER HINKLE: Mr. Chair, if I may?

15 CHAIRPERSON JORDAN: Yes, yes.

16 MEMBER HINKLE: I just need some
17 clarification in terms of the plans themselves.

18 And I'm trying to understand this. How many
19 units are in the building?

20 MS. REED: Four.

21 MEMBER HINKLE: Four. So you have
22 -- and you have -- besides the fourth floor,

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1 how does that breakdown floor-by-floor?

2 MS. REED: It's actually there is
3 a basement unit. There is a unit on the first
4 floor, a unit on the second floor, the third
5 floor is a two story unit in efforts to make
6 that unit more modern. There was no modern
7 closet size, the bathroom was not accessible.

8 The first portion of the third unit
9 is handicap accessible now. It was not before.

10 Of course, since there is a two level situation,
11 the fourth story is not the handicap accessible
12 portion. But that fourth story, I wanted to
13 make clear is not seen from the front and is
14 below the 40 foot height. It's just an
15 additional story and can be seen maybe as a half
16 story.

17 MEMBER HINKLE: Sure.

18 MS. REED: But that purpose -- the
19 purpose for the fourth story was to make that
20 third unit liveable, sellable, rentable to help
21 Mr. Smith not fall under, which happened any
22 way.

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1 MEMBER HINKLE: So without the
2 fourth floor, that third floor unit would be,
3 approximately, the same size as the other units
4 below it. Is that correct?

5 MS. REED: The other units below
6 were always traditionally larger. They were
7 about 1,100 to 1,200 square feet. The third
8 unit was 720 prior to construction. The fourth
9 floor were -- who -- yes, it would actually still
10 be the smaller unit without the fourth story.

11 MEMBER HINKLE: Without the fourth
12 story?

13 MS. REED: That's correct.

14 MEMBER HINKLE: And looking at the
15 plans -- and I'm looking at, it's our Exhibit
16 A and it's page A-2.

17 MS. REED: Okay.

18 MEMBER HINKLE: Which is this. I'm
19 just trying to understand. There is no
20 staircase to the fourth floor, to the proposed
21 addition. How does that fit in?

22 MS. REED: The reason why those

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1 drawings were submitted is because those were
2 the drawings that was requested from the Office
3 of Zoning Administrator be submitted. There
4 was a lot of back and forth about what needed
5 to be shown on the drawings.

6 The Office of the Zoning
7 Administrator and the Permit Office, those were
8 the set that generated the zoning letter. Those
9 drawings were approved by Matthew LeGrant. We
10 have letters of correspondence about that as
11 well. Everything that I have stated today we
12 can show proof of our correspondence with the
13 OZA.

14 VICE CHAIRPERSON SORG: I think the
15 question was why is there no staircase shown
16 to the fourth floor?

17 MS. REED: That's what was --

18 VICE CHAIRPERSON SORG: Not what
19 was the process that led you to submit the plans
20 that you submitted.

21 MS. REED: Okay.

22 VICE CHAIRPERSON SORG: Those are

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1 two different questions.

2 MS. REED: Okay.

3 VICE CHAIRPERSON SORG: I don't
4 want to speak for you, Mr. Hinkle. I apologize.

5 MS. REED: Okay. The drawings --

6 VICE CHAIRPERSON SORG: The answer
7 could be I don't know.

8 MS. REED: I actually do know
9 though.

10 VICE CHAIRPERSON SORG: Okay.

11 MS. REED: Okay. So I'll respond
12 with that as the architect that prepared those
13 drawings. I omitted the third story and so we
14 submitted them that way because that's what was
15 submitted to DCRA and I didn't want -- I wanted
16 it to be 100 percent transparent. I didn't want
17 to be criticized for showing you something that
18 DCRA did not see.

19 MS. COHEN: Mr. Chairman?

20 CHAIRPERSON JORDAN: Yes, go ahead,
21 please.

22 MS. COHEN: I'm now confused with

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1 one of your answers. You said that the third
2 floor is handicap accessible. Yet, there is
3 no elevator in this building. So how do they
4 get to the --

5 MS. REED: Well, the handicap
6 accessibility has to do with the aisle width
7 and space in the kitchen. So I didn't say --
8 the building itself is not --

9 MS. COHEN: Oh.

10 MS. REED: -- but each story is seen
11 by ADA standards now with the addition as being
12 large enough for a clearance space. If there
13 needed to be turns or anything in the kitchen
14 or the bathroom units.

15 MS. COHEN: But how would the person
16 reach that floor? That's my question.

17 MS. REED: I understand.

18 MS. COHEN: Yes, okay.

19 MS. REED: I misspoke then.

20 MEMBER HINKLE: So let me ask you
21 just for clarification. If I'm looking at this
22 drawing, how many square feet is this?

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1 MS. REED: Is that the third story?

2 MEMBER HINKLE: This is the third
3 story.

4 MS. REED: Currently, it is --

5 MEMBER HINKLE: With the addition
6 on the third floor.

7 MS. REED: Oh, with the addition,
8 1,520 square feet.

9 MEMBER HINKLE: Okay. And then
10 there is an extra 700 square feet on the fourth
11 floor?

12 MS. REED: Oh, you are asking with
13 the addition? There is a third and fourth story
14 addition, sir.

15 MR. SMITH: Correct. It's roughly
16 about 1,100 square feet and then the other --
17 there is another 400 square feet on the fourth
18 floor.

19 MEMBER HINKLE: Thank you.

20 MR. SMITH: Yes.

21 MEMBER HINKLE: And how do you get
22 to that fourth floor?

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1 MR. SMITH: There are steps that
2 lead from the third to the fourth floor, whether
3 or not they are reflected in the drawings, I'm
4 not sure.

5 MEMBER HINKLE: Okay. They are not
6 reflected in the drawings. I'm just curious.

7 CHAIRPERSON JORDAN: No, no, no.

8 MS. REED: Just also to add that
9 portion, the fourth floor stair has been -- from
10 the third floor to the fourth floor has been
11 blocked off for use per the infraction, the civil
12 case against Mr. Smith, so --

13 MEMBER HINKLE: So currently, the
14 third floor is rented without the fourth floor?

15 MR. SMITH: No. Currently only the
16 portion that was there originally, the front
17 part of the third floor is being rented and the
18 -- I was -- I had to put a partition for the
19 third and the fourth floor addition, so it
20 couldn't be used until the BZA case.

21 MEMBER HINKLE: Okay. Thank you.

22 MS. REED: That's the reason why the

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1 stairs aren't show, because what was actually
2 permitted to be used from Office of Zoning is
3 not the portion that includes the stair.

4 MEMBER HINKLE: Okay. I
5 appreciate the clarification.

6 MS. REED: No problem.

7 CHAIRPERSON JORDAN: Okay. Are
8 there any other questions for the applicant?
9 Okay. Then we will close this hearing. Is the
10 Board ready to deliberate?

11 MS. COHEN: Yes.

12 CHAIRPERSON JORDAN: Yes, the Board
13 is ready to deliberate.

14 MS. REED: I wanted to -- if I may
15 add, sir?

16 CHAIRPERSON JORDAN: We just closed
17 it.

18 MS. REED: Oh, I'm sorry.

19 CHAIRPERSON JORDAN: We're moving
20 into deliberation.

21 MS. REED: Okay.

22 CHAIRPERSON JORDAN: Well, this is

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1 a really interesting situation. It goes to show
2 why people have to do all their due diligence
3 before they start a project in the District of
4 Columbia.

5 I am very much not moved by the after
6 effect issues of DCRA. I think DCRA needs to
7 be more diligent about what they do with their
8 responsiveness, but that didn't come until after
9 the fact. And those things don't go toward
10 meeting the test.

11 I don't see anything to grant any,
12 this is my opinion, relief for four -- ' 400.1,
13 to allow an additional fourth story, 401, the
14 lot width or lot occupancy. There has been
15 nothing presented to us showing any uniqueness
16 or exceptional circumstances as required by the
17 regulations.

18 Certainly, we didn't get to the
19 point of showing practical difficulties and that
20 there has also been some evidence and some
21 discussion that this -- allowing any fourth
22 floor would affect the Zoning Regulations as

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1 well as have a detriment of the public good.

2 And we kept trying to get you to get
3 us to what would provide the unique or
4 exceptional circumstances that would allow for
5 a fourth floor, independent of the DCRA argument
6 that you are making, which is all after the fact,
7 after you have been caught doing something you
8 weren't supposed to do.

9 The cases that you cited are cases
10 where we had estoppel issues where the DCRA had
11 already given the applicant maybe the permit
12 or the go-ahead to go forward or a great reliance
13 that they could go forward before they began
14 doing construction. That's when you can rely
15 on the estoppel kind of argument, to me.

16 I think though as we move to the
17 relief for, I think you need, ' 406.1 regarding
18 the third floor, the court area that rises up
19 for the third floor, I think that we have by
20 virtue of the fact that it is a matter-of-right
21 for the third floor, that the court area is
22 necessary.

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1 And as Office of Planning has
2 offered and we give great weight to the Office
3 of Planning's recommendations, that the court
4 rising into the third floor is necessary in order
5 to protect the integrity of the building and
6 also to provide for the light and air of
7 neighbors.

8 So that's just my thought on this.
9 Anyone else? Ms. Sorg?

10 VICE CHAIRPERSON SORG: Thank you,
11 Mr. Chairman. I agree with you and I don't see
12 any reason to consider the story relief. I also
13 do agree on the other hand with you and with
14 the Office of Planning, the existing court is
15 nonconforming and would be unable to be brought
16 into compliance without risking the integrity
17 as Ms. Brown-Roberts indicated of the original
18 building leading to a practical difficulty that
19 related to the property, which we can see in
20 creating or building what would otherwise be
21 an allowable third floor.

22 So I can support the court relief,

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1 but I cannot support the story relief for the
2 fourth floor addition.

3 And I would just add something that
4 I feel -- to my deliberations, that I feel really
5 troubled by and that is that I would hope that
6 anyone representing themselves as a
7 professional land use consultant in the District
8 of Columbia would be familiar with what is and
9 what isn't relevant in BZA cases, what are the
10 tenets of the variance tests and be able to serve
11 their clients accurately in these proceedings.

12 And, unfortunately, I feel like that
13 this has not happened today. It's a difficult
14 case. And the homeowner may have made efforts,
15 but I don't feel like there has been any favors
16 done to the applicant today. Thank you.

17 CHAIRPERSON JORDAN: Thank you.
18 Anyone else?

19 MS. COHEN: No. I just want to say
20 that I concur with my colleagues.

21 CHAIRPERSON JORDAN: Thank you.

22 MEMBER HINKLE: Mr. Chair, I'm in

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1 concurrence as well. I haven't heard anything
2 that supports the relief for a fourth story.
3 Certainly the court, I understand, and I think
4 OP has made a case for that, but in terms of
5 allowing a fourth story, I just haven't heard
6 any evidence that there needs to be relief.

7 CHAIRPERSON JORDAN: With that
8 then, I would move that the Board grant the
9 relief from ' 406.1, allowing for the extension
10 of the open court and the nonconforming use,
11 and deny the other request for relief for this
12 applicant requiring lot width, lot occupancy
13 and ' 400.1 to allow for a fourth story.

14 VICE CHAIRPERSON SORG: Second.

15 CHAIRPERSON JORDAN: The motion is
16 made and seconded. Any other discussion?

17 All those in favor of the motion
18 signify by saying aye.

19 ALL: Aye.

20 CHAIRPERSON JORDAN: Those opposed
21 nay? The motion carries. Mr. Moy, please.

22 MR. MOY: Yes, Mr. Chairman. Staff

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1 would record the vote as 4-0-1. This is the
2 Board's motion to approve in part and deny in
3 part on the motion of Chairperson Jordan to
4 approve ' 406.1 and to deny the other forms of
5 relief, which is 400.1 and 401 and ' 403.
6 Seconding the motion is Vice Chairperson Sorg.

7 Also in support of the motion Ms. Cohen and
8 Mr. Hinkle. No other Board Members present.

9 So again, the final vote is 4-0-1.
10 The motion carries.

11 CHAIRPERSON JORDAN: Thank you, Mr.
12 Moy. Thank you. That ends this particular
13 matter. Thank you all for coming down.

14 MR. SMITH: Thank you.

15 CHAIRPERSON JORDAN: Yes, let's do
16 this. Regarding this 18376, I'm going to
17 collect back that exhibit of the bank records
18 and give them back to the applicant. A couple
19 of reasons. One, I'm not accepting them into
20 the record. I don't think it's necessary, but
21 more importantly, they have account numbers and
22 other things on it that has not been redacted

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1 and I don't want those things floating around.

2 We have one more for you. Mr. Moy,
3 if you will call our next case, please?

4 MR. MOY: Yes, sir. That would be,
5 oh, yes, right, this should be the last -- oh,
6 oh, that's right. Let me get my thoughts
7 together here.

8 Yes, all right. Taking a step
9 backwards here. That would be Application No.
10 18381. No?

11 CHAIRPERSON JORDAN: Let's do this,
12 because we have another case that has been
13 pending. First, let me do this. Let's call
14 that case not to hear it, at least decide how
15 the Board or what we want to do with it, but
16 it's going to be called after 133 -- we're going
17 to hear it after -- if we hear it, after 18368.

18 MR. MOY: Okay. Okay.

19 CHAIRPERSON JORDAN: So would the
20 parties for 18381 come to the table quickly,
21 please? For 381, 381. Are you -- I'm looking
22 on the wrong case? I'm sorry.

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1 MS. COHEN: You're not.

2 MR. MOY: Which one do you want,
3 John Ritch?

4 CHAIRPERSON JORDAN: The first
5 case. The very first case on today's docket.

6 MR. MOY: Yes. Right, that's the
7 one I was going to call. That was 18381 of Lawal
8 Abdulganiyu, yes.

9 CHAIRPERSON JORDAN: Is this your
10 case? Come to the table, please.

11 MR. MOY: Shall I administer the
12 oath to these two gentlemen --

13 CHAIRPERSON JORDAN: Yes.

14 MR. MOY: -- Mr. Chair?

15 CHAIRPERSON JORDAN: Would you
16 raise your right hand and take the oath or
17 affirmation, please?

18 (Whereupon, the witnesses were
19 sworn.)

20 MR. MOY: You may consider yourself
21 under oath.

22 CHAIRPERSON JORDAN: Now, this case

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1 was called earlier. Take a seat, please. This
2 Board begins at 9:30, that's the time this matter
3 has been scheduled and you received notice that
4 this matter was here for 9:30. We called this
5 case several times.

6 In fact, we had Ms. Pyndell, I think,
7 who is one of your neighbors waiting here and
8 others are ready to execute on this case. You
9 are the applicant. It is your requirement, you
10 are required to prosecute this case. You were
11 not here.

12 We also took another step into
13 making/having the staff call to find out where
14 you were and we got a report that you didn't
15 know if you were coming.

16 And so we, the Board, have already
17 executed on this matter. It was going to be
18 dismissed, but we corrected ourselves and issued
19 a Show Cause Notice that will go out indicating
20 why you -- why this matter should not be
21 dismissed.

22 So for all practical purposes today,

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1 this matter is gone and very well was going to
2 be gone, gone as being dismissed from this.
3 You are here now. Is there any requests you
4 want to make of this Board, understanding the
5 actions that we have taken already today?

6 Please, scoot up and talk into the
7 mike. And I'm going to ask you, I don't know
8 if you have done it, that at some point that
9 you fill out the witness cards and give that
10 to the court reporter.

11 Could you tell us your name, please?

12 MR. MOBLEY: Yes, my name is
13 Clarence Mobley.

14 MR. MOY: Sir, you need -- I'm
15 sorry. You need to push the button, the green
16 button.

17 MR. MOBLEY: Mr. Chairman, my name
18 is Clarence Mobley. I'm an architect for this
19 particular client. I want to express my regret
20 for not being on time this morning. And it was
21 due to my fault, not my client's fault. It was
22 my fault.

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1 I'm an architect in the District of
2 Columbia.

3 CHAIRPERSON JORDAN: Meaning you
4 are licensed in the District of Columbia?

5 MR. MOBLEY: And I'm licensed in the
6 District of Columbia, Maryland and Virginia.

7 CHAIRPERSON JORDAN: Very good.

8 MR. MOBLEY: I'm also a
9 Commissioner for the DC Housing Authority. I
10 believe in doing things properly and nicely.
11 I didn't want to come to this hearing unprepared.

12 My client came to me at the last moment and
13 we had the drawings, but I wanted to put them
14 on illustration board. I wanted to make a nice
15 presentation for you, because I wanted you to
16 see exactly what was going on.

17 And I went to the store and they
18 didn't open up until 9:00 this morning. I
19 rushed down to the store to get some illustration
20 board to come back. I had to go back and pick
21 up my client and come back and I've been ripping
22 and running all this morning trying to make it

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1 down here on time.

2 And I just came up short having
3 problems with parking and I'm asking for the
4 mercy of this body to grant me a chance to defend
5 my client here. And I'm at your mercy right
6 now.

7 CHAIRPERSON JORDAN: And so you'll
8 be prepared to proceed today?

9 MR. MOBLEY: Yes, sir.

10 CHAIRPERSON JORDAN: Okay. Is
11 that the wish of the Board or the desire of the
12 Board in this? We will take this after the other
13 matter. Ms. Cohen?

14 MS. COHEN: Mr. Chair, my only
15 concern is that I'm afraid I can't remember your
16 name, but she has been here, you know. I would
17 like to ask her is it more convenient for you
18 to stay or come back, if we decide?

19 MS. PYNDELL: You don't know how
20 long the other will be?

21 MS. COHEN: You have to come to the
22 mike. I'm sorry.

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1 MS. PYNDELL: Forgive me. I just
2 wanted to say my name is Benita Pyndell.

3 CHAIRPERSON JORDAN: Pyndell.

4 MS. PYNDELL: And --

5 CHAIRPERSON JORDAN: Did I start
6 something here?

7 MS. PYNDELL: Pyndell, that's all
8 right. We all have our problems. We all have
9 had plenty and ample time to prepare for this
10 day, 9:30. However, if it's the Board's desire
11 for me to say, I will, rather than come back
12 at another time, I will stay. But we all had
13 ample time to prepare to know what date it was.

14 I had to give up and sacrifice certain things
15 to be here on time, that's all I have to say.

16 But it's up to the Board and I will-- rather
17 than come back another time, I will stay.

18 CHAIRPERSON JORDAN: Thank you.
19 Thank you very much.

20 MS. PYNDELL: You're welcome.

21 CHAIRPERSON JORDAN: We appreciate
22 your patience. But I would move that we retract

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1 our Notice to Show Cause and that we hear this
2 matter today. Is there a second?

3 MEMBER HINKLE: Mr. Chair, I would
4 just like to state that --

5 CHAIRPERSON JORDAN: Mr. Hinkle,
6 just give me one second.

7 MEMBER HINKLE: Okay.

8 CHAIRPERSON JORDAN: Is there a
9 second? No? It's going to lose for a second?
10 Okay. So the Board -- there is no motion in
11 front of us. Mr. Hinkle, go ahead.

12 MEMBER HINKLE: Never mind.

13 CHAIRPERSON JORDAN: All right.
14 So there is no motion.

15 MS. COHEN: I'll go with the second.

16 CHAIRPERSON JORDAN: Okay. All
17 right. I revise my motion. The motion made
18 and seconded that we do have this hearing today.

19 As you see, it is costing us a great deal to
20 do this.

21 All those in favor signify -- I'm
22 sorry, you have --

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1 MEMBER HINKLE: Yes, I would just
2 like to state that I think we are setting a
3 precedent if, you know, we start to make
4 significant adaptations for applicants. So I
5 just want to note that.

6 I mean, we do have another
7 application to look at this morning, who has
8 been sitting here since 9:30.

9 CHAIRPERSON JORDAN: And we will.
10 Yes, and that's why we are going to do that
11 first. We are going to do them first.

12 All those in favor of the motion
13 signify by saying aye.

14 MS. COHEN: Aye.

15 CHAIRPERSON JORDAN: Aye.

16 VICE CHAIRPERSON SORG: Aye.

17 MEMBER HINKLE: Nay.

18 CHAIRPERSON JORDAN: Those opposed
19 nay? The motion carries. We will --

20 MR. MOY: Mr. Moy, do you want to
21 poll the Board if you think it's necessary?
22 The motion -- the vote is 3-1. And I think --

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1 MR. MOY: Yes, he said nay.

2 CHAIRPERSON JORDAN: I understand,
3 yes. He has been the nayer across the board.
4 But rightly so. So if you would step back from
5 the microphone, we're going to call this case,
6 but we are going to hear the case that was already
7 pending. I think it is 18368. Is that correct?

8 MR. MOY: Yes, 18368 of John Ritch.

9 CHAIRPERSON JORDAN: So we will
10 hear this -- your case after this case.

11 MR. MOY: Let me call the complete
12 case, Mr. Chairman, if I may, as advertised.

13 And this is Application No. 18368,
14 Application of John B. Ritch, as amended,
15 pursuant to 11 DCMR 3103.2, for a variance from
16 the building height requirements under ' 400,
17 a variance from the lot occupancy requirements
18 under ' 403, a variance from the side yard
19 requirements under ' 405, and a variance from
20 the nonconforming structure provisions under
21 subsection 2001.3, this is for an addition to
22 an existing one-family dwelling in the R-1-B

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1 District at premises 1830 24th Street, N.W.,
2 property located in Square 2506, Lot 44.

3 CHAIRPERSON JORDAN: Okay. I'll
4 delay. Okay. Would you, please, introduce
5 yourself for the record, please?

6 MR. MANGAN: My name is --

7 CHAIRPERSON JORDAN: Excuse me, you
8 need to turn your -- push the button.

9 MR. MANGAN: Can you hear me now?

10 CHAIRPERSON JORDAN: Yes. Go
11 ahead.

12 MR. MANGAN: My name is John Mangan.
13 I'm the architect for the owner, John Ritch.

14 CHAIRPERSON JORDAN: Do we have a
15 letter of authorization for you in the file
16 to --

17 MR. MANGAN: Yes, we -- from the
18 previous -- from the continuance back on June
19 7th -- June 19th, I believe it was in the record
20 there, Mr. Moy.

21 MR. MOY: I'm sorry?

22 MR. MANGAN: Your letter of

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1 authorization for me.

2 MR. MOY: Okay. Let me check.

3 MR. MANGAN: I may have a copy of
4 that, Mr. Chairman. Mr. Chairman, if I may,
5 I've been in contact since our previous hearing
6 on June 19th with Mr. Arthur Jackson from the
7 Office of Planning. We have been working
8 together to try and address what I'm going to
9 be revising here.

10 I have two additional exhibits and
11 with your permission, I would like to distribute
12 copies of those to the Board.

13 CHAIRPERSON JORDAN: Just a second,
14 please. I do see the authorization. All
15 right. Let me be clear, this matter was called,
16 it was on our docket previously, I believe, on
17 June 19th. At that time, you were requesting
18 variance relief.

19 We had a hearing, began a hearing
20 and it was discussed that you had some issues,
21 we had issues with getting to the variance relief
22 and, that with some suggestion by the Board and

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1 Office of Planning, believed that some of these
2 things might have been allowed as a special
3 exception.

4 You subsequently -- we pulled it,
5 continued this matter over. You have had
6 conversations with Office of Planning and you
7 are now back here, although these documents
8 weren't real clear, you are now looking for a
9 special exception relief as opposed to variance
10 relief. Would that be correct?

11 MR. MANGAN: Correct.

12 CHAIRPERSON JORDAN: You've got to
13 make sure that button is pushed.

14 MR. MANGAN: That's correct, Mr.
15 Chairman.

16 CHAIRPERSON JORDAN: And you're
17 looking for a special exception relief from
18 which provision, so we can be clear.

19 MR. MANGAN: Provision under 223.
20 We previously were asking for a variance,
21 because we had lot occupancy that was still in
22 excess of 50 percent. We have revised the

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1 design to take the lot occupancy under 50
2 percent, which we think entitles us to a special
3 exception, so that's what we are asking for,
4 Mr. Chairman.

5 CHAIRPERSON JORDAN: Go ahead.

6 VICE CHAIRPERSON SORG: Thank you,
7 Mr. Chairman. So it's just lot occupancy now?

8 MR. MANGAN: No, it's still the
9 setback.

10 VICE CHAIRPERSON SORG: Side yard?

11 MR. MANGAN: I'm sorry, side yard
12 setback, yes.

13 VICE CHAIRPERSON SORG: Okay.

14 CHAIRPERSON JORDAN: Side yard
15 setback and?

16 VICE CHAIRPERSON SORG: So it's the
17 same relief, smaller degree?

18 MR. MANGAN: Yes, ma'am.

19 VICE CHAIRPERSON SORG: Same two
20 areas rather.

21 CHAIRPERSON JORDAN: Okay.

22 MR. MANGAN: Yes. I believe we are

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1 now meeting the threshold for special exception.

2 VICE CHAIRPERSON SORG: Gotcha.

3 CHAIRPERSON JORDAN: All right. I
4 want to be clear, so what section are we seeking
5 relief from?

6 MR. MANGAN: 223, I believe. No,
7 that's for -- for 400?

8 CHAIRPERSON JORDAN: For 403?
9 Okay.

10 MR. MANGAN: Thank you.

11 CHAIRPERSON JORDAN: That's what I
12 have.

13 MR. MANGAN: Thank you very much.

14 CHAIRPERSON JORDAN: 403. Okay.
15 And that 400? 400 is not in this? Okay. Cool.
16 Got it. All right.

17 VICE CHAIRPERSON SORG: 401.

18 CHAIRPERSON JORDAN: Mr. Jackson?

19 MR. JACKSON: Yes, the -- Arthur
20 Jackson, D.C. Office of Planning. As is the
21 norm, we request it's a nonconforming lot, so
22 we requested relief because it didn't have the

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1 minimum width. It has area, but not width, so
2 that's 401.1.

3 CHAIRPERSON JORDAN: So 401.1.
4 Okay. So good, okay. Whew. Are we all on the
5 same page?

6 MS. COHEN: Now we are.

7 CHAIRPERSON JORDAN: Okay.

8 MR. MANGAN: Thank you, Mr. Jackson
9 and the Board for clarification.

10 MR. JACKSON: Yes.

11 CHAIRPERSON JORDAN: All right.
12 And we went through this pretty in depth the
13 last time and we shook our heads at the variance
14 and we all, even this Board, at that time, said
15 that we thought special exception would lie for
16 this. And you had the relief for special
17 exception and we didn't understand why you were
18 looking for a variance.

19 And those things have been worked
20 out with OP.

21 Is there any issues the Board has
22 with this, since we have seen this before, and

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1 OP, certainly I think it might have been OP's,
2 suggestion that we get to this point where we
3 are?

4 MS. COHEN: Mr. Chairman, I was not
5 sitting in originally, so I had to read the
6 entire record.

7 CHAIRPERSON JORDAN: Oh, I'm sorry.
8 Okay.

9 MS. COHEN: I noticed in Tab F of
10 the submission of July 10th, there is scaffolding
11 on the building. Why is that? Oh, it's the
12 neighborhood. Thank you.

13 MR. MANGAN: Yes, that's -- yes,
14 they are kind of showing that this house would
15 kind of look like the neighbor's house at the
16 end of the day, kind of, that's why it's there.

17 MS. COHEN: Oh, okay.

18 CHAIRPERSON JORDAN: No, that was
19 the last case. Boy that was an interesting
20 case.

21 VICE CHAIRPERSON SORG: Mr.
22 Chairman, I would just chime in and say I have

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1 no issues. Oh, we're not deliberating yet.
2 Oh, no questions then.

3 CHAIRPERSON JORDAN: Mr. Hinkle,
4 anything?

5 MEMBER HINKLE: So there was a
6 redesign in terms of meeting the lot occupancy,
7 so that was the garage. Is that correct? If
8 I'm --

9 MR. MANGAN: That's correct, Mr.
10 Hinkle, yes.

11 MEMBER HINKLE: So you have
12 redesigned the garage to reduce the lot
13 occupancy to meet the special exception standard
14 and then we're --

15 MR. MANGAN: That is correct, Mr.
16 Hinkle.

17 MEMBER HINKLE: Okay. Thank you.

18 MR. MANGAN: Yes.

19 MS. COHEN: Do we have copies? I'm
20 sorry, do we have copies that you can --

21 MR. MANGAN: I was -- I did not have
22 them to Mr. Moy a week ago. I do have these

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1 two exhibits, which I can give you right now
2 if that's --

3 MS. COHEN: I think that would be
4 helpful.

5 MR. MANGAN: Great. Okay.

6 MS. COHEN: Thank you.

7 CHAIRPERSON JORDAN: All right. I
8 believe that the Board is pretty much -- the
9 Board is aware of this case and has reviewed
10 the record in this case. And I'm certainly
11 going to give deference to Commissioner Cohen,
12 so if there is any questions she needs, so we
13 don't have to have a full presentation, because
14 we actually had a presentation on this before.
15 And seeing that the relief is lessened, let
16 me just deviate a bit on the agenda.

17 And while we just continue to make
18 sure we are okay, then I'm going to ask Office
19 of Planning if they would just comment about
20 this, if that's okay with the Board?

21 MR. JACKSON: Thank you, Mr.
22 Chairman. The applicant's architect discussed

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1 the matter. He indicated that the applicant
2 still desired to make the proposed additions,
3 which are fairly modest, but again would exceed
4 what is allowed under right, as a
5 matter-of-right.

6 So the applicant also indicated they
7 weren't that concerned about the garage. So my
8 suggestion was to reduce the lot occupancy that
9 was created by the garage. The applicant came
10 up -- the architect came up with this proposal
11 to reduce most of the roof to be an arbor with
12 a 2 foot distance between the slats.

13 Technically, under the zoning, that
14 does not constitute -- it's not in -- from the
15 surface that counts to a lot occupancy, so the
16 -- in essence, the rear that is remaining is
17 going to be a storage structure. There will
18 be the arbor and then there will be -- they will
19 continue to have the continuous wall along the
20 rear alley.

21 There is a new enclosure shown there
22 that will be for storage of trash cans, I

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1 believe, and trash.

2 And the other issues with regard to
3 the additional encroachment to the side yard
4 and the moderate -- the enclosure of the first
5 -- of the ground floor for a play area, according
6 to the applicant's calculations, came up to less
7 than 50 percent of lot occupancy.

8 And for -- to be on the safe side,
9 I also suggested to the applicant that the
10 architect go down and talk to the Zoning
11 Administrator's representative on the -- at DCRA
12 to make sure that that was -- this met with their
13 standards. And they came to the same
14 conclusion.

15 So my suggestion would be that this
16 full set of plans really, as a package, would
17 enable the applicant to meet the standards for
18 this -- for approval. So we support the revised
19 plans as submitted.

20 CHAIRPERSON JORDAN: Thank you.
21 Any questions for the Office of Planning, any
22 one? No? Okay.

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1 The ANC has previously given its
2 blessing and we have a letter from the previous
3 case. They even went and approved their support
4 of even their variance if it was necessary for
5 that. Certainly we will give great weight based
6 upon the letter that is already in the file.

7 The Department of Transportation
8 had issued, in Exhibit 26, no objection.

9 Are there any persons in support in
10 the audience? Any persons in opposition?

11 Is there anything that you think we
12 need to hear from the applicant before we-- yes,
13 Ms. Cohen?

14 MS. COHEN: Yes, just one further
15 thing. The Office of Planning stated that the
16 neighboring property owners expressed support
17 in conversation. Is that the extent of the
18 documentation that we have or do they -- did
19 you actually get letters, by any chance?

20 MR. MANGAN: We didn't get letters
21 of support from the neighbors, but we have been
22 working quite closely and have an email chain

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1 of the Hanlins or the adjacent property with
2 the scaffolding, because we are trying to do
3 our work in tandem.

4 MS. COHEN: Okay.

5 MR. MANGAN: So that's part of the
6 reason for Exhibit G-2 --

7 MS. COHEN: Right.

8 MR. MANGAN: -- was to show how we
9 have been working with them to try and make the
10 original Wardman duplex building kind of grow
11 in harmony.

12 MS. COHEN: Okay. Thank you.

13 CHAIRPERSON JORDAN: Okay. Seeing
14 none, we will close this hearing. And is the
15 Board ready for deliberation? Anyone want to
16 -- I would believe that the requirements for
17 special exception and the relief requested from
18 ' 401, 403, 405 are met and that we would grant
19 this particular relief for the special
20 exception.

21 Anyone else? Yes, Ms. Cohen?

22 MS. COHEN: I'll second it.

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1 CHAIRPERSON JORDAN: I didn't move
2 it, but I'll move it now.

3 MS. COHEN: Oh, I'm sorry.

4 CHAIRPERSON JORDAN: No, no, that's
5 good. That's okay. I'll take that as a motion
6 and then I'll second it and then under readiness,
7 we can have a discussion as an unreadiness.
8 Ms. Sorg? Oh, just say what you want to say.

9 VICE CHAIRPERSON SORG: I have no
10 unreadiness.

11 CHAIRPERSON JORDAN: Any comments?

12 VICE CHAIRPERSON SORG: No, I agree
13 with your assessment and I can be supportive
14 of the relief.

15 CHAIRPERSON JORDAN: Great.

16 MEMBER HINKLE: Yes, Mr. Chairman,
17 I just want to express appreciation to the
18 applicant to actually take the time to go back
19 and reconsider the plans and come back with
20 something that is easy to --

21 CHAIRPERSON JORDAN: Yes, thank
22 you, we really do appreciate it.

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1 MEMBER HINKLE: -- apply in terms
2 of relief.

3 CHAIRPERSON JORDAN: All those
4 ingrained in the relief, signify by saying aye.

5 ALL: Aye.

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

8 MR. MOY: Staff would record the
9 vote as 4-0-1. This is on the motion of, was
10 it, Ms. Cohen?

11 MS. COHEN: Sure.

12 MR. MOY: Okay. And seconding the
13 motion, Mr. Chairman Jordan. Also in support
14 of the motion Ms. Vice Chair Sorg, Mr. Hinkle.

15 No other Members present. And this was to
16 approve the request for a special exception
17 under ' 223, not meeting ' 403, 405 and 401.

18 So again, the final vote 4-0-1,
19 motion carries, Mr. Chairman.

20 CHAIRPERSON JORDAN: Thank you.
21 And this is ripe for a summary judgment.

22 MR. MOY: Thank you very much.

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1 CHAIRPERSON JORDAN: Thank you.

2 MR. MOY: So, Mr. Chairman, this
3 takes us back to, again --

4 CHAIRPERSON JORDAN: Thanks,
5 Officer Jackson, appreciate it. That's going
6 to be with you, you know that?

7 MR. MOY: For life.

8 CHAIRPERSON JORDAN: Thanks a lot.

9 MR. MOY: All right. This takes
10 the Board, again, back to Application No. 18381,
11 Mr. Chairman.

12 CHAIRPERSON JORDAN: Would the
13 persons for that case, please, come to the
14 witness table? Yes, Ms. Pyndell and Mr. Mobley?
15 Mobley and Mr. Abdulganiyu. Well, the
16 applicant.

17 Mr. Mobley, will you be sure that
18 you and your client have prepared the witness
19 cards and given them to the court reporter?

20 MR. MOBLEY: I'll see to it that it
21 is done right away.

22 CHAIRPERSON JORDAN: All right.

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1 Thank you. Ms. Pyndell, you have made a -- we
2 understand your opposition and you certainly
3 have the right to voice your opposition as any
4 citizen can. But you have also made a request
5 of party status. And I don't know if you are
6 clear about what it means to be a party -- for
7 party status.

8 Party status means that you do a
9 complete -- that you have a right to -- as a
10 party, you would be a party. You would then
11 have to -- you can do a presentation and be
12 subject to cross-examination. Cross examine
13 witnesses, put on a presentation. It opens the
14 door for what you can do.

15 But being in just simple opposition,
16 you have up to three minutes you can talk about
17 why you are in opposition and all that stuff
18 without going through all the hoopla.

19 MS. PYNDELL: I'm not even prepared
20 for the hoopla.

21 CHAIRPERSON JORDAN: Gotcha. So
22 you will withdraw the request for party status

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1 and you will sit as a party -- a person in
2 opposition?

3 MS. PYNDELL: Yes.

4 CHAIRPERSON JORDAN: Gotcha.

5 MS. PYNDELL: Yes. Thank you.,

6 CHAIRPERSON JORDAN: Put that for
7 the record, please.

8 MR. MOY: Yes.

9 CHAIRPERSON JORDAN: And we do
10 appreciate your waiting here and putting up with
11 processes. That is a little bit beyond our
12 control.

13 MS. PYNDELL: Okay.

14 CHAIRPERSON JORDAN: But things
15 happen.

16 Mr. Mobley, let's begin, please.

17 MR. MOBLEY: Yes, we are ready,
18 exactly.

19 CHAIRPERSON JORDAN: I want to be
20 sure we are clear on the relief that is requested
21 here. What relief are you requesting?

22 MR. MOBLEY: Let me first say to the

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1 Chair that this is a client that came to me about
2 three days ago and he made his case known to
3 me. And my office has been in the process for
4 the last 72 hours producing this document to
5 get him a variance, so that he can build a
6 residence on a vacant lot and he has been before
7 the Zoning Commission, zoning, someone in zoning
8 before and they told him that if he could come
9 back 3 feet off his lot on either side of the
10 property, since the property is only 25 feet
11 wide, and it's a vacant lot, if he could come
12 back 3 feet on either side, they would grant
13 him a variance so he could put a building or
14 a residence on the lot, which is only 25 feet
15 wide.

16 The lot is a single-family detached
17 house in a neighborhood in the Lily Ponds area
18 off of Kenilworth Avenue and the East Gardens
19 area, if you are familiar with that
20 neighborhood.

21 And the lot is vacant right now.
22 And he would like to put a house on that lot.

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1 It's 25 feet wide and about 100 -- no, about
2 225 feet long, the lot is. And so my knowing
3 about it three days ago and trying to get him
4 ready for this hearing, he had a limited amount
5 of time to get ready.

6 And so we worked almost continuously
7 to try to get this to him today for this hearing.

8 I'm hoping that we have met the requirements,
9 so that he can have a designer to come and design
10 the house, have a builder to build it on this
11 lot.

12 CHAIRPERSON JORDAN: Okay. It's
13 my understanding that what we have here is that
14 we have relief requested from an area variance
15 in ' 405.9 dealing with the side yard width,
16 area variance from ' 401.3 for the lot width
17 and a use variance request under ' 201.

18 Would that be correct?

19 MR. COCHRAN: That was the case.
20 What is being described now does not sound like
21 it is exactly the same relief, Mr. Chair.

22 CHAIRPERSON JORDAN: Okay. Okay.

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1 Let me go back to my question, initial question.

2 And, Mr. Mobley, I don't think we have a letter
3 of your authorization of representation in the
4 file either, so we need to have the applicant
5 grant to you authorization and we will take that
6 verbally.

7 Are you the owner?

8 MR. EGBAIYELO: No.

9 CHAIRPERSON JORDAN: You're not?

10 MR. EGBAIYELO: No. I'm the
11 designer. I'm the designer to do this work
12 within here.

13 CHAIRPERSON JORDAN: You are what
14 now?

15 MR. EGBAIYELO: I'm a professional
16 building designer.

17 CHAIRPERSON JORDAN: Okay.

18 MR. EGBAIYELO: I work with him,
19 yes.

20 CHAIRPERSON JORDAN: Okay.

21 MR. EGBAIYELO: We do not send also

22 --

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1 CHAIRPERSON JORDAN: We don't have
2 authorization from -- and your name again? I'm
3 sorry.

4 MR. EGBAIYELO: My name is Raphael
5 Alison Egbaiyelo. I'm a professional building
6 designer.

7 CHAIRPERSON JORDAN: Gotcha.

8 MR. EGBAIYELO: And I work with him,
9 yes, yes.

10 CHAIRPERSON JORDAN: We have
11 another issue here. We've got a huge issue.
12 We don't have authorization from the applicant,
13 the owner of the property, that you can represent
14 them. We have to have that before we can proceed
15 and have you represent them.

16 And I know you just got this dumped
17 in your lap, but see that's why it's really --
18 I understand your position. These folks came
19 to you at the last minute, but that's why it's
20 important that people follow the rules and the
21 law and what have you.

22 And it requires your time here and

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1 other people's time. We have Ms. Pyndell who
2 has been here all day. But we can't -- we don't
3 have you representing anyone and it has to come
4 from the owner for authorization purposes.

5 And we have no way that we could even
6 waive it, because the applicant is not here,
7 the owner is not here.

8 MS. GLAZER: Mr. Chair?

9 CHAIRPERSON JORDAN: Yes?

10 MS. GLAZER: I see something,
11 Exhibit 6. I'm not sure if --

12 CHAIRPERSON JORDAN: Yes.

13 MS. GLAZER: -- it's an
14 authorization from --

15 CHAIRPERSON JORDAN: But this is
16 Mr. Mobley.

17 MS. GLAZER: It's --

18 CHAIRPERSON JORDAN: This is Mr.
19 Mobley. The letter of authorization is not for
20 Mr. Mobley.

21 MS. GLAZER: Oh, I see.

22 CHAIRPERSON JORDAN: Ojewumi? Are

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1 you in -- either one of you in association with
2 Ojewumi?

3 MR. EGBAIYELO: Yes, I'm -- he know
4 something, Ojewumi?

5 MS. COHEN: Yes.

6 MR. EGBAIYELO: Yes, he is the
7 person that came to me.

8 CHAIRPERSON JORDAN: Okay.

9 MR. EGBAIYELO: Yes, when this --

10 CHAIRPERSON JORDAN: All right.
11 Yes, that is --

12 MR. EGBAIYELO: He came to me back
13 then and he asked the problem with the zoning.
14 When he came to me, he explain that it's soon.

15 CHAIRPERSON JORDAN: Yes.

16 MR. EGBAIYELO: He asked that I --

17 CHAIRPERSON JORDAN: Wait.

18 MR. EGBAIYELO: -- was to come with
19 --

20 CHAIRPERSON JORDAN: All right. I
21 understand completely. And you just answered
22 our question. All right. Board, what are we

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1 going to do with this? Give it another date?

2 We've got to go back to the Show Cause. No
3 that's a Show Cause. Somebody is here, but we
4 need to put this on another day. Ms. Sorg?

5 VICE CHAIRPERSON SORG: Thank you,
6 Mr. Chairman. You know, I think it's a little
7 messy also. I agree with you. I agree with
8 you that we have no authorization for these
9 parties to represent this application today.

10 Unfortunately, we will have had Ms.
11 Pyndell waiting. I feel terrible about that.

12 Also, I wonder why when he received
13 this case, Mr. Mobley did not heed the suggestion
14 of the Office of Planning to request a delay,
15 because it does sound like from the few words
16 that we have heard so far, that the plans will
17 be changing and the relief that is being
18 requested will be changing, based on the few
19 statements that we have heard thus far.

20 So I would be in support of putting
21 this on another date where the applicant and
22 his representatives can be fully prepared, can

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1 have submitted accurate plans that we can look
2 at.

3 CHAIRPERSON JORDAN: And I would
4 agree with that. And I don't even know if you
5 have seen the Office of Planning report, have
6 you?

7 MR. MOBLEY: No.

8 CHAIRPERSON JORDAN: I didn't think
9 you did.

10 VICE CHAIRPERSON SORG: What?

11 CHAIRPERSON JORDAN: I didn't think
12 he did. He just got this dumped on his lap.

13 Now, let me say this. Let me say
14 this. I would go ahead and let Ms. Pyndell put
15 forth -- we already have a letter and issues,
16 to put on the record, so she does not have to
17 come back, her statement.

18 However, the only caveat to that,
19 I'm hearing that these plans are going to change.
20 Yes?

21 MR. COCHRAN: I'm sorry, Mr. Chair.
22 I think I can help to clarify things a little

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1 bit more quickly, just if I summarize the
2 conversations that I have had with the owner
3 and his various representatives. If that's
4 okay?

5 CHAIRPERSON JORDAN: I don't know
6 if that's going to help us, because we can't
7 go forward in this hearing.

8 MR. COCHRAN: No. It would just--
9 it's germane to --

10 CHAIRPERSON JORDAN: Okay. Okay.
11 Yes.

12 MR. COCHRAN: I have had
13 conversations with the owner and the previous
14 architect and the previous representative
15 explaining the Office of Planning's analysis
16 of the then current application, which was for
17 a semi-detached house in a zone that permits
18 detached houses.

19 And explained the difficulty that
20 we would have in recommending approval for the
21 case. But did suggest to the applicant that
22 there was precedent for other cases where, in

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1 the neighborhood, there had been a submission
2 for a fully detached house and relief was
3 requested for side yards.

4 And that in at least one instance
5 that had been approved, so it seemed like there
6 would be a better chance of making a case for
7 an application that had a fully detached house
8 with reduced width side yards.

9 So I believe, from what I have heard
10 this morning, that that's what the most recent
11 architect on the house has done. So there would
12 be a different relationship with the neighbors
13 than had been proposed before.

14 But it turns out it would actually
15 be closer to Ms. Pyndell than in the past,
16 because it was going to be a 5 foot side yard
17 on one side and no side yard on the other.

18 So there we have it. And it also
19 looks like they have changed fenestration on
20 the sides.

21 CHAIRPERSON JORDAN: But here we
22 go. We don't have enough in front of us to say

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1 what is really going to happen at the end when
2 it all washes out until we see drawings and all
3 that stuff.

4 And so -- yes, Ms. Sorg?

5 VICE CHAIRPERSON SORG: But I
6 agree, Mr. Chairman, but I do also -- I think
7 what Mr. Cochran is noting is that whatever
8 statement that Ms. Pyndell --

9 CHAIRPERSON JORDAN: Oh, yes.

10 VICE CHAIRPERSON SORG: -- would or
11 would not give today, may not be reflective of
12 the actual circumstance in which she would find
13 herself.

14 CHAIRPERSON JORDAN: Right. I
15 agree with that.

16 VICE CHAIRPERSON SORG: Yes.

17 CHAIRPERSON JORDAN: That's what
18 I'm saying.

19 Ms. Pyndell, do you understand what
20 is going on tonight? I'm sure you do. You have
21 -- because you are on top of this probably better
22 than we are. That they got plans that are

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1 changing. And we understand your opposition,
2 but I don't know if your opposition changes once
3 the new plans come.

4 MS. PYNDELL: May I speak?

5 CHAIRPERSON JORDAN: Yes.

6 MS. PYNDELL: My opposition will
7 not change, because now it's going to be even
8 closer --

9 CHAIRPERSON JORDAN: Gotcha.

10 MS. PYNDELL: -- than before. So
11 it's the same opposition. Don't come a step
12 closer to me.

13 CHAIRPERSON JORDAN: All right.
14 Let's go ahead. Why don't you make your
15 statement. You have three minutes to make a
16 statement. I want to put it on the record. I
17 want to accommodate you, so you don't have to
18 come back and your statement and everything that
19 you are saying will be used in -- if you don't
20 come back in the next hearing, we would also
21 apply it.

22 MS. PYNDELL: I'm allowed to come

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1 back if I --

2 CHAIRPERSON JORDAN: Yes. It
3 would be your option.

4 MS. PYNDELL: -- wish?

5 CHAIRPERSON JORDAN: Yes.

6 MS. PYNDELL: Okay. Well, this was
7 my -- these are my reasons.

8 If approved by the Zoning Board, I
9 will no longer be able to have access to my
10 backyard. In fact, it would be impossible to
11 enter my backyard or my garage. This common
12 driveway has always been shared with the owners
13 who lived at 4336 Douglas Street and my family,
14 who resided at 4340 Douglas street.

15 From this driveway, I have easy
16 access to my backyard and my garage. This state
17 of easement has been in existence between the
18 two homeowner for over 70 years. I was born
19 there. I know it's not called Lily Ponds any
20 more. It is now Aquatic Gardens.

21 And we are a part of the Eastlands
22 Garden area, not East Garden. All right?

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1 My brother, who is here, Benjamin
2 Pyndell, and I are the owners of the said
3 property, inherited by my mother in 1968 when
4 she passed. And I have been the sole occupant
5 of this property for over 45 years.

6 As seen in the pictures provided,
7 the distance between the two properties is,
8 approximately, 9 feet. The driveway easily
9 accommodates a large car or truck. If this
10 request is approved, there will be a decrease
11 and/or a reduction in the market value of my
12 property.

13 This negative impact on the value
14 of my property would hinder or decrease the
15 asking price for my home if or when I decide
16 to sell in the future.

17 The proposed zoning section, if
18 approved -- wait a minute, did I miss one?
19 Should this action be approved, it would lessen
20 and limit the use and enjoyment of my property.

21 It would affect the lighting and
22 windows on that side of my home, not to mention

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1 again no access to the driveway, my garage or
2 my backyard. This would intimately affect the
3 use of my property on a daily basis.

4 And the last reason I gave is the
5 proposed zoning action, if approved, would
6 greatly affect the neighborhood. Douglas
7 Street along with Eastland Gardens has always
8 been a street of detached homes for
9 African-Americans, which was made available by
10 and named after Frederick Douglas.

11 That is why Douglas Street exists
12 between Pond and Quarles Street. Washington,
13 D.C. is laid out alphabetically and numerically.

14 Even though I was born at 4335 Douglas Street
15 and Kenilworth Elementary School was a block
16 away, it was for caucasians.

17 I had to cross Kenilworth Avenue and
18 the railroad tracks to attend Carver Elementary
19 School. I am now the oldest living resident
20 on Douglas Street. I don't know if it's
21 important.

22 It would be an affront and an

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1 injustice to me really, my family, my ancestors
2 and Frederick Douglas if this action is
3 approved. Thank you so much.

4 CHAIRPERSON JORDAN: I know you
5 have a very detailed letter. It's Exhibit 24
6 in our record.

7 MS. PYNDELL: Where is it?

8 CHAIRPERSON JORDAN: It's in our
9 record at Exhibit 24. I just wanted to let the
10 Board know and we really appreciate your
11 interest and we take that very seriously. And
12 we're just so glad that you came down here and
13 spent time with us.

14 And your letter is very explanatory
15 of what the issues are, which we would have --
16 we would turn to the applicant during the time
17 that when these plans -- Mr. Mobley, whenever
18 you talk with the applicant and these plans are
19 finally made, that they take in consideration
20 everything that Ms. Pyndell has talked about.

21 And more importantly, have
22 conversation and let's get that done in unison

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1 and it will save a whole bunch of trouble.
2 Because as it is now, we probably wouldn't --
3 you know, we are just concerned about what she
4 has just given us. So there should be some kind
5 of conversation about this can be -- if it's
6 going to be done, how it could be done that
7 everybody is happy.

8 Maybe not happy to the extent of
9 hitting a home run, but happy to maybe be on
10 third base or on second base.

11 MR. MOBLEY: Okay.

12 CHAIRPERSON JORDAN: So, Mr. Moy,
13 what date can we continue this to?

14 MEMBER HINKLE: Mr. Chair, just
15 real quick?

16 CHAIRPERSON JORDAN: Yes. Yes,
17 please. I'm sorry.

18 MEMBER HINKLE: I have a couple of
19 questions --

20 CHAIRPERSON JORDAN: Yes.

21 MEMBER HINKLE: -- for Ms. Pyndell.
22 I'm sorry. So this is not a legal easement

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1 for access. You have just been using this
2 driveway over the years. But there is no legal
3 documents for access?

4 MS. PYNDELL: If you can find them,
5 I would gladly get them. But over almost 100
6 years from my grandparents on --

7 MEMBER HINKLE: That you have had
8 this access?

9 MS. PYNDELL: We have had access,
10 yes.

11 MEMBER HINKLE: That it has been
12 there. Okay.

13 MS. PYNDELL: Yes, and I'm still--
14 I know the previous owners.

15 MEMBER HINKLE: Okay. Do you know
16 how many feet you have between your house and
17 your property line?

18 MS. PYNDELL: Yes, my property is
19 50 feet wide, 150 deep.

20 MEMBER HINKLE: Okay. And between
21 your house and the property line to --

22 MS. PYNDELL: About 9 feet.

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1 MEMBER HINKLE: About 9 feet or so.

2 MS. PYNDELL: So my car can get in
3 and out or a large truck, like I said.

4 MEMBER HINKLE: Okay. And then my
5 last question is do you have access to the alley
6 that is in the back?

7 MS. PYNDELL: Yes, sometimes when
8 -- there is a church on my street and they block
9 up everything. I can come from the alley in
10 the back.

11 MEMBER HINKLE: Okay.

12 MS. PYNDELL: And get to my garage
13 or get to my backyard, yes.

14 MEMBER HINKLE: Oh, so you do get
15 to your garage through the alley?

16 MS. PYNDELL: I can.

17 MEMBER HINKLE: You can park.
18 Okay. Great. Thank you.

19 MS. PYNDELL: You're welcome.

20 CHAIRPERSON JORDAN: Yes, Ms. Sorg?

21 VICE CHAIRPERSON SORG: Thank you,
22 Mr. Chairman. I just have a couple other

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1 questions. Is there a curb cut in front?

2 MS. PYNDELL: Yes.

3 VICE CHAIRPERSON SORG: Okay.

4 MS. PYNDELL: Yes. There is a curb
5 cut.

6 VICE CHAIRPERSON SORG: Okay. And
7 is the driveway paved or is it grass?

8 MS. PYNDELL: No, it's not paved.

9 VICE CHAIRPERSON SORG: Okay.

10 MS. PYNDELL: It's grass. We have
11 to cut the grass.

12 VICE CHAIRPERSON SORG: Okay.

13 MS. PYNDELL: So I would --

14 VICE CHAIRPERSON SORG: Gotcha.

15 MS. PYNDELL: It's my intention.

16 VICE CHAIRPERSON SORG: I
17 understand. Thank you.

18 MS. PYNDELL: You're welcome.

19 CHAIRPERSON JORDAN: Okay. Any
20 other questions? Okay. Mr. Moy, can we have
21 a date, please, for this matter?

22 MS. PYNDELL: Excuse me, Mr.

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1 Chairman, did you get the pictures I have
2 supplied?

3 CHAIRPERSON JORDAN: Yes, we got
4 them.

5 MS. PYNDELL: Okay.

6 CHAIRPERSON JORDAN: Yes, we did.
7 yes. Yes, good pictures. Thank you.

8 MR. MOY: Mr. Chairman --

9 CHAIRPERSON JORDAN: September
10 something?

11 MR. MOY: Oh, thank you. That was
12 one of my suggestions. Ms. Cohen, I see is
13 scheduled to sit with the Board on September
14 25th.

15 CHAIRPERSON JORDAN: That's fine
16 with me. Would you be ready by that time,
17 September 25th?

18 MR. MOBLEY: Yes, sir.

19 CHAIRPERSON JORDAN: All right. I
20 believe so, okay.

21 MR. MOY: Also, Mr. Chairman, if I
22 may? If there are any other directions you

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1 wanted to leave with the applicant before they
2 leave, although traditionally I haven't done
3 this for the Board, but I think given what I
4 have heard, it might be useful, if I may, Mr.
5 Chairman, when they submit any new drawings,
6 they also show a site plan that shows the
7 relationship with the lot with the adjacent
8 neighbor, Ms. Pyndell.

9 CHAIRPERSON JORDAN: And be sure to
10 visit with the Office of Planning. They are
11 open five days a week. They are there for you
12 from 8:30 to 5:00, call them, bug them, talk
13 to them, talk to your neighbors. Well, you've
14 got to convey this to the applicant, the owner.

15 And let's try to work with whatever
16 we've got to do to get this done, okay, if
17 necessary.

18 MR. MOBLEY: Yes, sir.

19 CHAIRPERSON JORDAN: Very good.

20 MR. MOBLEY: Thank you so much, Mr.
21 Chairman.

22 MS. PYNDELL: It's September what,

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1 Mr. Chairman?

2 CHAIRPERSON JORDAN: I'm sorry?

3 MS. PYNDELL: Is it definite for
4 September what was the date?

5 CHAIRPERSON JORDAN: 25th.

6 MS. PYNDELL: September 25th.

7 CHAIRPERSON JORDAN: Is that on the
8 9:30 docket or 1:30 -- 1:00 docket?

9 MS. PYNDELL: Oh, no.

10 CHAIRPERSON JORDAN: Oh, no, which
11 one?

12 MR. MOY: Which would you prefer,
13 sir?

14 CHAIRPERSON JORDAN: Which would
15 you prefer?

16 MS. PYNDELL: Morning.

17 CHAIRPERSON JORDAN: Oh, yes.
18 Which one is it, 9:30?

19 MR. MOY: Okay. Let's make it
20 9:30.

21 CHAIRPERSON JORDAN: 9:30 it is.

22 MR. MOY: Let's do it.

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1 MS. PYNDELL: Okay. Thank you.

2 CHAIRPERSON JORDAN: See --

3 MS. PYNDELL: You're all right with
4 me. And you're going to change now to a detached
5 home, rather than a semi-detached? You don't
6 know yet. Okay.

7 MR. MOBLEY: No.

8 MS. PYNDELL: That's fine.

9 CHAIRPERSON JORDAN: Well, you will
10 meet.

11 MS. PYNDELL: We will meet.

12 CHAIRPERSON JORDAN: Yes, please,
13 be sure, Mr. Mobley.

14 MR. MOBLEY: I'll meet.

15 CHAIRPERSON JORDAN: Because I know
16 you know the right thing to do, Mr. Mobley.

17 MR. MOBLEY: I'll know the right
18 thing to do. I'll meet with her and I'm sure
19 that whatever happens is going to be amenable.

20 Right now, the lot is vacant and the lot
21 adjacent to this lot is a vacant lot as well.

22 MS. PYNDELL: Exactly.

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1 MR. MOBLEY: So we have two vacant
2 lots.

3 MS. PYNDELL: That's right.

4 MR. MOBLEY: -- between -- and the
5 vacant lots are not maintained. There is
6 growing grass like, you know. They are not
7 maintained.

8 MS. PYNDELL: Not maintained.

9 MR. MOBLEY: So I mean, it's an
10 eyesore as well in the block. But we have a
11 picture of it.

12 CHAIRPERSON JORDAN: But --

13 MR. MOBLEY: Anyway, we are going
14 to get with the client. We are going to get
15 with her and see what we can do.

16 CHAIRPERSON JORDAN: All right.
17 Well, I thank you all and let's call this matter
18 to a close.

19 MS. PYNDELL: Thank you, Mr.
20 Chairman.

21 CHAIRPERSON JORDAN: Thank you.

22 MS. PYNDELL: Thank you, Board.

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1 MR. MOBLEY: Thank you, Chairman,
2 for letting us come back on the agenda.

3 CHAIRPERSON JORDAN: Thank you.

4 MR. MOBLEY: Thank you, Ms. Sorg.
5 Thank you, Ms. Cohen. Thank you, Mr. Moy.
6 Thank you, Mr. Hinkle. Thank you so much.

7 CHAIRPERSON JORDAN: Thank you.

8 MR. MOBLEY: And thank you, Ms.
9 Glazer. Thank you so much, Ms. Pyndell.

10 MS. PYNDELL: All right.

11 MR. MOBLEY: I'll be in touch with
12 you. Whatever I can do to help you out, we'll
13 do. I will definitely -- I'm not going to let
14 you --

15 MS. PYNDELL: I'm fine.

16 MR. MOBLEY: Yes.

17 MS. PYNDELL: I'm fine.

18 (Whereupon, the hearing was
19 recessed at 11:46 a.m. to reconvene at 1:07 p.m.
20 this same day.)
21
22

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:07 p.m.

3 CHAIRPERSON JORDAN: Would the
4 hearing, please, come to order?

5 Good afternoon, ladies and
6 gentlemen. We are located in the Jerrily R.
7 Kress Memorial Hearing Room at 441 4th Street
8 on the second floor. Today's date is July 17,
9 2012.

10 We are here for a hearing of the
11 Board of Zoning Adjustment of the District of
12 Columbia.

13 My name is Lloyd Jordan,
14 Chairperson. To the left of me is Nicole Sorg,
15 Vice Chairperson. To her left is Marcie Cohen,
16 Zoning Commission representative. To the right
17 of me is Rashida MacMurray, Board Member, and
18 to her right is Jeffrey Hinkle, Board Member.

19 Please be advised that this
20 proceeding is being recorded by a court reporter
21 and is also being webcast live. Accordingly,
22 we must ask you to refrain from any disruptive

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1 noises or actions in the hearing room.

2 The Board's hearing procedures and
3 how we will process applications can be found
4 on the table by the back door.

5 So let's begin this afternoon's
6 hearing agenda.

7 Mr. Moy, do we have any preliminary
8 matters we need to do?

9 MR. MOY: Well, we do have one for
10 announcement, Mr. Chairman, which is the
11 scheduled appeal, Appeal No. 18367 of ANC-6C
12 has been withdrawn from the schedule. So that
13 leaves one application for the afternoon
14 session, Mr. Chairman.

15 CHAIRPERSON JORDAN: And would you
16 call that case and after calling it, then swear
17 in witnesses, please?

18 MR. MOY: Should I swear in first?

19 CHAIRPERSON JORDAN: Yes, you can
20 swear in first, either way. Anyone that is
21 going to testify or give any testimony here today
22 needs to stand and take the oath or affirmation

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1 from the Secretary of the Board.

2 MR. MOY: All right.

3 (Whereupon, witnesses were sworn.)

4 MR. MOY: You may consider yourself
5 under oath.

6 CHAIRPERSON JORDAN: And
7 additionally, we request that anyone giving
8 testimony today prepares the witness cards, two
9 witness cards each, and hand those to the court
10 reporter.

11 All right. Mr. Moy, would you call
12 our first case, please?

13 MR. MOY: Yes, sir. Good
14 afternoon, Mr. Chairman, Members of the Board.

15 The first and only scheduled application for
16 this afternoon is Application No. 18377. This
17 is the application of Jeffrey Alpher and Haley
18 Kaufman, pursuant to 11 DCMR 3104.1, for a
19 special exception for a rear porch addition to
20 an existing one-family detached dwelling under
21 ' 223, not meeting the lot occupancy
22 requirements under ' 403, and side yard

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1 requirements under ' 405, in the R-1-B District
2 at premises 2938 Macomb Street, N.W., Square
3 2084, Lot 825. Thank you.

4 CHAIRPERSON JORDAN: Great. Would
5 you, please, identify yourselves for the record,
6 please?

7 MS. MILLER: Good afternoon,
8 Chairman Jordan and Members of the Board. My
9 name is Ruthanne Miller. I'm counsel for the
10 applicants, Jeff Alpher and Haley Kaufman.
11 Jeff Alpher is to my right and then next to him
12 is our architect, Mr. Tom Raithel.

13 CHAIRPERSON JORDAN: Tom? The
14 last name again?

15 MS. MILLER: Raithel.

16 CHAIRPERSON JORDAN: Raithel.
17 Very good. I believe that our record is pretty
18 full in this matter. And I particularly don't
19 have any questions. I think it's pretty
20 straightforward.

21 However, I'm going to defer to the
22 Board to see if there is any issues that we may

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1 need you to address, so it won't be redundant
2 in the presentation, if necessary.

3 MS. MILLER: Okay.

4 CHAIRPERSON JORDAN: Does the Board
5 have any issues with anything here? Anyone?

6 Are there any letters in support
7 from neighbors? I think there are some, aren't
8 there?

9 MS. MILLER: Yes, there are.

10 CHAIRPERSON JORDAN: Yes, there
11 are. Yes. They are there. I thought I saw
12 a group of a list of neighbors. Yes, it was
13 a good little group of neighbors.

14 Well, I would think that -- let me
15 turn to the Office of Planning before I begin
16 with you. Is there anything the Office of
17 Planning needs to add, other than what is already
18 in your report?

19 MR. GYOR: The Office of Planning
20 supports the applicants' request for relief and
21 rests on the record.

22 CHAIRPERSON JORDAN: Okay. So you

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1 can rest on the record and understanding that
2 we believe that this application probably has
3 everything we need to grant relief or you can
4 do a presentation, if you would like.

5 MS. MILLER: We will rest on the
6 record.

7 CHAIRPERSON JORDAN: Okay.

8 MS. MILLER: Thank you.

9 CHAIRPERSON JORDAN: That's a good
10 idea from the stories I have heard about other
11 people talked themselves into some problems.

12 But let me say this though. I
13 believe that we -- it is recommended that we
14 add additional relief under ' 401, lot width,
15 if I'm not mistaken, because of nonconforming
16 use. Is that right? Would that be correct,
17 Ms. Glazer?

18 MS. GLAZER: Yes.

19 CHAIRPERSON JORDAN: So if you
20 would just do an oral motion to amend, then we
21 can just amend it later.

22 MS. MILLER: Okay.

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1 CHAIRPERSON JORDAN: For
2 nonconforming. Oh, you're not on the record.
3 You weren't --

4 MS. GLAZER: I'm sorry. The
5 applicant had suggested that 2001.3 be added
6 and OP, I think, suggested that relief under
7 401 be added.

8 CHAIRPERSON JORDAN: Okay. So
9 with that, I would move that we grant the relief
10 requested by this applicant under ' 403, 405
11 and 401 and 2001.3.

12 MS. COHEN: Actually, I --

13 CHAIRPERSON JORDAN: Yes, you've
14 got something to say?

15 MS. COHEN: Chairman, I'm sorry.
16 I feel like the turtle this afternoon.

17 CHAIRPERSON JORDAN: Okay. Go
18 ahead.

19 MS. COHEN: I do have a question for
20 the Office of Planning.

21 CHAIRPERSON JORDAN: Okay. Sure.

22 MS. COHEN: Under the Historic

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1 Preservation Review Board's review and
2 recommendation, they are recommending the front
3 window restoration and rear porch to be
4 consistent with the purposes of the Preservation
5 Act and find the front porch to be inconsistent.

6 Can you address that for me, please?

7 MR. GYOR: I believe the
8 applicants' proposal does not include a front
9 porch modification.

10 MS. COHEN: Thank you. Then I'm
11 sorry, Mr. Chairman, you can move ahead.

12 CHAIRPERSON JORDAN: Let me ask,
13 are there any persons in the audience in support
14 that wants to speak for this application?
15 Anyone in opposition? Ms. Sorg?

16 VICE CHAIRPERSON SORG: I would ask
17 one. Thank you, Mr. Chairman. I would ask one
18 final question of the applicant.

19 I just noticed that we don't have
20 an ANC report.

21 CHAIRPERSON JORDAN: There is an
22 ANC report.

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1 VICE CHAIRPERSON SORG: Oh, my God,
2 I'm the turtle.

3 CHAIRPERSON JORDAN: Well, there is
4 an ANC -- let me tell you. There is a letter.

5 VICE CHAIRPERSON SORG: We have --

6 CHAIRPERSON JORDAN: There is a
7 letter that states that the ANC voted
8 unanimously in support of this. However, there
9 is no mention of a quorum and etcetera. We will
10 take into consideration, but we don't have some
11 of the requisite great weight, but there is an
12 ANC letter that is in support.

13 VICE CHAIRPERSON SORG: Fair
14 enough.

15 CHAIRPERSON JORDAN: Okay. We're
16 good? You sure? We've got time. We have
17 nothing else on the docket. Okay. Good.

18 Well, then I would go back to my
19 motion to move that the relief requested in this
20 application be granted from ' 403, 405 and the
21 additional ' 401 and 2001.3, would be my motion.

22 MEMBER HINKLE: I'll second that.

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1 CHAIRPERSON JORDAN: Motion made
2 and seconded that the relief be granted as I
3 stated it. Any unreadiness? Any other
4 conversation?

5 All those in favor signify by saying
6 aye.

7 ALL: Aye.

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

10 MR. MOY: Yes, sir, staff would
11 record the vote as 5-0-0. This is on the motion
12 of Chairman Jordan to approve the application
13 for special exception relief under ' 223, not
14 meeting the lot occupancy of ' 403, side yard
15 405 and the amended requirements under lot width
16 and nonconforming structure provisions under
17 401 and 2001.3, respectively. Also seconding
18 the motion Mr. Hinkle. In support of the motion
19 Ms. Cohen, Vice Chairperson Sorg and Ms.
20 MacMurray.

21 So again, the final vote is 5-0-0.
22 Motion carries.

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1 CHAIRPERSON JORDAN: Thank you.
2 And since this is clearly one we can have a
3 summary order for.

4 MR. MOY: Yes, sir.

5 CHAIRPERSON JORDAN: Okay. Very
6 good. Thank you. We will call this hearing
7 to an end.

8 MS. MILLER: Okay.

9 CHAIRPERSON JORDAN: Thank you so
10 much.

11 MS. MILLER: Thank you very much.

12 CHAIRPERSON JORDAN: We didn't have
13 any drama like --

14 MS. MILLER: Have a good afternoon.

15 CHAIRPERSON JORDAN: -- we had this
16 morning. Gee, we had all kind of things
17 happening this morning.

18 Mr. Secretary, is there any other
19 matters to come before us this afternoon?

20 MR. MOY: Not today, Mr. Chairman.

21 CHAIRPERSON JORDAN: Anyone have
22 anything else we need to do today?

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1 No? We're good? No, next week is
2 not -- the following week. Next week is a
3 hearing. So we're okay.

4 We have two hearings next week? The
5 decision is -- oh, you added some cases for
6 decision? So we've got two cases. Yes,
7 because I think you moved cases from last week
8 for decision.

9 VICE CHAIRPERSON SORG: We did.

10 MR. MOY: Could we hold on just for
11 a second, sir?

12 CHAIRPERSON JORDAN: Sure. Yes,
13 that's good to see where we are.

14 MR. MOY: Yes, Mr. Chairman, I do
15 have, thanks to Chairperson Sorg, I just have
16 two versions of the same schedule, but the
17 schedule I have here, we have a Special Public
18 Meeting in the morning and this is for
19 Application No. 18375 of Florida Avenue
20 Residential, LLC, which the Board concluded its
21 hearing on July the 10th, right?

22 CHAIRPERSON JORDAN: You said it's

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1 18375?

2 MR. MOY: 18375, which the Board
3 completed public hearing on July the 10th, where
4 Zoning Commissioner Chairman, Mr. Hood, was
5 participating. July the 10th, last July 10th.

6 CHAIRPERSON JORDAN: So it's just
7 one case that is on?

8 MR. MOY: Just one case, sir.

9 CHAIRPERSON JORDAN: Okay. All
10 right.

11 MS. GLAZER: I just wanted to note,
12 Mr. Chair, that that's the case where, I think,
13 the Board requested additional submissions from
14 OAG and the applicant and OP regarding a
15 particular issue.

16 MR. MOY: So in light of that,
17 whether the Board would care to have a Monday
18 closed meeting or not for the one case?

19 CHAIRPERSON JORDAN: Well, let's
20 play it safe with it and call a meeting. We
21 can always cancel it if we don't think it's
22 necessary.

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1 So as Chairperson of the Board of
2 Zoning Adjustment of the District of Columbia
3 and in accordance with ' 405 of the District
4 of Columbia Administrative Procedural Act, i
5 would move that we hold a closed meeting on July
6 23, 2012 at 4:00 p.m. via telephone conference
7 for the purposes of seeking legal advice and
8 deliberation for Case No. 18375. That's the
9 only one, correct?

10 MR. MOY: That's the only one,
11 unless you also want to include the new
12 applications for later that day.

13 CHAIRPERSON JORDAN: And any
14 conversation, and also for legal advice on Case
15 18387, Cases 18380, 18384, 18364, 18383, 18388,
16 18382.

17 Is there a second?

18 VICE CHAIRPERSON SORG: Second.

19 MR. MOY: There is also, Mr. Chair,
20 18373.

21 CHAIRPERSON JORDAN: Oh, and let me
22 add to that 18373?

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

2 CHAIRPERSON JORDAN: Okay. And
3 there was a second. Mr. Moy, would you take
4 a roll call, please?

5 MR. MOY: Yes. When I call your
6 name, if the respondent can reply whether they
7 are yes or no.

8 Ms. Cohen?

9 MS. COHEN: Yes.

10 MR. MOY: Ms. Sorg?

11 VICE CHAIRPERSON SORG: Yes.

12 MR. MOY: Chairman Jordan?

13 CHAIRPERSON JORDAN: Yes.

14 MR. MOY: Ms. MacMurray?

15 MEMBER MacMURRAY: Yes.

16 MR. MOY: Mr. Hinkle?

17 MEMBER HINKLE: Aye.

18 MR. MOY: There is always one in the
19 group.

20 CHAIRPERSON JORDAN: There is
21 always one in the group.

22 MR. MOY: I believe there is a

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1 consensus, Mr. Chairman.

2 CHAIRPERSON JORDAN: Yes. As it
3 appears that the motion has passed, I hereby
4 give notice that the Board of Zoning Adjustment
5 will hold this aforementioned closed meeting
6 via telephone conference pursuant to ' 406 of
7 the District of Columbia Administrative
8 Procedural Act.

9 Notice will also be posted in the
10 Office of Zoning Electronic Reading Room, placed
11 on the Office of Zoning's electronic calendar,
12 on its website and published in the DC Register
13 in as timely a manner as practicable.

14 With that, if there is no other
15 business, I will adjourn this hearing. Thank
16 you.

17 (Whereupon, the Public Hearing was
18 concluded at 1:20 p.m.)

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