

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY  
NOVEMBER 27, 2012

+ + + + +

The Regular Public Hearing  
convened in the Jerrily R. Kress Memorial  
Hearing Room, Room 220 South, 441 4th Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 10:28 a.m., Lloyd Jordan,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
NICOLE SORG, Vice-Chairperson  
JEFF 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:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN

ARTHUR JACKSON

STEPHEN GYOR

BRANDICE ELLIOTT

The transcript constitutes the  
minutes from the Public Hearing held on  
November 27, 2012.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Page

Case Number 18450 - Application of Karl and Julie Moeller . . . . .	.7
Case Number 18446 - Application of Edward Bruske . . . . .	17
Case Number 18448 - Application of 3579 Warder Street, LLC . . . . .	75
Preliminary Matters . . . . .	.166
Appeal of Valor 1350 Maryland LLC . . . . .	.169

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

2 (10:28 a.m.)

3 CHAIRPERSON JORDAN: I'm going to  
4 open this session as a Public Hearing session  
5 for the Board of Zoning Adjustment. As  
6 already announced, we're here at the Jerrily  
7 R. Memorial Kress hearing room at 441 4th  
8 Street.

9 Today's date is November 27th,  
10 2012. I'm Lloyd Jordan, Chairperson. To my  
11 right is Jeffrey Hinkle, Board member. To my  
12 left is Nicole Sorg, Vice Chair. To her left  
13 is Marcia Cohen. Oh, Peter's here, okay.

14 COMMISSIONER COHEN: I was just  
15 keeping it warm.

16 CHAIRPERSON JORDAN: Okay. Roll  
17 with us, please. Then we will come back to  
18 our Public Hearing session and now actually  
19 break from recess and go back to the public  
20 meeting. You with me, Court Reporter?

21 (Whereupon, the foregoing matter  
22 went off the record at 10:29 a.m. and went

1 back on the record at 10:58 a.m.)

2 CHAIRPERSON JORDAN: All right, so  
3 now we're back in session as a Public Hearing  
4 for November 27th. Sitting with us today is  
5 Marcia Cohen, member of the Zoning Commission.

6 And so now we will now go back  
7 into our Hearing session. All those who plan  
8 to testify in any matter before us this  
9 morning or this afternoon, whatever time it  
10 is, please stand and take the oath or  
11 affirmation being given by the Board  
12 Secretary.

13 And additionally, afterwards, I'm  
14 going to ask to be sure that you complete two  
15 witness cards and hand them to the court  
16 reporter for each person who will testify.

17 Thank you. Mr. Moy?

18 (Swearing in of Witnesses)

19 COMMISSIONER MILLER: Ladies and  
20 gentlemen, you may consider yourself under  
21 oath.

22 CHAIRPERSON JORDAN: Thank you.

1 Yes, that's it.

2 MR. MOY: All right, with that Mr.  
3 Chairman and members of the Board, the first -  
4 -

5 (Off microphone comments)

6 MR. MOY: -- the first application  
7 Public Hearing session is Application number  
8 18447. This is the application of Karen  
9 Slachetku.

10 Pursuant to 11 DCMR 3104.1 for a  
11 special exception to allow a rear deck to an  
12 existing one family road dwelling under  
13 Section 223, not meeting the lot area and lot  
14 width requirements under Section 401, lot  
15 occupancy requirements under Section 403 and  
16 rear yard requirements under Section 404 in  
17 the R-4 District at premises 1139 Abbey Place,  
18 Northeast property located at Square 773, Lot  
19 193.

20 CHAIRPERSON JORDAN: Thank you.  
21 Would the persons for this case please come  
22 forward? The applicant or anyone else? I

1 guess there is no one else. Okay. Is the  
2 Board ready or anything you need with this  
3 one?

4 Anybody got any issues with this  
5 case? I guess then we can't really ask  
6 anybody anything because they're not here.  
7 Yes, is the applicant or anyone here in this  
8 case?

9 Okay. You've got a question,  
10 something OP can answer or no? Yes, nothing  
11 for the neighbors or ANC? Yes, yes. Is the  
12 applicant here for 18447? Okay. The address  
13 is 1139 Abbey Place, Northeast.

14 (Off microphone comments)

15 CHAIRPERSON JORDAN: Let's roll  
16 it. Let's move to the next. Let's move this  
17 to the end of the docket and give them another  
18 chance in this matter.

19 COMMISSIONER COHEN: Somebody just  
20 walked in the door, so maybe if you could  
21 repeat it? Oh.

22 CHAIRPERSON JORDAN: Yes, we're

1 looking for the applicant on 18447, 1139 Abbey  
2 Place, Northeast. No, okay. Then let's move  
3 to our next matter, Mr. Moy.

4 MR. MOY: Yes, sir. That would be  
5 Application number 18450. This is the  
6 application of Karl and Julie Moeller.

7 Pursuant to 11 DCMR 3104.1, this  
8 is for a special exception to allow a third  
9 story addition and roof deck to an existing  
10 one family road dwelling under Section 223,  
11 not meeting the court requirements under  
12 Section 406, and non-conforming structure  
13 requirements under Subsection 2001.3 in the R-  
14 4 District at premises 426 11th Street,  
15 Northeast, property located at Square 992 Lot  
16 806.

17 CHAIRPERSON JORDAN: Okay. Thank  
18 you. Would you please identify yourselves,  
19 for us?

20 WHEREUPON,

21 JENNIFER FOWLER

22 was called as a witness for the Applicant and,

1 having been first duly sworn, assumed the  
2 witness stand, was examined and testified as  
3 follows:

4 MS. FOWLER: Good morning, I'm  
5 Jennifer Fowler of 1819 D Street, Southeast.

6 CHAIRPERSON JORDAN: Okay.

7 WHEREUPON,

8 KARL MOELLER  
9 was called as a witness for the Applicant and,  
10 having been first duly sworn, assumed the  
11 witness stand, was examined and testified as  
12 follows:

13 MR. MOELLER: Karl Moeller of 426  
14 11th Street, Southeast.

15 CHAIRPERSON JORDAN: Okay. We  
16 have here a party request in opposition, which  
17 we will grant party status to.

18 (Off microphone comment)

19 CHAIRPERSON JORDAN: Okay, thank  
20 you. And that was by Vonda Harris. Is Ms.  
21 Harris here? Then we will move on. We have  
22 her letter in the file, and I think we've all

1 had the opportunity to look at it.

2           Regarding this application, any  
3 questions the Board has for the applicant?  
4 Before we begin, let me find out if there's  
5 anything particular that the Board needs  
6 addressed before you have the opportunity to  
7 do your presentation.

8           COMMISSIONER COHEN: Thank you,  
9 Mr. Chairman. I just have a question.  
10 Capitol Hill Historic District, do they have  
11 to approve this?

12           MS. FOWLER: The Capitol Hill  
13 Restoration Society? Yes, in fact they have.  
14 And Mr. Peterson hand delivered letters to me  
15 just this morning, and we have these here.  
16 They've approved it unanimously.

17           CHAIRPERSON JORDAN: Does anybody  
18 else have a question they need to get answered  
19 from the -- or do you think that -- yes, Ms.  
20 Sorg?

21           VICE CHAIRPERSON SORG: Thank you.  
22 I just want to ask one question. I guess we

1 know that one of the adjacent neighbors has  
2 submitted the party status request.

3 She did indicate in her request  
4 that she would not be available to attend the  
5 hearing. So we understand her issues with the  
6 proposed project.

7 And if you can comment on  
8 interactions. I know you have letters of  
9 support, but I didn't see whether you did from  
10 the other adjacent neighbor, or not.

11 MR. MOELLER: I did meet with the  
12 neighbors on the south side of the property.  
13 Went over personally, shared a glass of wine  
14 in their backyard. Flipped through our plans  
15 that Jennifer had put together.

16 We have talked to a number of  
17 other neighbors in the Walker Court area. I  
18 think we have seven to ten letters of support.  
19 Seven. The Harris letter, I was made aware of  
20 that and we did present that to the ANC with  
21 our materials and with our letters of support.

22 The ANC Zoning Board approved it,

1 even with considering that letter, as did the  
2 full ANC and the Capitol Hill Restoration  
3 Society.

4 CHAIRPERSON JORDAN: Yes, and I --

5 VICE CHAIRPERSON SORG: Great, but  
6 --

7 CHAIRPERSON JORDAN: I was going  
8 to say I was incorrect. You actually have  
9 nine letters of support in our files.

10 VICE CHAIRPERSON SORG: Right.  
11 But just to clarify, so you shared a glass of  
12 wine with your other adjacent neighbor, and  
13 then did they submit a letter?

14 MR. MOELLER: The neighbors to the  
15 south --

16 VICE CHAIRPERSON SORG: And that's  
17 428?

18 MR. MOELLER: Twenty eight and  
19 thirty.

20 VICE CHAIRPERSON SORG: Yes.

21 MR. MOELLER: The neighbors at 430  
22 called me actually over the weekend to say

1 they were not going to oppose the project. I  
2 have a voicemail I could play for you if you  
3 would like to listen to it.

4 VICE CHAIRPERSON SORG: We'll take  
5 your testimony.

6 CHAIRPERSON JORDAN: I think, Ms.  
7 Sorg, are you asking regards to Miss Harris?

8 VICE CHAIRPERSON SORG: No, I'm  
9 asking about the other adjacent neighbor at  
10 428. He was describing their interactions, but  
11 I didn't understand whether or not they  
12 indicated their support or not.

13 MR. MOELLER: The other neighbor  
14 to my immediate south, 428 wrote a letter  
15 saying that they opposed the letter, but would  
16 support it if their property was permitted to  
17 do the same thing, which I wrote to them and  
18 said I would fully support, you know, your  
19 expansion of your house, but I would hope not  
20 to have to delay my project to wait for you to  
21 be ready to do that.

22 VICE CHAIRPERSON SORG: And that's

1 obviously not how zoning works.

2 MR. MOELLER: Right, right.

3 VICE CHAIRPERSON SORG: Thank you.

4 MR. MOELLER: You're welcome.

5 CHAIRPERSON JORDAN: Any other  
6 questions that we may have for the applicant?  
7 Okay. I believe that our file is very full  
8 already regarding the requested relief.

9 You certainly have the right and  
10 the opportunity to do a presentation before  
11 the Board. And that's certainly up to you to  
12 decide, or you can just waive that and we can  
13 proceed on.

14 MS. FOWLER: I think we would be  
15 happy to waive that and proceed, if  
16 everybody's comfortable.

17 CHAIRPERSON JORDAN: Then let's  
18 turn to the Office of Planning to see if  
19 there's anything in addition that they need to  
20 add to their already submitted report  
21 recommending approval.

22 MR. GYOR: Good morning, Mr.

1 Chairman and members of the Board. Stephen  
2 Gyor with the Office of Planning. We support  
3 the applicant's request for relief and rest on  
4 the record. Thank you.

5 CHAIRPERSON JORDAN: And do we  
6 have DDOT, anything from DDOT? No, we don't.  
7 Okay. Oh, well nothing from DDOT. Anyone  
8 here from ANC 6B?

9 We do have a letter of support  
10 from ANC 6B, which we would give great weight  
11 to in support of the application. Well, our  
12 file does contain nine support letters from  
13 neighbors regarding this matter.

14 Is there anyone else here in  
15 support of this application wish to testify?  
16 Those in opposition? We do have, as I said  
17 before, a Vonda Harris who has voiced her  
18 opposition, has submitted her letter which the  
19 Board has considered and will consider in this  
20 deliberation.

21 Then let's turn back to the  
22 applicant for any rebuttal, but there's

1 nothing to rebut. And there's no additional  
2 questions. So then we'll close this hearing  
3 based upon the record already before the  
4 board.

5 Is the board ready to deliberate?  
6 I see a lot of heads shaking, yes, we're  
7 ready. Then I move that we grant the relief  
8 requested under Application 18450.

9 COMMISSIONER COHEN: And I'll  
10 second that, Mr. Chairman.

11 CHAIRPERSON JORDAN: Motion made  
12 and seconded. Any additional discussion? All  
13 those in favor, signify by saying aye.

14 (Chorus of ayes)

15 CHAIRPERSON JORDAN: Those  
16 opposed, nay. The motion carries. Mr. Moy?

17 MR. MOELLER: Thank you very much,  
18 Mr. Chairman and members of the board.  
19 Appreciated.

20 MR. MOY: Staff would record the  
21 vote as four to zero to one. This is on the  
22 motion of Chairman Jordan to approve the

1 application for the relief being requested.

2 Also in support of the motion, Miss Marsha

3 Cohen --

4 COMMISSIONER COHEN: Marcy.

5 MR. MOY: Marcy Cohen. And also  
6 in support of the motion, Chairperson Sorg and  
7 Mr. Hinkle. No other Board members  
8 participating. So again, the motion carries  
9 on a vote of four to zero to one.

10 CHAIRPERSON JORDAN: I know we  
11 said give Miss Harris party status, but she  
12 didn't show up for this hearing. And so I'm  
13 going to move the Board to that we rescind the  
14 party status. Someone second?

15 VICE CHAIRPERSON SORG: I would  
16 second that.

17 CHAIRPERSON JORDAN: Okay, motion  
18 made and seconded that we rescind the party  
19 status since Miss Harris didn't show up. All  
20 those in favor, signify by saying aye.

21 (Chorus of ayes)

22 CHAIRPERSON JORDAN: Those

1       opposed, nay. Great. And so we can have a  
2       summary order, please, Mr. Moy?

3                   MR. MOY: Yes, sir.

4                   CHAIRPERSON JORDAN: Next?

5                   MR. MOY: The next application  
6       before the Board is Application number 18446.  
7       This is the application of Edward Bruske.  
8       Pursuant to 11 DCMR 3103.2 for a variance from  
9       the lot area requirements under subsection  
10      401.3.

11                   This would allow the conversion of  
12      a flat, a two unit dwelling into a three unit  
13      apartment building in the R-4 District at  
14      premises 1308 Euclid Street, Northwest.  
15      Property located in Square 2866, Lot 55.

16                   CHAIRPERSON JORDAN: Okay. Good  
17      morning. Would you please introduce  
18      yourselves?

19      WHEREUPON,

20                   MARTIN SULLIVAN  
21      was called as a witness for the Applicant and,  
22      having been first duly sworn, assumed the

1 witness stand, was examined and testified as  
2 follows:

3 MR. SULLIVAN: Good morning, Mr.  
4 Chair and members of the Board. My name is  
5 Martin Sullivan of Sullivan and Barros, here  
6 on behalf of the applicant.

7 WHEREUPON,

8 EDWARD BRUSKE  
9 was called as a witness for the Applicant and,  
10 having been first duly sworn, assumed the  
11 witness stand, was examined and testified as  
12 follows:

13 MR. BRUSKE: My name is Edward  
14 Bruske. I'm the owner at 1308 Euclid Street,  
15 Northwest for the last 25 years.

16 WHEREUPON,

17 ERIK HOFFLAND  
18 was called as a witness for the Applicant and,  
19 having been first duly sworn, assumed the  
20 witness stand, was examined and testified as  
21 follows:

22 MR. HOFFLAND: And I'm Erik

1 Hoffland. I'm an architect working with the  
2 owner on the property.

3 CHAIRPERSON JORDAN: Your name  
4 again?

5 MR. HOFFLAND: Erik Hoffland.

6 CHAIRPERSON JORDAN: Hoffland,  
7 thank you.

8 MR. SULLIVAN: Mr. Chairman, I  
9 would like to qualify Mr. Hoffland as an  
10 expert witness. He's not yet been before this  
11 board, but he is highly qualified, and I have  
12 copies of his CV to distribute.

13 CHAIRPERSON JORDAN: We don't have  
14 it in our record?

15 VICE CHAIRPERSON SORG: Mr.  
16 Hoffland, are you registered?

17 MR. HOFFLAND: Yes, I'm registered  
18 in D.C., Maryland and Virginia.

19 VICE CHAIRPERSON SORG: And when  
20 did you obtain your registration?

21 MR. HOFFLAND: 2009.

22 VICE CHAIRPERSON SORG: Okay.

1                   CHAIRPERSON JORDAN:   And what  
2 would Mr. Hoffland be an expert in?

3                   MR. SULLIVAN:   Architecture and  
4 design, and he's going to talk specifically  
5 about practical difficulties with reconnecting  
6 the basement and first floor units.

7                   CHAIRPERSON JORDAN:   Have you been  
8 out to the site?

9                   MR. HOFFLAND:   Yes, I've done full  
10 documentation of the existing building.

11                   CHAIRPERSON JORDAN:   All right.  
12 Have you been accepted as an expert in any  
13 forum before?

14                   MR. HOFFLAND:   Not that I can  
15 recall.

16                   COMMISSIONER COHEN:   And Mr.  
17 Chairman, just for the record, he did work on  
18 the Cohen residence, but it was not mine.

19                   CHAIRPERSON JORDAN:   Okay.  Oh, I  
20 see, I see.

21                   MR. HOFFLAND:   Which residence?

22                   COMMISSIONER COHEN:   Cohen.

1 MR. HOFFLAND: There is a Cohen  
2 residence that I did work on. Oh, I see.  
3 Another Cohen.

4 CHAIRPERSON JORDAN: Okay. I  
5 don't know if he necessarily has to be  
6 qualified as an expert since he's actually  
7 been out to the property, can testify from  
8 first hand knowledge as to what's going on and  
9 he's done the investigation.

10 But so let's just proceed. Let me  
11 make sure what questions the Board may have  
12 first so we can kind of limit or direct your  
13 presentation. Board, is there a question  
14 particularly we want to talk about?

15 Has the procedural deficiency  
16 regarding ANC 6A versus 1B been taken care of?

17 MR. SULLIVAN: We contacted the  
18 ANC before we even filed.

19 CHAIRPERSON JORDAN: 1B?

20 MR. SULLIVAN: Yes, 1B. So it was  
21 essentially cured before it happened. I found  
22 out about it two weeks ago. But we notified

1 the single member district rep before we  
2 filed, and we stayed on top of it, and we went  
3 before their Planning and Zoning Committee and  
4 the full ANC.

5 CHAIRPERSON JORDAN: For 1B?

6 MR. SULLIVAN: For 1B, yes. And  
7 there should be a letter in the file. It was  
8 only received, though, last week when we  
9 noticed it wasn't there. I have one copy of  
10 it here. But I have an email noting that it  
11 was received on Friday by this office.

12 CHAIRPERSON JORDAN: I don't think  
13 we have a copy of it. So if you could make  
14 that available. Does the Board have any  
15 questions they need to have --

16 MR. SULLIVAN: If I could, Mr.  
17 Chairman, before we get into questions, I did  
18 have a presentation prepared, and I can limit  
19 it to the extent you would like me to, but --

20 CHAIRPERSON JORDAN: That's what I  
21 really want you to do. That's why I'm asking  
22 the Board what particular questions do we have

1 so that you can limit your presentation.

2 MR. SULLIVAN: What I have is a  
3 handout where I've identified a precedent. I  
4 call it a blueprint of a case that the board  
5 approved about three years ago which is  
6 strikingly similar to this case.

7 And in fact, it's the last time  
8 that the Office of Planning actually supported  
9 one of these types of relief requests. So I  
10 would like to hand that out because I think it  
11 will make your analysis a lot easier. Thanks.

12 CHAIRPERSON JORDAN: Sure. And if  
13 you want to step through it with us, we can do  
14 that. While you're doing that, let me ask a  
15 question.

16 This repair work that has to be  
17 done on the property has to be done  
18 regardless, whether or not you do this  
19 additional unit or not, isn't that correct?

20 MR. SULLIVAN: That's correct.

21 CHAIRPERSON JORDAN: So then how  
22 does it factor in to the need of creating a

1 difficulty, exceptional situation and  
2 difficulty for the relief being requested?

3 MR. SULLIVAN: The primary area,  
4 and I don't know that this was fully flushed  
5 out in our initial application, but the  
6 primary area of practical difficulty is the  
7 practical difficulty in reconnecting the  
8 basement and the first floor units.

9 And this is why I've provided the  
10 comparison with Case 17991, which again, the  
11 Office of Planning supported. And I include  
12 the Office of Planning report for your  
13 reference, and the Board's Order, which was a  
14 Summary Order.

15 But in 17991, what the Office of  
16 Planning and the Board found to be critical  
17 factors in determining whether or not there  
18 was an exceptional condition which led to a  
19 practical difficulty, it was the fact that the  
20 applicant purchased the property in three  
21 units because prior to his purchase, it was  
22 converted to a three unit building, and that's

1 how he found the property.

2 That's, in effect, the exceptional  
3 condition of the property. The practical  
4 difficulty is the cost and difficulty of  
5 reconnecting the basement and the first floor  
6 because there's no connection for them right  
7 now.

8 And that's why I thought it was  
9 easiest to lay out, it's not a lot of  
10 information, but 17991, almost exact same case  
11 and the Office of Planning supported that  
12 emphatically.

13 CHAIRPERSON JORDAN: Continue,  
14 please.

15 MR. SULLIVAN: And we would  
16 submit, we have the architect here to submit  
17 testimony to the difficulty of reconnecting  
18 those units because it's more than just  
19 opening up a floor and throwing down a set of  
20 stairs.

21 COMMISSIONER COHEN: Mr. Chairman?

22 CHAIRPERSON JORDAN: Yes, please.

1                   COMMISSIONER COHEN:  It's the  
2                   premise of connecting the basement and the  
3                   first floor.  I mean, it seemed to me that  
4                   there's a lot of deferred maintenance and that  
5                   that's why, now you want to create that third  
6                   unit, as opposed to, you know, as long as you  
7                   have to correct many things that have happened  
8                   to this property, that's really what's driving  
9                   it, the major repair work that's been  
10                  deferred.

11                  MR. SULLIVAN:  I would say that  
12                  that's accurate in the sense that being able  
13                  to make that idle portion of the property  
14                  productive again will enable us to make the  
15                  structural repairs that are necessary.

16                  And it's not a question of  
17                  maintenance, and Mr. Bruske can testify to  
18                  that.  It's structural deficiencies.

19                  MR. BRUSKE:  And they weren't  
20                  deferred, either.  We just learned, really,  
21                  the extent of the problems a year and a half  
22                  ago when we had an engineer visit the site.

1                   So what basically, I've been  
2                   wrestling with this and living with this  
3                   basement issue for 25 years since I bought the  
4                   property in June of 1987 thinking it was a  
5                   three unit building and finding out only later  
6                   that we could not legally, you know, renovate  
7                   that basement.

8                   A year and a half ago, we had an  
9                   engineer come in because we noticed that we  
10                  had subsidence in the floors around the  
11                  stairwell area going all the way up to the  
12                  third floor.

13                  And he had discovered that there  
14                  had been a beam there that is no longer there.  
15                  He also noticed that there are water issues,  
16                  in other words, seepage in the breeze way that  
17                  we share with a neighbor, against the brick  
18                  that has to be excavated and parged.

19                  That the slab in the basement is  
20                  hardly a slab at all, but just a thin layer of  
21                  concrete that was laid directly over the dirt  
22                  without any windows that have rotted out and

1 need to be replaced.

2 So these are all things that were  
3 not necessarily deferred but were really  
4 defined just within the last year and a half  
5 or so. We know we're going to have to deal  
6 with them and we thought this is it. We  
7 either find out whether we can get a zoning  
8 variance and do this basement now, or it's  
9 going to stay empty forever, basically.

10 CHAIRPERSON JORDAN: Haven't you  
11 been there for 25 years?

12 MR. BRUSKE: Sorry?

13 CHAIRPERSON JORDAN: Have you  
14 lived there for 25 years, at this property for  
15 25 years, or no?

16 MR. BRUSKE: Not continuously.  
17 But there was a break. But we have moved back  
18 in.

19 CHAIRPERSON JORDAN: Okay, but  
20 you've owned it for 25 years?

21 MR. BRUSKE: Yes.

22 CHAIRPERSON JORDAN: Okay.

1                   MR. SULLIVAN: And if I could step  
2 away back from the maintenance issue, the  
3 source of the variance relief comes from not  
4 wanting to leave property idle.

5                   And I think this Board is familiar  
6 with generally why variance relief exists and  
7 why that one of the reasons it exists is to  
8 keep property from remaining idle and not to  
9 encourage idle property.

10                   And because it's disconnected from  
11 the rest of the building, it is, in effect,  
12 idle. And we would like to be able to provide  
13 what would be more affordable housing in the  
14 basement level.

15                   And this was the rationale in Case  
16 17991. It wasn't so much what's the cost of  
17 the maintenance that's necessary. It's that  
18 we have a space here that is unusable,  
19 essentially because it's disconnected from the  
20 rest of the house.

21                   And in order to use that property,  
22 we have a practical difficulty in meeting the

1 strict regulations. And we have the practical  
2 difficulty would be maintaining that as part  
3 of an upstairs unit and only having two units  
4 because it would require redesign of the whole  
5 first floor.

6 CHAIRPERSON JORDAN: Mr. Hinkle?  
7 Do you have, I thought you had --

8 MEMBER HINKLE: No, I just wanted  
9 some clarification. You're saying this  
10 property, there's some unused property here.  
11 But there's two units that are occupied, is  
12 that correct?

13 MR. SULLIVAN: I'm saying just the  
14 portion in the basement.

15 MEMBER HINKLE: Okay, thank you.

16 MR. SULLIVAN: Yes.

17 CHAIRPERSON JORDAN: Ms. Sorg?

18 VICE CHAIRPERSON SORG: Thank you.  
19 I'm having a little trouble with timeline,  
20 here. I understand from your testimony and  
21 your filings that the property was bought 20  
22 years ago, 25 years ago. And I want to

1 clarify a few things that I see are  
2 differences.

3 In your pre-hearing statement, you  
4 indicated that Mr. Bruske lived in the  
5 basement at the beginning of having purchased  
6 the home because the rest of the home was in  
7 severe disrepair which would indicate that  
8 that space was not idle and was habitable.

9 So I'm having a little trouble  
10 with the argument of putting that into proper  
11 use when it was able to be lived in. So  
12 perhaps some clarification of what happened in  
13 the ensuing years to that space.

14 But I also just want to get to a  
15 couple of other areas that can be maybe a  
16 little bit larger discussion. Similarly, in  
17 the handout that you just gave, you indicate  
18 that, and I don't know whether this plays into  
19 my first question or not, it may, you indicate  
20 that the building was previously used as a  
21 rooming house.

22 That's not something that I can

1 recall being mentioned in the pre-hearing  
2 submissions at all. So I want to understand  
3 where that comes from. Did you find a  
4 Certificate of Occupancy or so forth.

5 And also, I appreciate the  
6 comparison here, you know, to understand that  
7 but also, it seems to me the difference here  
8 is that when the home here at 1308 Euclid was  
9 purchased, it was vacant and not operating as  
10 a three unit, non-conforming use.

11 So I'm having trouble with that  
12 connection in your comparison of these two  
13 cases. So those are sort of the three things  
14 that have come up from what you've described  
15 so far for me. Thank you.

16 MR. SULLIVAN: I'll start, and  
17 then you can. Thank you. I'm not sure if we  
18 mentioned it specifically, but we do have the  
19 rooming house C of O as an exhibit. I'm sorry  
20 if we didn't mention it.

21 But it's an exhibit to the  
22 applicant's statement. It was from 1966. It

1 does not mention the number of units within  
2 that rooming house, it just says rooming  
3 house. It's Exhibit C to the applicant's  
4 statement.

5 And again, I don't think that's  
6 the primary factor. It's a factor that has  
7 been considered in the past to be a  
8 contributing factor. Maybe more towards Prong  
9 3 than anything else.

10 Regarding the fact that there's  
11 been 25 years, the practical difficulty and  
12 the exceptional condition existed in 1987 when  
13 he purchased the property, regardless of the  
14 condition of the property because there were  
15 three separate units and they were not  
16 connected.

17 And in order to connect them,  
18 aside from any necessary renovation, would  
19 have been a practical difficulty. The  
20 renovation that took place was superficial.  
21 It wasn't a gutting and changing around of  
22 pipes.

1           The fixtures were put where they  
2 were put before. And so there was nothing  
3 changed with the layout of the design or the  
4 internal configuration.

5           So the practical difficulty and  
6 the exceptional condition comes from the  
7 internal configuration which was there when he  
8 found it, which was non-conforming just like  
9 in Case 17991.

10           The only difference is he didn't  
11 proceed to operate the property illegally. He  
12 abandoned the basement effectively and waited  
13 until it became necessary to pursue an action,  
14 which in 17991 the owner pursued immediately  
15 after he purchased the property. And Mr.  
16 Bruske can talk more about his history with  
17 the property.

18           MR. BRUSKE: Yes, I guess the  
19 previous hearing was so fast, I don't know how  
20 much you want me to say. I mean, I was a  
21 young cub reporter at The Washington Post at  
22 that time on a meager salary.

1 I had been looking for months for  
2 a house to buy. And the only way the math  
3 worked was if it had a rental unit. So I was  
4 kind of delighted to find this place that had  
5 two rental units.

6 The only one that was even  
7 marginally habitable was the basement. For  
8 some reason, somebody had been there before me  
9 and started a renovation from the bottom up.

10 And the first floor was there. It  
11 needed a major re-do of the kitchen. It  
12 needed bathroom, closets, doors, et cetera.  
13 The basement, well it was kind of like camping  
14 out.

15 And what happened was, you know,  
16 when we finally finished the upstairs, we had  
17 a one and a half year deadline from the seller  
18 who had given me a second mortgage for a year  
19 and a half.

20 When we finally were able to get  
21 permanent financing and moved upstairs, it was  
22 just obvious to me that the basement was in no

1 condition to rent to anybody.

2 The drywall was moldering away.  
3 Behind the drywall, the stud work was termite  
4 ridden and moldering away. And so I just  
5 ripped it all out and it's been empty ever  
6 since because of this issue.

7 And you know, just as far as  
8 connecting it to the first floor, well the  
9 stairway that used to be in there is in our  
10 apartment.

11 We live on the second and third  
12 floors. And when you enter our apartment from  
13 the vestibule, that's where the stairwell was  
14 going down into the basement.

15 So there's in order to build a new  
16 stairwell to created a duplex, in effect, you  
17 would have to, you know, cut out joists,  
18 engineer a new stairway going down to the  
19 basement.

20 We never considered doing that. I  
21 mean, it would create a huge apartment that's  
22 not in character with the neighborhood at all,

1 not something we can afford to do, and I don't  
2 know who would rent it.

3           Meanwhile, the first floor, we  
4 have people standing in line to rent that  
5 apartment when it comes up. And I think they  
6 would for the basement apartment, as well.

7           So you know, it's never been a  
8 consideration for us to connect the first  
9 floor and the basement. It would be a monster  
10 apartment and I don't know who would rent it.

11           And I wouldn't want to put my  
12 money at risk doing it. So I guess that we're  
13 here to see if the basement finally qualifies  
14 for, you know, a zoning adjustment.

15           MR. SULLIVAN: And along those  
16 lines, if I could point to the last page of  
17 the handout, it gives some indication of what  
18 is in the surrounding area, and it's  
19 apartments.

20           It's a lot of apartments, large  
21 apartment buildings. And there's only two  
22 single family homes on the south side of this

1 street, and both of them have filed letters of  
2 support.

3 But this colors the other issue in  
4 17991 that I keep going back to, the  
5 marketability of a two story 1900 square foot  
6 unit, and that itself being a practical  
7 difficulty, which the Office of Planning  
8 believed it was three years ago in that case.

9 CHAIRPERSON JORDAN: I may have  
10 missed it, but I don't see any financials in  
11 this application and in the record.

12 MR. SULLIVAN: Right. The  
13 practical difficulty is that we could provide  
14 financials if the Board required. The  
15 practical difficulty, we think, is obvious  
16 from the testimony of the architect saying  
17 what's involved in reconnecting basement and  
18 one.

19 This situation's a little  
20 different. Normally in a typical case like  
21 this, you have a speculator or developer  
22 coming in and saying I'm buying this property

1 and I need a unit or I'm going to loose money,  
2 and here's what I'm paying. This is a little  
3 different because he's owned it for 25 years.

4 CHAIRPERSON JORDAN: But you've  
5 been making argument from 17991 which I  
6 haven't read the full case, but just by your  
7 outline here, it's based upon the economics of  
8 the matter.

9 And so you're just coming here  
10 saying that and there's no back up  
11 documentation that that is at issue.

12 MR. SULLIVAN: Well, we would like  
13 to have the architect testify as to some of  
14 the things that are necessary to --

15 CHAIRPERSON JORDAN: But can you  
16 testify in regards to the marketability of the  
17 building? He's not an expert in that regard?

18 MR. SULLIVAN: No. And I don't  
19 believe that we need an expert to testify that  
20 you can't rent a 2,000 square foot unit.

21 CHAIRPERSON JORDAN: Well, Mr.  
22 Sullivan, we can go this round and round, but

1 I'm trying to help you get to where you need  
2 to. And I'm telling you what probably this  
3 Board needs to see.

4 Now if you think it's not  
5 necessary, then don't do it. But I'm just  
6 saying it's something that we have done in  
7 other cases, required that kind of evidence to  
8 support the argument that you're making.

9 MR. SULLIVAN: Right. Well, we  
10 have testimony from the owner, who's lived in  
11 the neighborhood for 25 years. When he  
12 originally moved into the neighborhood, it was  
13 a bad neighborhood. It's gotten better.

14 He's got experience with that, so  
15 we can submit that. But we're happy to submit  
16 comps after the hearing, and any financial  
17 information you want.

18 The amounts, it's going to be a  
19 significant amount to reconnect basement and  
20 one. And there's nothing to compare that  
21 number to. If it's \$30,000, it doesn't  
22 compare to whether or not we need to get a

1 unit because the practical difficulty is in  
2 actually reconnecting basement and one.

3 CHAIRPERSON JORDAN: You said you  
4 wanted, Ms. Sorg?

5 VICE CHAIRPERSON SORG: I'm a  
6 little confused with the way that you are  
7 parsing this because the practical difficulty  
8 that you are describing is the cost of  
9 reconnecting those things.

10 There was a stair there. There's  
11 room for a stair there. You can see it in the  
12 plans. So it's not the actual organization of  
13 the structure that disallows you from  
14 reconnecting those things.

15 What you have described in your  
16 testimony so far, and also in the filings that  
17 we've read, there is an economic issue. So I  
18 mean, we've not finished with the hearing yet,  
19 but I would in that case, echo what the Chair  
20 has been saying.

21 And I would also note, Mr.  
22 Sullivan, that in all of these cases, big or

1 small, developer or homeowner, the record I  
2 think would show that we have always received  
3 cost estimates and we have always received  
4 market analyses.

5 So I mean, as we move forward, for  
6 me as well, those two things would be  
7 something that I would really look for, and  
8 that I was looking for originally in the  
9 application and is a big part of that  
10 documentation. Quantitative documentation is  
11 something that, to me, was missing from the  
12 arguments.

13 MR. SULLIVAN: Okay. We're happy  
14 to provide that. And I would like to have the  
15 architect testify. But the standard is that  
16 it be unnecessarily burdensome to comply with  
17 the zoning regulations.

18 And whether the estimate to  
19 connect B and 1 is \$30,000 or \$100,000, it's  
20 unnecessarily burdensome. But we're happy to  
21 submit that.

22 CHAIRPERSON JORDAN: Yes, but

1 again, and I understand you trying the matter  
2 and you making that opinion, but this is the  
3 Board that's going to vote on it. And we're  
4 telling you probably what we need for us to  
5 get to where you are.

6 MR. SULLIVAN: Okay.

7 CHAIRPERSON JORDAN: You may be  
8 there, but we're not there so far. Are you  
9 going to have the architect testify?

10 MR. SULLIVAN: Yes. Thank you.

11 MR. HOFFLAND: It's true that, you  
12 know, at some point historically there was a  
13 stair from the first level to the lower  
14 basement level of the building.

15 The way that the first floor unit  
16 is currently configured, there is a very small  
17 kitchen, a mechanical room and a full bathroom  
18 right in the middle of the house.

19 And so in order to put a new  
20 stairwell connecting the two in kind of the  
21 most logical place, we would have to demolish  
22 and/or relocate the bathroom.

1                   At the same time, having a large  
2                   1,900 square foot apartment would, and I think  
3                   anybody that's owned a house or an apartment  
4                   could understand this, would necessitate, you  
5                   know, it's going to be a three bedroom  
6                   probably, maybe even four bedroom unit would  
7                   require a much larger kitchen than what  
8                   currently is there to be marketable and useful  
9                   for that quantity of people that would be  
10                  living in an apartment.

11                  So the kitchen has to be expanded,  
12                  and it can't be expanded in the way it is now  
13                  because of where the mechanical room is. So  
14                  that has to be relocated.

15                  So really, while there are lots of  
16                  different ways to organize the internal  
17                  spaces, what we're really talking about on  
18                  that first level is to gut everything because  
19                  the bathroom, the kitchen and the mechanical  
20                  room all have to be relocated and/or majorly  
21                  renovated in order to support the kind of size  
22                  and capacity that three or four bedroom

1 apartment would need to be marketable.

2 And at the same time, then,  
3 presumably the lower level becomes the bedroom  
4 level. And then you have a very large  
5 apartment that has all the bedrooms  
6 subterranean.

7 And maybe this now comes more to  
8 where I have renovated many houses in the  
9 area. I live in the neighborhood. And you  
10 know, really I don't think people that are  
11 looking for such a large apartment would put  
12 up with having subterranean bedrooms and no  
13 parking and so forth.

14 So really, it becomes an awkward  
15 apartment, but more to the point I guess, the  
16 entire first floor would really have to be  
17 gutted and completely renovated to make it  
18 work as one large apartment, whereas if we  
19 just renovated the basement, it's very easy to  
20 do that and create a separate apartment there  
21 without doing anything to the first floor.

22 MR. BRUSKE: And as the owner,

1 that is a real concern of mine is investing a  
2 whole lot of money to basically create a white  
3 elephant. Not interested.

4 VICE CHAIRPERSON SORG: Yes, I  
5 actually think that you make some good points.  
6 And there are spaces that want to be certain  
7 sizes. And you've got to have a certain size  
8 kitchen and living room if you're going to  
9 have, you know, four bedrooms, a family with  
10 four kids or whatever living in a place. So  
11 I understand that.

12 What I do think would be helpful  
13 in illustrating those differences would be,  
14 and correct me if I'm wrong, I don't believe  
15 that we've received any existing conditions,  
16 plans of what is there now?

17 MR. SULLIVAN: Just photos. No,  
18 not existing plans, but photos in the  
19 applicant's statement.

20 MR. HOFFLAND: I do have, not with  
21 me here, but I do have those plans. They've  
22 been documented. So I suppose I could give

1 those to Marty to distribute if you would  
2 like.

3 VICE CHAIRPERSON SORG: I think  
4 that would be nice.

5 CHAIRPERSON JORDAN: Any other  
6 questions of the applicant? Well, Mr.  
7 Sullivan, anything else you want to present to  
8 us before we move to Planning?

9 MR. SULLIVAN: Not at this time,  
10 no.

11 CHAIRPERSON JORDAN: Then let's  
12 turn now to the Office of Planning.

13 MR. COCHRAN: Thank you, Mr.  
14 Chair. The Office of Planning, based on the  
15 information that we have now and that you have  
16 now has recommended against your approving the  
17 requested relief.

18 We would certainly be willing to  
19 reconsider if the Board does ask the applicant  
20 to submit additional information. But at this  
21 point, as I believe we said in our report, it  
22 does appear that the applicant has not

1 documented the exceptional conditions on this  
2 site.

3 That it really does appear to be  
4 more a case of deferred maintenance, for which  
5 the applicant wishes to receive additional  
6 income to help to pay for a quarter century of  
7 deferred maintenance.

8 And that does not seem to comport  
9 with the intention of the zoning regulations.  
10 I can go into more detail if you would like.

11 CHAIRPERSON JORDAN: Yes. Does  
12 the Board have any questions of Planning?  
13 Does the applicant have questions?

14 MR. SULLIVAN: Yes, just a couple,  
15 please. Are you familiar with Case 17991, Mr.  
16 Cochran?

17 MR. COCHRAN: Excuse me. No, sir,  
18 I'm not.

19 MR. SULLIVAN: Okay. In that  
20 case, your office determined that the  
21 practical difficulty was the fact that there  
22 was no connection between the basement and the

1 first floor unit, and that the practical  
2 difficulty was in reconnecting those two.

3 So would that square with your  
4 contention that this is just a case of  
5 deferred maintenance?

6 MR. COCHRAN: I feel a bit  
7 uncomfortable answering that question without  
8 really understanding all of the conditions in  
9 Case number 17991. It's very difficult for me  
10 to make a comparison about something I don't  
11 know anything about.

12 MR. SULLIVAN: Did you have a copy  
13 of the handout?

14 MR. COCHRAN: I do.

15 MR. SULLIVAN: The OP report, do  
16 you have a copy of the OP report?

17 MR. COCHRAN: You've attached it.

18 CHAIRPERSON JORDAN: And the  
19 difference here, because I'm just recognizing,  
20 what you passed out, it was from the OP report  
21 because it's not what the Board actually found  
22 in that case. I mean, that wasn't what the

1 Board because it was a Summary Order, was it  
2 not?

3 MR. SULLIVAN: It was a Summary  
4 Order, that's correct.

5 CHAIRPERSON JORDAN: I thought so.

6 MR. SULLIVAN: I have one more  
7 question, I think, for the Office of Planning.  
8 You stated in your report that the 2007 text  
9 amendment reinforced the minimum lot area  
10 requirements for apartment conversions.

11 Can you explain what that means  
12 and what impact that has on this decision?

13 MR. COCHRAN: Prior to those  
14 amendments, there had been some question about  
15 whether the R-4 zone was appropriate as an  
16 apartment zone or not.

17 The 2007 amendments, as I  
18 understand it, reiterated that the R-4 zone is  
19 not intended to be an apartment zone, that  
20 these conversions are allowed for existing  
21 structures, which your applicant's is.

22 And it, again, reiterated that the

1 900 square feet was the appropriate minimum  
2 for a unit in a building that has been  
3 converted to an apartment building.

4 MR. SULLIVAN: How exactly did it  
5 reiterate? Did it just say we really like  
6 this provision, so we want to keep it going?

7 MR. COCHRAN: I'm sorry, I would  
8 have to go back to the OP report on that.

9 MR. SULLIVAN: Isn't it true, in  
10 fact, that that case had to do with apartment  
11 buildings that existed prior to 1958 and not  
12 conversions, because prior to that text  
13 amendment, the interpretation was that there  
14 was no lot occupancy limit and no unit limit  
15 for any building that was an existing  
16 apartment building prior to 1958.

17 And all that text amendment did  
18 was it said that these provisions are now  
19 going to apply to preexisting apartments, just  
20 like it applies to conversions. So it was, in  
21 a sense, shoring up a loophole for apartment  
22 buildings that existed prior to 1958.

1                   MR. COCHRAN: Thank you for  
2 explaining what I wrote.

3                   MR. SULLIVAN: Okay. I'm not sure  
4 I understand how that was what you wrote. But  
5 did the 2007 text amendment say that this  
6 Board didn't have the ability to consider  
7 variance relief for a 900 foot role?

8                   MR. COCHRAN: Of course not. Of  
9 course. We're not suggesting --

10                  MR. SULLIVAN: Did the text  
11 amendment say that it was more difficult than  
12 other areas of variance relief?

13                  MR. COCHRAN: No. The test for  
14 variance relief is the test for variance  
15 relief.

16                  MR. SULLIVAN: Thank you. You  
17 stated in the report that according to our  
18 engineer's report, that it appeared that, you  
19 said the applicant has submitted information  
20 from a structural engineer that indicate that  
21 within the context of other repair needs, the  
22 reinsertion of a staircase may be a relatively

1 minor task.

2 My recollection is that structural  
3 engineer's report didn't even address the  
4 reinsertion of the staircase. So can you tell  
5 me how you got that determination from that?

6 MR. COCHRAN: I would be happy to.  
7 While there were no estimates of how much it  
8 would cost to do the repairs that were  
9 necessary, the tone of, no I shouldn't say the  
10 tone.

11 When you look at the numbers of  
12 things that the applicant is saying need to be  
13 addressed in order to shore up the structure  
14 of the building, it seems considerable.

15 When you're considering putting in  
16 a steel beam or two, and the various other  
17 things that the applicant mentions, the cost  
18 of putting in the framing out for a staircase  
19 seems to be relatively minor compared to the  
20 other things that are entailed in the ongoing  
21 maintenance costs, or the current needs for  
22 the maintenance of the building.

1                   MR. SULLIVAN:   Okay.   So how do  
2                   you get the opinion that it was a relatively  
3                   minor expense from the engineer's report.  
4                   You're just making a judgement on your --

5                   MR. COCHRAN:   I'm making a  
6                   judgement, yes.

7                   MR. SULLIVAN:   Thank you.   I have  
8                   no further questions.

9                   CHAIRPERSON JORDAN:   You want to  
10                  ask that question?

11                  VICE CHAIRPERSON SORG:   Okay.   So  
12                  one of the things, one of the paths that  
13                  you're just going down with the Office of  
14                  Planning is kind of interesting, I think.

15                  And I'm sure there's at least,  
16                  like, four lawyers in the room who may also be  
17                  able to think potentially even more than me  
18                  about this.   But in places in your testimony  
19                  and your filings, what you're indicating is  
20                  this is already a three unit building, right?

21                  MR. SULLIVAN:   That's correct.

22                  VICE CHAIRPERSON SORG:   Okay.

1 MR. SULLIVAN: It's configured --

2 VICE CHAIRPERSON SORG: Okay, just  
3 wait.

4 MR. SULLIVAN: -- internally as a  
5 three unit dwelling, yes.

6 VICE CHAIRPERSON SORG: Right,  
7 okay. So you're saying this is already a three  
8 unit building. What you're coming here for is  
9 an area variance.

10 MR. SULLIVAN: That's correct.

11 VICE CHAIRPERSON SORG: And when  
12 you're talking about reiterating the 900  
13 square feet, that's for converting two units  
14 or a single family or other uses into a non-  
15 conforming use, in this case, a three unit  
16 building.

17 MR. SULLIVAN: We're legally a  
18 flat, a two unit flat. That's the legal  
19 status of this structure.

20 VICE CHAIRPERSON SORG: Okay. So  
21 there's a C of O for a flat?

22 MR. SULLIVAN: Actually, there

1       isn't a C of O. But that's what it operates  
2       as. And so it, just like in all the other  
3       cases to come before the Board, when there's  
4       a preexisting --

5                   VICE CHAIRPERSON SORG: That's  
6       based on taxes.

7                   MR. SULLIVAN: There's what the  
8       building exists as and what it's configured as  
9       and what it's --

10                  VICE CHAIRPERSON SORG: I  
11       understand. Why does it not exist as a three  
12       unit building where only two units are being  
13       used?

14                  MR. BRUSKE: You mean legally?

15                  VICE CHAIRPERSON SORG: Yes.

16                  MR. BRUSKE: Because when I went  
17       to the permit office, they said you cannot get  
18       a permit to work on three units there because  
19       your lot --

20                  VICE CHAIRPERSON SORG: That's  
21       because you requested to establish three  
22       units.

1                   MR. SULLIVAN: Our C of O for  
2 rooming house was 1966. So the assumption  
3 would be that sometime after 1966 and prior to  
4 1987, somebody created a third unit.

5                   VICE CHAIRPERSON SORG: Yes.

6                   MR. SULLIVAN: There's evidence  
7 that perhaps it was a single family house  
8 before it was a rooming house. We don't know  
9 what it was configured as a rooming house.

10                   But after it was a rooming house,  
11 it was most likely reconfigured into its  
12 current --

13                   MR. BRUSKE: The man I bought it  
14 from, in the late '70s, 1980 had obtained a  
15 permit to build the flat.

16                   VICE CHAIRPERSON SORG: Okay.

17                   MR. BRUSKE: And I believe what he  
18 did at that time was he just took out the  
19 stairway to the basement, built a vestibule to  
20 create first floor, second and third floor  
21 units, and basement unit, but he never had a  
22 permit for it.

1                   VICE CHAIRPERSON SORG:  Okay.  I'm  
2                   trying to, you know, you get where I'm sort of  
3                   trying to look at.

4                   CHAIRPERSON JORDAN:  I'm trying to  
5                   get where you need to be.

6                   MR. SULLIVAN:  That's why I wanted  
7                   to go from the beginning and do the  
8                   presentation based on 17991 because it was  
9                   very clear to them that --

10                  CHAIRPERSON JORDAN:  But it's not  
11                  clear to us, and we did step through that with  
12                  you, Mr. Sullivan.

13                  MR. SULLIVAN:  An exceptional  
14                  condition is --

15                  CHAIRPERSON JORDAN:  And that was,  
16                  again, what Office of Planning has done, but  
17                  not what this Board, we don't know what this  
18                  Board considered since we had a summary  
19                  opinion.

20                  And we did step through this  
21                  analysis with you, your comparison.  You had  
22                  the opportunity, you did do that.  And we

1 still have questions. So it may be clear to  
2 you, it's not as clear to us.

3 MR. SULLIVAN: Okay.

4 CHAIRPERSON JORDAN: But, you  
5 know, if you want to --

6 MR. SULLIVAN: Can we go through,  
7 would it be helpful to go through, step by  
8 step, my handout?

9 CHAIRPERSON JORDAN: Well, I asked  
10 you did you want to present anything else, and  
11 I thought that you were done. So let me  
12 finish. You can do that in your rebuttal  
13 phase.

14 Is there anyone from ANC?  
15 Department of Transportation, have they  
16 submitted a document? I don't think they did,  
17 did they? Department of Transportation?

18 No, we do have a letter. Is ANC  
19 1B here? Then we do have a letter from ANC 1B  
20 voting in support, however we can't give great  
21 weight to since it doesn't meet the  
22 requirements for granting great weight from my

1 review of the letter.

2 Is there anyone here wishing to  
3 testify in support of this application? Is  
4 there anyone here wishing to testify in  
5 opposition to the application?

6 Then Mr. Sullivan, do you want to  
7 present your rebuttal, your additional  
8 discussion?

9 MR. SULLIVAN: Thank you. I have  
10 a question about the ANC 1B report. I'm  
11 puzzled why it's not valid.

12 CHAIRPERSON JORDAN: Well, you  
13 want to tell me why it is valid for bearing  
14 great weight?

15 MR. SULLIVAN: Sure. It's signed  
16 by the Chair and it notes that it was at a  
17 regularly scheduled meeting with a quorum.

18 CHAIRPERSON JORDAN: Okay, it does  
19 say a quorum.

20 MR. SULLIVAN: And it was  
21 unanimously voted to support the application.

22 CHAIRPERSON JORDAN: I stand

1 corrected. We will give it great weight.

2 Yes, we just got it and I didn't see that.

3 All right, thank you.

4 MR. SULLIVAN: Thank you. I'll  
5 just go briefly through my handout in this  
6 side by side analysis. And I used 17991 as a  
7 model because it was the only case I know of  
8 where the Office of Planning supported this  
9 variance relief.

10 And yes, it was a Summary Order, I  
11 could provide parts of the transcript. But it  
12 essentially referred to the transcripts then,  
13 too. And it referred and deferred to OP's  
14 reasoning on that.

15 CHAIRPERSON JORDAN: Let me offer  
16 this as help for you. I don't know if this is  
17 going to be helpful for you to say that this  
18 is something that mirrors our particular  
19 action in this matter.

20 You can continue to make the  
21 argument, but we're asking you to build this  
22 up independently with this Board, if you

1 would.

2 MR. SULLIVAN: Okay.

3 CHAIRPERSON JORDAN: I don't know  
4 if you can use this as any type of precedence  
5 for what this Board's action is because one,  
6 it was a Summary Order by this Board.

7 There could have been a lot of  
8 other discussions going on and all other kind  
9 of reasons, and I don't know, based upon a  
10 Summary Order, what this Board actually laid  
11 its hat on in this decision to set any level  
12 of precedence. So I just want to offer that  
13 to you as a suggestion in your argument.

14 MR. SULLIVAN: Thank you. And I'm  
15 not calling a precedent, I'm calling it a  
16 blueprint because I think it makes sense.

17 And some of the things that Office  
18 of Planning looked at in that case was that  
19 after the rooming house use was in effect, the  
20 building was then illegally converted to a  
21 three unit apartment house by a previous  
22 owner, and then purchased by the applicant.

1           That was considered to be an  
2           exceptional situation or condition. And I  
3           believe that's true in this case, as well. In  
4           1987, when he purchased it as three separate  
5           units, he then had a property that was subject  
6           to an exceptional condition or situation as a  
7           result of the previous owners converting that  
8           to three units and him believing.

9           And this was something that was  
10          present in the Board's transcript, it was  
11          critical the fact of his knowledge that he  
12          believed he was purchasing three units without  
13          knowledge of it not being legal.

14          And those three units existed for  
15          the last 25 years. The practical difficulty  
16          is in using, being able to use that space  
17          effectively. To be legal and to comply with  
18          the strict zoning regulations, you need to  
19          combine the basement level and the first  
20          level.

21          That's unnecessarily burdensome.  
22          And that's what our architect's testimony went

1 to. And we're happy to provide financial  
2 information specifically about all the costs  
3 involved in doing that.

4 The other practical difficulty  
5 that was mentioned by OP in the other case,  
6 and I think is present in this case is that  
7 you're creating a two story, 1,900 square foot  
8 unit.

9 And we can submit information on  
10 that, although I think that kind of  
11 information's been submitted many times and  
12 it's in the Office of Planning report here  
13 that we're submitting that there's very few  
14 units of such a large size in an apartment  
15 house area such as this.

16 Regarding the substantial  
17 detriment to the zone plan or the public good,  
18 I think the Office of Planning did comment  
19 that there is no substantial detriment to the  
20 public good.

21 Regarding the zone plan, I would  
22 just add that the comp plan, land use category

1 here is possibly even medium density  
2 residential, which supports large apartment  
3 buildings. It's on the border and straddling  
4 the moderate density and the medium density.

5 And it's also surrounded by  
6 apartment houses. So for that reason, and  
7 because, and this is why I'm presenting 17991,  
8 it's in line with another decision and it's in  
9 line with rationale where Office of Planning  
10 has said in their report, we don't like this  
11 variance, we don't hardly ever support it.

12 But this is one of those cases  
13 where we will. And since this is a similar  
14 case, this I believe is also a unique case  
15 that doesn't impact the zone plan negatively  
16 for that reason.

17 And that's all I have. We're  
18 happy to submit financial information or  
19 market information.

20 CHAIRPERSON JORDAN: Does the  
21 board have any other questions of --

22 VICE CHAIRPERSON SORG: Sorry.

1 CHAIRPERSON JORDAN: No, go ahead  
2 then.

3 VICE CHAIRPERSON SORG: Okay. One  
4 question. Just if you wouldn't mind  
5 repeating, Mr. Bruske. You said that when the  
6 previous owner sold you the house, they had  
7 obtained the building permit, I guess, for two  
8 flat unit and had kind of abandoned the  
9 basement.

10 That was what you, I think, just  
11 testified to. And you should correct me if  
12 I'm wrong because that was my understanding of  
13 your testimony.

14 MR. BRUSKE: No. I started to do  
15 some, after meeting with Mr. LeGrant, went to  
16 the archives to see what they had. And for  
17 the first time, saw that the previous owner  
18 had taken out a permit, I believe it was late  
19 '70s, early '80s.

20 And I conjectured from what he was  
21 doing that he went ahead and created the flat,  
22 but also took out the stairs to the basement

1 and created apartment down there with all the  
2 plumbing and kitchen, all that stuff, even  
3 though he didn't have a permit.

4 VICE CHAIRPERSON SORG: And that  
5 was there when you found it, all the --

6 MR. BRUSKE: Yes, and like I --

7 VICE CHAIRPERSON SORG: -- fit out  
8 of the basement was there when you found it?

9 MR. BRUSKE: Yes it was. I was  
10 able to live there. And --

11 VICE CHAIRPERSON SORG: In a  
12 camping type --

13 MR. BRUSKE: -- like I said, it  
14 was a little bit like camping out. But it  
15 was, you know, habitable. It just was not in  
16 any condition.

17 It was so substandard, it was not  
18 something that I, you know, would ever feel  
19 comfortable renting to anyone. And in fact,  
20 it really needed to be removed.

21 MR. HOFFLAND: I would just add  
22 briefly here, since I did a lot of work with

1 Ed trying to determine the use and what we  
2 could do to renovate this, that there is a  
3 document, home inspection report from 1987  
4 when he purchased it that states it as a three  
5 unit building.

6 So when I was looking through,  
7 there's no obviously legal record of a three  
8 unit building, but it shows in the home  
9 inspector's report as a three unit. And there  
10 are three separate meters for it as well.

11 So I think that only supports the  
12 fact that it was assumed to be a three unit  
13 when you purchased it.

14 MR. BRUSKE: Yes, actually there  
15 were two or three home inspection reports from  
16 prior to when I arrived that all, you know,  
17 said it was a three unit building with  
18 separate meters. So there wasn't any  
19 question.

20 CHAIRPERSON JORDAN: Mr. Cochran?

21 MR. COCHRAN: This is in response  
22 to Mr. Sullivan's question earlier about the

1 case on North Capitol Street. It appears from  
2 looking at the information you submitted that  
3 there is a significant difference between the  
4 two.

5 For North Capitol Street, that was  
6 a recent purchase on the part of the  
7 applicant. Admittedly, the applicant had an  
8 obligation to make sure that every piece of  
9 information presented by the realtor that sold  
10 it to him was correct.

11 I don't know whether the applicant  
12 did or not. But it could have been sort of a  
13 whoops, didn't know that kind of a situation.  
14 Your client has had 25 years of owning this  
15 house, and has been aware for some time that  
16 it didn't have a permit to do three units.

17 Your client is working on the  
18 assumption that there's a right to use the  
19 basement. That there's a right to use the  
20 house for its maximum economic return.

21 Your filing actually says that  
22 absent the reconversion of the basement into

1 a residential unit, there would not be, and I  
2 quote, "any corresponding material economic  
3 benefit to mitigate restoration and  
4 maintenance costs."

5 Now that's what I had a very  
6 difficult time finding anything in the zoning  
7 regulations that entitle an applicant to an  
8 economic return on maintenance.

9 CHAIRPERSON JORDAN: Mr. Cochran,  
10 let me end that. I thought we were just going  
11 to -- that's not the basis of where we need to  
12 have that argument. And we're going to close  
13 this hearing based upon the record that we  
14 have --

15 COMMISSIONER COHEN: Mr. Chairman?

16 CHAIRPERSON JORDAN: Yes?

17 COMMISSIONER COHEN: I have one  
18 other statement, though, or question.

19 CHAIRPERSON JORDAN: Certainly.

20 COMMISSIONER COHEN: I would like  
21 to see more market information. And the  
22 reason why, this is a very mixed neighborhood.

1 And I think some of the things you have said,  
2 you know, I'm evaluating, digesting.

3 But there are very few units of  
4 1,900 square feet for a family in that  
5 neighborhood, especially immigrant families.  
6 One of the things that the District lacks are  
7 larger units for families.

8 And again, I don't know this  
9 market. I don't know what rents are. But I  
10 just think we need to have a better  
11 understanding and grasp with regard to that.

12 CHAIRPERSON JORDAN: And Ms.  
13 Cohen, what I was going to say as we close  
14 this hearing, the record will remain open for  
15 you to submit one, financial data of what the  
16 cost of doing the work that you talked about.

17 We need to have the marketability  
18 analysis presented to the board in this  
19 regard. And is there anything else that the  
20 board feels that they need?

21 MR. BRUSKE: Well, I would just  
22 like to --

1 CHAIRPERSON JORDAN: Wait a  
2 second. Ms. Sorg?

3 VICE CHAIRPERSON SORG: Yes. What  
4 I had mentioned was cost estimates, the you  
5 know, market information, rental information,  
6 as well as the existing conditions.

7 And I think any of those, you  
8 know, if you're mentioning inspection reports  
9 or any of those things. I mean, you never  
10 know. You know, I think if you leave it  
11 fairly open, it might be of a benefit. I  
12 don't know. Back to you.

13 CHAIRPERSON JORDAN: Yes, because  
14 I just don't want to open the door to a whole  
15 bunch. But those are the things that we have  
16 this record open.

17 And if there's something else, you  
18 can certainly petition the Board to submit it  
19 and submit it and ask for leave, and we will  
20 deal with that. Okay, then lets -- yes?

21 MR. BRUSKE: I just wanted to  
22 interject very briefly a couple of things.

1 First, we welcome families in our building.  
2 In fact, we've had three children in there,  
3 and actually one baby born in the first floor  
4 apartment.

5 And our most recent tenant also  
6 has a toddler that was born while they were  
7 there. So that's not an issue.

8 And I just want to, again, sort of  
9 object to the notion that we've had these  
10 deferred maintenance issues, which is why we  
11 want to build an apartment to pay for them.

12 We just don't operate that way.  
13 As I said before, these are structural issues  
14 that came to light at the engineer's visit a  
15 year and a half ago.

16 We know we have to take care of  
17 them, but regardless, I mean the question is,  
18 is that basement going to be put to good use,  
19 or not? I think that's where we are with it.

20 CHAIRPERSON JORDAN: Okay. So --

21 MR. SULLIVAN: And in response to  
22 what Mr. Cochran said --

1                   CHAIRPERSON JORDAN: We're not  
2 going to have any more response at this point.  
3 I've already closed at this point. I'm not  
4 going back and forth anymore. Thank you.

5                   Mr. Moy, do we have a date in  
6 which we can put this on for any more  
7 testimony? Let's go for a decision date,  
8 then.

9                   MR. MOY: Decision date. The  
10 decision date in December, Mr. Chairman is in  
11 the afternoon of December the 18th.

12                  CHAIRPERSON JORDAN: Will that be  
13 enough time for you? December 18th is enough  
14 time for you to get all that?

15                  MR. SULLIVAN: I don't think so.

16                  CHAIRPERSON JORDAN: Let's have  
17 another date, Mr. Moy.

18                  MR. MOY: Different date?

19                  CHAIRPERSON JORDAN: Yes, please.

20                  MR. MOY: A later date. Okay,  
21 well that puts us into 2013. We already have  
22 a special public meeting on the morning of

1 January the 8th. Other than that, then --

2 CHAIRPERSON JORDAN: What's wrong  
3 with the 15th? What do we have on the 15th?  
4 On that day we already have a case on the  
5 15th?

6 MR. MOY: December 15th again?

7 CHAIRPERSON JORDAN: January 15th.

8 MR. MOY: Oh, oh. That works.  
9 One, two, three, this would be the fourth  
10 decision on --

11 CHAIRPERSON JORDAN: Okay, that  
12 makes sense. Thanks.

13 MR. MOY: -- January 15th.

14 CHAIRPERSON JORDAN: January 15th,  
15 Mr. Sullivan.

16 MR. SULLIVAN: Yes, that's fine  
17 with us. When would be the date for  
18 submitting additional information, then?

19 CHAIRPERSON JORDAN: Mr. Moy, what  
20 date do you need that so it can get to the  
21 Board? Probably by the 9th is it?

22 MR. MOY: Yes, give me a second,

1 let me pull up my calendar.

2 CHAIRPERSON JORDAN: No, probably  
3 the 8th.

4 MR. MOY: Let's see. December,  
5 January 15th. Assuming this is only requests  
6 for filing into the record, staff would  
7 suggest if do-able with the applicant, Monday,  
8 January the 7th.

9 MR. SULLIVAN: Yes, that's fine  
10 for us. Thanks.

11 CHAIRPERSON JORDAN: All right,  
12 thank you.

13 MR. MOY: Would that include any  
14 supplemental from the Office of Planning, sir?  
15 Yes, no?

16 CHAIRPERSON JORDAN: That means  
17 Planning would need to see it before then.  
18 Yes, so can we do it that Friday and then  
19 maybe get something from planning?

20 MR. MOY: Okay, so if the  
21 applicant can file, lets say that Friday which  
22 would be January the 4th?

1 MR. SULLIVAN: Yes, that's fine.

2 Thanks.

3 MR. MOY: And the Office of  
4 Planning, if they could file, like, two or  
5 three days? Okay, let's make it Wednesday the  
6 9th. Wednesday, January 9th for OP.

7 So once again, Mr. Chairman, it's  
8 a decision on Tuesday, January 15th.  
9 Applicant to file by Monday, January the 7th,  
10 Office of Planning to do a supplemental report  
11 by Wednesday, January 9th.

12 CHAIRPERSON JORDAN: All right,  
13 thank you. Then let's conclude this hearing.

14 MR. SULLIVAN: Thank you.

15 CHAIRPERSON JORDAN: Thank you.

16 MR. MOY: The next application  
17 before the Board, then, would be Application  
18 number 18448. This is the application of 3579  
19 Warder Street, LLC.

20 Pursuant to 11 DCMR 3103.2, this  
21 is for a variance from the lot area  
22 requirements under Subsection 401.3 to allow

1 the conversion of a rooming house into a four  
2 unit apartment building in the R-4 District at  
3 premises 1221 Otis Place, Northwest. Property  
4 located Square 2829, Lot 57.

5 And I believe in this application,  
6 Mr. Chairman, there's a request for party  
7 status under Exhibit number 27 and 28.  
8 Exhibit 28 being a waiver of the time  
9 requirements, I believe.

10 VICE CHAIRPERSON SORG: I'm good,  
11 I think.

12 MR. MOY: While there's a pause,  
13 Mr. Chairman, the Zoning Office is in receipt  
14 of a letter, a report from ANC 1A at 11:57 to  
15 be exact.

16 CHAIRPERSON JORDAN: Okay, let's  
17 deal with the party status issue first.  
18 There's a motion to waive the time in the  
19 party status. Mr. Wolfberg? Well, first let  
20 me have the persons at the table identify  
21 themselves for us, please.

22 WHEREUPON,

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ELIAS WOLFBERG

was called as a witness for the Applicant and, having been first duly sworn, assumed the witness stand, was examined and testified as follows:

MR. WOLFBERG: Mr. Chairman and members of the Board, my name is Elias Wolfberg. I live at 3601 13th Street. And my property abuts the property that we are all here to talk about.

CHAIRPERSON JORDAN: When you use the term abut, what do you mean?

MR. WOLFBERG: The rear of my property, sorry, looks out on the side of his property. And so that sidewall on the left --

CHAIRPERSON JORDAN: So that's why it's a different street name?

MR. WOLFBERG: Correct, yes.

CHAIRPERSON JORDAN: Okay, all right. Got it, okay. Yes, all right.

WHEREUPON,

RICHARD KLUGMAN

1 was called as a witness for the Applicant and,  
2 having been first duly sworn, assumed the  
3 witness stand, was examined and testified as  
4 follows:

5 MR. KLUGMAN: My name is Richard  
6 Klugman, 3603 13th Street, Northwest. And  
7 obviously, my property is next to Elias's and  
8 is to the left of the photograph. Sorry, over  
9 there.

10 CHAIRPERSON JORDAN: Okay. All  
11 right, Ms. Molderhauer?

12 WHEREUPON,

13 MEREDITH MOLDERHAUER  
14 was called as a witness for the Applicant and,  
15 having been first duly sworn, assumed the  
16 witness stand, was examined and testified as  
17 follows:

18 MS. MOLDERHAUER: Good morning, my  
19 name is Meredith Molderhauer from Griffin and  
20 Murphy. I am here representing the Applicant  
21 in this case, which is 3579 Warder Street,  
22 LLC.

1                   On the applicant's behalf today we  
2                   have Mohammed Pishvaeian, represented also  
3                   James Killelte representing a James Klutten  
4                   Associate which is the architect for the  
5                   project.

6                   I believe there are a few  
7                   different preliminary matters.

8                   CHAIRPERSON JORDAN: Go ahead.

9                   MS. MOLDERHAUER: One of them is  
10                  the preliminary matter of just clarifying that  
11                  Mr. Wolfberg is the individual that applied  
12                  for the party status.

13                  I am understanding, obviously, Mr.  
14                  Klugman may be a witness, but that it's not --

15                  CHAIRPERSON JORDAN: I only have  
16                  Mr. Wolfberg's. That's what my assumption  
17                  was.

18                  MS. MOLDERHAUER: I just want to  
19                  make sure that that's clarified for the  
20                  record. In addition to that, I don't know if  
21                  the Board or if Mr. Wolfberg has already  
22                  presented it to the board, but there was a

1 submission that Mr. Wolfberg was going to  
2 provide in addition to supplement his party  
3 status. And I think that might be an issue as  
4 well, as a preliminary matter.

5 CHAIRPERSON JORDAN: What do you  
6 mean, other than the waiver of time? What are  
7 you referring to?

8 MR. WOLFBERG: Well, so we have a  
9 brief that we would like the Board to  
10 consider. It was completed last night, and  
11 there are copies for the Board that I  
12 presented earlier.

13 CHAIRPERSON JORDAN: Hold that,  
14 Mr. Moy. Go ahead, finish please.

15 MR. WOLFBERG: Yes, and as I am  
16 representing myself and Richard is  
17 representing himself pro se, putting together  
18 this brief unfortunately took longer than we  
19 had hoped.

20 We think it's a solid, strong  
21 brief which is compelling and chock full of  
22 important and material information. But

1       unfortunately, I was unable to present this to  
2       you, nor to opposition counsel prior to this  
3       hearing.

4               I would hope that you would still  
5       consider the information that's contained in  
6       the brief, even though you're only now  
7       receiving it.

8               And I guess also very relevant is  
9       the fact that we include Exhibits that help,  
10      we think, prove our case. They certainly  
11      support our points.

12              CHAIRPERSON JORDAN: Well, so you  
13      can make that, if we grant you party status,  
14      then you can make that part of your case, is  
15      that what you're saying?

16              MR. WOLFBERG: Right. Correct.

17              CHAIRPERSON JORDAN: Now let's go  
18      back to the waiver of time issue because you  
19      were not timely in filing your request for  
20      party status.

21              MR. WOLFBERG: That is correct. I  
22      filed it 12 days prior to this hearing, and I

1 should have filed it 14 days prior to this  
2 hearing.

3 I will point out that the  
4 applicant did not post that orange sign on his  
5 front door but for 13 days prior to this  
6 hearing.

7 And so it took me 24 hours to sort  
8 of focus on the fact that this was the day  
9 that the hearing was occurring, and then to  
10 submit my application to appear here before  
11 you. Again, this is the first time that I  
12 have appeared before the Board.

13 And so I recognize that I was  
14 tardy by 48 hours, and I would hope though  
15 that considering the interest that I have,  
16 considering the interest that Richard have,  
17 that you would still certainly allow me and  
18 hopefully Richard as well, to appear as party  
19 opponents.

20 MS. MOLDERHAUER: Chairman Jordan,  
21 I would just like to kind of respond to that.

22 CHAIRPERSON JORDAN: Yes, I was

1 going to ask you a question about that.

2 MS. MOLDERHAUER: We do not oppose  
3 party status in this case. Obviously the  
4 Board can make their own determination, but I  
5 want to make sure that's clear, we do not  
6 oppose it.

7 However, I would like to clarify a  
8 couple issues. As presented to the Board, we  
9 did have a meeting, the applicant did meet  
10 with both gentlemen in October, middle of  
11 October to try to see if they couldn't resolve  
12 the issues and very clearly discussed the  
13 issues and let them know about the different  
14 dates that were coming up.

15 We then provided an email copy to  
16 both individuals of the supplemental filing as  
17 at the time, which our firm actually formally  
18 became representing the applicant, because  
19 this case was actually filed in July when we  
20 were not representing the applicant.

21 Both parties attended the ANC  
22 meeting and presented, you know, their

1 opposition to that case, as well. And I just  
2 want to make one other point is that Mr.  
3 Wolfberg indicated that he's never been before  
4 the Board before, but he has. You said you  
5 never appeared before the Board?

6 MR. WOLFBERG: Yes.

7 MS. MOLDERHAUER: Okay. But I  
8 just want to make sure that the clarification  
9 is that actually Mr. Wolfberg has had a case  
10 before the Board wherein his property actually  
11 received relief and, you know, he did an  
12 addition to his property as well as Mr.  
13 Klugman received relief from a two unit to a  
14 three unit flat property.

15 So they both understand the  
16 process very well, and they're both attorneys  
17 by practice, maybe not in this area. I got  
18 it, not in this area, I know and I understand  
19 that.

20 But I'm just putting that on the  
21 record. Again, we do not formally oppose the  
22 party status, though. That concludes my

1 remarks.

2 MR. WOLFBERG: Yes look, that is  
3 all accurate. And I did receive a copy of the  
4 applicant's brief. I practice as an attorney.  
5 I've had a lot of things that I've had to do  
6 and so I was not able to focus and spend time  
7 until more recently.

8 And so, but considering the  
9 interest that we have, I hope that form over  
10 substance won't rule out your --

11 CHAIRPERSON JORDAN: All right.  
12 Thank you for the clarification, because I was  
13 a bit concerned about that aspect of  
14 communication and I think we've been just a  
15 little bit moving in our request for leave to  
16 file late. But we will allow you to be a  
17 party opponent.

18 MR. WOLFBERG: Thank you.

19 MS. MOLDERHAUER: Now I believe,  
20 Mr. Jordan, is the question of the admission  
21 of the late written brief?

22 CHAIRPERSON JORDAN: No, no. We

1 have a posting issue.

2 MS. MOLDERHAUER: Okay, yes, that  
3 as well.

4 CHAIRPERSON JORDAN: And I read  
5 your brief, and we will accept your affidavit  
6 posting.

7 MS. MOLDERHAUER: Thank you.

8 CHAIRPERSON JORDAN: Now, the  
9 written brief I have not had a chance to  
10 review it and we're not going to accept that  
11 in the record until you actually go through  
12 it.

13 And if you can do a presentation  
14 from it and use it that way because otherwise,  
15 the opponent hasn't had a chance to properly  
16 research and respond to it and et cetera.

17 And we're just not going to do it.  
18 And that's late on top of it being late on top  
19 of the other stuff being late on top of being  
20 late.

21 MR. WOLFBERG: Fair enough.

22 CHAIRPERSON JORDAN: So it's just

1 a lot of late. Okay? So let us then move --  
2 yes, Ms. Sorg?

3 VICE CHAIRPERSON SORG: I just  
4 have one question. So you accepted Mr.  
5 Wolfberg as the party opponent. Mr. Kluberg  
6 is an individual?

7 CHAIRPERSON JORDAN: We have no  
8 request for party status, and --

9 VICE CHAIRPERSON SORG: Just want  
10 to clarify they've, you know, putting  
11 themselves together. But I want to understand  
12 how you want to proceed.

13 MR. WOLFBERG: Just as a  
14 clarification over here, can Richard speak as  
15 an interested --

16 CHAIRPERSON JORDAN: As a party in  
17 opposition, if that's what you're here for.  
18 Or party in support if you wish to. Either  
19 way.

20 MR. WOLFBERG: Okay. And just one  
21 further clarification. Considering the  
22 tardiness of the brief that I have provided

1 you all, and also considering the fact that I  
2 think it really does contain some very, I  
3 mean, I obviously think this contains strong  
4 legal arguments, that would counter the  
5 applicant's legal argument.

6 Is the only way that it will be  
7 read into the record if I read that, which  
8 it's approximately 12 pages, and while  
9 scintillating --

10 CHAIRPERSON JORDAN: No, no. We  
11 want you to do a presentation from it, then  
12 we'll decide how we handle it.

13 MR. WOLFBERG: Yes, okay, great.  
14 Okay, thank you.

15 CHAIRPERSON JORDAN: Okay. Where  
16 are we now? Who's on first?

17 MS. MOLDERHAUER: I believe we are  
18 prepared to start our presentation. However,  
19 I do want to identify just one new preliminary  
20 matter.

21 We have reviewed, between 9:30 and  
22 I think unfortunately now 12 o'clock, the

1 submission that Mr. Wolfberg was going to  
2 present to the Board, and will obviously  
3 articulate during his opposition.

4 In that, he legally, you know,  
5 there are a lot of legal issues that are not  
6 specifically germane to this case in regards  
7 to claims of self created hardship, which as  
8 the Board knows, is not relevant or does not  
9 bar an area variance based on multiple years  
10 of Court of Appeals case precedent including  
11 ALW.

12 But in addition to that, they do  
13 identify a potential question mark in regards  
14 to the lot occupancy of the property. And as  
15 the Board is aware from kind of the timing of  
16 the filing, you know, I was not the attorney  
17 of record in this case until October.

18 And so this morning, again between  
19 9:00 and 12:00, we reviewed that. And we, you  
20 know, took a look at it.

21 And we do believe that based on  
22 reviewing the record and the architect, Mr.

1       Killette can kind of identify where there may  
2       have been a discrepancy in regards to the  
3       calculation, but the calculation initially, in  
4       the self certified application was based on  
5       the internal measurements when you're doing a  
6       marketing analysis.

7                So measuring the walls from  
8       interior wall to interior wall, not measuring  
9       the exterior brick. And from again, you know,  
10      very quick analysis this morning, we do  
11      believe that the project, that the statements  
12      in regards to the square footage on the  
13      property are not 54 percent, but rather the  
14      existing condition is higher than that and  
15      over 60 percent.

16               Now, that being said, that would  
17      require additional relief, but that relief we  
18      don't believe is requiring any additional  
19      notice since it's still an area variance and  
20      all the plans submitted would be plans based  
21      on the same project that has always been in  
22      existence.

1                   And that has been presented to the  
2 neighborhood, and presented to the Board in  
3 this submission. And also is the, you know,  
4 project that the parties in opposition have  
5 seen.

6                   We will go through the exact  
7 numbers kind of as we go forward, but I just  
8 wanted to make sure that that's on the record  
9 and that the Board does know that we are  
10 requesting a amendment to our self certified  
11 application to modify the relief in that  
12 regard.

13                   The relief is from obviously  
14 2001.3 for a non-conforming structure as it  
15 currently exists under 403 for lot occupancy.  
16 The project currently with the rear deck has  
17 a 65.5 percent lot occupancy.

18                   So we're talking about a 5.5  
19 percent deviation from lot occupancy. The  
20 applicant will explain, and so will the  
21 architect, as they testify they will explain  
22 that there is the opportunity, potentially, to

1 remove the deck and make the property more  
2 conforming at the 61.5 percent lot occupancy,  
3 which would be under the two percent deviation  
4 permitted by the Zoning Administrator in  
5 Section 407.

6 So that would be the potential  
7 option. However, we would like to continue at  
8 the Board's, you know, deference to simply  
9 modify the application as it exists today  
10 based on the current plans asking for the  
11 additional relief.

12 CHAIRPERSON JORDAN: You're here  
13 now.

14 MR. WOLFBERG: I would like to  
15 object to that request.

16 CHAIRPERSON JORDAN: On what  
17 basis?

18 MR. WOLFBERG: Pardon me?

19 CHAIRPERSON JORDAN: Your  
20 objection, why is that?

21 MR. WOLFBERG: Well unfortunately,  
22 this is not my practice area, but that strikes

1 me that if she is seeking to modify something  
2 that has been presented not only to us but to  
3 the public, that is a material change to the  
4 application.

5 It also raises questions about  
6 some of the factual statements that are  
7 included in the entire brief. And I think  
8 this is one of those things where I would  
9 certainly like the opportunity to do research  
10 into how it could --

11 CHAIRPERSON JORDAN: Thank you.  
12 Your objection is overruled. We will accept  
13 the modification. The amendment --

14 MS. MOLDERHAUER: In that regard,  
15 I'm going to turn to the applicant to start  
16 his presentation.

17 CHAIRPERSON JORDAN: Let me first  
18 check with the Board to see if there is, what  
19 particularly we may need just so you can  
20 hammer in. But I don't want to stop your  
21 presentation.

22 Anything we want to be sure that

1 we hear from the applicant before? Well,  
2 certainly we're hitting the parking issue. I  
3 guess there's not an argument being made about  
4 the peace and enjoyment issue. No that's just  
5 raised in the opposition. Okay, just please  
6 go forward. Go ahead, please.

7 MR. PISHVAEIAN: Good afternoon  
8 Mr. Jordan, Mr. Hinkle, Mrs. Sorg, Mrs. Cohen.  
9 My name is Mohammed Pishvaeian. I've been  
10 here at the Board in front of you before.

11 I'm 57 years old. I'm a  
12 developer. I'm developing in this instance  
13 2004. I have developed over 41 homes and over  
14 \$16.5 million of sales. I've been through all  
15 areas in Southeast and Anacostia and Northwest  
16 and Northeast.

17 The location of this property is  
18 on 1221 Otis. It's right on the conjunction  
19 of 13 and Otis, one block away from 14th  
20 Street, eight tenths of a mile from metro.  
21 It's in zoning map R-4 zone.

22 CHAIRPERSON JORDAN: Let me help

1 kind of we can direct this. If you would get  
2 to the various requirements for the relief.  
3 I don't need the tour.

4 Just get us to the requirements of  
5 relief because I think there's a lift there,  
6 and you need to spend time lifting us.

7 MS. MOLDERHAUER: We're jumping  
8 into that right now. Going to the facts of  
9 the needs of the case.

10 MR. PISHVAEIAN: These two  
11 pictures are showing that the picture of the  
12 property on the left hand side, that when I  
13 purchased the property on July 20th, it was a  
14 rooming house.

15 And the picture is showing that  
16 this is the way it's standing right now here.  
17 The bricks are loose and they can fall out.  
18 On this side, this is an end unit, and we have  
19 this problem at end units, usually when the  
20 joists are sitting inside the walls after so  
21 many years, they put pressure on the end  
22 unit's wall.

1                   So we had to go through. All we  
2 had was a demolition permit, but we went  
3 through and we repointed all the bricks and we  
4 put primer so it would hold it off.

5                   We had to take out all the  
6 interior walls off because of the weight that  
7 it's putting on the joists. So the sooner we  
8 can release the pressure from the exterior  
9 wall, which is again, the end unit, the sooner  
10 we can come back and we actually put bolts  
11 between the walls on different parts, about 12  
12 different parts to hold it up.

13                  Then the second picture on the  
14 right hand side that you see, this is the  
15 property. And Mr. Wolfberg's property is this  
16 here. This is his third floor looking at the  
17 side of this. Mr. Klugman is next to him on  
18 the other side.

19                  This is the back of the property.  
20 This is just a stairway's coming out from the  
21 top to here, and then walking from back here  
22 to downstairs.

1                   There are two legal parking space  
2 here in the backyard. And this is the back  
3 alley, and this is the side wall that you saw  
4 from the other picture.

5                   These are just the neighbors on  
6 14th Street and rooming houses. I mean, I'm  
7 sorry, apartment buildings. These are the  
8 interior pictures of the property.

9                   When I bought the property, it  
10 looked like this. And you can see the  
11 deterioration in the walls, in the ceilings  
12 and the joists and the rain that it was coming  
13 through the property.

14                   Again, this was a rooming house,  
15 and it has not been repaired for many, many  
16 years. You still have a strong odor of sewer  
17 inside the property that we haven't touched.

18                   But basically, the plumbing and  
19 electricity and everything else has been  
20 gutted out. So we can removed everything so  
21 we can stop the deterioration of the wood and  
22 plywood from the rain coming in and basically

1 make it lighter.

2 So the only thing that I want to  
3 mention here is the profit and loss statement  
4 is submitted, and it's included. And it shows  
5 all the cost comparisons for each relief  
6 required.

7 And I understand the OP  
8 recommended for three units, unfortunately.  
9 Three units is not financially feasible based  
10 on the investment and the time and risk.

11 I purchased the property last  
12 July. And by the time it will be finished and  
13 will be sold, it will be a year and a half  
14 project.

15 Carrying costs alone would not  
16 give me enough margin to stand on three units  
17 if I can't sell one unit and I just have to  
18 carry it for extra seven, eight months.

19 The last thing is I have 28  
20 letters of support that I went to the  
21 neighbors one by one, and I had them read the  
22 letters and support it if they were for the

1 support of development.

2 And we have the ANC support that  
3 we went through the ANC and we had our case  
4 presented.

5 MS. MOLDERHAUER: At this point in  
6 time, we can turn over to the architect.  
7 Okay, so Mr. Killette?

8 CHAIRPERSON JORDAN: Well, we  
9 still just really need to get to the basis of  
10 the relief. Whatever you feel is comfortable  
11 to get us.

12 MR. KILLETTE: James Killette.  
13 1221 Otis Place is an existing two story  
14 structure with a cellar to be converted from  
15 a rooming house to four units.

16 Each unit will house two bedrooms,  
17 two full baths with an open living room,  
18 dining room area with laundry and utility.  
19 There are two legal parking spaces.

20 And the elevations show the third  
21 floor addition per the ANC meeting, a cone  
22 roof was added to the bay area. The existing

1 floor plans show the rooming house layout with  
2 bedrooms and a bath.

3 And the proposed layout shows,  
4 which is typical of a two bedroom, two bath  
5 with open kitchen. And the third floor  
6 addition, as well.

7 MS. MOLDERHAUER: Board members,  
8 the relief that we're seeking is to convert a  
9 existing Certificate of Occupancy property  
10 that has the ability to be a rooming house  
11 based on its C of O for an 11 bedroom C of O  
12 rooming house to a four unit apartment  
13 building.

14 The crux of this case is that  
15 there are, as past cases in which the Board  
16 has found that a rooming house is unique in  
17 the fact that the ability to continue that use  
18 is challenging based on the current dichotomy  
19 and contacts for neighborhoods.

20 And in addition to that, the  
21 additional cost associated with the fact that  
22 most rooming houses, as testified by the

1 applicant, based on the extended levels of  
2 deferred maintenance and the extensive wear  
3 and tear that is incurred by that type of use,  
4 creates additional costs which create a  
5 practical hardship, a practical difficulty for  
6 the applicant.

7 And here we are, I think, based on  
8 the testimony and the submissions that we've  
9 presented to the Board, previously both in the  
10 initial submission and the supplemental that  
11 there is there is a confluence of factors  
12 based on the deteriorated structure based on  
13 unnecessary walls and unconventional layout,  
14 that it creates an economic infeasibility.

15 We have not relied upon  
16 generalities, rather but provided a specific  
17 cost basis analysis and cash flow report to  
18 the Board, which shows, as the applicant  
19 testified, that a three unit project creates  
20 challenges for financial feasibility based on  
21 the diminimous perspective.

22 CHAIRPERSON JORDAN: Okay, but

1       that I have some concerns about because I see  
2       where three units with the existing floor  
3       plan, with no additional floors rather, is a  
4       profitable operation.

5                   MS. MOLDERHAUER: I would not call  
6       that --

7                   CHAIRPERSON JORDAN: It's not  
8       maximizing your money --

9                   MS. MOLDERHAUER: And it's not a  
10      question of maximizing. And the Board has, in  
11      other cases, you know, found that that amount  
12      of profit is not a profit or is not reasonable  
13      or is not viable in other cases.

14                  And in that situation, as is here,  
15      you know, to take an investment based on the  
16      time of risk and invested opportunity, you're  
17      talking about something that is less than a  
18      1.5 percent return, which is equivalent to  
19      what you would get in your bank account.

20                  CHAIRPERSON JORDAN: Is that what  
21      \$64,900 --

22                  MS. MOLDERHAUER: It's equivalent

1 to about a 1.5 percent return.

2 CHAIRPERSON JORDAN: Okay.

3 MS. MOLDERHAUER: And so you're  
4 not, you know, we're not looking to maximize  
5 the return. We're looking to simply do what  
6 is potentially viable. And I believe that's  
7 what the numbers show.

8 COMMISSIONER COHEN: Is the  
9 property owned free and clear? Do you know?

10 MS. MOLDERHAUER: Mr. Pishvaeian?

11 MR. PISHVAEIAN: I'm sorry?

12 COMMISSIONER COHEN: Do you own  
13 the property free and clear? I mean, is it  
14 optioned or do you own it free and clear?

15 MR. PISHVAEIAN: No, there's a  
16 lien on it. I mean, I purchased the property  
17 with a mortgage or with a loan from the bank.

18 COMMISSIONER COHEN: Okay, okay.

19 MR. PISHVAEIAN: United Bank.

20 CHAIRPERSON JORDAN: Yes? Do you  
21 have something else for us, or does the Board  
22 have any questions of them?

1                   COMMISSIONER COHEN: I just want a  
2 clarification. On the height of this  
3 building, you said that you added a dome or  
4 something?

5                   MS. MOLDERHAUER: A mansard roof,  
6 yes.

7                   COMMISSIONER COHEN: And when you  
8 say that the height is approximately 39 feet,  
9 whereas 40 feet is allowed. So what is the  
10 approximate --

11                  MS. MOLDERHAUER: The zoning  
12 requirements indicate that the height is  
13 measured to the top of the ceiling of the top  
14 floor.

15                  COMMISSIONER COHEN: Right.

16                  MS. MOLDERHAUER: So a mansard  
17 roof would not actually legally be counted.  
18 It would be considered an architectural  
19 embellishment, which would not be considered  
20 part.

21                                So by adding that, it was  
22 something that was to accommodate something

1 the ANC has requested after an extensive  
2 discussion with the ANC and something that  
3 they wanted to see in the area.

4 COMMISSIONER COHEN: Okay, thanks.

5 VICE CHAIRPERSON SORG: That's  
6 just something that's on the building  
7 currently?

8 MS. MOLDERHAUER: Yes, it's  
9 currently, yes.

10 VICE CHAIRPERSON SORG: So it's  
11 keeping the character, I would think.

12 MS. MOLDERHAUER: Yes, exactly.

13 CHAIRPERSON JORDAN: All right.

14 VICE CHAIRPERSON SORG: Yes, I  
15 don't think we would have wanted to see a  
16 project without it, I think. So I think  
17 that's probably a good choice.

18 MEMBER HINKLE: Could you speak a  
19 little bit towards the issue of the lot  
20 occupancy? And we're looking at plans that  
21 have the deck in the back, and you said there  
22 might be some option to remove that deck. You

1 don't need additional egress out of those  
2 units? Or how does that work?

3 MS. MOLDERHAUER: I'll turn to Mr.  
4 Killette to speak about the ability to  
5 potentially remove the deck and the building  
6 code issues in that regard.

7 MR. KILLETTE: You're not required  
8 to have two means of egress up to three  
9 stories, if a building's fully sprinkled. So  
10 this building's fully sprinkled.

11 And the one means of egress that's  
12 required is met through the interior. So the  
13 stair would be a convenience stair if we did  
14 a stair at the rear.

15 MEMBER HINKLE: Okay, thank you.

16 MS. MOLDERHAUER: If there's no  
17 other questions, the applicant would rest at  
18 this time, but obviously request an  
19 opportunity to provide a conclusion or  
20 rebuttal based on comments that we are aware  
21 of possibly through opposition.

22 CHAIRPERSON JORDAN: Certainly.

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

2 MR. JACKSON: Good afternoon, Mr.  
3 Chair, members of the Board. My name's Arthur  
4 Jackson of the D.C. Office of Planning. You  
5 have before you a copy of the Office of  
6 Planning's report on this case.

7 Briefly, I will summarize the  
8 report by starting off saying this is not a  
9 case where the applicant has been denied any  
10 economical use of the property.

11 And it is not a case where an  
12 existing condition on site, relief with the  
13 building or lot, prevents them from using the  
14 property in accordance with our regulations.

15 So we note that there are a lot of  
16 uses that are currently allowed under the  
17 zoning regulations that could be applied to  
18 the property.

19 The applicant is focusing on,  
20 however, the flat, the three unit apartment,  
21 the four unit apartment, and of course, the  
22 single family dwelling.

1           Okay, our contention is that there  
2           has been no uniqueness shown particular to the  
3           property that's preventing them from using for  
4           an economic purpose, a purpose that's  
5           economically feasible.

6           Okay, now when we go through those  
7           uses, though, they did prepare a comparison of  
8           the uses, and the numbers that they project  
9           would be generated in long term.

10           Now we should note that the  
11           applicant, of course, has done another  
12           application of a similar project in the area.  
13           So they have some experience.

14           So this is not information that's  
15           coming from an unknowledgeable source. It's  
16           an experienced developer that understands what  
17           he's put on, you know, paper.

18           We think for the purpose of these  
19           regulations, he's asking for relief from the  
20           lot area requirement for individual units.  
21           He's asking to reduce that requirement to five  
22           50 percent.

1                   He's also indicating in his  
2                   analysis that there are, of the four options  
3                   he has chosen to pursue, there are two options  
4                   that generate a positive revenue. One is the  
5                   three unit apartment. The other is a four  
6                   unit apartment.

7                   Our contention is that if the  
8                   Board was to consider the apartment approach  
9                   to create apartments, we think it's most  
10                  appropriate to use the most conservative  
11                  relief that is available that appears to be  
12                  economically feasible, if the Board's using  
13                  that as a standard.

14                  Economically feasible to us is  
15                  essentially there's not a negative return. In  
16                  this case, in both cases, with a three unit  
17                  and a four unit, there is a positive return.

18                  So we would strongly recommend  
19                  that if the Board was to consider this  
20                  argument, they would approve a three unit  
21                  apartment and not a four.

22                  Again, this would be more

1 consistent with the intent of the regulations  
2 in terms of currently the zoning district, and  
3 is not creating multiple apartments on  
4 property.

5 More consistent with the existing  
6 building in that there would not be expanded  
7 to create more apartments. More consistent  
8 with the existing zoning and the existing land  
9 use designation for the area.

10 That's essentially what the Office  
11 of Planning's position is on this case. And  
12 we're available to answer questions.

13 CHAIRPERSON JORDAN: Does the  
14 Board have any questions for Office of  
15 Planning? Mr. Hinkle?

16 MEMBER HINKLE: Thank you, Mr.  
17 Chair. Just real quick, on your note in terms  
18 of a preference, four units versus three  
19 units, what would your opinion be in terms of  
20 the third prong of the variance test?

21 Is there any harm to the public  
22 good or the zoning regulations for the

1 difference between a three unit and a four  
2 unit?

3 MR. JACKSON: We feel that the  
4 granting three units would be more in line  
5 with what the regulations have called for.  
6 Granting four would be detrimental to the  
7 regulations because we're encouraging  
8 additional development for additional  
9 apartments in this zone district.

10 MEMBER HINKLE: Sure, sure. But  
11 the preference for OP is a matter of right?

12 MR. JACKSON: We think that it  
13 would be less detrimental to the intent of the  
14 regulations and more consistent with the  
15 intent of the regulation with regards to the  
16 area, lot area per unit.

17 MEMBER HINKLE: Okay.

18 CHAIRPERSON JORDAN: Any other  
19 questions from the Board? You'll have an  
20 opportunity, but --

21 MEMBER HINKLE: Just one more?

22 CHAIRPERSON JORDAN: Yes, please.

1                   MEMBER HINKLE: Thanks. We did  
2 modify the application in terms of the lot  
3 occupancy. Did you have an opinion on that?

4                   MR. JACKSON: Well, I think it  
5 would probably be good to give the applicant  
6 an opportunity to re-look at it in detail.  
7 They've only had it for a few minutes.

8                   We would really not like to see  
9 any more relief granted for this case. Of  
10 course, if this is an existing condition and  
11 you can't do anything about it, you would deal  
12 with that situation accordingly.

13                   But we're wondering if the rear  
14 exits became, and emergency stair, because I  
15 assume the emergency stair that exists  
16 actually was why it wasn't calculated as part  
17 of the floor area.

18                   And we would just encourage, I  
19 think, to work to make sure that exactly what  
20 the numbers are. And at that point, we would  
21 like to consider it when they're actually a  
22 final set of plans that reflect those correct

1 numbers.

2 MEMBER HINKLE: Okay, thank you.

3 CHAIRPERSON JORDAN: Any other  
4 questions of Planning by the Board? Does the  
5 applicant have any questions of Planning?

6 MS. MOLDERHAUER: Thank you very  
7 much. Good afternoon, I think it is now, Mr.  
8 Jackson. So --

9 MR. JACKSON: Don't rub it in.

10 MS. MOLDERHAUER: You're  
11 indicating that you would support three units?

12 MR. JACKSON: We're indicating  
13 that if the Board was to accept this being  
14 developed as an apartment house, that we would  
15 be more comfortable with the three unit option  
16 because we think that's closer to the intent  
17 of the regulations.

18 MS. MOLDERHAUER: So then it's  
19 more of a question of the fact that you could  
20 potentially see that the three prongs could be  
21 satisfied, then, based on prior precedent of  
22 the Board?

1 MR. JACKSON: We think the  
2 applicant has a better chance of making the  
3 case for three as opposed to four in this  
4 case.

5 MS. MOLDERHAUER: And that's based  
6 on the assumption that a approximately \$60,000  
7 profit is enough to make the project viable?

8 MR. JACKSON: It's based on the  
9 assumption that, well our perspective is that  
10 a positive outcome from the proposal is a  
11 viable solution in that the regulations do  
12 not, in itself, state that the applicant can  
13 maximize the proposal for the sake of benefit.

14 MS. MOLDERHAUER: Do you think  
15 that there is an area between viability and  
16 maximization such as potentially a reasonable,  
17 you know, viable project?

18 Or is it simply just making a  
19 dollar or making something more than a dollar  
20 is maximizing the overall benefit of the  
21 project?

22 MR. JACKSON: Well, I think in

1 this case, well I think from the zoning  
2 perspective, we're looking at whether this  
3 would result in a taking of the property or  
4 the applicant make economic benefit from the  
5 property. \$60,000 is an economic benefit from  
6 the development.

7 MS. MOLDERHAUER: Are you aware  
8 that there are multiple other cases that the  
9 Board has approved, such as 1 Fairmont, which  
10 is Application 18163 where they evaluated the  
11 case and the applicant was arguing for over  
12 \$300,000 in profit, and that that was to them,  
13 and that was approved by the Board as  
14 something that was necessary but not a over  
15 maximization of profit?

16 MR. JACKSON: I'm not aware of  
17 that case, no.

18 MS. MOLDERHAUER: Are you aware of  
19 other cases where the Board has disagreed with  
20 OP and found that there is such thing as a  
21 need for reasonable return in order for  
22 property to be not left idle or not returned

1 to reasonable use?

2 MR. JACKSON: I know of a number  
3 of cases that the Board has disagreed with OP,  
4 yes.

5 MS. MOLDERHAUER: Thank you. No  
6 other questions.

7 CHAIRPERSON JORDAN: Okay. Mr.  
8 Wolfberg, you may ask questions, yes.

9 MR. WOLFBERG: I was just hoping  
10 that you had clarified. Have you weighed in  
11 on your thoughts on their recently changed  
12 position or their seeking a new variance to  
13 construct a third floor?

14 And could you weigh in on whether  
15 or not --

16 MS. MOLDENHAUER: Objection,  
17 that's not an accurate statement of the facts.

18 MR. WOLFBERG: Oh, it's not?

19 CHAIRPERSON JORDAN: Sustained.

20 MR. WOLFBERG: Sorry. Okay, they  
21 are proposing building a third floor, and are  
22 seeking a variance for that currently.

1 MS. MOLDENHAUER: No, we are  
2 seeking a variance to the nonconforming lot  
3 occupancy.

4 MR. WOLFBERG: Sorry, better said.

5 MS. MOLDENHAUER: That the plans  
6 have always shown the third floor. There's no  
7 question there.

8 MR. WOLFBERG: Okay, so they are  
9 seeking approval to construct an additional  
10 floor at this hearing. No.

11 CHAIRPERSON JORDAN: That's a  
12 mischaracterization of what the request is.

13 MR. WOLFBERG: Okay, so I am not  
14 trying to be a problem, I'm just trying to  
15 understand.

16 CHAIRPERSON JORDAN: I understand.

17 MR. WOLFBERG: Okay. What do you  
18 think, can you weigh in on whether or not an  
19 additional third floor would be consistent  
20 with the existing adjacent structures on Otis  
21 Place?

22 MR. JACKSON: The unit facing to

1 the west, which is your unit, has a third  
2 floor, but the units to the east along the  
3 same frontage as the applicant's dwelling have  
4 two floors, and I assume they all have  
5 basements or cellars.

6 So in that way, the additional  
7 floor on this building would not be consistent  
8 with the existing buildings along that  
9 frontage.

10 MR. WOLFBERG: Okay, thank you.

11 VICE CHAIRPERSON SORG: I just  
12 want to clarify something. Isn't the third  
13 floor a matter of right?

14 MR. JACKSON: His question was,  
15 would --

16 VICE CHAIRPERSON SORG: I know,  
17 but a different question.

18 MR. JACKSON: Okay, what is your  
19 question?

20 VICE CHAIRPERSON SORG: Is the  
21 third floor outside of the use a matter of  
22 right?

1 MR. JACKSON: The third floor,  
2 they would be able to put, add on a third  
3 floor as a matter of right up to a height of  
4 40 feet.

5 VICE CHAIRPERSON SORG: Okay.

6 MR. JACKSON: The issue's only  
7 that it could not be for an additional  
8 apartment at this point.

9 VICE CHAIRPERSON SORG: Yes, I  
10 understand that.

11 CHAIRPERSON JORDAN: Do you have  
12 an additional question?

13 MR. WOLFBERG: I have an objection  
14 to that point.

15 CHAIRPERSON JORDAN: Do you have a  
16 question?

17 VICE CHAIRPERSON SORG: You cannot  
18 object -- sorry. Sorry.

19 CHAIRPERSON JORDAN: Folks, I'm  
20 chairing this hearing. Okay.

21 Do you have a question that you'd  
22 like to ask the Office of Planning?

1 MR. WOLFBERG: Oh, I'm sorry.

2 Yes, can I have my colleague --

3 CHAIRPERSON JORDAN: Question of  
4 Office of Planning.

5 MR. WOLFBERG: Okay, I'm sorry  
6 about that.

7 CHAIRPERSON JORDAN: And the time  
8 is running out if you don't get to ask the  
9 question. No, you need to ask it.

10 MR. WOLFBERG: No, sorry.

11 CHAIRPERSON JORDAN: Okay, if you  
12 want to whisper it or something then that's  
13 where we're proceeding. Okay. I'm taking it  
14 there's no other questions of Office of  
15 Planning?

16 Do we have the Department of, is  
17 anyone here from the Department of  
18 Transportation?

19 MS. MOLDENHAUER: We do have a  
20 letter in the record from DDOT.

21 CHAIRPERSON JORDAN: And the DDOT  
22 letter, let's see -- we just got it? Okay,

1 this is just in yesterday, kind of hot off the  
2 press, and it's a letter of no objection,  
3 Department of Transportation.

4 And do we have a letter from, is  
5 anyone here from ANC-1A? I think we do have  
6 a letter from ANC-1A. Yes, I think we just,  
7 what did I do with it?

8 Oh, that's right. This is another  
9 hot off the press by, about as you start  
10 sitting down we got a letter from ANC-1A which  
11 recommends approval, and that we can give  
12 weight to.

13 Is there anyone here in the  
14 audience wishing to testify in support of this  
15 application?

16 Then let's move to the  
17 presentation of the opponents.

18 MR. WOLFBERG: I'm sorry. Mr.  
19 Chairman, right before I get to my  
20 presentation, can I ask that question to the -  
21 -

22 CHAIRPERSON JORDAN: You need to

1 go to your presentation at this point, yes.

2 MR. WOLFBERG: Okay, fair enough.

3 Okay, so --

4 CHAIRPERSON JORDAN: You can call  
5 Planning as a witness if that's what you're  
6 trying to say, but you have 30 minutes, Mr.  
7 Wolfberg.

8 MR. WOLFBERG: Okay, fair enough.

9 Well, then --

10 CHAIRPERSON JORDAN: Well,  
11 actually I think it was 20 minutes used by  
12 the, 25 minutes were actually used by the  
13 applicant so would 25 -- okay, go ahead.

14 MR. WOLFBERG: I would like to  
15 refer to exhibits which are contained in the  
16 brief I had written.

17 CHAIRPERSON JORDAN: Then we will  
18 pass it out for the sake of your discussion --

19 MR. WOLFBERG: Thank you so much.

20 CHAIRPERSON JORDAN: -- for us to  
21 step through the exhibits --

22 MR. WOLFBERG: Thank you.

1                   CHAIRPERSON JORDAN: -- and your  
2 presentation, but you need to do a  
3 presentation.

4                   MR. WOLFBERG: Okay. So the  
5 thrust of my presentation is this.

6                   This is a professional real estate  
7 developer who spent \$465,000 to purchase a  
8 single, a two-story row house in an R-4  
9 district. And what he is now seeking from you  
10 is a variance that would allow him to put in  
11 four luxury condominium units such that he can  
12 maximize the return on his, what I would  
13 characterize as a quite high investment.

14                   I would argue that case law has  
15 shown and, in fact, from the facts as he  
16 presented that he just cannot meet Prong 1, 2  
17 nor 3 in proving that A, he has a unique  
18 property.

19                   And that B, the strict application  
20 of the zoning rules would cause such a  
21 hardship to him, and also C, that the  
22 construction that he wants to do wouldn't

1 really drastically change the Columbia Heights  
2 neighborhood.

3 Now as to Prong 1, I would sort of  
4 quote what the Office of Planning just  
5 testified to, which is that this is not a  
6 unique property. The fact of the matter is,  
7 is that he purchased a 100 year old row house,  
8 and I think that -- I, for instance, purchased  
9 the exact same type of house, which had been  
10 a rooming house, and I can tell you that I did  
11 have to put money into it.

12 But what the applicant stated  
13 which is that he had to point up the bricks,  
14 he had to put on primer, he had to take out  
15 all of the interior walls, those don't create  
16 the type of extraordinary expense that would  
17 rise to the threshold that would meet Prong 1,  
18 which is that this is unique to this property.

19 I would instead offer the fact  
20 that this is consistent with a 100 year old  
21 row house. I mean I have a 100 year old row  
22 house. I spent \$16,000 taking out all of the

1 interior walls.

2 And to me, I mean like \$16,000  
3 isn't peanuts but at the same time that's not  
4 a sufficiently exorbitant cost to create the  
5 unique situation that is contemplated by Prong  
6 1. So I would just like to sort of underscore  
7 that.

8 And just briefly I would also like  
9 to point out that just prior to the applicant  
10 purchasing the property there had been a  
11 single family living there, and it was not,  
12 even though at the time their certificate of  
13 occupancy showing that it was a rooming house  
14 for the past ten years, a single family had  
15 lived in that house, which just speaks to the  
16 fact that, granted, it would not ever have  
17 been considered a luxury place, but at the  
18 same time people fully occupied that structure  
19 for ten years.

20 As to Prong 2, I would say that  
21 the applicant also hasn't met his legal burden  
22 to meet Prong 2, insofar as this Board in the

1 D.C. Court have appeals, has held that in the  
2 type of situation which we have here, which is  
3 that when an applicant has created what he  
4 calls a economic hardship, that that is not  
5 the type of, that that situation won't, is not  
6 sufficient to meet Prong 2.

7 Now I had, so I am using the term  
8 "self-created economic hardship." My  
9 understanding is that that is a term of art  
10 and that I'm using it in the correct way.

11 MS. MOLDENHAUER: I would object  
12 any testimony in regards to using a self-  
13 created hardship because it is specifically  
14 not, bar an area variance.

15 CHAIRPERSON JORDAN: Yes, well, I  
16 think he's, well, let's be careful about  
17 saying what's a term of art.

18 And we're not showing here, he's  
19 not required to show an undue hardship. I  
20 know you said that earlier too, but I just let  
21 that pass because that's not the standard in  
22 which an area variance is granted. So why

1 don't you proceed?

2 MR. WOLFBERG: Sure. In the case  
3 Carliner versus District of Columbia Board of  
4 Zoning Adjustment, in that case there was a  
5 petitioner who purchased three adjacent  
6 contiguous lots.

7 The petitioner, and those lots,  
8 there was a house on one lot and then there  
9 were two lots that, yes, okay. So the  
10 petitioner then gave the lot that had the  
11 house on it to her daughter, I believe, and  
12 then came before the Board and sought a  
13 variance, sought an area variance such that  
14 she could use the two existing, such that she  
15 could place a home on the two existing lots  
16 that she herself retained.

17 And in that case the Court of  
18 Appeals stated that her affirmative actions  
19 made those two lots economically useless. And  
20 the Court of Appeals wouldn't overturn the  
21 Board's choice not to give that applicant a  
22 variance because the Court held that this

1 petitioner created its own economic hardship.

2 And so I would draw the parallel  
3 to right here, which is that here the  
4 applicant paid \$465,000 for a two-story row  
5 house which he can do, but I would also argue  
6 that that's a lot of money to pay for a house,  
7 and it's not the Board's role to help him to  
8 maximize the possible profits.

9 I would also say that as the  
10 Office of Planning testified, in their opinion  
11 he can turn a profit, it won't be a huge  
12 profit but it will be a profit. And so  
13 consequently I would argue that the applicant  
14 has not met his burden as to Prong 2.

15 Then as to Prong 3, I would like,  
16 would it be possible for Richard to, in fact,  
17 argue Point 3?

18 CHAIRPERSON JORDAN: He doesn't  
19 have a position to argue. Now if you can ask  
20 that question you can use him as a witness.

21 MR. WOLFBERG: That might take  
22 more time than I probably have, so if it's

1       okay I would like to just move on to Prong 3  
2       and explain why I don't think that, in fact,  
3       he has -- so give me one second if you would.

4                So one of the main points that the  
5       applicant makes is in the applicant's argument  
6       that, in fact, you should grant him the  
7       ability to construct four condominium units is  
8       that he would reduce the density of the  
9       neighborhood.

10               I would point out that even though  
11       the house had a certificate of occupancy as a  
12       rooming house, A, that certificate of  
13       occupancy was voided when the property was --

14               MS. MOLDENHAUER:  Objection.  
15       These are incorrect legal statements or, and  
16       it's also an issue about DCRA versus the BZA.  
17       I can clarify if the Board would like, but I  
18       just want to object.

19               CHAIRPERSON JORDAN:  Well, that  
20       was one of the questions I had was that was it  
21       still, it's use still legitimate for a rooming  
22       house?

1 MS. MOLDENHAUER: Certificates of  
2 occupancy are not, are related to the property  
3 owner. Now they are transferable, but what  
4 you have to do is you have to actually go down  
5 to the DCRA office and apply for what's called  
6 a "change of use" versus a change of  
7 ownership.

8 CHAIRPERSON JORDAN: That's kind  
9 of what I'm asking. It never happened.

10 MS. MOLDENHAUER: It did not  
11 happen but that could occur if the applicant  
12 wanted to. However, the applicant is here  
13 today.

14 CHAIRPERSON JORDAN: So, in fact,  
15 the property can be operated as a rooming  
16 house today if he wanted to.

17 MS. MOLDENHAUER: If we went down  
18 tomorrow, yes, and just simply applied for it.

19 MR. WOLFBERG: But yes, no, that's  
20 100 percent accurate. I would also point out,  
21 and perhaps this is conjecture that for an  
22 applicant to pay \$465,000 for that type of a

1 property, the chances of him going down and  
2 turning it into a rooming house is  
3 extraordinarily small.

4 So then I would just, you all are  
5 clearly aware of and you know the reason why  
6 the R-4 designation is what it is. And I  
7 would point out that it is our understanding,  
8 and I would expect that there would be an  
9 objection if, but that they're in the Columbia  
10 Heights neighborhood that there currently are  
11 no four-unit apartments.

12 MS. MOLDENHAUER: I would object  
13 because you're making an assumption that you  
14 do not know as the facts, so it's an  
15 assumption.

16 MR. WOLFBERG: Okay. Well --

17 CHAIRPERSON JORDAN: Proceed.

18 MR. WOLFBERG: All right. In our  
19 neighborhood of Columbia Heights, in the  
20 surrounding at least two or three streets,  
21 there are no two-story row houses that have  
22 four condominium units in them.

1           So I would argue that, in fact,  
2           this would actually harm the current zoning  
3           regulations. And look, this is, most  
4           importantly I have pictures of the houses to  
5           the west of Otis Place from the property, and  
6           I believe those are in Exhibit 3 and 4.

7           And all to the west there are  
8           really, there are just two-story single-family  
9           homes with one or two units in them. Again  
10          this is Otis Place opposed to 13th Street.

11          And so if, in fact, the applicant  
12          were to receive an area variance, I would  
13          argue that this really would change the  
14          complexion of the surrounding neighborhood,  
15          and as a result he has not met his burden to  
16          prove Prong 3.

17          And I guess I would just close on  
18          the fact that it really is as the courts have  
19          long recognized, it is the applicant's burden  
20          to show that he meets all three of the prongs.  
21          And I would submit to you that in his brief he  
22          just has not supplied the type of facts that

1 would rise to prove inconclusively Prong 1, 2  
2 or 3. Thank you.

3 CHAIRPERSON JORDAN: Thank you.  
4 Does the Board have any questions of Mr.  
5 Wolfberg?

6 Ms. Cohen?

7 COMMISSIONER COHEN: Thank you,  
8 Mr. Chairman. Your home is a single-family  
9 home, one occupant, or are there --

10 MR. WOLFBERG: Two.

11 COMMISSIONER COHEN: There's two  
12 families?

13 MR. WOLFBERG: Yes, two.

14 COMMISSIONER COHEN: And when did  
15 you purchase and renovate this home?

16 MR. WOLFBERG: I purchased my home  
17 in October of 2010. And then I -- yes.

18 COMMISSIONER COHEN: And then you  
19 had to rip out the interior to upgrade it, to  
20 renovate it?

21 MR. WOLFBERG: Yes, I did. The  
22 home that I purchased, it had been abandoned

1 for at least 20 years. There was wood on the  
2 panels, I'm sorry, wood encompassed all of the  
3 windows and I didn't have electricity, I  
4 didn't have water. There hadn't been any  
5 people living there. And so I had to gut  
6 everything.

7 COMMISSIONER COHEN: And that's  
8 where you came up with the \$15,000 number?

9 MR. WOLFBERG: It was \$16,000,  
10 yes. Yes, and I did not submit anything to  
11 prove that. I would be more than happy to  
12 provide an Excel spreadsheet of the cost for  
13 the entire renovation project.

14 COMMISSIONER COHEN: I was just  
15 curious. The email, you had numbers and I  
16 just didn't know how old they were. Thank  
17 you.

18 CHAIRPERSON JORDAN: Any other  
19 questions from the Board?

20 VICE CHAIRPERSON SORG: Yes, thank  
21 you, Mr. Chairman. Mr. Wolfberg, you're a  
22 party opponent, but you're also a neighbor.

1 I want here a little bit less of a legal side  
2 and more on how you feel your living situation  
3 in your home will be negatively affected by --

4 MR. WOLFBERG: What the  
5 applicant's proposing?

6 VICE CHAIRPERSON SORG: -- the  
7 proposed project. What are those specific  
8 elements that you feel are really going to  
9 negatively affect you. That's sort of what I  
10 want to hear.

11 MR. WOLFBERG: Okay, sure. First  
12 of all, I would like to say that I think  
13 highly of the applicant. I think that he,  
14 when he constructs things I think he  
15 constructs things in a, you know, positive  
16 way.

17 So as I said when I asked to be  
18 recognized here, one of the concerns that I  
19 have is that he is proposing to build a third  
20 floor and I currently have a view of the sky,  
21 and if he constructs a brand-new third floor  
22 that will be compromised. So that is

1 certainly one of the reasons why I am opposed  
2 to this.

3           However, on top of that I have two  
4 units in the building that I have which is me  
5 and then one other family. I do have a real  
6 concern that if the BZA, or if he is allowed  
7 to do four, then every other person in his  
8 shoes will come and ask for four.

9           And you're going to see all of  
10 these two-story houses get turned into four,  
11 and they're all going to have the same story  
12 which is that the Columbia Heights  
13 neighborhood is hot. I had to pay \$465,000,  
14 I had to pay \$550,000. The only way I can  
15 recoup and make any money is if you give me  
16 four units.

17           And so this is, so it's really, I  
18 will try to conclude just as quickly as I can,  
19 but that is a real concern.

20           And I, and Richard as well, we  
21 chose the area that we chose because I mean  
22 the housing stock is a smaller housing stock.

1 It currently, there really are single families  
2 there and when you start jamming in four units  
3 you really are going to change the complexion  
4 of the entire area and that really speaks to  
5 Prong 3.

6 CHAIRPERSON JORDAN: Any other  
7 questions? Okay, then I'm going to turn to  
8 the applicant for any cross examination.

9 MS. MOLDENHAUER: Thank you. Mr.  
10 Wolfberg, you came before the Board and asked  
11 for relief when you built an addition to your  
12 property?

13 MR. WOLFBERG: Yes. Yes, I did.

14 MS. MOLDENHAUER: And you're aware  
15 that Mr. Klugman to your left also came before  
16 the Board and asked for relief.

17 MR. WOLFBERG: Yes.

18 MS. MOLDENHAUER: And Mr. Klugman  
19 asked for relief to turn a 12-room rooming  
20 house into three units?

21 MR. WOLFBERG: Yes.

22 MS. MOLDENHAUER: And that in

1 submitting his application and in the  
2 testimony before the Board that he argued and  
3 the Board agreed and granted his approval  
4 based upon that a rooming house was unique and  
5 satisfied the first prong.

6 MR. WOLFBERG: So I actually can't  
7 speak to the transcript of his case because --

8 MS. MOLDENHAUER: But are you  
9 aware of these facts?

10 MR. WOLFBERG: Could you restate  
11 your question, I guess?

12 MS. MOLDENHAUER: Are you aware of  
13 the fact that Mr. Klugman had a 12-room  
14 rooming house and asked to have the property  
15 converted to three rooms and that the Board  
16 approved that case and now he has a three-  
17 unit?

18 MR. WOLFBERG: Three-unit, yes.

19 MS. MOLDENHAUER: And your  
20 property does not provide any parking?

21 MR. WOLFBERG: No, it does not.  
22 But can I expand upon that or no?

1 MS. MOLDENHAUER: No. And that  
2 Mr. Klugman's property, does his property  
3 provide any parking?

4 MR. WOLFBERG: Not that I'm aware  
5 of.

6 MS. MOLDENHAUER: You had  
7 indicated that the property could be used for  
8 a single-family home, but are you aware that  
9 there is no kitchen in the property?

10 MR. WOLFBERG: I was unaware and I  
11 can't say that I'm aware, yes, I can't speak  
12 to that point.

13 MS. MOLDENHAUER: You said that  
14 there's no other four-unit dwellings, but are  
15 you aware that in our supplemental we  
16 identified property at 749 Park Road as a  
17 four-unit dwelling? Are you aware of that in  
18 Columbia Heights?

19 MR. WOLFBERG: My understanding is  
20 that, in fact, that was grandfathered in.

21 MS. MOLDENHAUER: Okay, but it  
22 exists.

1 MR. WOLFBERG: Yes.

2 MS. MOLDENHAUER: And in your  
3 party status request you identified as you  
4 stated earlier to the Board that one of your  
5 concerns is losing the view from your deck.

6 MR. WOLFBERG: Yes, I believe I  
7 also just restated that.

8 MS. MOLDENHAUER: And so it's not  
9 really a question of how many units, it's more  
10 a concern of the additional floor?

11 MR. WOLFBERG: Well, I mean I  
12 think that to respond to that, when I sought  
13 to be a party I spoke about the additional  
14 floor but then I also spoke about the four  
15 units. So it's not fair to characterize it as  
16 only talking about that extra floor.

17 MS. MOLDENHAUER: If the applicant  
18 were to squeeze, and I know this is a  
19 hypothetical because it's, but were to squeeze  
20 four units into three floors, would you still  
21 be opposed to that case?

22 MR. WOLFBERG: Yes.

1 CHAIRPERSON JORDAN: Let me ask  
2 you.

3 MR. WOLFBERG: Yes.

4 CHAIRPERSON JORDAN: When you did  
5 your unit you didn't have, did you add a  
6 fourth floor?

7 MR. WOLFBERG: I went up one floor  
8 and so I put on a third floor, but I created  
9 only two units.

10 CHAIRPERSON JORDAN: Okay.

11 MS. MOLDENHAUER: I may have  
12 misspoke. It's a third floor as well with the  
13 applicant. It's four units and a third floor.

14 CHAIRPERSON JORDAN: So you have a  
15 third floor, that's what I meant. So you did  
16 add a third floor?

17 MR. WOLFBERG: Yes. But I would  
18 like to point out that I have a 13th Street  
19 address, and so I would --

20 CHAIRPERSON JORDAN: I understand  
21 where your property lies and --

22 MR. WOLFBERG: Okay.

1 CHAIRPERSON JORDAN: Any other  
2 questions in cross examination?

3 MS. MOLDENHAUER: No other  
4 questions.

5 CHAIRPERSON JORDAN: All right  
6 then. Well, I definitely know that Mr., is it  
7 Klowberg, wishes to have three minutes to  
8 provide testimony in opposition.

9 MR. KLUGMAN: Thank you. As we've  
10 already heard, the applicant now knows that  
11 the property is not at 54 percent as he  
12 claimed in his brief but it is actually 68  
13 percent, and now he has amended his  
14 application to reflect such.

15 However, when he went to the ANC  
16 and when he met with us he stated it is a  
17 matter of right for him to build a third  
18 floor, and it is a much different conversation  
19 when you tell a committee, I have the right to  
20 build a third floor, I don't need your  
21 permission as opposed to, I do not have the  
22 right to build a third floor, I do need

1 permission.

2 And so it is not fair now to amend  
3 his complaint without hearing at least from  
4 the neighborhood who never had a chance to  
5 respond to a variance for the third floor.

6 There has been some comments about  
7 my case versus his case. Obviously I'm here,  
8 and I would like to point out some vast  
9 differences for the Board to consider between  
10 18115, which is myself, and 18448, which is  
11 today's hearing.

12 Obviously in my case there were  
13 only three units sought and here is an  
14 unprecedented fourth. In 2010, 3603 Street  
15 sat on the market for over six months without  
16 a buyer. Here, the property was purchased at  
17 a private auction between five bidders over  
18 one weekend for \$465,000.

19 And as to the point of sitting on  
20 the market for six months, let me quote from  
21 the transcript from 18115. "It does tip the  
22 scale in his favor here that he's articulated

1 that the property has not but sat on the  
2 market for over six months and that no other  
3 purchasers or other investors found the  
4 property to be adequate enough for an  
5 investment." This is Chairman Moldenhauer.

6 Number 3, I am at 36, I'm a 13th  
7 Street address, and I am among 92 percent of  
8 the homes from my address south that are three  
9 stories. There are no homes on Otis Place  
10 between 11th and 14th that are three stories.

11 The financial hardship that was in  
12 18115 was a much different situation obviously  
13 because of the price, because it sat on the  
14 market and was bought below market value as  
15 opposed today which was bought at far greater  
16 than market value.

17 And finally in my case there was  
18 no neighborhood opposition. We have  
19 signatures here from over 50 residents who,  
20 all the adjacent neighbors, who do oppose this  
21 plan. So with ten seconds left I'll  
22 summarize.

1 CHAIRPERSON JORDAN: We appreciate  
2 that. Does the Board have any questions of  
3 Mr. Klugman? Any questions?

4 Does the applicant wish to cross  
5 examine? Is that a yes or what?

6 MS. MOLDENHAUER: That is a yes,  
7 and I'm sorry. I was just looking briefly  
8 down at my paper.

9 CHAIRPERSON JORDAN: I was about  
10 to roll on.

11 MS. MOLDENHAUER: Jump up and make  
12 sure I get my chance. You indicated that none  
13 of the other properties on Otis have an  
14 additional story, a third floor.

15 MR. KLUGMAN: From 11th to 14th.

16 MS. MOLDENHAUER: Is there not a  
17 property on that may have an address of 13th  
18 but actually is bordering right across the  
19 street on Otis that goes up three floors both  
20 on 13th and on 12th?

21 MR. KLUGMAN: An address on 13th  
22 Street?

1 MS. MOLDENHAUER: They're on, they  
2 both have their side, the side of the property  
3 is on Otis and you can see all three floors  
4 from, as you walk down Otis on the other side  
5 of the property.

6 MR. KLUGMAN: 13th Street has much  
7 larger lots.

8 MS. MOLDENHAUER: I'd like just to  
9 answer yes or no.

10 MR. KLUGMAN: So yes, obviously  
11 mine is as well. 13th Street has much larger  
12 lots and they do have three stories.

13 MS. MOLDENHAUER: And you  
14 indicated that you've obtained all of these  
15 letters of opposition. Did you present  
16 opposition to the ANC? I'm asking the  
17 question, did you present your opposition to  
18 the ANC?

19 MR. KLUGMAN: Yes, we did.

20 MS. MOLDENHAUER: And was it an  
21 extended discussion with the ANC about your  
22 opposition and the same statements that you're

1 making here today before the Board?

2 MR. KLUGMAN: Yes, the ANC  
3 considered the facade of the building quite  
4 thoroughly but not the density.

5 MS. MOLDENHAUER: But did the ANC,  
6 after hearing the different arguments, approve  
7 the application?

8 MR. KLUGMAN: Yes, they did.

9 MS. MOLDENHAUER: No other  
10 questions.

11 CHAIRPERSON JORDAN: Does the  
12 Board have any additional questions? Okay,  
13 then we'll turn back to the applicant for  
14 wrap-up, please.

15 MS. MOLDENHAUER: Thank you. I  
16 just want to allow my client to speak briefly  
17 about some of the figures here. There was  
18 comments made by Mr. Klugman, and about the  
19 time on the market and things to that effect.

20 We've been very transparent in  
21 providing documentation on the pricing and the  
22 purchase and everything, and just want my

1 client to kind of walk through those and  
2 outline the practical difficulty that's being  
3 articulated here, in a little more detail for  
4 the Board.

5 MR. PISHVAEIAN: I want to thank  
6 you for listening to us. And the market has  
7 changed. It's been in Washington Post two  
8 weekends ago, the properties in D.C. has,  
9 prices has gone up 33 percent. The inventory  
10 is the lowest that it has been in last 30  
11 years.

12 This is what I do for a living. I  
13 have to purchase a property to change it, to  
14 sell it, to produce income to put food on the  
15 table for everybody and myself. So the fact  
16 that their property was \$100,000 less than  
17 this two or three years ago when the economy  
18 was bad is irrelevant. It is what it is right  
19 now. Properties, they sell within 24 hours  
20 from the time they come in the market.

21 At this point, the only thing that  
22 I can explain to you is about this profit and

1 loss statement, the difference between  
2 \$64,000, earning \$64,000 after two years hard  
3 working and investing \$1.4 million versus  
4 making \$183,000, which is ten percent of  
5 \$1,700,000 investment.

6 When you look at these numbers and  
7 when you say, okay, so you're selling four  
8 units at \$400,000 or \$500,000 apiece, it's not  
9 like I make \$500,000 per unit. If you look at  
10 these numbers that again I've provided, the  
11 total sales cost and the condominium warranty  
12 on four units is \$375,000 that I give away to  
13 D.C. government and transfer tax and agents.

14 So after all of that \$375,000 and  
15 investing \$478,000, renovating \$620,000, it  
16 leaves \$183,000 at the end of the day after  
17 two years of work.

18 I purchased another property right  
19 around the corner on 13th Street, June of  
20 2011, and due to the market and due to being  
21 in the basement, the lower unit has not been  
22 sold yet. We're hoping that we can have

1 something coming year. Those are some of the  
2 experiences that I have learned from the 13th  
3 Street.

4 All the bond companies that they  
5 were in the business that we were paying  
6 \$5,000 to buy bonds, they're all out of  
7 business. Now we have to put ten percent up  
8 with the D.C. government, which is \$75,000 in  
9 this case. And I'm sure you know, five  
10 percent of condo conversion fee that we have  
11 to pay to the D.C. government.

12 MS. MOLDENHAUER: I think, so  
13 you're identifying the risk associated with  
14 doing an investment project. And, you know,  
15 can you just wrap up and kind of identify why  
16 being able to do a three-unit without doing an  
17 addition would not be viable or economically  
18 feasible for you?

19 MR. PISHVAEIN: Exactly. So in  
20 laymen language, as you know we call it a  
21 cushion. \$65,000 is not enough cushion that  
22 I can hang onto hoping that I would sell all

1 these three units and make some money and walk  
2 away with it so I can move on with doing what  
3 I'm doing.

4 3609 13th Street, which was a  
5 rooming house that I converted to three units,  
6 first floor and second floor, has been sold 48  
7 hours after it went in the market. The  
8 basement is still sitting there. So at this  
9 point, at this moment on 3609 13th Street, I  
10 have a loss of \$300,000 hoping that I would  
11 sell the basement and make money there. That  
12 would be my income.

13 So from those experiences, you  
14 know, I've been doing this for seven, eight,  
15 nine years, but the economy changes. The  
16 market changes. The cost of construction went  
17 up from \$125 to \$160 right now, and  
18 requirements and zoning regulations and  
19 sprinkler, all of that has changed. So we  
20 keep changing everything every day and it's  
21 just a road that we're through and these are  
22 the numbers.

1 MS. MOLDENHAUER: So that being  
2 said, I'm at the point where we'd like to  
3 either provide a final closing argument unless  
4 the Board has any final questions.

5 CHAIRPERSON JORDAN: No, please do  
6 so. Unless you've got a question, anybody  
7 have a question? No.

8 MEMBER HINKLE: Just real quick.

9 CHAIRPERSON JORDAN: Yes.

10 MEMBER HINKLE: We don't have any  
11 market analysis that supports these projected  
12 sales prices, do we, in this --

13 MR. PISHVAEIN: Absolutely.  
14 Absolutely. I'm sorry. Absolutely I do have  
15 the, the numbers that I put in here is the  
16 numbers that I --

17 MEMBER HINKLE: We don't have it  
18 in our records.

19 CHAIRPERSON JORDAN: We don't have  
20 it in our record, do we?

21 MS. MOLDENHAUER: Let me just try  
22 to explain what my client's getting at. My

1 client sold a property right around the street  
2 just two blocks from Mr. Klugman, or two  
3 houses from Mr. Klugman's property, and he's  
4 using the exact sales prices there for the pro  
5 forma here.

6 So we don't have it as a MRIS  
7 comparison, but we use actual figures of what  
8 those units sold for, for a project that he  
9 did two houses down the street.

10 MR. PISHVAEIN: They're exact same  
11 square footage. They're exact two bedrooms,  
12 two bathrooms with a deck in the back and  
13 1,800 square feet, the lot, which is all of  
14 those houses are on 3601 to 3609, including  
15 Mr. Klugman and including Mr. Wolfberg.

16 Those are all 1,800 which is, this  
17 is 1,800 also. So I used exact same numbers  
18 hoping that I can get the same numbers.

19 MEMBER HINKLE: Okay.

20 COMMISSIONER COHEN: Except you  
21 really haven't sold the basement so those may  
22 be inflated?

1 MR. PISHVAEIN: Or the other way  
2 around. The basement has something to do with  
3 people don't want to be in the basement, so  
4 it's really hard to sell it. So we offered  
5 closing help and parking space and all of that  
6 and so far we didn't have any luck.

7 We have one gentleman that he is  
8 working on writing a contract. So we think  
9 the price will be \$425,000, which is what I  
10 included in here, which is \$75,000 below the  
11 first floor, and under \$25,000.

12 So in 20 feet difference it's  
13 \$125,000 less. So based on that assumption,  
14 based on that experience I've learned that I  
15 can't concentrate on the basement unit.

16 CHAIRPERSON JORDAN: All right,  
17 why don't you take two minutes to close?

18 MS. MOLDENHAUER: Yes. Based on  
19 our submissions in the record and based on the  
20 testimony here today, we feel that the  
21 applicant has satisfied the three-prong test  
22 based on for the first prong, a confluence of

1 factors.

2 As the applicant stated, there is  
3 an exceptional circumstance in regards to a  
4 rooming house use as has been determined by  
5 two other cases that were approved by the  
6 Board. And the fact of the irregular layout,  
7 the additional dilapidated condition as  
8 pointed out by the applicant based on the  
9 deteriorated condition and the extended use  
10 and the wear and tear created by a rooming  
11 house and the delayed maintenance from the  
12 prior owner, we pointed out evidence of the  
13 brick problems, roof leaks that had been  
14 extensive and had not been repaired for a  
15 significant period of time, and those factors  
16 create a confluence of factors to satisfy the  
17 first prong.

18 And then to create the practical  
19 difficulty, which is an economic practical  
20 difficulty here which we are not relying upon  
21 as I said earlier, generalities, but rather  
22 providing specific, clear cut numbers.

1 There's been no issue of hiding the ball in  
2 regards to purchase price and about the time  
3 frame in that regard.

4 We're just simply showing the  
5 figures and showing that as the applicant just  
6 testified to the ability to a project and to  
7 have such a minor, really insignificant value  
8 will be erased by any potential contingencies.

9 As the Board is aware of the  
10 construction contingencies anything may occur,  
11 and that to ask that to be considered a viable  
12 project we believe is something that is not  
13 considered in regards to case precedent.

14 As I indicated earlier and  
15 identified in the record, Fairmont is a case  
16 where the applicants had articulated somewhere  
17 upwards of 15 percent of a profit in that  
18 case. And the Board in that case found that  
19 that was not considered to be maximizing the  
20 use as OP was indicating to go beyond what is  
21 permitted. We are not even asking for that  
22 much. We are simply asking for, you know, to

1 provide something much lower but just simply  
2 indicate that that is necessary in order to  
3 return this property to a viable use to  
4 provide individuals that are going to own  
5 their units, care about the property and to  
6 live in the community.

7           There's no issue here in regards  
8 to parking. We are providing the two required  
9 spaces for all four units. As indicated by  
10 the opposition, neither of their properties  
11 actually have parking, and as stated during  
12 Mr. Klugman's hearing, he stated that actually  
13 it's not a problem because he was reducing  
14 from a 12-room rooming house down to three  
15 units. And the same argument could be applied  
16 here, but we're actually providing the legal  
17 parking that is required.

18           In addition to that the applicant  
19 has gone through extraordinary lengths to talk  
20 both with the parties in opposition and other  
21 neighbors and to present the case before the  
22 ANC. As indicated, it was an extended

1 discussion similar to this here today, and at  
2 the end of the day the ANC determined to vote  
3 in support and that letter of support should  
4 receive great weight.

5 In addition to that we have Office  
6 of Planning's report which we do recognize is  
7 not an outright recommendation of denial but  
8 rather just simply three units. And I think  
9 we have proven why three units is not viable  
10 and why the applicant is seeking the  
11 additional fourth unit.

12 In addition to that we've  
13 identified the additional relief under 2001.3  
14 for 403, lot occupancy relief, and we believe  
15 that this application would create a harmony  
16 and balance of residential uses in the area  
17 and would not harm the zone plan or the public  
18 good. Thank you.

19 CHAIRPERSON JORDAN: Thank you.  
20 Then we'll conclude this hearing based upon  
21 the testimony and the record before us.

22 I'm going to ask that the

1 applicant prepare for us findings of facts and  
2 conclusions of law as well as the party in  
3 opposition prepare findings of facts and  
4 conclusions of law, and that you -- we need a  
5 date for when we put this for a decision.

6 Mr. Moy? So then we can do, so  
7 everybody can exchange their documents.

8 (Off microphone discussion)

9 CHAIRPERSON JORDAN: I'd rather  
10 not. Just give me a hearing date and then  
11 we'll work our way backwards. I mean a  
12 decision date and we'll work our way back.

13 MR. MOY: A decision date would be  
14 scheduled for the afternoon of December 18th.

15 CHAIRPERSON JORDAN: Do you want  
16 it that soon?

17 Mr. Hinkle, did you want to say  
18 something?

19 MEMBER HINKLE: Yes, I'm not sure  
20 if you're going to get to this, but I was  
21 hoping to get a supplemental from the Office  
22 of Planning in regards to the lot occupancy

1 issue.

2 MR. MOY: Okay, very good. Okay,  
3 then we'll put it further down the road then.

4 MEMBER HINKLE: Thank you.

5 MR. MOY: Then we have, Mr.  
6 Chairman, the January 15th date.

7 CHAIRPERSON JORDAN: We're  
8 starting to stack up on the 15th, aren't we?

9 MR. MOY: Yes, but you know.

10 (Off the record comments)

11 CHAIRPERSON JORDAN: Okay, does  
12 anybody need anything else from the parties?  
13 Then we will close this hearing and --

14 MR. MOY: Mr. Chairman?

15 CHAIRPERSON JORDAN: Yes.

16 MR. MOY: I didn't give a date for  
17 --

18 CHAIRPERSON JORDAN: Submissions.

19 MR. MOY: -- for submissions. You  
20 were going to work backwards from the decision  
21 date of the 15th.

22 CHAIRPERSON JORDAN: So what's

1 your date, Mr. Moy?

2 MR. MOY: Well, there's no  
3 responses then I would suggest the Monday of  
4 January the 7th.

5 CHAIRPERSON JORDAN: Okay.

6 MR. JACKSON: Mr. Chairman, just a  
7 point of clarification.

8 CHAIRPERSON JORDAN: Yes.

9 MR. JACKSON: At this point the  
10 Board doesn't have a correct plat showing the  
11 right dimensions on the property.

12 MS. MOLDENHAUER: It is correct,  
13 it's just, yes. Everything is correct, it's  
14 just a question of the calculation.

15 MR. JACKSON: Okay, sorry, just  
16 want to clarify that, okay.

17 MS. MOLDENHAUER: And the plans  
18 are not changing.

19 MR. MOY: Which reminds me, Mr.  
20 Chairman, since Mr. Jackson spoke up, would  
21 you want a supplemental from the Office of  
22 Planning?

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CHAIRPERSON JORDAN: Yes, I

thought we did include that.

MR. MOY: Okay, on the same date,

January 7th.

CHAIRPERSON JORDAN: Okay, then

let's conclude this hearing and we'll stand in

recess for a half hour for this afternoon's

session. Thank you.

(Whereupon, the foregoing matter

went off the record at 1:36 p.m. and went back

on the record at 2:16 p.m.)



1 house.

2 CHAIRPERSON JORDAN: So the reason  
3 why you didn't make it this morning is because  
4 you had a flood?

5 MR. PERUZZI: Yes.

6 CHAIRPERSON JORDAN: We wish we'd  
7 received some type of notification. This  
8 matter was on the docket for this morning.  
9 We're now into our afternoon session. So we  
10 didn't dismiss it, which we could have  
11 dismissed this matter but we didn't. So what  
12 we will do is reschedule this for another  
13 decision date.

14 Mr. Moy, what date do we have?  
15 January?

16 MR. MOY: We're looking at January,  
17 okay.

18 CHAIRPERSON JORDAN: Or do you  
19 want to do it the 15th?

20 (Off microphone discussion)

21 MR. MOY: Today's the 27th. Yes,  
22 we're looking at continuing this application

1 to another public hearing, for what I'm  
2 hearing.

3 (Off microphone discussion)

4 CHAIRPERSON JORDAN: We can do it  
5 on the 15th then.

6 MR. MOY: January 15th. So  
7 January 15th in the morning.

8 CHAIRPERSON JORDAN: That's a  
9 hearing date?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON JORDAN: Okay. So we  
12 will hear your case on January 15th.

13 MR. PERUZZI: Okay, thank you very  
14 much.

15 CHAIRPERSON JORDAN: Okay, then we  
16 can begin the afternoon docket, please.

17 MR. MOY: Well, the preliminary  
18 matter, Mr. Chairman, is that just for the  
19 record, staff to note for the record that the  
20 Appeal Number 18438 of Advisory Neighborhood  
21 Commission 6A has been withdrawn from the  
22 agenda.

1                   So that leaves this afternoon  
2                   session with the Appeal Number 18439 of Valor  
3                   1350 Maryland LLC, pursuant to 11 DCMR 3100  
4                   and 3101, from a May 4th, 2012, decision by  
5                   the Department of Consumer and Regulatory  
6                   Affairs, to issue a building permit, building  
7                   permit number B1107494, allowing the repair  
8                   and renovation of a gasoline station in the  
9                   HS-A/C-2-A, C2A District at premises 1400  
10                  Maryland Avenue, N.E., property located in  
11                  Square 1049, Lots 21 and 803.

12                  CHAIRPERSON JORDAN: Will the  
13                  parties please come to the witness table,  
14                  please?

15                  MR. MOY: Shall I administer the  
16                  oath, Mr. Chairman?

17                  CHAIRPERSON JORDAN: Let's just  
18                  get people situated first.

19                  If there's anyone who's going to  
20                  testify in this appeal, please stand and take  
21                  the oath or affirmation from the Board  
22                  secretary, please.

1 (All sworn in)

2 MR. MOY: You may consider  
3 yourself under oath, thank you.

4 CHAIRPERSON JORDAN: All right,  
5 could the parties identify themselves, please?

6 MR. BROWN: Good afternoon, Mr.  
7 Chairman, Patrick Brown from Greenstein  
8 DeLorme & Luchs on behalf of the appellant,  
9 1350 Valor Maryland LLC.

10 MR. GLASGOW: Good afternoon, Mr.  
11 Chairman and members of the Board. For the  
12 record, Norman M. Glasgow, Jr. with the law  
13 firm of Holland & Knight on behalf of the  
14 ground lessee.

15 MR. LEGRANT: Good afternoon,  
16 members of the Board. I'm Matthew LeGrant,  
17 the zoning administrator with the Department  
18 of Consumer and Regulatory Affairs.

19 MR. SURABIAN: Good afternoon.  
20 Assistant Attorney General Jay Surabian on  
21 behalf of DCRA.

22 CHAIRPERSON JORDAN: Very good.

1 Let's see where we are. Please, do we have  
2 any preliminary matters in this case?

3 MR. MOY: Yes, sir. The appellant  
4 filed a motion to amend the appeal as well as  
5 a motion for continuance under Exhibit 15, I  
6 believe.

7 CHAIRPERSON JORDAN: Mr. Brown,  
8 what's the basis of the motion to amend the  
9 appeal?

10 MR. BROWN: The current pending  
11 Appeal 18439 is based on a building permit  
12 from May of this year for, and keeping it  
13 simple, for the gas station portion of the  
14 development.

15 We filed an appeal in a timely  
16 manner, and then as we approached the hearing  
17 date a second permit, which was issued on  
18 November 1st for what I'll refer to as the  
19 grocery or convenience store, convenience  
20 store having gone out of vogue as a term,  
21 permit was issued on November 1st.

22 ANC-6A has already filed an appeal

1 of the second building permit for the quote  
2 "grocery store." Rather than filing a  
3 separate appeal I chose to amend, at request  
4 to amend the current appeal to include the  
5 second building permit which was bifurcated  
6 from the original permit.

7 You'll notice from the various  
8 briefs filed by my colleagues at Holland &  
9 Knight and DCRA that there's a community of  
10 issues involved. So it makes sense from an  
11 economy of time and effort to amend the  
12 original appeal and proceed on both permits  
13 simultaneously.

14 To do so, the original, the second  
15 permit only issued November 1st, I'm still  
16 collecting documents and I'm not prepared to  
17 proceed on the merits of that in the 14 days  
18 since I became aware of the permit and filed  
19 the motion to amend. So that's the four  
20 corners of it.

21 CHAIRPERSON JORDAN: Is it my  
22 understanding, I think you said that the ANC

1 has filed an appeal also?

2 MR. BROWN: That's correct.

3 They've filed an appeal, I think it's 18499 of  
4 the second building permit.

5 CHAIRPERSON JORDAN: It's the same  
6 one that you're seeking to amend on?

7 MR. BROWN: That's correct. And  
8 that was filed on November 14th according to  
9 the copy I have and assigned Case Number  
10 18499.

11 CHAIRPERSON JORDAN: Okay, Mr.  
12 Glasgow?

13 MR. GLASGOW: Yes, sir. Mr.  
14 Chairman, we filed an opposition to  
15 appellant's motion to amend, which should be  
16 a part of the record, on the basis that the  
17 discussion that they have with respect to the  
18 building and the location of the building was  
19 shown on the original permit and therefore is  
20 untimely.

21 And at the appropriate time we  
22 will be filing a motion to dismiss ANC-6A's

1 appeal because they had withdrawn their appeal  
2 that was timely filed and then they're  
3 appealing on the same basis that the, Valor is  
4 appealing.

5 When you look at the documents  
6 that was filed, the building that was shown on  
7 the permit application initially --

8 CHAIRPERSON JORDAN: Which one of  
9 the exhibits is the original building permit?

10 MR. GLASGOW: The original  
11 exhibit, and we have larger copies so that  
12 they're more legible, but Exhibit A --

13 CHAIRPERSON JORDAN: Well, let me  
14 have that if we can have that passed to the  
15 Board, please.

16 (Off microphone discussion)

17 CHAIRPERSON JORDAN: On the permit  
18 application.

19 MR. GLASGOW: Correct.

20 MR. BROWN: Could I ask which  
21 permit application we're referring to?

22 CHAIRPERSON JORDAN: I think Mr.

1 Glasgow referred to the first permit  
2 application.

3 (Off microphone discussion)

4 CHAIRPERSON JORDAN: Okay, on the  
5 set of plans you mean, but not on the  
6 application itself? I thought you would  
7 indicate --

8 MR. GLASGOW: This is what went  
9 with the first application.

10 (Off microphone discussion)

11 CHAIRPERSON JORDAN: Do you think  
12 it'll stand up, Mr. Moy?

13 MR. MOY: Someone would have to  
14 hold this.

15 CHAIRPERSON JORDAN: All right  
16 then, let's not worry about it.

17 (Off the record comments)

18 MR. GLASGOW: Because of the size  
19 of the drawings and the legibility, what we've  
20 done is a combination of, when we first filed  
21 the submission we had the reduced copies here,  
22 and you can see Ms. Mack's signature here for

1 the zoning.

2 Yes, and Stephen's got the full  
3 size set. Mr. Gyor has the full size set  
4 there. And this was with the original permit.

5 CHAIRPERSON JORDAN: Come down  
6 here because we're not going to shoot it, are  
7 we? Okay, and make sure that the Board can --

8 (Off microphone discussion)

9 MR. GLASGOW: Yes, they signed off  
10 November 4th, 2011. And if you look at then  
11 Sheet C-10, once again you'll see the sign off  
12 by the zoning technician right there and the  
13 building is shown on the plans.

14 (Off microphone discussion)

15 MR. BROWN: Mr. Chairman, I'm  
16 confused about the whole purpose of this line  
17 of discussion. I think my colleague is trying  
18 to argue timeliness of an appeal that, one,  
19 hasn't been accepted in my request to amend  
20 and is certainly pending before the Board, and  
21 the party who filed that appeal is not here  
22 and prepared, a representative is here but

1 hasn't been asked to respond.

2 CHAIRPERSON JORDAN: So we're  
3 clear, making a determination whether or not  
4 we're going to allow you to amend. And so  
5 based upon the timeliness is the argument in  
6 opposition to allow you to amend, so that's  
7 why it's relevant.

8 So we have on the original, plans  
9 that went with the first application back in  
10 November of 2011?

11 MR. GLASGOW: That's when it was  
12 approved. The application was filed prior to  
13 that.

14 CHAIRPERSON JORDAN: When was it  
15 filed?

16 MR. GLASGOW: The building permit  
17 application is dated April 4th, 2011. Zoning  
18 approval was obtained in November of 2011, and  
19 the plans clearly show the building as of that  
20 date.

21 And the motion to amend is on the  
22 basis of the rezoning of the site and

1 statements that the building does not conform  
2 with the subsequently adopted change of  
3 zoning. And the building is clearly shown on  
4 the plans and has not changed since it was  
5 originally filed in April 4th, 2011.

6 CHAIRPERSON JORDAN: And the  
7 application was based upon the BZA Case Number  
8 --

9 MR. GLASGOW: 17825.

10 CHAIRPERSON JORDAN: -- 17825,  
11 which granted the relief requested that  
12 allowed this.

13 MR. GLASGOW: Yes, sir. And the  
14 sign-off by the zoning technician references  
15 the BZA application number.

16 CHAIRPERSON JORDAN: Okay, thank  
17 you.

18 MR. BROWN: Mr. Chairman, can I  
19 respond?

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

22 MR. BROWN: And if you go and you

1 look, and you have to go beyond just the plans  
2 that were submitted, the application, again  
3 this is the original application for what I  
4 refer to as the fueling station, the gas  
5 station portion.

6 And if you go back to the  
7 application which the applicant amended  
8 themselves and then they removed the grocery  
9 store/convenience store portion from the  
10 permit application and proceeded based solely  
11 on the gasoline service station.

12 CHAIRPERSON JORDAN: There was a  
13 removal? There was a subsequent amendment to  
14 this application?

15 MR. BROWN: The applicant amended  
16 the permit application, again it was filed  
17 correctly on April 4th of 2011, to remove the  
18 store.

19 And if you then go forward, fast  
20 forward to where we are November 1 when a  
21 permit was issued, a separate permit was  
22 issued for the grocery store which says,

1 "Grocery store to be added to existing vehicle  
2 service station under separate building permit  
3 B1107494, which is the plans you're looking  
4 at. And then it says originally the one-story  
5 store was part of the previous application and  
6 was removed to become this permit.

7 So the applicant, for reasons that  
8 we don't need to get into, going back to the  
9 first permit bifurcated the gas station from  
10 the grocery store.

11 CHAIRPERSON JORDAN: I think  
12 you're off-mic maybe.

13 MR. BROWN: I'm just not close  
14 enough to the mic. But the applicant of their  
15 own doing bifurcated --

16 CHAIRPERSON JORDAN: Do you have a  
17 document that, was there a formal removal of  
18 this from the original application?

19 MR. BROWN: It's on the  
20 application form that was amended by the  
21 applicant. And I can provide copies to the --

22 CHAIRPERSON JORDAN: It says

1 removal, that it's been --

2 MR. BROWN: They've crossed off  
3 one-level convenience store and put "remove"  
4 in the margins. So that the permit that was  
5 issued was strictly for renovation, alteration  
6 and repair of existing vehicle service  
7 station.

8 So the grocery store building  
9 which is a separate building from the gas  
10 station was removed from the original permit.

11 MR. GLASGOW: Mr. Chairman, I'll  
12 object to that. Those plans never removed  
13 that building.

14 MR. BROWN: The application itself  
15 --

16 CHAIRPERSON JORDAN: What  
17 application?

18 MR. BROWN: -- then there would  
19 have, as a practical --

20 CHAIRPERSON JORDAN: Which  
21 application are you speaking of?

22 MR. BROWN: The application form -

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CHAIRPERSON JORDAN: For the second permit or for the first?

MR. BROWN: For the first permit, and perhaps --

CHAIRPERSON JORDAN: And you said it has on there that it has been amended to say "remove?"

MR. BROWN: The one-level convenience store "remove." And it's been crossed out, and I can provide that to the Board. And it makes sense.

MR. GLASGOW: Mr. Chairman, it was just the use that was discussed, and we'll get into that with respect to the BZA order which says specifically that since a convenience store is a matter or right use in the C3 District, this is Application Number 17825, the subject of this application and the sole focus of the Board's decision is the gasoline service station use.

The use of whether you want to

1 call it a convenience store or a grocery store  
2 or any of those things is all permitted as a  
3 matter of right.

4 The building was never removed  
5 from the permit. The permit that was issued  
6 by the District permitted the construction of  
7 the building, and in fact, later on in the  
8 Board's order. I was reading from the first  
9 paragraph of the decision and the order right  
10 there.

11 CHAIRPERSON JORDAN: Yes, I know  
12 what the order says. And that it says that  
13 the convenience store or the  
14 grocery/convenience store is a matter of right  
15 and that the order was going to just generally  
16 address the other issues raised.

17 MR. GLASGOW: That's correct. And  
18 we left the building, the building was never  
19 removed from the plans on the thing. The use  
20 within the building, at one point in time we  
21 had a cashier's area.

22 We had initially a convenience

1 store, which is permitted as a matter of  
2 right, then we had the cashier's office and  
3 storage, and then when we got further along  
4 with the health department and whatever.

5 Then we got the interior permit,  
6 which is essentially what the second permit is  
7 that's being appealed. It's for the interior  
8 work for the fill out of the convenience  
9 store, which in a couple of different places  
10 in this order says it's a matter of right.

11 And the building, when they're  
12 talking about the building and it doesn't  
13 comply with the H Street overlay that it's not  
14 in, that has to do with setbacks from the H  
15 Street overlay. The building has never  
16 changed its position or its size as approved  
17 by the Board.

18 MR. BROWN: Mr. Chairman, I  
19 disagree.

20 CHAIRPERSON JORDAN: Let me see  
21 the document you just had with the removal on  
22 it, please.

1                   COMMISSIONER COHEN: Can I ask a  
2 basic question? What is the basic complaint  
3 with the use? I mean what is the actual, I  
4 mean I know that there's issues with, you  
5 know, issuing a permit and issue, but what is  
6 the basic issue?

7                   MR. BROWN: Well, and my clients  
8 are building a condominium building across the  
9 street. But the problem is, and it goes much  
10 deeper than just these permits, is that work  
11 has been done at the site without permits.

12                   The ground lessee, who I assume is  
13 doing the work, has been cited and fined.  
14 Buildings have been demolished including this  
15 quote "grocery store" building, so that it's  
16 really just a bunch of cinder blocks that are  
17 being incorporated into a new building.

18                   And that the applicant, having  
19 chosen to bifurcate their permits, operate in  
20 such a way that they're cited for illegal  
21 demolition, underground storage tank work with  
22 permits. And then demolishing, and I can

1 provide pictures, of the grocery store  
2 building that they claim is dealt with in the  
3 permit.

4 Well, the permit was issued in  
5 May. The wall was demolished after that so  
6 that you're down to just part of a rear wall,  
7 and then they get a second permit to build the  
8 grocery store, rebuild the grocery store. And  
9 it's pretty clear that's the case.

10 The community has moved on. My  
11 clients have moved on. The H Street overlay  
12 is the law of the land there. And they  
13 should, having chosen to bifurcate their  
14 permits, to demolish an existing building  
15 which would have grandfathered them to stay in  
16 its current location, they're now subject to  
17 the H Street overlay which has a much  
18 different requirement.

19 The building is not in the back of  
20 the property, it's on the front, the street  
21 level with respect to the corner, their  
22 entrances, and much more pedestrian,

1 community-friendly setup than a grocery store  
2 behind pump islands.

3 So I think that's the, whether I'm  
4 talking about my clients who are building an  
5 apartment building or others in the community  
6 is that there's a new standard that by virtue  
7 of the ground lessee's actions they're now  
8 subject to, and they should be because it  
9 results in a much different physical  
10 appearance and community relationship between  
11 the site.

12 And again for whatever reason, I  
13 don't represent the ground lessee, but they  
14 chose to do it this way and then when they  
15 chose to, I can provide pictures, when they  
16 chose to demolish the existing building which  
17 would have grandfathered them, they did this  
18 sometime after the first permit was issued in  
19 about July, they were then cited on July 10th  
20 by the city for illegal demolition and  
21 underground storage tank work.

22 So having taken those steps,

1 they've lost their grandfather rights having  
2 operated illegally and destroyed the existing  
3 building and are now subject to --

4 MR. GLASGOW: Mr. Chairman, we  
5 object to those characterizations. We have  
6 worked out all our permits with the District  
7 of Columbia. We're presently are not cited  
8 for any violations. The gas station is  
9 essentially, and the building are on the site  
10 as of this time.

11 Also Mr. Chairman, I'd like to  
12 reference that where it says Description of  
13 Proposed Work, there's one little piece of  
14 that that says, "all renovation, alterations  
15 and repair for existing vehicle fuel station"  
16 and all of those things in accordance with the  
17 BZA plan, and there's one part of one line  
18 that's stricken through on that permit  
19 application that Mr. Brown was citing.

20 It says special exception granted  
21 to Exhibits Number 60, revised plan, and  
22 Number 66A, floor plan with elevation and

1 reduced sign size. None of that's stricken  
2 through and all of that is reflected on those  
3 plans.

4 He's taking out of context one  
5 small line with respect to the description of  
6 the work. There was no intent and it's not  
7 even showing on the permit set to remove that,  
8 that the building is no longer going to be  
9 part of the application or part of what was  
10 approved by the Board.

11 CHAIRPERSON JORDAN: All right,  
12 let's deal with this issue of whether or not  
13 we're allowing him to amend.

14 There's a couple of issues for me  
15 that's rolling out this. One, that we already  
16 have an appeal pending under 18449 that's  
17 going to again bring up the issue of this  
18 permit which we can handle it at that date.

19 I believe that the initial appeal  
20 in this matter should have included all your  
21 objections to what was already in your initial  
22 applications, what my beliefs and thoughts are

1 regarding this matter.

2 Does the Board have any other  
3 thoughts on this?

4 (Off microphone discussion)

5 CHAIRPERSON JORDAN: We're just  
6 dealing now with the opportunity to amend to  
7 allow. We're not into the substance of the  
8 underlying appeal yet, or we kind of are but  
9 we're not.

10 Yes, let's hear from DCRA  
11 regarding that.

12 MR. SURABIAN: I would just say  
13 that Mr. Glasgow's statement of the facts is  
14 correct, that the second permit was just a  
15 question of the grocery store use. It wasn't  
16 the structural changes to the building. That  
17 was allowed under the first permit from May.  
18 It was just a question of use.

19 And secondly, the structural  
20 changes to the building were all part of the  
21 applications submitted to the Board. It was  
22 shown on the site plan that the Board approved

1 and indicated in the order that as part of the  
2 special exception it has to be constructed  
3 pursuant to that site plan.

4 So it's all part of the order  
5 which is approved, and so even if there's a  
6 change in the law they're allowed to continue  
7 under 3202.6.

8 CHAIRPERSON JORDAN: Well,  
9 actually I'm looking at this as one continuous  
10 application project, is the way I'm seeing it.

11 Anybody else on the Board have any  
12 idea about this? That when they filed the  
13 application back in April, that's kind of what  
14 started the, it was all included, everything  
15 about this project.

16 And so I'm saying that there's  
17 nothing new that's occurred in regards to why  
18 this should be amended on this appeal. They  
19 had the opportunity. It should have all been  
20 done at that point. Nothing new to me has  
21 arisen in regards to why it should be changed.

22 But if you have a thought, I'm now

1 turning to the Board for their thoughts on the  
2 matter before we rule.

3 Ms. Sorg?

4 VICE CHAIRPERSON SORG: I'm just  
5 looking at the description on the second  
6 building permit and it says, "grocery store to  
7 be added to existing vehicle service station."

8 And, you know, because, for  
9 example, when we were going through our case  
10 files because we had a rather difficult, the  
11 plans were pretty dense and difficult to read,  
12 you know, it was difficult to tell, you  
13 couldn't tell whether that was just the use  
14 inside or still having to do with the exterior  
15 building. Was it an addition? Was it just,  
16 you know, how you're constructing the interior  
17 layout or whatever.

18 So I mean I remain unclear as to  
19 whether there is a potential that the  
20 appellant believed there to be exterior  
21 changes, and then second to that whether or  
22 not that is relevant if there were not to be

1 any exterior changes that would then kick in  
2 the H Street overlay.

3 CHAIRPERSON JORDAN: So you  
4 believe that --

5 VICE CHAIRPERSON SORG: I maintain  
6 that I'm not yet clear on that.

7 MR. GLASGOW: We have a copy of  
8 the permit plans for the second permit and it  
9 shows the building in the exact same  
10 dimensions, the exact same size.

11 And also when you're talking about  
12 changes to the building, the Board in its  
13 order stated that the building had to be  
14 reduced in size from 1,321 square feet minus  
15 385 square feet, which is less than 1,000  
16 square feet, so of course there was going to  
17 be substantial removal of building. But we  
18 have those set of plans that show the building  
19 in the exact same location. And Mr. Gyor has  
20 those.

21 (Off microphone discussion)

22 VICE CHAIRPERSON SORG: So between

1 the first building permit application and the  
2 second building permit application the  
3 building shrank but it's siting didn't change?

4 MR. GLASGOW: No, the building  
5 never changed because the Board ordered the  
6 reduction in size.

7 VICE CHAIRPERSON SORG: Before  
8 this?

9 MR. GLASGOW: Before that. So the  
10 location of the building and the size of the  
11 building through both permit sets did not  
12 change in location or size. The only thing  
13 that changed with respect to designation of  
14 permitted uses within the building.

15 MR. BROWN: And one, I don't think  
16 the facts bear that out. One, this is July of  
17 this year between the first and the second  
18 permit. This is the building, what happened  
19 to the building. It actually got smaller  
20 after this when they started. And they didn't  
21 start construction of the grocery store  
22 building until after the second, the November

1 1, 2012 permit.

2 So the facts do not indicate that  
3 they had permission to build a grocery store  
4 building in the first. The facts would  
5 indicate that, one, they tore down the  
6 building after the first permit, didn't start  
7 construction of the grocery store building  
8 until after the November 1 permit.

9 So I don't think the facts, and  
10 the fact that they got a second building  
11 permit, they got a building permit, they  
12 didn't get an interior layout permit. They  
13 got a separate permit, and between the first  
14 and the second permit this illegal demolition  
15 occurred. And I can provide the notice --

16 MR. GLASGOW: The District doesn't  
17 take the position that we have the problems  
18 that Mr. Brown has that he's asserting that  
19 the District has.

20 CHAIRPERSON JORDAN: Go ahead.

21 VICE CHAIRPERSON SORG:

22 Regardless, I mean illegal demolition isn't

1 what we're talking about.

2 CHAIRPERSON JORDAN: Right, that's  
3 not before us.

4 MR. BROWN: Mr. Chairman, maybe it  
5 would make it easier, because I don't, there's  
6 no need to have an extended battle about  
7 amending the appeal. I'm willing to withdraw  
8 my request to amend and continue.

9 We will file a separate appeal of  
10 the second permit to coincide with the ANC  
11 permit, and in due course we'll have a hearing  
12 on the merits.

13 MR. GLASGOW: We'll file obviously  
14 a motion to dismiss that.

15 CHAIRPERSON JORDAN: Yes, okay,  
16 and thank you. This is where we are. It's  
17 withdrawn. We accept your withdraw. Now  
18 let's move to the merits of the initial  
19 appeal, of the initial appeal that's filed.

20 And note for the record that the  
21 motion to amend has been withdrawn and we  
22 accepted that. And we're not going to

1 continue this because he withdrew that. It  
2 was based upon that. So let's proceed. Let's  
3 go forward. Let's get this done.

4 I think this matter has been  
5 briefed well enough for the parties. We're  
6 going to give each side, we're going to give  
7 you ten minutes each to argue your appeal of  
8 this matter, all parties. The appellant can  
9 begin.

10 MR. BROWN: Sure. And I'm going  
11 to make it very simple. I don't expect to use  
12 ten minutes, Mr. Chairman and members.

13 Notwithstanding the --

14 CHAIRPERSON JORDAN: So you and I  
15 are on the same page. At first I was going to  
16 say five but I thought I'd give you some --

17 MR. BROWN: Well, if I do it in  
18 five --

19 CHAIRPERSON JORDAN: No, go ahead.  
20 Go ahead.

21 MR. BROWN: -- do I get the extra  
22 points?

1           The sole issue that's worth  
2     discussing in the context of the original  
3     appeal now is the absence of a single record  
4     lot, a subdivision of Lot 21 and 803.

5           And both the ground lessee and  
6     DCRA have acknowledged that at least when they  
7     filed their briefs that the subdivision hasn't  
8     occurred, and that in the case of the ground  
9     lessee that it was purely an administrative  
10    matter and that would have no regulatory  
11    impediment to that being completed.

12           The regulation is clear that no  
13    permits shall be issued until you have the  
14    record lot. We now have two permits that have  
15    been issued and -- if Mr. Glasgow, Chip, to do  
16    you have the recorded plat?

17           MR. GLASGOW: No, but I have the  
18    plat signed by the applicant for this.

19           MR. BROWN: The regulations, there  
20    are no permits shall be issued until the  
21    single record lot has been created. We have  
22    had two instances now, two permits issued.

1 There was no impediment based on the ground  
2 lessee's filing to doing that but they chose  
3 or were not able to do that.

4 At this moment they acknowledge  
5 that there still is no subdivision plat, and  
6 we don't know when it will occur. But the  
7 regulations are clear, and I've been doing  
8 this almost as long as Mr. Glasgow, that I  
9 don't have the good fortune on behalf of my  
10 clients to get building permits before I have  
11 subdivision plats.

12 And in this case two permits have  
13 been issued without a subdivision plat.  
14 Certainly the first permit as to the appeal,  
15 they didn't comply with the zoning  
16 regulations. They admit it, and the permits  
17 should be revoked on that basis.

18 What they do in the future to cure  
19 that is irrelevant because we all have moments  
20 in our lives where we're judged. They should  
21 have been judged when the permit was issued  
22 the first time. They weren't. They should

1 have been judged when the second permit was  
2 issued. They weren't. And now we're before  
3 the BZA.

4 And again this goes back to, they  
5 filed their first permit on this property in  
6 April of 2011. By my count that's 18 months  
7 ago and they still don't have a subdivision  
8 plat, but they're going to promise you that  
9 they're going to do it.

10 At this moment they're not in  
11 compliance with the zoning regulations and  
12 have admitted so, and I think that's the basis  
13 for a summary judgment on my behalf on that  
14 fact.

15 Three minutes, I believe.

16 CHAIRPERSON JORDAN: Okay, thank  
17 you. Does the Board have any questions they  
18 would like to ask the appellant?

19 VICE CHAIRPERSON SORG: Thank you,  
20 Mr. Chairman. Can you summarize which again  
21 for us, which are the zoning regulations that  
22 they're currently not in compliance with?

1 MR. BROWN: If you go to section  
2 3202.3, and it begins, "Except as provided in  
3 the building lot control regulations," and  
4 then you go down beyond all the cites.

5 It says, "A building permit shall  
6 not be issued for the proposed erection,  
7 construction or conversion of any principal  
8 structure or for any addition to any principal  
9 structure unless the land for the proposed  
10 erection, construction or conversion has been  
11 divided so that each structure will be on a  
12 separate lot of record." That's a subdivided  
13 lot created by the surveyor's office.

14 In this case we have Lot 21 and  
15 Lot 803 comprising the site, not a single  
16 record lot. A clear violation of the zoning  
17 regulations that should have been, quite  
18 frankly, done 18 months ago.

19 But in my experience, and Mr.  
20 Jordan, you've been at DCRA, permits are not  
21 issued without a record lot, and we've now had  
22 two permits. We come to the BZA hearing,

1 there still isn't a subdivision.

2           These are, in Mr. Glasgow's words,  
3 administerial, and no regulatory impediment to  
4 accomplishing it, yet 18 months later they  
5 haven't done that and they're in violation of  
6 the zoning regulations as to the first and the  
7 second permit. The first permit is before you  
8 and should be revoked.

9           CHAIRPERSON JORDAN: Ms. Cohen?

10           COMMISSIONER COHEN: Yes, I think  
11 that could be mitigated. I mean I know that  
12 he didn't follow, you know, the rules and we  
13 should slap him around a bit, but it could be  
14 mitigated.

15           So what is going to, you know, if  
16 we continue this kind of discussion it's just  
17 going to, you know, be sort of circular. So  
18 what are you proposing be the punishment?  
19 Just revoking the permits and then going  
20 forward with the same plan because the  
21 original order allows them to do this, meaning  
22 provide the mini-mart or whatever you want to

1 call it, grocery store, and the particular gas  
2 station?

3 MR. BROWN: I don't think  
4 mitigation is the Board's role in an appellate  
5 function. If we were a special exception  
6 variance we might have that discussion. The  
7 Board's function in an appeal case is to judge  
8 the validity of a zoning determination. In  
9 this case a permit, but any zoning decision.

10 And the question is, when the  
11 zoning decision was made and the first permit  
12 was issued was that permit issued in  
13 compliance with the zoning regulations? The  
14 answer is clearly, and I don't think anybody's  
15 going to dispute it, no.

16 What we do after that is not for  
17 this body in the appellate function, it's left  
18 to others. But in your appellate role, you're  
19 judging this permit at the time the decision  
20 was made, they weren't in compliance with the  
21 zoning regulations.

22 And even raising mitigation, May

1 of 2012, the permit was issued. They had from  
2 May until now, six months, to mitigate, come  
3 into compliance. They still haven't done it.  
4 So I think again, when the permit was issued  
5 in May 4th of 2012, you have to say, were they  
6 in compliance with the zoning regulations?

7 They've admitted they weren't.  
8 They admitted they still aren't. It's a  
9 summary judgment. There's no material  
10 disputed fact. There's no material disputed  
11 law. It doesn't say you shall do it when it's  
12 convenient. It says, no permit shall be  
13 issued.

14 CHAIRPERSON JORDAN: How do you  
15 reconcile that with the Board's order in  
16 17825? How do you reconcile that requirement  
17 or the alleged requirement in regards to what  
18 the Board did on 17825? The lots were still,  
19 were not subdivided at that time, correct?

20 MR. BROWN: And that happens all  
21 the time where the Board approves it based on  
22 a site which comprised as two lots. The Board

1 is not approving a building permit. That's a  
2 different function. That's a DCRA function.

3 And the Board was clearly within  
4 its right and jurisdiction to approve the  
5 application. They did so. All your  
6 applications are approved subject to getting  
7 your building permits.

8 So it goes to a different phase  
9 which is now before you whether, in fact, DCRA  
10 was correct or incorrect in issuing that  
11 building permit, and I think it's pretty clear  
12 that they were incorrect in issuing a building  
13 permit for this site without a subdivision  
14 creating a single record lot.

15 CHAIRPERSON JORDAN: All right,  
16 thank you. Mr. Surabian?

17 MR. SURABIAN: Thank you.

18 CHAIRPERSON JORDAN: You're on the  
19 clock for ten too, which you're not going to  
20 take all ten, right?

21 MR. SURABIAN: I hope not.

22 Well, thank you, members of the

1 Board. Even though Mr. Brown didn't address  
2 them I'll just quickly indicate the bases he  
3 raised in his initial appeal are all without  
4 merit. The median strip has been installed.  
5 The gas station use as we know is allowed by  
6 the special exception. The grocery store use  
7 is allowed as a matter of right. There really  
8 shouldn't be any debate on those questions.

9 As for the subdivision, he's  
10 correct that it hasn't been recorded yet. The  
11 fact is, this isn't unknown to DCRA and we  
12 haven't bypassed this regulation.

13 The fact is that it takes a  
14 considerable amount of time to process that  
15 and so as accommodation DCRA has allowed  
16 permits to be issued in its cases like this  
17 provided that the subdivision is complete and  
18 recorded before you get your final inspection.  
19 So in other words, you won't get your C of O,  
20 you won't be approved in the final inspection  
21 so long as that subdivision's incomplete.

22 So we have a regulatory control in

1 place, it was done because what happened was  
2 months, you know, projects could be held up  
3 for months that were ready that are otherwise  
4 ready to go that were just being held up for  
5 this requirement.

6 There isn't any regulatory  
7 impediment to this being accomplished and it  
8 has been applied for, so I don't see the Board  
9 revoking the permits or doing, I don't see how  
10 that accomplishes anything or resolves the  
11 issue. So we would ask the Board to deny the  
12 appeal.

13 CHAIRPERSON JORDAN: When was a  
14 subdivision applied for?

15 MR. GLASGOW: Mr. Chairman, I have  
16 copies of our subdivision application as  
17 approved, as accepted by the Department of  
18 Consumer and Regulatory Affairs. We applied  
19 for the subdivision June 13th, 2011.

20 CHAIRPERSON JORDAN: And it's my  
21 understanding from your argument that this has  
22 been a pattern and practice of the ZA?

1 MR. SURABIAN: It's been a policy  
2 put in place because of the delays that can  
3 sometimes occur.

4 CHAIRPERSON JORDAN: What's the  
5 average time for processing a subdivision such  
6 as this?

7 (Crosstalk)

8 MR. LEGRANT: The question is how  
9 long typically for subdivisions?

10 CHAIRPERSON JORDAN: Yes.

11 MR. LEGRANT: It varies depending  
12 upon the size of the subdivision. Many  
13 subdivisions are simply conversions of tax  
14 lots to record lots. Some subdivisions  
15 involve, you know, tens if not hundreds of  
16 lots. So a subdivision like this, it's my  
17 experience typically run two to three months  
18 in terms of processing time.

19 CHAIRPERSON JORDAN: Is there any  
20 questions? Yes, go ahead.

21 VICE CHAIRPERSON SORG: Thank you.  
22 So if that's the average, why is this one

1 taking so long you think?

2 MR. GLASGOW: Our application was  
3 lost and then it was redrawn. And we asked  
4 for that a couple of months ago after we found  
5 out that the subdivision had been misplaced  
6 and we never had it.

7 And so then it took several weeks  
8 even after that to get it drawn, and it was  
9 then issued to us, I believe it was last week.  
10 We have signatures of the owners on the  
11 subdivision plat. I'm going to enter that  
12 into the record.

13 VICE CHAIRPERSON SORG: So the  
14 subdivision plat was restored to DCRA, do you  
15 know when? Last week?

16 MR. GLASGOW: We asked, where is  
17 our plat, because we're getting, the  
18 building's being constructed, has been for  
19 some period of time, and we needed our record  
20 lot because we knew that we would need it for  
21 the final inspections and to get our C of O.

22 And then weeks after that the plat

1       showed up. We got it last week. We signed it  
2       in like two business days, and we're trying to  
3       process it as quickly as we possibly can. And  
4       as Mr. Surabian indicated, there's no  
5       impediment. There's no regulatory impediment  
6       for the processing of that plat.

7                   VICE CHAIRPERSON SORG: Thank you.

8                   CHAIRPERSON JORDAN: Any other  
9       questions?

10                  MR. GLASGOW: It's just consistent  
11       with the District's practice at this point in  
12       time.

13                  CHAIRPERSON JORDAN: I'm about to  
14       defer to your portion of this, unless you want  
15       to take some as part of your minutes.

16                  Any other questions of Mr.  
17       Surabian? Okay, then let's now turn to the  
18       ground lessee. Well, let's wait for Mr. Moy  
19       to get back so he can put you on the clock.

20                  I don't know, you've used some of  
21       your ten minutes. You're probably down to  
22       like three. No, let's go ahead and put him on

1 ten minutes, please.

2 Just what I like, more paper, poor  
3 trees. Okay, then let's begin, please.

4 MR. GLASGOW: All right. Thank  
5 you, Mr. Chairman. I'll just defer to the  
6 comments that Mr. Surabian made with respect  
7 to all the other issues that were raised in  
8 this appeal other than the subdivision.

9 I think that those are very clear  
10 and disposed of and we also wrote document  
11 with respect to that on our response that  
12 opposed the motion to amend. I think we  
13 covered the other issues in there, so we would  
14 want to know if the Board has any questions or  
15 issues on any of the other comments.

16 With respect to the subdivision,  
17 picking up on something that Ms. Cohen  
18 referenced, if the Board were to revoke the  
19 permit we would just continue processing the  
20 plat that we have and the permit would be  
21 reissued and the subdivision's in place.

22 I mean it's clear, and I don't

1 view that particularly even as mitigation or  
2 anything. It's just completing that part of  
3 the administrative process of which we had no  
4 control over, and we more than timely filed  
5 everything that we were supposed to file, the  
6 building permit application, the subdivision  
7 application filed in June of 2011.

8 And so we would submit that the  
9 applicant has done everything that it's  
10 supposed to do under the BZA order and all we  
11 have sought to do with respect to this project  
12 is build it in accordance with the Board's  
13 approval and BZA Application 18725, or 17825.  
14 And that's all we've sought to do from the  
15 beginning, and what we're planning to do at  
16 this point in time and continue to do.

17 CHAIRPERSON JORDAN: Does anyone  
18 from the Board have any questions of Mr.  
19 Glasgow or the ground lessee?

20 All right, then we're going to  
21 conclude this hearing.

22 VICE CHAIRPERSON SORG: Mr.

1 Chairman, I do have one other question for the  
2 appellant --

3 CHAIRPERSON JORDAN: Sure.

4 VICE CHAIRPERSON SORG: -- which  
5 came up for me when you were giving your  
6 testimony.

7 If we were to grant this appeal,  
8 what material relief would that provide to you  
9 given Mr. Glasgow's comments? What material  
10 relief would that provide to you and your  
11 clients?

12 MR. BROWN: Well, one, the  
13 building permit would be revoked, the first  
14 one.

15 VICE CHAIRPERSON SORG: No, I  
16 understand that. But I'm talking about  
17 material --

18 MR. BROWN: Well, and then the  
19 question of the proper review of that building  
20 permit in the context of the current zoning,  
21 the BZA decision, the demolition that's  
22 occurred to the building, and where we are now

1 would all have to occur.

2 VICE CHAIRPERSON SORG: Okay, then  
3 that leads me to a question. Thank you.

4 MR. BROWN: Can I also --

5 VICE CHAIRPERSON SORG: Yes.

6 MR. BROWN: And Mr. Glasgow was  
7 very helpful because he provided the  
8 application from June of 2011. Let's put that  
9 in the context.

10 That was shortly after the first  
11 building permit application was filed, it's  
12 what, 15 months ago. And the fact that it was  
13 lost and is, I mean that happens. We've all  
14 been through that. But a 15-month period and  
15 still no subdivision recorded lot, two permits  
16 being issued, the system breaks down.

17 And I'm not aware of any policy of  
18 building permits being issued without the  
19 record lot being in place. I'm certainly not  
20 aware of any policy that would allow you to  
21 continue construction until your final  
22 inspection to get a record lot, particularly

1 in the context where Mr. Glasgow says that  
2 this was purely administrative.

3 Mr. LeGrant says two to three  
4 months. That sounds about right. And we  
5 still don't have it, and Mr. Glasgow says  
6 there was no impediment to. Well, the ground  
7 lessee, the one seeking the building permit,  
8 the burden's on them.

9 And I don't think it's reasonable  
10 to the process and to the Board to say, well,  
11 it took us longer than it should have. At the  
12 moment you need to judge this, which is the  
13 time the permit was issued, the first permit  
14 which is May 4th of 2012, they did not have a  
15 record lot. The regulations don't give you  
16 the authority to deviate from that. So I'll  
17 just leave it at that.

18 COMMISSIONER COHEN: It appears to  
19 me, and correct me if I'm wrong, but that you  
20 want to go back to the BZA for a re-review of  
21 the original request under the overlay, the H  
22 Street overlay?

1 MR. BROWN: I didn't say that. I  
2 just said that we'd have to go back to ground  
3 zero from the permits. And there are enough,  
4 and we heard the discussion earlier on,  
5 there's enough --

6 CHAIRPERSON JORDAN: But aren't  
7 you really saying, Mr. Brown, you're saying  
8 you just call it quits since there was a  
9 violation. It's a violation, you can't  
10 correct it, it's done.

11 And then you would piggyback upon  
12 the argument that if any new application is  
13 made in the manner which you say it should  
14 happen, then that that's outside the two-year  
15 time frame and so this issue, this whole thing  
16 would be dead. Is that kind of where you are?

17 MR. BROWN: That may be the end  
18 result. I don't get to make that --

19 CHAIRPERSON JORDAN: I figured  
20 that's where you are. And so I just want this  
21 Board to understand what his argument was and  
22 where he was with my understanding of where we

1 are.

2 MR. BROWN: But Mr. Chairman, the  
3 consequences of your decision shouldn't be --

4 CHAIRPERSON JORDAN: I understand.

5 MR. BROWN: -- that you may not  
6 disagree with those consequences. In your  
7 appellate rule you have to decide whether the  
8 permit was issued in compliance with the  
9 regulations regardless of how that, what  
10 effect that has.

11 CHAIRPERSON JORDAN: All right.

12 VICE CHAIRPERSON SORG: But the  
13 Board's mandate is to take into consideration  
14 when decisions made by the Board have only an  
15 administrative effect or can have an effect of  
16 providing relief for people in front of the  
17 Board.

18 So that's beside the point, but I  
19 do want to ask a question of Mr. Surabian  
20 which is, if the building permit were revoked  
21 and had to be reapplied for now, would that  
22 have to --

1                   CHAIRPERSON JORDAN:  And just  
2                   before that I just want to also put on the  
3                   table that this Board does have the ability to  
4                   give relief in regards to various regulations.

5                   VICE CHAIRPERSON SORG:  No, yes,  
6                   and I'm saying --

7                   CHAIRPERSON JORDAN:  I know.  No,  
8                   I'm supporting what you're saying.

9                   VICE CHAIRPERSON SORG:  Yes.

10                  CHAIRPERSON JORDAN:  Just so that  
11                  we put this out there.

12                  Okay, Mr. Surabian, you have a  
13                  question.

14                  VICE CHAIRPERSON SORG:  Right.  So  
15                  --

16                  CHAIRPERSON JORDAN:  And we're  
17                  going to wrap this up.

18                  VICE CHAIRPERSON SORG:  You got  
19                  it?

20                  MR. SURABIAN:  I don't see that  
21                  scenario playing out.  I think in the time  
22                  that it would take the Board to even issue a

1 decision it would be complete. So it would  
2 all sort of be for nothing.

3 CHAIRPERSON JORDAN: Okay. I  
4 think we've had all the arguments, but I do  
5 want to add into the record that ANC-6A  
6 submitted a letter and where they voted 6-0-0  
7 with a quorum present to support the appeal  
8 filed by the applicant on the building permit  
9 1107494, and as well as the amendment.

10 However, that's not before us at  
11 this point anymore. I just want to add that  
12 to the record on this matter.

13 All right, we're going to conclude  
14 this hearing on the appeal. I'm going to ask  
15 that each party present a finding of facts and  
16 conclusions of law to the Board so that we put  
17 this on for a decision.

18 Mr. Moy, what are we looking at at  
19 our favorite January something date? Is it  
20 the 15th?

21 MR. MOY: Yes, yes.

22 CHAIRPERSON JORDAN: Is that our

1 favorite date?

2 MR. MOY: Yes.

3 CHAIRPERSON JORDAN: How are we  
4 stacking up? We've really been stacking that  
5 date today.

6 MR. MOY: We're doing fine.  
7 What's one more, right?

8 CHAIRPERSON JORDAN: Yes, that's  
9 what you said, and that's why we're sitting  
10 here at this time of day and we had the  
11 morning rolled over to -- but anyway.

12 Yes, how are we looking on that  
13 day?

14 MR. MOY: About five decision  
15 cases at this point.

16 CHAIRPERSON JORDAN: Okay, plus we  
17 have the findings of the facts and conclusions  
18 of law coming in that will probably be in on  
19 January 8th. Is that the day for those things  
20 to be submitted?

21 (Off the record comments)

22 MR. MOY: I think that was about

1 right. January 7th, which is a Monday.

2 CHAIRPERSON JORDAN: January 7th,  
3 so from all the parties. Okay. And we're not  
4 taking in any responses or rebuttals to the  
5 finding of facts and conclusions of law. Just  
6 submit those to the Board, please.

7 MR. GLASGOW: And Mr. Chairman,  
8 we'd like to be able to file our subdivision  
9 if it is processed by that date, for the  
10 record.

11 CHAIRPERSON JORDAN: I think  
12 either the, as they say, the horse is out of  
13 the barn or not, we've already got your  
14 testimony regarding where it is. I mean  
15 because the issue is what happened at the  
16 time, yes, and we already know when the  
17 application was filed, so I don't think we  
18 really need it in the record.

19 All right, so then let's conclude  
20 this hearing, and thank you.

21 MR. GLASGOW: Thank you.

22 MR. MOY: And there's one other

1 administrative item, Mr. Chairman.

2 CHAIRPERSON JORDAN: Oh, sure, and  
3 now I've got to read this thing. Gee. Okay.

4 Excuse me, could you sit down,  
5 please?

6 (Off microphone discussion)

7 CHAIRPERSON JORDAN: Who's  
8 responsible for this guy? No.

9 (Laughter)

10 CHAIRPERSON JORDAN: If I may, in  
11 accordance with section 405C of the Open  
12 Meeting Act of D.C. Official Code section  
13 2575(c), I move that the Board of Zoning  
14 Adjustment hold closed meetings on Monday of  
15 December 3rd, December 10th and December 17th.

16 This will begin at 4:00 p.m. for  
17 the purpose of obtaining legal advice from our  
18 counsel, and to deliberate upon but not voting  
19 on the cases scheduled to be publicly heard or  
20 decided by the Board on the day after each  
21 such closed meeting.

22 Those cases are identified on the

1 Board's public agenda for December 4th,  
2 December 11th and December 18th.

3 Is there a second?

4 MR. HINKLE: Second.

5 CHAIRPERSON JORDAN: Motion made  
6 and seconded. Will the secretary please take  
7 a roll call?

8 MR. MOY: Yes, sir. Thank you.  
9 When I call your name if you would reply with  
10 either yes, no, aye or nay.

11 Ms. Cohen?

12 COMMISSIONER COHEN: Yes.

13 MR. MOY: Vice Chair Sorg?

14 VICE CHAIRPERSON SORG: Yes.

15 MR. MOY: Chairman Jordan?

16 CHAIRPERSON JORDAN: Yes, no, aye  
17 or nay. Oh, yes.

18 MR. MOY: Thank you. And Mr.  
19 Hinkle?

20 MR. HINKLE: Yes.

21 MR. MOY: The motion carries, Mr.  
22 Chairman.

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CHAIRPERSON JORDAN: Thank you.

Seeing that the motion was approved, I request that the Office of Zoning provide notice of these closed meetings in accordance with the Act. Thank you.

Is there any other business coming before the Board today?

MR. MOY: Not from the staff, Mr. Chairman.

CHAIRPERSON JORDAN: Thank you. Then we will adjourn.

(Whereupon, the foregoing matter went off the record at 3:17 p.m.)

<b>A</b>				
<b>abandoned</b> 35:12 67:8 136:22	<b>actual</b> 42:12 156:7 185:3	<b>administrator</b> 95:4 170:17	190:7 214:20	<b>ANC-1A</b> 124:5,6 124:10
<b>Abbey</b> 6:17 7:13 8:1	<b>add</b> 14:20 65:22 68:21 122:2 144:5 144:16 219:5,11	<b>admission</b> 88:20	<b>allowed</b> 51:20 107:9 110:16 139:6 178:12 190:17 191:6 206:5,7,15	<b>ANC-6A</b> 171:22 219:5
<b>ability</b> 53:6 103:10 103:17 109:4 132:7 159:6 218:3	<b>added</b> 102:22 107:3 180:1 192:7	<b>admit</b> 199:16	<b>allowing</b> 169:7 189:13	<b>ANC-6A's</b> 173:22
<b>able</b> 27:12 30:12 32:11 36:20 55:17 64:16 68:10 88:6 122:2 153:16 199:3 221:8	<b>adding</b> 107:21	<b>admitted</b> 200:12 204:7,8	<b>allows</b> 202:21	<b>and/or</b> 44:22 45:20
<b>absence</b> 198:3	<b>addition</b> 8:9 14:19 82:20 83:2 87:12 92:12 102:21 103:6,20 140:11 153:17 160:18 161:5,12 192:15 201:8	<b>Admittedly</b> 70:7	<b>alteration</b> 181:5	<b>announced</b> 4:6
<b>absent</b> 70:22	<b>additional</b> 16:1,12 24:19 48:20 49:5 61:7 76:18 93:17 93:18 95:11 103:21 104:4 105:3 109:1 114:8 114:8 120:9,19 121:6 122:7,12 143:10,13 148:14 150:12 158:7 161:11,13	<b>adopted</b> 178:2	<b>alterations</b> 188:14	<b>answer</b> 7:10 113:12 149:9 203:14
<b>Absolutely</b> 155:13 155:14,14	<b>address</b> 7:12 54:3 144:19 147:7,8 148:17,21 183:16 206:1	<b>Advisory</b> 168:20	<b>ALW</b> 92:11	<b>answered</b> 10:18
<b>abut</b> 80:12	<b>addressed</b> 10:6 54:13	<b>Affairs</b> 169:6 170:18 207:18	<b>amend</b> 146:2 171:4 171:8 172:3,4,11 172:19 173:6,15 176:19 177:4,6,21 189:13 190:6 196:8,21 211:12	<b>answering</b> 50:7
<b>abuts</b> 80:9	<b>adjacent</b> 11:1,10 12:12 13:9 120:20 130:5 147:20	<b>affect</b> 138:9	<b>amended</b> 145:13 179:7,15 180:20 182:7 191:18	<b>anybody</b> 7:4,6 10:17 37:1 45:3 155:6 163:12 191:11
<b>accept</b> 89:5,10 96:12 116:13 196:17	<b>adjourn</b> 224:11	<b>affidavit</b> 89:5	<b>amending</b> 196:7	<b>anybody's</b> 203:14
<b>accepted</b> 21:12 90:4 176:19 196:22 207:17	<b>adjustment</b> 1:4,16 4:5 38:14 130:4 222:14	<b>affirmation</b> 5:11 169:21	<b>amendment</b> 51:9 52:13,17 53:5,11 94:10 96:13 179:13 219:9	<b>anymore</b> 75:4 219:11
<b>accommodate</b> 107:22	<b>administer</b> 169:15	<b>affirmative</b> 130:18	<b>amendments</b> 51:14 51:17	<b>anyway</b> 220:11
<b>accommodation</b> 206:15	<b>administerial</b> 198:9 202:3 212:3 215:2	<b>afford</b> 38:1	<b>amount</b> 41:19 105:11 206:14	<b>apartment</b> 18:13 37:10,12,21 38:5 38:6,10,21 45:2,3 45:10 46:1,5,11 46:15,18,20 51:10 51:16,19 52:3,10 52:16,21 63:21 65:14 66:2,6 68:1 74:4,11 79:2 100:7 103:12 110:20,21 112:5,6 112:8,21 116:14 122:8 187:5
<b>accomplished</b> 207:7	<b>administrative</b> 217:15 222:1	<b>affordable</b> 30:13	<b>amounts</b> 41:18	<b>apartments</b> 38:19 38:20 52:19 112:9 113:3,7 114:9 134:11
<b>accept</b> 89:5,10 96:12 116:13 196:17		<b>afternoon</b> 5:9 75:11 97:7 110:2 116:7 162:14 166:6,16,20 167:9 168:16 169:1 170:6,10,15,19	<b>Anacostia</b> 97:15	<b>apiece</b> 152:8
<b>accepted</b> 21:12 90:4 176:19 196:22 207:17		<b>afternoon's</b> 165:7	<b>analyses</b> 43:4	<b>appeal</b> 3:22 168:20 169:2,20 171:4,9 171:11,15,22 172:3,4,12 173:1 173:3 174:1,1 176:18,21 189:16 189:19 190:8 191:18 196:7,9,19 196:19 197:7 198:3 199:14
<b>accommodate</b> 107:22		<b>agenda</b> 168:22 223:1	<b>analysis</b> 24:11 59:21 62:6 72:18 93:6,10 104:17 112:2 155:11	
<b>accommodation</b> 206:15		<b>agents</b> 152:13	<b>ANC</b> 7:11 11:20,22 12:2 15:8,10 22:16,18 23:4 60:14,18,19 61:10 79:14 86:21 102:2 102:3,21 108:1,2 145:15 149:16,18 149:21 150:2,5 160:22 161:2 172:22 196:10	
<b>accomplished</b> 207:7		<b>ago</b> 22:22 24:5 27:22 28:8 31:22 31:22 39:8 74:15 151:8,17 200:7 201:18 209:4 214:12		
<b>accomplishes</b> 207:10		<b>agreed</b> 141:3		
<b>accomplishing</b> 202:4		<b>ahead</b> 67:1,21 82:8 83:14 97:6 125:13 178:21 195:20 197:19,20 208:20 210:22		
<b>account</b> 105:19		<b>alleged</b> 204:17		
<b>accurate</b> 27:12 88:3 119:17 133:20		<b>alley</b> 100:3		
<b>acknowledge</b> 199:4		<b>allow</b> 6:11 8:8 18:11 78:22 85:17 88:16 126:10 150:16 177:4,6		
<b>acknowledged</b> 198:6				
<b>Act</b> 222:12 224:5				
<b>action</b> 35:13 62:19 63:5				
<b>actions</b> 130:18 187:7				

203:7 206:3 207:12 211:8 213:7 219:7,14 <b>appealed</b> 184:7 <b>appealing</b> 174:3,4 <b>appeals</b> 92:10 129:1 130:18,20 <b>appear</b> 48:22 49:3 85:10,18 <b>appearance</b> 187:10 <b>appeared</b> 53:18 85:12 87:5 <b>appears</b> 70:1 112:11 215:18 <b>appellant</b> 170:8 171:3 192:20 197:8 200:18 213:2 <b>appellant's</b> 173:15 <b>appellate</b> 203:4,17 203:18 217:7 <b>applicant</b> 6:22 7:7 7:12 8:1,22 9:9 10:3 14:6 15:22 18:21 19:6,9,18 25:20 48:6,19,22 49:5,13 53:19 54:12,17 63:22 70:7,7,11 71:7 77:7,21 78:9 80:2 81:1,14,20 85:4 86:9,18,20 94:20 96:15 97:1 104:1 104:6,18 109:17 110:9,19 111:11 115:5 116:5 117:2 117:12 118:4,11 125:13 127:12 128:9,21 129:3 130:21 131:4,13 132:5 133:11,12 133:22 135:11 138:13 140:8 143:17 144:13 145:10 148:4 150:13 157:21 158:2,8 159:5	160:18 161:10 162:1 166:13 179:7,15 180:7,14 180:21 185:18 198:18 212:9 219:8 <b>applicants</b> 159:16 <b>applicant's</b> 15:3 33:22 34:3 47:19 51:21 82:1 88:4 91:5 121:3 132:5 135:19 138:5 <b>application</b> 3:9,13 3:16 6:6,7,8 8:5,6 10:2 15:11,15 16:8 17:1 18:5,6,7 25:5 39:11 43:9 61:3,5,21 78:16 78:17,18 79:5 85:10 93:4 94:11 95:9 96:4 111:12 115:2 118:10 124:15 126:19 141:1 145:14 150:7 161:15 166:9,10,15 167:22 174:7,18 174:21 175:2,6,9 177:9,12,17 178:7 178:15 179:2,3,7 179:10,14,16 180:5,18,20 181:14,17,21,22 182:18,19 188:19 189:9 191:10,13 194:1,2 205:5 207:16 209:2 212:6,7,13 214:8 214:11 216:12 221:17 <b>applications</b> 189:22 190:21 205:6 <b>applied</b> 82:11 110:17 133:18 160:15 207:8,14 207:18	<b>applies</b> 52:20 <b>apply</b> 52:19 133:5 <b>appreciate</b> 33:5 148:1 <b>Appreciated</b> 16:19 <b>approach</b> 112:8 <b>approached</b> 171:16 <b>appropriate</b> 51:15 52:1 112:10 173:21 <b>approval</b> 14:21 120:9 124:11 141:3 177:18 212:13 <b>approve</b> 10:11 16:22 112:20 150:6 205:4 <b>approved</b> 10:16 11:22 24:5 118:9 118:13 141:16 158:5 177:12 184:16 189:10 190:22 191:5 205:6 206:20 207:17 224:3 <b>approves</b> 204:21 <b>approving</b> 48:16 205:1 <b>approximate</b> 107:10 <b>approximately</b> 91:8 107:8 117:6 <b>April</b> 177:17 178:5 179:17 191:13 200:6 <b>architect</b> 20:1 26:16 39:16 40:13 43:15 44:9 82:4 92:22 94:21 102:6 <b>architectural</b> 107:18 <b>Architecture</b> 21:3 <b>architect's</b> 64:22 <b>archives</b> 67:16 <b>area</b> 6:13 11:17 18:9 25:3,6 28:11 38:18 46:9 51:9	56:9 65:15 78:21 87:17,18 92:9 93:19 95:22 102:18,22 108:3 111:12,20 113:9 114:16,16 115:17 117:15 129:14,22 130:13 135:12 139:21 140:4 161:16 183:21 <b>areas</b> 32:15 53:12 97:15 <b>argue</b> 126:14 131:5 131:13,17,19 135:1,13 176:18 197:7 <b>argued</b> 141:2 <b>arguing</b> 118:11 <b>argument</b> 32:10 40:5 41:8 62:21 63:13 71:12 91:5 97:3 112:20 132:5 155:3 160:15 177:5 207:21 216:12,21 <b>arguments</b> 43:12 91:4 150:6 219:4 <b>arisen</b> 191:21 <b>arrived</b> 69:16 <b>art</b> 129:9,17 <b>Arthur</b> 2:15 110:3 <b>articulate</b> 92:3 <b>articulated</b> 146:22 151:3 159:16 <b>aside</b> 34:18 <b>asked</b> 60:9 138:17 140:10,16,19 141:14 177:1 209:3,16 <b>asking</b> 13:7,9 23:21 62:21 95:10 111:19,21 133:9 149:16 159:21,22 <b>aspect</b> 88:13 <b>asserting</b> 195:18 <b>assigned</b> 173:9 <b>Assistant</b> 170:20	<b>Associate</b> 82:4 <b>associated</b> 103:21 153:13 <b>assume</b> 115:15 121:4 185:12 <b>assumed</b> 9:1,10 18:22 19:10,19 69:12 80:3 81:2 81:15 <b>Assuming</b> 77:5 <b>assumption</b> 58:2 70:18 82:16 117:6 117:9 134:13,15 157:13 <b>attached</b> 50:17 <b>attend</b> 11:4 <b>attended</b> 86:21 <b>attorney</b> 2:7 88:4 92:16 170:20 <b>attorneys</b> 87:16 <b>auction</b> 146:17 <b>audience</b> 124:14 <b>authority</b> 215:16 <b>available</b> 11:4 23:14 112:11 113:12 <b>Avenue</b> 169:10 <b>average</b> 208:5,22 <b>aware</b> 11:19 70:15 92:15 109:20 118:7,16,18 134:5 140:14 141:9,12 142:4,8,11,15,17 159:9 172:18 214:17,20 <b>awkward</b> 46:14 <b>aye</b> 16:13 17:20 223:10,16 <b>eyes</b> 16:14 17:21 <b>A-F-T-E-R-N-O-...</b> 166:1 <b>a.m</b> 1:14 4:2,22 5:1
				<b>B</b>
				<b>B</b> 43:19 126:19 <b>baby</b> 74:3 <b>back</b> 4:17,19 5:1,3

5:6 15:21 29:17 30:2 39:4 40:10 52:8 73:12 75:4 84:18 99:10,19,21 100:2 108:21 150:13 156:12 162:12 165:10 177:9 179:6 180:8 186:19 191:13 200:4 210:19 215:20 216:2	58:19,21 64:19 67:9,22 68:8 70:19,22 74:18 152:21 154:8,11 156:21 157:2,3,15	200:15 209:9	112:8,19 113:14 114:19 116:4,13 116:22 118:9,13 118:19 119:3 128:22 130:3,12 132:17 136:4 137:19 140:10,16 141:2,3,15 143:4 146:9 148:2 150:1 150:12 151:4 155:4 158:6 159:9 159:18 164:10 166:14 169:21 170:11,16 174:15 176:7,20 182:12 184:17 189:10 190:2,21,22 191:11 192:1 193:12 194:5 200:17 204:18,21 204:22 205:3 206:1 207:8,11 211:14,18 212:18 215:10 216:21 217:14,17 218:3 218:22 219:16 221:6 222:13,20 224:7	<b>brand-new</b> 138:21 <b>break</b> 4:19 29:17 <b>breaks</b> 214:16 <b>breeze</b> 28:16 <b>brick</b> 28:17 93:9 158:13 <b>bricks</b> 98:17 99:3 127:13 <b>brief</b> 83:9,18,21 84:6 88:4,21 89:5 89:9 90:22 96:7 125:16 135:21 145:12 <b>briefed</b> 197:5 <b>briefly</b> 62:5 68:22 73:22 110:7 128:8 148:7 150:16 <b>briefs</b> 172:8 198:7 <b>bring</b> 189:17 <b>Brown</b> 170:6,7 171:7,10 173:2,7 174:20 176:15 178:18,22 179:15 180:13,19 181:2 181:14,18,22 182:4,9 184:18 185:7 188:19 194:15 195:18 196:4 197:10,17 197:21 198:19 201:1 203:3 204:20 206:1 213:12,18 214:4,6 216:1,7,17 217:2 217:5 <b>Bruske</b> 3:14 18:7 19:8,13,14 27:17 27:19 29:12,16,21 32:4 35:16,18 46:22 57:14,16 58:13,17 67:5,14 68:6,9,13 69:14 72:21 73:21 <b>build</b> 37:15 58:15 62:21 74:11 138:19 145:17,20 145:22 186:7
<b>backwards</b> 162:11 163:20 <b>backyard</b> 11:14 100:2 <b>bad</b> 41:13 151:18 <b>balance</b> 161:16 <b>ball</b> 159:1 <b>bank</b> 105:19 106:17,19 <b>bar</b> 92:9 129:14 <b>barn</b> 221:13 <b>Barros</b> 19:5 <b>based</b> 16:3 40:7 48:14 57:6 59:8 63:9 71:13 92:9 92:21 93:4,20 95:10 101:9 103:11,18 104:1,7 104:12,12,20 105:15 109:20 116:21 117:5,8 141:4 157:13,14 157:18,19,22 158:8 161:20 171:11 177:5 178:7 179:10 197:2 199:1 204:21 <b>basement</b> 21:6 25:8 26:5 27:2 28:3,7 28:19 29:8 30:14 31:14 32:5 35:12 36:7,13,22 37:14 37:19 38:6,9,13 39:17 41:19 42:2 44:14 46:19 49:22	<b>basements</b> 121:5 <b>bases</b> 206:2 <b>basic</b> 185:2,2,6 <b>basically</b> 28:1 29:9 47:2 100:18,22 <b>basis</b> 71:11 95:17 102:9 104:17 171:8 173:16 174:3 177:22 199:17 200:12 <b>bath</b> 103:2,4 <b>bathroom</b> 36:12 44:17,22 45:19 <b>bathrooms</b> 156:12 <b>baths</b> 102:17 <b>battle</b> 196:6 <b>bay</b> 102:22 <b>beam</b> 28:14 54:16 <b>bear</b> 194:16 <b>bearing</b> 61:13 <b>bedroom</b> 45:5,6,22 46:3 103:4,11 <b>bedrooms</b> 46:5,12 47:9 102:16 103:2 156:11 <b>beginning</b> 32:5 59:7 212:15 <b>begins</b> 201:2 <b>behalf</b> 19:6 82:1 170:8,13,21 199:9 200:13 <b>beliefs</b> 189:22 <b>believe</b> 14:7 40:19 47:14 48:21 58:17 64:3 66:14 67:18 79:5,9 82:6 88:19 91:17 92:21 93:11 93:18 106:6 130:11 135:6 143:6 159:12 161:14 171:6 189:19 193:4	<b>believed</b> 39:8 64:12 192:20 <b>believing</b> 64:8 <b>benefit</b> 71:3 73:11 117:13,20 118:4,5 <b>better</b> 41:13 72:10 117:2 120:4 <b>beyond</b> 159:20 179:1 201:4 <b>bidders</b> 146:17 <b>bifurcate</b> 185:19 186:13 <b>bifurcated</b> 172:5 180:9,15 <b>big</b> 42:22 43:9 <b>bit</b> 32:16 50:6 68:14 88:13,15 108:19 138:1 202:13 <b>block</b> 97:19 <b>blocks</b> 156:2 185:16 <b>blueprint</b> 24:4 63:16 <b>board</b> 1:4,16,18 4:5 4:11 5:11 6:3 7:2 10:3,5 11:22 14:11 15:1,19 16:4,5,18 17:7,13 18:6 19:4 20:11 22:11,13 23:14,22 24:4 25:16 30:5 39:14 41:3 44:3 48:19 49:12 50:21 51:1 53:6 57:3 59:17,18 62:22 63:6,10 66:21 72:18,20 73:18 76:21 78:17 80:7 82:21,22 83:9,11 85:12 86:4,8 87:4 87:5,10 92:2,8,15 94:2,9 96:18 97:10 103:7,15 104:9,18 105:10 106:21 110:3	<b>Board's</b> 25:13 63:5 64:10 95:8 112:12 130:21 131:7 182:20 183:8 203:4,7 204:15 212:12 217:13 223:1 <b>body</b> 203:17 <b>bolts</b> 99:10 <b>bond</b> 153:4 <b>bonds</b> 153:6 <b>border</b> 66:3 <b>bordering</b> 148:18 <b>born</b> 74:3,6 <b>bottom</b> 36:9 <b>bought</b> 28:3 31:21 58:13 100:9 147:14,15 <b>BRANDICE</b> 2:17	

195:3 212:12	131:14 135:15,19	<b>carries</b> 16:16 17:8	<b>century</b> 49:6	17:17,22 18:4,16
<b>building</b> 18:13	<b>burdensome</b> 43:16	223:21	<b>certain</b> 47:6,7	20:3,6,13,15,19
21:10 25:22 28:5	43:20 64:21	<b>carry</b> 101:18	<b>certainly</b> 14:9,11	20:22 21:1,7,11
30:11 32:20 40:17	<b>burden's</b> 215:8	<b>Carrying</b> 101:15	48:18 71:19 73:18	21:19 22:4,19
44:14 52:2,3,15	<b>business</b> 153:5,7	<b>case</b> 3:9,13,16 6:21	84:10 85:17 96:9	23:5,12,20 24:12
52:16 54:14,22	210:2 224:6	7:5,8 24:4,6 25:10	97:2 109:22 139:1	24:21 26:13,22
55:20 56:8,16	<b>buy</b> 36:2 153:6	26:10 30:15 35:9	176:20 199:14	29:10,13,19,22
57:8,12 63:20	<b>buyer</b> 146:16	39:8,20 40:6	214:19	31:6,17,18 39:9
67:7 69:5,8,17	<b>buying</b> 39:22	42:19 49:4,15,20	<b>certificate</b> 33:4	40:4,15,21 42:3,5
74:1 79:2 103:13	<b>bypassed</b> 206:12	50:4,9,22 52:10	103:9 128:12	43:22 44:7 47:4
107:3 108:6 109:5	<b>BZA</b> 132:16 139:6	56:15 62:7 63:18	132:11,12	48:3,5,11 49:11
110:13 113:6	178:7,15 182:15	64:3 65:5,6 66:14	<b>Certificates</b> 133:1	50:18 51:5 55:9
119:21 121:7	188:17 200:3	66:14 70:1 76:4	<b>certified</b> 93:4 94:10	55:11,22 56:2,6
139:4 150:3 169:6	201:22 212:10,13	81:21 84:10,14	<b>cetera</b> 36:12 89:16	56:11,20 57:5,10
169:6 171:11	213:21 215:20	86:3,19 87:1,9	<b>Chair</b> 4:12 19:4	57:15,20 58:5,16
172:1,5 173:4,18	<b>B1107494</b> 169:7	92:6,10,17 98:9	42:19 48:14 61:16	59:1,4,10,15 60:4
173:18 174:6,9	180:3	102:3 103:14	110:3 113:17	60:9 61:12,18,22
176:13 177:16,19		110:6,9,11 112:16	223:13	62:15 63:3 66:20
178:1,3 180:2	<b>C</b>	113:11 115:9	<b>chairing</b> 122:20	66:22 67:1,3 68:4
181:8,9,13 183:4	<b>C</b> 33:19 34:3 56:21	117:3,4 118:1,11	<b>Chairman</b> 6:3 10:9	68:7,11 69:20
183:7,18,18,20	57:1 58:1 103:11	118:17 126:14	15:1 16:10,18,22	71:9,16,19 72:12
184:11,12,15	103:11 126:21	130:2,4,17 141:7	20:8 21:17 23:17	73:1,3,13 74:20
185:8,8,15,17	206:19 209:21	141:16 143:21	26:21 71:15 75:10	75:1,12,16,19
186:2,14,19 187:4	<b>calculated</b> 115:16	146:7,7,12 147:17	78:7 79:6,13 80:6	76:2,7,11,14,19
187:5,16 188:3,9	<b>calculation</b> 93:3,3	153:9 159:13,15	85:20 124:19	77:2,11,16 78:12
189:8 190:16,20	164:14	159:18,18 160:21	136:8 137:21	78:15 79:10,16
192:6,15 193:9,12	<b>calendar</b> 77:1	166:9 168:12	147:5 163:6,14	80:11,16,19 81:10
193:13,17,18	<b>call</b> 24:4 105:5	171:2 173:9 178:7	164:6,20 166:7	82:8,15 83:5,13
194:1,2,3,4,10,11	125:4 153:20	186:9 192:9 198:8	168:18 169:16	84:12,17 85:22
194:14,18,19,22	183:1 203:1 216:8	199:12 201:14	170:7,11 173:14	88:11,22 89:4,8
195:4,6,7,10,11	223:7,9	203:7,9	176:15 178:18	89:22 90:3,7,9,16
199:10 201:3,5	<b>called</b> 8:22 9:9	<b>cases</b> 33:13 41:7	181:11 182:13	91:10,15 95:12,16
205:1,7,11,12	12:22 18:21 19:9	42:22 57:3 66:12	184:18 188:4,11	95:19 96:11,17
212:6 213:13,19	19:18 80:2 81:1	103:15 105:11,13	196:4 197:12	97:22 102:8
213:22 214:11,18	81:14 114:5 133:5	112:16 118:8,19	200:20 207:15	104:22 105:7,20
215:7 217:20	<b>calling</b> 63:15,15	119:3 158:5	211:5 213:1 217:2	106:2,20 108:5,10
219:8	<b>calls</b> 129:4	206:16 220:15	221:7 222:1	108:13,14 109:22
<b>buildings</b> 38:21	<b>camping</b> 36:13	222:19,22	223:15,22 224:9	113:13 114:18,22
52:11,22 66:3	68:12,14	<b>cash</b> 104:17	<b>Chairperson</b> 1:15	116:3 119:7,19
100:7 121:8	<b>capacity</b> 45:22	<b>cashier's</b> 183:21	1:17 4:3,10,16 5:2	120:11,16 121:11
185:14	<b>Capitol</b> 10:10,12	184:2	5:22 6:20 7:15,22	121:16,20 122:5,9
<b>building's</b> 109:9,10	12:2 70:1,5	<b>category</b> 65:22	8:17 9:6,15,19	122:11,15,17,19
209:18	<b>cards</b> 5:15	<b>cause</b> 126:20	10:17,21 12:4,5,7	123:3,7,11,21
<b>built</b> 58:19 140:11	<b>care</b> 22:16 74:16	<b>ceiling</b> 107:13	12:10,16,20 13:4	124:22 125:4,10
<b>bunch</b> 73:15	160:5	<b>ceilings</b> 100:11	13:6,8,22 14:3,5	125:17,20 126:1
185:16	<b>careful</b> 129:16	<b>cellar</b> 102:14	14:17 15:5 16:11	129:15 131:18
<b>burden</b> 128:21	<b>Carliner</b> 130:3	<b>cellars</b> 121:5	16:15 17:6,10,15	132:19 133:8,14

134:17 136:3	<b>change</b> 96:3 127:1	32:12 87:8 88:12	16:9 17:3,4,5	<b>Commission</b> 1:19
137:18,20 138:6	133:6,6 135:13	90:14,21 107:2	21:16,18,22,22	5:5 168:21
140:6 144:1,4,10	140:3 151:13	164:7	22:1,3 26:21 27:1	<b>Commissioner</b>
144:14,20 145:1,5	178:2 191:6 194:3	<b>clarified</b> 82:19	71:15,17,20 72:13	1:21 4:14 5:19
148:1,9 150:11	194:12	119:10	97:8 106:8,12,18	7:19 10:8 16:9
155:5,9,19 157:16	<b>changed</b> 35:3	<b>clarify</b> 12:11 32:1	107:1,7,15 108:4	17:4 21:16,22
161:19 162:9,15	119:11 151:7	86:7 90:10 121:12	136:6,7,11,14,18	26:21 27:1 71:15
163:7,11,15,18,22	154:19 178:4	132:17 164:16	137:7,14 156:20	71:17,20 106:8,12
164:5,8 165:1,5	184:16 191:21	<b>clarifying</b> 82:10	185:1 202:9,10	106:18 107:1,7,15
166:3,17 167:2,6	194:5,13	<b>clear</b> 59:9,11 60:1	211:17 215:18	108:4 136:7,11,14
167:18 168:4,8,11	<b>changes</b> 154:15,16	60:2 86:5 106:9	223:11,12	136:18 137:7,14
168:15 169:12,17	190:16,20 192:21	106:13,14 158:22	<b>coincide</b> 196:10	156:20 185:1
170:4,22 171:7	193:1,12	177:3 186:9 193:6	<b>colleague</b> 123:2	202:10 215:18
172:21 173:5,11	<b>changing</b> 34:21	198:12 199:7	176:17	223:12
174:8,13,17,22	154:20 164:18	201:16 205:11	<b>colleagues</b> 172:8	<b>committee</b> 23:3
175:4,11,15 176:5	<b>character</b> 37:22	211:9,22	<b>collecting</b> 172:16	145:19
177:2,14 178:6,10	108:11	<b>clearly</b> 86:12 134:5	<b>colors</b> 39:3	<b>communication</b>
178:16,20 179:12	<b>characterizations</b>	177:19 178:3	<b>Columbia</b> 1:2	88:14
180:11,16,22	188:5	203:14 205:3	127:1 130:3 134:9	<b>community</b> 160:6
181:16,20 182:2,6	<b>characterize</b>	<b>client</b> 70:14,17	134:19 139:12	172:9 186:10
183:11 184:20	126:13 143:15	150:16 151:1	142:18 188:7	187:5,10
189:11 190:5	<b>check</b> 96:18	156:1	<b>combination</b>	<b>community-frien...</b>
191:8 192:4 193:3	<b>children</b> 74:2	<b>clients</b> 185:7	175:20	187:1
193:5,22 194:7	<b>Chip</b> 198:15	186:11 187:4	<b>combine</b> 64:19	<b>comp</b> 65:22
195:20,21 196:2	<b>chock</b> 83:21	199:10 213:11	<b>come</b> 4:17 6:21	<b>companies</b> 153:4
196:15 197:14,19	<b>choice</b> 108:17	<b>client's</b> 155:22	28:9 33:14 57:3	<b>compare</b> 41:20,22
200:16,19 202:9	130:21	<b>CLIFFORD</b> 1:23	99:10 139:8	<b>compared</b> 54:19
204:14 205:15,18	<b>Chorus</b> 16:14	<b>clock</b> 205:19	151:20 169:13	<b>comparison</b> 25:10
207:13,20 208:4	17:21	210:19	176:5 201:22	33:6,12 50:10
208:10,19,21	<b>chose</b> 139:21,21	<b>close</b> 16:2 71:12	204:2	59:21 111:7 156:7
209:13 210:7,8,13	172:3 187:14,15	72:13 135:17	<b>comes</b> 30:3 33:3	<b>comparisons</b> 101:5
212:17,22 213:3,4	187:16 199:2	157:17 163:13	35:6 38:5 46:7	<b>compelling</b> 83:21
213:15 214:2,5	<b>chosen</b> 112:3	166:4 180:13	<b>comfortable</b> 14:16	<b>complaint</b> 146:3
216:6,19 217:4,11	185:19 186:13	<b>closed</b> 75:3 222:14	68:19 102:10	185:2
217:12 218:1,5,7	<b>cinder</b> 185:16	222:21 224:4	116:15	<b>complete</b> 5:14
218:9,10,14,16,18	<b>circular</b> 202:17	<b>closer</b> 116:16	<b>coming</b> 39:22 40:9	206:17 219:1
219:3,22 220:3,8	<b>circumstance</b>	<b>closets</b> 36:12	56:8 86:14 99:20	<b>completed</b> 83:10
220:16 221:2,11	158:3	<b>closing</b> 155:3 157:5	100:12,22 111:15	198:11
222:2,7,10 223:5	<b>cited</b> 185:13,20	<b>Cochran</b> 2:14	153:1 220:18	<b>completely</b> 46:17
223:14,16 224:1	187:19 188:7	48:13 49:16,17	224:6	<b>completing</b> 212:2
224:10	<b>cites</b> 201:4	50:6,14,17 51:13	<b>comment</b> 9:18 11:7	<b>complexion</b> 135:14
<b>challenges</b> 104:20	<b>citing</b> 188:19	52:7 53:1,8,13	65:18	140:3
<b>challenging</b> 103:18	<b>city</b> 187:20	54:6 55:5 69:20	<b>comments</b> 6:5 7:14	<b>compliance</b> 200:11
<b>chance</b> 7:18 89:9	<b>claim</b> 186:2	69:21 71:9 74:22	109:20 146:6	200:22 203:13,20
89:15 117:2 146:4	<b>claimed</b> 145:12	<b>code</b> 109:6 222:12	150:18 163:10	204:3,6 217:8
148:12	<b>claims</b> 92:7	<b>Cohen</b> 1:21 4:13,14	175:17 211:6,15	<b>comply</b> 43:16
<b>chances</b> 134:1	<b>clarification</b> 31:9	5:5 7:19 10:8	213:9 220:21	64:17 184:13

199:15 <b>comport</b> 49:8 <b>comprised</b> 204:22 <b>comprising</b> 201:15 <b>compromised</b> 138:22 <b>comps</b> 41:16 <b>concentrate</b> 157:15 <b>concern</b> 47:1 139:6 139:19 143:10 <b>concerned</b> 88:13 <b>concerns</b> 105:1 138:18 143:5 <b>conclude</b> 78:13 139:18 161:20 165:6 212:21 219:13 221:19 <b>concludes</b> 87:22 <b>conclusion</b> 109:19 <b>conclusions</b> 162:2 162:4 219:16 220:17 221:5 <b>concrete</b> 28:21 <b>condition</b> 25:18 26:3 34:12,14 35:6 37:1 59:14 64:2,6 68:16 93:14 110:12 115:10 158:7,9 <b>conditions</b> 47:15 49:1 50:8 73:6 <b>condo</b> 153:10 <b>condominium</b> 126:11 132:7 134:22 152:11 185:8 <b>cone</b> 102:21 <b>configuration</b> 35:4 35:7 <b>configured</b> 44:16 56:1 57:8 58:9 <b>confluence</b> 104:11 157:22 158:16 <b>conform</b> 178:1 <b>conforming</b> 56:15 95:2 <b>confused</b> 42:6	176:16 <b>conjecture</b> 133:21 <b>conjectured</b> 67:20 <b>conjunction</b> 97:18 <b>connect</b> 34:17 38:8 43:19 <b>connected</b> 34:16 <b>connecting</b> 27:2 37:8 44:20 <b>connection</b> 26:6 33:12 49:22 <b>consequences</b> 217:3,6 <b>consequently</b> 131:13 <b>conservative</b> 112:10 <b>consider</b> 5:20 15:19 53:6 83:10 84:5 112:8,19 115:21 146:9 170:2 <b>considerable</b> 54:14 206:14 <b>consideration</b> 38:8 217:13 <b>considered</b> 15:19 34:7 37:20 59:18 64:1 107:18,19 128:17 150:3 159:11,13,19 <b>considering</b> 12:1 54:15 85:15,16 88:8 90:21 91:1 <b>consistent</b> 113:1,5 113:7 114:14 120:19 121:7 127:20 210:10 <b>constitutes</b> 2:19 <b>construct</b> 119:13 120:9 132:7 <b>constructed</b> 191:2 209:18 <b>constructing</b> 192:16 <b>construction</b> 126:22 154:16	159:10 183:6 194:21 195:7 201:7,10 214:21 <b>constructs</b> 138:14 138:15,21 <b>Consumer</b> 169:5 170:18 207:18 <b>contacted</b> 22:17 <b>contacts</b> 103:19 <b>contain</b> 15:12 91:2 <b>contained</b> 84:5 125:15 <b>contains</b> 91:3 <b>contemplated</b> 128:5 <b>contention</b> 50:4 111:1 112:7 <b>context</b> 53:21 189:4 198:2 213:20 214:9 215:1 <b>contiguous</b> 130:6 <b>contingencies</b> 159:8,10 <b>continuance</b> 171:5 <b>continue</b> 26:13 62:20 95:7 103:17 191:6 196:8 197:1 202:16 211:19 212:16 214:21 <b>continuing</b> 167:22 <b>continuous</b> 191:9 <b>continuously</b> 29:16 <b>contract</b> 157:8 <b>contributing</b> 34:8 <b>control</b> 201:3 206:22 212:4 <b>convened</b> 1:13 <b>convenience</b> 109:13 171:19,19 181:3 182:10,16 183:1,13,22 184:8 <b>convenient</b> 204:12 <b>conversation</b> 145:18 <b>conversion</b> 18:11 79:1 153:10 201:7	201:10 <b>conversions</b> 51:10 51:20 52:12,20 208:13 <b>convert</b> 103:8 <b>converted</b> 25:22 52:3 63:20 102:14 141:15 154:5 <b>converting</b> 56:13 64:7 <b>copies</b> 20:12 83:11 174:11 175:21 180:21 207:16 <b>copy</b> 23:9,13 50:12 50:16 86:15 88:3 110:5 173:9 193:7 <b>corner</b> 152:19 186:21 <b>corners</b> 172:20 <b>correct</b> 24:19,20 27:7 31:12 47:14 51:4 55:21 56:10 67:11 70:10 80:18 84:16,21 115:22 129:10 164:10,12 164:13 173:2,7 174:19 183:17 190:14 204:19 205:10 206:10 215:19 216:10 <b>corrected</b> 62:1 <b>correctly</b> 166:12 179:17 <b>corresponding</b> 71:2 <b>cost</b> 26:4 30:16 42:8 43:3 54:8,17 72:16 73:4 101:5 103:21 104:17 128:4 137:12 152:11 154:16 <b>costs</b> 54:21 65:2 71:4 101:15 104:4 <b>counsel</b> 84:2 222:18 <b>count</b> 200:6 <b>counted</b> 107:17	<b>counter</b> 91:4 <b>couple</b> 32:15 49:14 73:22 86:8 184:9 189:14 209:4 <b>course</b> 53:8,9 110:21 111:11 115:10 193:16 196:11 <b>court</b> 4:20 5:15 8:11 11:17 92:10 129:1 130:17,20 130:22 <b>courts</b> 135:18 <b>covered</b> 211:13 <b>create</b> 27:5 37:21 46:20 47:2 58:20 104:4 112:9 113:7 127:15 128:4 158:16,18 161:15 <b>created</b> 37:16 58:4 67:21 68:1 92:7 129:3,13 131:1 144:8 158:10 198:21 201:13 <b>creates</b> 104:4,14,19 <b>creating</b> 24:22 65:7 113:3 205:14 <b>critical</b> 25:16 64:11 <b>cross</b> 140:8 145:2 148:4 <b>crossed</b> 181:2 182:11 <b>Crosstalk</b> 208:7 <b>crux</b> 103:14 <b>cub</b> 35:21 <b>cure</b> 199:18 <b>cured</b> 22:21 <b>curious</b> 137:15 <b>current</b> 54:21 58:12 95:10 103:18 135:2 171:10 172:4 186:16 213:20 <b>currently</b> 44:16 45:8 94:15,16 108:7,9 110:16 113:2 119:22
--	--	---	--	--

134:10 138:20 140:1 200:22 <b>cushion</b> 153:21,21 <b>cut</b> 37:17 158:22 <b>CV</b> 20:12 <b>C-O-N-T-E-N-T-S</b> 3:5 <b>C-10</b> 176:11 <b>C2A</b> 169:9 <b>C3</b> 182:17	79:17 115:11 189:12 <b>dealing</b> 190:6 <b>dealt</b> 186:2 <b>debate</b> 206:8 <b>December</b> 75:10,11 75:13 76:6 77:4 162:14 222:15,15 222:15 223:1,2,2 <b>decide</b> 14:12 91:12 217:7 <b>decided</b> 222:20 <b>decision</b> 51:12 63:11 66:8 75:7,9 75:10 76:10 78:8 162:5,12,13 163:20 167:13 169:4 182:20 183:9 203:9,11,19 213:21 217:3 219:1,17 220:14 <b>decisions</b> 217:14 <b>deck</b> 6:11 8:9 94:16 95:1 108:21,22 109:5 143:5 156:12 <b>deeper</b> 185:10 <b>defer</b> 210:14 211:5 <b>deference</b> 95:8 <b>deferred</b> 27:4,10 27:20 29:3 49:4,7 50:5 62:13 74:10 104:2 <b>deficiencies</b> 27:18 <b>deficiency</b> 22:15 <b>defined</b> 29:4 <b>definitely</b> 145:6 <b>delay</b> 13:20 <b>delayed</b> 158:11 <b>delays</b> 208:2 <b>deliberate</b> 16:5 222:18 <b>deliberation</b> 15:20 <b>delighted</b> 36:4 <b>delivered</b> 10:14 <b>DeLorme</b> 170:8 <b>demolish</b> 44:21	186:14 187:16 <b>demolished</b> 185:14 186:5 <b>demolishing</b> 185:22 <b>demolition</b> 99:2 185:21 187:20 195:14,22 213:21 <b>denial</b> 161:7 <b>denied</b> 110:9 <b>dense</b> 192:11 <b>density</b> 66:1,4,4 132:8 150:4 <b>deny</b> 207:11 <b>department</b> 60:15 60:17 123:16,17 124:3 169:5 170:17 184:4 207:17 <b>depending</b> 208:11 <b>described</b> 33:14 42:15 <b>describing</b> 13:10 42:8 <b>description</b> 188:12 189:5 192:5 <b>design</b> 21:4 35:3 <b>designation</b> 113:9 134:6 194:13 <b>destroyed</b> 188:2 <b>detail</b> 49:10 115:6 151:3 <b>deteriorated</b> 104:12 158:9 <b>deterioration</b> 100:11,21 <b>determination</b> 54:5 86:4 177:3 203:8 <b>determine</b> 69:1 <b>determined</b> 49:20 158:4 161:2 <b>determining</b> 25:17 <b>detriment</b> 65:17,19 <b>detrimental</b> 114:6 114:13 <b>developed</b> 97:13 116:14	<b>developer</b> 39:21 43:1 97:12 111:16 126:7 <b>developing</b> 97:12 <b>development</b> 102:1 114:8 118:6 171:14 <b>deviate</b> 215:16 <b>deviation</b> 94:19 95:3 <b>dichotomy</b> 103:18 <b>difference</b> 33:7 35:10 50:19 70:3 114:1 152:1 157:12 <b>differences</b> 32:2 47:13 146:9 <b>different</b> 39:20 40:3 45:16 75:18 80:17 82:7 86:13 99:11,12 121:17 145:18 147:12 150:6 184:9 186:18 187:9 205:2,8 <b>difficult</b> 50:9 53:11 71:6 192:10,11,12 <b>difficulties</b> 21:5 <b>difficulty</b> 25:1,2,6 25:7,19 26:4,4,17 30:22 31:2 34:11 34:19 35:5 39:7 39:13,15 42:1,7 49:21 50:2 64:15 65:4 104:5 151:2 158:19,20 <b>digesting</b> 72:2 <b>dilapidated</b> 158:7 <b>dimensions</b> 164:11 193:10 <b>diminimous</b> 104:21 <b>dining</b> 102:18 <b>direct</b> 22:12 98:1 <b>directly</b> 28:21 <b>dirt</b> 28:21 <b>disagree</b> 184:19 217:6	<b>disagreed</b> 118:19 119:3 <b>disallows</b> 42:13 <b>disconnected</b> 30:10 30:19 <b>discovered</b> 28:13 <b>discrepancy</b> 93:2 <b>discussed</b> 86:12 182:14 <b>discussing</b> 198:2 <b>discussion</b> 16:12 32:16 61:8 108:2 125:18 149:21 161:1 162:8 167:20 168:3 173:17 174:16 175:3,10 176:8,14 176:17 190:4 193:21 202:16 203:6 216:4 222:6 <b>discussions</b> 63:8 <b>dismiss</b> 167:10 173:22 196:14 <b>dismissed</b> 167:11 <b>disposed</b> 211:10 <b>dispute</b> 203:15 <b>disputed</b> 204:10,10 <b>disrepair</b> 32:7 <b>distribute</b> 20:12 48:1 <b>district</b> 1:2 6:17 8:14 10:10 18:13 23:1 72:6 79:2 113:2 114:9 126:9 130:3 169:9 182:18 183:6 188:6 195:16,19 <b>District's</b> 210:11 <b>divided</b> 201:11 <b>docket</b> 7:17 166:4 167:8 168:16 <b>document</b> 60:16 69:3 180:17 184:21 211:10 <b>documentation</b> 21:10 40:11 43:10 43:10 150:21
<b>D</b>				
<b>D</b> 9:5 <b>data</b> 72:15 <b>date</b> 4:9 75:5,7,9,10 75:17,18,20 76:17 76:20 162:5,10,12 162:13 163:6,16 163:21 164:1 165:3 167:13,14 168:9 171:17 177:20 189:18 219:19 220:1,5 221:9 <b>dated</b> 177:17 <b>dates</b> 86:14 <b>daughter</b> 130:11 <b>day</b> 76:4 85:8 152:16 154:20 161:2 220:10,13 220:19 222:20 <b>days</b> 78:5 84:22 85:1,5 172:17 210:2 <b>DCMR</b> 6:10 8:7 18:8 78:20 169:3 <b>DCRA</b> 132:16 133:5 170:21 172:9 190:10 198:6 201:20 205:2,9 206:11,15 209:14 <b>DDOT</b> 15:6,6,7 123:20,21 <b>dead</b> 216:16 <b>deadline</b> 36:17 <b>deal</b> 29:5 73:20				



128:16 131:16 132:2,6 133:14 135:1,11,18 141:13 142:20 151:15 158:6 183:7 195:10 200:14 204:10 205:9 206:11,13 214:12 <b>factor</b> 24:22 34:6,6 34:8 <b>factors</b> 25:17 104:11 158:1,15 158:16 <b>facts</b> 98:8 119:17 126:15 134:14 135:22 141:9 162:1,3 190:13 194:16 195:2,4,9 219:15 220:17 221:5 <b>factual</b> 96:6 <b>fair</b> 89:21 125:2,8 143:15 146:2 <b>fairly</b> 73:11 <b>Fairmont</b> 118:9 159:15 <b>fall</b> 98:17 <b>familiar</b> 30:5 49:15 <b>families</b> 72:5,7 74:1 136:12 140:1 <b>family</b> 6:12 8:10 38:22 47:9 56:14 58:7 72:4 110:22 128:11,14 139:5 <b>far</b> 33:15 37:7 42:16 44:8 147:15 157:6 <b>fast</b> 35:19 179:19 <b>favor</b> 16:13 17:20 146:22 <b>favorite</b> 219:19 220:1 <b>feasability</b> 104:20 <b>feasible</b> 101:9 111:5 112:12,14 153:18	<b>fee</b> 153:10 <b>feel</b> 50:6 68:18 102:10 114:3 138:2,8 157:20 <b>feels</b> 72:20 <b>feet</b> 52:1 56:13 72:4 107:8,9 122:4 156:13 157:12 193:14,15,16 <b>figured</b> 216:19 <b>figures</b> 150:17 156:7 159:5 <b>file</b> 9:22 14:7 15:12 23:7 77:21 78:4,9 88:16 196:9,13 212:5 221:8 <b>filed</b> 22:18 23:2 39:1 84:22 85:1 86:19 171:4,15,22 172:8,18 173:1,3 173:8,14 174:2,6 175:20 176:21 177:12,15 178:5 179:16 191:12 196:19 198:7 200:5 212:4,7 214:11 219:8 221:17 <b>files</b> 12:9 192:10 <b>filing</b> 70:21 77:6 84:19 86:16 92:16 172:2 173:22 199:2 <b>filings</b> 31:21 42:16 55:19 <b>fill</b> 184:8 <b>final</b> 115:22 155:3 155:4 206:18,20 209:21 214:21 <b>finally</b> 36:16,20 38:13 147:17 <b>financial</b> 41:16 65:1 66:18 72:15 104:20 147:11 <b>financially</b> 101:9 <b>financials</b> 39:10,14 <b>financing</b> 36:21	<b>find</b> 10:4 29:7 33:3 36:4 <b>finding</b> 28:5 71:6 219:15 221:5 <b>findings</b> 162:1,3 220:17 <b>fine</b> 76:16 77:9 78:1 220:6 <b>fined</b> 185:13 <b>finish</b> 60:12 83:14 <b>finished</b> 36:16 42:18 101:12 <b>firm</b> 86:17 170:13 <b>first</b> 6:3,6 9:1,10 18:22 19:10,19 21:6 22:8,12 25:8 26:5 27:3 31:5 32:19 36:10 37:8 38:3,8 44:13,15 45:18 46:16,21 50:1 58:20 64:19 67:17 74:1,3 79:17,19 80:3 81:2,15 85:11 91:16 96:17 138:11 141:5 154:6 157:11,22 158:17 169:18 175:1,9,20 177:9 180:9 182:3,4 183:8 187:18 190:17 194:1,17 195:4,6,13 197:15 199:14,22 200:5 202:6,7 203:11 213:13 214:10 215:13 <b>fit</b> 68:7 <b>five</b> 111:21 146:17 153:9 197:16,18 220:14 <b>fixtures</b> 35:1 <b>flat</b> 18:12 56:18,18 56:21 58:15 67:8 67:21 87:14 110:20 <b>Flipped</b> 11:14	<b>flood</b> 167:4 <b>flooding</b> 166:22 <b>floor</b> 21:6 25:8 26:5 26:19 27:3 28:12 31:5 36:10 37:8 38:3,9 44:15 46:16,21 50:1 58:20,20 74:3 99:16 102:21 103:1,5 105:2 107:14 115:17 119:13,21 120:6 120:10,19 121:2,7 121:13,21 122:1,3 138:20,21 143:10 143:14,16 144:6,7 144:8,12,13,15,16 145:18,20,22 146:5 148:14 154:6,6 157:11 188:22 <b>floors</b> 28:10 37:12 105:3 121:4 143:20 148:19 149:3 <b>flow</b> 104:17 <b>flushed</b> 25:4 <b>focus</b> 85:8 88:6 182:20 <b>focusing</b> 110:19 <b>Folks</b> 122:19 <b>follow</b> 202:12 <b>follows</b> 9:3,12 19:2 19:12,21 80:5 81:4,17 <b>food</b> 151:14 <b>foot</b> 39:5 40:20 45:2 53:7 65:7 <b>footage</b> 93:12 156:11 <b>foregoing</b> 4:21 165:9 224:12 <b>forever</b> 29:9 <b>form</b> 88:9 180:20 181:22 <b>forma</b> 156:5 <b>formal</b> 180:17	<b>formally</b> 86:17 87:21 <b>forth</b> 33:4 46:13 75:4 <b>fortune</b> 199:9 <b>forum</b> 21:13 <b>forward</b> 6:22 43:5 94:7 97:6 179:19 179:20 197:3 202:20 <b>found</b> 22:21 25:16 26:1 35:8 50:21 68:5,8 103:16 105:11 118:20 147:3 159:18 209:4 <b>four</b> 16:21 17:9 45:6,22 47:9,10 55:16 79:1 102:15 103:12 110:21 112:2,5,17,21 113:18 114:1,6 117:3 126:11 132:7 134:22 139:7,8,10,16 140:2 143:14,20 144:13 152:7,12 160:9 172:19 <b>fourth</b> 76:9 144:6 146:14 161:11 <b>four-unit</b> 134:11 142:14,17 <b>Fowler</b> 8:21 9:4,5 10:12 14:14 <b>frame</b> 159:3 216:15 <b>framing</b> 54:18 <b>frankly</b> 201:18 <b>free</b> 106:9,13,14 <b>Friday</b> 23:11 77:18 77:21 <b>front</b> 85:5 97:10 186:20 217:16 <b>frontage</b> 121:3,9 <b>fuel</b> 188:15 <b>fueling</b> 179:4 <b>full</b> 12:2 14:7 21:9 23:4 40:6 44:17
--	--	---	--	---

83:21 102:17 176:2,3 <b>fully</b> 13:18 25:4 109:9,10 128:18 <b>function</b> 203:5,7,17 205:2,2 <b>further</b> 55:8 90:21 163:3 184:3 <b>future</b> 199:18	178:9,13 181:11 182:13 183:17 188:4 193:7 194:4 194:9 195:16 196:13 198:15,17 199:8 207:15 209:2,16 210:10 211:4 212:19 214:6 215:1,5 221:7,21 <b>Glasgow's</b> 190:13 202:2 213:9 <b>glass</b> 11:13 12:11 <b>go</b> 4:19 5:6 40:22 49:10 52:8 59:7 60:6,7 62:5 67:1 75:7 82:8 83:14 84:17 89:11 94:6 94:7 97:6,6 99:1 111:6 125:1,13 133:4 159:20 178:20,22 179:1,6 179:19 195:20 197:3,19,20 201:1 201:4 207:4 208:20 210:22 215:20 216:2 <b>goes</b> 148:19 185:9 200:4 205:8 <b>going</b> 4:3 5:14 12:7 13:1 17:13 21:4 22:8 28:11 29:5,9 37:14,18 39:4 40:1 41:18 44:3,9 45:5 47:8 52:6,19 55:13 62:17 63:8 71:10,12 72:13 74:18 75:2,4 83:1 86:1 89:10,17 92:1 96:15 98:8 134:1 138:8 139:9 139:11 140:3,7 160:4 161:22 162:20 163:20 169:19 176:6 177:4 180:8 183:15 189:8,17	192:9 193:16 196:22 197:6,6,10 197:15 200:8,9 202:15,17,19 203:15 205:19 209:11 212:20 218:17 219:13,14 <b>good</b> 9:4 14:22 18:16 19:3 47:5 65:17,20 74:18 79:10 81:18 97:7 108:17 110:2 113:22 115:5 116:7 161:18 163:2 166:20 170:6,10,15,19,22 199:9 <b>gotten</b> 41:13 <b>government</b> 1:1 152:13 153:8,11 <b>grandfather</b> 188:1 <b>grandfathered</b> 142:20 186:15 187:17 <b>grant</b> 9:17 16:7 84:13 132:6 213:7 <b>granted</b> 115:9 128:16 129:22 141:3 178:11 188:20 <b>granting</b> 60:22 114:4,6 <b>grasp</b> 72:11 <b>great</b> 12:5 15:10 18:1 60:20,22 61:14 62:1 91:13 161:4 <b>greater</b> 147:15 <b>Greenstein</b> 170:7 <b>Griffin</b> 81:19 <b>grocery</b> 171:19 172:2 179:8,22 180:1,10 181:8 183:1 185:15 186:1,8,8 187:1 190:15 192:6 194:21 195:3,7	203:1 206:6 <b>grocery/convenie...</b> 183:14 <b>ground</b> 170:14 185:12 187:7,13 198:5,8 199:1 210:18 212:19 215:6 216:2 <b>guess</b> 7:1,5 10:22 35:18 38:12 46:15 67:7 84:8 97:3 135:17 141:11 <b>gut</b> 45:18 137:5 <b>gutted</b> 46:17 100:20 <b>gutting</b> 34:21 <b>guy</b> 222:8 <b>Gyor</b> 2:16 14:22 15:2 176:3 193:19	214:13 <b>happy</b> 14:15 41:15 43:13,20 54:6 65:1 66:18 137:11 <b>hard</b> 152:2 157:4 <b>hardship</b> 92:7 104:5 126:21 129:4,8,13,19 131:1 147:11 <b>harm</b> 113:21 135:2 161:17 <b>harmony</b> 161:15 <b>Harris</b> 9:20,21 11:19 13:7 15:17 17:11,19 <b>hat</b> 63:11 <b>heads</b> 16:6 <b>health</b> 184:4 <b>hear</b> 97:1 138:10 168:12 190:10 <b>heard</b> 145:10 216:4 222:19 <b>hearing</b> 1:6,12,13 2:21 4:4,7,18 5:3 5:7 6:7 11:5 16:2 17:12 35:19 41:16 42:18 71:13 72:14 78:13 84:3,22 85:2,6,9 120:10 122:20 146:3,11 150:6 160:12 161:20 162:10 163:13 165:6 168:1,2,9 171:16 196:11 201:22 212:21 219:14 221:20 <b>height</b> 107:2,8,12 122:3 <b>Heights</b> 127:1 134:10,19 139:12 142:18 <b>held</b> 2:21 129:1 130:22 207:2,4 <b>help</b> 41:1 49:6 62:16 84:9 97:22 131:7 157:5
<b>G</b>				
<b>gas</b> 171:13 179:4 180:9 181:9 188:8 203:1 206:5 <b>gasoline</b> 169:8 179:11 182:20 <b>Gee</b> 222:3 <b>General</b> 2:7 170:20 <b>generalities</b> 104:16 158:21 <b>generally</b> 30:6 183:15 <b>generate</b> 112:4 <b>generated</b> 111:9 <b>gentleman</b> 157:7 <b>gentlemen</b> 5:20 86:10 <b>germane</b> 92:6 <b>getting</b> 155:22 205:6 209:17 <b>give</b> 7:17 15:10 17:11 47:22 60:20 62:1 76:22 101:16 115:5 124:11 130:21 132:3 139:15 152:12 162:10 163:16 166:19 197:6,6,16 215:15 218:4 <b>given</b> 5:11 36:18 213:9 <b>gives</b> 38:17 <b>giving</b> 213:5 <b>Glasgow</b> 170:10,12 173:12,13 174:10 174:19 175:1,8,18 176:9 177:11,16				<b>H</b>
				<b>H</b> 184:13,14 186:11 186:17 193:2 215:21 <b>habitable</b> 32:8 36:7 68:15 <b>half</b> 27:21 28:8 29:4 36:17,19 74:15 101:13 165:7 <b>hammer</b> 96:20 <b>hand</b> 5:15 10:14 22:8 24:10 98:12 99:14 <b>handle</b> 91:12 189:18 <b>handout</b> 24:3 32:17 38:17 50:13 60:8 62:5 <b>hang</b> 153:22 <b>happen</b> 133:11 216:14 <b>happened</b> 22:21 27:7 32:12 36:15 133:9 194:18 207:1 221:15 <b>happens</b> 204:20

<b>helpful</b> 47:12 60:7 62:17 214:7	<b>hour</b> 165:7	<b>illegally</b> 35:11 63:20 188:2	90:6 111:20	136:19 184:5,7 192:16 195:12
<b>hiding</b> 159:1	<b>hours</b> 85:7,14 151:19 154:7	<b>illustrating</b> 47:13	<b>individuals</b> 86:16 160:4	<b>interject</b> 73:22
<b>high</b> 126:13	<b>house</b> 13:19 30:20 32:21 33:19 34:2	<b>immediate</b> 13:14	<b>infeasibility</b> 104:14	<b>internal</b> 35:4,7 45:16 93:5
<b>higher</b> 93:14	34:3 36:2 44:18	<b>immediately</b> 35:14	<b>inflated</b> 156:22	<b>internally</b> 56:4
<b>highly</b> 20:11 138:13	45:3 58:2,7,8,9,10 63:19,21 65:15	<b>immigrant</b> 72:5	<b>information</b> 26:10 41:17 48:15,20	<b>interpretation</b> 52:13
<b>Hill</b> 10:10,12 12:2	67:6 70:15,20	<b>impediment</b> 198:11 199:1 202:3 207:7	53:19 65:2,9	<b>introduce</b> 18:17
<b>Hinkle</b> 1:18 4:11 17:7 31:6,8,15	79:1 98:14 100:14	210:5,5 215:6	66:18,19 70:2,9	<b>inventory</b> 151:9
97:8 108:18	102:15,16 103:1	<b>important</b> 83:22	71:21 73:5,5	<b>invested</b> 105:16
109:15 113:15,16	103:10,12,16	<b>importantly</b> 135:4	76:18 83:22 84:5 111:14	<b>investigation</b> 22:9
114:10,17,21	116:14 126:8	<b>include</b> 25:11 77:13 84:9 165:2	<b>information's</b> 65:11	<b>investing</b> 47:1 152:3,15
115:1 116:2 155:8	127:7,9,10,21,22	172:4	<b>initial</b> 25:5 104:10 189:19,21 196:18	<b>investment</b> 101:10 105:15 126:13
155:10,17 156:19	128:13,15 130:8	<b>included</b> 96:7 101:4 157:10	196:19 206:3	147:5 152:5 153:14
162:17,19 163:4 223:4,19,20	130:11 131:5,6	189:20 191:14	<b>initially</b> 93:3 174:7 183:22	<b>investors</b> 147:3
<b>Historic</b> 10:10	132:11,12,22	<b>including</b> 92:10 156:14,15 185:14	<b>inside</b> 98:20 100:17 192:14	<b>involve</b> 208:15
<b>historically</b> 44:12	133:16 134:2	<b>income</b> 49:6 151:14 154:12	<b>insignificant</b> 159:7	<b>involved</b> 39:17 65:3 172:10
<b>history</b> 35:16	140:20 141:4,14	<b>incomplete</b> 206:21	<b>insofar</b> 128:22	<b>irregular</b> 158:6
<b>hitting</b> 97:2	154:5 158:4,11	<b>inconclusively</b> 136:1	<b>inspection</b> 69:3,15 73:8 206:18,20	<b>irrelevant</b> 151:18 199:19
<b>Hoffland</b> 19:17,22 20:1,5,5,6,9,16,17	160:14 167:1	<b>incorporated</b> 185:17	214:22	<b>islands</b> 187:2
20:21 21:2,9,14	<b>houses</b> 46:8 66:6 100:6 103:22	<b>incorrect</b> 12:8 132:15 205:10,12	<b>inspections</b> 209:21	<b>issue</b> 28:3 30:2 37:6 39:3 40:11 42:17
21:21 22:1 44:11 47:20 68:21	134:21 135:4	<b>incurred</b> 104:3	<b>inspector's</b> 69:9	74:7 79:17 83:3 84:18 89:1 97:2,4
<b>hold</b> 83:13 99:4,12 175:14 222:14	139:10 156:3,9,14	<b>independently</b> 62:22	<b>installed</b> 206:4	108:19 132:16 159:1 160:7 163:1
<b>Holland</b> 170:13 172:8	<b>housing</b> 30:13 139:22,22	<b>indicate</b> 11:3 32:7 32:17,19 53:20	<b>instance</b> 97:12 127:8	169:6 185:5,6 189:12,17 198:1
<b>home</b> 32:6,6 33:8 69:3,8,15 130:15	<b>HS-A/C-2-A</b> 169:9	107:12 160:2	<b>instances</b> 198:22	207:11 216:15 218:22 221:15
136:8,9,15,16,22 138:3 142:8	<b>huge</b> 37:21 131:11	175:7 195:2,5 206:2	<b>intended</b> 51:19	<b>issued</b> 171:17,21 172:15 179:21,22
<b>homeowner</b> 43:1	<b>hundreds</b> 208:15	<b>indicated</b> 13:12 32:4 87:3 142:7	<b>intent</b> 113:1 114:13 114:15 116:16	181:5 183:5 186:4 187:18 198:13,15
<b>homes</b> 38:22 97:13 135:9 147:8,9	<b>hypothetical</b> 143:19	148:12 149:14	189:6	198:20,22 199:13 199:21 200:2
<b>hope</b> 13:19 84:4 85:14 88:9 205:21	<b>I</b>	159:14 160:9,22 191:1 210:4	<b>intention</b> 49:9	201:6,21 203:12 203:12 204:1,4,13
<b>hoped</b> 83:19	<b>idea</b> 191:12	<b>indicating</b> 55:19 112:1 116:11,12	<b>interactions</b> 11:8 13:10	206:16 209:9 214:16,18 215:13
<b>hopefully</b> 85:18	<b>identified</b> 24:3 142:16 143:3	159:20	<b>interest</b> 85:15,16 88:9	217:8
<b>hoping</b> 119:9 152:22 153:22	159:15 161:13	<b>indication</b> 38:17	<b>interested</b> 47:3 90:15	
154:10 156:18 162:21	222:22	<b>individual</b> 82:11	<b>interesting</b> 55:14	
<b>horse</b> 221:12	<b>identify</b> 8:18 79:20 91:19 92:13 93:1		<b>interior</b> 93:8,8 99:6 100:8 109:12	
<b>hot</b> 124:1,9 139:13	153:15 170:5		127:15 128:1	
	<b>identifying</b> 153:13			
	<b>idle</b> 27:13 30:4,8,9 30:12 32:8 118:22			
	<b>illegal</b> 185:20 187:20 195:14,22			

**issues** 7:4 11:5  
28:15 74:10,13  
86:8,12,13 92:5  
109:6 172:10  
183:16 185:4  
189:14 211:7,13  
211:15

**issue's** 122:6  
**issuing** 185:5  
205:10,12

**item** 222:1  
**it'll** 175:12

---

## J

---

**Jackson** 2:15 110:2  
110:4 114:3,12  
115:4 116:8,9,12  
117:1,8,22 118:16  
119:2 120:22  
121:14,18 122:1,6  
164:6,9,15,20

**James** 82:3,3  
102:12

**jamming** 140:2

**January** 76:1,7,13  
76:14 77:5,8,22  
78:6,8,9,11 163:6  
164:4 165:4  
167:15,16 168:6,7  
168:12 219:19  
220:19 221:1,2

**Jay** 170:20

**JEFF** 1:18

**Jeffrey** 4:11

**Jennifer** 8:21 9:5  
11:15

**Jerrily** 1:13 4:6

**JOHN** 1:23

**joists** 37:17 98:20  
99:7 100:12

**Jordan** 1:14,17 4:3  
4:10,16 5:2,22  
6:20 7:15,22 8:17  
9:6,15,19 10:17  
12:4,7 13:6 14:5  
14:17 15:5 16:11  
16:15,22 17:10,17

17:22 18:4,16  
20:3,6,13 21:1,7  
21:11,19 22:4,19  
23:5,12,20 24:12  
24:21 26:13,22  
29:10,13,19,22  
31:6,17 39:9 40:4  
40:15,21 42:3  
43:22 44:7 48:5  
48:11 49:11 50:18  
51:5 55:9 59:4,10  
59:15 60:4,9  
61:12,18,22 62:15  
63:3 66:20 67:1  
69:20 71:9,16,19  
72:12 73:1,13  
74:20 75:1,12,16  
75:19 76:2,7,11  
76:14,19 77:2,11  
77:16 78:12,15  
79:16 80:11,16,19  
81:10 82:8,15  
83:5,13 84:12,17  
85:20,22 88:11,20  
88:22 89:4,8,22  
90:7,16 91:10,15  
95:12,16,19 96:11  
96:17 97:8,22  
102:8 104:22  
105:7,20 106:2,20  
108:13 109:22  
113:13 114:18,22  
116:3 119:7,19  
120:11,16 122:11  
122:15,19 123:3,7  
123:11,21 124:22  
125:4,10,17,20  
126:1 129:15  
131:18 132:19  
133:8,14 134:17  
136:3 137:18  
140:6 144:1,4,10  
144:14,20 145:1,5  
148:1,9 150:11  
155:5,9,19 157:16  
161:19 162:9,15  
163:7,11,15,18,22

164:5,8 165:1,5  
166:3,17 167:2,6  
167:18 168:4,8,11  
168:15 169:12,17  
170:4,22 171:7  
172:21 173:5,11  
174:8,13,17,22  
175:4,11,15 176:5  
177:2,14 178:6,10  
178:16,20 179:12  
180:11,16,22  
181:16,20 182:2,6  
183:11 184:20  
189:11 190:5  
191:8 193:3  
195:20 196:2,15  
197:14,19 200:16  
201:20 202:9  
204:14 205:15,18  
207:13,20 208:4  
208:10,19 210:8  
210:13 212:17  
213:3 216:6,19  
217:4,11 218:1,7  
218:10,16 219:3  
219:22 220:3,8,16  
221:2,11 222:2,7  
222:10 223:5,15  
223:16 224:1,10

**Jr** 170:12  
**judge** 203:7 215:12  
**judged** 199:20,21  
200:1  
**judgement** 55:4,6  
**judging** 203:19  
**judgment** 200:13  
204:9  
**Julie** 3:11 8:6  
**July** 86:19 98:13  
101:12 187:19,19  
194:16  
**Jump** 148:11  
**jumping** 98:7  
**June** 28:4 152:19  
207:19 212:7  
214:8  
**jurisdiction** 205:4

---

## K

---

**Karen** 6:8 166:10

**Karl** 3:11 8:6 9:8  
9:13

**keep** 30:8 39:4 52:6  
154:20

**keeping** 4:15  
108:11 171:12

**kick** 193:1

**kids** 47:10

**Killette** 82:3 93:1  
102:7,12,12 109:4  
109:7

**kind** 22:12 36:4,13  
41:7 44:20 45:21  
55:14 63:8 65:10  
67:8 70:13 85:21  
92:15 93:1 94:7  
98:1 124:1 133:8  
151:1 153:15  
190:8 191:13  
202:16 216:16

**kitchen** 36:11  
44:17 45:7,11,19  
47:8 68:2 103:5  
142:9

**Klowberg** 145:7

**Kluberg** 90:5

**Klugman** 80:22

81:5,6 82:14  
87:13 99:17  
140:15,18 141:13  
145:9 148:3,15,21  
149:6,10,19 150:2  
150:8,18 156:2,15

**Klugman's** 142:2  
156:3 160:12

**Klutton** 82:3

**knew** 209:20

**Knight** 170:13  
172:9

**know** 11:1,8 13:18  
17:10 22:5 25:4  
27:6 28:6 29:5  
32:18 33:6 35:19  
36:15 37:7,17  
38:2,7,10,14

44:12 45:5 46:10  
47:9 50:11 58:8  
59:2,17 60:5 62:7  
62:16 63:3,9  
68:15,18 69:16  
70:11,13 72:2,8,9  
73:5,8,10,10,12  
74:16 82:20 86:13  
86:22 87:11,18  
90:10 92:4,16,20  
93:9 94:3,9 95:8  
105:11,15 106:4,9  
111:17 117:17  
119:2 121:16  
129:20 134:5,14  
137:16 138:15  
143:18 145:6  
153:9,14,20  
154:14 159:22  
163:9 183:11  
185:4,5 192:8,12  
192:16 199:6  
202:11,12,15,17  
206:5 207:2  
208:15 209:15  
210:20 211:14  
218:7 221:16

**knowledge** 22:8

64:11,13

**knows** 92:8 145:10

**Kress** 1:13 4:7

---

## L

---

**lacks** 72:6

**Ladies** 5:19

**laid** 28:21 63:10

**land** 65:22 113:8  
186:12 201:9

**language** 153:20

**large** 38:20 45:1  
46:4,11,18 65:14  
66:2

**larger** 32:16 45:7

72:7 149:7,11  
174:11

**late** 58:14 67:18  
88:16,21 89:18,18

89:19,20 90:1 <b>Laughter</b> 222:9 <b>laundry</b> 102:18 <b>law</b> 126:14 162:2,4 170:12 186:12 191:6 204:11 219:16 220:18 221:5 <b>lawyers</b> 55:16 <b>lay</b> 26:9 <b>layer</b> 28:20 <b>laymen</b> 153:20 <b>layout</b> 35:3 103:1,3 104:13 158:6 192:17 195:12 <b>leads</b> 214:3 <b>leaks</b> 158:13 <b>learned</b> 27:20 153:2 157:14 <b>leave</b> 30:4 73:10,19 88:15 215:17 <b>leaves</b> 152:16 169:1 <b>led</b> 25:18 <b>left</b> 4:12,12 80:15 81:8 98:12 118:22 140:15 147:21 183:18 203:17 <b>legal</b> 56:18 64:13 64:17 69:7 91:4,5 92:5 100:1 102:19 128:21 132:15 138:1 160:16 222:17 <b>legally</b> 28:6 56:17 57:14 92:4 107:17 <b>legibility</b> 175:19 <b>legible</b> 174:12 <b>legitimate</b> 132:21 <b>LeGrant</b> 67:15 170:15,16 208:8 208:11 215:3 <b>lengths</b> 160:19 <b>lessee</b> 170:14 185:12 187:13 198:5,9 210:18 212:19 215:7 <b>lessee's</b> 187:7 199:2	<b>letter</b> 9:22 11:19 12:1,13 13:14,15 15:9,18 23:7 60:18,19 61:1 79:14 123:20,22 124:2,4,6,10 161:3 219:6 <b>letters</b> 10:14 11:8 11:18,21 12:9 15:12 39:1 101:20 101:22 149:15 <b>let's</b> 7:15,16,16 8:2 14:17 15:21 22:10 48:11 75:7,16 77:4 78:5,13 79:16 84:17 110:1 123:22 124:16 129:16 165:6 166:4 169:17 171:1 175:16 189:12 190:10 196:18 197:2,2,3 210:17,18,22 211:3 214:8 221:19 <b>level</b> 30:14 44:13 44:14 45:18 46:3 46:4 63:11 64:19 64:20 186:21 <b>levels</b> 104:1 <b>lien</b> 106:16 <b>lies</b> 144:21 <b>lift</b> 98:5 <b>lifting</b> 98:6 <b>light</b> 74:14 <b>lighter</b> 101:1 <b>limit</b> 22:12 23:18 24:1 52:14,14 <b>line</b> 38:4 66:8,9 114:4 176:16 188:17 189:5 <b>lines</b> 38:16 <b>listen</b> 13:3 <b>listening</b> 151:6 <b>little</b> 31:19 32:9,16 39:19 40:2 42:6 68:14 88:15	108:19 138:1 151:3 188:13 <b>live</b> 37:11 46:9 68:10 80:8 160:6 <b>lived</b> 29:14 32:4,11 41:10 128:15 <b>lives</b> 199:20 <b>living</b> 28:2 45:10 47:8,10 102:17 128:11 137:5 138:2 151:12 <b>LLC</b> 3:17,22 78:19 81:22 169:3 170:9 <b>Lloyd</b> 1:14,17 4:10 <b>loan</b> 106:17 <b>located</b> 6:18 8:15 18:15 79:4 169:10 <b>location</b> 97:17 173:18 186:16 193:19 194:10,12 <b>logical</b> 44:21 <b>long</b> 27:6 111:9 135:19 199:8 206:21 208:9 209:1 <b>longer</b> 28:14 83:18 189:8 215:11 <b>look</b> 10:1 43:7 54:11 59:3 88:2 92:20 135:3 152:6 152:9 174:5 176:10 179:1 <b>looked</b> 63:18 100:10 <b>looking</b> 8:1 36:1 43:8 46:11 69:6 70:2 99:16 106:4 106:5 108:20 118:2 148:7 167:16,22 180:3 191:9 192:5 219:18 220:12 <b>looks</b> 80:14 <b>loophole</b> 52:21 <b>loose</b> 40:1 98:17 <b>losing</b> 143:5 <b>loss</b> 101:3 152:1	154:10 <b>lost</b> 188:1 209:3 214:13 <b>lot</b> 6:13,13,14,18 8:15 16:6 18:9,15 24:11 26:9 27:4 38:20 47:2 51:9 52:14 57:19 63:7 68:22 78:21 79:4 88:5 90:1 92:5,14 94:15,17,19 95:2 108:19 110:13,15 111:20 114:16 115:2 120:2 130:8 130:10 131:6 156:13 161:14 162:22 198:4,4,14 198:21 201:3,12 201:13,14,15,16 201:21 205:14 209:20 214:15,19 214:22 215:15 <b>lots</b> 45:15 130:6,7,9 130:15,19 149:7 149:12 169:11 204:18,22 208:14 208:14,16 <b>lower</b> 44:13 46:3 152:21 160:1 <b>lowest</b> 151:10 <b>Luchs</b> 170:8 <b>luck</b> 157:6 <b>luxury</b> 126:11 128:17	<b>major</b> 27:9 36:11 <b>majorly</b> 45:20 <b>making</b> 40:5 41:8 44:2 55:4,5 117:2 117:18,19 134:13 150:1 152:4 177:3 <b>man</b> 58:13 <b>mandate</b> 217:13 <b>manner</b> 171:16 216:13 <b>mansard</b> 107:5,16 <b>map</b> 97:21 <b>Marcia</b> 4:13 5:5 <b>MARCIE</b> 1:21 <b>Marcy</b> 17:4,5 <b>margin</b> 101:16 <b>marginally</b> 36:7 <b>margins</b> 181:4 <b>mark</b> 92:13 <b>market</b> 43:4 66:19 71:21 72:9 73:5 146:15,20 147:2 147:14,14,16 150:19 151:6,20 152:20 154:7,16 155:11 <b>marketability</b> 39:5 40:16 72:17 <b>marketable</b> 45:8 46:1 <b>marketing</b> 93:6 <b>Marsha</b> 17:2 <b>Martin</b> 18:20 19:5 <b>Marty</b> 48:1 <b>MARY</b> 2:9 <b>Maryland</b> 3:22 20:18 169:3,10 170:9 <b>material</b> 71:2 83:22 96:3 204:9 204:10 213:8,9,17 <b>materials</b> 11:21 <b>math</b> 36:2 <b>matter</b> 4:21 5:8 7:18 8:3 15:13 40:8 44:1 62:19 82:10 83:4 91:20
--	---	---	---	--

114:11 121:13,21 122:3 127:6 145:17 165:9 166:6,8 167:8,11 168:18 182:17 183:3,14 184:1,10 189:20 190:1 192:2 197:4,8 198:10 206:7 219:12 224:12 <b>matters</b> 3:20 82:7 171:2 <b>Matthew</b> 170:16 <b>maximization</b> 117:16 118:15 <b>maximize</b> 106:4 117:13 126:12 131:8 <b>maximizing</b> 105:8 105:10 117:20 159:19 <b>maximum</b> 70:20 <b>meager</b> 35:22 <b>mean</b> 27:3 35:20 37:21 42:18 43:5 50:22 57:14 73:9 74:17 80:12 83:6 91:3 100:6 106:13 106:16 127:21 128:2 139:21 143:11 162:11 175:5 185:3,4 192:18 195:22 202:11 211:22 214:13 221:14 <b>meaning</b> 202:21 <b>means</b> 51:11 77:16 109:8,11 <b>meant</b> 144:15 <b>measured</b> 107:13 <b>measurements</b> 93:5 <b>measuring</b> 93:7,8 <b>mechanical</b> 44:17 45:13,19 <b>median</b> 206:4 <b>medium</b> 66:1,4	<b>meet</b> 11:11 60:21 86:9 126:16 127:17 128:22 129:6 <b>meeting</b> 4:20 6:13 8:11 30:22 61:17 67:15 75:22 86:9 86:22 102:21 222:12,21 <b>meetings</b> 222:14 224:4 <b>meets</b> 135:20 <b>member</b> 1:18,19 4:11 5:5 23:1 31:8,15 108:18 109:15 113:16 114:10,17,21 115:1 116:2 155:8 155:10,17 156:19 162:19 163:4 <b>members</b> 1:16 6:3 15:1 16:18 17:7 19:4 80:7 103:7 110:3 170:11,16 197:12 205:22 <b>Memorial</b> 1:13 4:7 <b>mention</b> 33:20 34:1 101:3 <b>mentioned</b> 33:1,18 65:5 73:4 <b>mentioning</b> 73:8 <b>mentions</b> 54:17 <b>Meredith</b> 81:13,19 <b>merit</b> 206:4 <b>merits</b> 172:17 196:12,18 <b>met</b> 109:12 128:21 131:14 135:15 145:16 <b>meters</b> 69:10,18 <b>metro</b> 97:20 <b>mic</b> 180:14 <b>microphone</b> 6:5 7:14 9:18 162:8 166:19 167:20 168:3 174:16 175:3,10 176:8,14	190:4 193:21 222:6 <b>middle</b> 44:18 86:10 <b>mile</b> 97:20 <b>MILLER</b> 5:19 <b>million</b> 97:14 152:3 <b>mind</b> 67:4 <b>mine</b> 21:18 47:1 149:11 <b>minimum</b> 51:9 52:1 <b>mini-mart</b> 202:22 <b>minor</b> 54:1,19 55:3 159:7 <b>minus</b> 193:14 <b>minutes</b> 2:21 115:7 125:6,11,12 145:7 157:17 197:7,12 200:15 210:15,21 211:1 <b>mirrors</b> 62:18 <b>mischaracterizat...</b> 120:12 <b>misplaced</b> 209:5 <b>missed</b> 39:10 <b>missing</b> 43:11 <b>misspoke</b> 144:12 <b>mitigate</b> 71:3 204:2 <b>mitigated</b> 202:11 202:14 <b>mitigation</b> 203:4 203:22 212:1 <b>mixed</b> 71:22 <b>model</b> 62:7 <b>moderate</b> 66:4 <b>modification</b> 96:13 <b>modify</b> 94:11 95:9 96:1 115:2 <b>Moeller</b> 3:11 8:6 9:8,13,13 11:11 12:14,18,21 13:13 14:2,4 16:17 <b>Mohammed</b> 82:2 97:9 <b>Moldenhauer</b> 119:16 120:1,5 123:19 129:11	132:14 133:1,10 133:17 134:12 140:9,14,18,22 141:8,12,19 142:1 142:6,13,21 143:2 143:8,17 144:11 145:3 147:5 148:6 148:11,16 149:1,8 149:13,20 150:5,9 150:15 153:12 155:1,21 157:18 164:12,17 <b>Molderhauer</b> 81:11,13,18,19 82:9,18 85:20 86:2 87:7 88:19 89:2,7 91:17 96:14 98:7 102:5 103:7 105:5,9,22 106:3,10 107:5,11 107:16 108:8,12 109:3,16 116:6,10 116:18 117:5,14 118:7,18 119:5 <b>moldering</b> 37:2,4 <b>moment</b> 154:9 166:13 199:4 200:10 215:12 <b>moments</b> 199:19 <b>Monday</b> 77:7 78:9 164:3 221:1 222:14 <b>money</b> 38:12 40:1 47:2 105:8 127:11 131:6 139:15 154:1,11 <b>monster</b> 38:9 <b>months</b> 36:1 101:18 146:15,20 147:2 200:6 201:18 202:4 204:2 207:2,3 208:17 209:4 214:12 215:4 <b>morning</b> 5:9 9:4 10:15 14:22 18:17 19:3 75:22 81:18	92:18 93:10 166:9 166:22 167:3,8 168:7 220:11 <b>morning's</b> 166:4 <b>mortgage</b> 36:18 106:17 <b>motion</b> 16:11,16,22 17:2,6,8,17 79:18 171:4,5,8 172:19 173:15,22 177:21 196:14,21 211:12 223:5,21 224:2 <b>move</b> 7:16,16 8:2 9:21 16:7 17:13 43:5 48:8 90:1 124:16 132:1 154:2 196:18 222:13 <b>moved</b> 29:17 36:21 41:12 186:10,11 <b>moving</b> 88:15 <b>Moy</b> 1:23 5:17 6:2 6:6 8:3,4 16:16,20 17:5 18:2,3,5 75:5 75:9,17,18,20 76:6,8,13,19,22 77:4,13,20 78:3 78:16 79:12 83:14 162:6,13 163:2,5 163:9,14,16,19 164:1,2,19 165:3 166:3,5 167:14,16 167:21 168:6,10 168:17 169:15 170:2 171:3 175:12,13 210:18 219:18,21 220:2,6 220:14,22 221:22 223:8,13,15,18,21 224:8 <b>MRIS</b> 156:6 <b>multiple</b> 92:9 113:3 118:8 <b>Murphy</b> 81:20
<hr/> <b>N</b> <hr/>				
<b>NAGELHOUT</b> 2:9				

<b>name</b> 19:4,13 20:3 80:7,17 81:5,19 97:9 166:19 223:9	103:19 <b>neighbors</b> 7:11 11:1,12,17 12:14 12:21 15:13 100:5 101:21 147:20 160:21	<b>noting</b> 23:10 <b>notion</b> 74:9 <b>Notwithstanding</b> 197:13	67:7 149:14 177:18	131:10 133:5 161:5 162:21 164:21 184:2 201:13 224:3
<b>name's</b> 110:3	<b>neither</b> 160:10	<b>November</b> 1:10 2:22 4:9 5:4 171:18,21 172:15 173:8 176:10 177:10,18 179:20 194:22 195:8	<b>obtaining</b> 222:17 <b>obvious</b> 36:22 39:15	<b>Official</b> 222:12
<b>nay</b> 16:16 18:1 223:10,17	<b>never</b> 37:20 38:7 58:21 73:9 87:3,5 133:9 146:4 181:12 183:4,18 184:15 194:5 209:6	<b>number</b> 3:9,13,16 6:7 8:5 11:16 18:6 34:1 41:21 50:9 78:18 79:7 119:2 137:8 147:6 166:10 168:20 169:2,7 173:9 178:7,15 182:18 188:21,22	<b>obviously</b> 14:1 69:7 81:7 82:13 86:3 91:3 92:2 94:13 109:18 146:7,12 147:12 149:10 196:13	<b>off-mic</b> 180:12 <b>oh</b> 4:13 7:21 15:7 21:19 22:2 76:8,8 119:18 123:1 124:8 222:2 223:17
<b>NCPC</b> 1:18	<b>new</b> 37:15,18 44:19 91:19 119:12 185:17 187:6 191:17,20 216:12	<b>numbers</b> 54:11 94:7 106:7 111:8 115:20 116:1 137:15 152:6,10 154:22 155:15,16 156:17,18 158:22	<b>occupancy</b> 6:15 33:4 52:14 92:14 94:15,17,19 95:2 103:9 108:20 115:3 120:3 128:13 132:11,13 133:2 161:14 162:22	<b>okay</b> 4:13,16 7:1,9 7:12 8:2,17 9:6,15 9:19 14:7 15:7 17:17 18:16 20:22 21:19 22:4 29:19 29:22 31:15 43:13 44:6 49:19 53:3 55:1,11,22 56:2,7 56:20 58:16 59:1 60:3 61:18 63:2 67:3 73:20 74:20 75:20 76:11 77:20 78:5 79:16 80:19 80:20 81:10 87:7 89:2 90:1,20 91:13,14,15 97:5 102:7 104:22 106:2,18,18 108:4 109:15 111:1,6 114:17 116:2 119:7,20 120:8,13 120:17 121:10,18 122:5,20 123:5,11 123:13,22 125:2,3 125:8,13 126:4 130:9 132:1 134:16 138:11 140:7 142:21 144:10,22 150:12 152:7 156:19 163:2,2,11 164:5 164:15,16 165:3,5 167:17 168:11,13 168:15 173:11 175:4 176:7 178:16 196:15
<b>necessitate</b> 45:4	<b>nice</b> 48:4 <b>Nicole</b> 1:18 4:12	<b>NYARKU</b> 1:23 <b>N.E</b> 169:10 <b>N.W</b> 1:14	<b>occupant</b> 136:9 <b>occupied</b> 31:11 128:18	
<b>need</b> 7:2 10:18 14:19 23:15 24:22 29:1 40:1,19 41:1 41:22 44:4 46:1 54:12 59:5 64:18 71:11 72:10,17,20 76:20 77:17 96:19 98:3,6 102:9 109:1 118:21 123:9 124:22 126:2 145:20,22 162:4 163:12 180:8 196:6 209:20 215:12 221:18	<b>nine</b> 12:9 15:12 154:15	<b>O</b> <b>O</b> 33:19 56:21 57:1 58:1 103:11,11 206:19 209:21	<b>occur</b> 133:11 159:10 199:6 208:3 214:1	
<b>needed</b> 36:11,12 68:20 209:19	<b>non</b> 56:14		<b>occurred</b> 191:17 195:15 198:8 213:22	
<b>needs</b> 10:5 41:3 53:21 54:21 98:9	<b>nonconforming</b> 120:2		<b>occurring</b> 85:9	
<b>negative</b> 112:15	<b>non-conforming</b> 8:12 33:10 35:8 94:14		<b>October</b> 86:10,11 92:17 136:17	
<b>negatively</b> 66:15 138:3,9	<b>Normally</b> 39:20		<b>odor</b> 100:16	
<b>neighbor</b> 11:10 12:12 13:9,13 28:17 137:22	<b>Norman</b> 170:12		<b>offer</b> 62:15 63:12 127:19	
<b>neighborhood</b> 37:22 41:11,12,13 46:9 71:22 72:5 94:2 127:2 132:9 134:10,19 135:14 139:13 146:4 147:18 168:20	<b>North</b> 70:1,5 <b>Northeast</b> 6:18 7:13 8:2,15 97:16 <b>Northwest</b> 18:14 19:15 79:3 81:6 97:15	<b>oath</b> 5:10,21 169:16,21 170:3	<b>offered</b> 157:4	
<b>neighborhoods</b>	<b>note</b> 42:21 110:15 111:10 113:17 168:19 196:20	<b>object</b> 74:9 95:15 122:18 129:11 132:18 134:12 181:12 188:5	<b>office</b> 1:22 2:7,11 14:18 15:2 23:11 24:8 25:11,12,15 26:11 39:7 48:12 48:14 49:20 51:7 55:13 57:17 59:16 62:8 63:17 65:12 65:18 66:9 77:14 78:3,10 79:13 110:1,4,5 113:10 113:14 122:22 123:4,14 127:4	
	<b>notes</b> 61:16	<b>objection</b> 95:20 96:12 119:16 122:13 124:2 132:14 134:9		
	<b>notice</b> 1:14 93:19 172:7 195:15 224:4	<b>objections</b> 189:21		
	<b>noticed</b> 23:9 28:9 28:15	<b>obligation</b> 70:8		
	<b>notification</b> 167:7	<b>obtain</b> 20:20		
	<b>notified</b> 22:22	<b>obtained</b> 58:14		

200:16 210:17 211:3 214:2 218:12 219:3 220:16 221:3 222:3 <b>old</b> 97:11 127:7,20 127:21 137:16 <b>once</b> 78:7 176:11 <b>one-level</b> 181:3 182:9 <b>one-story</b> 180:4 <b>ongoing</b> 54:20 <b>OP</b> 7:10 50:15,16 50:20 52:8 65:5 78:6 101:7 114:11 118:20 119:3 159:20 <b>open</b> 4:4 72:14 73:11,14,16 102:17 103:5 166:6 222:11 <b>opening</b> 26:19 <b>operate</b> 35:11 74:12 185:19 <b>operated</b> 133:15 188:2 <b>operates</b> 57:1 <b>operating</b> 33:9 <b>operation</b> 105:4 <b>opinion</b> 44:2 55:2 59:19 113:19 115:3 131:10 <b>opponent</b> 88:17 89:15 90:5 137:22 <b>opponents</b> 85:19 124:17 <b>opportunity</b> 10:1,6 14:10 59:22 94:22 96:9 105:16 109:19 114:20 115:6 190:6 191:19 <b>oppose</b> 13:1 86:2,6 87:21 147:20 <b>opposed</b> 13:15 16:16 18:1 27:6 117:3 135:10	139:1 143:21 145:21 147:15 211:12 <b>opposition</b> 9:16 15:16,18 61:5 84:2 87:1 90:17 92:3 94:4 97:5 109:21 145:8 147:18 149:15,16 149:17,22 160:10 160:20 162:3 173:14 177:6 <b>option</b> 95:7 108:22 116:15 <b>optioned</b> 106:14 <b>options</b> 112:2,3 <b>OP's</b> 62:13 <b>orange</b> 85:4 <b>order</b> 18:2 25:13 25:14 30:21 34:17 37:15 44:19 45:21 51:1,4 54:13 62:10 63:6,10 118:21 160:2 182:15 183:8,9,12 183:15 184:10 191:1,4 193:13 202:21 204:15 212:10 <b>ordered</b> 194:5 <b>organization</b> 42:12 <b>organize</b> 45:16 <b>original</b> 172:6,12 172:14 173:19 174:9,10 176:4 177:8 179:3 180:18 181:10 198:2 202:21 215:21 <b>originally</b> 41:12 43:8 178:5 180:4 <b>Otis</b> 79:3 97:18,19 102:13 120:20 135:5,10 147:9 148:13,19 149:3,4 <b>outcome</b> 117:10 <b>outline</b> 40:7 151:2	<b>outright</b> 161:7 <b>outside</b> 121:21 216:14 <b>overall</b> 117:20 <b>overlay</b> 184:13,15 186:11,17 193:2 215:21,22 <b>overruled</b> 96:12 <b>overturn</b> 130:20 <b>owned</b> 29:20 40:3 45:3 106:9 <b>owner</b> 19:14 20:2 35:14 41:10 46:22 63:22 67:6,17 133:3 158:12 <b>owners</b> 64:7 209:10 <b>ownership</b> 133:7 <b>owning</b> 70:14 <b>o'clock</b> 91:22 <b>O-F</b> 3:5	<b>particular</b> 10:5 23:22 62:18 111:2 203:1 <b>particularly</b> 22:14 96:19 212:1 214:22 <b>parties</b> 86:21 94:4 160:20 163:12 169:13 170:5 197:5,8 221:3 <b>parts</b> 62:11 99:11 99:12 <b>party</b> 9:16,17 11:2 17:11,14,18 79:6 79:17,19 82:12 83:2 84:13,20 85:18 86:3 87:22 88:17 90:5,8,16 90:18 137:22 143:3,13 162:2 176:21 219:15 <b>pass</b> 125:18 129:21 <b>passed</b> 50:20 174:14 <b>paths</b> 55:12 <b>Patrick</b> 170:7 <b>pattern</b> 207:22 <b>pause</b> 79:12 <b>pay</b> 49:6 74:11 131:6 133:22 139:13,14 153:11 <b>paying</b> 40:2 153:5 <b>peace</b> 97:4 <b>peanuts</b> 128:3 <b>pedestrian</b> 186:22 <b>pending</b> 171:10 176:20 189:16 <b>people</b> 38:4 45:9 46:10 128:18 137:5 157:3 169:18 217:16 <b>percent</b> 93:13,15 94:17,19 95:2,3 105:18 106:1 111:22 133:20 145:11,13 147:7 151:9 152:4 153:7	153:10 159:17 <b>period</b> 158:15 209:19 214:14 <b>permanent</b> 36:21 <b>permission</b> 145:21 146:1 195:3 <b>permit</b> 57:17,18 58:15,22 67:7,18 68:3 70:16 99:2 169:6,7 171:11,17 171:21 172:1,5,6 172:15,18 173:4 173:19 174:7,9,17 174:21 175:1 176:4 177:16 179:10,16,21,21 180:2,6,9 181:4 181:10 182:3,4 183:5,5 184:5,6 185:5 186:3,4,7 187:18 188:18 189:7,18 190:14 190:17 192:6 193:8,8 194:1,2 194:11,18 195:1,6 195:8,11,11,12,13 195:14 196:10,11 199:14,21 200:1,5 201:5 202:7,7 203:9,11,12,19 204:1,4,12 205:1 205:11,13 211:19 211:20 212:6 213:13,20 214:11 215:7,13,13 217:8 217:20 219:8 <b>permits</b> 172:12 185:10,11,19,22 186:14 188:6 198:13,14,20,22 199:10,12,16 201:20,22 202:19 205:7 206:16 207:9 214:15,18 216:3 <b>permitted</b> 13:16 95:4 159:21 183:2
---	---	---	---	---

183:6 184:1 194:14 <b>person</b> 5:16 139:7 <b>personally</b> 11:13 <b>persons</b> 6:21 79:20 <b>perspective</b> 104:21 117:9 118:2 <b>PERUZZI</b> 166:20 167:5 168:13 <b>Peterson</b> 10:14 <b>Peter's</b> 4:13 <b>petition</b> 73:18 <b>petitioner</b> 130:5,7 130:10 131:1 <b>phase</b> 60:13 205:8 <b>photograph</b> 81:8 <b>photos</b> 47:17,18 <b>physical</b> 187:9 <b>picking</b> 211:17 <b>picture</b> 98:11,15 99:13 100:4 <b>pictures</b> 98:11 100:8 135:4 186:1 187:15 <b>piece</b> 70:8 188:13 <b>piggyback</b> 216:11 <b>pipes</b> 34:22 <b>Pishvaeian</b> 82:2 97:7,9 98:10 106:10,11,15,19 151:5 <b>PISHVAEIN</b> 153:19 155:13 156:10 157:1 <b>place</b> 6:17 7:13 8:2 34:20 36:4 44:21 47:10 79:3 102:13 120:21 128:17 130:15 135:5,10 147:9 207:1 208:2 211:21 214:19 <b>places</b> 55:18 184:9 <b>plan</b> 5:7 65:17,21 65:22 66:15 105:3 147:21 161:17 188:17,21,22 190:22 191:3	202:20 <b>planning</b> 2:11 14:18 15:2 23:3 24:8 25:11,12,16 26:11 39:7 48:8 48:12,14 49:12 51:7 55:14 59:16 62:8 63:18 65:12 65:18 66:9 77:14 77:17,19 78:4,10 110:1,4 113:15 116:4,5 122:22 123:4,15 125:5 127:4 131:10 162:22 164:22 212:15 <b>Planning's</b> 110:6 113:11 161:6 <b>plans</b> 11:14 42:12 47:16,18,21 93:20 93:20 95:10 103:1 108:20 115:22 120:5 164:17 175:5 176:13 177:8,19 178:4 179:1 180:3 181:12 183:19 189:3 192:11 193:8,18 <b>plat</b> 164:10 198:16 198:18 199:5,13 200:8 209:11,14 209:17,22 210:6 211:20 <b>plats</b> 199:11 <b>play</b> 13:2 <b>playing</b> 218:21 <b>plays</b> 32:18 <b>please</b> 4:17 5:10 6:21 8:18 18:2,17 26:14,22 49:15 75:19 79:21 83:14 97:5,6 114:22 150:14 155:5 166:4,18,19 168:16 169:13,14 169:20,22 170:5	171:1 174:15 178:21 184:22 211:1,3 221:6 222:5 223:6 <b>plumbing</b> 68:2 100:18 <b>plus</b> 220:16 <b>plywood</b> 100:22 <b>point</b> 38:16 44:12 46:15 48:21 75:2 75:3 85:3 87:2 102:5 115:20 122:8,14 125:1 127:13 128:9 131:17 132:10 133:20 134:7 142:12 144:18 146:8,19 151:21 154:9 155:2 164:7 164:9 183:20 191:20 210:11 212:16 217:18 219:11 220:15 <b>pointed</b> 158:8,12 <b>points</b> 47:5 84:11 132:4 197:22 <b>policy</b> 208:1 214:17 214:20 <b>poor</b> 211:2 <b>portion</b> 27:13 31:14 171:13 179:5,9 210:14 <b>position</b> 113:11 119:12 131:19 184:16 195:17 <b>positive</b> 112:4,17 117:10 138:15 <b>possible</b> 131:8,16 <b>possibly</b> 66:1 109:21 210:3 <b>post</b> 35:21 85:4 151:7 <b>posting</b> 89:1,6 <b>potential</b> 92:13 95:6 159:8 192:19 <b>potentially</b> 55:17 94:22 106:6 109:5	116:20 117:16 <b>practical</b> 21:5 25:6 25:7,19 26:3 30:22 31:1 34:11 34:19 35:5 39:6 39:13,15 42:1,7 49:21 50:1 64:15 65:4 104:5,5 151:2 158:18,19 181:19 <b>practice</b> 87:17 88:4 95:22 207:22 210:11 <b>precedence</b> 63:4,12 <b>precedent</b> 24:3 63:15 92:10 116:21 159:13 <b>preexisting</b> 52:19 57:4 <b>preference</b> 113:18 114:11 <b>preliminary</b> 3:20 82:7,10 83:4 91:19 166:5 168:17 171:2 <b>premise</b> 27:2 <b>premises</b> 6:17 8:14 18:14 79:3 169:9 <b>prepare</b> 111:7 162:1,3 <b>prepared</b> 23:18 91:18 172:16 176:22 <b>present</b> 1:16,19,22 2:7,11 11:20 48:7 60:10 61:7 64:10 65:6 84:1 92:2 149:15,17 160:21 219:7,15 <b>presentation</b> 10:7 14:10 22:13 23:18 24:1 59:8 89:13 91:11,18 96:16,21 124:17,20 125:1 126:2,3,5 <b>presented</b> 70:9 72:18 82:22 83:12	86:8,22 94:1,2 96:2 102:4 104:9 126:16 <b>presenting</b> 66:7 <b>presently</b> 188:7 <b>presiding</b> 1:15 <b>press</b> 124:2,9 <b>pressure</b> 98:21 99:8 <b>presumably</b> 46:3 <b>pretty</b> 186:9 192:11 205:11 <b>preventing</b> 111:3 <b>prevents</b> 110:13 <b>previous</b> 35:19 63:21 64:7 67:6 67:17 180:5 <b>previously</b> 32:20 104:9 <b>pre-hearing</b> 32:3 33:1 <b>price</b> 147:13 157:9 159:2 <b>prices</b> 151:9 155:12 156:4 <b>pricing</b> 150:21 <b>primary</b> 25:3,6 34:6 <b>primer</b> 99:4 127:14 <b>principal</b> 201:7,8 <b>prior</b> 25:21 51:13 52:11,12,16,22 58:3 69:16 84:2 84:22 85:1,5 116:21 128:9 158:12 177:12 <b>private</b> 146:17 <b>pro</b> 83:17 156:4 <b>probably</b> 41:2 44:4 45:6 76:21 77:2 108:17 115:5 131:22 210:21 220:18 <b>problem</b> 98:19 120:14 160:13 166:22 185:9 <b>problems</b> 27:21
--	---	--	---	---

158:13 195:17 <b>procedural</b> 22:15 <b>proceed</b> 14:13,15 22:10 35:11 90:12 130:1 134:17 172:12,17 197:2 <b>proceeded</b> 179:10 <b>proceeding</b> 123:13 166:15 <b>process</b> 87:16 206:14 210:3 212:3 215:10 <b>processed</b> 221:9 <b>processing</b> 208:5 208:18 210:6 211:19 <b>produce</b> 151:14 <b>productive</b> 27:14 <b>professional</b> 126:6 <b>profit</b> 101:3 105:12 105:12 117:7 118:12,15 131:11 131:12,12 151:22 159:17 <b>profitable</b> 105:4 <b>profits</b> 131:8 <b>project</b> 11:6 13:1 13:20 82:5 93:11 93:21 94:4,16 101:14 104:19 108:16 111:8,12 117:7,17,21 137:13 138:7 153:14 156:8 159:6,12 191:10 191:15 212:11 <b>projected</b> 155:11 <b>projects</b> 207:2 <b>promise</b> 200:8 <b>prong</b> 34:8 113:20 126:16 127:3,17 128:5,20,22 129:6 131:14,15 132:1 135:16 136:1 140:5 141:5 157:22 158:17 <b>prongs</b> 116:20	135:20 <b>pronounced</b> 166:11 <b>proper</b> 32:10 213:19 <b>properly</b> 89:15 <b>properties</b> 148:13 151:8,19 160:10 <b>property</b> 6:18 8:15 11:12 13:16 18:15 20:2 22:7 24:17 25:20 26:1,3 27:8 27:13 28:4 29:14 30:4,8,9,21 31:10 31:10,21 34:13,14 35:11,15,17 39:22 64:5 79:3 80:9,9 80:14,15 81:7 87:10,12,14 92:14 93:13 95:1 97:17 98:12,13 99:15,15 99:19 100:8,9,13 100:17 101:11 103:9 106:9,13,16 110:10,14,18 111:3 113:4 118:3 118:5,22 126:18 127:6,18 128:10 132:13 133:2,15 134:1 135:5 140:12 141:14,20 142:2,2,7,9,16 144:21 145:11 146:16 147:1,4 148:17 149:2,5 151:13,16 152:18 156:1,3 160:3,5 164:11 169:10 186:20 200:5 <b>proposal</b> 117:10,13 <b>proposed</b> 11:6 103:3 138:7 188:13 201:6,9 <b>proposing</b> 119:21 138:5,19 202:18 <b>prove</b> 84:10 135:16 136:1 137:11 <b>proven</b> 161:9	<b>provide</b> 30:12 39:13 43:14 62:11 65:1 83:2 109:19 137:12 141:20 142:3 145:8 155:3 160:1,4 180:21 182:11 186:1 187:15 195:15 202:22 213:8,10 224:4 <b>provided</b> 25:9 86:15 90:22 104:16 152:10 201:2 206:17 214:7 <b>providing</b> 150:21 158:22 160:8,16 217:16 <b>proving</b> 126:17 <b>provision</b> 52:6 <b>provisions</b> 52:18 <b>public</b> 1:6,12 2:21 4:4,18,19 5:3 6:7 65:17,20 75:22 96:3 113:21 161:17 168:1 223:1 <b>publicly</b> 222:19 <b>pull</b> 77:1 <b>pump</b> 187:2 <b>punishment</b> 202:18 <b>purchase</b> 25:21 70:6 126:7 136:15 150:22 151:13 159:2 <b>purchased</b> 25:20 32:5 33:9 34:13 35:15 63:22 64:4 69:4,13 98:13 101:11 106:16 127:7,8 130:5 136:16,22 146:16 152:18 <b>purchasers</b> 147:3 <b>purchasing</b> 64:12 128:10 <b>purely</b> 198:9 215:2	<b>purpose</b> 111:4,4,18 176:16 222:17 <b>pursuant</b> 1:14 6:10 8:7 18:8 78:20 169:3 191:3 <b>pursue</b> 35:13 112:3 <b>pursued</b> 35:14 <b>put</b> 11:15 35:1,2 38:11 44:19 46:11 74:18 75:6 98:21 99:4,10 111:17 122:2 126:10 127:11,14 144:8 151:14 153:7 155:15 162:5 163:3 181:3 208:2 210:19,22 214:8 218:2,11 219:16 <b>puts</b> 75:21 <b>putting</b> 32:10 54:15,18 83:17 87:20 90:10 99:7 <b>puzzled</b> 61:11 <b>P-R-O-C-E-E-D-...</b> 4:1 <b>p.m</b> 165:10,11 166:2 222:16 224:13 <hr/> <b>Q</b> <hr/> <b>qualified</b> 20:11 22:6 <b>qualifies</b> 38:13 <b>qualify</b> 20:9 <b>Quantitative</b> 43:10 <b>quantity</b> 45:9 <b>quarter</b> 49:6 <b>question</b> 7:9 10:9 10:18,22 22:13 24:15 27:16 32:19 50:7 51:7,14 55:10 61:10 67:4 69:19,22 71:18 74:17 86:1 88:20 90:4 92:13 105:10 116:19 120:7 121:14,17,19	122:12,16,21 123:3,9 124:20 131:20 141:11 143:9 149:17 155:6,7 164:14 185:2 190:15,18 203:10 208:8 213:1,19 214:3 217:19 218:13 <b>questions</b> 10:3 14:6 16:2 22:11 23:15 23:17,22 48:6 49:12,13 55:8 60:1 66:21 96:5 106:22 109:17 113:12,14 114:19 116:4,5 119:6,8 123:14 132:20 136:4 137:19 140:7 145:2,4 148:2,3 150:10,12 155:4 200:17 206:8 208:20 210:9,16 211:14 212:18 <b>quick</b> 93:10 113:17 155:8 <b>quickly</b> 139:18 206:2 210:3 <b>quite</b> 126:13 150:3 201:17 <b>quits</b> 216:8 <b>quorum</b> 61:17,19 219:7 <b>quote</b> 71:2 127:4 146:20 172:1 185:15 <hr/> <b>R</b> <hr/> <b>R</b> 1:13 4:7 8:13 <b>rain</b> 100:12,22 <b>raised</b> 97:5 183:16 206:3 211:7 <b>raises</b> 96:5 <b>raising</b> 203:22 <b>rationale</b> 30:15 66:9
--	---	--	---	--

<b>read</b> 40:6 42:17 89:4 91:7,7 101:21 192:11 222:3	<b>received</b> 23:8,11 43:2,3 47:15 87:11,13 167:7	219:5,12 220:21 221:10,18 224:13	<b>regularly</b> 61:17	217:16 218:4
<b>readdress</b> 166:14	<b>receiving</b> 84:7	<b>recorded</b> 198:16 206:10,18 214:15	<b>regulation</b> 114:15 198:12 206:12	<b>relocate</b> 44:22
<b>reading</b> 183:8	<b>recess</b> 4:19 165:7	<b>records</b> 155:18	<b>regulations</b> 31:1 43:17 49:9 64:18 71:7 110:14,17 111:19 113:1,22 114:5,7,14 116:17 117:11 135:3 154:18 198:19 199:7,16 200:11 200:21 201:3,17 202:6 203:13,21 204:6 215:15 217:9 218:4	<b>relocated</b> 45:14,20
<b>ready</b> 7:2 13:21 16:5,7 207:3,4	<b>recognize</b> 85:13 161:6	<b>recoup</b> 139:15	<b>regulatory</b> 169:5 170:18 198:10 202:3 206:22 207:6,18 210:5	<b>relying</b> 158:20
<b>real</b> 47:1 113:17 126:6 139:5,19 155:8	<b>recognized</b> 135:19 138:18	<b>redesign</b> 31:4	<b>reinforced</b> 51:9	<b>remain</b> 72:14 192:18
<b>really</b> 7:5 23:21 27:8,20 29:3 43:7 45:15,17 46:10,14 46:16 49:3 50:8 52:5 68:20 91:2 102:9 115:8 127:1 135:8,13,18 138:8 139:17 140:1,3,4 143:9 156:21 157:4 159:7 185:16 206:7 216:7 220:4 221:18	<b>recognizing</b> 50:19	<b>redrawn</b> 209:3	<b>reinsertion</b> 53:22 54:4	<b>remaining</b> 30:8
<b>realtor</b> 70:9	<b>recollection</b> 54:2	<b>reduce</b> 111:21 132:8	<b>reissued</b> 211:21	<b>remarks</b> 88:1
<b>reapplied</b> 217:21	<b>recommend</b> 112:18	<b>reduced</b> 175:21 189:1 193:14	<b>reiterated</b> 211:21 52:5	<b>reminds</b> 164:19
<b>rear</b> 6:11,16 80:13 94:16 109:14 115:13 186:6	<b>recommendation</b> 161:7	<b>reducing</b> 160:13	<b>reiterated</b> 51:18,22	<b>removal</b> 179:13 180:17 181:1 184:21 193:17
<b>reason</b> 36:8 66:6,16 71:22 134:5 167:2 187:12	<b>recommended</b> 48:16 101:8	<b>reduction</b> 194:6	<b>reiterating</b> 56:12	<b>remove</b> 95:1 108:22 109:5 179:17 181:3 182:8,10 189:7
<b>reasonable</b> 105:12 117:16 118:21 119:1 215:9	<b>recommending</b> 14:21	<b>refer</b> 125:15 171:18 179:4	<b>related</b> 133:2	<b>removed</b> 68:20 100:20 179:8 180:6 181:10,12 183:4,19
<b>reasoning</b> 62:14	<b>recommends</b> 124:11	<b>reference</b> 25:13 188:12	<b>relationship</b> 187:10	<b>renovate</b> 28:6 69:2 136:15,20
<b>reasons</b> 30:7 63:9 139:1 180:7	<b>reconcile</b> 204:15,16	<b>referenced</b> 211:18	<b>relatively</b> 53:22 54:19 55:2	<b>renovated</b> 45:21 46:8,17,19
<b>rebuild</b> 186:8	<b>reconversion</b> 70:22	<b>references</b> 178:14	<b>release</b> 99:8	<b>renovating</b> 152:15
<b>rebut</b> 16:1	<b>record</b> 4:22 5:1 15:4 16:3,20 20:14 21:17 39:11 43:1 69:7 71:13 72:14 73:16 77:6 82:20 87:21 89:11 91:7 92:17,22 94:8 123:20 155:20 157:19 159:15 161:21 163:10 165:10,11 168:19,19 170:12 173:16 175:17 196:20 198:3,14 198:21 201:12,16 201:21 205:14 208:14 209:12,19 214:19,22 215:15	<b>referred</b> 62:12,13 175:1	<b>relevant</b> 84:8 92:8 177:7 192:22	<b>renovation</b> 34:18 34:20 36:9 137:13 169:8 181:5 188:14
<b>rebuttal</b> 15:22 60:12 61:7 109:20	<b>reconnect</b> 41:19	<b>referring</b> 83:7 174:21	<b>relied</b> 104:15	<b>rent</b> 37:1 38:2,4,10 40:20
<b>rebuttals</b> 221:4	<b>reconnecting</b> 21:5 25:7 26:5,17 39:17 42:2,9,14 50:2	<b>reflect</b> 115:22 145:14	<b>relief</b> 14:8 15:3 16:7 17:1 24:9 25:2 30:3,6 48:17 53:7,12,14,15 62:9 87:11,13 93:17,17 94:11,13 95:11 98:2,5 101:5 102:10 103:8 110:12 111:19 112:11 115:9 140:11,16 140:19 161:13,14 178:11 213:8,10	<b>rental</b> 36:3,5 73:5
<b>recall</b> 21:15 33:1	<b>reconsider</b> 48:19	<b>reflected</b> 189:2	<b>regard</b> 40:17 72:11 72:19 94:12 96:14 109:6 159:3	<b>renting</b> 68:19
<b>receipt</b> 79:13	<b>reconversion</b> 70:22	<b>regarding</b> 10:2 14:8 15:13 22:16 34:10 65:16,21 190:1,11 221:14	<b>regards</b> 13:7 40:16 92:6,13 93:2,12 114:15 129:12 158:3 159:2,13 160:7 162:22 191:17,21 204:17 218:4	<b>rents</b> 72:9
<b>receive</b> 49:5 88:3 135:12 161:4	<b>record</b> 4:22 5:1 15:4 16:3,20 20:14 21:17 39:11 43:1 69:7 71:13 72:14 73:16 77:6 82:20 87:21 89:11 91:7 92:17,22 94:8 123:20 155:20 157:19 159:15 161:21 163:10 165:10,11 168:19,19 170:12 173:16 175:17 196:20 198:3,14 198:21 201:12,16 201:21 205:14 208:14 209:12,19 214:19,22 215:15	<b>regardless</b> 24:18 34:13 74:17 195:22 217:9	<b>registered</b> 20:16,17	<b>repair</b> 24:16 27:9 53:21 169:7 181:6 188:15
		<b>registration</b> 20:20	<b>Regular</b> 1:12	<b>repaired</b> 100:15 158:14
				<b>repairs</b> 27:15 54:8
				<b>repeat</b> 7:21
				<b>repeating</b> 67:5
				<b>replaced</b> 29:1
				<b>reply</b> 223:9
				<b>repointed</b> 99:3
				<b>report</b> 14:20 25:12

48:21 50:15,16,20 51:8 52:8 53:17 53:18 54:3 55:3 61:10 65:12 66:10 69:3,9 78:10 79:14 104:17 110:6,8 161:6 <b>reporter</b> 4:20 5:16 35:21 <b>reports</b> 69:15 73:8 <b>represent</b> 187:13 <b>representative</b> 176:22 <b>represented</b> 82:2 <b>representing</b> 81:20 82:3 83:16,17 86:18,20 <b>request</b> 9:16 11:2,3 15:3 79:6 84:19 88:15 90:8 95:15 109:18 120:12 143:3 172:3 176:19 196:8 215:21 224:3 <b>requested</b> 14:8 16:8 17:1 25:2 48:17 57:21 108:1 178:11 <b>requesting</b> 94:10 <b>requests</b> 24:9 77:5 <b>require</b> 31:4 45:7 93:17 <b>required</b> 39:14 41:7 101:6 109:7 109:12 129:19 160:8,17 <b>requirement</b> 111:20,21 186:18 204:16,17 207:5 <b>requirements</b> 6:14 6:15,16 8:11,13 18:9 51:10 60:22 78:22 79:9 98:2,4 107:12 154:18 <b>requiring</b> 93:18 <b>reschedule</b> 167:12 <b>rescind</b> 17:13,18	<b>research</b> 89:16 96:9 <b>residence</b> 21:18,21 22:2 <b>residential</b> 66:2 71:1 161:16 <b>residents</b> 147:19 <b>resolve</b> 86:11 <b>resolves</b> 207:10 <b>respect</b> 173:17 182:15 186:21 189:5 194:13 211:6,11,16 212:11 <b>respond</b> 85:21 89:16 143:12 146:5 177:1 178:19 <b>response</b> 69:21 74:21 75:2 211:11 <b>responses</b> 164:3 221:4 <b>responsible</b> 222:8 <b>rest</b> 15:3 30:11,20 32:6 109:17 <b>restate</b> 141:10 <b>restated</b> 143:7 <b>restoration</b> 10:13 12:2 71:3 <b>restored</b> 209:14 <b>result</b> 64:7 118:3 135:15 216:18 <b>results</b> 187:9 <b>retained</b> 130:16 <b>return</b> 70:20 71:8 105:18 106:1,5 112:15,17 118:21 126:12 160:3 <b>returned</b> 118:22 <b>revenue</b> 112:4 <b>review</b> 61:1 89:10 213:19 <b>reviewed</b> 91:21 92:19 <b>reviewing</b> 92:22 <b>revised</b> 188:21 <b>revoke</b> 211:18	<b>revoked</b> 199:17 202:8 213:13 217:20 <b>revoking</b> 202:19 207:9 <b>rezoning</b> 177:22 <b>re-do</b> 36:11 <b>re-look</b> 115:6 <b>re-review</b> 215:20 <b>Richard</b> 80:22 81:5 83:16 85:16,18 90:14 131:16 139:20 <b>ridden</b> 37:4 <b>right</b> 4:11 5:2 6:2 12:10 14:2,2,9 21:11 26:6 39:12 41:9 44:18 55:20 56:6 62:3 70:18 70:19 77:11 78:12 80:20,20 81:11 84:16 88:11 97:18 98:8,16 99:14 107:15 108:13 114:11 121:13,22 122:3 124:8,19 131:3 134:18 145:5,17,19,22 148:18 151:18 152:18 154:17 156:1 157:16 164:11 170:4 175:15 176:12 182:17 183:3,9,14 184:2,10 189:11 196:2 205:4,15,20 206:7 211:4 212:20 215:4 217:11 218:14 219:13 220:7 221:1,19 <b>rights</b> 188:1 <b>rip</b> 136:19 <b>ripped</b> 37:5 <b>rise</b> 127:17 136:1 <b>risk</b> 38:12 101:10 105:16 153:13	<b>road</b> 6:12 8:10 142:16 154:21 163:3 <b>role</b> 53:7 131:7 203:4,18 <b>roll</b> 4:16 7:15 148:10 223:7 <b>rolled</b> 220:11 <b>rolling</b> 189:15 <b>roof</b> 8:9 102:22 107:5,17 158:13 <b>room</b> 1:13,13 4:7 42:11 44:17 45:13 45:20 47:8 55:16 102:17,18 <b>rooming</b> 32:21 33:19 34:2,2 58:2 58:8,9,10 63:19 79:1 98:14 100:6 100:14 102:15 103:1,10,12,16,22 127:10 128:13 132:12,21 133:15 134:2 140:19 141:4,14 154:5 158:4,10 160:14 <b>rooms</b> 141:15 <b>rotted</b> 28:22 <b>round</b> 40:22,22 <b>row</b> 126:8 127:7,21 127:21 131:4 134:21 <b>rub</b> 116:9 <b>rule</b> 88:10 192:2 217:7 <b>rules</b> 126:20 202:12 <b>run</b> 208:17 <b>running</b> 123:8 <b>R-4</b> 6:17 18:13 51:15,18 79:2 97:21 126:8 134:6 <hr/> <b>S</b> <hr/> <b>sake</b> 117:13 125:18 <b>salary</b> 35:22 <b>sales</b> 97:14 152:11	155:12 156:4 <b>sat</b> 146:15 147:1,13 <b>satisfied</b> 116:21 141:5 157:21 <b>satisfy</b> 158:16 <b>saw</b> 67:17 100:3 <b>saying</b> 13:15 16:13 17:20 31:9,13 39:16,22 40:10 41:6 42:20 54:12 56:7 84:15 110:8 129:17 191:16 216:7,7 218:6,8 <b>says</b> 34:2 70:21 179:22 180:4,22 182:16 183:12,12 184:10 188:12,14 188:20 192:6 201:5 204:12 215:1,3,5 <b>scale</b> 146:22 <b>scenario</b> 218:21 <b>scheduled</b> 61:17 162:14 222:19 <b>scintillating</b> 91:9 <b>se</b> 83:17 <b>second</b> 16:10 17:14 17:16 36:18 37:11 58:20 73:2 76:22 99:13 132:3 154:6 171:17 172:1,5,14 173:4 182:3 184:6 186:7 190:14 192:5,21 193:8 194:2,17,22 195:10,14 196:10 200:1 202:7 223:3 223:4 <b>seconded</b> 16:12 17:18 223:6 <b>secondly</b> 190:19 <b>seconds</b> 147:21 <b>secretary</b> 1:23 5:12 169:22 223:6 <b>section</b> 6:13,14,15 6:16 8:10,12 95:5 201:1 222:11,12
--	---	---	--	--

<b>see</b> 11:9 14:18 16:6 21:20,20 22:2 32:1 38:13 39:10 41:3 42:11 62:2 67:16 71:21 77:4 77:17 86:11 96:18 99:14 100:10 105:1 108:3,15 115:8 116:20 123:22 139:9 149:3 171:1 175:22 176:11 184:20 207:8,9 218:20	115:22 175:5 176:3,3 189:7 193:18 <b>setbacks</b> 184:14 <b>sets</b> 194:11 <b>setup</b> 187:1 <b>seven</b> 11:18,19 101:18 154:14 <b>severe</b> 32:7 <b>sewer</b> 100:16 <b>shaking</b> 16:6 <b>share</b> 28:17 <b>shared</b> 11:13 12:11 <b>Sheet</b> 176:11 <b>shoes</b> 139:8 <b>shoot</b> 176:6 <b>shore</b> 54:13 <b>shoring</b> 52:21 <b>shortly</b> 214:10 <b>show</b> 17:12,19 43:2 102:20 103:1 106:7 129:19 135:20 177:19 193:18 <b>showed</b> 210:1 <b>showing</b> 98:11,15 128:13 129:18 159:4,5 164:10 189:7 <b>shown</b> 111:2 120:6 126:15 173:19 174:6 176:13 178:3 190:22 <b>shows</b> 69:8 101:4 103:3 104:18 193:9 <b>shrank</b> 194:3 <b>side</b> 11:12 38:22 62:6,6 80:14 98:12,18 99:14,17 99:18 100:3 138:1 149:2,2,4 197:6 <b>sidewall</b> 80:15 <b>sign</b> 85:4 176:11 189:1 <b>signature</b> 175:22 <b>signatures</b> 147:19	209:10 <b>signed</b> 61:15 176:9 198:18 210:1 <b>significant</b> 41:19 70:3 158:15 <b>signify</b> 16:13 17:20 <b>sign-off</b> 178:14 <b>similar</b> 24:6 66:13 111:12 161:1 <b>Similarly</b> 32:16 <b>simple</b> 171:13 197:11 <b>simply</b> 95:8 106:5 117:18 133:18 159:4,22 160:1 161:8 208:13 <b>simultaneously</b> 172:13 <b>single</b> 23:1 38:22 56:14 58:7 110:22 126:8 128:11,14 140:1 198:3,21 201:15 205:14 <b>single-family</b> 135:8 136:8 142:8 <b>sir</b> 8:4 18:3 49:17 77:14 168:10 171:3 173:13 178:13 223:8 <b>sit</b> 222:4 <b>site</b> 21:8 27:22 49:2 110:12 177:22 185:11 187:11 188:9 190:22 191:3 201:15 204:22 205:13 <b>siting</b> 194:3 <b>sitting</b> 5:4 98:20 124:10 146:19 154:8 220:9 <b>situated</b> 169:18 <b>situation</b> 25:1 64:2 64:6 70:13 105:14 115:12 128:5 129:2,5 138:2 147:12 <b>situation's</b> 39:19	<b>six</b> 146:15,20 147:2 204:2 <b>size</b> 45:21 47:7 65:14 175:18 176:3,3 184:16 189:1 193:10,14 194:6,10,12 208:12 <b>sizes</b> 47:7 <b>sky</b> 138:20 <b>slab</b> 28:19,20 <b>Slachetku</b> 6:9 166:11 <b>slap</b> 202:13 <b>small</b> 43:1 44:16 134:3 189:5 <b>smaller</b> 139:22 194:19 <b>Society</b> 10:13 12:3 <b>sold</b> 67:6 70:9 101:13 152:22 154:6 156:1,8,21 <b>sole</b> 182:19 198:1 <b>solely</b> 179:10 <b>solid</b> 83:20 <b>solution</b> 117:11 <b>somebody</b> 7:19 36:8 58:4 <b>soon</b> 162:16 <b>sooner</b> 99:7,9 <b>Sorg</b> 1:18 4:12 10:20,21 12:5,10 12:16,20 13:4,7,8 13:22 14:3 17:6 17:15 20:15,19,22 31:17,18 42:4,5 47:4 48:3 55:11 55:22 56:2,6,11 56:20 57:5,10,15 57:20 58:5,16 59:1 66:22 67:3 68:4,7,11 73:2,3 79:10 90:2,3,9 97:8 108:5,10,14 121:11,16,20 122:5,9,17 137:20 138:6 192:3,4	193:5,22 194:7 195:21 200:19 208:21 209:13 210:7 212:22 213:4,15 214:2,5 217:12 218:5,9,14 218:18 223:13,14 <b>sorry</b> 29:12 33:19 52:7 66:22 80:14 81:8 100:7 106:11 119:20 120:4 122:18,18 123:1,5 123:10 124:18 137:2 148:7 155:14 164:15 166:21 <b>sort</b> 33:13 59:2 70:12 74:8 85:7 127:3 128:6 138:9 202:17 219:2 <b>sought</b> 130:12,13 143:12 146:13 212:11,14 <b>sounds</b> 215:4 <b>source</b> 30:3 111:15 <b>south</b> 1:13 11:12 12:15 13:14 38:22 147:8 <b>Southeast</b> 9:5,14 97:15 <b>space</b> 30:18 32:8,13 64:16 100:1 157:5 <b>spaces</b> 45:17 47:6 102:19 160:9 <b>speak</b> 90:14 108:18 109:4 141:7 142:11 150:16 <b>speaking</b> 181:21 <b>speaks</b> 128:15 140:4 <b>special</b> 6:11 8:8 75:22 188:20 191:2 203:5 206:6 <b>Specialist</b> 1:23 <b>specific</b> 104:16 138:7 158:22 <b>specifically</b> 21:4
---	--	---	---	---

33:18 65:2 92:6 129:13 182:16 <b>speculator</b> 39:21 <b>spend</b> 88:6 98:6 <b>spent</b> 126:7 127:22 <b>spoke</b> 143:13,14 164:20 <b>spreadsheet</b> 137:12 <b>sprinkled</b> 109:9,10 <b>sprinkler</b> 154:19 <b>square</b> 6:18 8:15 18:15 39:5 40:20 45:2 50:3 52:1 56:13 65:7 72:4 79:4 93:12 156:11 156:13 169:11 193:14,15,16 <b>squeeze</b> 143:18,19 <b>stack</b> 163:8 <b>stacking</b> 220:4,4 <b>staff</b> 1:22 2:11 16:20 77:6 168:19 224:8 <b>stair</b> 42:10,11 44:13 109:13,13 109:14 115:14,15 <b>staircase</b> 53:22 54:4,18 <b>stairs</b> 26:20 67:22 <b>stairway</b> 37:9,18 58:19 <b>stairway's</b> 99:20 <b>stairwell</b> 28:11 37:13,16 44:20 <b>stand</b> 5:10 9:2,11 19:1,11,20 61:22 80:4 81:3,16 101:16 165:6 169:20 175:12 <b>standard</b> 43:15 112:13 129:21 187:6 <b>standing</b> 38:4 98:16 <b>start</b> 33:16 91:18 96:15 124:9 140:2 194:21 195:6	<b>started</b> 36:9 67:14 191:14 194:20 <b>starting</b> 110:8 163:8 <b>state</b> 117:12 <b>stated</b> 51:8 53:17 127:12 130:18 143:4 145:16 158:2 160:11,12 193:13 <b>statement</b> 32:3 33:22 34:4 47:19 71:18 101:3 119:17 152:1 190:13 <b>statements</b> 93:11 96:6 132:15 149:22 178:1 <b>states</b> 69:4 <b>station</b> 169:8 171:13 179:4,5,11 180:2,9 181:7,10 182:21 188:8,15 192:7 203:2 206:5 <b>status</b> 9:17 11:2 17:11,14,19 56:19 79:7,17,19 82:12 83:3 84:13,20 86:3 87:22 90:8 143:3 <b>stay</b> 29:9 186:15 <b>stayed</b> 23:2 <b>steel</b> 54:16 <b>step</b> 24:13 30:1 59:11,20 60:7,8 125:21 <b>Stephen</b> 2:16 15:1 <b>Stephen's</b> 176:2 <b>steps</b> 187:22 <b>STEVEN</b> 2:14 <b>stock</b> 139:22,22 <b>stop</b> 96:20 100:21 <b>storage</b> 184:3 185:21 187:21 <b>store</b> 171:19,20 172:2 179:9,18,22 180:1,5,10 181:3	181:8 182:10,17 183:1,1,13,14 184:1,9 185:15 186:1,8,8 187:1 190:15 192:6 194:21 195:3,7 203:1 206:6 <b>store/convenience</b> 179:9 <b>stories</b> 109:9 147:9 147:10 149:12 <b>story</b> 8:9 39:5 65:7 102:13 139:11 148:14 <b>straddling</b> 66:3 <b>street</b> 1:13 3:17 4:8 8:14 9:5,14 18:14 19:14 39:1 70:1,5 78:19 80:8,17 81:6,21 97:20 100:6 135:10 144:18 146:14 147:7 148:19,22 149:6,11 152:19 153:3 154:4,9 156:1,9 184:13,15 185:9 186:11,17 186:20 193:2 215:22 <b>streets</b> 134:20 <b>stricken</b> 188:18 189:1 <b>strict</b> 31:1 64:18 126:19 <b>strictly</b> 181:5 <b>strikes</b> 95:22 <b>strikingly</b> 24:6 <b>strip</b> 206:4 <b>strong</b> 83:20 91:3 100:16 <b>strongly</b> 112:18 <b>structural</b> 27:15,18 53:20 54:2 74:13 190:16,19 <b>structure</b> 8:12 42:13 54:13 56:19 94:14 102:14	104:12 128:18 201:8,9,11 <b>structures</b> 51:21 120:20 <b>stud</b> 37:3 <b>stuff</b> 68:2 89:19 <b>subdivided</b> 201:12 204:19 <b>subdivision</b> 198:4,7 199:5,11,13 200:7 202:1 205:13 206:9,17 207:14 207:16,19 208:5 208:12,16 209:5 209:11,14 211:8 211:16 212:6 214:15 221:8 <b>subdivisions</b> 208:9 208:13,14 <b>subdivision's</b> 206:21 211:21 <b>subject</b> 64:5 182:19 186:16 187:8 188:3 205:6 <b>submission</b> 83:1 92:1 94:3 104:10 175:21 <b>submissions</b> 33:2 104:8 157:19 163:18,19 <b>submit</b> 12:13 26:16 26:16 41:15,15 43:21 48:20 65:9 66:18 72:15 73:18 73:19 85:10 135:21 137:10 212:8 221:6 <b>submitted</b> 11:2 14:20 15:18 53:19 60:16 65:11 70:2 93:20 101:4 179:2 190:21 219:6 220:20 <b>submitting</b> 65:13 76:18 141:1 <b>subsection</b> 8:13 18:9 78:22	<b>subsequent</b> 179:13 <b>subsequently</b> 178:2 <b>subsidence</b> 28:10 <b>substance</b> 88:10 190:7 <b>substandard</b> 68:17 <b>substantial</b> 65:16 65:19 193:17 <b>subterranean</b> 46:6 46:12 <b>sufficient</b> 129:6 <b>sufficiently</b> 128:4 <b>suggest</b> 77:7 164:3 <b>suggesting</b> 53:9 <b>suggestion</b> 63:13 <b>Sullivan</b> 18:20 19:3 19:5,5 20:8 21:3 22:17,20 23:6,16 24:2,20 25:3 26:15 27:11 30:1 31:13,16 33:16 38:15 39:12 40:12 40:18,22 41:9 42:22 43:13 44:6 44:10 47:17 48:7 48:9 49:14,19 50:12,15 51:3,6 52:4,9 53:3,10,16 55:1,7,21 56:1,4 56:10,17,22 57:7 58:1,6 59:6,12,13 60:3,6 61:6,9,15 61:20 62:4 63:2 63:14 74:21 75:15 76:15,16 77:9 78:1,14 <b>Sullivan's</b> 69:22 <b>summarize</b> 110:7 147:22 200:20 <b>summary</b> 18:2 25:14 51:1,3 59:18 62:10 63:6 63:10 200:13 204:9 <b>superficial</b> 34:20 <b>supplement</b> 83:2 <b>supplemental</b>
---	--	--	--	---

77:14 78:10 86:16 104:10 142:15 162:21 164:21 <b>supplied</b> 135:22 <b>support</b> 11:9,18,21 12:9 13:12,16,18 15:2,9,11,12,15 17:2,6 39:2 41:8 45:21 60:20 61:3 61:21 66:11 84:11 90:18 101:20,22 102:1,2 116:11 124:14 161:3,3 219:7 <b>supported</b> 24:8 25:11 26:11 62:8 <b>supporting</b> 218:8 <b>supports</b> 66:2 69:11 155:11 <b>suppose</b> 47:22 <b>supposed</b> 212:5,10 <b>Surabian</b> 170:19 170:20 190:12 205:16,17,21 208:1 210:4,17 211:6 217:19 218:12,20 <b>sure</b> 5:14 22:11 24:12 33:17 53:3 55:15 61:15 70:8 82:19 86:5 87:8 94:8 96:22 114:10 114:10 115:19 130:2 138:11 148:12 153:9 162:19 166:11 176:7 197:10 213:3 222:2 <b>surrounded</b> 66:5 <b>surrounding</b> 38:18 134:20 135:14 <b>surveyor's</b> 201:13 <b>Sustained</b> 119:19 <b>Swearing</b> 5:18 <b>sworn</b> 9:1,10 18:22 19:10,19 80:3 81:2,15 170:1	<b>system</b> 214:16 <b>S-E-S-S-I-O-N</b> 166:1 <hr/> <b>T</b> <hr/> <b>table</b> 79:20 151:15 169:13 218:3 <b>take</b> 5:10 13:4 74:16 99:5 105:15 127:14 131:21 157:17 169:20 195:17 205:20 210:15 217:13 218:22 223:6 <b>taken</b> 22:16 67:18 187:22 <b>takes</b> 206:13 <b>talk</b> 21:4 22:14 35:16 80:10 160:19 <b>talked</b> 11:16 72:16 <b>talking</b> 45:17 56:12 94:18 105:17 143:16 184:12 187:4 193:11 196:1 213:16 <b>tank</b> 185:21 187:21 <b>tardiness</b> 90:22 <b>tardy</b> 85:14 <b>task</b> 54:1 <b>tax</b> 152:13 208:13 <b>taxes</b> 57:6 <b>tear</b> 104:3 158:10 <b>technician</b> 176:12 178:14 <b>tell</b> 54:4 61:13 127:10 145:19 192:12,13 <b>telling</b> 41:2 44:4 <b>ten</b> 11:18 128:14,19 147:21 152:4 153:7 197:7,12 205:19,20 210:21 211:1 <b>tenant</b> 74:5 <b>tens</b> 208:15 <b>tenths</b> 97:20	<b>term</b> 80:12 111:9 129:7,9,17 171:20 <b>termite</b> 37:3 <b>terms</b> 113:2,17,19 115:2 208:18 <b>test</b> 53:13,14 113:20 157:21 <b>testified</b> 9:2,11 19:1,11,20 67:11 80:4 81:3,16 103:22 104:19 127:5 131:10 159:6 <b>testify</b> 5:8,16 15:15 22:7 27:17 40:13 40:16,19 43:15 44:9 61:3,4 94:21 124:14 169:20 <b>testimony</b> 13:5 26:17 31:20 39:16 41:10 42:16 55:18 64:22 67:13 75:7 104:8 129:12 141:2 145:8 157:20 161:21 213:6 221:14 <b>text</b> 51:8 52:12,17 53:5,10 <b>thank</b> 5:17,22 6:20 8:17 9:19 10:8,21 14:3 15:4 16:17 20:7 31:15,18 33:15,17 44:10 48:13 53:1,16 55:7 61:9 62:3,4 63:14 75:4 77:12 78:13,14,15 88:12 88:18 89:7 91:14 96:11 109:15 113:16 116:2,6 119:5 121:10 125:19,22 136:2,3 136:7 137:16,20 140:9 145:9 150:15 151:5 161:18,19 163:4 165:8 168:13	170:3 178:16 196:16 200:16,19 205:16,17,22 208:21 210:7 211:4 214:3 221:20,21 223:8 223:18 224:1,5,10 <b>thanks</b> 24:11 76:12 77:10 78:2 108:4 115:1 <b>thin</b> 28:20 <b>thing</b> 13:17 101:2 101:19 118:20 151:21 183:19 194:12 216:15 222:3 <b>things</b> 27:7 29:2 32:1 33:13 40:14 42:9,14 43:6 54:12,17,20 55:12 63:17 72:1,6 73:9 73:15,22 88:5 96:8 138:14,15 150:19 183:2 188:16 220:19 <b>think</b> 9:22 10:19 11:18 13:6 14:14 23:12 24:10 30:5 34:5 38:5 39:15 41:4 43:2 45:2 46:10 47:5,12 48:3 51:7 55:14 55:17 60:16 63:16 65:6,10,18 67:10 69:11 72:1,10 73:7,10 74:19 75:15 79:11 83:3 83:20 84:10 88:14 91:2,3,22 96:7 98:5 104:7 108:11 108:15,16,16 111:18 112:9 114:12 115:4,19 116:7,16 117:1,14 117:22 118:1 120:18 124:5,6 125:11 127:8	129:16 132:2 138:12,13,14 143:12 153:12 157:8 161:8 172:22 173:3 174:22 175:11 176:17 180:11 187:3 194:15 195:9 197:4 200:12 202:10 203:3,14 204:4 205:11 209:1 211:9,12 215:9 218:21 219:4 220:22 221:11,17 <b>thinking</b> 28:4 <b>third</b> 8:8 27:5 28:12 37:11 58:4 58:20 99:16 102:20 103:5 113:20 119:13,21 120:6,19 121:1,12 121:21 122:1,2 138:19,21 144:8 144:12,13,15,16 145:17,20,22 146:5 148:14 <b>thirty</b> 12:19 <b>thoroughly</b> 150:4 <b>thought</b> 26:8 29:6 31:7 51:5 60:11 71:10 165:2 175:6 191:22 197:16 <b>thoughts</b> 119:11 189:22 190:3 192:1 <b>three</b> 18:12 24:5 25:20,22 28:5 33:10,13 34:15 39:8 45:5,22 55:20 56:5,7,15 57:11,18,21 63:21 64:4,8,12,14 69:4 69:7,9,10,12,15 69:17 70:16 74:2 76:9 78:5 87:14 101:8,9,16 104:19
--	---	---	--	---

105:2 109:8	171:15 174:2	150:13 166:18	<b>unaware</b> 142:10	87:14 98:18 99:9
110:20 112:5,16	212:4	210:17	<b>unclear</b> 192:18	101:17 102:16
112:20 113:18	<b>times</b> 65:11	<b>turned</b> 139:10	<b>uncomfortable</b>	103:12 104:19
114:1,4 116:11,15	<b>timing</b> 92:15	<b>turning</b> 134:2	50:7	110:20,21 112:5,6
116:20 117:3	<b>tip</b> 146:21	192:1	<b>unconventional</b>	112:16,17,20
130:5 134:20	<b>today</b> 5:4 82:1 95:9	<b>Twenty</b> 12:18	104:13	114:1,2,16 116:15
135:20 140:20	133:13,16 147:15	<b>two</b> 5:14 18:12	<b>underground</b>	120:22 121:1
141:15,16 143:20	150:1 157:20	22:22 31:3,11	185:21 187:21	141:17 144:5
145:7 146:13	161:1 220:5 224:7	33:12 36:5 38:21	<b>underlying</b> 190:8	152:9,21 157:15
147:8,10 148:19	<b>today's</b> 4:9 146:11	39:5 43:6 44:20	<b>underscore</b> 128:6	161:11
149:3,12 151:17	167:21	50:2 54:16 56:13	<b>understand</b> 11:5	<b>United</b> 106:19
154:1,5 160:14	<b>toddler</b> 74:6	56:18 57:12 65:7	13:11 31:20 33:2	<b>units</b> 21:6 25:8,21
161:8,9 200:15	<b>tomorrow</b> 133:18	67:7 69:15 70:4	33:6 44:1 45:4	26:18 31:3,11
208:17 210:22	<b>tone</b> 54:9,10	76:9 78:4 87:13	47:11 51:18 53:4	34:1,15 36:5
215:3	<b>top</b> 23:2 89:18,18	95:3 98:10 100:1	57:11 87:15,18	56:13 57:12,18,22
<b>three-prong</b> 157:21	89:19 99:21	102:13,16,17,19	90:11 101:7	58:21 64:5,8,12
<b>three-unit</b> 141:18	107:13,13 139:3	103:4,4 109:8	120:15,16 122:10	64:14 65:14 70:16
153:16	<b>tore</b> 195:5	112:3 121:4 130:9	144:20 213:16	72:3,7 98:19
<b>threshold</b> 127:17	<b>total</b> 152:11	130:14,15,19	216:21 217:4	101:8,9,16 102:15
<b>throwing</b> 26:19	<b>touched</b> 100:17	134:20 135:9	<b>understanding</b>	105:2 109:2
<b>thrust</b> 126:5	<b>tour</b> 98:3	136:10,11,13	50:8 67:12 72:11	111:20 113:18,19
<b>time</b> 5:9 24:7 35:22	<b>transcript</b> 2:19	139:3 144:9 151:7	82:13 129:9 134:7	114:4 116:11
45:1 46:2 48:9	62:11 64:10 141:7	151:17 152:2,17	142:19 166:12	121:2 126:11
58:18 67:17 70:15	146:21	156:2,2,9,11,12	172:22 207:21	132:7 134:22
71:6 75:13,14	<b>transcripts</b> 62:12	157:17 158:5	216:22	135:9 139:4,16
79:8,18 83:6	<b>transfer</b> 152:13	160:8 198:14,22	<b>understands</b>	140:2,20 143:9,15
84:18 85:11 86:17	<b>transferable</b> 133:3	198:22 199:12	111:16	143:20 144:9,13
88:6 98:6 101:10	<b>transparent</b> 150:20	201:22 204:22	<b>undue</b> 129:19	146:13 152:8,12
101:12 102:6	<b>Transportation</b>	208:17 210:2	<b>unfortunately</b>	154:1,5 156:8
105:16 109:18	60:15,17 123:18	214:15 215:3	83:18 84:1 91:22	160:5,9,15 161:8
123:7 128:3,12,18	124:3	<b>two-story</b> 126:8	95:21 101:8	161:9
131:22 150:19	<b>trees</b> 211:3	131:4 134:21	<b>unique</b> 66:14	<b>unit's</b> 98:22
151:20 158:15	<b>trouble</b> 31:19 32:9	135:8 139:10	103:16 126:17	<b>unknowledgeable</b>
159:2 166:21	33:11	<b>two-year</b> 216:14	127:6,18 128:5	111:15
172:11 173:21	<b>true</b> 44:11 52:9	<b>type</b> 63:4 68:12	141:4	<b>unknown</b> 206:11
183:20 188:10	64:3	104:3 127:9,16	<b>uniqueness</b> 111:2	<b>unnecessarily</b>
199:22 203:19	<b>try</b> 86:11 139:18	129:2,5 133:22	<b>unit</b> 18:12,12 24:19	43:16,20 64:21
204:19,21 206:14	155:21	135:22 167:7	25:22 27:6 28:5	<b>unnecessary</b>
208:5,18 209:19	<b>trying</b> 41:1 44:1	<b>types</b> 24:9	31:3 33:10 36:3	104:13
210:12 212:16	59:2,3,4 69:1	<b>typical</b> 39:20 103:4	39:6 40:1,20 42:1	<b>unprecedented</b>
215:13 216:15	120:14,14 125:6	<b>typically</b> 208:9,17	44:15 45:6 50:1	146:14
218:21 220:10	176:17 210:2	<b>T-A-B-L-E</b> 3:5	52:2,14 55:20	<b>untimely</b> 173:20
221:16	<b>Tuesday</b> 1:9 78:8		56:5,8,15,18	<b>unusable</b> 30:18
<b>timeline</b> 31:19	<b>turn</b> 14:18 15:21	U	57:12 58:4,21	<b>unused</b> 31:10
<b>timeliness</b> 176:18	48:12 96:15 102:6	<b>unable</b> 84:1	63:21 65:8 67:8	<b>upgrade</b> 136:19
177:5	109:3 110:1	<b>unanimously</b> 10:16	69:5,8,9,12,17	<b>upstairs</b> 31:3 36:16
<b>timely</b> 84:19	131:11 140:7,19	61:21	71:1 79:2 87:13	36:21

**upwards** 159:17  
**use** 30:21 32:11  
 33:10 56:15 63:4  
 63:19 64:16 65:22  
 69:1 70:18,19  
 74:18 80:11 89:14  
 103:17 104:3  
 110:10 112:10  
 113:9 119:1  
 121:21 130:14  
 131:20 132:21  
 133:6 156:7 158:4  
 158:9 159:20  
 160:3 182:14,17  
 182:21,22 183:19  
 185:3 190:15,18  
 192:13 197:11  
 206:5,6  
**useful** 45:8  
**useless** 130:19  
**uses** 56:14 110:16  
 111:7,8 161:16  
 194:14  
**usually** 98:19  
**utility** 102:18

---

**V**

---

**vacant** 33:9  
**valid** 61:11,13  
**validity** 203:8  
**Valor** 3:22 169:2  
 170:9 174:3  
**value** 147:14,16  
 159:7  
**variance** 18:8 29:8  
 30:3,6 53:7,12,14  
 53:14 56:9 62:9  
 66:11 78:21 92:9  
 93:19 113:20  
 119:12,22 120:2  
 126:10 129:14,22  
 130:13,13,22  
 135:12 146:5  
 203:6  
**varies** 208:11  
**various** 54:16 98:2  
 172:7 218:4

**vast** 146:8  
**vehicle** 180:1 181:6  
 188:15 192:7  
**versus** 22:16  
 113:18 130:3  
 132:16 133:6  
 146:7 152:3  
**vestibule** 37:13  
 58:19  
**viability** 117:15  
**viable** 105:13 106:6  
 117:7,11,17  
 153:17 159:11  
 160:3 161:9  
**Vice** 4:12 10:21  
 12:5,10,16,20  
 13:4,8,22 14:3  
 17:15 20:15,19,22  
 31:18 42:5 47:4  
 48:3 55:11,22  
 56:2,6,11,20 57:5  
 57:10,15,20 58:5  
 58:16 59:1 66:22  
 67:3 68:4,7,11  
 73:3 79:10 90:3,9  
 108:5,10,14  
 121:11,16,20  
 122:5,9,17 137:20  
 138:6 192:4 193:5  
 193:22 194:7  
 195:21 200:19  
 208:21 209:13  
 210:7 212:22  
 213:4,15 214:2,5  
 217:12 218:5,9,14  
 218:18 223:13,14  
**Vice-Chairperson**  
 1:18  
**view** 138:20 143:5  
 212:1  
**violation** 201:16  
 202:5 216:9,9  
**violations** 188:8  
**Virginia** 20:18  
**virtue** 187:6  
**visit** 27:22 74:14  
**vogue** 171:20

**voiced** 15:17  
**voicemail** 13:2  
**voided** 132:13  
**Vonda** 9:20 15:17  
**vote** 16:21 17:9  
 44:3 161:2  
**voted** 61:21 219:6  
**voting** 60:20  
 222:18

---

**W**

---

**wait** 13:20 56:3  
 73:1 210:18  
**waited** 35:12  
**waive** 14:12,15  
 79:18  
**waiver** 79:8 83:6  
 84:18  
**walk** 149:4 151:1  
 154:1  
**walked** 7:20  
**Walker** 11:17  
**walking** 99:21  
**wall** 93:8,8 98:22  
 99:9 100:3 186:5  
 186:6  
**walls** 93:7 98:20  
 99:6,11 100:11  
 104:13 127:15  
 128:1  
**want** 10:22 22:14  
 23:21 24:13 27:5  
 31:22 32:14 33:2  
 35:20 38:11 41:17  
 47:6 48:7 52:6  
 55:9 60:5,10 61:6  
 61:13 63:12 73:14  
 74:8,11 82:18  
 86:5 87:2,8 90:9  
 90:11,12 91:11,19  
 96:20,22 101:2  
 107:1 121:12  
 123:12 132:18  
 138:1,10 150:16  
 150:22 151:5  
 157:3 162:15,17  
 164:16,21 166:14

167:19 182:22  
 202:22 210:14  
 211:14 215:20  
 216:20 217:19  
 218:2 219:5,11  
**wanted** 31:8 42:4  
 59:6 73:21 94:8  
 108:3,15 133:12  
 133:16  
**wanting** 30:4  
**wants** 126:22  
**Warder** 3:17 78:19  
 81:21  
**warm** 4:15  
**warranty** 152:11  
**Washington** 1:14  
 35:21 151:7  
**wasn't** 23:9 30:16  
 34:21 50:22 69:18  
 115:16 190:15  
**water** 28:15 137:4  
**way** 28:11,16 36:2  
 42:6 44:15 45:12  
 74:12 89:14 90:19  
 91:6 98:16 121:6  
 129:10 138:16  
 139:14 157:1  
 162:11,12 185:20  
 187:14 191:10  
**ways** 45:16  
**wear** 104:2 158:10  
**Wednesday** 78:5,6  
 78:11  
**week** 23:8 209:9,15  
 210:1  
**weekend** 12:22  
 146:18  
**weekends** 151:8  
**weeks** 22:22 209:7  
 209:22  
**weigh** 119:14  
 120:18  
**weighed** 119:10  
**weight** 15:10 60:21  
 60:22 61:14 62:1  
 99:6 124:12 161:4  
**welcome** 14:4 74:1

**went** 4:22,22 11:13  
 23:2 57:16 64:22  
 67:15,21 99:2  
 101:20 102:3  
 133:17 144:7  
 145:15 154:7,16  
 165:10,10 175:8  
 177:9 224:13  
**weren't** 27:19  
 199:22 200:2  
 203:20 204:7  
**west** 121:1 135:5,7  
**we'll** 13:4 16:2  
 91:12 150:13  
 161:20 162:11,12  
 163:3 165:6  
 182:14 196:11,13  
**we're** 4:6 5:3 7:22  
 16:6 29:5 38:12  
 41:15 43:13,20  
 44:3,8 45:17 53:9  
 56:17 62:21 65:1  
 65:13 66:17 71:12  
 75:1 89:10,17  
 94:18 97:2 98:7  
 103:8 106:4,5  
 108:20 113:12  
 114:7 115:13  
 116:12 118:2  
 123:13 129:18  
 152:22 154:21  
 159:4 160:16  
 163:7 167:9,16,22  
 174:21 176:6  
 177:2,4 188:7  
 189:13 190:5,7,9  
 196:1,22 197:5,6  
 199:20 200:2  
 209:17 210:2  
 212:15,20 218:16  
 219:13 220:6,9  
 221:3  
**we've** 9:22 42:17  
 42:18 47:15 74:2  
 74:9 88:14 104:8  
 145:9 150:20  
 161:12 175:19



167:19 168:5,6,7 168:12 219:20 <b>15-month</b> 214:14 <b>166</b> 3:20 <b>169</b> 3:22 <b>17</b> 3:14 <b>17th</b> 222:15 <b>17825</b> 178:9,10 182:18 204:16,18 212:13 <b>17991</b> 25:10,15 26:10 30:16 35:9 35:14 39:4 40:5 49:15 50:9 59:8 62:6 66:7 <b>18</b> 200:6 201:18 202:4 <b>18th</b> 75:11,13 162:14 223:2 <b>18115</b> 146:10,21 147:12 <b>18163</b> 118:10 <b>1819</b> 9:5 <b>18438</b> 168:20 <b>18439</b> 169:2 171:11 <b>18446</b> 3:13 18:6 <b>18447</b> 6:8 7:12 8:1 166:10,18 <b>18448</b> 3:16 78:18 146:10 <b>18449</b> 189:16 <b>18450</b> 3:9 8:5 16:8 <b>18499</b> 173:3,10 <b>18725</b> 212:13 <b>1900</b> 39:5 <b>193</b> 6:19 <b>1958</b> 52:11,16,22 <b>1966</b> 33:22 58:2,3 <b>1980</b> 58:14 <b>1987</b> 28:4 34:12 58:4 64:4 69:3	<b>2:16</b> 165:11 166:2 <b>20</b> 31:21 125:11 137:1 157:12 <b>20th</b> 98:13 <b>20001</b> 1:14 <b>2001.3</b> 8:13 94:14 161:13 <b>2004</b> 97:13 <b>2007</b> 51:8,17 53:5 <b>2009</b> 20:21 <b>2010</b> 136:17 146:14 <b>2011</b> 152:20 176:10 177:10,17,18 178:5 179:17 200:6 207:19 212:7 214:8 <b>2012</b> 1:10 2:22 4:10 169:4 195:1 204:1 204:5 215:14 <b>2013</b> 75:21 <b>21</b> 169:11 198:4 201:14 <b>220</b> 1:13 <b>223</b> 6:13 8:10 <b>24</b> 85:7 151:19 <b>25</b> 19:15 28:3 29:11 29:14,15,20 31:22 34:11 40:3 41:11 64:15 70:14 125:12,13 <b>2575(c)</b> 222:13 <b>27</b> 1:10 2:22 79:7 <b>27th</b> 4:9 5:4 167:21 <b>28</b> 79:7,8 101:19 <b>2829</b> 79:4 <b>2866</b> 18:15	<b>3103.2</b> 18:8 78:20 <b>3104.1</b> 6:10 8:7 <b>3202.3</b> 201:2 <b>3202.6</b> 191:7 <b>33</b> 151:9 <b>3579</b> 3:17 78:18 81:21 <b>36</b> 147:6 <b>3601</b> 80:8 156:14 <b>3603</b> 81:6 146:14 <b>3609</b> 154:4,9 156:14 <b>385</b> 193:15 <b>39</b> 107:8	<b>6B</b> 15:8,10 <b>6-0-0</b> 219:6 <b>60</b> 93:15 188:21 <b>61.5</b> 95:2 <b>65.5</b> 94:17 <b>66A</b> 188:22 <b>68</b> 145:12
<hr/> <b>2</b> <hr/> <b>2</b> 126:16 128:20,22 129:6 131:14 136:1 <b>2,000</b> 40:20	<hr/> <b>3</b> <hr/> <b>3</b> 34:9 126:17 131:15,17 132:1 135:6,16 136:2 140:5 147:6 <b>3rd</b> 222:15 <b>3:17</b> 224:13 <b>30</b> 125:6 151:10 <b>3100</b> 169:3 <b>3101</b> 169:4	<hr/> <b>4</b> <hr/> <b>4</b> 8:14 135:6 <b>4th</b> 1:13 4:7 77:22 169:4 176:10 177:17 178:5 179:17 204:5 215:14 223:1 <b>4:00</b> 222:16 <b>40</b> 107:9 122:4 <b>401</b> 6:14 <b>401.3</b> 18:10 78:22 <b>403</b> 6:15 94:15 161:14 <b>404</b> 6:16 <b>405C</b> 222:11 <b>406</b> 8:12 <b>407</b> 95:5 <b>41</b> 97:13 <b>426</b> 8:14 9:13 <b>428</b> 12:17 13:10,14 <b>430</b> 12:21 <b>441</b> 1:13 4:7 <b>48</b> 85:14 154:6	<hr/> <b>7</b> <hr/> <b>7</b> 3:11 <b>7th</b> 77:8 78:9 164:4 165:4 221:1,2 <b>70s</b> 58:14 67:19 <b>749</b> 142:16 <b>75</b> 3:17 <b>773</b> 6:18
		<hr/> <b>8</b> <hr/> <b>8th</b> 76:1 77:3 220:19 <b>80s</b> 67:19 <b>803</b> 169:11 198:4 201:15 <b>806</b> 8:16	
		<hr/> <b>9</b> <hr/> <b>9th</b> 76:21 78:6,6,11 <b>9:00</b> 92:19 <b>9:30</b> 91:21 <b>900</b> 52:1 53:7 56:12 <b>92</b> 147:7 <b>992</b> 8:15	
		<hr/> <b>6A</b> 22:16 168:21	

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In the matter of: Public Hearing

Before: DCZC/BZA

Date: 11-27-12

Place: Washington, DC

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