

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 18, 2010

+ + + + +

The Regular Public Hearing
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Meridith H. Moldenhauer,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Vice Chairman (NCPC)
NICOLE SORG, Board Member

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
KONRAD SCHLATER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
TRACEY W. ROSE, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
MATT JESICK
PAUL GOLDSTEIN

The transcript constitutes the
minutes from the Public Hearing held on May
18, 2010.

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

2 9:30 a.m.

3 CHAIRPERSON MOLDENHAUER: The
4 hearing will please come to order.

5 Good morning, ladies and
6 gentlemen. This is the May 18, 2010 Public
7 Hearing of the Board of Zoning Adjustments of
8 the District of Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson.

11 Joining me today to my right is
12 Vice Chair Shane Dettman, representative of
13 the National Capitol Planning Commission. To
14 his right is Michael Turnbull, representative
15 of the Zoning Commission. To my left is
16 Nicole Sorg, mayoral appointee.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door.

20 Please be advised this proceeding
21 is being recorded by a court reporter and is
22 also Webcast live. Accordingly, we must ask

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

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

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

18 The order of procedures for
19 special exceptions and variances is: statement
20 and witnesses of the applicant, government
21 reports including Office of Planning and
22 Department of Public Works, reports from the

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1 ANC, parties and persons in support, parties
2 and persons in opposition, and closing remarks
3 by the applicant.

4 Pursuant to section 3117.4 and
5 3117.5, the following time constraints will be
6 maintained. The applicant, appellant, persons
7 and parties in support except the ANC,
8 including witnesses, get 60 minutes
9 collectively. The appellees, persons and
10 parties in opposition except the ANC,
11 including witnesses, get 60 minutes
12 collectively. Individuals get 3 minutes.

13 These time restraints do not
14 include cross-examinations or questions from
15 the Board. Cross-examination of witnesses is
16 permitted by the applicant and the parties.

17 The ANC within which the property
18 is located is automatically a party in a
19 special exception or variance case.

20 Nothing prohibits the Board from
21 placing reasonable restrictions on cross-
22 examinations, including time limits and

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1 limitations on the scope of cross-examination.

2 The record will be closed at the
3 conclusion of each case except for any
4 materials specifically requested by the Board.
5 The Board and the staff will specify at the
6 end of the hearing exactly what is expected
7 and the dates the person must submit evidence
8 to the Office of Zoning. After the record is
9 closed no other information will be accepted
10 by the Board.

11 The Sunshine Act requires the
12 Public Hearing on each case be held in the
13 open before the public. The Board may,
14 consistent with its rules and procedures and
15 the Sunshine Act, enter into Executive Session
16 during or after a Public Hearing on a case for
17 purposes of reviewing the record or
18 deliberating on the case.

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

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1 present do not engage members of the Board in
2 conversation.

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

6 The Board will now consider any
7 preliminary matters. Preliminary matters are
8 those relating to whether a case should or
9 should not be heard today, such as requests
10 for postponement, continuance, withdrawal, or
11 whether the proper adequate notice of a
12 hearing has been given. If you are not
13 prepared to go forward with a case today or if
14 you believe the Board should not proceed, now
15 is the time to raise such matters.

16 Does the staff have any
17 preliminary matters for us?

18 SECRETARY BAILEY: Madam Chair and
19 members of the Board, good morning.

20 CHAIRPERSON MOLDENHAUER: Good
21 morning.

22 SECRETARY BAILEY: Yes, Madam

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1 Chair. It has to do with Application No.
2 18063. This is the application of Zachary and
3 Lydia Plotz, et al. There is a request for
4 postponement of this case.

5 CHAIRPERSON MOLDENHAUER: Okay. I
6 think what we'll do is we'll take that up at
7 the time that we call the case.

8 SECRETARY BAILEY: Thank you.

9 CHAIRPERSON MOLDENHAUER: Will all
10 parties wishing to testify please stand to
11 take the oath?

12 Ms. Bailey, would you please
13 administer the oath?

14 (WITNESSES SWORN.)

15 SECRETARY BAILEY: Thank you.

16 CHAIRPERSON MOLDENHAUER: Ms.
17 Bailey, would you like to call the first case?

18 Those parties can step forward and
19 take a seat at the tables.

20 SECRETARY BAILEY: Madam Chair,
21 this Application No. 18061 is the Application
22 of Stuart and Linda McMeans, pursuant to 11

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1 DCMR Section 3104.1, for a special exception
2 to construct a two-story rear addition to an
3 existing one-family row dwelling under section
4 223, not meeting the lot occupancy
5 requirements (section 403), and the open court
6 requirements (section 406). The property is
7 zoned R-4 and is located at 140 12th Street,
8 Southeast (Square 1014, Lot 806).

9 CHAIRPERSON MOLDENHAUER: Good
10 morning. If everyone can introduce themselves
11 for the record?

12 MS. FOWLER: Hi. My name is
13 Jennifer Fowler of Fowler Architects. I live
14 at 1819 D Street, Southeast.

15 MS. MCMEANS: I'm Linda McMeans.
16 I'm the owner. I live now at 125 Kentucky.

17 CHAIRPERSON MOLDENHAUER: You'll
18 need to turn on your microphone.

19 MS. DAVIS: Okay. Sorry. I'm
20 Sharon Davis and I'm residing at 138 12th
21 Street, Southeast.

22 CHAIRPERSON MOLDENHAUER: You, I

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1 actually don't have any -- are you a party in
2 opposition?

3 MS. DAVIS: Yes.

4 CHAIRPERSON MOLDENHAUER:

5 Actually, I believe you're an individual in
6 opposition. You have not submitted a party
7 status request?

8 MS. DAVIS: No, I didn't.

9 CHAIRPERSON MOLDENHAUER: Okay.

10 So then you'll just have to wait for your 3-
11 minute testimony.

12 MS. DAVIS: Okay.

13 CHAIRPERSON MOLDENHAUER: At this
14 time, we will start off with the applicant's
15 statements.

16 MS. FOWLER: Good morning.

17 I think in this case the record is
18 pretty full. We have support from the ANC.
19 We've got Historic Preservation approval and
20 Capitol Hill Restoration. We do have
21 signatures from both abutting neighbors.

22 However, we were surprised to see

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1 Ms. Davis here this morning, and we're happy
2 to hear what her concerns are and address
3 them. The McMeans have worked with her on two
4 or three occasions, shared the plans with her
5 and tried to answer any questions that she's
6 had.

7 I think I'll leave it at that,
8 rest on the record, and open it to questions.
9 Thank you.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you very much.

12 I think that probably what we will
13 do -- I don't have any questions at this time.
14 We'll go forward and then there may be some
15 questions that are brought up based on Ms.
16 Davis' testimony.

17 At this time, we will open up the
18 discussion for OP's report.

19 MR. JESICK: Good morning, Madam
20 Chair and members of the Board. My name is
21 Matt Jesick.

22 The Office of Planning reviewed

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1 this application using the criteria of section
2 223. We found that the light and air
3 available to neighboring properties would not
4 be negatively impacted by the addition to the
5 residence.

6 We also found that the privacy of
7 adjacent properties would not be impacted,
8 that the addition would not impact the
9 character of the neighborhood, that it would
10 definitely not be visible from 12th Street,
11 and only marginally visible from the public
12 alley.

13 Therefore, the Office of Planning
14 recommends approval of the application. I'd
15 be happy to take any questions.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much, Mr. Jesick. I don't have any
18 questions for you. I think that your report
19 was very thorough.

20 Did you have any chance to
21 actually talk with the ANC? From your report,
22 it seems as though there was no ANC report; is

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1 that correct?

2 MR. JESICK: We have not seen the
3 ANC report as of today.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 Thank you.

6 Are there any other questions from
7 the Board?

8 Seeing none, does the applicant
9 have any questions for OP?

10 MS. FOWLER: No questions at this
11 time. I just wanted to thank him for his
12 thorough report and his time.

13 CHAIRPERSON MOLDENHAUER: Now we
14 will go to the report from the ANC. And I
15 stand corrected; we have our ANC report in our
16 file which is our Exhibit 25, dated April 19,
17 2010.

18 The report states that there was a
19 public meeting which was properly called and
20 noticed on April 13, 2010 with a quorum
21 present, and that ANC 6-B voted unanimously on
22 a 9-0 vote to support the application's

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1 request for special exception for a two-story
2 rear addition under 223.

3 They say that the Commission did
4 not find there to be any negative impact, that
5 they are supporting the application in regards
6 to light, air, and privacy. This would
7 receive our great weight.

8 Let me just ask for clarification,
9 is there anybody from the ANC present?

10 There is not.

11 At this point in time, what we'll
12 do is move on to persons or parties in support
13 or opposition.

14 Is there anybody else here other
15 than Ms. Davis for this case?

16 Seeing none, Ms. Davis, if you'd
17 like, you now have 3 minutes to present your
18 concerns in support or opposition.

19 MS. DAVIS: Okay. I have met with
20 Ms. McMeans. And I just want to make sure
21 that their property -- you know, because it's
22 going to be adjoining mine. I just want to

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1 make sure that, you know, it's not going to be
2 anything -- you know what I'm trying to say.
3 Because their property is going to be right at
4 mine. And I would like to know what, if any,
5 actions I can take.

6 CHAIRPERSON MOLDENHAUER: Ms.

7 Davis, at this point in time, it's actually
8 the opportunity for you to present any of your
9 concerns specifically to the Board, whether
10 you think that the plans as they are have any
11 negative impact on light, air, or privacy. So
12 if that's your concern we actually need to
13 hear that from you. And you need to
14 articulate how you feel as though potentially
15 the adjacency of this project will affect you.

16 MS. DAVIS: Okay. Like I was
17 telling Ms. McMeans, if they build right to my
18 house, I have sometimes -- I have termite
19 problems. And I sometimes have to go over in
20 their yard to manage my property. And I'm
21 wondering if that would hinder me in any way.
22 I just want to be sure.

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1 CHAIRPERSON MOLDENHAUER: Is there
2 anything other than the termites that you're
3 concerned about?

4 MS. DAVIS: Anything. Anything
5 that might come up with my house.

6 CHAIRPERSON MOLDENHAUER: Does the
7 development affect your light or your privacy
8 in any way?

9 MS. DAVIS: I don't think it
10 would, but I'm not sure.

11 CHAIRPERSON MOLDENHAUER: Okay.
12 Do any other Board Members have any questions
13 for Ms. Davis?

14 VICE CHAIRPERSON DETTMAN: Good
15 morning, Ms. Davis.

16 We have before us our Exhibit 8,
17 which is a letter signed by you in support of
18 the application. I just wanted to clarify,
19 because you had described this morning that
20 you were in opposition.

21 Are you generally in support of
22 the application?

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1 MS. DAVIS: I told her at the time
2 I signed, only if it did not attach to my
3 property. But then she came back and said
4 that it would. That's what I'm concerned
5 about.

6 VICE CHAIRPERSON DETTMAN: Okay.
7 On the wall that faces the property, are there
8 any windows along that section?

9 MS. DAVIS: No. Not on mine, no.

10 VICE CHAIRPERSON DETTMAN: So
11 you're not concerned that the addition is
12 going to provide views into your house because
13 there are no windows there?

14 MS. DAVIS: I do have a two-story
15 porch upstairs.

16 VICE CHAIRPERSON DETTMAN: Yes.

17 MS. DAVIS: But she says it's not
18 going to touch that.

19 VICE CHAIRPERSON DETTMAN: Okay.
20 I don't know if you have an extra plan looking
21 at drawing C-3 that maybe we could show Ms.
22 Davis. Or maybe even the one before that, C-

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1 2.

2 Is your two-story porch on the
3 rear of your house, the part that is further
4 into the rear yard than the McMeans' house?

5 MS. MCMEANS: It only comes to
6 here. And yours is several feet back.

7 MS. DAVIS: Okay. So, I'm here.

8 VICE CHAIRPERSON DETTMAN: Did you
9 get clarification on the relationship --

10 MS. DAVIS: Yes, I did.

11 VICE CHAIRPERSON DETTMAN: -- of
12 your porch to the proposed addition?

13 MS. DAVIS: Yes, I did.

14 VICE CHAIRPERSON DETTMAN: Okay.
15 You had mentioned you maybe have a little
16 concern about how the addition is going to
17 attach to your house, because they do share a
18 property line.

19 Did you talk with the applicant at
20 all about how the properties will attach?

21 MS. DAVIS: Yes. And I still
22 wasn't quite sure. Because like I say, I have

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1 to get over there sometimes, and I'll have
2 someone get over and work on my property.

3 VICE CHAIRPERSON DETTMAN: Did you
4 mention that that was a slight concern of
5 yours, and did you reach a level of comfort
6 that you would still be able to do that?

7 MS. DAVIS: I think so.

8 VICE CHAIRPERSON DETTMAN: Okay.
9 Thank you, Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Any
11 additional questions from the Board?

12 COMMISSIONER TURNBULL: I just had
13 a couple. I guess it's a question for both
14 the architect and Ms. Davis.

15 On your property there is a porch
16 which is going to be abutting her property.
17 Where's the nearest window; how far away is
18 that?

19 MS. FOWLER: The wall that's
20 shared is a party wall. So it's a 2-hour
21 rated, solid masonry wall. It's going to
22 extend approximately 15 feet beyond the

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1 proposed construction. There are no windows
2 along that wall.

3 COMMISSIONER TURNBULL: There are
4 no windows now?

5 MS. FOWLER: It's a fire wall.
6 And the McMeans do own half of that wall.

7 COMMISSIONER TURNBULL: I've got
8 you.

9 MS. FOWLER: It will remain open
10 for maintenance, as it is now. It is going to
11 be a screened porch.

12 COMMISSIONER TURNBULL: And open
13 underneath?

14 MS. FOWLER: Yes. Everything is
15 going to be open along that wall because it's
16 a screen porch.

17 COMMISSIONER TURNBULL: I've got
18 you.

19 MS. FOWLER: It's an open air
20 structure. The brick wall will remain exposed
21 and it will, in fact, be protected because it
22 will have a roof over it as well. The

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1 remainder of the wall will be accessible as it
2 always has been.

3 COMMISSIONER TURNBULL: Okay.

4 Thank you.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you very much, Ms. Davis, for your testimony.

7 At this time it goes back to the
8 applicant for any closing remarks.

9 MS. FOWLER: Okay. I think we
10 just addressed that. And I apologize; we'd
11 prefer to have these conversations not on your
12 time, but we weren't aware that there were
13 issues. So I'm glad that we've been able to
14 work that out.

15 I do have a copy of the survey. I
16 don't know if anybody is interested in seeing
17 it. It shows the party wall, the extent of
18 the party wall. I'm happy to take that up to
19 Ms. Bailey, if that's helpful.

20 Other than that I don't think we
21 have any additional comments. Thank you.

22 CHAIRPERSON MOLDENHAUER: I

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1 believe we actually already have the survey
2 which is our Exhibit 10, which does identify
3 the existing party wall on both sides of the
4 structure. So I think that's fine. Thank
5 you.

6 At this point in time we are going
7 to conclude this hearing. I believe that we
8 are ready to go into deliberations on this
9 case.

10 I think the record is extremely
11 full. I think that the applicant, even as
12 evidenced from the dialogue this morning, has
13 worked well with her neighbors in order to try
14 to obtain the support.

15 She has support of the ANC-6B,
16 which is our Exhibit 25. She also has the
17 support of the Capitol Hill Restoration
18 Society, which indicated that they were also
19 in support of the application, our Exhibit 27.

20 The Office of Planning submitted
21 their report which is our Exhibit 28, which
22 also indicated that they would recommend

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1 approval of the 223 relief to construct a two-
2 story addition, which would require 403 relief
3 to allow a 66.6 percent lot occupancy, and
4 under 406 to allow a 5-foot wide court.

5 I think that any potential
6 concerns raised by Ms. Davis were addressed
7 and that, in general, Ms. Davis' concerns were
8 not actually associated with our standard of
9 review on the case in regards to light, air,
10 or privacy. Rather, they were issues that we
11 were happy to see the applicant work out with
12 Ms. Davis in regards to maintenance of the
13 exposed joint party wall that both property
14 owners share.

15 In addition to that, there were
16 statements that there are no windows on the
17 party wall. So there really would be no
18 concerns about privacy, light, or air
19 concerns.

20 They also received a letter from
21 their other neighbors in support of the
22 application, which we have in our record.

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1 Based on that, I would be willing
2 to throw out a motion to support the
3 application if there's no additional
4 deliberation.

5 COMMISSIONER TURNBULL: Second.

6 CHAIRPERSON MOLDENHAUER: Motion
7 has been made and seconded.

8 If there's no further
9 deliberation, all those in favor say aye?

10 ALL: Aye.

11 CHAIRPERSON MOLDENHAUER: Ms.
12 Bailey, could you please read back the record
13 of the vote?

14 SECRETARY BAILEY: Madam Chair,
15 the vote is recorded as 4-0-1 to grant the
16 application. The motion was made by Ms.
17 Moldenhauer, seconded by Mr. Turnbull. Mr.
18 Dettman and Ms. Sorg support the motion. The
19 third mayoral appointee is not sitting at this
20 time.

21 CHAIRPERSON MOLDENHAUER: Since
22 there were no parties in opposition, I would

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1 request that we waive our requirements for a
2 full order and have a summary order.

3 SECRETARY BAILEY: A summary
4 order, Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you very much.

7 Ms. Bailey, could you please call
8 the next case and those parties step forward?

9 SECRETARY BAILEY: Sorry, Madam
10 Chair.

11 Application No. 18063. This is
12 the Application of Zachary and Lydia Plotz, et
13 al, pursuant to 11 DCMR Section 3104.1, for a
14 special exception to allow a rear deck
15 addition to an existing flat (two-family) row
16 dwelling under section 223, not meeting the
17 lot occupancy (section 403), rear yard
18 (section 404), and court (section 406)
19 requirements. The property is zoned R-4 and
20 is located at 3420 13th Street, Northwest
21 (Square 2828, Lot 25).

22 CHAIRPERSON MOLDENHAUER: Good

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1 morning. What we'll do is if we can just go
2 down the row, and if you can introduce
3 yourself and provide your home address,
4 please?

5 MR. HASKELL-HOEHL: Good morning.
6 My name is Micah Haskell-Hoehl. I'm the
7 resident at 3420 13th Street, Northwest, Unit
8 2.

9 MS. FULLER: Good morning. I'm
10 Carlynn Fuller, the attorney representing Mr.
11 Haskell-Hoehl. My address is 1127 Abbey
12 Place, Northeast, Washington, DC.

13 MS. ACOSTA: Good morning. My
14 name is Wendy Acosta. I'm the owner of
15 Apartment 1, 1300 Monroe Street, the
16 opposition party requesting party status.

17 MR. NOKER: Good morning. My name
18 is Jason Noker. I am Wendy's husband. I
19 reside at 1300 Monroe Street, Northwest,
20 Apartment 1. I'm also an opponent.

21 CHAIRPERSON MOLDENHAUER: Good
22 morning. We have two preliminary matters in

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1 this case.

2 First, we have the preliminary
3 matter of party status. There were party
4 status applications submitted by both Mr.
5 Noker and Ms. Acosta, which are our Exhibits
6 24 and 25.

7 You both live at the same
8 property, correct?

9 MR. NOKER: Yes, ma'am.

10 CHAIRPERSON MOLDENHAUER: Okay. I
11 think for purposes of convenience, if you
12 would both voluntarily join your party status
13 application instead of granting two separate
14 party status applications, that probably would
15 make a more efficient process.

16 Is that something that you'd be
17 willing to do?

18 MR. NOKER: We're amenable to
19 that, yes.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you. Procedurally, you have to make that
22 motion. So what we'll do is we will look at

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1 one joint application for party status.

2 I think you have presented that
3 you two are adjacent to the property; is that
4 correct?

5 MS. ACOSTA: Correct.

6 MR. NOKER: Yes, ma'am.

7 CHAIRPERSON MOLDENHAUER: Okay. I
8 think you definitely satisfy the requirements
9 in order to obtain party status. I believe
10 the rest of my colleagues are in agreement on
11 that.

12 Is there any opposition for
13 granting party status from the applicant?

14 MS. FULLER: No.

15 CHAIRPERSON MOLDENHAUER: The
16 motion is granted for party status.

17 Next, we move on to the issue of
18 requesting a postponement. A postponement was
19 requested in our Exhibit 30 by the applicant.

20 There was also an opposition to
21 the postponement submitted, our Exhibit 36.

22 What we'll do is we'll hear from

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1 the applicant in regards to any issues they
2 have for postponement. Then we'll hear from
3 the party in opposition as to why a
4 postponement should not be granted.

5 MS. FULLER: Thank you, Madam
6 Chair.

7 The owners nor the agent, Scott
8 Zimmerman, received notice of the hearing.
9 Therefore we never picked up the placards to
10 post the property. I guess we kind of found
11 out inadvertently from the Office of Planning
12 that the hearing had been set for today, and
13 that was about 2 weeks prior to today.

14 Because of that, we were not able
15 to adequately prepare to present to the ANC.
16 We're working on engineering submittals to
17 send to the neighbor and the ANC.

18 We also are planning to meet with
19 the neighbor, the adjacent owner, to go over
20 their concerns in more detail, and to try and
21 come up with some solutions. We know that
22 privacy is one of their main concerns. So we

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1 are exploring options to address some of those
2 concerns.

3 We just did not have time to
4 prepare to present those options to them prior
5 to today, or to the Board today, because we
6 did not get the notice and therefore the
7 property was never posted for this hearing.

8 CHAIRPERSON MOLDENHAUER: Okay.
9 Thank you very much.

10 At this time you can present any
11 argument that you have in opposition.

12 MR. NOKER: Yes. We would
13 actually like this to not be postponed, so we
14 would like to do it today. I feel like when
15 this started I had a full head of hair.
16 That's not actually the case, but it's gone on
17 for so long.

18 I've actually got a couple of
19 presentations here. So we can just go on one
20 at a -- it's two pages that really go through
21 the timeline of when this started and how we
22 got to today. Which kind of gets you to the

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1 point of it's almost laughable to say that
2 there hasn't been enough time. It's been
3 about 15 months.

4 July 7, we have a letter from Matt
5 LeGrant, Zoning Administrator, saying that he
6 sent certified mail to the owners at that
7 property. Within that last 15 months, we have
8 not been contacted, we have not been
9 approached.

10 The only reason that they're even
11 considering to approach us today is because
12 the Office of Planning said this was illegal;
13 the ANC voted against it. So now it's, well,
14 let's go to Plan B.

15 CHAIRPERSON MOLDENHAUER: Well, I
16 guess my -- I'm just going to focus you a
17 little bit. The issue here is whether or not
18 we grant the postponement. And I would need
19 to understand why that would prejudice you;
20 not the merits of the case but more how a
21 postponement would prejudice you.

22 MR. NOKER: Okay. Well, a couple

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1 of things. I would say that first, though,
2 let's look at the merits of the postponement.
3 Because this started in February 2009, okay.
4 So the very first time that we contacted the
5 District of Columbia and the DCRA informed
6 that property that this deck was illegally
7 constructed was February 2009. Not February
8 2010; February 2009.

9 So the fact that they say there
10 hasn't been enough time -- they submitted the
11 applications. They submitted the -- they're
12 the ones who submitted. It's not like we
13 submitted it and we're, you know, pulling the
14 wool over their eyes.

15 In terms of how this would
16 prejudice, I'm not sure that it would
17 necessarily prejudice me. But I've taken a
18 day off today and so has my wife. There's
19 only so many days off that you have in a year
20 and, you know, these are precious to us.

21 Beyond that, there's still a
22 concern of privacy. There's still a concern

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1 of security. And it's only a matter of time
2 until we get robbed or somebody breaks in.

3 And beyond that, our lives have
4 been on hold pending this day. This is our
5 day. We've dealt with every single element of
6 this with the District of Columbia on the
7 DCRA, the OZA, the Office of Planning, the
8 ANC, and now we're at the BZA. This is our
9 day.

10 CHAIRPERSON MOLDENHAUER: Let me
11 just interrupt you. Has this issue --

12 MR. NOKER: I'm sorry. I'm
13 rambling.

14 CHAIRPERSON MOLDENHAUER: That's
15 why I'm going to interrupt you. Has the ANC
16 heard or discussed this issue?

17 MR. NOKER: Yes, ma'am. They
18 voted --

19 CHAIRPERSON MOLDENHAUER: At what
20 date?

21 MR. NOKER: -- not to support the
22 request.

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1 MS. ACOSTA: That was actually
2 admitted last week. You should have that, as
3 well as a waiver for the 7 days.

4 CHAIRPERSON MOLDENHAUER: I know.
5 I have that. But I'm just trying to ask some
6 additional follow-up questions.

7 They did vote, but was there a
8 presentation by the applicant at that ANC
9 meeting?

10 MR. NOKER: Yes, ma'am. I'm not
11 sure --

12 CHAIRPERSON MOLDENHAUER: Now I'm
13 going to jump over here to the applicant and
14 ask you some questions.

15 MR. HASKELL-HOEHL: There was a
16 presentation by the applicant at the ANC
17 meeting.

18 I would just like to state for the
19 record that there is some controversy about if
20 the motion that the ANC voted is accurately
21 reflected in the letter that they provided to
22 the BZA. And I have not heard back from our

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1 ANC Commissioner to assuage my concerns that
2 that letter does accurately reflect the motion
3 voted on.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 But I guess I'm just trying to -- your
6 testimony that one of the reasons why you want
7 to postpone is because you want to actually
8 present to the ANC. But now you're saying
9 that you did present to the ANC previously?

10 MR. HASKELL-HOEHL: Madam Chair --

11 VICE CHAIRPERSON DETTMAN: Madam
12 Chair, I'm sorry to interrupt. But before we
13 get too far down the road I just need
14 something clarified.

15 I need to fully understand who is
16 representing who, who is the property owner,
17 and what not. Because we have a C of O that
18 was granted to Scott Zimmerman; we have a
19 letter that authorizes Scott Zimmerman to
20 represent you all.

21 Who is Scott Zimmerman in terms of
22 the ownership of the property?

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1 MR. HASKELL-HOEHL: Scott
2 Zimmerman was the builder who built the decks
3 prior to our purchase of the property. We
4 have made every effort to hold him accountable
5 for the work that he's done and to guarantee
6 the work that he's done. And we have held his
7 feet to the fire to submit the retroactive
8 permit applications, the retroactive
9 application to BZA for the special exceptions
10 and the variance.

11 VICE CHAIRPERSON DETTMAN: Okay.
12 So the subject property is a two unit condo
13 building?

14 MR. HASKELL-HOEHL: Yes.

15 MS. FULLER: That's correct.

16 VICE CHAIRPERSON DETTMAN: And Ms.
17 Fuller, you're representing --

18 MS. FULLER: I'm here as a --

19 VICE CHAIRPERSON DETTMAN: -- just
20 Mr. Hoehl?

21 MS. FULLER: Mr. Hoehl is here on
22 behalf of all the owners. So I'm representing

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1 all of the owners.

2 VICE CHAIRPERSON DETTMAN: Do we
3 have a letter of authorization that's
4 authorizing you to represent both property
5 owners of the unit?

6 MS. FULLER: It's my understanding
7 that they did --

8 MR. HASKELL-HOEHL: I signed and
9 scanned in a letter about approximately a week
10 ago that I believe was delivered to the BZA.

11 VICE CHAIRPERSON DETTMAN: Okay.

12 MS. FULLER: Yes.

13 MR. HASKELL-HOEHL: I have not
14 seen my application since about a week ago.

15 MS. FULLER: And just to kind of
16 clarify, it's my understanding that the
17 property owners found out about the ANC
18 meeting at the last minute, so there was not
19 a full presentation at that time. They --

20 VICE CHAIRPERSON DETTMAN: Okay.
21 I'm just trying to get clear who is
22 representing who. Because it's the property

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1 owners that can bring an application --

2 MS. FULLER: Right.

3 VICE CHAIRPERSON DETTMAN: -- to
4 the BZA.

5 I need a clarification on whether
6 this was rental or not. So, it's not?

7 MS. FULLER: They are owners.

8 MR. HASKELL-HOEHL: May I speak
9 for 15 seconds to the request for the
10 postponement?

11 CHAIRPERSON MOLDENHAUER: I want
12 to make sure that --

13 VICE CHAIRPERSON DETTMAN: We're
14 good.

15 CHAIRPERSON MOLDENHAUER: Okay.
16 As long as Mr. Dettman has clarified the
17 issues that he feels comfortable with.

18 But actually, you did bring up a
19 point that I now just want to jump back on.
20 This application was submitted by Mr.
21 Zimmerman in March 2010.

22 Were you an owner at that time?

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1 MR. HASKELL-HOEHL: Yes.

2 CHAIRPERSON MOLDENHAUER: Okay.

3 So he was submitting it then as your agent?

4 MR. HASKELL-HOEHL: Yes.

5 CHAIRPERSON MOLDENHAUER: Okay.

6 It is a little convoluted. But now you're
7 moving forward because obviously he was not
8 the owner; you're the owners as a condominium
9 association?

10 MR. HASKELL-HOEHL: Yes.

11 CHAIRPERSON MOLDENHAUER: Okay.

12 Go ahead if you'd like to take a few minutes
13 to present. You said you wanted to make some
14 comments on the record?

15 MR. HASKELL-HOEHL: No. All I
16 wanted to say was that I find the current
17 situation extraordinarily regrettable. I wish
18 that I wasn't here before you today asking for
19 this extension.

20 The status quo really is not an
21 acceptable situation to me or Jessica Lemke,
22 who is my girlfriend and lives with me, or the

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1 downstairs neighbors, Zachary and Lydia Plotz.
2 It's not an acceptable situation for there to
3 be such conflict between neighbors.

4 And it's not our intent to be
5 stringing this out for another several months.
6 Our intent is strictly to try to be able to
7 prepare in the manner that we have prepared
8 for every other step in this process that
9 we've also been engaged in for 15 months.

10 If we came before you today and
11 had the full hearing, our concern would be
12 that we are unprepared after also being
13 engaged with the DCRA and the administrators
14 over there, the builder, and everyone else
15 through the process for 15 months, only to
16 come before you today unprepared.

17 CHAIRPERSON MOLDENHAUER: I guess
18 one of my concerns is that your request
19 actually asks for a postponement until
20 September. Now, I am not inclined one way or
21 another, but I do think September is --

22 MR. HASKELL-HOEHL: Madam Chair --

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1 CHAIRPERSON MOLDENHAUER: If you
2 can explain why; is it connected with the ANC
3 meetings?

4 MR. HASKELL-HOEHL: That was at
5 the advice of Mr. Nero to request that it be
6 moved all the way back to September.

7 CHAIRPERSON MOLDENHAUER: Okay.

8 MR. HASKELL-HOEHL: But we would
9 be amenable --

10 MS. FULLER: We were told that was
11 the next available date. That's the only
12 reason --

13 MR. HASKELL-HOEHL: We would be
14 amenable to a sooner date.

15 MS. FULLER: Right. We are
16 amenable to a sooner date but we were told
17 that that was the next available date. So
18 that's why that time frame is specifically
19 listed, because that's what we were told.

20 CHAIRPERSON MOLDENHAUER: It did
21 give rise to some concerns as to the length of
22 time.

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1 MS. FULLER: Right. That's not
2 our request.

3 CHAIRPERSON MOLDENHAUER: If we
4 were to postpone this potentially to July 13,
5 would that be something -- that would be the
6 next available date that we would be able to,
7 based on my review of our calendar.

8 Would that be something that, Mr.
9 Noker, you be amenable to, that closer date?
10 It's kind of compromise but I see --

11 MR. NOKER: I mean, the way we
12 look at it, you know -- and maybe I'm wrong on
13 this because I'm not a Zoning expert. But the
14 DCRA issued basically the notice that you have
15 14 days to remove the structure or to apply
16 for the permit. This was over a year ago.

17 So if we want to do it on July 13,
18 I think that's great. We could do it in
19 September, that's fine. But let's enforce the
20 order to remove the structure first, and then
21 we'll be amenable to changing the date for the
22 hearing. I think that's fair to all parties

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1 because it gives them to prepare and it gets
2 the structure out of our window.

3 CHAIRPERSON MOLDENHAUER: I hear
4 your perspective. But unfortunately, as a
5 Board we don't have the authority to dictate
6 that. Our authority is only to review the
7 application before us. I know it's
8 frustrating from the perspective of different
9 government agencies. But DCRA would be the
10 only agency that would have the authority
11 to --

12 MR. NOKER: Okay.

13 CHAIRPERSON MOLDENHAUER:
14 -- require a demolition of an existing
15 structure. So you would have to obviously
16 work with them on that issue. We can
17 simply --

18 MR. NOKER: So what would change
19 between now and July 13 other than, you know,
20 we have to change all of our schedules around
21 and come back down here?

22 I mean, this really does consume

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1 us. Like, this is what we talk about at
2 dinner at night; this is what we talk about
3 when we go to sleep. I mean, this really is
4 all-consuming. And it's been the most
5 stressful experience that I've probably ever
6 had.

7 So what is really going to change
8 between now and July 13?

9 CHAIRPERSON MOLDENHAUER: It would
10 just --

11 COMMISSIONER TURNBULL: Madam
12 Chair, I'm going to -- actually, that's a
13 really good question.

14 What does the applicant need to
15 prepare for? The deck is there. I mean, what
16 do you have to prepare for?

17 MR. HASKELL-HOEHL: If I may --
18 it's an excellent question.

19 One thing that I want to note is
20 that we made our appearance before the ANC
21 last week. I have records of my outreach,
22 unsuccessful, to my ANC Commissioner starting

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1 May 2009. I was unable to get in touch with
2 someone from the ANC who would get back to me
3 until last year.

4 There was turnover; there's
5 admitted leave, you know. There were issues
6 with our Commissioner having not fulfilled
7 other duties. He was not very responsive.
8 And I've not been able to even just make a
9 case before the ANC in a proactive manner. So
10 I feel that that is indicative of the
11 situation that we are in.

12 Again, I find it extraordinarily
13 regrettable that we're not prepared today.
14 But this is due to the lack of receipt of
15 notice. It is not due to any intention on the
16 part of myself or my downstairs neighbors to
17 try and slow up the process. Again, I find it
18 completely, you know -- an untenable
19 situation.

20 MS. FULLER: If I may -- just to
21 go over some of the technical issues. The
22 developer, Mr. Zimmerman, procured a private

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1 survey of the property. We have since met
2 with the DCRA Surveyor's Office and discovered
3 that that survey is incorrect.

4 So a lot of the drawings that were
5 submitted, which we now know are incorrect,
6 were based off of that survey. We have to fix
7 that. We have to get the correct dimensions
8 of the lot so that we can accurately reflect
9 the correct dimensions of the deck, so that we
10 can explore engineering options as to whether
11 the deck can be reduced, which may alleviate
12 some of the concerns of the neighbors. But we
13 haven't been able to explore those options up
14 to this point because we are just now
15 discovering it.

16 When Ms. Brown brought it to the
17 attention that this is not right -- "Your
18 sizes are incorrect" -- that's when we began
19 to investigate with DCRA Office of the
20 Surveyor: is the survey correct?

21 This is what the builder relied on
22 when constructing the deck, when doing the

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1 dimensions, and what we relied on when we
2 submitted the package. So we even have to
3 amend what we've submitted because it is not
4 an accurate reflection of the deck or the
5 property as it stands right now. So those are
6 just some of the technical issues.

7 There have been attempts to reach
8 out to the adjacent owner, to have a meeting,
9 to discuss some of the concerns. Mr. Flack
10 has left several messages; Cris Flack has left
11 several messages. There's been emails from
12 the owners to the adjacent neighbor.

13 As Mr. Hoel says, it's no one's
14 intent to not be a good neighbor. We're
15 trying to come to some resolutions before we
16 present. It would be great if we could come
17 back to you and say these are the options
18 we've explored; this is how we've tried to
19 work with the neighbor; this is how we've
20 tried to alleviate some of the concerns. But
21 at this point, we cannot even say that
22 because --

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1 CHAIRPERSON MOLDENHAUER: My major
2 concern is it sounds as though your plans are
3 not even solidified. Obviously there's an
4 existing structure. But we have an
5 application before us to permit an addition of
6 a three-story rear deck.

7 MS. FULLER: Yes.

8 CHAIRPERSON MOLDENHAUER: Now,
9 that's the Zoning issue. We're just looking
10 at the Zoning issue, not the illegal
11 construction. We're looking at what you're
12 currently requesting.

13 MS. FULLER: Yes.

14 CHAIRPERSON MOLDENHAUER: If you
15 don't have accurate plans, you don't know what
16 you're asking for, and I don't know how we can
17 forward. Because if we go forward and then
18 all of a sudden, tomorrow you change the
19 plans, or within the time frame between when
20 we actually make a decision you change the
21 plans, then they have to come back again.

22 I don't want to see a long time

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1 frame here. What's the time frame that you
2 would require to work with an architect, get
3 some plans solidified, and then have final
4 versions of what you'd be looking for in
5 regards to requests?

6 MS. FULLER: Those plans are being
7 done now. Mr. Flack is here. I can have him
8 submit a witness card and come and speak to
9 when they'll be completed.

10 But surely, if July 13 is your
11 next available date, we will definitely be
12 ready by that day. Two weeks from today,
13 those plans will be finished and submitted.

14 CHAIRPERSON MOLDENHAUER: I think
15 what we're going to do is -- while I do
16 understand the stresses of living with the
17 situation, I think we've already kind of heard
18 all of the arguments. It is stressful and it
19 does take time.

20 However, we definitely want to
21 make sure that we are not going to make a
22 determination and then the plans will change.

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1 Any decision that we would make today would be
2 reliant upon plans. If those plans change,
3 we'd have to come back, and it's not an
4 efficient judicial process to do that.

5 What I will say is that we will
6 grant the postponement until July 13. We will
7 ask that within 2 weeks, you provide plans to
8 all parties.

9 You guys are now a party. Make
10 sure that you guys get a copy of any revised
11 plans. I would make sure that you have a new
12 submission to the ANC, present that fully.

13 One the issues that is currently
14 presented procedurally for us is we need a
15 letter from the condo association authorizing
16 whether it's Ms. Fuller or somebody else to
17 represent the association. Right now the
18 application is under Mr. Zimmerman's name, so
19 that will also need to be signed by Mr.
20 Zimmerman, identifying that he was the
21 applicant as an agent of the owners. So
22 please make sure that the record is full in

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1 regards to who is authorized to speak before
2 the Board at the next meeting.

3 MS. ACOSTA: Ms. Chairwoman, I
4 just want to say something to that because I
5 guess I'm trying to understand the timeline
6 from a stall and delay perspective.

7 To us, there's also a personal
8 timeline. We got married in November and
9 we're thinking of starting a family. And that
10 second bedroom would be where we would have
11 our child.

12 By the time the plans come around,
13 you know, next time and the time after that,
14 there's -- according to what I've seen and the
15 exhibits that have been submitted, Mr. Scott
16 Zimmerman has actually had a lot of time to
17 submit various plans. At some point, one of
18 the plans seems that, clearly, it just shows
19 the proposed, and is clearly not what the
20 property there is.

21 So what I guess we're trying to
22 figure out is, okay, when are your next plans

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1 coming and what are they going to do with this
2 delay? For me, it's personal. We want to
3 start a family. And when July comes around,
4 then what? How long is that going to take?

5 MR. NOKER: I actually just have
6 one question procedurally, just because I'm a
7 novice to this.

8 On July 7, 2009, Matt LeGrant, who
9 is the Zoning Administrator, wrote a letter to
10 the owners notifying them that their decks
11 were illegal and they had 30 days to apply for
12 a building permit or a demolition permit.

13 So that 30 days, you're going to
14 turn into 365 days because they -- so if you
15 just continually submit plans and say, "No,
16 no, no. I changed my mind. No, no, no. I
17 changed my mind," that 30-day clock doesn't
18 keep resetting. I mean, that should have been
19 it. It should have been it on August 7.

20 CHAIRPERSON MOLDENHAUER: Again,
21 that is something that DCRA has -- we are
22 looking simply at an application for relief.

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1 We are not looking at the issue of the illegal
2 deck or the request by DCRA. Unfortunately,
3 I know that they're all connected from a
4 personal perspective, but we can only address
5 the issues that are before us.

6 MR. NOKER: Why can't we do it
7 today, then? I guess that's what I keep
8 coming back to.

9 CHAIRPERSON MOLDENHAUER: Because
10 we approve, or we review and analyze based on
11 the Zoning Requirements, a specific plan. But
12 the applicant is saying that plan is going to
13 change, hopefully benefitting you. Hopefully,
14 they're going to change it to improve the
15 conditions. And I don't know what's going to
16 happen but that's what I've heard in
17 testimony.

18 MR. NOKER: I apologize. It's
19 just very emotional for us. I apologize.
20 We'll come back.

21 MS. ACOSTA: So I guess I'm
22 confused, because they're acting like, "Oh, we

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1 didn't know." But on March 9, they actually
2 -- you have this exhibit. A notary public --
3 they have a signed --

4 CHAIRPERSON MOLDENHAUER: I
5 understand. I think at this point in time
6 what we're going to do is we're going to stick
7 with the July 13 date. I definitely
8 understand your concerns.

9 I definitely would say to the
10 applicant, you guys now have time. You guys
11 are new homeowners in a condo association.
12 Work with your neighbors. I would like to see
13 new plans. You have plenty of time.

14 You said your plans will be done
15 in 2 weeks?

16 MS. FULLER: Yes.

17 CHAIRPERSON MOLDENHAUER: In 2
18 weeks we'd like to have a submission submitted
19 to the Board and all the parties. That way if
20 there's changes from those plans or the other
21 parties are still in opposition to those
22 plans, you're going to have time between the

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1 date that you get the plans in 2 weeks to work
2 with them or to express any concerns you have.

3 I hope that there will be an
4 adequate dialogue, or at least some
5 information that has gone back and forth
6 between now and July 13 when you come before
7 the Board.

8 MS. FULLER: Yes. Thank you.

9 MR. HASKELL-HOEHL: Thank you.

10 COMMISSIONER TURNBULL: Madam
11 Chair, could I just say that on these
12 drawings --

13 What I would like to see is not
14 just a drawing of your building. I want to
15 see the outline and relationships of all the
16 adjacent buildings, your neighbors, and that
17 backyard. I'd like to have a clear
18 understanding of the impact of this deck on
19 all of the neighbors. I'd like to see that in
20 plan and I'd like to see an elevation of this.
21 I want a set of documents that we could look
22 at and actually gauge the total impact on the

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1 other properties.

2 MS. FULLER: Okay. We can provide
3 that.

4 COMMISSIONER TURNBULL: Thank you.

5 CHAIRPERSON MOLDENHAUER: I think
6 that's a very good point. We should also see
7 any windows. So make sure that any diagrams
8 show windows or accessibility, the elevation
9 in regards to how close the equal level of
10 different windows to the deck risers, and
11 things to that effect.

12 MS. ACOSTA: If you had my picture
13 you would know that, how close they are.

14 CHAIRPERSON MOLDENHAUER: We
15 have --

16 VICE CHAIRPERSON DETTMAN: This is
17 your opportunity to build an even stronger
18 case and documentation. Use the time
19 effectively.

20 MR. NOKER: We actually brought
21 the presentations. Do we submit them now?

22 CHAIRPERSON MOLDENHAUER: You can

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1 submit that now so we can review it, yes. And
2 then if you want to submit something at a
3 later date, we would request that you submit
4 it at least 14 days prior to the hearing next
5 time so we can have time to review it.

6 MR. NOKER: Okay. And then just
7 procedurally, I mean, because this is -- I
8 guess this is a dry run for us. But when we
9 come back, what is the format; is it
10 everything is submitted in advance, or can we
11 bring charts or pictures?

12 CHAIRPERSON MOLDENHAUER: What
13 will happen is the applicant will present
14 their case. You will then have an opportunity
15 to cross-examine, ask questions of the
16 applicant.

17 You will then have an opportunity
18 to present your own case in opposition, at
19 which time you can use diagrams, PowerPoint
20 presentations. You will have 60 minutes to
21 present your opposition case.

22 We would request that you provide

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1 documentation to us in advance. You can work
2 with the Office of Zoning for that.

3 Then they would have the
4 opportunity to cross-examine you on specific
5 issues.

6 I would say look at the Office of
7 Planning report in regards to the requirements
8 that they have to meet and their burdens. You
9 can address the legal issues and the factual
10 issues that will be relevant to the case.

11 MR. NOKER: Okay. Thank you.

12 CHAIRPERSON MOLDENHAUER: Okay.

13 MS. ACOSTA: Wait, I'm sorry. How
14 is that different from everything that we've
15 submitted so far for your docket? I just want
16 to know because, you know, we have submitted
17 a lot of the pictures. And the Office of
18 Planning, you have that copy. I just want to
19 understand for next time, you know, what
20 additional --

21 CHAIRPERSON MOLDENHAUER: There's
22 nothing additional. It's just a matter of it

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1 will be an actual hearing, at which time you
2 would present those pictures and present
3 testimony in conjunction with that.

4 Does the applicant have any
5 questions?

6 MR. HASKELL-HOEHL: No. Thank you
7 for your guidance.

8 MS. GLAZER: Madam Chair, I'm
9 sorry to interrupt. I know the Board set a
10 time for modified plans to be submitted. Did
11 the Board also set a time for the
12 authorization documents?

13 CHAIRPERSON MOLDENHAUER: All of
14 that should be submitted at the same time. So
15 we're just going to provide 2 weeks. That way
16 we have everything together from the
17 applicant, including Mr. Zimmerman authorizing
18 the Board, the condominium association, the
19 condominium association hiring Ms. Fuller, and
20 identifying all of the -- just outlining the
21 ownership and everything so that that's clear
22 in the record. That would be appreciated.

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1 MS. FULLER: Okay.

2 SECRETARY MOY: Madam Chair, two
3 more items. I'm sorry to belabor this. The
4 2-week period would take us to Tuesday, June
5 1. I just want to have that date for the
6 record.

7 MS. FULLER: Thank you.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much. Thank you to everybody.

10 I think we can call the next case
11 for the morning.

12 MS. ROSE: The next case is
13 Application No. 18060 of Abigail Murray,
14 pursuant to 11 DCMR 3103.2, for a variance
15 from the lot width and lot area requirements
16 under subsection 401.3, and a variance from
17 the lot occupancy requirements under section
18 403, to allow the construction of two semi-
19 detached one-family dwellings in the R-2
20 District at premises 4506 Edson Place,
21 Northeast [Square 5132, Lot 160 (83 and 84)].

22 CHAIRPERSON MOLDENHAUER: Good

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1 afternoon. Or good morning still, I guess.

2 How are you doing?

3 MS. MURRAY: Fine. How are you?

4 CHAIRPERSON MOLDENHAUER: Good.

5 If you can introduce yourself for the record,
6 please?

7 MS. MURRAY: I'm Abigail Murray.

8 CHAIRPERSON MOLDENHAUER: Ms.

9 Murray, can you please state your home
10 address?

11 MS. MURRAY: My home address is
12 16604 Peach Street in Bowie, Maryland.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 We have your application before us. I see
15 here we have some general questions. I think
16 that we need some additional information from
17 you.

18 At this point in time, you can
19 present your case in regards to the standards
20 of relief that you're requesting. Are you
21 prepared to do that?

22 MS. MURRAY: Yes.

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1 CHAIRPERSON MOLDENHAUER: Okay.

2 Then I'll let you go forward and present.

3 We'll ask questions after you've completed.

4 MS. MURRAY: Okay. Well, what I
5 want to do is construct two semi-detached
6 homes on the land that I own there. It wasn't
7 until I saw two newly constructed homes built
8 just three doors away. I'm a licensed Realtor
9 in DC and Maryland. I went into those
10 properties and I saw how beautiful they were
11 on the inside, and it gave me motivation to do
12 the same thing.

13 So I went down to DCRA and I got a
14 copy, which is public information, of the
15 plans that were approved by Zoning. So I was
16 shocked when I submitted my plans and they
17 said that what I'm trying to do wasn't allowed
18 in the area, in the R-2 Zone.

19 So I'm just here going through the
20 formality, not trying to go the route that
21 they went, which was -- I think they did
22 something like an expedite or they didn't go

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1 through the rouse. But I want to do it right.

2 What I'm doing is creating jobs
3 and I'm building two nice homes for the
4 community. It's going to be building the
5 neighborhood. It's going to, you know --
6 everything around there are two semi-detached
7 homes. It's only one home three doors down
8 that is one single family home. The lot area,
9 the lot width is the same for all of those
10 semi-detached homes on that block. So I'm
11 just wanting to do the same thing.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 Thank you very much, Ms. Murray.

14 Let me just kind of provide you
15 with some framework as to the process. I
16 understand that you're saying that a lot of
17 the other homes are similar. But based on
18 Zoning, you actually are not permitted as a
19 matter-of-right to do a semi-detached home.
20 You have to seek a variance, which is what
21 you're before the Board today for, for lot
22 area and lot width.

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1 You as the applicant actually have
2 to show and prove to the Board a three-prong
3 test:

4 (1) that the lot has some
5 exceptional or unique circumstances to the
6 lot,

7 (2) that those exceptional or
8 unique circumstances -- whether it's
9 narrowness, shallowness, the shape, things to
10 that effect -- create a burden for you to
11 follow or to apply the Zoning Regs as they are
12 strictly interpreted; and,

13 (3) that that relief would not
14 create a public detriment to the community
15 that you're surrounding and in your area.

16 Have you had a chance to review
17 the Office of Planning report?

18 MS. MURRAY: Yes, I did. I have
19 it in front of me.

20 CHAIRPERSON MOLDENHAUER: Okay.

21 MS. MURRAY: There's no other land
22 for me to purchase to do this. The community,

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1 the ANC, is in support. And the neighbors on
2 the street, and the streets before and after,
3 are in support. And everything on that block
4 is the same. So you know, I feel as though I
5 met those criteria.

6 CHAIRPERSON MOLDENHAUER: Okay.
7 So you're saying that the size of the lot, no
8 matter what, you could never expand upon that
9 lot and you would need some sort of variance
10 relief in order to build.

11 Could you maybe explain to me if
12 you were to build a single family home versus
13 a semi-detached home, would you still need the
14 same type of relief?

15 MS. MURRAY: Well, the problem is
16 that a single family home would not develop
17 the community. It wouldn't look -- it would
18 stick out, in my opinion, like a sore thumb.
19 It's not like everything would be uniform. It
20 wouldn't look beautiful.

21 And to build a single family, I
22 wouldn't be interested in doing that. I

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1 wouldn't be interested in living there, you
2 know. I may consider living there. So I
3 wouldn't want it; I would probably sell the
4 lot.

5 CHAIRPERSON MOLDENHAUER: I'm
6 trying to make sure that I understand this in
7 regards to what our standards are. It would
8 not be economically feasible for you to build
9 a single family home?

10 MS. MURRAY: No.

11 CHAIRPERSON MOLDENHAUER: It would
12 not?

13 MS. MURRAY: No.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 And if you were required to build a single
16 family home, you would probably sell the lot;
17 that's what you're saying? Okay.

18 I think I've heard you testify
19 about the other density of the area. Could
20 you maybe describe to me the area that the
21 property is, and give me a little more
22 information as to the types of homes that are

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1 in the surrounding lot and the surrounding
2 community?

3 MS. MURRAY: Well, in the Office
4 of Planning's report, they speak the truth
5 about everything on the east of me is semi-
6 detached. Everything -- let me see, the
7 squares -- okay. On the north -- no, I'm
8 sorry. To the east there are single family
9 detached homes. On the west and rear, there
10 are four semi-detached homes. And on the
11 south, across the street, it's probably a few
12 detached but they also have semi-detached.
13 But most of the community is they have the two
14 semi-detached homes.

15 Here's a picture of the area, an
16 overhead picture of the area. I think it's in
17 the file.

18 CHAIRPERSON MOLDENHAUER: I
19 believe that you're pointing to a blown-up
20 version of our Exhibit 20, the large image?

21 MS. MURRAY: Yes.

22 CHAIRPERSON MOLDENHAUER: Okay.

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1 There are some statements in the OP report
2 about the slope. Can you provide us some
3 additional understanding of what degree that
4 slope is from the front to the rear of the
5 property?

6 MS. MURRAY: No. I couldn't do
7 that. I'd have to probably -- it's a little
8 slope, which I like because I can get a walk-
9 out. But I don't know how much, exactly. It
10 says here a 15 percent downward slope.

11 CHAIRPERSON MOLDENHAUER: I'm just
12 looking in my file for the ANC report. I
13 don't believe we have an ANC report for this.

14 MS. MURRAY: I think it was just
15 put in. But I have a copy of it.

16 CHAIRPERSON MOLDENHAUER: Okay.
17 You have copies of that? If you could pass
18 that down, that would be fabulous.

19 SECRETARY MOY: To Ms. Rose.
20 Thank you.

21 For the record, Madam Chair,
22 there's no ANC filing in the official

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1 record until now.

2 CHAIRPERSON MOLDENHAUER: Okay.

3 Thank you. Ms. Rose will make copies for us
4 and then we'll have that.

5 MS. MURRAY: They put in this
6 morning.

7 CHAIRPERSON MOLDENHAUER: Okay.
8 Well, it's not part of our official record yet
9 for what we've been reviewing for the case.
10 So we'll have a copy and be able to review
11 that.

12 If you can just provide us with
13 some testimony as to your discussions with the
14 ANC and their support of the case?

15 MS. MURRAY: On the 13th of this
16 month I went over to meet with the ANC and the
17 community. And they were 100 percent in
18 support of what I want to do.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you. I don't have any further questions for
21 you right now.

22 I'm going to open up the

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1 discussion to the other Board Members.

2 VICE CHAIRPERSON DETTMAN: Thank
3 you, Madam Chair.

4 Ms. Murray, you had mentioned that
5 constructing a detached single family dwelling
6 would be economically infeasible. On what
7 basis are you making that statement; did you
8 explore the idea?

9 MS. MURRAY: Yes. Because I'm a
10 Realtor, I looked at the semi-detached homes
11 that were newly constructed. Each one of them
12 sold for close to \$300,000, and they sold in
13 this real bad market.

14 I feel as though because Zoning
15 approved them and that's the basis for me
16 going out, and I planned my funds to do
17 exactly what was already approved by Zoning,
18 I felt that it would be, you know, okay to do.

19 VICE CHAIRPERSON DETTMAN: Do you
20 happen to know -- the semi-detached dwellings
21 that were constructed and sold that you're
22 referring to -- whether or not the size of the

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1 lots that they reside on meet the minimum
2 Zoning requirements?

3 MS. MURRAY: They're exactly the
4 same as what I have.

5 VICE CHAIRPERSON DETTMAN: I know
6 that in the Office of Planning's report, they
7 indicate that they found no record of BZA
8 approval for --

9 MS. MURRAY: I have it right here.
10 I went and got this before I even went down
11 this road. I wouldn't have done this if I had
12 not already gotten approval.

13 VICE CHAIRPERSON DETTMAN: Right.
14 It may have been approved by the Zoning
15 Administrator because the size of the lots
16 that were being proposed meet the Zoning
17 Regulations, meaning that they are 30 feet in
18 width and 3,000 square feet in area each.

19 MS. MURRAY: No. They're the same
20 as what I'm doing.

21 VICE CHAIRPERSON DETTMAN: They're
22 the same as what you're doing?

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1 MS. MURRAY: It's the same square
2 footage. Here it is, 2313, 913, lot
3 occupancy. It's the exact same thing as what
4 I'm doing.

5 VICE CHAIRPERSON DETTMAN: Okay.
6 That might be helpful to have in the record if
7 we can get a copy of it.

8 I want to go back to my original
9 question, though. You had said that maybe you
10 looked at the Multiple Listing Service and
11 looked at comparables in terms of what semi-
12 detached homes were going for in the
13 neighborhood. Did you do the same for what
14 single family detached dwellings were selling
15 for in the neighborhood?

16 MS. MURRAY: No. Just the semi-
17 detached.

18 VICE CHAIRPERSON DETTMAN: Do you
19 have any idea what the market for a detached
20 home is in the neighborhood, and in terms of
21 if you were to do that, what that would net in
22 terms of the economics of the project?

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1 MS. MURRAY: No, I have not looked
2 at it. But it definitely wouldn't be the same
3 as what I want to do.

4 VICE CHAIRPERSON DETTMAN: Is that
5 something that you would be able to provide to
6 us in terms of you've looked at constructing
7 a single family dwelling, in terms of doing a
8 short market analysis? We've had that before
9 where real estate agents have looked at the
10 MRIS and looked at comparables.

11 MS. MURRAY: Yes. I mean, if
12 that's something that I would be wanting to
13 do. But I wouldn't be interested in doing a
14 single family home there. It just wouldn't do
15 anything for the community.

16 VICE CHAIRPERSON DETTMAN: I
17 understand that.

18 In terms of the standard that the
19 Board has to apply, they have to apply a very
20 rigid test in order to render a decision on
21 your application. And part of what the Board
22 needs to look at is: could the property be put

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1 to use in a manner that is totally in
2 conformance with the Zoning Regulations? And
3 the size of the property as it is today meets
4 the minimum requirement for a single family
5 dwelling.

6 So the case that needs to be made
7 is a single family dwelling would not be
8 feasible on this property, and that you need
9 relief from the Zoning Regulations in order to
10 do what you're doing. I'm just trying to kind
11 of frame what the argument, I think, needs to
12 be.

13 MS. MURRAY: Well, that would only
14 be because of what I went and done. I
15 combined the lots. And that's not what -- I
16 was instructed to do it that way, but it was
17 wrong. I went down from --

18 VICE CHAIRPERSON DETTMAN: It was
19 right in terms of Zoning. You were probably
20 instructed to combine them because
21 individually they did not meet the Zoning
22 Regulations.

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1 MS. MURRAY: That's not what they
2 told me. They told me in order to do this,
3 which is what's already existing on the
4 street, that I had to combine them.

5 VICE CHAIRPERSON DETTMAN: Okay.

6 MS. MURRAY: So that's the only
7 reason why they are combined. It's wrong.
8 And I've invested a lot of money and time into
9 this.

10 VICE CHAIRPERSON DETTMAN: Okay.

11 I have nothing further. Thank you.

12 CHAIRPERSON MOLDENHAUER: Any
13 additional questions?

14 COMMISSIONER TURNBULL: I think
15 what we're trying to get at is that looking
16 strictly at the Zoning Regulations, we need to
17 look at the practical difficulties as to allow
18 a variance like this.

19 The applicant mentioned at one
20 point something about you wouldn't want to
21 live there. But you're not going to live
22 there even if the two were built.

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1 MS. MURRAY: Yes. I was
2 considering living in one of them.

3 COMMISSIONER TURNBULL: Living in
4 one and selling the other?

5 MS. MURRAY: Yes.

6 COMMISSIONER TURNBULL: Right now
7 you live in Maryland, right?

8 MS. MURRAY: Yes.

9 COMMISSIONER TURNBULL: So these
10 are not totally speculative in the sense that
11 you're looking to sell both?

12 MS. MURRAY: I haven't decided yet
13 but that's something that I was going to
14 entertain.

15 COMMISSIONER TURNBULL: I guess
16 what we need to hear more about -- again, as
17 a practical difficulty -- is shedding some
18 background or information related to what DCRA
19 had actually said. I think if we received who
20 you talked to and what the story was -- if you
21 were told explicitly to do this to be able to
22 perform this, we need to hear a little bit

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1 more about that.

2 MS. MURRAY: Well, Rochelle Joseph
3 -- I think she's deputy over at DCRA -- is
4 very familiar with this. And she felt that if
5 I went through this process that I would get
6 what I need.

7 COMMISSIONER TURNBULL: By
8 combining the properties?

9 MS. MURRAY: Right. She said that
10 once we went through this process, then what
11 we could go back and do is subdivide them to
12 be able to do this. But I took these plans --
13 I went downtown before I did anything and told
14 them what I wanted to do. And that's what
15 they told me to do, to put them together.

16 COMMISSIONER TURNBULL: I think
17 that's the sort of thing you need to help
18 provide us in the record, the hardship that's
19 happened because of this and the practical
20 difficulty that you are now faced with because
21 you were instructed to do that. I think we
22 need to have that on the record.

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1 MS. MURRAY: Okay. What do you
2 want me to do? Rochelle Joseph is very
3 familiar with what I've gone through and what
4 her office told me to do.

5 COMMISSIONER TURNBULL: I would
6 just submit something in writing to us telling
7 us the steps you went through, who you talked
8 to, and what the instruction is that you
9 received.

10 MS. MURRAY: Right.

11 COMMISSIONER TURNBULL: Okay.

12 MS. MURRAY: Okay.

13 CHAIRPERSON MOLDENHAUER: I think
14 what both Mr. Dettman and Mr. Turnbull are
15 trying to obtain as far as information and
16 evidence is that -- what you're asking for is
17 one of the higher standards in regards to
18 approval. A variance standard is a higher
19 standard, rather than something like a special
20 exception. And we need from the applicant,
21 from you, certain documentation and evidence
22 in order for us to be able to grant something

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1 like this.

2 Right now, based on what we have,
3 it doesn't look as though we have the
4 information that we would need in order to
5 grant this application. So in order for you
6 to be able to prove your case and prove that
7 there is an exceptional circumstance here --

8 That may be that you were told by
9 somebody that these are the steps you had to
10 take. And now because of those steps that
11 you've taken, you've created a more
12 challenging situation for yourself, and that
13 is going to provide some practical difficulty
14 for you economically.

15 We would need you to show that,
16 economically, it would not be feasible for you
17 to have a single family home. It sounds like
18 you're saying that there may be an economic
19 benefit for you to provide two detached homes,
20 one that you would reside in and one that you
21 could sell. As you said, you're a real estate
22 agent and you could provide us with some MRIS

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1 listings to show that, potentially. We have
2 other applicants that have shown that.

3 You can show that in regards to
4 what you purchased the property at, what you
5 could sell two semi-detached homes for, how
6 that can actually make the project feasible,
7 versus creating a single family home would not
8 make the project feasible in regards to what
9 is being sold or not sold in the area. These
10 are the things I think that we would need in
11 order to have a full record.

12 Unfortunately, I hear your
13 arguments as to other properties on the block
14 have done something, but that's not something
15 that we can rely upon in order to grant an
16 application. Every property is unique.
17 Without having that documentation that you're
18 showing in regards to other plans before us,
19 or even if -- I don't know and I don't want to
20 speculate -- another building was built maybe
21 illegally, improperly, or erroneously, we
22 cannot rely upon that to grant or to approve

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1 an application.

2 I think what we're trying to do is
3 help you and provide you with some specific
4 guidance that would provide us information so
5 that, maybe at that point, we could look at
6 this case in a different light.

7 MS. MURRAY: DCRA did approve
8 these plans. I mean, I wouldn't have gone
9 down there to want to do the same thing had I
10 not gotten this approval prior to even doing
11 anything, prior to spending any money.

12 CHAIRPERSON MOLDENHAUER: Maybe
13 I'm confused. Those plans that are DCRA
14 approved, those are not your plans. Those are
15 somebody else's plans.

16 MS. MURRAY: Right. These are the
17 plans --

18 CHAIRPERSON MOLDENHAUER: Somebody
19 else's plans on the block?

20 MS. MURRAY: Two, three doors
21 down.

22 CHAIRPERSON MOLDENHAUER: Okay.

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1 MS. MURRAY: Yes.

2 CHAIRPERSON MOLDENHAUER: Again,
3 those are not for your project. I don't know
4 and I cannot speculate as to what happened in
5 that other project. I can only tell you what
6 I'm looking at as far as your lots and your
7 size of your lots in regards to what's
8 required. I understand you're saying that you
9 looked at somebody else's and it was similar.
10 But again, all we can do is we can look at
11 your property.

12 I think if you provide these
13 things that we're identifying, this additional
14 documentation, it can definitely strengthen
15 your case to a level in which potentially --
16 I can't say for everybody -- you would meet
17 the standards for a variance test.

18 MS. MURRAY: Okay.

19 VICE CHAIRPERSON DETTMAN: Madam
20 Chair, I'd just like to ask one quick question
21 about our Exhibit 2 which is the plat the
22 applicant submitted.

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1 This is the document that is
2 associated with when you combined the two
3 lots; is that correct?

4 MS. MURRAY: Right. But just
5 before that, it was Lot 83 and Lot 84.

6 VICE CHAIRPERSON DETTMAN: I see
7 that.

8 MS. MURRAY: They told me to
9 combine them in order to construct two semi-
10 detached homes.

11 VICE CHAIRPERSON DETTMAN: I see
12 this drawing here that shows the footprint of
13 what you're proposing.

14 MS. MURRAY: Yes.

15 VICE CHAIRPERSON DETTMAN: While
16 you were going through that process, and
17 especially when you were going through DCRA --
18 and I see that a representative of Matt
19 LeGrant signed this -- were they aware that
20 you were looking to build two semi-detached
21 homes?

22 MS. MURRAY: Yes. I mean, a month

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1 before I even submitted I had came down and
2 done all of this research prior to even
3 thinking about doing anything. And I showed
4 them what I wanted to do and that's what they
5 told me to do.

6 VICE CHAIRPERSON DETTMAN: Okay.

7 MS. MURRAY: That's why I'm so
8 emotional about this, because I've gone
9 through so much trying to go through and do it
10 the right way.

11 VICE CHAIRPERSON DETTMAN: Okay.

12 MS. MURRAY: When these people did
13 it, I don't know how they did it but they did
14 it. And so now I'm, you know -- I'm also
15 frustrated with this process. I'm just having
16 to keep doing more and more and more. It's so
17 clear what I want to do and it shouldn't be a
18 problem; everything else is the same. I can
19 see if I'm asking to do something that's not
20 done. It's all done.

21 VICE CHAIRPERSON DETTMAN: I
22 understand. But like the Chair said, we can't

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1 speculate how that thing got approved. Based
2 on our records, we can't find any record that
3 thing came to BZA, so we've never even seen
4 that project. If DCRA approved it, perhaps
5 they made a mistake.

6 MS. MURRAY: But I've already
7 talked to DCRA. This is a follow-up.

8 VICE CHAIRPERSON DETTMAN: I know.
9 But DCRA may have approved that project
10 without sending it to BZA when they actually
11 should have. So we can't speculate what
12 happened there. What we're trying to do is
13 make sure that the evidence is in the record
14 for your case to help you put on a strong case
15 to justify your request.

16 MS. MURRAY: Okay. What is it
17 that you want now, so I can be clear? You
18 want a comparable market analysis; you want to
19 show how it would economically be not a good
20 benefit for me if I do just one; is that what
21 you want? Was it anything else?

22 VICE CHAIRPERSON DETTMAN: I think

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1 that's about it.

2 The test that the Board has to
3 apply is that there's something exceptional
4 about the property. That could be the size
5 and shape, the narrowness, the topography, all
6 of that stuff. Something exceptional. It
7 doesn't have to be specifically something
8 physical about the property. It could be the
9 economics of the project of building a single
10 family dwelling.

11 Basically, you need to show that
12 there's something exceptional about this
13 specific piece of property that makes it
14 practically difficult for you --

15 MS. MURRAY: Okay.

16 VICE CHAIRPERSON DETTMAN: -- to
17 construct a house that's in total conformance
18 with the Zoning Regulations. Because right
19 now what you're proposing, the two lots, they
20 don't meet the minimum dimensions that the
21 regulations require.

22 So you need to show us that it's

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1 practically difficult for you to meet the
2 Zoning Regulations, and that you need us to
3 approve smaller lots in order for you to build
4 your project. I hope that's kind of clear.

5 MS. MURRAY: Yes. I thought I --
6 I mean -- okay. I'll do something.

7 CHAIRPERSON MOLDENHAUER: We'll
8 move on in the proceeding. And then what we
9 can do is we'll leave the record open for some
10 additional documentations.

11 But at this time what we'll do is
12 we're going to turn to the Office of Planning,
13 Mr. Goldstein, for your report.

14 MR. GOLDSTEIN: Thank you, Madam
15 Chair, members of the Board. My name is Paul
16 Goldstein, for the record. I'm with the
17 Office of Planning.

18 To recap, just to give a little
19 more information, the subject lot is Lot 160
20 in Square 5132. It measures 4,625 square feet
21 and 50 feet in width, zoned R-2.

22 In this zone semi-detached

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1 dwellings are a permitted building type, but
2 they must be located on lots that are at least
3 3,000 square feet of lot area and 30 feet in
4 width.

5 A detached dwelling, for
6 reference, must exceed 4,000 square feet of
7 lot area and 40 feet in width. So this lot
8 currently exceeds the dimensions for a
9 detached home lot.

10 The applicant, as you've heard, is
11 proposing to subdivide the lot into two
12 substandard sized lots to accommodate semi-
13 detached dwellings. As a result, the
14 applicant needs relief from 401.3 for lot area
15 and lot width.

16 OP is supportive of the idea,
17 certainly, of improving vacant lots and
18 putting them into productive use. I think the
19 applicant's goals in that respect are laudable
20 and they are a desirable goal.

21 Looking at the test very strictly,
22 which is our role, we just can't get there

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1 under our analysis. This is something the
2 applicant and I have discussed on a few
3 occasions.

4 The property, from our analysis,
5 does not have a uniqueness that imposes a
6 practical difficulty. The existing lot is a
7 typical shape, size, and width to be able to
8 construct either a detached home or a semi-
9 detached home, whichever one the applicant
10 prefers.

11 There are other issues that the
12 applicant has alluded to regarding the
13 development down the block. I've tried to
14 find out answers to that question but I
15 haven't been able to get an answer. I
16 apologize for that. I can't quite figure out
17 what the circumstances were with those other
18 semi-detached dwellings.

19 My sense is that even if these
20 lots hadn't been combined we'd still be in the
21 same situation; they'd still need relief for
22 both lots. They're both in common ownership;

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1 they're both substandard in size. You'd still
2 need lot area and lot width relief,
3 regardless.

4 Because of all this, this lot
5 could be developed by right. Therefore it
6 doesn't create, under our analysis of the
7 test, a practical difficulty.

8 Saying that, we also find that
9 granting relief would impair the zone plan.
10 It's permitting an intensity of development
11 that is at odds with the intent of the Zoning
12 Regulations.

13 The applicant submitted some
14 helpful documentation today showing that there
15 is ANC support and neighborhood support. So
16 we don't see that there'd be any harm to the
17 public good if it was granted.

18 To conclude, the Office of
19 Planning can't support it. We really are
20 encouraged that the applicant would be
21 interested in developing this lot. We just
22 can't support the type of development that she

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1 wants.

2 I also just wanted to note that
3 there was a property that had a similar issue
4 last year. In the Northeast corner there's a
5 trapezoidal-shaped property -- you can see it
6 in the bottom right-hand map -- that is
7 undeveloped in that diagram. We had an
8 applicant come forward and want to do a very
9 similar circumstance. The lot was a bit more
10 unusually shaped. We told the applicant we
11 could not support that.

12 Ultimately, it was in the BZA
13 queue but it got withdrawn before the hearing,
14 and currently has a single family detached
15 home being built on the property. I was out
16 there about 2 weeks ago.

17 So there are detached homes.
18 Certainly, there's a lot of semi-detached; the
19 applicant is right. It's not a uncommon
20 building type. Most of the semi-detached,
21 almost all, are pre-1958. They haven't been
22 granted any kind of relief for their

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1 construction. But looking at the test, we
2 just can't support it.

3 That concludes my presentation.
4 Thank you. Let me know if you have any
5 additional questions.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you very much, Mr. Goldstein.

8 I guess just two questions that I
9 have and then I'll open it up to other Board
10 Members. The neighboring property that Ms.
11 Murray referenced, you said that you looked
12 into it. Was that lot similarly small or did
13 it not meet the standard requirements?

14 MR. GOLDSTEIN: Based on my review
15 of our GIS mapping, those lots are under 3,000
16 square feet. I don't know what the analysis
17 was on DCRA's side that ultimately concluded
18 that these could be permitted properly. It
19 seems like there could have been an argument,
20 perhaps, that they couldn't have come to BZA.
21 But I don't really know what the circumstances
22 were to be able to really comment on it.

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1 CHAIRPERSON MOLDENHAUER: No. And
2 I don't want you to speculate, obviously. I
3 think that's something that we all are in
4 agreement to, that we cannot speculate.

5 I'm trying to parse out the
6 potential issue of this exceptional history
7 with Ms. Murray in regards to the fact that
8 she did do this due diligence, that there was
9 potentially another lot that had a similar
10 deficiency in regards to size that was
11 developed similarly. I'm trying to understand
12 the history around that in regards to your
13 review of those plans.

14 MR. GOLDSTEIN: Yes. I understand
15 the desire to be able to understand that one
16 and be able to compare it to this property.
17 I just don't know enough to know what other
18 factors may have been at play in that review
19 to be able to permit it.

20 MS. MURRAY: But it got permitted.
21 I don't know why or how but Zoning did sign
22 off on it.

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1 CHAIRPERSON MOLDENHAUER: I had
2 another question for you, Mr. Goldstein, but
3 it is escaping me at the moment. I will open
4 up for any other Board Members to ask any
5 questions of OP and if I remember my question,
6 I will come back to you. Thank you.

7 COMMISSIONER TURNBULL: Good
8 morning, Mr. Goldstein.

9 The two lots that had been
10 combined into this lot -- this is now a
11 singular lot -- how do the width of those
12 previous lots compare with some of the other
13 lots that are in the area? I mean, I'm
14 looking at the map on page 2, and it looks
15 like there are a lot of thin slivers of
16 property.

17 MR. GOLDSTEIN: Yes. If you look
18 at the lots directly to the east on that map
19 that are developed with semi-detached, I think
20 they are the same size. They're each 25 feet
21 in width. It's not an uncommon size.

22 COMMISSIONER TURNBULL: Okay. So

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1 in this area, the previous existing single
2 lots would have been sort of standard for
3 what's in the square?

4 MS. MURRAY: That's correct.

5 MR. GOLDSTEIN: Yes. That's
6 probably right. Certainly when Zoning was
7 adopted, that didn't conform to a lot of these
8 smaller lots.

9 COMMISSIONER TURNBULL: Right.

10 MR. GOLDSTEIN: My belief is that
11 there's probably an intention for a lot of
12 these lots to combine and to be larger, and
13 that Zoning was encouraging, in effect, the
14 combination of these lots.

15 COMMISSIONER TURNBULL: Ms. Murray
16 had mentioned that in order to do what her
17 plans show, she had been advised to combine
18 them. Obviously you weren't involved in that,
19 but why would DCRA say that to her?

20 MR. GOLDSTEIN: Frankly, I just
21 don't know.

22 COMMISSIONER TURNBULL: I know.

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1 That would be totally speculative on your
2 part.

3 MR. GOLDSTEIN: In a speculative
4 sense, there is an intent to make lots more
5 conforming --

6 COMMISSIONER TURNBULL: Right.

7 MR. GOLDSTEIN: -- if possible.
8 Maybe that had something to do with it, but I
9 certainly don't know for sure.

10 COMMISSIONER TURNBULL: Okay. I
11 don't mean to put that burden on you. Thank
12 you.

13 CHAIRPERSON MOLDENHAUER: Any
14 additional questions for Office of Planning?

15 VICE CHAIRPERSON DETTMAN: Good
16 afternoon, Mr. Goldstein.

17 I'm just wondering, do you know of
18 any provision in the regulations that
19 encourages development on properties that are
20 of a size larger than the minimum but not
21 quite 200 percent of the minimum, and that
22 would allow for the construction of multiple

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1 buildings even if they don't meet 100 percent
2 of the minimum lot dimensions?

3 MR. GOLDSTEIN: I think I
4 understand. Section 401.2, there is provision
5 that talks about 80 percent of the lot size.

6 VICE CHAIRPERSON DETTMAN: Section
7 401.4?

8 MR. GOLDSTEIN: I was looking at
9 401.2. Let's see; 401.4. Let me take a read.
10 It's an interesting provision. It's a little
11 hard to figure out exactly what it's getting
12 at.

13 If you looked at her proposed lot
14 area and lot width, the lot area is about 77
15 percent of the needed size and the lot width
16 is about 83 percent.

17 If you wanted to try to use one of
18 these provisions to get there, one of the
19 problems with this is that it's two
20 undeveloped lots in same ownership next to
21 each other. In those circumstances we
22 typically recommend combining them, when it's

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1 possible to do so.

2 VICE CHAIRPERSON DETTMAN: I
3 understand what you typically recommend. But
4 it looks like 401.4 would allow a property
5 owner to take a single piece of property
6 that's less than 200 percent of that
7 prescribed in the minimum lot requirements,
8 and actually build two structures on it so
9 long as it meets 80 percent of the lot area
10 and lot width. Eighty percent of the lot
11 width would be 24 feet. What's being proposed
12 is 25 feet.

13 Eighty percent of the lot area
14 would be 2,400 square feet, which you're not
15 quite there in this situation. However, I
16 could see a case being made that you actually
17 don't need a variance from the lot width,
18 because you could do it as a matter-of-right
19 under 401.4. You would still need a variance
20 from the lot area. However, what you're
21 looking at is a variance of 88 square feet per
22 lot.

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1 If you were to take advantage of
2 the ZA's minor flexibility under 407, you
3 could further reduce the required lot area by
4 2 percent, which would provide for a variance
5 of 40 square feet per lot in this situation.

6 MR. GOLDSTEIN: How do you get
7 past the 200 percent?

8 VICE CHAIRPERSON DETTMAN: In a
9 case of an unimproved lot, which this is, and
10 single ownership, which this is, that has a
11 lot area or lot width of less than 200 percent
12 of that prescribed in 401, we have a minimum
13 lot requirement of 3,000 x 30.

14 The lot area for the existing lot
15 is what?

16 MR. GOLDSTEIN: It's about 4,625.

17 VICE CHAIRPERSON DETTMAN: So it's
18 less than 6,000 square feet, which would be
19 200 percent of what's required.

20 The lot width, I believe, is 50
21 feet. It's less than 60 feet, which is 200
22 percent of what would be required. So it

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1 meets the 200 percent threshold; it's less
2 than 200 percent.

3 My reading of the regulations
4 would allow you to build two structures on
5 this so long as you met 80 percent of the 30
6 feet in width and the 3,000 square feet in
7 area. You meet it on the width; you don't on
8 the lot area.

9 I'm just wondering if you looked
10 at it in this way and considered the de
11 minimis variance that would be required in
12 order to put this property back to productive
13 use?

14 MR. GOLDSTEIN: I did not consider
15 it under that provision. I'd like to think
16 about that one some more. I will say though
17 that I was looking at the relief that DCRA
18 referred it for.

19 VICE CHAIRPERSON DETTMAN: Right.
20 I wanted to look at page 4 of your report. It
21 says allowing two dwellings on newly created
22 substandard lots would allow an intensity of

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1 development at odds with the intent of the
2 Zoning Regulations.

3 The intent of density for the R-2
4 is a collection of detached/semi-detached; is
5 that correct?

6 MR. GOLDSTEIN: That is correct.

7 VICE CHAIRPERSON DETTMAN: In
8 terms of density and if you were going to
9 measure density in dwelling units per acre,
10 for semi-detached in the R-2 you're looking at
11 a density of 14 units per acre. What's being
12 proposed is 18 units per acre.

13 Do you consider that a density
14 that's at odds with the intent of the Zoning
15 Regulations for an R-2?

16 MR. GOLDSTEIN: Well, the R-2
17 gives the minimum. I was trying to say in my
18 report that this property can meet the
19 minimum, and creating new substandard lots is
20 at odds with that policy decision to have a
21 certain amount of intensity per lot.

22 VICE CHAIRPERSON DETTMAN: I'm not

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1 sure who from the Office of Planning staff was
2 on a previous BZA case, the Hillcrest homes
3 case, which when reading this record I was
4 reminded of because in that situation you had
5 an R-1-B Zone. It was a very large lot that
6 was being built in theoretical building sites.

7 In that case 54 homes were being
8 proposed. OP supported a variance from lot
9 area for all 54 sites in an R-1-B. And 50 of
10 the 54 sites, OP supported a variance from the
11 lot width in an R-1-B. I would think you
12 would seek to protect the density of the R-1-B
13 more stringently than in the R-2, because you
14 start to increase in density as you go up.

15 So I'm just wondering -- it seems
16 to me that there's a big difference here in
17 terms of how OP has approached.

18 MR. GOLDSTEIN: Yes. I am
19 familiar with that case. As I recall, it was
20 a theoretical lot subdivision; tremendous
21 slope, clustering of properties. I think
22 there were certainly some unique circumstances

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1 at play in that.

2 I think in this case, this type of
3 argument could be made for every single one of
4 these sized lots. I have a little trouble
5 agreeing with you off the bat.

6 I've kind of said it; I don't say
7 that there's any harm to the public good.
8 It's not this amount of development that's
9 being proposed is -- there's other semi-
10 detached on small lots around here. So I
11 can't say that this extra bit of intensity is
12 going to be harmful. But it's at odds, in our
13 view, with the Zone Plan.

14 VICE CHAIRPERSON DETTMAN: Do you
15 know if what's being proposed meets the other
16 area requirements of chapter 4, such as rear
17 yard, side yard, height, etcetera?

18 MR. GOLDSTEIN: I believe it does,
19 yes. Certainly it wasn't called out by DCRA
20 as needing any of those relief.

21 There was an issue about the curb
22 cut which I think the applicant was made aware

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1 of. That's more of a public space issue. If
2 for some reason DCRA wouldn't give them a curb
3 cut, there could be a need for some type of
4 parking relief which we would be supportive
5 of. There's no alley to speak of. But I
6 believe all the other requirements are met in
7 this case.

8 VICE CHAIRPERSON DETTMAN: Last
9 question. If the Board decided today to put
10 off its decision in order to review the record
11 and what not, would the Office of Planning be
12 amenable to supplementing the record with a
13 report that looked at this case in light of
14 401.4?

15 MR. GOLDSTEIN: Sure. Certainly.

16 VICE CHAIRPERSON DETTMAN: Thank
17 you.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you very much, Mr. Dettman, for a thorough
20 grouping of questions. I do appreciate your
21 pointing out of 401.4 and that additional
22 analysis that I think we probably will ask OP

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1 to do.

2 In regards to a supplemental OP
3 report, once we get some additional
4 information from the applicant in regards to
5 the second prong and things to that effect, I
6 think that would be helpful.

7 At this point in time in our
8 proceeding, we will go to the ANC. I don't
9 believe any members from the ANC are present
10 in the audience.

11 MS. MURRAY: No, that's my son.
12 I'm so glad he's here to hear Mr. Dettman do
13 a thorough job in supporting. I appreciate
14 him going through that and explaining and
15 giving another option to get this done.

16 Thank you so much.

17 CHAIRPERSON MOLDENHAUER: In
18 regards to the ANC, even though no one is
19 present, I will at this time read into the
20 record -- it does not yet have an exhibit
21 number but it was presented to us by the
22 applicant -- that we have a letter from the

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1 ANC-7C on March 13 which indicated that there
2 was a regularly scheduled meeting.

3 It does not indicate that proper
4 notice was given for the meeting. It does
5 state that the ANC has no objection to the
6 variance being granted. It does not provide
7 the vote or that a quorum was present.

8 So while we will review this
9 letter as a statement of support, we cannot
10 give this letter great weight. That is
11 something that we can address at the end of
12 the hearing as something that you can also
13 supplement the record for.

14 At this time we would open up the
15 hearing for any persons or parties in support
16 or in opposition.

17 I don't see any parties in the
18 audience in support or in opposition. Maybe
19 there is a party in support.

20 If you want to come forward you
21 can have 3 minutes to testify. If you could
22 please state your name and your home address?

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1 MR. TUTEN: My name is Melvin
2 Tuten. I live at 9548 Muirkirk Road in
3 Laurel, Maryland.

4 I have known the applicant for
5 about 30 years. She's a former employee of
6 Small Business Administration, involved
7 parent, very good citizen. She's always done
8 what she felt was right.

9 I really want to comment on the
10 hardship side. Because the reason why she
11 went through this process as to getting this
12 is because she already saw it on the block, so
13 she hired the same architect. And a lot of
14 the advice that she was getting came from him
15 and the people at 941.

16 So she didn't really know anything
17 about the process, but one thing she did want
18 to do is do it the right way and not expedite
19 this, which was suggested to her from several
20 people. She said, "No. If it's not going to
21 be done right, I don't want to do it."

22 The ANC people were very much in

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1 favor. We talked to some of the neighbors and
2 all of them are in favor of it.

3 And it's like she said, she just
4 wants to do what's on file. She wants to give
5 the block some good quality homes. She's not
6 going to put up any shanty. I guarantee you
7 she has very good taste. She wants to put
8 good money in it. And that's why she's not
9 going to build something that's not going to
10 be affordable and not going to be worth the
11 money. It's going to probably be worth more
12 than what she wants to sell it for.

13 That's all I want to say.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you very much.

16 MS. MURRAY: I'd like to thank Mr.
17 Goldstein, too. Although I knew his position,
18 he did speak with me, he met with me, and he
19 was working with me. He recommended, you
20 know, flowers in support of that. And so
21 although I know he was against, I think he's
22 for, too. So thank you to Mr. Goldstein.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you very much.

3 At this point in time we conclude
4 our hearing. But what we're going to do is
5 we're going to leave the record open. I'm not
6 going to outline again the different points
7 that Mr. Dettman already asked you for. I'll
8 add on a couple of different things, too.

9 In regards to the ANC report, in
10 order for us to give it great weight which
11 provides some additional support for your
12 case, it would need to actually specifically
13 say that a quorum was present at the meeting
14 and that it's under section 3115. If you look
15 up the Zoning Regulations online you can
16 actually look at the specific requirements
17 that would have to be in a letter in order for
18 us to give it great weight.

19 MS. MURRAY: Okay.

20 CHAIRPERSON MOLDENHAUER: I'll
21 just point you to that section. You want to
22 write down that section; definitely write that

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1 down. It's 3115. That requires significant
2 things in the record so we can actually give
3 their support great weight.

4 MS. MURRAY: Okay. Excuse me.
5 Are they aware of how they're supposed to
6 submit that?

7 CHAIRPERSON MOLDENHAUER: Most
8 ANCs are aware of it but some ANCs are not.
9 Maybe there's a new ANC Chair, maybe someone
10 who wrote the letter may not have gone through
11 the Zoning process before. It is a fluid
12 group of people and so not every ANC Chair has
13 gone through the process before, and thus they
14 may not have the knowledge. So obviously, as
15 the applicant, I would just say make sure you
16 work with them so that we can give their
17 report the weight it should have.

18 In addition to that, what we would
19 also like to see is some sort of MRIS listing
20 analysis that you can provide your analysis
21 and your perspective on as a real estate agent
22 as to:

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1 (1) the ability for you to market
2 a single family home versus a semi-detached
3 home in that area;

4 (2) how that would potentially
5 make the project feasible or infeasible for
6 you financially;

7 (3) the time frame that you have
8 already incurred in trying to get this project
9 approved, and maybe how that has created its
10 own substantial detriment to you in regards to
11 the delays that you've gone through in working
12 with DCRA in regards to combining the lot,
13 their advice on that.

14 If there's specific issues with
15 regards to your architect -- your architect
16 had indicated that he had gotten another
17 project approved and that this would be
18 approved -- that would be specific history in
19 regards to the property circumstances that
20 would provide us with the detriment that we
21 may need economically in order to grant the
22 application.

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1 Are there any other specific
2 issues that would help the Board? It doesn't
3 appear as such.

4 Those would be the things that we
5 would be looking for. How long do you think
6 you will need in order to pull that together
7 and submit that, both to our office and the
8 Office of Planning, so that we can provide OP
9 time to then supplement their report?

10 MS. MURRAY: I'll have it by the
11 end of the week.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 Let me just look at the calendar. We'll give
14 you a full week until Tuesday, May 25 to get
15 that into the record.

16 Mr. Goldstein, how long would you
17 need after receiving that to get us a
18 supplemented report?

19 MR. GOLDSTEIN: Perhaps a week
20 would be sufficient.

21 CHAIRPERSON MOLDENHAUER: A week?
22 Okay. Then that would be into our office by

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1 Tuesday, June 1, and then we can have a
2 decision on this.

3 Mr. Moy, is June 8 open for a
4 decision on this?

5 SECRETARY MOY: It's open for a
6 decision, Madam Chair. Although I want to add
7 that for your judgement there are two other
8 decision cases, one which is fairly
9 significant. So you could add a third one.
10 That other one I'm speaking of is the N Street
11 Follies case. But if that's not doable,
12 certainly you can do it on the morning of June
13 15.

14 MR. GOLDSTEIN: Madam Chair, I'm
15 sorry. I'm checking my schedule. If I could
16 have a bit more time, I'm going to be away
17 before then. If it won't prejudice the
18 applicant at all, just a few more days for my
19 submission would be really helpful.

20 CHAIRPERSON MOLDENHAUER: I think
21 that in regards to our June 8, the calendar is
22 actually pretty full. So as long as the

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1 applicant is okay with that, what we'll do is
2 we will provide OP until June 8 to get their
3 report in to us. And we will have the
4 decision set for June 15.

5 So on June 15, you actually don't
6 need to come back. You can watch it via
7 Webcast or you can come back. But normally we
8 will not take testimony during a decision
9 calendar. That's just so you know the
10 process.

11 MS. MURRAY: Okay. June 15?
12 Okay.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Thank you very much.

15 If there's nothing further, then
16 we'll look forward to getting your additional
17 submissions by May 25. We'll have a decision
18 on this on June 15.

19 MS. MURRAY: Okay. Thank you all
20 very much.

21 CHAIRPERSON MOLDENHAUER: Thank
22 you very much.

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1 I believe that is all for the
2 morning calendar. We are adjourned until the
3 afternoon session. Thank you.

4 (Whereupon, at 12:38 p.m. the
5 hearing was adjourned to reconvene at 1:40
6 p.m.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:50 p.m.

3 CHAIRPERSON MOLDENHAUER: The
4 hearing will please come to order.

5 Good afternoon, ladies and
6 gentlemen. This is the May 18, 2010 Public
7 Hearing of the Board of Zoning Adjustments of
8 the District of Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson.

11 Joining me today to my right is
12 Vice Chair Shane Dettman, representative of
13 the National Capitol Planning Commission. To
14 his right is Konrad Schlater, representative
15 of the Zoning Commission. And to my left is
16 Nicole Sorg, mayoral appointee.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door.

20 Please be aware that this
21 proceeding is being recorded by a court
22 reporter and is also being Webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disturbing noise or actions in the hearing
3 room.

4 When presenting information to the
5 Board, please turn on your microphone and
6 state your name and home address. When you
7 are finished please turn off your microphone
8 so that no noise can be picked up or
9 background noise can be heard.

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

18 The order of procedure for special
19 exceptions and variances is as follows:
20 statement and witnesses of the applicant, the
21 government reports including Office of
22 Planning and Department of Public Works,

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1 reports of the ANC, persons and parties in
2 support, persons and parties in opposition,
3 and closing remarks of the applicant.

4 Pursuant to Section 3117.4 and
5 3117.5, the following time constraints will be
6 maintained. The applicant, appellant, persons
7 and parties in support except the ANC,
8 including witnesses, are given 60 minutes
9 collectively. Appellees, persons and parties
10 in opposition except the ANC, including
11 witnesses, are given collectively.
12 Individuals are given 3 minutes.

13 These time restrictions do not
14 include cross-examinations or questions from
15 the Board. Cross-examination of witnesses is
16 permitted by the applicant or parties.

17 The ANC within which the property
18 is located is automatically a party in a
19 special exception or variance case.

20 Nothing prohibits the Board from
21 placing reasonable restrictions on cross-
22 examination, including time limitations and

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1 limitations on the scope of cross-examination.

2 The record will be closed at the
3 conclusion of each case except for any
4 materials specifically requested by the Board.
5 The Board and the staff will specify at the
6 end of the hearing exactly what is expected
7 and the date by which that person must submit
8 evidence to the Office of Zoning. After the
9 record is closed no other information except
10 will be accepted by the Board.

11 The Sunshine Act requires that the
12 Public Hearing on each case be held in the
13 open before the public. The Board may,
14 consistent with its rules, regulations, and
15 the Sunshine Act, enter into Executive Session
16 during or after the Public Hearing on a case
17 for purposes of reviewing the record or
18 deliberating on the case.

19 The decision of the Board in these
20 contested cases must be based exclusively on
21 the public record. To avoid any appearance of
22 the contrary, the Board requests that all

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1 persons present do not engage members of the
2 Board in conversation.

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

6 The Board will make every effort
7 to conclude the Public Hearing as near as
8 possible to 6:00 p.m. If the afternoon cases
9 are not completed by 6:00 p.m., the Board will
10 assess whether it can complete the pending
11 cases or cases remaining on the agenda.

12 At this time, the Board will
13 consider any preliminary matters. Preliminary
14 matters are those relating to whether a case
15 will or should be heard today, such as
16 requests for postponement, continuance,
17 withdrawal, or whether the proper adequate
18 notice has been given for the hearing. If you
19 are not prepared to go forward today or you
20 believe the Board should not proceed, now is
21 the time to raise such matters.

22 Does the staff have any

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1 preliminary matters?

2 SECRETARY MOY: The staff doesn't
3 have anything to report this afternoon, Madam
4 Chair.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you very much.

7 Would all those individuals
8 wishing to testify today please rise to take
9 the oath? Mr. Moy will administer the oath.

10 (WITNESSES SWORN.)

11 CHAIRPERSON MOLDENHAUER: Just to
12 kind of get a lay of the land for the
13 afternoon cases, anybody who is here to
14 testify for HAI, can you just kind of raise
15 your hand?

16 Nobody else in the audience is
17 here for HAI? As an observer? Okay.

18 For the American Society of
19 Microbiology, is there anybody here for that
20 case?

21 Are those all witnesses in
22 accordance with the applicant? Okay.

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1 Based on that, what we'll do is
2 we'll just follow the agenda. I was trying to
3 determine whether or not we were going to
4 arrange the agenda in any different way.

5 We'll call the first case that's
6 on the agenda, Mr. Moy.

7 SECRETARY MOY: Yes. Good
8 afternoon, Madam Chair and members of the
9 Board.

10 That would be Application No.
11 18064 of HAI Real Estate Holdings LLC,
12 pursuant to 11 DCMR 3104.1, for a special
13 exception from the rear yard requirements
14 under subsection 774.5, and a special
15 exception from the parking requirements under
16 subsection 2120.6, to allow an addition to an
17 existing office building in the C-3-C District
18 at premises 1820-1822 Jefferson Place,
19 Northwest (Square 139, Lot 75).

20 CHAIRPERSON MOLDENHAUER: If all
21 the parties can take a seat and introduce
22 yourselves for the record, please, along with

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1 your home address?

2 MS. GIORDANO: Good afternoon,
3 members of the Board. My name is Cynthia
4 Giordano. I'm with Saw Ewing Law Firm. The
5 address is 2600 Virginia Avenue, Northwest.

6 MR. CREASER: My name is Randy
7 Creaser, principal at Creaser/O'Brien
8 Architects, 1420 Q Street, Northwest.

9 MR. RAMOS: My name is Ricardo
10 Ramos; Creaser/O'Brien Architects, 1420 Q
11 Street, Northwest.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much.

14 At this time if you'd like to
15 begin your presentation -- I think that we
16 have a fairly full record. There are a number
17 of letters in opposition so if you want to,
18 address some of those points. But just so you
19 know, we do have a full record on this case.

20 MS. GIORDANO: Okay. I'll just go
21 right to the main issues then, if that's okay.
22 Then we'll go into the architect's

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1 presentation.

2 I did want to provide a little bit
3 of background on this case, though. We have
4 been through the Historic Preservation review
5 process. That process took a little bit of
6 time, I think probably over a year. The
7 architect will go into that in a little bit
8 more detail. But the building is in a
9 historic district.

10 There was a good deal of research
11 about the rear portions of the building and
12 whether or not they were original or historic.
13 Originally, we had proposed to delete those
14 rear additions in the back. But it was
15 determined that they were old enough to be
16 considered historic, although not original.
17 And the Historic staff asked us to retain
18 those, so we went through a whole nother
19 iteration with the design.

20 The issue then became visibility
21 of the addition from Jefferson Place. The
22 building was reduced in size so that it would

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1 not be visible from Jefferson Place. So the
2 building is very much rear-loaded.

3 We are asking for, and the design
4 requires, a rear yard waiver. That is, just
5 to be clear, a 7-foot rear yard from the
6 property line that would be required here.
7 Because the rear yard would be 12 feet, but
8 measured from the center line at the alley,
9 and the alley is 10 feet. We're talking about
10 7 feet from the property line and beginning 20
11 feet in height up. So it's not a huge
12 variance that we're asking for; it's actually
13 a special exception. But what I meant was
14 it's not a huge deviation from the matter-of-
15 right requirement.

16 The zoning here is C-3-C. It's a
17 moderate commercial density zone. The site is
18 well located for public transportation and
19 parking garages; there's a variety of them in
20 the vicinity.

21 The agencies are in support. We
22 also have a letter -- I don't know that you

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1 have it yet -- in the record from the Advisory
2 Neighborhood Commission 2B. They just met on
3 last Wednesday evening so their letter just
4 came in overnight. If you don't have it --

5 CHAIRPERSON MOLDENHAUER: We
6 actually do have that. We just got it this
7 morning.

8 MS. GIORDANO: Okay. So
9 basically, that ends my introduction. I'd
10 like to go ahead and turn it over to the
11 architects.

12 CHAIRPERSON MOLDENHAUER: If
13 you're going to stand up there is a mobile --
14 yes.

15 You'll have to speak into the
16 microphone. Thank you.

17 MS. GIORDANO: If I could, I
18 wanted to also hand out -- there's some photos
19 of the rear yard conditions in this packet
20 that I think might be helpful for the Board
21 that will track the architect's presentation.

22 CHAIRPERSON MOLDENHAUER: If you

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1 can hand that over to Mr. Moy, he'll make sure
2 we get copies. Thank you.

3 MR. CREASER: Okay. Again, my
4 name is Randy Creaser with Creaser/O'Brien
5 Architects, and this is Ricardo Ramos.

6 To just sort of give you an
7 illustration of what Cynthia was mentioning
8 before in terms of the rear of the building,
9 this is the first floor of the existing
10 townhouses right here. It's on sheet 106 in
11 your set.

12 There were several projections on
13 the rear of that which come out beyond the 39
14 feet from the front of the building. You can
15 see that this is the rear of the building,
16 here. We were originally proposing with Steve
17 Callcott that we could hopefully take all of
18 these rear projections off, therefore creating
19 a clearer new building.

20 We ended up doing some research on
21 that and finding that they were literally
22 built about a year after the original

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1 construction. So they were saved and kept
2 into the design of the addition that was put
3 to surround it. Our idea was to really kind
4 of celebrate the fact that these buildings
5 were in the back, keep the windows, restore
6 the windows and doors, and all that.

7 This area here is the addition
8 that will occupy the rear yard. And this
9 design is showing it going to the property
10 line.

11 When we were originally proposing
12 this and took it to HPRB about a year ago, our
13 building height was 65 feet 7 inches. From a
14 sight line across the street, we ended up with
15 about a 2 feet 9 inches margin to the sight
16 line. That seemed to be a little too close
17 for comfort for certain people on the Board.
18 So we went back to the owner and suggested
19 that we take a floor off. He agreed.

20 You can see the difference between
21 these two sections. This is the revised new
22 one that is in your submittal. I was just

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1 showing you this one that showed the
2 additional floor.

3 Also, the consequences of trying
4 to cram another floor created some other
5 issues in relating to the existing building.
6 So my pitch to the owner was, well, won't this
7 make the floor plate align and be really nice?
8 Besides, it'll give us an almost 6.5-foot
9 lowering of the earlier submittal.

10 So we went back to the
11 Conservancy, went back to the ANC, showed them
12 the revised building profile, and they were
13 very pleased.

14 Just to maybe illustrate what this
15 building would look like, here is that.

16 In working with Steve Callcott we
17 really reduced the height of the building, as
18 well as originally we had a little more of the
19 building coming out over. So we really felt
20 that the whole design was more about, here is
21 the existing old townhouses and here is a new
22 building, so that it's not competing and being

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1 -- it's acting as more of a background to the
2 existing townhouses that are now office use.

3 You can also see that two doors
4 away is the Jefferson Row condos. Those
5 condos, the height of those are at 66 feet 6
6 inches from the sidewalk, and our building is
7 at 60 feet.

8 Now, what we've done is just kind
9 of illustrate the difference between building
10 by right in terms of what the setback would
11 do. This is the alley, this is 20 feet above
12 the alley, and then a 7-foot setback. So
13 that's just to kind of show you what the
14 difference in the profile would be that
15 Cynthia was mentioning.

16 I think that is enough. That
17 should be good.

18 MS. GIORDANO: Do you want to go
19 to the photos --

20 MR. CREASER: Do you want to go to
21 the rear?

22 MS. GIORDANO: -- of the back, the

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1 rear?

2 MR. CREASER: You want to do that?

3 MS. GIORDANO: Yes.

4 MR. CREASER: Okay. In your
5 packet there are photographs of the rear of
6 the building next-door to 1820-1822 Jefferson
7 Place. And that's the rearview of 1824-1826.

8 MS. GIORDANO: Just to clarify,
9 that is the property that I think has raised
10 an objection to the rear yard waiver.

11 MR. CREASER: That's these
12 photographs here. And that has a two-story
13 addition, maybe done 50 years ago, that goes
14 back to the rear alley. Also, those two
15 buildings adjoin the Jefferson Row
16 condominiums that you see in this perspective.

17 You can also see, from the other
18 set of photographs in your packet, pictures of
19 the rear alley across the alley from the
20 subject property. It shows how most of those
21 buildings are built right up to the alley.

22 MS. GIORDANO: Just to clarify,

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1 point out which one is 1824.

2 MR. CREASER: 1824?

3 MS. GIORDANO: 1824 is the darker
4 orange colored building.

5 MR. CREASER: This is the 1824
6 building here.

7 MS. GIORDANO: In conclusion, the
8 1824-1826 building is already built out to the
9 property line for the first 20 feet of height.
10 And the building on the other side of it,
11 opposite of our side, is already built out to
12 the property line to a height of 66 feet. So
13 we really don't see a significant impact here
14 of our rear yard variance.

15 I would just also conclude that
16 the matter-of-right height in this Zone
17 District is 90 feet. We're well below FAR by
18 1.5 FAR, as well. So we are not building this
19 site out to matter-of-right density and we're
20 being very respectful of the historic
21 structure. I think the judgement of the
22 review Board was that it made more sense to

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1 amass the building to the rear than the front
2 for historic preservation purposes.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you. I have a couple of questions.

5 One of the issues that was raised
6 by 1824 Jefferson Place was about the
7 potential light impact. Would there be any
8 change or significant change in the light
9 impact from -- you had the two different
10 examples -- creating the building as you are
11 currently designing it, versus creating the
12 building in conformity with the Zoning
13 requirements and conducting the setback as you
14 were showing on the additional sheet of paper?

15 MR. CREASER: Well, as you can
16 see, this is what we're proposing. What I've
17 drawn here is just an illustration of what
18 would be done by a matter-of-right.

19 We're allowed to come up 20 feet.
20 And this 7 feet over a distance of the length
21 of the lot I think is very -- would not have
22 an impact on light.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you.

3 Do any other Board Members have
4 any other questions for the applicant or his
5 architect?

6 Thank you very much. I don't
7 believe we have any other questions at this
8 point in time.

9 What we'll do now is we'll move to
10 Office of Planning if the applicant has
11 completed their initial opening.

12 Good afternoon.

13 MR. COCHRAN: Good afternoon. For
14 the record, my name is Steve Cochran with the
15 Office of Planning. Not to be confused with
16 Steve Callcott of the Historic Preservation
17 Office which often is the case, which is a
18 compliment to me because Steve is so good.

19 I'm taking it that you'd be happy
20 with the Office of Planning pretty much
21 resting on the record from your earlier
22 comments. So I'd like to focus just on a few

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1 of the concerns that have been raised by some
2 of the letters in opposition.

3 With respect to the 774.3 which is
4 the rear yard requirements, the applicant --
5 first off, it's a special exception. It's not
6 a variance. And just to get right down to it,
7 if you will look again at your picture that
8 shows the 1824, which is this picture, this
9 picture was taken at the worst possible impact
10 time, which would be the morning.

11 The building is already in shadow.
12 The addition of the applicant's rear addition
13 wouldn't increase its shadow since it's
14 already in shadow. And 7.5 feet is not going
15 to make a significant change in that. So it
16 seems like if there's impact, it's already
17 there; the applicant's wouldn't increase it.

18 With respect to any impact there
19 might be on the buildings on the south side of
20 the alley, again, the applicant is on the
21 north side. So with respect to light, there's
22 only a possibility of there being a diminution

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1 in light for 3 weeks in the year, roughly, in
2 July. At which point somebody might actually
3 appreciate having a little bit less light in
4 their windows.

5 The other thing is none of those
6 buildings on the south side are residential.
7 They're all commercial. We don't know whether
8 the addition on the property to the rear is
9 going to be used for storage or for office
10 use. Either way, there's only one window
11 behind, and that is still 12 feet away from
12 the applicant's.

13 Section 774.4 refers to habitable
14 rooms which are, more often than not,
15 considered to be residential rooms. And this
16 just wouldn't have an impact on any
17 residential rooms.

18 I don't think there's really a
19 need to go into the parking. DDOT has
20 reviewed the case although they have not filed
21 a letter. They have no problem whatsoever
22 with the reduction in parking. It would be

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1 minus six spaces because nine would be
2 required for the addition, which isn't covered
3 by Historic Preservation exemptions.

4 The applicant is within probably a
5 5-minute walk of two Red Line Metro stations
6 and a 10 to 12-minute walk of a Blue/Orange
7 Line station. So DDOT has no problem with it.

8 That concludes OP's report.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much, Mr. Cochran. I think that you
11 have addressed all of my questions.

12 Obviously, one of my questions was
13 going to be about DDOT and actually getting a
14 report from them. It is nice to hear your
15 testimony. But in a case where neighbors and
16 individuals have raised issues of congestion,
17 it always is nice to actually have something
18 from DDOT. But I do think it's clear there's
19 a lot of readily available public
20 transportation.

21 Are there any other questions from
22 any Board Members on this case for OP?

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1 Seeing none, thank you.

2 Does the applicant have any
3 questions?

4 MS. GIORDANO: No questions.

5 CHAIRPERSON MOLDENHAUER: At this
6 point in time we would hear from the ANC.

7 Is the ANC present for this? I
8 don't believe I see anybody coming forward.

9 We do have a letter here from ANC-
10 2B which was dated May 17, 2010, indicating
11 that there was a public meeting on May 12,
12 that they heard presentations from the
13 applicant, and that ANC-2B voted to support
14 the application. There was a quorum present
15 and it was an 8-0 vote in support.

16 At this time, any individual
17 persons that would like to testify in support
18 or in opposition could step forward to present
19 3 minutes of testimony. Seeing no individuals
20 stepping forward or raising their hands, there
21 seems to be no one in the audience.

22 What we can do is we can move

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1 forward to closing remarks by the applicant.

2 MS. GIORDANO: No closing remarks,
3 Madam Chair. I think our presentation is
4 complete.

5 We would ask the Board to approve
6 the special exceptions in a bench decision, if
7 the Board feels comfortable with that.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much.

10 At this time we will conclude the
11 hearing portion. I think we all feel
12 comfortable going straight into deliberation
13 on this case. I will start us off.

14 This is a case for two special
15 exceptions, one for rear setback under 774.2
16 and one for special exception for parking
17 requirement under 2120.6. The zoning is
18 commercial, C-3-C. It's in the Dupont Circle
19 Historic Overlay District.

20 The applicant has presented the
21 case to HPRB and they have gotten the
22 approval. They've modified their plans, as

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1 they stated in the hearing today, to
2 accommodate HPRB's desire to preserve the rear
3 addition of the building.

4 They've also reduced the height of
5 the addition to preserve the appearance of the
6 historic buildings from Jefferson Place. That
7 obviously is reducing the density in an area
8 that would permit, I think, a large amount of
9 density.

10 In addition to that, because of
11 the reduction in height they're kind of having
12 to push a majority of their addition into the
13 rear, thus seeking this rear yard relief. I
14 think the relief that they're seeking is very
15 minimal, especially under a special exceptions
16 standard, not a variance standard.

17 I think that they have satisfied
18 all the requirements under a special exception
19 rear yard. I'm not going to walk through
20 them, but rather I will incorporate OP's
21 report by reference, which is our Exhibit 23.

22 We do have a letter from the ANC

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1 in support, which I referenced earlier.

2 We also have two letters of
3 opposition, one letter is our Exhibit 20 and
4 one is our Exhibit 22, both making reference
5 to their concern about the density, parking
6 concerns, and the potential reduction in
7 sunlight.

8 I think that both the applicant
9 and OP have sufficiently addressed the issue
10 that there's going to be very minimal,
11 definitely not significant impact to light and
12 air by the addition. We have diagrams and
13 pictures that Mr. Cochran presented to us
14 today that show the property already has a
15 large shadow in the morning hours, and that
16 really there would be a limited time in which
17 the shadow would potentially be increased.

18 In addition to that, there's an
19 entire brick wall on one side of the building
20 and there's few very windows. And the setback
21 would really be only setting back a very
22 minimal amount, as shown by the architect in

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1 the diagram. So whether or not there's
2 setback, I think that any light impact would
3 be very minimal in this case.

4 In regards to the parking special
5 exception, I think that we have to give DDOT
6 great weight in regards to their
7 recommendations. There are several Metro
8 stops and Metro buses within walking distance
9 to this location. Jefferson Place is just, I
10 think, three blocks from the Red Line Metro
11 and just a few other blocks from Farragut
12 North.

13 So providing a special exception
14 for a historic building, I would be in
15 approval of that.

16 I will open up the Board for any
17 additional deliberation.

18 Seeing none, I will submit a
19 motion to approve Application No. 18064 for a
20 special exception relief for rear yard
21 setback, and approval of a special exception
22 for the parking requirement.

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1 Do I have a second?

2 COMMISSIONER SCHLATER: Second.

3 CHAIRPERSON MOLDENHAUER: Motion's
4 been made and seconded.

5 All those in favor, say aye?

6 ALL: Aye.

7 CHAIRPERSON MOLDENHAUER: Mr. Moy,
8 could you read back the vote please?

9 SECRETARY MOY: Yes, Madam Chair.
10 The staff would record the vote as 4-0-1.
11 This is on the motion of the Chair, Ms.
12 Moldenhauer, to approve the special exception
13 relief from 774.2 rear yard setback
14 requirements, and 2120.6 from the parking
15 requirements. The motion was seconded by Mr.
16 Schlater. In support of the motion, Mr.
17 Dettman and Ms. Sorg. No other Board Member
18 participating.

19 Again, a final tally of 4-0-1.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you very much.

22 Seeing that there is no party

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1 opposition in this case, I would recommend
2 that we waive our requirements and provide a
3 summary order.

4 SECRETARY MOY: Very good. Thank
5 you.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you. Have a good day.

8 MR. CREASER: Thank you.

9 SECRETARY MOY: The next case for
10 the afternoon, Madam Chair, is Application No.
11 18062 of American Society of Microbiology,
12 pursuant to 11 DCMR 3104.1 and 3103.2, for a
13 variance from the nonconforming structure
14 provisions under subsection 2001.3, and a
15 special exception to allow the conversion of
16 an existing row dwelling at 1750 N Street,
17 Northwest, for office uses under section 508,
18 and to modify the relief granted in BZA Order
19 Nos. 12783 and 16470, to allow the connection
20 of 1750 N Street, Northwest, and 1752 N
21 Street, Northwest, and the subdivision of both
22 properties into a single lot of record, in the

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1 DC/SP-1 District at premises 1750 and 1752 N
2 Street, Northwest (Square 159, Lot 70 and 88).

3 CHAIRPERSON MOLDENHAUER: Good
4 afternoon.

5 MS. BRAY: Good afternoon,
6 Chairperson Moldenhauer and members of the
7 Board. My name is Kinley Bray with the law
8 firm of Arent Fox on behalf of the American
9 Society for Microbiology, the applicant in
10 this case.

11 We believe we have a very full
12 record although our entire team is here to
13 present. I can go ahead and introduce them.

14 To my right is Kim Shankle with
15 ASM. Behind me are JP Spickler and Derek Wood
16 of FOX Architects; Ellen McCarthy, our expert
17 in Planning and Zoning; Nicole White from
18 Symmetra Design, a traffic consultant; as well
19 as Karen Coble and Francis Manwell on behalf
20 of Lincoln Property, which manages the
21 building for ASM.

22 As I said, I think we have a very

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1 full record in this case today. I'm happy to
2 dispense of our presentation and just take
3 questions from the Board, or give a limited
4 background, whatever is the pleasure of the
5 Board.

6 CHAIRPERSON MOLDENHAUER: I think
7 we do have a full record on this case. I
8 think that you have a funny way of loving N
9 Street.

10 We've all reviewed the case and I
11 don't think that a full presentation is
12 necessary. I don't know how many questions
13 Board Members have but there may be a few here
14 and there. I think if you want to just allow
15 Board Members to ask questions, we can kind of
16 go from there.

17 I'll open up for any questions
18 from the Board.

19 VICE CHAIRPERSON DETTMAN: Thank
20 you, Madam Chair.

21 I just had one question and it's
22 more of a curiosity, and it goes to your

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1 request to modify Order No. 16470. That order
2 allows you to build to a lot occupancy of 90
3 percent and a maximum FAR of up to 5.375.

4 As a result of your project, both
5 of those areas of relief are going down. So
6 I just don't understand why you need to
7 request the special exception.

8 MS. BRAY: The reason that we're
9 here is essentially because the special
10 exception does not extend to Lot 70, which is
11 the property recently acquired by ASM.
12 Therefore Lot 70 -- although you had
13 previously approved relief in a separate
14 special exception case, it's not clear to us
15 that that relief ever properly vested. So
16 we're seeking a modification to extend the
17 special exception to Lot 70 and allow the
18 consolidation.

19 It's our intention that no
20 additional variance relief is necessary,
21 although we really took a belt and suspenders
22 approach in putting together this application.

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1 Because one could arguably construe this as an
2 addition to 1750 which doesn't have any relief
3 approved on it.

4 VICE CHAIRPERSON DETTMAN: What's
5 the validity of Order No. 16470 now; did you
6 come back and build to 90 percent lot
7 occupancy?

8 MS. BRAY: No. As I review the
9 regulations, the new order would actually
10 supersede the relief granted in 16470.

11 VICE CHAIRPERSON DETTMAN: Okay.
12 Thank you.

13 CHAIRPERSON MOLDENHAUER: Any
14 other questions from Board Members?

15 Seeing none -- as I said earlier I
16 think there's definitely a full record -- the
17 applicant at this point in time can take the
18 opportunity to clarify anything, or we can
19 move on to a report from Office of Planning.

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

22 The Office of Planning is willing

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1 to stand on the record but is available to
2 answer any questions.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you very much, Mr. Mordfin.

5 I don't believe I have any
6 questions. It's a very thorough report from
7 OP and I appreciate that.

8 Let me open up the floor for any
9 questions by other Board Members. I don't
10 believe there are any.

11 At this point in time, I open up
12 the floor for any questions from the applicant
13 to OP.

14 MS. BRAY: We have none. Thank
15 you.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much.

18 Then at this point in time, we'll
19 move on to the ANC. Is a member of the ANC
20 present?

21 Not seeing any member present, we
22 have our Exhibit 27. This exhibit is a letter

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1 dated April 18, 2010. They state that there
2 is a regularly held meeting on -- I believe it
3 was a spelling error and they mean April 14,
4 2010. At that time they heard and voted on
5 the special exception and variance relief for
6 this application. They had a quorum present
7 and it was a 9-0 vote in support of the
8 application. This letter would receive great
9 weight.

10 At this point in time, we'll open
11 up the floor for any individuals wishing to
12 testify in support or in opposition of this
13 case.

14 Seeing none in the audience, we
15 can move back to any closing remarks by the
16 applicant.

17 MS. BRAY: Thank you, Ms.
18 Moldenhauer.

19 Obviously the record is quite full
20 in this. I think in answering Mr. Dettman's
21 question we've addressed why the request for
22 relief came in in the posture that it did.

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1 We're seeking an extension of the existing
2 special exception on 1752 N Street to 1750 N
3 Street so that the entire property may be used
4 for a special exception for office purposes.

5 The overall FAR as a result of the
6 combined lot would drop to 5.1 FAR. The lot
7 occupancy would drop to 87 percent. And an
8 existing nonconforming court would become
9 conforming. That's essentially the existing
10 rear yard of 1750.

11 We believe we've met all the tests
12 for relief.

13 We appreciate the Board's time
14 this afternoon and the efforts of the staff of
15 the Office of Planning in working with us to
16 prepare our application and to prosecute it.

17 We would urge the Board's approval
18 at this time. Should the Board feel it
19 appropriate, we would request a summary order
20 and a bench decision.

21 CHAIRPERSON MOLDENHAUER: Thank
22 you very much.

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1 At this time the hearing portion
2 of this case will be concluded. I don't
3 believe any other Board Members have any other
4 questions for the applicant. I think we can
5 go into deliberations.

6 VICE CHAIRPERSON DETTMAN: I'd be
7 happy to lead the Board in our deliberations,
8 Madam Chair. I think it can be done
9 relatively quickly and simply.

10 I'll just incorporate by reference
11 the Office of Planning's report in support of
12 the application, noting that the provisions of
13 508 for purposes of converting the subject
14 property to a nonresidential use pursuant to
15 508 -- those conditions have been met.

16 With respect to the variance
17 request under 2001.3 to permit an addition to
18 a nonconforming structure, I think the Office
19 of Planning's report adequately demonstrates
20 that the property does have an exceptional
21 condition by way of the improvements on the
22 property. That gives rise to a practical

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1 difficulty on the property owner in that it
2 would be practically difficult for them to put
3 a small portion of the subject property to
4 residential use.

5 As the Office of Planning states,
6 the requested relief will not give rise to any
7 substantial detriment to the public good, nor
8 compromise the intent, purpose, and integrity
9 of the Zone Plan.

10 Finally, with respect to the
11 request to modify the special exception
12 granted under the previous order, Order No.
13 16470 -- is that correct?

14 CHAIRPERSON MOLDENHAUER: Yes.

15 VICE CHAIRPERSON DETTMAN: I still
16 question why the special exception is
17 required. But without an abundance of caution
18 I certainly support that special exception.

19 With that, Madam Chair, I'm
20 prepared to make a motion if there's no
21 further deliberation.

22 CHAIRPERSON MOLDENHAUER: I think

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1 a motion would be appropriate at this time.

2 VICE CHAIRPERSON DETTMAN: Then I
3 would move for approval of Application No.
4 18062 -- I don't have the advertised language
5 here so I'll wing it -- for a special
6 exception pursuant to section 508, a variance
7 pursuant to 2001.3, and a special exception to
8 modify a previous Board order.

9 CHAIRPERSON MOLDENHAUER: I
10 second.

11 The motion has been made and
12 seconded.

13 With no further deliberation, all
14 those in favor?

15 ALL: Aye.

16 CHAIRPERSON MOLDENHAUER: Mr. Moy,
17 if you could read back the vote?

18 SECRETARY MOY: With pleasure,
19 Madam Chair. The staff would record the vote
20 as 4-0-1. This is on the motion of Mr.
21 Dettman, the Vice Chair, to approve the
22 application as stated to the relief. Seconded

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1 by the Chair, Ms. Moldenhauer. In support of
2 the motion, Ms. Sorg and Mr. Schlater. No
3 other Board Members participating.

4 Again, the final vote is 4-0-1.

5 CHAIRPERSON MOLDENHAUER: There is
6 no form of opposition for this case and the
7 ANC is in support. So I would like to waive
8 our requirements for a full order and ask for
9 a summary order, please.

10 SECRETARY MOY: Very good. Thank
11 you, Madam Chair.

12 MS. BRAY: Thank you.

13 CHAIRPERSON MOLDENHAUER: This
14 meeting is now adjourned for today. Thank
15 you.

16 (Whereupon, at 2:26 p.m. the
17 hearing was concluded.)
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20
21
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