

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING AND MEETING

+ + + + +

TUESDAY

MAY 15, 2012

+ + + + +

The Regular Public Hearing and Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:50 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
RASHIDA MacMURRAY, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
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.
MARY NAGELHOUT, ESQ.

The transcript constitutes the
minutes from the Public Hearing and Meeting
held on May 15, 2012.

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TABLE OF CONTENTS

Page No.

I. Expedited Review Calendar

Application No. 18371, Luke F. Grande and Hope H. Grande 5

Application No. 18374, John and Joan Wolfle 7

Application No. 18361, George Boguslawski 7

II. Public Decision Meeting

Application No. 18330 of FCP Champlain, LLC15

Application No. 18240, District of Columbia28
Public Library

Application No. 18404, Chaney Enterprises,33 LP

Application No. 18273, 1328 - 1330 Wisconsin41
Avenue, LLC, et al

III. Public Hearing

Application No. 18321, Citizens Association49
of Georgetown

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

9:50 a.m.

CHAIRPERSON JORDAN: Will the meeting please come to order.

Good morning, ladies and gentlemen.

We are located in the Jerrily R. Kress Memorial Hearing Room, at 441 4th Street, N.W. Today's date is May 15th. The time now is, oh, I don't know, 9:50.

We are here for the public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. To the left of me is Nicole Sorg, Vice Chairperson. To the right of me, Rashida MacMurray, Board Member. And, to her right, Jeffrey Hinkle, Board Member.

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

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1 any disruptive noise in the hearing room.

2 Today's agenda is for the Board to
3 render decisions on cases that are under the
4 regulations do not require a hearing, or do not
5 require hearings.

6 We will handle preliminary matters
7 with the cases when called.

8 Mr. Secretary, is there anything we
9 need before we begin?

10 SECRETARY MOY: No, sir.

11 CHAIRPERSON JORDAN: Then let's
12 call our first case.

13 SECRETARY MOY: Yes, good morning,
14 Mr. Chairman, Members of the Board.

15 The first item for the morning
16 session are the cases on the expedited review
17 calendar, of which there are three cases.

18 The first for discussion is
19 Application No. 18371. This is of Luke F.
20 Grande and Hope H. Grande, pursuant to 11 DCMR
21 3104.1, for a special exception for a rear

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1 addition to an existing one-family detached
2 dwelling, under Section 223, not meeting the
3 rear yard Section 404, and side yard Section
4 405, requirements in the R-1-B District. This
5 is at premises 3709 Corey Place, N.W., property
6 located at Square 1525, Lot 60.

7 In your case folders, Mr. Chairman,
8 you should have the applicant's affidavit of
9 posting, which is identified as Exhibit 26.
10 There were also two letters in your case folders,
11 one from the Office of Planning, one from the
12 ANC, and those are as Exhibits 25 and 27,
13 respectively.

14 There are no other filings in the
15 record. The Board should act on the merits of
16 the case, on the expedited calendar, pursuant
17 to Section 3118, Requirements, attended to the
18 special exception relief under Section 223.

19 Mr. Chairman, should I read the
20 captions for the other two applications, or
21 should I read them one by one? I just read the

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1 first case.

2 CHAIRPERSON JORDAN: Yes, read the
3 captions for the next two special exceptions.

4 SECRETARY MOY: Okay. The second
5 case on the expedited review calendar is the
6 application of 18374, this is of John and Joan
7 Wolfle, pursuant to 11 DCMR 3104.1, for a special
8 exception for a rear addition to an existing
9 one-family detached dwelling under Section 223,
10 not meeting the rear yard, Section 404, and
11 non-conforming structure 2001.3 requirements,
12 in the R-1-B District, at premises 6325 32nd
13 Street, N.W., property located at Square 2349,
14 Lot 209.

15 This application, Mr. Chairman,
16 there is a preliminary matter related to the
17 posting of the public notice and, of course,
18 subsequently, the affidavit.

19 The second, or rather third, and
20 final case, on the expedited review calendar
21 is Application No. 18361. This is of George

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1 Boguslawski, pursuant to 11 DCMR 3104.1, for
2 a special exception to construct an accessory
3 garage serving a one-family row dwelling under
4 Section 223, not meeting the lot occupancy,
5 Section 403, requirements in the R-4 District
6 at premises 808 L Street, N.E., property located
7 at Square 51, Lot 908.

8 Those filings are in your case
9 folders. I'm not going to go through those,
10 Mr. Chairman, and that completes the cases on
11 the calendar.

12 CHAIRPERSON JORDAN: Okay, thank
13 you, Mr. Secretary.

14 Let's do this then, on Case No.
15 18374, I think you indicated that there wasn't
16 a posting, but there was a posting, but not with
17 the amended --

18 SECRETARY MOY: That's correct.
19 The applicants posted and filed their affidavit
20 last Friday, on the same day.

21 And, that should be identified in

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1 your folders as Exhibit 20.

2 CHAIRPERSON JORDAN: That was the
3 filing affidavit, but the posting had, actually,
4 occurred, correct?

5 SECRETARY MOY: Yes.

6 CHAIRPERSON JORDAN: Okay. For
7 18374, before we go to any deliberation, I would
8 just ask the Board that we nos sue sponte agree
9 to waive this requirement of affidavit filings
10 less than 15 days, if that's the consent of the
11 Board.

12 Okay, so we will so do that.

13 Regarding Application 18361, I
14 don't know if anyone on the Board has any issues
15 with it, other than the fact that we know, based
16 upon OP, that there's two additional reliefs,
17 two additional minor reliefs, that would be
18 necessary to give the applicant full relief
19 necessary to do the project, and that they would
20 need to add relief from Section 401, minimum
21 lot width, and then relief from Section 406,

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1 the minimum lot area.

2 Has this issue been resolved on
3 this? Well, let me finish this.

4 And so, with that, we can do that
5 on our own motion to amend and add the proper
6 relief. Is there consent for that?

7 So, by consent, we would add that
8 relief.

9 Now, the question arises as to
10 18374, Mr. Secretary, did you we find out whether
11 or not that, actually, had been waived, but the
12 application itself speaks toward the expedited
13 hearing.

14 SECRETARY MOY: That's correct.

15 CHAIRPERSON JORDAN: So that, it's
16 been reported by the Office of Zoning that it
17 did, indeed, meet the requirements for
18 expedited.

19 SECRETARY MOY: Yes, that's my
20 understanding, Mr. Chairman.

21 CHAIRPERSON JORDAN: So then, that

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1 would not be an issue.

2 Do you want to respond to that?

3 SECRETARY MOY: Yes, well, my
4 understanding from the submission from the
5 applicant was, when they filed their posting
6 and the affidavit there were no explicit words
7 asking for the waiver of the time requirements.

8 But, they were aware that they did not meet
9 the requirements, but they submitted as early
10 as they could.

11 CHAIRPERSON JORDAN: Okay.

12 SECRETARY MOY: So, it's implicit,
13 I think.

14 CHAIRPERSON JORDAN: And my report
15 from the Office of Zoning indicates that that
16 has been waived, so we can proceed.

17 I'm sorry?

18 MS. GLAZER: Yes. I didn't see a
19 copy of the waiver of hearing, which is usually
20 required.

21 CHAIRPERSON JORDAN: I understand

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1 that. I understand the issue.

2 MS. GLAZER: Okay.

3 CHAIRPERSON JORDAN: I understand
4 the issue. I'm saying, what was reported by
5 the Office of Zoning. We'll deal with that,
6 too.

7 MS. GLAZER: Okay.

8 CHAIRPERSON JORDAN: That there was
9 all the other prerequisites for this to be on
10 the expedited docket, or whether there may have
11 been some mistake in not checking off on the
12 box indicating waiver of hearing in this matter.

13 Does the Board have a feeling for
14 this one way or the other, that we waive it or
15 not, that we add it to the expedited docket?
16 It's already on the expedited docket.

17 MEMBER MacMURRAY: Mr. Chairman, I
18 would move that we do the waiver, if it's already
19 on the docket it's not going to prejudice any
20 other party.

21 CHAIRPERSON JORDAN: Let me ask,

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1 are the -- is the applicant here? Yes. Are
2 you making -- would you make an oral motion that
3 we waive the need for hearing?

4 MR. WOLFLE: I make an oral request
5 that you waive the motion, waive the
6 requirement.

7 CHAIRPERSON JORDAN: Okay, thank
8 you. And, we accept that.

9 With that, I think has the Board had
10 enough time to review the requests for relief
11 under 18371, 18374, and 18361?

12 Does anyone have any questions or
13 issues with any of these three applications?

14 Seeing none, then I would entertain
15 -- the Chair would make a motion that we approve
16 the items requested, the relief requested for
17 18371, 18374, and 18361, as we have modified
18 the reliefs necessary under 18361 to add the
19 two additional requirements for relief. And,
20 I think you have those already in the record.

21 SECRETARY MOY: Yes, sir.

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1 CHAIRPERSON JORDAN: Any
2 questions?

3 Is there a second, please?

4 MEMBER MacMURRAY: Mr. Chairman, I
5 second the motion.

6 CHAIRPERSON JORDAN: Motion made
7 and seconded that we approve the three
8 applications for special exception relief on
9 our expedited docket.

10 Any unreadiness?

11 All those in favor signify by saying
12 aye.

13 (Ayes.)

14 CHAIRPERSON JORDAN: Any opposed?

15 The motion carries.

16 Mr. Secretary, would you poll the
17 Board, please?

18 SECRETARY MOY: Yes, sir. Staff
19 would record the vote as 4:0:1, on the motion
20 of Chairman Jordan to approve the three cases,
21 18371, 18374, and 18361, on the expedited review

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1 calendar for approval as amended. Seconding
2 the motion Ms. MacMurray. Also in support of
3 the motion, Ms. Sorg, Vice Chair Sorg, and Mr.
4 Hinkle. No other Board Members participating.

5 So again, the final vote is 4:0:1,
6 the motion carries in all three cases.

7 CHAIRPERSON JORDAN: And, could you
8 issue summary orders on those, please.

9 SECRETARY MOY: Thank you, Mr.
10 Chairman.

11 CHAIRPERSON JORDAN: Let's call
12 18330, if we may.

13 SECRETARY MOY: The next
14 application for decision is Application No.
15 18330. This is of FCP Champlain, LLC, pursuant
16 to 11 DCMR 3104.1 and 3103.2, for a variance
17 for, advertised, this is a variance from the
18 floor area ratio requirements under Section 402
19 and a special exception to allow an increase
20 in building height under Section 1403, to permit
21 the development of a residential building in

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1 the RC/R-5-B District. This is at premises 2337
2 Champlain Street, N.W., property located in
3 Square 2563, Lot 887.

4 On April the 3rd of this year, the
5 Board completed public testimony and closed the
6 record and schedule this decision on May 15th.

7 The Board requested supplemental
8 information to support the -- to supplement the
9 record.

10 In your case folders, Mr. Chairman,
11 there are two draft orders, findings, facts and
12 conclusions of law, from the applicant and from
13 the opposition party, identified as Exhibits
14 49 and 50, respectively.

15 There are also, as allowed into the
16 record, responses, and those filings are from
17 the applicant and the opposition party,
18 identified as Exhibits 51 and 52, respectively.

19 And finally, the Board asked that
20 the Department of Transportation file a report,
21 and that is in your case folders identified as

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1 Exhibit 48.

2 So, with that, the Board has to act
3 on the merits of the requested variance relief
4 from FAR requirements and the special exception
5 to allow increasing the building height under
6 Section 1403.

7 And, that completes the staff's
8 briefing, Mr. Chairman.

9 CHAIRPERSON JORDAN: I think we
10 need Commissioner Cohen, please.

11 SECRETARY MOY: Mr. Chairman, I
12 should also add for the record that this morning
13 there was a filing from the applicant on this
14 application. And, I believe that that's in your
15 case folders.

16 CHAIRPERSON JORDAN: I want to make
17 for the record that Zoning Commissioner Marcy
18 Cohen has now joined the Board, particularly,
19 for this case.

20 Is the applicant present?

21 SECRETARY MOY: Yes.

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1 CHAIRPERSON JORDAN: Would you come
2 forward, please.

3 Would you introduce yourself for the
4 record, please?

5 MS. SHIKER: Yes, good morning. I'm
6 Christy Shiker, with the law firm of Holland
7 & Knight, representing the applicant.

8 CHAIRPERSON JORDAN: We have
9 received -- I don't know, when did you file this
10 letter, it's dated May 15th, was that this
11 morning?

12 MS. SHIKER: The letter was filed
13 this morning, yes.

14 CHAIRPERSON JORDAN: And so, we
15 take that as a motion to postpone, which is
16 certainly beyond the time, we would have to give
17 relief to do that.

18 Can you tell us why it wasn't filed
19 before today, and, additionally, what is the
20 basis of the motion?

21 MS. SHIKER: Of course, thank you.

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1 The applicant began working with the
2 opposition party prior to the hearing, and has
3 continued to work with the opposition party
4 since the hearing to try to come to some
5 resolution of the opposition party's concerns.

6 As we had testified at the hearing,
7 we believe that those -- that there should be
8 no further concerns given, given the changes
9 that have been to the application.

10 Clearly, opposition was still
11 concerned, and we've been trying to make
12 adjustments to different elements, possibly,
13 of the project or to their building to try to
14 resolve their concerns on their views.

15 We were hopeful that we would have
16 some type of agreement by yesterday. We
17 continued discussions into the evening. And,
18 we were asked to look at another option, which
19 we were not able to do last night. And, we
20 agreed with the opposition party and their
21 counsel as present that we would request a

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1 one-week continuance for the decision to see
2 if that last question that they had could be
3 addressed, such that their opposition could be
4 removed to the application.

5 We believe that we have satisfied
6 the burden of proof, but in an effort to try
7 to work with the adjoining party we have
8 continued these discussions, and the reason why
9 it was filed this morning was based on continuing
10 into last night, and not knowing we'd need the
11 continuance until after the Office of Zoning
12 was closed.

13 CHAIRPERSON JORDAN: First let me
14 see if the Board is willing to entertain this,
15 since it was filed out of time, before we go
16 further.

17 Is there a consensus that we do
18 accept it, taken it was filed out of time, one
19 way or the other?

20 VICE CHAIR SORG: I have one
21 question, Mr. Chairman.

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1 CHAIRPERSON JORDAN: Go ahead.

2 VICE CHAIR SORG: It's my
3 understanding in this case, and also I should
4 note for the record that I have read the record
5 in this case, but I was not present for the
6 original hearing, that we are not, of course,
7 accepting additional filings from the
8 applicant.

9 And so, I'm not certain -- I mean,
10 presumably, you know, some changes with the
11 relationship, you know, between the applicant
12 and the opposition party may require, you know,
13 either a change in relief, or a change in plans,
14 because, obviously, we have to vote on, you know,
15 what are the current plans for the -- you know,
16 architectural plans.

17 So, that would then -- entertaining
18 this motion would also, potentially, require
19 us to look at an additional motion request for
20 additional filings from the applicant, you know,
21 in addition to, potentially, obviously, they

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1 are hopeful for a withdrawal of the opposition.

2 So, I don't know whether that's --
3 it's also a question in my mind, in that, of
4 course, there was a rather full record from what
5 we had.

6 CHAIRPERSON JORDAN: Let me first
7 then -- let me do this, I'm going to accept the
8 late filing, not that we are really in favor,
9 we are just accepting it as late filing, waiving
10 the requirement for the time for you to file
11 it.

12 Now, discussing the merits, as which
13 Ms. Sorg has done so, does any other Board Member
14 want to discuss -- no, that's okay -- any other
15 discussion about whether or not to postpone this
16 or not?

17 ZC MEMBER COHEN: Thank you, Mr.
18 Chairman.

19 I would suggest that we postpone
20 this. It seems to me that there may be a
21 compromise reached, an acceptable compromise,

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1 and that we should encourage this continuing
2 dialogue.

3 So, that's my position, is to accept
4 the postponement.

5 CHAIRPERSON JORDAN: Any other
6 discussion?

7 MEMBER MacMURRAY: Mr. Chairman, I
8 agree with Vice Chair Sorg, in terms of that
9 we will probably have to, after we -- if we grant
10 this motion to accept the untimely filing, then
11 we'll need to revisit and look at the plans when
12 we have the next hearing. That will be
13 something that the applicant will need to make
14 a motion upon.

15 VICE CHAIR SORG: And, to note, Mr.
16 Chairman, that they are requesting only a week
17 of postponement, which is not in keeping with
18 the schedule that the Board has established with
19 regard to our decision.

20 CHAIRPERSON JORDAN: Mr. Hinkle, I
21 think you were going to --

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1 MEMBER HINKLE: Yes, thank you, Mr.
2 Chair.

3 I understand Ms. Sorg's concern
4 about the time frame, but I'm thinking more,
5 you know, this is a permanent structure that
6 will be there for 20, 30, 50, 70 years, who knows
7 how long. And, I think if we could give the
8 applicant and the opposition party just a little
9 more time, it seems like they might be able to
10 come to a resolution, where there could be
11 settlement on both sides, and both sides can
12 walk away a little bit happier with this.

13 So, I'm inclined to support the
14 postponement for at least one week.

15 CHAIRPERSON JORDAN: I appreciate
16 everyone's comments, and I do believe -- well,
17 let me say, this is quite out of the ordinary.

18 And, let me say for the record, so that you'll
19 know, and anybody else will know, these type
20 of late filings doesn't do you justice or the
21 Board justice.

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1 Moreover, requesting us to tell the
2 Board when you want it heard is something else
3 that's not in your purview to do. I mean, I
4 take that as a real concern, and I recommend
5 that you not do that in the future.

6 Whether or not if we are going to
7 postpone it, it would have to be at our
8 convenience and added into the docket when we
9 saw fit to add it to the docket. We have a lot
10 of other cases, and other people have been
11 waiting to get hearings and to get decisions,
12 and no one party controls that docket.

13 I mean, there's a lot that goes into
14 it that the Office of Zoning has to do, in regards
15 to cases. And so, this will require us, if we
16 were to grant this, for us to have to do some
17 finagling just to meet your request, which has
18 been out of time and some other things. And,
19 it's been pending, by your own conversation,
20 that this thing has been pending for a while.

21 That being said, I certainly want

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1 neighbors and citizens to get along as much as
2 possible. I believe that there's great value
3 in working things out. We wish that they all
4 could be worked out before they got here. I
5 mean, I think that's what we really, really want.

6 I don't find it to be a great
7 detriment to our decision, based upon that which
8 is in the record now, and any other changes that
9 may be admitted. You are just going to have
10 to get back in the loop, in the regular loop
11 to get it heard.

12 So, with that, I would be supportive
13 of the postponement.

14 So, the Chair would entertain a
15 motion one way or the other by anyone.

16 Ms. Cohen?

17 ZC MEMBER COHEN: Thank you, Mr.
18 Chairman.

19 I move that we postpone Case No.
20 18330, application of FCP Champlain, and I also
21 would move that we place it on the docket as

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1 soon as possible.

2 CHAIRPERSON JORDAN: Which would be
3 next week, and the afternoon when you are
4 sitting.

5 ZC MEMBER COHEN: And, therefore,
6 I'm willing to come back.

7 CHAIRPERSON JORDAN: No, that's
8 very important, because that's the only reason
9 why I'm willing to entertain this in any shape,
10 form or fashion, because it just happened to
11 be a time when Commissioner Cohen was going to
12 be here.

13 So, motion made and second anyone?

14 MEMBER HINKLE: I'll second it.

15 CHAIRPERSON JORDAN: Motion made
16 and seconded that we postpone this to next week's
17 agenda in the afternoon.

18 Any unreadiness, other than what
19 we've already had?

20 All those in favor signify by saying
21 aye.

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1 (Ayes.)

2 CHAIRPERSON JORDAN: Those opposed
3 nay.

4 The motion carries.

5 Secretary Moy?

6 SECRETARY MOY: Yes, staff would
7 record the vote as 5:0:0 on the motion of Zoning
8 Commissioner Cohen to postpone the Board's
9 decision until next Tuesday, May 22nd, in the
10 afternoon session, seconding the motion Mr.
11 Hinkle. Also in support, Ms. Sorg, Vice Chair
12 Sorg, Chair Jordan and Ms. MacMurray. That's
13 5:0:0, Mr. Chairman.

14 CHAIRPERSON JORDAN: Thank you.

15 MS. SHIKER: Thank you for your
16 consideration.

17 SECRETARY MOY: The next case
18 before the Board is a request for
19 reconsideration and rehearing of the Board's
20 decision to Application No. 18240. This is of
21 the District of Columbia Public Library,

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1 pursuant to Section 3126 of the Zoning
2 Regulation.

3 For the record, Mr. Chairman, the
4 original application was approved on September
5 13, 2011, and that application was pursuant to
6 11 DCMR 3103.2 for a variance from the rear yard
7 requirements under Section 404, to allow an
8 addition to an existing Mount Pleasant Library,
9 in the R-5-D District at premises 3160 16th
10 Street, N.W., property located at Square 2595,
11 Lot 830.

12 The individual filed on April 18,
13 2012 the request, and that document is
14 identified in your case folders, Mr. Chairman,
15 as Exhibit 61. He subsequently filed a second
16 document, dated April 23, 2012, and that is
17 identified as Exhibit 62.

18 And finally, there's a response to
19 these filings from the D.C. Public Library, and
20 that document is identified as Exhibit 63.

21 There are procedural matters in this

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1 application or request, Mr. Chairman, and that
2 completes the staff's briefing.

3 CHAIRPERSON JORDAN: All right,
4 thank you, Mr. Moy.

5 On 18240, we have a motion to
6 reconsider from a previously denied non-party
7 regarding the merits of the case.

8 Does the Board have a feel one way
9 or the other on this?

10 Ms. Sorg?

11 VICE CHAIR SORG: Thank you, Mr.
12 Chairman.

13 Before we even get to any potential
14 merits of this request, I believe that the
15 petitioner is a non-party and, therefore, not
16 only did the petitioner in this matter not
17 request a waiver of the rules regarding the
18 requirement that motions for reconsideration
19 be submitted by parties, but also this
20 petitioner does not have standing to represent
21 those that he claims to represent.

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1 And so, there's the threshold
2 question of whether this petitioner has standing
3 to submit this request. I believe that it
4 should be denied.

5 CHAIRPERSON JORDAN: Anyone else?

6 I've taken a very extensive look at
7 this, and I went through the previous hearing
8 where the party status was denied. And, it's,
9 actually, 23 pages in the hearing transcript,
10 23 pages, or a whole discussion on whether or
11 not Mr. Otten qualified as a party, which he
12 was denied after 23 pages of dialogue, and that
13 the proper party representing the -- well, the
14 ANC was, actually, represented, and the
15 community was represented, and our precedent
16 shows that we do not let non -- we have not let
17 non-parties -- let me go back and say, generally,
18 do not let non-parties submit motions for
19 reconsideration.

20 So, with that, I would find that this
21 motion would not be proper for us to grant, and

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1 would move that we deny the motion.

2 MEMBER MacMURRAY: Mr. Chairman, I
3 would second that motion, and also include the
4 fact that applicant has not even shown up to
5 provide any other further testimony or question
6 to defend why they should be a party.

7 CHAIRPERSON JORDAN: Motion made
8 and seconded that we deny the motion for
9 reconsideration.

10 Any additional unreadiness or
11 discussion?

12 Seeing none, all those in favor
13 signify by saying aye.

14 (Ayes.)

15 CHAIRPERSON JORDAN: Those opposed
16 nay?

17 The motion carries. We will deny
18 that.

19 Mr. Moy?

20 SECRETARY MOY: Yes, sir. Staff
21 would record the vote as 4:0:1, this on the

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1 motion of Chairman Jordan to deny the request
2 for a reconsideration rehearing, for the reasons
3 cited. Seconding the motion, Ms. MacMurray,
4 also in support of the motion Vice Chair Sorg,
5 Mr. Hinkle, and we have no other sitting Board
6 Members.

7 Again, the final vote was 4:0:1.
8 The motion carries, Mr. Chairman.

9 CHAIRPERSON JORDAN: All right,
10 thank you.

11 Our next case?

12 SECRETARY MOY: The next case
13 before the -- Mr. Chairman, I'd like to strike
14 what I just said, because I have an absentee
15 ballot. Yes, oops.

16 Mr. Turnbull has also filed an
17 absentee ballot, so, actually, I would rather
18 record the vote as 5:0:0, because Mr. Turnbull's
19 absentee ballot is also to deny.

20 So again, once again for the record,
21 this is on the motion of Chairperson Jordan to

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1 deny, second Ms. MacMurray, also supporting the
2 motion Vice Chair Sorg, Mr. Hinkle and Mr.
3 Michael Turnbull.

4 So again, 5:0:0.

5 CHAIRPERSON JORDAN: Thank you.

6 SECRETARY MOY: The next case
7 before the Board for action is a request for
8 a modification of approved plans. This is to
9 Application No. 18273, of 1328 through 13 --

10 CHAIRPERSON JORDAN: What about
11 404?

12 SECRETARY MOY: Okay, we can do
13 that, let's skip to Application No. 18404. This
14 is a request or a motion to waive the rules,
15 the requirements on a public hearing notice.
16 Again, it's Application No. 18404 of Chaney
17 Enterprises, LP, pursuant to 11 DCMR 3104.1,
18 for a special exception to allow the
19 construction of a concrete manufacturing
20 facility under Section 802.17, in the C-M-1
21 District. This is at premises 3 D.C. Village

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1 Lane, S.W., property located at Square 6264,
2 part of Lot 801.

3 In your case folders, Mr. Chairman,
4 the applicant filed the request to waive the
5 notice of time requirements under Section
6 3113.13. This document is dated May 2, 2012,
7 identified in the case folders as Exhibit 25.

8 And, that would complete the staff's
9 briefing, Mr. Chair.

10 CHAIRPERSON JORDAN: Thank you, Mr.
11 Moy.

12 On 18404, which is the request for
13 the applicant for us to waive the notice
14 requirement to kind of expedite and move their
15 hearing, which is scheduled for September, 2012,
16 to June 5th, at the time that the Board would
17 hear an appeal on Case 18349.

18 And so, that's the gist of what they
19 are looking for. They are claiming that,
20 basically, if I understand right, that their
21 argument is that they don't want to have a delay

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1 from being possibly shut down in their operation
2 on June 5th, and waiting until their special
3 exception request is scheduled for September,
4 2012.

5 Also, there's a question, I believe,
6 that, if I understand right, I don't know if
7 we've received anything in the record that the
8 Zoning Administrator may have issued a
9 revocation of the present CFO, do we have
10 anything on it?

11 SECRETARY MOY: Not in my case
12 record, Mr. Chairman.

13 CHAIRPERSON JORDAN: Well, the
14 problem with -- here's a couple of problems with
15 this, as I see it -- and, certainly, I want the
16 Board to weigh in, is that this also requires
17 that we would have to waive provisions of 3106.2,
18 which wasn't requested by the applicant, for
19 us to do so.

20 And, if it becomes a real issue about
21 how then do we deal with the ANC's ability to

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1 do their statutory time for reporting to the
2 case, which may require us to do some kind of
3 bifurcated hearing to get it done.

4 And, for those reasons, I would not
5 be inclined to grant this request. It's just
6 too much -- it doesn't fit neatly in, and what
7 it would do is possibly step on the toes of ANC
8 statutory time period, which they are to review
9 files at, and do things that they are required
10 to do by Code, not by Regulation, but by Code.

11 So, that gives me -- that's just one
12 of my concerns.

13 Anyone else want to weigh in?

14 Ms. Sorg?

15 VICE CHAIR SORG: Thank you, Mr.
16 Chairman.

17 I think my further thought on this
18 request has nothing to do with the Board's
19 precedent. We have, in a fairly routine manner,
20 seen appeals and applications dealing with the
21 same property, and have not, for example, one

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1 that we just discussed today -- and while I
2 believe this may be the first time that I have
3 seen this request, I'm not sure that it is
4 appropriate in the sense of who the different
5 parties who are bringing these cases before the
6 Board, to move them around, to treat them as
7 something that is connected, which we can
8 understand, except inasmuch as the property is
9 the same property.

10 And so, that gives me a little bit
11 of a pause with regard to this request.

12 Thank you.

13 CHAIRPERSON JORDAN: And, you just
14 reminded me, this movant is not the same person
15 that's a party in the appeal, if I'm not
16 mistaken. So, this person is not even part of
17 that appeal, this applicant, this movant is not
18 even part of the appeal that they are
19 questioning.

20 Anyone else?

21 MEMBER HINKLE: Yes, thank you, Mr.

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1 Chair.

2 I tend to agree with Ms. Sorg. I
3 think, you know, even though I took a different
4 approach in the last case, I'm thinking that,
5 you know, if we start moving cases around at
6 the pleasure of the applicants, I think that
7 gives the Board a lot of difficulty.

8 And, as you mentioned, you know,
9 already in contemplating this motion that this
10 gets into the territory of, you know, needing
11 to respect the statutory requirements of the
12 agency to respond to these cases and so forth.

13 So, I am not necessarily inclined
14 to support this motion.

15 CHAIRPERSON JORDAN: Anyone else?

16 We have a motion --

17 MS. GLAZER: Mr. Chair, can I
18 interject, and this is very technical, but I
19 just wanted to call attention to the Board that
20 the letter also requests that the Board
21 consolidate the special exception and appeal.

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1 Obviously, if you are not going to expedite
2 it, that wouldn't occur, but I just wanted to
3 raise that.

4 CHAIRPERSON JORDAN: Well --

5 MS. GLAZER: So that that's part of
6 the motion.

7 VICE CHAIR SORG: But, will this
8 applicant have standing to do such a thing
9 without the consent of --

10 MS. GLAZER: Well, he's asking the
11 Board to direct consolidation.

12 CHAIRPERSON JORDAN: Regardless,
13 he's not even here, regardless of giving the
14 consent, he's asking us --

15 VICE CHAIR SORG: I don't feel --
16 in that regard, in regard to what OAG brings
17 up, I don't believe that we have enough
18 information to be able to consolidate.

19 CHAIRPERSON JORDAN: Yes. Anyone
20 want to make a motion one way or the other?

21 Ms. Sorg?

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1 VICE CHAIR SORG: Thank you, Mr.
2 Chairman.

3 I'll make a motion to deny the
4 request for waiver of notice of the 40-day notice
5 rules for hearing scheduled for September 10th
6 and 12th, under Application 18404.

7 MEMBER MacMURRAY: Mr. Chairman, I
8 second Vice Chairman Sorg's motion.

9 CHAIRPERSON JORDAN: Motion made
10 and seconded that we deny the request in 18404,
11 motion to waive notice of rules to allow for
12 an expedited hearing, and consolidation of the
13 two cases mentioned in the motion.

14 Any additional discussion that we
15 have not already had?

16 Seeing none, all those in favor
17 signify by saying aye.

18 (Ayes.)

19 CHAIRPERSON JORDAN: Those opposed
20 nay?

21 The motion carries.

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1 SECRETARY MOY: Yes, sir, Mr.
2 Chairman.

3 Staff would record the vote as
4 4:0:1. This is on Vice Chair Sorg's motion to
5 deny the request. Seconding the motion Ms.
6 MacMurray. Also in support of the motion
7 Chairman Jordan and Mr. Hinkle, and no other
8 participating Board Members.

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

11 The last case before the Board, the
12 final case for the morning session, would be
13 the request for a modification of approved plans
14 for Application No. 18273. This is on property
15 1328 through 1330 Wisconsin Avenue, LLC et. al.,
16 pursuant to 11 DCMR 3103.2, for a variance from
17 the floor area ratio requirements under Section
18 771, variance from the lot occupancy
19 requirements under Section 772, variance from
20 the rear yard requirements under Section 774,
21 to allow rear additions to existing buildings

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1 in the C-2-A District. This is at premises
2 1328, 1330, 1332 and 1336 Wisconsin Avenue,
3 N.W., property located at Square 1231, Lots 824
4 and 843.

5 On May 8, 2012, the Board completed
6 public testimony and closed the record,
7 scheduled its decision on May 15th. The Board
8 heard final oral testimony from the applicant
9 on May 4, 2012, which went toward his final
10 filing, as shown on Exhibit 56.

11 The record was complete and closed,
12 so, therefore, today the Board is to act on the
13 merits of the applicant's request to modify the
14 original order, to reflect relief from the
15 variance from the FAR and variance from the rear
16 yard requirements under Section 774, variance
17 from the lot occupancy under Section 772 does
18 not apply any longer.

19 So, that completes the staff's
20 briefing, Mr. Chairman.

21 CHAIRPERSON JORDAN: Thank you, Mr.

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1 Moy.

2 This is a matter which we've heard
3 a couple of times. We sent the applicant back
4 to provide additional information, so that it
5 could meet its burden of the undue hardship.
6 The file was supplemented with additional
7 testimony and expert opinion that there was
8 undue hardship that would occur without the
9 particular relief.

10 I think we've kind of gone through
11 this several times. We had it up again last week,
12 where we reviewed the letter of the applicant,
13 the real estate agent, and advisor, Josh
14 Freeman, and we also looked at the report of
15 the construction company and the estimation of
16 making the changes if it was to become within
17 the zoning regulations.

18 And so, from that they submitted
19 that as their support for hardship.

20 I don't know if there is any other
21 discussion. Anyone feel that they need to weigh

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1 in on this matter?

2 Seeing none, and the fact that this
3 matter was not -- there was no opposition to
4 this application, and the Office of Planning
5 also supported the application, as well as, I
6 believe, the ANC -- did the ANC support this?

7 SECRETARY MOY: There's a letter,
8 ANC 2E letter, dated April 30th, identified as
9 Exhibit 54, in support, Mr. Chairman, if you
10 want to verify that.

11 CHAIRPERSON JORDAN: Yes, I believe
12 that they did, because my records would
13 indicate that if they didn't. Just one second.

14 MS. GLAZER: Mr. Chair, I believe
15 the letter was submitted after May 8th, or prior
16 to the May 8th hearing.

17 CHAIRPERSON JORDAN: Okay.

18 MS. GLAZER: But, after May 1st.

19 CHAIRPERSON JORDAN: Thank you.

20 Yes, okay. Then I think that we are
21 ready for a decision in this, and that the

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1 applicant requests variance relief modifying
2 the order of 18273 from Section 774.1 for rear
3 yard depth.

4 Based upon the record, the applicant
5 has satisfied the burden of proving the elements
6 necessary to establish the case for this
7 variance and for that modification of Section
8 774.1, rear yard, 771.2 for the FAR relief.
9 And, I think that it's leading only to an
10 increase of .19 increase in the FAR.

11 The Board, having given great weight
12 to the Office of Planning, and to the ANC report
13 filed in the case, the Board concludes that the
14 applicant has met the burden of proving the
15 variance -- the modification and the variance,
16 that there exists exceptional and extraordinary
17 situation and condition related to the property
18 that creates an undue hardship in complying with
19 the zoning regulations, and that the relief can
20 be granted without substantial detriment to the
21 public good, and without substantially

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1 impairing the intent, purpose and integrity of
2 the zoning plans, and the zoning regulations.

3 I would move that we approve this
4 application.

5 MEMBER HINKLE: I'll second.

6 CHAIRPERSON JORDAN: Motion made
7 and seconded. Any further discussions?

8 Seeing none, all those in favor
9 signify by saying aye.

10 (Ayes.)

11 CHAIRPERSON JORDAN: Those opposed
12 nay?

13 The motion passes.

14 SECRETARY MOY: Staff would record
15 the vote as 3:0:2. This is on the motion of
16 Chairman Jordan to approve the application as
17 amended. Seconding the motion Mr. Hinkle.
18 Also in support of the motion Ms. MacMurray.
19 We have a Zoning Commissioner not present, not
20 voting, and a Board Member not participating.

21 So again, the final vote 3:0:1,

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1 motion carries.

2 CHAIRPERSON JORDAN: And, I believe
3 there was no party in opposition, and since the
4 decision is in favor of the applicant, that this
5 would be prime for a summary order.

6 SECRETARY MOY: Thank you, Mr.
7 Chairman.

8 CHAIRPERSON JORDAN: Okay. Mr.
9 Moy, is there anything else on our morning
10 docket?

11 SECRETARY MOY: No, sir.

12 CHAIRPERSON JORDAN: Okay. Seeing
13 none -- let me take my little dig in, another
14 reason why we are going to work with this
15 agenda, so we can probably move some things
16 faster. But, I really appreciate the Board's
17 cooperation and support as we make some changes
18 to make some things streamline.

19 I mean, it's been helping us, you
20 know, move these dockets a little bit faster,
21 and more efficiently.

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1 With that, let's stand in recess
2 until 1:00 p.m.

3 (Whereupon, the above-entitled
4 matter was recessed at 10:39 a.m., to reconvene
5 at 1:00 p.m., this same day.)
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:08 p.m.

CHAIRPERSON JORDAN: The meeting
will please come to order.

Good afternoon, ladies and
gentlemen. We are located at the Jerrily R.
Kress Memorial Hearing Room at 441 4th Street,
N.W. Today is May 15th, and we are here for
the afternoon session of the public meeting of
the Board of Zoning Adjustment of the District
of Columbia.

My name is Lloyd Jordan,
Chairperson. To the left of me is Nicole Sorg,
Vice Chair, and to the right of me is Jeffrey
Hinkle, Board Member.

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

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1 Today's agenda is for us to render
2 a decision on cases -- or, no, we are having
3 a hearing this afternoon, so this is our hearing
4 agenda, not our meeting agenda, to hear cases,
5 applications, or appeals pending.

6 We'll handle preliminary matters
7 with the cases as called.

8 Mr. Secretary? Yes, go ahead.

9 SECRETARY MOY: Yes, good
10 afternoon, Mr. Chairman, Members of the Board.

11 I could either begin to call the
12 first and only case for the afternoon session.

13 As a hearing, would you like me to
14 administer the oath?

15 CHAIRPERSON JORDAN: Yes, please.
16 No, we trust everybody.

17 SECRETARY MOY: For the record,
18 though. Do you solemnly swear or affirm that
19 the testimony you are about to present in this
20 proceeding is the truth, the whole truth, and
21 nothing but the truth?

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1 Ladies and gentlemen, you may
2 consider yourself under oath.

3 CHAIRPERSON JORDAN: Would the
4 parties please proceed to the witness table,
5 please?

6 SECRETARY MOY: And, while you are
7 doing that, I'll call the case, Mr. Chairman.

8 That would be Case No. 18321, this is the appeal
9 of the Citizens Association of Georgetown,
10 pursuant to 11 DCMR 3100 and 3101, from an August
11 26, 2011 decision by the Zoning Administrator,
12 Department of Consumer and Regulatory Affairs,
13 to issue a building permit, which is No. B1010202
14 for construction of a new two-story rear
15 building in the C-2-A District. This is at
16 premises 1525 Wisconsin Avenue, N.W., property
17 located in Square 1271, Lot 813.

18 I believe there are a couple
19 preliminary matters in this appeal, Mr.
20 Chairman.

21 CHAIRPERSON JORDAN: Yes, let's

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1 handle those.

2 What's the first preliminary
3 matter?

4 SECRETARY MOY: There is a motion
5 to postpone --

6 CHAIRPERSON JORDAN: A motion to
7 postpone?

8 SECRETARY MOY: -- by the
9 appellant. No?

10 CHAIRPERSON JORDAN: That was the
11 other case, right? That was March, okay, we
12 postponed.

13 SECRETARY MOY: It was a motion to
14 dismiss by the appellee, Mr. Chairman, DCRA.

15 CHAIRPERSON JORDAN: Is that right.
16 Well, first let's have the parties
17 introduce themselves, please.

18 MR. HORSEY: I'm Outerbridge
19 Horsey, representing the Citizens Association
20 of Georgetown. We are the appellant in this
21 case.

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1 MS. MOKHTARI: My name is Sara
2 Mokhtari, I'm the property owner.

3 MR. LeGRANT: Matthew LeGrant,
4 Zoning Administration, DCRA.

5 MR. SURABIAN: Good afternoon,
6 Assistant Attorney General Jay Surabian, on
7 behalf of DCRA.

8 CHAIRPERSON JORDAN: Thank you.

9 Mr. Surabian, I understand we have
10 a motion to dismiss that you filed in this
11 matter, and we have an opposition letter from
12 the applicant regarding your motion to dismiss.

13 I think we pretty much understand
14 your motion to dismiss. Your motion to dismiss
15 is based upon your allegation that the hearing
16 is moot because DCRA has taken some type of
17 enforcement action. Would that be correct?

18 MR. SURABIAN: That's correct.

19 CHAIRPERSON JORDAN: Let's proceed
20 to deal with the motion to dismiss before we
21 proceed, if we do proceed, to any hearing on

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1 the application.

2 I think we understand your motion
3 pretty much. I think the Board may want to ask
4 questions from you if necessary so they can move
5 forward.

6 MR. SURABIAN: Okay.

7 CHAIRPERSON JORDAN: We understand
8 the basis of your motion is that DCRA Took an
9 enforcement action on, what date was that --
10 what's the date of the enforcement action, I'm
11 sorry?

12 MR. SURABIAN: May 2nd.

13 CHAIRPERSON JORDAN: May 2nd.
14 And, it provided that the CFO was going to be
15 revoked effective August --

16 MR. SURABIAN: The building permit
17 under appeal that unless a property owner
18 obtained a revised permit that complied with
19 the regular builder regulations that the permit
20 would be revoked effective August 31st.

21 CHAIRPERSON JORDAN: Okay. During

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1 the interim period of time that this letter was
2 in effect, what is the status of the project?

3 MR. SURABIAN: My understanding is
4 that they -- it's been inspected by DCRA, and
5 that it is -- work is going on.

6 And, the interim time is designed
7 for the property owner to get plans together
8 that can be approved by the various reviewing
9 entities to bring her into compliance.

10 CHAIRPERSON JORDAN: Any other
11 questions, anyone?

12 VICE CHAIR SORG: Why such a long
13 time?

14 MR. SURABIAN: I'm not sure of that,
15 in light of -- that would have to be reviewed
16 by the Commission of Fine Arts, and that that
17 necessarily is a long time. These reviews can
18 sometimes, you know, they have to fit into their
19 calendar, and also to give her time to get plans
20 together. And then, she may have to make
21 revisions depending on different changes that

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1 are required.

2 VICE CHAIR SORG: During the time
3 between the revocation letter of May 2nd, and
4 the date of August 31st, you know, that the
5 building permit would actually be revoked if
6 remedies were not made, is it allowable for the
7 property owner to continue with construction
8 under the current plans? Or, with regard to
9 construction, is that time period allotted for
10 remedies such as those that we have in the
11 record, tearing down some historic pieces, and
12 so on and so forth?

13 MR. SURABIAN: You could, I think,
14 pursue a few different paths. If she teared
15 it all down, I mean, that would be one solution.

16 I don't think that she's going to do that.
17 I think she's intending to have an addition on
18 the building, and I think that when she was last
19 at the Commission of Fine Arts they indicated
20 that they will allow an addition, but it has
21 to meet certain requirements that they have sort

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1 of set forth and communicated to her.

2 So, she knows what they want her to
3 do. And, she's either going to do that or not.

4 CHAIRPERSON JORDAN: Any other
5 questions?

6 So, why wasn't this issued for a
7 cease and desist, and that being effective
8 immediately, and stop the work on the project?

9 MR. SURABIAN: I think the
10 rationale was that this is a very unique
11 situation. I think in most cases that they do
12 -- would stop the job. But, I think that given
13 the uniqueness of this case that they opted to
14 sort of allow construction to continue, but sort
15 of under supervision of DCRA, and also operating
16 in the store now, she has a business operating
17 in a portion of the building. And, I think that
18 an effective revocation, and just stopping the
19 whole work, would there be maybe undue costs
20 associated with that for her.

21 So, the action that they took, I

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1 think that DCRA took, I think was to be
2 accommodating and to give her time to come into
3 compliance. Final occupancy of the building
4 won't be approved until the building is in
5 compliance.

6 MS. MOKHTARI: Can I just add to
7 what Mr. Surabian thinks?

8 CHAIRPERSON JORDAN: No, not at
9 this point.

10 Any other questions?

11 VICE CHAIR SORG: Yes, thank you,
12 Mr. Chairman. One follow-up question.

13 So, at the time that a permit would
14 be revoked, would the certificate of occupancy
15 that's allowing her to operate the shop also
16 go out of effect?

17 MR. SURABIAN: Any certificate of
18 occupancy for that addition approved under that
19 permit at issue here would be temporary in
20 nature, would not continue past August 31st.

21 VICE CHAIR SORG: Okay, got you.

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1 And, you characterized this
2 situation as unique a couple of times in your
3 answer to the last question. What is it in your
4 mind briefly that you find is so unique about
5 it?

6 MR. SURABIAN: I think the historic
7 -- that it's in a historic district, and the
8 time, and extra steps that are associated with
9 that, make it unique.

10 I think that the fact that we have
11 a permit issued in error is unique. And, I think
12 that where the applicant has made, has submitted
13 some plans that, ultimately, did not make CFA
14 approval, but that -- so, she has demonstrated
15 that she has tried -- attempted to revised plans,
16 that just shutting everything down in the
17 judgment of DCRA wasn't -- in their discussion,
18 wasn't the appropriate route to take.

19 VICE CHAIR SORG: All right. I
20 understand.

21 Thank you.

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1 CHAIRPERSON JORDAN: Mr. Horsey?

2 MR. HORSEY: Mr. Chairman, good
3 morning, or good afternoon.

4 As our letter indicates, sent
5 electronically yesterday, we believe that the
6 Board should do one of two things.

7 One is, A, adopt the findings set
8 forth in the notice to revoke, and revoke the
9 permit that's been mentioned today, or,
10 alternatively, to continue our appeal until
11 after the date of August 31st that's in the
12 notice to revoke issue by DCRA.

13 Another thing that's unique about
14 this situation is the complete disregard for
15 regulations and approved plans by the building
16 owner. Our appeal is filed on October 25, 2011.

17 We were here in March. We went to the Old
18 Georgetown Board in February. Nothing has been
19 done by the appellant, or very little that I
20 can see, to correct any deviations that have
21 been cited, both in this appeal and at the

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1 February Old Georgetown Board meeting.

2 And, in fact, further things have
3 been done, changes, physical changes to the
4 property, that are in total defiance of those
5 recommendations by the Old Georgetown Board.

6 So, if the appeal is dismissed, and
7 the owner does nothing, or does not cure any
8 of the defects or all of the defects, we would,
9 number one, have to file another appeal, which
10 would be both a waste of our resources and of
11 the Board's resources, and we don't believe
12 anything should occur in this process that would
13 reward or benefit the owner in its pattern of
14 violation

15 CHAIRPERSON JORDAN: Thank you.

16 MR. HORSEY: Thank you.

17 CHAIRPERSON JORDAN: Have the two
18 sides talked?

19 MR. SURABIAN: Yes, we've spoken on
20 the phone.

21 CHAIRPERSON JORDAN: How recent,

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1 about resolving this issue?

2 MR. HORSEY: I spoke -- he called
3 me -- I got the notice on Friday, I called him,
4 and he, obviously, knows a lot more about this
5 stuff than I do.

6 It struck me, my gut instinct was
7 that that was not something I wanted to see
8 happen.

9 We agreed last time, as you'll
10 recall, on March 5th, to postpone, and the Board
11 gave us until today. I had asked for, actually,
12 more time, because I didn't think things would
13 be resolved, and, in fact, they haven't. And,
14 we have not spoken since then.

15 So, I filed my letter yesterday.

16 VICE CHAIR SORG: Thank you, Mr.
17 Chairman.

18 One question, Mr. Horsey. What is
19 it about the action that DCRA is taking, and,
20 perhaps, you've mentioned this, certainly, in
21 your testimony, what exactly about the length

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1 of time between the revocation letter and its
2 effect do you think keeps the issues in this
3 appeal live?

4 MR. HORSEY: Because there are no
5 plans on record that have been approved that
6 don't have a zoning violation in them. There's
7 nothing on -- they withdrew the last set that
8 was presented to the Old Georgetown Board.

9 As far as I know, we asked DCR --
10 we had a big meeting at DCRA about ten days ago,
11 there were no plans on record at that point.

12 The issues haven't been resolved.
13 I think there's still an issue with the
14 residential use. It appears to me from an
15 examination of the premises, from outside the
16 property, that there is still non-compliance,
17 and that there may still be intention to have
18 a residential use on the second floor, which
19 is where we started with this whole thing, about
20 the lot occupancy being too great.

21 So, to me they are all still alive.

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1 They are all balls in the air. It's a shell
2 game, you pick something up, you are just not
3 quite sure where it is, but I don't see how this
4 can possibly be moot. Nothing has been
5 resolved. Nothing has been corrected. How can
6 it be dismissed? I mean, I just don't
7 understand conceptually.

8 There's been no effort to comply,
9 period.

10 VICE CHAIR SORG: There's a
11 difference with regard to appeals between what
12 your appeal is in name, which is that a building
13 permit has been issued in error.

14 MR. HORSEY: Exactly.

15 VICE CHAIR SORG: You know, and,
16 obviously, you know, certain other aspects of
17 compliance, but thank you for your testimony.

18 I think if it suits the Chairman and
19 the Board, I think, because we have her here,
20 it would be nice to hear from Ms. Mokhtari about
21 the process, as you've experienced it, so that

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1 we can get all the information.

2 MS. MOKHTARI: Thank you.

3 CHAIRPERSON JORDAN: Whoa, hold it.

4 I don't want to make it that broad and that
5 general. I'd like it to be specific with
6 regards to this motion to dismiss, as to your
7 questions, if any. I don't want to get into
8 aspects of the appeal, that's not where we are
9 at this point. We are at the issue on the motion
10 to dismiss.

11 I don't know what you might want to
12 hear about on the motion to dismiss on this
13 particular point, that's kind of where I am.

14 MR. HORSEY: If I could just respond
15 to something you said, which was that I think
16 Mr. LeGrant, since he's here, can testify that
17 almost immediately when we called this to his
18 attention he admitted that there had been an
19 error, either in the drawings or in the
20 interpretation of the drawings, due to the way
21 the drawings were presented. There were three

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1 different design firms involved, and it was
2 difficult to put it all together.

3 That was back -- and, subsequently,
4 certain things were corrected and other issues
5 came up.

6 So, the issue that was one question
7 I would have for DCRA that's been asked --

8 CHAIRPERSON JORDAN: Let's --

9 MR. HORSEY: -- but, the notice to
10 revoke --

11 CHAIRPERSON JORDAN: -- I'm dealing
12 with the motion to dismiss. As long as we stay
13 within the time frame, the confines of the
14 issues based on this.

15 MR. HORSEY: -- why did it take so
16 long to have the notice to revoke issued, is,
17 I guess, my question. And, why hasn't the permit
18 just been suspended, basically, at this point.

19 CHAIRPERSON JORDAN: Ms. Mokhtari,
20 if you would limit your statements to why you
21 think the motion to dismiss should be granted,

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1 or why it should not be granted, that's where
2 we are, not doing a whole bunch about the issue
3 that's on appeal, whether it's right or wrong,
4 that the permit was issued.

5 MS. MOKHTARI: Okay, and do you want
6 me to elaborate on why it should be granted,
7 or why the time frame is relevant? Can I touch
8 on both of those?

9 CHAIRPERSON JORDAN: Both, yes.

10 MS. MOKHTARI: Okay. I applied for
11 a permit back in November, 2010, and I did go
12 through all the appropriate channels. It took
13 me a year and half to, actually, get a building
14 permit.

15 I had a few different permits that
16 were issued, so I spent a lot of time going
17 through the process, and then the construction
18 was almost complete in August of 2011.

19 Right before the construction was
20 almost complete, I received a stop work order.

21 I was stopped for almost six months. So, there

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1 have been a lot of delays, and there have been
2 a lot of actions that DCRA has taken.

3 OGB meets once a month. I have a
4 set of plans that I submitted once I received
5 the stop work order, to correct any violations
6 that I was not aware of until I received the
7 stop work. I was working based on an approved
8 permit that I received, that I later found was
9 issued in error.

10 So, after that stop work, I issued
11 a set of -- I submitted a set of plans, and it
12 was approved by Zoning again, and it had not
13 been approved by OGB. It was not approved by
14 OGB, because Outerbridge sent them a letter
15 requesting that they don't approve any of the
16 changes.

17 I'm in the process of trying to
18 figure out how I can have any sort of fair
19 representation at a hearing of a panel of people
20 who have been advised to not allow the changes
21 without any justification.

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1 So, it's kind of a lengthy,
2 complicated process. They are a Federal
3 organization, and I haven't been able to receive
4 any assistance on how I can conquer that issue.

5 In the meantime, I have a building
6 that's been complete. I've spent a lot of
7 money, and I operate a business, and I just --
8 my intention has always been to expand that
9 business, once the addition was complete.

10 I have not been able to expand that
11 business until just a couple weeks ago, when
12 I received a temporary C of O, and I have had
13 a huge, huge financial loss as a result of it.

14 And, to only get three months to figure out
15 what's happening and try to solve this situation
16 is nothing for me. I need, probably, a year.

17 I need time, I need money, I need counsel.

18 So, the August 31st deadline is very
19 complicated for to have to rebuild things that
20 are just aesthetic.

21 As far as safety, which is why I

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1 deviated from the plans, and I have a structural
2 engineer attest to the changes, DCRA is more
3 concerned with the safety, and has done a live
4 safety inspection. So, my building is safe and
5 sound, and I'm asked to make changes that have
6 nothing to do with safety, that were purely
7 aesthetic, that are not visible to anyone.

8 So, I am disputing that, and I will
9 try to appeal that, and that has nothing to do
10 with this permit and with DCRA.

11 My only struggle and my issue has
12 to do with the OGB and with CFA.

13 We are here today to discuss the
14 motion to dismiss. Prior to the motion to
15 dismiss, there was an original appeal to the
16 permit. The appeal has to do with zoning
17 issues. The zoning issues were satisfied. So,
18 there are no outstanding zoning issues, and
19 there is not going to be a permit soon.

20 So, I'm not really sure why we are
21 even here.

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1 CHAIRPERSON JORDAN: All right.

2 If I heard you right, Mr. Horsey,
3 you say as an alternative, if we would have kept
4 the appeal alive to August 31st that you'll be
5 comfortable with that.

6 MR. HORSEY: Or to the middle of
7 September, some time after the expiration of
8 the notice to revoke. I think that would
9 certainly be -- yes, we'd be comfortable with
10 that.

11 CHAIRPERSON JORDAN: Then I believe
12 what we will do is to -- and let me ask Mr.
13 Surabian, are you comfortable with that?

14 MR. SURABIAN: No. I would object
15 to that.

16 CHAIRPERSON JORDAN: Okay. Then
17 let's do this. I'm going to suggest that we
18 overrule the motion to dismiss, deny the motion
19 to dismiss, as this matter is still pending,
20 since there is not an issue that's moot, because
21 you still have a live and active building permit.

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1 I can see if the building permit
2 stopped things as it was at that point, but it's
3 not -- it's not moot because you still have
4 activity going forward. So, it would be my
5 thought that we deny the motion to dismiss.

6 Any other thoughts?

7 So, I --

8 VICE CHAIR SORG: I will add one
9 thing, Mr. Chairman.

10 I think this is sort of a tough one,
11 in the sense that -- because there are several
12 things that I think we want to be sensitive to
13 with regard to this motion and this appeal in
14 general.

15 Certainly, the concerns of the
16 appellant, and their organization, with regard
17 to an important historic fabric. And, I think
18 a sensitivity also to those people in our
19 community who are entrepreneurs, trying to this
20 system, as well as to the action that DCRA
21 clearly has already taken in this matter, in

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1 terms of, you know, remedying some of the
2 issues that were present in their earlier
3 actions.

4 And so, I think that, actually, what
5 you may be suggesting, Mr. Chairman, may be a
6 suitable course of action in this case, which
7 is to allow -- to remove any action to a more
8 timely period with regard to, you know, DCRA's
9 time frame in their letter of revocation for
10 the building permit.

11 I think that there will be more
12 information with regard to potential
13 outstanding zoning issues, and I certainly
14 understand where Mr. Horsey is coming from in
15 that regard, at that time.

16 CHAIRPERSON JORDAN: So, yes, so I
17 would move that we deny the motion to dismiss.

18 We need a second.

19 VICE CHAIR SORG: Second.

20 CHAIRPERSON JORDAN: Motion made
21 and seconded that we deny the motion to dismiss

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1 for the reasons previously given, that the issue
2 is not moot, that the project is still live,
3 and that the notice of revocation is not
4 effective until August, I think, 31st, 2012.

5 Any further discussions that we have
6 not had already?

7 MR. SURABIAN: Mr. Jordan, could I
8 just interject a point.

9 CHAIRPERSON JORDAN: Not at this
10 point.

11 MR. SURABIAN: Okay.

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

14 (Ayes.)

15 CHAIRPERSON JORDAN: Those opposed
16 nay?

17 The motion carries.

18 Mr. Horsey, would you like to make
19 an oral motion to postpone until after August
20 31st?

21 MR. HORSEY: Yes, Mr. Chairman.

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1 CHAIRPERSON JORDAN: Okay. We
2 will accept that, even though it's out of time
3 to accept your oral motion to postpone. I
4 believe it makes sense to maybe resolve this
5 issue, and give everybody more time to move this
6 thing one way or the other. And, we would set
7 a date some time thereafter, Mr. Moy.

8 Any discussion necessary?

9 So, I so move that we postpone this
10 to a date after August 31st. Do we need to get
11 a date now, or just resolve it afterwards?

12 SECRETARY MOY: I think it would
13 desirable, so everyone has time to --

14 CHAIRPERSON JORDAN: Okay, sure.

15 SECRETARY MOY: -- as to what to
16 look forward to.

17 We have two hearing dates in
18 September, Mr. Chairman, September 18th and
19 September 25th.

20 CHAIRPERSON JORDAN: September 25th.

21 SECRETARY MOY: I would suggest

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1 that we hold this appeal in the afternoon.

2 CHAIRPERSON JORDAN: Well, is that
3 within our time frame, is that beyond our notice
4 time frame, so we have some leeway as to where
5 it places on September 25th?

6 SECRETARY MOY: I'm sorry, Mr.
7 Chairman.

8 CHAIRPERSON JORDAN: That's okay.
9 I think that's important.

10 SECRETARY MOY: Staff consultation
11 here.

12 We have scheduled a decision meeting
13 for the afternoon of the 25th, but I don't see
14 any difficulty in also having this appeal on
15 the same afternoon session.

16 CHAIRPERSON JORDAN: Okay. What
17 do we have in the morning?

18 SECRETARY MOY: We have one, two,
19 three, four cases in the morning.

20 CHAIRPERSON JORDAN: And, in the
21 afternoon?

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1 SECRETARY MOY: It's open for
2 decisions.

3 CHAIRPERSON JORDAN: Okay. And, I
4 understand that. However, my reluctance in
5 setting it for the afternoon as opposed to
6 setting it for that date is, we've talked about
7 trying to make our docket more efficient in our
8 operation. So, I would rather set it for
9 September 25th, and we can make it the -- well,
10 right now it would be the last item for that
11 day?

12 SECRETARY MOY: Yes.

13 CHAIRPERSON JORDAN: Okay.

14 SECRETARY MOY: It would be for now.

15 CHAIRPERSON JORDAN: Okay. Good.
16 So, we'll set it for September 25th. That
17 docket begins at 9:30, but we'll set as the last
18 item on that day.

19 So, I so move that we postpone it
20 to September 25th. Second anyone?

21 MEMBER HINKLE: I'll second that.

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1 CHAIRPERSON JORDAN: Motion made
2 and seconded that we move, that we postpone this
3 appeal to September 25, 2012 docket.

4 Any additional unreadiness?

5 All those in favor signify by saying
6 aye.

7 (Ayes.)

8 CHAIRPERSON JORDAN: Those opposed
9 nay.

10 The motion carries.

11 MR. HORSEY: Thank you, Mr.
12 Chairman.

13 MS. GLAZER: Mr. Chairman, does the
14 Board want to issue an order at this point, or
15 wait until the hearing on -- or wait until
16 September 25th? I think it's in the Board's
17 discretion. Okay.

18 CHAIRPERSON JORDAN: Is there any
19 other item of business for us this afternoon?

20 SECRETARY MOY: Not from the staff,
21 sir.

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1 CHAIRPERSON JORDAN: Are you sure?

2 Come on now -- no.

3 So, we'll stand adjourned.

4 SECRETARY MOY: Very good, thank
5 you, Mr. Chairman.

6 (Whereupon, the above-entitled
7 matter was concluded at 1:40 p.m.)

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