

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JULY 10, 2012

+ + + + +

The Regular Public 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 11:36 a.m.,
Nicole Sorg, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the
Minutes from the Public Meeting held on July
10, 2012.

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

Expedited Review Calendar

Application No. 18407 of John and Suzanne Simon	5
VOTE: 4-0-1 to approve	9
Application No. 18064 of HAI Real Estate Holdings, LLC	10
Erie Condominium Association on Application No. 18064 of HAI Real Estate Holdings, LLC	15
Application No. 18272 of Keener-Squire Properties	24
VOTE: 4-0-1 to deny	31

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

11:36 a.m.

VICE CHAIRPERSON SORG: This meeting will please come to order. Good morning, ladies and gentlemen.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W.

This is the July 10th Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Nicole Sorg, Vice Chairperson. Joining me today to my far right Jeffrey Hinkle representing the National Capital Planning Commission, Rashida MacMurray, Board Member and no Zoning Commission member this morning.

Copies of today's meeting agenda are available to you and are located in the wall bin near the door.

We do not public testimony at our meetings unless the Board asks someone to come

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1 forward.

2 Please be advised that this
3 proceeding is being recorded by a court reporter
4 and is also being webcast live. Accordingly,
5 we must ask you to refrain from any disruptive
6 noises or actions in the hearing room. Please
7 turn off all beepers and cell phones.

8 Mr. Secretary, do you have any
9 preliminary matters?

10 SECRETARY MOY: Good morning, Madam
11 Chairperson.

12 We do, but staff would suggest that
13 the Board address those matters when I call each
14 case separately.

15 VICE CHAIRPERSON SORG: Excellent.
16 Then let's proceed.

17 SECRETARY MOY: The first action
18 for the Board is the Expedited Review Calendar.

19 And this morning we have one application on
20 the calendar, which is Application No. 18407.

21 This if John and Suzanne Simon pursuant to 11
22 DCMR ' 3104.1 for a special exception for an

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1 addition. This is to an existing one-family
2 semi-detached dwelling under Section 223, not
3 meeting the lot occupancy (Section 403), open
4 court (Section 406), and nonconforming
5 structure requirements (Subsection 2001.3) in
6 the R-3 District at premises 1906 35th Street,
7 N.W. Property located in Square 2196E, Lot 836.

8 The preliminary matter in this case,
9 Madam Chair, is that there is a submission from
10 ANC 2E, a letter, which was received by the
11 office yesterday; Monday, July 9th. 2012, and
12 that is as Exhibit 24.

13 Other than that, I think I'd just
14 conclude by saying that the Board should act
15 in the merits of the case, the application on
16 the Expedited Review Calendar pursuant to
17 Section 318 requirements which consists of
18 Application No. 18407 for a special exception
19 under Section 223.

20 VICE CHAIRPERSON SORG: Thank you
21 very much, Mr. Secretary.

22 I think that with regard to the

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1 timeliness of the ANC 2E submission, I believe
2 that as a Board we can by consensus accept that
3 filing into the record. And that being said,
4 we can move into deliberations on this case.

5 This is an Expedited Review case.

6 It is my belief that the standards that work
7 under the special exception relief as noted for
8 lot occupancy and nonconforming structures and
9 have been sufficiently addressed. As well we
10 have received public support for this
11 application. Therefore, I would have no
12 hesitation in supporting approval of this
13 application.

14 And with that, I will open it up for
15 comments from other Board Members.

16 MEMBER HINKLE: Yes, thank you,
17 Madam Chair. I tend to agree with you, and I
18 just wanted to note that we don't have the--
19 at least I haven't seen them, letters of support
20 or opposition within the package. But there
21 are some elements of the design with this that
22 I think really support this application in terms

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1 of not affecting the neighbors and, you know
2 the extension won't go pass the existing
3 neighboring extension and the fact that some
4 windows are being removed and other windows
5 don't look upon this property. So, with those
6 facts I can certainly support this case.

7 VICE CHAIRPERSON SORG: Thank you,
8 Mr. Hinkle.

9 MEMBER MacMURRAY: Madam Vice
10 Chair, I would echo those sentiments and also
11 note that the proposed extension is not going
12 to be adverse to the neighbors or with light
13 and air.

14 VICE CHAIRPERSON SORG: Thank you
15 for those comments. I agree actually with
16 applauding the design in this case. In fact,
17 there's really only one neighbor, which is the
18 neighbor to the north that would essentially
19 be effected based on that.

20 So that being said, I will propose
21 a motion to approve Application No. 18407 of
22 John and Suzanne Simon for a special exception

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1 for an addition to an existing one-family
2 semi-detached dwelling under Section 223, not
3 meeting the lot occupancy under Section 403,
4 open court under Section 406, nonconforming
5 structure under Subsection 2001.3 at the
6 premises 1906 35th Street, N.W.

7 The motion has been made. Is there
8 a second?

9 MEMBER HINKLE: Second.

10 VICE CHAIRPERSON SORG: Motion has
11 been second. All those in favor say aye.

12 ALL: Aye.

13 VICE CHAIRPERSON SORG: And, Mr.
14 Secretary, can you please read back the vote?

15 SECRETARY MOY: Yes, Madam Chair.

16 Before I do that, we do have an absentee ballot
17 from Lloyd Jordan. And his absentee ballot is
18 to approve Application No. 18407 under the
19 Expedited Review Calendar.

20 So, with that vote it would give a
21 final vote of 4-0-1. This is on the motion of
22 Vice Chair Sorg. Second the motion by Mr.

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1 Hinkle. Also in support of the motion Ms.
2 MacMurray. No other Board Members present
3 participating or voting.

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

6 VICE CHAIRPERSON SORG: Thank you
7 very much. And we will waive our regulations
8 and write a summary order.

9 SECRETARY MOY: Very good. Thank
10 you.

11 And when you're ready, we can go on.

12 SECRETARY MOY: Ready. The next
13 application for the Board for action, we have
14 here, Madam Chair, a request for a two year time
15 extension of Application No. 18064 of HAI Real
16 Estate Holdings, LLC, pursuant to Section 3130.

17 And they've also requested a waiver of Section
18 3130.9, which as you know is a 30 day filing
19 of application prior to expiration of the Order.

20 The original application was
21 approved on May 18th, 2010 for the record. I'll
22 read the original caption of that application,

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1 and that is "11 DCMR 3104.1 for a special
2 exception from the rear yard requirements under
3 Subsection 774.5 and a special exception from
4 a parking requirements under Subsection under
5 2120.6."

6 This is to allow an addition to an
7 existing office building in the DC/C-3-C
8 District at premises 1829 to 1822 Jefferson
9 Place, N.W. Property located in Square 13 139,
10 Lot 75.

11 The Applicant filed on May 21, 2012
12 under Exhibit 31 in your case folders.
13 Of course, I've just read their request to waive.

14 Also in your case folders, I'm not
15 sure, arriving this morning is a request from
16 the Applicant for the Board to kindly postpone
17 their decision to your next decision meeting,
18 which would be, I believe, July 24th -- July
19 31st. That's correct.

20 And that completes the staff's
21 briefing.

22 VICE CHAIRPERSON SORG: Thank you

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1 very much, Mr. Secretary.

2 So, as we have two preliminary
3 matters in this case, I think we'd like to take
4 up the request for postponement first.

5 I'm actually pleased to see that the
6 Applicant has requested postponement in this
7 case. I do believe that in viewing the original
8 file there were some elements that I personally
9 felt could be augmented here. So, therefore I
10 would be in support of granting the request for
11 postponement.

12 If there are any comments from other
13 Board Members? Then if there are none, then
14 we will go ahead and be consensus we will accept
15 the request for postponement and place this on
16 our decision calendar for July 31st.

17 Secondly, we would like to address
18 the request from May 21st to waive our
19 requirements under 3130.9 for intending filing
20 of the application or the request for extension.

21 The standard here is for good cause and no
22 prejudice. And I believe that based on a number

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1 of factors that we see in the filings here, as
2 well as in the letter for request for the waiver,
3 we do see a good cause. And clearly I can see
4 that no prejudice would be shown as the only
5 party in the case is has already shown their
6 support, additionally having accepted the
7 postponement of this decision would allow
8 another three weeks for any additional potential
9 public comment or any opposition. So, I believe
10 that that being said, we can waive our
11 requirements under 3130.9 and accept the
12 application.

13 Are there any other comments from
14 Board Members?

15 MEMBER MacMURRAY: Madam Vice Chair,
16 my only comment I do support us granting the
17 waiver, but I just wanted to make note on the
18 record that the extension of the 30 day filing
19 we don't want to make it a common practice of
20 applicants of not submitting in a timely
21 fashion.

22 VICE CHAIRPERSON SORG:

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1 Absolutely. I agree. And I appreciate your
2 adding that comment. I think that obviously
3 we treat each of these cases and, of course,
4 requests here. And so the acceptance of the
5 filings here certainly are only based on the
6 specific merits and good cause shown in this
7 case.

8 So that being said, I believe unless
9 there's other comments we can accept by
10 consensus the Applicant and waive our
11 requirements under 3130.9.

12 Thank you very much.

13 SECRETARY MOY: Thank you, Madam
14 Chair.

15 The next Board action before the
16 Board is a motion or a request from the Erie
17 Condominium Association in opposition and to
18 strike the Applicant's Draft Findings of Fact
19 and Conclusions of Law. This is attendant to
20 Application No. 18330 of FCP Champlain, LLC.
21 The Board will recall the original -- or rather
22 the application that was approved on May 22,

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1 2012 which was pursuant to 11 DCMR 3104.1 and
2 3103.2 for a variance from the floor area ratio
3 requirements under Section 402, and a special
4 exception to allow an increase in the building
5 height under Section 1403 to permit the
6 development of a residential building in the
7 RC/R-5-B District at premises 2337 Champlain
8 Street N.W. Property located in Square 2563,
9 Lot 887.

10 In your case folders, Madam Chair,
11 there are two filings. The first is a requested
12 filing from the Board from the Applicant which
13 is dated June 5th, 2012. Which is identified
14 as Exhibit 57.

15 The second filing is from the
16 opposition party, the area condominium
17 association, under Exhibit 58. Which is their
18 opposition and their request to the Board to
19 strike the Applicant's draft Findings of Fact
20 and Conclusions of Law.

21 The Board is to deliberate on the
22 merits of the request and with that, the staff

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1 will conclude, Madam Chair.

2 VICE CHAIRPERSON SORG: Thank you,
3 Mr. Secretary. Thank you, Mr. Secretary.

4 With regard to this potential
5 motion, what I want to do is go through a little
6 bit on the record the process that happens in
7 writing orders in these cases and a little bit
8 of the sort of procedural history here so that
9 it's understandable to all the parties in this
10 case.

11 As the Secretary indicated, the
12 Applicant -- it was suggested -- after the vote
13 and at the close of the hearing on May 22nd after
14 the Board voted to grant the application in this
15 case, the Chair made a suggestion requesting
16 the Applicant to propose an order in light of
17 the findings that were made by the Board and
18 present it for consideration in the writing of
19 an application.

20 Therefore, we have, as the Secretary
21 noted, our Exhibit 57 which was submitted by
22 the Applicant as requested on June 5th.

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1 Then what happens is that this draft
2 order Findings of Fact and Conclusion of Law
3 is transmitted to the Office of the Attorney
4 General, our legal counsel for the Board, who
5 is the body who generally -- who writes and
6 revises orders for approval by the Board. The
7 Agency made changes to the text. In this case,
8 insured it's legal sufficiency just as it would
9 with any Board order that was generated by the
10 Office of the Attorney itself.

11 Subsequently, that revised draft
12 order was transmitted to the Board and to the
13 Office of Zoning. Both the Office and the Board
14 made comments and further revisions to the
15 Office of Attorney General revised draft.

16 Finally, the Office of Zoning and
17 the Office of the Attorney General makes final
18 technical corrections and any other revisions
19 that are necessary and this is actually a process
20 that is currently ongoing.

21 Now, to address the letter of June
22 11th from the opposing party association, there

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1 are essentially three arguments that are made
2 in this request. The first is that the proposed
3 order failed to include all of the findings made
4 during the Board's deliberation. The second,
5 that the order included findings not made during
6 the deliberations particularly relating to
7 property values and so forth and the third, that
8 the Chair would not, in fact, be permitted to
9 request such a filing as a proposed order from
10 the Applicant and they cite -- and the letter
11 cites a Subsection 3121.7.

12 With regard to the first points that
13 the opposing party brings up, this really
14 amounts to what is a literal reading of the
15 Board's -- of the Chair's request. As
16 discussed, this is merely a suggestion in the
17 writing of an order that would ordinarily and
18 customarily be written by the Office of the
19 Attorney General and revised as I
20 mentioned.

21 This process involves, you know,
22 many different elements including noting

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1 certain findings during the Board's
2 deliberations excluding findings not relevant
3 to the relief being requested and the arguments
4 related to the relief as it, in this case, was
5 granted.

6 So, in this case, the Chair was
7 appropriately and simply asking for the
8 Applicant to perform a task of compiling a
9 suggestion of these Findings of Fact and
10 Conclusion of Law to aid the efficiency of the
11 process of the Office of the Attorney General.

12 As I noted, the proposed order was
13 a starting point for the process and as I
14 mentioned, again, OAG and the Board reviewed
15 the draft several times and, for example,
16 relating to the second argument with regard to
17 Finding of Fact Number 44 and their disagreement
18 regarding the mention of real estate values,
19 that, for example, was eliminated in the
20 proposed Finding of Fact Number 44 in a
21 subsequent version of the draft order.

22 Therefore, I would believe that as

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1 to the merit there it's difficult to understand
2 why there would be a need to strike what is a
3 suggestion.

4 Additionally, the opposing party in
5 their letter, Exhibit 58, relies upon Section
6 3121.6. When this, in fact, section governs
7 the Board's proceedings leading up to Board's
8 vote. Wherein, the Board is required to permit
9 responses to findings.

10 In fact, in the Board's request for
11 documentation subsequent to its ruling on a
12 case, there is no requirement for the Board to
13 allow for any responses by any other parties.

14 What this really amounts to is a
15 suggestion that a proposed order which came
16 after a vote granting the application was
17 submitted to persuade the Board to take action.

18 There was no action that the Board could take.

19 It had already taken its action and, therefore,
20 any subsequent filings such as the letter here
21 could not be construed or accepted in that
22 regard.

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1 The appropriate provisions
2 governing the submission of proposed Findings
3 of Fact and Conclusions of Law are to note 3121.3
4 and 3121.4.

5 In this case, as the Applicant's
6 submission of this suggested order came after
7 the Board's vote, the appropriate place for any
8 opposing party or disagreement to voice their
9 opposition is after the issuance of a final order
10 and in the form potentially of a motion for
11 reconsideration. That would be the next
12 appropriate area in which that type of
13 submission would be appropriate.

14 That being said, I had opened it up
15 after that long discussion to other Board
16 Members.

17 MEMBER MacMURRAY: Madam Vice
18 Chair, I think that you made a very comprehensive
19 discussion of the position and I would agree
20 with the rationale that you have provided
21 regarding the status of the opposition's motion
22 to strike.

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1 MEMBER HINKLE: Madam Chair, I'm
2 also in agreement. I thought that was well
3 stated and well described in terms of the process
4 that actually these orders go through and it's
5 certainly the Board's expectation that these
6 orders would be complete in terms of granting
7 the relief that was requested and we certainly
8 do rely on OAG as well as the Office of Zoning
9 to do that. So, that's pretty much all I got
10 to say.

11 VICE CHAIRPERSON SORG: Thank you
12 very much, Ms. MacMurray and Mr. Hinkle.

13 Since it appears that we are all in
14 agreement, I believe that by consensus we can
15 dismiss the motion to strike the Applicant's
16 draft Findings of Fact and Conclusions of Law
17 and I will also note that the Board will,
18 therefore, issue an appropriate order in light
19 of the proceedings and Findings of Fact and
20 Conclusions of Law in this case.

21 Thank you very much.

22 SECRETARY MOY: Madam Chair, and

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1 before you close this case --

2 VICE CHAIRPERSON SORG: Folder?

3 SECRETARY MOY: Yes. I just want
4 to mention for the record that we have two other
5 absentee ballots which would be consistent with
6 the Board's decision on this motion and that
7 is from Lloyd Jordan and Marcie Cohen and they
8 also had voted to deny or to dismiss the motion
9 to strike the draft Findings of Fact and
10 Conclusions of Law.

11 VICE CHAIRPERSON SORG: Thank you,
12 Mr. Secretary.

13 SECRETARY MOY: The next and last
14 action before the Board in its morning section,
15 there is a request for a reconsideration of
16 Application No. 18272. This is of
17 Keener-Squire Properties on behalf of the First
18 Baptist Church of the City of Washington
19 pursuant to Section 3126 of the Zoning
20 Regulation.

21 For the record, the original
22 application was approved on January the 10th,

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1 2012, issued on June 1st, 2012 pursuant to 11
2 DCMR 3103.2 and 3104.1 for a special exception
3 for roof structures of unequal height pursuant
4 to Section 411 and for a variance from the height
5 provisions under Section 530 to allow the
6 development of an apartment house as an addition
7 to an existing church building in the DC/SP-1
8 and DC/SP-2 Districts at premises 1328 16th
9 Street, N.W. Property located in Square 181,
10 Lot 163 as amended.

11 In your case folders, Madam Chair,
12 there are two -- basically two filings. The
13 first, of course, is the request for
14 reconsideration from Ms. Kay Marlin and that
15 is on your Exhibit 50.

16 In response, the response filing
17 which is to dismiss this motion for
18 reconsideration is from the Applicant and these
19 two filings are identified as Exhibits 51 and
20 52.

21 The Board is to deliberate and then
22 act on the merits of the request for the

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1 reconsideration from Kay Marlin.

2 That essentially completes the
3 staff's briefing, Madam Chair.

4 VICE CHAIRPERSON SORG: Thank you,
5 Mr. Secretary.

6 Before we go to the merits on this
7 case, we're just going to rewind for a moment
8 to the last case, 18330. I've been notified
9 by our counsel that there may have been a glitch
10 in the record here and so, I wanted to make sure
11 that our action was received on the record and
12 I did state that by consensus the Board would
13 dismiss the motion to strike. That was on the
14 table and would adopt an appropriate order
15 issued by OAG.

16 And now, let's go back to the present
17 time and you were finished with your captions.
18 Correct?

19 SECRETARY MOY: That's correct,
20 Madam Chair.

21 VICE CHAIRPERSON SORG: Okay.

22 SECRETARY MOY: This is good.

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1 Everything's good.

2 VICE CHAIRPERSON SORG: All right.

3 Okay. With regard to the request for
4 consideration of Application No. 18272, we do
5 have a preliminary matter here. The request
6 was made by an individual and 3126 under motions
7 for reconsideration only allows for parties to
8 file motions for consideration and that is a
9 rule of the Board that can potentially be waived
10 under 3100.5.

11 What we received in this case which
12 I do not have an exhibit number -- oh, Exhibit
13 No. 50 is a request for a motion for
14 consideration which is being filed by Ms. Kay
15 Marlin who is a resident of the Richmond
16 Condominium and she indicates in her motion that
17 she is filing as an individual.

18 Therefore, we would need to have a
19 request to waive our rules regarding the ability
20 of individuals to request reconsideration here.

21 There's a little bit of confusion
22 here and lack of clarity regarding whether or

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1 not Ms. Marlin made a request to waive that
2 provision, but in light of this, the sort of
3 mandate of this body as a quasi-judicial body
4 interacting with laypeople not always extremely
5 familiar with our proceedings, I would suggest
6 that the cover letter associated with the
7 submission of the motion for reconsideration
8 is, in fact, a -- well, not an express request
9 for a waiver, but I believe that based on the
10 foregoing that the matter here would be to treat
11 this waiver on its merits of whether or not good
12 cause is shown to waive our regulations and allow
13 an individual to file a motion for
14 reconsideration.

15 I'll stop there for a moment and see
16 if there's any comment on that treatment of this
17 matter by other Board Members. Seeing --

18 MEMBER HINKLE: So, Madam Chair,
19 just to be clear, you're stating that we're
20 looking at just a waiver for the submission.

21 VICE CHAIRPERSON SORG: A request
22 for a waiver for the submission by an individual.

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1 MEMBER HINKLE: Yes, I think if I
2 read the attached email that was the cover to
3 that I think I'm comfortable with that waiver.

4 VICE CHAIRPERSON SORG: Okay.
5 Then proceeding with that, I will state that
6 my opinion on this waiver is Ms. Marlin indicates
7 that because she cannot afford to hire legal
8 representation she is making this request as
9 an individual.

10 Certainly, we're sensitive to
11 financial burdens on individuals, but in this
12 case, I don't see the connection between an
13 inability to finance legal counsel as good cause
14 for the association which would be the relevant
15 party in this case not requesting the
16 reconsideration.

17 So, therefore, I don't see that as
18 sufficient reasoning to explain why the party
19 as I mentioned the Richmond Condominium
20 Association in its entirety could not have
21 submitted this motion and, therefore, I would
22 recommend that the motion be denied.

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1 Are there any comments from other
2 Board Members?

3 MEMBER HINKLE: No, I tend to agree
4 with you, Madam Chair. I think, you know, the
5 rules are fairly clear in terms of who could
6 file for a motion for reconsideration and I'm
7 not quite sure why the party in question did
8 not versus Ms. Marlin.

9 But, I would certainly support the
10 dismissal of the motion.

11 VICE CHAIRPERSON SORG: I see
12 someone in the audience. Unfortunately, as I
13 stated in our opening remarks, the Board does
14 not take any comments from the audience in these
15 public meetings.

16 Are there any further comments?

17 Then I will submit a motion to deny
18 the request for consideration based on standing.

19 A motion has been made. Is there
20 a second?

21 MEMBER MacMURRAY: Second.

22 VICE CHAIRPERSON SORG: Motion has

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1 been made and seconded. All those in favor say
2 aye.

3 ALL: Aye.

4 VICE CHAIRPERSON SORG: Mr.
5 Secretary or OAG.

6 MS. GLAZER: Madam Chair, are you
7 moving to dismiss or moving to deny the request
8 for a wavier of the rule that only a party --

9 VICE CHAIRPERSON SORG: Deny the
10 request for waiver as we establish that the
11 request was made.

12 MS. GLAZER: Okay.

13 VICE CHAIRPERSON SORG: Thank you
14 for jumping in because I did misspeak there.
15 So, the vote here is denying the request for
16 a waiver or our rules under 3126.2.

17 And now we turn to the Secretary.

18 SECRETARY MOY: Yes, with that
19 before the final vote count, Madam Chair, we
20 do have an absentee ballot from Lloyd Jordan
21 and his vote is consistent with the Board's
22 judgment to deny the request to waive the rules.

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1 So, that would give a final vote of
2 4-0-1. One member not present. Not
3 participating. This is on the motion of
4 Chairperson Sorg. Second the motion Ms.
5 MacMurray. Also in support of the motion Mr.
6 Hinkle and, of course, also in support of the
7 motion Lloyd Jordan.

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

10 VICE CHAIRPERSON SORG: Thank you
11 very much.

12 I believe that concludes our
13 morning.

14 SECRETARY MOY: Yes, it does.

15 VICE CHAIRPERSON SORG: Our short
16 morning and we'll be back at 1:00 p.m. --

17 SECRETARY MOY: That's correct.

18 VICE CHAIRPERSON SORG: -- for our
19 public hearing. Thank you very much.

20 (Whereupon, at 12:11 p.m., the
21 meeting was adjourned.)

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