

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY
JULY 31, 2012
+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 1:40 p.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:

PETER MAY, Commissioner
OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

ARTHUR ROGERS

STEPHEN GYOR

The transcript constitutes the
minutes from the Public Hearing held on July
31, 2012.

TABLE OF CONTENTS

PAGE

Call to Order, Chairperson Jordan	.4
Application No. 18385 of Otis and Angela Ray	.6
Office of Planning.	20
ANC-5C (letter)	29
Persons in support.	30
Rescheduled to September 25, 2012 . . .	52
Application No. 18389 of Margaret Chase	53
Office of Planning.	55
Vote to approve the application	58
Application No. 18390 of Community Three Development, LLC.	59
Office of Planning.	64
ANC-2C (letter)	64
Vote to approve the application	66
ADJOURN, Chairperson Jordan	69

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

1:40 p.m.

CHAIRPERSON JORDAN: We'll now
move into our public hearing for the day. We
have already indicated our location. We're at
the Jerrily R. Kress Memorial Hearing Room,
441 4th Street, N.W. Today's date is July
31st. We are here for the public hearing of
the Board of Zoning Adjustment of the District
of Columbia.

My name is Lloyd Jordan,
Chairperson. To my left is Peter May, member
of the Zoning Commission. To my right Rashida
MacMurray, Board Member. To her right Jeffrey
Hinkle, Board Member.

Again, please be advised that this
proceeding is being recorded by a court
reporter and also being webcast live.

Therefore, I'm going to ask you to refrain
from any disruptive noises or actions in the
hearing room. The Board's hearing procedures
and how we will process applications can be

1 found on the table by the back door.

2 If there is anyone who is in the
3 audience today that is going to provide
4 testimony, would you please stand and raise
5 your hand to take the affirmation or oath
6 offered by the Secretary of the Board. If you
7 are going to testify, you are going to have to
8 be sworn.

9 Mr. Moy.

10 (Whereupon, the witnesses were
11 sworn.)

12 CHAIRPERSON JORDAN: Let's do that
13 one more time.

14 MR. MOY: One more time. All
15 right. Once again.

16 CHAIRPERSON JORDAN: If you are
17 going to speak to the Board, if you think
18 there is going to be some reason why you are
19 going to come to this table and speak to the
20 Board, we need you to take an oath and all
21 that stuff.

22 (Whereupon, the witnesses were

1 sworn.)

2 CHAIRPERSON JORDAN: Good. Thank
3 you.

4 I am also going to ask that when
5 you come to the witness table -- this is the
6 witness table -- that you also complete two
7 witness cards. Each person needs to complete
8 two witness cards and then hand those things
9 to the court reporter who is to my right.

10 Let's begin today's hearing
11 agenda. Mr. Secretary, are there any
12 preliminary matters that we need to address?

13 MR. MOY: No, sir.

14 CHAIRPERSON JORDAN: Let's call
15 our first case, please.

16 MR. MOY: The first case would be
17 Application No. 18385. This is the
18 Application of Otis and Angela Ray pursuant to
19 11 DCMR 3103.2, for a variance from the lot
20 occupancy requirements under Section 403, and
21 a variance from the nonconforming structure
22 provisions under Subsection 2001.3, to allow

1 the construction of a pergola serving a one-
2 family row dwelling in the R-4 District at
3 premises 2100 1st Street, N.W. Property
4 located in Square 3119, Lot 24.

5 CHAIRPERSON JORDAN: Thank you,
6 Mr. Moy. Let me pause for one second.

7 Ms. Glazer.

8 There was a procedural deficiency
9 noted in this application. The procedural
10 deficiency issue actually arose in the
11 measurement of the lot occupancy as far as
12 what the Zoning Administrator calculated it to
13 be versus what Office of Planning calculated
14 it to be.

15 I just want to highlight these
16 points because I don't know if it's going to
17 be definitive generally of the issue in this
18 matter because of the variances being
19 requested. Either way the variance will be
20 required so that point of it is not necessary
21 for us to resolve beforehand.

22 I will also note that the Office

1 of Planning indicated that there is additional
2 relief necessary for this to go forward and
3 that would be relief from Section 401 for lot
4 area, relief from Section 404 rear, and relief
5 from Section 405 court.

6 However, I've gone through this
7 record and I don't really see -- understand
8 what's going on here. I know that this
9 project is already completed. The Applicant
10 is tending now to get us to grant the proper
11 relief to allow for them to do that which they
12 have already done.

13 However, I don't see any other
14 things are necessary in the record for us to
15 grant a variance. I see no discussion in
16 anything in this record that indicated
17 anything for a variance.

18 With that I want to call the
19 parties to the table and understand that
20 before we move forward. Could you introduce
21 yourselves for the record, please? Push the
22 button and you'll see a green light. Now give

1 your name, please.

2 MS. PRENTICE-RAY: Angela

3 Prentice --

4 CHAIRPERSON JORDAN: No. It's
5 really bright when it's on. It looks like
6 it's on but it's probably not.

7 MR. RAY: Otis Ray.

8 CHAIRPERSON JORDAN: Okay, Otis
9 Ray. We have Otis Ray.

10 MS. PRENTICE-RAY: Angela
11 Prentice-Ray.

12 CHAIRPERSON JORDAN: Is there
13 anybody else in regards to this case, both in
14 support or opposition in this matter?

15 And you're in support? And that's
16 Angela --

17 MS. PRENTICE-RAY: Prentice.

18 CHAIRPERSON JORDAN: Prentice.
19 Ms. Prentice, in relation to this case you
20 are?

21 MS. PRENTICE-RAY: My husband and
22 I bought the house at 2100 1st Street about

1 this time last year.

2 CHAIRPERSON JORDAN: I don't know
3 how much you know but we're required to find
4 before we can grant variances that you have to
5 explain to us where there is exceptional
6 circumstance or situation why this property is
7 unique in a way and that you cannot comply
8 with the Zoning Regulations and, therefore, we
9 should grant you the relief.

10 The documents that you submitted
11 basically said, "We've done this and we need
12 your relief because this is the requirement
13 for us to be there." It has missed the points
14 that are necessary for us to do it. We can't
15 just say, "Okay, it's fine."

16 We have to follow within the
17 guidelines of the law and the law requires
18 that there are some exceptional circumstances
19 or that this property is particularly unique
20 and, therefore, you have some difficulties,
21 practical difficulties, in getting to comply
22 with the Zoning Regulation.

1 With that you can begin your
2 presentation. Do you understand how we
3 process here? You have the opportunity to
4 present to us additional information. You
5 submitted some things in writing to us.
6 Office of Planning has weighed in and others.

7 You have the opportunity to talk
8 to us and tell us why you think we should
9 grant it. If you do that, please bear in mind
10 what I just said to you, what we really need
11 to get our arms around. Do you have any
12 questions? Do you understand what I mean?

13 MS. PRENTICE-RAY: I think I
14 understand.

15 CHAIRPERSON JORDAN: Sure. Go
16 ahead.

17 MS. PRENTICE-RAY: If I could
18 start by just giving a little background.

19 CHAIRPERSON JORDAN: One second.
20 Anything else any Board members need to have
21 specifically raised? Okay.

22 Sure. Go ahead.

1 MS. PRENTICE-RAY: As I mentioned,
2 my husband and I moved here from New Jersey in
3 April of last year and we bought the house at
4 2100 1st Street. We started a number of
5 projects including building the trellis. It
6 took us about three months because we had so
7 many other moving projects going on.

8 We had built a trellis at another
9 house where we lived in another location and
10 we didn't need a permit or we didn't have this
11 kind of process. But in August when we were
12 essentially complete in building it, an agent
13 showed up from DCRA.

14 We didn't know what DCRA was at
15 the time because we were new to DC. She
16 mentioned that we needed to get a permit so we
17 set out to get a permit. In that process we
18 found that our trellis didn't conform because
19 the boards are 16 inches apart.

20 I think you probably have
21 pictures. The lateral boards on the top are
22 16 inches apart. According to DCRA, that

1 would define it as a structure. It would have
2 to be more than 24 inches on center.

3 In terms of why we think to answer
4 your direct question, Chairman Jordan,
5 according to the building code 16 inches on
6 center defines it as a floor but under the
7 Zoning Rule 11199 defines structure as
8 anything constructed including a building the
9 use of which requires permanent location on
10 the ground or anything attached to something
11 that has a permanent location on the ground.

12 This is not a permanent structure.
13 It's not a room, it's a trellis. Future
14 owners could remove it if they want to. It
15 might be with some effort or cost but it's not
16 permanent.

17 But beyond that, if it was
18 considered a structure, the ruling 223 for
19 Zoning relief allows a special exception from
20 the Board subject to these provisions:

21 The light and air available to
22 neighboring properties should not be affected

1 and it is not. The privacy, use, and
2 enjoyment of neighboring properties shall not
3 be unduly compromised, and it is not.

4 It goes on to talk about the
5 addition of accessory structures and the
6 visual intrusion of character, the pattern of
7 houses. It's in the rear and it does not
8 obstruct. We have a tremendous amount of
9 support from our neighbors and the ANC.

10 The last provision for special
11 exception is that it demonstrates that we
12 provide graphical representation such as
13 plans, photographs, elevation, and drawings to
14 represent the relationship of the proposed
15 addition to adjacent buildings.

16 My neighbors, who are here in
17 support of us, are the neighbors who live
18 closest to us and we've gotten a tremendous
19 amount of support from them.

20 In addition to the ANC-5, who are
21 very diligent, but they supported us
22 unanimously, no contest. We received letters

1 of support from our nearest neighbors who like
2 it and support it. We even have gotten
3 unsolicited letters of support. Actually, the
4 support has been overwhelming. We don't have
5 any known opposition.

6 The reason that we are asking for
7 the waiver is that we believe that taking out
8 every other board to meet the DCRA requirement
9 could jeopardize the structural integrity of
10 the trellis. It's gone through an earthquake,
11 several major storms without structural damage
12 so safety for us is a priority.

13 CHAIRPERSON JORDAN: Excuse me
14 just a second.

15 MS. PRENTICE-RAY: Sure.

16 CHAIRPERSON JORDAN: We're trying
17 to get our arms around trying to get you where
18 you need to be.

19 MS. PRENTICE-RAY: Okay.

20 CHAIRPERSON JORDAN: And so we're
21 trying to be helpful.

22 MS. PRENTICE-RAY: Thank you.

1 CHAIRPERSON JORDAN: We're trying
2 to be helpful and we're trying to find how we
3 can get there and so that is kind of what we
4 are discussing, not to be rude. Is there
5 anything else you want to tell us about what
6 you -- I think we understand what you have and
7 what you're doing so if there is nothing
8 else --

9 MS. PRENTICE-RAY: I would like to
10 also say although the letter from the Office
11 of Planning from Mr. Gyor wasn't in support
12 because it is 16 inches on center, they did go
13 on to say the requested variance would not
14 result in substantial detriment to the public
15 good and the requested variance would have no
16 substantial harm to the Zoning Regulations.

17 Our primary concern is safety. We
18 don't want to go and start deconstructing it
19 and have it be less stable.

20 CHAIRPERSON JORDAN: If you're
21 complete, I'm going to turn now to the Board
22 to ask any questions that they may have.

1 Mr. May.

2 COMMISSIONER MAY: It's difficult
3 to understand exactly what you built here
4 because of what was submitted doesn't show a
5 lot of information. I'm guessing that what we
6 are seeing here in this trellis is a second
7 floor trellis on top of a garage. Now, the
8 garage existed when you bought the property?

9 MS. PRENTICE-RAY: Yes.

10 COMMISSIONER MAY: Okay.

11 MS. PRENTICE-RAY: And the patio
12 existed.

13 COMMISSIONER MAY: The patio on
14 top of the garage. Okay. So, in essence,
15 what you were trying to do was capture some
16 outdoor living space on top of the garage that
17 already existed. Right? You were trying --
18 I mean, there already was some living space
19 there because it was a patio.

20 MS. PRENTICE-RAY: It was a patio.

21 COMMISSIONER MAY: You tried to
22 put shade over it.

1 MS. PRENTICE-RAY: We tried to do
2 natural shade.

3 COMMISSIONER MAY: Right. That's
4 fine. I'm just trying to understand what you
5 were faced with when you got it.

6 MS. PRENTICE-RAY: I have
7 pictures.

8 COMMISSIONER MAY: Well, there are
9 pictures that are in here. I think what I
10 really wanted to confirm was that you didn't
11 build the garage. The garage was there.

12 MS. PRENTICE-RAY: We did not
13 build the garage or the patio. We just put
14 the trellis on.

15 COMMISSIONER MAY: Right. Okay.
16 So the property in Zoning parlance is
17 nonconforming because of lot occupancy. In
18 other words, you are already occupying more of
19 the property than you would be allowed to do
20 if you had just bought a vacant piece of land.
21 You've got like 90 percent lot occupancy or
22 something like that.

1 MS. PRENTICE-RAY: My
2 understanding is that is the case generally in
3 the neighborhood but it was grandfathered back
4 to 50.

5 COMMISSIONER MAY: And that's
6 fine. I mean, this is a very common
7 circumstance. The fact that it's
8 nonconforming is not a bad thing. It's a very
9 common thing. It just means that you have to
10 do things a certain way from here.

11 I think that is the only real
12 question I had at this moment. I would be
13 very interested in hearing why the Office of
14 Planning thinks that relief from lot occupancy
15 is necessary if it was a pre-existing
16 condition.

17 CHAIRPERSON JORDAN: Does the
18 Board have any other questions of the
19 Applicant?

20 Let's turn to the Office of
21 Planning if we may, please.

22 MR. GYOR: The Office of Planning

1 cannot support the Applicant's request for a
2 variance in this case. We note that the
3 Zoning Administrator's determination that a
4 pergola with slats 16 inches on center
5 constitutes a structure.

6 As we noted in our report, the
7 pergola increases the lot occupancy of a
8 previously nonconforming lot. Although the
9 nonconformity is not increasing numerically,
10 the addition of the pergola on top of the
11 structure increases the volume or the extent
12 of the nonconforming structure. In OP's view
13 the intensity of the nonconformity is
14 increasing through a vertical addition.

15 In addition, the Applicant's lot
16 is not unique or exceptional. He does note,
17 however, that the requested variance would not
18 result in a substantial detriment to the
19 public good and that the Applicant has the
20 support of neighbors and the ANC.

21 OP would support modification of
22 the pergola into a trellis by altering the

1 slats so that they are 24 inches on center and
2 a trellis would not require relief.

3 CHAIRPERSON JORDAN: Questions of
4 OP, please.

5 COMMISSIONER MAY: I have a
6 follow-up question on this. In the years that
7 I've done this and, I don't know, eight years
8 or so that I've been on the Zoning Commission
9 and heard lots of BZA cases, I don't think
10 I've ever heard the argument that increasing
11 the volume of the occupancy of the lot or the
12 volume that is associated with the occupancy
13 of the lot requires a variance from the lot
14 occupancy.

15 I mean, I understand that it is a
16 nonconforming structure and there is some
17 relief that is needed in order to build an
18 addition to a nonconforming structure but it's
19 a different section of the Zoning Regs. I
20 can't remember which one it is. I understand
21 that relief. I don't understand lot occupancy
22 because the lot occupancy isn't changing and

1 what is there must be grandfathered.

2 MR. GYOR: As we note in our
3 report, we are trying to be consistent with
4 the Zoning Administer's determination of what
5 a structure would be.

6 COMMISSIONER MAY: I agree that
7 it's a structure. I mean, the way they have
8 constructed this, if they determine that 16
9 inches on center makes it a structure, I agree
10 it's a structure. It's equivalent of building
11 an addition onto an existing nonconforming
12 structure.

13 I agree that is the case but I
14 don't understand why that leads to a needful
15 relief from lot occupancy. It should lead to
16 a special exception -- is that what it is? --
17 for adding to a nonconforming structure. I
18 mean, can you convince me otherwise?

19 MR. GYOR: As I stated, our view
20 is that previously nonconforming where
21 increasing the volume, the numerical value of
22 the lot occupancy, is not changing.

1 COMMISSIONER MAY: Okay. I mean,
2 volume I would understand if FAR were limited,
3 but FAR is not limited here. Right?

4 MR. GYOR: Right.

5 COMMISSIONER MAY: I mean, this is
6 -- I don't know what the zone is. It's an R-4
7 zone so you don't have a cap on FAR so volume
8 really doesn't enter into that calculation.

9 MR. JACKSON: Well, one thing is
10 that OP has consistently held that if you've
11 got a nonconforming ground floor and your
12 upper floor is not nonconforming, if you
13 continue the nonconformity upward, then you
14 are increasing the nonconformity.

15 In this case we're reviewing the
16 introduction of the trellis which is counted
17 as a full structure as opposed to an open
18 structure as increasing the nonconformity by
19 extending through the occupiable space to the
20 second floor.

21 COMMISSIONER MAY: Okay.

22 MR. JACKSON: So that's how this

1 will be treated.

2 COMMISSIONER MAY: Now I'm
3 understanding the logic of that so I
4 appreciate that explanation. Again, I don't
5 recall ever having encountered that before but
6 certainly I'm not here every week.

7 MR. JACKSON: I think it's
8 normally a case, for example, if we had an
9 irregular court with a one-story building, if
10 they put on a second story that continued the
11 irregular court, then we would note that is
12 extending the nonconformity.

13 We haven't had many cases where
14 we've dealt with lot occupancy that way but we
15 have with other types of lot dimensions.

16 COMMISSIONER MAY: Okay. What is
17 the calculation of lot occupancy at the second
18 floor level? Is that in the report somewhere?

19 MR. GYOR: That is not in the
20 report.

21 COMMISSIONER MAY: Okay.

22 CHAIRPERSON JORDAN: But overall

1 you have -- what is your --

2 MR. GYOR: Overall we have
3 approximately 90 percent lot occupancy.

4 CHAIRPERSON JORDAN: And you -- so
5 this wouldn't be a special exception because
6 it's over 70 percent? Is that why this can't
7 go as a special exception?

8 MR. JACKSON: You mean as 223?

9 CHAIRPERSON JORDAN: Yes, 223.

10 COMMISSIONER MAY: Well, but we
11 don't know whether it's 223 or not. Because
12 it's got to bring it up to 90 percent? Do you
13 think it's going to bring it up to 90 percent?

14 MR. GYOR: It's currently 90
15 percent.

16 COMMISSIONER MAY: Well, that's on
17 the ground floor.

18 MR. GYOR: Correct.

19 COMMISSIONER MAY: But it's on the
20 second floor that we're --

21 CHAIRPERSON JORDAN: That's
22 including the new use, the new expansion.

1 It's including your 90 percent.

2 MR. GYOR: Correct. It is 90
3 percent based on the fact that we are
4 including the court area which is less than
5 five feet wide. The only portion of the
6 property that is not included is the rear yard
7 and I think it's about eight feet from the
8 structure to the alley.

9 CHAIRPERSON JORDAN: Where is the
10 difference between you and DCRA? DCRA has
11 calculated it at 77 percent.

12 MR. GYOR: I think the difference
13 is the court area which we are interpreting
14 should count because it's less than five feet
15 in width.

16 MS. PRENTICE-RAY: May I --

17 CHAIRPERSON JORDAN: One second.
18 Any other questions of OP by the
19 Board?

20 Yes, Ms. MacMurray.

21 MEMBER MacMURRAY: Thank you, Mr.
22 Chairman.

1 My question is in the Applicant's
2 testimony it stated that where you have
3 requirements in the changes was to change it
4 to 24 inches to make it more conforming and
5 they expressed concern about the integrity of
6 the structure.

7 Many times we have applicants come
8 up and we are able to figure what would be the
9 best structural integrity solution. If the 16
10 inches are not possible, what other options
11 would the Applicant have to be conforming?

12 MR. GYOR: In our view, we would
13 suggest that the Applicant work with DCRA to
14 evaluate the structural integrity of the
15 pergola. We do note in our report that it is
16 a concern. The structural integrity is
17 something that should be weighed as a factor.
18 Through the permitting process with DCRA that
19 the Applicant could evaluate that.

20 CHAIRPERSON JORDAN: Any other
21 questions of OP?

22 Let me ask a question. Have you

1 met with the Applicants?

2 MR. GYOR: I have.

3 CHAIRPERSON JORDAN: And you've
4 discussed some alternatives with the
5 Applicants?

6 MR. GYOR: I discussed -- we
7 discussed the 16 inches versus 24 inches slats
8 modifying the pergola.

9 CHAIRPERSON JORDAN: If there's no
10 other questions of the Office of Planning, I'm
11 going to turn to the Applicant and ask if you
12 have any questions or something you want to
13 say in regards to Office of Planning's report.

14 MS. PRENTICE-RAY: I just want to
15 note that the Office of Planning and DCRA had
16 different opinions on what we needed relief
17 from. Their definition of structure in DCRA
18 and Zoning's definition seems to be different.

19 To answer your question directly,
20 we talked about the pergola and doing
21 construction of it to get to 24. It's not as
22 easy as taking out every other board. It's

1 basically reconstructing it because you would
2 have to take the top off.

3 CHAIRPERSON JORDAN: Just right
4 now if you want to ask any questions of the
5 Office of Planning. I'm going to give you the
6 opportunity to come and make a narrative.

7 MS. PRENTICE-RAY: I don't have
8 any questions for Mr. Gyor. Thank you.

9 CHAIRPERSON JORDAN: Do we have
10 anyone from the Department of Transportation?
11 The ANC? Anyone here from the ANC -- what is
12 it?

13 MS. PRENTICE-RAY: 5C.

14 CHAIRPERSON JORDAN: 5C. Do we
15 have a representative of ANC-5C?

16 We do have a letter in our file
17 that ANC-5C voted unanimously to support the
18 approval for the variance and that they had a
19 quorum present. Therefore, we would give
20 great weight to their weigh-in of this matter.

21 Are there persons here in support
22 of this application that want to testify? If

1 you would come to the table, you will get the
2 opportunity to take up to three minutes if you
3 want to say something to the Board in regards
4 to support for this application if you want.
5 Anybody want to do that?

6 Before you sit down, I need you to
7 raise your right hand and take an oath or
8 affirmation by the Board secretary.

9 (Whereupon, the witness was
10 sworn.)

11 CHAIRPERSON JORDAN: And I also
12 need -- I'm going to ask all of you, even the
13 new gentleman who just came to the table, that
14 you fill out the witness cards, two witness
15 cards apiece. Then I'm going to ask you to
16 give those to the court reporter.

17 Person in support, can you give us
18 your name, please?

19 MR. BUSH: Theodore R. Bush --

20 CHAIRPERSON JORDAN: Bush?

21 MR. BUSH: Bush, Jr.

22 CHAIRPERSON JORDAN: Theodore R.

1 Bush, Jr. Mr. Bush, you have up to three
2 minutes to talk to the Board and tell us your
3 support for this particular application.

4 MR. BUSH: My address is 118 V as
5 in Victor. I live diagonally across the
6 street from --

7 CHAIRPERSON JORDAN: Please do me
8 a favor and push the button.

9 MR. BUSH: My address is 118 V, as
10 in Victor, Street, N.W., Washington, D.C. I
11 am one that fully support Mr. and Mrs. Ray.
12 In fact, I went around to the neighbors and
13 had them sign a petition in support of Mr. and
14 Mrs. Ray.

15 We see no harm in it. It's a
16 beautiful structure. It adds to the community
17 and to the block. As far as I know, no one on
18 the block has any objection of the pergola
19 being up.

20 We wish that you would grant a
21 waiver for Mr. and Mrs. Ray because it's not
22 causing any problems. It's not causing any

1 viewing. It's a beautiful structure and it
2 does add to the community and to the block.

3 CHAIRPERSON JORDAN: We're still
4 trying to work with this and we appreciate
5 your testimony.

6 Any questions of the person in
7 support?

8 We really appreciate the neighbors
9 coming out and try to support or voice their
10 concerns one way or the other. It really
11 helps us in our decisions and what we're
12 doing. Thank you, sir.

13 Are there any -- do you have any
14 questions of the Applicant -- I mean, of the
15 person in support?

16 MS. PRENTICE-RAY: No, just to
17 thank him.

18 CHAIRPERSON JORDAN: Very good.

19 We have someone else who --

20 Mr. Bush, did you fill out the
21 cards? You need to fill out two cards,
22 please, and then give it to the gentleman in

1 the blue shirt, the court reporter, to the
2 right.

3 Mr. Moy, I need you to -- we have
4 a new person in support.

5 (Whereupon, the witness was
6 sworn.)

7 CHAIRPERSON JORDAN: Would you
8 give your name, please?

9 MS. BABINO: My name is Ada
10 Babino, B-A-B-I-N-O.

11 CHAIRPERSON JORDAN: B-A-N --

12 MS. BABINO: B-A-B-I-N-O, Babino.

13 CHAIRPERSON JORDAN: Babino.

14 Thank you, Ms. Babino.

15 MS. BABINO: Yeah. I'm a neighbor
16 directly across the alley from them. My
17 address is 115 V Street so it's their house,
18 the alley, and then my house.

19 I am fully in support of the
20 variance, and also in support of the beautiful
21 structure they have built. I've lived there
22 over 25 years so I know that -- I was there

1 when there was no balcony on the garage, when
2 there was nothing in the early '80s. The
3 whole house has come a long way in terms of
4 the beauty and the added value to the
5 neighborhood.

6 This just adds another element to
7 the entire block. It's a beautiful structure.
8 I don't even understand the bureaucracy of
9 this in terms of coming to court for this
10 because it is causing no hurt, nothing
11 negative to the neighborhood. Everything is
12 positive.

13 Anything else at this point moving
14 forward it would just be a lot of wasted time
15 and money added to this whole situation. So
16 I'm fully in support of it. Again, it adds
17 beauty and value to the neighborhood. It's a
18 nice structure. They're enjoying it immensely
19 so I have nothing negative to say about it.
20 That's it.

21 CHAIRPERSON JORDAN: We appreciate
22 it. You are directly behind so --

1 MS. BABINO: I'm not behind.

2 CHAIRPERSON JORDAN: To the side?

3 MS. BABINO: Well, if you're
4 calling it behind because their house faces
5 1st Street.

6 CHAIRPERSON JORDAN: Okay.

7 MS. BABINO: 1st and V is the
8 corner. I'm in the first alley house on V so
9 I'm right there. It's right out my bedroom
10 window.

11 CHAIRPERSON JORDAN: Thank you.

12 MS. BABINO: Thank you.

13 CHAIRPERSON JORDAN: Do we have
14 anyone else? Yes, here we have someone else.

15 Mr. Moy.

16 MR. MOY: Yes, sir.

17 (Whereupon, the witness was
18 sworn.)

19 CHAIRPERSON JORDAN: Please be
20 sure to complete the witness cards. You need
21 to complete two for us, please. If you would
22 make sure the green light -- I think it's

1 already on. If you would state your name for
2 the record.

3 MR. ROBINSON: My name is Ronny
4 Robinson and I live at 119 V Street which is
5 two houses away from Ada who just testified.

6 I, along with my partner, Joe
7 Palmer, who is in the audience, are in 100
8 percent support of the structure that the Rays
9 have built. It's beautiful.

10 I admire that they put security
11 first. They've done a beautiful job already
12 but the fact that they are looking at this
13 from a security perspective making sure that
14 the addition is stable to me is the foremost
15 priority.

16 Because of the way the structure
17 is open, it would seem to me that taking away
18 some of the supports on the top would diminish
19 the security which I think is the most
20 important aspect of this. That's all I wanted
21 to emphasize, that the structure is secure
22 and, as Angela said, has gone through a

1 hurricane, an earthquake, several storms.

2 CHAIRPERSON JORDAN: Has it -- let
3 me ask a question. Was this in bad condition?
4 Was the reason you had to put the top on it
5 was because this thing was in a dangerous
6 situation and the top kind of gives it more
7 stability? Is that what I'm understanding?

8 MS. PRENTICE-RAY: The trellis was
9 built with the top on it. It wasn't an
10 addition to the trellis.

11 CHAIRPERSON JORDAN: So you didn't
12 -- so there was not a need to make it more
13 secure?

14 MS. PRENTICE-RAY: I built it
15 secure from start to finish.

16 CHAIRPERSON JORDAN: You built it
17 secure?

18 MS. PRENTICE-RAY: Right, from
19 start to finish.

20 CHAIRPERSON JORDAN: And the
21 condition -- I thought when you got there it
22 was already began to be formed.

1 MS. PRENTICE-RAY: No. There was
2 a garage with a patio on it, brick walls, and
3 we just put a trellis up.

4 CHAIRPERSON JORDAN: Okay. Just
5 trying to get there.

6 Any questions of Mr. Robinson
7 anyone?

8 Thank you. We really appreciate.

9 MR. ROBINSON: Thank you.

10 CHAIRPERSON JORDAN: Anybody in
11 the audience in opposition to this
12 application? Anybody in opposition to this
13 application who wants to speak? I do not see
14 any. Please, again, we are going to need
15 those cards for the court reporter. Thank
16 you.

17 Now we'll turn back to the
18 Applicant to do a closing statement or tell us
19 something else that you want to tell us. We
20 may have questions for you after you're
21 finished again.

22 MS. PRENTICE-RAY: Okay. If we

1 had to build it over again knowing the process
2 and knowing DCRA, we would definitely build it
3 24 inches on center. But given that it is
4 built, it would be a significant cost to us.
5 It would cost almost as much to take out and
6 space out boards. I mean, you can't slide
7 them. You would have to do a level of
8 deconstruction. It would be very costly for
9 us.

10 CHAIRPERSON JORDAN: It would be
11 very costly?

12 MS. PRENTICE-RAY: It would be
13 very costly and time consuming. It's not a
14 matter of taking out every other board.

15 CHAIRPERSON JORDAN: And it's not
16 easy to take lose, is it?

17 MS. PRENTICE-RAY: Oh, no.

18 CHAIRPERSON JORDAN: It's very
19 difficult for you to get back in compliance
20 with the Zoning Regulations. It's going to be
21 really difficult for you to do.

22 MS. PRENTICE-RAY: It would be

1 like rebuilding it.

2 CHAIRPERSON JORDAN: Cost wise
3 what do you think it will cost? Is it
4 something that will be difficult for you to
5 make the cost to do it?

6 MS. PRENTICE-RAY: Given the other
7 things we have going on it would. I talked
8 with the person who helped us to put it up and
9 he said roughly it would be \$5,000 to \$10,000
10 if he would go in and unhammer, because they
11 are nailed in, every other board. Then it
12 would put it 35 inches on center which really
13 would challenge the structural integrity so we
14 would almost have to take the top off and
15 rebuild it.

16 MEMBER MacMURRAY: So just to
17 clarify, essentially it would end up costing
18 you twice as much as what you currently spent
19 to build it?

20 MS. PRENTICE-RAY: Pretty much.

21 COMMISSIONER MAY: Can I ask a
22 question about the construction then. You

1 said somebody helped you build it or built it
2 for you?

3 MS. PRENTICE-RAY: Yes, a
4 contractor. We got together on the design and
5 he actually did most of the manual work.

6 COMMISSIONER MAY: Okay. Did you
7 have a contract with him to design this and
8 make sure it was structurally sound and all
9 that sort of stuff or did somebody else do
10 that?

11 MS. PRENTICE-RAY: No, he did
12 that.

13 COMMISSIONER MAY: Okay. I don't
14 know what your contract says but it is common
15 in a contract like that to have a provision
16 that they would make sure that it meets the
17 local codes and regulations.

18 If this is built -- I mean, if
19 whoever had helped you build it, if they had
20 actually done the design and had gone through
21 the required permitting, they would have run
22 into this and they would have realized, "Oh,

1 we just have to space the overhead elements at
2 24 inches on center." Then it would be
3 compliant with Zoning. I mean, you can pursue
4 this whatever way you want but --

5 MS. PRENTICE-RAY: He's a friend
6 of the family. He's a licensed contractor but
7 not in D.C.

8 COMMISSIONER MAY: Right. Okay.

9 MS. PRENTICE-RAY: So he wasn't
10 aware of DCRA either at the time.

11 COMMISSIONER MAY: Right.
12 Unfortunately that doesn't really get you much
13 in the way of relief the fact that it was done
14 in this manner. I mean, the truth of the
15 matter is if you had gotten an architect or an
16 engineer to design this, it would be on them
17 to understand the local codes and regulations
18 and make sure that it complied with local
19 Zoning, as well as would be structurally
20 sound.

21 I'm certain that you can build
22 something with 24 inches on center, the

1 vertical boards on the roof, or on the top of
2 the trellis. You can build that 24 inches on
3 center and it would be perfectly sound. It
4 would probably be perfectly sound. I see
5 there's diagonal bracing and stuff.

6 I'm an architect. I can see it's
7 probably still going to be fine with that
8 removed. It's just not going to look as good.
9 I think that is probably a big consideration
10 as well.

11 I think the real point of this is
12 that we are in a quandary here because what
13 you've done essentially is equivalent to
14 building an addition onto the house, building
15 an enclosed space on the house, and that is
16 how the Zoning Regulations have to regard
17 this. It would be the same.

18 We have to look at this and grant
19 the relief as if it were okay for you to
20 enclose this and make it into an addition.
21 That is kind of the standard that we are
22 having to go by and that is why it's

1 problematic for us. I'm not sure how we are
2 going to see our way through that.

3 MS. PRENTICE-RAY: I understand
4 what you're saying. If I had it to do over,
5 I certainly would have built it 24 inches on
6 center.

7 COMMISSIONER MAY: Right.

8 MS. PRENTICE-RAY: But it would
9 take a lot to get there at this point. I
10 understand the intent of the law with the 16
11 inches because it could be a floor but it's
12 open spaced at the top and the sides. There
13 is no way you could build a room and live on
14 it.

15 COMMISSIONER MAY: I understand
16 that but that's --

17 MS. PRENTICE-RAY: I understand
18 the problem.

19 COMMISSIONER MAY: You have to
20 define a structure somehow and that is how
21 they do it at DCRA. Once you've got
22 structural members that are 16 inches on

1 center, it's equivalent -- it's no longer a
2 trellis, it's a floor.

3 MS. PRENTICE-RAY: I understand.
4 I understand the law. Also within the Zoning
5 Regulations the structure is defined
6 differently than DCRA. As I mentioned
7 earlier, it wouldn't necessarily be defined as
8 a structure according to the Zoning.

9 COMMISSIONER MAY: Well, I'm not
10 sure.

11 MS. PRENTICE-RAY: Unless I'm
12 interpreting that incorrectly.

13 COMMISSIONER MAY: Right. Well,
14 here's the thing. What we have from DCRA is
15 from the Zoning Administrator. This Board is
16 responsible for granting variances and
17 exceptions to the Zoning Regulations but the
18 Zoning Administrator is the one who basically
19 polices everything in the city that's built to
20 make sure that it complies with Zoning. If
21 the Zoning Administrative has said that this
22 is a structure, we're not in a position to

1 opine that it's not a structure.

2 MS. PRENTICE-RAY: I understand.

3 CHAIRPERSON JORDAN: And it's not
4 just the party that you put on the top. If it
5 attaches to anything that is permanent like
6 the garage. The garage is permanent.

7 MS. PRENTICE-RAY: I understand.
8 I understand the ruling. I guess my summary
9 comments would be that it would be -- we would
10 have to kind of deconstruct it in order to get
11 it to compliance.

12 It's not our intent to ever live
13 on top of the trellis. I'm a gardener. I
14 plant flowers and organic vegetables. This
15 trellis was really a way to have the morning
16 glories grow up and give us natural shade.
17 It's never intended to be a room to live in.

18 CHAIRPERSON JORDAN: Who designed
19 it? Did this contractor design it, too?

20 MS. PRENTICE-RAY: Actually, we
21 bought the house from a couple that the
22 husband was an architect and he had an

1 original design.

2 CHAIRPERSON JORDAN: Got it.

3 MS. PRENTICE-RAY: Which we
4 modified somewhat.

5 CHAIRPERSON JORDAN: I was
6 wondering if they would have known about the
7 Zoning laws and requirements. That's why it's
8 important to get that knowledge.

9 I think in regards to DCRA so you
10 don't beat up on them, they probably didn't
11 just happen by to see this. Somebody probably
12 called them.

13 MS. PRENTICE-RAY: DCRA has been
14 very supportive. I think someone did call.
15 It would have been nice if they had just said,
16 "You know, you need a permit for this," but
17 instead someone called. In doing the survey
18 and in getting support from the ANC, we didn't
19 hear any voices of opposition.

20 CHAIRPERSON JORDAN: If there is
21 nothing else, are there any questions of the
22 Applicant? Then I am going to close this

1 hearing. Does the Board have an issue about
2 moving to deliberation? My thought is about
3 keeping this open and moving it to a decision
4 date so we can do some further research and
5 have some discussions because there are some
6 questions.

7 Mr. May.

8 COMMISSIONER MAY: Yeah. I think
9 I understand now better why the Office of
10 Planning went in the direction of a variance.
11 This affects my thinking about the case
12 overall which is looking at what DCRA wrote,
13 they said that this is contrary to Section
14 2001.3 which addresses nonconforming
15 structures and basically says that you can
16 make an addition to enlargement to a
17 nonconforming structure, or that we can grant
18 a variance to do that but the structure shall
19 conform to the percentage of lot occupancy
20 requirements.

21 Therefore, in order to get the
22 relief that DCRA says is necessary, which is

1 relief from 2001.3, we would have to -- under
2 the terms of 2001.3 we would have to grant the
3 lot occupancy variance. I understand that but
4 I think the Office of Planning had the right
5 intention but I don't think -- it didn't come
6 across and didn't connect to what DCRA told us
7 in this regulation.

8 I was trying to understand because
9 I knew I had been in cases before where we had
10 granted relief for additions to nonconforming
11 structures. Most of them were probably under
12 223 but I'm sure that there were ones that
13 were in excess of 70 percent so they weren't
14 under 223.

15 That meant giving relief to the
16 underlying provisions having to do with lot
17 occupancy and perhaps a nonconforming court or
18 what have you. The relief extends from that
19 point into needing the relief for what is
20 otherwise an existing condition, an existing
21 grandfathered condition.

22 Now that I understand it better, I

1 have a clear picture about why the Office of
2 Planning believes this doesn't comply. I
3 would be ready to move to deliberation now.
4 I would also be happy to pick it up later if
5 others want to consider the matter further.

6 CHAIRPERSON JORDAN: Others on the
7 Board opinion, please?

8 Ms. MacMurray.

9 MEMBER MacMURRAY: I recommend
10 that we postpone to conduct a little bit
11 further research because it is an unusual case
12 to make sure that we are able to give the
13 proper relief to the Applicant if applicable.

14 COMMISSIONER MAY: Right. That's
15 fine with me.

16 CHAIRPERSON JORDAN: Mr. Hinkle.

17 MEMBER HINKLE: Yes, Mr. Chairman.
18 We did hear from the Applicant that there was
19 a contract that was drawn up in terms of
20 construction. There was also the issue of
21 making changes to this would actually have a
22 significant cost so it might be helpful to

1 have some additional information in terms of
2 that cost as it relates to the original
3 construction cost and what it would be like.

4 CHAIRPERSON JORDAN: I think what
5 we will do is close the hearing. However,
6 we'll keep the record open and ask the
7 Applicant to supplement the record with
8 anything that is going to help us further
9 deliberate in regards to something that is
10 unique about the property or special
11 circumstances why you can't comply.

12 I think there is something there
13 for us and I'm going to ask Office of the
14 Attorney General to brief us on a couple of
15 matters regarding the uniqueness in a reverse
16 way, especially in light of that we cannot
17 hold self-imposed hardships on the Applicant
18 in area variances. Therefore, that is not
19 before us so I wanted to keep the record open
20 for that.

21 Additionally, we need to probably
22 get some financial information regarding the

1 cost estimates or what it would cost to
2 deconstruct the thing and all of that. Would
3 that be helpful to you, Mr. Hinkle?

4 MEMBER HINKLE: (No response.)

5 CHAIRPERSON JORDAN: Is there
6 anything else the Board would like to see?

7 Mr. Moy, what would be another
8 date if we can -- we are done in August.

9 MR. MOY: That's right, sir. The
10 Board's next decision meeting is the afternoon
11 of the September 25th unless you want to do a
12 special --

13 CHAIRPERSON JORDAN: If that's
14 acceptable to you, it gives us time to try to
15 work with what we need to do. I see a head
16 nodding that is okay.

17 MS. PRENTICE-RAY: I'm sorry. I
18 didn't hear you.

19 CHAIRPERSON JORDAN: September
20 25th we'll put it on for a decision.

21 MR. MOY: Yes. September 25th in
22 the afternoon.

1 CHAIRPERSON JORDAN: Then I'm
2 going to ask that you get any additional
3 information to us no later than September
4 18th.

5 MS. PRENTICE-RAY: I need to
6 clarify. I heard Mr. Hinkle say we had a
7 written contract. We didn't have a written
8 contract.

9 CHAIRPERSON JORDAN: But now we
10 need to get something in writing what it would
11 cost to go through this process in bringing
12 this down, etc.

13 MS. PRENTICE-RAY: I understand.
14 I didn't want to have a misconception.

15 CHAIRPERSON JORDAN: Appreciate.
16 Is there anything else for this
17 particular case? If not, I'm going to thank
18 you and move on to the next case.

19 MS. PRENTICE-RAY: Thank you.

20 MR. MOY: The next application for
21 the Board is Application No. 18389. This is
22 the application of Margaret Chase, pursuant to

1 11 DCMR 3104.1, for a special exception to
2 establish an accessory apartment in an
3 existing one-family detached dwelling under
4 Subsection 202.10, in the R-1-B District at
5 premises 1206 Crittenden Street, N.W.
6 Property located in Square 2920, Lot 34.

7 CHAIRPERSON JORDAN: Would the
8 parties for that case please come forward.
9 The parties and persons in regards to this
10 case.

11 Would you state your name for us,
12 please?

13 MS. CHASE: Margaret Chase.

14 CHAIRPERSON JORDAN: I need you to
15 complete two witness cards.

16 MS. CHASE: Okay.

17 CHAIRPERSON JORDAN: And give them
18 to the court reporter. And your relation to
19 this application is you are the owner?

20 MS. CHASE: I own the house, my
21 husband and I.

22 CHAIRPERSON JORDAN: Okay. I

1 notice that this is before us on a special
2 exception regarding Section 202.10 for
3 allowing an accessory apartment and a waiver
4 from -- an additional waiver is necessary in
5 regards to 202.10 regarding the 25 percent of
6 the floor area space for this because it's
7 equaling 27 -- the percentage is 27 percent.
8 We would need to amend your request if that is
9 acceptable to you to add for the additional
10 relief that's necessary.

11 MS. CHASE: Yes.

12 CHAIRPERSON JORDAN: I think the
13 record is pretty full and understandable in
14 this matter. I don't know if there is
15 anything additional we need from you. I note
16 that the ANC has voted and recommended
17 approval and meet their criteria for great
18 weight. The Office of Planning has also
19 recommended approval.

20 Let me ask first anybody in
21 opposition to this application here? Anyone
22 here in support?

1 Now I'm going to ask the Board is
2 there anything that they need to hear from the
3 Applicant on?

4 Does OP have something that they
5 need to hear from the Applicant on?

6 MR. JACKSON: Mr. Chairman, I just
7 wanted to note that the Applicant was in the
8 process of renovating the building at the time
9 and that their plans are to move in to make it
10 their permanent residence so it would be an
11 accessory use on the basement of the existing
12 dwelling.

13 CHAIRPERSON JORDAN: Thanks. I
14 think we can make our decision without you
15 providing testimony. It's always your
16 opportunity and your right to provide
17 testimony if you want.

18 You can tell us anything you want
19 to tell us or you can just let us make a
20 decision. I always warn people there's been
21 times they have talked themselves into
22 problems. With that then you waive any

1 hearing issues? Okay.

2 I would be inclined -- so I'll
3 close the hearing and move into deliberation
4 if that is the will of the Board. I would be
5 inclined to grant the relief requested by the
6 Applicant in addition to the requirement that
7 the special exception include the excess of
8 the 25 percent allowance. I will move that.

9 MEMBER MacMURRAY: I'll second.

10 MR. MOY: Motion made and seconded
11 to grant the relief with the additional relief
12 as stated. Any further discussions?

13 MEMBER HINKLE: Yes, Mr. Chairman.
14 I think in our package we have a relatively
15 poor floor plan. I think there was a request
16 by the Office of Planning for the Applicant to
17 submit a new floor plan.

18 CHAIRPERSON JORDAN: If you could
19 update your floor plan for us, please.

20 MS. CHASE: You want me to just
21 hand that to you?

22 CHAIRPERSON JORDAN: You can give

1 it to Mr. Moy.

2 MS. CHASE: I have an existing and
3 a proposed. They are the same. We're not
4 changing anything in the house.

5 CHAIRPERSON JORDAN: Is that what
6 you need?

7 COMMISSIONER MAY: I think our
8 copy was very bad. That's all.

9 CHAIRPERSON JORDAN: Good. All
10 those in favor of the motion signify by saying
11 aye.

12 BOARD MEMBERS: Aye.

13 CHAIRPERSON JORDAN: Those opposed
14 nay. The motion carries.

15 Mr. Moy.

16 MR. MOY: Yes, sir. Staff would
17 record the vote as four to zero to one. This
18 is on the motion of Chairperson Jordan to
19 approve the application as amended. Seconding
20 the motion Ms. MacMurray. Also in support of
21 the motion Mr. Peter May and Mr. Jeffrey
22 Hinkle. No other members participating.

1 Again, the final vote is four to zero to one.
2 The motion carries.

3 CHAIRPERSON JORDAN: Thank you.
4 Mr. Moy, I think this is right for a summary
5 order, please.

6 MR. MOY: Thank you.

7 CHAIRPERSON JORDAN: Thank you.
8 Then we would -- after you complete your last
9 act of giving your cards to the court
10 reporter, then this matter is over. If you
11 would step to the side while we bring up the
12 next case.

13 MS. CHASE: Thank you very much.
14 I just have a quick question. Will I be
15 provided some --

16 CHAIRPERSON JORDAN: The order?

17 MS. CHASE: The order.

18 CHAIRPERSON JORDAN: Yes.

19 MS. CHASE: Okay. Can you mail
20 that to me?

21 CHAIRPERSON JORDAN: Yes.

22 MS. CHASE: Sorry. I've never

1 done this before.

2 CHAIRPERSON JORDAN: Yes. You can
3 ask Mr. Moy any questions you want, or go
4 across the hall to the Office of Zoning. They
5 will tell you everything you need to know.

6 MR. MOY: The next and last
7 application for this afternoon's session, Mr.
8 Chairman, is Application No. 18390. This is
9 the application of Community Three
10 Development, LLC, pursuant to 11 DCMR 3103.2,
11 for a variance from the -- I'm going to read
12 the original caption as advertised.

13 This is for a variance from the
14 off-street parking requirements under
15 Subsection 2101.1, to allow the conversion of
16 an existing building into a 24-unit, four-
17 story multi-family residential building in the
18 C-2-A District at 435 R Street, N.W. Property
19 located in Square 508, Lots 52, 53, and 66.

20 The Applicant on June the 15th,
21 2012 filing amended his application and is now
22 requesting, I believe, variance relief from

1 the drive aisle width under Section 2117.5 and
2 a variance from the compact parking spaces, a
3 number of spaces under Section 2215.

4 CHAIRPERSON JORDAN: Thank you.
5 Do we have a motion to amend this application?
6 Did we receive that or do you want to make an
7 oral motion to amend?

8 MR. DONAHUE: I believe we did
9 file it in the letter but, if not, Mr.
10 Chairman, I would like to request that we
11 modify the application as reflected by Mr.
12 Moy's statement.

13 CHAIRPERSON JORDAN: If the Board
14 doesn't have any issues, then we will grant
15 that.

16 MR. DONAHUE: Yes, sir.

17 CHAIRPERSON JORDAN: Again, this
18 is a matter that I think the record is full
19 for me. I think it's very clear what you need
20 and why you need it. We have letters of
21 support from ANC-2C as well as Office of
22 Planning. I think there might be one other

1 issue we need to talk about and that is the
2 Department of Transportation's recommendation
3 in this case.

4 Have you talked with the
5 Department of Transportation?

6 MR. DONAHUE: We did have
7 conversations with the Department of
8 Transportation. I think, if you will permit
9 me, Mr. Chairman, the comments and the
10 recommendations from DDOT may reflect the
11 earlier application which was a more
12 aggressive relief.

13 CHAIRPERSON JORDAN: That makes
14 sense.

15 MR. DONAHUE: What we are
16 providing now are 11 spaces, two of which are
17 compact but we have 11 for the 22 units. We
18 are very close to being a by-right development
19 and DDOT may be hearkening back to the earlier
20 application.

21 CHAIRPERSON JORDAN: I was trying
22 to think why we have that and that explains

1 it.

2 MR. DONAHUE: Yes, sir.

3 CHAIRPERSON JORDAN: Do Board
4 members have any questions they need to ask
5 this Applicant?

6 Yes, Mr. May.

7 COMMISSIONER MAY: I just want to
8 ask -- I mean, we don't have complete plans
9 for the whole building. I'm just trying to
10 understand what it is. It's not really
11 relevant to the relief. You have six units on
12 the floor. Are they some form of studio
13 apartments? Is that what they are?
14 Otherwise, they've got landlocked bed rows.

15 MR. DONAHUE: Yes, they are.

16 COMMISSIONER MAY: I assume the
17 two-bedroom units in which we see no plans
18 whatsoever, they have windows in the bedrooms?

19 MR. DONAHUE: Yes, sir.

20 COMMISSIONER MAY: I can't let --

21 MR. DONAHUE: Understood.

22 COMMISSIONER MAY: -- things like

1 that go sometimes.

2 CHAIRPERSON JORDAN: I need you to
3 identify yourself for the record.

4 MR. DONAHUE: I'm sorry, Mr.
5 Chairman. Ed Donahue on behalf of the
6 Applicant, Community Three.

7 CHAIRPERSON JORDAN: And you have
8 completed the witness cards?

9 MR. DONAHUE: Yes, I have.

10 CHAIRPERSON JORDAN: You've been
11 around this block before.

12 Anybody else have any questions
13 for this Applicant?

14 Does OP have anything that they
15 need from the Applicant?

16 MS. THOMAS: Nothing.

17 CHAIRPERSON JORDAN: Anything in
18 addition you need to add?

19 MS. THOMAS: Nothing to add. We
20 are happy they satisfied the community's
21 request and made this a smooth case for the
22 community.

1 CHAIRPERSON JORDAN: The
2 Department of Transportation is not here. I
3 think they were invited. Right, Mr. Moy?

4 MR. MOY: Yes, sir.

5 CHAIRPERSON JORDAN: And they're
6 not here.

7 We do have a letter of support
8 from ANC-2C. Is anyone here from ANC-2C?

9 Any persons in the audience that
10 want to speak in support? Those in
11 opposition? There is none.

12 I think we can move to
13 deliberations unless you want to do a
14 presentation for the Board, which you have
15 every right to do.

16 MR. DONAHUE: I'm happy to waive,
17 Mr. Chairman.

18 CHAIRPERSON JORDAN: Then we can
19 close the hearing based upon the record and
20 move into deliberation.

21 Is there a feel from the Board in
22 this matter from anyone? Anyone want to make

1 a motion or you're going to wait for me to do
2 all the work?

3 All right. Then I would move that
4 we grant the requested relief -- the amended
5 relief as requested.

6 COMMISSIONER MAY: Second.

7 MEMBER MacMURRAY: Sorry. Second.

8 CHAIRPERSON JORDAN: Motion made
9 and seconded. I think Mr. May beat you to the
10 second.

11 Any unreadiness? All those in
12 favor of the motion signify by say aye.

13 BOARD MEMBERS: Aye.

14 CHAIRPERSON JORDAN: Those opposed
15 nay. The motion carries.

16 Mr. Moy.

17 MR. MOY: Yes, sir. Staff would
18 record the vote as four to zero to one. This
19 is on the motion of Chairman Jordan to approve
20 the application with the amended relief.

21 Seconding the motion Mr. Peter May. Also in
22 support of the motion Ms. MacMurray and Mr.

1 Hinkle. No other Board members participating.
2 Again, the final vote is four to zero to one.
3 The motion carries.

4 CHAIRPERSON JORDAN: Thank you. I
5 believe we are prime for a summary order.

6 MR. MOY: Yes, sir.

7 CHAIRPERSON JORDAN: Thank you.

8 Is there any other business coming
9 before this Board? Let me then before we
10 dismiss --

11 Thank you.

12 MR. DONAHUE: Thank you, Mr.
13 Chairman.

14 CHAIRPERSON JORDAN: In
15 accordance with Section 405(c) of the Open
16 Meetings Act, D.C. office code 2575, I move
17 that the Board of Zoning Adjustment hold
18 closed meetings on Monday, September 10th,
19 17th, and 24th beginning at 4:00 p.m. for the
20 purposes of obtaining legal advice from our
21 counsel and/or to deliberate upon but not
22 voting on cases scheduled to be publicly heard

1 or decided by the Board on the day after each
2 closed meeting as those cases are identified
3 by the Board's agendas for September 11th,
4 18th, and 25th which have been of public
5 record.

6 Is there a second?

7 MEMBER MacMURRAY: Second.

8 CHAIRPERSON JORDAN: Motion made
9 and seconded.

10 Mr. Secretary, please take a roll
11 call on the motion.

12 MR. MOY: Yes, sir.

13 Board members, when I call your
14 name, if you would please respond with yes or
15 no or aye or nay.

16 Peter May.

17 COMMISSIONER MAY: Aye.

18 MR. MOY: Chairman Jordan.

19 CHAIRPERSON JORDAN: Aye.

20 MR. MOY: Ms. MacMurray.

21 MEMBER MacMURRAY: Aye.

22 MR. MOY: Mr. Hinkle.

1 MEMBER HINKLE: Yes.

2 MR. MOY: Ms. Sorg is not present
3 with us this afternoon.

4 CHAIRPERSON JORDAN: Thank you.
5 The motion carries. As it appears that this
6 motion has passed, I request that the Office
7 of Zoning provide notice of these closed
8 meetings in accordance with the law. Thank
9 you.

10 Seeing there is no other business
11 coming before us today, then we will adjourn
12 this hearing.

13 (Whereupon, at 2:43 p.m. the
14 hearing was adjourned.)

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able 27:8 50:12 acceptable 52:14 55:9 accessory 14:5 54:2 55:3 56:11 act 59:9 67:16 actions 4:20 Ada 33:9 36:5 add 32:2 55:9 64:18,19 added 34:4,15 adding 22:17 addition 14:5,15,20 20:10,14,15 21:18 22:11 36:14 37:10 43:14,20 48:16 57:6 64:18 additional 8:1 11:4 51:1 53:2 55:4,9 55:15 57:11 Additionally 51:21 additions 49:10 address 6:12 31:4,9 33:17 addresses 48:14 adds 31:16 34:6,16 adjacent 14:15 adjourn 3:22 69:11 adjourned 69:14 Adjustment 1:4,16 4:9 67:17 Administer's 22:4 Administrative 45:21 Administrator 7:12 45:15,18 Administrator's 20:3 admire 36:10 advertised 60:12 advice 67:20 advised 4:16 affirmation 5:5 30:8 afternoon 52:10,22 69:3	afternoon's 60:7 agenda 6:11 agendas 68:3 agent 12:12 aggressive 62:12 agree 22:6,9,13 ahead 11:16,22 air 13:21 aisle 61:1 alley 26:8 33:16,18 35:8 allow 6:22 8:11 60:15 allowance 57:8 allowed 18:19 allowing 55:3 allows 13:19 altering 20:22 alternatives 28:4 amend 55:8 61:5,7 amended 58:19 60:21 66:4,20 amount 14:8,19 ANC 14:9 20:20 29:11,11 47:18 55:16 ANC-2C 3:18 61:21 65:8,8 ANC-5 14:20 ANC-5C 3:4 29:15 29:17 and/or 67:21 Angela 3:2 6:18 9:2 9:10,16 36:22 answer 13:3 28:19 anybody 9:13 30:5 38:10,12 55:20 64:12 apart 12:19,22 apartment 54:2 55:3 apartments 63:13 apiece 30:15 appears 69:5 applicable 50:13 Applicant 8:9 19:19 20:19 27:11	27:13,19 28:11 32:14 38:18 47:22 50:13,18 51:7,17 56:3,5,7 57:6,16 60:20 63:5 64:6 64:13,15 applicants 27:7 28:1,5 Applicant's 20:1 20:15 27:1 application 3:2,7 3:11,13,20 6:17 6:18 7:9 29:22 30:4 31:3 38:12 38:13 53:20,21,22 54:19 55:21 58:19 60:7,8,9,21 61:5 61:11 62:11,20 66:20 applications 4:22 appreciate 24:4 32:4,8 34:21 38:8 53:15 approval 29:18 55:17,19 approve 3:11,20 58:19 66:19 approximately 25:3 April 12:3 architect 42:15 43:6 46:22 area 8:4 26:4,13 51:18 55:6 argument 21:10 arms 11:11 15:17 arose 7:10 ARTHUR 2:4 asking 15:6 aspect 36:20 associated 21:12 assume 63:16 attached 13:10 attaches 46:5 Attorney 1:25 51:14 audience 5:3 36:7	38:11 65:9 August 12:11 52:8 available 13:21 aware 42:10 aye 58:11,12 66:12 66:13 68:15,17,19 68:21	15:8 16:21 19:18 26:19 28:22 30:3 30:8 31:2 39:14 40:11 45:15 48:1 50:7 52:6 53:21 56:1 57:4 58:12 61:13 63:3 65:14 65:21 66:13 67:1 67:9,17 68:1,13 boards 12:19,21 39:6 43:1 Board's 4:21 52:10 68:3 bought 9:22 12:3 17:8 18:20 46:21 bracing 43:5 brick 38:2 brief 51:14 bright 9:5 bring 25:12,13 59:11 bringing 53:11 build 18:11,13 21:17 39:1,2 40:19 41:1,19 42:21 43:2 44:13 building 12:5,12 13:5,8 22:10 24:9 43:14,14 56:8 60:16,17 63:9 buildings 14:15 built 12:8 17:3 33:21 36:9 37:9 37:14,16 39:4 41:1,18 44:5 45:19 bureaucracy 34:8 Bush 30:19,19,20 30:21,21 31:1,1,4 31:9 32:20 business 67:8 69:10 button 8:22 31:8 by-right 62:18 BZA 21:9 B-A-B-I-N-O 33:10 33:12 B-A-N 33:11

C	25:4,9,21 26:9,17 27:20 28:3,9 29:3 29:9,14 30:11,20 30:22 31:7 32:3 32:18 33:7,11,13 34:21 35:2,6,11 35:13,19 37:2,11 37:16,20 38:4,10 39:10,15,18 40:2 46:3,18 47:2,5,20 50:6,16 51:4 52:5 52:13,19 53:1,9 53:15 54:7,14,17 54:22 55:12 56:13 57:18,22 58:5,9 58:13,18 59:3,7 59:16,18,21 60:2 61:4,13,17 62:13 62:21 63:3 64:2,7 64:10,17 65:1,5 65:18 66:8,14 67:4,7,14 68:8,19 69:4 challenge 40:13 change 27:3 changes 27:3 50:21 changing 21:22 22:22 58:4 character 14:6 Chase 3:8 53:22 54:13,13,16,20 55:11 57:20 58:2 59:13,17,19,22 circumstance 10:6 19:7 circumstances 10:18 51:11 city 45:19 clarify 40:17 53:6 clear 50:1 61:19 CLIFFORD 1:23 close 47:22 51:5 57:3 62:18 65:19 closed 67:18 68:2 69:7 closest 14:18 closing 38:18	code 13:5 67:16 codes 41:17 42:17 Columbia 1:2 4:10 come 5:19 6:5 27:7 29:6 30:1 34:3 49:5 54:8 coming 32:9 34:9 67:8 69:11 comments 46:9 62:9 Commission 1:20 4:13 21:8 Commissioner 1:21 17:2,10,13 17:21 18:3,8,15 19:5 21:5 22:6 23:1,5,21 24:2,16 24:21 25:10,16,19 40:21 41:6,13 42:8,11 44:7,15 44:19 45:9,13 48:8 50:14 58:7 63:7,16,20,22 66:6 68:17 common 19:6,9 41:14 community 3:13 31:16 32:2 60:9 64:6,22 community's 64:20 compact 61:2 62:17 complete 6:6,7 12:12 16:21 35:20 35:21 54:15 59:8 63:8 completed 8:9 64:8 compliance 39:19 46:11 compliant 42:3 complied 42:18 complies 45:20 comply 10:7,21 50:2 51:11 compromised 14:3 concern 16:17 27:5 27:16	concerns 32:10 condition 19:16 37:3,21 49:20,21 conduct 50:10 confirm 18:10 conform 12:18 48:19 conforming 27:4 27:11 connect 49:6 consider 50:5 consideration 43:9 considered 13:18 consistent 22:3 consistently 23:10 constitutes 2:6 20:5 constructed 13:8 22:8 construction 7:1 28:21 40:22 50:20 51:3 consuming 39:13 CONTENTS 2:22 contest 14:22 continue 23:13 continued 24:10 contract 41:7,14,15 50:19 53:7,8 contractor 41:4 42:6 46:19 contrary 48:13 convened 1:13 conversations 62:7 conversion 60:15 convince 22:18 copy 58:8 corner 35:8 Correct 25:18 26:2 cost 13:15 39:4,5 40:2,3,5 50:22 51:2,3 52:1,1 53:11 costing 40:17 costly 39:8,11,13 counsel 67:21 count 26:14 counted 23:16	couple 46:21 51:14 court 4:17 6:9 8:5 24:9,11 26:4,13 30:16 33:1 34:9 38:15 49:17 54:18 59:9 criteria 55:17 Crittenden 54:5 currently 25:14 40:18 C-2-A 60:18 D damage 15:11 dangerous 37:5 date 4:7 48:4 52:8 day 4:4 68:1 DC 12:15 DCMR 6:19 54:1 60:10 DCRA 12:13,14,22 15:8 26:10,10 27:13,18 28:15,17 39:2 42:10 44:21 45:6,14 47:9,13 48:12,22 49:6 DDOT 62:10,19 dealt 24:14 decided 68:1 decision 48:3 52:10 52:20 56:14,20 decisions 32:11 deconstruct 46:10 52:2 deconstructing 16:18 deconstruction 39:8 deficiency 7:8,10 define 13:1 44:20 defined 45:5,7 defines 13:6,7 definitely 39:2 definition 28:17,18 definitive 7:17 deliberate 51:9 67:21
---	--	---	--	--

deliberation 48:2 50:3 57:3 65:20	Donahue 61:8,16 62:6,15 63:2,15 63:19,21 64:4,5,9 65:16 67:12	evaluate 27:14,19 exactly 17:3 example 24:8 exception 13:19 14:11 22:16 25:5 25:7 54:1 55:2 57:7	19:6 43:7 50:15 finish 37:15,19 finished 38:21 first 6:15,16 35:8 36:11 55:20 five 26:5,14 floor 13:6 17:7 23:11,12,20 24:18 25:17,20 44:11 45:2 55:6 57:15 57:17,19 63:12	giving 11:18 49:15 59:9 Glazer 2:1 7:7 glories 46:16 go 8:2 11:15,22 16:12,18 25:7 40:10 43:22 53:11 60:3 64:1 goes 14:4 going 4:19 5:3,7,7 5:17,18,19 6:4 7:16 8:8 12:7 16:21 25:13 28:11 29:5 30:12,15 38:14 39:20 40:7 43:7,8 44:2 47:22 51:8,13 53:2,17 56:1 60:11 66:1
demonstrates 14:11	door 5:1	exceptional 10:5,18 20:16	flowers 46:14	good 6:2 16:15 20:19 32:18 43:8 58:9
Department 29:10 62:2,5,7 65:2	drawings 14:13	excess 49:13 57:7	follow 10:16	gotten 14:18 15:2 42:15
design 41:4,7,20 42:16 46:19 47:1	drawn 50:19	Excuse 15:13	follow-up 21:6	GOVERNMENT 1:1
designed 46:18	drive 61:1	existed 17:8,12,17	foremost 36:14	grandfathered 19:3 22:1 49:21
detached 54:3	dwelling 7:2 54:3 56:12	existing 22:11 49:20,20 54:3 56:11 58:2 60:16	form 63:12	grant 8:10,15 10:4 10:9 11:9 31:20 43:18 48:17 49:2 57:5,11 61:14 66:4
determination 20:3 22:4	D.C 1:14,25 31:10 42:7 67:16	expansion 25:22	formed 37:22	granted 49:10
determine 22:8	E	explain 10:5	forward 8:2,20 34:14 54:8	granting 45:16
detriment 16:14 20:18	earlier 45:7 62:11 62:19	explains 62:22	found 5:1 12:18	graphical 14:12
development 3:15 60:10 62:18	early 34:2	explanation 24:4	four 58:17 59:1 60:16 66:18 67:2	great 29:20 55:17
diagonal 43:5	earthquake 15:10 37:1	expressed 27:5	friend 42:5	green 8:22 35:22
diagonally 31:5	easy 28:22 39:16	extending 23:19 24:12	full 23:17 55:13 61:18	ground 13:10,11 23:11 25:17
difference 26:10,12	Ed 64:5	extends 49:18	fully 31:11 33:19 34:16	grow 46:16
different 21:19 28:16,18	effort 13:15	extent 20:11	further 48:4 50:5 50:11 51:8 57:12	guess 46:8
differently 45:6	eight 21:7 26:7	F	Future 13:13	guessing 17:5
difficult 17:2 39:19 39:21 40:4	either 7:19 42:10	faced 18:5	G	guidelines 10:17
difficulties 10:20 10:21	element 34:6	faces 35:4	garage 17:7,8,14 17:16 18:11,11,13 34:1 38:2 46:6,6	Gyor 2:4 16:11 19:22 22:2,19 23:4 24:19 25:2 25:14,18 26:2,12
diligent 14:21	elements 42:1	fact 19:7 26:3 31:12 36:12 42:13	gardener 46:13	
dimensions 24:15	elevation 14:13	factor 27:17	General 1:25 51:14	
diminish 36:18	emphasize 36:21	family 7:2 42:6	generally 7:17 19:2	
direct 13:4	enclose 43:20	far 7:11 23:2,3,7 31:17	gentleman 30:13 32:22	
direction 48:10	enclosed 43:15	favor 31:8 58:10 66:12	getting 10:21 47:18	
directly 28:19 33:16 34:22	encountered 24:5	feel 65:21	give 8:22 29:5,19 30:16,17 32:22 33:8 46:16 50:12 54:17 57:22	
discussed 28:4,6,7	engineer 42:16	feet 26:5,7,14	given 39:3 40:6	
discussing 16:4	enjoying 34:18	figure 27:8	gives 37:6 52:14	
discussion 8:15	enjoyment 14:2	file 29:16 61:9		
discussions 48:5 57:12	enlargement 48:16	filing 60:21		
dismiss 67:10	enter 23:8	fill 30:14 32:20,21		
disruptive 4:20	entire 34:7	final 59:1 67:2		
District 1:2 4:9 7:2 54:4 60:18	equaling 55:7	financial 51:22		
documents 10:10	equivalent 22:10 43:13 45:1	find 10:3 16:2		
doing 16:7 28:20 32:12 47:17	especially 51:16	fine 10:15 18:4		
	ESQ 2:1			
	essence 17:14			
	essentially 12:12 40:17 43:13			
	establish 54:2			
	estimates 52:1			

27:12 28:2,6 29:8	important 36:20 47:8	Jersey 12:2	10:3 12:14 21:7	longer 45:1
H	inches 12:19,22	job 36:11	23:6 25:11 31:17	look 43:8,18
hall 60:4	13:2,5 16:12 20:4	Joe 36:6	33:22 41:14 47:16	looking 36:12
hand 5:5 6:8 30:7	21:1 22:9 27:4,10	JOHN 1:24	55:14 60:5	48:12
57:21	28:7,7 39:3 40:12	Jordan 1:14,17 3:1	knowing 39:1,2	looks 9:5
happen 47:11	42:2,22 43:2 44:5	3:22 4:3,11 5:12	knowledge 47:8	lose 39:16
happy 50:4 64:20	44:11,22	5:16 6:2,14 7:5	known 15:5 47:6	lot 6:19 7:4,11 8:3
65:16	inclined 57:2,5	9:4,8,12,18 10:2	Kress 1:13 4:6	17:5 18:17,21
hardships 51:17	include 57:7	11:15,19 13:4	L	19:14 20:7,8,15
harm 16:16 31:15	included 26:6	15:13,16,20 16:1	land 18:20	21:11,13,13,21,22
head 52:15	including 12:5 13:8	16:20 19:17 21:3	landlocked 63:14	22:15,22 24:14,15
hear 47:19 50:18	25:22 26:1,4	24:22 25:4,9,21	lateral 12:21	24:17 25:3 34:14
52:18 56:2,5	incorrectly 45:12	26:9,17 27:20	law 10:17,17 44:10	44:9 48:19 49:3
heard 21:9,10 53:6	increases 20:7,11	28:3,9 29:3,9,14	45:4 69:8	49:16 54:6
67:22	increasing 20:9,14	30:11,20,22 31:7	laws 47:7	lots 21:9 60:19
hearing 1:6,12,13	21:10 22:21 23:14	32:3,18 33:7,11	lead 22:15	M
2:6 4:4,6,8,21,21	23:18	33:13 34:21 35:2	leads 22:14	MacMURRAY
6:10 19:13 48:1	indicated 4:5 8:1	35:6,11,13,19	left 4:12	1:18 4:14 26:20
51:5 57:1,3 65:19	8:16	37:2,11,16,20	legal 67:20	26:21 40:16 50:8
69:12,14	information 11:4	38:4,10 39:10,15	letter 3:4,18 16:10	50:9 57:9 58:20
hearkening 62:19	17:5 51:1,22 53:3	39:18 40:2 46:3	29:16 61:9 65:7	66:7,22 68:7,20
held 2:6 23:10	integrity 15:9 27:5	46:18 47:2,5,20	letters 14:22 15:3	68:21
help 51:8	27:9,14,16 40:13	50:6,16 51:4 52:5	61:20	mail 59:19
helped 40:8 41:1,19	intended 46:17	52:13,19 53:1,9	Let's 5:12 6:10,14	major 15:11
helpful 15:21 16:2	intensity 20:13	53:15 54:7,14,17	19:20	making 36:13
50:22 52:3	intent 44:10 46:12	54:22 55:12 56:13	level 24:18 39:7	50:21
helps 32:11	intention 49:5	57:18,22 58:5,9	licensed 42:6	manner 42:14
highlight 7:15	interested 19:13	58:13,18 59:3,7	light 8:22 13:21	manual 41:5
Hinkle 1:19 4:15	interpreting 26:13	59:16,18,21 60:2	35:22 51:16	Margaret 3:7
50:16,17 52:3,4	45:12	61:4,13,17 62:13	limited 23:2,3	53:22 54:13
53:6 57:13 58:22	introduce 8:20	62:21 63:3 64:2,7	little 11:18 50:10	matter 7:18 9:14
67:1 68:22 69:1	introduction 23:16	64:10,17 65:1,5	live 4:18 14:17 31:5	29:20 39:14 42:15
hold 51:17 67:17	intrusion 14:6	65:18 66:8,14,19	36:4 44:13 46:12	50:5 55:14 59:10
house 9:22 12:3,9	invited 65:3	67:4,7,14 68:8,18	46:17	61:18 65:22
33:17,18 34:3	irregular 24:9,11	68:19 69:4	lived 12:9 33:21	matters 6:12 51:15
35:4,8 43:14,15	issue 7:10,17 48:1	Jr 30:21 31:1	living 17:16,18	mean 11:12 17:18
46:21 54:20 58:4	50:20 62:1	July 1:10 2:6 4:7	LLC 3:15 60:10	19:6 21:15 22:7
houses 14:7 36:5	issues 57:1 61:14	June 60:20	Lloyd 1:14,17 4:11	22:18 23:1,5 25:8
hurricane 37:1	J	K	local 41:17 42:17	32:14 39:6 41:18
hurt 34:10	JACKSON 23:9,22	KAREN 2:3	42:18	42:3,14 63:8
husband 9:21 12:2	24:7 25:8 56:6	keep 51:6,19	located 7:4 54:6	means 19:9
46:22 54:21	JEFF 1:19	keeping 48:3	60:19	meant 49:15
I	Jeffrey 4:14 58:21	kind 12:11 16:3	location 4:5 12:9	measurement 7:11
identified 68:2	jeopardize 15:9	37:6 43:21 46:10	13:9,11	meet 15:8 55:17
identify 64:3	Jerrily 1:13 4:6	knew 49:9	logic 24:3	meeting 52:10 68:2
immensely 34:18		know 7:16 8:8 10:2	long 34:3	meetings 67:16,18

69:8 meets 41:16 member 1:18,19,20 4:12,14,15 26:21 40:16 50:9,17 52:4 57:9,13 66:7 68:7,21 69:1 members 1:16 11:20 44:22 58:12 58:22 63:4 66:13 67:1 68:13 Memorial 1:13 4:6 mentioned 12:1,16 45:6 met 28:1 mind 11:9 minutes 2:6 30:2 31:2 misconception 53:14 missed 10:13 modification 20:21 modified 47:4 modify 61:11 modifying 28:8 moment 19:12 Monday 67:18 money 34:15 months 12:6 morning 46:15 motion 57:10 58:10 58:14,18,20,21 59:2 61:5,7 66:1,8 66:12,15,19,21,22 67:3 68:8,11 69:5 69:6 move 4:4 8:20 50:3 53:18 56:9 57:3,8 65:12,20 66:3 67:16 moved 12:2 moving 12:7 34:13 48:2,3 Moy 1:23 5:9,14 6:13,16 7:6 33:3 35:15,16 52:7,9 52:21 53:20 57:10	58:1,15,16 59:4,6 60:3,6 65:3,4 66:16,17 67:6 68:12,18,20,22 69:2 Moy's 61:12 multi-family 60:17 N nailed 40:11 name 4:11 9:1 30:18 33:8,9 36:1 36:3 54:11 68:14 narrative 29:6 natural 18:2 46:16 nay 58:14 66:15 68:15 NCPC 1:19 nearest 15:1 necessarily 45:7 necessary 7:20 8:2 8:14 10:14 19:15 48:22 55:4,10 need 5:20 6:12 10:11 11:10,20 12:10 15:18 30:6 30:12 32:21 33:3 35:20 37:12 38:14 47:16 51:21 52:15 53:5,10 54:14 55:8,15 56:2,5 58:6 60:5 61:19 61:20 62:1 63:4 64:2,15,18 needed 12:16 21:17 28:16 needful 22:14 needing 49:19 needs 6:7 negative 34:11,19 neighbor 33:15 neighborhood 19:3 34:5,11,17 neighboring 13:22 14:2 neighbors 14:9,16 14:17 15:1 20:20	31:12 32:8 never 46:17 59:22 new 12:2,15 25:22 25:22 30:13 33:4 57:17 nice 34:18 47:15 NICOLE 1:18 nodding 52:16 noises 4:20 nonconforming 6:21 18:17 19:8 20:8,12 21:16,18 22:11,17,20 23:11 23:12 48:14,17 49:10,17 nonconformity 20:9,13 23:13,14 23:18 24:12 normally 24:8 note 7:22 20:2,16 22:2 24:11 27:15 28:15 55:15 56:7 noted 7:9 20:6 notice 1:14 55:1 69:7 number 12:4 61:3 numerical 22:21 numerically 20:9 NYARKU 1:24 N.W 1:14 4:7 7:3 31:10 54:5 60:18 O oath 5:5,20 30:7 objection 31:18 obstruct 14:8 obtaining 67:20 occupancy 6:20 7:11 18:17,21 19:14 20:7 21:11 21:12,14,21,22 22:15,22 24:14,17 25:3 48:19 49:3 49:17 occupiable 23:19 occupying 18:18 offered 5:6	office 1:22,25 2:2 3:4,9,17 7:13,22 11:6 16:10 19:13 19:20,22 28:10,13 28:15 29:5 48:9 49:4 50:1 51:13 55:18 57:16 60:4 61:21 67:16 69:6 off-street 60:14 Oh 39:17 41:22 okay 9:8 10:15 11:21 15:19 17:10 17:14 18:15 23:1 23:21 24:16,21 35:6 38:4,22 41:6 41:13 42:8 43:19 52:16 54:16,22 57:1 59:19 Once 5:15 44:21 ones 49:12 one-family 54:3 one-story 24:9 OP 20:21 21:4 23:10 26:18 27:21 56:4 64:14 open 23:17 36:17 44:12 48:3 51:6 51:19 67:15 opine 46:1 opinion 50:7 opinions 28:16 opportunity 11:3,7 29:6 30:2 56:16 opposed 23:17 58:13 66:14 opposition 9:14 15:5 38:11,12 47:19 55:21 65:11 options 27:10 OP's 20:12 oral 61:7 order 3:1 21:17 46:10 48:21 59:5 59:16,17 67:5 organic 46:14 original 47:1 51:2 60:12	Otis 3:2 6:18 9:7,8 9:9 outdoor 17:16 overall 24:22 25:2 48:12 overhead 42:1 overwhelming 15:4 owner 54:19 owners 13:14 P package 57:14 PAGE 2:22 Palmer 36:7 parking 60:14 61:2 parlance 18:16 participating 58:22 67:1 particular 31:3 53:17 particularly 10:19 parties 8:19 54:8,9 partner 36:6 party 46:4 passed 69:6 patio 17:11,13,19 17:20 18:13 38:2 pattern 14:6 pause 7:6 people 56:20 percent 18:21 25:3 25:6,12,13,15 26:1,3,11 36:8 49:13 55:5,7 57:8 percentage 48:19 55:7 perfectly 43:3,4 pergola 7:1 20:4,7 20:10,22 27:15 28:8,20 31:18 permanent 13:9,11 13:12,16 46:5,6 56:10 permit 12:10,16,17 47:16 62:8 permitting 27:18 41:21
---	--	---	---	--

person 6:7 30:17 32:6,15 33:4 40:8 persons 3:5 29:21 54:9 65:9 perspective 36:13 Peter 1:21 4:12 58:21 66:21 68:16 petition 31:13 photographs 14:13 pick 50:4 picture 50:1 pictures 12:21 18:7 18:9 piece 18:20 plan 57:15,17,19 Planning 2:2 3:4,9 3:17 7:13 8:1 11:6 16:11 19:14 19:21,22 28:10,15 29:5 48:10 49:4 50:2 55:18 57:16 61:22 Planning's 28:13 plans 14:13 56:9 63:8,17 plant 46:14 please 4:16 5:4 6:15 8:21 9:1 11:9 19:21 21:4 30:18 31:7 32:22 33:8 35:19,21 38:14 50:7 54:8 54:12 57:19 59:5 68:10,14 point 7:20 34:13 43:11 44:9 49:19 points 7:16 10:13 polices 45:19 poor 57:15 portion 26:5 position 45:22 positive 34:12 possible 27:10 postpone 50:10 practical 10:21 preliminary 6:12 premises 7:3 54:5	Prentice 9:3,17,18 9:19 Prentice-Ray 9:2 9:10,11,17,21 11:13,17 12:1 15:15,19,22 16:9 17:9,11,20 18:1,6 18:12 19:1 26:16 28:14 29:7,13 32:16 37:8,14,18 38:1,22 39:12,17 39:22 40:6,20 41:3,11 42:5,9 44:3,8,17 45:3,11 46:2,7,20 47:3,13 52:17 53:5,13,19 present 1:16,20,22 1:25 2:2 11:4 29:19 69:2 presentation 11:2 65:14 presiding 1:15 pretty 40:20 55:13 previously 20:8 22:20 pre-existing 19:15 primary 16:17 prime 67:5 priority 15:12 36:15 privacy 14:1 probably 9:6 12:20 43:4,7,9 47:10,11 49:11 51:21 problem 44:18 problematic 44:1 problems 31:22 56:22 procedural 7:8,9 procedures 4:21 proceeding 4:17 process 4:22 11:3 12:11,17 27:18 39:1 53:11 56:8 project 8:9 projects 12:5,7 proper 8:10 50:13	properties 13:22 14:2 property 7:3 10:6 10:19 17:8 18:16 18:19 26:6 51:10 54:6 60:18 proposed 14:14 58:3 provide 5:3 14:12 56:16 69:7 provided 59:15 providing 56:15 62:16 provision 14:10 41:15 provisions 6:22 13:20 49:16 public 1:6,12 2:6 4:4,8 16:14 20:19 68:4 publicly 67:22 purposes 67:20 pursuant 1:14 6:18 53:22 60:10 pursue 42:3 push 8:21 31:8 put 17:22 18:13 24:10 36:10 37:4 38:3 40:8,12 46:4 52:20 P-R-O-C-E-E-D-... 4:1 p.m 1:14 4:2 67:19 69:13	63:4 64:12 quick 59:14 quorum 29:19 R R 1:13 4:6 30:19,22 60:18 raise 5:4 30:7 raised 11:21 Rashida 1:18 4:13 Ray 3:2 6:18 9:7,7 9:9,9 31:11,14,21 Rays 36:8 read 60:11 ready 50:3 real 19:11 43:11 realized 41:22 really 8:7 9:5 11:10 18:10 23:8 32:8 32:10 38:8 39:21 40:12 42:12 46:15 63:10 rear 8:4 14:7 26:6 reason 5:18 15:6 37:4 rebuild 40:15 rebuilding 40:1 recall 24:5 receive 61:6 received 14:22 recommend 50:9 recommendation 62:2 recommendations 62:10 recommended 55:16,19 reconstructing 29:1 record 8:7,14,16,21 36:2 51:6,7,19 55:13 58:17 61:18 64:3 65:19 66:18 68:5 recorded 4:17 reflect 62:10 reflected 61:11	refrain 4:19 regard 43:16 regarding 51:15,22 55:2,5 regards 9:13 28:13 30:3 47:9 51:9 54:9 55:5 Regs 21:19 Regular 1:12 regulation 10:22 49:7 regulations 10:8 16:16 39:20 41:17 42:17 43:16 45:5 45:17 relates 51:2 relation 9:19 54:18 relationship 14:14 relatively 57:14 relevant 63:11 relief 8:2,3,4,4,11 10:9,12 13:19 19:14 21:2,17,21 22:15 28:16 42:13 43:19 48:22 49:1 49:10,15,18,19 50:13 55:10 57:5 57:11,11 60:22 62:12 63:11 66:4 66:5,20 remember 21:20 remove 13:14 removed 43:8 renovating 56:8 report 20:6 22:3 24:18,20 27:15 28:13 reporter 4:18 6:9 30:16 33:1 38:15 54:18 59:10 represent 14:14 representation 14:12 representative 29:15 request 20:1 55:8 57:15 61:10 64:21
---	---	---	---	---

69:6 requested 7:19 16:13,15 20:17 57:5 66:4,5 requesting 60:22 require 21:2 required 7:20 10:3 41:21 requirement 10:12 15:8 57:6 requirements 6:20 27:3 47:7 48:20 60:14 requires 10:17 13:9 21:13 Rescheduled 3:6 research 48:4 50:11 residence 56:10 residential 60:17 resolve 7:21 respond 68:14 response 52:4 responsible 45:16 result 16:14 20:18 reverse 51:15 reviewing 23:15 right 4:13,14 5:15 6:9 17:17 18:3,15 23:3,4 29:3 30:7 33:2 35:9,9 37:18 42:8,11 44:7 45:13 49:4 50:14 52:9 56:16 59:4 65:3,15 66:3 Robinson 36:3,4 38:6,9 ROGERS 2:4 roll 68:10 Ronny 36:3 roof 43:1 room 1:13,13 4:6 4:21 13:13 44:13 46:17 roughly 40:9 row 7:2 rows 63:14	rude 16:4 Rule 13:7 ruling 13:18 46:8 run 41:21 R-1-B 54:4 R-4 7:2 23:6 S safety 15:12 16:17 satisfied 64:20 saying 44:4 58:10 says 41:14 48:15,22 scheduled 67:22 second 7:6 11:19 15:14 17:6 23:20 24:10,17 25:20 26:17 57:9 66:6,7 66:10 68:6,7 seconded 57:10 66:9 68:9 Seconding 58:19 66:21 secretary 1:23 5:6 6:11 30:8 68:10 section 6:20 8:3,4,5 21:19 48:13 55:2 61:1,3 67:15 secure 36:21 37:13 37:15,17 security 36:10,13 36:19 see 8:7,13,15,22 31:15 38:13 43:4 43:6 44:2 47:11 52:6,15 63:17 seeing 17:6 69:10 self-imposed 51:17 sense 62:14 September 3:6 52:11,19,21 53:3 67:18 68:3 serving 7:1 session 60:7 set 12:17 shade 17:22 18:2 46:16 SHERRY 2:1	shirt 33:1 show 17:4 showed 12:13 side 35:2 59:11 sides 44:12 sign 31:13 significant 39:4 50:22 signify 58:10 66:12 sir 6:13 32:12 35:16 52:9 58:16 61:16 63:2,19 65:4 66:17 67:6 68:12 sit 30:6 situation 10:6 34:15 37:6 six 63:11 slats 20:4 21:1 28:7 slide 39:6 smooth 64:21 solution 27:9 somebody 41:1,9 47:11 somewhat 47:4 Sorg 1:18 69:2 sorry 52:17 59:22 64:4 66:7 sort 41:9 sound 41:8 42:20 43:3,4 South 1:13 space 17:16,18 23:19 39:6 42:1 43:15 55:6 spaced 44:12 spaces 61:2,3 62:16 speak 5:17,19 38:13 65:10 special 13:19 14:10 22:16 25:5,7 51:10 52:12 54:1 55:1 57:7 Specialist 1:24 specifically 11:21 spent 40:18 Square 7:4 54:6	60:19 stability 37:7 stable 16:19 36:14 Staff 1:22 2:2 58:16 66:17 stand 5:4 standard 43:21 start 11:18 16:18 37:15,19 started 12:4 state 36:1 54:11 stated 22:19 27:2 57:12 statement 38:18 61:12 step 59:11 STEPHEN 2:4 storms 15:11 37:1 story 24:10 60:17 street 1:13 4:7 7:3 9:22 12:4 31:6,10 33:17 35:5 36:4 54:5 60:18 structural 15:9,11 27:9,14,16 40:13 44:22 structurally 41:8 42:19 structure 6:21 13:1 13:7,12,18 20:5 20:11,12 21:16,18 22:5,7,9,10,12,17 23:17,18 26:8 27:6 28:17 31:16 32:1 33:21 34:7 34:18 36:8,16,21 44:20 45:5,8,22 46:1 48:17,18 structures 14:5 48:15 49:11 studio 63:12 stuff 5:21 41:9 43:5 subject 13:20 submit 57:17 submitted 10:10 11:5 17:4 Subsection 6:22	54:4 60:15 substantial 16:14 16:16 20:18 suggest 27:13 summary 46:8 59:4 67:5 supplement 51:7 support 3:5 9:14,15 14:9,17,19 15:1,2 15:3,4 16:11 20:1 20:20,21 29:17,21 30:4,17 31:3,11 31:13 32:7,9,15 33:4,19,20 34:16 36:8 47:18 55:22 58:20 61:21 65:7 65:10 66:22 supported 14:21 supportive 47:14 supports 36:18 sure 11:15,22 15:15 35:20,22 36:13 41:8,16 42:18 44:1 45:10,20 49:12 50:12 survey 47:17 sworn 5:8,11 6:1 30:10 33:6 35:18 T table 2:22 5:1,19 6:5,6 8:19 30:1,13 take 5:5,20 29:2 30:2,7 39:5,16 40:14 44:9 68:10 talk 11:7 14:4 31:2 62:1 talked 28:20 40:7 56:21 62:4 tell 11:8 16:5 31:2 38:18,19 56:18,19 60:5 tending 8:10 terms 13:3 34:3,9 49:2 50:19 51:1 testified 36:5 testify 5:7 29:22
--	---	---	--	---

testimony 5:4 27:2 32:5 56:15,17 thank 6:2 7:5 15:22 26:21 29:8 32:12 32:17 33:14 35:11 35:12 38:8,9,15 53:17,19 59:3,6,7 59:13 61:4 67:4,7 67:11,12 69:4,8 Thanks 56:13 Theodore 30:19,22 thing 19:8,9 23:9 37:5 45:14 52:2 things 6:8 8:14 11:5 19:10 40:7 63:22 think 5:17 11:8,13 12:20 13:3 16:6 18:9 19:11 21:9 24:7 25:13 26:7 26:12 35:22 36:19 40:3 43:9,11 47:9 47:14 48:8 49:4,5 51:4,12 55:12 56:14 57:14,15 58:7 59:4 61:18 61:19,22 62:8,22 65:3,12 66:9 thinking 48:11 thinks 19:14 THOMAS 2:3 64:16,19 thought 37:21 48:2 three 3:13 12:6 30:2 31:1 60:9 64:6 time 5:13,14 10:1 12:15 34:14 39:13 42:10 52:14 56:8 times 27:7 56:21 today 5:3 69:11 today's 4:7 6:10 told 49:6 top 12:21 17:7,14 17:16 20:10 29:2 36:18 37:4,6,9 40:14 43:1 44:12	46:4,13 transcript 2:6 Transportation 29:10 62:5,8 65:2 Transportation's 62:2 treated 24:1 trellis 12:5,8,18 13:13 15:10 17:6 17:7 18:14 20:22 21:2 23:16 37:8 37:10 38:3 43:2 45:2 46:13,15 tremendous 14:8 14:18 tried 17:21 18:1 truth 42:14 try 32:9 52:14 trying 15:16,17,21 16:1,2 17:15,17 18:4 22:3 32:4 38:5 49:8 62:21 63:9 TUESDAY 1:9 turn 16:21 19:20 28:11 38:17 twice 40:18 two 6:6,8 30:14 32:21 35:21 36:5 54:15 62:16 two-bedroom 63:17 types 24:15	understandable 55:13 understanding 19:2 24:3 37:7 Understood 63:21 unduly 14:3 Unfortunately 42:12 unhammer 40:10 unique 10:7,19 20:16 51:10 uniqueness 51:15 units 62:17 63:11 63:17 unreadiness 66:11 unsolicited 15:3 unusual 50:11 update 57:19 upper 23:12 upward 23:13 use 13:9 14:1 25:22 56:11	voices 47:19 volume 20:11 21:11,12 22:21 23:2,7 vote 3:11,20 58:17 59:1 66:18 67:2 voted 29:17 55:16 voting 67:22	15:16,20 16:1,2 23:15 25:20 32:3 32:11 45:22 58:3 we've 10:11 14:18 24:14 whatsoever 63:18 wide 26:5 width 26:15 61:1 window 35:10 windows 63:18 wise 40:2 wish 31:20 witness 6:5,6,7,8 30:9,14,14 33:5 35:17,20 54:15 64:8 witnesses 5:10,22 wondering 47:6 words 18:18 work 27:13 32:4 41:5 52:15 66:2 wouldn't 25:5 45:7 writing 11:5 53:10 written 53:7,7 wrote 48:12
				W wait 66:1 waive 56:22 65:16 waiver 15:7 31:21 55:3,4 walls 38:2 want 7:15 8:18 13:14 16:5,18 28:12,14 29:4,22 30:3,4,5 38:19 42:4 50:5 52:11 53:14 56:17,18 57:20 60:3 61:6 63:7 65:10,13,22 wanted 18:10 36:20 51:19 56:7 wants 38:13 warn 56:20 Washington 1:14 31:10 wasn't 16:11 37:9 42:9 wasted 34:14 way 7:19 10:7 19:10 22:7 24:14 32:10 34:3 36:16 42:4,13 44:2,13 46:15 51:16 webcast 4:18 week 24:6 weighed 11:6 27:17 weight 29:20 55:18 weigh-in 29:20 went 31:12 48:10 weren't 49:13 we'll 4:3 38:17 51:6 52:20 we're 4:5 10:3
				Y yard 26:6 Yeah 33:15 48:8 year 10:1 12:3 years 21:6,7 33:22
				Z zero 58:17 59:1 66:18 67:2 zone 23:6,7 Zoning 1:4,16,20 1:22,24 4:9,13 7:12 10:8,22 13:7 13:19 16:16 18:16 20:3 21:8,19 22:4 39:20 42:3,19 43:16 45:4,8,15 45:17,18,20,21 47:7 60:4 67:17 69:7 Zoning's 28:18

\$	27:4 28:7,21 39:3 42:2,22 43:2 44:5	66 3:20 60:19 69 3:22		
\$10,000 40:9 \$5,000 40:9	24th 67:19 24-unit 60:16	7		
1	25 3:6 33:22 55:5 57:8	70 25:6 49:13 77 26:11		
1st 7:3 9:22 12:4 35:5,7	25th 52:11,20,21 68:4	8		
1:40 1:14 4:2	2575 67:16 27 55:7,7	80s 34:2		
10th 67:18	29 3:4	9		
100 36:7	2920 54:6	90 18:21 25:3,12,13 25:14 26:1,2		
11 6:19 54:1 60:10 62:16,17	3			
11th 68:3	30 3:5			
11199 13:7	31 1:10 2:7			
115 33:17	31st 4:8			
118 31:4,9	3103.2 6:19 60:10			
119 36:4	3104.1 54:1			
1206 54:5	3119 7:4			
15th 60:20	34 54:6			
16 12:19,22 13:5 16:12 20:4 22:8 27:9 28:7 44:10 44:22	35 40:12			
17th 67:19	4			
18th 53:4 68:4	4 3:1			
18385 3:2 6:17	4th 1:13 4:7			
18389 3:7 53:21	4:00 67:19			
18390 3:13 60:8	401 8:3			
	403 6:20			
	404 8:4			
	405 8:5			
	405(c) 67:15			
	435 60:18			
	441 1:13 4:7			
2	5			
2:43 69:13	5C 29:13,14			
20 3:4	50 19:4			
20001 1:14	508 60:19			
2001.3 6:22 48:14 49:1,2	52 3:6 60:19			
2012 1:10 2:7 3:6 60:21	53 3:8 60:19			
202.10 54:4 55:2,5	55 3:9			
2100 7:3 9:22 12:4	58 3:11			
2101.1 60:15	59 3:15			
2117.5 61:1	6			
22 62:17	6 3:2			
220 1:13	64 3:17,18			
2215 61:3				
223 13:18 25:8,9,11 49:12,14				
24 7:4 13:2 21:1				

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In the matter of: Public Hearing

Before: BZA

Date: 07-31-12

Place: Washington, DC

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