

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 2, 2012

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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 9:30 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson

NICOLE SORG, Vice-Chairperson

JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

ARTHUR JACKSON

ELISA VITALE

STEPHEN GYOR

MAXINE BROWN-ROBERTS

DDOT STAFF PRESENT:

MARAT OHMY

The transcript constitutes the
minutes from the Public Hearing held on
October 2, 2012.

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Be the Change on behalf of the District

of Columbia107

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

(9:40 a.m.)

CHAIRPERSON JORDAN: Would the hearing please come to order? Good morning. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. Today's date is October 2nd, 2012.

We're here for the public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Lloyd Jordan, a chairperson.

To my left, Nichole Sorg, Vice Chairperson. To her left, Michael Turnbull, representative of the Zoning commission. And to my right, Jeffery Hinkle, board member.

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

1 how we process applications could be found by
2 the back door. So let's begin today's docket.
3 All those who are here to testify in a case,
4 please stand and take the oath or affirmation
5 from Mr. Moy, the Board Secretary.

6 (Swearing in of Witnesses)

7 CHAIRPERSON JORDAN: Additionally,
8 I'm going to ask that prior to your
9 testimony, that you complete two witness cards
10 and give them to the court reporter before
11 coming to the table. So that I need each
12 person who's going to testify to complete two
13 witness cards.

14 Mr. Moy, are there any preliminary
15 matters we need to address this morning?

16 MR. MOY: Sir, in the morning
17 session, there is one preliminary matter to
18 one application, and that is application
19 number 18409 of Cas, C-A-S, Riegler Companies.

20 CHAIRPERSON JORDAN: And do you
21 want to go ahead and --

22 MR. MOY: Oh yes, yes. That

1 preliminary matter is the applicant is asking
2 for a postponement. If you like, I can read
3 the case.

4 CHAIRPERSON JORDAN: No, I think
5 we already granted the postponement.

6 MR. MOY: Oh, you did?

7 CHAIRPERSON JORDAN: Didn't we?
8 Okay, well let's handle it now.

9 MR. MOY: Yes, that would be
10 application number 18409. This is the
11 application of C-A-S Reigler Companies
12 pursuant to 11 DCMR 3103.2.

13 This is a variance from the off-
14 street parking requirements under Subsection
15 2101.1 for the conversion of an existing flat
16 into an apartment housing containing five
17 units in the R-4 District at premises 1300
18 Park Road Northwest, property located in
19 square 2843, Lot 824.

20 CHAIRPERSON JORDAN: Are you
21 finished reading?

22 MR. MOY: Yes, sir.

1 CHAIRPERSON JORDAN: It kind of
2 dropped off. Okay. I don't see any reason
3 why we don't agree to consent postponement.

4 I know it's one that was
5 encouraged by the Office of Planning and that
6 the applicant, then has agreed that that's
7 probably the best route, I think, for the
8 basis of what we need to do, that it's
9 something that we should grant. So I will
10 grant that.

11 MR. MOY: Very good, Mr. Chairman.
12 So with that granting of the motion to
13 postpone, is there a date that the Board, we
14 would like to reschedule the application.
15 Staff would suggest the afternoon of January
16 the 8th. Go ahead.

17 CHAIRPERSON JORDAN: Yes, that
18 date's pretty clear, isn't it?

19 MR. MOY: Yes, sir.

20 CHAIRPERSON JORDAN: The
21 afternoon, it's a 1:00 p.m. docket?

22 MR. MOY: It's wide open.

1 CHAIRPERSON JORDAN: Yes, let's
2 put it there. And let's be conscious that we
3 might have some additional, that might be an
4 extended hearing, so let's make sure we're
5 conscious of keeping --

6 MR. MOY: That will be done, Mr.
7 Chairman. Good morning, Mr. Chairman, members
8 of the Board. The next application in the
9 Board's morning session then is Application
10 number 18405.

11 This is the application of Robert
12 Carroll pursuant to 11 DCMR 3104.1 and 3103.2.
13 This is for a variance from the alley setback
14 requirements under Subsection 2300.2 sub b and
15 a special exception to allow the construction
16 of an accessory garage addition serving a one
17 family road dwelling under Section 223.

18 Not meeting the lot occupancy
19 requirements under Section 403 in the R-4
20 District at premises 937 S Street Northwest.
21 Property located in Square 362 Lot 110.

22 CHAIRPERSON JORDAN: Now, would

1 the parties for that application or anyone
2 who's testifying in regards to this
3 application please come forward?

4 And I'm going to ask have you
5 prepared the witness cards and given them to
6 the court reporter?

7 MR. MANGAN: Yes, we have.

8 CHAIRPERSON JORDAN: And would you
9 please identify yourselves?

10 WHEREUPON,

11 ROBERT CARROLL

12 was called as a witness by the Board and,
13 having been first duly sworn, assumed the
14 witness stand, was examined and testified as
15 follows:

16 MR. CARROLL: Robert Carroll, the
17 owner of the property.

18 WHEREUPON,

19 JOHN MANGAN

20 was called as a witness by the Board and,
21 having been first duly sworn, assumed the
22 witness stand, was examined and testified as

1 follows:

2 MR. MANGAN: And John Mangan, Mr.
3 Carroll's architect.

4 CHAIRPERSON JORDAN: Before you
5 begin, I'll kind of point the Board to
6 indicate what you should do in the
7 presentation. My first question would be to
8 you is what's the exceptional situation or
9 extraordinary condition that requires us to
10 act in this regard?

11 MR. MANGAN: Mr. Chairman, I think
12 it was actually laid out very clearly by the -
13 -

14 CHAIRPERSON JORDAN: I wouldn't
15 have asked the question.

16 MR. MANGAN: I'm sorry, sir?

17 CHAIRPERSON JORDAN: I wouldn't
18 have asked the question. I'm quite
19 comfortable and understand the full record
20 here.

21 MR. MANGAN: Yes, sir.

22 CHAIRPERSON JORDAN: And every

1 document that's filed here. And so the
2 questions that we ask at the board meetings
3 are if there is something that we don't think
4 the file has all the information. So if you
5 can explain to us.

6 MR. MANGAN: Okay, well in terms
7 of an extraordinary situation, the alley
8 presents us with a context that has allowed
9 for, through the history of the city of
10 allowing itself to accommodate automobiles
11 where once it pre-dated automobiles at that
12 time.

13 So we have a rather narrow alley.
14 In terms of a variance, the setback
15 requirement, I don't know the history of what
16 that setback requirement was, but I do think
17 in this specific case, precedent and context
18 have been such that that is a special
19 exception in the case that we're talking about
20 here.

21 So the other issue there is were
22 we to not ask for this variance and build per

1 the requirement of the zoning regulation of
2 the setback of this structure, we would create
3 what we consider kind of a hazard and a
4 maintenance problem in terms of the issue of
5 the niche that we would create for the face,
6 the street face that's been made by the other
7 garages and fence structures along the alley.

8 So it's one of these cases, I
9 think, in terms of a hardship is that the
10 zoning is actually, the intent, it's well
11 intended. In order to follow the letter of
12 the law of the zoning, it's actually doing a
13 poorer job of what it was originally intended
14 to do in this specific context.

15 So we feel that that's our special
16 case there. In terms of lot coverage, once
17 again, it's not unusual in these areas for a
18 lot coverage to exceed what is required.

19 What we have done, we originally
20 had proposed to do something that would have
21 exceeded the 70 percent minimum that would
22 have thrown us to a variance rather than a

1 special exception.

2 So we've redesigned that garage
3 structure, take it down under the 70 percent
4 coverage so that we're asking for just special
5 exception for that piece of our request to the
6 zoning board here.

7 CHAIRPERSON JORDAN: Any other
8 questions of the applicant?

9 VICE CHAIRPERSON SORG: I'll
10 follow your line of questioning, Mr. Chairman.
11 I've got no issue with, personally based on
12 the record, with the lot occupancy request.

13 But I do think that I did have
14 some questions about the variance.

15 MR. MANGAN: Yes, ma'am.

16 VICE CHAIRPERSON SORG: And
17 particularly there are two. I'm looking at
18 the map that's in our Office of Planning
19 report as well as the photographs that you
20 provided.

21 And the particular difficulty
22 here, of course, is that the first prong of

1 the variances cannot be met using other
2 people's property.

3 MR. MANGAN: Sure.

4 VICE CHAIRPERSON SORG: Right?

5 MR. MANGAN: Yes.

6 VICE CHAIRPERSON SORG: But, that
7 being said, what I want to ask first is the
8 properties on either side, do they have
9 garages? Or do they just do that roll top
10 door thing that people in this neighborhood
11 like to do?

12 MR. MANGAN: There a combination.
13 Directly next to us --

14 MR. CARROLL: This is just a gate.
15 The one to the left is a gate, the one to the
16 right does not have a garage.

17 VICE CHAIRPERSON SORG: So neither
18 adjacent property --

19 MR. MANGAN: Yes, but if you can
20 look in, I don't have the photograph labeled
21 here, but it's the view of the alley east from
22 back the property.

1 VICE CHAIRPERSON SORG: That's the
2 one I'm looking at.

3 MR. MANGAN: Yes. So though we
4 are looking at a gate, the gate presents
5 itself to the alley at the 7.5 foot setback
6 much the way the face of a garage would.

7 So from a context of the alley, it
8 has the same aesthetic impact on the alley
9 that a garage face would.

10 VICE CHAIRPERSON SORG: I agree
11 with that. The second question is with regard
12 to your arguments related to the practical
13 difficulty, you talked about the niche that
14 would be created by setting back the central
15 garage as a conundrum for trash, as well I
16 think you mentioned safety.

17 But I wanted to ask about entry
18 and exit into the property and how you feel
19 that would be effected by that potential
20 condition?

21 MR. MANGAN: The condition,
22 whether it were to be set back or whether it

1 would be at the face, whether the garage door
2 was there, that would be fairly neutral, in my
3 opinion if we look at that view down the
4 street in terms of a car coming into that
5 alley from the garage or vice versa.

6 The concern we would have, really,
7 for to not bring it forward has to do with
8 such things as loitering, maintenance, trash
9 buildup, vermin, all those types of things
10 that we think would be much more cleanly dealt
11 with if we could have a uniform face on the
12 alley as we're proposing.

13 VICE CHAIRPERSON SORG: Okay,
14 thank you. That's all I have for right now.

15 ZC COMMISSIONER TURNBULL: All of
16 the trash cans are out in the alley, though,
17 right?

18 MR. MANGAN: Yes.

19 CHAIRPERSON JORDAN: Do you have
20 anything else you want to present to us before
21 -- you have the opportunity to do a
22 presentation if you like. Or we just want to

1 be sure to get to the questions that are in
2 our mind.

3 MR. MANGAN: I just, I'm hoping
4 that I'm being as clear as far that the
5 photographs are speaking better than I could
6 in terms of how we're trying to maintain the
7 context that's already been set for us.

8 And though I understand that
9 nothing can be granted based on someone else's
10 situation, the whole purpose of zoning is
11 trying to bring some type of a continuity to
12 this city, a street scape and whatnot.

13 So the context is actually playing
14 a very important role, and that's really the
15 case we're trying to make here is we're not
16 trying to get something, necessarily. We're
17 trying to make the best possible design
18 solution for what we're proposing here.

19 CHAIRPERSON JORDAN: But what
20 about this, with this property is specific or
21 unique that the other neighbors and the other
22 properties are not affected by the same

1 layout? Because I don't see any difference,
2 nor have I heard it.

3 MR. MANGAN: And Mr. Chairman, I
4 would agree with that statement with the
5 exception that what we are asking for, whether
6 it should be granted on precedent or not has
7 changed the situation specifically in this
8 alley street scape that would create a special
9 exception for us being sort of the odd man out
10 in this situation.

11 All we're really trying to do now
12 is bring some more uniformity to this
13 alleyway.

14 CHAIRPERSON JORDAN: Do you have
15 anything else for us that you want to present?
16 I mean, we have your file.

17 MR. MANGAN: Just as sort of an
18 aesthetic tipping of the hat, if you look at
19 exhibit that says neighbor's garage at 929 S
20 Street, the neighbor who did that, and I don't
21 know what time frame that may have been done
22 in, they did reach out a little bit to do a

1 little corbeling detail.

2 It's our intention to try and pick
3 up on that, to try and give a little bit of an
4 aesthetic bump to these, you know, rather
5 monolithic garage door facades. And in that
6 sense, maybe help the alleyway a little bit.

7 CHAIRPERSON JORDAN: Any other
8 questions of the applicant, anyone? Is there
9 anything you want to say before we go to
10 Office of Planning?

11 MR. MANGAN: I don't think so, no.

12 CHAIRPERSON JORDAN: Good. Then
13 let's swing to the Office of Planning for
14 Office of Planning's report.

15 MS. VITALE: Good morning, Mr.
16 Chair and members of the Board. For the
17 record, Elisa Vitale with the Office of
18 Planning.

19 And the Office of Planning will
20 stand on the record. I can certainly answer
21 any questions that you might have at this
22 time. Thank you.

1 CHAIRPERSON JORDAN: Let me ask
2 you. Can you explain to me the specific
3 uniqueness of this property that has an
4 exceptional condition or circumstance?

5 MS. VITALE: Certainly. As
6 outlined in the staff report that was --

7 CHAIRPERSON JORDAN: You people
8 keep saying something. Both the applicant and
9 yourself keep saying the stuff that I read
10 says what I've asked. I wouldn't ask the
11 question necessarily if it said what I thought
12 --

13 MS. VITALE: Certainly.

14 CHAIRPERSON JORDAN: Maybe I'm
15 misunderstanding it. Maybe I'm not reading
16 well or understanding. So I asked the
17 question so that I can hear something
18 different than what my eyes see and process as
19 language.

20 MS. VITALE: Certainly. And I
21 would like to elaborate on what you do have
22 here. I believe the architect started down

1 this path.

2 I think by requiring the setback
3 on this specific property, it would create a
4 site line issue for an individual trying to
5 enter or exit, should you grant this request
6 and the applicant were to construct the garage
7 and set it back.

8 I think given the adjoining
9 property and the current, you know, fence line
10 and prevalent setback along the alley, if you
11 were set back the required distance from the
12 center line, you wouldn't have a good view
13 into the alley to make a safe exit from that
14 garage.

15 So I do think it would present a
16 safety hazard if you did, in fact, require the
17 applicant to meet the setback. And we did
18 receive comments from DDOT. They did not have
19 any objection to the application.

20 We also spoke with Historic
21 Preservation staff. They didn't have any
22 concerns with the subject application and the

1 request. And they did, in fact, indicate that
2 they would prefer a garage to a roll up door
3 in this situation.

4 ZC COMMISSIONER TURNBULL: This
5 isn't in a historic area, though, right?

6 MS. VITALE: This is in the
7 greater U Street Historic District.

8 ZC COMMISSIONER TURNBULL: Oh, it
9 is?

10 MS. VITALE: It is, yes.

11 ZC COMMISSIONER TURNBULL: Oh,
12 okay. So you're saying that was not in your
13 report is that --

14 MS. VITALE: Actually, that is in
15 my report on Page 3 under the discussion of
16 223.2C, that preservation staff did not have
17 any concerns with the proposed design.

18 ZC COMMISSIONER TURNBULL: No,
19 what I was getting at what's not in your
20 report that you just mentioned is the safety
21 issue?

22 MS. VITALE: Correct. I did not

1 outline that safety issue. I think I spoke
2 more specifically to kind of a security and
3 maintenance difficulty with that setback.

4 ZC COMMISSIONER TURNBULL: So
5 basically you're saying that by meeting the
6 zoning regulations, they're creating a
7 uniqueness and a safety hazard which would --

8 CHAIRPERSON JORDAN: On the back
9 end?

10 ZC COMMISSIONER TURNBULL: Right.
11 Okay, thank you.

12 CHAIRPERSON JORDAN: So it's on
13 the back end, and not what we normally and
14 typically would look at. And Vice Chair Sorg
15 and I would discuss the issue.

16 But that's what it is. It's not
17 what we typically deal with in regards to when
18 we look at variances and the condition of the
19 property itself as is. We're looking at if
20 you comply with, it would be this. That's
21 what, right?

22 MS. VITALE: I agree with you,

1 both of you Mr. Turnbull and Mr. Jordan. I
2 also do think that, you know, sometimes
3 variances, the uniqueness that we've looked at
4 can be over a collection of properties.

5 So I think that in this case, you
6 can look at patterns of development over the
7 square, perhaps in the area of that first
8 problem, which leads you to, you know, that
9 potential compliance may infringe upon
10 patterns of development that have created a
11 certain condition for the square, that is, or
12 you know, small area rather.

13 CHAIRPERSON JORDAN: Okay. Any
14 questions of Office of Planning? Any
15 additional questions? Does the applicant have
16 any questions of Office of Planning?

17 Is there anyone in the audience,
18 well let me go back. We have a DOT report?
19 And the Department of Transportation has
20 recommended, well, they have no objection to
21 the request of the applicant.

22 Any other government agency? No.

1 Do we have anyone here from ANC-1B? I don't
2 think I have a report or a letter, do I, from
3 ANC-1B? I missed it? I didn't think so. Did
4 this get presented to the ANC?

5 MR. CARROLL: I had reached out to
6 the ANC by phone four times in May and early
7 June. And again, with the different phone
8 number provided by the Office of Planning in
9 late August and September. I simply wasn't
10 able to reach them.

11 CHAIRPERSON JORDAN: You left
12 messages?

13 MR. CARROLL: Yes.

14 CHAIRPERSON JORDAN: You tried to
15 contact them, but you didn't get any calls
16 back, is that what I'm understanding?

17 MR. CARROLL: Right, correct.

18 CHAIRPERSON JORDAN: Okay. Is
19 there anyone in the audience who's here to
20 testify in support of the application? Anyone
21 in the audience wanted to testify in
22 opposition to it?

1 Okay, let's turn back to the
2 applicant for wrap up, please. Is there
3 anything you want to say in closing?

4 MR. MANGAN: No, just we hope that
5 the Board would consider, you know, what we've
6 gone through from a design standpoint.

7 This has actually been fairly well
8 thought out, we think, from our perspective.
9 And we think we're doing really what's best,
10 not only for the property in question, but
11 also for the city and the alley scape.

12 CHAIRPERSON JORDAN: Good. Thank
13 you very much.

14 MR. MANGAN: Thank you.

15 CHAIRPERSON JORDAN: This will
16 conclude testimony in regards to this matter
17 and this hearing. And the Board will move now
18 to deliberation.

19 VICE CHAIRPERSON SORG: Mr.
20 Chairman, with regard to deliberations on this
21 case, I would note at the outset, I'll keep my
22 comments to the variance request. I think

1 that we saw no issues, my opinion with the
2 special exception.

3 But to the variance, I think due
4 to some additional facts and facets on the
5 property that I think were sussed out in this
6 still relatively short hearing on the record,
7 you know, I can get just over the hump in on
8 the variance test here based on something
9 which, you know, I'll sort of repeat my
10 comments.

11 But I think that I had some
12 questions about the first prong of the test in
13 reviewing the file.

14 But I think based on the
15 discussion, I can see that there is a
16 uniqueness with regard to the use over time of
17 the drive aisle of this alley and the pattern
18 of development in this particular small area,
19 in this alley, on this block that's led to a
20 condition in which compliance with the zoning
21 regulation requiring the setbacks from the
22 alley would potentially, and we could see

1 perhaps likely create hazardous conditions
2 including security, maintenance and site
3 lines. And so for that reason, I would be in
4 support of the application.

5 CHAIRPERSON JORDAN: Anyone else?

6 ZC COMMISSIONER TURNBULL: Mr.
7 Chair, I would just agree with the Vice Chair.
8 That this is sort of unique. I think we're
9 sort of backing into this from kind of a
10 reversal of how we're analyzing this.

11 I'm always reluctant to go down
12 that route. But I think in this case, as the
13 Vice Chair also said, I think we can get over
14 the hump, and I would be in favor, also, of
15 granting this.

16 CHAIRPERSON JORDAN: Anyone else?
17 I asked a question, and as you can hear very
18 clearly that this, with some help through the
19 questions here, we're able to save this.

20 And it's like right there at the
21 point of saving it. And I'll certainly defer
22 to my colleagues. And I understand now

1 another way of looking at this, that we
2 normally would not take that route, but I can
3 support it.

4 Any other discussions? Then Ms.
5 Sorg, do you want to make the motion?

6 VICE CHAIRPERSON SORG: Sure. I
7 would move to approve the relief as requested
8 in Case 18405.

9 ZC COMMISSIONER TURNBULL: Second.

10 CHAIRPERSON JORDAN: Motion being
11 seconded to approve the request for relief in
12 Case 18405, both the special exception and a
13 variance. Any additional questions or
14 discussions? Seeing none, all those in favor,
15 signify by saying aye.

16 (Chorus of ayes)

17 CHAIRPERSON JORDAN: Those
18 opposed, nay. The motion carries. Mr. Moy?

19 MR. MOY: Yes, sir. Staff would
20 record the vote as four to zero to one. This
21 is on the motion of the Vice Chair Sorg to
22 approve the application for the relief

1 requested, the variance of alley setback
2 requirements under 2300.2 sub b and the
3 special exception 223 not meeting the lot
4 occupancy under Section 403.

5 Second the motion Mr. Turnbull,
6 also in support of the motion are the Chairman
7 Jordan and Mr. Hinkle. We have no other
8 board members participating with us today. So
9 again, the final vote is four to zero to one.
10 The motion carries.

11 CHAIRPERSON JORDAN: And we can
12 have a summary order, could we please?

13 MR. MOY: Thank you, sir.

14 MR. MANGAN: Thank you.

15 MR. CARROLL: Thank you.

16 MR. MOY: The next application is
17 Application number 18408. This is the
18 application of Jeff Hammond and Mauri Ziff
19 pursuant to 11 DCMR 3104.1 for a special
20 exception for a rare addition to an existing
21 one family road dwelling under Section 223.

22 Not meeting the lot occupancy

1 requirements under Section 403 and non-
2 conforming structure requirements under 2001.3
3 in the R-4 District at premises 654
4 Massachusetts Avenue Northeast. Property
5 located in Square 865 Lot 92.

6 CHAIRPERSON JORDAN: Good morning.

7 MS. FOWLER: Good morning.

8 CHAIRPERSON JORDAN: Could you
9 please identify yourself for us, please?
10 WHEREUPON,

11 JENNIFER FOWLER
12 was called as a witness by the Board and,
13 having been first duly sworn, assumed the
14 witness stand, was examined and testified as
15 follows:

16 THE WITNESS: Hi, good morning.
17 I'm Jennifer Fowler of Fowler Architects.

18 CHAIRPERSON JORDAN: Great. I
19 think the record's pretty clear here, and
20 full. Let me defer to the board and see if
21 there's any specific questions that we have,
22 or issues. I'm not seeing any. Mr. Turnbull,

1 please.

2 ZC COMMISSIONER TURNBULL: Yes, I
3 just want to clarify. Basically, the existing
4 deck, is most of the existing structure
5 staying, or are you replacing some of the
6 principle members?

7 THE WITNESS: No, we're going to
8 maintain the structure, the footings,
9 everything. We need to do a little
10 investigation to see if it needs to be
11 reinforced, obviously.

12 ZC COMMISSIONER TURNBULL: Right.

13 THE WITNESS: But we're going to
14 be roofing in the same footprint of the deck.

15 ZC COMMISSIONER TURNBULL: Okay.

16 THE WITNESS: So there's no
17 change. The deck currently counts against the
18 coverage because it's tall enough that it
19 triggers the coverage.

20 ZC COMMISSIONER TURNBULL: Right,
21 okay.

22 THE WITNESS: So we're covering

1 that.

2 ZC COMMISSIONER TURNBULL: Okay,
3 thank you.

4 CHAIRPERSON JORDAN: I think we're
5 pretty clear. The record's very full and I
6 think we have a good understanding and grasp
7 of the relief requested.

8 Certainly, you can do a
9 presentation if you like, but I think we're
10 probably comfortable as is. But certainly up
11 to you.

12 THE WITNESS: I'm happy to rest on
13 the record. We have, you know, neighbor
14 support, both adjacent neighbors as well as
15 the neighbor on 7th has signed a letter of
16 support, and ENC, NCHRS as well.

17 CHAIRPERSON JORDAN: NCHRS.

18 THE WITNESS: So yes, we're happy
19 to rest on the record. Thank you.

20 CHAIRPERSON JORDAN: Thank you.
21 Let's turn now to Office of Planning.

22 MS. THOMAS: Good morning, Mr.

1 Chairman, members of the Board. Karen Thomas,
2 for the record. We will be happy to stand on
3 the record.

4 CHAIRPERSON JORDAN: Okay. Any
5 questions for Office of Planning, anyone? The
6 applicant, questions for planning?

7 THE WITNESS: No, thank you.

8 CHAIRPERSON JORDAN: Anyone from
9 Department of Transportation? We do have a
10 letter from the Department of Transportation
11 citing no objection to the relief.

12 Anybody else? Anyone here from
13 ANC-6C? We do have a letter of support from
14 ANC-6C recommending approval by a vote of
15 seven to zero, and it meets the requirements
16 for us to give support in deference to the
17 ANC's report, which we will do and give great
18 weight.

19 Anyone here who wants to give
20 testimony in support of this application,
21 other than the applicant, of course. Anyone
22 in opposition?

1 Seeing there's nobody else but one
2 other person here for another matter, then we
3 will turn back to you if there's something you
4 need to say in closing.

5 THE WITNESS: I would just thank
6 you so much for your time. It's nice seeing
7 you all again.

8 CHAIRPERSON JORDAN: Good. Then
9 let's close this hearing. And the Board's
10 ready for deliberation? Then I would move
11 that we grant the relief requested in Case
12 number 18408.

13 VICE CHAIRPERSON SORG: I would
14 second that motion.

15 CHAIRPERSON JORDAN: Motion made
16 and seconded that we grant the request. Any
17 unreadiness? All those in favor, signify by
18 saying aye.

19 (Chorus of ayes)

20 CHAIRPERSON JORDAN: Those
21 opposed, nay. Motion carries, thank you.

22 THE WITNESS: Thank you so much.

1 MR. MOY: Staff would record the
2 vote as four to zero to one. This is on the
3 motion of Chairman Jordan to approve the
4 special exception relief, not meeting the lot
5 occupancy requirements under 403 and non-
6 conforming structure requirements under
7 2001.3.

8 Also in support of the motion,
9 Chairperson Sorg and also supporting the
10 motion were, rather Chairperson Sorg second
11 the motion. Also in support, Mr. Turnbull and
12 Mr. Hinkle.

13 No other board members
14 participating. So again, the final vote's
15 four to zero to one.

16 CHAIRPERSON JORDAN: A summary
17 order, please?

18 MR. MOY: Very good, thank you Mr.
19 Chairman.

20 CHAIRPERSON JORDAN: We were
21 having deep theory discussion about cell
22 phones. No, but other things. We just took

1 care of 18409 because that's been postponed.
2 So we move to the next one.

3 MR. MOY: Yes, sir. That would be
4 Application number 18410. This is the
5 application of Massage Escape Spa Company
6 pursuant to 11 DCMR 3104.1 and 1533.1.

7 This is for a special exception
8 for a Massage establishment under section 731
9 in the NO/C-2-A and R-3 Districts at premises
10 2352 Wisconsin Avenue Northwest, property
11 located in Square 1300, Lot 425.

12 CHAIRPERSON JORDAN: Okay. This
13 is 18410? There's something we need to get
14 straight in this matter. Could the parties
15 for this case come forward, please?

16 And did you complete the witness
17 card? Okay. And would you push the mic on,
18 make sure I can hear. No, the mic to your
19 right. Right there. Is the green button
20 showing? Very good, thank you.

21 MS. CHEN: Good morning.

22 CHAIRPERSON JORDAN: Good morning.

1 Could you identify yourself for us, please?

2 WHEREUPON,

3 CONG JIE CHEN

4 was called as a witness by the Board and,

5 having been first duly sworn, assumed the

6 witness stand, was examined and testified as

7 follows:

8 THE WITNESS: My name is Cong Jie

9 Chen. I'm here for the applicant. Good

10 morning, Mr. Chairman and members of the

11 Board.

12 CHAIRPERSON JORDAN: Very good,

13 good morning. We do have a letter of

14 authorization for you, is that right?

15 THE WITNESS: Yes, you should.

16 CHAIRPERSON JORDAN: Okay. Before

17 we begin, there's a discussion, I guess, with

18 the recommendation of planning thinking that

19 additional relief is necessary?

20 MR. JACKSON: Yes, my name's

21 Arthur Jackson, D.C. Office of Planning. Yes,

22 in our analysis, we noted, if you look on the

1 third page of the Office of Planning report,
2 there's a map that shows the property.

3 And you'll note that the property
4 is divided between residential use and the C
5 and the NOCC2 use.

6 As a result, the actual area of
7 the property that's in commercial zoning is
8 less than the overall lot area. The entire
9 building is non-residential.

10 That is, you would say, office
11 use, it's currently in office use. It'll
12 become a massage parlor and it's a fingernail
13 parlor, service use on the ground floor.

14 As a result, if you take the total
15 area of the building based on our
16 calculations, and divide it by the area of the
17 lot that's in a commercial zone, you get 1.6
18 FAR of non-residential uses where a C2 allows
19 1.5 FAR.

20 So what we determined was that the
21 property requires, well, some relief to allow
22 the C1.6 FAR to continue.

1 Again, neither floor, based on our
2 analysis, neither the first floor or second
3 floor or third floor has been residential as
4 far back as we can determine based on the
5 records of the Department of Consumer
6 Regulatory Affairs.

7 It's always been non-residential.
8 So this is an existing use. These are
9 existing uses that have been non-residential
10 over a period of time.

11 So as such, we weren't treating it
12 as a variance. We were treating it as a
13 modification under the provisions that deal
14 with changing of a non-conforming use with
15 another non-conforming use.

16 CHAIRPERSON JORDAN: I'm going to
17 ask the Offices of Attorney General to weigh
18 on this publicly for us, please, to discuss
19 it. Give us her view of it.

20 MS. GLAZER: Good morning, Mr.
21 Chair. As you know, the Office of the
22 Attorney General believes that Section 2003 is

1 not applicable for several reasons.

2 But succinctly, the basic reason
3 is because the existing use is not a non-
4 conforming use. There's really no evidence as
5 to what type of use it is.

6 But certainly, it wouldn't qualify
7 under the section under 2003, which is
8 designed for a switching from one non-
9 conforming use to another.

10 In addition, I don't know if this
11 was noted when the case was called, but there
12 is one other section that is applicable. And
13 that is section 1533 relating to the Naval
14 Observatory overlay requirements.

15 And although that section is not
16 referenced in the caption, it is referenced in
17 the self certification form that the applicant
18 filed. So the applicant apparently believes
19 that that section is applicable.

20 CHAIRPERSON JORDAN: Does the
21 Board have any questions of planning or OAG on
22 this issue? Whether or not there's additional

1 relief necessary before we proceed with the
2 applicant?

3 ZC COMMISSIONER TURNBULL: Yes.
4 Well if we could just sort this out.

5 CHAIRPERSON JORDAN: That's what I
6 mean.

7 ZC COMMISSIONER TURNBULL: Are we
8 saying that what was there previously was not
9 non-conforming?

10 MS. GLAZER: Well, the only
11 evidence that we have on this issue is what's
12 in the OP report. I don't believe the
13 applicant has addressed this.

14 From reading the OP report, I'm
15 not clear as to what's there now at all. The
16 report says that what's there, that it's
17 vacant, that the second and third floors, I
18 believe, are vacant.

19 So that there's no evidence of any
20 non-conforming use there at all.

21 ZC COMMISSIONER TURNBULL: Do we
22 have a previous C of O available?

1 MR. JACKSON: Well, when we did
2 our research through DCRA, we did note that
3 the previous CO, as noted in the OP report,
4 the most recent COO's have been either office
5 or the --

6 ZC COMMISSIONER TURNBULL: That's
7 what I thought.

8 MR. JACKSON: Yes, so that's just
9 based on what was in the DCRA records. So
10 based on that information, so that's the
11 information reflected in our report.

12 CHAIRPERSON JORDAN: What was the
13 year of the C of O?

14 MR. JACKSON: Well, we had '63,
15 '70, we have '83 and 2011 I think was when the
16 nail salon went in.

17 CHAIRPERSON JORDAN: So 2011 there
18 was a C of O for a nail salon?

19 MR. JACKSON: Right, but that was
20 on the ground floor, that's the first floor.

21 CHAIRPERSON JORDAN: On the first
22 floor?

1 MR. JACKSON: And there was an art
2 studio that was on the third floor.

3 CHAIRPERSON JORDAN: In 2011?

4 MR. JACKSON: No, that was '63.
5 Well, that was in the '70s. But then there
6 were two C of O's back in '63 and the mid '80s
7 that were for office uses on all three floors.

8 Now I should note if there had
9 been a residential use, a single family
10 residential use, there would not be a C of O.

11 But in this location, it appeared
12 the only type of use that would be in there
13 would be a rental use. So if there had been
14 a rental use upon the property, there would
15 presumably be a C of O for a rental use.

16 So based on the information
17 available, we conclude there has not been a
18 residential use on the property since the
19 '60s, early '60s.

20 And again, we go back to be what
21 appears to be a non-conforming, non-
22 residential FAR which exceeds the 1.5.

1 CHAIRPERSON JORDAN: Okay. Any
2 other questions, anyone? Does that help you
3 change anything differently?

4 MS. GLAZER: No, Mr. Chair. With
5 all due respect to OP, I mean I didn't go
6 through all of the reasons that we believe
7 2003 is just not applicable in this situation.

8 First of all, you need to know
9 exactly what the existing non-conforming use
10 is there right now. And there's no evidence
11 that there's any use there from what OP has
12 said, unless the applicant can shed light on
13 that.

14 Otherwise, but even if 2003 were
15 applicable, a massage parlor is not permitted
16 as a matter of right until the C3 zone. And
17 therefore, under 2003, it would be ineligible
18 to be swapped for either an office or an
19 artist studio use that's both of those uses
20 are permitted in the C1.

21 So our recommendation to the Board
22 is that the applicant be apprised to the fact

1 that a use variance may be needed for that
2 tiny portion of FAR. It's only .05 FAR and
3 represents, we did some rough calculations. It
4 represents only about 14 square feet.

5 And so we believe that it's likely
6 that a case could be made for that small
7 amount of space. But it would be up to the
8 applicant to make that case.

9 CHAIRPERSON JORDAN: And that's
10 something that might be raised when she
11 actually applies for the C of O. Yes, might
12 have to reapply.

13 So okay, does the board have a
14 feeling of the way how you want to proceed
15 with this? I think we would just move forward
16 as the relief requested by the applicant.

17 VICE CHAIRPERSON SORG: Thank you,
18 Mr. Chairman. With regard to OAG's points on
19 the use variance, I think, and I think they
20 set this out in their discussion earlier that
21 I would be in favor of dealing with the
22 question of the use variance.

1 It's really seems like a very,
2 very straightforward matter. And one that
3 would likely kick this application back to us
4 from DCRA. But I still have a little bit of
5 confusion on one other point, which is --

6 CHAIRPERSON JORDAN: Well, we
7 haven't heard from the applicant, but I just
8 want to make sure we establish --

9 VICE CHAIRPERSON SORG: For OIG?
10 Yes, which is, if the use in the majority of
11 the building, of the portion of the building
12 that's in the C-2-A has been discontinued and
13 the massage establishment is in this zone, it
14 requires a special exception for operation,
15 then are we not, never mind, I answered my own
16 question.

17 MS. GLAZER: I'm not sure if
18 you're going down this road, but another issue
19 that I don't think I mentioned is that to be
20 eligible for a switch under 2003, the massage
21 establishment has to be permitted as a matter
22 of right. And it's not, it's only permitted

1 in this zone by special exception.

2 VICE CHAIRPERSON SORG: Right,
3 exactly. That's sort of what I was getting to
4 is that it would be another reason that it
5 would seem to me that 2003 would not be
6 applicable here.

7 But if we take care of the use
8 variance for the residential FAR, then it's
9 okay because the use is being established in
10 the C2 zone by special exception and then the
11 use variance would be applicable potentially
12 for the residential portion of the building,
13 the 14 square feet rough calculation.

14 CHAIRPERSON JORDAN: Anyone else?
15 My only question is is the applicant ready to
16 deal with the use variance issue? I don't
17 know if you're following our discussion and
18 where we are.

19 But there's a belief that there's
20 additional relief is recommended. And it
21 would probably help. When you have to come
22 back, you know, we could go through the

1 process as it is now.

2 But there very well may be an
3 issue raised that there's a use variance
4 necessary for this property. And I don't want
5 to be unfair to you, and I don't know if you
6 had this discussion, if planning had this
7 discussion.

8 If you want to go forward to do
9 the presentation now in regards to those
10 requirements, which requires you to show that
11 there's exceptional circumstance, undue
12 hardship, et cetera.

13 Are you familiar with the proof
14 necessary for use variances and then are you
15 ready to present that?

16 THE WITNESS: The applicants, we
17 are here to present for the special exception.
18 But it sounds to me that it's now has changed
19 from an application for a special exception to
20 variance. Am I correct?

21 CHAIRPERSON JORDAN: It's sort of
22 changed.

1 MS. GLAZER: Not exactly. You
2 still need to go through the special exception
3 test for the property to establish the massage
4 establishment and also make a showing that it
5 meets the overlay requirements. This is an
6 additional aspect of the relief that you'll be
7 needing.

8 ZC COMMISSIONER TURNBULL: Yes,
9 it's basically saying that your application is
10 complete for as far as it goes.

11 But the unfortunate situation is
12 you have one of those unique pieces of
13 property where you have part of it, that very
14 small percentage is zoned residential.

15 So you need what's called a use
16 variance to identify and change that so that
17 we can then further process your application
18 to do that. So you need to be requesting a
19 use variance for the residential portion.

20 CHAIRPERSON JORDAN: Let me look
21 at it this way to try to help, and so we can
22 be fair to the parties. Regarding the special

1 exceptional relief, does the board have any
2 issues or questions with that?

3 Okay. Anything, and I think
4 planning, you support the special exception
5 portion?

6 MR. JACKSON: Yes, we do.

7 CHAIRPERSON JORDAN: Okay, so why
8 don't we kind of see if we can get you through
9 the use variance issues as suggested by Vice
10 Chair Sorg?

11 And maybe, if we run afoul of that
12 during this kind of question and answering,
13 then we can also continue if you come back.
14 Does that make sense to everyone? Seem fair?

15 If you need some more time to
16 provide the information. And then what we
17 would do now is accept your oral motion to
18 amend your application to include a use
19 variance in regards to that, is it 0.05 FAR
20 relief that's necessary under 2003.

21 So we'll accept that if that's
22 okay with you as making an application, a

1 motion from you to amend your application to
2 include the relief that we suggest.

3 THE WITNESS: Oh, yes if that's
4 what it takes to get the application approved.

5 CHAIRPERSON JORDAN: Yes, we're
6 trying to avoid you going, we grant the relief
7 you request and then you're going to need some
8 other relief and have to come back here at
9 some other point and pay again and the whole
10 nine yards and all that.

11 We try to be full service here to
12 help out and try to make it very fair with
13 folks. Okay, the Board's okay with that? We
14 can accept that oral motion request?

15 Does anyone want to begin with
16 this? Nick, why don't you --

17 VICE CHAIRPERSON SORG: Sure, Mr.
18 Chairman. What we're going to do is, because
19 you've amended your application to include
20 requesting a use variance, which has a
21 different test, a different standard of proof
22 than the special exception that you requested

1 before, as I think you may have heard in our
2 discussion up here on the dais, it's a very
3 small part of the property.

4 So what I think we can do is we'll
5 ask you some questions, and then that will
6 help us establish whether or not the property
7 meets the test.

8 And that will all be on the
9 record, and therefore be in the testimony for
10 us to be able to deliberate on that.

11 Okay? Okay, so the first test in
12 the variance test is, you know, whether or not
13 the property is unique. And I'm not sure that
14 this actually requires any questioning.

15 But I think perhaps one question
16 that we can ask to establish whether or not
17 your application would meet the first prong of
18 the variance test is when you go inside the
19 building, as we mentioned, the very, very
20 small rear portion sticks into a residential
21 zone.

22 When you go into the building, is

1 there any part of the building that is
2 constructed as a residence? Or is it all
3 constructed as an office inside?

4 THE WITNESS: Yes, I believe it's
5 all constructed as office.

6 VICE CHAIRPERSON SORG: Okay, so
7 there's two --

8 THE WITNESS: This is what the
9 certificate of use indicates.

10 VICE CHAIRPERSON SORG: Okay, and
11 so you have no knowledge of residential use,
12 of people living in this very back 14 feet of
13 this house, I mean building?

14 THE WITNESS: No. I remember
15 having a conversation with the landlord's
16 representative. He indicated that the
17 property has always been used for businesses.

18 VICE CHAIRPERSON SORG: Okay.

19 THE WITNESS: For the last 50
20 years or so.

21 VICE CHAIRPERSON SORG: Great. So
22 the second portion of the variance test for a

1 use variance is whether or not this unique
2 situation, which in your case is a little tiny
3 portion of the building sticking into the
4 residential zone, if that causes an undue
5 hardship for you to bring the building into
6 compliance.

7 Which would mean, is there an
8 undue hardship for you to use the rear 14 feet
9 of the house for a residential use?

10 So you can describe, perhaps,
11 whether that would be possible. And if it's
12 not possible, in what ways would it be
13 impossible?

14 THE WITNESS: I would say it will
15 be impossible because of the small area in
16 light of the large area for commercial use.
17 We are talking about 14 feet out of 2000
18 square feet of the total area.

19 So I would say to set aside that
20 small area for residential use, it's
21 practically impossible.

22 VICE CHAIRPERSON SORG: Okay. And

1 maybe we can discuss with the office of
2 planning the third prong of the test?

3 (Crosstalk)

4 VICE CHAIRPERSON SORG: Or we can
5 go forward, sorry.

6 CHAIRPERSON JORDAN: But also the
7 fact that the requirements and whatnot, it's
8 a detriment and et cetera has been addressed
9 and we talked about the special exception.

10 VICE CHAIRPERSON SORG: That's
11 right. I agree.

12 ZC COMMISSIONER TURNBULL: I just
13 wanted to clarify. On Ms. Sorg's line of
14 questioning, it is your intent, or it's the
15 applicant's intent to operate this business on
16 two floors from front to the back as part of
17 the business?

18 In other words, for you to
19 separate or separate in the residential
20 portion I think is what she was, you need the
21 whole space on the both floors from back to
22 front to operate your business?

1 THE WITNESS: That would depend.
2 If it's required that we give up the 14 feet
3 in order to get the special exception, we may
4 work on it.

5 But if we can have every inch of
6 the area for commercial use, we will accept
7 that as well. So that would depend what the
8 Board's requirement is.

9 ZC COMMISSIONER TURNBULL: Well,
10 I'm looking at your current plan. Your
11 current plan is you come in and there is a
12 reception area. And then there is a stairs by
13 the reception area that takes you to the other
14 floor.

15 So there's no physical way to have
16 that back part of the building operate as a
17 residence unless you come in from the back.

18 And I'm just looking from a
19 business standpoint, you would be looking at
20 the backs of both floors would have to be
21 residential.

22 And what I'm asking you is that

1 from a business standpoint, your plan is to be
2 able to operate from back to front as a
3 business on both floors?

4 THE WITNESS: Yes, that's the
5 plan. That's the business plan, to use the
6 entire space for the business.

7 ZC COMMISSIONER TURNBULL: Okay,
8 thank you.

9 THE WITNESS: Welcome.

10 VICE CHAIRPERSON SORG: I could
11 actually follow on. We noted from the special
12 exception request that the applicant is
13 looking to provide parking for customers in
14 the rear of the property.

15 You know, and you can see from the
16 images that have been submitted into to the
17 record that there is an entrance, and
18 circulation in the rear of the property for
19 customers that would be within the use.

20 So in satisfying requirements
21 under the special exception request here may
22 play into the use variance, as well. That's

1 a note, not a question.

2 CHAIRPERSON JORDAN: You see, you
3 have us working. There's all kind of
4 conferences going on and reviews going on in
5 regards to this application.

6 Is there anything in addition that
7 you might want to say based upon the line of
8 questioning that you were asked?

9 THE WITNESS: No. Unless the
10 Board has additional questions for us to
11 answer.

12 CHAIRPERSON JORDAN: Then I'm
13 going to turn to Office of Planning to see if
14 we can make something out of all this.

15 MR. JACKSON: Well, the applicant
16 has outlined the uniqueness of the property in
17 that its bifurcated part, its residential
18 part, it's non-residential. I should note,
19 the entire building is in the non-residential
20 part.

21 But under C-2-A, a portion of the
22 building itself needs to be residential.

1 They're needing the relief because the FAR of
2 the non-residential part is 1.5.

3 So we aren't talking about any
4 part of the building being in a residential
5 zone. It's the entire building is in a
6 commercial zone, but a portion of it is
7 supposed to be residential.

8 Be that as it may, the applicant's
9 outlined the issue of turning what's an
10 estimated 14 feet into a livable residence,
11 which is kind of tough.

12 And also outlined that the plans,
13 as presented, do intend to use the entire
14 space for the non-residential use. We would
15 note that the proposal would not be
16 detrimental to the community, to the
17 neighborhood because we found that in our
18 special exception analysis, we note that it is
19 not inconsistent with the character of the
20 community and that granting the relief would
21 not be detrimental to the zone plan because,
22 I would say the zone plan did not anticipate

1 the circumstance whereby an existing building
2 that pre-dated zoning regulations on a
3 bifurcated property would, by it's very
4 existence, be non-conforming with regard to
5 lot occupancy.

6 So in that case, we think this
7 change would meet the standards for variance
8 approval.

9 And we note that the variance
10 would not be specifically for the use, but
11 would be for the property itself such that if
12 this use were to be removed from the site,
13 replaced by another, that the variance would
14 stay with the property.

15 And I think that should probably
16 be something that the Board would want to
17 outline in the order. And that concludes the
18 Office of Planning --

19 CHAIRPERSON JORDAN: What was the
20 last bit, I'm sorry.

21 MR. JACKSON: That the variance is
22 actually for the property and not to the use.

1 The special exception is needed for the use
2 that's being proposed, but the variance is
3 actually for the property in that the non-
4 residential FAR of 1.6 is now for that
5 existing building would be allowed as well as
6 the variance.

7 VICE CHAIRPERSON SORG: I would
8 just note, sorry, that to officer Jackson that
9 I misspoke about the nature of the use
10 variance.

11 And so I thank him for clarifying
12 the record. I misspoke regarding the zone
13 versus the FAR.

14 MR. JACKSON: Oh, I guess one
15 other point is that while the National
16 Observatory overlay does apply to this case,
17 we saw no provisions in the National
18 Observatory overlay that would prohibit the
19 proposed service use. And we noted that in
20 the report.

21 CHAIRPERSON JORDAN: And it's my
22 understanding through our examination of the

1 file that all the required referrals for the
2 overlay criteria has been made.

3 And there's reports back from OZ,
4 DHCD, DDOT, except there's no report from
5 NCPC. And I don't know if that happened, but
6 yes. But at least the referral's in there.

7 So any other questions for Office
8 of Planning? Does the applicant have any
9 questions for Office of Planning?

10 THE WITNESS: No, thank you.

11 CHAIRPERSON JORDAN: We have a lot
12 going on here. Do we have a DDOT report?
13 Yes, they issued a report that said no
14 objection to the application.

15 And also DHCD issued a letter of
16 support for the project. I do not see an ANC-
17 3, is it 3B letter?

18 THE WITNESS: Yes.

19 CHAIRPERSON JORDAN: Is there one?
20 Did this go to ANC-3B?

21 MR. MOY: There's no official
22 record of a letter from ANC, Mr. Chairman.

1 Although, I believe Arthur Jackson can weigh
2 in on that. Oh, from your report?

3 CHAIRPERSON JORDAN: Arthur
4 Jackson or Officer Jackson?

5 MR. JACKSON: Arthur Jackson, D.C.
6 Office of Planning. I just wanted to clarify
7 that we're in verbal communication with the
8 ANC representative, I'm sorry, email.

9 They indicated by email that this
10 issue was brought to their ANC, I believe
11 twice. There was one meeting where it was
12 discussed. There was apparently some issues
13 raised.

14 But at a subsequent meeting,
15 apparently the ANC felt that the issues that
16 were raised initially had been satisfactorily
17 addressed.

18 And they, in email, indicated that
19 the Board for the ANC had no opposition to the
20 application. And I think, quoting their
21 closing quote was that they thought that the
22 applicant would be a good commercial neighbor

1 to the commercial district.

2 CHAIRPERSON JORDAN: Very good,
3 thank you. Any other -- well we've already
4 had the report. You just stepped in from ANC.

5 Does anyone in the audience want
6 to speak in support of the application?
7 Anyone who wants to speak in opposition?
8 Okay. And if there's anything else that you
9 want to provide for us, then you have the
10 opportunity now to state.

11 THE WITNESS: We would want to
12 find out if there's anything that we need to
13 address in order to get the application
14 granted, approved.

15 CHAIRPERSON JORDAN: I think we've
16 kind of stepped through all that.

17 THE WITNESS: Great.

18 CHAIRPERSON JORDAN: And I think
19 we're comfortable. With that, then we'll
20 close this hearing. Is the Board ready to
21 deliberate?

22 Well, I'm glad we finally worked

1 our way through this hodgepodge of issues. But
2 we try to satisfy and be customer friendly and
3 citizen friendly.

4 I believe the Board is, I'm
5 generally comfortable that we met the
6 requirements that's necessary to give the full
7 relief.

8 And so I would move that we grant
9 the special exception relief for Section 731,
10 1533 and that we grant the use variance under
11 3103 for the property for the 0.05 FAR, non-
12 residential FAR.

13 ZC COMMISSIONER TURNBULL: Second.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded to approve that motion. Any
16 unreadiness, discussion? All those in favor,
17 signify by saying aye.

18 (Chorus of ayes)

19 CHAIRPERSON JORDAN: Those
20 opposed, nay. The motion carries. Mr. Moy?

21 MR. MOY: Yes, sir. Staff would
22 record the vote as four to zero to one. This

1 is on the motion of Chairman Jordan to approve
2 the application for special exception under
3 731 and also amended to include 1533 and to
4 confirm that, anyway.

5 And to add the use variance relief
6 under 3103. Seconded motion, Mr. Turnbull.
7 Also support of the motion, Vice Chairperson
8 Sorg and Mr. Hinkle. And no other board
9 members participating, so again, the final
10 vote is four to zero to one.

11 CHAIRPERSON JORDAN: Okay. And I
12 believe this is right for summary order?

13 MR. MOY: Yes, sir, thank you.

14 CHAIRPERSON JORDAN: Thank you,
15 appreciate it.

16 MS. CHEN: Thank you Mr. Chairman
17 and members of the Board. Thank you.

18 CHAIRPERSON JORDAN: Is there any
19 other business for us this morning?

20 MR. MOY: Not for the morning
21 session, Mr. Chairman.

22 CHAIRPERSON JORDAN: Then we go

1 ahead and discuss the afternoon cases and get
2 them resolved before they come? No, I guess
3 not. Then we will stand in recess until 1:00.
4 Thank you.

5 (Whereupon, the foregoing matter
6 went off the record at 10:42 a.m. and went
7 back on the record at 1:09 p.m.)

8 CHAIRPERSON JORDAN: Okay, let's
9 get the afternoon started. Good afternoon,
10 everyone. Would the hearing please come to
11 order?

12 We're located at the Jerrily R.
13 Kress Memorial Hearing Room at 441 4th Street,
14 Northwest. Today's date is October 2nd, 2012
15 for the public hearing of the Board of Zoning
16 Adjustment.

17 I'm Lloyd Jordan, chairperson. To
18 my left is Nichole Sorg, Vice Chair. To her
19 left is Michael Turnbull, member of the Zoning
20 commission. And to my right, Jeffery Hinkle,
21 board member. I'm going to have to change
22 that order sometime so you don't get left out.

1 Please be advised that this
2 hearing is being recorded by a court reporter,
3 and also being webcast live. Therefore, I'm
4 going to ask that you refrain from any
5 disruptive noises and ask that we turn off
6 cell phones or silence cell phones while we're
7 in the hearing room today.

8 The hearing procedures that the
9 Board operates upon is located by the back
10 door. So let's begin today's hearing agenda.

11 If there's any persons in the
12 audience that are going to testify in any of
13 the cases, I'm going to ask that you rise and
14 take the oath or affirmation given by Mr. Moy,
15 the Board Secretary.

16 (Swearing in of Witnesses)

17 CHAIRPERSON JORDAN: I'm going to
18 also ask those that are going to testify,
19 prior to you taking your seat at the witness
20 table, if you will complete two witness cards
21 and please give those to the court reporter as
22 Mr. Freeman is doing.

1 See Mr. Freeman, court reporter?

2 Taking cards over. So if you kind of follow

3 their lead before you testify, please do so.

4 Two cards each, thanks.

5 Okay Mr. Moy, on you. Do we have

6 any preliminary matters we need to discuss

7 this afternoon?

8 MR. MOY: Yes. Good afternoon Mr.

9 Chairman, members of the Board. No major

10 ones, but if I do have something, I'll be sure

11 to note that for the Board when I call the

12 case.

13 CHAIRPERSON JORDAN: Okay. So

14 that means we don't have any minor ones also,

15 right? Or do we?

16 MR. MOY: We may.

17 CHAIRPERSON JORDAN: Okay. All

18 right. Let's call the first case, please.

19 MR. MOY: Yes, sir. Thank you.

20 That first application is Application number

21 18411. This is the application of 5th and S

22 Streets Northwest pursuant to 11 DCMR 3103.2.

1 This is for a variance from the
2 lot occupancy requirements under Section 403
3 and a variance from the off street parking
4 requirements under Subsection 2101.1.

5 This is to construct a new flat, a
6 two family dwelling in the R-4 District at
7 premises 451 S Street Northwest, property
8 located in Square E, E as in echo 475, Lot 22.

9 To note for the record, Mr.
10 Chairman when you come up in your order of
11 proceedings, there is an ANC-2C filing in your
12 case folders. But note that this is a late
13 filing, as it was submitted into the office
14 yesterday, Monday, October the 1st.

15 CHAIRPERSON JORDAN: What's the
16 late filing, Mr. Moy?

17 MR. MOY: A letter from ANC-2C,
18 which the office received yesterday, not being
19 in the seven day rule period. That completes
20 the staff's briefing, Mr. Chairman.

21 CHAIRPERSON JORDAN: Is there a
22 reason given why it's late?

1 MR. MOY: According to the letter,
2 it does not address that issue, Mr. Chairman.
3 This letter is signed by Alexander Padro,
4 who's the chair of ANC-2C.

5 CHAIRPERSON JORDAN: Usually,
6 they're very diligent about what they're
7 doing, so there must have been a reason why we
8 got this late.

9 MR. MOY: Yes, sir.

10 CHAIRPERSON JORDAN: And
11 additionally, give them deference as a
12 governmental entity as we are.

13 MR. MOY: The letter itself is
14 dated September 22nd.

15 CHAIRPERSON JORDAN: Okay. So
16 we'll accept that.

17 MR. MOY: Thank you, sir.

18 CHAIRPERSON JORDAN: Okay. Would
19 the parties for this matter please come to the
20 table, the witness table? And would you
21 introduce yourselves, please?

22 WHEREUPON,

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LEILA BATTIES

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

MS. BATTIES: Sure. Good
afternoon Mr. Chairman, members of the Board.
Leila Betties with the law firm of Holland &
Knight representing the applicant, 5th & S
Street, LLC.

I'm joined this afternoon by Mr.
Naresh Malkani to my immediate right who is a
general contractor for this project and Mr.
Raul Lissabet who is the architect for the
project.

They are not being proffered as
expert witnesses today, but they will be
available to answer any questions about the
project.

CHAIRPERSON JORDAN: Okay, have
they completed the witness cards?

MS. BATTIES: Yes.

1 CHAIRPERSON JORDAN: Let me ask a
2 question. Is there another set of plans that
3 have been produced on this?

4 MS. BATTIES: No.

5 ZC COMMISSIONER TURNBULL: Let me
6 just further on with what the Chair is saying,
7 that the Office of Planning report clearly
8 says that they have seen a revised set of
9 drawing that shows these stair from the
10 basement being relocated to S Street.

11 MS. BATTIES: And those should
12 have been submitted to --

13 ZC COMMISSIONER TURNBULL: We do
14 not have those.

15 MS. BATTIES: With the pre-hearing
16 statement? Those were submitted with the pre-
17 hearing statement.

18 ZC COMMISSIONER TURNBULL: This
19 booklet?

20 MS. BATTIES: Yes.

21 CHAIRPERSON JORDAN: Is there a
22 tab number for that? Ms. Sorg, do you have a

1 tab number?

2 VICE CHAIRPERSON SORG: Oh, sorry.
3 Yes, it's Tab D in the pre-hearing statement.

4 MS. BATTIES: These are not the
5 typical big set of plans that you may be
6 accustomed to seeing. I think there are only
7 two or three sheets to this set of drawings.

8 ZC COMMISSIONER TURNBULL: All
9 right. Well, we'll discuss this as you get
10 into your case.

11 MS. BATTIES: Okay.

12 CHAIRPERSON JORDAN: Okay, let's
13 proceed then.

14 MS. BATTIES: Okay, great.

15 CHAIRPERSON JORDAN: Is there
16 anything that the Board specifically needs to
17 hear before the applicant begins their case so
18 that we can have it be sure that it's
19 addressed?

20 VICE CHAIRPERSON SORG: Thank you,
21 Mr. Chairman. There were a couple of areas,
22 if we are speaking about the topics for the

1 presentation that I am particularly interested
2 in.

3 In the OP report, there's a
4 mention of an argument with regard to the
5 second prong of construction costs or
6 economics, which I don't recall really seeing
7 flushed out in the pre-hearing statement.

8 If that's something that we should
9 be considering, I would like to hear about
10 that.

11 Secondly, and this is perhaps both
12 for the applicant and for DDOT, there's an
13 assertion regarding the disallowing the use of
14 the existing curb cut, which is not addressed
15 in the DDOT letter that we received.

16 And I'll ask DDOT, they're here,
17 right? Yes? No. Oh, they're here but not
18 for this case? So we'll try and, I guess,
19 figure that out.

20 And then, additionally, which I
21 think Mr. Turnbull's first question was
22 getting to, while they're not zoning issues,

1 the public space issues that are existing in
2 the plans, and what that's going to mean for
3 what we're looking at with regard to the
4 zoning. Thank you.

5 ZC COMMISSIONER TURNBULL: Right.
6 One of the prongs is the impacting the
7 character of the neighborhood. So I think we
8 have a serious impact that needs to be
9 addressed.

10 CHAIRPERSON JORDAN: Okay, with
11 that, would you like to proceed, please?

12 MS. BATTIES: Sure. The subject
13 property is located at 451 S Street Northwest,
14 which is at the Northeast corner of the
15 intersection of 5th and S Streets.

16 The site is currently vacant, and
17 I just recently learned after attending the
18 ANC meeting that it was once the site of a
19 local corner market.

20 The subject property is surrounded
21 by a mix of real houses and flats.

22 Immediately east to the subject property along

1 S Street there are row houses, but directly
2 across the street on the south side of S
3 Street there are flats.

4 And on the corners of this
5 intersection, the corner at 5th and S there's
6 an apartment house directly south of this
7 property. There are also two flats on the
8 other corners of the site.

9 So this area is basically a mix of
10 residential row house and flat dwellings. The
11 applicants propose to develop a flat on the
12 site with two units.

13 Unit A will occupy floors one
14 through three and will have four bedrooms and
15 consist of approximately 1,764 square feet.
16 The lower unit, Unit B will be at the cellar
17 level and consist of 588 square feet and will
18 have one bedroom.

19 The applicant has worked with the
20 Office of Planning. And in doing so, they've
21 refined the roof elements of the building,
22 they've relocated the entrance of Unit B from

1 5th to S Street.

2 And they've also changed the
3 materials on the upper portion of the building
4 from EIFS to colored brick in order to make
5 sure that the property, again the scale of the
6 building's more in line with the immediate
7 area.

8 And as well as the design elements
9 are in keeping with the existing properties in
10 the area. We submit to you that with these
11 changes, given the lot configurations, given
12 the surrounding uses that the scale and the
13 design of the proposed flat is in keeping with
14 the surrounding residential structures.

15 This application meets the three
16 prong test for granting the variance request.
17 First, as it relates to the exceptional
18 condition. This lot is the narrowest lot on
19 this section of S Street.

20 It's only 12 feet wide and
21 consists of just under 900 square feet. So it
22 is the narrowest and smallest slot on this

1 section of S Street, and it has been that way
2 as far back as we can find in the records.

3 The variances for the lot coverage
4 and the off street parking are driven solely
5 by this exceptional condition.

6 So as it relates to the second
7 prong of the test, the practical difficulty
8 prong, the building footprint needs to be
9 extended beyond the 60 percent lot coverage in
10 order for the bedrooms to comply with the
11 building code requirements.

12 And that Board Member Sorg, goes
13 to the comment in the Office of Planning
14 report. I think they refer to the
15 marketability of the units.

16 And in fact, it is that in order
17 to comply with the bedroom width requirement
18 set forth in the building code, the flat has
19 to extend beyond the 60 percent footprint.

20 And the architect, Mr. Lissabet
21 and Mr. Malkani can address that more
22 specifically at the end of my remarks.

1 CHAIRPERSON JORDAN: So you're
2 saying that they do this to make the minimum
3 code for the bedroom size, then it had to
4 expand beyond what was allowed?

5 MS. BATTIES: Sixty percent,
6 correct.

7 CHAIRPERSON JORDAN: Got you,
8 okay. And not the marketability issue, it's
9 the --

10 MS. BATTIES: Correct. It's the
11 building code requirements.

12 VICE CHAIRPERSON SORG: Just to be
13 specific, while we're on the topic, I agree
14 and I completely understand the necessity
15 around the building organization.

16 But I was just referring to one
17 sentence in the OP report that indicates the
18 applicant stated that the construction of a
19 flat would be necessary to make an
20 economically viable project.

21 CHAIRPERSON JORDAN: Right, got
22 you.

1 VICE CHAIRPERSON SORG: I'm not
2 sure that that is necessarily going to play
3 into -- doesn't make or break anything with
4 regard to any exceptional situation for me.

5 But I was wondering, just because
6 of the absence of statements in that regard in
7 your pre-hearing. That's why I was asking.

8 MS. BATTIES: Okay. Well I will
9 let them address that. I don't know that we
10 represented that. Again --

11 CHAIRPERSON JORDAN: Well, we can
12 take your word and what you're saying. It
13 doesn't require anybody else to do that. But
14 what Ms. Sorg's saying is that it clarified
15 what was in the report and what our questions
16 were.

17 MS. BATTIES: Right, okay. So
18 also with regard to the practical difficulty,
19 so we have the issue with the building
20 footprint and not being able to meet the
21 building code requirements for the bedroom
22 width.

1 But also with regard to the
2 parking, the site is too narrow to accommodate
3 an on-site parking space. In addition, based
4 on DDOT's current policies, DDOT is not likely
5 to grant a curb cut approval for this site
6 that would accommodate an on street parking
7 space.

8 So given that, given the fact that
9 we are going to be with the redevelopment of
10 this site, the applicant is going to be
11 closing the existing curb cut and generating
12 one additional on-street parking space, we
13 believe that the inability to provide one off
14 street parking space on the site will be
15 mitigated.

16 The third prong of the test that
17 the variance is not contrary to the zone plan,
18 nor will it result in a substantial detriment
19 to the public good is evidenced by the fact
20 that this application has been supported by
21 ANC-2C.

22 We went to the ANC meeting on

1 September 5th. It was unanimously supported
2 by the ANC, and there were neighbors who lived
3 in immediate proximity to the site, but they
4 expressed no objection to the redevelopment of
5 the site.

6 The Office of Planning and DDOT,
7 of course, as you know have also recommended
8 support of the project. So again, all I had
9 in terms of my remarks, the architect and the
10 general contractor are here to answer any
11 questions that you may have.

12 CHAIRPERSON JORDAN: Okay, thank
13 you. Are there any questions for the
14 applicant or --

15 ZC COMMISSIONER TURNBULL: Are
16 these the drawings we're looking at?

17 MS. BATTIES: Yes, sir.

18 ZC COMMISSIONER TURNBULL: With no
19 details on them, nothing called out?

20 MS. BATTIES: Yes, sir.

21 ZC COMMISSIONER TURNBULL: Oh,
22 isn't that nice. Thank you for some nice,

1 clear drawings. This is -- why do you do
2 this?

3 Why don't you come prepared with
4 drawings that this board can understand and
5 have clearly delineated what you're asking for
6 and what we're looking at?

7 MS. BATTIES: Mr. Turnbull, I
8 believe that the drawings are sufficient to
9 address the two variance requests that are
10 before you today. And that's the lot coverage
11 and the on-street parking.

12 This project, so you know, by way
13 of background, they were already in the
14 permitting process. And it is only through
15 going through that process did they learn that
16 they didn't meet the two requirements that are
17 here, presented before you today, and that was
18 the lot coverage and the off-street parking
19 space requirement.

20 ZC COMMISSIONER TURNBULL: Well,
21 we need to get into the third prong, detriment
22 to the public good, and I've got some serious

1 questions about this.

2 MS. BATTIES: Okay.

3 CHAIRPERSON JORDAN: Anyone else?

4 Any questions? Vice Chair Sorg?

5 VICE CHAIRPERSON SORG: I wanted
6 to ask about the curb cut. And I had some
7 difficulty understanding from the submission,
8 the existing curb cut, where does it come into
9 the property? Is it on 5th Street or on S
10 Street?

11 MS. BATTIES: The existing curb
12 cut is on 5th Street.

13 VICE CHAIRPERSON SORG: And it
14 leads just onto the property?

15 MS. BATTIES: Correct.

16 VICE CHAIRPERSON SORG: Okay. And
17 as I mentioned before you began your
18 presentation, I was looking for a little bit
19 of clarification in your statement regarding
20 DDOT not allowing the use of that curb cut.

21 It's not something that they've
22 stated in their report. And I may be under

1 informed, but I didn't know that they could
2 disallow you from using one that you had.

3 MS. BATTIES: Right, well okay.

4 WHEREUPON,

5 NARESH MALKANI

6 was called as a witness by the Board and,
7 having been first duly sworn, assumed the
8 witness stand, was examined and testified as
9 follows:

10 MR. MALKANI: May I answer that?

11 MS. BATTIES: Sure, go ahead.

12 MR. MALKANI: The problem is, I
13 did go to DDOT personally, myself. And I told
14 them we have a curb cut, so that should be
15 sufficient.

16 And he said you're right, that
17 should be sufficient. But your lot, the depth
18 of your lot is only 12 feet. If you're coming
19 off 5th Street, the depth of your lot is only
20 12 feet, and we will not allow a car off 12
21 feet land.

22 I mean, you have to have 19 feet

1 depth minimum. They used to grant, you know,
2 parking pads which were nine feet in length,
3 and they stopped doing that because they said
4 we grant that, and people still park large
5 cars.

6 So, and that was one question,
7 that was one issue he had. The other issue he
8 had was the risk and the safety. They don't
9 want a car pulling out straight right onto the
10 main road, 5th Street, you know, right from
11 the lot which is right by the curb.

12 So those were the issues. And so
13 on those bases, he says there's just no way we
14 can allow you parking and using that parking
15 spot. If you're willing to give it up, you
16 can get off street parking.

17 VICE CHAIRPERSON SORG: Okay.

18 MR. MALKANI: That's what drove
19 that decision.

20 VICE CHAIRPERSON SORG: That
21 actually clarifies it a lot. So it sounds
22 like what you're saying is that the

1 recommendation is because you can't get a full
2 sized parking space --

3 MR. MALKANI: Correct.

4 VICE CHAIRPERSON SORG: -- on the
5 property without the vehicle being in the
6 drive and in the public space.

7 MR. MALKANI: Right.

8 VICE CHAIRPERSON SORG: That makes
9 sense.

10 CHAIRPERSON JORDAN: And that was
11 actually expressed to you. It's not just a
12 thought that it was an unlikely that they
13 weren't, but they actually expressed that to
14 you?

15 MR. MALKANI: No, the requirement
16 is the parking pad has to be nine feet by 19
17 feet minimum.

18 CHAIRPERSON JORDAN: Yes, I think
19 someone made a statement somewhere is that it
20 was not likely that something was going to
21 happen, right? I understand that.

22 MS. BATTIES: Yes, those

1 statements are just based on our experience
 2 with DDOT lately. They are not inclined to
 3 grant. And I think some of them have been
 4 probably there before you where they don't
 5 want to grant curb cuts for projects like
 6 this.

7 VICE CHAIRPERSON SORG: For new
 8 curb cuts, absolutely. But my question was
 9 specifically in regard to whether or not DDOT
 10 could disallow the use of a curb cut that you
 11 had under your property.

12 But to me, that's actually
 13 separate and apart from the lack of 19 feet of
 14 available space on the property. So that
 15 answers my question.

16 CHAIRPERSON JORDAN: Any other
 17 questions for the applicant? Is there
 18 anything else you want to add before we turn
 19 to planning?

20 MS. BATTIES: No.

21 CHAIRPERSON JORDAN: Then let's
 22 turn to planning.

1 MR. GYOR: Stephen Gyor, Office of
2 Planning. The Office of Planning supports the
3 applicant's request for relief and we rest on
4 the record. I'm open to any questions the
5 Board may have.

6 CHAIRPERSON JORDAN: Planning's
7 standing on their report. Does the Board have
8 any questions for Planning? Anyone? Yes, Mr.
9 Turnbull?

10 ZC COMMISSIONER TURNBULL: Yes,
11 Mr. Gyor, the sidewalk on 5th Street is an
12 existing brick sidewalk which runs the entire
13 length of the street. It's probably at least
14 eight feet plus wide.

15 When you looked at the plans and
16 you, of course, hard to tell from which plans
17 we're looking at right now which one are
18 accurate, I saw a lawn, I saw area wells and
19 I saw a stairwell protruding into a public
20 sidewalk. You don't think there's a safety
21 issue with that?

22 MR. GYOR: The Office of Planning,

1 we advised the applicant to revise that such
2 that the stairwell would not protrude into
3 public space.

4 ZC COMMISSIONER TURNBULL: And if
5 I'm looking at the revised plans, it looks
6 like it still protrudes into the public space
7 and there's no dimension on the plan.

8 But I'm assuming it's got to be at
9 least three to four feet, be on the property
10 line into the public way. Plus there's two
11 area wells into the public way.

12 Plus there's down spouts which are
13 going to be having water and freezing ice,
14 whatever, that will form on this sidewalk.
15 And you're asking me that this is not a
16 detriment to the public good?

17 MR. GYOR: We communicated several
18 times to the applicant to redesign that space
19 such that the stairwell would --

20 ZC COMMISSIONER TURNBULL: Well,
21 they haven't done it. They haven't done it.
22 So you're still in support?

1 MR. GYOR: We support the overall

2 --

3 ZC COMMISSIONER TURNBULL:

4 Concept.

5 MR. GYOR: -- concept. We --

6 ZC COMMISSIONER TURNBULL: You
7 don't support the current plan?

8 MR. GYOR: We do not support a
9 stairwell protruding into public space. We
10 would support the public space committee
11 evaluating that and making that determination.
12 But we do not support --

13 ZC COMMISSIONER TURNBULL: Well,
14 as far as the zoning regulations, we're
15 looking at the third prong, the detriment to
16 the public good.

17 We are responsible for looking at
18 this from the standpoint of approving
19 something that we think is not going to be a
20 harm to the public or to neighbors or anybody,
21 to the adjacent public.

22 MS. BATTIES: If I may,

1 Commissioner, Mr. Turnbull? The building code
2 does allow certain projections into public
3 space for residential districts for
4 residential uses.

5 That is something that we will
6 address either with the building code official
7 or the DDOT public --

8 ZC COMMISSIONER TURNBULL: And the
9 area wells? You got a hole in the middle of
10 the street?

11 MS. BATTIES: Correct. There --

12 ZC COMMISSIONER TURNBULL: On the
13 middle of the sidewalk?

14 MS. BATTIES: The building code
15 allows projections up to a certain dimension -
16 -

17 ZC COMMISSIONER TURNBULL: So
18 you're going to have to have a grate around
19 it?

20 MS. BATTIES: We will comply with
21 the building code, Mr. Turnbull.

22 ZC COMMISSIONER TURNBULL: I just

1 think that this should be, I think you should
2 re-look at this. I'm just concerned that this
3 is a substantial detriment to the public good
4 from the zoning regulations.

5 MS. BATTIES: Well, there's
6 nothing in the zoning regulations that
7 prohibit --

8 ZC COMMISSIONER TURNBULL: But you
9 have to meet the third prong.

10 MS. BATTIES: Correct. You're
11 absolutely right. And what I'm saying to you
12 is that the projections, as they are right
13 now, comply with the building code
14 requirements. And Mr. Malkani can address this
15 further. He's worked on this --

16 MR. MALKANI: Mr. Turnbull, if I
17 could just have a minute here. The brick
18 sidewalk that you mentioned is exactly 14.8
19 feet wide.

20 After the brick sidewalk, there's
21 nine feet, three inches of grass that still
22 belongs to public space.

1 If you visited the site, the site
2 is fenced off, but there's nine feet of grass,
3 and then our yard starts of 12 feet. The
4 fence that you see there right now is total
5 covering 21 feet in width.

6 ZC COMMISSIONER TURNBULL: Well
7 why don't you put that on a plan so that we
8 could tell? I mean, my one question was what
9 is the fenced area?

10 MR. MALKANI: Well, the fenced
11 area is exactly 21.3 inches.

12 ZC COMMISSIONER TURNBULL: Well,
13 why don't you put a dimension --

14 MR. MALKANI: I apologize.

15 ZC COMMISSIONER TURNBULL: -- so
16 that we don't ask questions and waste time. I
17 mean, the whole point is for you to come to us
18 and clearly give your case and not --

19 MR. MALKANI: I understand.

20 ZC COMMISSIONER TURNBULL: --
21 waste this board's time.

22 MR. MALKANI: I understand your

1 issue.

2 ZC COMMISSIONER TURNBULL:

3 Counselor? I go back to what I said before.

4 Accurate drawings so that this board can look
5 at things.

6 MS. BATTIES: I'm not disagreeing
7 with you. I believe that the plans presented
8 are sufficient for the relief that we are
9 requesting.

10 CHAIRPERSON JORDAN: Well, let me
11 do this.

12 ZC COMMISSIONER TURNBULL:

13 Counselor, I've had enough.

14 CHAIRPERSON JORDAN: Yes, let me
15 say this so we can keep this back in order so
16 we don't have the back and forth.

17 We're asking questions of Office
18 of Planning. I think he's just been getting
19 the benefit of what one of the board members
20 thoughts in this project.

21 And that our test is not one and
22 two, our test is there's at least four steps

1 in this test. And determining test three
2 takes in a lot, whether or not you comply with
3 the building code or not.

4 So I think what Mr. Turnbull was
5 doing is just giving you some heads up as we
6 proceed. So let's get back in order as we
7 move forward.

8 Any other questions of planning?
9 Does the applicant have any questions of
10 planning?

11 MS. BATTIES: No. I just want to
12 clarify that the Office of Planning has no
13 objection to the application that's presented
14 or the variance relief, the variances that are
15 presented and clarify that the public space
16 issues are not within their purview.

17 They're building code issues that
18 the applicant is dealing with through the
19 permitting process.

20 MR. GYOR: We support the
21 applicant's request. I did, as it stated in
22 the report, I do support redesigning that

1 stairwell, if possible.

2 I attempted to communicate that to
3 the applicant several times that, you know, I
4 understand it's a narrow, tight spot, it's a
5 tight space. And if that's within a potential
6 design, I think we would definitely support
7 that.

8 CHAIRPERSON JORDAN: Department of
9 Transportation. Did I hear somebody's from
10 Transportation is here for this? No, guess
11 not. Oh, not on this case. Okay.

12 We do have a letter from DDOT of
13 no objection to this relief requested. Is
14 there anyone here from ANC-2C? As earlier
15 mentioned, we did receive a letter of support
16 from ANC-2C that came in late.

17 However, we accepted into the
18 record with a vote of four to zero to support
19 the application, which we would give great
20 weight.

21 Is there anyone in the audience
22 who wants to testify in support of this

1 application? Anyone who wants to testify in
2 opposition to the application?

3 Seeing none, we'll turn back to
4 the applicant for any rebuttal or closing.

5 MS. BATTIES: Mr. Turnbull, I
6 don't know how you want us to further address
7 your concerns at this point. But given that
8 the project has been supported by the
9 community, the Office of Planning, DDOT, ANC-
10 2C, we request the approval of the application
11 today and the issuance of an order as
12 expeditiously as possible.

13 ZC COMMISSIONER TURNBULL: Well,
14 since it's now been determined that you have
15 nine feet from your property line to the
16 sidewalk, that changes issues for me, but
17 which could have been addressed a lot earlier
18 in this hearing, could have been addressed
19 with the appropriate definition of what was
20 happening and how you were impacting.

21 Again, that third prong is key. I
22 mean, if this board had passed it, I was ready

1 to sua sponte this to the zoning commission.
2 That's how serious it gets.

3 It may be a building code issue to
4 you, but for me it's zoning regs. And the
5 zoning regulations are key. And if you're
6 going into the public space like that, to me
7 that is a public good issue.

8 But now that I know that there's
9 nine feet, nine feet from the property line
10 out and that there is space that you will not
11 be encroaching on the sidewalk, that puts
12 things in a little bit different light.

13 But again, I wanted to say
14 accurate drawings to this board are key.
15 Thank you.

16 CHAIRPERSON JORDAN: Ms. Sorg?

17 VICE CHAIRPERSON SORG: Thank you,
18 Mr. Chairman. I just have one other question
19 that I forgot to ask, which is as this is an
20 attached row house, did you make any efforts
21 to contact, and I notice I don't think we have
22 any letters from the adjacent neighbor. Has

1 there been any communication?

2 MR. MALKANI: Yes, as part of the
3 approval process of our permit, we sent out
4 letters to the neighbors, and we have been in
5 constant correspondence.

6 I've also been to the property and
7 inspected the property, the neighboring
8 property. So they're very much aware as to
9 what's coming.

10 VICE CHAIRPERSON SORG: And
11 they've got no issues that they've expressed
12 to you?

13 MR. MALKANI: No, they have no
14 issues.

15 MS. BATTIES: We did have property
16 owners within the immediate area show up to
17 the ANC meeting, and they didn't have any
18 objection to the application.

19 VICE CHAIRPERSON SORG: Okay.

20 CHAIRPERSON JORDAN: Okay, any
21 other questions? Good. Well, then we will
22 conclude this hearing. And is the Board

1 willing to go into deliberations, or good?
2 Okay.

3 And so the Chair's opened the
4 floor to the Board for any conversation they
5 want to have about this application. Anyone?
6 Ms. Sorg?

7 VICE CHAIRPERSON SORG: I can go
8 ahead and start, Mr. Chairman. I will note,
9 first, that I do agree in part with Mr.
10 Turnbull that more complete plans,
11 specifically, especially given the desire to
12 use the public space as site plan, would have
13 been useful and prevented some of the
14 confusion that I think all of us actually had
15 with regard to this application and the
16 building plans here.

17 And regardless of whether or not
18 the issues with the plans have to do with the
19 zoning relief that's being requested, we do
20 vote on plans.

21 And that's something that we say a
22 lot. So when we vote on plans regarding

1 zoning relief, they need to be to the extent
2 that they are schematic, you know, without
3 deficiencies in that area.

4 That being said, I think based on
5 the testimony, my questions which were
6 regarding the parking variance have been
7 satisfied based on the applicant's testimony
8 about their conversations with DDOT.

9 Also, I think, you know, this line
10 occupancy variance would have been a special
11 exception but for the fact that this is new
12 construction.

13 So the request there for 70
14 percent, to me, is met under the same
15 reasoning that was given to us in our files.
16 So I can wait to make a motion.

17 CHAIRPERSON JORDAN: No, and I
18 appreciate that. But I think this, let me say
19 this, because we had the same issues this
20 morning.

21 I think when the Board asks
22 questions and also gives lead, we're doing

1 that for a reason. We're quite aware of what
2 the record shows.

3 We've studied it, we've looked at
4 it and we know. And like this morning,
5 concerns of the board when they ask the
6 question should be, we did it to get to the
7 point.

8 This hearing was very important
9 because I think it helped change the minds of
10 the Board members in regards to this
11 application.

12 So I just wanted to say that, and
13 this was very helpful for me because the
14 questions that were answered, the certain
15 questions, answers that we needed to move
16 this. Anyone else? Ms. Sorg?

17 VICE CHAIRPERSON SORG: Sure.
18 Thank you. I will make a motion to approve
19 Application 18411 with the relief as
20 requested.

21 CHAIRPERSON JORDAN: Motion, a
22 second, please?

1 MEMBER HINKLE: Second.

2 CHAIRPERSON JORDAN: Mr. Hinkle
3 seconds the motion. Any further discussion,
4 any further unreadiness? Seeing none, all
5 those in favor, signify by saying aye.

6 (Chorus of ayes)

7 CHAIRPERSON JORDAN: Those
8 opposed, nay. The motion carries. Mr. Moy?

9 MR. MOY: Yes, sir. Staff would
10 record a vote as four to zero to one. This is
11 on the motion of Vice Chair Sorg to approve
12 the application requesting variance relief
13 from lot occupancy under Section 403 and from
14 off street parking requirements under Section
15 2101.1.

16 Second the motion, Mr. Hinkle.
17 Also in support of the motion, Mr. Turnbull
18 and the Chairman Jordan. No other Board
19 members participated. So again the final vote
20 is four to zero to one. The motion carries.

21 MS. BATTIES: Thank you.

22 CHAIRPERSON JORDAN: And then

1 summary order, please?

2 MR. MOY: The next and last
3 application before the board, Mr. Chairman is
4 Application number 18412. That would be the
5 application of Be the Change on behalf of the
6 District of Columbia pursuant to 11 DCMR
7 3103.2 and 3104.1 for a variance from the
8 court width and area requirements under
9 Section 776, a variance from the off street
10 parking requirements under Subsection 2101.1,
11 variances from the loading berth depth and
12 service/delivery space requirements under
13 Subsection 2201.1, special exception from the
14 rear yard requirements under Subsection 774.2,
15 special exception from the roof structure
16 setback requirements under Subsections 411.11
17 and 770.6 to allow the construction of a new
18 building with residential, retail and office
19 uses in the C-3-C District at premises 1005
20 North Capitol Street, Northeast.

21 Property located in Square 674,
22 Lot 439. We do have, in your case folders,

1 Mr. Chairman, is a note for the record, a
2 report from the DDOT when you get to it in
3 your proceedings.

4 And to note that although the, or
5 rather the letter from DDOT is dated September
6 28th, 2012 and it was received into the Zoning
7 Office on that date, as well, which was last
8 Friday. That completes the staff's briefing,
9 Mr. Chairman.

10 CHAIRPERSON JORDAN: I thought,
11 yesterday, that I granted permission for that
12 to be added to the record.

13 MR. MOY: Okay, well I --

14 CHAIRPERSON JORDAN: I just want
15 to make sure we're good, we did that in the
16 preliminary because of the fact that good
17 cause was shown that they had just gotten the
18 report from the traffic expert and et cetera.
19 So we have that in the record.

20 VICE CHAIRPERSON SORG: Mr.
21 Chairman, I have --

22 CHAIRPERSON JORDAN: No --

1 VICE CHAIRPERSON SORG: Sorry, go
2 ahead. Go ahead? I do have an additional
3 preliminary matter. I will be recusing myself
4 from this case.

5 My company is the architect for
6 this project. And in specific, my mother is
7 looking directly at me. I'm told to be
8 grounded, but you know?

9 CHAIRPERSON JORDAN: All right.
10 We'll accept that, although we know you can be
11 impartial. But it's also the appearance of
12 impropriety and we really appreciate that.

13 VICE CHAIRPERSON SORG:
14 Absolutely. Thank you very much.

15 CHAIRPERSON JORDAN: Others don't
16 know you like we know you.

17 ZC COMMISSIONER TURNBULL: Mr.
18 Chair, I just want to add to Mr. Freeman that
19 as of right now, I really have no issues with
20 the drawings.

21 CHAIRPERSON JORDAN: Let's have
22 people introduce themselves, please Mr.

1 Freeman.

2 WHEREUPON,

3 KYRUS FREEMAN

4 was called as a witness by the Board and,
5 having been first duly sworn, assumed the
6 witness stand, was examined and testified as
7 follows:

8 MR. FREEMAN: Good afternoon,
9 members of the Board. For the record, my name
10 is Kyrus Freeman. I'm an attorney with the
11 law firm of Holland and Night on behalf of the
12 applicant.

13 WHEREUPON,

14 JAMES TRUBY

15 was called as a witness by the Board and,
16 having been first duly sworn, assumed the
17 witness stand, was examined and testified as
18 follows:

19 MR. TRUBY: And I'm Jim Truby.
20 I'm serving as the owner's representative for
21 Be the Change.

22 WHEREUPON,

1 JAMI MILANOVICH

2 was called as a witness by the Board and,
3 having been first duly sworn, assumed the
4 witness stand, was examined and testified as
5 follows:

6 MS. MILANOVICH: Good afternoon,
7 Chairman Jordan, members of the Board. I'm
8 Jami Milanovich with Wells & Associates, the
9 traffic consultant for the project.

10 WHEREUPON,

11 MATT DAVITT

12 was called as a witness by the Board and,
13 having been first duly sworn, assumed the
14 witness stand, was examined and testified as
15 follows:

16 MR. DAVITT: Good afternoon. My
17 name is Matt Davitt. I'm with Sorg
18 Architects, and I'm the project manager.

19 WHEREUPON,

20 SUMAN SORG

21 was called as a witness by the Board and,
22 having been first duly sworn, assumed the

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

3 MS. SORG: Good afternoon. I'm
4 Suman Sorg and I'm the principal designer at
5 Sorg Architects.

6 CHAIRPERSON JORDAN: Thank you.
7 Now I understand that this matter is kind of
8 being pled in the alternative? That you're
9 asking for relief --

10 MR. FREEMAN: Right. We initially
11 filed our application and set of plans asking
12 for a number of areas of relief, one of which
13 included a reduction in the loading
14 requirements to have a 30 foot berth as well
15 as a 200 foot platform.

16 A subsequent to filing that
17 application, and you'll hear from DDOT, and
18 DDOT has a report indicating that they are not
19 supportive of a curb cut on North Capitol
20 Street.

21 And therefore, if that curb cut is
22 not approved, we would have zero loading in

1 our building. So it's a loading variance to
2 either have a 30 foot berth and a 200 square
3 foot platform, or in the alternative, to have
4 no loading facilities within the building.

5 And we're asking for approval of
6 the plans and the plans have both of those
7 options shown on, and I can point to the sheet
8 numbers within the plans.

9 CHAIRPERSON JORDAN: Excuse me
10 just a second. We're getting some legal
11 advice as to how to proceed with the
12 alternative remedy requested.

13 We understand the partial relief
14 requested from the loading dock issue. And we
15 also understand why you're requesting complete
16 relief.

17 So we're just talking about how do
18 we go about doing that since that's not
19 something that we normally do. But we
20 understand there is some precedence to
21 consider that relief.

22 Does the Board have any specific

1 questions or issues that we need to address,
2 that we want the applicant to address?

3 I mean, I think the record's kind
4 of full here. Certainly, I think there are
5 some questions we need to ask DDOT. The
6 party in opposition withdrew their opposition
7 and we understand that's through dialogue.

8 And we really appreciate that, and
9 we strongly encourage dialogue among
10 applicants and the neighbors, and particularly
11 those once we know there's some type of
12 opposition, like this worked out a lot better.
13 Everybody understands --

14 MR. FREEMAN: Can I make a
15 statement just to that effect? As the Board
16 is aware, Mr. George Keys submitted a letter
17 withdrawing their opposition based on the fact
18 that the applicant reached the agreement with
19 representatives of the church.

20 That agreement, part of Mr. Keys'
21 letters and part of the agreement requires
22 that we ask that the Board reference the MOU

1 as a condition to the order.

2 So we are making that request,
3 given the --

4 CHAIRPERSON JORDAN: Do you have a
5 copy of the MOU, because we have some
6 reluctance at times to do that.

7 MR. FREEMAN: Right.

8 CHAIRPERSON JORDAN: Do you have a
9 copy of the MOU?

10 MR. FREEMAN: I just got a signed
11 copy, so I have my signed copy that I'll give
12 you.

13 CHAIRPERSON JORDAN: If we can get
14 copies of that so we can, before we proceed.
15 Well, we'll proceed on -- Mr. Moy? On
16 anything specifically, I think the record's
17 full in this matter. Mr. Turnbull, anything
18 that you need further from this applicant?

19 ZC COMMISSIONER TURNBULL: No, I'm
20 good.

21 CHAIRPERSON JORDAN: Mr. Hinkle?
22 Mr. Freeman, you can do what you want to do.

1 As you know our process and our procedure and
2 our wisdom. So I'll turn back to the
3 applicant to let us know how you want to
4 proceed.

5 MR. FREEMAN: We will rest on the
6 record, Mr. Chairman. As you know, the record
7 has a number of letters in support from DHCD
8 as Exhibit 26, the Office of Planning, ANC,
9 two letters from ANC.

10 And you'll hear from DDOT, but I
11 would say they support, generally, the parking
12 variance. So we believe the record is full
13 and complete and ready for Board action.
14 Thank you.

15 CHAIRPERSON JORDAN: Let's turn,
16 now, to the Office of Planning for their
17 report.

18 MS. BROWN-ROBERTS: Good
19 afternoon, Mr. Chairman and members of the
20 BZA. Maxine Brown-Roberts representing the
21 Office of Planning.

22 I, too, will stand on the record

1 and that we are in support of the variances,
2 and also for the special exception. And we're
3 also in support of the alternative for the
4 loading berth.

5 As you would see in our
6 recommendation, we also added that if there
7 were any conditions that were recommended by
8 DDOT, we would also be in support of those.

9 That is mainly because as the
10 applicant is requesting a variance, and going
11 back to the third prong, you know, that there
12 be no detriment to the public good.

13 And so we believe that, you know,
14 the loading has to be done someplace. And so
15 if that is something that the applicant has
16 worked out with DDOT, we're completely in
17 support. Thank you, Mr. Chairman.

18 CHAIRPERSON JORDAN: Thank you.
19 Does the Board have any questions of the
20 Office of Planning? Does the applicant have
21 any questions of the Office of Planning?

22 MR. FREEMAN: No, Mr. Chairman.

1 CHAIRPERSON JORDAN: Let's turn,
2 now, to the Department of Transportation,
3 please.

4 MR. OHMY: Good afternoon. My
5 name is Marat Ohmy. I'm with DDOT Policy
6 Planning and Sustainability Administration.
7 And as we indicated, we received the report
8 from the applicant last week.

9 And we expeditiously reviewed it
10 and prepared the report in front of you today.
11 And prior to our report, we had extensive
12 communication with the applicant and her
13 architect to look into this loading issue more
14 in detail.

15 And we actually outlined all the
16 parameters that we looked at in our report.
17 So, if you don't mind, I'm going to focus on
18 the loading issue.

19 And the initial concept that came
20 before us was a driveway to be used for
21 loading only on the southern portion of the
22 proposed building.

1 And we believe that there's going
2 to be backing in into that driveway by the
3 trucks, and DDOT was not supportive of that
4 because of several reasons.

5 One being the safety of the
6 motorists that are traveling northbound on the
7 North Capitol Street. And the other one being
8 the pedestrians that are actually using the
9 sidewalk on North Capitol Street.

10 And then the third one being that,
11 you know, North Capitol Street is a principal
12 arterial that carries roughly 27,000, 28,000
13 vehicles. And we believe that, you know,
14 backing in into the driveway would impede with
15 traffic operations, especially during the peak
16 hours.

17 So we actually discussed the
18 matter with the applicant in detail. And we
19 proposed to provide a loading zone in front of
20 the building. And there are some geometric
21 issues that was discussed with WMATA, PTSA and
22 us.

1 And I believe that they are
2 resolved. And based on that, DDOT is
3 supporting what the applicant labels as option
4 1, which is on street loading.

5 And we're not supportive of the on
6 site loading, the 15 feet driveway that they
7 proposed initially.

8 CHAIRPERSON JORDAN: Board
9 questions of DDOT? Anyone?

10 ZC COMMISSIONER TURNBULL: So
11 there's a bus stop on North Capitol.

12 MR. OHMY: Yes, sir.

13 ZC COMMISSIONER TURNBULL: And how
14 far in is that?

15 MR. OHMY: You mean from the
16 intersection of K Street and North Capitol?

17 ZC COMMISSIONER TURNBULL: Yes.

18 MR. OHMY: I believe, I'm just
19 going to need a minute here to look at it.
20 But I believe that is approximate that the bus
21 zone starts approximately 90 feet from the
22 intersection.

1 And that the actual location of
2 the bus shelters should be somewhere under 20
3 feet.

4 ZC COMMISSIONER TURNBULL: So
5 you're proposing no curb cut, but there would
6 be an area marked in front of the building,
7 permanently marked as a loading zone for the
8 building?

9 MR. OHMY: That's correct, sir.
10 And we worked the geometry, and I think the
11 applicant is proposing to extend the concrete
12 bus pad slightly so that actually they can fit
13 in the bus stop and then the bus area, loading
14 area, and then the commercial loading area,
15 which is going to be 12 by 30, and then three
16 parking spaces following the loading area.
17 And then have adequate clearance from the
18 intersection.

19 ZC COMMISSIONER TURNBULL: Okay,
20 obviously there's going to be a drop off.
21 They need to be able to drop off people in
22 front of the building, handicapped, whatever,

1 just access.

2 There's going to be elderly there.
3 How is this loading area going to impact a
4 drop off area?

5 MR. OHMY: I would assume that
6 there will be an ADA compliant ramp for the
7 bus stop. But we'll probably look into that
8 more in detail to make sure that that's
9 addressed properly during the public --

10 ZC COMMISSIONER TURNBULL: I'm
11 just trying to make sure that, you know, from
12 an operational standpoint, that they can do
13 loading and people can still come up and let
14 people on and off.

15 Taxis for any of the occupants of
16 the building. I just want to make sure from
17 a layout standpoint, that there's a sequence.
18 If you have the bus drop off, loading, is that
19 going to work?

20 MR. OHMY: Yes. Based on our
21 review, that operation, it is going to work.
22 And that's one of the issues that we've been

1 discussing internally with PTSA, with Traffic
2 Operations Administration, ourselves and then
3 the folks that are in charge of transit.

4 And we had several internal
5 meetings and we had several meetings with the
6 applicant to iron out the details. But it is
7 in our opinion that it is going to coexist
8 with no problems.

9 ZC COMMISSIONER TURNBULL: Okay,
10 thank you.

11 CHAIRPERSON JORDAN: You have
12 performed the operational analysis, or are you
13 in the process of still doing that?

14 MR. OHMY: There was no
15 operational analyses, per se required from the
16 applicant as far as the capacity analyses.

17 But as far as the drop off area,
18 we did work out the details. And except the
19 ADA compliance ramp, or a location if there is
20 one that's needed, I think that the rest of
21 the geometry works out, operationally and from
22 a safety perspective.

1 CHAIRPERSON JORDAN: Board, any
2 other questions of DDOT? Does the applicant
3 have any questions for DDOT?

4 MR. FREEMAN: No, Mr. Chairman.

5 CHAIRPERSON JORDAN: Do we have
6 any other governmental entity? Do we have a
7 letter from somebody else? Oh, DHCD? We do
8 have a letter from the Department of Housing
9 and Community Development supporting this
10 application.

11 Is there anyone from ANC-6C
12 present? We have a letter meeting the great
13 weight requirements from ANC-6C recommending
14 approval of the relief requested.

15 Are there persons in the audience
16 who wish to testify in support of this
17 application? Is there anyone in the audience
18 who wants to testify in opposition to the
19 application?

20 Seeing none, let's turn back to
21 the applicant for any rebuttal and closing.

22 MR. FREEMAN: Thank you, Mr.

1 Chairman. As I said at the top, we believe
2 the record clearly indicates that we meet the
3 standards for the relief we've requested in
4 this application.

5 With respect to the DDOT report,
6 we've responded in writing to the concerns
7 they've raised in their report, some of which
8 would have to be flushed out in more detail as
9 we go through the public space permit process,
10 which is why if the Board decides to approve
11 this application, which we hope you will, we
12 would request that you include language, and
13 I can work with the office, that gives the
14 applicant the flexibility to develop the
15 project to include either a loading berth and
16 200 square foot loading platform as shown on
17 Sheet A1.1 of the plans marked as Exhibit 30,
18 or in the alternative, to provide no loading
19 berth, no loading platform or service delivery
20 space as shown on Sheet A1.1a of Exhibit 30.

21 And that flexibility would enable
22 us to move forward on the loading issue during

1 the public space permit process. Thank you,
2 Mr. Chairman.

3 CHAIRPERSON JORDAN: Before I
4 close the hearing, I'm going to ask that the
5 Office of Attorney General, so we can talk if
6 there's any questions about this memorandum in
7 your viewpoint before we close this, before
8 our deliberations.

9 MS. GLAZER: Mr. Chair, I'm still
10 reviewing it. It is seven pages long. And I
11 think that perhaps it would be good if the
12 applicant could go through some of the
13 language and explain what it is that they're
14 proposing.

15 It was not clear to me whether
16 this would just be merely incorporated in the
17 record or anything further?

18 CHAIRPERSON JORDAN: Yes, and I
19 think before we do that, I think maybe the
20 question is are you asking us to incorporate
21 this in our order, or just refer to it to give
22 deference that you have made an agreement, and

1 make that statement?

2 MR. FREEMAN: Language to the MOU?

3 CHAIRPERSON JORDAN: Yes.

4 MR. FREEMAN: When you say seven,
5 I'm not sure which document you mean.

6 MS. GLAZER: Let me be specific.

7 CHAIRPERSON JORDAN: This MOU
8 between, just the MOU and the church.

9 MR. FREEMAN: So what I'm
10 envisioning is that in your order, you note
11 that the applicant has committed to an MOU --

12 CHAIRPERSON JORDAN: An MOU just
13 in general?

14 MR. FREEMAN: -- with the church,
15 which MOU is included as Exhibit X of the
16 record of this case.

17 CHAIRPERSON JORDAN: But it's not
18 part of our order?

19 MR. FREEMAN: I mean, in your
20 order, you would have that sentence.

21 CHAIRPERSON JORDAN: As far as an
22 issue --

1 MS. GLAZER: It's a reference,
2 it's not a condition imposed by the Board.

3 MR. FREEMAN: If you want to say
4 that the applicant shall comply with the MOU
5 as referenced.

6 CHAIRPERSON JORDAN: Well, that's
7 what we're saying we're not that comfortable
8 with doing, we can reference that one has been
9 entered.

10 MR. FREEMAN: Okay, well we're
11 asking --

12 MS. GLAZER: Some of the material
13 in the MOU is outside of the Board's
14 jurisdiction. That's what I've, at just a
15 quick glance, surmised. Some of it isn't.
16 But usually the Board does not make the MOUs
17 as a condition.

18 CHAIRPERSON JORDAN: For instance,
19 social service issues and et cetera. We can
20 say that the parties have an MOU and that it's
21 an MOU and make reference to make it part of
22 the exhibit.

1 But we can't incorporate some of
2 these terms that clearly are not within our
3 wheelhouse to do.

4 MR. FREEMAN: Thank you. I
5 understand.

6 CHAIRPERSON JORDAN: But it would
7 give the church, also, some knowledge that
8 there's some, not oversight, but that it is
9 part of a record somewhere.

10 MR. FREEMAN: Yes, Mr. Chair.

11 CHAIRPERSON JORDAN: They need to
12 point back to the applicant anyway in making
13 sure that someone knows that it does exist. We
14 could do that.

15 MR. FREEMAN: That's good.

16 MS. GLAZER: I think that's
17 appropriate, Mr. Chair.

18 CHAIRPERSON JORDAN: Any other
19 questions anyone? Mr. Turnbull?

20 ZC COMMISSIONER TURNBULL: Well,
21 Mr. Freeman, thank you for that wonderful
22 drawing which just happened. I didn't notice

1 while I was talking.

2 And are you comfortable, is the
3 applicant comfortable with the layout like
4 this? Is this going to work for you?

5 MR. FREEMAN: The loading?

6 ZC COMMISSIONER TURNBULL: The
7 loading and the --

8 MR. FREEMAN: I think, from an
9 operational perspective, and I don't want to
10 speak for the applicant, the applicant's here.
11 But my understanding is from an operational
12 perspective, the loading, on site loading is
13 the preferred alternative for operationally.

14 However, we have to go to DDOT and
15 get a curb cut. And depending on how that
16 process --

17 ZC COMMISSIONER TURNBULL: Process
18 works out, all right. So that's why you would
19 like the alternative --

20 MR. FREEMAN: Yes.

21 ZC COMMISSIONER TURNBULL: Okay.

22 Okay, thank you.

1 CHAIRPERSON JORDAN: If there's no
2 more questions for the applicant, then I will
3 close this hearing and ask if the board is
4 ready for deliberations?

5 I really appreciate how thorough
6 your application was and the pre-hearing
7 statement and the addition that the traffic
8 report and as Mr. Turnbull said, the drawings
9 regarding this.

10 It helps us out a lot that we
11 don't have to pick up the lift and carry it
12 though as normally happens, Mr. Freeman. And
13 we appreciate that.

14 But I believe all the necessary
15 elements have been shown by the documents
16 supported by things in the record that a
17 variance should be granted from 776 regarding
18 the court width and court area as defined in
19 the application.

20 A variance from 2101.1, the
21 parking variance from 31 spaces to none, and
22 regarding 2201.1, I believe a variance is in

1 order for the 30 foot loading berth and a 200
2 square foot loading platform.

3 But also the Board's comfortable,
4 I think, a case has been made due to the
5 testimony of DDOT that alternatively, no
6 loading dock and berth and platform would be
7 allowed, also, in our order.

8 And a special exception under
9 411.11, the roof structure which clearly was
10 shown a need for that as a special exception.
11 So I would move that. Anyone want to second?

12 Motion made and seconded to
13 approve the relief requested by the applicant
14 as I've defined in my motion. Any
15 unreadiness? All those in favor, signify by
16 saying aye.

17 (Chorus of ayes)

18 CHAIRPERSON JORDAN: Those
19 opposed, nay. The motion carries. Mr. Moy?

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

1 the application for the relief that he has
2 cited in his motion.

3 Second the motion, Mr. Turnbull.
4 I'm sorry.

5 CHAIRPERSON JORDAN: Let me let
6 you finish.

7 MR. MOY: Also in support, Mr.
8 Hinkle. And no other Board members
9 participating. So again, the final vote is
10 three to zero to one.

11 CHAIRPERSON JORDAN: And as a
12 friendly amendment to that motion that the
13 order make reference that the applicant and
14 the, I think St. Phillips Church, have a
15 Memorandum of Understanding reached in this
16 matter, which should be included as Exhibit.

17 Mr. Moy, I believe we can have a
18 summary order in this matter.

19 MR. MOY: Yes, sir.

20 CHAIRPERSON JORDAN: All right,
21 thank you very much.

22 MR. FREEMAN: Thank you.

1 CHAIRPERSON JORDAN: Is there any
2 other business coming before the board?

3 MR. MOY: None today, sir.

4 CHAIRPERSON JORDAN: Any other
5 issue, Mr. Hinkle? Good. Then we'll be
6 adjourned. Thank you.

7 (Whereupon, the hearing in the
8 above-entitled matter was concluded at 2:11
9 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 10-02-12

Place: Washington, DC

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