

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
SEPTEMBER 10, 2013

+ + + + +

The Regular Public Meeting and 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
S. KATHRYN ALLEN, Vice-Chairperson
JEFF HINKLE, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER G. MAY, Commission Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
BRANDICE ELLIOTT
STEPHEN GYOR

DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

JONATHAN ROGERS

The transcript constitutes the minutes
from the Public Hearing held on September 10,
2013.

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

2 (10:39 a.m.)

3 BZA CHAIR JORDAN: Mr. Moy, let's
4 continue and let's first call -- I guess,
5 where are we; 18603?

6 MR. MOY: Yes, sir. Okay. That
7 would be application number 18603. This is
8 the application for Brandon Webster and Nancy
9 Younan pursuant to 11 DCMR 3103.2. This is
10 for multiple variances. The first from floor
11 area ratio requirements under Section 402, lot
12 occupancy requirements under Section 403, rear
13 yard requirements under Section 404, and
14 variance on the non-conforming structure
15 provisions under 2001.3, to allow a rear
16 addition to an existing flat in the D/DC/R-5-B
17 District at premises 2112 R Street, NW, Square
18 66, Lot 56.

19 BZA CHAIR JORDAN: Okay. Would
20 you please introduce yourselves?

21 MR. FOWLKES: My name is V.W.
22 Fowlkes. I'm here representing Brandon

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1 Webster and Nancy Younan.

2 MR. WEBSTER: I'm Brian Webster.
3 I'm the owner of 2112 R Street.

4 BZA CHAIR JORDAN: Okay. Thank
5 you. In reviewing the information submitted
6 in the application, et cetera, and the Board
7 has, really, already dwelled into this. I
8 don't have any real issues or concern with
9 this application. Does the Board have any
10 issues with this particular application or any
11 questions they need to ask?

12 It might be easiest to let us
13 drive it and then you can do a presentation if
14 you want to, but I think, right now, you might
15 be okay, because I think there's enough in the
16 record already submitted that supports the
17 variance requests that you made. And we have,
18 OP recommends approval as well as ANC 2B
19 recommends approval. With that, and I see no
20 questions coming from the Board, and it's up
21 to you if you want to do a presentation or you
22 also have the opportunity to waive any further

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1 hearing and we can just proceed on.

2 MR. FOWLKES: We have nothing
3 specific to add that's not already in the
4 record if you're inclined to --

5 BZA CHAIR JORDAN: Right. We give
6 the opportunity, if something comes up, to add
7 a rebuttal or a statement. Then let's turn to
8 OP and see if there's anything in addition
9 that OP needs to add to what they've already
10 submitted.

11 MR. JESICK: Thank you, Mr.
12 Chairman. Matt Jesick with the Office of
13 Planning. Office of Planning is happy to rest
14 on the record in support of the application.

15 BZA CHAIR JORDAN: And any
16 questions for OP from the Board? Then we also
17 have the Department of Transportation's letter
18 of no objection, and I don't think anyone's
19 here from DOT. We have a letter from ANC 2B
20 which meets our requirements to give great
21 weight, who supports this application also.
22 Is there anyone in the audience here wishing

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1 to testify in support of the application?
2 Anyone wishing to testify in support of the
3 application? Anyone wishing to testify in
4 opposition to the application? Anyone in
5 opposition?

6 Then we would normally turn back
7 to the applicant to issue any rebuttal or
8 closing, but I'm sure you probably want to
9 waive those things, unless -- you got a
10 question, Mr. May?

11 MEMBER MAY: Yes, I just have one
12 small question, which is that, it's not clear
13 from the drawings that we had what the extent
14 of the sleeping porch is that's being removed
15 in order to do the addition. So how far back
16 did that extend off the back of the house
17 that's being replaced?

18 MR. FOWLKES: I think the drawing
19 on the easel may help. The current sleeping
20 porch extends 7 feet 4 off of the back of the
21 house. We are told by our contractor that it
22 is not structurally sound and it needs to be

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1 entirely removed.

2 MEMBER MAY: I don't care about
3 that.

4 MR. FOWLKES: Okay.

5 MEMBER MAY: The question is, it's
6 7' 4" now --

7 MR. FOWLKES: Yes.

8 MEMBER MAY: -- and it's going to
9 12' 6".

10 MR. FOWLKES: That's right.

11 MEMBER MAY: And immediately, I
12 don't know what my north and south are here,
13 but below that, the extension of the other
14 house next door extends only to the party wall
15 that we see; the slightly thicker section of
16 the wall?

17 MR. FOWLKES: That's right.

18 MEMBER MAY: Okay. And then on
19 the other side, you're not extending the side
20 where I see a bathroom at all.

21 MR. FOWLKES: That's correct.

22 MEMBER MAY: Okay. That's all.

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1 BZA CHAIR JORDAN: All right.
2 Real good. Is there anything else you think
3 you need to -- well, good. Then let's
4 conclude this hearing and see if the Board's
5 ready to deliberate. Based upon the record, I
6 believe that applicant has met the criteria to
7 receive the variance and special exception as
8 requested, so I would move that the Board
9 approve the application.

10 VICE CHAIR ALLEN: Second.

11 BZA CHAIR JORDAN: Motion made and
12 seconded. Any unreadiness? All those in
13 favor, signify by saying aye.

14 (Chorus of Ayes)

15 BZA CHAIR JORDAN: Those opposed,
16 nay. The motion carries. Mr. Moy.

17 MR. MOY: Staff would record the
18 vote as 4 to 0. This is on the motion of
19 Chairman Jordan to approve the request for the
20 four-variance relief as well as the special
21 exception for the art gallery under Section
22 361. Second to the motion, Vice Chairperson

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1 Allen. Also in support, Mr. Peter May and Mr.
2 Jeffrey Hinkle, and we have a Board seat
3 vacant.

4 The motion carries on a vote of 4
5 to 0, Mr. Chairman.

6 BZA CHAIR JORDAN: Thank you. May
7 I have a summary order, please, Mr. Moy?

8 MR. MOY: Yes, sir.

9 BZA CHAIR JORDAN: The things you
10 forget when you haven't been here in a while.
11 Then let's call 18602, please.

12 MR. MOY: Application number 18602
13 of Archdiocese of Washington, pursuant to 11
14 DCMR 3104.1. This is for a special exception
15 for a private school for 150 students and 20
16 staff under Section 206 in the R-5-A District
17 at premises 1600 Morris Road, SE, property
18 located in Square 5817, Lot 803.

19 BZA CHAIR JORDAN: Okay. Would
20 you please identify yourselves?

21 MS. BOURDON: Sister Mary Bourdon,
22 head of the school.

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1 MS. HURSEY: Charlene Hursey, the
2 principal.

3 BZA CHAIR JORDAN: All right.
4 Let's do it again. Your name again, sorry.

5 MS. BOURDON: Sister Mary Bourdon,
6 head of school.

7 MS. HURSEY: Charlene Hursey, the
8 principal of the school and campus.

9 MR. KADLECEK: Cary Kadlecek from
10 the law firm of Goulston & Storrs on behalf of
11 the applicant.

12 BZA CHAIR JORDAN: Okay. Good. I
13 think this is another matter which is pretty
14 straightforward and I believe the Board can
15 approve, unless they have some other issues
16 and questions. I would rather approach the
17 hearing that way. There was some recommended
18 conditions, have you reviewed it and are there
19 any objections to those conditions?

20 MR. KADLECEK: Yes, we've reviewed
21 them. We have no objections to the
22 conditions. And in fact, one of the

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1 conditions requested that we submit a portion
2 of the lease with the landlord regarding the
3 parking. I just presented that to Mr. Moy for
4 your review as well.

5 BZA CHAIR JORDAN: Okay. Is there
6 any issue that the Board has that they need to
7 drill down -- want the applicant to discuss?

8 MEMBER MAY: I'm sorry. The
9 conditions that you review are inclusive of
10 DDOT's conditions as well as OP's conditions?

11 MR. KADLECEK: DDOT can clarify
12 this, I believe DDOT's conditions were
13 deferential to OP's conditions.

14 BZA CHAIR JORDAN: Yes, I thought
15 they pooled them in. They did pool them in.

16 MEMBER MAY: Okay. I'm just
17 looking at our summary of conditions and it's,
18 like, six pages.

19 BZA CHAIR JORDAN: Okay. So then,
20 Mr. Kadlecek, we will proceed, then, to Office
21 of Planning, if that's okay with you?

22 MR. KADLECEK: Yes.

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1 BZA CHAIR JORDAN: Okay. Office
2 of Planning, is there anything in addition
3 that you believe --

4 MR. COCHRAN: No, OP is happy to
5 stand on the record in support of the
6 application with the conditions.

7 BZA CHAIR JORDAN: Thank you. The
8 Board, any questions for OP? Does the
9 applicant have any questions for OP?

10 MR. KADLECEK: No questions.

11 BZA CHAIR JORDAN: Department of
12 Transportation, is there --

13 MR. ROGERS: Yes, sir. Jonathan
14 Rogers from the Department of Transportation
15 and I'm happy to stand on the record.

16 BZA CHAIR JORDAN: Okay. And I
17 just want to make it clear, the conditions
18 proposed by DOT is also included in those
19 which OP --

20 MR. ROGERS: DDOT did not have any
21 conditions.

22 BZA CHAIR JORDAN: I didn't think

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1 so. That's right. Okay. Thank you. But
2 there are some -- oh, I understand where you -
3 - because it makes reference that they should
4 coordinate some things with DOT if necessary.
5 Got it. Okay. Board, any questions for DOT?
6 The applicant, any questions?

7 MR. KADLECEK: No questions.

8 BZA CHAIR JORDAN: Anyone here
9 from ANC 8A? I don't think we have a letter
10 on file from 8A, do we? Is that the one that
11 came in late? No, no, that's not it. 8A?

12 MR. MOY: There's no letter in the
13 record, Mr. Chairman.

14 BZA CHAIR JORDAN: Okay. And
15 turning the to applicant, was 8A notified of
16 this application?

17 MR. KADLECEK: They were. In
18 fact, there was a special meeting on August, I
19 believe it was, 14th. Sister Bourdon attended
20 the meeting and she can answer any questions
21 if you have any.

22 BZA CHAIR JORDAN: Okay. Did they

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1 take a vote?

2 MS. HURSEY: Yes, they did. They
3 voted to send a letter to BZA.

4 BZA CHAIR JORDAN: A letter that
5 said they approved this --

6 MS. HURSEY: Approved, yes. No
7 exceptions.

8 BZA CHAIR JORDAN: Okay. Then we
9 will accept your testimony on that and thank
10 you. Is there anyone in the audience wishing
11 to speak in support of this application?
12 Anyone wishing to speak in support? Anyone
13 wishing to speak in opposition? Anyone
14 wishing to speak in opposition?

15 Then, as you know, Mr. Kadlecek,
16 we normally would turn back to the applicant
17 for any rebuttal or closing, but I think you
18 want to waive those since there's no need for
19 that.

20 MR. KADLECEK: I agree. Yes,
21 thank you.

22 BZA CHAIR JORDAN: Then we will

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1 close the hearing based upon the record
2 already deduced by this Board. Is the Board
3 ready to deliberate? Then based upon the
4 application and the recommendation of both
5 Office of Planning, and certainly, the ANC as
6 represented, then I would move that -- and
7 Department of Transportation, I would move
8 that we grant the request of relief for 18602.

9 VICE CHAIR ALLEN: Second.

10 BZA CHAIR JORDAN: Motion made and
11 seconded. All those in favor, signify by
12 saying aye.

13 (Chorus of Ayes)

14 BZA CHAIR JORDAN: Those opposed,
15 nay. The motion carries. Mr. Moy?

16 MR. MOY: Yes, sir. Staff would
17 record the vote as 4 to 0. This is on the
18 motion of Chairman Jordan to approve the
19 applications with the conditions as the Board
20 cited. Second to the motion, Vice Chairperson
21 Allen. Also in support, Mr. Peter May and Mr.
22 Jeffrey Hinkle. We have a Board seat vacant.

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1 The motion carries on a vote of 4 to 0.

2 BZA CHAIR JORDAN: And then we may
3 have a summary order, please, Mr. Moy?

4 MR. MOY: Yes, sir. Thank you
5 very much.

6 BZA CHAIR JORDAN: You guys with
7 this M-A, M-Y, and M-O, and all that. It's
8 throwing me for a loop today. All right. Ms.
9 Allen?

10 VICE CHAIR ALLEN: I wanted to
11 say, Sister, I had a flashback as you were
12 walking down, to, like, third grade, Sister
13 Mary Joseph coming at me. I was like, for
14 just a second. Thank you. It's all good.

15 BZA CHAIR JORDAN: All right then.

16 VICE CHAIR ALLEN: Hope all is
17 well.

18 BZA CHAIR JORDAN: Thank you.

19 MS. BOURDON: Thank you very much.

20 BZA CHAIR JORDAN: I think we
21 should slap her knuckles or something. Let's
22 call 18604, please.

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1 MR. MOY: That would be
2 application 18604. This is the application of
3 Halcyon Georgetown, LLC, pursuant to 11 DCMR
4 3104.1. This is for a special exception to
5 establish a non-profit organization under
6 Section 217 in the R-3 District at premises
7 3400-3410 Prospect Street, NW, property
8 located in Square 1204, Lot 83.

9 BZA CHAIR JORDAN: Mr. Moy, I
10 don't know if you announced earlier that 18601
11 has been withdrawn, right?

12 MR. MOY: No, I didn't, I was
13 about to, but thank you for doing that for me.

14 BZA CHAIR JORDAN: All right.
15 Let's see where we are. Would you please
16 introduce yourselves?

17 MS. HAASE: I'm Alice Haase with
18 the law firm Castro Haase on behalf of the
19 applicant S & R Foundation and the Halcyon
20 Georgetown, LLC, the owner of the property.

21 MR. ANDRES: Erwin Andres with
22 Gorove/Slade Associates, the transportation

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1 consultant for the project.

2 BZA CHAIR JORDAN: Okay. There
3 were this is another application, I think,
4 it's pretty straightforward. There were a lot
5 of conditions, though, that had been pending
6 and I think you submitted a list of those
7 conditions, which you have agreed to?

8 MS. HAASE: Yes, Mr. Chairman, we
9 have agreed to them, but in agreement with the
10 ANC, OP, and DDOT, we wanted to put forward, I
11 would say, a couple of tweaks to the
12 conditions.

13 BZA CHAIR JORDAN: Okay. Wait a
14 minute. Let me catch up and then we can tweak
15 it. You've discussed these tweaks?

16 MS. HAASE: We have definitely
17 discussed them and have an agreement.

18 BZA CHAIR JORDAN: So we're going
19 to change, slightly --

20 MS. HAASE: Very.

21 BZA CHAIR JORDAN: -- is what I'm
22 hearing. Okay. I'm trying to find, where is

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1 those conditions again; your set of them?

2 Yes, I have that and I have OP's. One second.

3 I'm trying to find all these lists. Okay.

4 Let's go ahead and tweak them. Which ones are
5 we tweaking?

6 MS. HAASE: 7B, the condition
7 reads now, "The applicant shall create a
8 turnaround in the rear parking area." The ANC
9 approved that condition to read, or to add,
10 "prior to holding the first event at the
11 property, but not before opening the non-
12 profit offices.", and that's because a
13 turntable will be installed to accommodate
14 guest parking and deliveries, but when it
15 opens, there will only be two employees, one
16 of whom doesn't drive and one of whom rides a
17 bike.

18 There will be no impact on traffic
19 from the incubator or the research program, so
20 we wanted to be able to get a certificate of
21 occupancy because the turntable could take
22 three to five months to fabricate and install.

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1 BZA CHAIR JORDAN: So that's prior
2 to holding any event?

3 MS. HAASE: To any event. And
4 there's a list of events in the conditions.

5 BZA CHAIR JORDAN: Okay. So the
6 applicant shall, prior to holding any event,
7 create a turnaround in the rear parking area.

8 MS. HAASE: Yes.

9 BZA CHAIR JORDAN: Okay. The next
10 one, please.

11 MS. HAASE: And the next one is
12 7E, which addresses the monitoring program.
13 The original condition was to monitor an event
14 over 200 people, and DDOT asked, and we
15 agreed, to also monitor a medium-sized event
16 for 100 to 200 people.

17 BZA CHAIR JORDAN: So we're going
18 to monitor -- the monitoring is going to be --

19 MS. HAASE: Expanded to include an
20 event up to 200 guests and an event over 200
21 guests.

22 BZA CHAIR JORDAN: That's

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1 monitoring all the events, so let's --

2 MS. HAASE: It's annually. It's
3 one event annually and there's three that
4 could occur over 200, but right now, none are
5 scheduled.

6 BZA CHAIR JORDAN: I don't like us
7 issuing conditions that we, you know, have to
8 have a decision table to find out whether or
9 not somebody made a decision or not made -- I
10 mean, followed a proper condition. And it
11 gets kind of hairy when people raise issues
12 and it causes disagreement and problems down
13 the way, so I'm understanding that, annually,
14 you're required to monitor events.

15 MS. HAASE: Annually, the way the
16 condition is written now, DDOT asks that we
17 monitor one event that's held for over 200
18 persons. The additional recommendation from
19 DDOT is that there be one other event
20 monitored that is attended by 100 to 200
21 people.

22 BZA CHAIR JORDAN: Less than 200.

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1 MS. HAASE: Less than 200 and over
2 100.

3 BZA CHAIR JORDAN: So it will be,
4 "The applicant shall provide monitoring,
5 annually, for one event held over 200 people,
6 and one event that is held for less than 200
7 people."

8 MS. HAASE: For 100 to 200. You
9 know, it's hard to say how many people will
10 come, but it would be for over 100 persons and
11 under 200. Is that --

12 BZA CHAIR JORDAN: No.

13 MS. HAASE: Maybe DDOT would like
14 to weigh-in on this.

15 BZA CHAIR JORDAN: I hear what
16 you're saying. I'm just trying to make it --

17 MS. HAASE: Easy to read?

18 BZA CHAIR JORDAN: -- palatable.
19 Okay. One event must be over 200, the other -
20 - has to be 201, and the other is 100 to 200.

21 Okay. I think I have it. So the record
22 would indicate that 7E is modified to include

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1 the monitoring, annually, of one event that
2 the participants are over 200 people and then
3 one event where the participants are less than
4 200 people, right? That's it, right? Which
5 is between 100 and 200. I'll be that
6 specific. Okay.

7 MR. ROGERS: Yes. And then an
8 additional element of the condition in the
9 DDOT report is that there be some enhancements
10 to valet operations if excess queuing is
11 observed.

12 BZA CHAIR JORDAN: Is that what
13 you've already discussed and it's already
14 added here? Wait a minute, we'll come back to
15 you a second. Something else, there was an
16 additional condition that I'm just
17 understanding, is that what you're going to
18 report --

19 MS. HAASE: That's our
20 understanding of the condition.

21 BZA CHAIR JORDAN: Okay. Are you
22 adding something else to 7E other than what

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1 we've already added?

2 MR. ROGERS: 7E from the OP
3 report. Is that what you're referring to?

4 BZA CHAIR JORDAN: Well, I'm
5 looking at where we've kind of consolidated
6 those and looking at the OP report as the
7 lead, so is that okay?

8 MR. ROGERS: So the OP report does
9 not contain the element of having additional
10 enhancements to the valet operations if excess
11 queuing is occurring.

12 BZA CHAIR JORDAN: You know, we
13 really have to be careful about adding a whole
14 bunch of criteria and we start, as a Board,
15 really getting into the, I don't want to use
16 mud, but the everyday operation, what's the
17 word I'm trying to use, the weeds of it. I
18 think we will just simply -- why don't we say
19 as coordinated with OP's requirements, or
20 something, because we're really -- for this
21 Board to say on every Tuesday minus Thursday,
22 you have three minus two, get one, come back.

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1 We're not going to do that.

2 MR. ROGERS: May I just explain
3 the logic behind the additional clause of
4 having additional enhancements if excess
5 queuing is observed? The idea behind that is,
6 monitoring should be two parts. It should be
7 the actual monitoring, so identifying if there
8 is, indeed, a problem, and then taking that
9 one step further if there is a problem. If
10 the valet operations are not meeting demand,
11 that there be some additional enhancements to
12 the valet operations to make things run a
13 little smoothly; reduce queuing in the
14 neighborhood. So that's the logic behind --

15 BZA CHAIR JORDAN: So why doesn't,
16 what's already recommended in 7E, pick that
17 up? It's going to report to you annually and
18 to OP to review parking traffic issues and
19 applicant shall take appropriate corrective
20 measures, so why isn't that already included?

21 MR. ROGERS: It depends on how
22 specific you want to get. I suppose

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1 corrective measures could be sufficient.

2 BZA CHAIR JORDAN: Okay. Thank
3 you. Got you. I'm with you. Anything else?

4 MS. HAASE: No, Mr. Chairman.

5 BZA CHAIR JORDAN: Thank you so
6 much. Does the Board have any questions we
7 need to address to this applicant or want the
8 applicant to address to us?

9 MEMBER MAY: I'm just seeking
10 clarity on which conditions we're actually
11 voting on because there are some differences
12 between what the ANC approved and what OP has
13 put into their report.

14 BZA CHAIR JORDAN: I was working
15 with the ones that's contained in the OP
16 report, because I thought it was consolidating
17 all those issues. Doesn't the OP report
18 consolidate all the ones --

19 MS. HAASE: Yes, with the revision
20 of the turntable, 7B, they're consistent.
21 They might be worded a little bit differently,
22 but they're consistent.

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1 MEMBER MAY: Okay. So where is
2 condition 7C from the ANC report? Where is
3 that included in OP's conditions?

4 MS. HAASE: I believe 7C is the
5 turntable.

6 MEMBER MAY: No.

7 MS. HAASE: Oh.

8 MEMBER MAY: "IIGR meeting
9 attendees, generally, are from the locations
10 outside of Washington, D.C., and generally,
11 will arrive at the party by means other than
12 personal vehicles, however, any attendees
13 driving personal vehicles shall park onsite in
14 the rear parking court or in a satellite
15 parking location."

16 I think that's woven into other
17 stuff, but it's -- you know, this is
18 explicitly what the ANC agreed to.

19 MS. HAASE: Any attendees coming
20 to any meeting, if they cannot be accommodated
21 in the rear parking court, must park in a
22 satellite lot. And the ANC was wanting to

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1 make the point that the IIGR meetings have
2 very little impact because most of the
3 attendees are coming from outside the
4 Washington area, and in all likelihood,
5 outside the country.

6 Obviously, the first clause of
7 that is not really an enforceable condition.

8 MEMBER MAY: Okay. But the
9 enforceable condition is that, "Any attendees
10 driving personal rental cars shall park onsite
11 in the rear parking court or in a satellite
12 parking location." So where is that stated
13 elsewhere in the conditions? I mean, I know
14 there's all sorts of --

15 MS. HAASE: 7C-1 is the first
16 place, "For events with 40 or less guests, the
17 applicant's staff, or a valet company, may
18 park guest vehicles in the rear parking
19 court." 7C-2, "For any events with more than
20 40 guests, or less than 150, the guests shall
21 be directed to utilize valet parking and
22 satellite parking lots."

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1 MEMBER MAY: Okay.

2 MS. HAASE: I don't have any issue
3 with that being added if the Board wishes to
4 do so.

5 MEMBER MAY: No, I just want to
6 make sure that it's covered.

7 BZA CHAIR JORDAN: He wanted to
8 make sure it's covered.

9 MS. HAASE: It's covered.

10 BZA CHAIR JORDAN: You know,
11 you've represented to us that it's covered
12 based upon the response that you just made.

13 MEMBER MAY: That's fine. It
14 works for me.

15 BZA CHAIR JORDAN: Are there any
16 other questions for the applicant? Then is
17 there anything that the applicant wants to
18 present to the Board? It's not necessary at
19 this point. You can come back and cleanup any
20 rebuttal, but I think we're walking our way
21 through this.

22 MS. HAASE: I think I'm happy to

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1 rest on the record.

2 BZA CHAIR JORDAN: Sure. Then
3 let's turn, now, to Office of Planning. Is
4 there anything in addition to what we've
5 already gone through that you really feel that
6 you need to talk about?

7 MR. GYOR: Thank you, Mr.
8 Chairman. Stephen Gyor with the Office of
9 Planning. We support the application and the
10 applicants revised conditions. Thank you.

11 BZA CHAIR JORDAN: DDOT? Or
12 excuse me, I'm sorry. Any questions for
13 Office of Planning, Board? Does the applicant
14 have any questions for the Office of Planning?

15 MS. HAASE: No.

16 BZA CHAIR JORDAN: Department of
17 Transportation?

18 MR. GALE: Good morning. DDOT has
19 no issues with the amended conditions and
20 rests on the record.

21 BZA CHAIR JORDAN: Board,
22 questions for the Department of

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1 Transportation? Applicant, question for the
2 Department of Transportation?

3 MS. HAASE: No.

4 BZA CHAIR JORDAN: And we do have
5 the report from ANC, what is it; which one is
6 that again? I just pulled it down. I have
7 the report sitting in front of me on my
8 computer. 2E. Yes, ANC 2E, in support of
9 this application with the conditions, and the
10 conditions have been incorporated, and the OP
11 report as modified here and discussed. I'm
12 sorry, is there anyone here from ANC 2E? I
13 always remiss. Anyone here from ANC 2E? No.

14 Then we have their report, which we would
15 certainly give great weight to.

16 As you heard, we've asked
17 questions in regards to the ANC's requests,
18 particularly as related to the conditions. Is
19 there anyone here wishing to testify in
20 support of this application? Anyone wishing
21 to testify in support of this application?
22 Anyone wishing to testify in opposition to

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1 this application? Anyone wishing to testify
2 in opposition to this application?

3 Then let's turn -- well, we would
4 normally turn back to the applicant for
5 rebuttal and closing, but I see your eyebrow
6 going up and down like you're going to waive
7 that, right?

8 MS. HAASE: That was the eyebrow,
9 yes.

10 BZA CHAIR JORDAN: Okay. Good.
11 Got the signal going. So then we will
12 conclude the record based upon what's already
13 been deduced here by the Board and then what's
14 already in the file. And is the Board ready
15 to deliberate? Any discussions from the
16 Board? Then I would move that we approve the
17 application with the conditions as we defined
18 that are contained in the Office of Planning's
19 report as modified here today.

20 Is there a second, anybody?

21 MEMBER MAY: Second.

22 BZA CHAIR JORDAN: Motion made and

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1 seconded. All those in favor, signify by
2 saying aye.

3 (Chorus of Ayes)

4 BZA CHAIR JORDAN: Those opposed,
5 nay. The motion carries. Mr. Moy?

6 MR. MOY: Yes, staff would give
7 the vote count as 4 to 0 on the motion of
8 Chairman Jordan to approve the application for
9 the relief requested, including the conditions
10 as modified by the Board today. Second to the
11 motion, Mr. Peter May. Also in support, Vice
12 Chairperson Allen and Mr. Hinkle, Board seat
13 vacant, the motion carries, Mr. Chairman.

14 BZA CHAIR JORDAN: Thank you. And
15 may we have a summary order that includes
16 those conditions, please?

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

18 BZA CHAIR JORDAN: Then we want to
19 call 18541.

20 MR. MOY: That would be
21 application number 18541 of Lubertha Payne,
22 pursuant to 11 DCMR 3104.1. This is for a

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1 special exception for child development
2 center, and as captioned, it was for 11
3 children and 2 staff, under Section 205 in the
4 R-3 District at premises 620 Southern Avenue,
5 SE, property located in Square 6250, Lot 11.

6 BZA CHAIR JORDAN: Would you
7 please identify yourselves?

8 MR. WORK: Good morning, Mr.
9 Chairman. Peter Work or Crowell & Moring for
10 the applicant.

11 BZA CHAIR JORDAN: Did you say
12 work?

13 MR. WORK: Work, W-O-R-K.

14 BZA CHAIR JORDAN: Okay.

15 (Off microphone comments)

16 MEMBER MAY: I don't think your
17 microphones were on.

18 BZA CHAIR JORDAN: Okay.

19 MS. TOKDEMIR: I guess now. Derya
20 Tokdemir from Crowell & Moring, special legal
21 consultant on behalf of the applicant.

22 BZA CHAIR JORDAN: Okay.

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1 MS. PAYNE: Lubertha Payne, owner
2 of Bert's Family Childcare, 620 Southern
3 Avenue, SE.

4 BZA CHAIR JORDAN: Okay. All
5 right. Here's another one where I don't have
6 any real -- well, there's a question. Was a
7 presentation made to ANC 8B on this?

8 MS. TOKDEMIR: 8D?

9 BZA CHAIR JORDAN: Is it 8D?

10 MS. TOKDEMIR: 8D. I think there
11 is a typo.

12 BZA CHAIR JORDAN: Okay. So it's
13 8D. Was a presentation made and ANC 8D
14 contacted?

15 MS. TOKDEMIR: Yes. There were
16 two, on 28 of March and 25th of April, we had
17 meetings with ANC. And there were some
18 rhetorical questions raised by the ANC
19 members.

20 BZA CHAIR JORDAN: Did they take
21 any vote on this?

22 MS. TOKDEMIR: No.

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1 BZA CHAIR JORDAN: Okay. But you
2 did do presentation to the ANC --

3 MS. TOKDEMIR: Yes.

4 BZA CHAIR JORDAN: -- and you had
5 discussions one way or the other. And our
6 record doesn't indicate that we have any
7 letter from ANC 8D or 8B regarding this.
8 Okay. I just wanted to make sure the ANC had
9 been consulted with in this matter.

10 MS. TOKDEMIR: Yes, Mr. Chairman.

11 BZA CHAIR JORDAN: Also, the
12 Office of Planning has proposed some
13 conditions, are you aware of those conditions
14 that, "The approval shall be for a period of
15 seven years, that the hours of operation shall
16 be from 6:30 a.m. to 5:00 p.m., and the number
17 of enrolled children shall not exceed 11 and
18 the number of staff shall not exceed 2."

19 MS. TOKDEMIR: We are aware of
20 those conditions.

21 BZA CHAIR JORDAN: And you're
22 agreeing with those?

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1 MS. TOKDEMIR: We do agree with
2 one concern, and I think that's Ms. Payne.
3 Her intention is to operate until 5:00 p.m.,
4 but there are some instances when parents are
5 running late or if they --

6 BZA CHAIR JORDAN: Yes, we
7 understand that.

8 MS. TOKDEMIR: So that's going to
9 be some exceptions, but --

10 BZA CHAIR JORDAN: Yes. That's
11 normal. I'm sure you penalize them pretty
12 heavy for being late, but I've had friends who
13 break their beck getting out of the meeting
14 because they had to go -- they charge us a
15 dollar a minute. Okay. And you're only
16 required to have one parking space, but you
17 have two, is that correct?

18 MS. TOKDEMIR: Yes.

19 BZA CHAIR JORDAN: The Board,
20 questions that we need to -- and the other
21 thing you have, letters from supporting
22 neighbors, which is very important for this

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1 type of child development center. Board, any
2 questions that we need to have addressed?
3 Then you have the opportunity to do a
4 presentation to the Board if you wish,
5 however, the Board is very comfortable as we
6 sit with the application as is, and leaning
7 toward it's approval, subject to something
8 coming up that we don't know about here.

9 So it's your opportunity to do a
10 presentation or you can waive that.

11 MS. TOKDEMIR: If the Board is
12 comfortable with our application, we don't
13 wish to take more time.

14 BZA CHAIR JORDAN: In the rare
15 cases where people didn't take our advice on
16 that, they've kind of stepped in the mud, got
17 themselves in trouble. That's very smart.
18 Then let's turn to Office of Planning. Is
19 there anything in addition, Ms. Roberts, that
20 we need to add to --

21 MS. BROWN-ROBERTS: No, Mr.
22 Chairman. We can rest on the record.

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1 BZA CHAIR JORDAN: You got to make
2 sure you're on.

3 MS. BROWN-ROBERTS: Sorry. No,
4 Mr. Chairman. We'll stand on the record for
5 approval.

6 BZA CHAIR JORDAN: Thank you very
7 much. Is there Board questions for OP? The
8 applicant, any questions of OP; Office of
9 Planning? Then Department of Transportation,
10 there's no one here, however, they submitted
11 their letter of no objection to the
12 application. Anyone here from the Office of
13 State Superintendent of Education?

14 We do have a letter of support
15 from the Office of State Superintendent of
16 Education. Is anyone here wishing to testify
17 in support of this application? Anyone
18 wishing to testify in support? Those in
19 opposition? Anyone wishing to speak in
20 opposition? Seeing none, well, we would
21 normally turn back to the applicant for
22 rebuttal or closing, again, I know you're

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1 going to heed the warning.

2 And then we can close this record,
3 is that agreeable with you?

4 MS. TOKDEMIR: Yes, Mr. Chairman.

5 BZA CHAIR JORDAN: We would close
6 the record based upon the evidence and the
7 record deduced so far. Is the Board ready to
8 deliberate? Then I would move that we grant
9 the relief requested with the addition of the
10 conditions proposed and the Office of
11 Planning's report. That would be my motion.

12 MEMBER MAY: Second.

13 BZA CHAIR JORDAN: Motion made and
14 seconded. All those in favor, signify by
15 saying aye.

16 (Chorus of Ayes)

17 BZA CHAIR JORDAN: Those opposed,
18 nay. The motion carries. And, Mr. Moy?

19 MR. MOY: Staff would record the
20 vote as 4 to 0. This is on the motion of
21 Chairman Jordan to approve the application,
22 including the four conditions as proposed by

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1 the Office of Planning. Second to the motion,
2 Mr. Peter May. Also in support, Chairperson
3 Allen and Mr. Hinkle, and we have a Board seat
4 vacant. The motion carries, Mr. Chairman.

5 BZA CHAIR JORDAN: Okay. Then can
6 we have a summary order, please?

7 MR. MOY: Yes, sir.

8 BZA CHAIR JORDAN: Yes, we do.
9 All right. What do I have remaining on the
10 docket? 18556, is that the only one?

11 MR. MOY: Yes.

12 BZA CHAIR JORDAN: I've been
13 trying to keep score here and my notes kind of
14 got away from me. Thank you very much.
15 Appreciate you coming. Have a good day.

16 MR. MOY: So again, that would be
17 application number 18556 of Derek S. Mattioli,
18 pursuant to 11 DCMR 3103.2. This is for a
19 variance from the lot occupancy requirements
20 under Section 403, variance on the rear yard
21 requirements under Section 404, variance from
22 the court requirements under Section 406, and

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1 the variance on the non-conforming structure
2 provisions under Subsection 2001.3.

3 This is for a rear addition to an
4 existing road dwelling in the R-4 District at
5 premises 1375 Massachusetts Avenue, SE,
6 property located in Square 1037, Lot 102.

7 BZA CHAIR JORDAN: Let me get them
8 to introduce themselves first. Would you
9 please introduce yourselves? Make sure your
10 microphones are turned on.

11 MR. MATTIOLI: My name is Derek
12 Mattioli. I'm the owner/occupant of 1375
13 Massachusetts Avenue, SE.

14 MR. NELSON: My name is Carl
15 Nelson. I'm Derek Mattioli's stepfather.

16 MR. MATTIOLI: Yes. He's
17 assisting me, but he will not be testifying.

18 MR. O'DONNELL: I'm Mark
19 O'Donnell. I'm the neighbor and I requested
20 party status.

21 BZA CHAIR JORDAN: And we've
22 granted you party status. So bring me up on

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1 where you are in your conversations. We have
2 not made any concessions and --

3 MR. MATTIOLI: No progress.

4 BZA CHAIR JORDAN: -- no progress.

5 So you'd rather for us to make that decision?

6 Okay.

7 MR. MATTIOLI: Mr. O'Donnell's
8 only suggestion was that we tear the porch
9 down, so that's not --

10 BZA CHAIR JORDAN: Okay. Well,
11 now I'm going to defer to Commissioner May,
12 please.

13 MEMBER MAY: Yes. Mr. Chairman, I
14 just need to make a disclosure for the record
15 on this. I know Mr. O'Donnell from the
16 neighborhood and from various activities
17 around the neighborhood. We've not had any
18 substantive discussion about this case and I'm
19 prepared to proceed if the rest of the Board
20 is comfortable with that.

21 BZA CHAIR JORDAN: You have no
22 pecuniary interest in this matter.

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1 MEMBER MAY: No.

2 BZA CHAIR JORDAN: I think there's
3 no problem for me, so there's not a problem.
4 Thank you for that disclosure, Mr. May.

5 MEMBER MAY: Thank you.

6 BZA CHAIR JORDAN: All right. OP
7 doesn't support. Nobody supports. So the
8 floor is yours to present to us to show us how
9 this property is unique and any practical
10 difficulty in why that you should be granted
11 the variance that you seek.

12 MR. MATTIOLI: Thank you. My name
13 is Derek Mattioli. I'm the owner/occupant of
14 1375 Mass Avenue. I live there with my wife.

15 I have been a Capitol resident my entire life
16 and so I assume the Board Members have
17 received my pre-hearing statement and
18 exhibits, is that correct? All right.

19 Then I would propose to then just
20 summarize the key points as to why a variance
21 should be granted, make a couple other
22 statements, and then stand on that record. I

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1 am seeking after-the-fact relief for a small
2 rear porch constructed in 2009 that overhangs
3 a strip of concrete that comprises my
4 backyard.

5 My lot, at only 818 square feet,
6 is exceptionally small and shallow. Of the 73
7 houses in Square 1037, 93 percent are larger
8 than mine. The average lot size in the square
9 is 1558 square feet, nearly double the size of
10 my lot. Some of the Board proceedings
11 relating to exceptionally small lot sizes have
12 been cited in my pre-hearing statements.

13 Based on an established confluence
14 of factors, standards, my lot is unique and
15 presents exceptional circumstances. In terms
16 of practical difficulty, the porch is already
17 built, has been for several years, and tearing
18 it down would be unnecessarily burdensome and
19 present significant practical difficulty.

20 It would also return to an
21 unusable state, my concrete slab backyard, and
22 cause what is now usable space to become idle.

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1 The D.C. Court of Appeals, in 1978, cited
2 that, "The variance procedure is designed to
3 provide relief from the strict letter of the
4 regulations and prevent usable land from
5 remaining idle."

6 My porch has wide support from the
7 neighborhood, I have 35 neighbors who
8 supported the request. Owners of both
9 adjoining houses, as well as those properties
10 directly across from my house, on Independence
11 Avenue, on that side of the square, have
12 written letters of support. Those letters are
13 collected in Exhibit 9.

14 Many nearby properties have lot
15 coverage between 90 and 100 percent.
16 Collected in Exhibits 6, 10, and 11 are ten
17 nearby properties at the point of Square 1037,
18 so that would be the eastern point where
19 Massachusetts Avenue and Independence
20 converge, which have area coverage ranging
21 between 90 and 100 percent.

22 BZA CHAIR JORDAN: That's kind of

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1 got a glare for the Board. Maybe if you can
2 just kind of move it out around from the
3 light. Yes, right there. Good for everyone?

4 I think so.

5 MR. MATTIOLI: This is Exhibit 6
6 that I've submitted. As you can see from this
7 overhead shot of Square 1037, of construction
8 on my property, including the back porches, in
9 line with or recessed from every lot to the
10 west of my house on Massachusetts Avenue.
11 That's 26 straight properties which are deeper
12 into the lots than my own.

13 So I can take a ruler and show you
14 if you'd like. I think the map speaks for
15 itself. The Board has taken into account, lot
16 occupancy of nearby properties in granting
17 area variances in the Capitol Hill Historic
18 District. To summarize, the situation to my
19 property is unique and strict compliance with
20 the area limitation would be unnecessarily
21 burdensome and present significant practical
22 difficulty.

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1 The lot is exceptionally small and
2 shallow. Adjoining properties have 100
3 percent, or close to 100 percent, area
4 coverage. There is wide neighborhood support,
5 and the 36-inch strip of concrete that
6 constitutes my backyard is not usable for
7 other purpose.

8 Post-construction area variance
9 relief has been granted in many prior cases,
10 including at least four in the Capitol Hill
11 Historic District. I would like to point out
12 for emphasis, a few of the exhibits that I've
13 submitted. All right. Excuse me for just one
14 moment. Well, I've got Exhibit 5 here, which
15 you all have, showing what constitutes my
16 backyard, and it's essentially, concrete slab.

17 Exhibit 6, which is shown here,
18 excuse me for just one moment. Well, I'll
19 reference them there in the packets that you
20 all have. Exhibit 2 shows the trash storage
21 areas and existing nearby porches with a near
22 100 percent lot occupancy in the rear

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1 pedestrian alley, which is actually entirely
2 closed off from the rest of the square so that
3 only these houses have access to it.

4 Exhibit 3, which shows the trash
5 storage area below my porch, which is
6 preserved for its previous use, while the
7 porch above uses the space to increase the
8 functionality of my house. The only reason
9 all those cans can be stored there is that the
10 concrete steps that were there previously have
11 already been demolished.

12 I addressed the Capitol Hill
13 Restoration Society's opposition in my pre-
14 hearing statement and I rest on the record
15 there, except to add, that in BZA Order 12480,
16 the Board granted an after-the-fact variance,
17 and which CHRS supported, "In view of the
18 exceptional practical difficulty and undue
19 hardship which would result where the
20 applicant required to, essentially, raise part
21 of his house."

22 I would like to now address the

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1 report issued by the Office of Planning. Let
2 me first state that my interactions with
3 Brandice have been exceptionally helpful and
4 cordial during this process. She's been of
5 great service to me and I can't thank you
6 enough for the help that you've provided. I
7 haven't had a lot of guidance in this. This
8 is not something that I do regularly, so I do
9 appreciate that.

10 Let's see, in 2005, in BZA Court
11 Case 17313, the Office of Planning similarly
12 recommended denial of an area variance
13 claiming that the property was not unique.
14 The Board rejected that recommendation and
15 granted relief, finding that the Office of
16 Planning had ignored the confluence of factors
17 standard, which I have already addressed.

18 In addition, there are several
19 factual errors and mischaracterizations of the
20 lot, and omissions, in the OP report, which I
21 would like to address. Factual errors, OP
22 states on Pages 2 and 4 that construction

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1 proceeded without any building permits
2 initially. That is not the case. DCRA did
3 issue a building permit to my contractor for
4 initial construction, however, the work done
5 was outside the scope of that permit, and
6 that's why we're here today.

7 OP states that my porch is 14 feet
8 from the curb of Independence Avenue, SE. I
9 have photos here. The first photograph there
10 is a 10-foot tape measure, which is fully
11 extended. It doesn't even get to the
12 beginnings of the properties on Independence
13 Avenue, so to state that my property is only
14 15 feet. It is actually 50 feet away from the
15 curb on Independence Avenue.

16 The photo used in OP evidence is a
17 composite Google Street View photo that is
18 shown from an angle. It skews the image and
19 distorts the depth of field, making the porch
20 appear much closer than it is. I've enclosed
21 a straight-ahead shot of the porch, which
22 shows it being recessed that 50 feet.

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1 There also, mischaracterization of
2 the properties of Square 1037, which I'd like
3 to address. OP states that my porch, being
4 visible from the pedestrian alley, is not
5 consistent with the square. I have here,
6 several photographs, taken from the sidewalk,
7 of multiple properties on the alley, from 13th
8 and the Independence Avenue side, showing
9 multiple constructions.

10 All right. If you look at the
11 first shot, which is the alley-view of the
12 house from the Massachusetts Avenue side, you
13 can see that six of the seven properties that
14 abut the alley and are visible from the street
15 have back porches. Five of those properties
16 have two-story additions that are fully
17 enclosed on at least one level.

18 From the Independence alley
19 entrance closest to 13th Street, two two-story
20 covered porches and one enclosed first floor
21 addition are visible. So from every alley
22 access point, covered porches or enclosed

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1 additions are fully visible.

2 Furthermore, the prior covered
3 porch that existed in my lot when I purchased
4 it was fully visible from the street in the
5 same manner as the new porch. Moving the
6 current porch back 3 feet will not make it any
7 less visible. The previous covered porch was
8 also dilapidated and was generally regarded as
9 an eyesore, and actually, one of the letters
10 of support from my neighbors has referenced
11 that.

12 OP states that since 73 percent of
13 the properties in my square are not
14 conforming, that defeats any claim of
15 uniqueness based on size. Non-conforming only
16 means that the lot sizes under 1800 square
17 feet, which is not pertinent to my
18 exceptionally small and shallow lot. The
19 average size of the lots in the square is 1557
20 feet, close to double the size of my lot.

21 In fact, if you were to drop my
22 entire lot in the 1557 square foot lot, the

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1 lot occupancy would be under 52 percent. 93
2 percent of the lots in the square are larger
3 than mine, of the five that are smaller, all
4 have upwards of 90 percent lot occupancy and
5 two appear to have 100 percent lot occupancy.

6 OP also states that neighboring
7 properties generally have open decks. There
8 are 28 houses on Massachusetts Avenue in this
9 square. Only two properties on Mass Avenue
10 have open decks as described by OP. All 26
11 other properties either have covered porches,
12 or fully enclosed porches, or additions, many
13 of which are two levels. I have photo
14 exhibits of that as well.

15 The only photo exhibits I have are
16 of fully enclosed porches, because I didn't
17 want to show 28 photos to you all.

18 BZA CHAIR JORDAN: Let me go back.
19 What are these picture of again?

20 MR. MATTIOLI: That is a view of
21 the alley from the Massachusetts side --

22 MEMBER MAY: You need to be on the

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1 mic.

2 MR. MATTIOLI: Oh, I'm sorry.
3 That shot is a view of the alley from
4 Massachusetts Avenue. Now, that's the alley
5 that then forms -- so if you look at the map
6 here, the alley is at the very tip of
7 Massachusetts Avenue, it bisects the block,
8 and then turns in, prior to my property, and
9 one adjacent property.

10 The small pedestrian alley that
11 you see, if you reference my previous exhibit,
12 has been entirely blocked off from that alley.

13 There is a privacy fence as well as several
14 porch constructions, but that's the nature of
15 the alleyway.

16 BZA CHAIR JORDAN: So your
17 property aligns these properties in the back.

18 MR. MATTIOLI: No, no, no. That's
19 the far end of the block right there.

20 BZA CHAIR JORDAN: Okay.

21 MR. MATTIOLI: And the
22 Independence side is the lower-end access to

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1 the alleyway.

2 BZA CHAIR JORDAN: And where's
3 your property on here?

4 MR. MATTIOLI: My property is at
5 the far tip of --

6 BZA CHAIR JORDAN: These pictures
7 are of --

8 MR. MATTIOLI: Are of additions
9 that are all on the --

10 BZA CHAIR JORDAN: Show me --

11 MR. MATTIOLI: Okay.

12 BZA CHAIR JORDAN: Okay.

13 MR. MATTIOLI: Thank you. The
14 first set of photos that I offered are
15 exhibits that are all on Massachusetts Avenue.

16 The second set are ones -- the first is the
17 alley access from 13th, then I have photos of
18 multiple --

19 BZA CHAIR JORDAN: This is 13th.

20 MR. MATTIOLI: The third is an
21 alley access from --

22 BZA CHAIR JORDAN: Which ones are

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1 Mass?

2 MR. MATTIOLI: The ones on Mass
3 are, let's see -- actually, I don't believe --
4 here, let me bring those to you now.

5 BZA CHAIR JORDAN: Standing on
6 Mass looking in, that's that corner up there,
7 where the green grass is, to the right of the
8 GOogle.

9 MR. MATTIOLI: Yes. The shots
10 that you have are of the ones that are visible
11 from the street on Massachusetts Avenue. I
12 have additional ones that are not visible from
13 the street. And these are all full additions,
14 or covered in enclosed porches, on
15 Massachusetts Avenue in the back alleyway.

16 BZA CHAIR JORDAN: Yes, you keep
17 on Mass, you mean there in the alley, behind
18 the house.

19 MR. MATTIOLI: Yes, correct.

20 BZA CHAIR JORDAN: Yes, you kept
21 saying on -- and that's why it was throwing me
22 for a loop.

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1 MR. MATTIOLI: Yes, I'm sorry.
2 It's on the Massachusetts Avenue side of the
3 alley in the square. You can't really get to
4 many of the properties that are on
5 Independence. They have driveways and things
6 like that. So I've also included photos of
7 several properties on the 13th Street side of
8 the alley, in addition to those viewable from
9 the street, all of which have enclosed porches
10 on the first floor, second floor, or both.

11 OP states that, "Because no
12 building permit was obtained prior to initial
13 construction, the integrity of the zoning
14 regulations would be impaired." DCRA issued a
15 building permit prior to construction. The
16 contractor's work exceeded the scope of the
17 permit, which is why we're here today.

18 I relied on the contractor for all
19 permitting, which in hindsight, I immensely
20 regret. OP further states that the lot
21 occupancy provisions are intended to provide
22 some open area on even the smallest lots. In

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1 this case, the result is a reduced rear yard
2 adjacent to a 3-foot wide pedestrian walkway
3 which provides little separation between
4 dwellings adjacent to the walkway, and no
5 usable outdoor space on an otherwise small
6 lot.

7 The infers that a 36-inch slab of
8 concrete is a usable outdoor space, which,
9 quite honestly, it is not. With a variance
10 allowing my rear porch to overhang this space,
11 I have a usable space that improves the
12 functionality of my house, while at the same
13 time, preserving the space below to store
14 trash cans.

15 The D.C. Court of Appeals has
16 stated that the variance procedure is designed
17 to provide relief from the strict letter of
18 the regulations and prevent usable land from
19 remaining idle. There are also omissions in
20 the report. First and foremost, the wide
21 neighborhood support from over 30
22 owner/occupants and neighbors, which were

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1 submitted to them directly, several days prior
2 to their filing of my pre-hearing statement
3 with BZA.

4 The 90 to 100 percent lot
5 occupancy of numerous neighboring properties,
6 which is a factor this Board has taken into
7 account before in granting variances in the
8 historic district. Finally, the report makes
9 no mention of the undue burden of having to
10 tear down an existing structure built four
11 years ago because it overhangs 3 feet of
12 concrete. Let's see, I think that's it.

13 BZA CHAIR JORDAN: Okay. The
14 Board have any questions for the applicant?

15 MEMBER MAY: Yes.

16 BZA CHAIR JORDAN: Yes, please,
17 Mr. May.

18 MEMBER MAY: You've said
19 repeatedly, 3 feet of concrete.

20 MR. MATTIOLI: Yes.

21 MEMBER MAY: And I'm looking at
22 the Exhibit B that you submitted and I'm

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1 seeing a porch that -- I mean, it's not fully
2 dimensioned, but the porch seems to be 6 feet
3 8.

4 MR. MATTIOLI: Right. The 3 feet
5 were covered prior from the right side of the
6 house by the previously existing structure, so
7 it's addition of 3 feet on that side.

8 MEMBER MAY: How big was the
9 original existing structure?

10 MR. MATTIOLI: Hold on just one
11 second. Let me find --

12 MEMBER MAY: Approximately.

13 (Off microphone comments)

14 BZA CHAIR JORDAN: You have to be
15 on the record or you don't speak to the Board.

16 MR. MATTIOLI: The original porch
17 was 4.83 feet extended from the property.

18 MEMBER MAY: And was it across the
19 whole width of the property?

20 MR. MATTIOLI: No, it was across,
21 approximately, half of the width. There were
22 concrete steps that covered --

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1 MEMBER MAY: Okay. So it was
2 about, give or take a few inches, 5 by 10;
3 something like that.

4 BZA CHAIR JORDAN: And was that
5 covered?

6 MR. MATTIOLI: The porch was
7 covered. Yes, it was.

8 MEMBER MAY: Right. But you keep
9 repeating that if this addition were not
10 built, you'd have 3 feet of concrete. It
11 seems to me that you would have 11 feet of
12 land because your lot is 41 feet deep and your
13 house is 30 feet 2 inches deep.

14 MR. MATTIOLI: That's not
15 including the storage for the trash can and
16 the existing concrete steps.

17 MEMBER MAY: And the existing
18 concrete steps eat up how much of the width of
19 the building.

20 MR. MATTIOLI: They take it, let's
21 see, so again, about a 1/3, so you're looking
22 at --

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1 BZA CHAIR JORDAN: About a 1/3?

2 MEMBER MAY: A 1/3 of the width?

3 So they're 6, 7 feet wide?

4 MR. MATTIOLI: This is a very
5 small lot.

6 MEMBER MAY: No, no, but they're 6
7 or 7 feet wide. You've got a 20-foot wide
8 lot, how much of the 20 feet is taken up by
9 steps?

10 MR. MATTIOLI: The measurement
11 here, I don't have the exact measurement for
12 it, that size lists 7.83 feet as the width of
13 that side before the internal -- so it appears
14 to cover about half of that.

15 BZA CHAIR JORDAN: The stairs?

16 MR. MATTIOLI: The concrete stairs
17 cover half of that half, I'm sorry, so a
18 quarter of that.

19 BZA CHAIR JORDAN: So about 3
20 feet.

21 MR. MATTIOLI: 3 feet.

22 MEMBER MAY: I mean, that's a

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1 normal stairway.

2 BZA CHAIR JORDAN: Normal
3 stairway. That's what I'm trying to --

4 MEMBER MAY: So you'd have
5 something like 17 by 10 plus that could be a
6 rear yard, right?

7 MR. MATTIOLI: If it had any -- it
8 has no usable space other than the storage of
9 the trash cans. There's no usable area there.
10 It's a concrete block.

11 MEMBER MAY: Right. But I mean,
12 there are ways to improve a concrete pad in
13 your rear yard to make it usable, and storage
14 of trash cans is something that everybody in
15 the city has to deal with on some level.

16 MR. MATTIOLI: That's correct.

17 MEMBER MAY: And they're
18 relatively small cans. They require an area
19 of about 2 feet by 5 feet, something like
20 that, right?

21 MR. MATTIOLI: I'm sorry.

22 MEMBER MAY: So you got about 10

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1 square feet eaten up by that and you've got 3
2 by, I don't know, 6 eaten up by the stairs, so
3 --

4 MR. MATTIOLI: Right, which are
5 not directly attached to the house, so the
6 area, essentially, it creates a curved area
7 which would be difficult to use.

8 MEMBER MAY: Okay. I mean, none
9 of that is really demonstrated in what you've
10 submitted. I mean, you keep -- you refer to
11 this 3 feet and it's a fictional 3 feet, and
12 that's all I'm trying to get at is that you're
13 not really demonstrating that your rear
14 property is unusable.

15 MR. MATTIOLI: It's accurate to
16 half of that lot, half the size of that lot,
17 and the other half is covered by the stairs.
18 I can do a measurement there, but again --

19 MEMBER MAY: I mean, the plans
20 show that your rear lot, for the most part, is
21 about 20 feet wide by almost 11 feet deep.

22 MR. MATTIOLI: That's correct and

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1 much of that was previously covered.

2 MEMBER MAY: Right. And much of
3 it is now covered.

4 MR. MATTIOLI: That's correct.

5 MEMBER MAY: All right. Well, I
6 think the references to 36 inches are
7 confusing at least. So I know you made
8 reference to the other properties in your
9 block in terms of how they are. I mean, I
10 understand your logic about how your property
11 is much smaller than the rest of them. What
12 about some of the other information that we
13 have on our records, specifically, the
14 Restoration Society citing something like 30
15 properties that are similar in size to yours
16 that would qualify for variances if this were
17 granted, I mean, if we went by the same
18 standard.

19 MR. MATTIOLI: There are
20 significant differences between those
21 properties, all of which they reference are
22 larger than my own, one of which is actually

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1 over 2100 square feet at the end of the lot.
2 It is a multi-story, multi-unit condo. We
3 have reference to that as well.

4 So if you look at that, the square
5 that they reference at 7th and Massachusetts
6 Avenue has a 2392 square foot lot. You have
7 Exhibit 12 in your sheets. Additionally, the
8 other lots on that square, one is over 2000
9 feet, one is over 1000 feet, so you're talking
10 about an average of 1800 square feet there.
11 Comparing a multi-story condo structure to an
12 800 square foot lot is not an accurate
13 comparison in my view.

14 MEMBER MAY: Okay. And your
15 Exhibit 12, these are all of the -- this
16 comprises all of the exhibits that were in
17 what we received from CHRS.

18 MR. MATTIOLI: That's correct.
19 And if you look, the lots and squares that I
20 reference are significantly smaller than all
21 the others referenced.

22 MEMBER MAY: You mean in terms of

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1 your examples of other --

2 MR. MATTIOLI: Yes. If you look
3 at them, the average size of the squares that
4 are referenced here --

5 MEMBER MAY: I'm trying to get an
6 answer to my question. I'm not trying to -- I
7 mean, you made your case about the properties
8 that you're citing, so my question was about
9 the specific properties that they were citing,
10 is that what you were talking about?

11 MR. MATTIOLI: Yes. If you look
12 at -- we're looking at this Square 876, those
13 are the lots at the end of the point there.
14 You can see 2392 square feet, 2186 square
15 feet, 1030 square feet.

16 MEMBER MAY: Right.

17 MR. MATTIOLI: And the size of
18 these are significantly larger than my lot.
19 Again, with Square 917, which they reference,
20 1511 square, 1300 and --

21 MEMBER MAY: Okay. I'm reading
22 the exhibit and I understand. Okay.

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1 MR. MATTIOLI: So I would say the
2 comparisons are not like structures.

3 MEMBER MAY: Okay.

4 BZA CHAIR JORDAN: But there are
5 structures that are about the same size as
6 yours that line up with your property.

7 MR. MATTIOLI: That's correct.
8 And they all line up with the porch as well;
9 with the porch as constructed.

10 MEMBER MAY: I'm sorry. Say that
11 again.

12 MR. MATTIOLI: The properties that
13 are like mine, are you just referring to the
14 ones in my square?

15 BZA CHAIR JORDAN: Yes.

16 MR. MATTIOLI: Yes, if you look at
17 those, the two that are directly adjoined to
18 mine to the west, both have porches that are
19 in line with mine, so they are covering the
20 same amount of space. If you look in my
21 exhibit, I believe it's 1 or 2, you can see
22 the perspective shot there, that they're all

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1 in the exact same --

2 BZA CHAIR JORDAN: But what makes
3 your property unique?

4 MR. MATTIOLI: The uniqueness of
5 the shallowness of the lot and the size.

6 BZA CHAIR JORDAN: Aren't the
7 other neighbor's properties the same --

8 MR. MATTIOLI: Uniqueness can
9 apply to multiple properties within a square
10 and that has been referenced before.

11 BZA CHAIR JORDAN: Each property
12 needs to stand on its own.

13 MR. MATTIOLI: In BZA case number
14 18430, in granting a variance, the Board cites
15 that, "Although other properties in the area
16 have similar lengths and widths, the property
17 here is generally exceptional within a broader
18 geographic context.", and I believe that
19 applies here.

20 BZA CHAIR JORDAN: Each property
21 in each meeting in each case stands on its
22 own.

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1 MR. MATTIOLI: Certainly, but I
2 would believe that in the general context of
3 the block, my property is unique; of the
4 square rather.

5 BZA CHAIR JORDAN: And it's unique
6 why?

7 MR. MATTIOLI: It's unique because
8 of its exceptional small size and the
9 shallowness of the property.

10 MEMBER MAY: Can I ask you one
11 other question. You mentioned Exhibit 1 and
12 2, so I'm looking at Exhibit 2, which is a
13 photograph, which direction is this taken?
14 And is that your property immediately on the
15 right; in the right foreground?

16 MR. MATTIOLI: Can you show that
17 to me so I can --

18 MEMBER MAY: Sorry.

19 MR. MATTIOLI: I'm sorry. Yes,
20 that is.

21 MEMBER MAY: So this is your
22 property right here.

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1 MR. MATTIOLI: That's correct.

2 MEMBER MAY: And then beyond that,
3 there's an open deck, right?

4 MR. MATTIOLI: That's correct.

5 MEMBER MAY: Okay. And then
6 beyond that, there's another deck.

7 MR. MATTIOLI: That's correct.

8 MEMBER MAY: And then beyond that,
9 what I'm seeing is the back of houses or is
10 that --

11 MR. MATTIOLI: That's a two-story
12 covered porch, after which is a screened-in
13 one-story porch with a second covered story,
14 and that's --

15 MEMBER MAY: And I'm looking to
16 the --

17 MR. MATTIOLI: You are looking to
18 the west.

19 MEMBER MAY: Yes, I'm looking to
20 the west.

21 MR. MATTIOLI: Yes.

22 MEMBER MAY: Okay. That's what

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1 throws me off here. Okay. And there's a
2 public walkway in here, right?

3 MR. MATTIOLI: The public walkway
4 is, literally, as you see it, ends. Now,
5 initially, and in the documents that we've
6 seen, that alley is listed as open, that alley
7 has been closed off for -- I've lived in this
8 block for --

9 MEMBER MAY: Well, there's a
10 technical term closed and open. I mean, the
11 technical term is --

12 MR. MATTIOLI: It's blocked.

13 MEMBER MAY: It's blocked.

14 MR. MATTIOLI: Blocked.

15 MEMBER MAY: Okay.

16 MR. MATTIOLI: Entirely.

17 MEMBER MAY: Because open means
18 that it's open to the public.

19 MR. MATTIOLI: Okay. Well, it is
20 --

21 MEMBER MAY: Closed means that it
22 has been closed and the property has been

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1 divided between the adjacent properties.

2 MR. MATTIOLI: Let me say that
3 that access has been entirely blocked.

4 MEMBER MAY: Okay. And that's not
5 uncommon. There are often dead-end alleys.
6 It's open from the street, right?

7 MR. MATTIOLI: Well, no. This
8 was, previously, a pedestrian access to the
9 alley, but it has been blocked off for --

10 MEMBER MAY: No, from the alley,
11 but it's still accessible from the street.

12 MR. MATTIOLI: That's correct.

13 MEMBER MAY: Right. So it's a
14 dead-end, but it's still a public -- I mean,
15 that's how you get your trash cans out if you
16 live --

17 MR. MATTIOLI: Correct. Yes, to
18 Independence Avenue.

19 MEMBER MAY: Right. Okay. All
20 right. Thank you.

21 BZA CHAIR JORDAN: You're claiming
22 your practical difficulty is due to your self-

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1 created difficulty.

2 MR. MATTIOLI: Self-created
3 difficulty only applies -- it does not apply
4 to area variances.

5 BZA CHAIR JORDAN: You keep
6 pushing back. All right. Okay. I'm trying
7 to ask questions to try to help you out here,
8 but you seem to know a little bit more about
9 this than we do --

10 MR. MATTIOLI: I'm sorry.

11 BZA CHAIR JORDAN: -- and so I'm
12 going to defer to what you say and just follow
13 your lead.

14 MR. MATTIOLI: I'm sorry, Mr.
15 Jordan.

16 BZA CHAIR JORDAN: It's your case.
17 You can handle it the way you wish to handle
18 it. I'm just trying to get a better
19 understanding on where you are and what I need
20 to know so I can have information to properly
21 evaluate this case, and you seem to be telling
22 me that, no, I don't need to know those things

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1 which I'm asking, so then that's up to you.

2 MR. MATTIOLI: I'm sorry.

3 BZA CHAIR JORDAN: Are we on the
4 same page?

5 MR. MATTIOLI: Yes, sir.

6 BZA CHAIR JORDAN: Okay. I just
7 wanted to know. Board, any other questions of
8 this applicant? Then I'm going to turn to
9 Mr., is it, O'Donnell?

10 MR. O'DONNELL: Yes.

11 BZA CHAIR JORDAN: Mr. O'Donnell,
12 are there any questions you would like to ask
13 the applicant?

14 MR. O'DONNELL: There is. I'd
15 like to ask if, at the time of the
16 construction, the owner's mother also owned
17 this property?

18 BZA CHAIR JORDAN: What's the
19 relevance of that question?

20 MR. O'DONNELL: Is that the
21 owner's mother is engaged in construction and
22 was involved with constructing multiple

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1 illegal and dangerous construction on our
2 block, and she was involved with this same
3 contractor from --

4 BZA CHAIR JORDAN: Let's go to
5 another question. I'm not going to accept
6 that one. Go ahead, please, to another
7 question.

8 MR. O'DONNELL: I'd like to ask --
9 nothing comes to mind at the moment.

10 BZA CHAIR JORDAN: You don't have
11 any other questions?

12 MR. O'DONNELL: No.

13 BZA CHAIR JORDAN: Okay. Thank
14 you. Then let's turn to the Office of
15 Planning for their report.

16 MS. ELLIOTT: Thank you, Mr.
17 Chairman, Members of the Board, and for the
18 record, my name is Brandice Elliott
19 representing the Office of Planning. First of
20 all, I would like to apologize to the
21 applicant. I wasn't trying to mischaracterize
22 your application at all. There are a couple

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1 of things I would like to clarify.

2 In terms of my site visit, I
3 entered the alley from the far eastern section
4 and so the vantage point that I had was of his
5 neighbors that had mostly other open decks,
6 and so just to clarify that point. Also, in
7 terms of the measurement of the distance of
8 the --

9 BZA CHAIR JORDAN: Excuse me, are
10 you saying, so there may be others that you
11 didn't see that were closed and you know now
12 that there are closed --

13 MS. ELLIOTT: Clearly, the alley
14 is blocked. I can confirm that. I couldn't
15 make my way down there, but yes, based on the
16 photographs that the applicant has submitted
17 that I didn't have at the time that I was
18 writing the report, it does appear that there
19 are other enclosed porches. However, the ones
20 nearest to the applicant do appear to be
21 mostly open decks.

22 The other thing that I would like

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1 to correct is the distance from the curb on
2 Independence. I did use GIS maps, and
3 apparently I failed in doing that, so I
4 appreciate the correction on that. That being
5 said, the Office of Planning is recommending
6 denial of this application.

7 The first hurdle of a variance is
8 to show that there's some sort of exceptional
9 or practical difficulty and that that
10 difficulty has to be related to the lot in
11 question. And in this case, we recognize that
12 it is a small lot, just over 800 square feet,
13 and the minimum lot size in the R-4 District
14 is 1800 square feet, but we don't find that
15 unique in this instance because a majority of
16 the lots in this square, and for that matter,
17 a majority of the lots in Capitol Hill, are
18 smaller than 1800 square feet.

19 So we have a hard time qualifying
20 that as an exceptional situation. The house
21 that is on the lot is of a typical size for
22 this area. It's, I believe, just over 1200

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1 square feet. I think if the addition had been
2 made to, perhaps, bring the house up to
3 building code in some form, or to improve the
4 functionality, perhaps moving a staircase to
5 create a more open floorplan, that's something
6 that we would be more supportive of, but for
7 adding square footage for the sake of adding
8 it, we have a hard time finding the practical
9 difficulty with this case.

10 And another thing that the
11 applicant has been mentioning is the fact that
12 the 3-foot slab of concrete is unusable, and
13 so this actually, you know, creates purpose
14 for it. Having some open space on your lot
15 that, otherwise, isn't usable for you, we
16 don't consider that a practical difficulty.

17 You know, just because it's there
18 doesn't mean it needs to be put to some use.
19 The zoning regulations have, you know, built-
20 in requirements so that even some of the
21 smallest lots can still have some open space
22 and, you know, not be -- to sort of minimize

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1 any negative impact you could have on your
2 neighbors.

3 So with that, our recommendation
4 stands and I would be happy to answer any
5 questions that you have.

6 BZA CHAIR JORDAN: Board,
7 questions for Office of Planning? My first
8 one is, so you still consider that this
9 property is not unique based upon its size and
10 what you've heard here today, and that there
11 are other properties similarly situated.

12 MS. ELLIOTT: Correct.
13 Unfortunately, we can't look at this as a
14 package deal and say, my neighbor did it and
15 they have an enclosed porch and so I should be
16 able to do the same thing. The burden with a
17 variance is, you have to show the uniqueness
18 as it relates to your lot. The applicant has
19 mentioned the size of it and the shallowness
20 of it, but he's not the only one with that
21 burden in this square.

22 And for that matter, in the

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1 general vicinity of Capitol Hill. This is a
2 common issue. So we don't find that it's a
3 strong enough argument to meet that test.

4 BZA CHAIR JORDAN: And I might
5 have misread your report, but I don't think
6 so, was there, previously, a deck there,
7 something that was not enclosed before, and
8 then this was, subsequently, enclosed?

9 MS. ELLIOTT: Correct. What was
10 there before, according to the site plan that
11 was submitted, was an existing porch, which,
12 to my knowledge, was open. But the applicant
13 is welcome to elaborate on that, but based on
14 --

15 BZA CHAIR JORDAN: So was there a
16 porch that was open before?

17 MR. MATTIOLI: The porch was
18 covered. The cover of the porch was in
19 serious disrepair and we removed that shortly
20 after moving in because it was dangerous.

21 BZA CHAIR JORDAN: But there was a
22 porch there.

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1 MR. MATTIOLI: It was a covered
2 porch, correct.

3 BZA CHAIR JORDAN: Al right.
4 Okay. So the previous porch was always closed
5 and not open, is that correct?

6 MR. MATTIOLI: It was covered.

7 BZA CHAIR JORDAN: Covered, not
8 closed. Got you. I'm sorry. Go ahead. Any
9 other questions for Office of Planning, Board?
10 Then I'm going to ask, does the applicant
11 have any questions of Planning you would like
12 to ask?

13 MR. MATTIOLI: No, I'd just like
14 to say thank you, again, for all of your help.

15 I know that it may not seem that way, but I
16 really do appreciate it.

17 BZA CHAIR JORDAN: Mr. O'Donnell,
18 questions for Office of Planning?

19 MR. O'DONNELL: No thanks.

20 BZA CHAIR JORDAN: Okay. Anyone
21 here from the Department of Transportation?
22 No. We do have a letter from Transportation.

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1 I'm just down right now. I think they had no
2 objection to this. Is anyone here from ANC
3 8D? No, excuse me, not 8D, 6B. Anyone here
4 form ANC 6B? All right. Give me one second.

5 I got to catch up with myself here. Do you
6 have the ANC report? What did they -- no
7 decision?

8 Oh, yes, this is the one where the
9 ANC voted not to take a position by one run,
10 so all right. Is anyone here from that ANC
11 wishing to speak; 6B? Then anyone here who
12 wishes to speak in support of this
13 application? Anyone here wishing to speak in
14 support? Then let's turn, now, to Mr.
15 O'Donnell regarding your presentation in the
16 opposition.

17 MEMBER MAY: Mr. Chairman, can I
18 ask one more question of the applicant?

19 BZA CHAIR JORDAN: Sure.

20 MEMBER MAY: I assume that you
21 were present at the ANC meeting and
22 discussion.

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1 MR. MATTIOLI: Yes.

2 MEMBER MAY: First of all, it's
3 unusual to get a vote saying no position, but
4 then to get a heavily-split vote on no
5 position, I mean, obviously, four out of nine
6 were not -- didn't want to take a position.
7 The other two -- well, two voted in opposition
8 to that?

9 MR. MATTIOLI: That's correct.

10 MEMBER MAY: Because they opposed
11 the application?

12 MR. MATTIOLI: They opposed the
13 application, yes.

14 MEMBER MAY: And then three were
15 not present or abstained?

16 MR. MATTIOLI: There were three, I
17 believe that abstained, yes.

18 MEMBER MAY: So they abstained on
19 taking no position. I just wanted to
20 understand that because it's just a really
21 unusual thing.

22 MR. MATTIOLI: I can't speak for

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1 the ANC.

2 MEMBER MAY: No, I'm not asking
3 that. I just wanted to make sure -- I'm
4 asking you what you believe actually happened.

5 MR. MATTIOLI: Well, what I
6 believe happened at the meeting, there were
7 two who voted and one in opposition, there was
8 a significant discussion about hardship, and
9 several of the ANC members were discussing
10 whether or not the fines that were paid for
11 constructing outside of permits and the time
12 and effort taken, along with the proceedings
13 involved, should qualify as some form of
14 hardship.

15 MEMBER MAY: Okay. That's fine.
16 My question was answered. Thanks.

17 BZA CHAIR JORDAN: Okay. Fine.
18 Mr. O'Donnell.

19 MR. O'DONNELL: Thank you.
20 There's no hardship here, no exceptional
21 uniqueness, or practical difficulties. I've
22 been in this house. On the second floor there

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1 are three bedrooms, at the time I was in
2 there. One was used as a kind of
3 entertainment T.V. room, one for dressing, you
4 know, hats, it was a bedroom, and one is a
5 bedroom. It's occupied by a couple; a single
6 couple. And there's a bathroom on that floor.

7 On the first floor is an open
8 space, dining room, living room, kitchen,
9 foyer, sort of a typical space. And the
10 basement, when I was in it, shortly around the
11 time they bought it, was unfinished. More
12 recently, we have seen a tenant coming and
13 going from that basement. It appeared to me
14 that someone was living in the basement.

15 And in discussions in the hall
16 with the owner, he admitted there was a
17 bathroom in there. No permits showing, no
18 nothing. So apparently, there is enough size
19 for a tenant in the basement. There are
20 around, by my count, 12 lots around the same
21 size at that end of the block. There's no
22 uniqueness. And the owner hasn't even claimed

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1 hardship.

2 The closest they came is sort of
3 hardship, that they built this illegal
4 addition and complying with the law would be a
5 hardship. They claim that it doesn't block
6 light and air, but if you look at the aerial
7 photo, I'll go and point it out, you can see
8 the roof of this structure. To me, it appears
9 to choke off light and air at that end of the
10 alley. And this argument that it's somehow in
11 line, let's take a look at the actual roof of
12 this building. I'll point it out and come
13 back.

14 BZA CHAIR JORDAN: You need the
15 remote microphone. There's a remote
16 microphone there, I'm thinking.

17 MR. O'DONNELL: Thank you. As is
18 shown here, A is the property, and you can see
19 the roof here. I believe that is the addition
20 that was illegally added on. You can see,
21 light and air through here is virtually choked
22 off by it.

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1 (Off the Record Comments)

2 MR. O'DONNELL: It appears that it
3 chokes off this tight point here at the alley,
4 so looking down this way or that way --

5 BZA CHAIR JORDAN: I'll tell you
6 what. Take the microphone and just kind of
7 tilt forward and then talk.

8 MR. O'DONNELL: Thank you.

9 BZA CHAIR JORDAN: Yes. Just do a
10 test. Say testing.

11 MR. O'DONNELL: Testing.

12 BZA CHAIR JORDAN: Is that okay?
13 Did the meter stay out of the red?

14 MR. O'DONNELL: Sorry.

15 BZA CHAIR JORDAN: Okay. Go
16 ahead.

17 MR. O'DONNELL: But it appears to
18 choke off this point in the alley. There is
19 that walkway through here and it appears to
20 approach that walkway, and as I'll get to, the
21 measurements that have been submitted by the
22 owner don't reflect the eave, so I believe

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1 their measurements under-report the size of
2 this illegal addition.

3 Owner makes a big deal out of how
4 this is in line with other properties, but if
5 you look at it, these other things don't have
6 roofs on them, and whatever they are, we don't
7 know if they're legal anyway, so the idea that
8 this is somehow compatible and in line with
9 the others, to me, seems like quite a stretch.

10 I'll go back to my -- the owner makes quite a
11 point about being, sort of, innocent in this,
12 that the contractor obtained permits, sort of,
13 without his knowledge.

14 Anything the contractor is doing,
15 of course, he's doing as agent of the owner.
16 And what wasn't stated here is that the
17 owner's mother owned the house with him and
18 the owner's mother has a long history of
19 working with this contractor, and these
20 workman, and this continues. And she has
21 personal and routine involvement with this
22 contractor, so the idea that permits were

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1 obtained without their knowledge is quite, to
2 me, a stretch.

3 As the owner suggested, you know -
4 - also, there were multiple stop-work orders
5 on Mary Donovan, the owner, and the contractor
6 is named Sheldon Roseman. Mary Donovan was
7 stopped in 2005, or so, for doing the same
8 thing; building illegally in the backyard of
9 1363, just down the block. Visible on here.

10 So she's well-aware of the zoning
11 requirements. So like the owner said, there
12 was a building permit that was requested and
13 the face of the building permit says, "Remove
14 concrete porch, replace it, in wood of the
15 same dimension, close door, open window, and
16 other stuff." Replace it in the same
17 dimension was right on the working permit. It
18 was limited to that.

19 And if you look at the
20 application, there were a set of plans that
21 show, in detail, looked like they're
22 professionally drawn, that they're limited to

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1 the size of this landing, and I have a photo
2 of the original.

3 If you look in what I submitted,
4 Attachment , is a photo of the pre-existing
5 porch. I don't see any cover on there. I
6 don't remember a cover on there. It is a flat
7 landing, like you see on lots of houses, where
8 you just -- a place to step out to, swing the
9 door, step out, and shut the door behind you,
10 go down the steps. Very typical.

11 These plans appear to sort of
12 mimic that footprint, you know, so that DCRA
13 would assume there was no zoning approval
14 required. So this appears to be an
15 application for a permit to replace the
16 existing landing, limited to its size, very
17 clearly, and no zoning, no public process was
18 required because of it, and then they went
19 ahead and built the full thing, you know,
20 covering, virtually, all the lot.

21 They had gone in prior to that,
22 and DCRA had warned them, no, you need zoning

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1 approval if you want to build, and I have that
2 record. They received a stop-work order.
3 Front and back, it was posted. Those are gone
4 now. The stop-work order wasn't just for
5 working beyond the permit, it was for illegal
6 gas line running out to this porch, illegal
7 electrical work, if you look into the
8 document.

9 There's also questions about a
10 roof railing. They put double doors up on the
11 second floor.

12 BZA CHAIR JORDAN: Why don't you,
13 kind of, narrow your presentation to that
14 which is germane to what this Board can handle
15 and deal with, and that's the application for
16 this relief.

17 MR. O'DONNELL: Thank you. I
18 will. My point is that there's an element of
19 bad faith here in all of this, and the
20 unstated facts that the owner hasn't stated to
21 you, that didn't come out in the owner's
22 presentation, the participation of his mother

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1 and her relationship with this contractor that
2 continues, the stop-work order that has not
3 been corrected.

4 Let me get to the inaccurate
5 measurements. If you look at the plat the
6 owner submitted, it does show that porch as
7 being 6.67 feet in depth. Our ANC member came
8 out and measured it, and he concluded that
9 that did not include the overhang. In
10 addition to that 6.67, there's, apparently, an
11 eave and a gutter.

12 Well, you see here, on that plat
13 it says there's 1.16 distance between the
14 addition and the lot line. Well, there's been
15 no survey, so we don't know exactly, but if
16 you add the eave and the gutter, wow, you
17 should look at it. One of my pictures, I
18 think, or any of them with the new addition,
19 you'll see that eave, but there's one from the
20 side where you get a fix of how deep that eave
21 is and the -- you know, in addition, look, it
22 says that there's 0.75 inches, or feet, on the

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1 west side; on the left side.

2 Well, if you look at some of these
3 pictures, there's no distance between.
4 They're butted right up against each other, so
5 I don't know where that came from. And of
6 course, they live there. You'd think they'd
7 get that right. I could point out the picture
8 for you.

9 Even if we were to believe this
10 was an honest mistake, then the owner could
11 seek redress from the contractor. If the
12 contractor had deceived them so much as to
13 submit detailed plans for a permit to replace
14 the existing landing, had deceived them that
15 much, even if we were to believe that, that
16 doesn't give you a zoning variance. You
17 should seek redress against your contractor if
18 they've deceived you.

19 And all these other cases, and
20 these other pictures, it seems so factual that
21 these just don't seem relevant. If this were
22 to be approved, all of us, it's a free-for-

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1 all, should just start building, and build
2 fast, and cover the lot, and come back and
3 say, oh, it's a hardship to undo it.

4 The owner made an issue of how
5 there's wide public support from the
6 neighborhood. I've lived five, six doors
7 down, 32 years or so. I know the neighbors.
8 It's not my impression there's wide public
9 support. And certainly, my wife and myself
10 are here. We don't support it in any way.
11 And there are others as well who've got
12 questions about these letters and how they
13 were obtained.

14 And we've talked to at least a
15 couple people who are on that list who didn't
16 seem to support it all that much. There was a
17 question about the ANC, I was at that ANC
18 meeting as well and there was no sense of
19 support for this. There was some confusion
20 about, well, could you claim hardship because
21 you built the illegal addition and taking it
22 down would be difficult.

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1 And I think it was just a busy
2 meeting and it was easy for them to pass by
3 it. That's it for me.

4 BZA CHAIR JORDAN: All right.
5 Does the Board have any questions for Mr.
6 O'Donnell? Does the applicant have any
7 questions of Mr. O'Donnell?

8 MR. MATTIOLI: No, as long as I
9 have a chance for a rebuttal statement.

10 BZA CHAIR JORDAN: Certainly.
11 Okay. Are there any witnesses you want to
12 call, Mr. O'Donnell?

13 MR. O'DONNELL: No, unless you --

14 BZA CHAIR JORDAN: Okay.

15 MR. O'DONNELL: My wife, who was
16 on submitted witness cards.

17 BZA CHAIR JORDAN: Okay. Are you
18 going to make a statement or are you actually
19 going to be cross-examined by the --

20 MS. OEHLER: Well, I just -- could
21 I make a statement --

22 BZA CHAIR JORDAN: Then let's do

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1 this. Okay. So there is no other witness you
2 want to present, however, now, we're going to
3 ask for others in the audience who wish to
4 speak in opposition to this application, and
5 you got to identify yourself, please.

6 MS. OEHLER: Oh, I'm Susan Oehler.
7 The wife of Mark O'Donnell.

8 BZA CHAIR JORDAN: Yes. Okay.
9 And you have three minutes.

10 MS. OEHLER: Okay. Three minutes.
11 I'll be very fast. I would just like to say,
12 I have the DCRA notice of infraction on 1375
13 and I know Derek keeps calling it a porch, but
14 in that notice of infraction it's called an
15 enclosed rear room addition, and there are no
16 other enclosed rear room additions around
17 Derek Mattioli.

18 And I know he kept talking about
19 all the additions on our block, but the only
20 two 100 percent lot coverage additions are the
21 two owned by his mother and himself, so there
22 is really nothing else on our block like this,

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1 a historic district block, where getting a 100
2 percent lot coverage is just really not heard
3 of.

4 BZA CHAIR JORDAN: So you said
5 that the other covered porch -- there's only
6 one other covered porch on the block? Did I
7 get that right?

8 MS. OEHLER: Well, there's another
9 100 percent lot coverage rear room addition,
10 and that is owned by his mother. So I'm
11 stating, he mentioned many, I don't know what
12 all of his purported facts were about other
13 additions, but I'm telling you, there are two
14 100 percent lot coverage additions in our
15 historic block, and they're owned by him or
16 his mother.

17 MEMBER MAY: So the distinction
18 you're making is that he referred to other
19 additions, generally, including porches and
20 enclosed porches --

21 MS. OEHLER: Right.

22 MEMBER MAY: -- and you're making

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1 the distinction that this is an addition of --

2 MS. OEHLER: Well, it is called,
3 in the DCRA notice of infraction by the
4 inspector, an enclosed rear room addition. It
5 is not called a porch.

6 MR. O'DONNELL: Has windows.

7 MS. OEHLER: Has windows and it is
8 also cited for unrated firewalls, which, you
9 know, is really a hazard to everyone on our
10 block.

11 BZA CHAIR JORDAN: Okay.

12 MEMBER MAY: I just want to make
13 clear what distinction you're making.

14 MS. OEHLER: And that's in the
15 file. Yes.

16 BZA CHAIR JORDAN: Okay. Does the
17 Board have any questions of the witness? Does
18 the applicant have questions?

19 MR. MATTIOLI: Not at this time.

20 BZA CHAIR JORDAN: Okay. Then
21 thank you for your comments.

22 MS. OEHLER: Thank you.

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1 BZA CHAIR JORDAN: Any other
2 person wishing to testify in opposition to
3 this application? Okay. Then we will turn
4 now back to the applicant to give us five
5 minute of rebuttal. I'm sorry. Yes, we got a
6 question.

7 VICE CHAIR ALLEN: I'm sorry. I
8 was just catching up with the inspection
9 report. It says that, in this report, the
10 fact that you have electricity and gas piped
11 into this porch; what you're calling a porch?

12 MR. MATTIOLI: That's correct.
13 That's from the initial citing, which I've
14 already addressed with DCRA. The gas line has
15 been removed, the electric permit was applied
16 for, and is pending approval based on the
17 building permit being issued.

18 VICE CHAIR ALLEN: Okay. Thank
19 you.

20 MEMBER MAY: Can I follow on that?
21 So is the space conditioned at all?

22 MR. MATTIOLI: Conditioned in what

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1 terms?

2 MEMBER MAY: Heated and cooled.

3 MR. MATTIOLI: No. Well, there's
4 a fan. Yes, an overhead fan.

5 MEMBER MAY: There's a fan, but
6 there's no heat in that space.

7 MR. MATTIOLI: That's correct. No
8 heat. The gas line has been removed. There's
9 no running water. It's solely an electric
10 permit that we've applied for; the building
11 permit.

12 MEMBER MAY: Right. And the
13 finish on the inside of the walls is?

14 MR. MATTIOLI: Wood.

15 MEMBER MAY: Wood paneling or wood
16 studs?

17 MR. MATTIOLI: I wouldn't know
18 what the construction term is. It's wood
19 paneling and there's wood support beams.

20 MEMBER MAY: Right. Okay. So it
21 really is -- I mean, it's an enclosed --
22 because from the outside, it looks like an

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1 addition with conditioned space inside.

2 MR. MATTIOLI: Yes, that is not
3 the case.

4 MEMBER MAY: Right. But it has
5 windows on it?

6 MR. MATTIOLI: It has screens that
7 we purchased from a screen/window -- or
8 screen/door store. Essentially, they're
9 sliding plastic screens that are --

10 MEMBER MAY: It's only screened.
11 You can't drop the glass and --

12 MR. MATTIOLI: No, they're movable
13 screens, but they're plastic screens. They're
14 not windows. They provide no --

15 MEMBER MAY: But is there glass?

16 MR. MATTIOLI: No, they're not.

17 MEMBER MAY: Okay. That's what
18 I'm asking.

19 MR. MATTIOLI: Okay.

20 BZA CHAIR JORDAN: But the notice
21 of infraction from DCRA does call it an
22 addition.

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1 MR. MATTIOLI: That's correct,
2 because the gas line was in place at that
3 time, and that, I think, they said it made it
4 an addition, and when we removed that, that
5 condition no longer exists.

6 BZA CHAIR JORDAN: And it says,
7 "Observed electrical installation", is it
8 electrical was running to this --

9 MR. MATTIOLI: That's correct. We
10 paid the fine for that and we have permitted
11 for --

12 BZA CHAIR JORDAN: And you did
13 have gas lines running to it.

14 MR. MATTIOLI: Initially, there
15 was a gas line --

16 BZA CHAIR JORDAN: And you did
17 remove it.

18 MR. MATTIOLI: That's correct.

19 BZA CHAIR JORDAN: But initially,
20 you had all these things --

21 MR. MATTIOLI: That's correct.

22 BZA CHAIR JORDAN: -- and it was a

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1 conditioned room.

2 MR. MATTIOLI: That's correct.

3 BZA CHAIR JORDAN: But you've
4 removed it as you sit here today.

5 MR. MATTIOLI: That's correct. It
6 is no longer there. DCRA cited us for it and
7 we immediately cooperated by removing --

8 BZA CHAIR JORDAN: I thought Mr.
9 May asked you, had it been conditioned and
10 were these things there, and you said no, but
11 you subsequently removed them, right?

12 MR. MATTIOLI: No, I believe he
13 asked about the current condition of the
14 property.

15 BZA CHAIR JORDAN: Oh, current.
16 Did you say current?

17 MEMBER MAY: I did. Well, I
18 asked, is it conditioned. I didn't ask was it
19 ever. Was it ever conditioned?

20 MR. MATTIOLI: Yes, it was. It
21 had a gas line that ran to a gas fireplace.

22 BZA CHAIR JORDAN: Okay.

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1 MR. MATTIOLI: That's the --

2 MEMBER MAY: So I mean, the
3 intention then was to use the space year
4 round.

5 MR. MATTIOLI: Yes.

6 MEMBER MAY: And presumably, if
7 you got this relief, you would move to
8 condition it again?

9 MR. MATTIOLI: I don't think that
10 there is any -- I don't plan on doing any
11 further construction on my property at this
12 point, given what we've gone through during
13 the course of the past four years.

14 MEMBER MAY: Thanks.

15 BZA CHAIR JORDAN: So this started
16 off, actually, as another room, an
17 additionally room, and now you've pulled back
18 by removing these things and asking for it as
19 a porch.

20 MR. MATTIOLI: It started off in
21 the manner in which the permits are for, but
22 the contractor asked -- said, you already have

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1 a rear access to your backyard, wouldn't you
2 like a back porch, and I said, yes. I didn't
3 realize that at that point, he wouldn't
4 follow-up on any of these things.

5 Additionally, these were all --
6 the fireplace was, literally, something that
7 someone was giving away, and I took, and I
8 asked if there was something that could be
9 added. It was not in the initial plan in any
10 way. It was just something I thought would be
11 nice to have. I had no idea that it would
12 cause such an issue. And as I said, as soon
13 as that was pointed out that that was an
14 issue, it was promptly removed.

15 BZA CHAIR JORDAN: Go ahead with
16 your rebuttal.

17 MR. MATTIOLI: Oh, all right.
18 Well, in terms of my rebuttal. To Mr.
19 O'Donnell, who makes the light and air claims,
20 he's the only person on the block making that
21 claim. His property is more than a 100 feet
22 from mine. He cannot see my porch at all from

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1 his property. He is separated by two one-
2 story fenced in porches, a privacy fence, one
3 two-story covered porch, and one screened-in
4 porch directly adjacent to his property with
5 100 percent lot coverage.

6 There's no way the light can bend
7 around my property, up over a privacy fence,
8 through the alley, and to his house. It's
9 illogical. The fact that he makes a claim in
10 a statement that his property is devalued by
11 the construction. He makes that without any
12 supporting evidence. And in fact, his
13 property value, as assessed by the D.C.
14 Government, has risen since the porch's
15 construction.

16 Mr. O'Donnell also makes a big
17 deal of my after-the-fact attempt at getting
18 this building permit. Mr. O'Donnell initially
19 sought and received a variance for a rear deck
20 on his property based on the same factors he
21 now argues against. At an ANC meeting, he
22 argued that it would be unfair if he were not

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1 allowed a variance, given that neighboring
2 properties had close to 100 percent occupancy,
3 and this was prior to the porch that was
4 constructed next to his property.

5 He argued that his more than 2100-
6 square-foot lot was unique due to its shape
7 and being near the end of block that came to a
8 point. He also claimed in his application for
9 party status that after-the-fact permitting
10 would make a mockery of the strict zoning
11 rules and permitting process that every other
12 Capitol Hill Historic resident is supposed to
13 follow.

14 When, in fact, without any permits
15 whatsoever, Mr. O'Donnell covered and
16 screened-in his deck, and added electricity.
17 He was cited by DCRA and paid a fine, and
18 sought after-the-fact relief, which was
19 granted by DCRA in the form of a building
20 permit.

21 Robert Fuller was the architect
22 who made the measurements for the plat as well

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1 as the drawings of the overhead porch. He is
2 a livelong architect. I don't doubt his work
3 in any way, shape, or form, and I don't
4 believe the Board has any cause to.

5 In addition, the statement that no
6 other houses in the lot have close to or near
7 100 percent coverage, is factually
8 inaccurate, that Ms. Oehler makes, or Mrs.
9 Oehler. My apologies. As you see, Lot 101 at
10 1373 -- I'm sorry, these are all referenced in
11 Exhibit 11, has a lot size of 120 square feet,
12 with the entire lot covered.

13 Lot 100, with a square feet of 820
14 feet, is 100 percent coverage. Lot 73, with
15 almost 1800 square feet is 100 percent
16 coverage. Lot 35, which is 1349, which is
17 1429 feet, has 23 square feet not coverage,
18 for a coverage of 98 percent. Lot 37, 1353,
19 has 1265 square feet, 66 square feet of which
20 are not covered, which is a 95 percent
21 occupancy. Lot 1377 has 746 square feet, 57
22 square feet of which are not covered.

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1 You can see in the exhibit, the
2 fact is, all of these properties lie at the
3 end of the point of the block. And so the
4 statement that nothing around my property has
5 at or near 100 percent lot occupancy is
6 inaccurate. Furthermore, the picture that Mr.
7 O'Donnell took stating that there was no
8 coverage on my porch was taken after that
9 cover, and I already stated, had been removed
10 because it was dangerous and it was falling
11 off.

12 The stop-work order he references
13 is not still in place today. When I went to
14 meet with DCRA, they removed the stop-work
15 order in order for me to bring the property
16 into line with zoning regulations, and that's
17 why I'm here today, in hopes that I can do
18 that.

19 BZA CHAIR JORDAN: Okay. Does
20 that conclude your rebuttal?

21 MR. MATTIOLI: Yes.

22 BZA CHAIR JORDAN: Then we'll

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1 conclude the record in this matter and close
2 this hearing. I don't know if the Board's
3 really ready to deliberate in this case. Are
4 we? I'm seeing, yes, I guess we are. Yes,
5 then there's no other evidence, and so we will
6 deliberate. Does anybody have anything they
7 want to say about this property?

8 Generally, I don't find this
9 property to be unique. The lot measurements
10 of 20 by approximately 41 feet, and that
11 particular square has other properties that
12 are similarly situated. The property may be
13 small, but I don't find it unique, based upon
14 the evidence, and I certainly give great
15 weight and deference to the Office of
16 Planning's report on this.

17 And I'm not convinced of the other
18 decks that, allegedly, are enclosed, which
19 really, each property has to stand on its own
20 merit. I also find and give some issue of
21 credibility, because I'm believing as I'm
22 looking at the building permit submitted, the

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1 building permit violation, that this was
2 actually supposed to be a live-in addition,
3 and now it's been removed, and we're at a
4 position of having it a porch.

5 I'm having difficulty supporting
6 this particular application. And regarding
7 the practical difficulty, I think it's a self-
8 imposed practical difficulty, and this Board
9 can consider self-imposed difficulty. It
10 cannot be a complete bar, or in and of itself,
11 why you don't grant relief, but I don't
12 believe that it, by itself, to me, meets the
13 conditions for practical difficulty. And
14 that's just my thought on the matter. Anyone
15 else? Mr. May.

16 MEMBER MAY: Sure. I think,
17 generally speaking, across the board, I would
18 agree with the Chairman on all points made. I
19 would say that, I mean, it is a very small
20 property and there might be an argument to be
21 made. Often, we see arguments for special
22 exception, or variance relief, on properties

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1 that are very small, and those lead to a
2 functional deficiency that needs to be
3 corrected, or is best corrected through an
4 addition, but that's one of the points that
5 the Office of Planning addressed, that this is
6 really not about addressing a particular
7 deficiency.

8 The applicant cites that it really
9 is necessary in order to be able to make use
10 of that space. On the one hand, there's no
11 affirmative obligation that we have to make
12 sure that every square inch of a person's
13 property is used, but on the other hand, I
14 don't necessarily agree with that.

15 I think that, you know, much like
16 the neighbor immediately to the west, there
17 are ways to make use of the backyard that
18 would not involve so substantial an addition
19 that would have, I think, unacceptable
20 impacts, and I do believe that this was an
21 unacceptable impact.

22 It's a very tight corner there and

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1 I can just imagine what would happen if, you
2 know, the neighbor immediately across the
3 alley built 100 percent on that lot line.
4 You'd wind up with 3 feet between. I don't
5 buy it. I think there are ways to make use of
6 that space.

7 It would require some construction
8 work in order to convert the 36 inches of
9 concrete and to be able to fully capture the
10 space that's available, but I think it's a
11 perfectly reasonable thing to do and much
12 could be done without requiring zoning relief,
13 but what's been done requires zoning relief,
14 and I just don't see that the case has ben
15 made for it.

16 BZA CHAIR JORDAN: Anyone else?
17 Then I would move that we deny the application
18 of 18556.

19 VICE CHAIR ALLEN: Second.

20 BZA CHAIR JORDAN: Motion made and
21 seconded. All those in favor of the motion,
22 signify by saying aye.

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1 (Chorus of Ayes)

2 BZA CHAIR JORDAN: Those opposed,
3 nay. The motion carries. Mr. Moy?

4 MR. MOY: Staff would record the
5 vote as 4 to 0. This is on the motion of
6 Chairman Jordan to deny the application.
7 Second to the motion, I believe, is Vice
8 Chairperson -- okay, Vice Chairperson Allen on
9 the courtesy of Mr. May. Also support, Mr.
10 May and Mr. Hinkle. Board seat vacant. The
11 motion carries on the vote of 4 to 0, Mr.
12 Chairman.

13 BZA CHAIR JORDAN: Very good.
14 Thank you. Then let's have a full order here,
15 please.

16 MR. MOY: Yes, sir.

17 BZA CHAIR JORDAN: Thank you all
18 for participating and coming today. Is there
19 any other business coming before the Board at
20 this point?

21 MR. MOY: No, I think you've gone
22 through the docket, Mr. Chairman.

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1 BZA CHAIR JORDAN: Do you want us
2 to do it again?

3 MR. MOY: No, that was the point
4 I'd make.

5 BZA CHAIR JORDAN: All right.
6 Then we stand adjourned.

7 (Whereupon, the hearing in the
8 above-entitled matter was concluded at 12:23
9 p.m.)
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