

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 17, 2013

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 10:04 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN RICE, Zoning Specialist
STEPHEN VARGA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
KAREN THOMAS
ARTHUR JACKSON
BRANDICE ELLIOTT
PAUL GOLDSTEIN

The transcript constitutes the
minutes from the Public Hearing held on
September 17, 2013.

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

2 (10:04 a.m.)

3 CHAIRMAN JORDAN: All right. So,
4 let's go to our hearing cases, please.

5 MR. MOY: Okay. That case would
6 be 18496. This is the request for
7 modification of Condition Number Three to BZA
8 Order 18496. This is the Application of Mid-
9 Cities, LLC. And this request is to change
10 revision three in the previous order or the
11 stated order from the hours of operation from
12 8:00 a.m. to 9:00 p.m. to the hours of
13 operation from 6:00 a.m. to 11:00 p.m.

14 CHAIRMAN JORDAN: Thank you.
15 Please introduce yourself.

16 MR. BROWN: Good morning, Mr.
17 Chairman and members of the Board. Patrick
18 Brown from Greenstein DeLorme & Luchs.

19 CHAIRMAN JORDAN: Thank you. Any
20 questions? Mr. Brown, let's handle this by us
21 probably providing some questions first before
22 you, we'll see whether it's necessary you do a

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1 presentation on it. Mr. Hinkle.

2 MEMBER HINKLE: Yes. Thank you,
3 Mr. Chair. I just have one question and one
4 of my concerns and reason why. It's a
5 technical issue supported that's going to a
6 hearing, I wanted to just know if there was
7 any discussion with the neighbors behind the
8 property, the residential neighbors. And if
9 you had support or opposition from them in
10 terms of discussions with them.

11 MR. BROWN: In the context of the
12 modification, no, we haven't had any direct
13 contact. I will say that, and this accessory
14 parking lot which is linked directly to the
15 building on Connecticut Avenue has been in
16 existence since the '30s and subject to BZA
17 approval since 1963 on a regular basis. And
18 has always met with support from the ANC.

19 And in fact, in this case, ANC was
20 unanimous in their support and in fact moved
21 very quickly to hear the matter, to support
22 the underlying lease, which is the moving

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1 factor here. So, I think there's been,
2 historically, strong neighborhood support.
3 The accessory parking and certainly no
4 objection in this context to extending the
5 hours of operation.

6 MEMBER HINKLE: Okay. Thank you.

7 CHAIRMAN JORDAN: Any other
8 questions that need to be addressed? Mr.
9 Brown, I think we're pretty much on this. You
10 can make a presentation if you think it's
11 necessary.

12 MR. BROWN: No. The only thing I
13 would say, and Mr. Jackson was very helpful in
14 his report, he provided a redlined version of
15 the conditions making the change that we
16 requested for the hours of operation. And
17 also clarifying that the accessory parking lot
18 is again directly related to the commercial
19 property on Connecticut Avenue. And I would
20 just ask the Board to use his revised
21 conditions as the basis for the approval.

22 CHAIRMAN JORDAN: Revised

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1 conditions? You mean what we have already
2 passed that we are just modifying the one?

3 MR. BROWN: In page two, Exhibit 1
4 to Mr. Jackson's OP report, he lists the
5 applicable conditions, and he redlines them to
6 show in item three the change in hours of
7 operation, but also in one and two, to just
8 clarify for the on going record, that the
9 accessory parking lot is directly related to
10 the property, the commercial property across
11 the alley that is on Connecticut Avenue.

12 CHAIRMAN JORDAN: So, what are you
13 asking the Board to give?

14 MR. BROWN: I would ask the
15 Board's approval and incorporate the
16 conditions as revised by Mr. Jackson in his
17 report.

18 CHAIRMAN JORDAN: You are asking
19 us to do more than that what you ask for the
20 modification. I understand what you're
21 saying.

22 MR. BROWN: For me, the revision

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1 to item three is the critical, allowing the
2 hours to be extended to 6:00 a.m. to 11:00
3 p.m. I am also willing to accommodate Mr.
4 Jackson's clarification because I think it's
5 helpful, but I'm not going to fight the Board
6 on that. If they choose not to make that,
7 that's fine. But the condition three is the
8 bottom line for me and my client.

9 CHAIRMAN JORDAN: We're adding
10 wording to condition we've already passed. Is
11 that correct?

12 MR. BROWN: Yes.

13 CHAIRMAN JORDAN: You're asking us
14 to add additional wording to conditions we've
15 already passed, and you're request has asked
16 us to modify something else that we have not
17 necessarily drilled down and looked at. I
18 understand what you're saying, but you're
19 sitting here asking us to do something else
20 that you haven't asked for prior to sitting
21 here.

22 That's the problem I'm having with

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1 it. We already passed conditions. You asked
2 us to modify those conditions, and it seems
3 like the board is willing to modify those
4 conditions. And now we sit and you're asking
5 us to modify them again because these are
6 additional imprint to the conditions. Would
7 that be correct, Mr. Jackson? These are, you
8 added to what we've already passed. Would
9 that be correct?

10 MR. JACKSON: Well, first, I
11 should identify myself. Arthur Jackson, the
12 Office of Planning. When this came up, the
13 Office of Planning is very supportive of the
14 change in hours since the applicant has made
15 the effort to contact the ANC and discuss that
16 issue. We also suggested that for simple
17 clarification we add additional wording to
18 actually specify where the property is located
19 and where the parking lot is located and what
20 it's accessory to.

21 However, that's if the Board is
22 uncomfortable making that change, that's not

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1 an issue for the Office of Planning, it's just
2 a suggestion. But again, I'd like to
3 reiterate to that the proposal to extend the
4 hours from 8:00 a.m. to 9:00 p.m. to 6:00 a.m.
5 to 11:00 p.m. does not raise any concerns with
6 the Office of Planning, and we are supportive
7 of that change.

8 CHAIRMAN JORDAN: If the Board
9 feels that they wish to do so, I'm a little
10 uncomfortable with it.

11 MR. BROWN: Mr. Chairman, for
12 simplicity because I don't want to make this
13 anymore difficult than it needs to be, why
14 don't we proceed on the basis of what we
15 requested, which is extending the hours of
16 operation to 6:00 a.m. to 11:00 p.m. on a
17 daily basis as it's shown on item three in the
18 OP report and declare victory and let you move
19 on.

20 CHAIRMAN JORDAN: My issue here is
21 not to be unreasonable. I don't want us to be
22 sloppy. I don't want us to start changing

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1 standards in our processes of what we do and
2 what other people are required to do and make
3 these type of exceptions. I want to be clear
4 about it. I think it's very minor changes
5 that he's asking for, but I think we have a
6 process and procedure to do so.

7 And we don't want to sit here and
8 start having it. Someone could have an issue
9 with some of the wording I don't know and
10 they're not here today. That's just what my
11 concern is. And I'm not trying to be
12 unreasonable. Just that it's process of
13 procedure.

14 All right with that then, see what
15 I said before about people sometimes, that
16 stuff just kind of rolls with you? No, but,
17 honestly, that is my concern. Were there any
18 further questions for Mr. Brown? Mr. Jackson,
19 anything additional you'd like to say?

20 MR. BROWN: Thank the Board for
21 reviewing the proposal that's presented.

22 CHAIRMAN JORDAN: Thank you. Is

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1 there anyone here, well, we didn't get a
2 report from the Department of Transportation
3 on this. Earlier in the underlying case we
4 did, but not, I mean, we have a record from
5 them in support of this. No opposition. No
6 objection. Is there anyone here from ANC.

7 MR. BROWN: 3F.

8 CHAIRMAN JORDAN: 3F.

9 MR. BROWN: I don't believe so.

10 CHAIRMAN JORDAN: We do have a
11 letter of support from ANC-3F that voted
12 unanimously to support this modification. Is
13 anyone here wishing to speak in support of the
14 application? Anyone wishing to speak in
15 opposition? We normally would turn back to
16 you, the applicant, for rebuttal or closing.

17 MR. BROWN: I'm happy to stand
18 with our record.

19 CHAIRMAN JORDAN: Very good. Then
20 let's close the record on this file, on this
21 case. Is the Board ready to deliberate? Then
22 I would move that grant to request for relief.

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1 VICE CHAIRPERSON ALLEN: Second.

2 CHAIRMAN JORDAN: Motion made and
3 seconded. Any unreadiness? All those in
4 favor signify by saying aye.

5 BOARD MEMBER: Aye.

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

8 MR. MOY: Yes, sir. Thank you,
9 Mr. Chairman. Staff will record the vote as
10 four to zero. This is on motion of Chairman
11 Jordan to approve the request to change the
12 hours of operations under condition number
13 three. Second motion, Vice Chairperson Allen.
14 Also in support Mr. Turnbull and Mr. Hinkle.
15 And a Board seat vacant. Motion carries four
16 to zero.

17 CHAIRMAN JORDAN: Thank you.
18 Summary order please.

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

20 MR. BROWN: Thank you very much.

21 MR. MOY: I believe the next
22 application, Mr. Chairman, is application

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1 number 18605. This would be the application
2 of The American Enterprise Institute pursuant
3 to 11 DCMR 3104.1 and 3103.2. They are
4 requesting a special exception from the roof
5 structure provision under sections 411.2,
6 411.5 and 537.1, a variance from the FAR under
7 subsection 531.1.

8 And the variance from the height
9 requirements under subsection 530.1 to allow
10 for a renovation of an addition to an existing
11 historic landmark office building in the
12 DC/SP-2 District. Property at 1785
13 Massachusetts Avenue, N.W. Property Square
14 157, Lot 112.

15 CHAIRMAN JORDAN: Would you please
16 introduce yourselves?

17 MS. PRINCE: Allison Prince from
18 Goulston & Storrs here on behalf of The
19 American Enterprise Institute.

20 MR. GERSON: My name is David
21 Gerson. I'm the Executive Vice President of
22 The American Enterprise Institute.

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1 MS. LANZILLOTTA: Mary Katherine
2 Lanzillotta with Hartman-Cox Architects.

3 CHAIRMAN JORDAN: Okay. I think
4 preliminarily, this needs to say for the
5 record that the public hearing notice in this
6 might have the incorrect address. It had 1758
7 rather than 1785. I think it's just a minor
8 and harmless error on this matter. I just
9 wanted to have that for the record.

10 I think this is one that we can
11 just probably hit some questions that the
12 Board may have instead of going through a full
13 presentation, but I think we're probably
14 there. We probably have some concerns. It's
15 generally kind of straight forward, but there
16 is just a couple little things that we need to
17 tighten up. Has the Board any questions
18 they'd like to ask the applicant before we do
19 a presentation? Anybody have a question about
20 this one?

21 MEMBER TURNBULL: I just have, I'm
22 not opposed to the project and what's going

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1 on, but I do have some questions. And maybe
2 it's a combination of the applicant and the
3 Office of Planning. The rational of the
4 height the penthouse and why it's being set up
5 the way it is.

6 To me, I didn't understand the
7 relationship of the, you're basically changing
8 the height of the penthouse, but it's still
9 within the regulations of the height. And so
10 my question is, when I start seeing things
11 about, it sounds like we're making another
12 floor and adding a little penthouse. I'm not
13 sure the rational way to explain by the Office
14 of Planning report and what I'm hearing by the
15 applicant.

16 I'd like to simplify this. To me
17 I'm just concerned that it's, if you're simply
18 changing the height of the penthouse, why
19 aren't we just offering it from that
20 standpoint? I'm just curious on the rational
21 on that.

22 MS. PRINCE: We're fully prepared

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1 to address that in the testimony. I think it
2 might be helpful simply to go through and
3 allow the architect to present.

4 CHAIRMAN JORDAN: Okay. Please.

5 MS. PRINCE: I'll begin then.

6 CHAIRMAN JORDAN: Really you can
7 go to the point that Mr. Turnbull has asked
8 about. And is there some other questions?
9 Does the Board have any other questions other
10 than that? Mr. Hinkle.

11 MEMBER HINKLE: Yes. Thank you.
12 I had some questions related to the building
13 next door to the east. And first, in terms of
14 the addition on the alley. So, that would be
15 first floor. Are there windows effected in
16 that building. And then number two, what's
17 the height relationship now between this
18 building and the building next door.

19 And have you heard any concerns
20 from them because we don't have anything in
21 the record in terms of discussions and whether
22 this addition that's being proposed on the

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1 roof would negatively affect their light in
2 there.

3 CHAIRMAN JORDAN: So, if you would
4 hit those three points for us and
5 additionally, did you do a presentation with
6 ANC?

7 MS. PRINCE: Absolutely. We have
8 unanimous support from the ANC. The ANC
9 believes that they submitted their report on
10 Friday. We were unable to find a copy of it
11 in the record, but we did appear before the
12 ANC on this project.

13 MALE PARTICIPANT: We got it this
14 morning.

15 MS. PRINCE: Excellent.

16 CHAIRMAN JORDAN: So, if you would
17 hit those points for us, those three points.

18 MS. PRINCE: I'm going to jump
19 right to David Gerson who will discuss the
20 discussions with the Carnegie Institute, the
21 property owner to the east. And then we will
22 go from David, who is the president of AEI, by

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1 the way, to Mary K. Lanzillotta who can
2 address the penthouse in as much detail as you
3 need. Thanks.

4 MR. GERSON: Our outreach to the
5 community has included the ANC, three ANC
6 meetings, three meetings with the ANC Zoning
7 and Preservation Committee, two meetings with
8 the Dupont Circle Conservancy, two meetings
9 with the DC Preservation League, two meetings
10 with the Office of Planning, and specifically
11 to answer your question, three meetings with
12 our only adjacent neighbor the Carnegie
13 Endowment.

14 We're grateful for the expressions
15 of support and no opposition that we've
16 received. I believe the Carnegie Endowment
17 has filed a letter in support of the project.

18 MS. LANZILLOTTA: Thank you, Mr.
19 Chairman and members of the Board. Moving
20 right into the presentation to address the
21 concerns addressed. Just a few images of the
22 adjacent neighborhood. This is along P Street

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1 looking west towards Dupont Circle. This is
2 from south of Massachusetts Avenue looking up
3 18th Street.

4 And this is from down
5 Massachusetts Avenue looking west on 18th.
6 And you see the Carnegie building there on the
7 right of 1785. Just for the record, the
8 National Trust, who was the previous owner of
9 this building, will hold in perpetuity a
10 preservation easement on approximately 60
11 percent of the interior of the building.

12 As you may know and read in the
13 record, this building was designed by Jules de
14 Sibour. Built between 1915 and 1916. It
15 served as luxury apartments for Andrew Mellon
16 and others of that generation. 1941 it was
17 converted to office use and it continues that
18 way today, and our owner will be a single
19 tenant in the building. They will occupy the
20 entire building.

21 The area highlighted in this plan
22 is the extent of the interior preservation

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1 easement. This building is in the DC
2 inventory of historic sites. It is also on
3 the national register of historic places and
4 was elevated to the national landmark status
5 in 1976 in part because of the interior
6 designation of the 5th floor.

7 CHAIRMAN JORDAN: Could you do me
8 a favor? Could you talk about the penthouse?

9 MS. LANZILLOTTA: Sure. Can I
10 talk about the first floor additions?

11 CHAIRMAN JORDAN: Let's talk about
12 the penthouse.

13 MS. LANZILLOTTA: Penthouse first.

14 Okay. To talk about the penthouse, I really
15 need to talk about the floor below. This
16 building, because we are maintaining so much
17 of the interior, we need to land the penthouse
18 on existing structure that is below. And the
19 existing structure, you can follow with my
20 cursor is this row of columns here along this
21 line, back to the east and then following the
22 building line along the east side.

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1 So, our penthouse, which is going
2 to primarily support mechanical equipment
3 along the north side and east side, needs to
4 align with the columns below in order to not
5 do interior alterations to the fifth floor
6 which is where the interior designation
7 occurs. This location, as you can see, is
8 primarily stairs, elevators and mechanical
9 equipment.

10 And the amount of interior space
11 that I think Mr. Turnbull is referring to is
12 really this lobby space that will then open on
13 to the roof terrace. It's really a way to get
14 from the interior of the building to the roof
15 terrace and it happens to be enclosed with in
16 the overall penthouse for structural reasons.

17 The penthouse is proposed to be at two
18 levels.

19 The area to the north, west and
20 south is proposed to be a 13 foot height about
21 the adjacent room level and that was primarily
22 in consultation with the historic preservation

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1 office to minimize the impact of the penthouse
2 on the sight lines from Dupont Circle. Where
3 the elevators occur, we propose to have a
4 penthouse that is at 18 foot 6.

5 We need relief for a two level
6 penthouse, but the two levels really is to
7 help minimize the viewshed from Dupont Circle
8 as you'll see in a minute. Then penthouse is
9 set back from the north, the west and the
10 south by more than a two to one. We're almost
11 20 feet from the edge of the room. Over
12 twenty, I'm sorry, from the edge of the roof
13 the face of the penthouse to the 13 foot
14 height.

15 And then it does step up above the
16 elevators to the 18 foot 6 height. And you
17 can see where we are significantly setting
18 back even the glass railing that will protect
19 the roof terrace is set back more than one to
20 one. It's seven feet back from the edge, and
21 that was really in consultation with the
22 neighbors that encouraged us to do that.

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1 Viewsheds looking from the south along 18th
2 Street, you really will not see the penthouse
3 from the street level or looking south along
4 18th Street.

5 The penthouse is set back in such
6 a way that it is visible from the immediate
7 neighborhood. When you get further away from
8 the building though, however, it does start to
9 appear from down 18th street, you can start to
10 see the edge of the penthouse peaking up over
11 the roof of the Carnegie. And if we go to
12 Dupont Circle, this is about the south side of
13 the circle, but the clock. You can see the
14 penthouse starting to appear over the roof
15 level.

16 And that, the reason for the two
17 height really was, again, directed by the
18 historic preservation office encouraged us to
19 try to minimize the height and the impact.
20 So, that's the penthouse question.

21 CHAIRMAN JORDAN: Before we leave
22 it, Mr. Turnbull.

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1 MEMBER TURNBULL: It doesn't make
2 sense. I'm trying to simplify the zoning
3 regulations and understand what, you have a
4 penthouse and you have a bump up. Okay. You
5 have a 13 foot main penthouse and then you
6 have a nub that goes up and takes it to 18
7 foot 6. You're still within the permitted
8 height for a penthouse.

9 MS. LANZILLOTTA: Yes.

10 MEMBER TURNBULL: What I don't
11 understand, I look at the OP's report, and I
12 look at what you've got. It says the height
13 of the building, regulation allows for 90
14 feet. OP says 85.25. Your drawing, your
15 section, one point shows 85 foot 8.
16 Somebody's off a fraction of whatever.

17 MS. LANZILLOTTA: It's two inches.

18 MEMBER TURNBULL: Two inches.
19 Right. I mean, it's a minor thing. So,
20 you're at 85 foot 8, and you're asking for a
21 relief to make, you want the height of the
22 building to be at 98 foot 8. Why? What I'm

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1 saying is the building should stay at the same
2 height, 85 foot 8. And you've simply enlarged
3 the penthouse.

4 I'm not sure what, what I'm
5 worried about is making a penthouse now part
6 of a building height. I'm worried about
7 including a penthouse into the building
8 height. This would be precedent setting. I'd
9 say keep the building at the height that it's
10 at and you're not asking for relief. You're
11 still within, yes, you're asking for a bump
12 up, an unequal penthouse.

13 That's the relief you really want,
14 is an un equal penthouse. Not to make the
15 penthouse part of the building. I don't think
16 we want to go down that road. I mean I can
17 look at the Office of Planning, but, why would
18 we want to go down and give you the extra
19 height and have this now included as building
20 height when it's a penthouse? That's my major
21 question of the zoning regs.

22 MS. PRINCE: Commissioner

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1 Turnbull, I'm happy to address that question.

2 And this is quite a technical variance. As
3 the architect explained, the penthouse walls
4 are where they're going to be. They are where
5 they need to be based on the structure below.

6 The whole issue of height and FAR
7 with respect to the penthouse, turns on the
8 ability to use 1100 feet of the penthouse in
9 connection with the roof top use. It's a very
10 technical variance in that the use of that
11 space does bring that space in to FAR. So, it
12 adds ever so slightly to our overall FAR for
13 the building. And we did discuss this height
14 issue with the Office of Planning, and Ms.
15 Elliott is here today and can discuss it
16 further.

17 Technically, once we have even a
18 small amount of usable space within the
19 penthouse, we need that height relief. So,
20 the building will look the same and will be
21 the same massing entirely whether or not a
22 small portion of the penthouse is useable.

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1 But the use of a portion of the penthouse,
2 very technically converts that into part of
3 the building.

4 I don't believe this is precedence
5 setting. We, in fact, have in the residential
6 zone, as you know, the ability to use
7 penthouses as accessory to office use, to
8 residential use. And this building, in fact,
9 was built as an apartment house. So, it is a
10 highly, it's an extraordinary set of
11 circumstances that we have here.

12 We had a landmark building that
13 was built as an apartment house that in fact
14 had Andrew Mellon's apartment which is an
15 interior landmark within the building. We
16 have a preservation covenant governing the
17 entire interior of the building. It is a
18 truly unique property.

19 And we have a penthouse that's
20 going to be located where it needs to be
21 located because of the structure below. So, I
22 really, I think it's an extraordinary case

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1 here in terms of how truly unique it is. And
2 that's why I don't believe there is a
3 precedential impact of the ability to use this
4 penthouse.

5 MEMBER TURNBULL: Well, maybe the
6 Office of Planning can weigh in on this.

7 MS. ELLIOTT: Good morning, Mr.
8 Chairman and members of the Board. For the
9 record, I'm Brandice Elliott with the Office
10 of Planning. We were in agreement with the
11 applicant's request for relief essentially
12 because that lower part of the penthouse is
13 going to be converted in to some occupiable
14 space.

15 So, for that reason, we believed
16 that the lower portion of the penthouse should
17 be included in the overall height and FAR.
18 And I'm not sure, if you have additional
19 questions about that, I'd be happy to respond.

20 MEMBER TURNBULL: Yes. I got to
21 say, it's kind of a unique case. It's a fine
22 point.

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1 CHAIRMAN JORDAN: Because this is
2 going to have usable space.

3 MS. ELLIOTT: Exactly. 1100 feet
4 of the -

5 MEMBER TURNBULL: What's it going
6 to be used for?

7 MS. PRINCE: It would be used as a
8 gathering area for people that are getting on
9 to the roof deck.

10 MEMBER TURNBULL: Are there going
11 to be washrooms up here?

12 MS. LANZILLOTTA: There are two
13 single restrooms. Unisex restrooms at this
14 level. Yes, sir.

15 MEMBER TURNBULL: So, is this
16 going to be a party space? Lights? What's
17 this going to do on the impact of the
18 neighborhood?

19 MS. LANZILLOTTA: There would be
20 some interior illumination for exiting
21 purposes.

22 MEMBER TURNBULL: But you're going

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1 to allow people to go out on the terrace?

2 MS. LANZILLOTTA: Yes, sir.

3 MEMBER TURNBULL: And the lighting
4 out on the terrace?

5 MS. LANZILLOTTA: Low level
6 lighting.

7 MEMBER TURNBULL: Down lighting.

8 MS. LANZILLOTTA: Down lighting.

9 MEMBER TURNBULL: And you'll agree
10 to that noise, sound.

11 MS. LANZILLOTTA: There are
12 potentially --

13 MEMBER TURNBULL: And the DC
14 regulations.

15 MS. LANZILLOTTA: Yes, sir.

16 MEMBER TURNBULL: Okay. I'm - I
17 don't know if my colleagues have any comment -
18 - I just had a fine point about --

19 CHAIRMAN JORDAN: I think what you
20 did, I mean, that was good because it pulls
21 out a couple of things that we didn't see on
22 the application.

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1 MEMBER TURNBULL: Okay.

2 CHAIRMAN JORDAN: Does the Board
3 have any other questions for the applicant?

4 MEMBER HINKLE: Well, if they
5 could speak to the first floor issue.

6 CHAIRMAN JORDAN: Oh yes. The
7 first floor issues. Yes. Let's go ahead.
8 I'm sorry.

9 MS. LANZILLOTTA: Mr. Hinkle,
10 we're looking at a one story addition on the
11 first floor that in fills a private alley. In
12 section, it does have an impact on the windows
13 on the second floor of the Carnegie building.

14 As Mr. Gerson indicated, we've been in
15 consultation with them over those windows. I
16 think they're right on the property line and
17 there would be five windows that would need to
18 be closed in order to meet the building code.

19 We worked with Carnegie to find
20 accommodation. Originally we proposed to
21 close more windows. In working with Carnegie,
22 we found a middle ground where some of the

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1 windows are closed, but not all of the windows
2 we originally proposed to close would be
3 there. It's approximately 711 square feet.
4 And it makes the first floor much for usable.
5 It's primarily for back up house service for
6 the equipment.

7 MEMBER HINKLE: I think you
8 mentioned you do have a letter. We don't that
9 that in our file, but I want to make sure that
10 we do from the Carnegie Institute. Real
11 quick, you know, I have the benefit of living
12 in the area and I'm quite familiar with this
13 building. And it's truly a treasure.

14 I do notice even now, there's a
15 lot of deliveries there. And it looks like
16 you're shortening the space for the trucks.
17 Could you speak a little bit in terms of your
18 requirements for deliveries and how that might
19 affect the sidewalk there? Understanding that
20 trucks go in and out, is there sufficient
21 space to accommodate trucks in the remainder
22 of that private alley?

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1 MS. LANZILLOTTA: Yes, sir. We
2 have approximately 44 feet of remaining alley
3 depth for trucks.

4 MEMBER HINKLE: And so you don't
5 think there's, you're going to anticipate
6 trucks blocking the sidewalks there. It is a
7 busy. No, sir. We anticipate the trucks to
8 back all the way in. And part of this one
9 story addition is actually to facilitate
10 service because the first floor of the
11 building is approximately one and a half feet
12 about grade, so we'll have a lift inside this
13 one story addition that will allow equipment
14 or materials to be offloaded quickly and then
15 the trucks can leave.

16 MEMBER HINKLE: Okay. Great.
17 Thank you.

18 MR. MOY: Mr. Hinkle the Carnegie
19 letter is in the case record under Exhibit 34.

20 CHAIRMAN JORDAN: Okay. The
21 Board, any other questions from the applicant?
22 Anything you need further from this

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1 applicant? Ms. Prince, we think we've
2 answered our questions. You certainly have
3 the right to do a presentation if you feel,
4 but I think the Board is comfortable at this
5 point.

6 If we go forward with this, I'm
7 thinking about adding the conditions that
8 would read, as you know, the add conditions
9 that would relate to those things which have
10 already been submitted regarding what DOT had
11 and then three additional. And changing
12 Department of Transportation's conditions from
13 offering employees with pre-taxes as worded.

14 It says the applicant shall offer
15 employees an option for pre-tax payroll
16 deduction to be used for transit expenses.
17 The second one would be the applicant shall
18 provide an onsite facility with showers and
19 lockers for employees use. The third was that
20 the applicant's use of the penthouse useable
21 space shall not create an adverse impact of
22 the neighborhood.

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1 Four, the applicant shall provide
2 down lighting on the useable penthouse space.

3 And the fifth would be that the applicant
4 shall follow the District of Columbia
5 requirements regarding noise and sound and the
6 use of the penthouse space.

7 MS. PRINCE: Those are all
8 acceptable.

9 CHAIRMAN JORDAN: All right. So,
10 then let's now turn to the Office of Planning.

11 Ms. Elliott, do you have anything additional
12 you think you need to add? I think we've
13 drilled you already.

14 MS. ELLIOTT: No. I have nothing
15 to add at this time. Thank you.

16 CHAIRMAN JORDAN: Then we have a
17 report. Anyone here from the Department of
18 Transportation? We do have a report from the
19 Department of Transportation who also made
20 recommendations for conditions which appears
21 the Board will add to this. The Department
22 of Transportation has found no adverse impact

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1 but recommended some modest recommendations
2 for consideration by the Board.

3 Is there anyone here from ANC? Is
4 it 2B? ANC 2B. We do have their letter and
5 resolution in support of the application in
6 which we will accept and certainly give a
7 great weight to. I'm glad we have that. Is
8 there anyone here wishing to speak in support
9 of the application? Anyone wishing to speak
10 in support of the application?

11 Anyone in opposition to the
12 application wishing to speak? Anyone in
13 opposition wishing to speak? Then we will
14 turn back to the applicant to see if there's
15 anything that you feel that you think that you
16 might need to say, or just we can close and go
17 to deliberation.

18 MS. PRINCE: You can close and go
19 to deliberation. I'll dispose of a closing
20 statement.

21 CHAIRMAN JORDAN: Okay. And then
22 we will close the record on this matter. Is

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1 the Board ready to deliberate? I believe the
2 applicant has made a showing, the proper
3 showing that is required by our zoning
4 regulations that allows them to receive a
5 special exception relief they requested and
6 the variance requests that they requested.

7 Undoubtedly this building is an
8 exceptional building by the nature of the
9 historic nature and it's design. I would also
10 include in granting the relief that we add the
11 conditions as I previously read to into the
12 record be added into this matter. And so, I
13 would move that we approve the application
14 with the conditions as I just previously read
15 into the record the five conditions.

16 MEMBER TURNBULL: Second.

17 CHAIRMAN JORDAN: Motion made and
18 second. Any discussion?

19 MEMBER HINKLE: I would just like
20 to say that I appreciate the discussion that
21 Mr. Turnbull brought up. I think it was
22 helpful. And I appreciate the applicant's

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1 explanation in terms of why they're seeking
2 the relief they are. I think it makes sense,
3 and I think we have a truly unique situation
4 here.

5 CHAIRMAN JORDAN: All those in
6 favor of the motion, signify by saying aye.

7 BOARD MEMBERS: Aye.

8 CHAIRMAN JORDAN: Those opposed,
9 nay. Then motion carries. Mr. Moy.

10 MR. MOY: Yes, sir. Staff will
11 record the vote as four to zero. This on
12 motion of Chairman Jordan to approve the
13 application proven relief requested including
14 five conditions two proposed by DOT and three
15 additional conditions proposed by the Board as
16 stated. Second motion, Mr. Turnbull also
17 support Chairperson Allen and Mr. Hinkle. We
18 have a Board seat vacant. Motion carried.

19 CHAIRMAN JORDAN: Can we have a
20 summary order, please.

21 MR. MOY: Yes, sir.

22 CHAIRMAN JORDAN: And we will stay

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1 in recess. We will be in recess for ten
2 minutes.

3 MR. MOY: All right. Welcome
4 back. The next application on the agenda is
5 application number 18606. This is the
6 application of The Family Place pursuant to 11
7 DCMR 3104.1. The applicant here, Mr.
8 Chairman, is asking for special exception for
9 a community service center under section 334.

10 The BZA Order that was last
11 approved is BZA Order 17728. This is in the
12 R-5-B District at premises 3309 16th Street,
13 North West. Property is located on the Square
14 2676, Lot 469.

15 CHAIRMAN JORDAN: Thank you. This
16 is, would you please identify yourself please?

17 MS. WIGGINS: My name is --

18 CHAIRMAN JORDAN: Make sure your
19 microphone is turned on.

20 MS. WIGGINS: My name is Haley
21 Wiggins, and I'm the Executive Director of The
22 Family Place.

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1 CHAIRMAN JORDAN: Wiggins?

2 MS. WIGGINS: Yes

3 CHAIRMAN JORDAN: All right. I
4 think this one is pretty straight forward
5 since it's been reissued and reissued over
6 years over years and gave approval after
7 approval after approval. I think all the way
8 back since 1986 maybe?

9 MS. WIGGINS: 1985 was the first
10 one, I believe.

11 CHAIRMAN JORDAN: 1985. And so,
12 this is up just for the continuation, and our
13 review. Does the Board have any issues with
14 this or something we need the applicant to
15 drill down on? We do have some
16 recommendations from Office of Planning for
17 conditions. Have you seen the recommendations
18 offered by the --

19 MS. WIGGINS: Yes. I have.

20 CHAIRMAN JORDAN: Some of these
21 have been in place before for the most part.

22 MS. WIGGINS: Right. We don't

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1 have any issues with any of the
2 recommendations, The Department of
3 Transportation or Office of Planning.

4 CHAIRMAN JORDAN: I'm trying to
5 check, does the Office of Planning's
6 recommendation's include those things? Yes.
7 It does include Department of
8 Transportation's.

9 MS. WIGGINS: Yes.

10 CHAIRMAN JORDAN: Okay. Then I
11 think that we can forward this without a
12 presentation unless you want to make one.

13 MS. WIGGINS: No. I rest on the
14 record. Is there any questions?

15 CHAIRMAN JORDAN: Okay. So, then
16 let's turn to the Office of Planning and see
17 if there's anything in addition.

18 MS. THOMAS: Good morning, Mr.
19 Chairman. This is Karen Thomas with the
20 Office of Planning. I have nothing further to
21 add, and we rest on the record of approval.
22 Thank you.

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1 CHAIRMAN JORDAN: We do have the
2 Department of Transportation's report which
3 leads to recommendations which have been added
4 into conditions proposed by Office of
5 Planning. We have a lot of different support
6 letters. Is anyone here from ANC 1A? We have
7 a letter of support from ANC 1A where they
8 votes 12 to zero to support the continued
9 operation.

10 We have 12 support letters in our
11 file from neighbors and citizens which are in
12 support of this. And we really appreciate
13 those letters. Council Member Jim Graham has
14 written in support of this application. Is
15 there anyone in the audience wishing to speak
16 in support of this application? Wishing to
17 speak in support?

18 Those wishing to speak in
19 opposition. Okay. We would normally turn
20 back to our applicant to view a, we would do a
21 rebuttal and closing. However, there has not
22 been anything to respond to. So, I'm sure

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1 you'll allow us to close the record as is and
2 move to the, have it moved that the Board
3 approve this application with the conditions
4 as proposed.

5 With the minor edit to the
6 condition number eight. Remove the hyphen and
7 put dust to dawn. That's the other change
8 there. So, that would be my motion.

9 VICE CHAIRPERSON ALLEN: Second.

10 CHAIRMAN JORDAN: Motion made and
11 seconded. Any unreadiness? All those in
12 favor signify by saying aye.

13 BOARD MEMBERS: Aye.

14 CHAIRMAN JORDAN: Those opposed,
15 nay. The motion carries, Mr. Moy.

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

18 CHAIRMAN JORDAN: Wait a minute.
19 We're not finished.

20 MS. WIGGINS: Oh, sorry.

21 CHAIRMAN JORDAN: Mr. Moy.

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

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1 Staff will record the votes four to zero.
2 This on the motion of Chairman Jordan to
3 approve the application for the relief
4 requested also including the 11 conditions as
5 proposed. Second motion, Vice Chairperson
6 Allen. Also support Mr. Turnbull and Mr.
7 Hinkle. And we have a Board seat vacant.
8 Motion carries four to zero.

9 CHAIRMAN JORDAN: All right.
10 Thank you. Now.

11 MS. WIGGINS: All right. Thank
12 you very much, Mr. Chairman and members of the
13 Board.

14 CHAIRMAN JORDAN: You didn't see
15 the script. No, very good. Thank you very
16 much. Good luck to you.

17 MS. WIGGINS: Thank you.

18 MR. MOY: Board order, Mr.
19 Chairman.

20 CHAIRMAN JORDAN: Yes. Please.
21 Thank you.

22 MR. MOY: All right. Thank you.

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1 The next applicant, I believe, on my list, Mr.
2 Chairman, is application number 18609. This
3 is the application of Ronald Kaplan pursuant
4 to 11 DCMR 3104.2. The applicant is
5 requesting the variance relief from lot
6 occupancy under section 403, side yard
7 requirements under subsection 405.9 and
8 nonconforming structure provisions under
9 subsection 2001.3. This is at 4916 Belt Road
10 North West, Square 1757, Lot 27.

11 CHAIRMAN JORDAN: All right.
12 Thank you. Will you, gentlemen, introduce
13 yourselves please.

14 MR. KAPLAN: Yes. I'm Ron Kaplan.
15 I'm the property owner.

16 MR. BOCK: Yoni Bock. Married to
17 Ron Kaplan, co-habitant.

18 CHAIRMAN JORDAN: Okay. I don't
19 know if we need a full presentation on this
20 one either. I think, Board, do you have any
21 issues with this one? I think it's generally
22 straight forward.

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1 MR. HINKLE: I don't, Mr. Chair.
2 I was just noticing that Exhibit 2 actually is
3 a waiver of public hearing for expedited
4 meeting. I was curious as to why this was not
5 on the Expedited Review Calendar.

6 CHAIRMAN JORDAN: I was too.

7 MR. HINKLE: I don't know if you
8 could respond to that.

9 MR. KAPLAN: No. I don't know.
10 We submitted the form. I didn't know if there
11 was anything else we needed to do to get it on
12 Expedited Review beyond -

13 CHAIRMAN JORDAN: Maybe it was on
14 our side. Maybe it might have been.

15 MR. GOLDSTEIN: Well, it, I'm
16 sorry, Paul Goldstein. It's a variance case.
17 I think can we do it for special exception
18 cases?

19 CHAIRMAN JORDAN: Oh yes. Okay.

20 MR. HINKLE: Thank you for the
21 explanation.

22 CHAIRMAN JORDAN: Okay. Anybody

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1 with concerns, questions, concerns? Then let
2 us, if you don't mind, we'll just move on.
3 You don't have to open your mouth at this
4 point. As we said before, as you might have
5 seen earlier, some people open up their mouths
6 and step into it. Unless if you want to, it's
7 certainly your right. Office of Planning,
8 anything additional?

9 MR. GOLDSTEIN: I'll follow the
10 same advice. We're happy to rest on the
11 record in support. Thank you

12 CHAIRMAN JORDAN: Any questions
13 for the Office of Planning from the Board?
14 Department of Transportation, have they
15 weighed in? I don't have anything from DOT.
16 So, there's no objections. Anyone here from
17 ANC? We do have a letter of unanimous
18 approval for the ANC in support of your
19 application.

20 Anyone here wish to speak in
21 opposition to this application? Anyone in
22 opposition? Anyone in support? Anyone

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1 wishing to speak in support? We normally turn
2 back to the applicant to do a rebuttal and
3 wrap up.

4 However, this is one in which
5 there's not much to be said, or nothing new to
6 be said. So, then, if it's with the okay of
7 the applicant, we will close the record and
8 move to deliberation.

9 MR. KAPLAN: Yes. We're all set.

10 CHAIRMAN JORDAN: Then we close
11 the record and the Board moves to
12 deliberation. I would move that we grant the
13 relief requested by this applicant.

14 MR. HINKLE: I'll second. I just
15 want to note, you might have said this, I
16 don't know. But we also have 13 letters of
17 support from neighbors and I think that's
18 helpful. I'll second the motion.

19 CHAIRMAN JORDAN: Great. I don't
20 think I did say that, but thank you. Motion
21 made and seconded to approve this application.
22 All those in favor signify by saying aye.

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1 BOARD MEMBERS: Aye.

2 CHAIRMAN JORDAN: Those opposed,
3 nay. Motion carries. Mr. Moy.

4 MR. MOY: Yes, sir. Staff will
5 record the vote as four to zero. This is on
6 the motion of Chairman Jordan to approve the
7 application for the relief requested. Second
8 the motion, Mr. Hinkle. Also support Mr.
9 Turnbull and Chairperson Allen. And we have a
10 Board seat vacant. Motion carried.

11 CHAIRMAN JORDAN: Summary order
12 please.

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

14 MR. KAPLAN: Thank you very much.

15 MR. MOY: The next application is
16 application 18610. I'm sorry.

17 CHAIRMAN JORDAN: Just discussing
18 administrative matters. This is not anything
19 about any case. All right, Mr. Moy, call the
20 next case for us.

21 MR. MOY: Yes, sir. Thank you.
22 That would be application number 18610 of Back

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1 Alley, LLC and Ellsworth T. Simpson Trust
2 pursuant to 11 DCMR 3103.2. The applicant
3 here is requesting variance relief from the
4 nonresidential floor area ratio restrictions
5 under subsection 931.2 to subdivide and use
6 all of the existing buildings on the property
7 for nonresidential uses permitted in the W-1
8 District. The property is at 1063 Wisconsin
9 Avenue, North West. The property is located
10 at Square 1199, Lot 48.

11 CHAIRMAN JORDAN: Would you please
12 introduce yourself?

13 MR. SULLIVAN: Yes. Good morning,
14 Mr. Chairman and members of the Board. My
15 name is Martin Sullivan with the law firm of
16 Sullivan & Barros.

17 MS. WEBER: I'm Diane Weber, and
18 I'm one of the representatives for the Simpson
19 Trust.

20 CHAIRMAN JORDAN: First, I didn't
21 see any plans in my file. Do we have plans in
22 this?

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1 MR. SULLIVAN: There's no plans.
2 The building is existing as it is, and there's
3 currently no plans for the interior of the
4 building. There's no additions. There's no
5 changes to the exterior. Right now it's just
6 an open floor plan.

7 CHAIRMAN JORDAN: Yes. But I
8 don't know what the building looks like.

9 MR. SULLIVAN: There's some photos
10 of the interior filed with the pre-hearing
11 statement or maybe just the exterior.

12 MR. MOY: I believe that would be
13 under Exhibit 8, Mr. Chairman.

14 CHAIRMAN JORDAN: Yes. I got it.

15 MR. SULLIVAN: There may just be
16 pictures of the exterior, but it's just an
17 empty shell and it basically has been since
18 forever, for over 100 years.

19 CHAIRMAN JORDAN: I mean, I would
20 think they would at least have floor plans.

21 MR. SULLIVAN: There are no,
22 there's no plan right now. We're asking for

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1 area variance relief to be able to use the
2 second floor for any permitted use in the W-1
3 zone. We are essentially asking for relief to
4 go from the 1.0 permitted nonresidential FAR
5 to 1.33 which would be, the total FAR
6 permitted is 2.5.

7 So, we're just asking for area
8 variance relief to be able to use that second
9 floor. And in fact, it's impossible to use
10 for residential use because it's on a 12 foot
11 alley. There's nothing else than can be done
12 with this other than to expand the
13 nonresidential FAR, if it's going to be used
14 at all.

15 MEMBER TURNBULL: And what have
16 they been used for in the past?

17 MR. SULLIVAN: It was the back
18 building was built in 1905, I believe. The
19 front building on Blues Alley was built in
20 1903. And the back building on Lot 48 has
21 been used as a part of Filomena Ristorante for
22 the last 25 or 30 years.

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1 The front building, which doesn't
2 have any utilities, even, was a stable, was a
3 carriage house, an actual delivery stable, and
4 a feed, Simpson Feed and Grain. Mr. Simpson
5 was your great-grandfather, I believe.
6 Simpson Feed and Grain until the '30s. And
7 when the original owner, Mr. Simpson, passed,
8 it has since really hasn't had a permanent use
9 at all.

10 It's been used for warehouse
11 intermittently. It's been used for some
12 temporary events. But it hasn't had any use
13 and it doesn't have a ceiling actually.

14 MEMBER TURNBULL: I assume there's
15 lighting and power though in it.

16 MR. SULLIVAN: No.

17 MS. WEBER: There's nothing. I
18 can speak to the history a little bit. 1903
19 it's been in my, my great-grandfather is the
20 one who purchased this lot. And the carriage,
21 we call it a carriage house because that's
22 what it was used for initially, and over the

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1 years, it was used for, I think there was a
2 Feed and Grain.

3 It was used as a carriage house,
4 used for carriages and horses. Then it was
5 used for cars, just an open place for cars.
6 It's off of an alley, off of another alley.
7 And when my father, the next Simpson came
8 along and inherited it, after his father
9 passed, laws had changed and it was difficult.

10 My father tried and tried and
11 tried to bring in utilities and so forth.
12 When my father passed, I tried to bring in
13 water, and the rules and regulations because,
14 are just so strict, that we were not able.
15 The family was just not able to find any kind
16 of permanent use.

17 We didn't have the funds. I had
18 inherited this empty shell. There is no floor
19 plan. The attorney asked us for a floor, it's
20 just an open brick building. It's very, very
21 unusual.

22 MEMBER TURNBULL: So, there's no

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1 heat, no nothing.

2 MS. WEBER: No heat, no water, no
3 sewer, no nothing. Absolutely nothing.

4 MEMBER TURNBULL: So, you would
5 have to bring in all the --

6 MS. WEBER: Absolutely.

7 MEMBER TURNBULL: Okay.

8 MR. SULLIVAN: And I would add,
9 this is part of a transaction. There's a
10 contract purchaser who believes that he can
11 make it work, even though others in the past
12 have tried it and it hasn't worked. He thinks
13 he can make it work as office or retail.

14 But nothing will get done unless
15 he knows he can use it for a permitted use in
16 the W-1 zone, using our building. So, before
17 he invests in devising plans and coming up
18 with a plan for a permitted use, the current
19 owner is seeking this approval so that we know
20 it can be used.

21 CHAIRMAN JORDAN: But in that
22 case, aren't we really kind of circumventing

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1 the zoning regulations that people come and
2 say that this is accepted condition as a fact
3 for difficulty for us to use this building to
4 do X, Y, Z. And it seems like from your
5 discussion that we're helping for speculation
6 for sale of the building. Maybe I'm wrong,
7 but it's just kind of --

8 MR. SULLIVAN: No, all the case is
9 still there. I can go through the
10 presentation if you want of the three prongs.
11 It is what it is. The property has an
12 exceptional condition.

13 CHAIRMAN JORDAN: The use of the
14 building - because the laws are replaced to
15 protect owners of building from, I'm going to
16 use, this may not be the proper technical
17 term, I'm just taking based upon the zoning
18 regulations, for the use of the building. And
19 you don't have a use of the building.

20 You're here because of
21 speculation. And I'm just toying with this in
22 my mind. I don't know if what I'm saying

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1 makes any sense, but I'm just toying with that
2 just to be --

3 MR. SULLIVAN: I'm not sure I
4 understand. We have a building that cannot be
5 used for residential use.

6 CHAIRMAN JORDAN: But you're not
7 trying to use it.

8 MR. SULLIVAN: I'm sorry?

9 CHAIRMAN JORDAN: You're not
10 trying to use it.

11 MR. SULLIVAN: Yes, but the
12 property owner will use this. And the
13 property owner is the applicant. And there's
14 an owner of a property and a contract
15 purchaser involved in BZA cases all the time.

16 So, I'm not sure I understand what the, it's
17 a typical normal deal that when you're showing
18 a property there's a contingency out there on
19 whether or not the property can be used.

20 And so the current property owner
21 is seeking relief, area variance relief I
22 might add, to use more than just the first

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1 floor. Because they could use the first
2 floor. They couldn't use the second floor.
3 It's the second floor use that takes this
4 over. And the only other, this would even fly
5 under a hardship standard because residential
6 use is absolutely prohibited on an alley lot
7 with a 12 foot alley.

8 So, this can't be anything until
9 it gets some kind of relief. And the area
10 variance relief is a better option than the
11 use variance relief. And even if we got a use
12 variance, you couldn't have residential here.

13 It's right next door to Blues Alley Jazz
14 Club. It's right next to a restaurant.

15 It's buried in the middle of an
16 alley. And I'm sure there's safety concerns.

17 One of the reasons why there's the
18 restriction in 2507 that you can't have
19 residential use in an alley that's less than
20 30 feet in length.

21 CHAIRMAN JORDAN: All right. Does
22 the Board have any other questions they want

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1 to ask or do you need to do presentation?

2 MEMBER TURNBULL: Since it's in a
3 historic area, you really can't do anything to
4 the exterior to change it.

5 MR. SULLIVAN: That's correct.

6 MEMBER TURNBULL: So, basically
7 it's going to look the same other than it will
8 have a different function. It will have some
9 useable functions.

10 CHAIRMAN JORDAN: Okay.

11 MEMBER TURNBULL: Now I see that
12 HPO has really had no comments on the
13 application.

14 MR. SULLIVAN: I've talked to HPO,
15 they do want us to, just for the record we'll
16 submit to them. They'll approve the
17 subdivision application, but they expect that
18 since there's no changes, it's not going to be
19 reviewed by OGB and they'll sign off, HPO will
20 sign off on our subdivision application
21 because there's no changes to it.

22 MEMBER TURNBULL: Okay. So, no

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1 more changes to the building. I'm assuming
2 you can do work on the inside, though. The
3 next owner would do something but not change
4 the exterior.

5 MS. WEBER: Would have to.

6 MR. SULLIVAN: He would have to.

7 MEMBER TURNBULL: He would have
8 to, right.

9 MR. SULLIVAN: -- for whatever use
10 he --

11 MEMBER TURNBULL: Whatever use.
12 Okay.

13 CHAIRMAN JORDAN: Does the Board
14 need anything further in this? Do you believe
15 you need to do any offer in the presentation?

16 MR. SULLIVAN: I'll say something
17 brief. Just to explain it, because at first
18 it is a little confusing. Lot 48 is located
19 on Blues Alley, and it's adjacent just east of
20 the Blues Alley Jazz Club just off of
21 Wisconsin Avenue. So, the address is 1063
22 Rear Wisconsin Avenue.

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1 And as I stated, there's two
2 buildings on the property, two separate
3 buildings. And one is leased and used by
4 Filomena Ristorante. The other one is not
5 used and has not been used since the '30s.
6 And in its current configuration and use, it
7 uses a nonresidential FAR of, I believe, .68,
8 and that's all in the Filomena building
9 because the other building is not used at all.

10 The total permitted FAR total is
11 2.5. The total FAR in these two buildings is
12 only 1.33. So, when we do the subdivision
13 application and sell the front building and
14 separate it from the back building, the back
15 building will go slightly over its
16 nonresidential FAR to 1.17. The front
17 building, if it's going to be used for
18 commercial use, will be over its permitted
19 nonresidential FAR to a tune of 1.58.

20 So, together it's 1.33 instead of
21 1. I noted in the application that it is area
22 variance relief. This has gone back and forth

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1 over the years whether or not the increase of
2 the level of a permitted use within a mixed
3 use district is a use variance or an area
4 variance. And it was fairly settled on that
5 it was a use variance in the last couple
6 years, but the Zoning Commission made an
7 administrative change effective in June where
8 they stated that this specific type of relief
9 is actually an area variance.

10 And I think that's important here
11 because if it were a use variance, not only
12 would it have a higher standard, but I think
13 it would have a higher standard of
14 questioning. What particular use you might
15 have and whether or not you would restrict it.

16 But, since it's a permitted use and we're
17 just asking to increase the area of whatever
18 permitted use that might be. Then that means
19 we don't have to present specific plans on the
20 actual use.

21 So, the extraordinary situations
22 and conditions, first and foremost, it's the

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1 fact that it is an alley lot with a 12 foot
2 alley, which makes the permitted residential
3 use, which is permitted density-wise because
4 we are way under the 2.5 impossible. 2507
5 says only single family house should be on an
6 alley, but only in a case where the alley is
7 at least 30 feet wide.

8 Both of these buildings are
9 historic buildings built over 100 years ago
10 and, they can't be expanded or raised to help
11 us meet the regulations. And the location
12 itself surrounded by restaurants and
13 nightlife. Even if we could get a use
14 variance, would sort of preclude any
15 residential use.

16 This application, as far as prong
17 three, is going to bring a property that has
18 been sitting in the middle of Georgetown
19 vacant and not used or underused for the last
20 80 years. Bring it possibly back to full
21 time, productive use. The ANC supported it
22 unanimously, and we haven't had any opposition

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1 or concerns expressed by any of the neighbors.

2 Thank you.

3 CHAIRMAN JORDAN: Any other
4 questions you have of the applicant? Go ahead
5 Office of Planning please.

6 MR. MORDFIN: Good morning. I'm
7 Stephen Mordfin with the Office of Planning.
8 And the Office of Planning is in support of
9 this application. It finds that it meets the
10 test for the variance, and that they are
11 restored structures that cannot be changed.
12 Due to their historic nature, they can't be
13 reduced in size. They can't be enlarged.

14 And also, as was stated by the
15 applicant, it doesn't meet the requirement for
16 the 30 foot width of an alley for use for
17 residential, so it would need additional
18 relief to convert the building to residential
19 use. Office of Planning finds that there
20 would be no substantial detriment to the
21 public good because it would permit the use of
22 these historic structures that are currently

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1 vacant within a commercial area for
2 nonresidential uses.

3 And finally, there would be no
4 substantial harm to the zoning regulations and
5 that these variances would permit the
6 nonresidential uses of these existing
7 buildings in their entirety. The Office of
8 Planning recommends approval of the
9 application. Thank you.

10 CHAIRMAN JORDAN: Any questions
11 for Office of Planning, Board? Does the
12 applicant have any questions to the Office of
13 Planning?

14 MR. SULLIVAN: No. We don't, Mr.
15 Chairman. Thanks.

16 CHAIRMAN JORDAN: Anyone here from
17 DOT? I think we have a letter of no
18 objection. Anyone here from the ANC? I
19 believe there is a letter from the ANC
20 supporting the application, which will give
21 great weight. Is there anyone here wishing to
22 speak in support of this application? Anyone

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1 wishing to speak in support?

2 Yes. Come forward please. Anyone
3 wishing to speak in opposition, please come
4 forward. Please take a seat and identify
5 yourself. Make sure the microphone is on.
6 Did you complete the witness card?

7 MR. SCHNIPPER: Yes, sir.

8 CHAIRMAN JORDAN: Very good.
9 Thank you. Would you make sure your
10 microphone is turned on? The bright green
11 light, see where it says push?

12 MR. SCHNIPPER: Yes, sir.

13 CHAIRMAN JORDAN: Here you go.
14 Tell us your name.

15 MR. SCHNIPPER: My name is Harry
16 Schnipper. I reside at 1426 A Street North
17 East in Washington D.C. I am the owner of
18 Blues Alley Jazz in the alley in question.
19 And I am a former commissioner with the,
20 senior commercial commissioner with the Board
21 of real Property Tax Assessment and Appeals.

22 I have experience and extreme

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1 knowledge in use alternative practices as well
2 as alternative use redevelopment and historic
3 rehabilitation. This is an area of commercial
4 real estate that I have strong background in,
5 but I have to confess that I have been in the
6 dark about this for sometime.

7 I was asked to be here in the late
8 period of August. I've just received the
9 application, and I have just forwarded it on
10 to my attorneys. I have not had an
11 opportunity to prepare for this particular
12 presentation, although I would like to state
13 unequivocally that I would be willing to
14 consider an extension so that I could bring an
15 attorney to represent me.

16 This is very important. A great
17 deal of what you've received in the form of
18 information today is accurate. However, it's
19 not the entire telling story, and I'd like to
20 separate it out into its bifurcated process.
21 First, I'd like to agree with you, Mr.
22 Mordfin. You're absolutely correct, and from

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1 a standpoint of zoning, there is no hesitation
2 that subdividing this lot would not be a
3 detriment to anyone.

4 However, because of the unique
5 aspect of this particular property, and bear
6 in mind that it's been vacant for 100 years.
7 And that's not just coincidence. There's a
8 reason and relativity to that as well. I'd
9 like to continue to point out both in pre-
10 hearing statements --

11 CHAIRMAN JORDAN: You realize
12 that, let's stop the clock a second, please.
13 You actually only have three minutes, and I
14 want to make sure you know. You said that you
15 just got the notice and you were out of town
16 and the notice was at your home or your
17 office?

18 MR. SCHNIPPER: Actually, sir, I
19 had to give a considerable amount of pursued
20 to get this information. You'll notice in the
21 notification list, even though I'm the only
22 tenant in the alley, we were not given

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1 notification.

2 CHAIRMAN JORDAN: You're not on
3 the notification list?

4 MR. SCHNIPPER: No, sir.

5 MR. SULLIVAN: He's not the
6 property owner. It went to the property
7 owner.

8 MR. SCHNIPPER: I'm not the
9 property owner. I was out of town.

10 CHAIRMAN JORDAN: Are you the
11 tenant?

12 MR. SCHNIPPER: I'm the tenant,
13 sir. I have been for half a century.

14 CHAIRMAN JORDAN: Okay.

15 MR. SCHNIPPER: There's two
16 aspects of this particular application, sir.
17 One is the request to subdivide the lot, which
18 is entirely within the bounds. However,
19 hidden inside this --

20 CHAIRMAN JORDAN: Start the clock
21 again please.

22 MR. SCHNIPPER: Hidden inside of

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1 this application, is a request for variance.
2 And one thing that a lot of people don't
3 realize is that the utilities that access the
4 subdivided B property that appears in the
5 application run through my business. And I've
6 been around for half a century.

7 We're open 360 days a year, and
8 this could very negatively impact our business
9 in ways in which I think we should have a
10 voice at this table. And more importantly
11 we're the only tenant who rebuts any of this
12 property here. So, all of the individuals
13 noted, when I spoke to the attorney here at
14 the table, Mr. Sullivan, he said, well don't
15 talk to me, talk to the contract purchaser.

16 So, I contacted the contract
17 purchaser, he said don't talk to me, talk to
18 Mr. Sullivan. The fact that the utilities run
19 through my building have a significant impact
20 upon their ability to access this building.
21 Also, I'd like to point out that I do not know
22 who the contract purchaser is, but three years

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1 ago, there were approved plans on this
2 property.

3 So, if it isn't stated that they
4 have no idea about what are intentions about
5 redeveloping this property, I think I'd like a
6 little more transparency. I'd like a little
7 bit of knowledge about the variance, the
8 secondary bifurcated variance that applies to
9 this particular application prior to
10 proceeding.

11 So, once again, in conclusion,
12 I'll try to make this simple, I'd just like an
13 extension so I can get a little more in depth
14 knowledge before I shut down my business as a
15 result of not understanding what it is that
16 the variance is for.

17 CHAIRMAN JORDAN: Okay. Thank
18 you. Does the Board have any questions of Mr.
19 Schnipper?

20 MEMBER TURNBULL: The owner never
21 contacted you, the owner of the property never
22 contacted you. Is that what you're saying?

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1 The owner was contacted, and you weren't
2 contacted. Is that what you're saying?

3 MR. SCHNIPPER: That's correct.
4 We were not contacted. We only found out
5 after I returned after Labor Day where there
6 was a permit posted on the side of the
7 building. I've attempted to contact, actually
8 there is another owner, majority owner who
9 doesn't appear here today, sir. You'll find
10 him in your envelope that includes all of the
11 ownership interest. It's a gentleman by the
12 name of George Kostakis.

13 CHAIRMAN JORDAN: The owner of
14 your property is on the list, the mailing list
15 that you just showed us.

16 MR. SCHNIPPER: That's correct.
17 They're located in Florida. They're absent.

18 CHAIRMAN JORDAN: Did you say that
19 there's two owners?

20 MR. SCHNIPPER: There's two owners
21 for the application.

22 CHAIRMAN JORDAN: Okay.

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1 MR. SCHNIPPER: There's a majority
2 and a minority. The minority interest owner
3 is sitting to my left. The majority interest
4 owner is not here today.

5 CHAIRMAN JORDAN: And there's also
6 a sign that was posted on the building. Is
7 that what you saw that brought you here?

8 MR. SCHNIPPER: Yes. It was a
9 little protracted process last week. As I had
10 told you, we contacted first the Board of
11 Zoning Adjustment and the subsequently Mr.
12 Sullivan. And then Mr. Sullivan referred me
13 to Mr. Levin.

14 CHAIRMAN JORDAN: Now you said you
15 were gone the month of August, so you --

16 MR. SCHNIPPER: Second half.

17 CHAIRMAN JORDAN: Second half.
18 So, you returned when?

19 MR. SCHNIPPER: The day after
20 Labor Day, sir. It was Labor Day, September.
21 It was a week ago today.

22 CHAIRMAN JORDAN: Okay. September

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1 4th.

2 MR. SCHNIPPER: And once I saw the
3 permit sign, I promptly attempted to contact
4 BZA and then presiding and representing
5 attorneys. Of course, because of the high
6 holidays, Mr. Levin who I was referred to by
7 Mr. Sullivan was absent on Friday and then
8 didn't return again until Monday. And then
9 spoke to --

10 CHAIRMAN JORDAN: What did the
11 Office of Zoning tell you when you contacted
12 the Office of Zoning.

13 MR. SCHNIPPER: That I did not
14 need to fill out any forms. Mr. Sullivan told
15 me, do not worry. I do not need to appear
16 here today. That it will be approved without
17 my appearance.

18 MR. SULLIVAN: Objection for
19 dishonesty. I'll handle that in my rebuttal.

20 CHAIRMAN JORDAN: Wait. Wait.
21 Wait. Mr. Sullivan, you don't understand an
22 objection. That's not an objection. And this

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1 is --

2 MR. SULLIVAN: Objection to
3 irrelevancy then.

4 CHAIRMAN JORDAN: I think it's
5 very relevant about notification, issue,
6 discussion and how this thing gets processed.
7 Board, any other questions?

8 MEMBER TURNBULL: You said that
9 the utilities go through your building. They
10 don't go down the alley?

11 MR. SCHNIPPER: No, sir.

12 MEMBER TURNBULL: You have
13 confirmation of that? The utilities for this
14 project could not go down the alley?

15 MR. SCHNIPPER: If you were to go
16 to the property today, you would see a piggy-
17 back electrical box that operates temporary
18 electricity in the property and it can only be
19 turned on once you come into my building.

20 MEMBER TURNBULL: All right.
21 Well, you don't have any confirmation.

22 MR. SCHNIPPER: I didn't have time

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1 to prepare that confirmation. I'd be happy to
2 do so for you.

3 MEMBER TURNBULL: Thank you.

4 CHAIRMAN JORDAN: And you're
5 talking about is it presently run, not saying
6 that it can't be something done later, but
7 you're saying as it presently runs.

8 MR. SCHNIPPER: Yes. I'd have an
9 interruption of my utility services if they
10 were to proceed with redevelopment of the
11 property.

12 CHAIRMAN JORDAN: All right. Any
13 other questions from the Board? Mr. Sullivan,
14 any cross?

15 MR. SULLIVAN: No cross, Mr.
16 Chairman.

17 CHAIRMAN JORDAN: All right.
18 Anybody else wishing to speak in opposition?
19 All right, Mr. Sullivan, rebuttal, closing.

20 MR. SULLIVAN: Thank you. I would
21 just, in regard to Mr. Schnipper's testimony,
22 it's not in my style when a neighbor calls to

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1 say don't talk to me, talk to somebody else.
2 I told him everything that I know about the
3 application and everything that I think needs
4 to be known.

5 And I said, in addition to that,
6 you're welcome to call the contract purchasers
7 representative as well. And I gave him that
8 information. But the contract purchasers
9 representative doesn't know anymore than I
10 know either. So, he knows everything he needs
11 to know.

12 I also didn't tell him that he
13 didn't need to show up because I'm not his
14 zoning attorney and I wouldn't give him
15 advice. I would note that the property was
16 posted instead of 15 days before the hearing,
17 19 days before the hearing. Because it was
18 Labor Day weekend and I was going out of town
19 and I wasn't coming into the city on Monday.

20 So, it was posted 19 or 20 days.
21 It was the Friday before the Labor Day
22 weekend. All notice went out. We're a little

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1 surprised, and the property owner can talk
2 about that. There's certain business
3 relationships between Mr. Schnipper and my
4 client. And they didn't think for a second
5 that he would be opposed to us actually using
6 our building.

7 I would point out further that the
8 utilities are completely irrelevant to the BZA
9 case. If the utilities in fact go through his
10 property and require his approval, then that
11 has to be taken care of through those
12 regulatory agencies, and has nothing to do
13 with whether or not this building can actually
14 be used, whether or not utilities can get
15 there is a building code issue.

16 It's probably several other
17 agencies. Not a zoning issue. I think that's
18 all I have. Ms. Weber, do you want to add
19 anything to response to what Mr. Schnipper
20 said?

21 MS. WEBER: Yes. I would. I am
22 not a legal person here. I came down from

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1 Boston today to be at this hearing, but it's
2 not so much, I didn't think it was so much the
3 contract purchaser. I am the owner. I am a
4 co-owner of the building.

5 We're tenants in common. The
6 other co-owner's attorney is present, and I've
7 been dealing with Mr. Schnipper for, I don't
8 know, at least ten years. He leases space in
9 the private alley for dumpsters. So, we have
10 a business relationship, and he could have
11 called me as he has many times to let me know
12 if he had concerns.

13 Actually, I reached out to him
14 when I heard that he had concerns. I had no
15 idea. It's our building. You know, I own it.

16 The contract purchaser wants to purchase it.
17 And we would like to trust the other owner
18 would certainly like to sell it so it can be a
19 viable asset to the Georgetown area.

20 So, I'm surprised to hear Harry, I
21 really am, that you didn't know anything about
22 this. I know. I've been working with the

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1 attorney that everything has been done in a
2 timely manner, and we've had a working
3 relationship for a long time. You know,
4 especially because he currently leases space
5 from us to run his business.

6 And we know we have to bring in
7 utilities. There are no utilities in our name
8 in that building. We would have to bring them
9 in, and I don't know how that would impact
10 anything to do with Harry's business.

11 But again, I'm not an engineer or
12 anything, so I can't speak to the legitimacy
13 of that. We have a building that we own. We
14 would like to sell. And the buyer would like
15 it to be in buyable condition. So, thank you.

16 MR. SULLIVAN: I would just point
17 out also that some of the things that Mr.
18 Schnipper said was the property is unique and
19 the subdivision is not a detriment. So, he's
20 claiming our use of the property is detriment.

21 But we're proposing a permitted use. And he
22 hasn't said in any which way why a permitted

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1 use would be a detriment to him.

2 CHAIRMAN JORDAN: Mr. Sullivan,
3 and let me ask the applicant, would you be
4 willing to continue this for 30 days to allow
5 Mr. Schnipper to present to be kind of a
6 proper party to present in this matter. My
7 concern is that the Board, when it makes it
8 decision, should be making it's decision
9 whether or not this decision is going to have
10 any adverse impact on the neighbor or
11 neighborhood. And that would be what my
12 thoughts are. That we're well briefed, and we
13 know what we're dealing with.

14 MR. SULLIVAN: I think that has
15 the potential to kill this deal and kill the
16 use of this property. I think it would be
17 extraordinary when an applicant goes through
18 the process and get ANC approval and posts
19 when they're supposed to and the notices get
20 sent out and there's nothing that he has said
21 that would even hint that any detriment to
22 him.

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1 So, that kills the deal. He goes
2 and gets party opposition which he said last
3 week he's represented by Chip Glasgow and
4 Chuck Means. So, he knows. He knows this
5 deal. He's going to call them. Maybe he did.

6 But I think, I just think that would be
7 extraordinary because now we're talking about
8 party opposition. We're talking about getting
9 an order a year from now.

10 CHAIRMAN JORDAN: Do you have
11 letters of support from the neighbors
12 surrounding this property?

13 MR. SULLIVAN: We don't, and
14 typically, and they're really like this,
15 people don't care and you don't even know who
16 to reach out to. It's almost light industrial
17 use back in the alley. It's restaurants all
18 around there.

19 And what we're proposing is, like
20 I said, it's a minor use, .33 of FAR. We can
21 use a certain portion of the building for
22 nonresidential use as it is. We're permitted

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1 to use it. We're asking for, okay instead of
2 just the first floor, we also get to use the
3 second floor for again a permitted use in the
4 W-1 Zone.

5 CHAIRMAN JORDAN: Do you have any
6 other questions you need to ask the, or you
7 already asked the witness. You had your
8 opportunity to do that. Do you want to do a
9 closing or rebuttal. You were doing rebuttal.
10 So, your closing.

11 MR. SULLIVAN: Just to reiterate
12 our preliminary statement in our application
13 and our presentation today I think clearly
14 shows, and the Office of Planning report, that
15 we obviously have a unique property with an
16 exceptional situation and condition. It's
17 more than a practical difficulty.

18 And using it for permitted use,
19 it's impossible because that would require
20 itself to be use variance. In addition to the
21 fact that residential use would not fly back
22 in the alley here and it's probably not safe

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1 in a 12 foot alley as well. Nobody has shown
2 that this would be a detriment, that we use
3 the second floor for whatever use is also
4 permitted on the first floor.

5 And anything that has been brought
6 up otherwise is irrelevant. We've gone
7 through the process. There have been no
8 deficiencies in posting notice of noticing the
9 property. We've been before the ANC. Two
10 delay it or even to go to full order would
11 sentence this property to sit there for an
12 indefinite time.

13 CHAIRMAN JORDAN: Thank you all.
14 We will close the record with what we have to
15 date. I'm not ready to deliberate on this.
16 In fact, we want to move this to a decision
17 date. Ms. Allen.

18 VICE CHAIRPERSON ALLEN: I don't
19 know that this is appropriate, but I am
20 interested in hearing some more information.
21 I feel like there's not a great deal of
22 information here. So, would you allow the

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1 record to be supplemented by either the
2 witness who is opposed if he wants to put some
3 documentation. I know Mr. Turnbull had asked
4 him for some information, and then obviously
5 the applicant would be able to respond to
6 that?

7 MEMBER TURNBULL: Mr. Chair, I
8 would not be in favor of continuing the
9 hearing. If we want to get some additional
10 information, that's fine, to deliberate. And
11 I think I would sort of concur with Mr.
12 Sullivan that we have to separate zoning from
13 building code. And I think that's going to be
14 a key issue.

15 I mean, there could be some issues
16 which go beyond our prevue, but if we need
17 some additional information, if you'd like to
18 talk about some impacts or just rudimentary
19 type things, that's fine. But I would be
20 willing to go forward and talk about this case
21 at some point, but I don't think we need to
22 continue a hearing.

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1 CHAIRMAN JORDAN: Oh yes. If I
2 said that, I don't know who said it, but
3 certainly we just supplement the record.

4 MEMBER TURNBULL: Okay. A
5 decision. I'm ready to decide. Okay. The
6 record too. Okay.

7 CHAIRMAN JORDAN: Stuff that will
8 remain open, what particularly would you like
9 to see?

10 VICE CHAIRPERSON ALLEN: I know
11 that specifically, and Mr. Turnbull you had
12 asked for something in particular, but I would
13 just like some more information from the party
14 who is clearly.

15 MR. SULLIVAN: Not a party, the
16 witness.

17 VICE CHAIRPERSON ALLEN: I'm
18 sorry. You're right. The witness. I would
19 just like to have some more information.

20 CHAIRMAN JORDAN: On the impact.

21 VICE CHAIRPERSON ALLEN: On the
22 impact.

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1 CHAIRMAN JORDAN: The impact upon
2 your leasehold interest where you are,
3 information about the electrical situation as
4 we talked about. Anything else? Anybody else
5 want to say something?

6 MEMBER TURNBULL: Yes. And I
7 don't want to cloud the case by talking
8 specifically about the electrical. I mean,
9 there are ways that this can be done. I'm
10 sure of it.

11 And again, it's not into our
12 prevue, but that would be a building
13 construction issue in the future that would
14 need to be dealt with if they have to deal
15 with this owner, that property, then they
16 would have to. If not, there could be a way
17 to circumvent it. But again, that's an issue,
18 that's an impact, but it's also something that
19 is down the line.

20 CHAIRMAN JORDAN: So, we'll give
21 you ten days to submit that and the give Mr.
22 Sullivan a week thereafter the write any

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1 rebuttal to that. And then let's put this on
2 a decision date. Let's work our way back from
3 the decision date to when we get the
4 information.

5 MR. MOY: Mr. Chairman, staff
6 would propose that there's room for the
7 application for October 21. So, working
8 backwards for October 22, Tuesday, October
9 22nd. Then the response from the applicant
10 would be Tuesday, October 15th. And for the
11 witness to submit his information would be
12 what October 1st, October 8th.

13 CHAIRMAN JORDAN: Yes. The 8th.

14 MR. MOY: Ok. October 8th.

15 CHAIRMAN JORDAN: All right. And
16 with that, then we would conclude this matter
17 as ordered.

18 MR. SULLIVAN: Thank you.

19 CHAIRMAN JORDAN: All right. Do
20 you want to call 595?

21 MR. MOY: Yes, sir. That would be
22 application number 18595. This is the

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1 Application of Eva R. Sanchez pursuant to 11
2 DCMR 3103.2. As the Board knows, this
3 application was first heard on July 23rd and
4 was postponed until today, September 17th.

5 This is an application for a
6 variance from the definition of a yard under
7 section 199, to allow a rear deck addition to
8 a row dwelling occupying more than 50 percent
9 of the rear yard area in the R-4 District.
10 Property at 620 9th Street North East, Square
11 913, Lot 846. I want to take the file, Mr.
12 Chairman, because I'm not sure whether or not
13 an affidavit of posting has been filed.

14 CHAIRMAN JORDAN: That's all
15 right. Let us first handle this. Before you
16 go forward. Is this Mr. Sanchez? Who? Time
17 out. Time out. Guys. I need you here, as
18 they say. I need you here. What is your
19 name?

20 MR. TONO: My name is Augusto
21 Tono. I'm representing Eva Sanchez.

22 CHAIRMAN JORDAN: Your name again?

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1 MR. TONO: Augusto Tono, T-O-N-O.

2 CHAIRMAN JORDAN: Tono. Okay.

3 MR. TONO: Yes, sir.

4 CHAIRMAN JORDAN: Is this the
5 representation letter? A couple things. Was
6 this posted?

7 MR. TONO: Yes.

8 CHAIRMAN JORDAN: Do we have the
9 evidence of posting?

10 MR. TONO: I sent it in.

11 CHAIRMAN JORDAN: Do you have a
12 copy of it?

13 MR. TONO: I was contacted a
14 couple days ago like the end of last week.
15 And then I sent you information over the email
16 telling you that I have --

17 CHAIRMAN JORDAN: You sent what to
18 who?

19 MR. TONO: To Mr. Mordfin.

20 CHAIRMAN JORDAN: What did you
21 file with the Office of Zoning?

22 MR. TONO: Pardon?

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1 CHAIRMAN JORDAN: What did you
2 file in the Office of Zoning?

3 MR. TONO: What did I file in the
4 Office of Zoning?

5 CHAIRMAN JORDAN: Correct. I've
6 got Mr. Mordfin's report Office of Zoning.

7 MR. TONO: I have replied to his
8 email.

9 CHAIRMAN JORDAN: Okay, but you
10 filed your evidence of posting to the Office
11 of Zoning?

12 MR. TONO: I sent them an email as
13 well.

14 CHAIRMAN JORDAN: You sent them an
15 email of what?

16 MR. TONO: I asked Mr. Mordfin
17 what it meant by me supplying information that
18 he wanted. I did not get a reply from him as
19 to what he meant. So, I assumed that he
20 wanted me to send the email through the Office
21 of Zoning, which I did.

22 CHAIRMAN JORDAN: And what did you

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1 send him in the email?

2 MR TONO: When?

3 CHAIRMAN JORDAN: What did you
4 send in the email to the Office of Zoning?

5 MR. TONO: Okay. I said that I
6 had posted the sign on the 21st of --

7 CHAIRMAN JORDAN: And you
8 presented them the evidence, you showed them -
9 -

10 MR. TONO: Yes. And I sent them a
11 picture.

12 CHAIRMAN JORDAN: You sent Office
13 of Zoning a picture.

14 MR. TONO: Yes. Correct. Which I
15 have a copy of here.

16 CHAIRMAN JORDAN: Okay. Let's see
17 what you have the Office of Zoning may have.

18 MR. MOY: In our record file, Mr.
19 Chairman, there's no affidavit of posting in
20 our official record.

21 CHAIRMAN JORDAN: Okay. And you
22 have a copy of it.

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1 MR. TONO: Yes.

2 MEMBER TURNBULL: You have a copy
3 of it with you?

4 MR. TONO: A copy of the picture?
5 Yes. I do.

6 MEMBER TURNBULL: The affidavit.

7 MR. TONO: No. I don't. Last
8 time when I was here, that issue never came
9 up.

10 CHAIRMAN JORDAN: Well, it's a
11 requirement. And it's not for us to tell you
12 the requirements. It's for you to know the
13 requirements. So, how long was the posting
14 placed?

15 MR. TONO: The posting wasn't
16 placed. I can tell you right away. Hold on.

17 (OFF MICROPHONE COMMENTS.)

18 CHAIRMAN JORDAN: Did we get
19 anything from ANC, what is it, ANC 6-A?

20 MR. MOY: Yes, sir. We did. It
21 was a late file, and as a matter of fact, it
22 was a preliminary matter that arrived in our

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1 office September 13th. I'll pass this to you.

2 MR. TONO: Okay. Here it is.

3 6/11/2013.

4 CHAIRMAN JORDAN: 6/11/2013?

5 MR. TONO: Yes, sir.

6 CHAIRMAN JORDAN: And you have a
7 picture of the posting?

8 MR. TONO: Yes, sir.

9 (OFF MICROPHONE COMMENTS.)

10 MR. MOY: Please, for the record.

11 It is posted, sir.

12 CHAIRMAN JORDAN: Okay. All
13 right. Let's go ahead and proceed. We'll
14 accept the representation under oath from Mr.
15 Tono that this has been posted. And we do
16 have a letter from the ANC. Would you like to
17 proceed, Mr. Tono?

18 MR. TONO: Thank you. I attempted
19 before during the ten minute recess to set up
20 the system, which I was unable to do. I'm in
21 the process right now of transferring the
22 information to a little hard drive so we can

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1 place it in a machine that way you can see the
2 small presentation I have for you. So, if you
3 will give me about 30 seconds I think we, we
4 can start by saying.

5 CHAIRMAN JORDAN: We'll take a ten
6 minute break and give you a chance to get.

7 MR. TONO: Thank you.

8 (A SHORT RECESS WAS TAKEN.)

9 CHAIRMAN JORDAN: All right.
10 Let's proceed. Mr. Moy, you already called
11 it, right?

12 MR. MOY: That's correct, sir.

13 CHAIRMAN JORDAN: Are you up and
14 running now?

15 MR. TONO: Yes, sir. Thank you so
16 much.

17 CHAIRMAN JORDAN: All right.
18 Would you like to do your presentation? I
19 don't know where to short cut this because you
20 have a real up hill battle in this matter.
21 Have you thought about any other type of
22 relief that might have been more palatable?

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1 MR. TONO: Well, sir. Let me give
2 you a little bit of a time table as to how, a
3 time line as to how this happened. Back in
4 April 4th, back in March, this application was
5 made to DCRA in which Mr. Matthew LeGrant
6 asked us to obtain a special exemption, not a
7 variance. Okay.

8 That was the first intent, a
9 special exemption. Once it reach the Board of
10 Zoning, okay, they modified it to a variance
11 for some reason. So, once at that point as a
12 variance, that was the only recourse that we
13 had to proceed on it.

14 CHAIRMAN JORDAN: You said the
15 Office of Zoning changed it to a variance?

16 MR. TONO: Yes.

17 CHAIRMAN JORDAN: I have to think
18 about that. That would be highly unusual.
19 This Office of Zoning or Matt LeGrant's
20 office?

21 MR. TONO: Possibly the Office of
22 Zoning talked to Matt LeGrant, and Matt

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1 LeGrant changed it to a variance rather than a
2 special exception. But the first information
3 that I have received was for special
4 exception. And since this is a, this doesn't
5 contribute to low coverage because it's below
6 four feet.

7 MEMBER TURNBULL: Mr. Tono, we
8 have a letter from Mr. LeGrant on August 30th
9 which is Exhibit 29 which he is saying it's a
10 variance.

11 MR. TONO: That is correct. I was
12 just giving you the time line as to how we got
13 there.

14 MEMBER TURNBULL: Okay but he is
15 asking for a variance or talking about a
16 variance not a special exception.

17 MR. TONO: That is correct. But I
18 was asked why are we going to a variance
19 rather than a special exception. And that's
20 how we got there.

21 CHAIRMAN JORDAN: No. No. That's
22 not what we asked. We are asking why you are

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1 asking for this type of relief? Is there
2 another way to try to get to what you need as
3 opposed to asking us to change definitions.

4 MR. TONO: Okay. I'm not a
5 lawyer. I'm an architect. I'm trying to
6 represent Eva Sanchez. She is with the
7 military, and she was transferred to Texas. I
8 am trying to help her out with this case. She
9 does not have a lawyer representing her.

10 So, anything that has to do with
11 legal, the representation, I am limited as to
12 how I can proceed at that end. I was informed
13 that the variance would be the only recourse I
14 could have. So, then later on I was informed
15 that it does not comply to the letter or the
16 variance for whatever reasons.

17 But this being a lot which is
18 supposed to be 1800 square feet. And the lot
19 only is 1020 square feet rather than 1800
20 along R-4. That should make it a special
21 exception, a special case. I was told that it
22 did not because the other lots did not have

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1 the same information. I would like to show
2 you what the other lots look like over here.
3 Okay.

4 You can see that everybody has
5 built all the way out to the maximum of their
6 property on these alleys. Okay. There is no
7 other place where this deck can be located on
8 the property given the fact that we only have
9 1020 square feet rather than 1800. The lot is
10 only 17 feet wide rather than 18. It's only
11 60 feet deep rather than 100 feet deep.

12 That should make it a special
13 commission to meet the first perimeter which
14 is the property is unique as to the R-4 zone.

15 Definitely this is not an 1800 square feet
16 property. Again, granting the variance will
17 not be a substantial detriment to the public
18 because the public is already using this space
19 in a similar manner.

20 And the granting the variance will
21 not be inconsistent with the general intent of
22 the R-4 zoning because the R-4 zoning allows

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1 for a rear deck to be placed on this property.

2 CHAIRMAN JORDAN: Now is this
3 picture, the one, is that the deck next to?
4 Which property, where the real property?
5 Where's the property you're talking about?

6 MR. TONO: I'm standing in our
7 property, and I'm taking a picture of the rest
8 of the property.

9 CHAIRMAN JORDAN: Rest of the
10 property. So, your property is not in this
11 picture?

12 MR. TONO: No. That's where I'm
13 standing, and I'm taking a picture of the
14 other ones so you could see what we're dealing
15 with. And there is no other place where this
16 deck could be placed. There is not an
17 original deck in this location. And although
18 we're asking to replace it because the
19 original deck is made out of metal and it very
20 difficult to repair.

21 And when people get out, is a
22 constant upkeep in terms of the metal

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1 corroding. So, that's why we're trying to
2 build a deck, which also, it's in line with
3 the other decks that have been built along
4 side and in the rear of the properties. As
5 you can see also, that the alley is quite
6 small in the back which also makes it a very
7 unique condition for this property.

8 Now, the fact that these house are
9 built in such a way in which the first floor,
10 there is a substantial difference in level
11 between the first floor and grade, it has to
12 have some kind of transition between one level
13 and the other. And that's why whatever we do
14 back there is going to infringe on getting
15 alley into a rear yard. I don't see any other
16 way that this could be addresses.

17 I was asked to go before the ANC,
18 which we did. They unanimously approved it.
19 I also was asked to go between the Capital
20 Hill Restoration Society, and they have no
21 idea why I was there even though I was
22 contacted and asked to go there. They said

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1 that these should never have come up. They
2 should have been done by height because it
3 doesn't go over four feet high.

4 CHAIRMAN JORDAN: This is not over
5 four feet high?

6 MR. TONO: No.

7 MEMBER TURNBULL: Can I ask, there
8 is an existing deck there.

9 MR. TONO: Yes.

10 MEMBER TURNBULL: And you're
11 replacing.

12 MR. TONO: Yes.

13 MEMBER TURNBULL: The same size.

14 MR. TONO: No. It's a little bit
15 larger. It's about two feet larger. Because
16 right now, as you can see, that's why I'm
17 showing the picture over her, you can see that
18 little deck on the right.

19 MEMBER TURNBULL: Right.

20 MR. TONO: Is similar to the
21 existing deck. However, in order to use the
22 property properly. That is to have some

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1 sitting area, it is almost impossible to have
2 even a chair out there because it's used as a
3 means of -

4 MEMBER TURNBULL: Well, I guess
5 what I'm confused about, I've got a drawing in
6 front of me that shows that the existing deck
7 is seven foot deep.

8 CHAIRMAN JORDAN: Deep? Is it
9 seven foot deep or seven foot in length?

10 MEMBER TURNBULL: It's 12 feet
11 wide and seven feet deep.

12 MR. TONO: That is correct.

13 MEMBER TURNBULL: And it looks
14 like on your drawings, you're making it 12
15 feet by seven feet again.

16 MR. TONO: No. The original is
17 not seven foot. It's about five feet only.
18 So, we are coming to seven foot six.

19 MEMBER TURNBULL: Well, Exhibit
20 number 3 which is a site plan, a plat of
21 survey, I think shows seven feet.

22 MR. TONO: That is the plan.

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1 MEMBER TURNBULL: Did somebody
2 draw this right? It says existing deck to be
3 reworked. I mean, the picture looks like it's
4 only about four feet or three feet. So, I'm
5 just confused with what the drawing, the site
6 plan is showing, and what you're, I mean, the
7 picture shows obviously it's a very narrow
8 deck. But this existing to be reworked -

9 MR. TONO: Right. This is just
10 showing the new work.

11 MEMBER TURNBULL: Oh, well that's
12 a deceptive plan. I mean, if you're going to
13 show a site plan, I guess it should be the
14 existing plan unless there's --

15 MR. TONO: This is showing the
16 existing deck to be worked to these numbers.
17 That's why these numbers are shown as to what
18 the, because if we are going to show it this
19 way -

20 MEMBER TURNBULL: Okay. all
21 right.

22 CHAIRMAN JORDAN: What's the

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1 present width of the deck?

2 MR. TONO: It's almost five feet.

3 CHAIRMAN JORDAN: That's almost
4 five feet? It's deceptive in this picture.

5 MR. TONO: It's almost between
6 four and five feet?

7 CHAIRMAN JORDAN: And extend it
8 another two feet?

9 MR. TONO: Yes. In order to make
10 it usable for them, that back yard. Otherwise
11 it just becomes an area way where they cannot
12 even place chairs around a small table back
13 there.

14 CHAIRMAN JORDAN: And how much of
15 the backyard would be remaining? None.
16 You're going 100 percent there.

17 MR. TONO: Five foot six.

18 CHAIRMAN JORDAN: Five foot six
19 feet?

20 MR. TONO: Yes. Of the remaining
21 back yard would show. As you can see on these
22 pictures, some of the people have built all

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1 the way out to the property line.

2 CHAIRMAN JORDAN: Probably without
3 a permit. That's what I'm really believing.
4 Probably without a permit. That's what I was
5 thinking. So, you're build out would come to
6 about one half, if we're looking at that
7 screen --

8 MR. TONO: One half.

9 CHAIRMAN JORDAN: -- it will come
10 up to the middle part of that wood fencing of
11 the neighbors.

12 MR. TONO: About five eights in to
13 it. It's not quite half. It's a little bit
14 beyond half.

15 CHAIRMAN JORDAN: Yes. Please.

16 VICE CHAIRPERSON ALLEN: Mr. Tono,
17 I just want to understand again. You said
18 that what I'm looking at there, the first part
19 of the screen, is that her porch?

20 MR. TONO: No. No. No. The
21 pictures that I had of the porch were
22 submitted to you with the --

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1 VICE CHAIRPERSON ALLEN: No. I
2 see it. It looked similar. That's why I was
3 wondering if it was the same. Okay. Thank
4 you.

5 MR. TONO: I just wanted to show
6 you a picture that showed all of the
7 conditions.

8 MEMBER TURNBULL: Is what I'm
9 looking at then the back of the, is that the
10 little deck on the back of the house?

11 MR. TONO: No.

12 MEMBER TURNBULL: That isn't.

13 MR. TONO: No it isn't.

14 CHAIRMAN JORDAN: That does not.

15 MR. TONO: No. That is an
16 adjacent property.

17 CHAIRMAN JORDAN: This is from the
18 property looking everything beyond him.

19 MEMBER TURNBULL: You're standing
20 on your deck.

21 MR. TONO: Correct.

22 MEMBER TURNBULL: Right now.

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1 Looking down the --

2 MR. TONO: Yes, sir.

3 MEMBER TURNBULL: I see. Okay.

4 MR. HINKLE: Has you client
5 considered just from the doorway down putting
6 a staircase and using the ground level and not
7 having a deck there?

8 MR. TONO: A patio.

9 MR. HINKLE: Like a patio.

10 MR. TONO: Well, there was a deck
11 there before.

12 MR. HINKLE: Right.

13 MR. TONO: It just makes it very
14 difficult to come out from the kitchen with
15 all kinds of things and trying to bring them
16 down the steps. It's a hazard. Especially if
17 she was child bearing.

18 She just had a child recently, and
19 she is in the child bearing age. So, she's
20 handling children and she might be pregnant
21 coming down the steps, that might present a
22 hazard to her.

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1 MR. HINKLE: Sure.

2 CHAIRMAN JORDAN: You're telling
3 me that what I see here is a metal deck in
4 Exhibit number 6 is not the deck that was
5 there before?

6 MR. TONO: You say number 6.

7 CHAIRMAN JORDAN: Yes. The
8 picture of the back, the metal, what I'm
9 calling the deck.

10 MR. TONO: It's the one that I had
11 shown you before in the package.

12 CHAIRMAN JORDAN: That's Exhibit
13 number 6, sir. I'm trying to work with you.
14 We're trying to get you where you are and
15 you've got a hard road to cross. So, you need
16 to work with us trying to work with you.
17 We're going above and beyond trying to help
18 you with your case. Okay?

19 MR. TONO: Thank you, sir.

20 CHAIRMAN JORDAN: And so, I'm
21 trying to say what Exhibit 6 which you
22 submitted or your applicant, whoever,

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1 submitted it, shows us pictures of the rear of
2 the property and there's a metal deck of some
3 sort. You said it's five feet, and I'm kind
4 of hard pressed to say that's five feet, but -
5 -

6 MR. TONO: With the steps.

7 CHAIRMAN JORDAN: With the steps.
8 Now I, okay.

9 MEMBER TURNBULL: It's really only
10 about two feet is I think what you're saying
11 or about three feet for this. The actual deck
12 itself is only about two feet.

13 MR. TONO: Yes. What is shows.
14 That's why I show you pictures because --

15 CHAIRMAN JORDAN: So, the deck.
16 Once you step off the back door, that landing
17 area is only about two to three feet. Is that
18 correct?

19 MR. TONO: About three feet. Yes.
20 And now to extend beyond with the steps.

21 CHAIRMAN JORDAN: You want to
22 extend to the end where the steps are.

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1 MR. TONO: Yes. Well, we want to
2 extend it to a point in which it makes sense
3 for her to have a little table and a couple
4 chairs in order to make it worthwhile.

5 CHAIRMAN JORDAN: Now, you said
6 there was a previous deck there.

7 MR. TONO: That's the one I'm
8 talking about.

9 CHAIRMAN JORDAN: That's the one
10 you're talking about.

11 MR. TONO: Yes, sir. That's the
12 only one.

13 CHAIRMAN JORDAN: That's what we
14 thought. You kind of took us down another
15 road.

16 MR. TONO: Oh. I'm sorry. I miss
17 understood.

18 CHAIRMAN JORDAN: And then from
19 where to bottom of the steps to the, is that
20 an alley back there?

21 MR. TONO: Yes.

22 CHAIRMAN JORDAN: From the bottom

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1 of the steps to the alley, how much space is
2 that?

3 MR. TONO: Five foot six is what
4 we are proposing. So, there would be five
5 foot six left between the fence and the deck.

6 CHAIRMAN JORDAN: How wide is that
7 alley?

8 MEMBER TURNBULL: Six feet.

9 MR. TONO: Yes. About.

10 CHAIRMAN JORDAN: Six feet alley.

11 Is that a usable alley?

12 MR. TONO: For walking.

13 CHAIRMAN JORDAN: For walking,
14 yes.

15 MR. TONO: Yes, sir.

16 CHAIRMAN JORDAN: Okay. Any other
17 questions for the applicant? Is there
18 anything more you want to say to the Board?

19 MR. TONO: Yes. Ms. Eva Sanchez
20 wishes to tell you that she is sorry she
21 couldn't be here, but she had to be in Texas.

22 CHAIRMAN JORDAN: Okay. Let's

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1 turn to the Office of Planning and see if they
2 can make some sense out of this.

3 MR. MORDFIN: Good afternoon. I'm
4 Stephen Mordfin with the Office of Planning.
5 And first I'd like to say, I realized our two
6 letters from the Zoning Administrator, I did
7 speak with him where he acknowledge that his
8 letter should say variance. So, that's why
9 you have the second letter that says variance.

10 CHAIRMAN JORDAN: Thank you.

11 MR. MORDFIN: I wanted to clear
12 that up. But, in July, this case did come
13 before the Board and then it was continued to
14 today where the Office of Planning was asked
15 to do an analysis of the case as an area
16 variance. And in this case, there is a row of
17 houses and they're all the same house.

18 They're all the same width.
19 They're all the same area with the same house
20 on it abutting the same six foot rear alley.
21 And based on that, the Office of Planning is
22 unable to determine anything unique about this

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1 property compared to the ones around it, and
2 therefore finds that it doesn't meet the first
3 test of a variance application.

4 Also, the Office of Planning did
5 re-evaluate its recommendation that the case
6 be dismissed because the zoning
7 administrator's office did state that relief
8 was required from this from section 199, the
9 definition of rear yard. And therefore, the
10 Office of Planning recommends that the Board
11 review it as directed by the zoning
12 administrator's office.

13 CHAIRMAN JORDAN: Sounds like a
14 cop out to me. Mr. Mordfin, I see something
15 on your face that you're not saying. What are
16 you holding back on us?

17 MR. MORDFIN: I don't think I'm
18 going back on you.

19 CHAIRMAN JORDAN: No. I said
20 you're holding back because it's something.

21 MR. MORDFIN: I mean that's, you
22 know, initially we didn't look at it as

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1 requiring relief from a definition, but we do
2 --

3 CHAIRMAN JORDAN: You see another
4 way. What did you initially look at it as
5 what relief would he need to do this?

6 MR. MORDFIN: Well, initially we
7 looked at this and said, well, it's less than
8 four feet high, therefore it doesn't count
9 towards lot occupancy. It doesn't need rear
10 yard set back. It doesn't need side yard set
11 back. And so, our initial thought was he
12 doesn't need relief to do this. It meets the
13 requirements of the zoning regulations.

14 But with further discussions with
15 the zoning administrator's office, with Jay
16 Surabian, the attorney representing them, they
17 did indicate to us that it does need that. It
18 doesn't have to, he can't take up more than 50
19 percent of the rear yard even though it's less
20 than four feet in height. If it takes up less
21 than that, then he's okay.

22 It doesn't have to meet the side

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1 yard set backs or the rear yard set backs if
2 it's less than four feet in height. He only
3 has to not take up more than 50 percent of the
4 rear yard. And in this case, it does take up
5 more than 50 percent because if he's going out
6 seven feet and leaving five foot six.

7 CHAIRMAN JORDAN: What's the
8 percentage?

9 MR. MORDFIN: I didn't calculate
10 the percentage, but if he goes out seven feet
11 and he's at five six leaving, which means that
12 --

13 MEMBER TURNBULL: If he only went
14 six feet --

15 MR. Mordfin: If he went six feet,
16 yes, that would be less than 50 percent
17 because then the five six would be --

18 CHAIRMAN JORDAN: Well, there's
19 your answer. Can you live with a six feet
20 deck?

21 MEMBER TURNBULL: Six foot deck.

22 MR. TONO: Yes.

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1 CHAIRMAN JORDAN: Well, you don't
2 need us if you do that. Let me tell you.
3 What we're going to do is try to help
4 everybody all around, if the Board will agree
5 with me. I'm going to continue this matter,
6 give you an opportunity to revise your plans,
7 submit it to Planning and the zoning
8 administrator with your reduced deck.

9 And that might be all you need.
10 Okay? I will keep your case alive, just in
11 case, and continue to give us a sixty day on
12 that because it's real hard pressed for us to
13 look at changing the definition of the rear
14 yard under the code, under the zoning
15 regulations for this property. That's a lift.
16 That's a lift. That's a heavy lift.

17 MR. TONO: I understand.

18 CHAIRMAN JORDAN: And I don't
19 think that you might not have gotten through
20 this with that because a practical and
21 philosophical issue for the Board. So, I
22 would recommend that we, if that's okay with

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1 the Board and if everybody all around is on
2 the same page, we're going to move this, give
3 you time to redo your plans, present it again
4 to the zoning administrator and see if you can
5 get it done that way.

6 If she can live with a six,
7 because you need to talk to her too. See if
8 she can live with a six foot deck as opposed
9 to a seven foot deck or no deck at all.
10 That's probably even better. Can she live
11 with a six foot deck or no deck. Okay. All
12 right.

13 MEMBER TURNBULL: And just to
14 reiterate what Mr. Chair is saying is that
15 going with a six foot deck, you may not be
16 back here. The zoning administrator could be
17 granting you the relief or allowing this as
18 is. But, we're going to leave it open in case
19 you do need to come back.

20 MR. TONO: Okay. So, to be clear.
21 All I need to do is to go back to DCRA with
22 the revised drawings, or shall I bring them

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1 here?

2 CHAIRMAN JORDAN: No. Don't bring
3 them to us. Go back to DCRA.

4 MR. TONO: Okay.

5 CHAIRMAN JORDAN: Make sure you
6 got your measurements done. If you want to do
7 a drive by with the Office of Planning,
8 they're always here to serve and help people.
9 I don't want to volunteer you for that, Mr.
10 Mordfin, but anyway because you got to be
11 under 50 percent back there. And if you just
12 do some shaving and some trimming and some,
13 you know, she certainly could be able to get a
14 table and chair back there on six feet.

15 MR. TONO: Well, I thank you. And
16 I thank you Mr. Mordfin. You've been also
17 very helpful.

18 CHAIRMAN JORDAN: We're going to
19 put this on to what date?

20 MR. MOY: Mr. Chairman, that would
21 be November the 19th.

22 CHAIRMAN JORDAN: November the

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1 19th. All right?

2 MR. TONO: Thank you so much.

3 CHAIRMAN JORDAN: Very good.

4 MR. TONO: Thank you for staying
5 with us this long.

6 CHAIRMAN JORDAN: Yes, I know.
7 Thank you. You're welcome. That's why they
8 don't pay us the big buck, but we're good
9 servants. Then the next item of business for
10 the Board is that I have a motion I need to
11 make regarding our training which is scheduled
12 for October 1st.

13 And so, at that point let me do
14 this. As Chairperson of the Board of Zoning
15 and Adjustment for the District of Columbia in
16 accordance with section 407 the open the Open
17 Meeting Amendment Act of 2010, I move that the
18 Board of Zoning and Adjustment hold a closed
19 meeting on October 1, 2013 from 9:00 a.m.
20 until 12:00 p.m. for the purpose of conducting
21 internal training pursuant to section 405 B-12
22 of the Open Meeting Amendment Act of 2010. Is

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1 there a second?

2 MEMBER TURNBULL: Second.

3 CHAIRMAN JORDAN: Motion made and
4 seconded. Will the secretary please take roll
5 call vote of the motion before us now that is
6 has been seconded.

7 MR. MOY: Okay this is 12:15 I get
8 it. I get it. Yes, sir, well when I call
9 your names, gentlemen and lady, if you can
10 respond with a yea or nay. Mr. Turnbull.

11 MEMBER TURNBULL: Yes.

12 MR. MOY: Chairman Jordan.

13 CHAIRMAN JORDAN: Yea.

14 MR. MOY: Vice Chairperson Allen.

15 VICE CHAIRPERSON ALLEN: Yea.

16 MR. MOY: Mr. Hinkle.

17 MR. HINKLE: Yea.

18 MR. MOY: And we have a Board seat
19 vacant. Motion carries, Mr. Chairman.

20 CHAIRMAN JORDAN: As it appears
21 that the motion has passed, I hear by request
22 that the Office of Zoning provide the notice

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1 required under the act. And any other
2 business coming before the Board at this time?

3 Then we're adjourned. Thank you. Thank you
4 all.

5 (Whereupon, the hearing in the
6 above-entitled matter was concluded at 12:21
7 p.m.)

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