

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 29, 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 9:30 a.m., Lloyd J. Jordan, Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Zoning Commission
Vice-Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEVE COCHRAN
PAUL GOLDSTEIN
KAREN THOMAS
ELISA VITALE

The transcript constitutes the minutes from the Public Hearing held on October 29, 2013.

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

	<u>PAGE</u>
Application No. 18643 Jonas Stiklorius	12
Application No. 18608 Sheldon P. Schuman	29
Application No. 18646 3053 Q Street LLC	38
Application No. 18640 Barry S. Jackson	43
Application No. 18641 Aung Hla and Myint Myint San	84
Application No. 18614 SMC United Industrial, LP	123
Application No. 18643 CAS Riegler Real Estate Development	142

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

2 (9:44 a.m.)

3 BZA CHAIR JORDAN: Would you please
4 come to order. Good morning, ladies and
5 gentlemen. We're located at the Jerrily R.
6 Kress Memorial Hearing Room at 441 4th Street,
7 N.W. And today's date is October 29, 2013.

8 We're here for a meeting on the Board
9 of Zoning Adjustment to issue decisions or to
10 hold hearings today on cases on today's docket.
11 My name is Lloyd Jordan. I'm the Chairperson of
12 the Board. To my left is Marcie Cohen, Member
13 of the Zoning Commission. To my right is S.
14 Kathryn Allen, Vice-Chair of the Board.

15 Please be advised that this meeting
16 is being recorded by a court reporter and also
17 being webcast live. Therefore I'm going to ask
18 you to refrain from any disruptive noises here
19 in the hearing room today. So that means
20 silence the phones so we don't have to give that
21 little peculiar look at somebody when their
22 phone goes off.

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1 The Board's hearing procedures are
2 contained to my left, the back door by the left.
3 And so if there is, if you're not comfortable or
4 understand how we proceed here please feel free
5 to get the printout of how we process matters
6 here at the Board.

7 For those of you who are here to
8 testify or to provide statements for our, for any
9 case on the agenda there are two things that I'm
10 going to ask you to do. The first thing is that
11 I need you to complete two witness cards per
12 person. That's two witness cards per person and
13 to turn those witness cards over to the court
14 reporter who is sitting to my right, prior to
15 your testimony.

16 So let me go over that again because
17 usually we get people come to the table, they'll
18 go I didn't know I had to do it. So everybody
19 who is going to provide testimony and/or a
20 statement to the Board today on any matter, I'm
21 going to ask that you complete two witness cards
22 per person and then give them to the court

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1 reporter prior to testifying.

2 The second thing I'm going to need
3 you to do today is to, if you're going to testify
4 or provide a statement to the Board, I'm going
5 to need you to stand and take the oath or
6 affirmation by the Board's Secretary. So if
7 you're going to give any testimony or make a
8 statement to the Board today I'm going to ask you
9 to stand and take the oath, which is going to be
10 given by the Board Secretary, Mr. Moy, the oath
11 or affirmation.

12 MR. MOY: Good morning.

13 BZA CHAIR JORDAN: So stand, yes,
14 this is the time to stand. And as I take a look
15 and I remember everyone who stood and did not.

16 (Witnesses Sworn)

17 MR. MOY: Ladies and gentlemen, you
18 may consider yourselves under oath.

19 BZA CHAIR JORDAN: Very good. Mr.
20 Moy, whenever you're ready.

21 MR. MOY: Yes, sir. I have a few
22 preliminary matters before the Board gets going.

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1 BZA CHAIR JORDAN: Please.

2 MR. MOY: First for the record on
3 the hearing docket for the record, the
4 Application Number 18642, this application of
5 57th Street Mews Incorporated. That has been
6 postponed, rescheduled to December 3, 2013.
7 Also Appeal Number 18644 of Caroline A. Crenshaw
8 has been withdrawn from the docket.

9 Secondly, Mr. Chairman, in terms of
10 preliminary, real quick preliminaries, on the
11 hearing side Application Number 18614, this is
12 the application of SMC United. There was a
13 withdrawal of party opposition, party status and
14 that's in your case folders under Exhibit 37 to
15 that application.

16 And finally, one of the three
17 decision cases this morning, Application Number
18 18632 of 14th & U Residential. There are two
19 filings that have been submitted to the office
20 which are preliminary matters for the Board to
21 act before going to the merits of the
22 application.

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1 BZA CHAIR JORDAN: Okay. Let's
2 handle that on the call of that case. Is there
3 anything else? All right. I'm going to ask a
4 representative from the applicant on case 18641
5 and the person requesting party status to come
6 to the witness table if you would please.

7 So that's 18641, a representative of
8 the applicant and a representative, the person
9 requesting party status or the representative
10 thereof. Now would you make sure that your
11 microphones are turned on. And first let me ask
12 did you give your cards to the court reporter?

13 MS. PRELOGAR: Sorry. We were just
14 filling them out.

15 BZA CHAIR JORDAN: Okay. Well
16 let's go, let's make sure that, let's do that.
17 You're going to have another opportunity. Just
18 take a seat. Let's go ahead and identify
19 yourselves on the record. This is not your
20 hearing. But I have something to talk about
21 prior to the hearing, so please identify
22 yourself.

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1 MS. PRELOGAR: Hi, I'm Elizabeth
2 Prelogar.

3 BZA CHAIR JORDAN: And you are the
4 request for party status.

5 MS. PRELOGAR: Exactly.

6 BZA CHAIR JORDAN: Okay. And you
7 are?

8 MR. PRELOGAR: Brandon Prelogar,
9 her husband. And we're the neighbors next door
10 to the west.

11 BZA CHAIR JORDAN: I understand.

12 MS. FOWLER: Hi, Jennifer Fowler.

13 BZA CHAIR JORDAN: And you are?

14 MS. FOWLER: The architect.

15 MR. HLA: Aung Hla, the owner of 404
16 Independence.

17 BZA CHAIR JORDAN: Say your last
18 name for me again and spell it for me please.

19 MR. HLA: My last name is H-L-A.
20 First name is A-U-N-G.

21 BZA CHAIR JORDAN: Very good, thank
22 you. As you are aware we have a request for

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1 party status and I don't know if you've had the
2 opportunity. But what has become a more recent
3 practice of this Board which has proven to be
4 very beneficial is that I require, is that the
5 Board requires the parties to seek in party
6 status, to have conversation with the applicant
7 prior to your hearing being called.

8 This has turned out to be very
9 beneficial in our previous hearings. And so I'm
10 going to, before your hearing is called in fact
11 after you be dismissed from this table if you go
12 out in the hall, have conversation and see if you
13 can work out any differences.

14 We've learned that we've been able
15 to eliminate a lot of problems and issues and
16 people are neighbors and they should be able to
17 either work together or understand the issues
18 and do the best they can. As Mr. Moy has
19 indicated, on our docket we had another case
20 which was a huge party status matter which has
21 subsequently worked its way out in the interim.

22 So both parties ought to be willing

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1 to open themselves up. And as I always say it's
2 better that you guys work it out before we work
3 it out. Okay, because somebody may not be
4 happy.

5 Well good, with that I'm going to ask
6 you to have conference and see what you can work
7 out in regards to the party status and so that
8 the applicant, based upon my review, I'm
9 inclined to grant party status since this is a
10 next door neighbor on this matter. Okay.

11 MR. PRELOGAR: Thanks, we
12 appreciate the opportunity.

13 BZA CHAIR JORDAN: Thank you very
14 much.

15 MR. HLA: Thank you.

16 (Whereupon, the foregoing matter
17 went off the record at 9:51 a.m. and went back
18 on the record at 10:31 a.m.)

19 BZA CHAIR JORDAN: Let's move into
20 our hearing agenda for today. Let's call 18643.

21 MR. MOY: Okay that would be to the
22 table Application Number 18643. This is the

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1 application of Jonas Stiklorius for a special
2 exception for an accessory garage serving a
3 one-family row dwelling under Section 223 not
4 meeting the lot occupancy requirements under
5 Section 403 in the R-4 district.

6 That premises is 19 or rather 119
7 12th Street, S.E., Square 989, Lot 50.

8 BZA CHAIR JORDAN: Thank you, Mr.
9 Moy. Would you please identify yourselves?

10 MS. FOWLER: Hi. My name is
11 Jennifer Fowler, Fowler Architects.

12 MR. STIKLORIUS: My name is Jonas
13 Stiklorius, resident, owner of the property and
14 applicant.

15 BZA CHAIR JORDAN: This is a matter
16 I think that we can handle without any real
17 testimony. I think we will add based upon
18 recommendation I believe from OP relief from
19 2001.3 since there's going to be an increase or
20 change in the lot occupancy and it's
21 nonconforming.

22 So I would add that the relief to 403

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1 also include 2001.3. Unless the Board has, does
2 the Board have any particular questions or
3 anything they would like to address in this
4 matter?

5 Then I would turn to the applicant.
6 Certainly it's your right to do a presentation
7 if you want. But the Board believes that based
8 upon the record that's been submitted that you
9 already have enough to be granted relief.

10 And the only thing you can do from
11 here is go down hill. As you know, some people
12 have stepped into that water when they had it
13 made and decided they had to say something. But
14 certainly it's your option to do.

15 MS. FOWLER: We're happy to waive
16 our presentation. Thank you.

17 BZA CHAIR JORDAN: And then we would
18 turn to the Office of Planning to see if there's
19 any additional, anything in additions or
20 subtraction they want to make from their report.

21 MS. VITALE: Good morning, Mr.
22 Chair, Members of the Board, Elisa Vitale with

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1 the Office of Planning. We're happy to rest on
2 the record and can answer any questions.

3 BZA CHAIR JORDAN: Thank you. Does
4 the Board have any questions of Office of
5 Planning? Does the applicant have any
6 questions of the Office of Planning? Do we have
7 a representative of the Department of
8 Transportation for this case?

9 We do have a letter in the file,
10 Exhibit 18 where the Department of
11 Transportation has submitted no objection to the
12 relief requested. Is there a representative
13 here from ANC-6B, ANC-6B? We do have Exhibit 27
14 from ANC-6B who has voted in support of this
15 application which we will give great weight to.

16 Is there anyone in the audience
17 wishing to speak in support of this application?
18 Anyone wishing to speak in support? Anyone
19 wishing to speak in opposition? Opposition,
20 please, want to speak in opposition come
21 forward.

22 Let's make sure your microphone is

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1 turned on. There should be a bright glowing
2 green light.

3 MS. HATFIELD: Yes.

4 BZA CHAIR JORDAN: Is it, pull it
5 closer to you. No, that one, yes. The one to
6 your right, the microphone. Okay, say
7 something. Let's see if you're on.

8 MS. HATFIELD: Testing.

9 BZA CHAIR JORDAN: No, push the,
10 you'll see a button that says push.

11 MS. HATFIELD: Testing.

12 BZA CHAIR JORDAN: There you go.
13 And did you give witness cards to the court
14 reporter?

15 MS. HATFIELD: Yes.

16 BZA CHAIR JORDAN: Okay. And would
17 you please state your name?

18 MS. HATFIELD: My name is Joanne
19 Hatfield.

20 BZA CHAIR JORDAN: Okay. Ms.
21 Hatfield, I understand you want to testify in
22 opposition to this relief being requested in

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1 this matter.

2 MS. HATFIELD: Yes.

3 BZA CHAIR JORDAN: Okay. You have
4 three minutes.

5 MS. HATFIELD: Hello, neighbors.
6 I don't have a problem with my neighbors getting
7 a garage. I think that would be nice. There's
8 currently a seven foot fence there and a pergola
9 over it.

10 Now the fence being seven foot,
11 we're going up to 15 foot so that's doubling the
12 visual wall there. And my concern is calling it
13 a one story. But I think 15 feet is more like
14 one and a half story.

15 And I'm concerned that the other
16 garages in the alley way are more about 10 foot,
17 maybe even 12 foot at the max. And this could
18 set a precedence that if all the other neighbors
19 make their garages 15 foot then we might be
20 creating a tunnel like a fortress in the alley.

21 And I'm also concerned, it's just
22 that the 15 foot height, I don't understand why

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1 if you have a vehicle and most of our human
2 heights are five to six foot tall, two people
3 high would even be 12 feet, why 15, which tells
4 me I'm concerned that this is really setting a
5 foundation, a purpose could be for a two story
6 residence. And that being what is the minimum
7 height requirement for occupancy wouldn't it be
8 about seven foot. So you could put a two story
9 structure there. And this could be a residence.

10 So I'm concerned that it's being
11 masked as a garage. But what vehicle needs 15
12 feet unless it's a school bus. So I propose that
13 the height be in keeping with 10 foot or 12 foot
14 at the max.

15 BZA CHAIR JORDAN: Let me ask you.
16 Have you talked to your neighbor about this prior
17 to today?

18 MS. HATFIELD: No.

19 BZA CHAIR JORDAN: Has the neighbor
20 reached out to you to have conversation about
21 this?

22 MS. HATFIELD: No. And I didn't

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1 realize until today how tall it was going to be
2 because where I see the pergola from the previous
3 owner and the fence, to just change that seven
4 foot to maybe ten foot wouldn't be visually that
5 much different.

6 But to go another five feet that is
7 like one and a half. Now across from it is a two
8 story carriage house. And I just, I think are
9 we creating a walled precedence that all the
10 other neighbors are going to say well I want mine
11 up to 15 feet.

12 BZA CHAIR JORDAN: Well that
13 wouldn't establish a precedence and that's not
14 the way that it would be allowed if there was a
15 request. Every issue would stand on its own
16 bottom and form a basis thereof.

17 Let me ask does the Board have any
18 other questions?

19 ZC VICE CHAIR COHEN: No, I'd like
20 to hear her.

21 MS. HATFIELD: If historically the
22 garages were only so far over your head to hold

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1 a carriage and now it's a vehicle because if
2 you're five foot or six foot, ten foot is four
3 feet over your head.

4 BZA CHAIR JORDAN: I understand.

5 MS. HATFIELD: So why does it have
6 to be 15 feet and then you have a visual wall on
7 because it's a corner property. So I would like
8 them to have a garage. I just wanted to know why
9 it has to be so high.

10 BZA CHAIR JORDAN: Let me turn to
11 the applicant. First let me ask you, have you,
12 did you not reach out to your neighbors for this?

13 MR. STIKLORIUS: We did indeed
14 reach out to our neighbors. We've made
15 ourselves available to anyone one who's willing
16 to --

17 BZA CHAIR JORDAN: Tell me how you
18 reached out. Not that you made yourself
19 available. How did you reach out?

20 MR. STIKLORIUS: There's an
21 association of, I would call it a ladies
22 gathering once a month and on the neighborhood.

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1 It's called the 12th Street Ladies. It's an
2 informal gathering.

3 My wife and my mother in law attend
4 essentially every month. I don't know if Ms.
5 Hatfield is a member.

6 BZA CHAIR JORDAN: Did you go to,
7 you're a next door neighbor?

8 MS. HATFIELD: No, I'm along East
9 Capitol Street.

10 BZA CHAIR JORDAN: So how far are
11 you from the property?

12 MS. HATFIELD: I can see it from my
13 back yard.

14 BZA CHAIR JORDAN: So how far are
15 you from the property?

16 MS. HATFIELD: About four houses
17 over.

18 BZA CHAIR JORDAN: Four houses
19 over. You're not directly in, they're not
20 directly behind you?

21 MS. HATFIELD: There's a park.

22 BZA CHAIR JORDAN: There's a park in

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1 between you?

2 MS. HATFIELD: Yes.

3 BZA CHAIR JORDAN: Okay. And did
4 you also see a notice for relief on this
5 building?

6 MS. HATFIELD: I see the notice.

7 BZA CHAIR JORDAN: Now did you go to
8 your next door neighbors and knock on their doors
9 and --

10 MR. STIKLORIUS: We did. We don't
11 consider this to be particularly adjacent.

12 MS. HATFIELD: The neighbors on
13 East Capitol Street all face this property.

14 BZA CHAIR JORDAN: Only when asked.
15 This is not a dialogue. We'll kind of
16 structure, it's supposed to be structured. I
17 don't do a very good job at it sometimes. But
18 it's supposed to be structured so we don't have
19 a lot of free for all.

20 I didn't see that there's
21 inhabitable space in these plans. Did I miss
22 that?

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1 MS. FOWLER: No, I can address that.
2 Well first of all we're only asking for 15 feet
3 which is by right height. It's a one story
4 garage. There's no, we could technically put a
5 mezzanine.

6 But we're not allowed to put a second
7 floor. That's not legal in this situation.
8 The idea is that we're creating a car lift garage
9 so you drive in and there would be, so it would
10 be two spots but you're lifting the car up.

11 And you do need the height for that
12 to be able to fit the second car stacked. It's
13 not wide enough to fit two cars side by side. So
14 that was the intent there. So that is by right.

15 And even in the future there's no way
16 they could put in a second floor without going
17 through a variance process to get a second, two
18 story garage. And I do also want to note that
19 the alley is 30 feet wide in both directions. So
20 it's quite a wide alley.

21 MR. STIKLORIUS: If I may.

22 BZA CHAIR JORDAN: Give me a second.

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1 Does the Board have any additional questions
2 they want to ask? Then before you give your
3 testimony I'm going to ask does the applicant
4 have any questions they would like to ask the
5 witness?

6 MR. STIKLORIUS: Would the witness
7 be interested in perhaps seeing the plan because
8 the only reason I would like to ask that is I
9 hired Ms. Fowler --

10 BZA CHAIR JORDAN: We're not giving
11 testimony. Are you going to ask her a question?
12 And a question is, let me see. Have you seen the
13 plans?

14 MS. HATFIELD: Yes, this morning.

15 BZA CHAIR JORDAN: Okay. All
16 right. So that answered that question. So
17 she's seen the plans. Now any rebuttal?

18 MR. STIKLORIUS: The rebuttal would
19 be only this. I grew up in a historic
20 neighborhood not in this city but in a different
21 one. And I have great respect for the
22 historical condition of the neighborhood.

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1 I hired Ms. Fowler with the express
2 purpose of building a carriage house type
3 structure that would look quite at home in 1899
4 when the house was built. Those carriage houses
5 generally are of a height in order to provide for
6 a hay loft.

7 I also believe that the height of the
8 structure is in keeping with the general
9 proportion of the house since the first story of
10 the house is raised up and a rear porch is
11 elevated off the back yard. So I think that just
12 simply proportionally it's artistic that way.

13 I also believe it, the structure
14 that we've designed is very much a parallel type
15 structure to the one just across the 30 foot
16 alley and so it will frame the alley, I think
17 rather aesthetically.

18 BZA CHAIR JORDAN: I was going to
19 ask that. I thought I saw that. I'm looking at
20 that in the picture across the alley. It's one
21 that's similar.

22 MR. STIKLORIUS: And I think I would

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1 like to rebut my neighbor's testimony that there
2 are not that many two story alley, garages in the
3 alley. In fact on 11th Street in Philadelphia
4 Row which was built in the 1860's, as I
5 understand it, and there are a number of
6 structures, some of which are actually rather
7 decrepit and could stand a refurbishing, which
8 are generally two stories in height and I'm not
9 asking for two stories.

10 BZA CHAIR JORDAN: I see at least
11 four in the pictures. Okay. Any questions?
12 All right. Then we will conclude this hearing
13 based upon the record. Is the Board ready to
14 deliberate in this matter? Okay.

15 Then based upon the request and the
16 evidence presented I would be inclined that, I
17 would move that the Board grant the relief. I
18 think this is a special exception. I have not
19 seen any evidence that shows there's a
20 substantial impact upon the community in any
21 negative way.

22 I think the drawings and plans would

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1 fit what's necessary for this area. And I think
2 the relief is minimum. And this is a special
3 exception and I think they meet the guidelines
4 for it. So I would move that we grant the relief
5 that included 403 and 2001.3.

6 ZC VICE CHAIR COHEN: And I would
7 second that, Mr. Chair.

8 BZA CHAIR JORDAN: Motion made and
9 seconded. Any unreadiness? All those in favor
10 signify by saying aye.

11 (Chorus of ayes)

12 BZA CHAIR JORDAN: Those opposed
13 nay. The motion carries. Mr. Moy.

14 MR. MOY: Yes, sir. Staff would
15 record the vote as 3-0 on the motion of Chairman
16 Jordan to approve the obligation with the
17 additional amended relief in 2001.3. Also in
18 support Ms. Marsha Cohen.

19 ZC VICE CHAIR COHEN: Marcie.

20 MR. MOY: Marcie Cohen, thank you,
21 sorry. Also support Chairperson Allen. We
22 have a Board member not present and a Board seat

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1 vacant. So the motion carries 3-0.

2 BZA CHAIR JORDAN: That concludes
3 this hearing. We thank you all and we thank you
4 for coming and giving us the input. But
5 certainly whoever may be listening to this we
6 always want people to go talk to their neighbors
7 beforehand and try to get some understanding.

8 And we know that everybody may not
9 agree. But at least let's make sure we did some
10 extended outreaches. But thank you for taking
11 your time coming down and bringing an issue.

12 We may not have agreed with you that
13 it has an impact, but at least you got some
14 additional answers to your questions. All
15 right. Thank you.

16 MR. MOY: Mr. Chairman, did the
17 Board waive the requirements for a summary
18 order?

19 BZA CHAIR JORDAN: Yes.

20 MR. MOY: Just checking. Thank
21 you. The next application before the Board is
22 Application Number 18640. This is the

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1 application of Barry S. Jackson.

2 BZA CHAIR JORDAN: No.

3 MR. MOY: Sorry.

4 BZA CHAIR JORDAN: Let's call
5 18608, please.

6 MR. MOY: Okay. That would be
7 Application Number 18608, application of
8 Sheldon P. Schuman pursuant to 11 DCMR 3104.1
9 special exception to establish a new fast food
10 establishment within a grocery store under
11 Section 733 in the C-2-A district at premises
12 1500 Independence Avenue, S.E., Square 1072, Lot
13 5. This case was continued, Mr. Chairman, from
14 the hearing of September 17th.

15 BZA CHAIR JORDAN: In fact we had
16 already stepped through the hearing and we made
17 some additional requirements and requests. So
18 let's have you identify yourselves please.

19 MR. MOON: Good morning. My name
20 is Kyu-Shik Moon.

21 BZA CHAIR JORDAN: Louder please.

22 MR. MOON: My name is Kyu-Shik Moon.

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1 BZA CHAIR JORDAN: Okay. And to
2 your right?

3 MR. MOON: Is my dad and his name is
4 Tae Won Moon.

5 BZA CHAIR JORDAN: Say it one more
6 time.

7 MR. MOON: Tae Won Moon.

8 BZA CHAIR JORDAN: Okay. We had
9 this matter before us I believe September 17th
10 and at that time we wanted to allow additional
11 time for the ANC to weigh in on the matter and
12 time for OP to take another look at this and to
13 work around some of the many deficiencies that
14 may have existed so we could all be on the same
15 footing.

16 And we subsequently have gotten
17 report from OP now in support of this with some
18 conditions as well as the ANC has voted in
19 support of this. Does the Board have any
20 questions for this applicant? I think we --

21 ZC VICE CHAIR COHEN: Thank you, Mr.
22 Chair. I understand that the waste receptacle

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1 is going to be enclosed in a wooden fence.

2 MR. MOON: That's correct.

3 ZC VICE CHAIR COHEN: Wooden is more
4 aesthetically pleasing. However, I know that
5 rats gnaw wood so is that the best that you can
6 find in materials?

7 MR. MOON: Well actually now we are
8 now willing to investigate any other material
9 than wood itself. But we are surely able to
10 style it into different types of material to
11 accommodate your needs impossible that the rat
12 aspect and all that.

13 Maybe there's some plans stuff that
14 is prevent any rusting or anything like that.
15 And we can look into that or we can paint it to
16 ensure that it's not going to be have an impact
17 on the wood also.

18 ZC VICE CHAIR COHEN: Yes, I know
19 the aesthetics wood works. I'm just worried
20 about rat infestation in, getting there. But
21 you're receptacle is going to be metal. Is that
22 correct?

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1 MR. MOON: That's correct.

2 ZC VICE CHAIR COHEN: Okay. That's
3 good. All right. So then really the fence may
4 not be as an egregious an issue.

5 MR. MOON: Most likely it's not
6 going to be. And we're going to have concrete
7 on the base and set the, as a frame around it
8 should be wooden panels. So it shouldn't be
9 that really.

10 ZC VICE CHAIR COHEN: That gives me
11 comfort.

12 MR. MOON: Thank you.

13 ZC VICE CHAIR COHEN: In addition
14 though I would just like to mention a few things
15 again. They're more on the aesthetic side. If
16 you can be, you know, you have some hanging sort
17 of posters.

18 If you can really, they really make
19 the building look unappealing. So if you could
20 take a look into that and maybe have something
21 more pleasing there to.

22 MR. MOON: We're going to look into

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1 it and see and make sure that as perhaps
2 presenting the label or the sign to be more
3 pleased as a public.

4 ZC VICE CHAIR COHEN: Yes, again, I
5 know that you have to have all those barriers
6 there for safety. But just take another look at
7 everything.

8 MR. MOON: Sure we will.

9 ZC VICE CHAIR COHEN: So that it
10 compliments the neighborhood more.

11 MR. MOON: We will do that.

12 ZC VICE CHAIR COHEN: Thank you.

13 BZA CHAIR JORDAN: Any other
14 questions of the applicant from the Board? Then
15 we've already kind of had this hearing. Let me
16 turn to Office of Planning since you've updated
17 your report.

18 MS. BROWN-ROBERTS: Good morning,
19 Mr. Chairman and Members of the BZA. I'm Maxine
20 Brown-Roberts. I'm in the Office of Planning.
21 In our report I think the applicant supplied us
22 with the information that we requested and we

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1 were able to make a recommendation of approval
2 with the one condition regarding the trash
3 receptacle.

4 And that as you see, that has to go
5 to public space through DDOT and so that will be,
6 will be determined there for the exact location
7 because there, the property fronts in two
8 streets and I think DDOT will make a
9 determination as to which side, whether
10 Independence Avenue or 15th Street that they
11 would like to see the receptacle placed. So if
12 you have any other questions.

13 BZA CHAIR JORDAN: Does the Board
14 have questions of the Office of Planning? Does
15 the Office of Planning have any guidelines
16 regarding the type of signage that's more
17 aesthetically pleasing?

18 MS. BROWN-ROBERTS: No, we don't,
19 the regulations for the signage goes to building
20 permit. However we did, you know, try to
21 convince the applicant to do something regarding
22 the signage.

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1 BZA CHAIR JORDAN: Okay. Any other
2 questions for Office of Planning by the Board?
3 Does the applicant have any questions of Office
4 of Planning?

5 MR. MOON: At this point, no, I
6 don't have any.

7 BZA CHAIR JORDAN: Is there anyone
8 here from the Department of Transportation? I
9 think we even did all this. But since we kind
10 of walked back and got some, we already kind of
11 went through all of this.

12 Department of Transportation issued
13 a letter of no objection. Is there a
14 representative of 6-B that wishes to speak on
15 this application? We do have a letter from
16 ANC-6B recommending support in which we will
17 definitely give great weight to.

18 Is there anyone here wishing to
19 speak in support of this application? Anyone
20 wishing to speak in opposition? Then we would
21 normally turn back to the applicant for a
22 rebuttal and closing. But I believe we can

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1 close the record and move into, we do have two
2 letters of support from Tim and Lana Britt and
3 Carole Howe who also are neighbors to this
4 property who wrote in support of the
5 application.

6 MR. MOON: Great.

7 BZA CHAIR JORDAN: We have two
8 letters of opposition from, one letter of
9 opposition from, if you would.

10 ZC VICE CHAIR COHEN: Yuan Liu and
11 a Nancy Kronstadt, neighbors, Exhibit 23.

12 BZA CHAIR JORDAN: Okay. So with
13 that then let's conclude this hearing. And I
14 would move that we support the application with
15 two conditions. That the applicant must obtain
16 his public space permit to allow for the trash
17 enclosure and additionally that the signage
18 outside the property shall be aesthetically
19 pleasing or in conformity with the District of
20 Columbia law.

21 And those would be the two
22 conditions that I would add to this. Any other

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1 thoughts?

2 ZC VICE CHAIR COHEN: No, Mr.
3 Chairman. I would second that.

4 BZA CHAIR JORDAN: So motion to
5 approve and second. Any unreadiness? All
6 those in favor signify by saying aye.

7 (Chorus of ayes)

8 BZA CHAIR JORDAN: Those opposed
9 nay. The motion carries. Mr. Moy.

10 MR. MOY: Staff would record the
11 vote as 3-0. There's a motion, on the motion of
12 Chairman Jordan to approve the application with
13 two conditions as he cited. Second the motion
14 Ms. Cohen. Also in support Vice Chairperson
15 Allen.

16 Have a Board member not present, a
17 Board seat vacant. Motion carries 3-0. Mr.
18 Chairman.

19 BZA CHAIR JORDAN: All right. And
20 then we can have a summary order please.

21 MR. MOY: Yes, sir.

22 BZA CHAIR JORDAN: We're going to be

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1 in a ten minute recess and we will come back.

2 MR. MOON: Thank you.

3 (Whereupon, the foregoing matter
4 went off the record at 10:55 a.m. and went back
5 on the record at 11:01 a.m.)

6 BZA CHAIR JORDAN: Mr. Moy, would
7 you call 18646, please?

8 MR. MOY: Thank you, sir. That
9 would be at the table Application Number 18646,
10 the application of 3053 Q Street, LLC, pursuant
11 to 11 DCMR 3103.2, variance from the
12 nonconforming structure provisions under
13 Subsection 2001.3 to allow the expansion of the
14 existing fourth floor of a one-family dwelling
15 not meeting the number of stories under Section
16 400 limitation.

17 Let me read that again. Not meeting
18 the number of stories limitation under Section
19 400 in the R-1-B district, premises 3053 Q
20 Street, N.W., Square 1282, Lot 863.

21 BZA CHAIR JORDAN: Don't give any
22 post song and dance. Okay. Would you identify

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1 yourselves please?

2 MS. MOLDENHAUER: Meredith
3 Moldenhauer, representing the applicant.

4 MR. SALEM: Rashid Salem, the
5 owner.

6 MR. MARKUS: And Rich Markus, the
7 architect.

8 BZA CHAIR JORDAN: I think, I don't
9 know if the Board had any issues. I think I'm
10 pretty straightforward on the relief and why
11 it's necessary.

12 The only question I have, I didn't
13 see any letters of support from neighbors.

14 MS. MOLDENHAUER: The, my client
15 can represent that he did speak with some
16 neighbors and provide some testimony in that
17 regard.

18 MR. SALEM: I did speak with the
19 neighbors. I spoke with my direct neighbor who
20 actually owns the property and rents it out to
21 some graduate students. The consensus from the
22 neighbors was they weren't in opposition but

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1 weren't willing to put their name forth in
2 support.

3 BZA CHAIR JORDAN: And I don't have
4 anything in opposition either. But we did have
5 the signage was out and et cetera. And I just
6 always, as you know like from the last case it's
7 important that neighbors talk to neighbors and
8 at least knock on the door.

9 And that was my concern about this
10 file. I didn't see anything in regards to, you
11 know, neighbors either saying yea or nay or what
12 have you. Does the Board have any other
13 questions about this application?

14 I think the record here is very clear
15 in regards to relief and that relief is
16 necessary. So you can present if you want or you
17 can --

18 MS. MOLDENHAUER: Applicant rests
19 of the record then.

20 BZA CHAIR JORDAN: Then we return to
21 OP to see if there's anything in addition.

22 MS. THOMAS: Nothing in addition.

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1 Good morning, Mr. Chairman, Members of the
2 Board. Karen Thomas for the Office of Planning
3 and we'll rest on the record.

4 BZA CHAIR JORDAN: Then we,
5 Department of Transportation, anyone on this
6 case for Department of Transportation? We do
7 have a letter of no objection to the relief
8 requested.

9 Anyone here from ANC-2E? We do have
10 a letter from ANC-2E, which you got unanimous
11 support. And there was a quorum so that means
12 you get great weight in and they have no
13 objection to the relief that's requested.

14 Anyone here wishing to speak in
15 support of this application? Anyone in
16 support? Anyone in opposition? Anyone in
17 opposition, let's make sure. You had a surprise
18 last minute. Anyone in opposition?

19 Then no one in opposition. We would
20 normally turn back for rebuttal and closing but
21 you're going to waive that I'm sure.

22 MS. MOLDENHAUER: We will waive

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1 that as well. Thank you.

2 BZA CHAIR JORDAN: Then we will
3 close the hearing and the file on this matter.
4 I would move that we grant the relief requested
5 by the applicant. The record in this matter
6 clearly shows that the request for variance
7 should be granted and so I would move that.

8 ZC VICE CHAIR COHEN: Second.

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

12 (Chorus of ayes)

13 BZA CHAIR JORDAN: Those opposed
14 nay. The motion carries.

15 MR. MOY: Staff would record the
16 vote as 3-0. This is on the motion of Chairman
17 Jordan to approve the application with the
18 relief requested. Second the motion, Ms.
19 Cohen. Also in support Vice Chair Allen.

20 We have a Board member not present
21 and a seat vacant. Again, the motion carries on
22 a vote of 3-0.

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1 BZA CHAIR JORDAN: Then may we have
2 a summary order please.

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

4 BZA CHAIR JORDAN: Thanks.

5 (Off the record comments)

6 BZA CHAIR JORDAN: Let's call
7 18640.

8 MR. MOY: Thank you, Mr. Chairman.
9 That would be Application Number 18640 of Barry
10 S. Jackson, pursuant to 11 DCMR 3104.1 special
11 exception to allow a two story rear addition and
12 two story garage addition to a row dwelling under
13 Section 223, not meeting the lot occupancy
14 requirements under Section 403 rear yard,
15 Section 404 an R-4 district at premises 761 10th
16 Street, S.E., Square 950, Lot 94.

17 BZA CHAIR JORDAN: Thank you. One
18 second.

19 (Off the record comments)

20 BZA CHAIR JORDAN: All right.
21 Let's identify yourselves please.

22 MS. FOWLER: Jennifer Fowler. I'm

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1 the architect.

2 MS. OLDENBURG: Kristen Oldenburg,
3 ANC-6B04 commissioner.

4 BZA CHAIR JORDAN: Very good.
5 Thank you. All right. This is on for 223
6 relief and special exception under 403 and 404
7 special exception relief. Shadow study, all
8 right.

9 I think your record is pretty full
10 here. I don't know if the Board has any other
11 issues with this matter. We do know there's two
12 letters of opposition from neighbors, Yuan Liu
13 and Nancy Kronstadt. Is that right?

14 ZC VICE CHAIR COHEN: Yes, that's
15 correct. I was in error when I said they opposed
16 a prior matter or case.

17 BZA CHAIR JORDAN: But I think as
18 this is on for special exception and there's been
19 support from others I don't see any real
20 problems. I don't see anything that leads to an
21 impact so far. I mean you can do a presentation
22 if you wish.

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1 But if the Board had any other
2 questions of the applicant's request. I don't
3 have any and I don't know if it's worth you going
4 through unless you want to hope something comes
5 up in rebuttal because based upon the record that
6 we have so far I mean you meet the request for
7 special exception. Board, anything you need to
8 ask? Okay, yes.

9 VICE CHAIRMAN ALLEN: I do, since
10 the objections go to the sunlight and lack of
11 sunlight maybe you could just talk a little bit,
12 short to that issue. It would be helpful for me.

13 BZA CHAIR JORDAN: And I do
14 appreciate having these various studies here
15 because, yes, go ahead.

16 MS. FOWLER: Sure, right, so we were
17 made aware of the opposition by the neighbors at
18 755 through 757. And as a result we did some sun
19 studies just to kind of see the impact on the
20 property, which were submitted in the
21 supplemental filing that you have.

22 But basically what we found kind of

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1 looking throughout the year mostly kind of
2 concerned with the deck, the rear deck at 757 and
3 the actual light entering into the windows,
4 there was going to be no impact to the light
5 available to the structure or the deck
6 throughout the year with the exception of
7 December kind of afternoon we had a 3:30 time
8 where it did hit, the first floor windows were
9 hit with shadow.

10 But for the rest of the year really
11 the shadow was falling on the rear yard.

12 BZA CHAIR JORDAN: But I thought it
13 was hitting those windows anyway but not, it just
14 went a little further.

15 MS. FOWLER: A little further
16 correct, yes. So again we have an existing
17 garage that varies in height but approximately
18 10 feet tall and adding some additional height
19 there.

20 So it is increasing shadows in the
21 rear yard of the adjacent property, but very,
22 very well really almost no impact to the

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1 property, to the building itself with the
2 exception of that very winter afternoon.

3 BZA CHAIR JORDAN: Yes, it was hard,
4 actually I went back and using a magnifying glass
5 to see the difference and the impact of where the
6 shade was coming onto the property. And it was
7 just that one period of time when the window was
8 more impacted but it was just for that brief
9 period of time.

10 MS. FOWLER: Correct. So I would
11 say it's definitely not anywhere near a undue
12 impact, a very, very minor impact on the
13 property. I can also address other changes that
14 we made in the revision if that's helpful.

15 BZA CHAIR JORDAN: Changes other
16 than what --

17 MS. FOWLER: In the supplemental
18 filing.

19 BZA CHAIR JORDAN: -- we have. No,
20 we've already.

21 MS. FOWLER: Okay.

22 BZA CHAIR JORDAN: And I understand

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1 the basis of the 2.6 longer than the building to
2 the north of the property because you still even
3 up with the building on the south part of the
4 property and so I see that. Any other questions
5 of the applicant?

6 Then let's turn to the Office of
7 Planning and see what if anything that Mr.
8 Goldstein has for us.

9 MR. GOLDSTEIN: Good morning, Mr.
10 Chair, Members of the Board. My name is Paul
11 Goldstein with the Office of Planning. For the
12 record I have nothing to add beyond the filing
13 I've submitted. We're supportive of the
14 application. Thank you.

15 BZA CHAIR JORDAN: Board, questions
16 of Mr. Goldstein? Applicant, questions of Mr.
17 Goldstein? Then let's turn to, is there a
18 representative of Department of Transportation
19 for this matter?

20 We do have a letter in the file from
21 DDOT in support or no opposition to the relief
22 requested. Representative of ANC-6B. Hello.

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1 MS. OLDENBURG: Hi, thank you very
2 much for having this hearing and having us here.
3 I attended today because the ANC, as you will
4 note in the letter that we submitted, we did vote
5 9-0-1 in support of this application contingent
6 on several changes to be made to the plans.

7 And one was to pull back the, a
8 portion of the addition 30 inches to make that
9 addition flush with the house on, the building
10 on the rear flush with the building on the north
11 side. And also we asked that the garage
12 staircase instead of abutting on the property on
13 the north side that it be pulled over more into
14 the yard of the owner and that the windows in the
15 garage that would be facing east.

16 In other words toward the back of the
17 building to the north, that those windows be
18 raised so that it wouldn't be easy for occupants
19 inside that garage apartment on the second floor
20 to be looking into the occupants on the north
21 side. And we did this primarily on the basis of
22 privacy issues, the requests that we made.

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1 So I'm not sure I saw a copy of some
2 changes that were sent to the Board. And I think
3 maybe some changes were made to the garage. But
4 I don't believe that the addition was pulled back
5 the 30 inches.

6 So that's why I'm here today to see
7 what the architect, what the owner has planned
8 for the property and whether our vote actually
9 stands. I'm not sure at this point.

10 BZA CHAIR JORDAN: Okay. Let me
11 have the applicant certainly respond to that
12 first please.

13 MS. FOWLER: Okay, yes. We did
14 consider the ANC's requests and that was
15 something we kind of worked through during the
16 meeting. Unfortunately the owner, Barry
17 Jackson, was not in attendance at the ANC
18 meeting. He does a lot of out of the country
19 travel with his work.

20 So I wasn't able to, you know, we
21 weren't able to make a definitive answer or give
22 them an answer on that day. So I said I would

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1 go back and discuss with him and we would make
2 some decisions.

3 So what we decided to do was to
4 address the garage concern. So we did pull the
5 stair away from the fence line so that basically
6 the french doors on the second floor of the
7 garage are all the way to the south. So they're
8 as far away as they can be from 755 and 757 10th
9 Street.

10 We also raised the windows that are
11 on the back of the garage facing the yard up so
12 that they're above five feet so that there were
13 not going to be any additional views into the
14 neighboring properties from the garage.
15 However, Mr. Jackson opted to not push the
16 addition back.

17 Again we feel like it's a very, you
18 know, it's a very nominal, small addition when
19 you look at. It's two houses, this is
20 originally two houses that got combined. So I
21 know that they look, appears like a very large
22 addition, but it's essentially a double wide

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1 property. Someone combined them at one point.

2 I think that the 20 foot addition,
3 well it goes just beyond the neighboring
4 property only on the first floor. The second
5 floor actually has a balcony so it's set back six
6 feet from there. So it's an open balcony on the
7 top floor.

8 But it sits in keeping with the other
9 properties. The other properties go back to
10 similar depths and the existing sunroom at this
11 property goes back about, within six inches of
12 this proposed wall. So I think it's kind of in
13 keeping with what you see on the block and on the
14 alley there.

15 And we felt like it was, there was
16 not enough of an impact on the neighbor to make
17 it worth moving back that wall to line it up.

18 BZA CHAIR JORDAN: Okay. And if
19 I'm not mistaken the wall does line up with the
20 south property, doesn't it? They extend to 2.6.

21 MS. FOWLER: Approximately, yes,
22 approximately. Yes, and in the original sun

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1 room on the south side was around that depth. It
2 was about six inches shorter than what we have
3 here.

4 BZA CHAIR JORDAN: It's longer than
5 the property on the north but it's just about the
6 same depth as the property on the south.

7 MS. FOWLER: Correct.

8 BZA CHAIR JORDAN: Okay. Let me
9 turn back to Ms. Oldenburg. What was the basis
10 of why the ANC wanted to have the property line
11 up with the property on the north as opposed to
12 the property on the south?

13 MS. OLDENBURG: Well it is I think
14 flush with the property on the south and also
15 there is no ability from the occupants of the
16 applicant's house to look into the neighbors
17 next door based on the, except of course there
18 is a roof terrace and that will allow occupants
19 of the applicant's house to be looking into the
20 back yards well of many of the houses in that area
21 actually.

22 But we were concerned about, I mean,

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1 the owners of the two condominiums next door they
2 are here today and they will, you will hear their
3 testimony also. We were concerned that just
4 because that protruded out, although it's just
5 30 inches, it would allow somebody on that
6 balcony to be looking into the terraces on the
7 condos next door.

8 And it seemed a simple matter to just
9 pull that back so it was flush and just eliminate
10 some of those privacy concerns. And we did at
11 the meeting when Ms. Fowler was there we had a
12 discussion about it and in fact negotiated down.

13 It wasn't to pull the entire rear
14 addition back 30 inches but just the portion that
15 was next to the north side. So it was half of
16 that addition to be pulled back 30 inches.

17 BZA CHAIR JORDAN: Okay. And Ms.
18 Fowler, why is, why was the decision made not to
19 pull it back?

20 MS. FOWLER: I think that Mr.
21 Jackson wanted to kind of bring it to your Board
22 to get your reading on it. You know, he's very

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1 adamant about every square inch that we're
2 getting out of this project and didn't want to
3 sacrifice anything.

4 My understanding when we were
5 talking to the ANC I was thinking that the two
6 and a half feet was more of a light and air
7 concern. Obviously if it's a privacy concern we
8 can easily make modifications to that balcony
9 with a wall or something to not allow people to
10 look over into their side.

11 I was just under the impression it
12 was more of a light and air concern with the
13 request to push it back two feet.

14 CHAIR JORDAN: Ms. Cohen.

15 ZC VICE CHAIR COHEN: Thank you, Ms.
16 Fowler, moving it back the 30 inches, will that
17 eliminate the privacy issue though?

18 MS. FOWLER: I think you're still
19 going to have a balcony that's facing the yard
20 of the neighbor.

21 ZC VICE CHAIR COHEN: That's what I
22 thought.

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1 MS. FOWLER: So I don't think it's
2 going to make, but I guess right now you can look
3 towards, you can look directly to the north from
4 the balcony because it's coming past the
5 building. But again, that's something that
6 could easily be addressed with a trellis or a
7 wall or something to keep somebody from looking
8 that direction.

9 BZA CHAIR JORDAN: What's back
10 there on the property to the north that, is there
11 windows there that can be looked into from the
12 balcony because I don't --

13 MS. FOWLER: There are windows but
14 they also have a deck, a second level deck.

15 BZA CHAIR JORDAN: I know they have
16 a deck there too, so.

17 MS. FOWLER: Right.

18 BZA CHAIR JORDAN: That was the
19 other thing. I knew they had a deck that's
20 sitting in back of their place.

21 MS. FOWLER: They do have deck.

22 ZC VICE CHAIR COHEN: And are they

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1 looking out at other peoples areas back, yes,
2 back yards from their decks? Can they see other
3 people's yards?

4 MS. FOWLER: I'm not sure. I
5 haven't been up on that deck.

6 BZA CHAIR JORDAN: It's an elevated
7 deck.

8 MS. FOWLER: It is elevated, yes.

9 ZC VICE CHAIR COHEN: I'm going to
10 ask this question of you and of OP. But my
11 experience in the city is that there are a lot
12 of people that can look over into other people's
13 private areas.

14 That's, you know, living in the
15 city. Is that your experience?

16 MS. FOWLER: Yes, that is. There's
17 really no true privacy in the city. But again
18 I think that the deck, the balcony is not a
19 primary driving force in this project. So I
20 think it's really just looking for the living
21 space. So we're --

22 ZC VICE CHAIR COHEN: Mr.

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1 Goldstein, can you answer that question too
2 about, you know, what we commonly see in the
3 District of Columbia with regard to new decks
4 overlooking other peoples?

5 MR. GOLDSTEIN: Sure. I mean the
6 city and particularly this neighborhood it's
7 close quarters. I mean homes are cheek to jowl
8 and there are going to be looking into neighbor's
9 properties. It's not an uncommon situation.

10 You know, the applicant if it had
11 been a smaller, if they hadn't done the garage
12 addition they probably could have pushed back a
13 deck if they wanted by right and not even come
14 to the Board. So it is here because of the lot
15 occupancy.

16 But there probably could have been
17 something else that would have been done that,
18 you know, houses can push decks back all the
19 time.

20 BZA CHAIR JORDAN: Thank you. Any
21 other questions of our representative from our
22 ANC and certainly appreciate the input. I'm

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1 glad you came. A lot of times we just get
2 letters and don't see faces and aren't able to
3 ask questions.

4 Sometimes we have to guess what the
5 intent was by some of these letters. But really
6 appreciate you coming out.

7 MS. OLDENBURG: Right and I noticed
8 that we have several cases here today from that
9 are 6B and I stayed very quiet on the others
10 because I wasn't prepared to speak up on those.
11 But yes, it is good to come and listen to what,
12 your comments.

13 It helps us when we do our
14 deliberations to understand how the Board
15 operates and how the Board feels.

16 BZA CHAIR JORDAN: Thank you again.
17 Is there anyone wishing to testify in support of
18 the application? Anyone in support? Anyone in
19 opposition? I do know we have opposition.

20 Please come forward, please.
21 Welcome. Make sure the microphone is on and
22 have you turned in your witness cards? And you

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1 were here this morning to get sworn in. I
2 remember, I'm pretty sure.

3 MS. KRONSTADT: Yes.

4 BZA CHAIR JORDAN: I try to remember
5 everybody. Please identify yourselves.

6 MS. LIU: My name is Yuan Liu. I'm
7 the owner of 757 10th Street.

8 MS. KRONSTADT: And my name is Nancy
9 Kronstadt. I'm the owner of 755 10th Street.

10 BZA CHAIR JORDAN: Okay. Your time
11 starts now. You have three minutes to present
12 us your statements.

13 MS. LIU: Okay. First of all I
14 would like to thank the Chairman, Board members
15 allow us to do the testifying. And I also want
16 to make a request since we're two separate units
17 we would like to have each of us have three
18 minutes.

19 BZA CHAIR JORDAN: Certainly, okay.

20 MS. LIU: Okay, thank you. This
21 building is designed by a prize winner
22 architect, Mr. Schwartz. It's very well known

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1 in the District. The most beautiful, enjoyable
2 part of our house of the two units is our back
3 window facing the yard.

4 It's a Cathedral window, it's our
5 living room. And the question that the ANC
6 Board requested for the set back is not mainly
7 for privacy issues. It's more really for air
8 and light because there is a patio on my unit and
9 there is a balcony on Nancy's unit that really
10 enjoy the sun.

11 And your sun study, we very much
12 appreciate you made the revised version of the
13 garage to address the privacy issue and by the
14 way your design is beautiful. We really
15 appreciate it. We don't have any objection for
16 our neighbors to expand their house.

17 However, there are several very
18 negative impact on our enjoyment of our
19 property. So on September 24th we submitted a
20 letter. We expressed seven points of concerns.
21 I think Ms. Fowler addressed one of the concerns
22 for the privacy issue we very much appreciate.

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1 But the largest concern is really
2 the block of lighting and air. So particularly
3 if, I'm a scientist by training. If you look at
4 the software study of they call it a sun study
5 or a shadow study we will only received it
6 yesterday.

7 If you look at this so one of the
8 drawing here is they only draw the upper part.

9 BZA CHAIR JORDAN: If you can
10 identify it in some kind of way for the record.
11 I think they're identified by the bottom what
12 you're looking at.

13 MS. LIU: Sorry this is the record
14 of what Ms. Fowler provide us.

15 BZA CHAIR JORDAN: Yes, but which
16 page?

17 MS. LIU: Page second. So if you
18 look at page second of her amendment which is a
19 drawing. So this start the first page has this
20 satellite picture. The second page is a drawing
21 of the back of the addition, which is more 30
22 feet, 30 inches more next to door.

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1 So we are on the north side you, Mr.
2 Chairman, you asked a question why we want to
3 address this because we're on the northern
4 atmosphere so the sun comes from the south. So
5 the south side neighbor does not have too much
6 negative impact but we do because we receive our
7 sunshine from the south.

8 So if you look at this drawing they
9 didn't draw anything on the downstairs. So that
10 building will block part of the light of the
11 patio. It's not a consider, privacy is not a
12 major concern. The lighting is the major
13 concern.

14 So they only draw the upper part, not
15 the lower part, that affect my property. And
16 then if you look at other pages what Ms. Fowler
17 called a sun study and in her supplement she made
18 several points.

19 She said that it's very minimum
20 impact. Actually I would like to bring your
21 attention to sun study she says has very minimum,
22 that's Page 2 on her supplement filing. And she

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1 said the very minimum --

2 BZA CHAIR JORDAN: Which supplement
3 filing or are you talking about the sun study
4 itself?

5 MS. LIU: That's, you have to look
6 in combination.

7 BZA CHAIR JORDAN: Exhibit 28, I
8 think it is or 24 excuse me.

9 MS. LIU: So her supplement filing.

10 BZA CHAIR JORDAN: Okay, let us
11 catch up with you a second.

12 MS. LIU: Sure.

13 BZA CHAIR JORDAN: So that would be
14 Exhibit 28. Now which page of Exhibit 28 are you
15 referring to?

16 MS. LIU: The supplement filing on
17 Page 2 and she said it will not, well Page 1 she
18 said, Number 3, she said at the last sentence of
19 Number 3 she said it will not impact the rear
20 windows of the building nor --

21 BZA CHAIR JORDAN: On the front
22 page, yes.

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1 MS. LIU: The front page, Number 3,
2 the third paragraph, last sentence of the third
3 paragraph. It says it will not impact the rear
4 windows of the building nor the existing deck.

5 BZA CHAIR JORDAN: Okay.

6 MS. LIU: And then if you look at
7 those sun study pictures most of them, she only
8 had the shadows on the yard but not on the
9 building itself. And also on Page 2 of the --

10 BZA CHAIR JORDAN: Refer to me on
11 the sun study that you are concerned because I
12 do see for instance on Page 4 it shows where the
13 back yard has, before and after both have shadows
14 and they both include the shadows on the deck
15 without the addition and without the addition.

16 MS. LIU: Right. So if we can go to
17 Page 6 --

18 BZA CHAIR JORDAN: Of?

19 MS. LIU: Of the sun study. Page 6
20 on the sun study which is 4 o'clock of March and
21 September 20th.

22 BZA CHAIR JORDAN: Page 6?

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1 MS. LIU: Yes.

2 BZA CHAIR JORDAN: Okay. Which one
3 are we looking at now?

4 MS. LIU: So if you look at the
5 existing compare was the proposed addition that
6 there is a much larger shadow not only on the
7 yard. It should have shadows on the building
8 but the drawing does not reflect the shadow on
9 the building. So that means it will make the
10 living room very dark.

11 BZA CHAIR JORDAN: So that's --

12 MS. LIU: That's most of the time of
13 the year. That's from March to September.

14 BZA CHAIR JORDAN: But that's not
15 based upon the 2.6 feet. That's overall, that
16 shadow flows from the garage, is that what you're
17 saying?

18 MS. LIU: Correct. That shadow is
19 from the garage so that we'll have two concerns.
20 One is from the garage, the second story of the
21 garage. One is from the --

22 BZA CHAIR JORDAN: You kind of lost

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1 me because initially you said the study didn't
2 show it hitting the balcony. But you just kind
3 of moved on to something else, got you. All
4 right.

5 MS. LIU: I apologize. There are
6 two separate issues. One is the first part of
7 the study didn't address the second, the ground
8 floor.

9 BZA CHAIR JORDAN: Okay. All
10 right. Anything else?

11 MS. LIU: And then if you look, I
12 will let Nancy just address something that she
13 had --

14 BZA CHAIR JORDAN: Let's start the
15 clock again, please.

16 MS. KRONSTADT: A couple of points.
17 We just got the --

18 BZA CHAIR JORDAN: Make sure your
19 microphone is on.

20 MS. KRONSTADT: It's a green light.

21 MS. LIU: Press.

22 MS. KRONSTADT: Okay, sorry. We

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1 just got these yesterday afternoon, the sun
2 drawings. But I do think there are some
3 existing conditions that were not reflected.
4 They back yard of the house has where you look
5 at the views that are presented and there is my
6 deck.

7 To the left there is five feet on the
8 north side of our property that is not property.
9 There's a staircase that comes down from my deck
10 to our parking pad. There is a full fence that
11 goes between the staircase and the, her yard.

12 BZA CHAIR JORDAN: On your north of
13 your property, the north side of your property?

14 MS. KRONSTADT: North of our
15 property. So when you look at the amount of
16 shade being cast by these sun drawings it looks
17 like it's just casting this much on a very big
18 yard where I think the percentage of shade on the
19 smaller yard and it is considerably smaller,
20 it's a lot more shade as a percentage of what
21 sunlight we used to get.

22 It's a big staircase. And it is

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1 separated by a fence. So her yard is not that
2 whole back yard. Her yard is considerably
3 shorter, less wide and so the new shadows are
4 taking up a greater percentage of the open space,
5 what truly is open space.

6 I do think that the Page 6 that Yuan
7 was just referring to, I do think the software
8 didn't adequately go past the top of the deck and
9 project. The shadow shouldn't --

10 BZA CHAIR JORDAN: It looks like
11 it's falling underneath the balcony. That's
12 what you're saying?

13 MS. KRONSTADT: Right and it's on
14 the far side. But it's, you know, it's, I think
15 there was a software glitch. There should be
16 some shade going there.

17 I had a little, very little time
18 yesterday afternoon. But I did talk to an
19 architect friend of mine who has a different
20 software program and asked him to just run a
21 couple of scenarios. And I know wintertime is
22 weird around here.

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1 But there were some significant
2 differences in the two he had time to run.

3 ZC VICE CHAIR COHEN: Did you bring
4 copies of those?

5 MS. KRONSTADT: I did.

6 BZA CHAIR JORDAN: Let me ask you
7 something. Is the, is it your testimony that
8 the garage is, will be above the balcony?

9 MS. KRONSTADT: No, my testimony is
10 that the shadows from --

11 BZA CHAIR JORDAN: I understand.
12 But is the garage higher, the top of the garage
13 is it higher than the balcony?

14 MS. KRONSTADT: No, my balcony is at
15 10 feet, eight feet.

16 BZA CHAIR JORDAN: Okay, so the
17 garage is, what's the height of the garage?

18 MS. FOWLER: 20.

19 MS. KRONSTADT: 20 feet.

20 BZA CHAIR JORDAN: So because what
21 I'm observing is that the garage is a little
22 lower than the balcony. It's the other way

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1 around? Okay.

2 MS. FOWLER: The existing garage,
3 but the new one is higher.

4 BZA CHAIR JORDAN: Okay, the new one
5 is higher.

6 MS. FOWLER: It might be just the
7 angle that you're seeing it. But it's
8 definitely taller.

9 MS. KRONSTADT: Yes, it's
10 definitely higher. The other thing that in
11 looking through the studies that you provided
12 this shows no sunlight on Yuan's patio except
13 during the summer period.

14 But this past Sunday the neighbors
15 were sitting out on their patio in sunlight from
16 2 o'clock to 3 o'clock.

17 BZA CHAIR JORDAN: Let's, time out.
18 Mr. Moy, we're going to need copies so everyone
19 can look at this. Is there something else
20 you're going to present? You have copies?

21 MS. KRONSTADT: This is what my
22 architect did, not what she did.

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1 BZA CHAIR JORDAN: If you're going
2 to talk from it and you want us to look at it then
3 the Board needs to have it to observe and try to
4 follow you or you can risk us not following you.
5 It's your option.

6 And if that's the case then there
7 should be copies for the Board so that we can look
8 at and follow.

9 MS. KRONSTADT: I will give the
10 copies. I'm not sure this will be necessary.
11 But I will give the copies to you.

12 BZA CHAIR JORDAN: No, no, give it
13 to Mr. Moy, please.

14 MS. KRONSTADT: Sorry.

15 BZA CHAIR JORDAN: So are you going
16 to use those to talk from?

17 MS. KRONSTADT: I am not at the
18 moment.

19 MS. LIU: Yes, yes.

20 MS. KRONSTADT: I guess my one thing
21 I would ask is I would like the architects, mine
22 his or a third party one to kind of get together

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1 and do pictures agreeing on what goes into the
2 sun study and agreeing on what the angles are
3 because --

4 BZA CHAIR JORDAN: Let me ask you
5 something. Have the two of you had conversation
6 prior to today?

7 MS. FOWLER: No.

8 MS. KRONSTADT: I have not spoken.

9 BZA CHAIR JORDAN: Well why not?

10 MS. LIU: They never reached out to
11 us.

12 MS. FOWLER: As I said, Mr. Jackson
13 travels extensively for work so.

14 BZA CHAIR JORDAN: You know, what I
15 find and not to try to lecture, but I'm
16 lecturing, what I find an awful lot coming before
17 this Board is that people won't talk to each
18 other. And until we begin to force people to
19 talk that's when it's I didn't know it was that
20 good or that bad.

21 I could make that little change to
22 make you happy. Yes, we post notices and we do

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1 other things. But certainly it's the
2 applicant, I would say the applicant's
3 responsibility to reach out.

4 It's not in the code yet, but let's
5 make that note for the ZR to at least reach out.
6 We find so much stuff and people are spending
7 money and time and activities when it's simple
8 courtesies that work.

9 And you're next door neighbors to
10 this property.

11 MS. KRONSTADT: He's moved out.

12 BZA CHAIR JORDAN: Well and I'm
13 talking also for the record in a larger sense of
14 others. But here's one that might have been
15 something that you guys could have resolved.
16 And here we're at a point where, you know, we've
17 got issues.

18 And it's also upon, it's incumbent
19 upon those who are opposed who also live out next
20 door, they should at least knock over and say
21 hey, I don't like what you're doing. You know,
22 I want to be your neighbor unless you want to just

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1 draw a line and start the Civil War again.

2 But at least do the courtesies to
3 each other. It just makes a better living
4 situation here in the District if we just try to
5 not necessarily all get along because as we said
6 some neighbors just won't get along. We've had
7 some of those. We thought it was the war between
8 the states again.

9 But here's something that it's a
10 shock to me to hear that there's not been reach
11 either way. So, Mr. Moy, where are we coming
12 with the --

13 MR. MOY: Okay. It's coming. We
14 were looking at it because it appears that these
15 additional copies are additional copies of one
16 set. So I think we're good to go with these. I
17 just wanted to ensure that --

18 BZA CHAIR JORDAN: You know what I'm
19 really inclined to do with this. Let me try to
20 draw this line on this because this really has
21 me kind of and I'm going to ask for some deference
22 from the Board.

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1 I'm thinking about moving this for
2 30 days and let the parties sit, talk, have
3 conversation, work out what they can. That the
4 applicant also get back with the ANC and have
5 conversation with the ANC and letting them know
6 why they couldn't do part of the conditions
7 because I'm also confused about the ANC's report
8 now whether or not they want to give support
9 because they did two of the three things or one
10 of the two things. I don't know what the letter
11 now says if it's really support there.

12 So I'm going to take the prerogative
13 of the Chair under the regulations and continue
14 this for 30 days. And can't we all just get
15 along. At least let's get a more refined issue
16 here for the Board.

17 We need to know where the ANC is on
18 the fact that because he hadn't even
19 communicated to ANC even that what they
20 requested they gave a letter contingent
21 supporting these things. And now all those
22 things are not done.

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1 There hasn't been, you know, both
2 ways on it. So I'm going to continue this for
3 30 days if that's okay with the Board.

4 FEMALE PARTICIPANT: Yes.

5 BZA CHAIR JORDAN: Mr. Moy, let's
6 give this a 30 day date.

7 MR. MOY: Yes, sir. The
8 approximate date, December 3rd. You have a huge
9 docket on that day.

10 BZA CHAIR JORDAN: On what day?

11 MR. MOY: The Thursday, huge
12 docket. And the 10th we have that training
13 session in the afternoon. So we're kind of
14 looking at the 17th of December.

15 BZA CHAIR JORDAN: Let's go ahead
16 and do that. I think there are some things here
17 that need to be worked out and I would like our
18 record to be complete added with updated shadow
19 study from both, that you have conversation and
20 see what you can work out a reason so that it
21 reflects, so the ANC knows why you're not moving
22 it back because the Board has a responsibility

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1 to the ANC to give great weight to their request
2 and also explain why we may or may not accept
3 their recommendation.

4 I don't see that in this record.
5 And I don't know if, we've talked about it, I
6 don't even know if you have, ready to prepare for
7 that. So those are the things I would like to
8 see in this record. Let's do some walk back
9 dates.

10 MR. MOY: Yes. So we should, the
11 staff would recommend, Mr. Chairman, of
12 continuing this on the 17th of December and with
13 additional filings into the record from all
14 parties by Tuesday, December 10th.

15 BZA CHAIR JORDAN: That would be and
16 I'm going to advise you to get with the ANC right
17 away because I don't know the cycle of their
18 meeting, et cetera. Yes, Ms. Oldenburg, give
19 you some deference to talk about scheduling.

20 MS. OLDENBURG: I think December
21 10th is the date of our, is that a Tuesday?

22 BZA CHAIR JORDAN: Yes.

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1 MS. OLDENBURG: That's the date of
2 our meeting and that's when we can vote again on
3 this case on December 10th. So we can get our
4 conclusions to the Board by the hearing date.

5 BZA CHAIR JORDAN: Very good, that
6 makes sense. Thank you, really appreciate it.

7 MS. LIU: Chairman, we have another
8 concern which is the --

9 BZA CHAIR JORDAN: I don't want to
10 hear it now. You need to sit and work it out and
11 get it all done. I understand your concerns.
12 You can come back with it on the 17th if it's not
13 worked out. And I'm telling the applicant,
14 like, you know, just come on, just work for the
15 applicant to at least touch base with folks, have
16 conversation with people because you're seeking
17 a relief, you know.

18 Some people come in and strong arm
19 it that way and then sometimes they lose. So
20 it's just, that's just a word to the wise. It
21 doesn't mean that you have to. Just use your
22 best effort. Would you agree Board? Thank you

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1 very much. Thank you all. Thank you for taking
2 time. Thank you for coming.

3 MS. LIU: Thank you.

4 (Off the record comments)

5 BZA CHAIR JORDAN: We're about to
6 take the witness table from you. Are you guys
7 the next case? Okay. You just assumed that I
8 would call your case. Let's call another, no.

9 Okay. Where are we on this thing?
10 I'm lost.

11 MR. MOY: Well on the agenda it
12 would be 18641. Okay, you want to do that, all
13 right. Application Number 18641. This is an
14 application of, I'm going to take a stab at this
15 at your name, I think it's Aung Hla and Myint
16 Myint San, pursuant to 11 DCMR.

17 BZA CHAIR JORDAN: This is our party
18 status.

19 MR. MOY: Yes, that's right,
20 3104.1, no. We're not?

21 BZA CHAIR JORDAN: I'm sorry. I'm
22 trying, just to let you know for the record I try

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1 to manage these dockets so that those that are
2 going to take longer or shorter so we don't put
3 burdens on others and spending time and effort
4 on them don't have to sit and wait.

5 And this is going to be a long one
6 with party status and et cetera.

7 MR. MOY: We do have that one case
8 where party status withdrew, that was 18644.

9 BZA CHAIR JORDAN: Yes and we've
10 also got 18463. Let's go to 18614 and then we'll
11 come back to 18463.

12 MR. MOY: Okay, great. Again that
13 would be Application Number 18614.

14 (Off microphone comments)

15 BZA CHAIR JORDAN: You just have to
16 go or you both. I'm sorry, Mr. Collins, just
17 give me a second. I'm going to have to
18 accommodate.

19 MS. PRELOGAR: I'm sorry, I just
20 didn't realize. I thought we were going to be
21 early in the day and so I didn't bring my pump.

22 BZA CHAIR JORDAN: So you both are

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1 leaving? You have a statement --

2 MS. PRELOGAR: No, if at all
3 possible to call this case next that would enable
4 us to both stay if at all possible.

5 BZA CHAIR JORDAN: What, that's the
6 next case.

7 MS. PRELOGAR: This was the party
8 status case.

9 BZA CHAIR JORDAN: Okay, but
10 there's a joint request for party status,
11 correct?

12 MS. PRELOGAR: Yes.

13 BZA CHAIR JORDAN: All right. Only
14 one of you have to talk about it. All right.
15 Let's call 18641, I really, let's call 18641.

16 MR. MOY: Okay. So we have a Case
17 Number 18641. This application --

18 BZA CHAIR JORDAN: Come back Steve.

19 MR. MOY: This is an application of
20 Aung Hla and Myint Myint San pursuant to 11 DCMR
21 --

22 BZA CHAIR JORDAN: It was only a

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1 save due to the baby, trust me.

2 MR. MOY: -- 3104.1 special
3 exception to allow a two story rear addition to
4 a semi-detached dwelling under Section 223, not
5 meeting the lot occupancy requirements under
6 Section 403, open court 406, nonconforming
7 structure requirements and the CAP or rather
8 CAP/R-4 District at premises 404 Independence
9 Avenue, S.E., Square 818, Lot 807.

10 BZA CHAIR JORDAN: Are you
11 finished?

12 MR. MOY: Do you want me to go on?

13 BZA CHAIR JORDAN: No, I think we're
14 probably good if we just call the case number.
15 It's already been published over and over again
16 in the relief request that's there. Not unless
17 somebody's changing relief. Let's ask the
18 parties to identify themselves.

19 MS. FOWLER: Hi, I'm Jennifer
20 Fowler. I'm the architect.

21 MR. HLA: Aung Hla, the owner of 404
22 Independence Avenue.

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1 MS. PRELOGAR: Elizabeth Prelogar
2 at 402 Independence.

3 MR. PRELOGAR: And Brandon Prelogar
4 at 402 Independence.

5 BZA CHAIR JORDAN: Have you had an
6 opportunity to meet and have we worked this all
7 out?

8 MR. HLA: Yes, Your Honor.

9 MS. PRELOGAR: Well we were close.

10 BZA CHAIR JORDAN: Don't get me
11 promoted. But so you're close. What do we mean
12 close?

13 MS. PRELOGAR: We weren't able to
14 reach total agreement.

15 BZA CHAIR JORDAN: We're not able to
16 reach. How far away are we?

17 MS. FOWLER: So well so we have this
18 gable roof proposal that you see in front of you.
19 And I think they are requesting that we take the
20 lower part of the gable all the way down to the
21 top of the first floor, which is a six foot
22 reduction in the wall facing their property.

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1 We kind of countered with how about
2 three feet, let's split the difference. But I
3 think that's not --

4 MR. HLA: The roof line originally
5 we proposed was 22 feet high, 12 feet above the
6 first floor. We already came down halfway, six
7 feet.

8 BZA CHAIR JORDAN: And so where do
9 you want them to come?

10 MR. HLA: Zero.

11 MR. PRELOGAR: Yes, we would
12 actually prefer that they just built on the east
13 side of the property.

14 BZA CHAIR JORDAN: So you want to
15 roll the dice because you're rolling the dice
16 whether or not the Board agrees with you or not.

17 MR. PRELOGAR: Not necessarily.
18 As well we think that there's a great deal of room
19 for compromise and as we have requested
20 repeatedly we would like our architect to get
21 together with theirs.

22 BZA CHAIR JORDAN: So we'll proceed

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1 on with this hearing and just deal with this
2 issue. Okay. So I'm inclined that we grant
3 party status to the next door neighbors. I
4 think their issue raised here is about their
5 living space and effect of light and air.

6 They are the next door neighbors and
7 so although I think the light and air issue is
8 something that we would handle, the general
9 nature of the Board being concerned for the total
10 community. But the fact that your next door
11 neighbor is in this type of situation I think
12 we'll give some, I would offer to give some
13 deference.

14 So unless the Board has any
15 objection to that we'll grant a party status.
16 Then granting party status in this matter, I
17 think this is not a very difficult matter to get
18 our arms around although you have ANC-6B
19 rejected it based upon the neighbors. So let's
20 begin this hearing and go to the applicant.

21 Let's talk, let me see if there's any
22 issues that I had. Let's talk about the issue

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1 regarding the effect upon the neighbors as they
2 raise it.

3 MS. FOWLER: Okay, as you see in the
4 file the original application was to, we have an
5 existing two story structure, the original part
6 of the house. And then there is a one story
7 structure at the rear, sun room. The idea was
8 to increase the height of that to two story and
9 extend it two feet five inches beyond the
10 existing line.

11 We, based on negotiations with the
12 neighbors we went to the ANC with a revised plan
13 where set back the second floor four feet
14 essentially creating a, not even a balcony but
15 a roof, a small roof there. And that wasn't, the
16 neighbors were not happy with that plan as well.

17 So we opted to go with a gable style
18 roof. So basically we're setting the wall back
19 a foot and a half away from their property and
20 then it angles, it comes up slightly about six
21 feet and then it angles away from them thus kind
22 of opening up their sky view because of the

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1 angled roof cutting away from their property.

2 We did some sun studies which are in
3 the file. And I want to explain sun study is
4 basically we pick kind of the solstices, you
5 know, kind of four points during the year and we
6 try to find the worst case scenario. I mean
7 obviously we could show you the best case
8 scenario as well.

9 But we try to show you, you know,
10 when we're seeing the impacts. So you might see
11 a shadow study from somebody else that has a
12 slightly different time that shows something
13 different. So this is just a snapshot of
14 several times during the year.

15 But what we found was that there is
16 absolutely no change in the shadows hitting the
17 yard or the house adjacent, with the adjacent
18 property throughout the year, particularly with
19 this gable roof design. And this gable roof is
20 the back 12 feet of the proposed addition.

21 We did go through the sun study with
22 the neighbors and they understand that the

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1 sunlight is not being impacted. And I think
2 more of the concern was the open space, kind of
3 the view from the yard and not blocking the view
4 of the sky.

5 But we do feel like the pitched gable
6 roof accommodates this as drawn and there is
7 really a very minimal impact on their property.

8 BZA CHAIR JORDAN: Okay.

9 MR. HLA: Dear Honorable Chairman
10 and Members of the Board, we are applying for a
11 special exception under Section 223. And our
12 neighbor said that the addition will first of all
13 unduly affect their light and air.

14 Second of all they said it's a wall
15 going up. Third of all they said that it's, they
16 have a feeling of being boxed in. Section 223
17 doesn't say anything about walls going up to a
18 reasonable height. And there is nothing saying
19 that we cannot infringe on the feeling of being
20 boxed in.

21 There is no issue of being boxed in
22 because their back yard is already boxed in by

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1 their house, by neighbor's houses. It's
2 already boxed in. Our original roof line is 22
3 and a half feet high. We arranged to continue
4 on the same height but because of their concern
5 we came down halfway.

6 We did not, we are not going to
7 extend 12 feet up. We already came down halfway
8 to six feet high and it is one and a half feet
9 inside our property. So if it sloped down
10 towards their property line then it would be
11 about five feet.

12 BZA CHAIR JORDAN: You've got to
13 stay on the microphone.

14 MR. HLA: Five feet extension only.
15 And our neighbors we have at least three of, we
16 have go with at least three compromises. But
17 they will not accept. The only thing is the
18 light and air issue.

19 And they said it unduly affect their
20 light and air. But according to
21 Merriam-Webster Dictionary unduly means to an
22 extreme, unreasonable or unnecessary. People

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1 have no rights to substitute and duly affected
2 in the law with slightly, minimally, marginally
3 or hardly affected.

4 It didn't say that we cannot affect
5 a little bit. So here are the reasons why our
6 extension will not extremely, unreasonably or
7 unnecessarily affect the light and air of our
8 neighbor. Number one reason is it is only half
9 of the property at the end of their back yard is
10 a small addition concerning the back yard.

11 And number two reason is the Figures
12 2 and 3 shows how small it is we are talking
13 about. Number three reason is the second floor
14 windows are more than 12 feet and 18 feet away
15 from the addition. The third floor windows will
16 even be overlooking our roof.

17 And the addition is not facing their
18 windows. We're not facing their walls. It is
19 on the sideline and is not in close proximity.
20 Number four reason would be Figures 5, 6, 7 shows
21 that their back yard and their windows get the
22 light from everywhere and our addition is under

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1 the roof line of our neighbor apartment
2 building.

3 There is nothing to block them.
4 Figure 8 shows the view from their window. And
5 other buildings behind the apartment are already
6 blocking their light and air and we would not
7 block any more. As seen in the figures our
8 addition will not unduly affect light and air,
9 only they demand that we cannot build on half of
10 our property and our roof must go down to zero.

11 That is unreasonable, extreme and
12 unnecessary. Our other seven neighbors,
13 including those most affected, have signed
14 support letters to our plan. We would like to
15 request the Zoning Commission to grant our
16 request as the sun study shows that it will not
17 affect our neighbor's back yard at all.

18 Design changes that ANC-6B
19 requested have also been made. We have also set
20 the addition back one and a half feet and lowered
21 the roof line halfway to alleviate our
22 neighbor's concern. Two bedrooms of ten feet

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1 wide are now only nine feet because of the set
2 back.

3 The requested relief complies with
4 all the requirements of Section 223 and is not
5 inconsistent with the intent and purpose of the
6 zoning regulations. We have sacrificed enough
7 even though the addition will not affect our
8 neighbor at all.

9 We have lived in this house for a
10 quarter century. Our daughter is 14 years old
11 now. Our son is 11 years old. We cannot
12 continue living in a one bedroom house. There
13 are two dens and one bedroom. We need all the
14 bedrooms and the back yard is already boxed in
15 by other houses.

16 We won't box them in. And our wall
17 won't be towering above their back yard. It
18 will be only five feet more than this. Thank you
19 very much.

20 BZA CHAIR JORDAN: Thank you. Does
21 the Board have any additional questions for the
22 applicant? Does the applicant have anything

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1 else you want to present us? I think they hit
2 the issues that we need to have examined.

3 We'll turn now to the Office of
4 Planning and see Mr. Yo-yo Kid here because I've
5 got you bouncing back and forth and I apologize.
6 But you understand what we're trying to do. It
7 just didn't work out and I appreciate it.

8 MR. COCHRAN: Thank you, Mr. Chair.
9 For the record my name is still Steve Cochran.
10 And Office of Planning does continue to support
11 this especially with the revisions that the
12 applicant has proposed and the shadow studies,
13 the light and shadow studies that they supplied
14 mid month.

15 I might like to offer a suggestion
16 on conditions however. It might not be
17 resolvable today. This seems to me to come down
18 to a question of aesthetics. The applicant
19 meets, as far as we are concerned, the zoning
20 requirements.

21 Nevertheless, the wall that's
22 allowed by zoning isn't necessarily going to be

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1 a very pretty thing to look at because ironically
2 in attempting to maintain the privacy that the
3 adjacent neighbors have the wall has become
4 blank, without any openings. If you consider
5 the difference between a blank wall and a wall
6 that has windows, windows make a wall seem more
7 friendly, more open.

8 I'm wondering if some sort of
9 aesthetic treatment to the wall, even to the
10 extent if historic preservation would allow it,
11 of putting in false windows might make the wall
12 seem more acceptable to the neighbors. I'm
13 merely suggesting that to help resolve this.
14 That is not a zoning concern.

15 BZA CHAIR JORDAN: Thank you and I
16 appreciate you trying to reach out. I don't
17 even know if that's the general issue by the
18 party in opposition. But at this point they're
19 rolling the dice in regards to what the Board is
20 going to do for relief. But I appreciate it.
21 Does the Board have any questions for Mr.
22 Cochran?

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1 ZC VICE CHAIR COHEN: Mr. Cochran,
2 did you have any discussions with the ANC-6B
3 because they, it's like a 7-3 almost vote, it's
4 not unanimous. I mean, they don't really
5 provide any explanation other than an emphatic
6 there's undue impacts on air and light and I
7 don't know if you had an opportunity to discuss
8 this.

9 MR. COCHRAN: I was not at the
10 meeting, no.

11 ZC VICE CHAIR COHEN: Okay, thank
12 you.

13 BZA CHAIR JORDAN: Any other
14 questions of Mr. Cochran? Does the applicant
15 have any questions?

16 MS. FOWLER: Yes. Hi, Mr. Cochran.
17 It's true that your original support was based
18 on the original filing, the two story proposal
19 that was submitted with the application,
20 correct?

21 MR. COCHRAN: That is correct.

22 MS. FOWLER: And then we further

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1 reduced the height and you continued to support,
2 but you were okay with the original application?

3 MR. COCHRAN: Yes, and we
4 understand why you had to change the design to
5 respond to another agency.

6 MS. FOWLER: Okay, thank you.

7 BZA CHAIR JORDAN: Any additional
8 questions? Does the, I was remiss, I can't
9 believe I did that. Does the party in
10 opposition have any questions for the Office of
11 Planning?

12 MS. PRELOGAR: Can we just ask did
13 you visit the applicant's property?

14 MR. COCHRAN: Did we, no.

15 MS. PRELOGAR: Right, okay. And
16 you didn't visit our property?

17 MR. COCHRAN: No. I looked at it
18 extensively through about three different GIS
19 systems that give you views into back yards,
20 front yards, et cetera on angles.

21 BZA CHAIR JORDAN: Okay. And I,
22 let me go back procedurally. Does the party in

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1 opposition have any questions for the applicant?

2 MR. PRELOGAR: No.

3 BZA CHAIR JORDAN: Okay. Then
4 let's move to, is there a representative here
5 from the Department of Transportation? We do
6 have a letter of no objection from the Department
7 of Transportation.

8 Is there anyone here from ANC-6B on
9 this case that wishes to speak? We do have a
10 letter from ANC-6B that as Commissioner Cohen
11 mentioned voted 7-2-1 to opposed, which had a
12 quorum which we would give great weight to.

13 The issue here I don't see a basis
14 of the rejection. It says, it's just in general
15 the impact on light and air so we can go with
16 that.

17 ZC VICE CHAIR COHEN: Was the
18 applicant at the meeting with the ANC?

19 MS. FOWLER: Yes, we were all in
20 attendance.

21 BZA CHAIR JORDAN: And what was your
22 concern?

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1 MS. FOWLER: In my experience the
2 ANC tends to, when there's neighbor opposition
3 that's not resolved in the meeting they tend to
4 not support the project.

5 BZA CHAIR JORDAN: Okay. All
6 right.

7 MR. HLA: I have a sense that they
8 said that we should have a design change to
9 accommodate the neighbor's concern. We already
10 did that.

11 BZA CHAIR JORDAN: Okay. We do
12 have a letter, excuse me, for the architect of
13 the Capitol that says that the proposed addition
14 is not inconsistent. Is there anyone here
15 wishing to speak in support of the application?
16 Anyone in support of the application?

17 Then let's turn now to the party in
18 opposition to put on their case. Mr. Moy, how
19 much time did we use for the applicant? It
20 wasn't 15 minutes.

21 MR. MOY: I think that's a fair
22 amount.

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1 BZA CHAIR JORDAN: Please, you have
2 15 minutes.

3 MR. PRELOGAR: Great, thank you
4 very much for holding the hearing and providing
5 us with the opportunity to put forward our case
6 and opposition of the renovation. We do want to
7 note that we are pleased that our neighbors are
8 inclined to renovate their home.

9 We like and respect them very much.
10 We understand their desire for more space as well
11 and seek to do what we can to accommodate that.
12 We do believe however as noted the proposed
13 renovation would have a significant negative
14 effect on our home.

15 Specifically we believe it would
16 have a substantial adverse effect on the use and
17 enjoyment of our property's back patio and the
18 back bedrooms as well. What was initially posed
19 was erecting a two story wall across the entire
20 length of the east side of our outdoor patio.

21 The renovation that we received last
22 night and certainly would appreciate having more

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1 time to consider that or some similar
2 alternative including the one that we proposed
3 and they rejected, we believe the wall going the
4 entire length of that side would unduly affect
5 our air, light and sense of space.

6 Our outdoor patio is one of the most
7 cherished spaces of our home. We spend a lot of
8 time out there with our 2 year old son running
9 around as we drink our morning coffee and the
10 like. As it currently is you come out the back
11 of the house to the north side.

12 On the west you have a one story
13 wall. On the north you have a similar wall of
14 also about one story. And then on the east side
15 for half of it, it's one story and then clear blue
16 sky above. And then for the last ten feet only
17 directly, that's our home on the east side, you
18 have the two story structure as it currently
19 resides.

20 So in essence it's an intimate space
21 that does provide a good degree of privacy but
22 is still quite open and airy for at least

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1 five-sixths of it until you get to that last
2 part. And this is where we feel the proposed
3 addition of a one and a half story or two story
4 wall on the entire eastern property line of the
5 back of our home would effectively box us in,
6 have a great deal of adverse affect on our sense
7 of air, light and space.

8 BZA CHAIR JORDAN: What do you mean
9 box in, you mean physically box you in?

10 MR. PRELOGAR: Yes, it's going to,
11 it directly abuts. Our property lines are
12 connected. So what they proposed is taking what
13 is now a one story structure that is the eastern
14 side of our property and extending it up a good
15 deal beyond so that it effectively creates a
16 racquetball court like feel.

17 So we do note that if you look around
18 the neighborhood nobody else has on the entire
19 length of their property line a two story or a
20 one and a half story structure from their
21 neighbor's home extending out and blocking in
22 their entire open outdoor space on one side. So

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1 we do think it's unusual.

2 We think it would affect the light
3 that comes into our bedrooms. It may not in the
4 form of direct sunlight. We think it would in
5 the form of radiant light for sure. And as far
6 as the air we think it would make a significant
7 difference as described.

8 The lot variance that they're
9 seeking is the maximum of 70 percent. Their lot
10 is oddly shaped and has a bit of a dog leg going
11 out the back as you can see. And so really what
12 they're proposing is more like taking up 80
13 percent of the usable space as it exists.

14 They're trying to cram four bedrooms
15 and three bathrooms into a relatively small
16 second level, as far as the available square
17 footage and it really just doesn't accommodate
18 that kind of huge floor plan at least not without
19 unduly affecting our property.

20 We would also note that we very much
21 would like to strive toward compromise. After
22 the first ANC hearing where the Board instructed

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1 that we get together and try to work something
2 out we took that command quite seriously.

3 We think that in general our
4 neighbors are very reasonable people and feel
5 confident that we could do that. And so we
6 proposed that our architect get together with
7 theirs and try to work out something that would
8 maximize both parties interests. And they
9 respectfully declined our request to get our
10 architects together.

11 We followed up by offering to even
12 pay for the time of their architect to meet with
13 our architect and they still declined our offer.
14 We continue to extend to them the offer to work
15 with our architect directly including paying for
16 the time that it would take the architect to do
17 that so that we could come to some sort of
18 mutually agreeable compromise.

19 We think what they proposed just
20 last night we haven't had time to fully consider.
21 But it's on the right track. It is similar to,
22 although clearly not as ideal as what we

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1 proposed, which is also certainly meeting them
2 halfway by proposing that they build on the
3 eastern half, not the eastern and the western
4 half of their property which would preserve that
5 open space on the northeastern side of our patio.

6 Just want to turn to my wife to see
7 if there's anything that I have out that is
8 crucial and that she would like to add.

9 MS. PRELOGAR: No, I think you've
10 covered it.

11 BZA CHAIR JORDAN: Okay. Board,
12 any questions of the party in opposition?

13 ZC VICE CHAIR COHEN: I know you
14 haven't had time to consider this. But the
15 proposal made by the Office of Planning, how do
16 you respond to that? Maybe designing something
17 in the wall that makes it a little bit more
18 palatable.

19 MR. PRELOGAR: I think that's
20 exactly the kind of creative thinking that we've
21 been looking to do by putting our two architects
22 together to try to come up with some of these

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1 ideas. And it could, there could be some
2 combination for instance that had to do with the
3 material used.

4 We've got a very nice brick on the
5 other side that if perhaps it were duplicated in
6 combination with some more reasonable meeting on
7 a middle ground as far as trying to prevent a full
8 12, 14, 15 story structure aligning the entire
9 eastern side of our outdoor open patio, we think
10 that there's some likelihood that we could come
11 to a meeting of the minds.

12 BZA CHAIR JORDAN: But I understand
13 your issue is not, your issue is the overall
14 having, that you feel boxed in. And even with
15 the, any aesthetic improvements to the wall
16 what's your position on this boxed in kind of
17 issue you have?

18 MR. PRELOGAR: That's right. But
19 at least we would be boxed in, in a prettier way.

20 BZA CHAIR JORDAN: Because I saw
21 nothing talking about the aesthetics or the
22 beauty of the wall or any of those things that

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1 would be an issue. I saw you were talking about
2 light and air. I don't see anything that and I
3 didn't hear you say anything that the sun study
4 or the shadow study was not correct in that
5 what's been viewed --

6 MS. PRELOGAR: We were never
7 provided with that.

8 BZA CHAIR JORDAN: You haven't seen
9 it?

10 MS. PRELOGAR: No, they just showed
11 it to us in the hallway. But that was the first
12 we had seen it so we haven't had a chance to
13 analyze it.

14 BZA CHAIR JORDAN: And you don't
15 have one yourself that indicates?

16 MR. PRELOGAR: We have a line of
17 sight diagram that we think helpfully explicates
18 the difference that we're concerned about. I
19 believe we submitted it with our letter and there
20 are also pictures that show the same thing. But
21 we would be happy to --

22 BZA CHAIR JORDAN: I was just

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1 talking particularly about the shadow study
2 itself. So that's kind of what I was looking at.
3 Board, have any other questions of the party in
4 opposition? Does the applicant have questions?

5 MR. HLA: I would like to say that
6 our neighbors --

7 BZA CHAIR JORDAN: No, no, no. I'm
8 not asking you to say. I'm asking you to ask.
9 You can ask them questions if you would like. If
10 you don't have any questions you don't have to
11 ask them questions. Is there anything you would
12 like to ask them?

13 MR. HLA: When did you offer to pay
14 for the architect? We never get an offer that
15 you would pay for the architect.

16 MS. PRELOGAR: We communicated that
17 directly to Jennifer. Jennifer I think is aware
18 of that and we expected her to pass that on to
19 you.

20 MR. HLA: And I e-mailed to you on
21 Sunday. Did you receive it just yesterday?

22 MS. PRELOGAR: No, he misspoke when

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1 he said last night. It was Sunday night that we
2 received the revised plans.

3 BZA CHAIR JORDAN: Okay and the
4 shadow study?

5 MS. PRELOGAR: We did not receive
6 the shadow study.

7 BZA CHAIR JORDAN: Okay. So have
8 you looked over the revised plans and they're
9 still not acceptable to you because you want,
10 what do you want them to do? What would be
11 acceptable to you in regards to that wall? To
12 the addition besides, they can relocate it
13 because that's what I'm hearing you asking that
14 they relocate it to the other edge of the
15 property.

16 MS. PRELOGAR: We had also proposed
17 potentially slanting the angled roof down to one
18 story but popping up a dormer to make that room
19 usable that would create a set back from the
20 eastern edge of our property line and so would
21 kind of preserve some of that sense of space, air
22 that we experienced. And that would

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1 directly address the boxing in issue that we were
2 experiencing. So it would remain a one story
3 wall then with an angled roof that slopes up to
4 the second story.

5 MR. PRELOGAR: That slopes up to the
6 center of the home in an east/west direction.

7 BZA CHAIR JORDAN: Okay. Does the
8 applicant have any other questions of the party
9 in opposition? No. All right. Then let's, is
10 there anybody else wishing to speak in
11 opposition to this requested relief?

12 And this is on special exception.
13 It's not a variance so it's a different standard.
14 Anyone in opposition? Yes, go ahead.

15 ZC VICE CHAIR COHEN: This is a
16 question for the applicant. The suggestion of
17 sloping the roof and then having sort of like a
18 room that the party in opposition suggested why
19 hasn't that satisfied your needs?

20 MS. FOWLER: I think what we
21 proposed bringing the wall down to six feet still
22 allows some usable space in that room. And then

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1 bringing it down all the way to the floor line
2 with a dormer, I think if the dormer was big
3 enough then you could still use the room.

4 It's just a very, very small room so
5 we're to avoid, you know, we're trying to use as
6 much space as possible there. I just, it's hard
7 to kind of pin down what would be an acceptable
8 dormer pop up size because I think probably in
9 our minds to make it workable for that room it's
10 going to be probably bigger than what they're
11 going to want.

12 So I think, you know, a three foot
13 or four foot small kind of bump up is not going
14 to make that room functional for us.

15 ZC VICE CHAIR COHEN: And remind me
16 how wide the house is again.

17 MS. FOWLER: The total width of the
18 property is 20 feet. And then we're setting
19 back the addition a foot and a half from the
20 property line. So 18 and a half feet. And
21 we're trying to get the two bedroom and this is
22 a multi-generational family.

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1 They have their children,
2 grandparent living there. So that's where the
3 driving factor is for the number of rooms.

4 ZC VICE CHAIR COHEN: And based on
5 your familiarity with the neighborhood are there
6 similar expansions of similar type of houses?

7 MS. FOWLER: Yes, I mean this is a
8 very common type of expansion that we go through
9 historic process, zoning process all the time.
10 I would also like to say that it's a very, very
11 dense block. It's, the corner of the block
12 between 4th Street and Independence.

13 The property on the corner is pretty
14 much 100 percent lot coverage which is the
15 property on the other side of the Prelogars. We
16 have other lots that are up above 70 percent.
17 This happens to be a little bit longer property.
18 So again taking it to the 70 percent it's going
19 to be larger than the other properties, than some
20 of the other properties.

21 But it's just, it's a very dense
22 corner as you see a lot of Capitol Hill. And we

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1 also see a lot of solid walls next to people's
2 yards where houses abut back yards.

3 ZC VICE CHAIR COHEN: So in this
4 case were the applicant's and opposition
5 fortunate to have had what they have and that
6 you're really doing something that is rather
7 common on Capitol Hill and other parts of the
8 city, do you think?

9 MS. FOWLER: I mean I think, yes, I
10 think it's common to go up to 70 percent on the
11 coverage. Again in most of these cases we rest
12 on the record when we get to this point when we
13 have 223 relief.

14 The original structure is there,
15 we're not taking that down the two story wall.
16 So we're really just looking at a 13 foot section
17 here where we can modify the roof line. We
18 actually cannot modify the roof line on the
19 original L because historic will not allow us to
20 do that.

21 So the first ten foot two that's
22 there now we can't lower or change. They want

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1 us to keep those walls because it's part of the
2 original house. So we're really just looking at
3 this 13 foot expansion.

4 And again we've dropped it, you
5 know, that wall was going to be continuous.
6 We've dropped it six feet. There's a gabled
7 roof. We proposed a standing seam metal roof
8 that it's very attractive. We're happy to, you
9 know, to propose any other kind of materials that
10 they would be content with.

11 BZA CHAIR JORDAN: And if you had a
12 dormer, if you dropped the roof and had a dormer
13 wouldn't you also have windows in it?

14 MS. FOWLER: Yes, we wouldn't be
15 able to because it's too close to the property
16 line. So it's basically a false dormer.

17 BZA CHAIR JORDAN: But then that's
18 what I was just trying to figure out in my mind
19 seeing it with a dormer. Any other questions
20 of, I guess we've kind of moved into your
21 rebuttal. But, yes, any --

22 ZC VICE CHAIR COHEN: Can we explain

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1 what that means. What's a false dormer? So it
2 doesn't actually open up space into the room or?

3 MS. FOWLER: It would open up space
4 but we wouldn't, because the dormer is facing the
5 property line, you have to be about three feet
6 from the property line to have a window, to have
7 any percentage of windows. So you would have,
8 it would look like a dormer from the inside but
9 with a blank wall.

10 So that's definitely not a common,
11 that's not a normal thing that we would design.

12 BZA CHAIR JORDAN: Any other
13 rebuttal that you would like to, you know, we
14 kind of did rebuttal by the fact we kind of
15 questioned you. But did you want to do any
16 rebuttal?

17 MR. HLA: The apartment building is
18 already blocking their light and air. Our roof
19 will be slanting like this so from looking here
20 it won't go more than the roof line of the
21 apartment building that is already there.

22 So my contention would be our

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1 addition won't block any light and air of their
2 back yard. That is the end of their back yard.
3 About ten feet more addition to it, two feet is
4 not adjoining the property. So we are talking
5 about only ten feet of addition.

6 And we already came down six feet.
7 And just outside we proposed to come down up to
8 three feet. And they still would not agree to
9 it. They will agree to it when it is zero or we
10 don't build at all on half of our property.

11 So what we are saying is our neighbor
12 is inflexible, not trying to compromise at all.
13 So what we would like to request is for the Zoning
14 Board to decide for us. And we have already
15 compromised as much as we can even though it is
16 not blocking their light and air at all.

17 BZA CHAIR JORDAN: Thank you. If
18 there's nothing else then we would conclude this
19 hearing. You know, personally I'm ready to make
20 a decision. But I think, then I think we will
21 go forward. At first there has been some
22 thought about just trying to let this continue

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1 over.

2 But I think, you know, this is on a
3 special exception. Normally on a 223 it doesn't
4 require all this lift to get done. So then we
5 would, then I offer this. I would offer that we
6 grant the relief requested by the applicant
7 based upon the revised plans that's submitted.

8 I believe that there's been no
9 showing of substantial adverse impact based upon
10 the request being made by the applicant. There
11 is no walls facing into the neighbor's property.
12 The property is already boxed in as that term has
13 been used.

14 The roof line of this property is
15 lower than the neighbor's roof line. The sun
16 study does not show any substantial impact or any
17 real impact whatsoever on the adjoining
18 property. And so I would move that we grant the
19 relief based upon the revised plans. Anyone?

20 ZC VICE CHAIR COHEN: I'll second
21 that.

22 BZA CHAIR JORDAN: Motion made and

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1 seconded. Any discussion, anyone? Yes, you
2 want to say something.

3 VICE CHAIRMAN ALLEN: I'm inclined
4 to support this motion as well. I would suggest
5 that while I think the applicant has done a good
6 job in terms of reaching out and trying to
7 compromise --

8 MR. HLA: Thank you.

9 VICE CHAIRMAN ALLEN: -- that if
10 there are some material requests or something
11 that would help keep you as good neighbors that
12 you might want to listen to that. That's it.

13 MR. HLA: We will.

14 BZA CHAIR JORDAN: Then all those in
15 favor of the motion signify by saying aye.

16 (Chorus of ayes)

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

19 MR. MOY: Staff would record the
20 vote as 3-0. This is on the motion of Chairman
21 Jordan to approve the application for relief
22 requested. Second the motion, Ms. Cohen. Also

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1 in support Vice-Chair Allen.

2 We have a Board member not present
3 and a seat vacant. Motion carries 3-0, Mr.
4 Chairman.

5 BZA CHAIR JORDAN: Thank you and
6 thank you all for participating. That's a full
7 order.

8 MR. HLA: Thank you, Your Honor.

9 BZA CHAIR JORDAN: Thanks so much.

10 MR. PRELOGAR: Thank you.

11 BZA CHAIR JORDAN: I didn't realize
12 we skipped past the lunch hour. You know me I
13 don't eat. So we can --

14 (Off the record comments)

15 BZA CHAIR JORDAN: Okay. Let's do,
16 let's call the short title of 18641, the short
17 title.

18 MR. MOY: Okay, I think you've done
19 it for me, Mr. Chairman. The application is
20 Number 18614 of SMC United Industrial, LP.

21 BZA CHAIR JORDAN: In fact this is
22 probably one we could have moved up to some

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1 extent based upon, I forgot to bring my heater.
2 I know that's why, I'm glad it's not just me.
3 Marcie's in our group.

4 Yes, Mr. Moy. Please identify
5 yourselves.

6 MR. COLLINS: My name is
7 Christopher Collins with the law firm of Holland
8 & Knight.

9 MS. BLOOMFIELD: Hi, I'm Jessica
10 Bloomfield with Holland & Knight.

11 MR. FARSHEY: Good afternoon. I'm
12 Fred Farshey with SMC United Industrial, LP.

13 BZA CHAIR JORDAN: Good. This
14 matter has been before us before. I think we had
15 some push back. We had a party in opposition at
16 that time. And thank you for working together
17 to reach a conclusion on this matter.

18 I think it always works out better,
19 as you see, when people work together and try to
20 resolve this. And I think that really gave this
21 matter a big lift from what the Board's initial
22 view of where we were.

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1 I think the only issue that we have
2 here, I know there are some revised conditions
3 and et cetera for this property. But I have a
4 concern and I think the other thing about the
5 Board having a concern about the type of fence
6 that's there and the nature of the fence not
7 being very attractive.

8 And I think we can move this thing
9 along certainly if the applicant is looking,
10 would be willing to do something regarding this
11 fence to make it more, what's the word that I'm
12 looking for?

13 ZC VICE CHAIR COHEN: Unprisonlike.

14 BZA CHAIR JORDAN: Okay, that's
15 very direct, unprisonlike regarding this
16 particular fence. Go ahead.

17 ZC VICE CHAIR COHEN: Thank you, Mr.
18 Chair. Basically I think this is a large
19 residential area about this property. And I just
20 think the fencing could be a bit more
21 aesthetically pleasing.

22 I'm not asking for, you know,

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1 decorative fencing. I'm just asking for more
2 softer fencing so that it and using the term
3 unprisonlike, you know, to me that is really what
4 it reminds me of. And I really think that is
5 inappropriate for a neighborhood that has, that
6 transitions to housing.

7 BZA CHAIR JORDAN: So you want to
8 provide us with any discussion or thoughts about
9 the fencing because otherwise I think we're
10 probably there?

11 MR. FARSHEY: We could maybe remove
12 the razor wire. We've had that for security
13 because we used to get a lot of break ins in the
14 past. But I think the area is much more secure
15 now.

16 ZC VICE CHAIR COHEN: That's a step
17 in the right direction. I just had a wooden
18 fence put up and I know that it's very expensive.
19 So sometimes I think what is more apt to reduce
20 vandalism or break ins is actually how you treat
21 the built environment.

22 So it's sort of like, you know, if

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1 you have broken glasses and vacant lots with
2 garbage that encourages people to disrespect
3 their neighborhood. So I have no idea how much
4 it would cost to actually eliminate the fencing
5 and put in something that looks better. But I
6 would be comfortable at least to remove that
7 razor stuff.

8 MR. FARSHEY: I think that will
9 improve it significantly. Chain link fence is
10 very innocuous, it's just really.

11 ZC VICE CHAIR COHEN: I hate
12 chain-linked fence. I just think chain-link
13 again it disrespects the environment. I've
14 seen a lot of it.

15 MR. FARSHEY: There is chain-link
16 in our residential environment too. Houses
17 they have it.

18 ZC VICE CHAIR COHEN: I know and
19 when I was sitting on the Public Housing
20 Commission I was really anxious to remove all
21 chain-link. Again it gives a bad impression I
22 think to people who live on either side of it.

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1 But it does exist. You're right.

2 So as I said, as a first step and
3 maybe as a good neighbor you can continue to look
4 into more aesthetic types of fencing. I think
5 it would protect your property more than the
6 visual chain-link.

7 BZA CHAIR JORDAN: As I said, I
8 think that in regards to relief I think we've got
9 a showing to do the relief. And I don't know if
10 any presentation is necessary. However,
11 regarding the conditions.

12 There is condition Number 4 offered
13 by the Office of Planning. Have you seen, Mr.
14 Collins, take a look at that and let me turn to
15 Office of Planning on that. Condition Number 4
16 I don't quite understand. Lighting shall not be
17 required at the site in accordance with the
18 agreement between, okay, can you tell us
19 condition Number 4 what we're trying to get at
20 here and what it means?

21 MS. THOMAS: With respect to the
22 applicants this most recent submission?

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1 BZA CHAIR JORDAN: Yes, I'm looking
2 at --

3 MS. THOMAS: Or mine?

4 BZA CHAIR JORDAN: The conditions,
5 I think it's your condition Number 4.

6 MS. THOMAS: Okay, lighting shall
7 be directed towards the surface of the lot.

8 BZA CHAIR JORDAN: No, something
9 says lighting shall not be, what am I looking at?
10 Where did I get this?

11 MR. COLLINS: That was stricken.

12 BZA CHAIR JORDAN: What was
13 stricken?

14 MR. COLLINS: What you were reading
15 was stricken.

16 BZA CHAIR JORDAN: Okay. Well mine
17 is just not updated, okay. You've got it on
18 yours too, yes, okay. The Office of Zoning's
19 conditions has been translated over. It's not
20 been stricken. Okay. Mr. Moy.

21 (Off the record comments)

22 MR. COLLINS: If I may, this may be

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1 a good time for us to introduce for your our
2 proposed conditions. I have spoken with the
3 Office of Planning about these and they are in
4 agreement.

5 BZA CHAIR JORDAN: Did they
6 incorporate the Office of Planning's conditions
7 and the ANC's conditions?

8 MR. COLLINS: Well once you get them
9 I can walk through them with you.

10 BZA CHAIR JORDAN: Because I have
11 seen a conflict in between the agreement and then
12 what Office of Planning had too. So I'm asking
13 you did they --

14 MR. COLLINS: Yes, there is a
15 conflict.

16 BZA CHAIR JORDAN: Number 5 is a
17 conflict?

18 MR. COLLINS: I'm sorry.

19 BZA CHAIR JORDAN: Provision Number
20 5, okay, let's take a look at it.

21 MR. COLLINS: Yes, please.

22 BZA CHAIR JORDAN: I did have a

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1 conflict here with what. This is something new.
2 This is not the agreement.

3 MR. COLLINS: Yes, it is. We're
4 sending it right now.

5 BZA CHAIR JORDAN: That may be
6 helpful. Thank you.

7 MR. COLLINS: Okay. If I may I'll
8 just walk right through it.

9 BZA CHAIR JORDAN: Please.

10 MR. COLLINS: Items 1 and 2 are
11 substantially the same as Office of Planning's
12 conditions. They refer to, Ms. Thomas refers to
13 the September 9th document, Tab G and that's
14 actually Exhibit 25 of the record. So in what
15 you just were handed is reflected as Exhibit 25
16 of the record.

17 Item 3 is the list of conditions that
18 were agreed to with the community. Item 3 of the
19 submission just received is the community's
20 agreements. Item 3 of what is in the OP report
21 was the conditions from ten years ago that were
22 just recently updated with the bold print.

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1 So what we're proposing is to
2 substitute the Office of Planning's condition
3 Number 3 with our condition Number 3. And I've
4 spoken to Ms. Thomas about that and she has these
5 conditions and I understand is in agreement with
6 that.

7 VICE CHAIRMAN ALLEN: Excuse me,
8 Mr. Chair.

9 BZA CHAIR JORDAN: Yes, go ahead
10 please.

11 VICE CHAIRMAN ALLEN: So I'm seeing
12 there's a couple of F's that talk about 24 hour
13 controlled parking that I don't see in yours or
14 am I missing it?

15 MR. COLLINS: No, you're not
16 missing it. The reason is that ten years ago the
17 conditions said that the lot shall be either
18 locked or attended with an attendant, parking
19 attendant. We don't use a parking attendant.

20 What we're using now is either
21 locking the gate or having a card reader to get
22 in. So there's no human that has to be there.

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1 So the gates are always closed. Does that
2 answer your question, Ms. Allen?

3 VICE CHAIRMAN ALLEN: It explains
4 why you don't have that. But that condition, I
5 don't see it reflected here I guess is my
6 question. Does that make sense?

7 MR. COLLINS: Well Exhibit, I mean
8 I'm sorry, condition 3C of our new document says
9 access to the parking lot will remain open during
10 business hours. Lot will be locked or accessed
11 otherwise automatically controlled during
12 unattended.

13 VICE CHAIRMAN ALLEN: Thank you.
14 That's what I was looking for. I didn't see it.
15 Thank you.

16 MR. COLLINS: Sure.

17 BZA CHAIR JORDAN: Okay. What else
18 is different?

19 MR. COLLINS: What we talked about
20 the lights, lighting shall be directed toward
21 the surface of the lot. We had lighting shall
22 not be required at this site but may be provided.

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1 We can certainly add in the
2 condition and that's an oversight and I
3 apologize that lighting shall be directed toward
4 the surface of the lot. It is directed toward
5 the surface of the lot. We can put that in.

6 ZC VICE CHAIR COHEN: Yes, please.

7 VICE CHAIRMAN ALLEN: But just for
8 clarification again. You're saying you don't
9 have to provide any light at all in this. Is
10 that correct?

11 MR. COLLINS: Well that was the
12 condition from ten years ago that said lighting
13 shall not be required. So we're just saying,
14 the community said lighting isn't required.
15 They didn't prohibit it. They just said that it
16 wasn't required.

17 BZA CHAIR JORDAN: And where is OP
18 on the lighting issue?

19 MS. THOMAS: We, that's why I
20 rephrased it to say that lighting should be
21 required.

22 BZA CHAIR JORDAN: So you're

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1 requiring lighting?

2 MS. THOMAS: Well in the original.

3 BZA CHAIR JORDAN: Yes, but I need
4 to know where you are now. I mean I understand
5 what they're proposing. What they're proposing
6 is not something that we have to accept. Where
7 are you on the lighting?

8 MS. THOMAS: I think that lighting
9 should be required.

10 MR. COLLINS: Okay. We'll accept
11 that. All right. Items 5, it's the same.
12 Yes, no. I'm just doing apples to apples
13 comparison here. Five on the Office of
14 Planning's is actually a combination I think of
15 several.

16 BZA CHAIR JORDAN: Because
17 originally I had that conflicting with that
18 agreement that was proposed. Maybe I --

19 ZC VICE CHAIR COHEN: Can I --

20 BZA CHAIR JORDAN: Yes, please.

21 ZC VICE CHAIR COHEN: Thank you.
22 Could we use the Office of Planning's. Instead

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1 of your new one, let's use the Office of
2 Planning's and see which ones you don't want or
3 cannot, you know, have dropped out through
4 negotiation with the neighbors because I think
5 that I'm more comfortable with the Office of
6 Planning's conditions then.

7 MR. COLLINS: So we've gone through
8 1, 2 and 3 and 4. Is everyone, okay. So on 5
9 of the Office of Planning's is the same as 5 on
10 what we propose. We agree with Item 5.

11 We agree with Item 6 and that's in
12 there. Item 7, the OP has stricken that all
13 areas shall be maintained with a paving material
14 for an impervious surface and said as an
15 explanation. But we put it back in.

16 But we included the word pervious
17 because you can now have pervious paving
18 surfaces. So our Item 7 is what was stricken
19 from OP's with adding the word pervious. Item
20 8 is the same.

21 VICE CHAIRMAN ALLEN: Excuse me in
22 terms of 7, before we leave that one, what

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1 happened to the all weather part. I'm confused
2 about that. I'm sorry. It's hard to go back to
3 all --

4 MR. COLLINS: The agreement from
5 ten years ago or these conditions from ten years
6 ago said an all weather impervious surface. But
7 now the Zoning Commission allows pervious
8 surfaces. So in my Item 7 I added the word
9 pervious. I said forming an approved
10 impervious or pervious surface for parking.

11 BZA CHAIR JORDAN: So it's just,
12 it's the same. Dropping all weather out and add
13 pervious and or.

14 MR. COLLINS: Exactly. So 8 is the
15 same, 9 is the same and 10 is the same. So what's
16 different is Item 3, which is the community's
17 conditions and Item 4 which we have just revised
18 to go back to an Office of Planning actually a
19 hybrid I suppose to say that lighting shall be
20 provided and directed toward the surface of the
21 lot.

22 BZA CHAIR JORDAN: So actually what

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1 you just gave us is the same. We've got minor
2 changes to that. Number 1 will be changed to add
3 from the final date of the order. Number 4 will
4 be changed lighting shall be required on the site
5 and directed toward the surface of the lot.
6 That's everything.

7 MR. COLLINS: Yes, I agree.

8 BZA CHAIR JORDAN: That includes
9 everything that the Office of Planning and the
10 community had and what have you. Is that
11 correct? Planning, yes, no?

12 MS. THOMAS: That's correct.

13 BZA CHAIR JORDAN: All right, with
14 that then I don't know, I think we're there. I
15 think we were looking at the conditions. I
16 think with the modification of the conditions as
17 we've done here then that should be, if that's
18 acceptable to the applicant.

19 Office of Planning, is there
20 anything else you need to add to this if you wish?

21 MS. THOMAS: I have nothing else to
22 add. I would just like to say the applicant's

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1 condition of approval is just a clarification of
2 what was put together.

3 BZA CHAIR JORDAN: That's why I kind
4 of worked through making sure that we all because
5 we were going left/right, left/right and then up
6 the middle and then we still hadn't scored. So
7 I was just trying to --

8 MS. THOMAS: The only thing is the
9 lighting.

10 BZA CHAIR JORDAN: Yes, got it.
11 And the modification I did to 1 says approval
12 shall be for a period of ten years from the date
13 of the final order.

14 ZC VICE CHAIR COHEN: And the
15 removal of the razor blade.

16 BZA CHAIR JORDAN: Well let's add
17 that. We did not add that as a condition.
18 Let's make that, did you, we didn't say that.
19 Let's make that Number 11. The applicant shall
20 remove, what do we call it barbed wire.

21 ZC VICE CHAIR COHEN: Barbed wire.

22 BZA CHAIR JORDAN: Top of the

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1 chain-linked fence.

2 MR. FARSHEY: Razor wire, that's
3 what it's called.

4 BZA CHAIR JORDAN: Which is even
5 worse, razor wire. Okay. Ms. Cohen, you had
6 something else. Did something wrong here. So
7 Department of Transportation, did we get a weigh
8 in from them? Yes, we have a letter of no
9 objection.

10 But they didn't support an open
11 term. Well we don't have an open term. We have
12 the ANC, we didn't receive an ANC letter. We do
13 have their signature on that proposed agreement
14 so we accept that as approval but can't
15 necessarily give it great weight.

16 But they're being taken care of in
17 regards to what the conditions are and we
18 understand that when they signed the agreement
19 but lack for approval they would not have signed
20 it if they didn't approve. Is anyone here
21 wishing to speak in support of the application?
22 Anyone in support? Anyone in opposition?

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1 The opposition has withdrawn with,
2 a subsequent agreement I understand has been
3 reached. Is that correct? I would turn back to
4 the applicant for any rebuttal but there's
5 nothing to rebut at this time. I think we've
6 stepped through all your issues.

7 So we will close this record on this
8 matter and move to deliberation. I would move
9 that we grant the relief requested by the
10 applicant with the conditions as modified as
11 discussed here. And I know we don't need to
12 repeat all that right now.

13 ZC VICE CHAIR COHEN: Second.

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

17 (Chorus of ayes)

18 BZA CHAIR JORDAN: Those opposed
19 nay. The motion carries. Mr. Moy.

20 MR. MOY: Yes, sir. Staff would
21 record the vote as 3-0. This is on a motion of
22 Chairman Jordan to approve the application with

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1 the conditions as amended and request relief as
2 requested. Second the motion, Chairperson
3 Allen. Also in support Ms. Cohen. A Board
4 member not present, Board seat vacant. Motion
5 carries 3-0.

6 BZA CHAIR JORDAN: Right. Then
7 that concludes this matter of summary order
8 please.

9 MR. COLLINS: Thank you.

10 BZA CHAIR JORDAN: Yes, thank you.
11 18463, please.

12 MR. MOY: This is Application
13 18463, the title is the Request for Modification
14 of Condition Number 3 of the Final Order and
15 Application of CAS, C-A-S, Riegler Real Estate
16 Development. This was rescheduled from the
17 Board's public meeting of September 24, 2013.

18 BZA CHAIR JORDAN: Okay. Please
19 identify yourselves.

20 MR. KADLACEK: Good morning. Cary
21 Kadlacek from the law firm of Goulston & Storrs
22 on behalf of the applicant.

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1 MS. ERWIN: Hi, good afternoon.
2 I'm Stephanie Erwin on behalf of the applicant.

3 BZA CHAIR JORDAN: Ms. Erwin you are
4 who for the applicant?

5 MS. ERWIN: The applicant. I work
6 for the developer.

7 BZA CHAIR JORDAN: Okay. This is a
8 matter before us for modification, request for
9 modification of condition Number 3. And that
10 condition required a Capitol Bike Share
11 location.

12 The, it's my understanding that the
13 Movement has asked that we relieve that
14 provision and substitute that \$25,000 be placed
15 with somebody toward, \$25,000 go toward the cost
16 of Capitol Bikeshare. We last had this on our
17 docket September 24th. We asked for additional
18 submission of materials supporting the request.

19 To our knowledge, to my knowledge
20 there's been nothing submitted on record. Is
21 that correct?

22 MR. KADLACEK: That's correct. We

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1 were going to provide direct testimony about
2 explaining exactly the basis for the relief.

3 BZA CHAIR JORDAN: Yes, but the
4 Board asked for additional material too. So it
5 should have been, the material should have been
6 submitted and the testimony.

7 MR. KADLACEK: Okay. It was our
8 understanding that they just wanted to
9 understand exactly what the basis for the relief
10 was. So I apologize for that.

11 BZA CHAIR JORDAN: Yes, they is us
12 being the Board. So our request as we sat there
13 today because we like to look at things, ponder
14 them, you know, scratch them, talk to them, flip
15 them up in the air, whatever sometimes.

16 We go to a lot of, we do a lot of
17 preparation for these hearings and sometimes
18 grasping different issues here could be
19 problematic. But anyway so what do you have for
20 us today?

21 MR. KADLACEK: Yes and again I
22 apologize for that. We don't have any

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1 additional evidence so that's why we thought it
2 would actually make more sense to just have the
3 applicant directly explain what exactly the
4 questions were. We thought we had --

5 BZA CHAIR JORDAN: We did that
6 before and it was the fact that there was a false,
7 a wrong assumption made by the applicant that,
8 well they didn't even have a price in mind or they
9 didn't know that the Capitol Bikeshare plan was
10 going to cost what it did.

11 You subsequently went back and found
12 that it was going to be about \$75,000 and you said
13 can't do that. Want to do \$25,000 and you've
14 come back for the modification, right? Am I
15 missing anything?

16 MR. KADLACEK: That's correct.

17 BZA CHAIR JORDAN: Okay. So and
18 your basis on that is simply economics that --

19 MR. KADLACEK: Our basis is that at
20 the time that the agreement was made and Ms.
21 Erwin can explain this better, it was the result
22 of this condition was purely the result of a good

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1 will gesture and an agreement with ANC. It
2 wasn't directly related to the relief that we
3 were seeking which was --

4 BZA CHAIR JORDAN: But it became a
5 modification of this order we asked you and I
6 think even the last time we actually took what
7 I'm going to call testimony when this was before
8 us. Where's the financials? You haven't
9 presented any financials that you can't do this?

10 MR. KADLACEK: Right and I'll let
11 Ms. Erwin explain exactly how it all came about.

12 MS. ERWIN: Okay. In fall of last
13 year we attended a community meeting with
14 numerous community members and the ANC Rep,
15 David Holmes to present renderings and discuss
16 our development of the Edmonds School.

17 During the meeting we listened to
18 community member requests and addressed various
19 concerns and questions. One of the items that
20 was brought up was in regard to parking.

21 During the discussion Mr. Holmes
22 suggested that a nice addition to the community

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1 would be a Capital Bikeshare station to help
2 encourage residents and community members to
3 utilize public transportation rather than
4 street parking. Since we were unfamiliar with
5 the program and had never installed a Bikeshare
6 before we asked David what the associated costs
7 were for the program.

8 He stated it was in the range of
9 \$20,000 to \$25,000 based on his previous
10 experiences. As a gesture of good will and to
11 help show our support for the common interest
12 with the community, we agreed to pay for the
13 installation of the Bikeshare.

14 After the meeting we contacted DDOT
15 to move forward on the Bikeshare at which point
16 we were informed that the cost of the program
17 would actually be \$75,000 to \$80,000 for the
18 smallest station which would pay for
19 manufacturing of the Bikeshare facility as well
20 as one year of operations.

21 In light of this discovery we
22 reached out to Mr. Holmes to discuss our options

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1 and the next steps. Over the next few months we
2 worked with Mr. Holmes and our attorney to draft
3 up a revision to the BZA language to reflect the
4 originally agreed upon amount of a \$25,000
5 contribution rather than an amount three times
6 that.

7 The change was proposed at the early
8 September ANC meeting and was unanimously
9 supported. We have a letter of support from
10 David Holmes for the change and have also worked
11 with DDOT regarding our contribution.

12 DDOT has stated that the Bikeshare
13 will be able to be installed but a final location
14 has yet to be determined.

15 MR. KADLACEK: Ms. Erwin, can you
16 clarify when that meeting with Chairman Holmes
17 occurred when he suggested the Bikeshare?

18 MS. ERWIN: Fall of last year.

19 MR. KADLACEK: Okay and was it very
20 shortly before a filing deadline for the BZA
21 hearing?

22 MS. ERWIN: Yes, it was.

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1 MR. KADLACEK: So is it fair to say
2 that given he suggested the Bikeshare at such a
3 late date that it was virtually impossible to
4 fully investigate the cost of the Bikeshare
5 station?

6 MS. ERWIN: Yes.

7 MR. KADLACEK: Thank you. And we
8 were taking his word on how much he believed it
9 would cost. And I don't think he purposely
10 misled us. I think that was just his
11 understanding and what he had seen in the past.

12 So that's what we were basing the
13 donation on was thinking that it was going to be
14 \$20,000 to \$25,000.

15 VICE CHAIRMAN ALLEN: Thank you,
16 Mr. Chair. So I have I guess two questions. So
17 who is paying the rest of this amount? I mean
18 if I understand your request it's to put \$25,000
19 sort of out there and then is there going to be
20 a Bikeshare or not?

21 That's the first part and then I
22 didn't quite understand, I know you wanted to

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1 make the point, but I didn't understand why there
2 wasn't investigation of the price. I guess
3 that's the part I didn't hear what the point was.
4 Thank you.

5 MS. ERWIN: As far as the pricing
6 goes, we based that on what Mr. Holmes told us
7 the Bikeshare was going to cost.

8 VICE CHAIRMAN ALLEN: I heard that
9 part.

10 MS. ERWIN: So we didn't
11 investigate, we committed to it that evening at
12 the meeting based on that. We didn't do any
13 investigation until after that meeting at which
14 point we found out that it was going to be a lot
15 more expensive than what we anticipated.

16 As far as the cost of who else is
17 going to pay for this, I don't know the answer
18 to that. DDOT explained that other developers
19 have done this in the past where they've made a
20 contribution towards a Bikeshare and then they
21 use that money as well as other DDOT funds to then
22 produce a Bikeshare in the general neighborhood

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1 of where they're being asked to place this based
2 on what the ANC has requested, the neighborhoods
3 have asked for. And I don't know where DDOT gets
4 the rest of the funding, if it's from other
5 developers or if it's from other operations.

6 ZC VICE CHAIR COHEN: I have a
7 question with regard to the expansion of the
8 residential space. How many of these units are
9 affordable? Are there any?

10 MR. KADLACEK: There are none.
11 This project actually was not required to
12 provide any under the IZ regulations.

13 ZC VICE CHAIR COHEN: So it's all
14 market, right, correct?

15 MR. KADLACEK: It's all market.
16 That's correct.

17 BZA CHAIR JORDAN: I lost that
18 thought. Yes, go ahead.

19 VICE CHAIRMAN ALLEN: And I want to
20 confirm so you in this project there was no
21 parking really sought or?

22 MR. KADLACEK: No, there was no

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1 parking relief. There was no loading relief,
2 nothing related to transportation.

3 BZA CHAIR JORDAN: I know what I
4 wanted to ask. So when was the meeting when you
5 met Mr. Holmes and he said \$25,000?

6 MS. ERWIN: It was late fall of last
7 year.

8 BZA CHAIR JORDAN: That was before
9 the Zoning Board, before the BZA had its meeting,
10 right?

11 MS. ERWIN: That's correct.

12 BZA CHAIR JORDAN: And you guys
13 didn't take a look at it in between the time from
14 that meeting until the time we had the December
15 hearing on this matter?

16 MR. KADLACEK: I think part of what,
17 you probably don't recall because you obviously
18 have heard a lot of cases since then, we actually
19 made a motion to file our 14 day filing late
20 because we had been negotiating with ANC
21 literally until the night before. And part of
22 that negotiation involved this Bikeshare.

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1 So this negotiation went on up until
2 13 days before the hearing when we had to make
3 our final submission. And that was when sort of
4 the final agreement was solidified which
5 included the suggestion for the Bikeshare that
6 had been made not too much longer before that.

7 BZA CHAIR JORDAN: Okay. So the
8 answer to my question is that it did happen
9 before the hearing that we had on December, I
10 remember quite well because I keep notes also.
11 I don't just rely on if I remember where we were
12 and what we did and all that.

13 But the question was, you know, was
14 that before the hearing, blah, blah, blah, blah.
15 How much in front of the hearing? I understand.
16 I know you didn't have any request for parking
17 and that's the only thing that's leading me to
18 try to take a look at this to lean towards this.

19 But one of the problems we can't
20 start is setting the precedence that people get
21 conditions and set conditions with us and then
22 get relief and then run out and want to change

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1 that. And the other side of it you haven't
2 really presented any reason why you can't do it.

3 You didn't do any financials. We
4 talked about it last time. I haven't seen your
5 financials that say you can't do it. But that's
6 neither here or there for the sake of it, just
7 to let you know.

8 The ANC has acquiesced and been
9 supportive of it. So that's just my thoughts.
10 Ms. Cohen.

11 ZC VICE CHAIR COHEN: Yes, again I
12 felt the same way. I think we requested or
13 stated last time about, you know, doing your due
14 diligence. Now I understand the timing was very
15 difficult.

16 I'm slightly uncomfortable. I
17 don't think it's going to set a precedence. I
18 think you did what you thought was right at the
19 moment in agreeing with the ANC. The ANC wasn't
20 fully informed about cost so in this case I do
21 not have a problem supporting the proposed
22 conditions, the reduction.

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1 I think that you did your best in
2 negotiating and it just, we all make mistakes.
3 Not maybe \$75,000, \$50,000 ones. But we all
4 make mistakes.

5 VICE CHAIRMAN ALLEN: Okay. I have
6 real issues with this and I will be very clear
7 about that. I understand, I appreciate the good
8 faith effort. I appreciate the good faith, you
9 know, negotiating and based on what you were
10 told.

11 But subsequent to that the Board
12 specifically asked for information. And I'm
13 very uncomfortable that you chose sort of not to
14 provide that or to even provide some analysis of
15 how much this would, you know, how this would eat
16 into your profits or it would cost much more or
17 any of that was done.

18 It's sort of let's throw this up
19 there and just okay, well we negotiated until the
20 end and you know, it costs more than we thought
21 so therefore we don't want to do it and we want
22 to modify the request. And I'm, that's the part

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1 that really bothers me about this.

2 And I'm inclined to go sort of
3 wherever my colleagues decide on this but I came
4 in really prepared to vote against this because
5 I didn't, I really didn't think that you did your
6 job here as, in terms of making this request to
7 the Board.

8 So I just want to be very clear that
9 while I no longer, based on what you have said,
10 no longer feel as strongly about it as I did sort
11 of walking in the door, I'm very uncomfortable
12 that this proceeded the way that it did. So I'm
13 just, so for future because I assume you'll be
14 back before us at some point, please understand
15 that.

16 MS. ERWIN: And I apologize. I
17 didn't realize that you had requested
18 financials. So that was our fault. And I
19 apologize or we would have prepared those for
20 you.

21 MR. KADLACEK: Yes, I echo that
22 sentiment. I think there was just some

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1 misunderstanding about what the Board was asking
2 for on our behalf.

3 BZA CHAIR JORDAN: Mr. Goldstein,
4 anything you want to weigh in on this, anything?

5 MR. GOLDSTEIN: I don't have
6 anything to add beyond my submission. I kind of
7 share the trepidation of the Board, but found
8 that under these circumstances there's a good
9 case for it here or at least we're not objecting
10 to the request.

11 BZA CHAIR JORDAN: All right. With
12 that then I would move that we grant the request
13 to modify the condition Number 3 and allow the
14 substitution thereof of providing \$25,000 to be
15 donated to go toward the Capital Bikeshare for
16 this area.

17 ZC VICE CHAIR COHEN: I'll second
18 that.

19 BZA CHAIR JORDAN: Motion made any
20 seconded. Any unreadiness? All those in favor
21 signify by saying aye.

22 (Chorus of ayes)

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1 BZA CHAIR JORDAN: Those opposed
2 nay. The motion carries. Mr. Moy.

3 MR. MOY: Yes, sir, staff would
4 record the vote as 3-0. This is on the motion
5 of Chairman Jordan to grant the request to change
6 the condition Number 3. Also in support Ms.
7 Cohen seconding. And also in support
8 Vice-Chair Allen.

9 We have a Board member not present,
10 a seat vacant. The motion carries 3-0.

11 BZA CHAIR JORDAN: Then thank you.
12 We can do, I guess we modify order summary wise
13 and do that.

14 MR. MOY: We could do that.

15 BZA CHAIR JORDAN: And that
16 concludes this matter.

17 MR. KADLACEK: Thank you.

18 MS. ERWIN: Thank you.

19 BZA CHAIR JORDAN: We have one other
20 item of business coming before the Board and that
21 is to provide and establish our closed meetings
22 for November, our telephone closed meetings.

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1 In accordance with Section 405C of the Open
2 Meetings Act of the District of Columbia Code I
3 move that the Board of Zoning Adjustment hold
4 closed meetings for Saturday, November 4th and
5 18th.

6 This would begin at 4:00 p.m. for the
7 purposes of obtaining legal advice from our
8 counsel and deliberating upon but not voting on
9 the cases scheduled to be publicly heard or
10 decided upon by the Board on the day after the
11 closed meeting. The cases are identified on the
12 Board's public agenda for November 5th and 19th.
13 Is there a second?

14 ZC VICE CHAIR COHEN: Second.

15 BZA CHAIR JORDAN: Motion made and
16 seconded. Will the secretary please call roll
17 call?

18 MR. MOY: Yes, when I call a
19 member's name if you could reply with a yes or
20 a no. Ms. Cohen.

21 ZC VICE CHAIR COHEN: Yes.

22 MR. MOY: Chairman Jordan.

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1 BZA CHAIR JORDAN: Yes.

2 MR. MOY: Vice-Chair Allen.

3 VICE CHAIRMAN ALLEN: Yes.

4 MR. MOY: And Board Member Hinkle is
5 not present. The motion carries 3-0, Mr.
6 Chairman.

7 BZA CHAIR JORDAN: As it appears the
8 motion has passed I request that the Office of
9 Zoning provide notice of the closed meeting in
10 accordance with the law. And we are adjourned.
11 Right, Mr. Moy?

12 MR. MOY: Absolutely, sir.

13 BZA CHAIR JORDAN: All right.
14 Thank you everyone.

15 (Whereupon, the hearing in the
16 above-entitled matter was concluded at 1:01
17 p.m.)

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