

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 29, 2013

+ + + + +

The Regular Public Meeting 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, Vice-Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
PAUL GOLDSTEIN
KAREN THOMAS
ELISA VITALE

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

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

(9:51 a.m.)

BZA CHAIR JORDAN: I think that's the only other party status because the other withdrew after they worked it out. And for the record, I want to say for Case 18614, both from the applicant and the parties who sought party status I really appreciate their hard work because I know it was miles apart on that and there's been at least two weeks discussion since it was set on our docket before.

But they did work that out. Mr. Moy, let's call our first matter please for decision.

MR. MOY: Okay, I believe, Mr. Chairman, that would be, unless told otherwise, would be Appeal Number 18615 of Advisory Neighborhood Commission 3/4G, pursuant to 11 DCMR 3100 and 3101 from April 3, 2013, and May 28, 2013, decision by the Department of Consumer and Regulatory Affairs to issue building permits Number B1208792, FD1200052 and SH1200128

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1 authorizing the construction of an apartment
2 building in the R-5-D district.

3 That permit is 5333 Connecticut
4 Avenue N.W., Square 1873, Lot 128. As the Board
5 will recall on September 24th, the Board
6 completed public testimony, closed the record
7 and scheduled it's decision on October 29th.

8 The Board requested additional
9 information to supplement the record. And
10 these were in the form of draft findings of fact
11 and conclusions of law. There are two filings
12 in your case folders, Mr. Chairman.

13 The first from the appellant. The
14 5333 Connecticut Avenue Coalition, as they are
15 now called. And that is identified as under
16 Exhibit 54 and also a filing of findings of fact
17 and conclusions of law from the party owner under
18 Exhibit 55.

19 BZA CHAIR JORDAN: Yes, would you
20 indicate the ANC withdrew their --

21 MR. MOY: That's correct. ANC
22 withdrew their --

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1 BZA CHAIR JORDAN: Objection to --

2 MR. MOY: -- objection to, correct.

3 BZA CHAIR JORDAN: -- status.

4 However we proceeded on and had the hearing on
5 September 24th on this matter. Is the Board
6 ready to deliberate in regards to our decision
7 or a decision?

8 FEMALE PARTICIPANT: Yes.

9 BZA CHAIR JORDAN: Okay. I guess
10 I'll start. This is a matter which, this is an
11 appeal where the applicant challenged the
12 administrative decision of the Department of
13 Consumer Regulatory Affairs, particularly the
14 zoning administrator regarding his
15 determination of matter of right development and
16 the issuance of building permits to construct a
17 premises on 5333 Connecticut, I believe.

18 This was a long hearing, a lot of
19 filings in this matter. And this is something
20 that a lot of hard work and time and review of
21 law and determinations have taken place. The
22 applicant makes four arguments, I believe, in

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1 this matter. The applicant has argued that the
2 building would exceed the maximum FAR allowed
3 because all apartment buildings on the lower
4 level were excluded from the FAR calculation on
5 the ground level and they were called cellars.

6 The second point of contention was
7 that the building would violate the Height Act
8 as the building was far taller than the maximum
9 permitted by the Height Act. And I think the
10 third issue, as I understand it, is that the
11 measuring point from Kanawha Street is, was an
12 arbitrary, they allege it was an arbitrary point
13 for measurement in determining the Height Act.

14 And then the fourth was that the
15 official zoning map was split in regards to what
16 the zone was for that particular area, whether
17 it's an R-5 or split between an R-1-5. And so
18 that's basically the issues that the Board had
19 before it.

20 Now this is not a case in which the
21 Board, it's before us on appeal and not want to
22 initial grant of variance or special exception.

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1 So the Board has to review these matters as was
2 the zoning administrator correct as a matter of
3 law or was his interpretations reasonable within
4 what is provided by the law.

5 This is not one where the Board has
6 to review the impact on the community, whether
7 or not we think the design is something that
8 should not be there, which is questionable and
9 some other things going on. So it's very clear,
10 I wanted to be very clear about where our hands
11 and what we have to do in regards to this matter,
12 at least from my perspective.

13 The Board is authorized to hear
14 appeals by virtue of 6-641.07 where the Board is
15 empowered to hear appeals of any decisions
16 carried out by any administrative officer in the
17 District of Columbia regarding zoning, any
18 zoning order, requirement, decision,
19 determination or refusal by any officer to act
20 upon what is required under the zoning
21 regulations.

22 That being said, there's a lot of

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1 facts that run around in this case. And as I see
2 the facts being that the property fronts on I
3 think three streets, on Kanawha, Connecticut
4 Avenue and Military Road. And the widest
5 street, Connecticut being the widest street is
6 measured I think 130 feet, that the property was
7 zoned as R-5-D and the property zoning goes all
8 the way back to 1965 regarding when the Zoning
9 Commission rezoned certain lots there.

10 And there has been no action taken
11 by the Zoning Commission to change the rezoning
12 since 1965. And there's a question raised
13 whether or not the map was correct or whether or
14 not the map was incorrect or had there been a
15 "conspiracy" to change the maps.

16 At some point there was a
17 typographical error that occurred in the past
18 issuance of the zoning map and the official
19 zoning map had been corrected to reflect that the
20 area was zoned R-5-D. The Board's notes and
21 official zoning certification issued by the
22 Office of Zoning in January 2013, who did an

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1 investigation of how that area was zoned and its
2 history, confirmed and certified by the Board
3 Office of Zoning that the area was zoned R-5-D.

4 And the R-5-D zoning district allows
5 for a maximum height of 90 feet there at that
6 location. The R-5-D also allows for a density
7 of 3.5 FAR on this matter. And the purpose of
8 measuring the building height is 87.3 feet as
9 measured from the curb opposite the middle front
10 of the building from Kanawha Street yielding the
11 elevation, which yielded an elevation of 316.83
12 feet.

13 The building gross area measures
14 198,000 and I think 338 square feet. It's a
15 normal practice for measuring under the Height
16 Act is kind of a two step process that the Board
17 has followed and the zoning administrator has
18 followed.

19 In the case of measuring of the
20 height purposes from Kanawha from the middle
21 point of the full length of the exterior walls
22 running from Kanawha which is consistent with

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1 the past administrative practices of the Board
2 and of the zoning administrator, the roof of the
3 building is proposed to contain a pool, pool
4 deck, penthouse and other things that are
5 allowable within the Height Act.

6 The building height at the top of the
7 parquet wall is 87.83 feet, I think, yes. These
8 tenths and a hundred tenths of inches are very
9 important in this particular case. And at the
10 top rail, guard rail is about 90 feet.

11 Located on the roof would be some
12 exempt structures, structures that have been
13 exempt under the Height Act and more importantly
14 as the Height Act has been interpreted I think
15 in the 1953 or 1956 opinion by the Office of the
16 Corporation Counsel in 1953, provided the list
17 and this is the interpretation of the Height Act
18 as to what is allowed to be in, within the Height
19 Act and not be included within the height
20 measurements.

21 A portion of the building contains
22 17 dwellings that are cellars that are below the

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1 four feet adjusted grade and not including the
2 gross floor area. Twelve percent of the lower
3 area of the building did have habitable space and
4 that space was included within the FAR.

5 DCRA used the perimeter wall method
6 in measuring its practice, as was its practice
7 in measuring the level of the building that is
8 located above grade. The areaway along
9 Military Road measured four feet wide and there
10 was really no access from the units in the
11 areaway.

12 But the portion of the courtyard
13 measured five feet wide and is accessible only
14 from those individual units. The property has
15 frontage on Connecticut Avenue, as I said and has
16 a right of way measurement of 130 feet. The
17 building height is approximately 90 feet, which
18 is also contained in the R-5-D zoning
19 classification.

20 Section 7 of the Code 6-601.07 or .7,
21 provides that the building, if the building has
22 more than one front the height can be measured

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1 from the elevation of the side walk opposite the
2 middle of the front that will permit the greater
3 height. Section 7 of the Height Act provides
4 that the height shall be measured from the middle
5 of the front that will permit, as I said, the
6 greater height.

7 I lost my place. Of the three
8 streets fronting the property Kanawha Street has
9 the highest elevation and is acceptable, is an
10 acceptable measuring point. Although one of
11 the other three frontages could have been used.

12 More questionable but not shown to
13 be wrong under the regulation is the practice of
14 where that middle point for measurement was.
15 And we kind of tried to drill down on that during
16 the hearing and we asked over and over again, at
17 least I did ask over and over again to cite the
18 authority for what the appellant was seeking as
19 the measuring point versus what the zoning
20 administrator offered and the authority was not
21 forthcoming.

22 DCRA put forth evidence that it's

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1 the practice to use the middle point of the full
2 length of the exterior wall that runs along the
3 street drawing lines perpendicular to the street
4 in which the building fronts both ends but not
5 beyond the end of the street of either end. The
6 mid point for the projected lines established
7 the location at the top of the curb to the
8 beginning of the measuring vertically.

9 The applicant argued, so basically
10 that's the facts. And generally the applicant
11 argued that the inclusion of the entire length
12 of the building should have been used to
13 determine the middle point and that as the
14 applicant stated in its writing and then before
15 the Board, not that the ZA was wrong, but that
16 the standard used was too rigid a view of what
17 constituted the proper frontage and the length
18 of the building and that the zoning
19 administrator should use another standard in
20 regards to its measurement.

21 That's basically the facts as I see
22 them. And unless the Board had some other facts

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1 that they wanted to add. But regarding what I
2 would conclude in this matter is that one, that
3 the, it was not improper for the zoning
4 administrator to consider the bottom of the
5 areaway to adjacent finished grade.

6 The term finished grade was
7 contemplated by the developer and they use
8 alternate natural grade. And nothing in the
9 zoning regulations prohibited the developer
10 from adding soil to achieve that.

11 And that's one of the things that we
12 asked over and over again of the applicant. Show us
13 where the regulation says that only certain
14 materials can be used for adjusted grade. That
15 was not forthcoming even though we asked it
16 several times.

17 The ZA is not in error for using the
18 perimeter wall method to differentiate between
19 the basement and cellar space and making a
20 determination of the amount of floor area of the
21 lowest level of this particular building to be
22 charged against the FAR.

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1 As indicated, portions of the lower
2 part of the building had been counted, I think
3 about 12 percent of the space actually had been
4 counted toward the FAR. Upon questioning
5 whether there was something that was specified
6 what materials were necessary to create the
7 finish grade, the applicant was unable to
8 produce any authority.

9 The next point of contention is that
10 the building violated the Height Act. And as I
11 said before the applicant contended that the
12 measuring point should take place from
13 Connecticut as the wider street and that the
14 zoning administrator relied on too rigid of a
15 spot or the restraints of the Height Act did not
16 allow for the zoning administrator to do that
17 which he did in his measurement.

18 The applicant was not able to show
19 that the zoning administrator used, violated the
20 regulation in regards to the Height Act. And it
21 simply argues that another street was a
22 preference. This case to me seems determined

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1 that this was about preferences or differences
2 of opinion but nothing that the zoning
3 administrator did wrong.

4 It might have been that we prefer you
5 to use Method A versus Method B, but it was not
6 wrong to use either one and that the zoning
7 administrator should be certainly given
8 deference in regards to his decisions about
9 applications of certain parts of the zoning
10 regulations and also to follow some precedence
11 in regards to that if it's not been shown to be
12 wrong.

13 The applicant to me ignored the
14 provisions of Section 7 of the Height Act that
15 allows a measurement from the front that would
16 give the greatest height. And it's very clear
17 the words used from the area that gives the
18 greatest height.

19 Nothing was presented by the
20 applicant that provided appellant, excuse me,
21 did I say applicant? I mean appellant. But
22 that the appellant showed that the zoning

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1 administrator violated any of that.

2 The method used by the zoning
3 administrator was consistent with the long
4 practice of the zoning administrator, in my
5 view. The measuring point along Kanawha it was
6 challenged that it was an arbitrary point. I
7 stated earlier this is an issue more of concern
8 for the Board by the measurement and that's
9 something I really wanted to get my arms around
10 because initially when we saw the layout, the
11 diagram it gave me some pause.

12 But after review of what the law was
13 in regards to and in hearing the testimony and
14 seeing what the practice has been, I cannot find
15 that the zoning administrator committed any
16 particular, any error.

17 The ZA's approach cannot be said to
18 be wrong in the measuring the middle point of the
19 full length of the exterior walls as they run
20 along the street drawing lines out perpendicular
21 to the street which the building fronts from both
22 ends but not beyond the end of the street.

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1 The mid point of this project line
2 to establish the location on the top of the curb
3 to the beginning of the measurement vertically.
4 The one where we spent so much time on and I tried
5 to send signals, we tried to send signals from
6 here that I didn't find that was the argument
7 that really needed to be made.

8 And I certainly don't find it a
9 credible argument that the zoning map had been
10 altered in some type of improper way. And that
11 there existed a split in zoning between R-5-D and
12 R-1-B.

13 And so I would find that the zone was
14 R-5 and has been that way since 1965, that there
15 had been a typographical area on the zoning map,
16 which is not the official record of the action
17 taken back in 1965 and that we also, in light of
18 even having the certification from the Office of
19 Zoning, clearly specifying that they
20 investigated this whole issue that this zoning
21 map had an error in it.

22 That the R-5 from all the records

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1 from the initial resolutions by the Zoning
2 Commission and as this matter had gone on had not
3 been changed. But we spent an enormous amount
4 of time on that issue even when the Board tried
5 to move the appellant on saying that's probably
6 a no start.

7 And so nothing presented and upon
8 questioning whether or not there had been, show
9 us some evidence that there had been something
10 that's altered. We were offered some type of
11 handwriting analysis that maybe the R, the 5 was
12 turned and the 1 was something else.

13 But I did not find that to be
14 credible, I didn't find it to be credible at all.
15 And so based upon the evidence it cannot be said
16 that the zoning administrator's interpretation
17 of the applicable regulations were erroneous or
18 inconsistent with the regulations as a whole.

19 And the arguments offered by the
20 appellant to me only intended to offer a
21 different view or a different way of doing the
22 evaluation and since the difference the opinion.

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1 It was simply a difference of opinion of the
2 zoning administrator.

3 And so I would offer the Board that
4 the applicant has not shown any error by the
5 zoning administrator and I would move that we
6 affirm the decision of the zoning administrator
7 in this matter.

8 VICE CHAIRMAN ALLEN: Second.

9 BZA CHAIR JORDAN: Any unreadiness
10 or discussion?

11 ZC VICE CHAIR COHEN: No, I just
12 wanted to state for the record, I don't want to
13 belabor everything. You provided a very
14 thorough explanation. But I too did an analysis
15 of the entire record for both parties.

16 And we reviewed the hearing and came
17 to the same conclusions that the zoning
18 administrator did follow zoning procedures and
19 the zoning code and the zoning regulations and
20 concur with your decisions.

21 BZA CHAIR JORDAN: Ms. Allen.

22 VICE CHAIRMAN ALLEN: Thank you,

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1 Mr. Chair. I would like to just for the record
2 state that I did not sit in on this hearing and
3 have subsequently reviewed the full record and
4 watched the video. And like my colleagues I
5 found the zoning administrator's
6 interpretations reasonable and therefore would
7 vote to deny the appeal.

8 BZA CHAIR JORDAN: I'm trying to
9 change the wording that we would affirm the
10 decision of the zoning administrator because
11 we've already heard the appeal. And I think the
12 wording that we've been using in the past is
13 probably not the best because we've already
14 allowed the appeal.

15 We're just going to, I would argue
16 that it's affirming the decision of the zoning
17 administrator. And so the motion is to affirm
18 the decision of the zoning administrator.
19 There was a second. All those in favor signify
20 by saying aye.

21 (Chorus of ayes)

22 BZA CHAIR JORDAN: Those opposed

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1 nay. The motion carries. Mr. Moy.

2 MR. MOY: Yes, sir, before I give a
3 final vote we do have an absentee ballot vote
4 from another participant on this appeal. And
5 it's from Jeffrey Hinkle, who is absent today.
6 And his absentee vote is to, on the absentee
7 ballot is to deny the appeal.

8 So that would give a final vote of
9 4-0 on the motion of the Chairman Jordan. Also
10 seconding the motion of the chairman is
11 Vice-Chair Allen. Also in support Ms. Marcie
12 Cohen. We have a Board seat vacancy. The
13 motion carries 4-0.

14 BZA CHAIR JORDAN: And this shall
15 not be a summary order.

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

17 BZA CHAIR JORDAN: Thank you. You
18 want to call our next matter please.

19 MR. MOY: The second of three
20 decision cases this morning is Application
21 Number 18632 of 14th & U Residential, LLC,
22 pursuant to 11 DCMR 3104.1 through 3103.2 and

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1 1906.1. Variances from the public space at
2 ground level requirements under Section 633
3 variance from the lot occupancy requirements
4 under 634 and from the rear yard set back
5 requirements under Section 636.

6 Special exceptions from the set back
7 requirements under Subsection 1902.2 and the
8 parking for historic structures requirements
9 under Subsection 2120.6 in the ARTS/CR District
10 at premises 1921-1923 14th Street N.W., 1925
11 14th Street, N.W., and 1351 Wallach Place, N.W.,
12 Square 237, Lots 180, 196 and 806.

13 As the Board is aware on October the
14 8th the Board completed the public testimony,
15 closed the record and scheduled its decision on
16 October 29th. The Board requested additional
17 information to supplement the record from the
18 applicant including draft findings of fact and
19 conclusions of law as well as a summary of the
20 results of the meetings with residents of the
21 Wallach Place.

22 In your case folders, Mr. Chairman,

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1 there are post hearing documents from the
2 applicant under Exhibits 40 and 41. We also, as
3 I mentioned earlier at the start, a preliminary
4 matter in that there are two additional filings
5 that the Board did not request into the record
6 since the record is closed.

7 One from the applicant and the other
8 from the Shaw Dupont Citizen's Alliance. So the
9 Board should act on the preliminary matters as
10 well then acting on the merits of the applicant's
11 request.

12 BZA CHAIR JORDAN: What are the
13 documents that are being proffered?

14 MR. MOY: The first is from the
15 applicant which is a cover letter with an
16 attached HBRB staff report with recommendations
17 of HBRB regarding minor errors of refinement
18 pursuantly in the design of the project.

19 The second is a letter of opposition
20 from the Shaw Dupont Citizen's Alliance which is
21 dated, September 19, 2013, received into the
22 Office of Zoning on October 22nd. Both these

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1 dates are after the hearing date of October the
2 8th.

3 BZA CHAIR JORDAN: Just let me see
4 the letter if I may please. Yes, representative
5 from the Applicant present would you, Ms.
6 Moldenhauer, would you please come forward,
7 please? And just identify yourself.

8 MS. MOLDENHAUER: Meredith
9 Moldenhauer for the applicant. Good morning,
10 Members of the Board.

11 BZA CHAIR JORDAN: I understand
12 your motion. Does this, did the HBRB in any way,
13 this letter significantly change in any way the
14 plan that has been submitted to the Board?

15 MS. MOLDENHAUER: No, it does
16 change any relief. It just simply affirms some
17 of the historic preservation aspects of the
18 project that were addressed by Office of
19 Planning and since we had received it after, we
20 filed it just for that purpose.

21 BZA CHAIR JORDAN: Okay. Then
22 we'll leave the record closed in regards to that.

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1 And the Shaw Dupont Citizen's Association I see
2 a date of September 19th and we could have had
3 this before, but I see a date sent by October
4 22nd. The record is closed.

5 I think we're ready to move on this
6 and not include these two matters in the record,
7 if that's okay with the Board. So is the Board
8 ready to deliberate on this matter?

9 ZC VICE CHAIR COHEN: Mr. Chairman,
10 just for the record, I did not participate in
11 this hearing in this matter.

12 BZA CHAIR JORDAN: And thank you.
13 We appreciate you remaining for the quorum so we
14 can hear this matter. This is a case which is,
15 you know, probably very, very borderline for me.

16 I think there is not a question about
17 the property being uniquely affected. There's
18 two historical structures on this property that
19 are, that must be preserved or are proposed to
20 be preserved. There's a high water table and
21 near a right of way abutting the property there's
22 a very narrow alley. So I think it affects all

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1 the things that's necessary.

2 So it's clearly an exceptional
3 situation with this property in that there are
4 some practical difficulties which would be
5 presented by meeting the roof structure set back
6 requirements and et cetera and the need to
7 preserve these buildings.

8 On the question substantial
9 detriment to the public good is where I'm kind
10 of bouncing around. And this Board has bounced
11 around for a lot of time. Parking is just an
12 issue in the District.

13 No matter how you code it and package
14 it and send it off. It's an issue. No matter
15 what you say about it, what you're going to do
16 to try to relieve it, parking is an issue. And
17 this Board has not been shown where some of these
18 traffic demand management plans have really been
19 either effective one way or the other, effective
20 or not effective.

21 So we're still kind of in a guessing
22 game regarding the parking demand,

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1 transportation demand plans. There was
2 testimony from neighbors that were concerned
3 about added parking in this area and that the
4 affects upon more cars in the 14th & U kind of
5 area would have problems.

6 Although this area is relatively,
7 there are some bonuses for this project in that
8 the property is near a Metro and there's bus
9 transportation nearby. It has a high level walk
10 score and other supporting things that would
11 offset the relief from parking.

12 But parking is still a major issue
13 and a concern. And I'm not exactly jumping up
14 and down by the proffered conditions offered on
15 this property. That's just my initial thought.
16 And, Ms. Allen, do you have something?

17 VICE CHAIRMAN ALLEN: Yes, Mr.
18 Chairman, and I too continue to struggle with
19 this every case that it comes up. I think that
20 it is clear that this is a major issue for the
21 District. It is clear that we are as a city
22 trying to grapple with it and sort of the method

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1 that has come up is well okay everybody should
2 ride bikes or do car shares.

3 And while that certainly goes to the
4 issue, I don't think it totally addresses the
5 issue. I also don't think it necessarily, by
6 not providing parking spaces that you're somehow
7 going to necessarily affect someone who wants to
8 have a car or needs to have a car.

9 And then that goes into, you know,
10 where are they going to park? And is it going
11 to affect the neighborhood? And if they can't
12 park in their building are they going to park in
13 front of someone else's home. And you know,
14 it's the ripple effect that we've talked about.

15 During the hearing and I will say it
16 again, I applaud the applicant's effort at
17 outreach. I'm happy to see that at least one of
18 the folks that were in opposition withdrew that
19 based on subsequent meetings with them. And I
20 still think that as we continue to have
21 applicants come and these are all unique
22 situations and I think this one is definitely

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1 unique because of the things that the Chairman
2 just stated.

3 But I continue to caution, I guess
4 against thinking that we're just going to
5 continue to do this. Some of this will be
6 relieved I hope with the changes in the zoning
7 rules and regulations.

8 But it really is something that we
9 look at very carefully. We do take the concerns
10 of the citizens very closely. We look at those.
11 We listen to them and in this situation there
12 still is opposition.

13 There still are folks who live in
14 this neighborhood who have made it clear that
15 they're going to be affected. And I think that
16 is something that we have to continue to look at
17 and address.

18 BZA CHAIR JORDAN: I agree it's
19 something that we can't take lightly. I'm
20 inclined to vote in support of this. But I would
21 also offer that the traffic management demand
22 plan as part of the condition be changed in such

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1 a way that it's a little bit more meaningful to
2 the neighborhood.

3 I do not think that it's adequate
4 simply to provide the initial residents of the
5 unit with the offer of \$100 car share membership
6 or \$150 for a Capital Bikeshare membership or
7 \$200 because people come in and out. And if you
8 just give it to the initial folks somebody else
9 might come in and they're not getting the same
10 thing and so they might go get a car.

11 I think we have to be, we need to be
12 sure that whoever moves into this residence has
13 the same incentives not to get a car, which, you
14 know, I'm still very much on the border line. So
15 I would change that, one of the conditions.

16 And the conditions that have been
17 offered or that the applicant would by lease, put
18 into the lease that tenants cannot have a
19 residential parking permit to offset the
20 parking, in order to offset the parking relief.
21 I would want to strengthen that.

22 I would want that to say that the

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1 applicant must record by covenant and by lease
2 a covenant to run with the land that they're,
3 that property is not eligible for a residential
4 parking permit, which would be coordinated with
5 the Department of Transportation and Department
6 of Motor Vehicle.

7 So that would include, my change to
8 the, I would offer the change of the conditions
9 would be that the applicant must record by
10 covenant on the property and by lease with the
11 tenant that the resident, that there's a
12 restriction that they cannot attain a
13 residential parking permit and that these things
14 be coordinated on a regular basis with the
15 Department of Motor Vehicle, ensure that they're
16 on board with that.

17 Second, it was offered that
18 installment of an electronic information
19 display system for real time information about
20 local transportation be in place. And I'm good
21 with that.

22 As I said regarding the bike share

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1 and car share and the Smart Trip, I would alter
2 the language that was offered for the condition
3 to we provide each residential unit, provide
4 each new residential unit with \$100 car sharing
5 membership and \$150 or \$150 Capital Bikeshare
6 membership or \$200 Smart card.

7 And then the third, the fourth
8 provision that they designate a member of the
9 property management team serve as the
10 transportation coordinator to ensure that the
11 information identifying programs and incentives
12 for other modes of transportation be
13 disseminated to the tenants in the building.

14 VICE CHAIRMAN ALLEN: Mr. Chairman,
15 could I just add to that one that person also be
16 tasked with assisting residents who are in need
17 of parking to help them identify other parking
18 facilities in the area.

19 BZA CHAIR JORDAN: So let's say they
20 should keep an ongoing list of available
21 parking, alternative parking, help with parking
22 in the area?

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1 VICE CHAIRMAN ALLEN: Yes, exactly.

2 BZA CHAIR JORDAN: I think that's
3 acceptable. And lastly, that the applicant
4 provide at least 30 covered and secured bicycle
5 spaces in the building. That would be my
6 condition of approval. And I would so move
7 that.

8 VICE CHAIRMAN ALLEN: And I would
9 support that and second it.

10 BZA CHAIR JORDAN: Motion made and
11 seconded that we approve the application subject
12 to the conditions as specified, as I just
13 described. All those in favor signify by saying
14 aye.

15 (Chorus of ayes)

16 BZA CHAIR JORDAN: Those opposed
17 nay. The motion, well we have an absentee
18 ballot from Mr. Hood. And I can read it if
19 that's, do you want me to read it?

20 MR. MOY: That's fine.

21 BZA CHAIR JORDAN: I vote to approve
22 and will go along with any condition imposed by

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1 the Board. So that's another third vote to
2 approve the application with the conditions as
3 indicated. So the motion passes. Mr. Moy, if
4 you want to just poll us.

5 MR. MOY: Yes, sir. The final vote
6 then with the absentee ballot vote from Mr. Hood
7 gives a final vote of 3-0. This is on the motion
8 of Chairman Jordan to approve the application
9 with the conditions, modified conditions as
10 cited.

11 Seconding the motion, Chairperson
12 Allen. Of course Mr. Hood in support. We have
13 a Board member not participating, not present
14 and a Board seat vacant. So the motion carries
15 3-0.

16 BZA CHAIR JORDAN: Thank you.
17 Let's have a full order.

18 MR. MOY: You want a full order,
19 okay.

20 BZA CHAIR JORDAN: Do you want to
21 call our next case?

22 MR. MOY: The last of the decision

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1 cases this morning is there is a, before the
2 Board a Motion for Reconsideration of
3 Application Number 18506 of Ontario
4 Residential, LLC, pursuant to Section 3126 of
5 the zoning regulations.

6 The original application was
7 approved on February 26, 2013. A hearing date
8 of the same day, February 26th. The issuance of
9 the final order was September 27, 2013. In your
10 case folders, Mr. Chairman, there are three
11 filings.

12 The first is of course the Motion for
13 Reconsideration from the Adams Morgan for
14 Reasonable Development or AMFRD. And that's
15 identified under Exhibit 36. There's a
16 response filing from the Goulston & Storrs on
17 behalf of Ontario Residential and that is
18 identified in the case folders as Exhibit 37.

19 Finally, there is a third filing
20 from the Movement. And I believe it's primarily
21 to correct technical references. But in any
22 event that filing in your case folder is

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1 identified as Exhibit 39. So with that then the
2 Board is to act on the merits of the Request for
3 Reconsideration under the standards under
4 Section 3126.

5 BZA CHAIR JORDAN: Okay. That was
6 a long introduction. I forgot what we were --

7 MR. MOY: I tried to shorten that,
8 Mr. Chairman.

9 BZA CHAIR JORDAN: You shortened
10 it. All right. Is the Board ready to
11 deliberate on 18506?

12 ZC VICE CHAIR COHEN: Yes, Mr.
13 Chairman. Just for the record I did not sit on
14 this case.

15 BZA CHAIR JORDAN: Did you review
16 the record?

17 ZC VICE CHAIR COHEN: No, I did not.

18 BZA CHAIR JORDAN: Then I think we
19 may not, do we have, we do have an absentee on
20 this?

21 MR. MOY: Yes, sir. We have an
22 absentee ballot from Mr. Peter May.

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1 BZA CHAIR JORDAN: Okay.
2 Kathryn, you sat on this one? Okay. Then good.
3 Then we can move forward. Then I would, I
4 believe that this matter, the request from the
5 applicant, the Movement be denied.

6 I don't think any of the basis and
7 the grounds for want of hearing has been set
8 forth. There was, we have a requirement that a
9 Request for a Hearing that the grounds be set
10 forth in where the Board committed error.

11 I did not see that in the filings.
12 And for reconsideration whether or not the
13 Movement must provide new evidence that could
14 not have been presented or offered at the
15 hearing. And that has not been presented to
16 this Board. There was a offer of a letter from
17 a neighbor or something in regards to this matter
18 that was in existence prior to the hearing, but
19 was not presented to the Board.

20 The other issues raised in this
21 matter is raised by the Movement had already been
22 handled by the Board and no basis for error.

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1 There was a claim that the rear yard relief was
2 and then also a request, he raised the issue that
3 additional relief was necessary.

4 And this Board has held numerously
5 that we grant the relief requested especially by
6 those on self certifications. And if more
7 relief is necessary then the applicant requests
8 the relief at their own peril.

9 So if they go through this process
10 and they have not requested enough relief that's
11 necessary for them to be granted the zoning
12 approval then it's on them to come back. But
13 that's the risk that they take and that's why
14 it's required that self certifications are
15 examined by either legal or architectural
16 professionals, et cetera in this matter.

17 So I don't see any basis to grant the
18 request of Movement here. And I move that we
19 deny the request.

20 VICE CHAIRMAN ALLEN: Second.

21 BZA CHAIR JORDAN: Motion made and
22 seconded. Any unreadiness? All those in favor

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1 signify by saying aye.

2 (Chorus of Ayes)

3 BZA CHAIR JORDAN: Those opposed
4 nay. The motion carries. Mr. Moy, do you want
5 to --

6 MR. MOY: Yes, sir. Before I read
7 the final vote we do have two absentee ballot
8 votes from participants who heard the original
9 application and made the decision on the
10 original application from Jeffrey Hinkle and Mr.
11 Peter May. And both their votes are to deny the
12 Request for Reconsideration.

13 So that would give a final vote of
14 4-0 on the motion of Chairman Jordan to deny.
15 Second the motion, Vice Chairperson Allen.
16 Board seat vacant. And of course, as I said, Mr.
17 Hinkle and Mr. May are in support of your motion,
18 4-0.

19 BZA CHAIR JORDAN: And all right.
20 Thank you. That concludes that matter.

21 (Whereupon, the meeting in the
22 above-entitled matter was concluded at 10:31

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