

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING AND MEETING

+ + + + +

TUESDAY

NOVEMBER 19, 2013

+ + + + +

The Regular Public Hearing and 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 Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
ELISA VITALE

The transcript constitutes the minutes from the Public Hearing and Meeting held on November 19, 2013.

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

2 (9:43 a.m.)

3 CHAIR JORDAN: Will 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
7 Street, N.W.

8 Today's date is November 19th,
9 2013. And we're here for a meeting of the
10 Board of Zoning Adjustment and hearing of
11 the Board of Zoning Adjustment. My name is
12 Lloyd Jordan, chairperson. And to my right
13 is S. Kathryn Allen, vice chair of the Board,
14 and to my left is Robert Miller, a member of
15 the Zoning Commission.

16 Please be advised that today's
17 proceedings are being recorded by a court
18 reporter and also being webcast live, so
19 therefore I'm going to ask you to refrain
20 from any disruptive noises here in the
21 hearing room. So if you would take a second
22 to silence your telephones that would be

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1 appreciated. The Board's hearing procedures
2 are contained in a document by the back door
3 to my left, so feel free to get that
4 information if you need to understand how we
5 operate here at the Board of Zoning
6 Adjustment.

7 If you're going to testify or
8 provide a statement at any hearing set before
9 the Board today, I need you to do two things,
10 one of which is to complete two witness cards
11 per person.

12 So that's two witness cards per
13 person if you're going to provide any
14 testimony and/or statement to the Board, and
15 give them to the court reporter sitting to my
16 right, prior to your testimony. So that's
17 two witness cards per person, give to the
18 court reporter prior to testifying.

19 The second thing I need you to do
20 is to stand now and take the oath or
21 affirmation which is going to be given by the
22 Board's secretary. So if you're going to

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1 provide any testimony or statement to the
2 Board, please stand now and take the oath or
3 affirmation being given by the Board's
4 secretary.

5 Mr. Moy?

6 (Witnesses sworn)

7 CHAIR JORDAN: Very good. Mr.
8 Moy, do we have any announcements for today?

9 MR. MOY: Yes, I do, Mr.
10 Chairman. For the record as well as for the
11 Board, one of the cases on the docket, which
12 is Application Number 18663 of the Lab
13 School, has been rescheduled and postponed to
14 January 14th, 2014.

15 Also, before the Board there's a
16 number of preliminary matters to the
17 following cases. 18659, there's a request
18 for party status as well as the movement
19 asking for, well, it's asking for a motion.

20 There is a request for a waiver
21 of posting requirements under Application
22 18660. Application Number 18661, there's a

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1 preliminary matter requesting a postponement
2 to a future hearing date. 18595 of Eva
3 Sanchez, Mr. Chairman, there is a preliminary
4 matter in that case, as well as -- well, I
5 think that those are the major ones for
6 today.

7 CHAIR JORDAN: Okay. Then let's
8 call 18659 first, please. Let's do this. I
9 need the applicant and the proposed person
10 party status to come to the witness table on
11 18659. We're now proposed to hear the case,
12 but we need to handle some preliminary
13 matters and some issues with that first.
14 18659.

15 Would you please identify
16 yourselves?

17 MR. SULLIVAN: Good morning, Mr.
18 Chairman and members of the Board. My name
19 is Marty Sullivan with the law firm of
20 Sullivan & Barros here on behalf of the
21 applicant in this case.

22 MR. DONOHUE: Good morning, Mr.

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1 Chairman. Ed Donohue on behalf of the
2 Bakers, potential intervenors and interested
3 parties.

4 CHAIR JORDAN: Mr. Sullivan, do
5 you have any issues with the party status?
6 Are you going to contest party status?

7 MR. SULLIVAN: No, we're not.

8 CHAIR JORDAN: Okay. And as you
9 know with party status request, the Board
10 requires the parties to meet, confer and have
11 discussions about possible resolving their
12 issues, and so that would be applicable to
13 this matter after we deal with the, I think
14 there's a motion to postpone that's been
15 filed by you, Mr. Donohue?

16 MR. DONOHUE: Yes, Mr. Chairman.

17 CHAIR JORDAN: And I understand
18 the basis of that is that your motion is to
19 postpone this hearing due to the change of
20 request for the vehicle for relief, meaning
21 that it was advertised as a special
22 exception, now it's a request to be a

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1 variance, and that you believe that it should
2 be a reposting and renoticing of this matter.

3 Is that correct?

4 MR. DONOHUE: It's largely
5 correct. Right, so it is styled as and it
6 was applied for as a special exception and
7 variance from front yard and side yard.

8 We believe that the special
9 exception is inappropriate given that the
10 DCRA has determined that the structure has
11 been raised. A 223, special exception for
12 addition to a structure really doesn't lie
13 where the building has been eliminated by
14 demolition.

15 CHAIR JORDAN: Yes, but you're
16 aware, and I think we -- you amended your
17 filing, Mr. Sullivan, is that correct?

18 MR. SULLIVAN: I did, yes. I
19 would take whatever the Board says in this
20 case. The way I was looking at it was if the
21 Board grants relief and we go back and get a
22 new building permit it won't be for the

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1 construction of the entire house.

2 The rest of the main house is a
3 matter of right and in effect has been
4 separated from the front porch, so that was
5 my rationale. But we noticed it as a
6 variance for the front yard relief.

7 CHAIR JORDAN: And I think we'll
8 proceed of it as a variance. And there's
9 been notice, Mr. Donohue, that this is going
10 to proceed as a variance and that there was a
11 request of modification to the application
12 for relief.

13 MR. DONOHUE: Yes, sir.

14 CHAIR JORDAN: Was I incorrect
15 that the basis of your motion is that you
16 believe that it requires a new posting?

17 MR. DONOHUE: We thought it had
18 been reapplied and reposted, but we are here
19 and we're prepared to go forward.

20 CHAIR JORDAN: Okay, because I'm
21 inclined to deny the request for postponement
22 based upon those reasons.

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1 MR. DONOHUE: Understood.

2 CHAIR JORDAN: With that, then
3 I'm going to ask the parties to meet and
4 confer and have serious dialogue. And I
5 don't know if you've participated in this
6 before, Mr. Donohue and Mr. Sullivan. We
7 have had great results on meet and confer.
8 And this is when I think a meet and confer
9 might be very helpful, and I'd strongly
10 recommend that you do so. So we will call
11 this back for a hearing at that point. Thank
12 you.

13 MR. DONOHUE: Thank you.

14 MR. SULLIVAN: Thank you.

15 CHAIR JORDAN: All right, Mr.
16 Moy?

17 MR. MOY: All right, Mr.
18 Chairman. I believe the case before the
19 Board is the case that's on the Expedited
20 Review Calendar which is Application Number
21 18670 of Robert Rubin, pursuant to 11 DCMR
22 3104.1.

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1 This, Mr. Chairman, is a special
2 exception for a rear addition to a one-family
3 detached dwelling under section 223, not
4 meeting the rear yard requirements, at 3704
5 Military Road, N.W., Square 1873, Lot 41.

6 In the case folder is the
7 applicant's filing, is identified under
8 Exhibit 1. The other major filings is a ANC
9 3G letter and an Office of Planning report,
10 Exhibits 26 and 28, respectively, a DDOT
11 letter that was filed under Exhibit 25, and
12 two letters of support.

13 With that then the Board is to
14 act on the merits of the requested relief for
15 special exception as well as section 3118.

16 CHAIR JORDAN: All right. Thank
17 you, Mr. Moy. I believe that the record in
18 this matter, this being an expedited review
19 doesn't require a hearing. I think the
20 applicant, in my view, has met the standard
21 and requirements for the relief requested.

22 We have the support of the ANC,

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1 Office of Planning and Department of
2 Transportation and other letters of support
3 of this application. So I would be inclined
4 to grant it.

5 Anybody else on the Board have
6 another thought about it? No, I haven't
7 moved. Let me move it. So I move that we
8 grant the relief requested by the applicant
9 in 18670.

10 VICE CHAIR ALLEN: Second.

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

14 (Chorus of ayes)

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

17 MR. MOY: Yes, the staff would
18 record the vote as 3 to 0. This on the
19 motion of Chairman Jordan to approve the
20 Application Number 18670. Second the motion,
21 Vice Chair Allen, also in support Mr. Rob
22 Miller. Mr. Hinkle is not present today and

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1 we have a Board seat vacant. So again, the
2 motion carries on the vote of 3 to 0.

3 CHAIR JORDAN: Yes, for the
4 record, Mr. Hinkle is on jury duty, I
5 believe.

6 MR. MOY: Yes, sir.

7 CHAIR JORDAN: All right, Mr.
8 Moy. MR. MOY: Thank you.

9 CHAIR JORDAN: Summary order,
10 please.

11 MR. MOY: Yes, thank you. So I
12 believe, Mr. Chairman, the next application
13 on the docket is Application Number 18657.
14 All right, that's the application of 903
15 Florida Avenue NE LLC et al, pursuant to 11
16 DCMR 3103.2.

17 This is a request for a relief
18 variances from the lot area requirements
19 under 401, off-street parking requirements
20 under subsection 2101.1. This is as
21 advertised, publicly advertised, to allow the
22 subdivision and construction of two flats in

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1 the R-4 District at premises 903, 905 and 907
2 Florida Avenue, N.E., Square 931N, Lots 802,
3 804, and 803.

4 CHAIR JORDAN: Good morning.
5 Will you please introduce yourselves?

6 MR. SULLIVAN: Good morning, Mr.
7 Chairman and members of the Board. My name
8 is Marty Sullivan with the law firm of
9 Sullivan & Barros here on behalf of the
10 applicant.

11 MS. HARRIS: Harris.

12 CHAIR JORDAN: And you are?

13 MS. HARRIS: Tonya Harris, and
14 I'm the owner of 903.

15 CHAIR JORDAN: Into the
16 microphone, make sure it's working. Say your
17 name and let's go through it again.

18 MS. HARRIS: My name is Tonya
19 Harris. I'm the contract purchaser of 903
20 Florida Avenue, N.E.

21 CHAIR JORDAN: Mr. Sullivan, we
22 have the owner's authorization representation

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1 letter?

2 MR. SULLIVAN: Yes, it should
3 have been filed with the application.

4 CHAIR JORDAN: If it's there, I
5 just wanted --

6 MR. SULLIVAN: Okay, thanks.

7 CHAIR JORDAN: Just wanted to run
8 off, instead of me looking it up again. This
9 is a matter before us in regards to, for two
10 variances regarding this property. I think
11 it's pretty straightforward to me and I don't
12 generally have any questions that I need to
13 have drilled down. I think the application
14 is sufficient as it stands. I don't know if
15 the Board has something that we need to hear
16 from this particular applicant on.

17 VICE CHAIR ALLEN: Did we get the
18 letter?

19 CHAIR JORDAN: The letter, yes.
20 We did get an ANC letter on this one. It
21 came in late yesterday or something. ANC 6A,
22 I believe it was. It voted 7 to 0 in

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1 support. So otherwise than that does the
2 Board have any particular issues that they
3 need to hear from the applicant on this? No?

4 Mr. Sullivan, as you know, if the
5 Board believes that this application as
6 submitted with the evidence already in the
7 exhibits in the file, we'll support your
8 application at this point for relief.

9 Certainly it's your opportunity
10 if you want to put on something else, if you
11 think it's necessary to do so, or you can
12 save any aspect of it for rebuttal as we go
13 through the normal hearing procedure.

14 MR. SULLIVAN: Thank you. We're
15 happy to stand on the record. And our
16 architect is with Mr. Hinkle today anyway.
17 But I do want to submit a revised Form 135
18 because I realized there should be two Page
19 2s, specifically, one for each lot, because
20 there were different lot occupancies and
21 different widths. And so I'd like to submit
22 that to the record. But no changes from what

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1 was originally planned.

2 CHAIR JORDAN: All right.

3 (Off microphone discussion)

4 CHAIR JORDAN: Okay, then let's
5 turn to the Office of Planning to see if
6 there's any additions or changes that the
7 Office of Planning would like to make to
8 their report.

9 MS. VITALE: Good morning, Mr.
10 Chair, members of the Board, Elisa Vitale
11 with the Office of Planning. OP supports the
12 requested relief and will rest on the record.
13 I can answer any questions that you might
14 have. Thanks.

15 CHAIR JORDAN: Does the Board
16 have any questions for the Office of
17 Planning?

18 Does the applicant have any
19 questions for Office of Planning?

20 MR. SULLIVAN: No, we don't.

21 CHAIR JORDAN: Okay. Is there a
22 representative here from the Department of

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1 Transportation for this particular case?
2 Seeing none, the Department of Transportation
3 has submitted its letter of no objection to
4 the relief requested.

5 Is there a representative here
6 from ANC 6A? We do have a letter that we'll
7 give great weight to from ANC 6A who voted 7
8 to 0 in support of this application.

9 Is there anyone in the audience
10 here wishing to testify in support of the
11 application? Anyone wishing to speak in
12 support? Anyone wishing to speak in
13 opposition? Yes, please come forward. Yes,
14 please. And make sure the microphone is
15 turned on.

16 MS. BERTRAND: Hi, yes.

17 CHAIR JORDAN: Did you give the
18 witness cards to the court reporter?

19 MS. BERTRAND: I will, just as
20 soon as I finish.

21 CHAIR JORDAN: Well --

22 MS. BERTRAND: Should I do it

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1 right now?

2 CHAIR JORDAN: Give it to her,
3 please. Witness cards to the court reporter
4 prior to testifying.

5 MS. BERTRAND: Good morning. My
6 name is Carli Bertrand. I live at 911 L
7 Street in Northeast, just right across the
8 street from this development. And I just
9 want to strongly oppose it. I mean, nobody
10 else seems to oppose it, but I know that me
11 and my neighbor strongly do. Not everyone
12 can get off work, you know, at 9:30 in the
13 morning to be here.

14 But I think it's important to
15 note that this development will strongly
16 change the very nature of our little
17 community over there. We have beautiful
18 connection with Gallaudet University across
19 the street from Florida Avenue, and we have a
20 nice community with a lot of, you know, it's
21 easy to park there. I know it's a luxury in
22 this town.

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1 But I think those of us who
2 bought property there and who have lived
3 there for a long time are going to see a
4 marked change in the value of our homes due
5 directly to this development.

6 So I just wanted to be here today
7 to make sure that there's at least one voice
8 in opposition to this. And especially the
9 variances that they're asking for, I mean
10 does it have to be that, you know, does it
11 have to be that dramatic?

12 Anyway that's all I have to say.
13 Thank you for your time.

14 CHAIR JORDAN: You're welcome,
15 and thank you. Don't run away. Thanks. The
16 Board, any questions of Ms. Bertrand? Yes?

17 VICE CHAIR ALLEN: Ms. Bertrand,
18 thank you for coming down today. Can you
19 just elaborate just briefly on why you think
20 it would so dramatically change the nature of
21 your community? I mean it's two flats,
22 right?

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1 MS. BERTRAND: Right. But right
2 now on that stands, what is there now, I
3 believe, has intrinsic value to our
4 community. What stands there now is an open
5 space. What stands there now is five
6 beautiful big trees that change colors every
7 season.

8 What stands there now has value.
9 What stands there now is a dog park where
10 people use every single day. What stands
11 there now is part of our community, and
12 that's why I think it will change.

13 VICE CHAIR ALLEN: Thank you.

14 CHAIR JORDAN: But it's privately
15 owned, isn't it? The plat of land? Yes.
16 Any other questions of the -- does the
17 applicant have questions of --

18 MR. SULLIVAN: No, we have no
19 questions. Thank you.

20 CHAIR JORDAN: Again, as Ms.
21 Allen did, we really appreciate you coming
22 down. And we do take seriously, we may not

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1 agree but we do take seriously the comments
2 from neighbors particularly in regards to
3 these matters.

4 And we generally require a little
5 bit more than sometimes a gut on it. So that
6 you know in the future, something that
7 supports the statements that are made.
8 Because we have to rule in regards to
9 evidence best presented to us.

10 And sometimes we have six
11 opinions whether something is pretty or not
12 nice or something we really wouldn't like,
13 but if we don't have evidence really to
14 support it, even the Board can't -- we churn
15 internally to want to get rid of something,
16 but the evidence has to speak and that's what
17 we have to rule. Because surely if we do
18 something wrong, someone will run across the
19 street to the Court of Appeals in a matter of
20 seconds.

21 But that's the thing. No, again
22 appreciate it, really do. Thank you. Anyone

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1 else wishing to speak in opposition? Anyone
2 else wishing to speak in opposition?

3 Then let's turn back to the
4 applicant to see if there's any rebuttal that
5 you believe is necessary, Mr. Sullivan.

6 MR. SULLIVAN: Would just like to
7 point out that other than the minimum lot
8 area for one of the two lots that we're
9 requesting, the structure itself is a matter
10 of right and we comply with the lot occupancy
11 on the side yards. And it is a vacant lot
12 right now and it is privately owned. Thank
13 you.

14 CHAIR JORDAN: The Board, any
15 other questions for -- yes, Mr. Miller?

16 MEMBER COMMISSIONER MILLER: So
17 Mr. Sullivan, I wonder if you could just
18 address the neighbors' issue that it would be
19 out of character with the surrounding
20 neighborhood, if you can just address that
21 issue.

22 MR. SULLIVAN: Sure. Well, it

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1 complies with the height and complies with
2 lot occupancy, will be in character with the
3 neighborhood. And what I think maybe the
4 source of the opposition is, is it's going
5 from nothing which is nice to have. It's
6 nice that they have the view across to
7 Gallaudet. But the homes will
8 comply in all respects with the area
9 restrictions and the use restrictions, and in
10 that sense will be compatible with the area.
11 And it's also at least 80 or 90 feet away
12 from every single neighbor which makes it
13 very unique as well in relation to the other
14 homes in the area.

15 CHAIR JORDAN: Okay. Then we
16 will close this hearing based upon the record
17 that we have before us. And I believe that
18 in my opinion clearly this is a matter of
19 where the variance should be granted. The
20 foundation of which has been supported by the
21 submission, the triangular lot, it's
22 surrounded by three streets, et cetera, and

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1 there clearly presents practical difficulty
2 in regard of the two parking spaces, the off-
3 street parking spaces which are required, in
4 that there's no substantial detriment to the
5 community in regards to this.

6 So I would recommend that the
7 Board grant the relief requested and I would
8 so move it.

9 VICE CHAIR ALLEN: Second.

10 CHAIR JORDAN: Motion made and
11 seconded. Further discussion? All those in
12 favor signify by saying aye.

13 (Chorus of ayes)

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

16 MR. MOY: Staff would record the
17 vote as 3 to 0. This is on the motion of
18 Chairman Jordan to approve the application
19 for the relief requested. Seconded the
20 motion, Vice Chairperson Allen, also in
21 support to Mr. Miller. Board seat vacant and
22 Board member not present. Motion carries 3

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1 to 0.

2 CHAIR JORDAN: Summary please.

3 MR. MOY: Thank you, sir.

4 CHAIR JORDAN: Thank you.

5 MR. SULLIVAN: Thank you.

6 MS. HARRIS: Thank you.

7 MR. MOY: The next application is
8 Application Number 18660. This is the
9 application of 1628 11th Street LLC, pursuant
10 to 11 DCMR 3104.1 and 3103.2.

11 This is a request for multiple
12 variances from compact parking space
13 requirements, parking space accessibility and
14 drive aisle width requirements, side yard
15 requirements, nonconforming structure
16 requirements, and a special exception from
17 the roof structure requirements under
18 sections 411 and 777. Address, 1628 through
19 1632 11th Street, N.W., Square 309, Lot 51.

20 Mr. Chair, as I said this case
21 also has a preliminary matter regarding a
22 waiver of posting requirements.

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1 CHAIR JORDAN: All right, I thank
2 you. Please introduce yourself for the
3 record.

4 MR. FREEMAN: Good morning,
5 Chairman Jordan. For the record, my name is
6 Kyrus Freeman. I'm a partner with the law
7 firm of Holland & Knight here on behalf of
8 the applicant.

9 CHAIR JORDAN: Mr. Freeman, I
10 understand we have a request for a waiver of
11 the posting requirements under 3113-14,
12 correct?

13 MR. FREEMAN: Yes, sir.

14 CHAIR JORDAN: And you filed the
15 motion with basically stating that it was
16 posted but it wasn't posted for the full 15-
17 day period required to be posted.

18 MR. FREEMAN: Yes, sir.

19 CHAIR JORDAN: And that there's
20 been notice to the neighborhood by community
21 meetings, meeting with the ANC and other
22 forms. Is that --

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1 MR. FREEMAN: Yes, sir. Although
2 it was posted late, it was in fact posted in
3 multiple, other forms of notice were provided
4 in accordance with the zoning regulations,
5 including publication in the D.C. Register,
6 mailing to all property owners within 200
7 feet, notice of two separate ANC meetings,
8 and posted on the Office of Zoning website.

9 I'd also like to add that as
10 recently as yesterday, we got additional
11 letters of support from adjacent property
12 owners which have been included and marked as
13 exhibits --

14 CHAIR JORDAN: Are they --

15 MR. FREEMAN: They were filed
16 yesterday and marked as Exhibits 29, 30 and
17 31 of your record.

18 CHAIR JORDAN: Okay, so you need
19 us to accept those into the record.

20 MR. FREEMAN: Yes, sir. And last
21 but not least, as recently as Sunday we've
22 been in touch with the president of the

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1 adjacent condo association. I just have this
2 via email indicating that they look forward
3 to working with us during the construction
4 process, and they're not raising any concerns
5 about the project.

6 So overall, I'd say ample notice
7 was provided, which as you know is the
8 purpose of the posting requirements, and
9 granting an waiver wouldn't have any adverse
10 impacts on any parties.

11 CHAIR JORDAN: All right, thank
12 you. Mr. Moy, do we have the filing?

13 MR. MOY: Well, I'll have to run
14 and grab that.

15 CHAIR JORDAN: We can take the
16 representation of Mr. Freeman. Certainly he
17 has always been above reproach here before
18 this Board, and we certainly wouldn't
19 question his statements.

20 Mr. Freeman, as you know, we
21 don't generally give waivers in regards to
22 the posting requirements. I believe in this

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1 situation we can do so because of the
2 representations made by you, the support of
3 these letters of the neighbors, and the fact
4 that you've had the various meetings with the
5 ANC.

6 But this is something that we
7 don't do as a norm, as you're well aware.
8 And it was in a commercial building, and the
9 relief requested is not much of a relief
10 because the building kind of speaks for
11 itself. You're just shoring up those things
12 formally in regards to a variance because it
13 was already nonconforming.

14 And you're doing the parking
15 spaces, however, the compact aspect of it you
16 can't meet the requirement of that. Is that
17 correct?

18 MR. FREEMAN: Yes, sir. All of
19 the relief stems from the fact that we're
20 converting an existing structure to a new
21 residential use.

22 CHAIR JORDAN: Then we will grant

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1 the request for the waiver, this time, and do
2 that --

3 MR. FREEMAN: It's been the only
4 time so far, so --

5 CHAIR JORDAN: I know, and that's
6 not what your practice is. I'm very well
7 aware of that. And again, like I said, I do
8 appreciate the type of work that you do
9 before this Board.

10 MR. FREEMAN: Thank you.

11 CHAIR JORDAN: So then let's move
12 into the -- and we'll also accept into the
13 record for the Exhibits 29, 30, 31, which are
14 the letters in support from the neighbors of
15 the project.

16 Now moving to the merits of this,
17 I believe, to me that's pretty
18 straightforward. I think the Board does have
19 some questions that we need to have drilled
20 down, but I think from my standpoint it's one
21 which we can support, especially because
22 you're still going to maintain the parking

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1 spaces. It's just the configuration of
2 parking spaces, and the other issues.

3 So let me find out from the Board
4 what they may want to hear or whether or not
5 they want to hear a full presentation. Does
6 anyone have any particular issues or
7 questions they need to raise? Mr. Miller?

8 COMMISSIONER MILLER: Thank you,
9 Mr. Chairman. I don't have any issues of
10 concern. I just had a question. I wanted to
11 hear just about the total number of units
12 and, residential units, and how many
13 inclusionary zoning units, if that's
14 applicable.

15 MR. FREEMAN: Sure. Why don't I,
16 the applicant from the first case kind of has
17 their laptop here, so why don't I have our
18 architect come up and answer those questions.

19 Essentially it's 33 units and we will comply
20 with the IZ requirements.

21 COMMISSIONER MILLER: So that's
22 eight percent? Could you just quantify that,

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1 what it is?

2 CHAIR JORDAN: Yes, and identify
3 yourself. And have you been sworn in?

4 MR. LENAR: Yes, I have. I'm Tom
5 Lenar with R2L:Architects on behalf of the
6 applicant.

7 As Mr. Freeman stated, we have 33
8 units with flexibility up to 42 units planned
9 in the project, and we are currently planning
10 with the compact spaces, 21 parking spaces.
11 If we were to reduce the number it would
12 obviously have a negative impact on the total
13 number of units.

14 With respect to the inclusionary
15 zoning, we fully intend to comply with the
16 eight percent minimum requirement that would
17 be applicable to the project.

18 COMMISSIONER MILLER: Okay, thank
19 you.

20 (Off microphone discussion)

21 CHAIR JORDAN: Mr. Freeman, I
22 believe that the file supports the relief

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1 requested. You certainly have the
2 opportunity if you wish or believe it's
3 necessary to present additional evidence to
4 the Board, but at this point I believe we
5 have all that we need.

6 MR. FREEMAN: Thank you. We
7 don't have a presentation. We'd just like to
8 thank the Office of Planning for their
9 support which is Exhibit 25 of the record.
10 We'd like to, for the record, thank the ANC
11 for their support which is Exhibit 23, DDOT
12 for their support which is Exhibit 26 as well
13 as the --

14 CHAIR JORDAN: It's not the
15 Oscars.

16 MR. FREEMAN: As well as the
17 letters of supports from the neighbors. Last
18 but not least, as Tom mentioned, we have
19 asked for flexibility to kind of, on the unit
20 count to go from 33 to 42 so long as we meet
21 the parking requirements.

22 CHAIR JORDAN: And so long it

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1 doesn't affect any other relief that's
2 required by doing that.

3 MR. FREEMAN: Yes, sir. So if
4 the Board grants the application, we'd
5 request that that be included in the order.

6 CHAIR JORDAN: Forty three?

7 MR. FREEMAN: Thirty three to
8 forty two.

9 CHAIR JORDAN: Thirty three to
10 forty two. And so 42 wouldn't reflect the
11 additional relief being requested?

12 MR. FREEMAN: No, sir. The unit
13 count has been, the range has been a function
14 of the parking. So we would only provide --

15 CHAIR JORDAN: That would be
16 comparable to parking?

17 MR. FREEMAN: Yes.

18 CHAIR JORDAN: Yes, okay. Well,
19 that helps you with one Board member for
20 sure.

21 But no, because parking, we understand the
22 issue with parking.

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1 Well, then let's turn to the
2 Office of Planning and see if there's
3 anything in addition that the Office of
4 Planning wants to add or subtract from their
5 previous report. Ms. Roberts?

6 MS. BROWN-ROBERTS: Good morning,
7 Mr. Chairman and members of the Board.
8 Maxine Brown-Roberts from the Office of
9 Planning. As outlined in our report, the
10 application meets all the standards and
11 requirements of both the variances and the
12 special exception, and therefore we recommend
13 approval with no other conditions. Thank
14 you, and I'm available for questions.

15 CHAIR JORDAN: Does the Board
16 have any questions for the Office of
17 Planning? Does the applicant have any
18 questions for the Office of Planning?

19 MR. FREEMAN: No, sir.

20 CHAIR JORDAN: Is there anyone
21 here from the Department of Transportation?
22 We do have a letter in support, Exhibit 26,

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1 from the Department of Transportation which
2 has no objection to the relief requested.

3 Any representative here from ANC 2F? ANC 2F?

4 We do have a letter to which the Board will
5 give great weight where there was a vote 8 to
6 0 in support of this application, and so we
7 appreciate that from ANC 2F.

8 Is there anyone wishing to speak
9 in support of this application? Anyone
10 wishing to speak in support of this
11 application? Anyone wishing to speak in
12 opposition to this application? Anyone
13 wishing to speak in opposition?

14 We would turn now back to the
15 applicant for what would normally be rebuttal
16 and closing but there's nothing to rebut,
17 there's nothing to close.

18 MR. FREEMAN: No, sir. Thank
19 you.

20 CHAIR JORDAN: And so we will
21 close the record based upon the evidence
22 already received by the Board. As I said,

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1 this matter meets the requirement, to my
2 opinion, for the relief that's requested and
3 so I would move that we grant the relief
4 requested by the applicant.

5 VICE CHAIR ALLEN: Second.

6 CHAIR JORDAN: Motion made and
7 seconded. Discussion? All those in favor
8 signify by saying aye.

9 (Chorus of ayes)

10 CHAIR JORDAN: Those opposed nay.
11 The motion carries. Mr. Moy?

12 MR. MOY: Yes, sir. Staff would
13 record the vote as 3 to 0, this on the motion
14 of Chairman Jordan to approve the application
15 with the relief requested. Second the
16 motion, Vice Chairperson Allen, also in
17 support Mr. Rob Miller. We have a Board
18 member not present, a seat vacant. Motion
19 carries 3 to 0.

20 CHAIR JORDAN: And summary order,
21 please.

22 MR. MOY: Thank you, sir.

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1 CHAIR JORDAN: Thank you.

2 MR. FREEMAN: Thank you.

3 MR. LENAR: Thank you.

4 MR. MOY: The next application
5 before the Board is Application Number 18661.

6 This is the application of Capitol Hill
7 Investors LLC, pursuant to 11 DCMR 3103.2.

8 CHAIR JORDAN: Wasn't that
9 postponed?

10 MR. MOY: Yes, it was postponed.
11 Okay, let's give a date.

12 CHAIR JORDAN: You're keeping us
13 honest.

14 MR. MOY: Me as well.

15 CHAIR JORDAN: Good save.

16 MR. MOY: The applicant's letter
17 requesting postponement, Mr. Chairman, is in
18 your case folders on Exhibit 23. And I
19 believe in his letter it's to provide the
20 applicant additional time to prepare his
21 burden of proof since now it's a variance
22 request, I believe.

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1 CHAIR JORDAN: Okay.

2 MR. MOY: So staff would suggest
3 the Board putting this off for another month.

4 CHAIR JORDAN: Or at least 60
5 days.

6 MR. MOY: Sixty days, okay, then
7 we're into January.

8 CHAIR JORDAN: We start stacking
9 these things tightly and the requests are not
10 our requests.

11 MR. MOY: I agree. Okay, in that
12 case then we're looking at January 29th,
13 2014.

14 CHAIR JORDAN: Okay.

15 (Off microphone discussion)

16 MR. MOY: The next application
17 before the Board is Application Number 18662.

18 This is the application of Douglas Memorial
19 Methodist Church, pursuant to 11 DCMR 3103.2.

20 This is for a variance from the
21 off-street parking requirements under
22 subsection 2101.1, to allow partial use of a

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1 church by a child development center in the
2 HS-R/C-2-A District at premises 800 11th
3 Street, N.E., Square 958, Lot 800.

4 CHAIR JORDAN: Please identify
5 yourselves.

6 MR. DANIEL: Good morning. Eric
7 Daniel, Griffin, Murphy, Moldenhauer &
8 Wiggins, zoning counsel for the applicant.
9 To my left is Meridith Moldenhauer, also --

10 CHAIR JORDAN: I was going to say
11 where's Meridith?

12 MR. DANIEL: Also zoning counsel
13 for the applicant. To my far right is Anya
14 French, one of the founding parents of
15 Toddlers on the Hill. To my immediate right
16 is Jackie Davidson, the Montessori teacher at
17 Toddlers on the Hill.

18 CHAIR JORDAN: Okay. This is not
19 before us to approve the community
20 development center. It's just to relief for
21 the two parking spaces, is that correct?

22 MR. DANIEL: That's correct.

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1 CHAIR JORDAN: Yes. And we've
2 got plenty letters of support, 32 letters in
3 support and we also have the ANC approval.

4 MR. DANIEL: If I may, just to
5 clarify. The 32 letters were filed on
6 Monday, yesterday, as was the ANC report. So
7 in total we actually have 65 letters of
8 support. The 32 filed yesterday were in
9 addition to those filed previously.

10 CHAIR JORDAN: So it was 64?

11 MR. DANIEL: Sixty five total.

12 CHAIR JORDAN: Sixty five, okay.

13 All right, so my numbers went up. But at
14 the time when I did my notes there were 30 --

15 MR. DANIEL: Fair enough.

16 CHAIR JORDAN: All right. I'm
17 comfortable with the documentation that's
18 already been submitted regarding this, and
19 from your office, to support the relief from
20 just the two parking spaces.

21 I don't know if the Board has any
22 other issues or concerns, so we really would

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1 rather drill down to that then to -- just to
2 slow your roll, you may not even need that in
3 regards to presentation. Is there any issues
4 or questions that the Board needs to have
5 drilled down on this one? No.

6 So you have the opportunity, the
7 Board is comfortable with the filed as ready
8 that supports the relief requested. You have
9 the opportunity to put on a presentation or
10 submit additional evidence. It's all up to
11 you.

12 But as Ms. Moldenhauser would
13 tell you that you probably don't want to try
14 to do that. You probably want to go with the
15 flow of where the Board is now or step in it.

16 So it's your opportunity. What do you
17 prefer?

18 MR. DANIEL: We'll rest on the
19 record at this time and reserve time at the
20 end for rebuttal if necessary.

21 CHAIR JORDAN: Then let's turn to
22 the Office of Planning and see what Mr.

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1 Mordfin has for us, what Office of Planning,
2 any addition, changes, substitutions.

3 MR. MORDFIN: Good morning. The
4 Office of Planning supports the application,
5 has no additions or changes to make to the
6 application. Thank you.

7 CHAIR JORDAN: Board, questions
8 for Planning? Applicant, questions for
9 Planning?

10 MR. DANIEL: No questions.

11 CHAIR JORDAN: DDOT? Anyone here
12 from the Department of Transportation? We do
13 have a letter of no objection to the relief
14 from the Department of Transportation. Is
15 there a representative here from 6A? ANC 6A?
16 We have a letter from ANC 6A which voted 6
17 to 1 in support of the application.

18 Is anyone here wishing to testify
19 in support of the application? Yes, please
20 come forward. Make sure your microphone is
21 turned on.

22 MS. AGARWAL: Sure. My name is

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1 Sara Agarwal. I live at 525 9th Street,
2 N.E., approximately four blocks from the
3 Douglas Memorial Church. I would just want
4 to mention that my son was in the program
5 last year. No longer, so as an interested
6 resident I just want to testify positively on
7 their behalf. And I would simply
8 say that having had the experience with the
9 program, I would say that it's extremely well
10 run and it's one of the few opportunities
11 that residents in the area and parents in the
12 area have to provide their children with
13 early childhood development skills including
14 stay-at-home parents who would otherwise not
15 have exposure to that until they get to
16 preschool.

17 And I don't think that the
18 parking waiver is a problem. I mean, most of
19 the parents just bring their kids in
20 strollers, so big walking area.

21 CHAIR JORDAN: Okay. And they're
22 going to have a drop-off and pick-up plan in

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1 place too. Board, any questions? Thank you.

2 Thank you for taking the time and coming
3 down. Just a second. Board, any questions?

4 No. Applicant, any questions?

5 MR. DANIEL: No questions.

6 CHAIR JORDAN: Again, thank you.

7 Appreciate it. Anyone in opposition wishing
8 to speak in opposition? Anyone wishing to
9 speak in opposition?

10 Then let's turn back to the
11 applicant, which we'd normally have rebuttal
12 and closing but I think we've already
13 rebutted and closed. So we would move to
14 close the record in this matter.

15 Based upon the record that's been
16 submitted, I would move that we grant the
17 relief requested.

18 VICE CHAIR ALLEN: Second.

19 CHAIR JORDAN: Motion made and
20 seconded.

21 COMMISSIONER MILLER: Mr.
22 Chairman?

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1 CHAIR JORDAN: Yes, Mr. Miller.

2 COMMISSIONER MILLER: I just
3 wanted to say that, to commend the applicant
4 on running a wonderful childhood development
5 center in the community that serves the
6 community and working with the community.
7 And I'm pleased to support your motion.

8 CHAIR JORDAN: Thank you. Well,
9 with that then, all those in favor of the
10 motion signify by saying aye.

11 (Chorus of ayes)

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

14 MR. MOY: Yes, sir. Staff would
15 record the vote as 3 to 0. This is on the
16 motion of Chairman Jordan to approve the
17 application for the relief requested. Also
18 second the motion, Vice Chairperson Allen,
19 also support, Mr. Rob Miller. Again, Board
20 member not present today, seat vacant.
21 Motion carries 3 to 0.

22 CHAIR JORDAN: Okay, summary?

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1 MR. MOY: Thank you, sir.

2 CHAIR JORDAN: Thank you.

3 MR. DANIEL: Thank you.

4 MR. MOY: The next application
5 before the Board is Application Number 18595.

6 This is the application of Eva Sanchez,
7 pursuant to 11 DCMR 3103.2, for a variance
8 from the definition of a yard under section
9 199.

10 Mr. Chairman, the staff has been
11 -- I don't believe the applicant is here with
12 us this morning, but the staff has been in
13 communication with the applicant who has said
14 that he would be withdrawing his application,
15 but we have yet to receive a letter of
16 withdrawal.

17 CHAIR JORDAN: He said he was
18 going to withdraw the application? Okay,
19 let's call the case and make sure.

20 MR. MOY: Yes, I just did.

21 CHAIR JORDAN: Okay, let's do --
22 is the applicant here for 18595? 18595?

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1 With no one answering, although we don't have
2 anything in our file that withdraws his
3 application it's still an active application.

4 So let's put this on for
5 dismissal, a 30-day dismissal calendar. If
6 the applicant doesn't show, should send
7 notice too, please.

8 MR. MOY: Yes, sir. Let's go as
9 a date certain. Let's put it down, it's a
10 little shy of a couple days, but December
11 17th.

12 (Off microphone discussion)

13 CHAIR JORDAN: What was the date?

14 MR. MOY: December 17th, sir.

15 CHAIR JORDAN: Okay. It's kind
16 of like a second setting show cause for this?

17 MR. MOY: Yes, sir. All right,
18 before the Board is Application Number 18555.

19 This is the request for a modification of
20 approved plans in the application of Jemal's
21 Prospect's.

22 As the Board will recall, this

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1 was scheduled for the Board's public meeting
2 in October 8th, but the Board pulled this off
3 for a hearing.

4 CHAIR JORDAN: Okay, 18555. Then
5 let's introduce yourself please.

6 MR. FREEMAN: Good morning. For
7 the record, my name is Kyrus Freeman. I'm a
8 partner with the law firm of Holland & Knight
9 on behalf of the applicant.

10 CHAIR JORDAN: This is a matter
11 which initially a request was made for a
12 minor modification and the Board pulled it
13 off from minor modification so that we can
14 allow others, if there's any issues with this
15 particular request for relief, have the
16 opportunity to appear and participate in this
17 matter.

18 I don't know if there's any
19 additional questions since that the Board had
20 just recently heard this case regarding the
21 special exception change of use within a
22 structure to a conforming use. I guess the

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1 only other question is the classification.
2 Did we get the classification of what the use
3 is going to be? What's the classification of
4 the use?

5 MR. FREEMAN: It is a yoga
6 studio, yoga apparel and yoga accessories.

7 CHAIR JORDAN: But that's not our
8 use, is it? Our use is group instructional
9 center, is that what it is?

10 MR. FREEMAN: Group instruction.
11 Yes, sir.

12 CHAIR JORDAN: So that's what it
13 is. So let's make sure the record's
14 recording. Again, this would be right in
15 line with what we've already heard and what's
16 already in the file.

17 The only issue why we set this is
18 to give others the opportunity to give input
19 for or against this particular matter,
20 because you already met the requirements for
21 that particular special exception that was
22 granted earlier.

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1 So does the Board have any other
2 questions of this applicant? Is there
3 anything in addition you want to say?

4 MR. FREEMAN: I'm sure you'll
5 probably turn to this in a second, but we
6 would like to note that after we were here we
7 went and met with the ANC and we have a
8 letter of support from ANC 2E marked as
9 Exhibit 38 in your record. We also have, as
10 I'm sure you know, a recommendation from the
11 Office of Planning marked as Exhibit 39.

12 CHAIR JORDAN: Okay. Was there
13 any additional conversation with neighbors or
14 others regarding?

15 MR. FREEMAN: None, other than
16 our presentations at the ANC.

17 CHAIR JORDAN: Okay. Yes, Mr.
18 Miller?

19 COMMISSIONER MILLER: Thank you,
20 Mr. Chairman. Have the three other retail
21 spaces that were previously approved been
22 converted to the yoga use already?

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1 MR. FREEMAN: We have a letter of
2 intent with the yoga studio for those three
3 spaces. And the reason we filed the
4 application is they've asked for additional
5 space to expand into this approximately five,
6 this additional space. So we do have a yoga
7 studio that's under letter of intent, but we
8 haven't started the actual work but the
9 spaces are vacant now.

10 COMMISSIONER MILLER: That was my
11 next question. Thank you.

12 CHAIR JORDAN: Okay. Then let's
13 turn to the Office of Planning and see if
14 there's anything additional that they would
15 like to add.

16 MR. MORDFIN: Good morning,
17 Stephen Mordfin with the Office of Planning,
18 and OP has nothing further to add and
19 supports the application. Thank you.

20 CHAIR JORDAN: We do have a
21 letter. Yes, that was the first case. What
22 about the second? Yes, we do have a letter

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1 of support from the Department of
2 Transportation of no objection.
3 Representative of ANC, I think we're 2E, is
4 that correct? ANC 2E?

5 MR. FREEMAN: Yes, sir.

6 CHAIR JORDAN: And you went back
7 and you have a letter of support from ANC 2E?
8 I don't see it in my file. Do we have that?

9 MR. FREEMAN: It's Exhibit 38 in
10 your record. It's date stamped November
11 12th, 2013.

12 CHAIR JORDAN: Okay, got it.
13 Yes. No objection. Thank you. Anyone
14 wishing to speak in support of this
15 application? Anyone wishing to speak in
16 support of this application? Anyone wishing
17 to speak in opposition to this application?
18 Opposition? Then turning back, we
19 would close the record if that's all right
20 with you, Mr. Freeman.

21 MR. FREEMAN: Yes, sir. Thank
22 you.

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1 CHAIR JORDAN: I was going to
2 call you Mr. Kyrus. Mr. Freeman, so we'll
3 close the record and I would move that we
4 grant the relief requested for the
5 modification to the relief already granted by
6 this Board.

7 VICE CHAIR ALLEN: Second.

8 CHAIR JORDAN: Motion made and
9 seconded. Any discussion? And seconded not
10 seconded. Seconded. Any other discussion?
11 All those in favor signify by saying aye.

12 (Chorus of ayes)

13 CHAIR JORDAN: Those opposed,
14 nay.

15 The motion carries. Mr. Moy?

16 (Off microphone discussion)

17 CHAIR JORDAN: Yes, the same
18 conditions apply. Yes, for the record.

19 MR. FREEMAN: Yes, thank you.

20 CHAIR JORDAN: Thanks, Mr. Moy.

21 MR. MOY: Okay. With that then
22 the motion carries on a vote of 3 to 0,

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1 motion by Chairman Jordan to approve. Second
2 the motion, Vice Chairperson Allen, also in
3 support, Mr. Rob Miller. Board member not
4 present, seat vacant, 3 to 0. Motion
5 carries.

6 CHAIR JORDAN: Summary, please.

7 MR. MOY: Thank you, sir.

8 MR. FREEMAN: Thank you.

9 MR. MOY: The next application is
10 18426. This is again another request for a
11 modification to Application Number 18426 of
12 the National Presbyterian Church, pursuant to
13 3129 of the zoning regulations.

14 Again, Mr. Chairman, this motion
15 was pulled from the Board's public meeting of
16 November 5th. And the only other thing staff
17 would like to add that under Exhibit 43 the
18 applicant's also requesting a waiver of
19 posting, and that's under your Exhibit 43.

20 CHAIR JORDAN: Okay. Please
21 identify yourselves.

22 MS. RODDY: Hi. My name is

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1 Christine Roddy and I'm an attorney with
2 Goulston & Storrs.

3 MS. HELLENDER: My name is
4 Lindsay Hellender and I'm an architect with
5 cox, graae + spack architects.

6 MR. NEILL: Good morning. My
7 name is Jim Neill, and I'm the head of school
8 of National Presbyterian School.

9 CHAIR JORDAN: So we have a
10 motion to waive posting. Was it posted at
11 any point?

12 MS. RODDY: It was posted, yes.
13 And we have the affidavit of maintenance with
14 us here today.

15 CHAIR JORDAN: How long was it
16 posted?

17 MS. RODDY: It was posted, I
18 think we were one day shy. If you recall,
19 this was taken off of the consent calendar
20 two weeks ago and we just didn't have an
21 opportunity to post that day.

22 CHAIR JORDAN: Okay, yes. Then

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1 fine. Then if the Board doesn't have a
2 problem with that then we will grant that. I
3 don't believe that we need any additional
4 testimony here because it's basically riding
5 under the same aspect of relief granted
6 before.

7 The same property conditions
8 would be in existence where we granted relief
9 to this before. However, you know, we pulled
10 this off as a minor modification, because in
11 the Board's opinion it wasn't a minor
12 modification and actually really getting
13 borderline is it a new request for relief.
14 However, in the sake of efficiency I would
15 offer that we accept it as it is.

16 I know there's probably some
17 differences of opinion that we add this as a
18 modification to the plans that were already
19 approved. I don't know if there's anything
20 in addition that you need to say at this
21 point. Do the Board members
22 have anything they want to say or comment

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1 about this? Ms. Allen?

2 VICE CHAIR ALLEN: I feel
3 compelled. I just want to really reiterate
4 the chairman's point that I think it's
5 actually beyond borderline. I think this
6 really should be a new request but because of
7 expediency as well as to the point that it's
8 similar to everything that you've already
9 gotten relief for, but just for future I
10 won't be as accommodating.

11 CHAIR JORDAN: So because what
12 we're doing is plopping a new building in
13 that which was already approved, it's not
14 like you're changing one of the buildings we
15 already approved. You're plopping a new
16 building in, so that's where we are.

17 So I don't know if this requires
18 you to respond to it, so we're already at the
19 point where we can move this along if that's
20 your wish. Or you want to do any other
21 evidence or --

22 MS. RODDY: The only other thing

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1 that I would note is that we did present to
2 the ANC this past Thursday and they
3 unanimously supported it.

4 CHAIR JORDAN: Good, thank you.
5 Then let's turn to the Office of -- maybe
6 not. Let's talk to the chair. We already
7 had something in the Office of Planning on
8 this, didn't we? Yes, we did. We did.

9 Office of Planning does not
10 oppose this application, not application,
11 this request for modification. I don't know
12 if we received anything from the Department
13 of Transportation on the modification, and we
14 do have ANC. The ANC has voted in support of
15 this, as we understand based upon what your
16 testimony has been, in support of this
17 application. I think it just came in late.
18 ANC 3E, I believe it was, supported this
19 application, this modification.

20 Anyone wishing to speak in
21 support of this modification? Anyone wishing
22 to speak in support? Anyone wishing to speak

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1 in opposition? Seeing there is nobody
2 generally in the room who could do that,
3 anyone wishing to speak in opposition?

4 Then let's turn back what would
5 normally be either rebuttal and closing, but
6 I'm just taking that head nod that we've
7 already closed. And then let's close the
8 record. And I would move that we grant the
9 modification relief. That would be my
10 motion.

11 COMMISSIONER MILLER: I'll second
12 it.

13 CHAIR JORDAN: Motion made and
14 seconded. Any discussion? All those in
15 favor signify by saying aye.

16 (Chorus of ayes)

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

19 MR. MOY: Staff would record the
20 vote as 3 to 0. This is on the motion of
21 Chairman Jordan to approve the application at
22 this point. Second the motion, Mr. Rob

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1 Miller. Also in support, Vice Chairperson
2 Allen, Board member not present, seat vacant.

3 Motion carries 3-0, Mr. Chairman.

4 CHAIR JORDAN: Thank you.
5 Summary order, please.

6 MR. MOY: Thank you, sir.

7 CHAIR JORDAN: And we'll take a
8 ten-minute recess.

9 MR. MOY: Very good.

10 MR. NEILL: Thank you.

11 (Whereupon, the foregoing matter
12 went off the record at 10:40 a.m. and went
13 back on the record at 11:07 a.m.)

14 CHAIR JORDAN: All right, Mr.
15 Moy, let's call this please.

16 MR. MOY: Yes, sir. This is the
17 caption as publicly advertised for
18 application of 18659 of Elodie Goirdan and
19 Andreas Xenophontos, pursuant to 11 DCMR
20 3104.1 and 3103.2.

21 As I said, as advertised for a
22 special exception for an addition to a one-

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1 family detached dwelling under section 223,
2 not meeting the side yard requirements,
3 variance from the front yard setback
4 requirements in the WH/R-1-B District, 4540
5 Lowell Street, N.W., Square 1608, Lot 68.

6 If the applicant can confirm the
7 amended relief, the staff would be
8 appreciative.

9 CHAIR JORDAN: Please identify
10 yourselves for us.

11 MR. SULLIVAN: My name is Marty
12 Sullivan with the law firm of Sullivan &
13 Barros here on behalf of the applicant. Yes,
14 we did amend or intend to amend the
15 application to request variance relief for
16 the side yard relief as well as the front
17 yard setback.

18 CHAIR JORDAN: And I think we've
19 already ruled in regards to accepting that
20 request.

21 Other identifications, please,
22 Mr. Donohue?

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1 MR. DONOHUE: Mr. Chairman, Ed
2 Donohue on behalf of the intervening parties,
3 the Bakers.

4 MR. PRICE: KC Price,
5 architectural designer and expediter for
6 Andreas Xenophontos and Elodie Grant.

7 CHAIR JORDAN: Okay.

8 MR. XENOPHONTOS: Andreas
9 Xenophontos, owner.

10 CHAIR JORDAN: Okay. So I take
11 it that we didn't work anything out in our
12 conference process.

13 MR. SULLIVAN: No, unfortunately
14 we did not.

15 CHAIR JORDAN: All right, then we
16 would move this to proceed with the hearing.

17 Okay, so we now have the amended application
18 for two variance requests here. You can
19 proceed, Mr. Sullivan.

20 I believe we're going to need,
21 certainly, presentation of evidence here, how
22 you meet the requirements for relief. I

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1 particularly want to hear evidence regarding
2 specific uniqueness of this property, and as
3 well as the effect raised by the party in
4 opposition, the impact on his light and air,
5 on the neighbor's light and air.

6 MR. MOY: Mr. Chairman, I'm sorry
7 to interrupt. Do you have a time requirement
8 for the presentation?

9 CHAIR JORDAN: Oh, thank you.
10 Fifteen minutes, please. Yes, we've been
11 briefed on this by both parties. I mean
12 we're just doing follow-up as to where we
13 are. There's been submission, significant
14 documents already submitted for this record.
15 We don't need a rehash of that which is in
16 the files. We need you to
17 certainly prove up those areas that we're
18 talking about for both the party status and
19 the applicant, please, any other questions
20 that the Board may raise in this regard, so
21 please.

22 MR. SULLIVAN: Thank you, Mr.

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1 Chairman, members of the Board. My name
2 again is Marty Sullivan with the law firm of
3 Sullivan & Barros here on behalf of the
4 applicant.

5 We will do our best to do the 15
6 minutes. There's a lot at stake here for
7 this applicant, so we would like to make sure
8 we get all our points on the record. I have
9 a --

10 CHAIR JORDAN: As I've said,
11 you've already filed substantial documents
12 and exhibits in this and some of that would
13 be redundant.

14 MR. SULLIVAN: Okay.

15 CHAIR JORDAN: And so we really
16 want you to hit some of the areas which we're
17 talking about. We can certainly give you the
18 right to do it, but we have a record that is
19 sufficient and the Board within its authority
20 can limit unduly repetitive and unnecessary
21 kind of testimony. So that's why I'm --

22 MR. SULLIVAN: Understood. I'm

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1 going to pass out a hard copy of this too,
2 which should make us go quicker and we'll get
3 everything in the record.

4 CHAIR JORDAN: And what is that
5 you're going to pass?

6 MR. SULLIVAN: This is the
7 PowerPoint presentation.

8 CHAIR JORDAN: Okay, thank you.
9 Appreciate it.

10 MR. SULLIVAN: So I will
11 summarize the slides. The first few slides
12 explain in great detail why we're here. I
13 will summarize briefly and set it up for Mr.
14 Xenophontos to give his testimony and for us
15 to show some pictures and diagrams.

16 Why we're here is for area
17 variance relief to allow a 10.4' by 10.9'
18 one-story portion of the house that has been
19 there since it was originally built, well
20 before 1958 and well before the Wesley
21 Heights Overlay.

22 The reason it's lost its legal

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1 nonconforming status is because in the middle
2 of the job actions taken by the applicant
3 caused the zoning administrator to change his
4 characterization of the project from an
5 addition to a full demolition.

6 And at that point the porch lost
7 its legal nonconforming status. However, the
8 zoning administrator made that decision about
9 five months after the subject wall came down
10 that caused that decision, and in that time
11 frame you'll see from this presentation there
12 were inspectors on the site regularly.

13 There was a lot of DCRA
14 involvement in this. There was a revised
15 permit which was obtained at the direction of
16 the illegal construction inspector, after
17 which he said everything's okay. So there's
18 several stages where --

19 CHAIR JORDAN: Was the wall
20 already down at that point?

21 MR. SULLIVAN: The wall was down
22 in February, yes.

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1 CHAIR JORDAN: So that's kind of
2 after the fact, right?

3 MR. SULLIVAN: The wall was down
4 in February, the inspectors came after that.
5 They looked at the project, said change your
6 permit to reflect this, this and this. They
7 did that. He said everything's okay.

8 And there were other meetings
9 where again they were told continuously, go
10 forward, go forward, everything's okay,
11 you're in compliance. Until at some point
12 down the road, relying on that they had built
13 or rebuilt what was a covered porch now into
14 what we're calling the powder room, the front
15 structure in front of the house. And then
16 after that was built the zoning administrator
17 came back, changed his determination and said
18 that that can't stay.

19 So our practical difficulty is
20 that we have to remove that structure at a
21 cost that will be testified to, and we won't
22 have a powder room now on the first floor,

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1 because that's where the powder room is,
2 unless we relocate it to another area of the
3 first floor which has an additional cost to
4 it as well. That's the practical difficulty.

5
6 The unique condition is related
7 to the fact that the porch was there already.

8 If the porch wasn't there he never would
9 have designed it to be there in the future.
10 And --

11 CHAIR JORDAN: So you're saying
12 that the nonconforming --

13 MR. SULLIVAN: The nonconforming
14 porch structure.

15 CHAIR JORDAN: -- structure --

16 MR. SULLIVAN: Right.

17 CHAIR JORDAN: -- in and of
18 itself creates the unique condition.

19 MR. SULLIVAN: It does in this
20 case just when it's combined. By itself it
21 would not. If you just tore down the house I
22 would not argue that you get to build this

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1 structure. However, if you combine it with
2 the fact that he justifiably relied on
3 actions of zoning officials in continuing to
4 build, to the point where he actually built
5 this, it was permitted.

6 He built it as permitted. The
7 permits were revised. It was inspected. The
8 job was inspected. He had numerous
9 discussions with DCRA, and throughout those
10 actions of the zoning officials which he
11 relied on he went forward and built this
12 structure.

13 CHAIR JORDAN: Wasn't there
14 requirements with the change of plans that
15 the applicant should have actually notified,
16 modified this plan to request with DCRA
17 before action and get permission to do so?

18 MR. SULLIVAN: Well, I can have
19 him address, testify to that. That's not
20 necessarily clear. And throughout a job like
21 this, especially dealing with an old
22 building, there's a lot of things.

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1 When you see an old wall you take
2 it down. The inspector came out a week after
3 the wall came down and he didn't mention the
4 wall, he mentioned other things.

5 CHAIR JORDAN: The zoning
6 inspector?

7 MR. SULLIVAN: Well, he was the
8 illegal construction inspector. He
9 comprehensively reviewed everything. So
10 we'll get into the testimony. That's the
11 underpinning of it. And I think you'll also
12 find that the impact from the actual porch
13 itself is minimal.

14 Andreas, do you want to briefly
15 go over the points, if you will. I'll lead
16 this so we'll go through it quicker.

17 CHAIR JORDAN: Thank you.

18 MR. SULLIVAN: Can you talk about
19 when did construction start?

20 MR. XENOPHONTOS: In November of
21 2012.

22 MR. SULLIVAN: Can you point out

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1 the plans up here?

2 MR. XENOPHONTOS: Sure. Can I
3 stand up?

4 MR. SULLIVAN: Yes.

5 MR. XENOPHONTOS: Can I stand up
6 or is it necessary?

7 MR. SULLIVAN: We have a
8 microphone.

9 CHAIR JORDAN: Yes, we have a
10 wireless microphone.

11 MR. XENOPHONTOS: So this is, to
12 my right is the approved, this area, front
13 elevation of the house is also approved to
14 get permitted, and this is what is there now.

15 They approved, it was the front.

16 Here is the west side of the
17 house, approved what is there. So I want to
18 emphasize that the house as it stands today
19 in its entirety is exactly as approved
20 originally with the DCRA, 100 percent every
21 inch of it.

22 MR. SULLIVAN: Andreas, can you

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1 tell us when the subject wall that eventually
2 caused Mr. LeGrant to change his
3 determination that this was a full raze, when
4 did that come down?

5 MR. XENOPHONTOS: Okay, that came
6 down somewhere in February, early February of
7 2013.

8 MR. BAKER: It was between the
9 12th and --

10 CHAIR JORDAN: Do we have
11 pictures of the before of the wall coming
12 down?

13 MR. SULLIVAN: Yes, we do. We do
14 have pictures of the rotted wall. Here's
15 some photos of what's still there in the
16 house. This is the permits, all the permits
17 that he got for the work.

18 The chimney's there and the
19 chimney wall behind it were retained. All
20 the basement was retained, all the utilities
21 were retained. This diagram shows a portion
22 of the nonconforming structure that was

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1 removed. It's not in its same footprint. It
2 actually got smaller from what it was before.

3 CHAIR JORDAN: Why don't you move
4 the easel because that's part of the block
5 here. And Mr. Moy, can we have the lights
6 turned off, please?

7 MR. SULLIVAN: So the highlighted
8 area --

9 CHAIR JORDAN: We still can't see
10 that very well. Is it here in your --

11 MR. SULLIVAN: Yes, it's in the
12 PowerPoint.

13 CHAIR JORDAN: Okay, so let's
14 work with that. Mr. Moy, turn the light back
15 on please. We will just use this document.
16 Page 18?

17 MR. SULLIVAN: Andreas, if you
18 could point out in this picture what portion
19 was removed?

20 MR. XENOPHONTOS: This is the
21 original porch as it was before the
22 demolition. All this part here including the

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1 roof came down.

2 CHAIR JORDAN: The full porch
3 basically.

4 MR. XENOPHONTOS: Well, what we
5 took down first was the part --

6 MR. SULLIVAN: Andreas, could you
7 just explain the area that's not there
8 anymore. That was there from the 1930s.

9 MR. XENOPHONTOS: Yes, I'm trying
10 to do that. In our plans to the DCRA we have
11 shown that this part here which was
12 originally the entrance of the house, it was
13 the closet. It was going to be demolished,
14 and we did that first.

15 So seven feet here, the entirety
16 that is gone now including the roof. So
17 basically the new structure now is less of
18 what it used to be before the construction.

19 MR. SULLIVAN: Now can you talk
20 about the portions of the wall that were
21 removed and why they were removed?

22 MR. XENOPHONTOS: Okay. I have

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1 to go back. We started first doing the work
2 in stages. We started from the east
3 excavation, we started excavation to the
4 south. We started building and making all
5 the foundations, and we are leaving the house
6 until February, pretty much, my wife and I.

7 At some point we'll have to move
8 out, because the workers have to come and
9 deal with existing home. So where we said
10 removing elements of the house, peeling it
11 off because there will be new electrical,
12 there will be new plumbing, et cetera, we
13 found that a lot of the exterior walls, they
14 were damaged.

15 Let's have the pictures, by the
16 way, could we go back? Pictures, pictures of
17 walls damaged. We went to a structural
18 engineer who has a letter and you have it
19 there, who basically verified for that.

20 So therefore, the original
21 demolition plan was asking us to retain few
22 pieces of wall at the time in different parts

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1 of the same elevation. It wasn't like a
2 continuous wall retained. It was few feet to
3 the left, few feet in the middle, few feet on
4 the other sides.

5 So it goes right along there.
6 However, because of the condition of those
7 structural elements, we decided it was all
8 rotten. So we did it assuming we're okay.

9 CHAIR JORDAN: Was it required
10 that you couldn't have, the condition of that
11 wall required you to take it down?

12 MR. XENOPHONTOS: Absolutely.
13 And if you look now at the -- well, if I go
14 back to my board and I'm looking at the
15 elevation of the proposed, is what happened
16 is several different things.

17 The house never intended to kept
18 the original outside material, the sheeting
19 or anything. Now the Inspector Cluff came
20 there of illegal construction on 2/27 when
21 all this was done and gone. So he asked me,
22 he spent the whole hour, he went over the

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1 entire set of plans.

2 CHAIR JORDAN: Who came out?

3 MR. XENOPHONTOS: Inspector
4 Cluff. So we had two inspectors all along.
5 An inspector from the DCRA who was a normal
6 inspector who came when you called him for
7 different stages of the project, and he did
8 ten different inspections through the
9 process, ten. Ten different inspections.
10 You're going to show you after when the time
11 comes. And then we have another inspector
12 who is coming every month.

13 CHAIR JORDAN: From DCRA?

14 MR. XENOPHONTOS: He always tell
15 me what you say and --

16 CHAIR JORDAN: Let's focus here,
17 okay. Who is the second inspector?

18 MR. XENOPHONTOS: The second
19 inspector was Inspector Robert Cluff of the
20 illegal construction who was called because
21 of the complaints of our neighbors. So he
22 came the first time on 2/12.

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1 Okay, well, the house now at that
2 point, at that point the house was in this --

3 CHAIR JORDAN: We need you on the
4 other microphone.

5 MR. XENOPHONTOS: Sure. As you
6 can tell, this is winter. It cannot be
7 spring. And the house is totally built,
8 totally. There's roof, there's everything.
9 There's nothing really to build there except
10 closing the other side.

11 This is in the spring again for
12 the same house and it shows the front porch
13 here, the picture over there also we can see
14 from over there.

15 So he comes somewhere in February
16 of 28th the first time, 27. So he comes with
17 me, he asks me for the other drawings,
18 through those other drawings, and I ask him
19 why you are there. He goes, you went above
20 scope of original work.

21 And I said, okay, let's look at
22 the plans and show me what I did. So he

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1 looks around, he goes down to the basement
2 which is original basement. He goes up to
3 the crawling space to see if we dug more than
4 what we said. Of course nothing happened.

5 And then I explained that he
6 would listen, all the joists, original joists
7 they're totally damaged. That what was
8 damaged, what can I do? He goes to me, go
9 back to the DCRA and get the revised permit
10 to reflect those changes. What did I do?
11 Here, I went.

12 CHAIR JORDAN: Any time you walk
13 away from the table please be sure to take
14 that. Just keep it in your hand.

15 MR. XENOPHONTOS: Yes, I should.

16 CHAIR JORDAN: Just slow down.
17 We're with you. Go ahead.

18 MR. SULLIVAN: So did you revise
19 the permit then? Did you get a revised
20 permit?

21 MR. XENOPHONTOS: We did. We
22 revised the permit.

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1 MR. SULLIVAN: Okay.

2 MR. XENOPHONTOS: Well, this is
3 it here. All things for the construction
4 work at the above address would revise
5 current drawings and permits to reflect
6 actual conditions. Also he would obtain the
7 permit for the temporary structure built in
8 the rear, yes, that was a legal storage.

9 MR. SULLIVAN: And Andreas, can
10 you tell us about the second inspection visit
11 then, in conclusion?

12 MR. XENOPHONTOS: Second
13 inspection extended. On my previous
14 inspection all current work is proceeded per
15 the approved set of drawings. This is in
16 March.

17 CHAIR JORDAN: What was the
18 condition of the porch at that time?

19 MR. XENOPHONTOS: The porch is
20 there at that time.

21 CHAIR JORDAN: So it's already
22 done?

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1 MR. XENOPHONTOS: Pardon me?

2 CHAIR JORDAN: It's already in
3 place?

4 MR. SULLIVAN: The porch is done
5 in April. We're getting to that. Yes.

6 CHAIR JORDAN: In April, not in
7 March?

8 MR. SULLIVAN: That's right. No,
9 at this point the porch is not reconstructed.
10 No.

11 CHAIR JORDAN: The porch is not
12 reconstructed right now. There's nothing
13 there. The wall that's been razed is already
14 gone.

15 MR. XENOPHONTOS: Gone.

16 CHAIR JORDAN: Okay.

17 MR. XENOPHONTOS: So at this
18 moment we have just delivered the main big
19 house, the front porch we kept it, why? We
20 lived at the rear of the house and we
21 received mail every day. My wife and I lived
22 at the back so we received mail, et cetera,

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1 et cetera, when they delivered the main
2 house. Now --

3 MR. SULLIVAN: Andreas, could you
4 talk about the third inspection then?

5 MR. XENOPHONTOS: But can you go
6 back, slides on back, please, KC? Okay, the
7 owner has applied and received a new building
8 permits, okay. We reviewed them. Owner has
9 obtained all current construction permits.
10 This is says so.

11 MR. SULLIVAN: So this was after,
12 this date, third inspection March 14th was
13 about a month after the wall had come down
14 and after three inspections, correct? Okay.

15 MR. XENOPHONTOS: And that's what
16 it is.

17 MR. SULLIVAN: That's what the
18 house looks like now.

19 MR. XENOPHONTOS: This is a plan
20 --

21 CHAIR JORDAN: At that point did
22 you have zoning sign off on that?

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1 MR. XENOPHONTOS: About what?

2 CHAIR JORDAN: Had zoning signed
3 off when you got the other building permit?

4 MR. XENOPHONTOS: Okay, he will -
5 -

6 CHAIR JORDAN: Because that's
7 usually the process, is zoning has to sign
8 off that your construction is --

9 MR. PRICE: During intake we were
10 not asked to go to zoning so we did not
11 proceed to the zoning counter. We went to
12 intake, structural and I believe that is it.

13 CHAIR JORDAN: And you went in
14 for a modification.

15 MR. PRICE: Correct. So we met
16 with Ms. Benko at, I believe, Counter Number
17 18. We showed her the original set of plans,
18 the proposed change, and she approved it and
19 did not send us anywhere.

20 MR. SULLIVAN: So it had been
21 throughout this, Andreas, you did whatever
22 DCRA told you to do, correct?

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1 MR. XENOPHONTOS: Yes. Basically
2 anything that DCRA asked us to do we did and
3 we complied 100 percent. I have more than
4 \$4,700 worth of permits back and forth.
5 Okay, we started with the main permit and
6 anything they needed I went back.

7 MR. SULLIVAN: Can you talk
8 about, Andreas, when the powder room then was
9 framed?

10 MR. XENOPHONTOS: Yes. Sometime
11 in April. Thank you.

12 During the week of April 8th,
13 2013, the legally nonconforming covered
14 porch, we built it and it took up a few days.
15 It's a very small thing. So we built it.
16 That was back in April 8.

17 MR. SULLIVAN: So then can you
18 tell us about the fourth visit from Mr.
19 Cluff?

20 MR. XENOPHONTOS: Sure. Mr.
21 Cluff came again. He was coming there, you
22 know, almost every other week. So the fourth

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1 time he came he has, again I don't know why
2 he came. He came there. He took pictures,
3 and he asked us, first of all, we should call
4 Rohan Reid of the Zoning and set up a meeting
5 with him.

6 MR. SULLIVAN: So you had that
7 meeting, and KC, do you want to tell us about
8 the meeting with Mr. Reid?

9 MR. XENOPHONTOS: I want to say
10 that conclusion yet of that report, no
11 violations, nothing.

12 MR. SULLIVAN: And he told you to
13 continue working --

14 MR. XENOPHONTOS: And continue
15 working.

16 CHAIR JORDAN: So when you went
17 in March to modify the plans you indicated
18 that you were taking a wall down.

19 MR. XENOPHONTOS: Well, he will
20 speak.

21 MR. PRICE: We indicated that we
22 were replacing the rotten floor framing and

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1 the joists.

2 CHAIR JORDAN: That you were
3 taking the wall down, that you were razing it
4 all the way down?

5 MR. PRICE: No.

6 CHAIR JORDAN: All right, that's
7 my question. So I'm now in the permit
8 processing section. I see that you're going
9 to make some modifications because you're
10 going to open some things up, but I don't
11 know the capacity of how far you're going.
12 Would that be fair?

13 MR. PRICE: No, it was indicated
14 on the plans what was being taken down and
15 what was being replaced, along with the
16 engineer's notes stating that the 2 by 6
17 wall, the floor, 2 by was rotten.

18 CHAIR JORDAN: Okay, got you.

19 MR. XENOPHONTOS: The structural
20 engineer stamped everything.

21 CHAIR JORDAN: All right.

22 MR. SULLIVAN: And throughout

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1 this, the exterior facade is all the same as
2 originally planned, correct?

3 MR. XENOPHONTOS: Yes.

4 MR. SULLIVAN: No changes to the
5 exterior. Can you talk about the meeting
6 with Mr. Reid, KC, please?

7 MR. PRICE: So we were called in
8 by Mr. Rohan on an FAR issue not a raze
9 issue. I gave him calculations for
10 everything that went to Mr. David Ballin and
11 we were cleared of that issue.

12 Not until, I believe, after, I
13 think it was May 10th that we received the
14 letter from Rohan stating that we had cleared
15 our FAR issue and that there was now a second
16 stage of investigation concerning the issue
17 of a raze.

18 MR. SULLIVAN: So this was the
19 first instance where you heard anything about
20 a raze having any impact on the zoning. Is
21 that correct?

22 MR. PRICE: Correct.

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1 MR. SULLIVAN: Did Mr. Reid give
2 you any indication, did he tell you to
3 continue working or did he tell you to stop
4 working?

5 MR. PRICE: He did tell us to
6 continue work and we did ask, should we
7 continue work, should we not continue work
8 while you're doing your calculations? We
9 were told specifically to go ahead and
10 continue work.

11 MR. XENOPHONTOS: Now I have to
12 point out something that's very important.
13 At this moment the whole house has been built
14 including the front porch. The whole place
15 is done, all the plumbing, electrical, HVAC,
16 the whole house.

17 And during the visit to the
18 meeting there was Mr. Cluff and Mr. Reid and
19 both of us assured us continue working. We
20 are going to make a lot of investigation now,
21 you know, for the second stage, which we
22 didn't know until we received that email.

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1 CHAIR JORDAN: But April 26th,
2 2013, the wall is down, and where's the
3 porch?

4 MR. XENOPHONTOS: The porch is up
5 on that time.

6 CHAIR JORDAN: Okay, got it.

7 MR. XENOPHONTOS: The porch is up.
8 And we have an email. Where's the email?
9 Can you go back please?

10 (Off microphone discussion)

11 MR. SULLIVAN: So you had other
12 inspections in addition to the illegal
13 construction inspector.

14 MR. XENOPHONTOS: Yes. This is
15 the inspection of Inspector Folmes.

16 CHAIR JORDAN: So we can keep up
17 with you, we can see, can you at least let us
18 know what pages you're on, please?

19 MR. SULLIVAN: I'm sorry, 43.

20 MR. XENOPHONTOS: Page 43.

21 CHAIR JORDAN: Okay. All right,
22 we're with you. Go ahead.

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1 MR. XENOPHONTOS: Ready? So
2 there was besides Mr. Cluff from the illegal
3 construction, there was Inspector Robin
4 Folmes who came from the early stages of the
5 project and he comes, I think, today. He has
6 performed ten different inspections on the
7 property.

8 Are we on the same page?

9 CHAIR JORDAN: But he didn't do a
10 zoning inspection.

11 MR. XENOPHONTOS: There's no such
12 a thing as a zoning inspection. Well, he did
13 a footing inspection, foundation inspection -
14 -

15 CHAIR JORDAN: Exactly. That's
16 the point I'm making. As you know, normally
17 they send inspectors out for the construction
18 not --

19 MR. XENOPHONTOS: Nothing for --

20 CHAIR JORDAN: Because actually
21 that's done back in the home office to get
22 you out there in the first place. Okay.

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1 MR. XENOPHONTOS: But also they
2 require you to have the wall checked. See,
3 the wall check is very important part of the
4 whole business which you have to file --

5 CHAIR JORDAN: From a structural
6 standpoint, right?

7 MR. XENOPHONTOS: Exactly, yes.

8 CHAIR JORDAN: I'm with you.

9 MR. XENOPHONTOS: And then this
10 is very important. On 7/2/13, he gave us a
11 framing inspection, in July. In July, which
12 included also the front porch. The whole
13 house now can be closed on 7/2. I think he
14 went back on, you know, 8/30, he gave us a
15 subsequent inspection.

16 CHAIR JORDAN: But the porch is
17 already done, right?

18 MR. XENOPHONTOS: It's done,
19 finished. Everything's done.

20 MR. SULLIVAN: Andreas, can you
21 talk about then when the Stop Work Order was
22 issued?

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1 MR. XENOPHONTOS: Yes. I have to
2 go --

3 MR. SULLIVAN: It's 5-44.

4 MR. XENOPHONTOS: 44?

5 MR. SULLIVAN: 44.

6 MR. XENOPHONTOS: Okay, on --

7 CHAIR JORDAN: Just one second
8 please.

9 VICE CHAIR ALLEN: Can you go
10 back to Page 37 please? So when you met with
11 Mr. Reid from the Zoning division, and you're
12 saying that Mr. Reid and Inspector Cluff
13 clear the project for compliance, is
14 everything completed at this point or not?
15 That's what I'm trying to catch up with too.

16 MR. XENOPHONTOS: Yes, at that
17 time the front porch is on, you know, there's
18 roof, there is plumbing, there is HVAC, there
19 is electrical. The whole house is up. We
20 have of course, you know, we have different
21 line --

22 CHAIR JORDAN: It's all done.

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1 MR. XENOPHONTOS: The whole house
2 is done.

3 VICE CHAIR ALLEN: So the
4 question that we really, I think that we're
5 trying to get to is, during the period when
6 the inspectors were coming out and the wall
7 was actually razed, up until that point and
8 even subsequent to that point there was never
9 a zoning inspection.

10 MR. XENOPHONTOS: No, never. It
11 was never done, a zoning inspection, until
12 today.

13 VICE CHAIR ALLEN: Okay, but
14 that's part of the issue, okay.

15 MR. XENOPHONTOS: Yes. Never.

16 MR. SULLIVAN: Mr. Reid is a
17 zoning official, is he not?

18 MR. XENOPHONTOS: Yes. Only Mr.
19 Reid is the one now who is handling the whole
20 thing. By the way he never came to the
21 property and they never sent --

22 CHAIR JORDAN: Isn't the real

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1 issue here the condition of this property
2 that required you to bring the wall down in
3 the first place? Isn't that the exceptional
4 condition and circumstance?

5 MR. SULLIVAN: That is, and I
6 have that in the record as well.

7 CHAIR JORDAN: Isn't that the
8 easier argument?

9 MR. SULLIVAN: Well, yes, I mean
10 it is the condition of the property, but --

11 CHAIR JORDAN: Because just so
12 you know, I'm not really buying the DCRA
13 argument, but I can understand --

14 MR. SULLIVAN: Yes, I understand.

15 CHAIR JORDAN: -- the exceptional
16 condition and situation because it was
17 incumbent upon the applicant to keep them
18 abreast of what you were doing before you did
19 it.

20 We're past that point, but I
21 think you do have an argument regarding
22 exceptional situation and condition because

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1 of the condition of that wall, which you
2 didn't know at the time you originally
3 applied and it required you to do it, and you
4 could not take that wall down and still
5 remain within compliant of the zoning
6 regulations, is that correct?

7 MR. SULLIVAN: That's correct.
8 And I would point to Slide 21 and 22 which
9 have a letter done after the fact after DCRA
10 asked about the walls. Mr. Andreas got a
11 letter from his structural engineer opining
12 about the walls. Unfortunately it's written
13 in two letters because in one letter he has a
14 typo.

15 CHAIR JORDAN: Okay, now let me
16 try to help you. Because you can beat up
17 this DCRA thing all day long and I'm not, as
18 the kids say, I'm not feeling it.

19 But I think the other aspect of
20 what you've talked about what your testimony
21 shows will provide us the basis of looking at
22 this as an exceptional situation. However, I

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1 would like to hear some testimony regarding
2 the effect upon this porch.

3 And I'm sorry if I'm cutting off
4 where the Board might need other. This is
5 for me. The effect upon the light and air
6 upon the neighbors with this structure in
7 place.

8 MR. SULLIVAN: Absolutely.
9 Andreas, do you want to talk about, show the
10 porch as it existed before.

11 MR. XENOPHONTOS: Yes.

12 MR. SULLIVAN: Slide 52.

13 MR. XENOPHONTOS: This is Slide
14 52. To the left is my little girl, my
15 daughter.

16 CHAIR JORDAN: Page 52?

17 MR. SULLIVAN: Yes.

18 MR. XENOPHONTOS: The left
19 picture is my little girl who is about 4 or 5
20 years old climbing on the porch. And on the
21 right is the same girl and now she's an adult
22 coming out of the porch.

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1 That porch was not a little shot
2 there. It was a building with columns and
3 roof and lighting and all the stuff. It's a
4 substantial structure. It's not something
5 like --

6 CHAIR JORDAN: There's already a
7 roof on that porch.

8 MR. XENOPHONTOS: Huge. Here, go
9 through the pictures please.

10 CHAIR JORDAN: Has the roof level
11 changed?

12 MR. PRICE: Not to my knowledge.

13 MR. XENOPHONTOS: This is higher.
14 Before, it was higher than today. You can
15 tell from this picture. Look at the picture.
16 That's the roof. When I did the new roof it
17 was one foot less than the previous.

18 CHAIR JORDAN: Got it, okay. Any
19 shadow studies done of this?

20 MR. XENOPHONTOS: Yes.

21 MR. SULLIVAN: We did. And let's
22 go to Slide 59 where we talk about the impact

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1 of the structure. And again it's just the
2 structure. It's not the rest of the house
3 that we're considering here. Andreas, do you
4 want to talk about this first picture?

5 MR. XENOPHONTOS: Sure.

6 MR. SULLIVAN: On Slide 60.

7 MR. XENOPHONTOS: This is our
8 house and this is the little porch, the new
9 powder room as viewed from the street. And
10 we have this humongous weeping Japanese
11 cherry tree.

12 If you look at the whole thing,
13 we have that. Now this is our neighbor's
14 house right here. This is our house. That's
15 their tree now being right next to the other
16 tree.

17 CHAIR JORDAN: We're looking at
18 61, correct?

19 MR. SULLIVAN: 60.

20 MR. XENOPHONTOS: 61. Here --

21 MR. SULLIVAN: 61 has --

22 CHAIR JORDAN: We went back to 60

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1 and we're looking at 60 and 61. I'm with
2 you.

3 MR. SULLIVAN: 60 and 61.
4 Andreas, do you want to talk about 61 and
5 then where the --

6 MR. XENOPHONTOS: Now this
7 picture is now in the fall as you can tell.
8 So I am starting of the other neighbors who
9 show on the east sides and taking the photo
10 directly from their property to my property.

11 What do you see there? You see
12 jungle of trees. You can hardly see my
13 house. Where is the house here, the little
14 porch? You cannot even see it. Now here is
15 from the back now. I am taking the picture
16 from --

17 CHAIR JORDAN: That to your left,
18 that is the front porch? That one, yes.

19 MR. XENOPHONTOS: This here,
20 here.

21 CHAIR JORDAN: That's the front
22 porch?

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1 MR. XENOPHONTOS: Yes.

2 CHAIR JORDAN: Okay.

3 MR. XENOPHONTOS: And here you
4 can see it from the neighbor's house, and
5 this is, here, the area which was removed
6 before.

7 CHAIR JORDAN: That's in the
8 fall, correct?

9 MR. XENOPHONTOS: Yes, that's the
10 fall. That's spring, you can tell. And then
11 there's another picture, KC. Now see, I'm
12 looking now --

13 CHAIR JORDAN: 62?

14 MR. SULLIVAN: 62.

15 MR. XENOPHONTOS: This is 62.
16 Now I am looking from the back to the front,
17 and look at the two properties how far they
18 are apart. It's not like they are next to
19 each other. Their house is here. You cannot
20 see my house here.

21 And then the next picture it's
22 even more telling. Look at it from the

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1 house. How possibly does it help with the
2 sunlight? How does it help?

3 MR. SULLIVAN: And we're on 63?

4 MR. XENOPHONTOS: No.

5 MR. SULLIVAN: We're looking at
6 65, Andreas, and the --

7 MR. XENOPHONTOS: Yes. KC, do
8 you want to come here?

9 CHAIR JORDAN: Like an hour ago I
10 was kind of asking for the shadow studies?

11 MR. SULLIVAN: Yes, it's coming
12 up. This is actually after Slide 64, Mr.
13 Chairman. It's not numbered, this slide, but
14 after 64 is a Google Earth view showing, this
15 line shows --

16 MR. PRICE: Where the sun would
17 have to be to actually go through the front
18 of their porch.

19 MR. SULLIVAN: If the sun was
20 going through the porch before and giving any
21 sunlight through the open porch before,
22 that's where the sun would have to be.

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1 That's the direction the sun would have to be
2 coming from. The next slide of the monthly
3 sun exposure shows where the sun is.

4 CHAIR JORDAN: Who did this
5 study?

6 MR. PRICE: I did the study.

7 CHAIR JORDAN: Okay, you did it?

8 MR. PRICE: Yes.

9 CHAIR JORDAN: You've done these
10 before?

11 MR. PRICE: Yes, I have.

12 CHAIR JORDAN: Has it been
13 accepted as an expert in regards to doing
14 these type of things?

15 MR. PRICE: No.

16 CHAIR JORDAN: Where have you
17 done it before?

18 MR. PRICE: I've completed it for
19 two of my firms that I've worked for showing
20 sight lines, shadow lines for Sherwood Forest
21 and Annapolis, Maryland, where it is required
22 to show what happens with the shade and

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1 shadow prior to building.

2 CHAIR JORDAN: And you used a
3 program, computer program for this?

4 MR. PRICE: Google SketchUp.

5 CHAIR JORDAN: Google Schedule?

6 MR. PRICE: SketchUp.

7 CHAIR JORDAN: SketchUp.

8 MR. PRICE: Yes. So you import
9 Google Earth which gives you the azimuth
10 bearing exactly where the sun goes and then
11 it provides the shadow.

12 MR. SULLIVAN: So does the line
13 of the sun ever get around the house itself?

14 MR. PRICE: No. So the corner of
15 the house would actually block any light
16 coming through the front porch, so it would
17 be kind of geometrically impossible for the
18 sun to actually go through the front porch
19 uncovered. So the house itself covers
20 indefinitely the front porch.

21 VICE CHAIR ALLEN: Excuse me. I
22 just want to be clear. So the green is the

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1 neighbor's house or that's your house?

2 MR. PRICE: The green is our
3 house. The white is the neighbor's house.

4 MR. SULLIVAN: Can you point out
5 north and south too, and just show generally
6 where, north is up. Is that correct?

7 MR. PRICE: Always up.

8 MR. SULLIVAN: On this as well.

9 MR. PRICE: Correct.

10 MR. SULLIVAN: And so the sun is
11 generally coming from the east and from the
12 southeast.

13 MR. PRICE: Correct.

14 MR. SULLIVAN: And so the slide
15 showing July would be the highest the sun
16 gets latitude wise.

17 CHAIR JORDAN: So the neighbor's
18 house, which is in white, is actually to the
19 east, and just a front of the applicant's
20 property, is that what you're saying?

21 MR. SULLIVAN: Correct.

22 VICE CHAIR ALLEN: East or west?

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1 CHAIR JORDAN: It would be east.
2 West, I'm sorry, west. Okay, got it.

3 MR. SULLIVAN: Some other aspects
4 on the substantial detriment or lack thereof
5 --

6 VICE CHAIR ALLEN: I'm sorry, Mr.
7 Sullivan. And can you just tell me based
8 again on the green which corner the porch is?
9 Is it on the --

10 MR. SULLIVAN: Maybe we can have
11 the lights down again please, and you could -
12 -

13 VICE CHAIR ALLEN: You can just
14 tell me. Is it to the -- try right or left
15 as opposed to north or south, really.

16 (Off microphone discussion)

17 VICE CHAIR ALLEN: Okay, so it's
18 actually where the sun is, on that photo at
19 least, where the sun is coming through.

20 (Off microphone discussion)

21 MR. SULLIVAN: Microphone.

22 VICE CHAIR ALLEN: Yes, we can't

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1 hear you.

2 MR. SULLIVAN: Turn your
3 microphone on, please.

4 MR. PRICE: So the existing
5 corner of the house is right here which kind
6 of engulfs the front porch. So any shade
7 coming from the house takes over the front
8 porch. So there's no way that the sun could
9 ever enter unless it went around the corner
10 and then through the front porch, if that
11 makes sense.

12 MR. SULLIVAN: Essentially you're
13 saying the main house is in between the sun
14 and the covered porch.

15 MR. PRICE: Correct.

16 MR. XENOPHONTOS: It's a big
17 house.

18 CHAIR JORDAN: Where's north and
19 south again on here?

20 MR. PRICE: North is up.

21 CHAIR JORDAN: North is up?

22 MR. PRICE: North is up.

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1 CHAIR JORDAN: When I'm looking
2 down -- your sun, isn't your sun tracking
3 north and south on your diagram? Or maybe
4 I'm looking at this wrong.

5 (Off microphone discussion)

6 CHAIR JORDAN: Yes, but I'm
7 looking at your diagram. I have not seen
8 your sun move.

9 MR. XENOPHONTOS: It moves.

10 MR. PRICE: This is where the sun
11 begins in the morning. It will end over
12 here. So the arrow shows --

13 CHAIR JORDAN: Okay.

14 MR. SULLIVAN: But KC, if you
15 could explain to them the different months
16 and the different relative position of the
17 sun in the winter versus the summer. So in
18 January --

19 CHAIR JORDAN: Let me tell you
20 where I am looking at this and what I'm
21 seeing that may be missing. I could be
22 wrong. I don't see any sun. Your sun is not

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1 tracking. From what I'm looking here, the
2 only thing I see is a sun that's in the
3 morning, right or wrong?

4 MR. PRICE: Yes, you are correct.

5 CHAIR JORDAN: The earth travels
6 and so therefore it gives the impression that
7 the sun is traveling from east to west,
8 correct? Where's that in this study?

9 MR. PRICE: I did not provide
10 that.

11 CHAIR JORDAN: I didn't think so.
12 Come on.

13 MR. SULLIVAN: But the line
14 doesn't, the house is three stories tall over
15 the one-story porch.

16 CHAIR JORDAN: But you know we
17 normally have, shadows says that we have
18 different times and spots of the day.
19 Whether or not it changes the situation or
20 not, at least we can depend upon the
21 credibility of the evidence to determine if
22 there is an effect.

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1 It could be some anomaly that
2 happens. We don't know. I just wanted to
3 make sure. I was trying to follow this,
4 because I kept seeing the sun in these
5 various diagrams sitting at the same kind of
6 position.

7 MR. SULLIVAN: And we can submit
8 that if you --

9 MR. PRICE: Yes.

10 (Off microphone discussion)

11 MR. SULLIVAN: I think the
12 understanding was the morning, 8 o'clock was
13 the worst time.

14 MR. XENOPHONTOS: That's the
15 perfect time to get sun from, we tried to
16 emphasize that.

17 CHAIR JORDAN: And your little
18 red zigzag here, whatever that is, that is
19 the effect of the shadow?

20 MR. PRICE: If you were to remove
21 the main structure of the house, then there
22 would be a shadow from the front porch. But

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1 you can't remove the main house to --

2 CHAIR JORDAN: Because you're
3 saying the main house casts a shadow?

4 MR. PRICE: Correct.

5 MR. XENOPHONTOS: Yes.

6 CHAIR JORDAN: That's what you're
7 saying.

8 MR. XENOPHONTOS: The house
9 overrides.

10 CHAIR JORDAN: Okay. A shadow's
11 being cast, but from a house that's a matter
12 of right is what your argument is.

13 MR. PRICE: Yes.

14 MR. XENOPHONTOS: Yes.

15 CHAIR JORDAN: We did all this to
16 get to that point?

17 MR. XENOPHONTOS: Yes.

18 CHAIR JORDAN: Maybe I'm slow.
19 All right, got you.

20 MR. SULLIVAN: Other aspects I'd
21 like to point out regarding the impact is
22 that obviously it was there before as a

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1 covered porch, and you saw it was a fairly
2 substantial porch. So we're talking about
3 closing in a 10 by 10 opening, whereas, I
4 think we finally see maybe the sun doesn't
5 directly come through. And also
6 there was the net change of removing a
7 portion on that earlier slide that was in the
8 side yard which was closest to the neighbor's
9 house, so the structure is less than what it
10 was as it's adjacent to the neighbor's house.

11 We do have 13 letters of support
12 from neighbors within 200 feet of the
13 property. Here's a map on Slide 68 which
14 identifies supporters and neutral parties all
15 immediately adjacent to the house and almost
16 all on Lowell Street or to the rear of the
17 property.

18 CHAIR JORDAN: Thank you. Board,
19 any questions of the applicant? Anything
20 else that you think we need? I think we
21 understand the situation pretty well.

22 MR. SULLIVAN: I'll address

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1 anything from, yes, in rebuttal. Thank you.

2 CHAIR JORDAN: The Board, any
3 additional questions? I know we asked
4 questions during the time, but any additional
5 questions or issues?

6 Okay, then let's turn to the
7 party in opposition for any cross
8 examination, please. Just make sure you turn
9 it on, please.

10 MR. DONOHUE: I'll be brief. Mr.
11 Price, let me ask you about the shadow study
12 because that's kind of fresh in everyone's
13 mind. These were taken at -- and I didn't
14 get there as quickly as the chair did so I
15 apologize. These are a snapshot at 8 o'clock
16 at different months of the year.

17 MR. PRICE: Correct.

18 MR. DONOHUE: Right, so an
19 attempt to look at the impact of the sun
20 right in from the east on the neighbor's
21 property to the west, right?

22 MR. PRICE: Correct, yes.

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1 MR. DONOHUE: What time does the
2 sun rise in June and July in the northern
3 hemisphere?

4 MR. PRICE: I would have to look
5 at my Google SketchUp to give me that
6 information, so all I did was look at --

7 CHAIR JORDAN: On the microphone
8 please.

9 MR. PRICE: Yes. So all I did
10 was look at Google SketchUp, take the shadow
11 of what was most impacted on their house from
12 Andreas Xenophontos' house and gave that kind
13 of snapshot at what I believed to be the most
14 detrimental shadow which was 8 o'clock in the
15 morning.

16 MR. DONOHUE: 8 o'clock
17 throughout the year is the most detrimental
18 time?

19 MR. PRICE: The other times there
20 was no shadow cast.

21 MR. DONOHUE: I guess what I'm
22 getting at is how did you arrive at the 8:00

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1 a.m. time slot?

2 MR. PRICE: Going through my own
3 kind of sequential, I guess, shadowing like
4 that seemed to be the most impact that it had
5 on the neighbor's structure, so that's what I
6 captured.

7 I'm happy to provide a full day
8 study or a month study of the four months
9 that are the most detrimental.

10 MR. DONOHUE: Thank you. I think
11 the conclusion of your testimony on the
12 shadow study I'll characterize is that the
13 main house in effect obviates the shadow.

14 MR. PRICE: Correct.

15 MR. DONOHUE: Okay. But the
16 porch is a protrusion from the front of the
17 main house, is that correct?

18 MR. PRICE: Correct.

19 MR. DONOHUE: So isn't it fair to
20 say that the sun casts some sun over the roof
21 of the porch?

22 MR. PRICE: It could be. But the

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1 angle of the sun hitting the angle of the
2 most, well, I guess, west point of the
3 structure would then overtake the porch
4 structure because --

5 MR. DONOHUE: Let me ask you to
6 look at your exhibit, if I can. Let's look
7 at July. The sun is almost at a parallel
8 with Lowell Street. It's a little below, and
9 you're showing in your angle there that the
10 green, which is the entirety of the house?

11 MR. PRICE: Correct.

12 MR. DONOHUE: Effectively removes
13 the shadow. I said obviates the shadow,
14 okay. Is the porch shown in the green? Is
15 it included within that or is it not?

16 MR. PRICE: It is, prior to
17 construction. So this shows the original
18 structure of the house.

19 MR. DONOHUE: Well, does it?
20 Because it doesn't show a protrusion for the
21 porch. It's a straight line across.

22 MR. PRICE: I mean, it's not the

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1 most DPI image but it was taken directly from
2 Google Earth, so yes, it does show the front
3 porch.

4 VICE CHAIR ALLEN: Please make
5 sure you speak into the mic.

6 MR. PRICE: Oh, sorry. I mean, I
7 would love to enlarge the photo, but it was
8 taken from Google Earth so it does show the
9 front porch. I can't manipulate the photo to
10 not include it.

11 MR. DONOHUE: All right. What
12 I'm getting at is if you're looking in that
13 July shot, and again this is at a time 8:00
14 a.m. in the morning --

15 MR. PRICE: Correct.

16 MR. DONOHUE: -- I'm supposing
17 that there's sun cast over the roof of that
18 porch whether it's the preexisting porch or
19 the newly constructed porch. Is that a fair
20 characterization?

21 MR. PRICE: That could be fair.

22 MR. DONOHUE: And that that light

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1 -- okay, I think that's enough on the shadow
2 study. I'd like to ask questions about the
3 structural, Marty, and is that, Mr.
4 Xenophontos, those questions --

5 (Simultaneous speaking)

6 MR. XENOPHONTOS: Sure.

7 MR. DONOHUE: Okay. So the
8 letter that we have in the file, and I
9 appreciate your candor that the Neubauer
10 letter had a typo, and I haven't found it yet
11 but I'll take your word on it. But the
12 letter we have on structural is May 9, 2019,
13 is that correct?

14 MR. PRICE: Yes.

15 MR. DONOHUE: Is that the only
16 structural report? Is that the only
17 structural evidence in the record?

18 MR. XENOPHONTOS: I think so.

19 MR. PRICE: Yes.

20 MR. XENOPHONTOS: Yes.

21 MR. DONOHUE: Okay, and did the
22 firm of Neubauer Consulting Engineers, did

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1 they come out to the premises?

2 MR. XENOPHONTOS: They came in
3 different occasions, yes.

4 MR. DONOHUE: All right, because
5 I'm reading from the second paragraph. He
6 said that he's providing you with a number of
7 photographs.

8 MR. XENOPHONTOS: Well, he came
9 on several occasions to the project and they
10 were provided in the photographs we have
11 seen. We took to his office to write his
12 reports.

13 MR. DONOHUE: And he came prior
14 to the May 9 letter?

15 MR. XENOPHONTOS: He came at the
16 property. I don't know exactly what, but he
17 came several times overseeing the project,
18 yes.

19 MR. DONOHUE: All right. He
20 addresses the mud room, the front room and
21 moisture relating issues, mold, rot, et
22 cetera, on the mud room, which is the porch.

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1 What we're referring to is the porch,
2 correct?

3 MR. XENOPHONTOS: And the walls
4 on the other side.

5 MR. DONOHUE: Well, let's talk
6 about what he uses. He says the mud room.
7 And he goes on to say that it seems
8 reasonable that there would be replacement
9 given what he found and the conditions he
10 found on the premises, right?

11 Were the Neubauer structural
12 engineers asked to address the west wall?
13 The wall between your property and the
14 Bakers?

15 MR. XENOPHONTOS: Could be. You
16 see, that's why you have the second letter
17 which corrects himself. If you can see, he
18 had the --

19 CHAIR JORDAN: What page of the
20 letter? Where are you at?

21 MR. XENOPHONTOS: There are two
22 letters.

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1 MR. SULLIVAN: 22.

2 CHAIR JORDAN: For the record,
3 let's be sure we identify where you are, so -
4 -

5 MR. XENOPHONTOS: 21.

6 CHAIR JORDAN: -- following the
7 record some years later.

8 MR. XENOPHONTOS: It's Page 21
9 and 22. These are the two letters.

10 MR. DONOHUE: All right. So in
11 the November 14 letter, that's your Slide 22,
12 right?

13 MR. XENOPHONTOS: Yes.

14 MR. DONOHUE: He addresses the
15 several sections of the first floor front and
16 west existing walls.

17 MR. XENOPHONTOS: Yes, because he
18 omitted it the first time by a typo and then
19 we realized. And then we went back to him to
20 make sure he's had the plans that he
21 corrected himself.

22 MR. DONOHUE: All right. And

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1 again, this is based on his inspection of the
2 property?

3 MR. XENOPHONTOS: I said he came
4 to the property several times with the
5 pictures. We gave him reports. Not every
6 time this actually we were around. No, we
7 have a relationship as professionals.

8 Sometimes, if you read in the
9 report, sometimes he comes if he thinks it's
10 important to come. But when you show him
11 pictures which the elements are totally
12 destroyed, you know, he doesn't really need
13 to come, but he came and said okay. I don't
14 know if he has pointed to him specifically --

15 CHAIR JORDAN: Wait, wait.
16 Bottom line, he came out.

17 MR. XENOPHONTOS: He came out
18 several times.

19 CHAIR JORDAN: He didn't just
20 look at pictures, he actually came out.

21 MR. XENOPHONTOS: Yes.

22 CHAIR JORDAN: Okay.

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1 MR. DONOHUE: This letter doesn't
2 address that. That's the reason I'm asking.

3 MR. XENOPHONTOS: He did.

4 MR. DONOHUE: Okay. So what were
5 the structural issues on the western wall?
6 What were the structural considerations that
7 forced the razing of the west wall?

8 MR. XENOPHONTOS: Okay,
9 everybody's talking about the razing of the
10 west wall, and it's misleading. If you are
11 looking at the approved DCRA demolition
12 plans, you're all going to see, and you have
13 in the records, you're all going to see that
14 the little, little portions of the old wall
15 we were supposed to keep. A little piece on
16 the left, a little piece in the middle and on
17 the right that these huge new windows where
18 we're supposed to put, so how can you put a
19 window retaining the wall up?

20 So there was very limited, no
21 more than 15 feet of wall continues, if you
22 add it together in pieces. Now if the wall

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1 is structurally not sound, who will go and
2 put a sheer wall in its place? Who can build
3 a house like that? This is a big house.

4 In the elevations that you can
5 see --

6 CHAIR JORDAN: The question was,
7 what was the defect that required you to take
8 the portion out?

9 MR. XENOPHONTOS: They're rotten.
10 We showed the pictures. They are rotten.

11 CHAIR JORDAN: Let's answer the
12 question.

13 MR. XENOPHONTOS: Sure.

14 CHAIR JORDAN: We don't need a
15 song and dance. He asked you a specific
16 question. I would appreciate if you just
17 told the response.

18 MR. XENOPHONTOS: Okay. Yes.

19 CHAIR JORDAN: He said that it's
20 defective. What was it if it was rotten?

21 MR. XENOPHONTOS: Rotten. There
22 was moisture. There was, what's it called?

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1 MR. PRICE: The bottom plate was
2 rotten so you could not attach any screws.
3 So the construction of the sheer wall forced
4 this to be taken down. It was not
5 structurally sound in order to maintain the
6 structural integrity of what was designed by
7 the structural engineer to make this wall a
8 strong enough wall to support --

9 CHAIR JORDAN: That was the
10 question. That was all he asked. Okay.

11 MR. DONOHUE: Mr. Price?

12 MR. PRICE: Yes.

13 MR. DONOHUE: Maybe it's a
14 mislabeling, but I'm looking at your Slide 23
15 and then going to Slide 24. Well, let me ask
16 you about Slide 23. East wall?

17 MR. XENOPHONTOS: Yes, east wall.

18 MR. PRICE: Should be the west
19 wall.

20 MR. XENOPHONTOS: West wall. I
21 mean this is west wall. It's a typo.

22 MR. DONOHUE: Okay, understood.

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1 All right, so this is the structural issue.
2 Maybe these were the photographs that were
3 shown to Neubauer? Okay. So the rotting
4 down there by the, say, six or eight inches
5 up from the floor joists?

6 MR. XENOPHONTOS: May I add
7 something?

8 CHAIR JORDAN: No, let's answer
9 the question. So yes or no?

10 MR. PRICE: Yes, those are the
11 rotting members.

12 MR. DONOHUE: All right. Were
13 these the photographs that were shown to the
14 Neubauer engineers?

15 MR. PRICE: Yes.

16 MR. DONOHUE: Okay. All right,
17 so when the question is what were the
18 structural issues, was this part of the
19 story? The photographs and the letter from
20 Neubauer?

21 MR. XENOPHONTOS: The bottom
22 line, the old wall on the west side was to

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1 remain, was structurally not sound. It was
2 damaged. It was rotten, and it was not to be
3 saved. And I decided to knock it down not
4 thinking, not I'm going to start a major
5 issue.

6 It's normal. In a construction
7 such as that if you find the rotten element
8 in the process, nobody goes down to the DCRA
9 and say oh, one of my joists is rotten, can
10 you give me a permit please? It doesn't work
11 like that.

12 The inspector was there. He saw
13 what I'm doing. He guided me and he asked me
14 to go back to the DCRA to revise my permits
15 and I did. He came back and verified that I
16 did and he was satisfied. Period. Who am I
17 going to say whether I'm going to do more?

18 CHAIR JORDAN: Look, just answer
19 the questions and just leave out --

20 MR. XENOPHONTOS: Well, that's
21 the thought.

22 CHAIR JORDAN: Okay, next

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1 question please.

2 MR. DONOHUE: The razing that
3 we're talking about, what was the time
4 period? I've forgotten the month.

5 MR. XENOPHONTOS: Was it in
6 February somewhere?

7 MR. DONOHUE: All right. At what
8 point did you notify DCRA that the western
9 wall had been razed?

10 MR. XENOPHONTOS: The DCRA knew
11 when Inspector Cluff came to --

12 CHAIR JORDAN: The question was,
13 when did you?

14 MR. XENOPHONTOS: The 28th, I'd
15 say, when Inspector Cluff came the first time
16 there, 27th.

17 CHAIR JORDAN: February 27th.

18 MR. XENOPHONTOS: February 27th.

19 MR. DONOHUE: Did you file a
20 revised demolition report, or demolition
21 application?

22 MR. XENOPHONTOS: Inspector Cluff

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1 --

2 CHAIR JORDAN: The answer's yes
3 or no.

4 MR. XENOPHONTOS: Not for that.

5 CHAIR JORDAN: No?

6 MR. XENOPHONTOS: No. He asked
7 us other things.

8 CHAIR JORDAN: The response is
9 no. MR. XENOPHONTOS: Yes.

10 CHAIR JORDAN: Okay.

11 MR. DONOHUE: Thank you, Mr.
12 Chairman.

13 CHAIR JORDAN: Okay. Then let's
14 turn to the Office of Planning for their
15 input, if you want to get in this fray. No.

16 MR. GYOR: Good morning, Mr.
17 Chairman and members of the Board. Stephen
18 Gyor with the Office of Planning.

19 The Office of Planning cannot
20 support the applicant's request for variance
21 relief as the applicant has not satisfied the
22 variance test including establishing an

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1 exceptional situation resulting in a
2 practical difficulty, as well as not
3 demonstrating no substantial harm to the
4 zoning regulations. Following the
5 determination of the zoning administrator, OP
6 evaluated the project as new construction and
7 as such the burden is upon the applicant to
8 bring the property into conformance with the
9 zoning regulations.

10 And then I just wanted to add in
11 regard to the shadow study, I did make a site
12 visit at 10:00 a.m. I did notice there was
13 some shadow on the neighboring property,
14 whether that was from the main house or the
15 addition it was difficult to tell, but there
16 was definitely shadow.

17 CHAIR JORDAN: Let me ask you a
18 question because your report kind of threw
19 me, to be real honest. You make a statement
20 that there's no nexus between any uniqueness
21 of the property and the practical difficulty.
22 What are you saying?

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1 MR. GYOR: I'm saying that once -
2 -

3 CHAIR JORDAN: Did you find that
4 there's a unique condition or no unique --

5 MR. GYOR: Well, there's one
6 unique condition is in regard to the physical
7 condition of the property.

8 CHAIR JORDAN: You didn't find
9 that a rotted structurally defective wall,
10 wouldn't it be a unique condition to that
11 property?

12 MR. GYOR: We evaluated it to the
13 prism of the zoning administrator's
14 determination that it was a complete
15 demolition and as such it becomes new
16 construction.

17 CHAIR JORDAN: Okay, let's assume
18 you didn't know then, but knowing now that
19 you had a structurally defective wall, would
20 that present a unique situation or condition
21 of the property?

22 MR. GYOR: It depends upon the

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1 applicant to --

2 CHAIR JORDAN: We've been sitting
3 here thinking, are my questions real direct?

4 MR. GYOR: No, it was not.
5 Because we're looking at it, the applicant
6 could have removed the structure, the front
7 room, and found a more conforming solution.
8 So that's how we're evaluating this.

9 CHAIR JORDAN: That's not my
10 question. And I'm understanding what you're
11 saying. My question was, was it a unique
12 situation where you have a structurally
13 defective wall --

14 MR. GYOR: I understand.

15 CHAIR JORDAN: See, when I'm
16 reading your report, and I see it a lot in
17 some of the reports coming from the office is
18 that you guys run unique situation or
19 condition and practical difficulty in the
20 same breath without stopping with the comma
21 or stopping and then going on.

22 Does this unique situation or

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1 condition create a practical difficulty? Not
2 that, you know, they're separate but you need
3 two to get past us, but they're separate
4 steps.

5 MR. GYOR: Right.

6 CHAIR JORDAN: So I'm asking,
7 you're saying that they don't get the step --
8 what I'm confused is do they get to step one
9 with you? I clearly know you said they don't
10 get to step two.

11 MR. GYOR: Correct.

12 CHAIR JORDAN: But where are they
13 in step one?

14 MR. GYOR: We did not evaluate it
15 that way.

16 CHAIR JORDAN: I understand that.
17 So I'm on the same page with you. I
18 understand what you were saying in your
19 report then because that's where I -- okay.
20 I thought I was missing that in your report,
21 but I understand. Got you. Okay.

22 Any other questions from the

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1 Board of the Office of Planning? And I'm
2 glad you went out there. I really appreciate
3 that, going out there.

4 Yes, please.

5 VICE CHAIR ALLEN: I do have a
6 question that's not quite gelled, okay, so
7 bear with me. So because the ZA said it's
8 new construction you didn't evaluate it for
9 the rotten wall. I got that part. And
10 because that wasn't part of the calculation
11 there was no unique difficulty. That was
12 what you just said? I just want to make sure
13 I got that.

14 MR. GYOR: If you accept that
15 this is new construction, then you have to
16 accept that there are other solutions on the
17 property that would satisfy the zoning
18 regulations better than the solution that the
19 applicant has presented.

20 VICE CHAIR ALLEN: Okay, but then
21 that's also your basis for deciding that it
22 did impact the zoning regs?

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1 MR. GYOR: Correct. Yes, I just
2 wanted to tell you we are deferring to the
3 zoning administrator's determination.

4 VICE CHAIR ALLEN: Got it. Thank
5 you.

6 CHAIR JORDAN: Any other
7 questions of Office of Planning within the
8 applicant, please? Any cross examination?

9 MR. SULLIVAN: Just a couple of
10 questions, please. Do you think, Mr. Gyor,
11 that it would be a practical difficulty to
12 remove the front porch? Do you think it
13 would be difficult for the applicant to
14 remove the front porch?

15 MR. GYOR: I think that there
16 would be considerable expense that the
17 applicant would incur, whether or not that in
18 this case provides us a level practical
19 difficulty, I don't --

20 CHAIR JORDAN: Oh, you mean to
21 remove that structure that's already --

22 MR. SULLIVAN: To remove the

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1 front structure to strictly comply with the
2 zoning regulations would be difficult.

3 MR. GYOR: Yes, I understand that
4 there would be an expense incurred by the
5 applicant. Yes, but we don't -- it also did
6 not rise to the level of practical difficulty
7 because --

8 MR. SULLIVAN: So because I think
9 if what you're saying is because of the
10 zoning administrator's recharacterization
11 after the fact, you have to ignore the zoning
12 process and history and the permitting
13 history that went on and pretend that there's
14 nothing on the lot, for your analysis, ignore
15 reality in a sense, or ignore not only in
16 that way --

17 CHAIR JORDAN: You asking a
18 question, Mr. Sullivan? Because --

19 MR. SULLIVAN: Yes. You have to
20 ignore --

21 (Simultaneous speaking)

22 MR. GYOR: We typically try not

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1 to ignore reality.

2 CHAIR JORDAN: Wait, wait. Time
3 out.

4 MR. SULLIVAN: Do you have to
5 ignore the facts for your analysis?

6 CHAIR JORDAN: No, no. Time out
7 means for all of us. Time out. We've got a
8 court reporter doing the best that she can to
9 maintain where we are, so it's going to be
10 hard for us all to talk at the same time.

11 Mr. Sullivan, it's your show for
12 you to ask a question and not the narrative.

13 MR. SULLIVAN: Probably not
14 asking it in the correct way. You took what
15 the zoning administrator said that this is
16 new construction now recharacterized, and
17 from that point then you have no analysis of
18 the actual process that took place to get up
19 to the point of the zoning administrator's
20 determination.

21 MR. GYOR: Our analysis is
22 largely based on the zoning administrator

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1 determination, yes.

2 MR. SULLIVAN: Okay. Thanks.
3 You mentioned that you went to the property
4 and you saw some shadow but you couldn't tell
5 if the shadow was coming from the porch or
6 not. But yet your report, I think, says that
7 there's a substantial detriment from granting
8 relief in this case to the public good.

9 MR. GYOR: Well, it's based
10 partly on the shadow as well as the Wesley
11 Heights Overlay and the impact on the
12 setback.

13 MR. SULLIVAN: And that's
14 substantial even though you weren't sure
15 whether the shadow was coming from the porch
16 or not, you couldn't tell, but you know it's
17 substantial even though you're not even sure
18 if there's any impact?

19 MR. GYOR: Our analysis, that is
20 a factor in our analysis. Our analysis is
21 not based wholly on the shadow, no.

22 MR. SULLIVAN: Okay. Thanks.

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1 Did your analysis of the Wesley Heights
2 Overlay take into consideration the fact that
3 this structure existed well before the
4 Overlay was adopted?

5 MR. GYOR: If you view it from
6 the viewpoint that this is new construction
7 then this would substantially impact the
8 Wesley Heights Overlay. And I just want to
9 say, on my site visit I did look at the
10 setbacks and although it is a relatively
11 small structure it does impact the rhythm of
12 the setbacks on that street.

13 MR. SULLIVAN: And did it disrupt
14 that rhythm for the last 80 years or 90
15 years?

16 MR. GYOR: There was a previous
17 structure that was there and this is smaller
18 than the previous structure. Yes.

19 MR. SULLIVAN: No further
20 questions.

21 CHAIR JORDAN: Mr. Donohue?

22 MR. DONOHUE: Very briefly, Mr.

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1 Chairman. Mr. Gyor, how would you
2 characterize the age of the homes in Wesley
3 Heights?

4 MR. GYOR: They predate the 1958
5 zoning regulations, so say the mid-20th
6 century.

7 MR. DONOHUE: Do many of them
8 have porches?

9 MR. GYOR: I would say some of
10 them do, yes.

11 MR. DONOHUE: Would you
12 characterize the porches as being into the
13 front yard similar to what we're talking
14 about here?

15 MR. GYOR: On my site visit I did
16 not see a pattern of front porches similar to
17 this in the immediate vicinity of this
18 structure.

19 MR. DONOHUE: Okay.

20 MR. GYOR: But I would have to
21 confirm and look again.

22 MR. DONOHUE: On Page 5 of your

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1 report you're describing the impact on Wesley
2 Heights Overlay District and also the
3 characterization of the size of the addition.

4 And I'm looking for your words
5 here, I'm sorry. Under the no substantial
6 harm to the zoning regulations it says,
7 "While the project replaces a larger
8 structure with a more conforming one, the
9 project's proposed side yard and front yard
10 setback would nevertheless contravene the
11 District's zone plan in the Wesley Heights
12 Overlay District."

13 MR. GYOR: Correct.

14 MR. DONOHUE: All right. So
15 let's go to the first part. It's where you
16 say the project replaces a larger structure
17 with a more conforming one. Are you
18 referring to the side yard and the
19 reconfiguration of the what we're calling the
20 bump-out on the side yard?

21 MR. GYOR: Yes.

22 MR. DONOHUE: Okay. But is the

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1 structure itself larger or smaller than the
2 preexisting structure?

3 MR. GYOR: I believe that the
4 footprint is smaller. The height of the
5 structure is taller than the previous
6 structure.

7 MR. DONOHUE: The footprint is
8 smaller but the height is taller.

9 MR. GYOR: Yes.

10 MR. DONOHUE: Okay. Okay, thank
11 you.

12 MR. GYOR: Sure.

13 CHAIR JORDAN: Any more cross
14 examination? Or examination, excuse me. I
15 hate to use the word cross with Office of
16 Planning. Anymore questions for Office of
17 Planning?

18 MR. DONOHUE: No, thank you, Mr.
19 Chairman.

20 CHAIR JORDAN: Ms. Allen, did you
21 have --

22 VICE CHAIR ALLEN: I just wanted

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1 to get the actual dimensions. Because it was
2 my understanding from the applicant's
3 presentation that the height was not taller,
4 so can we get some clarification on that
5 please?

6 MR. XENOPHONTOS: I want to ask
7 the gentleman how did he determine --

8 CHAIR JORDAN: No, answer the
9 question please.

10 MR. XENOPHONTOS: I say the
11 existing structure is a foot shorter than the
12 previous structure.

13 VICE CHAIR ALLEN: That's what I
14 thought I heard.

15 CHAIR JORDAN: Shorter in height
16 or shorter in --

17 MR. XENOPHONTOS: Is one foot
18 shorter in height, a good six inches over
19 there were eliminated and also seven feet by
20 four feet on the other corner they are
21 totally gone. So the new structure is
22 smaller.

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1 VICE CHAIR ALLEN: That's what I
2 thought I had heard, so I just want to --

3 MR. GYOR: I may have been
4 mistaken in that height determination.

5 VICE CHAIR ALLEN: Okay. Thank
6 you.

7 CHAIR JORDAN: Okay. Anyone from
8 the Department of Transportation here? Do we
9 have -- Department of Transportation did what
10 with this? They had no objection for the
11 relief to be granted. Our representative
12 from ANC? Anyone from ANC 3D? Yes, please.
13 Yes, welcome.

14 MR. SLOWINSKI: Hi. My name is
15 Kent Slowinski and I'm the ANC commissioner
16 for 3D01, including --

17 CHAIR JORDAN: I'm sorry. Your
18 name again?

19 MR. SLOWINSKI: Kent Slowinski.

20 CHAIR JORDAN: Now I don't have
21 3D01. I don't have an authorization letter
22 from the ANC, so are you speaking in regards

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1 to the single-member district? I'm in the --

2 MR. SLOWINSKI: I'm speaking
3 about a letter that was sent to the BZA by
4 the chair, Penny Pagano, that's dated
5 November 12th.

6 CHAIR JORDAN: Yes, but they're
7 required to say who's going to represent ANC
8 3D, and the letter, I think, doesn't have
9 that. But you can cite to the letter. But
10 as far as further testimony, I think that
11 becomes a kind of an issue because what we
12 typically have as required, and as you know
13 in the letter who's going to represent 3D.

14 We also have had situations where
15 the full ANC voted in support of something
16 but a single-member person was opposed or
17 against or the opposite and it gets into a
18 whole bunch of issues.

19 MR. SLOWINSKI: Right.

20 CHAIR JORDAN: But go ahead,
21 please.

22 MR. SLOWINSKI: It's one point

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1 that we overlooked. It was I was asked to
2 represent ANC 3D but --

3 CHAIR JORDAN: Okay, and that's
4 acceptable to me.

5 MR. SLOWINSKI: -- we didn't vote
6 on it.

7 CHAIR JORDAN: That's acceptable,
8 thank you.

9 MR. SLOWINSKI: At its properly
10 noticed public meeting on November 6, 2013,
11 at the American University School of
12 International Service with a quorum present
13 at all times, ANC 3D voted 10-0-0 to deny
14 approval of BZA Application Number 18659.

15 ANC met in October and November
16 to review this application, in addition, five
17 of the commissioners with zoning
18 administrator Matt LaGrant which was very
19 helpful in understanding the issues.

20 In addition, each commissioner
21 was invited to visit both sites. Some
22 commissioners visited several times. We

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1 would appreciate the commission's support in
2 denying this application.

3 CHAIR JORDAN: Now let me ask,
4 did the ANC consider that you had a
5 structural defective wall that created an
6 exceptional situation or condition to the
7 property in your deliberations?

8 MR. SLOWINSKI: Yes, we did.

9 CHAIR JORDAN: Okay. And you
10 thought what about it?

11 MR. SLOWINSKI: That came up in
12 our discussion with the zoning administrator
13 and it was pointed out that the applicant had
14 a responsibility to inform DCRA that they'd
15 deviated from the approved construction
16 plans.

17 CHAIR JORDAN: Okay, so I
18 understand what your consideration was. It
19 was the fact that that was the basis of the
20 reason why that wall came down. But they
21 still were wrong, the fact because they
22 didn't notify DCRA that they made a change.

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1 MR. SLOWINSKI: Also there was
2 the issue that the photograph, we weren't
3 sure if they were from the north wall facing
4 Lowell Street or the west wall facing the
5 neighbors.

6 CHAIR JORDAN: Got it. All
7 right, so you didn't base your decision on it
8 in regards to this variance test, but only
9 because they actually violated their
10 requirement of notifying DCRA --

11 MR. SLOWINSKI: Yes.

12 CHAIR JORDAN: -- that they're
13 making changes. Yes, I understand. Other
14 Board members, questions? And I appreciate
15 you taking the time in coming down to do this
16 in regards to the testimony in support
17 written by the ANC 3D.

18 Any other statements from,
19 questions? Mr. Miller? Please.

20 COMMISSIONER MILLER: Thank you,
21 Mr. Chairman. Commissioner Slowinski, was
22 there a presentation made at the ANC meeting

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1 by both the applicant and the neighbor prior
2 to the consideration by the ANC?

3 MR. SLOWINSKI: There were
4 presentations made in both October and
5 November ANC 3D meeting.

6 COMMISSIONER MILLER: Okay, thank
7 you.

8 CHAIR JORDAN: Okay. All right,
9 applicant, any questions?

10 MR. SULLIVAN: No. No questions.

11 CHAIR JORDAN: Party status or
12 intervenor?

13 MR. DONOHUE: No questions.

14 CHAIR JORDAN: No questions
15 either way we go. Thank you. Thank you so
16 much for your time. Any person wishing to
17 speak in support of this application? Any
18 person wishing to speak in support of this
19 application?

20 Then let's turn to the party in
21 opposition for their testimony. And I think
22 we, how much time did we take? We took what,

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1 28 minutes or something?

2 MR. MOY: Yes, you went over the
3 15 so 28 or 30 minutes.

4 CHAIR JORDAN: Yes, about 28
5 minutes.

6 MR. DONOHUE: We can get through
7 very quickly if I can get a minute to get
8 loaded up on your laptop.

9 CHAIR JORDAN: Sure, please.

10 MR. DONOHUE: And I have copies
11 for the Board.

12 CHAIR JORDAN: All right.

13 (Pause)

14 CHAIR JORDAN: Are we ready, Mr.
15 Donohue? Mr. Donohue, let me give you some
16 direction in light of the authority of the
17 Board.

18 We're well aware and the record
19 is very, very clear that we've had violations
20 of the building codes and et cetera, and that
21 there was not the proper seeking and
22 modification of the plans, so we're not going

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1 to rehash that here.

2 As you know, that's before the
3 administrative hearing office whether or not
4 they were right or wrong in that. So I don't
5 want you to spin your wheels doing that.

6 MR. DONOHUE: Understood.

7 CHAIR JORDAN: What we really
8 need to talk about, do they meet the variance
9 test in your estimation to get the variance
10 relief as well as hitting hard in regards to
11 the effect, because you argued that it's
12 affecting the light and air of the property
13 next door.

14 MR. DONOHUE: Yes, sir.

15 CHAIR JORDAN: Okay?

16 MR. DONOHUE: All right. Thank
17 you, Mr. Chairman. I'm going to go through
18 these very quickly. Mr. Miller asked about
19 these.

20 CHAIR JORDAN: Someone else
21 joined you at the table. Are you going to
22 testify?

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1 MR. DONOHUE: And you were sworn
2 in?

3 MR. BAKER: I was sworn in.

4 CHAIR JORDAN: And you provided
5 witness cards?

6 MR. BAKER: Yes.

7 CHAIR JORDAN: Okay, let's have
8 your name for the record please.

9 MR. BAKER: And I'm Peter Baker,
10 the neighbor to the west, and husband of
11 Sally Baker. And she and I have been
12 opposing the application.

13 CHAIR JORDAN: Yes.

14 MR. DONOHUE: So this is a
15 distillation of a couple of presentations we
16 gave to the Advisory Neighborhood Commission
17 in the October and November time frame. But
18 there's some photographs here I think that
19 are very helpful to us, if we go to our Slide
20 2. So the original porch,
21 preexisting porch is shown on the left side
22 of the screen. And it's our contention that

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1 the new and improved porch, the replacement
2 porch, is both a taller structure and of much
3 bigger significance to the Bakers, whose
4 house is immediately located to the west.

5 You see the open air porch with
6 the hip roof in the photo to the left with
7 the cherry tree, and then you see the porch
8 as largely completed 100 percent, I'm sorry,
9 demolished in this scene to the right.

10 CHAIR JORDAN: Okay.

11 MR. DONOHUE: I'm going to skip
12 over this and come back to it. We had the
13 discussion about the demolition. We had the
14 discussion about the retention of walls, and
15 I think it was covered at length as the chair
16 noted, but we have retention of zero exterior
17 walls. This is a view of the west wall.

18 CHAIR JORDAN: Tell me where you
19 are.

20 MR. DONOHUE: Sorry, Slide 6.

21 CHAIR JORDAN: Okay, yes.

22 MR. DONOHUE: This is probably

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1 the critical portion of construction, for
2 purposes of the Bakers in any event, when the
3 removal of the west wall. That's the porch
4 bump-out there in the lower left.

5 CHAIR JORDAN: Lower left.

6 MR. BAKER: Can I point out
7 something?

8 CHAIR JORDAN: Yes.

9 MR. BAKER: On this photo, this
10 is the west wall. And if you'll note, the
11 west wall is down to its sill and on the
12 inside of the house is the basement itself,
13 the original basement.

14 In the photo submitted by the
15 applicant where he shows a rotten wall
16 labeled as the east wall which he says is a
17 typo, that photos of those walls appear on a
18 concrete slab.

19 And I would like to call to your
20 attention that the east wall photo that was a
21 typo of a rotten wall submitted by the
22 applicant could not possibly have been this

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1 west wall. There is no concrete slab. This
2 is the brick foundation and sill that fall
3 right down to the basement itself.

4 MR. DONOHUE: And again, this is
5 the February 2013 time frame, Mr. Chairman.

6 MR. BAKER: And this wall is
7 about 25 feet in length, and the new
8 structure of course has windows in it, but in
9 the submitted application this entire 25-foot
10 length of wall was to be retained. And on
11 their March 1st permit where they identified
12 structural deficiency, that permit was based
13 on floor joists only, and that permit which
14 got approved did not identify any deficiency
15 in this west wall.

16 CHAIR JORDAN: So that's your
17 Exhibit 8, is that what you're -- no, that's
18 the Stop Work Order. So what do you have,
19 the application? You just --

20 MR. BAKER: In the applicant's
21 slides that he just showed, he had a photo
22 that he labeled --

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1 CHAIR JORDAN: Yes, but I'm
2 talking about what they applied for. You
3 said that they had applied --

4 MR. BAKER: I have a photocopy of
5 the approved building permit, and in that
6 permit it describes the structurally
7 deficient floor joists. And even in this
8 drawing, it's S1 engineering drawing up on
9 the screen. No, that's not -- pardon me.
10 Oh, it's not in this slide show.

11 There was an S1 engineering
12 drawing submitted with the building permit
13 approved on March 1. And in that structural
14 drawing S1 it identified floor joists and
15 arrows pointing to those floor joists, but
16 not identifying anything, and I've
17 highlighted in red, to the 25-foot west wall.

18 (Off the record comments)

19 MR. BAKER: So that S1 drawing is
20 what was submitted in applying for the permit
21 for structural deficiency that was approved
22 on March 1, and identified only problems with

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1 floor joists.

2 CHAIR JORDAN: Yes.

3 MR. BAKER: And that's why it was
4 a little suspicious to us that it was May,
5 months later, May that he has an engineer
6 create a letter that says the front wall and
7 rafters had a problem.

8 And when we pointed out in an ANC
9 meeting, our November meeting, that your
10 engineer's letter just speaks to the front
11 wall and the rafters but not the west wall,
12 well, lo and behold, they can generate a new
13 letter that now describes the west wall as
14 having a structural problem. But yet they
15 have no photos of that.

16 MR. DONOHUE: Mr. Chairman, we
17 find ourselves in agreement with the Office
18 of Planning, notwithstanding the back and
19 forth about compaction of the sentences, but
20 we agree with the Office of Planning in terms
21 of the exceptional situation.

22 We have a rectangular lot. We

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1 have a tear down. We have porches throughout
2 the neighborhood. Matter of fact, in the
3 November ANC presentation, the applicant
4 submitted probably a dozen photographs of
5 other porches that were either open or had
6 been enclosed throughout the Wesley Heights
7 Overlay District.

8 We have certainly aligned
9 ourselves with Office of Planning's
10 determination that we don't find any
11 exceptional situation.

12 We do have issues with the
13 structural, the conclusions, the letter
14 submitted as Mr. Baker says, the May 9
15 letter, 2013, is buttressed by the November
16 2013 structural letter, none of which was
17 shared with DCRA when it came to
18 demonstrating that relief was needed in terms
19 of demolition of the wall, and particularly
20 that western wall.

21 MR. BAKER: And that letter
22 describes, the engineer states that my

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1 analysis is based on review of photographs.
2 He makes no mention of physical visits. So
3 today's hearing is the first time we heard
4 that he had physical visits.

5 And if you read, it's in his
6 opening paragraph there or second paragraph,
7 it says based on review of photographs. I
8 would think if he had had a visit throughout
9 the project he would eagerly identify, I've
10 had site visits, this is what I saw.

11 MR. DONOHUE: I want to call your
12 attention to Slide 4. This is during
13 construction, and I don't have a date of this
14 photograph. This is during construction. So
15 the porch is in the left side of the
16 photograph. That is the --

17 CHAIR JORDAN: Which one are we
18 looking at now?

19 MR. DONOHUE: Slide 4.

20 CHAIR JORDAN: Okay, one second.
21 All right.

22 MR. DONOHUE: You have the

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1 retaining wall there in the foreground. You
2 have the new porch there on the left side,
3 left of center there, and then you have an
4 indentation there.

5 This is the portion of the side
6 yard encroachment that the applicant has
7 said, we've reduced the nonconformity because
8 we've lessened the encroachment into the side
9 yard. Subsequent to the construction that
10 you see here, we've seen --

11 CHAIR JORDAN: You mean this
12 little indentation here and then --

13 MR. DONOHUE: Roughly the center
14 of that frame.

15 CHAIR JORDAN: Yes.

16 MR. DONOHUE: Since construction
17 has progressed, and at the present time the
18 building is largely complete, the siding is
19 up and windows of course as you see are in
20 place, it's become clear that that's going to
21 be a pad site for HVAC. So that the
22 lessening of the encroachment, if you will,

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1 is really going to be improved by mechanical
2 equipment which really doesn't help the
3 neighbors in terms of the setback.

4 So in terms of the difficulties
5 that the Bakers find themselves in, you have
6 a pretty significant impact on light and air
7 as a result of the porch issue, and you also
8 have the side yard.

9 CHAIR JORDAN: What's your
10 evidence of that?

11 MR. DONOHUE: Mr. Baker's going
12 to testify to the --

13 CHAIR JORDAN: Okay.

14 MR. BAKER: Despite what the
15 solar analysis that was presented earlier, as
16 we all know the named streets such as Lowell
17 run directly east and west.

18 CHAIR JORDAN: Okay.

19 MR. BAKER: And starting in about
20 May, the peak of the sun is what, June 21st,
21 the summer solstice, but starting in about
22 May the sun literally comes directly up

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1 Lowell Street and spreads light through
2 everyone's front door, and in our case a bay
3 window.

4 And when W.C. and A.N. Miller
5 developed our home built in '26, of course
6 they're thinking they've got to sell all the
7 houses. So they want each house to have, to
8 get some sun and have some redeeming feature.

9 And the reason their porch was
10 totally open is we do get sunlight through
11 their porch, over their porch through to our
12 bay window. The front of our house, if you
13 can see in earlier photos, has a bay window
14 and that's our dining room and our front
15 door's just to the left of that.

16 And it's an absolute certainty
17 that starting in about mid-May that sun is
18 coming directly up Lowell Street and casts
19 great sunlight or in our case now a shadow,
20 and we get no morning light in our bay window
21 or our front door or our dining room.

22 Whereas, before, and I'm an early

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1 riser, let's say 6 o'clock, and the sun is
2 rising a little before 6:00 to answer that
3 earlier question, I could come down for my
4 cup of coffee and have beams of light coming
5 in the front door and through the bay window
6 and now there is none.

7 And it's hard to really conclude
8 that without sitting in our dining room, of
9 which by the way some of the commissioners of
10 the ANC 3D did sit in our dining room and
11 look through our bay windows and that put a
12 lot of time and effort, and that was a lot of
13 their determining factor in arriving at their
14 unanimous decision to deny.

15 In terms of air, the applicant
16 could argue that with putting in an HVA
17 system in that corner, of course no light
18 comes through the corner. We have a three-
19 story home, they've merely removed a six-foot
20 section of the bump-out.

21 But because of the height of the
22 home no light comes through, but they could

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1 argue that with putting in an HVA system we
2 do get more air. It would be hot air, but we
3 would get more air. And combine that with
4 the bathroom vent that also vents on that
5 side, it could be an interesting combination.

6 MR. DONOHUE: Mr. Baker, is it
7 your testimony that the notch effect I'm
8 showing on Slide 4 here, that the notch
9 effect or the reduction of the encroachment
10 into the side yard is of no benefit to your
11 property?

12 MR. BAKER: Correct. Loss of
13 light and gain of hot air.

14 MR. DONOHUE: The rest of the
15 slides, Mr. Chairman, would run afoul of your
16 warning to stay away from the prior
17 transgressions. We have copies of the Stop
18 Work Order, copies of letters from Mr.
19 LeGrant and others. The Board has heard
20 about that. But I'm going to submit those
21 into the record.

22 CHAIR JORDAN: Just one second,

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1 catching up with my notes.

2 MR. BAKER: And I do have one
3 comment regarding --

4 CHAIR JORDAN: Got it, okay.

5 MR. BAKER: And I'd like to
6 submit, these were slides that were used in
7 the ANC meetings, but they address the
8 question of the height of the new roof. And
9 as obviously you can see the original roof
10 was a hip roof and the new roof is an A-
11 frame.

12 So obviously where you'd only be
13 covering half the air and sunlight, the new
14 roof goes straight across. And then that new
15 roof, when you compare it to -- here's the
16 original roof.

17 CHAIR JORDAN: We need to make
18 sure you're on the microphone back there.

19 MR. BAKER: So what you see is a
20 March photo where the front porch is still
21 intact but all the new structure is in place.
22 But it shows the original roof. That's the

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1 original porch taken in early March.

2 And then on April 4th the porch
3 was demolished, reconstructed, and it's shown
4 there, the new roof. And if you look at it
5 relative to the second floor window, you can
6 just draw a visual line across that shows
7 again, relative to the second floor window,
8 the new roof line which is an A-frame is also
9 taller by approximately, we've measured the
10 siding and it's approximately 24 inches
11 taller.

12 CHAIR JORDAN: Twenty four
13 inches? MR. BAKER: Yes.

14 CHAIR JORDAN: Twenty four inches
15 taller.

16 MR. BAKER: Twenty four inches.
17 If you measure each, it's a clabbered siding
18 of about four inch, five inches. So if you
19 can, five inches per each clabbered you can
20 add that up and read across to see roughly
21 the height increase.

22 CHAIR JORDAN: Give this to Mr.

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1 Moy. Mr. Moy, we have several documents that
2 came in that we need you to -- do you want to
3 hold onto that? Okay.

4 MR. SULLIVAN: Mr. Chairman, I
5 don't have any copies of these.

6 CHAIR JORDAN: Well, let's --

7 MR. BAKER: That last piece of
8 paper I handed over is the original approved
9 plan.

10 CHAIR JORDAN: Here's what we're
11 going to do. Hand those to Mr. Sullivan and
12 let him have a chance to look through those
13 as we sit here now, please. Mr. Sullivan,
14 you're going to get these here. And as you
15 know we should always have sufficient copies
16 for any of the parties when we present
17 evidence to the Board.

18 MR. DONOHUE: My apologies, Mr.
19 Chairman. Some things came up on direct that
20 we were reacting to.

21 MR. BAKER: And we did not plan
22 on distributing these, but it addresses the

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1 structural issues that have been expanded
2 based on previous presentations in front of
3 the ANC.

4 CHAIR JORDAN: Okay. Anymore?
5 You finished?

6 MR. DONOHUE: I'm all set.

7 CHAIR JORDAN: Okay. Board,
8 additional questions? Mr. Donohue, did you
9 have any shadow studies or sun studies
10 performed?

11 MR. DONOHUE: I've seen other
12 shadow studies done. We have not done a
13 shadow study on Baker's property, no.

14 CHAIR JORDAN: And that's all I
15 have. Yes, please.

16 VICE CHAIR ALLEN: So I just want
17 to make sure I'm getting the major points.
18 So the point was regardless of where the roof
19 line is or where it ends up being, the major
20 issue is that the original porch, light could
21 go through it, and so therefore you were able
22 to get the light in your dining room.

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1 Now, even though it's smaller
2 it's solid and so the light does not pass
3 through. Is that what your point was?

4 MR. BAKER: It's smaller to make
5 room for the nook you saw for the HVAC.

6 VICE CHAIR ALLEN: I got that.

7 MR. BAKER: So it's smaller in an
8 area that --

9 CHAIR JORDAN: A portion of it.

10 MR. BAKER: A portion. It
11 actually is by inches, it's inches larger
12 where they framed it in.

13 CHAIR JORDAN: It's area-small if
14 you do the area of it's smaller, but really
15 the dimensions of it still protrudes the same
16 way.

17 MR. BAKER: Correct.

18 MR. DONOHUE: I think the
19 testimony was that the impact is greater, and
20 he explained the sunlight. Not withstanding
21 the shadow study taken at a particular time
22 of day, Mr. Baker explained the experience

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1 from the early morning and when the
2 preexisting porch had a --

3 CHAIR JORDAN: Yes, she was
4 talking about the property on the sides,
5 encroachment. Encroachment into the --

6 VICE CHAIR ALLEN: But I was
7 asking about, the fact is that because it was
8 open air the light was able to come through.
9 That was what your testimony is.

10 MR. BAKER: Correct. Yes.

11 VICE CHAIR ALLEN: And now that
12 it's enclosed that light does not come
13 through.

14 MR. BAKER: No light comes
15 through.

16 VICE CHAIR ALLEN: That's just
17 what I wanted to verify.

18 CHAIR JORDAN: Okay.

19 VICE CHAIR ALLEN: Okay, thank
20 you.

21 CHAIR JORDAN: Mr. Sullivan, any
22 cross examination? Yes, cross examination.

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1 MR. SULLIVAN: Thank you. Mr.
2 Baker, you said that you had beams of light
3 coming in your house and now there is none.
4 Do you have anything to show that that is
5 coming from the matter of right house or is
6 that coming just from the 10' by 10' wall of
7 the enclosed porch? Is all of that lack of
8 sunlight coming just from that porch and none
9 of it from the matter of right house?

10 MR. BAKER: The beams of sun
11 would pass through what was an open porch and
12 over the hip roof.

13 MR. SULLIVAN: Okay, but you
14 don't have anything to show whether or not
15 those are obstructed by the new matter of
16 right west wall versus the one-story porch?

17 MR. BAKER: Well, there was no
18 light passing through the original home and
19 its walls. Any light that passed through,
20 passed through its front porch. And now that
21 the front porch is enclosed, we see no light
22 in the morning.

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1 MR. SULLIVAN: Okay. You said
2 because of the height of the house, the
3 matter of right portion of the house, I
4 assume, the bump-out was really of no benefit
5 to you. You're saying the house, the main
6 house, the matter of right house, is between
7 the sun and the area of the bump-out?

8 MR. BAKER: In that particular
9 corner, yes. No sun gets to that corner.

10 MR. SULLIVAN: Okay. I have a
11 question about your document filed with the
12 party status request. You mentioned that
13 these violations of the front and side yard
14 setback have degraded the amount of light and
15 air previously afforded his residence. Are
16 you talking about your residence or the
17 applicant's residence?

18 MR. BAKER: That would be my
19 residence.

20 MR. SULLIVAN: Okay. So much so
21 that you were forced to remove a garden that
22 could no longer thrive?

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1 MR. BAKER: That's correct.

2 MR. SULLIVAN: Where was that
3 garden?

4 MR. BAKER: The garden was along
5 the west side, what was the west wall of the
6 applicant's home towards the back corner.
7 And in the original home that back corner of
8 the house set back. It had a back porch, and
9 sunlight would pass over that.

10 It was less than, because of the
11 way it was set back and the height of the
12 overall house, we would get sun to the back
13 of what would be our east corner of the
14 property.

15 MR. SULLIVAN: So how did closing
16 up the porch in the front of the house affect
17 the garden way in the back of the house?

18 MR. BAKER: The garden in the
19 back of the house was affected by the roughly
20 40 feet height of the main home which appears
21 in compliance of current zoning.

22 MR. SULLIVAN: Because there's a

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1 gross floor area requirement in the Wesley
2 Heights neighborhood, if the applicant
3 removed at the beginning before he knew this
4 was going to happen, if he had removed that
5 front porch and put that density to the back,
6 wouldn't that have made the situation even
7 worse for your rear yard?

8 MR. BAKER: No, because under the
9 current structure the back of the house
10 exceeds -- our property's only 50 feet in
11 depth. Their new structure is 60 feet in
12 length from front to back. So we already go
13 ten feet, if you will, to the south beyond
14 our property line. So adding a powder room
15 to the back would not be of any detriment to
16 us and it would allow sun to then pass
17 through the north side or dining room or bay
18 window and front door of our home. So we
19 would prefer that solution.

20 MR. SULLIVAN: Where's your AC
21 unit on your property?

22 MR. BAKER: It's on the same

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1 side.

2 MR. SULLIVAN: Okay, thank you.
3 If we hadn't removed the bump-out could the
4 applicant have still put an HVAC unit
5 somewhere on their property, regardless of
6 the bump-out?

7 MR. BAKER: I would think so.

8 MR. SULLIVAN: Thank you. I have
9 no further questions.

10 CHAIR JORDAN: Let me ask you a
11 question. Applicant, you're going to really
12 need to control yourself. We do have some
13 order here in regards to this hearing.

14 Let me ask you a question.

15 MR. BAKER: Yes.

16 CHAIR JORDAN: So if the
17 applicant had not raised that wall and took
18 it down to zero and they simply just enclosed
19 that area, you would have been affected the
20 same way as a matter of right, would you not?

21 MR. BAKER: That's correct.

22 CHAIR JORDAN: Okay, that's what

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1 I was thinking. But the fact is, it is what
2 it is at this point, yes. The Board have any
3 other questions? Yes, Mr. Miller?

4 COMMISSIONER MILLER: Thank you,
5 Mr. Chairman. I'm trying to understand. I'm
6 not sure it's relevant to our evaluation but
7 I just want to understand what's happened
8 before and after.

9 For each party, what was the
10 height of the main house prior to the
11 construction and what is it currently?

12 MR. DONOHUE: That's an applicant
13 question.

14 MR. XENOPHONTOS: At this moment
15 is just shy of 40 feet at the top of the
16 roof. Prior to that --

17 CHAIR JORDAN: Put your mic on.

18 MR. BAKER: My apologies.
19 Probably about 25 feet, because I ran the
20 calculations on our home which is about 25
21 feet, and although his house does, sits
22 taller, the profile of the land, the

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1 topography, he's higher by about two feet.

2

3 But overall, the structure of his
4 house in height was similar in terms of the
5 height of the attics and two floors. Two
6 floors plus an attic, they were about the
7 same, so approximately 25 feet.

8 COMMISSIONER MILLER: And so now
9 it was previously two stories, is it still
10 two stories or a three-story building?

11 MR. XENOPHONTOS: It is a three-
12 story, and also one has to take into
13 consideration our house sits up about 7.5
14 feet from the street level. So it's already
15 high. It's not low. So everybody can see
16 the house and they're thinking why it's high,
17 but the reality of eight feet from street to
18 the first step of the house.

19 COMMISSIONER MILLER: And where
20 was your HVAC prior to this?

21 MR. XENOPHONTOS: Okay, we had
22 one HVAC small unit and it was just serving

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1 the top floor and it was on the east side.
2 And I'd like to add something about this, I'm
3 glad you brought it up.

4 When he's saying that Mr. Baker,
5 that I demolish all the structures just to
6 put in an AC unit. No, that's not true. He
7 called me and we met on the side and he tells
8 me, where are you going to put your AC units?

9 And I said, I cannot do it on the
10 other side anymore because there's no room.
11 There's a driveway and there's less than two
12 feet of garden so that you cannot put on
13 other side. I have to put it here. And I
14 said where? And I said, I'm going to try to
15 put it in this spot, then we'll demolish. So
16 it's discreet and it's away from anybody.
17 It's away from your patio.

18 You know what he told me? Good.

19 Okay. I have no reason to put it there. I
20 did this to be, you know, discreet.

21 MR. XENOPHONTOS: You've
22 answered. Thank you.

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1 COMMISSIONER MILLER: Mr.
2 Xenophontos, you've lived there 18 years?

3 MR. XENOPHONTOS: 18 years.

4 COMMISSIONER MILLER: And Mr.
5 Baker, you've lived there --

6 MR. BAKER: Eight years.

7 COMMISSIONER MILLER: Where was
8 the powder room before? It wasn't under the
9 open porch. Where was the powder room?

10 MR. XENOPHONTOS: Sir, we lived
11 for 18 years there with our daughter on a
12 two-bedroom, one bathroom --

13 CHAIR JORDAN: So the answer is -
14 -

15 COMMISSIONER MILLER: So there
16 was no powder room.

17 MR. XENOPHONTOS: There was no
18 powder room.

19 CHAIR JORDAN: The answer is no
20 powder room.

21 COMMISSIONER MILLER: Okay.

22 MR. XENOPHONTOS: Is our first

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1 one.

2 CHAIR JORDAN: Got you.

3 COMMISSIONER MILLER: Thank you.

4 That's it.

5 CHAIR JORDAN: Well, good. Okay.

6 Then anyone wishing to speak in opposition?

7 Any other person wishing to speak in
8 opposition? Please come forward. Yes, Mr.
9 Donohue? You had --

10 MR. DONOHUE: Mr. Chairman, this
11 is George Watson. He's the president of
12 Wesley Heights Historical Society. He
13 attempted to submit a letter yesterday but it
14 was rejected because it wasn't signed and
15 sent PDF. He's got copies for the Board.
16 He's also requesting party status and I
17 neglected to bring that up as a preliminary.

18 CHAIR JORDAN: It's too late for
19 party status. We're not doing party status
20 at this point. We've already began this
21 process. We will give you five minutes to
22 make your comments, however.

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1 MR. WATSON: I had prepared some
2 testimony.

3 CHAIR JORDAN: You've got to
4 identify yourself, please, on the record.

5 MR. WATSON: Oh, I'm George
6 Watson. I've lived for 44 years at 4323
7 Cathedral Avenue which is a few blocks away
8 from the Lowell Street property. I'm a
9 founding member --

10 CHAIR JORDAN: One second.

11 COMMISSIONER MILLER: I'm sorry,
12 did you say you had copies available --

13 MR. WATSON: I do.

14 COMMISSIONER MILLER: -- for us?
15 It would be helpful to have that.

16 MR. WATSON: That will save me
17 from having to recite some of the stuff which
18 is redundant. I'm a founding member --

19 CHAIR JORDAN: Are you
20 representing the Wesley Heights Historical
21 Society?

22 MR. WATSON: I am.

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1 CHAIR JORDAN: And you had a
2 meeting on this and you voted that you'd
3 represent them on this hearing?

4 MR. WATSON: Not on this
5 particular hearing.

6 CHAIR JORDAN: So you're
7 testifying for yourself?

8 MR. WATSON: I'm testifying for
9 myself --

10 CHAIR JORDAN: But you happen to
11 be a member of the Wesley Heights Historical
12 Society.

13 MR. WATSON: Well, I'm a founding
14 member.

15 CHAIR JORDAN: I've got you.
16 Yes.

17 MR. WATSON: And I am the current
18 president of the Historical Society.

19 CHAIR JORDAN: Okay, well, he's
20 got five minutes. Okay.

21 MR. WATSON: I spoke to some of
22 the members but not all of them.

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1 CHAIR JORDAN: Okay, we'll give
2 some deference to you. Normally we require
3 the organization to have designated as an act
4 of the organization. But please, go ahead.
5 Proceed. You're president and you're here.

6 MR. WATSON: And essentially what
7 I had planned to do was to present some
8 history of the founding of the Society
9 because that founding is highly relevant to
10 the circumstances before the BZA.

11 The Wesley Heights was developed
12 during the 1920s to 1930s as an upscale, low
13 density residential community for families.
14 In the late 1980s, a group of neighbors
15 became concerned about overbuilding in Wesley
16 Heights when some developers started
17 acquiring small properties and razing them or
18 replacing them with much larger structures.
19 The neighbors held a number of open meetings
20 which led to the formation of the Society in
21 1989.

22 And of particular concern was the

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1 acquisition by the Kettler company of two
2 adjacent 7,500 square foot lots with smaller
3 homes. One of them was a one-story bungalow
4 in the 4400 block of Klinge Street, one
5 block away. They razed the small structures
6 and --

7 CHAIR JORDAN: Mr. Watson, I just
8 want to let you know you had five minutes.
9 We're down to two minutes.

10 MR. WATSON: Okay.

11 CHAIR JORDAN: Okay?

12 MR. WATSON: Essentially what
13 happened was that the Kettlers demolished
14 these two houses, put up large structures,
15 three stories that looked down into the
16 neighbors, and one of the neighbors who
17 happened to be a very close friend of ours
18 moved out of the neighborhood because of this
19 loss of privacy and loss of air.

20 I intended to read from the
21 preamble to the Wesley Heights Overlay which
22 essentially to preserve, it was done to

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1 preserve, in general, the current density of
2 the neighborhood, allow reasonable
3 opportunities for owners to expand their
4 dwellings and preserve existing trees, access
5 to light and air, and the harmonious design
6 and attractive appearance of the
7 neighborhood. Now what I am
8 concerned about is that we've already had,
9 Kent Slowinski told you about the vote on
10 this particular case which was 10 to 0.
11 There was a previous one two months before
12 that was 9 to 1, Kent was the only one
13 objecting, that went the other direction.

14 And what we did was to educate
15 the ANC to the importance to us and to the
16 neighborhood of our Wesley Heights zoning
17 Overlay, and that was the result of a 10 to 0
18 vote supporting the integrity of this
19 Overlay. And I just implore you,
20 do not allow a variance that is going to be
21 used as a precedent. And if you remember,
22 there was a porch that was cited in this

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1 presentation. There was a porch on Klingle
2 Street where it was intruding into the front
3 yard and that was approved and that has been
4 already cited by the applicant here as a
5 precedent for him keeping this small front
6 porch.

7 So I'm just imploring you, do not
8 give further reasons for citing those porches
9 in Wesley Heights as a reason for granting a
10 variance.

11 CHAIR JORDAN: Well, we thank you
12 for your testimony. I just want to ask a
13 quick question. But this porch was there.
14 Prior to this rehabilitation or whatever to
15 this property, that porch has been there for
16 a number of years, right?

17 MR. WATSON: Oh, granted.

18 CHAIR JORDAN: And so it's not
19 setting precedence, is it, because it's
20 already there? It's been there, I don't
21 know, what's the year the property was built?
22 1930s, correct?

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1 MR. WATSON: Yes. I just want to
2 say I live in a house that was built in 1924.

3 It had a screened porch on the side. The
4 father and his son who lived in the house in
5 the 1920s enclosed it. And it makes our
6 living room 30 feet long in a tiny little
7 building of the same size as the previous
8 building at 4540. One bathroom also.

9 But what I'm getting at is, I'm
10 aware that there are porches. I'm aware that
11 people enclose porches. Our porch did not
12 intrude in front of the house at all.

13 CHAIR JORDAN: Got you. We
14 appreciate it. Thank you. Board, questions
15 of Mr. Watson? Does the applicant have
16 questions of Mr. Watson?

17 MR. SULLIVAN: No questions, Mr.
18 Chairman.

19 CHAIR JORDAN: Mr. Donohue, any
20 questions of Mr. Watson?

21 MR. DONOHUE: No, sir.

22 CHAIR JORDAN: All right, thank

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1 you very much. Any other person wishing to
2 testify in opposition? Okay, then let's move
3 back to any rebuttal, if necessary, Mr.
4 Sullivan. You have ten minutes to rebut
5 whatever you may want.

6 MR. SULLIVAN: Thank you.
7 Andreas, can you tell me, if you could have
8 saved the west wall in a safe manner would
9 you have?

10 MR. XENOPHONTOS: Yes, I would.

11 MR. SULLIVAN: Can you get the
12 pictures of the damaged, rotted wall and
13 respond to their claim that those have to be
14 pictures from the east wall.

15 In the meantime, while you're
16 looking for that I want to ask you a
17 question. It's not relevant, but just to
18 clear the record did you say that you were
19 going to rent your house out to an embassy?

20 MR. XENOPHONTOS: I never said
21 that. On the contrary, I got up at the ANC
22 meeting and I asked Mr. Watson, when did you

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1 hear that I said that? When did I say that?

2 Actually I --

3 MR. SULLIVAN: So no is the
4 answer, right?

5 MR. XENOPHONTOS: No.

6 MR. SULLIVAN: So on this Slide
7 23, can you point out and respond to the
8 assertion that --

9 MR. XENOPHONTOS: This of the
10 existing east wall elevations of the house.

11 MR. SULLIVAN: West walls.

12 MR. XENOPHONTOS: West walls,
13 spelling.

14 MR. SULLIVAN: The rest of my
15 rebuttal is in the form of a closing, if you
16 would like me to do that at this point.

17 CHAIR JORDAN: Sure, please.
18 Yes.

19 MR. SULLIVAN: Thank you. In
20 closing, I believe the case is --

21 CHAIR JORDAN: Well, one second,
22 because you had a rebuttal. Is there, Mr.

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1 Donohue, anything in regards to that rebuttal
2 testimony?

3 MR. DONOHUE: No, thank you.

4 CHAIR JORDAN: Okay, make sure.

5 MR. SULLIVAN: Believe it or not,
6 I think the case is simpler than we have made
7 it out to be here today. I think the
8 practical difficulty is quite obvious. If
9 not granted relief from strict compliance,
10 the powder room structure must come down and
11 there will be no powder room on the first
12 floor, meaning that he would have to
13 reconstruct it. One of the
14 suggestions from the ANC single-member
15 district commissioner when we were discussing
16 this was that he could put an elevator in
17 instead, which obviously would also be
18 unnecessarily burdensome.

19 That practical difficulty has
20 risen from several unique factors. First of
21 all, it is a factor that it was previously
22 legally nonconforming. And this would have

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1 been a matter of right activity completely
2 but for the technicality of removing a
3 structural wall in a totally unrelated
4 portion of the building.

5 If he could have kept the wall he
6 would have kept the wall. His intention in
7 keeping all of the basement structure, and he
8 could have dug out a huge basement in this
9 house instead, and keeping the utilities, was
10 to keep portions of the house essentially to
11 save money if he could.

12 But the idea of keeping the front
13 porch in that area was never a primary
14 concern. It didn't need to be because the
15 porch didn't get him anything. It didn't
16 benefit him any. It didn't give him any
17 extra floor area that he couldn't have put in
18 the back.

19 There's a huge rear yard. He
20 could have easily put this in the back. He
21 just designed it this way because he thought
22 it would be more efficient to do so since

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1 this is how it has existed since the 1930s.
2 He of course relied on the approved building
3 permits and the inspections and specifically
4 relied on Mr. Cluff's inspections and
5 comments.

6 And if I'll note briefly, in the
7 Monaco case, the Board held among other
8 things that reliance on actions of zoning
9 officials itself can be a factor in the
10 variance analysis.

11 Granted, regardless of that
12 process we still had the structural walls and
13 we still would have asked for the variance to
14 keep the porch because it was already
15 designed at that point.

16 CHAIR JORDAN: You do know in
17 those cases the reliance was up front that
18 they gave him proper instructions and
19 allowed, there wasn't a change of plans that
20 changed anything in that case.

21 MR. SULLIVAN: Yes, in this case
22 I think it's just a question. We're not here

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1 to appeal the zoning administrator's
2 decision. It was just so, the whole process
3 so vague and ambiguous that it couldn't be
4 known exactly what he had to do, and he
5 wouldn't know that it would affect the
6 existence of the front porch.

7 Regarding prong three, the
8 detriment to the public good, we think we've
9 shown with the slides that there's limited
10 impact if any on the neighbors to the west.
11 Essentially we're talking about a one-story,
12 10' by 10' structure which has had one wall
13 closed up.

14 I think you can hear from the
15 Wesley Heights Overlay president as well as
16 the Bakers that there's a concern about the
17 matter of right structure of the house. And
18 that's understandable, but it's all matter of
19 right and it meets the heightened
20 restrictions of the Wesley Heights Overlay,
21 30 percent lot occupancy and a gross floor
22 area limit.

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1 Regarding the integrity of the
2 zone plan in the overlay, and this is where
3 I'm puzzled by the Office of Planning's
4 testimony that there's only a few porches
5 that already encroach into the rear yard and
6 that it's an unusual situation, when in fact
7 the setback amount is on average on each
8 block of the houses.

9 So by definition, when the
10 Overlay was created half the houses on the
11 street were already noncompliant. So the
12 fact that it's in the front yard isn't
13 necessarily on the integrity of the Overlay,
14 it's part and parcel of the Overlay that some
15 houses will be over. Half the houses will be
16 over and half will be behind the Overlay.

17 We've not extended the structure
18 beyond what was existed there for 60 years
19 before the Overlay was adopted. And in this
20 case enforcement of the zoning regulations
21 without granting variance relief could cause
22 an 18-year resident of Wesley Heights to pay

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1 \$30,000 or more of a penalty for what
2 amounted to a zoning technicality and
3 structural defects in an existing wall, both
4 of which had nothing to do with the actual
5 nonconformity. And the area of
6 variance relief exists in this case, I think
7 exists as a safety valve to protect property
8 owners in a situation just like this. We
9 believe it's appropriate for the Board to do
10 so in this case and grant the requested
11 relief. Thank you.

12 CHAIR JORDAN: Okay, thank you.
13 All right, what to do, what to do. I think
14 what we need is some additional information
15 here and keep the record open for a couple of
16 things.

17 One, I would like to have the
18 complete engineering report, statement of
19 action and analysis that was performed by
20 your structural engineer. I need to know
21 what they considered and what they did not
22 consider and what actions they actually took,

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1 whether or not they came out or didn't come
2 out. So I need the statement of actions and
3 activities. I need a full set of
4 shadow studies, or sun studies. I want
5 copies of all applications for the
6 modification of building plans which were
7 submitted, and from both parties, certainly,
8 proposed findings of facts and conclusions of
9 law.

10 And so let's work our way back
11 from a decision date on this and to when
12 these things should be in. Mr. Moy? Yes.
13 Oh, you have something else too, Mr. Miller
14 or --

15 VICE CHAIR ALLEN: It's not
16 something else, but it would be really
17 helpful based on the party in opposition's
18 statement that the light used to come through
19 the porch. So where you're doing
20 the study, if you could make sure that we can
21 tell whether it's from the, you know, your
22 whole thing before was, well, the main house

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1 is blocking the sun.

2 What we're really interested in
3 is if the now enclosed, or at least what I'm
4 interested in is if the now enclosed portion
5 is blocking the sun. Okay? Is that fair?

6 CHAIR JORDAN: Yes. Mr. Miller?

7 COMMISSIONER MILLER: On that
8 point, just to follow up. If the party in
9 opposition happens to have any photographs
10 from the last eight years in the dining room
11 bay, you could provide that for the record as
12 well.

13 CHAIR JORDAN: Yes.

14 MR. DONOHUE: Not to put too fine
15 of a point on it, Mr. Chairman, but if we
16 were to conduct our own shadow study, I
17 assume you would accept that in the record?

18 CHAIR JORDAN: Oh absolutely,
19 because I said shadow studies. I didn't mean
20 any one person. And also I want them
21 exchanged and what have you. So --

22 MR. DONOHUE: Understood.

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1 CHAIR JORDAN: -- absolutely. In
2 fact I thought I would have those, you know,
3 because that's the only way, otherwise we're
4 just shooting from the gut and the Board
5 actually needs real evidence in this regard.

6 So Mr. Moy, can you give us some
7 dates and times?

8 MR. MOY: Yes.

9 MR. BAKER: And Mr. Chairman, can
10 I ask that there's some clarification on
11 these photos or that they address how --

12 CHAIR JORDAN: No.

13 MR. BAKER: -- the slab --

14 CHAIR JORDAN: No.

15 MR. BAKER: I mean, for reporting
16 back in the future?

17 CHAIR JORDAN: I hear you. No,
18 we're good. We're good. Thank you.

19 MR. BAKER: Okay.

20 CHAIR JORDAN: Mr. Moy, we're
21 waiting.

22 MR. MOY: Yes. I'm pulling these

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1 dates together, Mr. Chairman.

2 CHAIR JORDAN: We'll give you a
3 minute for that. We'll give you a minute.

4 MR. MOY: I ask one quick
5 question of the Board. Do you want just one
6 quick, I won't say quick, filing?

7 CHAIR JORDAN: Yes.

8 MR. MOY: Or all that you ask
9 were any responses? No?

10 CHAIR JORDAN: Let's do this.
11 Yes, let's give each a seven day to reply to
12 each other's document. So we want that to
13 be, so that's 14 days out that they need to
14 exchange that document, because seven days
15 out we need to have it filed here at the
16 Board. So 14 days from the
17 hearing date the parties should be exchanging
18 information, and seven days out whatever
19 final submission should be before this Board.
20 Does that help you any, Mr. Moy?

21 MR. MOY: Yes, sir. Okay.

22 CHAIR JORDAN: That also includes

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1 OP to get copies of all that and have their
2 opportunity to respond in that same window.
3 Everybody. Yes, ANC is a party and they
4 should have the right to respond to it also,
5 but they didn't present.

6 MR. BAKER: Mr. Chairman, one
7 other question. Do we want to clarify all
8 the heights of the new structure compared to
9 the height of the original porch? Only
10 because I submitted --

11 CHAIR JORDAN: We should have the
12 full set of plans from both ways. So don't
13 we? We do have the plans? We have the
14 before and after plans. We should have that
15 in our record. We have that in our record.

16 MR. BAKER: They don't clearly
17 identify the differential as shown in the
18 photos that I handed up.

19 CHAIR JORDAN: Let's leave it as
20 is. We do have the plans. Okay, Mr. Moy?

21 MR. MOY: Okay, Mr. Chair. I'm
22 looking at a real tight schedule. I don't

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1 know if you would like a really tight --
2 okay, this is the tight one with a decision
3 for December 17th, which would be the last
4 hearing for the Board in this year.

5 CHAIR JORDAN: What are we
6 looking like on the 17th?

7 MR. MOY: We have seven cases and
8 an appeal case, otherwise we're into January
9 for a decision. So that's my decision point.

10 CHAIR JORDAN: Okay, well, that's
11 fine. We're in January.

12 (Off the record comments)

13 CHAIR JORDAN: Mr. Moy?

14 MR. MOY: Yes, sir. I would
15 recommend that all filings which includes
16 findings of fact and conclusions of law by
17 January the 8th, all right, and then with the
18 responses by January 22nd. Decision, January
19 29th.

20 CHAIR JORDAN: Okay.

21 MR. MOY: The transcript should
22 be ready in about two weeks. Ten days to 14

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1 days.

2 CHAIR JORDAN: Okay, so that's
3 where we are. Okay. And we thank everybody
4 for participating this day, and always
5 there's time to talk and work things out
6 because as we always say, it's better that
7 you work it out than we work it out.
8 Somebody's not going to be happy. And it's
9 just an ongoing issue and people living next
10 to each other and et cetera.

11 So really appreciate you taking
12 time, everybody participating here and the
13 community in general into this hearing. So
14 we will close this particular matter subject
15 to the schedule we just gave.

16 We have one other item of
17 business for the Board. In accordance with
18 Section 405 of the Open Meetings Act, D.C.
19 Official Code Section 2575 Subsection C, I
20 move that the Board of Zoning Adjustment hold
21 closed meetings on Monday, December 2nd, 9th
22 and 16th.

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1 This will begin at 4:00 p.m. for
2 the purpose of obtaining legal advice from
3 our counsel and to deliberate upon without
4 voting on cases scheduled for public hearing
5 or decided by the Board on the day after each
6 such closed meeting. These cases are
7 identified in the Board's public agenda for
8 December 3rd, 10th and 17th.

9 So in accordance with this, I
10 move that we hold those meetings as set forth
11 for the 10th. Hold a closed meeting on
12 December 10th from -- oh, and also hold a
13 closed meeting on December 10th from 1:00 to
14 4:00 p.m. for the purpose of conducting
15 training if we're going to be able to get it
16 again, unless there is another sequester or
17 something.

18 VICE CHAIR ALLEN: Second.

19 CHAIR JORDAN: Motion made and
20 seconded. Would the secretary poll the
21 Board?

22 MR. MOY: Yes, sir. When I call

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1 the member's name if you can reply with a yes
2 or no, yea or nay.

3 Mr. Rob Miller?

4 COMMISSIONER MILLER: Yes.

5 MR. MOY: Chairman Jordan?

6 CHAIR JORDAN: Yes.

7 MR. MOY: Vice Chairperson Allen?

8 VICE CHAIR ALLEN: Yes.

9 MR. MOY: Mr. Hinkle is absent,
10 and a Board seat vacant. The motion carries,
11 Mr. Chairman.

12 CHAIR JORDAN: Any other
13 business?

14 MR. MOY: No, sir, nothing to
15 start.

16 CHAIR JORDAN: We are adjourned.

17 (Whereupon, the foregoing matter
18 went off the record at 1:15 p.m.)
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